

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SECURITIES AND EXCHANGE §
COMMISSION, §
§
PLAINTIFF, §
§
vs. §
§
BRIAN A. BJORK, THE ESTATE OF JOEL §
DAVID SALINAS, J. DAVID GROUP OF §
COMPANIES, INC., J. DAVID FINANCIAL §
GROUP, LP, SELECT ASSET §
MANAGEMENT, LLC, SELECT ASSET §
CAPITAL MANAGEMENT, LLC, SELECT §
ASSET FUND I, LLC, AND SELECT ASSET §
PRIME INDEX FUND, LLC, §
§
DEFENDANTS. §

CIVIL ACTION NO. 4:11 CV - 02830

**RECEIVER’S UNOPPOSED FIFTH MOTION TO APPROVE CLAIMS AND
SECOND REQUEST TO MODIFY PREVIOUSLY APPROVED CLAIMS**

TO THE HONORABLE KEITH P. ELLISON, UNITED STATES DISTRICT COURT:

COMES NOW, Steven A. Harr (“Receiver”), the Receiver appointed by the Court in these proceedings, and files this *Unopposed Fifth Motion to Approve Claims and Second Request to Modify Previously Approved Claims*, and in support of such would respectfully show the Court the following:

**I.
FACTUAL BACKGROUND**

1. On August 1, 2011, the Securities and Exchange Commission (“SEC”) filed its Complaint against Defendants. In conjunction therewith, the SEC sought, and by Order Appointing Receiver (the “Order”), the Court appointed, Steven A. Harr as the Receiver (the “Receiver”) for Brian A. Bjork, The Estate of Joel David Salinas, J. David Group of Companies, Inc., J. David Financial Group, LP, Select Asset Management, LLC, Select Capital Management,

LLC, Select Asset Fund I, LLC, and Select Asset Prime Index Fund, LLC (collectively, the "Receivership Entities").

2. The Receiver was authorized to have complete and exclusive control, possession, and custody of all Receivership assets and Receivership records of Defendants. Receivership Assets and Receivership Records were defined in the Order as "assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities), of the [Receivership Entities] and all entities they own or control . . . , and the books and records, client lists, account statements, financial and accounting documents, computers, computer hard drives, computer disks, internet exchange servers, telephones, personal digital devices, and other informational resources of or in possession of the [Receivership Entities] or issued by [Receivership Entities] and in possession of any agent or employee of the [Receivership Entities]."1

3. The Receiver has been acting and fulfilling his duties as Receiver since his appointment and has conducted various investigations of the Receivership Entities with the intent to marshal the Receivership assets for the benefit of the Receivership Entities' investors and creditors. These efforts have also included review of corporate records, forensic accounting analysis, records from various legal counsel from the Receivership Entities, and forensic tracing.

II. **INTRODUCTION**

4. In addition to the tasks stated above, the Receiver has the responsibility for resolving claims of investors and third parties against assets of the Receivership Estate. The Receiver and his staff have reviewed the claim forms and the supporting information since the

¹ Order Appointing Receiver, ¶1.

claims process was established. The court-approved claim form requested information necessary to permit the Receiver to evaluate investor claims.² The Court approved both the claim form and the claims procedures plan.³

5. Substantial efforts have been made to establish an accurate understanding of the financial records of the Receivership Entities so that the claims asserted could be cross checked against the records of the company. Based on the information submitted thus far, the Receiver has previously filed four motions to approve claims and one motion to modify previously approved claims. All of these motions have been granted. With this Motion, the Receiver is prepared to and respectfully submits: (i) one new claim for approval; and (ii) two previously approved claims for modification. Both the new request and the modified claims are listed and detailed in Exhibit "A."

