**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
TEXAS DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. 3:16-CV-1735-D
	§	
CHRISTOPHER A. FAULKNER, et al.	§	
	§	
Defendants.	§	

NON-PARTY STATE COURT PLAINTIFFS' THIRD MOTION TO LIFT STAY, REQUEST FOR JUDICIAL NOTICE OF RECEIVER'S SETTLEMENT WITH ROTHSTEIN KASS, AND BRIEF IN SUPPORT

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I.
Summary of Argument

Jinsun, L.L.C., Silver Star Holdings Trust, TPH Holdings, L.L.C., Vertical Holdings, L.L.C., Steven M. Plumb, and J. Leonard Ivins (collectively, "State Court Plaintiffs") move the Court to lift its Stay Order so that they can proceed to trial in their state court lawsuit against Rothstein Kass under Cause No. CC-17-06249-C in County Court at Law No. 3 for Dallas County. The Stay Order is ripe to be lifted.

Indeed, subject to Court approval, on February 12, 2021, Receiver and Rothstein Kass settled their lawsuit under Civil Action No. 3:19-CV-01594-D and styled *Thomas Taylor vs. Rothstein Kass et al*. and that case has been administratively closed. Appx. (pp. 116-119). Receiver asserted and has settled claims, subject to Court approval, for professional negligence, gross negligence, and breach of fiduciary duty upon the following receivership entities: Breitling Oil & Gas Corporation, Breitling Royalties Corporation, Breitling Energy Corporation, Crude Energy LLC, Crude Royalties, LLC, and Patriot Energy, Inc. Appx. (pp. 59, 86-88).

As both this Court and as Rothstein Kass articulated in its MSJ on Receiver's Claims under Civil Action No. 3:19-CV-01594-D and styled *Thomas Taylor vs. Rothstein Kass et al*., Receiver did not, has not, and cannot assert claims for individualized losses to investors or other third parties, which are the very claims asserted by State Court Plaintiffs. *See, e.g., Reneker v. Offill*, Civil Action No. 3:08-CV-1394, 2009 WL 804134, *5 (N.D. Tex. March 26, 2009) (Fitzwater, J.); *see also* Appx. (pp. 121-123); docket # 95 (pp. 46-47) (§ VI-C) (filed Dec. 8, 2020).

Judge Fitzwater has stated:

"It is a well-known legal principle that a receiver can bring *only* those claims belonging to the entities it represents and cannot bring claims on behalf of third parties**."** *See, e.g., Reneker v. Offill*, Civil Action No. 3:08-CV-1394, 2009 WL 804134, *5 (N.D. Tex. March 26, 2009) (Fitzwater, J.) (emphasis added) [citations omitted].

Rothstein Kass's MSJ states as follows:

Defendants' conduct was the proximate cause of those damages. *Reneker v. Offill*, No. 3:08-CV1394-D, 2012 WL 2158733, at *10 (N.D. Tex. June 14, 2012). Since "'[i]t is a well-known legal principle that a receiver can bring only those claims belonging to the entit[ies] it represents and cannot bring claims on behalf of third parties,' such as investors," *id.* at *5 (quoting *Scholes v. Stone, McGuire & Benjamin*, 821 F. Supp. 533, 535 (N.D. Ill. 1993)), "such claims must involve damages which actually belong to the entities, rather than to the investors." *Scholes*, 821 F. Supp. at 536; *see also Reneker v. Offill*, No. 3:08-CV-1394-D, 2009 WL 804134, at *6 (N.D. Tex. Mar.

26, 2009) ("The Receivership Estate's financial inability to satisfy liabilities owed to investors as a result of securities-laws violations harms the investors, not the AmeriFirst Clients."). Put simply, Plaintiff seeks damages for claims that do not belong to the Receiver Entities.

Although Plaintiff has filed claims "to recover damages sustained by the" Receiver Entities, Dkt. No. 45, ¶ 1, Plaintiff's claims improperly seek damages on behalf of the ***investors*** in working interests or royalty interests offered by certain Receiver Entities. This Court faced an identical issue in *Reneker v. Offill*. In *Reneker*, as is the case here, the receiver sought damages for a professional negligence claim based on the entities "causing or increasing liabilities to third parties." 2012 WL 2158733, at *6. The defendant, however, argued the receiver was actually seeking "nothing more than investor losses." *Id.* The Court concluded that the receiver entities' "liability to investors and investor losses are mathematically equivalent," which showed that the "liabilities are not distinct from investor losses." *Id.* Therefore, the Court dismissed the claim "for lack of standing to the extent it is based on liabilities incurred to defrauded investors or the increased amount of such liabilities." *Id.* The Court should do the same here.

