

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE §
COMMISSION, §
§
Plaintiff, §
§ Civil Action No. 3:16-CV-1735-D
VS. §
§
CHRISTOPHER A. FAULKNER, et al., §
§
Defendants. §

MEMORANDUM OPINION
AND ORDER

Plaintiff U.S. Securities and Exchange Commission (“SEC”) moves for a preliminary injunction to enjoin defendants Christopher Faulkner (“Faulkner”), Breitling Energy Corporation (“BECC”), and Breitling Oil & Gas Corporation (“BOG”) from allegedly violating specific antifraud provisions of federal securities laws. The SEC also moves for an asset freeze, appointment of receiver and other ancillary relief. In opposition, Faulkner presents limited objections concerning the scope of the requested relief. Concluding that the SEC has met its burden of establishing the needed scope of the requested relief, but that Faulkner has demonstrated immediate and ongoing harm due to a lack of defense funds, the court by contemporaneous order largely—but not entirely—grants the relief the SEC seeks.¹

¹Pursuant to Fed. R. Civ. P. 52(a), the court sets out its findings of fact and conclusions of law in this memorandum opinion and order. The SEC’s motion is before the court under the procedure permitted by Rule 43(c) and is being decided on the papers, without an evidentiary hearing. *See, e.g., John Crane Prod. Solutions, Inc., v. R2R and D, LLC*, 861 F.Supp.2d 792, 793 n.2 (N.D. Tex. 2012) (Fitzwater, C.J.) (following similar procedure when addressing motion for preliminary injunction).

I

In this securities fraud civil enforcement action, the SEC alleges that, since 2011, Faulkner and his codefendants have orchestrated a massive scheme that has defrauded investors in Faulkner’s oil-and-gas companies of approximately \$80 million. Although the intricacies of the alleged scheme are beyond the scope of this memorandum opinion order, its basics can be briefly summarized as follows. According to the SEC, Faulkner—while misrepresenting his education and experience—sold “working investments” in various oil and gas prospects through his companies.² Faulkner oversold the available units for each project and inflated the estimated costs to be incurred. Despite representing to investors that their funds would be segregated, Faulkner and his companies commingled and misappropriated significant portions of this money through tens of millions of dollars in cash disbursements and reimbursements of Faulkner’s personal expenditures.³ Throughout the scheme, Faulkner signed, and BECC filed, inaccurate and misleading financial reports with the SEC. Investors in Faulkner’s companies ultimately received only a small fraction of their investment principal. The SEC alleges that, in conducting this scheme, Faulkner and other defendants have violated § 17(a) of the Securities Act of 1933 (“1933 Act”) and § 10(b) of

²The SEC alleges that Faulkner used different companies at different times in his scheme. These companies included BOG, BECC (a publicly traded company), Crude Energy, LLC, and Patriot Energy, LLC.

³According to the SEC, Faulkner has personally received at least \$23.8 million in investor funds. The SEC alleges that Faulkner personally obtained approximately \$10 million from BOG investors alone. Faulkner does not contest any of the SEC’s figures.

the Securities Exchange Act of 1934 (“1934 Act”), and SEC Rule 10b-5, promulgated thereunder.

The SEC now alleges that, after it filed this lawsuit, Faulkner, BOG, and BECC have continued to defraud investors. It maintains that records seized through a subpoena indicate that, since June 2016, over \$110,000 in production revenue checks from oil and gas operators payable to BOG has been deposited into four accounts that Faulkner controls or beneficially owns. None of these funds has been used to pay BOG investors; instead, the funds have been misappropriated to pay Faulkner’s personal expenditures.

In light of foregoing and ongoing conduct, the SEC filed a motion for a preliminary injunction, *ex parte* temporary restraining order, asset freeze, the appointment of a receiver to conserve the assets of Faulkner, BECC, and BOG, and other ancillary relief (including sworn accounting, document preservation, and expedited discovery). On August 14, 2017 the court issued an order appointing a temporary receiver, and it also granted a temporary restraining order and asset freeze order, without prejudice to granting the remaining relief that the SEC requested. The court then established a procedure for considering the instant motion.

Only Faulkner has filed an opposition response. He does not contest the majority of the SEC’s requested relief. Instead, he contends that the court should narrow the scope of any orders to only address the oil and gas assets of BOG and BECC, and that the court should permit Faulkner and other insureds to access the directors and officers insurance policy (“D&O Policy”) issued to BECC. The SEC’s motion is now ripe for decision.

II

“The court need not address the merits of the SEC’s preliminary injunction application insofar as it seeks relief that defendants do not oppose.” *SEC v. AmeriFirst Funding, Inc.*, 2007 WL 2192632, at *1 (N.D. Tex. July 31, 2007) (Fitzwater, J.). Similarly, the court need not address the merits of the SEC’s motion to the extent it relates to requests for relief that defendants do not fairly address, such as the SEC’s request for relief in the form of expedited discovery and a sworn accounting. *Id.* Therefore, the court focuses its analysis on Faulkner’s two objections to the scope of the SEC’s requested relief.

