UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS GROUP, INC. d/b/a PAR FUNDING, *et al.,*

Defendants.

_____/

DEAN VAGNOZZI'S MOTION FOR STATUS CONFERENCE REGARDING FINAL APPROVAL HEARING FOR SETTLEMENT AMONG RECEIVER, PUTATIVE CLASS PLAINTIFFS, AND ECKERT SEAMANS

Defendant, Dean Vagnozzi ("Vagnozzi"), by and through his undersigned counsel, hereby submits this Motion for Status Conference Regarding Final Approval Hearing for Settlement Among Receiver, Putative Class Plaintiffs, and Eckert Seamans:

1. On May 6, 2024, the Receiver filed a Motion for: (I) Approval of Settlement Among Receiver, Putative Class Plaintiffs, and Eckert Seamans; (II) Approval of Form, Content and Manner of Notice of Settlement and Bar Order; (III) Setting Deadline to Object to Approval of the Settlement and Entry of Bar Order; and (IV) Scheduling a Hearing. [ECF No. 1861].

2. This Motion is filed to request the Court hold a status conference concerning the Receiver's Motion at which the Court can set a schedule for limited discovery concerning the relevant questions at issue as well as establishing procedures and protocols for the Final Approval Hearing.

3. On May 13, 2024, the Court entered an Order Preliminarily Approving Settlement Among Receiver, Putative Class Plaintiffs, and Eckert Seamans. [ECF No. 1906].

4. The proposed Settlement includes a provision that counsel for the Putative Class Plaintiffs would receive $6.75 million in attorney fees, and in that regard, on May 16, 2024, Counsel for the Putative Class Plaintiffs filed a Motion for Approval of Attorneys' Fund, seeking court approval of its requested $6.75 million fee. [ECF No. 1913].

5. The May 13, 2024 Order established a deadline for interested parties to file Objections to the proposed Settlement within 30 days before the scheduled Final Approval Hearing on July 16, 2024.

6. The Order describes "[t]he purposes of the Final Approval Hearing will be to consider final approval of the Settlement Agreement, entry of the Bar Order, and an Award of attorneys' fees as described in paragraph 7 of the Settlement Agreement."

7. The most controversial part of the proposed Settlement is the request that the Court approve a "bar order" that would extinguish all claims against Eckert Seamans and its former partner John Pauciulo, Esquire.

8. The proposed "bar order" is broad. It would extinguish not just the claims of the Receiver and the Putative Class which is receiving compensation from the Settlement, but purports to extinguish those claims owned by all plaintiffs, even those that are getting virtually no compensation from the proposed Settlement, such as the plaintiffs in legal malpractice claims that have been filed by: (a) Dean Vagnozzi in *Dean Vagnozzi v. Pauciulo, et al.*, No. 210402115 (Phila. Ct. Com. Pl. 2021), (b) Albert Vagnozzi, Terry Kohler, and PTK Financial LLC in *Albert Vagnozzi, et al. v. Pauciulo, et al*, No. 210502334 (Phila. Ct. Com. Pl. 2021), and (c) Alec Vagnozzi in *Alec*

Vagnozzi v. Pauciulo, et al., 242303094 (Phila. Ct. Com. Pl. 2024) (collectively "Vagnozzi Objecting Parties").

9. The Vagnozzi Objecting Partes – Plaintiffs in the foregoing legal malpractice matters – are all represented by undersigned counsel. They intend to file Objections to the proposed Settlement insofar as it seeks a bar order extinguishing their respective legal malpractice claims with no compensation. They also intend to file Objections to the $6.75 million in fees requested by Counsel for the Putative Class.

10. While the May 13, 2024 Order establishes the deadlines to file Objections and the date of the Final Approval Hearing, the Order does not address other procedural rights of the Objecting parties, including their right to obtain discovery in advance of the Final Approval Hearing, pre-hearing disclosures of witnesses and hearing exhibits, and whether the Final Approval Hearing will provide for the Objecting parties to present testimony and other evidence in support of their Objections.

11. A bar order is an extraordinary form of relief and the party seeking such an order faces a high bar. *See SEC v. Quiros*, 966 F.3d 1195 (11th Cir. 2020). For this reason, the Eleventh Circuit has warned that courts should enter bar orders "cautiously and infrequently and only where essential, fair, and equitable." *In re Seaside Eng'g & Surveying, Inc*., 780 F.3d 1070, 1079 (11th Cir. 2015) (citation omitted).

