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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

MANAGEMENT SOLUTIONS, INC., a
Texas Corporation; WENDELL A.
JACOBSON; and ALLEN R. JACOBSON,

Defendants.

**OBJECTION TO
REQUEST TO SUBMIT FOR DECISION**

Case No: 2:11-cv-01165

Judge Bruce S. Jenkins

Intervenors Black Cliffs Investments, LLC, Matthew A. Nielson, and Jill R. Nielson (collectively “**Black Cliffs**”), through their undersigned counsel of record, hereby object to the Request for Decision on Motion for Approval to Pool Claims and Assets filed with the Court on October 22, 2013 (Doc. 1329). For the reasons set forth below, the Request for

Decision is premature and improper, and the Court should set it aside and acknowledge the right of Black Cliffs to maintain its opposition to the Motion.

1. The Receiver's Motion for Findings Regarding the Existence and Start Date of a Ponzi Scheme and for Approval to Pool Claims and Assets was filed with the Court November 13, 2012 (Doc. 685) (the "**Motion**").

2. Black Cliffs filed a Motion to Intervene and Memorandum in Support on January 17, 2013 (Doc. 860).

3. The Court granted that Motion by a Memorandum Opinion & Order issued March 5, 2013 (Doc. 973). By that Opinion the Court granted Black Cliffs the right to intervene to participate "in the Receiver's Motion for Findings Re: Existence and Start Date of a Ponzi Scheme and for Approval to Pool Claims and Assets." (Doc. 973 at 8.)

4. Black Cliffs then filed a Complaint in Intervention on March 14, 2013 (Doc. 993). In the Complaint, the Intervenors explicitly sought declaratory judgment in their favor and against the Receiver on the issues raised in both parts of the Motion.

5. Specifically, with regard to the pooling part of the Motion, the Complaint alleges as follows:

31. Moreover, by a Motion filed with the Court, the Receiver seeks authority to pool claims and assets and to make a *pro rata* distribution to claimants.

32. The Intervenors seek declaratory judgment finding that such pooling is improper with respect to them, in particular because (a) they are similarly situated with other persons whom the Receiver classifies as "investors," with respect to their relationship to and their transactions with the Jacobsons, MSI, and/or related entities, and (b) they did

not invest funds which were commingled with the funds of other investors.

(Doc. 993 at 6.)

6. Shortly after intervention was granted, Black Cliffs participated in the first of several pre-trial conferences preceding an ultimate evidentiary hearing on the Motion.¹ The Court allowed Black Cliffs, as well as the McDermott Intervenors, to participate in opposition to the Motion without having filed a written objection or memorandum in opposition.

7. Nevertheless, Black Cliffs has consistently maintained on the record its opposition to all aspects of the Motion. In addition to their Complaint in Intervention referenced above, the proposed Joint Pre-Hearing Order submitted March 8, 2013 (Doc. 983), which Black Cliffs jointly filed with the McDermotts and the Receiver, includes the following as contested issues of fact:

13. Were all of the persons whom the Receiver classifies as “investors” similarly situated with respect to their relationship to the Jacobsons and/or MSI, or with respect to the nature of the transactions between the “investors” and the Jacobsons and/or MSI?

14. Were the funds of every person whom the Receiver classifies as an “investor” commingled with the funds of other “investors”?

(Doc. 983 at 8.)

8. At a Pre-Trial Conference held March 18, 2013, the Court considered the proposed Joint Pre-Hearing Order (Doc. 983), and among other things ruled that the Motion would be bifurcated such that only the Motion for determination of a Ponzi scheme would be

¹ In fact, Black Cliffs participated in the first pre-trial conference on February 15, 2013 after the Motion to Intervene was filed but before the Court’s Opinion was issued.

heard at the anticipated evidentiary hearing. The part of the Motion seeking approval to pool claims and assets would not be heard or decided at the hearing. The parties then filed another Joint Pre-Hearing Order on April 1, 2013 (Doc. 1034) which acknowledged the Court had bifurcated the Motion. (Doc. 1034 at 2.)

9. Thus, Black Cliffs has always maintained its opposition to both parts of the Motion, both through their Complaint in Intervention and through their joint filings of proposed Pre-Hearing Orders.

10. Black Cliffs wishes to maintain its opposition by filing a written objection or memorandum in opposition to the Motion, within the time frame described below, and by participating in any motion hearing, evidentiary hearing, and other proceedings relating to the Motion.

Based thereon, Black Cliffs respectfully requests the Court to sustain its Objection, set aside the Receiver's Request for Decision, and allow it fourteen (14) days to file a written objection or memorandum in opposition to the Motion, pursuant to D.U.Civ.R. 7-1(b)(4)(B).

DATED this 24th day of October, 2013.

RICHARDS BRANDT MILLER NELSON

/s/ Matthew C. Barneck

MATTHEW C. BARNECK

CHAD E. FUNK

Attorneys Intervenors Matthew A. Nielson

Jill R. Nielson, and Black Cliffs

Investments, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 24, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Daniel Wadley, Esq. Thomas M. Melton, Esq. Securities & Exchange Commission 15 West South Temple, Suite 1800 Salt Lake City, UT 84101 wadleyd@sec.gov meltont@sec.gov <i>Attorneys for Plaintiff</i>	Stephen Quesenberry, Esq. Hill, Johnson & Schmutz, L.C. Riverview Plaza, Suite 300 4844 North 300 West Provo, UT 84604-5663 squensenberry@hjslaw.com <i>Attorneys for Wendell A. Jacobson</i>
David K. Broadbent, Esq. Matthew T. Wirthlin, Esq. Cory A. Talbot, Esq. J. Andrew Sjoblom, Esq. Romaine C. Marshall, Esq. Holland & Hart 222 South Main Street, Suite 2200 Salt Lake City, UT 84101 dbroadbent@hollandhart.com mwirthlin@hollandhart.com catalbot@hollandhart.com jasjoblom@hollandhart.com rcmarshall@hollandhart.com	All other persons or entities entitled to receive notice through PACER, pursuant to Fed. R. Civ. P. 5(b)(3) and D.U.Civ.R. 79-1.

And

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first class, postage prepaid, on this 24th day of October, 2013, to the following:

Greg B. Bailey
 P.O. Box 298
 Fountain Green, UT 84632
Pro Se

/s/ Matthew C. Barneck