III

A

The availability of a preliminary injunction in an SEC civil enforcement action is derived from explicit statutory authorization. Under § 20(b) of the 1933 Act, 15 U.S.C. § 77t(b), and § 21(d) of the 1934 Act, 15 U.S.C. § 77u(d), the SEC can obtain injunctive relief upon “a proper showing” that there is a “reasonable likelihood that the defendant[s][are] engaged or about to engage in practices that violate the federal securities laws.” *SEC v. First Fin. Grp. of Tex.*, 645 F.2d 429, 434 (5th Cir. Unit A May 1981) (citations omitted); *SEC v. Zale Corp.*, 650 F.2d 718, 720 (5th Cir. Unit A July 1981) (“[T]he Commission is entitled to prevail [on its permanent injunction application] when the inferences flowing from the defendant’s prior illegal conduct, viewed in light of present circumstances, betoken a ‘reasonable likelihood’ of future transgressions.”); *SEC v. Blatt*, 583 F.2d 1325, 1334 (5th Cir. 1978) (“The critical question in issuing the injunction and also the ultimate test on

review is whether defendant's past conduct indicates that there is a reasonable likelihood of further violations in the future."); *cf. SEC v. Cavanagh*, 1 F.Supp.2d 337, 360 (S.D.N.Y. 1998) (“[A] more substantial showing of likelihood of success, both as to violation and risk of recurrence [is required] whenever the relief sought is more than preservation of the status quo.” (quoting *SEC v. Unifund SAL*, 910 F.2d 1028, 1039 (2d Cir. 1990)), *aff'd*, 155 F.3d 129 (2d Cir. 1998) (Reavley, J.); *SEC v. Tyler*, 2002 WL 32538418, at *2 (N.D. Tex. Feb.21, 2002) (Solis, J.).

The showing is usually made with proof of past substantive violations that indicate a reasonable likelihood of future substantive violations. *First Fin. Grp. of Tex.*, 645 F.2d at 434 (citations omitted); *Tyler*, 2002 WL 32538418, at *2 (citations omitted). Additionally, “[w]hen scienter is an element of the substantive violation sought to be enjoined, it must be proven before an injunction may issue.” *Tyler*, 2002 WL 32538418, at *2 (citing *Aaron v. SEC*, 446 U.S. 680, 699-700 (1980)). “[I]n SEC civil enforcement actions for preliminary injunctive relief under the antifraud provisions of the federal securities laws . . . the proper standard of proof is the preponderance of the evidence.” *First Fin. Grp. of Tex.*, 645 F.2d at 434.

B

The court has broad equitable power in securities fraud cases to fashion appropriate ancillary remedies necessary to grant full relief. *SEC v. Posner*, 16 F.3d 520, 521-22 (2d Cir. 1994). Moreover, the appointment of a receiver is a “well-established equitable remedy available to the SEC in its civil enforcement proceedings for injunctive relief.” *AmeriFirst*

Funding, 2007 WL 2192632, at *3 (quoting *First Fin. Grp. of Tex.*, 645 F.2d at 438.)

The district court's exercise of its equity power in this respect is particularly necessary in instances in which the corporate defendant, through its management, has allegedly defrauded members of the investing public; in such cases, it is likely that, in the absence of the appointment of a receiver to maintain the status quo, the corporate assets will be subject to diversion and waste to the detriment of those who were induced to invest in the corporate scheme and for whose benefit, in some measure, the SEC injunctive action was brought.

First Fin. Grp. of Tex., 645 F.2d at 438. (discussing applicability of receivership where automatic stay in bankruptcy was in effect) (footnote omitted). In *First Financial Group of Texas* the Fifth Circuit noted that, in reviewing a district court's decision to enter a preliminary injunction in favor of the SEC,

[t]he prima facie showing of fraud and mismanagement, absent insolvency, is enough to call into play the equitable powers of the court. It is hardly conceivable that the trial court should have permitted those who were enjoined from fraudulent misconduct to continue in control of (the corporate defendant's) affairs for the benefit of those shown to have been defrauded. In such cases the appointment of a trustee-receiver becomes a necessary implementation of injunctive relief.

Id. (quoting *SEC v. Keller Corp.*, 323 F.2d 397, 403 (7th Cir. 1963)). Receivers may also be appointed over individual—not only corporate—defendants if their fraudulent conduct makes such an appointment appropriate. *See, e.g., Janvey v. Alguire*, 647 F.3d 585, 598 (5th Cir. 2011); *SEC v. Stanford Int'l Bank, Ltd.*, 2009 WL 8707814, at *1 (N.D. Tex. Oct. 9, 2009) (Godbey, J.).

