UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-21964-CIV-ALTONAGA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP., *et al.*,

Defendant.
_____/

NON-PARTY GRANT THORNTON CAYMAN ISLANDS' OBJECTION TO SETTLEMENT AND BAR ORDER

I. Introduction

Non-party Grant Thornton Cayman Islands ("GT Cayman") files this Objection pursuant to the Court's Order (Doc. 371) preliminarily approving the Receiver's Motion to (I) Preliminarily Approve Settlement Among Receiver, Class Plaintiffs, and Former Officers and Directors; (II) Approve Form and Content of Notice, and Manner and Method of Service and Publication; (III) Set Deadline to Object to Approval of Settlement and Entry of Bar Order; and (IV) Schedule a Hearing ("Motion") (Doc. 369). The Receiver, by essentially using a proxy (the putative "Class Plaintiffs") to pursue claims through a separate action against GT Cayman, has partially incapacitated GT Cayman in its defense of that case. Having weakened its shield, the Receiver and its proxy now seek to eliminate GT Cayman's sword by handicapping GT Cayman with a Bar Order that would take away its ability to seek redress for harms committed against it. Because GT Cayman is a non-party to this action and

because GT Cayman has independent and likely successful claims that could potentially be barred, GT Cayman respectfully objects to the proposed Settlement and Bar Order and requests that this Court deny entry of the Bar Order. In doing so, GT Cayman also requests that its objection be heard at the Final Approval Hearing scheduled on October 25, 2023.

II. Background

As the Court is aware, currently pending in this District before District Judge Robert N. Scola is *Todd Benjamin International, LTD. et al. v. Grant Thornton Cayman Islands et al.*, Case No. 1:20-cv-21808 (the putative "Class Action"). In that case, GT Cayman is defending against a potential class action by investors (the putative "Class Plaintiffs") relating to auditing services it performed for the TCA Funds.[1] The Class Plaintiffs originally filed their Class Action on April 30, 2020, against TCA Fund Management Group Corp., several TCA Officers and Directors, and the TCA Funds (collectively, the "TCA Defendants"). *Todd Benjamin Int'l, Ltd.*, No. 1:20-cv-21808, Doc. 1. Shortly after filing the complaint, Judge Scola granted a joint motion to stay and administratively closed the Class Action, in light of the stay order entered in the present case. (Doc. 5 at 10-11). Over two years later, the Class Plaintiffs filed a motion in this case to seek relief from the receivership stay, and asserted that they intended to drop the claims against the TCA Defendants without prejudice. (Doc. 296). After this Court granted that relief, (Doc. 297), the Class Plaintiffs then moved to lift the stay in the Class Action, which Judge Scola granted. *Todd Benjamin Int'l, LTD.*, No. 1:20-cv-21808, Docs. 19, 20. When the Class Plaintiffs amended their Class Action complaint in September 2022, they deleted the claims against the TCA Defendants and instead raised brand new

[1] The TCA Funds, now in Receivership, were each registered in the Cayman Islands: TCA Global Credit Master Fund, L.P., TCA Global Credit Fund, LP, and TCA Global Credit Fund, Ltd.

claims against different entities, including GT Cayman and Grant Thornton Ireland ("GT Ireland"), among others. *Id.*, Doc. 21. These claims, brought under theories of negligent misrepresentation, aiding and abetting breach of fiduciary duty, and aiding and abetting fraud, ignore the fact that GT Cayman and GT Ireland issued highly qualified audit opinions, noting substantial deficiencies in the financial information presented by the TCA Funds, such that the Class Plaintiffs' claim that they relied on the opinions to their detriment is nonsensical. Nevertheless, following Judge Scola's order granting in part and denying in part a joint motion to dismiss by the defendants in the Class Action, only the claims against GT Cayman and GT Ireland currently remain in that case. *Id.*, Doc. 85.

In the present case, the Receiver reports that he has recently reached a settlement, pending Court approval, with TCA officers and directors Robert Press, Alyce Schreiber, William Fickling III, Tara Antal, Bruce Wookey, and Bernard Sumner (collectively, the "TCA Officers and Directors"). (Doc. 369). The Receiver moved this Court to approve the Settlement, which includes four of the TCA Officers and Directors who had originally been defendants in the separate Class Action. Significantly, the proposed Settlement also provides for the entry of an expansive Bar Order that is *for the benefit of* the TCA Officers and Directors and *to the detriment* of any person or entity who may have claims against the TCA Officers and Directors arising from their management (or mismanagement) of the TCA Funds. The proposed Bar Order states in pertinent part:

> Except as expressly otherwise permitted by the Settlement Agreement, *all Barred Persons (as defined below) are permanently barred, enjoined, and restrained from commencing, prosecuting, conducting, asserting or continuing in any manner, directly, indirectly, or derivatively, against the Former Officers and Directors (as defined in the Settlement Agreement, but excluding Press)*, or against AIG Claims, Inc. and AIG Europe (solely under or in connection with Investment Management Insurance Policy No. LF32000100

