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MICHAEL A. GRASSMEUCK

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

SUNWEST MANAGEMENT, INC.,
CANYON CREEK DEVELOPMENT,
INC., CANYON CREEK FINANCIAL,
LLC, AND JOHN M. HARDER,

Defendants,

DARRYL E. FISHER, ET AL.,

Relief Defendants.

MICHAEL GRASSMUECK, Receiver,

Plaintiff,

vs.

DAVIS WRIGHT TREMAINE LLP, a
Washington limited liability partnership,

Defendant.

Case No. 09-CV-6056-HO

**DECLARATION OF RECEIVER
MICHAEL A. GRASSMUECK IN
SUPPORT OF MOTION FOR
APPROVAL OF SETTLEMENTS
WITH DAVIS WRIGHT TREMAINE
LLP, K&L GATES LLP, AND
THOMPSON & KNIGHT LLP, AND
FOR ENTRY OF FINAL CLAIMS
BARS**

Oral Argument Requested

Hearing Date: February 4, 2010

Case No. 09-CV-0651-HO

MICHAEL GRASSMUECK, Receiver,
Plaintiff,

vs.

K&L GATES LLP, a Delaware limited
liability partnership,
Defendant.

Case No. 09-CV-06202-HO

MICHAEL GRASSMUECK, Receiver,
Plaintiff,

vs.

THOMPSON & KNIGHT, LLP, a
Texas limited liability partnership,
Defendant.

Case No. 09-CV-06199-HO

I, MICHAEL A. GRASSMUECK, declare:

1. Pursuant to orders entered by this Court on March 10, 2009, May 27, 2009, and August 28, 2009 ("Receivership Orders") in *SEC v. Sunwest Management, Inc.*, Case No. 09-6056-HO (the "SEC Action"), I am the duly appointed and acting receiver for Sunwest Management, Inc., Canyon Creek Development, Inc., Canyon Creek Financial, LLC, Fuse Advertising, Inc., KDA Construction, Inc., and other entities named in the Receivership Orders (the "Receivership Entities").

2. I have personal knowledge of the facts stated in this declaration and could and would competently testify thereto if called upon to do so. My knowledge is based upon my work and the work of my staff and professionals in carrying out the duties and obligations of the Receiver under the orders appointing me and under the Distribution Plan, including participation in the litigation and mediation proceedings described herein. My knowledge and views of the litigation

and settlements are also informed by my 25 years of experience serving as a trustee in bankruptcy and as a receiver.

3. On October 2, 2009 the Court entered an order approving and establishing a Distribution Plan in the SEC Action. Among other things, the Receivership Orders and the Distribution Plan authorized me, as Receiver, to pursue claims of the Receivership Entities against third parties for the benefit of investors and creditors of the Receivership Entities. The Distribution Plan created a Litigation Trust for amounts recovered on any such claims.

4. In my capacity as Receiver, I filed three actions in this Court against law firms alleging claims arising from services that those firms provided to one or more of the Receivership Entities:

- (a) *Grassmueck v. Davis Wright Tremaine LLP*,
Case No. 09-CV-0651-HO ("DWT Action");
- (b) *Grassmueck v. K&L Gates, LLP*,
Case No. 09-CV-06202-HO ("KLG Action"); and,
- (c) *Grassmueck v. Thompson & Knight LLP*,
Case No. 09-CV-06199-HO ("T&K Action")(together, the
"Actions").

5. Each of the defendants in the Actions has denied, and continues to deny, all material allegations of the complaints filed by the Receiver against it and has indicated an intent to defend the Action as to it vigorously. As Receiver, I participated in separate mediations with each defendant regarding the claims. I was also authorized to employ Esler Stephens & Buckley as special litigation counsel to assist with respect to claims by unrepresented investors in the mediations. Other represented investors were also entitled to participate in the mediation.

6. Before each mediation, my counsel and I reviewed hundreds of thousands of documents produced by the defendants and participated in a number

of without interviews. The mediation resulted in agreement on basic terms of separate settlement agreements between the Receiver and certain Investor Claimants, on the one hand, and each of the three law firms, on the other hand. The settlement terms were read into the record confidentially at the conclusion of each mediation. The parties then prepared more detailed written agreements containing the terms and conditions of each settlement (the "Settlement Agreements"). The Settlement Agreements require the parties to seek Court approval of the settlement in each of the three Actions, as well as in the SEC Action. In addition, the Settlement Agreements required the Investor Claimants to file class actions styled *Robert T. DeVaney v. Davis Wright Tremaine*, Case No. 10-CV-6134-HO and *Houghmaster v. K&L Gates LLP, et al.* Case. No. 10-CV-06321 (the "Settlement Class Actions") for the purpose of certifying a settlement class and seeking approval of the Settlement. The process for certifying and obtaining approval of the Settlement Class Actions is being conducted simultaneously with the Settlement Approval Motion.

7. The Settlement Agreements also call for the Receiver to seek Final Claim Bar Orders in the federal court proceedings. Each of the settling defendants has stated that they would not enter into the settlements without such provisions, and the Settlement Agreements' effectiveness is conditional upon the entry of Final Claim Bar Orders as to each settling defendant.

8. As Receiver, I believe that each of the settlements and Settlement Agreements is in the best interests of the investors and creditors of the Receivership Entities. The factors that lead me to this conclusion include: (1) The time and risks associated with both pursuing the litigation and collecting a judgment (such as appeals and bankruptcy filings) are significant; (2) the additional cost to the receivership estate of further pursuing the pending litigation against each settling defendant would be substantial, and the costs of defense would continue to erode the available insurance coverage under each firm's applicable professional liability policies; and

(3) the certainty of receiving substantial funds for the Litigation Trust under the Distribution Plan is of great benefit to investors and creditors.

9. The settling defendants continue to dispute the claims alleged against them and have displayed an intention to defend all pending actions vigorously. The damages sought in the DWT Action, the KLG Action, and the T&K Action substantially exceed the amount of each firm's available insurance coverage, and the policies are wasting policies, such that legal costs would further decrease the amounts available to pay damages in the Actions and other actions. The matters involve complex litigation of claims covering, in some cases, at least six years and hundreds of transactions. Had the cases not been settled, the cost to prosecute the three Actions and related Litigation brought by or on behalf of the Investor Claimants through trial and appeal would be substantial and the amount of available insurance coverage would continue to decline. The litigation would consume significant judicial resources, in both this Court and the state courts, and the resources of the parties.

10. Absent the settlements, difficulties are likely to be encountered in collecting any judgment. Beyond insurance proceeds from wasting policies, collection of a judgment against the defendants is problematic and could involve an extended process yielding uncertain results. For example, the collection of a substantial judgment from each firm and from individuals could be delayed or even defeated by appeals and bankruptcy filings. The settlements provide a significant actual recovery. The value to the receivership estate in the certainty of having funds paid as provided in the Settlement Agreements rather than after years of litigation is a positive factor which supports the settlements.

11. In sum, I have balanced the risks of litigation and actual recovery and concluded that, considered individually and as a group, the settlements are in the best interests of the investors and creditors of the Receivership estate.