Beyond appointing a receiver, “[t]he court is also empowered to freeze defendants’

assets to preserve the status quo and prevent dissipation of ill-gotten gains so that they remain available to fund subsequent disgorgement orders and civil penalties.” *AmeriFirst Funding*, 2007 WL 2192632, at *3; *see also SEC v. Brooks*, 1999 WL 493052, at *2 (N.D. Tex. July 12, 1999) (Fitzwater, J.) (citing *SEC v. Schiffer*, 1998 WL 307375, at *7 (S.D.N.Y. June 11, 1998)).

IV

Based on the SEC’s briefing and the largely uncontested evidence, the court finds from a preponderance of the evidence that the SEC has made “a proper showing” that there is at least a “reasonable likelihood that the defendant[s][are] engaged or about to engage in practices that violate the federal securities laws.” The court finds that there is a reasonable likelihood that defendants, acting with scienter, obtained money and property through false and misleading statements and omissions of material fact and engaged in a scheme to defraud investors, in violation of the securities laws, including § 17(a) of the 1933 Act, § 10(b) of the 1934 Act, and SEC Rule 10b-5 promulgated thereunder. The court has therefore entered an order granting the requested preliminary injunction.

V

Regarding the remainder of the requested equitable relief, the court first considers Faulkner’s request that the court limit the scope of the relief to only address the oil and gas assets of BOG and BECC. Faulkner contends that the requested appointment of a receiver is overbroad in relation to the SEC’s purported aim to protect investor money from being misappropriated. He maintains that because all assets of BOG and BECC will be under the

receiver's control, BOG's and BECC's investors will be sufficiently secure, and a receivership that covers Faulkner's assets generally and extends to companies not party to this action is excessive and unnecessary. The court disagrees.

While a receivership over BOG and BECC would prevent the payments the SEC alleges have occurred since this lawsuit was filed, such a more limited receivership would not protect the investor proceeds that Faulkner has already allegedly misappropriated. Indeed, the SEC has demonstrated through its extensive filings that Faulkner has already obtained at least \$23.8 million of investor proceeds through fraudulent cash disbursements and reimbursements. Faulkner has offered no evidence to rebut these figures. Moreover, the fact that Faulkner continued to misappropriate investor assets even after the SEC filed this lawsuit gives the court little confidence that Faulkner's asset management would improve without supervision. Thus the court is left to conclude that a receivership that only reaches BOG and BECC's oil and gas assets will leave ill-gotten investor proceeds unsecured.

The court finds that the SEC has met its burden of demonstrating by a preponderance of the evidence that the court should order an asset freeze and appoint a temporary receiver covering Faulkner's assets. This encompasses entities controlled by Faulkner to which the un rebutted evidence indicates he may have redistributed either BOG's or BECC's investors' assets—including the Breitling Royalties Corporation. Granting such relief will ensure that these assets will be available to satisfy any judgment that either the SEC or a defrauded investor may obtain. "The court is [] empowered to freeze defendants' assets to preserve the status quo and prevent dissipation of ill-gotten gains so that they remain available to pay

subsequent disgorgement orders and civil penalties.” *AmeriFirst Funding*, 2007 WL 2192632, at *3; *Brooks*, 1999 WL 493052, at *2. The court concludes this power is both necessary and appropriate to enable the temporary receiver to accurately assess and secure assets likely needed for future disgorgement.

To ensure that the relief granted does not extend past what is reasonably necessary for the receiver to determine the extent of Faulkner’s, BOG’s, and BECC’s assets and their ability to preserve ill-gotten gains for future disgorgement, the court directs that the temporary receiver file a status report with the court no later than the first business day of each quarter, the first report being due January 2, 2018, informing the court his identification of available assets and whether these assets can satisfy the SEC’s estimation of funds subject to disgorgement.

VI

The court next determines whether to permit Faulkner and the other insureds to access the D&O Policy and its proceeds. Faulkner specifically requests the court “to exclude the D&O Policy from the receivership estate or to authorize the disbursement of its proceeds to fund a legal defense.” D. Br. 15. To address Faulkner’s objection, the court must address two separate questions: whether the D&O policy is part of the receivership estate, and whether the court should advance defense costs.

A

Because relatively few cases arise examining the ownership of insurance proceeds in the receivership context, “it is appropriate to consider the treatment of the issue under

bankruptcy law, where the courts must frequently decide whether persons insured under a D&O policy are entitled to the proceeds when the named insured is a debtor in bankruptcy proceedings.” *SEC v. Narayan*, 2017 WL 447205, at *4 (N.D. Tex. Feb. 2, 2017) (Lynn, C.J.) (internal quotation marks and citation omitted). In receivership actions, “there is clear Fifth Circuit precedent on a closely related issue—the treatment of liability proceeds in the context of bankruptcy.” *Exec. Risk Indem., Inc. v. Integral Equity, L.P.*, 2004 WL 438936, at *13 (N.D. Tex. Mar. 10, 2004) (Fish, C.J.).

