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November 10, 2009

VIA CM/ECF

The Honorable William C. Griesbach
United States District Judge
United States District Court
Eastern District of Wisconsin
125 South Jefferson Street
P.O. Box 22490
Green Bay, WI 54305-2490

Re: Securities and Exchange Commission v. Wealth Management LLC, James Putman and Simone Fevola, No. 09-C-506 (Griesbach, J.)

Dear Judge Griesbach:

We are the attorneys for the Edwin Wilson M.D. IRA ("Wilson"). At the Court's invitation, Wilson respectfully submits this letter brief to supplement the Objection of Creditor Wilson to the Receiver's Proposed Plan for the Allocation of the Assets of Wealth Management LLC and WML Gryphon Fund LLC (Docket No. 84), and in response to the Receiver's Omnibus Response to Objections to Proposed Plan for Allocation of Assets (Docket No. 116).

1. State Law Rights. At the hearing on November 4, 2009, the Receiver boldly asserted the unprecedented position that her appointment invalidates Wilson's state law and other choate rights, the Operating Agreement and the contractual rights created by The Confidential Private Offering Memorandum. Wilson respectfully requests that this Court decline to create this new federal common law doctrine for three principal reasons.

First, as provided by 28 U.S.C. § 959(b), the Receiver manages and operates the property according to the laws of the state where the property is located. See also Waag v. Hamm, 10 F. Supp 2d 1191, 1193 (D. Colo. 1998); Midwest Sav. Ass'n v. Riversbend Assocs. P'ship, 724 F. Supp. 661, 661-62 (D. Minn. 1989); Borock v. City of New York, 268 F.2d 412 (2d Cir. 1959)(the City of New York could properly impose real estate taxes on property in possession of the receiver even though the receiver was acting on behalf of the United States). Here,

applicable state law clearly provides upon making a withdrawal request, Wilson became a creditor of WML Gryphon Fund LLC (the "Gryphon Fund"). *See* Wis. Stat. §183.0606. Pursuant to section 183.0905 of the Wisconsin Statutes, Wilson is entitled to receive a distribution prior to the interests of members who chose to continue their investment in the Gryphon Fund. Second, the Operating Agreement for the Gryphon Fund provides that the managing member had the option of segregating the investment or creating an account payable. In Wilson's case, the latter option was elected, creating a contract right in favor of Wilson. Finally, the U.S. Supreme Court has long recognized that claims accorded legal priority by statute must be honored by a court of equity. Wiswall v.Sampson, 55 U.S. 52, 66 (1852). See also SEC v. Enterprise Trust Co., 559 F.3d 649, 653 (7th Cir. 2009) ("[t]he absolute priority rule in bankruptcy means that one class of creditors may be paid in full before junior creditors get anything; a similar approach might have been appropriate here. But none of the custodial investors has appealed").

2. The Receiver's Reliance on Section 510(b) of the Bankruptcy Code is Not Appropriate. The Receiver asks this Court to engraft the doctrine of equitable subordination found in section 510(b) of the Bankruptcy Code on Wilson's and other creditors' rights. Wilson respectfully requests that the Court decline the invitation to create new federal common with respect to the rights of a dissociated member of a Wisconsin limited liability company.

First, the argument ignores the Supreme Court's mandate in Butner v. United States, 440 U.S. 48, 55 (1979), that "[p]roperty interests are created and defined by state law." Accord, Barnhill v. Johnson, 503 U.S. 393, 398 (1992). There is no statutory analogue to section 510(b) in Chapter 183 of the Wisconsin statutes. Indeed, section 183.0607(4) provides that the Gryphon Fund's indebtedness to Wilson "is at parity with the limited liability company's indebtedness to its general, unsecured creditors, except to the extent subordinated by written agreement." As the Receiver conceded at the hearing, all of the funds, including the Gryphon Fund, have positive net equity. While the entities managed by Wealth Management lost money, or are not as valuable as everyone would like, the fact remains that the Gryphon Fund's assets exceed its liabilities, and Wilson is entitled to receive a proportionate distribution (with all other unsecured creditors) with respect to the claim which arose when Wilson withdrew from -- and was dissociated from -- the Gryphon Fund.

Second, even assuming, *arguendo*, that the Gryphon Fund is insolvent, the law recognizes that payment of a note/account payable for the redemption of Wilson's membership stake is not "damages" for purposes of section 510(b) of the Bankruptcy Code. See In re Blondheim Real Estate, Inc., 91 B.R. 639, 640 (Bankr. D. N.H. 1988) ("the concept of 'damages' has the connotation of some recovery *other than* the simple recovery of an unpaid debt due upon an instrument"), and In re Wyeth Co., 134 B.R. 920 (Bankr. W.D. Mo. 1991) (holding that a promissory note given for the sale of stock would not be subordinated under section 510(b) since the amount paid under the note was not "damages" as contemplated by Congress).

Third, all of the cases cited by the Receiver are cases where "true trade creditors" existed and whose rights would be adversely impacted. In this case, as the Receiver concedes, there are no "true trade creditors" whose rights would be adversely impacted, and there is no allegation -- nor could there be -- that Wilson agreed to subordinate the withdrawal claim to the claims of any other creditor.

3. Honoring A Contract and Following Statutes Is Not Inequitable. At bottom, the Receiver essentially asks this Court to ignore the applicable statutes and contractual provisions because it is somehow "unfair" to divide the proceeds realized from the dissolution and winding up of the Gryphon Fund (as otherwise contemplated by Subchapter IX of Chapter 183 of the Wisconsin Statutes). Everyday on the securities market, investors buy and sell securities. Some have the foresight to "buy low and sell high" in a given company, others are less fortunate and "buy high and sell at a loss" or, as happened here, hold on too long before the company loses substantial value. Wilson made a business decision in the first quarter of 2008 to withdraw from the limited liability company, which was recognized and became effective on March 30, 2008. The statutes provide that Wilson is a creditor at the point he withdrew, and the applicable contract provisions and subsequent correspondence and tax reporting all confirm Wilson's status. While it is possible that withdrawing members will receive a greater distribution than those members who chose not to withdraw, that result is no different than what happens daily in security markets and is not inequitable.

The creditors, like Wilson, who made the decision to sell, should be able to obtain the benefit of their statutory and contract creditor rights and should be allowed to keep the financial benefits of their decisions. The Receiver's argument that there was "no upside" for the investors who did not make redemption requests impermissibly uses the benefit of hindsight and fails to recognize that with any or all investments, an investor must make a daily decision to buy, hold or sell. Taking the Receiver's rationale to its logical conclusion, those investors who decided to sell their stock in GM shortly before the bankruptcy filing (or before credit markets seized up) should be required to share the capital loss with those investors who made the decision to "buy and hold," since we now know with the benefit of hindsight that there was no "upside" to holding on to GM stock. Thus, there is no principle of fairness or inequity at play; rather, this is nothing more than the application of straightforward laws to the workings of the capital markets -- capital losses are to be borne by those who made the decision to continue to be owners, and the loss is not to be spread out on *prior owners* who sold their stake, and assumed creditor status under applicable statutory or contractual law.

Very truly yours,

/s/ Bruce G. Arnold

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