6. Until recently, the Receiver has maintained separate books of accounting, assets and claims for each of (a) J. David Financial / Group / Parkway Pawn, (b) Select Asset Fund I LLC and (c) Select Asset Prime Index Fund LLC. As a result of the substantial completion of the Receiver's investigation in this matter, the Receiver requested that the Court collapse all of the receivership entities into a single common fund. This request, as the foundation for his plans for an interim distribution and the final distribution, has been granted by the Court. When the collapse occurred, certain of the previously approved claims had to be re-evaluated based on the determination that all Receivership entities were insolvent at an early stage in their existence and thus payments that had been made to investors from those funds needed to be treated as debits against the claims asserted. Based on the foregoing, the Receiver respectfully requests that the modification of claims referenced in Exhibit "A" be approved.

² See Granted Agreed Order Establish Claims Procedure and Claim Form (DKT #24).

³ *Id.*

7. Investors who filed the claims on the attached Exhibit "A" that need to be modified have been contacted, the situation explained, their consent to the change obtained and their claims reduced to achieve common treatment among the investors. The Receiver now asks the Court to modify these previously approved claims to achieve this end.

8. The attached Exhibit "A" is a list of the claim numbers relevant to this Motion. If this Motion is granted, the total number of claims submitted for approval will be 269 for a total of \$50,565,748.94. The Receiver continues to review the remaining claims and will file additional motions as the reviews are completed. At present, there are 2 claims remaining and the face amount of these unresolved claims is \$890,000.00. With this Motion, the Receiver respectfully requests that the Court approve and modify the claims presented, as necessary, and allow the Receiver to continue his efforts to resolve all outstanding claims in this dispute.

III. CONCLUSION

9. The Receiver requests that the claims listed in Exhibit "A" be approved and/or modified by the Court for payment pursuant to the plan approved by the Court.

WHEREFORE, PREMISES CONSIDERED, the Receiver requests that upon final consideration of this Motion that the Court enter an Order consistent with the foregoing requested relief and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

DATED: December 31, 2013

Respectfully submitted,

By: /s/ Steven A. Harr

Steven A. Harr

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CERTIFICATE OF CONFERENCE

On December 30, 2013, I conferred with Tim McCole and he stated that the Securities and Exchange Commission is not opposed to the relief sought in this motion.

/s/ Sameer S. Karim
Sameer S. Karim

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Clerk via the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Houston, Texas, this 31st Day of December 2013.

/s/ Sameer S. Karim
Sameer S. Karim

EXHIBIT A

Claims Modification

Select Asset Management, LLC et al.

12/26/2013

<u>Claim #</u>	<u>Previously Approved Claim Amount</u>	<u>Modified Claim Amount</u>
SAA-00119	\$ 150,000.00	\$ 121,497.05
SAA-00277	\$ 500,000.00	\$ 391,661.99
	2 claims for	<u>\$ 513,159.04</u>

Claim Approval

Select Asset Management, LLC et al.

12/26/2013

<u>Claim #</u>	<u>NetClaim</u>
SAA-00293	\$ 300,000.00

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Exhibit A

Select Asset Management, LLC et al.

12/26/2013

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CIVIL ACTION NO. 4:11 CV - 02830

**ORDER GRANTING RECEIVER’S UNOPPOSED FIFTH MOTION TO APPROVE CLAIMS
AND SECOND REQUEST TO MODIFY PREVIOUSLY APPROVED CLAIMS**

This matter is before the Court on the Receiver’s *Unopposed Fifth Motion to Approve Claims and Second Request to Modify Previously Approved Claims* (the “Motion”). Because the Court is of the opinion that the Receiver’s Motion is well-taken, it is hereby **GRANTED**. It is therefore,

ORDERED that the claim submitted by the Receiver in the Motion for approval is approved based on the amount listed in Exhibit “A” to the Motion. It is further,

ORDERED that the claims submitted by the Receiver in the Motion for modification are modified based on the amounts listed in Exhibit “A” to the Motion.

SIGNED this _____ day of _____, 2013.

HONORABLE KEITH P. ELLISON