Whether a D&O policy is part of a receivership estate depends on the entities and individuals covered by the policy and the language of the policy itself. *See, e.g., In re La. World Exposition, Inc.*, 832 F.2d 1391, 1401 (5th Cir. 1987) (holding that when debtor corporation owns D&O policy that exclusively covers its directors and officers, the proceeds are not part of debtor’s bankruptcy estate). The relevant question is not who owns the policy but who owns its proceeds. *In re Edgeworth*, 993 F.2d 51, 55-56 (5th Cir. 1993) (“In other words, when the debtor has no legally cognizable claim to the insurance proceeds, those proceeds are not property of the estate.”). The Fifth Circuit has addressed—albeit in dicta—the options for a court when considering a D&O policy when:

- (1) the policy-owning debtor is but one of two or more coinsureds or additional named insureds, (2) the rights of the other coinsured(s) or additional named insured(s) are not merely derivative of the rights of one primary named insured, and (3) the aggregate potential liability substantially exceeds the aggregate limits of available insurance coverage.

In re Vitek, Inc., 51 F.3d 530, 535 (5th Cir. 1995) (emphasis omitted). Deeming such

circumstances “mid-continuum” cases, the *Vitek* panel suggests two possible paths forward. First, the court can wholly include the proceeds of a policy in the estate of the debtor that owns the policy—“even though there are other coinsureds or additional named insureds who have some ‘interest’ in the proceeds.” *Id.* Or, second, the proceeds can be divided among all coinsureds, on either a per capita basis or in proportion to the potential or actual liability faced by each insured party. *Id.*

That a D&O policy is deemed to be part of a receivership estate, however, does not preclude the advancement of defense costs. “It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.” *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372-73 (5th Cir. 1982) (quoting *SEC v. Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978)). Accordingly, several courts have concluded that the advancement of defense costs is appropriate, despite the fact that they may be drawn from a D&O policy within a receivership estate. *See, e.g., Stanford Int’l Bank*, 2009 WL 8707814, at *3-4 (declining to determine whether D&O policy proceeds were part of receivership estate, but holding that even if they were, court would permit advancement of defense costs); *Narayan*, 2017 WL 447205, at *6 (noting that even in cases where D&O policy proceeds are within bankruptcy estate, “courts have nonetheless granted relief when the harm weighs more heavily against the directors or officers than the debtor”) (citations omitted). In these cases, the courts balance the potential harm facing the defendants moving for defense costs with the harm to the receivership estate if said funds are released. In particular, they consider whether the harms are clear and immediate rather than

hypothetical or speculative. *See Stanford Int'l Bank*, 2009 WL 8707814, at *3-4; *Narayan*, 2017 WL 447205, at *6; *see also In re Allied Digital Techs. Corp.*, 306 B.R. 505, 514 (Bankr. D. Del. 2004); *In re CyberMedica, Inc.*, 280 B.R. 12, 18 (Bankr. D. Mass. 2002).

B

In this case, the D&O Policy explicitly insures both BECC and its directors and officers. In relevant part, the D&O Policy provides that “[t]he Insurer shall pay on behalf of the Insured Persons Loss resulting from a Claim first made against the Insured Persons during the Policy Period . . . for a Wrongful Act.” D. App. 38 Similarly, the Insurer promises to “pay on behalf of the Company Loss resulting solely from and Securities Claim first made against the Company . . . for a Company Wrongful Act.” *Id.* It specifically defines the “Insured” as both the “Company”—listed as the BECC elsewhere in the D&O Policy—and “Insured Persons”—further defined as including “any, past, present or future director or officer, or member of the Board of Managers, of the Company.” D. App. 4, 39. The definition of “Loss” includes both “damages, judgments, settlement, pre-judgment and post-judgment interest” and “Defense Expenses in excess of the Retention that the insured is legally obligated to pay.” D. App. 23, 40.

From this language, the court determines that the D&O Policy is at least in part within the receivership estate. Its provisions clarify that the D&O Policy is one of the “midcontinuum” cases contemplated in *Vitek*: both those covered by the receivership (Faulkner and BECC) and those that are not (other yet unknown directors and officers) are entitled to its proceeds to cover respective “Losses.” Because the scope of the receivership

covers the assets of both Faulkner and BECC, however, the D&O Policy proceeds that would be used to pay “damages, judgments, settlement, pre-judgment and post-judgment interest” and “Defense Expenses” related to Faulkner’s and BECC’s conduct are within the receivership estate. Therefore, they are subject to the receivership and the court’s asset freeze order.

