

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. §

CIVIL ACTION NO. 4:11 CV - 02830

DEFENDANTS.

**RECEIVER’S UNOPPOSED MOTION TO APPROVE COMPROMISE OF CLAIMS
RELATING TO JOEL DAVID SALINAS CHILDREN’S IRREVOCABLE TRUST
LIFE INSURANCE POLICIES**

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

Receiver Steven A. Harr (“Receiver”) moves the Court to approve this
Compromise of Claims relating to the Joel David Salinas Children’s Irrevocable Trust
Life Insurance Policies and respectfully provides:

**I.
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 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. Mr. Harr 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 included interactions with existing and former employees, reviews of corporate records and discussions with involved third-parties.

¹ Order Appointing Receiver, ¶1.

II.
PERTINENT FACTS

4. The Receiver's duties include investigating and collecting all assets which rightfully belong to the Receivership Entities. Shortly after appointment, the Receiver identified several life insurance policies insuring the life of Joel David Salinas. After locating these policies, the Receiver conducted a thorough factual, forensic, and legal investigation to identify the proper owner(s) of these policies. With this Motion, the Receiver seeks to compromise claims relating to three of these policies.

5. At the time of Joel David Salinas' death, the Joel David Salinas Children's Irrevocable Life Insurance Trust ("Children's Trust") was the sole owner and sole beneficiary on the following three life insurance policies (collectively, the "Children's Trust Policies"):

| CARRIER | POLICY NO. | POLICY VALUE |
|------------------------------------|-------------|--------------------|
| American Fidelity Assurance (1994) | 94105012 | \$1,500,000 |
| Valley Forge (1999) | VIHN011496 | \$500,000 |
| Metropolitan Life (1989) | 890345262UL | \$350,000 |
| TOTAL VALUE: | | \$2,350,000 |

6. Based on the Receiver's investigation, he believes that the Children's Trust has no value or assets other than the Children's Trust Policies. The Receiver is currently maintaining the death proceeds from the Children's Trust Policies in an independent bank account. Under the terms of the Children's Trust, the beneficiaries are: (1) Christopher Salinas (21.28% equaling \$500,080); (2) Sarah Ann Salinas Hail (21.28% equaling \$500,080); Sommer Anne Salinas (21.28% equaling \$500,080); and (4) Robbin Sue Salinas (36.16% equaling \$849,760) (collectively, "Putative Beneficiaries").

7. After identifying the Children's Trust Policies, the Receiver contacted counsel for the Putative Beneficiaries to assert a multitude of claims including, but not limited to, fraudulent conveyance and constructive trust, on the Children's Trust Policies' death benefits. The Putative Beneficiaries were cooperative and patient and offered the Receiver sufficient time to complete his investigation.

8. As the Receiver was conducting his investigation, the carriers of these policies became weary and uncomfortable about holding onto the death benefits at issue. For this reason, the Receiver and the Putative Beneficiaries moved this Court to appoint the Receiver as Trustee of the Children's Trust for the sole and limited purposes of: (1) filing claims on all life insurance policies on which the Children's Trust is the current beneficiary; (2) safely investing the death proceeds from these policies, and (3) not releasing any portion of these funds without approval of this Court or a notarized agreement between the Receiver and all beneficiaries of the Children's Trust addressing the rightful owner of the proceeds. [Dkt. No. 48]. This Court appointed the Receiver as Trustee pursuant to this request on March 5, 2012 (the "Order"). [Dkt. Nos. 52, 56]. The Receiver then made claims on all life insurance policies on which the Children's Trust is the current beneficiary, collected the funds and safely invested the death proceeds.

9. The Putative Beneficiaries were originally not willing to settle/assign their respective interests in the Children's Trust Policies without retaining counsel and paying for a legal review of the Receiver's position. For this reason, the Receiver retained UHY Advisors, Inc. to conduct a forensic investigation to trace the source of all premium payments and to conduct a thorough solvency analysis of the implicated

entities. The Receiver's independent forensic investigation in conjunction with the Receiver's own legal and factual analysis confirm the Receivership Estate is the rightful owner of the death proceeds at issue. To effectively demonstrate this, the Receiver provided the Putative Beneficiaries a detailed Position Statement outlining the results from the Receiver's forensic, legal and factual investigations.

10. The Receiver is confident that the Receivership Estate is the rightful owner of any and all death proceeds paid as a result of Mr. Salinas' suicide.² The Receiver is willing and able to litigate his entitlement to the entirety of these proceeds. However, in the interest of preserving the Receivership Estate, the Receiver entered into negotiations with the Putative Beneficiaries to resolve this dispute without incurring substantial litigation costs and expenses. The Receiver now seeks permission from this Court to effectuate the compromise reached with the Putative Beneficiaries relating to the Children's Trust Policies and fulfill his obligations as Trustee pursuant to the Order.

