

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-CV-24678-COOKE/LOUIS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ONIX CAPITAL LLC., *et al.*,

Defendants.

**REPORT AND RECOMMENDATION ON RECEIVER'S
MOTION TO APPROVE AND ENFORCE SETTLEMENT**

Pending before the Court is the Motion to Approve and Enforce Settlement filed by Melanie E. Damian, the Court-appointed Receiver. (ECF No. 271). The Honorable Marcia G. Cooke referred the motion to me for a report and recommendation. (ECF No. 273). The Receiver asks the Court to approve a confidential mediated settlement agreement she reached with a third party¹ prior to filing suit.²

The Court's Receivership Order authorizes the Receiver to settle or compromise certain claims if she first obtains the Court's approval. (ECF No. 84 at 4, ¶ 12). I have

¹ The parties agreed that the settling party's identity should remain confidential, although it was disclosed to me by the *in camera* submission of the settlement agreement. I will provide Judge Cooke with a copy of the Settlement Agreement for her *in camera* review, as well.

² Earlier in this litigation, I held a settlement conference between the Receiver and the Chilean and BVI Liquidators. (ECF Nos. 219, 245). The present settlement is an agreement between the Receiver and a third party, which those parties reached with a private mediator. My knowledge of this settlement is limited to my review of the settlement agreement, the motion, and the docket.

made a careful *in camera* review of the confidential settlement agreement the Receiver and third party are prepared to execute. I believe it is a fair and reasonable compromise that furthers the Receiver's obligation to "[m]arshall and safeguard" the assets of the receivership estate and to protect the investors of Onix and/or the Relief Defendants. (*Id.* at 2, ¶ 2). The Court has subject-matter jurisdiction to both review and enforce the proposed settlement agreement.

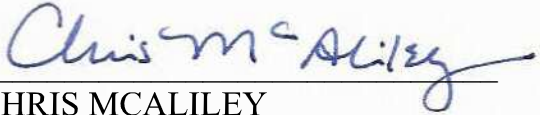
I spoke with counsel for the Receiver and third party yesterday, by telephone, at a sealed hearing on the matter, and I recommend that the Court grant the motion by entering the proposed order attached to this report. The Receiver and the third party should be commended for reaching this agreement pre-suit and thereby avoiding the expenses of litigation.

Also, the parties request, and I agree, that the order approving the settlement agreement should be a final, appealable order under Federal Rule of Civil Procedure 54(b). That Rule provides that "[w]hen an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b). The Receiver explained that she does not expect any objections to the settlement agreement or appeal of this Court's order approving that agreement. The Receiver is eager to make a distribution, and accelerating the period for when any challenges might be raised will expedite the Receiver's opportunity to distribute the settlement funds. I agree that there is no just reason for delaying the finality of the settlement agreement, and I recommend that the

Court make that finding and approve the settlement agreement as a final, appealable order under Rule 54(b).

At the telephonic hearing, I advised counsel that I would make these recommendations, and they advised that they waive their right to file any objections. For that reason, this report provides for no objection period.

RESPECTFULLY SUBMITTED in chambers at Miami, Florida, this 15th day of November 2019.



CHRIS MCALILEY
UNITED STATES MAGISTRATE JUDGE

cc: The Honorable Marcia G. Cooke
Counsel of record