As the cited foregoing cases demonstrate, the fact that these funds are within the receivership estate does not preclude the court from granting an advancement of defense costs. In all of these cases, however, the respective courts received full briefing on this particular issue from the receiver, the SEC, and, often, additional defendants. *See Stanford Int’l Bank*, 2009 WL 8707814, at *3-4; *Narayan*, 2017 WL 447205, at *6. Here, the temporary receiver has not had the opportunity to assess the risk that an indefinite advancement of defense costs would pose to the receivership assets and defrauded investors. Without this information, the court cannot effectively balance the harms implicated by this decision. Therefore, the court declines to indefinitely provide Faulkner and other insureds access to defense funds.

Faulkner has demonstrated, however, that he and other defendants face real and immediate harm. Without access to the D&O Policy proceeds, Faulkner may be unable to mount a defense in the present case. D. App. 2. Faced with this harm, the court will order that the temporary receiver allow defendants access to the D&O Policy proceeds for the period required for the court to decide this question on full briefing, or, if sooner, the date the court by order denies such access. To avoid entry of such an order on October 16, 2017,

Faulkner must by that date file a motion for the advancement of defense costs. Briefing on the motion will follow the court's local civil rules unless the court, on request of a party or parties, sets a different schedule. In the meantime, the temporary receiver will be able to make an assessment of any likely harms to the estate should the court allow further access to D&O Policy Proceeds. This will allow the court to better engage in the required balancing of harms analysis.

* * *

For the reasons stated, the court by separate order entered today is granting in large part the SEC's motion for preliminary injunction, asset freeze, appointment of receiver, and other ancillary relief.

SO ORDERED.

September 25, 2017.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE	§	
COMMISSION,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:16-CV-1735-D
VS.	§	
	§	
CHRISTOPHER A. FAULKNER, et al.,	§	
	§	
Defendants.	§	

ORDER

For the reasons set out in a memorandum opinion and order filed today, the court enters the following order.

The court finds, based on the record in these proceedings, that the appointment of a temporary receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets—in any form or of any kind whatsoever—owned, controlled, managed, or possessed by defendants Christopher A. Faulkner, Breitling Oil & Gas Corporation (“BOG”), and Breitling Energy Corporation (“BECC”) (collectively, the “Receivership Defendants”), directly or indirectly (“Receivership Assets”).

The court has subject matter jurisdiction over this action and personal jurisdiction over the Receivership Defendants.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The court hereby takes exclusive jurisdiction and possession of the Receivership Assets, of whatever kind and wherever situated.
2. Until further order of the court, Thomas L. Taylor is appointed to serve without bond as temporary receiver (the “Receiver”) for the estates of the Receivership Defendants and the

Receivership Assets.

I. Asset Freeze

3. Except as otherwise specified herein, all Receivership Assets are frozen until further order of this court. Accordingly, all persons and entities with direct or indirect control over any Receivership Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating, or otherwise disposing of or withdrawing such assets. All persons and entities with direct or indirect control over any Receivership Assets are ordered to relinquish such control to the Receiver. This freeze includes, but is not limited to, Receivership Assets that are (a) in the possession or control of oil and gas operators; or (b) on deposit with financial institutions such as banks, brokerage firms, and mutual funds.

II. General Powers and Duties of Receiver

4. The Receiver shall have all powers, authorities, rights, and privileges heretofore possessed by the officers, directors, managers, and general and limited partners of the entity Receivership Defendants under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements, in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959, and 1692, and Fed. R. Civ. P. 66.

5. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys, and other agents of the entity Receivership Defendants are hereby dismissed, and the powers of any general partners, directors, and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the entity Receivership Defendants' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The

Receiver shall assume and control the operation of the entity Receivership Defendants and shall pursue and preserve all of their claims.

6. No person holding or claiming any position of any sort with the entity Receivership Defendants shall possess any authority to act by, or on behalf of, the entity Receivership Defendants.

7. Subject to the specific provisions in Sections III through XIV, below, the Receiver shall have the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location, and value of all Receivership Assets, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest, or other income attributable thereto, of whatever kind, that the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly (collectively, the “Receivership Estate”);
- B. To take custody, control, and possession of all Receivership Assets and records relevant thereto from the Receivership Defendants; to sue for and collect, recover, receive, and take into possession from third parties all Receivership Assets and records relevant thereto;
- C. To manage, control, operate, and maintain the Receivership Estate and hold in his possession, custody, and control all Receivership Assets, pending further order of the court;
- D. To use Receivership Assets for the benefit of the Receivership Estate, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;
- E. To take any action that, prior to the entry of this order, could have been taken by the officers, directors, partners, managers, trustees, and agents of the entity Receivership Defendants;
- F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders, or auctioneers;
- G. To take such action as necessary and appropriate for the preservation of Receivership Assets or to prevent the dissipation or concealment of Receivership Assets;

- H. To issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;
- I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;
- J. To pursue, resist, and defend all suits, actions, claims, and demands that may now be pending or that may be brought by or asserted against the Receivership Estate; and,
- K. To take such other action as may be approved by the court.

