

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Jeffery A. Balls (12437) (jballs@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840

Attorneys for Court-Appointed Receiver Wayne Klein

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER'S EIGHTEENTH
MOTION FOR APPROVAL TO
CONSUMMATE SETTLEMENT:
LAGRAND T. JOHNSON**

Civil No. 2:15-cv-00828-DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

R. Wayne Klein, the court-appointed receiver (the “Receiver”) of the Receivership Entities and the assets of Neldon Johnson and R. Gregory Shepard, hereby submits this Eighteenth Motion for Approval to Consummate Settlement. In support hereof, the Receiver states as follows:

BACKGROUND AND ANALYSIS

1. On October 31, 2018, the Receivership Estate was created with the entry of the Receivership Order (the “Order”).¹ The Order authorizes and empowers the Receiver to, among

¹ Docket No. 490. A Corrected Order was filed the next day on November 1, 2018. *See* Docket No. 491.

other things, investigate, prosecute, and compromise actions to recover Receivership Property.² On May 24, 2019, the court granted the Receiver leave to commence litigation against designated categories of persons.³

2. The court has granted seventeen prior motions by the Receiver seeking approval to consummate settlements.

3. The Receiver has entered into one additional settlement agreement involving a matter currently in litigation (“Settlement Agreement”). This agreement resolves the Receiver’s lawsuit against LaGrand T. Johnson, which lawsuit is set for trial beginning September 15, 2023.

4. The settlement with LaGrand Johnson will bring approximately \$300,000.00 in additional funds into the Receivership Estate. The Settlement Agreement (a) was negotiated at arm’s length and in good faith by the Receiver and the defendant, (b) will avoid further expenditures to prepare for the upcoming trial, (c) will result in the collection of significant funds for the benefit of the Receivership Estate, and (d) has taken into account issues related to the collection of a judgment.

5. Based on the above factors, the Receiver has determined that the Settlement Agreement with LaGrand Johnson is in the best interest of the Receivership Estate.⁴ The Settlement Agreement has been approved by counsel for the United States.

6. The Receiver filed suit against LaGrand Johnson on July 26, 2019. On March 16, 2023, the court awarded the Receiver a judgment of \$200,000.00 against LaGrand Johnson and

² *Id.* at ¶ 59.

³³ Docket No. 673, filed May 24, 2019.

⁴ “In evaluating proposed settlements in equity receiverships . . . the Court should inquire whether the action to be taken is ‘in the best interest of the receivership.’” *SEC v. Am. Pension Servs., Inc.*, No. 214CV00309RJSDBP, 2015 WL 12860498, at *10 (D. Utah Dec. 23, 2015) (quoting *SEC v. Capital Consultants, LLC*, No. Civ. 00-1290-KI, 2002 WL 31470399 (D. Ore. March 8, 2002)).

ruled that another \$424,176.05 in transfers to LaGrand Johnson were actually fraudulent, subject to LaGrand Johnson carrying his burden at trial of demonstrating that he took the transfers in good faith and that the Receivership Entities received reasonably equivalent value for the transfers. The Receiver dismissed claims against LaGrand Johnson for wages and reimbursements he received.

7. The Receiver believes the evidence he would present at trial against LaGrand Johnson is very strong. The Receiver believes that findings previously made by the court, trial exhibits already stipulated to by LaGrand Johnson, and jury instructions approved by the court would together create a high hurdle for LaGrand Johnson to overcome at trial. While the Receiver expects he would have prevailed at trial for all or nearly all the \$424,176.05 in remaining claims, he is concerned he would face difficulty in collecting the full \$200,000.00 awarded previously *and* the new judgment amount after trial. He previously reviewed sworn financial statements from LaGrand Johnson asserting that LaGrand Johnson had limited assets that might be available satisfy any judgment and significant debts. LaGrand Johnson recently threatened to file bankruptcy. The Receiver was not dissuaded by that threat and continued preparing for trial. As the trial date loomed, LaGrand Johnson accepted a previous settlement offer made by the Receiver. This settlement will resolve concerns about collectability of the settlement amount and eliminate the possibility of an appeal, giving finality to resolution of the Receiver's claims against LaGrand Johnson.

8. In these circumstances, the Receiver negotiated a settlement agreement with LaGrand Johnson pursuant to which LaGrand Johnson will turn over to the Receiver the amounts in four accounts at three financial institutions. These account balances total approximately \$35,000.00. These accounts, at America First Credit Union, Zions Bank, and Fidelity were frozen

by court order in 2020.⁵ LaGrand Johnson will pay an additional \$265,000.00 in cash, which he expects to obtain by borrowing funds against the equity in his home. The Receiver believes this amount is more than half the equity in the home LaGrand Johnson owns with his wife.⁶

9. If the settlement is approved by the court, the Receiver will dismiss the pending lawsuit against LaGrand Johnson after LaGrand Johnson turns over the account balances and pays the \$265,000.00 cash component of the settlement.

CONCLUSION

The Receiver moves the court to approve, and authorize the Receiver to finalize, the Settlement Agreement.

DATED this 11th day of September 2023.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls

Jonathan O. Hafen

Jeffery A. Balls

Attorneys for R. Wayne Klein, Receiver

⁵ Docket No. 1006, filed September 15, 2020.

⁶ The Receiver is concerned that if LaGrand Johnson did file for bankruptcy, LaGrand Johnson would be able to claim a homestead exemption from the equity and that only half of the remaining equity would be available to satisfy creditor claims—including claims other than those of the Receiver.

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S EIGHTEENTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENT** was filed with the court on this 11th day of September 2023 and served via ECF on all parties who have requested notice in this case. Copies were also sent by mail to:

Neldon Johnson
PO Box 95332
South Jordan, UT 84095

/s/ Wendy V. Tuckett