> initially issued by Chartis Europe S.A.), in any court, arbitration proceeding, administrative agency, or other forum, any and all suits, actions, causes of action, cross-claims, counterclaims, third party claims or other demands (including any of the Receiver Claims or Class claims being released in the Settlement Agreement) in any federal or state court or any other judicial or non-judicial proceeding (including, without limitation, any proceeding in any judicial, arbitral, mediation, administrative, or other forum) against or affecting any of the Former Officers and Directors, which is based in whole or part on any allegation, claim, demand, cause of action, matter of fact directly or indirectly relating in any way to or arising in connection with: (i) the claims released in the Settlement Agreement; (ii) the events or occurrences underlying the claims or allegations in the SEC Actions, or claims or allegations that could have been brought in the SEC Action; or (iii) the events or occurrences underlying the claims or allegations in the Class Action, or claims or allegations that could have been brought in the Class Action (collectively, the "Barred Claims"). For purposes o the Bar Order, "Barred Persons" shall mean any person or entity other than the Securities and Exchange Commission or any other regulatory authority. *Barred Persons includes, without limitation*: (i) the Receivership Entities; (ii) owners, officers, directors, members, managers, partners, agents, representatives, employees, and independent contractors of the Receivership Entities; (iii) investors who purchased any Receivership Entities Securities; (iv) persons or entities who found prospective investors for or referred prospective intestors [sic] to the Receivership Entities; (v) persons and entities who offered for sale or sold any Receivership Entities Securities; (vi) the Receiver; (vii) the Class Plaintiffs; (viii) any person or entity claiming by, through, or on behalf of the foregoing persons or entities, whether individually, directly, indirectly, through a third party, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever; and (viii) *all persons who have made, have threatened or may assert claims against any or all of the Bar Order Parties, excluding Press provided, however*, that the Bar Order shall not relieve the Former Officers and Directors from their obligations under the Settlement Agreement.

(Doc. 369-4 at 4-5 (emphasis added)). Two days after the Receiver moved for preliminary approval of the Settlement and Bar Order, this Court summarily granted the motion and entered an Order preliminarily approving the Settlement, setting procedures for the filing of

objections, and scheduling a Final Approval Hearing for October 25, 2023. (Doc. 371). This Objection is filed pursuant to that Order.

III. Analysis

"A bar order is an extraordinary remedy—it can bar a third party's claim, even though the third party may not be part of the relevant lawsuit or settlement." *S.E.C. v. Quiros*, 966 F.3d 1195, 1199 (11th Cir. 2020). Although district courts have "broad powers and wide discretion to determine relief in an equity receivership," the Eleventh Circuit has "warned that courts should enter bar orders 'cautiously and infrequently and only where essential, fair, and equitable.'" *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (quoting *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1079 (11th Cir. 2015)). A bar order should therefore only be entered after satisfying a two-part inquiry. *Id.* First, "[t]he court must conclude that the bar order is essential." *Id.* Second, the court "must decide that the bar order is fair and equitable, with an eye toward its effect on the barred parties." *Id.* Bar orders are considered fair and equitable only if:

> (1) the bar order fulfills the long-standing public policy of encouraging pretrial settlements; (2) the settlement satisfies the requirements for the approval of settlements under [*In re*] *Justice Oaks*, [*II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990)] for a fair and reasonable agreement; and (3) the bar order satisfies the nonexclusive set of factors for approval of bar orders set forth in *Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir.1996).

Brophy v. Salkin, 550 B.R. 595, 599 (S.D. Fla. 2015). The non-exclusive *Munford* factors are: (1) whether the potentially barred claims are interrelated, (2) the likelihood of success of the potentially barred claims, (3) the complexity of the action, and (4) whether continued litigation would be a drain on resources. *Id.* at 599-600.

The present Bar Order requested by the Receiver, the Class Plaintiffs, and the TCA Officers and Directors constitutes a claim for *extraordinary relief* that would deny GT Cayman and others the ability to assert their legal rights. Because GT Cayman is a non-party to this action, the entering of an expansive Bar Order would jeopardize GT Cayman's due process rights by depriving it of its day in court. On that basis alone, the requested Bar Order is not fair and equitable to GT Cayman, and thus should be denied. Moreover, a consideration of the *Munford* factors further augurs against the entry of the Bar Order under the present circumstances.

A. GT Cayman is a Non-Party.

The primary reason the Court should decline to enter the Bar Order is that it is so broad in scope it would preemptively prohibit *non-parties* such as GT Cayman from being able to assert claims against the TCA Officers and Directors, most of whom already have been accused by both the SEC and the Class Plaintiffs of committing a fraud and mismanagement that prompted the creation of the Receivership. "Although 'a district court may properly bar claims of nonsettling *defendants* against settling defendants for contribution or indemnity,' *Denney v. Deutsche Bank AG*, 443 F.3d 253, 273 (2d Cir. 2006) (emphasis added), principles of due process and fundamental fairness preclude a court from barring claims of *nonparties*." *Cobalt Multifamily Investors I, LLC v. Shapiro*, No. 06 Civ. 6468, 2013 WL 5418588, at *1 (S.D.N.Y. Sept. 27, 2013). "It is a well settled 'general rule that a person cannot be deprived of his legal rights in a proceeding to which he is not a party.'" *Id.* (quoting *Martin v. Wilks*, 490 U.S. 755, 759 (1989)). "Courts have routinely determined that bar orders cannot apply to non-parties to an action, as such application violates due process." *In re European Gov. Bonds Antitrust Litig.*, No. 19 Civ. 2601, 2023 WL 4198730, at *4 (S.D.N.Y. June 27, 2023);

see also Alvarado Partners L.P. v. Mehta, 723 F. Supp. 540, 554 (D. Colo. 1989) ("Fundamental due process principles prohibit claim extinguishment against anyone not a party to this action."). In short, it is almost universally accepted that principles of due process and fundamental fairness disfavor the entry of bar orders against non-parties.

For instance, in *Cobalt Multifamily Investors*, the district court declined to issue the parties' requested bar order. 2013 WL 5418588, at *3. There, a court-appointed receiver and a group of plaintiff entities referred to as "Cobalt" filed suit against three sets of attorneys and their law firms with respect to services provided to Cobalt. *Id.* at *3. One set of attorneys and the receiver entered into a settlement agreement that was "conditioned on the issuance by [the] Court of an order 'barring any future derivative claim, whether such claim sounds in indemnification or contribution, against the settling defendants.'" *Id.* The court recognized that "the sole purpose of the requested bar order is to extinguish potential nonparty claims." *Id.* Noting that the bar order would even apply to a former party to the litigation who is "not a party to this suit now and thus cannot be bound by the requested bar order," the court refused to enter the bar order. *Id.* at *3.