III. Access to Information

8. Faulkner and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants, and employees of the entity Receivership Defendants, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Defendants and/or all Receivership Assets; such information shall include, but not be limited to, books, records, documents, accounts, and all other instruments and papers.

9. Within fourteen (14) days of the entry of this order, the Receivership Defendants shall file with the court, and serve upon the Receiver and the U.S. Securities and Exchange Commission (“SEC” or “Plaintiff”) a sworn statement, listing: (a) the identity, location, and estimated value of all Receivership Assets; (b) all employees (and job titles thereof), other personnel, attorneys, accountants, and any other agents or contractors of the Receivership Defendants; and (c) the names, addresses, and amounts of claims of all known creditors of the Receivership Defendants.

10. Within thirty (30) days of the entry of this order, the Receivership Defendants shall file with the court and serve upon the Receiver and the SEC a sworn statement and accounting, with

complete documentation, covering the period from January 1, 2011 to the present:

- A. of all Receivership Assets, wherever located, held by, or in the name of, the Receivership Defendants, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains and/or exercised or exercises control, including, but not limited to: (a) all securities, investments, funds, real estate, automobiles, jewelry and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any oil and gas operator or with any bank, brokerage, or other financial institution held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage or other financial institution;
- B. identifying every account at every bank, brokerage, or other financial institution: (a) over which Receivership Defendants has signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, the Receivership Defendants;
- C. identifying all credit, bank, charge, debit, or other deferred payment card issued to, or used by, each Receivership Defendants, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve (12) months;
- D. of all assets received by any of them from any person or entity, including the value, location, and disposition of any assets so received;
- E. of all funds received by the Receivership Defendants, and each of them, in any way related, directly or indirectly, to the conduct alleged in the SEC's first amended complaint (Doc. 22) or in the SEC's brief in support of plaintiff's *ex parte* emergency motion for temporary restraining order, asset freeze, appointment of receiver, and other ancillary relief ("Brief") (Doc. 103). The submission must clearly identify, among other things, all investors, the securities they purchased, the date and amount of their investments, and the current location of such funds;
- G. of all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity; and
- H. of all transfers of assets made by any of them.

11. Unless the court, on motion of a Receivership Defendant, orders otherwise, within thirty (30) days of the entry of this order, the Receivership Defendants shall provide to the Receiver and the SEC copies of the Receivership Defendants' federal income tax returns for 2010 through 2016, with all relevant and necessary underlying documentation.

12. Subject to any applicable rights under the Fifth Amendment to the United States Constitution, Faulkner and the entity Receivership Defendants' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions that the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Defendants, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Defendants. If the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make his discovery requests in accordance with the Federal Rules of Civil Procedure.

13. The Receivership Defendants are required to assist the Receiver in fulfilling his duties and obligations. As such, subject to any applicable rights under the Fifth Amendment to the United States Constitution, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

IV. Access to Books, Records and Accounts

14. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books, and records and all other documents or instruments relating to the Receivership Defendants. All persons and entities having control, custody, or possession of any Receivership Assets are hereby directed to turn over such property to the Receiver.

15. The Receivership Defendants, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Defendants, and any persons receiving notice of this order by personal service, facsimile transmission, or otherwise, having possession of the property, business, books, records, accounts, or assets of the Receivership Defendants are hereby directed to deliver the same to the Receiver, his agents, and/or employees.

16. All oil and gas operators and all banks, brokerage firms, financial institutions, and other persons or entities that have possession, custody, or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of the Receivership Defendants that receive actual notice of this order by personal service, facsimile transmission, or otherwise shall:

- A. not liquidate, transfer, sell, convey, or otherwise transfer any assets, securities, funds, or accounts in the name of, or for the benefit of, the Receivership Defendants, except upon instructions from the Receiver;
- B. not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control, without the permission of the court;
- C. within seven (7) days of receipt of that notice, file with the court and serve on the Receiver and counsel for the SEC a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,
- D. cooperate expeditiously in providing information and transferring funds, assets, and accounts to the Receiver, or at the direction of the Receiver.

17. Paragraph 16 notwithstanding, the Receiver shall permit XL Speciality Insurance Company to process the Receivership Defendants' claims under Directors and Officers Insurance Policy Number ELU137222-14, until a further order of the court.

V. Access to Real and Personal Property

18. The Receiver is authorized to take immediate possession of all personal property of

the Receivership Defendants, wherever located, including but not limited to, electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

19. The Receiver is authorized to take immediate possession of all real property of the Receivership Defendants, wherever located, including, but not limited to, all ownership and leasehold interests and fixtures. Upon receiving actual notice of this order by personal service, facsimile transmission, or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or (c) destroying, concealing, or erasing anything on such premises.