III. AUTHORITIES

11. In receiverships, federal courts have broad equitable powers enabling them to fashion appropriate ancillary remedies necessary to grant full relief. *SEC v. Blatt*, 583 F.2d 1325 (5th Cir. 1978); *SEC v. Manor Nursing Centers*, 458 F.2d 1082, 1103-04 (2d Cir. 1972).

IV.

² In addition to the Children's Trust Policies, the Receiver is also currently in negotiations on resolving similar claims relating to various other policies.

RELIEF SOUGHT

12. The Putative Beneficiaries claim they are entitled to at least a portion of the death proceeds at issue because the Children's Trust Policies were issued and maintained for several years prior to any allegations of fraud against Joel David Salinas. The Receiver does not agree with the Putative Beneficiaries' position and has thoroughly outlined the reasons why in his Position Statement.

13. In an effort to compromise their positions and settle this matter without further judicial intervention, the Receiver proposes to make the following compromise with each of the individual Putative Beneficiaries:

The Receiver will pay: (1) Sommer Salinas \$25,000; (2) Robbin Salinas \$10.00; and (3) William H. Morgan, counsel for Robbin and Sommer Salinas, \$14,000, in exchange for Robbin Salinas' and Sommer Salinas' release of any and all claims, entitlements and/or interest in any and all assets or money owned by or held in the name of the Children's Trust in favor of the Receiver, including but not limited to, \$1,349,840 in death benefits from the Children's Trust Policies plus accrued interest.

The Receiver will pay Christopher Salinas \$40,000 in exchange for Christopher Salinas' release of any and all claims, entitlements and/or interest in any and all assets or money owned by or held in the name of the Children's Trust in favor of the Receiver, including but not limited to, \$500,080 in death benefits from the Children's Trust Policies plus accrued interest.

The Receiver will pay Sarah Hail \$10.00 and other good and valuable consideration in exchange for Sarah Hail's release of any and all claims, entitlements and/or interest in any and all assets or money owned by or held in the name of the Children's Trust in favor of the Receiver, including but not limited to, \$500,080 in death benefits from the Children's Trust Policies plus accrued interest. Further, in exchange of the Receiver's release of any and claims against possessions, property or items of value that Sarah Hail has disclosed to the Receiver to date, Sarah Hail will grant the Receiver a lien of \$50,000 on a Galveston County property specifically

identified in the Receiver's Settlement and Release Agreement.³ In conjunction therewith, Sarah Hail agrees to promptly put the property at issue on the market for sale and, if the property does not timely sell, Ms. Hail further understands the Receiver will foreclose on the property pursuant to Texas law.

14. The Receiver believes these compromises are in the best interest of the Receivership Estate because they will add \$2,400,000 plus accrued interest to the Receivership Estate in exchange for payments totaling \$79,020. If this matter were to be litigated through trial, the Receivership Estate would incur attorneys' fees and costs that would be significantly more than this collective settlement figure.

15. Copies of the Settlement and Release Agreements executed by the Putative Beneficiaries and the Receiver's Position Statement will be made available to the Court upon request but are not attached here so as to protect the confidentiality of these documents.

16. For these reasons, the Receiver requests that the Court approve the compromise as stated in this motion, order the Receiver to release the proceeds of the Children's Trust Policies into the Receivership Estate, terminate the Receiver as Trustee of the Children's Trust and release the Receiver of any and all duties as limited Trustee of the Children's Trust.

17. Pursuant to Local Rule LR 7.2, the Receiver advises the Court that the Plaintiff SEC does not oppose this Motion. The Defendant entities are all controlled by the Receiver.

³ The Receiver's investigative efforts identified a monetary gift from Joel David Salinas to Sarah Hail that can be specifically traced into the purchase price of the Galveston County property. In an effort to claw back a reasonable portion of the value gifted, the Receiver and Sarah Hail have agreed that Ms. Hail will release of any and all interest in the Children's Trust and grant the Receiver the proposed lien in full and final settlement of all claims relating to the aforementioned monetary gift.

V.
CONCLUSION

WHEREFORE, the Receiver prays that the Court enter an Order in the form submitted with this Motion, or for substantially the same relief in such form as the Court may find just and proper.

Respectfully submitted,

By: /s/ Sameer S. Karim

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CERTIFICATE OF CONFERENCE

On June 19, 2012, I conferred with Tim McCole and he advised that the Securities and Exchange Commission is not opposed to the relief sought in this motion.

/s/ 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 on June 19, 2012. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system on the date of filing. Moreover, notice of this filing will also be sent to counsel for Robbin Salinas, Sommer Salinas, Christopher Salinas and Sarah Hail pursuant to the Federal Rules of Civil Procedure.

/s/ Sameer S. Karim
Sameer S. Karim