Here, as in *Cobalt Multifamily Investors*, the proposed Bar Order would impermissibly extinguish all claims or prospective claims of not only parties to the present litigation, but also *non-parties* such as GT Cayman. The Bar Order provides that the claims of "*all persons who* have made, have threatened or *may assert claims* against any or all of the Bar Order Parties" are *forever barred*. (Doc. 369-4 at 5) (emphasis added). GT Cayman's ability to assert claims against the TCA Officers and Directors would plainly fall under the purview of this broad prohibition. The Bar Order thus would completely prevent GT Cayman and others from seeking redress for their injuries caused by the TCA Officers and Directors. It is axiomatic

that non-parties such as GT Cayman have "nothing to win and everything to lose when the court considers such a bar order." *F.D.I.C. v. Geldermann, Inc.*, 975 F.2d 695, 698 (10th Cir. 1992) (reversing issuance of bar order that precluded "a nonsettling defendant from maintaining a claim of contribution or indemnity against *nonparties*").

To further highlight the Bar Order's enormous scope, even claims by investors in the TCA Funds would be forever barred. As noted, the investors are currently putative class members in the pending Class Action. However, it is certainly possible no class will ever be certified in the Class Action. In that event, the Bar Order would preclude reassertion by investors of class claims against the parties who the investors previously characterized as the true culprits in this matter. *See Todd Benjamin Int'l, LTD.*, No. 1:20-cv-21808, Doc. 1. However, even if a class is ultimately certified, any *right* of an investor to opt out of the class would be rendered meaningless by the proposed Bar Order because those opt-out investors would be prohibited from later pursuing a claim against the TCA Officers and Directors. It is thus no exaggeration that this proposed Bar Order is all-encompassing in nature.

Although some courts have permitted bar orders to extinguish claims by parties who are "critical participant[s] and contributor[s]" to the settlement, that scenario is not present in this case. *Rieckborn v. Velti PLC*, No. 13-cv-03889-WHO, 2015 WL 468329, at *13 (N.D. Cal. Feb. 3, 2015). GT Cayman played no part whatsoever in the instant settlement, the discussions leading to which apparently have been ongoing since the end of 2021. (*See* Doc. 190, Receiver's Sixth Quarterly Report, p. 8). Moreover, the Receiver and Class Plaintiffs have been coordinating together to prosecute the putative Class Action in a way that has directly hindered GT Cayman's ability to defend itself. Notwithstanding that the Receiver, acting in his official capacity in this action, has brought and settled dozens of claims against

third-parties, the Receiver apparently has delegated pursuit of just a single claim out of all of the others through the Class Plaintiffs. Specifically, the Receiver has effectively assigned the claim against GT Cayman and GT Ireland to the Class Plaintiffs, thereby allowing them to serve as his proxy in the Class Action litigation against GT Cayman. This maneuver already has worked to undermine legitimate defenses of GT Cayman and to materially prejudice its position in the ongoing Class Action.[2]

Now, through the proposed Bar Order, the Receiver and Class Plaintiffs further seek to prevent GT Cayman (and other non-parties) from affirmatively asserting their substantive legal rights against those who the Receiver previously cast as the true tortfeasors – the TCA Officers and Directors. As discussed in greater detail below, GT Cayman possesses good faith claims against the TCA Officers and Directors that it intends to pursue in the Cayman Islands, which ought to have jurisdiction over the Class Action claims as well. GT Cayman respectfully requests that the Court protect GT Cayman's due process rights to assert those claims by denying entry of the Bar Order. *See Perkins v. Johnson*, No. 06 Civ. 1503, 2007 WL 521170, at *1 (D. Colo. Feb. 15, 2007) ("[F]undamental principles of due process preclude me from giving effect to that portion of the parties' agreement affecting the rights of any

[2] For example, the Receiver, who stands in the shoes of the TCA Funds, is bound by the forum selection clauses contained in GT Cayman's engagement agreements with the TCA Funds, which provided that any claims relating to the auditing services performed by GT Cayman must be brought exclusively in the Cayman Islands courts. *See Stermer v. Credit Exchange Corp.*, No. 09-06223-CIV, 2009 WL 1203928, at *1 n.1 (S.D. Fla. May 1, 2009) (noting that a "Receiver[ ] stands in the shoes of the Receivership Entities"). However, the Receiver's proxy, the Class Plaintiffs, were able to successfully argue that their claims (which redound to the benefit of the Receivership) were not subject to the forum selection clauses because they, unlike the Funds into which shoes the Receiver stepped, had not signed the engagement agreements containing the forum selection clauses. *Todd Benjamin Int'l, LTD.*, No. 1:20-cv-21808, Doc. 85.

defendants who may be added at a later time.") (internal quotation marks and citation omitted).

The Bar Order's fallout also may spread beyond GT Cayman's ability to bring affirmative claims, even contaminating GT Cayman's ability to *defend* itself in the Class Action. As an example, the putative Class Plaintiffs allege a claim for aiding and abetting the fraud allegedly committed by the TCA Officers and Directors.[3] A fundamental prerequisite to proving an aiding and abetting fraud claim is establishing the underlying tort – that is, proving that a fraud occurred. *ZP No. 54 Ltd. P'ship v. Fid. & Deposit Co. of Md.*, 917 So. 2d 368, 372 (Fla. 5th DCA 2005) (holding that, if aiding and abetting fraud is a valid cause of action in Florida, one element is "an underlying fraud"); *see also Gevaerts v. TD Bank, N.A.*, 56 F. Supp. 3d 1335, 1341 (S.D. Fla. 2014). Yet through this proposed Settlement and Bar Order, the TCA Officers and Directors (excluding Robert Press) would be forever released as to the world of any and all liability for their misrepresentations and fraud (i.e., the underlying tort). This is not analogous to a situation in which one of two jointly liable tortfeasors settles and gets released, leaving any and all claims against the remaining tortfeasor completely intact and available to the plaintiff. Here, proof of an aiding and abetting claim requires proof of the underlying tort, and thus the release (via the Bar Order) of the underlying tortfeasors necessarily will eliminate the claim against the alleged aider and abettor of that underlying

[3] For example, the Class Plaintiffs allege, *inter alia*: "Grant Thornton had actual knowledge of the conduct of certain members of TCA Management's officers and directors." *Todd Benjamin Int'l, LTD.*, No. 1:20-cv-21808, Doc. 21 at 23, ¶ 90; "Grant Thornton knew that certain officers and directors of TCA Management were misrepresenting the financial status of the funds to Plaintiffs and the Class members." *Id.* at 35, ¶ 140; "Grant Thornton substantially assisted TCA Management's scheme with knowledge that certain officers and directors of TCA Management were misrepresenting the financial status of the Funds to Plaintiffs and Class members." *Id.* at 35, ¶ 141.

tort. Stated differently, because the aiding and abetting claims against GT Cayman in the Class Action are derivative of the underlying torts (claims for fraud and breach of fiduciary duty) that were allegedly aided and abetted, the Bar Order's extinguishment of those base torts concomitantly must extinguish the aiding and abetting claims premised thereon.

GT Cayman's due process concerns are heightened by the fact that the Receiver and the Class Plaintiffs are obviously working together to facilitate the unimpeded entry of the Bar Order, and also to maximize the prospects of recovery against the very non-parties who have the most to lose by entry of the Bar Order. Not only have the Class Plaintiffs expressly stipulated to entry of the Bar Order – notwithstanding that they are not parties to this action and their consent might prejudice the rights of "opt-outs" (as discussed above) – but it is now apparent that Class Plaintiffs have entered into a court-approved Litigation Coordination Agreement (Doc. 288) by which "all recoveries" of the class action go to the Receivership. (*See* Doc. 362 at 22). It is fair, therefore, to consider the Class Plaintiffs to be a proxy for the Receiver in the Class Action.[4]

But perhaps most disturbing is the fact that the Settlement Agreement incorporating the Bar Order contains an express "cooperation clause" by which the "Former Officers and Directors" who are getting released by the Bar Order "shall, as they deem appropriate,

[4] One reason the Receiver would be motivated to allow the Class Plaintiffs to bring claims in his stead against GT Cayman (as his proxy) is to prevent enforcement of the forum selection clauses in GT Cayman's engagement agreements with the TCA Funds, which require all claims arising from GT Cayman's auditing services to be litigated in the Cayman Islands. While taking away GT Cayman's ability to enforce the clauses where GT Cayman is located, and where the TCA Funds were registered, the Receiver risks very little by allowing the Class Plaintiffs to take up the task of litigating against GT Cayman; after all, any recovery in the Class Action will go to the Receivership in any event. (Doc. 362 at 22). Now, the Receiver and Class Plaintiffs seek to pull the rug further out from under GT Cayman again by denying it the ability to assert any claims against the TCA Officers and Directors. To do so would be a miscarriage of justice.

cooperate with, and *assist, the Receiver and Class Counsel*, in the prosecuting of claims against third parties, including but not limited to … *Grant Thornton Cayman Islands* ….” (Doc. 369-1, p. 12 (emphasis added)). In short, in exchange for the Receiver securing via the Bar Order a forced, non-consensual release from GT Cayman (and others), the TCA Officers and Directors have agreed to “cooperate” both with the Receiver and his proxy, the Class Plaintiffs, in prosecuting the Class Action against GT Cayman. This is fundamentally unfair and inequitable. The Receiver and the Class Counsel seek to secure the assistance and cooperation of the TCA Officers and Directors against GT Cayman while at the same time stripping GT Cayman of any reciprocal rights and claims against the TCA Officers and Directors. This plan, obviously hatched by the Receiver and Class Plaintiffs working in concert, gives new meaning to the maxim that nonparties such as GT Cayman have “nothing to win and everything to lose when the court considers such a bar order.” *Geldermann, Inc.*, 975 F.2d at 698.

In sum, courts considering the issue presently before this Court have held that bar orders that reach the claims of non-parties are too broad. GT Cayman is a non-party to this litigation and to the settlement and is facing the deprivation of its legal rights and remedies while defending the allegations of the Receiver’s proxy, the Class Plaintiffs, in the putative Class Action. The resulting deprivation is particularly acute in this action where the Receiver and the Class Plaintiffs have actively coordinated to secure the services of the TCA Officers and Directors *against* non-party, GT Cayman, while ensuring that those officers and directors remain immune from reciprocal action by GT Cayman. This is wrong. GT Cayman respectfully requests that the Court deny entry of the Bar Order.

B. GT Cayman Has Independent Claims.

GT Cayman argues that its status as a non-party to this litigation and the proposed Bar Order is dispositive of the issue, and the Court should decline to enter the Bar Order on that basis alone. But to the extent that the Court is inclined to further examine the *Munford* factors, GT Cayman also argues that those factors weigh in favor of not entering the Bar Order.[5] As a threshold matter, the Bar Order improperly covers GT Cayman's independent claims. "The Eleventh Circuit has not clearly defined what it means for claims to be interrelated, but it has observed that [barring] 'a truly independent claim . . . might be *per se* inappropriate.'" *Brophy*, 550 B.R. at 600 (quoting *In re HealthSouth Corp. Sec. Litig.*, 572 F.3d 854, 865 (11th Cir. 2009)). "A claim may be 'truly independent' if, for example, it is 'not based on the claimants' liability to the instant plaintiffs or claims based on damages completely separate from the instant damages.'" *Id.* (quoting *AAL High Yield Bond Fund v. Deloitte & Touche LLP*, 361 F.3d 1305, 1311 (11th Cir. 2004)). "To date, the Eleventh Circuit has found only cross-claims for indemnity and contribution among co-defendants or similar claims to be interrelated." *Id.*