Just as in *Reneker*, the Increased Liabilities Damages sought by Plaintiff are a blatant attempt to repackage investor claims as damages to the Receiver Entities. *See* 2012 WL 2158733,

See Appx (p. 121-122); docket # 95 (pp. 46-47) (§ VI-C) (filed Dec. 8, 2020) (emphasis added).

Given Receiver's settlement with Rothstein Kass, under no set of circumstances, can State Court Plaintiffs' non-professional negligence and non-breach of fiduciary duty claims impact the receivership estate at this point. Appx. (pp. 116-119). Consequently, State Court Plaintiffs' Third Motion to Lift the Stay should be granted.

II.
Statement of Facts

On September 25, 2017, this Court entered a Stay Order under the above cause number. The Stay Order states in pertinent part as follows:

> All civil legal proceedings of any nature . . . involving . . . any Receivership Assets . . . the Receivership Defendants . . . or . . . any of the Receivership Defendants' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise.

See Stay Order (¶ 32).

On November 28, 2017, Jinsun, L.L.C., Silver Star Holdings Trust, KM Casey No. 1 Ltd., TPH Holdings, L.L.C., Vertical Holdings, L.L.C., Steven M. Plumb, and J. Leonard Ivins (collectively, "State Court Plaintiffs") sued Rothstein Kass under Cause No. CC-17-06249-C in County Court at Law No. 3 for Dallas County ("State Court Lawsuit"). Prior to March of 2013, State Court Plaintiffs were shareholders of Bering Exploration, Inc. ("Bering") before it entered into a reverse merger with Christopher Faulkner's two former private companies, Breitling Royalties Corporation and Breitling Oil and Gas Company (collectively, "Breitling").

Albeit State Court Plaintiffs' Ninth Amended Petition filed in the State Court Lawsuit speaks for itself, a brief summary may be useful to the Court here. Appx. (pp. 1-31).

State Court Plaintiffs are investors who lost their ownership interests and shares in Bering, when it reversed merged into Breitling, not knowing that Faulkner was actively using Breitling to further a criminal enterprise. *See* Appx. (pp. 8-13). As the outside auditors, Rothstein Kass blessed the reverse merger between Bering and Breitling,

when it issued an unqualified audit opinion, which was a condition precedent under SEC rules to taking Breitling public. *Id.*

Rothstein Kass knew there was widespread fraud within Breitling; however, it failed to disclose it. Had Rothstein Kass blown the whistle on Breitling, as it was obligated to do as its outside auditors, State Court Plaintiffs would not have allowed Bering to go forward with the transaction, State Court Plaintiffs would still own their shares in Bering, and State Court Plaintiffs could have either continued operating Bering as a public company or they could have otherwise sold it to another company with scrupulous business practices. *Id.*

On August 20, 2018, Rothstein Kass filed a Motion asking this Court to clarify it its Stay Order and find that the State Court Lawsuit was stayed. *See* docket # 301.

On October 24, 2018, this Court granted Rothstein Kass's Motion to Clarify the scope of the Stay Order. *See SEC v. Faulkner*, 2018 WL 5279321 (N.D. Tex. Oct. 24, 2018). Appx. (pp. 32-41). This Court clarified that the State Court Lawsuit was stayed pending further order from this Court.

On December 13, 2018, State Court Plaintiffs filed a Motion to Vacate the Court's October 24, 2018 Order. *See* docket #358.

On March 5, 2019, this Court denied State Court Plaintiffs' Motion to Vacate. Appx. (pp. 32-41); docket #408. This Court held that State Court Plaintiffs' professional negligence claim belonged to the Receiver. *See id.*

On March 26, 2019, this Court entered a Second Amended Order Appointing Receiver. *See* docket #418.

On July 1, 2019, Receiver filed suit under Civil Action No. 3:19-cv-01594-D in the United States District Court for the Northern District of Texas, Dallas Division, against Rothstein Kass—bringing claims for professional negligence, breach of fiduciary duty, fraudulent transfer, and aiding and abetting fraud. See docket #1. Receiver would later file an Amended Complaint, asserting only claims for professional negligence and breach of fiduciary duty. Appx. (pp. 86-88).