12. This is a two-part inquiry. The court must conclude that the bar order is essential. And it must decide that the bar order is fair and equitable, with an eye toward its effect on the barred parties. *See, e.g., In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996) (first analyzing whether an order was essential and then considering whether it was fair and equitable). A bar order is essential when it is "integral to settlement." *Id.* A bar order issued to facilitate a settlement

is essential only if it is essential to resolving the settling parties' litigation. If parties would have still resolved their dispute without entry of the bar order, the order is not essential, and the court should not enter it. *Id.*

13. To determine if a bar order is fair and equitable, courts consider whether "(1) the bar order fulfills the long-standing public policy of encouraging pretrial settlements; (2) the settlement satisfies the requirements for the approval of settlements under *Justice Oaks* for a fair and reasonable agreement; and (3) the bar order satisfies the nonexclusive set of factors for approval of bar orders set forth in [ ] *Munford*[.]" *Brophy v. Salkin*, 550 B.R. 595, 599 (S.D. Fla. 2015).[1]

14. The *Munford* factors include "the interrelatedness of the claims that the bar order precludes, the likelihood of non[-]settling defendants to prevail on the barred claim, the complexity of the litigation, and the likelihood of depletion of the resources of the settling defendants." *In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996).

15. Considering the above legal standards, the Vagnozzi Objecting Parties seek discovery from: (a) Eckert Seamans; (b) Eckert Seamans' insurance carriers; and (c) Counsel for the Putative Class.

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[1] The *Justice Oaks* factors that are considered when approving settlements in an equity receivership are:

> (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; [and] (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re Just. Oaks II, Ltd., 898 F.2d 1544, 1549 (11th Cir. 1990).

16. As to Eckert Seamans, the Vagnozzi Objecting Parties seek documents related to: (a) Eckert Seaman's ability to pay for the liability exceeding its purported $50 million insurance limits, (b) correspondence with Eckert Seamans' insurance carriers concerning the existence of additional insurance limits above the $50 million of insurance proceeds that forms the basis of the Settlement, and (c) what steps, if any, Eckert Seamans took to prevent the dissipation of millions of dollars in profits once it was put on notice of the obligation to preserve assets to meet its anticipated obligations in enabling the Par Funding debacle and that it was seriously under-insured.[2]

17. The Vagnozzi Objecting Parties also seek to depose Timothy Coon, Esquire, General Counsel of Eckert Seamans, concerning what was done to prevent the dissipation of Eckert Seamans' assets in connection with the massive firm liability from the Par Funding cases.

18. As to Eckert Seamans' insurance carriers, the Vagnozzi Objecting Parties seek documents related to: (a) the carriers' position on whether Dean Vagnozzi's legal malpractice claims in connection with the Fallcatcher and Pillar Life Insurance transactions were separate claims from the Par Funding related claims under the terms of Eckert's insurance; and (b) the establishment of reserve funds for the legal malpractice claims in connection with the Fallcatcher and Pillar Life Insurance transactions.

19. Upon receipt of such documents, the Vagnozzi Objecting Parties may also seek to depose representatives of the carriers with knowledge of the foregoing issues.

[2] On October 5, 2022, Counsel for the Vagnozzi Objecting Parties sent a letter to Counsel for Eckert Seamans placing Eckert and Pauciulo – as well as all member-owners of Eckert Seamans – "on notice of their collective, affirmative obligations not to engage in fraudulent transfers of assets, given the enormous damage exposure in these matters." A copy of that October 5, 2022 letter is attached as **Exhibit "A."**

20. All this discovery is directly related to the *Munford* factor which requires the Court to determine "the likelihood of depletion of the resources of the settlement defendants." 97 F.3d at 455.

21. The Vagnozzi Objecting Parties also seek to depose John Pauciulo, Esquire in advance of the Final Approval Hearing because the Vagnozzi Objecting Parties were not able to depose Pauciulo in the legal malpractice matters before the cases were stayed by this Court. His testimony goes directly to the *Munford* factor that requires the Court to evaluate "the likelihood of non[-]settling defendants to prevail on the barred claim," 97 F.3d at 455.

22. Pauciulo's testimony will establish, among other things, the utter failure of the Eckert firm as a whole to monitor his activities and how he and Eckert enabled the raising of hundreds of millions of dollars from the investing public with assurances that the private placement offerings complied in every respect with the securities laws of the United States.

23. The Vagnozzi Objecting Parties also seek discovery from Counsel of the Putative Class, which seek a $6.75 million fee and have filed a separate Motion for approval of that fee.

24. Their request for $6.75 million in fees is accompanied by no detailed billing statements detailing what work they allegedly performed, no disclosure of any discovery efforts they may have made, no attendance of court hearings, and no obtaining of court rulings they procured. Rather, Counsel's Motion includes Declarations, which only generally describe the work performed and include only a chart summarizing total hours purportedly spent by the attorneys in the respective firms.

25. Thus, the Vagnozzi Objecting Parties seek discovery to uncover the detail (or lack thereof) supporting the $6.75 million in requested fees, which is the only way such issues can be

flushed out so this Court may make a reasoned consideration of the "reasonableness" of their requests.

26. Upon receipt of such discovery the Vagnozzi Objecting Parties may also seek to depose the attorneys who executed Declarations in support of Class Counsel's Motion.

27. In view of the legal standards governing "bar orders," and the need to take limited discovery on the factual issues that are directly relevant to such standards, the Vagnozzi Objecting Parties respectfully request the Court to schedule a Status Conference so that the discovery and the evidentiary presentation at the Final Approval Hearing can be organized and structured.

WHEREFORE, Dean Vagnozzi respectfully requests the Court grant this Motion and schedule a Status Conference to determine the scope and timing of discovery and the protocols for the Final Approval Hearing.

Respectfully submitted,

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/s/ Matthew L. Minsky
/s/ George Bochetto
By: _____
George Bochetto, Esquire
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Attorneys for Dean Vagnozzi

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was electronically filed May 21, 2024 with the CM/ECF filing portal, which will send a notice of electronic filing to all counsel of record.

Respectfully submitted, this 21st day of May 2024.

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By: _____
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Exhibit “A”

Bochetto / Lentz P.C.

George Bochetto†^
Gavin P. Lentz*
Jeffrey W. Ogren*
David P. Heim*
Vincent van Laar*
Bryan R. Lentz*
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PRACTICE DEDICATED TO LITIGATION AND NEGOTIATION MATTERS

George Bochetto
Attorney at Law
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Please send all Mail to the Philadelphia Office*

October 5, 2022

VIA FIRST CLASS MAIL
AND EMAIL (jay.dubow@troutman.com)
Jay Dubow, Esquire
Troutman Pepper
3000 Two Logan Square
Philadelphia, PA 19103

RE: Dean Vagnozzi v. Pauciulo, Eckert Seamans Cherin & Mellott, LLC, Philadelphia Court of Common Pleas, No. 210402115

Albert Vagnozzi, et al. v. Pauciulo, Eckert Seamans Cherin & Mellott, LLC, Philadelphia Court of Common Pleas, No. 210502334

Dear Mr. Dubow:

As you are aware, I represent Plaintiffs in the above matters. I am writing to place your clients – John Pauciulo and Eckert Seamans – as well as all member-owners of Eckert Seamans on notice of their collective, affirmative obligations not to engage in fraudulent transfers of assets, given the enormous damage exposure in these matters. This includes a duty to refrain from transferring assets of the Defendants, as well as making bonus payments or profit distributions to lawyers and/or partners of Eckert Seamans. Indeed, we deem all such transfers of assets, bonus payments or profit distributions that have occurred since the SEC action was filed on July 24, 2020 to be fraudulent transfers.

Defendants' liability in these and other pending matters arising out of the CBSG d/b/a Par Funding investment notes is not debatable. Indeed, in the SEC's recent Order imposing remedial sanctions against Pauciulo, the SEC described "Pauciulo's role in a multi-million-dollar unregistered offering fraud," and that "Pauciulo knew or was reckless in not knowing that there was no exemption from registration available for the CBSG offerings." Further, our investigation has revealed that Pauciulo and Eckert Seamans were involved in other SEC enforcement actions separate and apart from the Par Funding notes, which were filed as early as

2017, wherein the SEC found Pauciulo's and Eckert Seamans' advice about exempted unregistered promissory notes -- the same type of legal advice given here -- was plain wrong. Shockingly, Defendants did not disclose such SEC actions to Plaintiffs, who, based on Defendants' advice, had created funds using the same type of unregistered promissory notes ***after*** the SEC filed enforcement actions in these other matters.

It is also undeniable that Defendants face exposure to enormous damages in these and other related matters. Our investigation shows that Pauciulo and Eckert Seamans represented funds that raised approximately $200 million from investors in connection with the Par Funding notes. In addition to the investment losses, however, Pauciulo and Eckert Seamans are also responsible for the enormous consequential damages suffered by my clients, whose careers and livelihoods have been permanently ruined and their personal lives and families' lives turned upside down. A very substantial punitive damages award – likely doubling or tripling the compensatory damages (a conservative estimate) – will also be rendered by a Philadelphia jury.

Amazingly, facing clear liability for such massive damages, your clients refuse to tell Plaintiffs the limits of applicable liability insurance policies, which is basic and non-confidential information. There is only one reasonable conclusion to be inferred from your clients' conduct thus far— they are grossly underinsured for these claims, otherwise undercapitalized, and likely meet the definition of "insolvent."

The transfer of assets and payment of bonusses or profits under such circumstances is clearly a fraudulent transfer in anticipation of the large, impending verdicts and judgments.