GT Cayman possesses truly independent claims that would be barred by this Bar Order. Auditor claims against clients are widely recognized, as evidenced by the seminal case on this point, *Cenco Inc. v. Seidman & Seidman*, 686 F.2d 449 (7th Cir. 1982). In that case, an auditor brought several common law claims against its client, including fraud and breach of contract. *Id.* at 457. The district court construed those claims as disguised attempts at indemnity, which the court found were impermissible in a Rule 10b-5 case. *Id.* But the

[5] In doing so, GT Cayman recognizes that this matter is complex. GT Cayman also understands that protracted litigation would be a drain on resources, but given the effect of the Bar Order on non-parties, the Court should give little weight to that factor. *See Walsh v. Saakvitne*, No. 18-00155, 2021 WL 1583872, at *4 (D. Haw. Apr. 22, 2021) (declining to enter bar order despite the existence of a wasting insurance policy).

Seventh Circuit disagreed, finding that these common law claims were not disguised indemnity claims because the auditor "was a victim rather than a wrongdoer." *Id.* at 457-58. Thus, the Seventh Circuit found that "if [the auditor] can prove that [the client] defrauded it into issuing false audit reports which in turn exposed it to liability to the class plaintiffs," that amount "would be a permissible item of damages." *Id.* at 458.

Similarly, in *In re Leslie Fay Companies, Inc. Securities Litigation*, an auditor filed crossclaims and third-party claims against the officers and directors of the company it audited. 918 F. Supp. 749, 751 (S.D.N.Y. 1996). Those claims included "contribution claims under the federal securities laws and common law claims for negligent misrepresentation, unjust enrichment and mutual mistake." *Id.* at 754. Relying in part on *Cenco*, the district court denied the directors' motion to dismiss, in part, because it found that the auditor's claims were not impermissible indemnity claims in disguise under Rule 10b-5. *Id.* at 764-67. The court recognized that the auditor identified "harms that it ha[d] suffered due to [the company's] alleged negligent misrepresentation." *Id.* at 766. Those harms included injury to the auditor's "business and reputation as a result of its involvement in this litigation." *Id.* The court held that if the auditor's "allegations are proven true, then it has been harmed by [the] misrepresentations, and may seek redress." *Id.*

Additionally, in *Ladd Furniture, Inc. v. Ernst & Young*, the auditor brought claims for fraud, negligent misrepresentation, and breach of contract. No. 2:95CV00403, 1998 WL 1093901, at *4 (M.D.N.C. Aug. 27, 1998). The district court recognized that the Seventh Circuit in *Cenco* "allowed the auditor to pursue common law claims against the company itself for fraud and breach of contract." *Id.* Finding the Seventh Circuit's reasoning persuasive, the court held that "[t]o the extent that [the auditor] claims to be a victim of [the client's]

wrongdoing as alleged in the Third-Party Complaint, this Court finds that it would be in keeping with the objective of tort liability to allow [the auditor] to seek redress for any damages it may have incurred as a result of [the client's conduct]." *Id.*

These cases all support the proposition that GT Cayman (and potentially other non-parties) have independent claims to bring against the TCA Officers and Directors – but claims that the proposed Bar Order here would stop in their tracks. As even the Class Plaintiffs allege, the TCA Officers and Directors "schemed" and "misrepresented" financial information to GT Cayman during its performance of the 2017 and 2018 audits. (*See* the Class Plaintiffs' allegations recounted in footnote three, *supra*). Those misrepresentations not only have caused GT Cayman harm in the form of having to defend against the Class Plaintiffs' lawsuit (and thus also defend against the Receiver), *see Cenco*, 686 F.2d at 458, but also caused reputational harm to GT Cayman by virtue of being named in the Class Plaintiffs' action. *See In re Leslie Fay*, 918 F. Supp. at 766. GT Cayman deserves (and is permitted under the law) to bring these claims to seek redress for its injuries.[6]

While it is true that the Eleventh Circuit has held that district courts have the discretion to extinguish claims through a bar order when those claims "arise out of the same facts as those underlying the litigation," *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 496 (11th Cir. 1992), such leeway is decidedly narrow. First, the Eleventh Circuit in that opinion limited its inquiry to "the cross-claims that the district court seeks to extinguish." *Id.* Here, the Class Plaintiffs have dropped the TCA Officers and Directors as defendants in the Class Action. GT

[6] GT Cayman's argument should not be construed as a waiver or admission that any contribution or indemnity claims it may have against the TCA Officers and Directors can be barred by the proposed Bar Order. Because it is a non-party, as discussed earlier, the Bar Order should not be entered at all. Beyond that, GT Cayman simply wishes to highlight that the Bar Order is so broad as to capture other independent claims.

Cayman, therefore, cannot bring crossclaims against them. Second, the Eleventh Circuit recognized in a later ruling that the holding of *U.S. Oil & Gas* is limited insofar as it "expressly declined to address the issue of 'truly independent claims.'" *AAL High Yield Bond Fund*, 361 F.3d at 1312.

Moreover, the Eleventh Circuit, as well as numerous other courts, have cautioned against the barring of independent claims. *See, e.g., In re HealthSouth Corp.*, 572 F.3d at 865; *AAL High Yield Bond Fund*, 361 F.3d at 1311; *In re Greektown Holdings, LLC*, 728 F.3d 567, 579 (6th Cir. 2013) ("A bar order that enjoins independent claims and provides no compensation is problematic to say the least."); *In re PNC Fin. Servs. Grp., Inc.*, 440 F. Supp. 2d 421, 451 (W.D. Pa. 2006) ("No court has expressly held that truly independent claims may be extinguished by a bar order in order to achieve settlement in complex securities litigation."); *Walsh v. Saakvitne*, No. 18-00155, 2021 WL 1583872, at *4 (D. Haw. Apr. 22, 2021) ("Given the breadth of the Proposed Bar Order, however, the court is concerned that it potentially prejudices the Nonsettling Defendants by encompassing independent claims."). "This limitation makes sense because when the scope of a bar order is limited to claims for contribution or indemnity, the court can compensate the *non-settling defendants* for the loss of those claims by reducing any future judgment against them." *In re Greektown*, 728 F.3d at 579 (emphasis added). GT Cayman, however, is in no position to be compensated for its claims against the TCA Officers and Directors because it is a non-party to this case and to the proposed Settlement Agreement among the Receiver, the Class Plaintiffs, and the TCA Officers and Directors.

The claims that GT Cayman seeks to bring against the TCA Officers and Directors are well-established in the law as independent claims. Because those claims would be proscribed by the Bar Order, the Court should refuse to enter such an Order.

C. GT Cayman Likely Will Succeed on Its Claims.

In addition to the fact that GT Cayman has independent claims that could be barred, the Court should find that GT Cayman is likely to succeed on those claims. Some, if not all, of GT Cayman's claims will be brought in the Cayman Islands. In particular, GT Cayman has filed a Generally Endorsed Writ in the Grand Court of the Cayman Islands, which is attached to this Objection as **Exhibit 1**. In doing so, GT Cayman will assert claims for the tort of deceit and/or conspiracy against the TCA Officers and Directors, as well as TCA Fund Management Group Corp., while also reserving its right to claim contribution from the TCA Officers and Directors and TCA Fund Management Group Corp. under section 6 of the Torts (Reform) Act (1996 Revision). The Generally Endorsed Writ describes how the TCA Officers and Directors, through their positions with the TCA Funds' General Partner, TCA Global Credit GP, Ltd., and TCA Fund Management Group Corp. issued letters of representation in favor of GT Cayman that made various representations, including that the valuations of the investment in the Master Fund were appropriate and that there had been no dishonest or fraudulent conduct by the TCA Officers and Directors, management, employees, the administrator, or TCA Fund Management Group Corp. which would have an effect on the financial statements, and that, therefore, the financial statements were not materially misstated as a result of fraud. (Ex. 1 at 3-4). The Generally Endorsed Writ further details how GT Cayman relied on those representations in issuing the qualified audit opinions for 2017 and 2018. (*Id.* at 4-5). As a result of its reliance on the representations made, GT

Cayman suffered damages. (*Id.* at 5-13). It is important to note that while one or more of these claims are likely to succeed, after GT Cayman can obtain discovery from the TCA Officers and Directors and TCA Fund Group Management Corp., its claims may become even stronger, and it may learn of additional claims that should be asserted under Cayman Islands law. The proposed Bar Order would eliminate all of those claims in a single stroke.

In terms of potential claims arising under Florida law, GT Cayman also may learn through discovery facts that give rise to a viable claim against the TCA Officers and Directors for negligent misrepresentation.[7] Negligent misrepresentation requires proof of four elements: (1) a misrepresentation of material fact that the defendant believed to be true but which was in fact false; (2) that the defendant should have known the representation was false; (3) the defendant intended to induce the plaintiff to rely on the misrepresentation; and (4) the plaintiff acted in justifiable reliance upon the misrepresentation, resulting in injury. *Arlington Pebble Creek, LLC v. Campus Edge Condominium Ass'n, Inc.*, 232 So. 3d 502, 505 (Fla. 1st DCA 2017). As described above, the *Cenco* line of cases supports the assertion of this type of claim. *Cenco*, 686 F.2d at 457; *In re Leslie Fay*, 918 F. Supp. at 766. As TCA Officers and Directors, Alyce Schreiber, William Fickling III, Tara Antal, Bruce Wookey, and Bernard Sumner may have made misrepresentations of material fact to GT Cayman during the course of its audits of the TCA Funds. In that event, those TCA Officers and Directors would have known that the representations were in fact false, and through those representations, the TCA Officers and Directors intended GT Cayman to rely on their representations to issue the audit reports that

[7] GT Ireland, which was engaged by the TCA Funds to perform the auditing services in conjunction with GT Cayman, has also filed an Objection to the Settlement and Bar Order (Doc. 374), and attached an Affidavit of John Glennon supporting the Objection. (Doc. 374-3).

it did.[8] GT Cayman justifiably relied on those representations, resulting in harm to its business. GT Cayman's damages include not only those fees and costs associated with defending the Class Action, but also the harm done to its business and reputation by virtue of the allegations leveled against it. The regard for GT Cayman's due process rights dictates that GT Cayman should be allowed to plead its case in the appropriate forum. To deny GT Cayman the right to bring such claims would be to violate its due process rights.

IV. Conclusion

Regardless of whatever agreement was reached between the Receiver, Class Plaintiffs, and the TCA Officers and Directors, the rights of GT Cayman to seek redress for harms it has suffered should not be stripped away. The Bar Order would do precisely that. As recognized by many courts in similar situations, the Bar Order should not be allowed to reach the claims of non-parties to this action. Moreover, GT Cayman has independent and likely successful claims that would be forever blocked. For these reasons, GT Cayman respectfully requests that this Court deny entry of the Receiver's proposed Bar Order. GT Cayman also respectfully requests to be heard at the October 25, 2023 Final Approval Hearing.

Dated: September 25, 2023.

Respectfully submitted,

/s/ John D. Mullen

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PHELPS DUNBAR LLP

[8] To be clear, GT Cayman and GT Ireland issued highly qualified audit opinions. Nevertheless, the Class Plaintiffs allege that GT Cayman and GT Ireland "should have done more" by issuing adverse opinions, a dubious premise that is contested in the Class Action litigation.

100 South Ashley Drive, Suite 2000
Tampa, Florida 33602-5315
813-472-7550

Counsel for Grant Thornton Cayman Islands

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was electronically filed this 25th day of September, 2023, with the Clerk of the Court by using the Court's CM/ECF system, which will send notice of electronic filing, via email, to all counsel or parties of record, including those on the Service List below.

/s/ John D. Mullen
Counsel for Grant Thornton Cayman Islands

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Counsel for Former Officers and Directors

EXHIBIT 1

COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO FSD 286 **OF 2023 ( )**

BETWEEN:

GRANT THORNTON CAYMAN ISLANDS — **PLAINTIFF**

and

ROBERT PRESS — **FIRST DEFENDANT**

BERNARD SUMNER — **SECOND DEFENDANT**

BRUCE WOOKEY — **THIRD DEFENDANT**

ALYCE SCHREIBER — **FOURTH DEFENDANT**

WILLIAM FICKLING — **FIFTH DEFENDANT**

TARA ANTAL — **SIXTH DEFENDANT**

TCA MANAGEMENT GROUP CORP — **SEVENTH DEFENDANT**

WRIT OF SUMMONS

TO: Robert Press
C/O: Carl F. Schoeppl, Esq.
Schoeppl Law, P.A.
160 West Camino Real, No. 229
Boca Raton, FL 33432

1

This Writ of Summons was issued by Campbells LLP, Attorneys for the Plaintiffs whose address for service is Floor 4, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010.
2820628-1

AND TO: Bernard Sumner, Bruce Wookey, William Fickling, Tara Antal
C/O: Steven J. Brodie, Esq.
Carlton Fields
2 Miami Central
700 NW 1st Avenue, Suite 1200
Miami, FL 33136

AND TO: Alyce Schreiber
OF: 18851 N.E. 29th Avenue
Aventura, FL 33180

AND TO: TCA Management Group Corp.
C/O: Jonathan Perlman, Esq., Receiver
Venable LLP
100 Southeast 2nd Street, Suite 4400
Miami, FL 33131

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff c/o Campbells LLP, Floor Four, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010 in respect of the claims set out on the next page.

Within 14 days after the service of this Writ on you (or 28 days if this Writ is served on you outside of the jurisdiction of the Grand Court of the Cayman Islands), counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495, George Town, Grand Cayman KY1-1106, Cayman Islands, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued: 22 September 2023

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

This Writ of Summons was issued by Campbells LLP, Attorneys for the Plaintiffs whose address for service is Floor 4, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010.
2820628-1

GENERAL INDORSEMENT

The Plaintiff's claim is for:

1. By letters of engagement dated 18 December 2017, 11 October 2018 and 18 November 2019 (the "**Engagement Letters**") the Plaintiff was engaged by: i) TCA Global Credit Fund, LP ("**TCA LP**"); ii) TCA Global Credit Fund, Ltd. ("**TCA Ltd.**"); and, iii) TCA Global Credit Master Fund, LP ("**TCA Master Fund**") (TCA LP, TCA Ltd., and TCA Master Fund together the "**Entities**") as auditors to prepare audited financial statements of each of the Entities for the financial years ending 2017, 2018, and 2019.

2. Each of the Engagement Letters were agreements between the Plaintiff and TCA LP, TCA Ltd., and TCA Master Fund and were signed by representatives of the Plaintiff and the First Defendant (in his capacity as director of each of the Entities) for and on behalf of each of the Entities.

3. It is understood that the other directors of the Entities were the Second and Third Defendants (together with the First Defendant the "**Directors**" or "**Board of Directors**") whilst the Fourth, Fifth, and Sixth Defendants were officers of each of the Entities (together the "**Officers**").

4. The Seventh Defendant was the investment manager of the Entities.

5. On or around 30 April 2018 the Board of Directors of TCA Ltd., and the Board of Directors of the general partner in respect of TCA LP and TCA Master Fund (understood to be the Directors), each issued a letter of representation in favour of the Plaintiff which stated, inter alia, that:

    a. The Directors [or Directors with respect to the General Partner] confirm to the best of their knowledge and belief, and having made appropriate enquiries of the other directors [or directors of the General Partner], the administrator and the investment manager of [the Entities] the following representations given to you [sic] in connection with your audit of the financial statements for the year ended December 31, 2017...

This Writ of Summons was issued by Campbells LLP, Attorneys for the Plaintiffs whose address for service is Floor 4, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010.
2820628-1

b. Investments

The Directors [or the Directors of the General Partner] have considered the valuations of the investment in [TCA Master Fund] and have concluded that the valuation is appropriate and in accordance with the accounting policies. In our opinion the investment is fairly valued in the financial statements...

c. Fraud and error

So far as we are aware either during the year to December 31, 2017 or since:

i. There has been no dishonest or fraudulent conduct by any of the Fund's Directors or by the management or employees of its administrator or its investment manager that would have an effect of the financial statements; and

ii. There has been no breakdown in the Fund's accounting records or related internal controls as operated by the administrator or the investment manager and no material weaknesses therein have been revealed or reported that would have an effect on the financial statements.

Accordingly, and based on our risk assessment, we confirm our belief that the financial statements are not materially misstated as a result of fraud.

d. Law and regulations

...the [Directors of the] General Partner confirm that [TCA Master Fund] is...not carrying on or attempting to carry on business...in a manner that would be prejudicial to any investors or any creditors...[nor is it] carrying on or attempting to carry on business that is based on fraudulent...actions...

e. Going Concern

...we have reasonable expectation that the Fund has adequate resources to continue operations for the foreseeable future.

This Writ of Summons was issued by Campbells LLP, Attorneys-at-Law for the Plaintiffs whose address for service is Floor 4, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010.
2820628-1

f. Approval

...The approval of this letter of representation was minuted by the Board of Directors.

6. On the basis of, and reliance upon, inter alia, the matters set out in paragraph 5 above the Plaintiff issued qualified audit opinions on 30 April 2018 for each of the Entities for the fiscal year end 31 December 2017.

7. On or around 19 July 2019 the Board of Directors of TCA Ltd., and the Board of Directors of the general partner in respect of TCA LP and TCA Master Fund (understood to be the Directors), each issued a letter of representation in favour of the Plaintiff materially identical to the matters set out in paragraph 5 above.

8. On the basis of, and reliance upon, inter alia, the matters set out in paragraph 7 above the Plaintiff issued qualified audit opinions on 19 July 2019 for each of the Entities for the fiscal year end 31 December 2018.

9. On or around 11 May 2020 the Securities and Exchange Commission (the "**SEC**") in the United States initiated proceedings in the United States District Court, Southern District of Florida (the "**Florida Court**") against the Seventh Defendant, TCA Global Credit Fund GP, Ltd. ("**TCA GP**") (as defendants) and TCA LP, TCA Ltd. and TCA Master Fund (as relief defendants) for, inter alia, violations of federal securities laws including fraudulently engaging in revenue recognition policies that inflated TCA Master Fund's revenue and overvalued the net asset value of the fund. At the request of the SEC, on 11 May 2020 the Florida Court appointed a receiver over the Seventh Defendant, TCA GP, TCA LP, TCA Ltd., and TCA Master Fund (the "**Receiver**").

10. On 30 April 2020 Todd Benjamin International, Ltd. and Todd Benjamin (the "**Benjamin Plaintiffs**") initiated a putative class action complaint against, inter alia, the First, Fourth, Fifth, Sixth and Seventh Defendants in the Florida Court for rescission, breach of fiduciary duty, and negligent misrepresentation. Subsequently, on 14 September 2022 the Benjamin Plaintiffs amended their complaint, dropping their claims against those Officers and Directors and instead alleged claims against the Plaintiff and others for negligent misrepresentation, aiding and

This Writ of Summons was issued by Campbells LLP, Attorneys for the Plaintiffs whose address for service is Floor 4, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010.
2820628-1

abetting breach of fiduciary duty, and aiding and abetting fraud. Those proceedings are ongoing and are defended.

11. In March and April 2022 the Receiver, the Benjamin Plaintiffs, and the Defendants to these proceedings mediated the claims against the Defendants that were alleged in the Florida court and, ultimately, in September 2023 reported that they had resolved to settle the claims for payment of US$3,682,007.78, the remaining balance of a Directors & Officers liability insurance policy.

12. The Plaintiff claims damages for the tort of deceit and/or conspiracy against all Defendants with respect to, inter alia, the matters pleaded at paragraphs 5 through 8 above.

13. The Plaintiff seeks a declaration and/or reserves its right to claim a contribution pursuant to the Torts (Reform) Law (1996 Revision) from any and/or all Defendants with respect to any damages and/or loss and/or costs including but not limited to premiums paid for any loss and/or damages and/or costs awarded against it within or without the jurisdiction.

14. Such further and other relief as the Court deems fit.

15. Interest pursuant to section 34 of the Judicature Act (2021 Revision).

16. Costs.

Dated: 22 September 2023

Campbells LLP

CAMPBELLS
Attorneys at Law for the Plaintiff

This Writ of Summons was issued by Campbells LLP, Attorneys for the Plaintiffs whose address for service is Floor 4, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010.
2820628-1

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO FSD OF 2023 ( )

BETWEEN:

GRANT THORNTON CAYMAN ISLANDS — **PLAINTIFF**

AND

ROBERT PRESS — **FIRST DEFENDANT**

BERNARD SUMNER — **SECOND DEFENDANT**

BRUCE WOOKEY — **THIRD DEFENDANT**

ALYCE SCHREIBER — **FOURTH DEFENDANT**

WILLIAM FICKLING — **FIFTH DEFENDANT**

TARA ANTAL — **SIXTH DEFENDANT**

TCA MANAGEMENT GROUP CORP — **SEVENTH DEFENDANT**

ACKNOWLEDGEMENT OF SERVICE OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him/her this form IMMEDIATELY.

IMPORTANT. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, **THIS FORM MAY HAVE TO BE RETURNED.**

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1.	State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged –
2.	State whether the Defendant intends to contest the proceedings (*tick appropriate box*) [ ] yes [ ] no
3.	If the claim against the Defendant is for a debt or liquidated demand, AND s/he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*) [ ] yes [ ] no [ ] N/A

Service of the Writ is acknowledged accordingly

(Signed) .....

..... [Attorneys for the Defendant]

Address for service: *(see overleaf)*

NOTES ON ADDRESS FOR SERVICE

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited Fund, "residence" means its registered principal office.

Endorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Campbells
Floor 4 Willow House
Cricket Square
George Town
Grand Cayman KY1-9010
Ref: MAG/IJD/18811/33146

Endorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE

OF WRIT OF SUMMONS

1. The accompanying form of ***Acknowledgment of Service*** should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

   After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495, George Town, Grand Cayman.

2. A Defendant who states in his/her Acknowledgment of Service that s/he intends to contest the proceedings ***must also serve a defence*** on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

   If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

   If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant

   If the Defendant fails to serve his/her defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A ***Stay of Execution*** against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that s/he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but s/he must, within that time, ***issue a Summons*** for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance

NOTES FOR GUIDANCE

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.

2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.

3. Where the Defendant is sued in a name different from his/her own, the form must be completed by him/her with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.

5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him/her with the addition in paragraph 1 of the description "trading as (.....)" after his/her name.

6. Where the Defendant is a LIMITED FUND the form must be completed by an Attorney or by someone authorised to act on behalf of the Fund, but the Fund can take no further step in the proceedings without an Attorney acting on its behalf.

7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.

8. A Defendant acting in person may obtain help in completing the form at the Courts Office.