Importantly, Receiver's claims were brought solely on behalf of the Receivership entities, which are as follows: Breitling Oil & Gas Corporation, Breitling Royalties Corporation, Breitling Energy Corporation, Crude Energy LLC, Crude Royalties, LLC, and Patriot Energy, Inc. Appx. (p. 59) (§ I, ¶ I). The pertinent portion of Receiver's Complaint filed against Rothstein Kass is reproduced below:

I. INTRODUCTION

1. The Receiver brings this action to recover damages sustained by Breitling Oil & Gas Corporation ("BOG"), Breitling Royalties Corporation ("BRC"), Breitling Energy Corporation ("BECC") (collectively the "Audit Entities") -- and their alter egos Crude Energy, LLC ("Crude Energy"), Crude Royalties, LLC ("Crude Royalties") and Patriot Energy, Inc. ("Patriot") (collectively with the Audit Entities, "Breitling") -- as a result of Rothstein and Matlock's failure to exercise the degree of care, skill and competence that reasonably competent members of their profession would exercise under similar circumstances in conducting their audit of the Audit Entities, which audit was not conducted in accordance with Generally Accepted Auditing Standards ("GAAS").

See Appx. (p. 59) (§ I, ¶ I). (Civil Action No. 3:19-CV-01594-D, Receiver's Amended Complaint) (emphasis added)).

Needless to say, Receiver has not, did not, and could not assert State Court Plaintiffs' individualized claims, the genesis of which derive from State Court Plaintiffs' ownership interests and shares in *Bering* long *before* the merger with Faulkner was ever consummated.

On October 16, 2019, Rothstein Kass filed another Motion in this Court seeking "additional" clarification, claiming that State Court Plaintiffs' aiding and abetting a breach of fiduciary duty claim was also stayed under the Court's Stay Order. *See* docket # 487.

On February 6, 2020, this Court granted Rothstein Kass' Motion—finding that the State Court Lawsuit remained stayed. Appx. (pp. 91-103); docket #512.

On February 10, 2020, State Court Plaintiffs filed an Emergency Motion to Lift the Stay in this Court so that State Court Plaintiffs could proceed to trial in the State Court Lawsuit, which was then scheduled for March 24, 2020—but only on the claims, which were beyond the Court's prior Memorandum Opinions and Orders (claims that were NOT for either professional negligence or breach of fiduciary duty). *See* docket # 516.

To this end, State Court Plaintiffs agreed to dismiss with prejudice their professional negligence and fiduciary duty claims.

State Court Plaintiffs further pointed out that one of the State Court Plaintiffs, Leonard Ivins, was elderly, in failing health, and may not live to see a later trial setting.

On February 25, 2020, this Court denied the Motion. Appx. (pp. 104-112); docket # 527.

On May 14, 2020, State Court Plaintiffs moved this Court to lift the stay, but only for the narrow purpose of correcting a "misnomer" in one of the spellings of the correct Rothstein Kass entities and for no other purpose. *See* docket #544.

On July 1, 2020, this Court denied the Motion. Appx. (pp. 113-115); docket # 550.

On December 8, 2020, Rothstein Kass moved for summary judgment on all of Receiver's claims filed under Civil Action No. 3:19-CV-01594-D and styled *Thomas Taylor vs. Rothstein Kass et al*. *See* Appx. (p. 120); docket # 95.

On February 11, 2021, Receiver and Rothstein Kass mediated their dispute under Civil Action No. 3:19-CV-01594-D and styled *Thomas Taylor vs. Rothstein Kass et al*. with former United States Magistrate Judge Jeff Kaplan at JAMS. Appx. (pp. 116); docket #117.

On February 12, 2021, Judge Kaplan filed an ADR Summary under Civil Action No. 3:19-CV-01594-D and styled *Thomas Taylor vs. Rothstein Kass et al*. stating that the Receiver and Rothstein Kass have settled all of their claims. Appx. (pp. 116-118); docket #117.

On February 12, 2021, this Court entered an Order under Civil Action No. 3:19-CV-01594-D and styled *Thomas Taylor vs. Rothstein Kass et al*. administratively closing the case, subject to the Court approving of the settlement. Appx. (pp. 119).

Because Receiver and Rothstein Kass have settled their dispute, State Court Plaintiffs should now be allowed to proceed in the State Court Lawsuit on their remaining claims. Appx. (pp. 116-119). This Third Motion to Lift the Stay Order should be granted.

III.
Argument & Authorities

A.
Receiver and Rothstein Kass have Settled their Lawsuit

In this Court's March 5, 2019 Order, it stated that "if the *Jinsun* Action [State Court Lawsuit] were no longer to implicate receivership assets, it would fall outside the scope of the Stay Order. Such an action would not be "one 'otherwise' 'involving … the Receivership Defendants because it would not impact the potential rights or property of the receivership estate." *See* Appx. (p. 54); docket # 408 (p. 13) (§ IV, ¶ 2).

Receiver asserted claims on behalf of the Receivership entities under Civil Action No. 3:19-CV-01594-D and styled *Thomas Taylor vs. Rothstein Kass et al*. for professional negligence and breach of fiduciary duty. *See* Appx. (pp. 86-88); docket #45 (pp. 28-30) (§ VI, ¶¶ 83-89). Subject to this Court's approval, these claims have now been settled. *See* Appx. (pp. 116-118); docket #117.

Importantly, State Court Plaintiffs are not pursuing claims for professional negligence or breach of fiduciary duty[1]—either on behalf of themselves individually or on behalf of any Receivership entity, which would not be connected to State Court Plaintiffs in any event. Rather, State Court Plaintiffs seek to proceed to trial on their individualized tort claims that accrued while they were investors in Bering. Appx. (pp. 18-23). Because Receiver and Rothstein Kass' dispute has been successfully mediated and settled (subject to Court approval), this Court should lift the stay and allow State Court Plaintiffs to try the State Court Lawsuit.

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[1] State Court Plaintiffs have already dismissed their professional negligence claim; and, as soon as this Court lifts the stay, assuming it does, they will dismiss their breach of fiduciary duty claim with prejudice. Appx. (p. 15).

B.
Notwithstanding Receiver's Settlement, State Court Plaintiffs Remaining Claims Belong Solely to Them

"It is a well-known legal principle that a receiver can bring *only* those claims belonging to the entities it represents and cannot bring claims on behalf of third parties**."** *See, e.g., Reneker v. Offill*, Civil Action No. 3:08-CV-1394, 2009 WL 804134, *5 (N.D. Tex. March 26, 2009) (Fitzwater, J.) (emphasis added) [citations omitted].

Consistent with the principles set forth in *Reneker*, this Court held that State Court Plaintiffs' remaining claims (that were not professional negligence and breach of fiduciary duty causes of action) could only be a receivership asset, "if the Receiver could have brought the claim *directly* and—due to the claim's *derivative* nature—the *Jinsun* Plaintiffs [State Court Plaintiffs] could *not* have done so." *See* Appx. (p. 49); docket # 408 (§ III-A, ¶ 1) (pg. 8) (emphasis added). This Court also held that the State Court Plaintiffs' non-professional negligence and non-breach of fiduciary duty claims, "*do not appear* to be receivership assets." *See* Appx. (p. 53); docket # 408 (§IV, ¶ 1) (pg. 12) (emphasis added).

Indeed, relying upon Section 162.01 of Professor Dorsaneo's TEXAS LITIGATION GUIDE, and the Texas Supreme Court's opinion in, *Murphy v. Campbell*, 964 S.W.2d 265, 268 (Tex. 1997), this Court opined that State Court Plaintiffs' non-professional negligence and non-breach of fiduciary duty claims, "appear to allege harms inflicted *directly* on the… [State Court] Plaintiffs themselves." *See* Appx. (p. 53); docket # 408 (§ IV, ¶ 1) (pg. 12) (emphasis added). [citations omitted]. The language from the Court's prior Order is re-produced below:

In denying the motion to vacate, the court observes that the claims the *Jinsun* Plaintiffs bring *other than* for professional negligence do not appear to be receivership assets. Rothstein Kass and the Receiver do not argue that these other claims—for aiding and abetting a breach of fiduciary duty, aiding and abetting violations of the Texas Securities Act,[10] negligent misrepresentation, common-law fraud and aiding and abetting fraud, fraud by non-disclosure, and statutory fraud—are derivative of a direct claim held by a receivership entity. Rather, these claims appear to allege harms inflicted directly on the *Jinsun* Plaintiffs themselves. *See* 11 William V. Dorsaneo III, *Texas Litigation Guide* § 162.01 (2019) ("When the wrongful acts violate duties owed directly to the injured shareholder rather than to the corporation, the shareholder may prosecute a direct action individually."); *cf. Murphy v. Campbell*, 964 S.W.2d 265, 268 (Tex. 1997) (where tax advisor counseled dissolving corporation *and* its shareholders, and consequences of tax treatment of dissolution fell directly on shareholders, shareholders had direct cause of action against advisor). The

See Appx. (p. 53); docket # 408 (§ IV, ¶ 1) (pg. 12) (emphasis added).