Pennsylvania courts look to the entirety of the circumstances surrounding an asset transfer to determine if that transfer was made with the intent to defraud creditors. Here, where Defendants have obstructed reasonable avenues to account for its ability to meet its liabilities, the circumstances give rise to an inference of intent to hinder and defraud creditors. *See, e.g. Godina v. Oswald*, 206 Pa.Super. 51, 55, 211 A.2d 91, 93 (1965) (finding that a jury could "well infer" that a conveyance was made with the intent to hinder, delay, or defraud a creditor when it was made shortly before a predictable verdict against the debtor when the insurance coverage was inadequate and the debtor failed to account, by records or otherwise, what had happened to its assets).

Moreover, we will be using Eckert Seamans' refusal to turn over its liability insurance limits as a basis for piercing the corporate veil of the LLC. It is well established that the use of a corporate form to perpetrate a fraud is grounds to pierce the corporate veil. *Kaites v. Dept. of Environmental Resources,* 108 Pa.Cmwlth. 267, 273, 529 A.2d 1148, 1151 (1987).

We will be pursuing all legal avenues available to recover the funds that have been fraudulently conveyed and, most likely, have found their way into the accounts of Eckert Seamans' officers, partners, members, and equity holders. To that end, please consider this a

formal notice to your clients to **immediately cease all profit distributions, partner bonuses, and other dissipation of assets. You are hereby placed on notice of your obligation to preserve all your clients' assets pending the outcome of this litigation**.

Please further advise your client that any partner, member, equity holder or management leader who takes part in the unlawful dissemination of firm assets shall be named as a defendant in our efforts to recover the fraudulently conveyed funds. If you continue to withhold information relating to your client's insurance coverage and/or solvency in the face of massive liability exposure, please be advised that we will seek all remedies at law, including but not limited to a asset freezing injunction. *See, e.g.*, *Citizens Bank of Pennsylvania v. Myers*, 872 A.2d 827 (Pa.Super. 2005)(freezing an account to which misapropriated funds had been traced); *Walter v. Stacy*, 837 A.2d 1205 (Pa. Super. 2003) (noting that preliminary injunction requiring placement of funds into escrow and requiring court approval before utilizing the funds to prevent the "unfair, wholesale dissolution of . . . assets in anticipation of civil liability" was "proper"); *American Express Travel Related Services Company, Inc. v. Laughlin*, 623 A.2d 854 (Pa. Super. 1993) (affirming preliminary injunction entered to enjoin the concealing or dissipation of funds); *East Hills TV & Sporting v. Dibert*, 531 A.2d 507 (Pa. Super. 1987) (seller may be enjoined from using funds in seller's bank so as to prevent potential loss of funds belonging to buyer and necessary to carry on its business).

In this regard, Plaintiff also hereby demands the following documents from Eckert Seamans to be produced immediately, within ten (10) days of this correspondence, in order to avoid emergency legal action:

a. Records of all profit distributions paid to any Eckert Seamans partner, member, equity holder or management leader from January 1, 2020 to the present;
b. Records of all bonuses paid to any Ecker Seamans partner, member, equity holder or management leader from January 1, 2020 to the present;
c. Records of any asset transfer, whether tangible or intangible, to any Eckert Seamans partner, member, equity holder or management leader from January 1, 2020 to the present;
d. Itemized documentation of all individuals with any ownership interest in Eckert Seamans, along with the percentage of ownership attributable to each individual; and
e. As a preliminary request, all balance sheets and financial statements from January 1, 2020 to the present.

Lastly, we further demand written assurance from Pauciulo and Eckert Seamans that they have placed a hold on the distribution of their assets, including but not limited to, profit

distributions and partner bonuses. Failure to provide such written assurances will be used to further support injunctive relief.

We hope that your client takes its liability exposure in this matter seriously, and we further implore your clients to understand the serious legal ramifications of continuing to hide vital information concerning its insurance coverage and asset distribution. I look forward to your prompt cooperation in this regard.

Please contact me if you wish to discuss these requests.

Sincerely,

BOCHETTO & LENTZ, P.C.

/s/ George Bochetto
By:_____
George Bochetto

cc: Cliffford Haines, Esquire (*via e-mail, chaines@haines-law.com*)
Gaetan Alfano, Esquire (*via e-mail, gaetan.alfano@troutman.com*)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS GROUP, INC. d/b/a PAR FUNDING, *et al.,*

Defendants.

_____/

ORDER FOR STATUS CONFERENCE

THIS CAUSE comes before the Court upon Motion for Status Conference Regarding Final Approval Hearing For Settlement Among Receiver, Putative Class Plaintiffs, and Eckert Seamans, filed by Defendant Dean Vagnozzi.

After reviewing the Motion, the Court hereby schedules a Status Conference on _____, 2024, at _____ A.M./P.M. to address the timing and scope of discovery and the protocols for presenting evidence at the Final Approval Hearing now scheduled for July 16, 2024. The Status Conference shall be conducted telephonically.

DONE AND ORDERED in Miami, Florida, this _____ day of May, 2024.

_____
RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE