

imposing a receiver. The Defendant does oppose entry of the Government's proposed order under its current terms.

Under the Government's proposed order, the only carve out from the stay of these proceedings was for the Receiver to "perform[] the duties and exercis[e] the powers set forth" in the Receivership Order notwithstanding the stay. ECF No. 44-1. The Court should clarify the order to permit any party or intervenor to challenge to actions or existence of the Receiver. Submitted herewith is a proposed order that would impose a limited stay of these proceedings, with an exception for the work of the receiver and for any party to raise any issues relating to the receiver. These adjusted terms of the stay are necessary to preserve fundamental fairness and to avoid a situation where the Government is able to get only what it wants out of this civil proceeding prior to its parallel criminal prosecution and then freeze the victory against any challenge.

Outside of any issues affecting the need or justification for the receiver or challenges to his actions, the Defendant supports staying other deadlines or discovery in this matter. The Defendant would note that there was miscommunication between the parties as the United States' motion [ECF No. 44], in that his counsel Richard Roper, who indicated to the government counsel that the Defendant was not going to oppose to the motion, mistakenly thought that the government counsel was going to send a draft motion to him before filing. Counsel Roper, in turn, was planning to provide that a copy to his co-counsel to review. The government filed the motion, did not send a copy to counsel before filing, and he was not able to provide a copy to his co-counsel for his review. Thus, the Defendant asked for additional time to respond. The Defendant was not suggesting in his response that the government counsel was at fault.

For the foregoing reasons, Defendant Timothy L. Barton respectfully requests that the Court grant the United States of America's Motion [ECF No. 44], but expressly permit any dispute germane to the receivership's operation or existence to proceed unabated, as reflected in the proposed order submitted with this response.

Dated: November 14, 2022

Respectfully submitted,

By: /s/ Michael J. Edney

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CERTIFICATE OF SERVICE

On November 14, 2022 I filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas. I hereby certify that I have served the document on all counsel and/or pro se parties of record by a manner authorized by Federal Rules of Civil Procedure 5(b)(2).

/s/ Michael J. Edney
Michael J. Edney

Therefore, it is:

ORDERED that all case deadlines and discovery in these proceedings are stayed until otherwise ordered by the Court;

IT IS FURTHER ORDERED that nothing in this Order shall preclude the Court-appointed Receiver, Cort Thomas, from performing the duties and obligations, and from exercising the powers and rights, set forth in the Court's October 18, 2022, Order Appointing Receiver (Dkt. 29).

IT IS FURTHER ORDERED that nothing in this Order shall preclude the parties from moving for relief from or contesting any issue related to the Court-appointed Receiver, including whether the Receiver should have been appointed in the first instance or there is a continuing need for the Receiver or whether there are sufficient allegations or evidence for the SEC to invoke its ancillary authorities to have sought or to maintain the Receiver's activities in this case. For avoidance of doubt, the matters mentioned in this paragraph are explicitly excepted from any stay of these proceedings.

SO ORDERED this _____ day of November, 2022.

JUDGE BRANTLEY STARR
UNITED STATES DISTRICT COURT JUDGE