In *Reneker supra*, this Court opined that, the Receiver, Ron Reneker, only had Article III standing to bring tort claims on behalf of the entities he represented—and not on behalf of the investors in those various entities. *See Reneker*, 2009 WL 804134, at *5 (Fitzwater, J.) ("The standing requirement of Article III precludes Reneker, as the designated receiver for the AmeriFirst Clients, from bringing causes of action that belong to their investors as such, as contrasted with claims that belong directly to the AmeriFirst Clients for whom Reneker is the appointed representative.") [citations

omitted]. Accordingly, in *Reneker*, the receiver could not assert legal malpractice claims against Godwin Pappas on behalf of various investors, for injuries they sustained, even though those investors owned stock in the entities put into receivership. *Id.* (Fitzwater, J.) ("The standing requirement of Article III 'precludes [Reneker], as the designated receiver for [the AmeriFirst Clients], from bringing causes of action that belong to their investors as such, as contrasted with claims that belong directly to [the AmeriFirst Clients] for whom [Reneker] is the appointed representative'.") (quoting *Scholes v. Schroeder*, 744 F. Supp. 1419, 1421 (N.D. Ill. 1990)).

Similarly, the Texas Supreme Court's decision in, *Sterling Trust Co. v. Adderly*, 168 S.W.3d 835 (Tex. 2005), is on-point—illuminating that State Court Plaintiffs are the exclusive owners of their remaining individualized claims. In *Sterling Trust*, the SEC sued Norman Cornelius for defrauding investors, when Cornelius steered these investors' savings into Avalon Custom Homes ("Avalon"), a business that Cornelius owned, where he commingled and misappropriated their funds. *Id*. at 837-38. Investors in Avalon lost millions of dollars. *Id*. at 838. The SEC put Avalon into receivership; however, the investors sued Sterling Trust, who Cornelius had recommended to be the custodian of their investments in Avalon. *Id*. Even though these investors owned stock certificates with Avalon, who was embroiled in an SEC receivership, the investors' rights to sue Sterling Trust for misrepresentations and aiding and abetting Avalon's Texas Securities Act violations were not impaired and their claims were tried to a state court jury. There is no indication whatsoever in *Sterling Trust* that these investors claims were anything other than "direct" claims that only they could bring. *Id*. at 839-43.

Reneker and *Sterling Trust* are factually similar to the present case. In the case at bar, State Court Plaintiffs owned shares in Bering *before* the reverse merger; in fact, State Court Plaintiffs are identified by name in the schedules to the Asset Purchase Agreement. The Asset Purchase Agreement was a "stock" transaction, where State Court Plaintiffs' shares in Bering were transferred to Faulkner and his criminal enterprise. Receiver has not, did not, and could not either bring or settle these claims because he has absolutely no right to pursue State Court Plaintiffs' individualized investor losses in Bering long *before* the reverse merger.

On the contrary, Receiver's lawsuit against Rothstein Kass underscores the point that he only has the authority to sue on behalf of these other entities, which are wholly unrelated to State Court Plaintiffs' individualized losses: **Breitling Oil and Gas Corporation, Breitling Royalties Corporation, Breitling Energy Corporation, Crude Energy, LLC, Crude Royalties, LLC, and Patriot Energy, Inc**. *See* App. (p. 59) (emphasis added); docket #45. (p. 1) (§ I, ¶ I) (Civil Action No. 3:19-cv-10594-D). The relevant portion of the Receiver's Complaint against Rothstein Kass is re-produced below:

1. The Receiver brings this action to recover damages sustained by Breitling Oil & Gas Corporation ("BOG"), Breitling Royalties Corporation ("BRC"), Breitling Energy Corporation ("BECC") (collectively the "Audit Entities") -- and their alter egos Crude Energy, LLC ("Crude Energy"), Crude Royalties, LLC ("Crude Royalties") and Patriot Energy, Inc. ("Patriot") (collectively with the Audit Entities, "Breitling") -- as a result of Rothstein and

See id. (emphasis added).

Consequently, because State Court Plaintiffs' non-professional negligence and non-breach of fiduciary duty claims do not "implicate receivership assets," they "fall outside the scope of the Stay Order." *See* Appx. (p. 54); docket # 408 (§ IV, ¶ 2) (pg. 13). Given the fact that Receiver and Rothstein Kass have settled their claims (Appx. pp. 116-119), this Court should lift the stay so that State Court Plaintiffs can try the State Court Lawsuit.

C.
Rothstein Kass' *Pending* Briefing on File Admits that State Court Plaintiffs' Losses Do Not Belong to the Receivership

It is important to underscore that, since State Court Plaintiffs' prior attempts to lift the stay were unsuccessful, on December 8, 2020, Rothstein Kass filed a Motion for Summary Judgment on the Receiver's claims, agreeing with the very position State Court Plaintiffs articulate in Section B, *supra*. Appx. (pp. 120-125). In that filing, Rothstein Kass correctly explains that Receiver cannot bring claims on behalf of third parties, such as investors like State Court Plaintiffs, who have individualized losses. Appx. (pp. 121-123).

Indeed, Rothstein Kass' MSJ correctly states in pertinent part as follows:

> Defendants' conduct was the proximate cause of those damages. *Reneker v. Offill*, No. 3:08-CV1394-D, 2012 WL 2158733, at *10 (N.D. Tex. June 14, 2012). Since "'[i]t is a well-known legal principle that a receiver can bring only those claims belonging to the entit[ies] it represents and cannot bring claims on behalf of third parties,' such as investors," *id.* at *5 (quoting *Scholes v. Stone, McGuire & Benjamin*, 821 F. Supp. 533, 535 (N.D. Ill. 1993)), "such claims must involve damages which actually belong to the entities, rather than to the investors." *Scholes*, 821 F. Supp. at 536; *see also Reneker v. Offill*, No. 3:08-CV-1394-D, 2009 WL 804134, at *6 (N.D. Tex. Mar.

26, 2009) ("The Receivership Estate's financial inability to satisfy liabilities owed to investors as a result of securities-laws violations harms the investors, not the AmeriFirst Clients."). Put simply, Plaintiff seeks damages for claims that do not belong to the Receiver Entities.

Although Plaintiff has filed claims "to recover damages sustained by the" Receiver Entities, Dkt. No. 45, ¶ 1, Plaintiff's claims improperly seek damages on behalf of the ***investors*** in working interests or royalty interests offered by certain Receiver Entities. This Court faced an identical issue in *Reneker v. Offill*. In *Reneker*, as is the case here, the receiver sought damages for a professional negligence claim based on the entities "causing or increasing liabilities to third parties." 2012 WL 2158733, at *6. The defendant, however, argued the receiver was actually seeking "nothing more than investor losses." *Id.* The Court concluded that the receiver entities' "liability to investors and investor losses are mathematically equivalent," which showed that the "liabilities are not distinct from investor losses." *Id.* Therefore, the Court dismissed the claim "for lack of standing to the extent it is based on liabilities incurred to defrauded investors or the increased amount of such liabilities." *Id.* The Court should do the same here.

Just as in *Reneker*, the Increased Liabilities Damages sought by Plaintiff are a blatant attempt to repackage investor claims as damages to the Receiver Entities. *See* 2012 WL 2158733,

Appx. (pp. 121-122) (emphasis added). Of course, Receiver and Rothstein Kass did not settle unfiled claims that Receiver could have never asserted in any event and that Rothstein Kass' own MSJ says the Receiver does not own. *See* Appx. (pp. 121-123); docket # 95 (pp. 46-47) (§ VI-C) (filed Dec. 8, 2020) (emphasis added).

IV.
<u>Conclusion</u>

In conclusion, this Court should lift the stay and allow State Court Plaintiffs to try their State Court lawsuit.

Certificate of Conference

A conference occurred between Counsel Brian Lauten and Receiver's attorney, Edward Snyder. Mr. Snyder indicated that Receiver opposed the Motion. Accordingly, the matter is submitted to the Court for a determination.

/s/ Brian Lauten

____

Brian P. Lauten

Respectfully Submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 5b of the Federal Rules of Civil Procedure, the undersigned certifies that a true and correct copy of the foregoing instrument has been served upon all counsel of record via the ECF case manager system on this the 7th day of April 2021.

/s/ Joe Kendall

JOE KENDALL