20. In order to execute the express and implied terms of this order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receivership Defendants, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have such keys in their possession during the term of the receivership.

21. The Receiver is authorized to open all mail directed to, or received by, or at the offices or post office boxes of the Receivership Defendants, and to inspect all mail opened prior to the entry of this order, to determine whether items or information therein fall within the mandates of this order.

22. Upon the request of the Receiver, the United States Marshals Service, in any judicial

district, is hereby ordered to assist the Receiver in carrying out his duties to take possession, custody, and control of, or to identify the location of, any assets, records, or other materials belonging to the Receivership Estate.

VI. Notice to Third Parties

23. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of the Receivership Defendants, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

24. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Defendant shall, until further ordered by the court, pay all such obligations in accordance with the terms thereof to the Receiver, and his receipt for such payments shall have the same force and effect as if the Receivership Defendants had received such payment.

25. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and serve this order on, any person, entity, or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estate. All government offices that maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this order upon the request of the Receiver or the SEC.

26. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail that is related, directly or indirectly, to the business, operations, or activities of any of the Receivership Defendants (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Defendants. The Postmaster shall not comply with, and shall

immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Defendants shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of Faulkner, and/or any mail appearing to contain privileged information related to Faulkner, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business, or service, or mail courier or delivery service, hired, rented, or used by the Receivership Defendants. The Receivership Defendants shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this order, whether through the U.S. mail, a private mail depository, or courier service.

27. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Defendants shall maintain such service and transfer any such accounts to the Receiver, unless instructed to the contrary by the Receiver.

28. Subject to paragraph 17 of this order, the Receiver is authorized to assert, prosecute, and/or negotiate any claim under any insurance policy held by or issued on behalf of the Receivership Defendants, or their officers, directors, agents, employees or trustees, and to take any and all appropriate steps in connection with such policies.

VII. Injunction Against Interference with Receiver

29. The Receivership Defendants and all persons receiving notice of this order by personal service, facsimile, or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, that would:

- A. interfere with the Receiver's efforts to take control, possession, or management of any Receivership Assets; such prohibited actions include, but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of, or interfering with or creating or enforcing a lien upon, any Receivership Assets;
- B. hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include, but are not limited to, concealing, destroying, or altering records or information;
- C. dissipate or otherwise diminish the value of any Receivership Assets; such prohibited actions include, but are not limited to, releasing claims or disposing, transferring, exchanging, assigning, or in any way conveying any Receivership Assets, enforcing judgments, assessments, or claims against any Receivership Assets or any Receivership Defendant, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Defendant or that otherwise affects any Receivership Assets; or,
- D. interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this court over the Receivership Estate.

30. The Receivership Defendants shall cooperate with and assist the Receiver in the performance of his duties.

31. The Receiver shall promptly notify the court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this order.

VIII. Stay of Litigation

32. As set forth in detail below, the following proceedings, excluding the instant

proceeding and all police or regulatory actions and actions of the SEC related to the above-captioned enforcement action, are stayed until further order of the court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Assets, wherever located; (c) the Receivership Defendants, including subsidiaries and partnerships; or, (d) any of the Receivership Defendants' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

33. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

34. All Ancillary Proceedings are stayed in their entirety, and all courts having any jurisdiction thereof are enjoined from taking or permitting any action until further order of this court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Defendants against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

IX. Managing Assets

35. For the Receivership Estate, the Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Assets (the "Receivership Fund").

36. The Receiver's deposit account shall be entitled "Receiver's Account, Estate of Christopher A. Faulkner, Breitling Energy Corporation, and Breitling Oil & Gas Corporation," together with the name of the action.

37. The Receiver may, without further order of this court, transfer, compromise, or otherwise dispose of any Receivership Assets, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Assets.

38. Subject to paragraph 39, immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

39. Upon further order of this court, pursuant to such procedures as may be required by this court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver is authorized to sell, and transfer clear title to, all real property in the Receivership Estates.

40. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estate, including making legally required payments to creditors, employees, and agents of the Receivership Estate and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

41. The Receiver shall take all necessary steps to enable the Receivership Fund to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of section 468B of the Internal Revenue Code and of the regulations, when applicable, whether proposed, temporary, or final, or pronouncements thereunder, including the filing of the elections and statements contemplated by those provisions. The Receiver shall be designated the administrator of the Settlement Fund, pursuant to Treas. Reg. § 1.468B-2(k)(3)(i), and shall satisfy the administrative

requirements imposed by Treas. Reg. § 1.468B-2, including but not limited to (a) obtaining a taxpayer identification number, (b) timely filing applicable federal, state, and local tax returns and paying taxes reported thereon, and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Settlement Fund. The Receiver shall cause the Settlement Fund to pay taxes in a manner consistent with treatment of the Settlement Fund as a “Qualified Settlement Fund.” The Receivership Defendants shall cooperate with the Receiver in fulfilling the Settlement Funds’ obligations under Treas. Reg. § 1.468B-2].

X. Investigate and Prosecute Claims

42. Subject to the requirement, in Section VIII above, that leave of this court is required to resume or commence certain litigation, the Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene in, or otherwise participate in, compromise, and/or adjust actions in any state, federal, or foreign court or proceeding of any kind as may in his discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Assets.

43. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted and (after obtaining leave of the court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from the court as may be necessary to enforce this order. Where appropriate, the Receiver should provide prior notice to SEC counsel before commencing

investigations and/or actions.

44. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by the entity Receivership Defendants. This paragraph does not apply to any applicable rights under the Fifth Amendment to the United States Constitution.

45. The Receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and the Receivership Estate.

XI. Bankruptcy Filing

46. The Receiver may seek authorization of the court to file voluntary petitions for relief under Title 11 of the United States Code (the “Bankruptcy Code”) for the entity Receivership Defendants. If an entity Receivership Defendant is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estate as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to paragraph 4 above, the Receiver is vested with management authority for the entity Receivership Defendants and may therefore file and manage a Chapter 11 petition.

47. The provisions of Section VIII above bar any person or entity, other than the Receiver, from placing the entity Receivership Defendants in bankruptcy proceedings.

XII. Liability of Receiver

48. Until further order of the court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

49. The Receiver and his agents, acting within scope of such agency (“Retained Personnel”) are entitled to rely on all outstanding rules of law and orders of this court and shall not

be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel.

50. This court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

51. In the event the Receiver decides to resign, the Receiver shall first give written notice to the SEC's counsel of record and the court of his intention, and the resignation shall not be effective until the court appoints a successor. The Receiver shall then follow such instructions as the court may provide.

XIII. Recommendations and Reports

52. The Receiver is authorized, empowered, and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Assets (the "Liquidation Plan").

53. Within thirty (30) days of the entry date of this order, the Receiver shall file a status report with the court. The status report shall include a summary of receivership activities to date. It shall also include a proposed plan for administering the receivership going forward, as well as a proposed deadline by which the Receiver will submit the Liquidation Plan. The Receiver's fees—including all fees and costs for the Receiver and others retained to assist in the administration and liquidation of the Receivership estate—are capped at \$75,000 during the initial 30-day period. Further fee limitations, if any, will be set by the court after the Receiver submits the status report.

54. Within the first day of each calendar quarter, beginning January 2, 2018, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the report)

the existence, value, and location of all Receivership Assets, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estate.

55. The Quarterly Status Report shall contain the following:

- A. a summary of the operations of the Receiver;
- B. the amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
- C. a schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;
- D. a description of all known Receivership Assets, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
- E. a description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);
- F. a list of all known creditors with their addresses and the amounts of their claims;
- G. the status of Creditor Claims Proceedings, after such proceedings have been commenced; and,
- H. the Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

56. On the request of the SEC, the Receiver shall provide the SEC with any documentation that the SEC deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the SEC's mission.

XIV. Fees, Expenses and Accountings

57. Subject to paragraphs 58 through 64 immediately below, the Receiver need not obtain court approval prior to the disbursement of cash in the Receivership Fund for expenses in the ordinary course of the administration and operation of the receivership. Further, prior court approval is not required for payments of applicable federal, state, or local taxes.

58. Subject to paragraph 59 immediately below, the Receiver is authorized to solicit persons and entities to be Retained Personnel to assist him in carrying out the duties and responsibilities described in this Order. The Receiver may engage Retained Personnel without obtaining an order of the court authorizing such engagement.

59. Subject to the limitations in paragraph 53 above, the Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estate as described in the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission” (the “Billing Instructions”) agreed to by the Receiver. Such compensation shall require the prior approval of the court.

60. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the court for compensation and expense reimbursement from the Receivership Estate (the “Quarterly Fee Applications”). At least thirty (30) days prior to filing each Quarterly Fee Application with the court, the Receiver shall serve upon SEC counsel a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

61. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver shall file a final fee application, describing in detail the costs and benefits associated with all litigation and

other actions pursued by the Receiver during the course of the receivership.

62. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the court. The total amounts held back during the course of the receivership will be paid out at the discretion of the court as part of the final fee application submitted at the close of the receivership.

63. Each Quarterly Fee Application shall:

- A. comply with the terms of the Billing Instructions agreed to by the Receiver; and,
- B. contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

64. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by SEC staff, as well as the Receiver's final application for compensation and expense reimbursement.

SO ORDERED.

September 25, 2017.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE