

No. _____

In the

Supreme Court of the United States

OVATION FUND MANAGEMENT II, LLC,
Petitioner,

v.

NOSSAMAN LLP, ET AL.,
Respondents.

*On Petition for Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit*

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents a clear conflict regarding the power of federal courts overseeing an equity receivership to extinguish third-party claims against non-receivership entities without the claimant's consent.

Federal courts have long utilized receivers to manage the affairs of corporate debtors and ensure a fair division of funds among its creditors. Somewhat recently, receivers began requesting and receiving from district courts “bar orders” when settling claims for the receivership. The receiver, acting for the receivership entities, settles with an adverse party and, to facilitate the settlement, includes a bar order enjoining all other claims against the settling party relating to the receivership—even claims belonging to third parties.

The circuits are split 4-1 on whether federal courts have the power to bar third-party claims against non-receivership entities. The Sixth Circuit holds that federal courts cannot enjoin claims against non-receivership entities that “belong” to a third party. In stark contrast, the Fifth, Tenth, Eleventh, and now the Ninth Circuit all permit federal courts to bar these third-party claims without consent.

The question presented is:

Whether a federal court overseeing an equity receivership has the power to enjoin and extinguish claims that belong to non-receivership entities against non-receivership third parties without the claimants' consent.

PARTIES TO THE PROCEEDING BELOW

Petitioner is Ovation Fund Management II, LLC, the appellant below and objector in the district court.

Respondents are Nossaman LLP and Marco Costales, appellees below and real parties-in-interest; Krista Freitag, Receiver for ANI Development, LLC, American National Investments, Inc., and their subsidiaries and affiliates, appellees below; Chicago Title Company and Chicago Title Insurance Company, appellees below; and the U.S. Securities & Exchange Commission, appellee below and plaintiff in the district court.

The following people and entities were also appellants below in a related appeal: Kim H. Peterson, individually, and as Trustee of the Peterson Family Trust dated April 14, 1992, and as Trustee of the Peterson Family Trust dated September 29, 1983; Kim Funding, LLC; ABC Funding Strategies Management, LLC; Kim Media LLC; Kim Management, Inc.; Kim Aviation, LLC; Aero Drive, LLC; Aero Drive Three, LLC; Baltimore Drive, LLC; George Palmer Corporation; Kim Funding LLC Defined Benefit Pension Plan; ANU License Fund, LLC; and Laurie Peterson.

CORPORATE DISCLOSURE STATEMENT

Petitioner is Ovation Fund Management II, LLC. It is not the subsidiary of any parent company, and no publicly held corporation owns ten percent or more of Ovation Fund Management II, LLC.

RELATED PROCEEDINGS

United States District Court (S.D. Cal.):

SEC v. Am. Nat'l Invs., Inc., et al.,

No. 19-cv-1628-LAB-AHG (Nov. 23, 2022)

United States Court of Appeals (9th Cir.):

SEC v. Peterson, et al.,

Nos. 22-56206, 22-56208 (Feb. 20, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Ovation Fund Management II, LLC, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a–35a) is reported at 129 F.4th 599. The order of the district court overruling objections to global settlement and bar orders (App. 36a–56a) is unreported but available at 2022 WL 22912794. The order of the district court entering the Nossaman bar order (App. 57a–63a) is unreported but available at 2022 WL 17184569.

JURISDICTION

The judgment of the court of appeals was entered on February 20, 2025. App. 4a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

INTRODUCTION

The Ninth Circuit’s decision deepens a preexisting conflict among the federal courts of appeals over a significant question: whether courts overseeing an equity receivership can extinguish third-party claims asserted against non-receivership entities without the claimants’ consent. The Sixth Circuit holds that federal courts have no power to bar these claims. *Digital Medial Solutions, LLC v. South Univ. of Ohio, LLC*, 59 F.4th 772, 774 (6th Cir. 2023). If that were

not the case, “a joint tortfeasor could sue an accomplice for the harms that they caused a third party and then ‘settle’ with the accomplice to eliminate their liability to the third party. That is quite wrong.” *Id.* at 784.

Yet in the proceedings below, this is precisely what the Ninth Circuit panel authorized. Joint tortfeasors settled their indemnity claims and the receiver asked the district court to extinguish all other claims against them related to the subject matter of the receivership. The district court extinguished the claims over third-party objections and the Ninth Circuit affirmed, holding that the court could extinguish third-party claims that “substantially overlapped” with the factual basis for the receiver’s claims or potential claims—irrespective of the legal theory of recovery, the specific damages sought, or to whom the enjoined claims belong. App. 15a, 31a.

In so holding, the Ninth Circuit joined the Fifth, Tenth, and Eleventh Circuits in this 4-1 conflict over district courts’ power to extinguish these third-party claims without consent. None of these decisions base the authority to bar these claims on any statute. Instead, all hold that the general equitable authority of a court overseeing a receivership to fashion appropriate relief authorizes district courts to enter what even the Eleventh Circuit concedes is an “extraordinary” remedy. *SEC v. Quiros*, 966 F.3d 1195, 1197 (11th Cir. 2020).

This case easily satisfies the traditional criteria for granting review. The conflict between the Sixth Circuit, on the one hand, and the Fifth, Tenth, Eleventh, and now the Ninth Circuit, on the other hand, is irreconcilable and obvious. The question presented is important—whether federal courts can

extinguish claims held by third parties without consent, not on the merits, but instead sacrificed at the altar of the receivership. And this case is an excellent vehicle for review: it presents a narrow, pure question of law that asks the binary question of whether federal courts have this power or not. The issue is dispositive and highly impactful, with no obstacles to resolving it here.

This Court addressed a comparable issue under bankruptcy law just one year ago, holding that “the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants.” *Harrington v. Purdue Pharma*, 603 U.S. 204, 227 (2024). While there was arguably a federal statute authorizing the injunctions in *Harrington*, here, there is no statutory basis upon which federal receivership courts can issue these injunctions. Accordingly, review will have the added benefit of harmonizing Chapter 11 bankruptcy proceedings with receiverships—ensuring that third-party claims are either treated with the same level of respect or explaining why differential treatment is warranted.

Because this case presents an ideal vehicle for resolving this important question of federal law on which the circuit courts are in conflict, the petition should be granted.

STATEMENT OF THE CASE

A. Factual Background

1. Petitioner Ovation Fund Management II, LLC

(Ovation), is the general partner of an investment fund, Ovation Finance Holdings 2, LLC (the Fund). The Fund invested over \$50 million in what turned out to be a Ponzi scheme. App. 28a–29a, 2-ER-157, 325 (¶¶12–13).¹

2. The scheme, operated largely by Gina Champion-Cain through her company ANI Development, LLC (ANI), was based on California liquor license transfers. California law requires an applicant seeking to purchase an existing liquor license to place an amount equal to the purchase price of the license in escrow while the California Department of Alcohol Beverage Control (ABC) considers the application. App. 8a–9a. Cain told prospective investors that many liquor-license applicants lacked sufficient funds to escrow and were willing to pay high interest rates for short-term loans. *Id.* at 9a.

To participate, Cain directed investors to deposit the needed loan amounts into purported escrow accounts held by Chicago Title Company and, once the state ruled on the liquor license applications, the deposits would be returned to the investors along with 80% of the accrued interest, with the remaining 20% interest going to Cain. *Ibid.* What investors found particularly attractive about this investment was the escrow accounts that kept their money safe while the liquor license applications were pending. *Id.* at 9a–10a.

But it turned out that there were no liquor license applicants needing loans—and there were no escrow accounts. App. 10a. Instead, Cain held a single

¹ Citations to the Excerpts of Record filed in the Ninth Circuit are formatted as [volume number]-ER-[page number(s)].

account at Chicago Title to which she had unfettered access. *Ibid.* To facilitate her scheme, Cain bribed several Chicago Title employees to provide investors with forged paperwork and false documentation showing escrow accounts and liquor license applications that did not exist, and to lie to investors who called Chicago Title directly to verify that their money was safely held in escrow accounts. *Ibid.*

3. Ovation was introduced to the “investment” opportunity by Cain’s friend, Kim Peterson, who was also an early investor in the scheme. *See* App. 10a–11a. Peterson was pleased with his early returns, so he continued to invest and actively sought to recruit new investors. *Id.* at 11a. To help him do so, Peterson retained Marco Costales, a partner in the Nossaman law firm who held himself out as a “liquor licensing expert.” *Ibid.*

After Peterson approached Ovation about investing in ANI’s program, Peterson suggested that Ovation speak with Costales, later telling Ovation that Costales “is considered the preeminent liquor license lawyer in the State” and assured Ovation that its “lenders can rely upon his advice and comments” regarding compliance with “statutes and regulations.” 2-ER-230. Ovation accepted Peterson’s offer and consulted Costales about investing in the ANI program. Costales told Ovation that he had “vetted” the ANI liquor license investment, “could find no structural deficiencies . . . from an ABC perspective” and was “hard pressed to think of a situation where invested funds placed in the escrow could be lost.” App. 11a. “In actuality, Costales had not investigated the liquor license scheme at all and merely passed along unverified information that Peterson gave him.” *Ibid.*

Assured by Costales's representations, Ovation directed the Fund to invest in the ANI program, investing approximately \$55 million over the program's life. App. 28–29a. When the scheme unraveled and Ovation's clients learned that it had invested in a Ponzi scheme, its clients fled the Fund and Ovation lost more than \$35 million in management fees. *Id.* at 29a; 2-ER-204 (¶64).

B. Proceedings Below

1. In 2019, Cain's scheme collapsed and the SEC initiated a civil enforcement action against her and ANI. App. 11a–12a. The district court froze their assets and appointed a receiver to take control of ANI and its parent company, collect ANI's assets, including pursuing any causes of action "belonging to ANI," and, ultimately, to distribute ANI's assets to defrauded investors. *Id.* at 12a. The district court also stayed all litigation against ANI. *Ibid.*

Unable to sue ANI, the Fund and Ovation sued Chicago Title. *See ibid.* Around the same time, and to focus first on Chicago Title, Ovation entered into an agreement with Costales and Nossaman that tolled the statute of limitations and permitted Ovation to defer suing them until thirty days after all pending litigation had been resolved. App. 29a; 2-ER-221–22. Meanwhile, Chicago Title filed a cross-claim against Nossaman, bringing it into the case. App. 29a. Ovation and the Fund settled with Chicago Title, with the Fund and Ovation receiving \$47 million, which fully compensated the Fund's investment losses, Ovation's attorneys' fees, and 28.6% (\$10 million) of Ovation's lost management fees. *See ibid.*

In January 2022, the Receiver sued Chicago Title, who in turn sued ANI for indemnity. App. 13a–14a. While that case and Chicago Title’s indemnity claim against Nossaman were pending, Nossaman initiated settlement talks with Ovation. *See* 2-ER-167.

2. In May 2022, the Receivership Entities and Chicago Title executed a settlement agreement resolving all remaining investor claims against Chicago Title (the Global Settlement). App. 14a, 39a. The Global Settlement “is conditioned on the Court entering the Chicago Title Bar Order, permanently enjoining all claims against Chicago Title arising from the investment scheme.” *Id.* at 41a. The Global Settlement also provides that Chicago Title would attempt to settle its cross-claims against Nossaman, and requires the Receiver “to support” the entry of a Nossaman Bar Order extinguishing all pending or future claims against Nossaman “related to the Ponzi scheme” in the event those claims settled. *Ibid.* They settled soon after, with Nossaman agreeing to pay Chicago Title \$4.75 million. *Id.* at 29a.

The Receiver asked the district court to approve the Global Settlement and to enter the Chicago Title and Nossaman Bar Orders. *Ibid.* In her motion, the Receiver acknowledged that she “has not asserted claims against Nossaman, nor have any investors” so the bar order “does not prejudice the receivership estate or the investors.” 3-ER-350. In the separate Nossaman settlement agreement, the Receiver represented that she “did not participate” in the settlement negotiations, and that the Receiver is a party to the Chicago Title–Nossaman settlement “only with regard to supporting and requesting a Nossaman Bar Order and to effectuate the mutual releases

between the Receiver and Nossaman” included in the agreement. 3-ER-334.

3. Ovation filed its suit against Nossaman and Costales in California state court and then objected in the federal receivership court to the Nossaman Bar Order. App. 29a. Nossaman, in turn, moved in the district court for leave to file an equitable indemnity claim against the Receivership Entities in the event the Nossaman Bar Order was not entered. *Id.* at 30a n.17.

The district court overruled Ovation’s objection. *Id.* at 37a. It found that it had the power to bar Ovation’s claims against Nossaman because they are “derivative of and dependent on the Receiver’s claims,” *Id.* at 46a–47a; and that Ovation’s claims “depend on the same loss as the Receiver,” reasoning that Ovation would not have any claims if the Receivership Entities had not suffered an injury. *Id.* at 46a. The district court also rejected Ovation’s argument that it could not extinguish Ovation’s claims against Nossaman because Ovation’s claims are independent of the Receiver’s claims and based on distinct theories of liability—calling an attempt to distinguish claims on this basis in pursuit of additional recovery “word play” that does not establish independence from the Receiver’s claims. App. 47a.

The district court also rejected Ovation’s argument that its claims against Nossaman did not imperil the Receiver’s assets. *Ibid.* The court found that although Ovation did not seek to recover from the receivership, Nossaman could do so by asserting an equitable indemnity claim against the ANI Receivership if Nossaman were found liable to Ovation. *Ibid.* Nossaman’s indemnity claim would, in turn, cause the receivership to incur additional legal expenses and

could result in a money judgment—so the Nossaman Bar Order was necessary to preserve the ANI Receivership’s assets from Nossaman’s potential claim. *Id.* at 50a.

The district court accordingly entered the Nossaman Bar Order. App. 61a–62a (¶7).

Ovation appealed the entry of the Nossaman Bar Order (No. 22-56208) and Peterson appealed the entry of the Chicago Title Bar Order (No. 22-562086) to the Ninth Circuit. App. 8a. The appeals were not consolidated but were argued together, and the Ninth Circuit issued a single opinion for both appeals.

4. The Ninth Circuit affirmed. *Ibid.*

The court began its discussion with Ovation’s contention on appeal: “that the district court had no authority to enter the bar order[.]” *Id.* at 15a. Starting from the proposition that district courts have “wide discretion to determine the appropriate relief in an equity receivership,” and citing to the Fifth, Tenth, and Eleventh Circuits, the panel wrote that district courts may “aid” receivers in gathering and distributing receivership assets equitably among defrauded investors “by issuing bar orders.” App. at 16a & n.10. The panel also adopted the Fifth Circuit’s limitation on bar orders, that a receivership court cannot extinguish claims “independent of the receivership and that do not involve assets claimed by the receivership.” *Id.* at 16a (quoting *Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883, 897 (5th Cir. 2019)).

Applying this standard, the panel found that the Receiver “could have” sued Nossaman for liability “that the ANI receivership incurred” as a result of Nossaman’s conduct. App. 31a. Because this hypothetical claim “substantially overlapped” with

Ovation’s attempt to recover “losses that Ovation suffered” from Nossaman’s conduct, the district court properly extinguished Ovation’s claim. *Id.* at 30a–31a. Notwithstanding that the Receiver could not claim Ovation’s lost management fees as receivership losses, the panel reasoned that those lost management fees “still resulted from the Ponzi scheme,” concluding curtly: “That is enough.” *Id.* at 31a.

The panel also affirmed the Nossaman Bar Order “based on the same reasoning that supported entry of the Chicago Title bar order.” App. 30a. In analyzing the Chicago Title Bar Order, the panel addressed the Sixth Circuit’s decision in *Digital Media*, 59 F.4th 772, which held that a receivership court had no power to bar claims that “belong” to third parties that are asserted against non-receivership entities. *Id.* at 777. Without addressing the Sixth Circuit’s holding, the panel found *Digital Media* inapplicable because it did not involve a Ponzi scheme, and because the receivership entity in that case did not suffer the same injury as the third parties. App. 21a n.13.

After the appeal was fully briefed but before oral argument, Ovation filed a Federal Rule of Appellate Procedure 28(j) letter asserting that this Court’s decision in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), bolsters its argument that the district court lacked the authority to extinguish its independent claims against Nossaman. App. 30a n.18. The panel rejected any reliance on *Harrington* because that case construed bankruptcy code provisions not implicated in this case, and because “it specifically addressed whether the bankruptcy code permitted the court overseeing Purdue Pharma’s bankruptcy to bar claims against . . . individuals who own the corporate debtor.” *Ibid.* The panel did not

explain this distinction's import vis-à-vis Ovation's extinguished claims against Nossaman.

Next, the panel concluded that the Nossaman Bar Order was necessary to protect the ANI Receivership's res. App. 32a–3a. The panel explained that if Nossaman lost to Ovation, it could pursue an equitable indemnity claim against the ANI Receivership, causing the receivership to expend receivership assets, “even if the Receiver ultimately prevailed.” *Id.* at 33a. The panel also rejected Ovation's argument that Nossaman did not have a valid equitable indemnity claim against the ANI Receivership under California law—again emphasizing that disposing of the invalid indemnity claim would still require litigation, so saving the receivership from using the res on that litigation itself justified the Nossaman Bar Order. *Ibid.*

Finally, the panel rejected Ovation's argument that the Anti-Injunction Act, 28 U.S.C. § 2283 (AIA), precludes the Nossaman Bar Order. App. 34a. The panel declined to determine whether the AIA applies because Ovation sued Nossaman after the Receiver moved for the Nossaman Bar Order—and the circuits also are divided on whether the AIA applies in that circumstance. Instead, assuming the AIA applied, the panel held that the Nossaman Bar Order falls within the AIA's exception for an injunction that is “necessary in aid” of the federal court's jurisdiction—here, the district court's jurisdiction over the ANI Receivership's res.² App. 34–35a.

² Petitioner is not renewing its AIA argument or any of its case-specific arguments in this Court. Its sole contention in this Court is that federal receivership courts do not have the power to extinguish third-party claims against non-receivership entities without the claimants' consent.

The panel accordingly affirmed.

REASONS FOR GRANTING THE PETITION

A. There is a clear and intractable conflict over a receivership court's power to extinguish third-party claims against non-receivership entities without consent

The Ninth Circuit's decision cements a clear conflict over a receivership court's equitable power to extinguish third-party claims against non-receivership third parties without the claimants' consent. Four circuits now hold that district courts have the power to extinguish these claims, using various and overlapping tests to do so, whereas one circuit—the Sixth—squarely holds the opposite, absolutely forbidding district courts from extinguishing these third-party claims in a receivership. With both sides of this conflict established, there is no chance it will somehow resolve on its own.

The use of bar orders is now common in receivership cases. As it now stands, third parties with valuable claims against non-receivership entities are at risk of losing those claims entirely—not on the merits, but because district courts are making a value judgment that receivership claims against those non-receivership entities are more important. That is, unless a lucky litigant finds itself within the Sixth Circuit. That level of uncertainty is unfair and unwarranted.

A definitive answer will provide certainty to all stakeholders considering or involved in receivership proceedings. The conflict should be resolved by this Court.

1. The decision below directly conflicts with settled law in the Sixth Circuit. In *Digital Media*, 59 F.4th 772, the Sixth Circuit held that a district court overseeing an equity receivership had no power to bar claims against third parties outside the receivership. *Id.* at 777. To reach that conclusion, the court considered three traditional rules of equity receiverships. *Ibid.*

First, the Sixth Circuit noted, “Given a receivership’s origins in equity, few laws delineate its scope.” The court cited Federal Rule of Civil Procedure 66 as the only guardrail, merely providing that “the practice of administering an estate by a receiver . . . must accord with the historical practice in federal courts or with local rule.” *Id.* at 778. That rule, the Sixth Circuit wrote, “codifies the Supreme Court’s repeated admonition that, absent legislative change, a federal court’s exercise of its equitable powers must fall within the traditional principles of equity exercised by the High Court of Chancery in England at the founding.” *Ibid.* (citing *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 318–19, 322 (1999) and other cases).

Second, after discussing the jurisdictional requirements for an equity receivership, the Sixth Circuit outlined the receiver’s powers. The receiver “stood in the shoes” of the receivership entity, taking possession of all its property and becoming its manager. *Digital Media*, 59 F.4th at 779. But the receiver had to “take the good with the bad,” which “meant that the receiver did not obtain *superior* rights

to the debtor.” *Id.* at 780. The same rules applied to causes of action, “a form of property” that the receivership entity held against third parties. *Ibid.* The receiver “possess[ed]” these claims and could litigate or liquidate them. *Ibid.* But if the receivership entity could not assert a claim because a different party “held the right to it,” the receiver “likewise could not raise it.” *Ibid.*

Third, the Sixth Circuit discussed the receivership court’s powers. It could issue injunctions to protect its “exclusive jurisdiction over the debtor’s property.” *Ibid.* And because the court delegated control of this property to the receiver, the court could enjoin suits against the receiver attempting to get that property. *Ibid.*

The Sixth Circuit then considered whether these traditional rules allowed the district court to bar third-party claims “against non-receivership entities and individuals.” *Id.* at 781. Writing that “most lawyers would describe this Bar Order as unprecedented,” the panel commented, “It is not every day that a court permits two parties to enter into a contract that disposes of the claims of a third party without that party’s agreement,” *ibid.* (cleaned up), and that unless “traditional equitable principles” permitted this “unique” relief, the district court “had no ability to grant it in the name of ‘equity.’” *Ibid.*

The Sixth Circuit rejected the argument that the receiver’s standing to sue a defendant gave the receiver authority to extinguish third-party claims against that same defendant. *Id.* at 781–82. Instead, the court reasoned, the “real question” concerns who “owns” the claims to be extinguished—a question that “has nothing to do with” standing. *Id.* at 782.

Finding that the non-receivership third parties “directly” injured the claimants, the Sixth Circuit found that the claims did not belong to the receiver but to the claimants. Rejecting the receiver’s contrary position, the court summed it up this way: “Under the Receiver’s view, then, a joint tortfeasor could sue an accomplice for the harms that they caused a third party and then ‘settle’ with the accomplice to eliminate their liability to the third party. That is quite wrong.” *Id.* at 784.

The Sixth Circuit also rejected the receiver’s argument that the bar order was justified because the receivership was also harmed by the same third parties. “Just because the same defendants allegedly cause harms to two parties does not make those harms the same.” *Id.* at 784.

The panel then rejected the receiver’s reliance on the Fifth Circuit’s decision in *Zacarias* and the Tenth Circuit’s decision in *DeYoung*—both of which authorized nonconsensual bar orders extinguishing claims against non-receivership entities—because both cases failed to ask the “critical” and “key question” of which party “possessed the right” to assert the claim “outside the receivership context.” *Id.* at 785.

Next, the Sixth Circuit considered whether the district court could issue the bar order because the claims “interfered with the district court’s exclusive control of receivership property.” *Ibid.* The court noted that a receivership court traditionally lacked the power to enjoin *in personam* suits because such suits determined personal liability, not possession or control of the debtor’s property, “even against a receivership debtor.” *Id.* at 787 (citing *Riehle v. Margolies*, 279 U.S. 218, 228 (1929)). Because a court

lacked the power to enjoin suits even against the receivership debtor, “it would make no sense to allow a court to enjoin in personam claims against *non-receivership entities*.” *Digital Media*, 59 F.4th at 787.

The Sixth Circuit highlighted the traditional principle that receivership courts may issue injunctions to protect “debtor assets that its creditors could execute upon” but lacked power to “protect assets outside the receivership”—deeming it an “obvious” conclusion. *Ibid.* Because the bar order attempted to protect “assets that fell wholly outside the receivership” (all of the property possessed by the non-receivership third parties in whose favor the bar order issued) it was “contrary to the whole theory of an equity receivership.” *Ibid.* (quoting *Greenbaum v. Lahrenkrauss Corp.*, 73 F.2d 285, 287 (2d Cir. 1934)).

The panel also examined bankruptcy law, specifically the then-existing circuit split over the authority of a bankruptcy court to extinguish third-party claims without consent. *Digital Media*, 59 F.4th at 787–89. The panel highlighted two “factors” from the circuit split to “show that these non-debtor releases do not arise from traditional equity principles.” *Id.* at 788. The first factor was the “timing”—that “non-debtor releases have obtained a judicial foothold only in the last several decades”—so they could not be grounded in equitable principles that existed at the founding. *Ibid.* The second factor was the “reasoning”—that neither side of the circuit split claimed inherent equitable authority to issue non-debtor releases without consent—with both sides instead arguing over the proper interpretation of the bankruptcy code. *Ibid.*

Finally, the panel declined to address the parties’ “equitable fairness” arguments, noting these policy

arguments should be made and resolved in Congress. *Id.* at 790.

In short, Ovation would have prevailed had this case been filed in the Sixth Circuit, but instead lost because this action arose in the Ninth Circuit.

2. Like the Ninth Circuit, however, multiple circuit courts have expressly permitted receivership courts to extinguish claims held by third parties against non-receivership entities without consent.

a. In *Zacarias v. Stanford International Bank, Ltd.*, 945 F.3d 883 (5th Cir. 2019), a divided panel of the Fifth Circuit affirmed bar orders extinguishing third-party claims against non-receivership third-party entities. After explaining the general purpose of an equity receivership underpinning an SEC enforcement action, *id.* at 895–97, the court stated the unremarkable proposition that the district court has the power to enjoin claims “against the receivership” to prevent interference with the court’s administration of the receivership property. *Id.* at 897. But the majority also stated that district courts can issue “bar orders foreclosing suit against third-party defendants with whom the receiver is also engaged in litigation,” citing an earlier unpublished opinion from the Fifth Circuit as the sole support. *Ibid.* (citing *SEC v. Kaleta*, 530 F. App’x 360, 362 5th Cir. 2013). The only limit to this power, the majority wrote, was that the receivership court “cannot reach claims that are independent and non-derivative and that do not involve assets claimed by the receivership.” *Zacarias*, 945 F.3d at 897.

The majority endorsed extinguishing third-party claims on this basis “to guarantee settlement and to ensure that key members of the fraudulent scheme paid the receivership.” *Id.* at 898. This was so, even

though the receiver did not—and could not—assert the extinguished claims against the settling third parties. *Id.* at 899. To the contrary, the majority wrote that it “is necessarily the case” that a troubled entity’s investors “will have hypothetical claims they could independently bring but for the receivership.” *Ibid.* That did not matter, the majority reasoned, because “the receivership exists precisely to gather such interests in the service and equity and aggregate recovery.” *Ibid.* The majority also highlighted that the incentive for non-receivership third parties to settle with the receiver is reduced or eliminated if other third parties could pursue claims against them “in individual satellite litigation,” *id.* at 900, making the value judgment that receivership claims are worthier of recovery than third-party claims.

Finally, the majority contrasted its decision with an earlier decision arising from the same receivership. In the earlier decision (*Lloyds*), the Fifth Circuit held that the district court could not bar claims belonging to third parties, who were former employees of the receivership entities asserting the bad-faith denial of insurance policy proceeds. *Id.* at 901 (discussing *SEC v. Stanford Int’l Bank, Ltd.*, 927 F.3d 830 (5th Cir. 2019)(*Lloyds*)). Their claims were “independent” of the receiver’s claims because they were asserted against non-receivership third parties who did not participate in the Ponzi scheme and did not arise from contact with the underlying scheme. *Zacarias*, 945 F.3d at 901–02. The majority did not explain why this “independence” test limited the court’s equitable power.

Judge Willett dissented. In his view, the third-party claims could not be extinguished “just because they both have origins in the same Ponzi scheme.” *Id.*

at 905. Judge Willett explained that the third-party defendants caused direct injuries to the claimants that were separate from the receivership entities' actions, so it did not matter that those claims were "factually intertwined" with the receiver's—and emphasized that "having a common destination for the plunder" does not make the claims the same. *Ibid.* Because the claims were distinct, he disagreed that the district court had the power to enjoin them. *Ibid.*

b. In *SEC v. DeYoung*, 850 F.3d 1172, 1175 (10th Cir. 2017), the Tenth Circuit reached the same conclusion as the Fifth and authorized a nonconsensual bar order extinguishing third-party claims against non-receivership entities. In discussing the district court's authority to bar the third-party claims, the panel first analyzed whether the receiver lacked standing to bring the extinguished third-party claims. *Id.* at 1180. The Tenth Circuit concluded that the receiver had standing to sue the same third-party defendant because the receivership entity was also injured by that same defendant. *Id.* at 1182. The panel, however, did not explain why standing to sue the same defendant meant that the receiver could assert the extinguished third-party claims. *See ibid.*

Next, the panel acknowledged the then-dearth of authority extinguishing third-party claims against non-receivership entities, but justified pressing forward because "this is a case in *equity*, [so] it is neither surprising nor dispositive that there is no case law directly controlling the district court's bar order." *Id.* at 1182 (quoting *Kaleta*, 530 F. App'x at 362). Relying on a district court's "broad powers and wide discretion" in fashioning relief in an equity receivership, "discretion derive[d] from the inherent

powers of an equity court to fashion relief,” the panel found that extinguishing the third-party claims was within the district court’s authority. 850 F.3d at 1182.

The panel then highlighted a variety of equitable factors that favored the bar order: (1) the third-party defendant would not have settled with the receiver without the bar order, *id.* at 1183; (2) protracted litigation could render the third-party defendant unable to satisfy a judgment, so it was “in the best interest” to settle, *ibid.*; (3) the third-party defendant would not admit wrongdoing to the receiver if the third-party claims against it were allowed to proceed, *ibid.*; (4) some of the settlement funds came from the third-party defendant’s insurance policy, and if litigation proceeded, that policy would be depleted defending claims instead of paying the receiver, *ibid.*; and “most importantly” (5) the third-party had a contractual indemnity right against the receivership entity, which could be invoked if the third-party claims were permitted to proceed. *Ibid.* Based on these factors, the Tenth Circuit concluded that the bar order was justified.

c. Finally, the Eleventh Circuit also authorizes bar orders extinguishing third-party claims against non-receivership entities. *SEC v. Quiros*, 966 F.3d 1195, 1197 (11th Cir. 2020). Recognizing that a bar order is an “extraordinary” remedy, *ibid.*, the panel warned that such an order should be entered “cautiously and infrequently” using a two-part test. *Id.* at 1199. The test, imported from Eleventh Circuit bankruptcy law because of “limited receivership precedent,” first requires that the bar order is “essential”; and second, that the district court “decide that the bar order is fair and equitable, with an eye toward its effect on the barred parties.” *Ibid.*

The panel held that a bar order is essential “only if it is essential to resolving the settling parties’ litigation,” *id.* at 1200, so a district court should not enter a bar order if it determines that the parties would have resolved their dispute without it. *Ibid.* The panel explained that the “essential” element served as protection against an “unusual” form of relief because bar orders “can strip non-settling parties of their day in court, through no fault of their own.” *Id.* at 1202.³

* * *

³ The Second Circuit has not addressed the question presented, but two district courts in the Southern District of New York have. In one case, the district court refused a receiver’s request for a bar order extinguishing third-party claims against non-receivership third parties, reasoning that “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 (KMW)(MHD), 2013 WL 5418588, at *1 (S.D.N.Y. Sept. 27, 2013) (Wood, J.). In another case, the receiver refused to seek the promised bar order after finding “no legal basis for the Court issuing a bar order binding non-parties,” and the district court found the receiver’s concerns “justified.” *Armstrong v. Collins*, No. 01-CV-2437, 2010 WL 1141158, at *25–26 (S.D.N.Y. March 24, 2010) (Crotty, J.). The Third and Fourth Circuits have likewise not addressed the question presented, but district courts in those circuits have authorized the type of bar orders at issue in this petition. *See Harmelin v. Man Fin., Inc.*, No. 06-1944, 05-2973, 2007 WL 4571021, at *5 (E.D. Penn. Dec. 28, 2007) (bar order “essential for the success of the settlement”); *CFTC v. Equity Fin. Group*, No. 04-1512 (RBK), 2007 WL 2139399, at *2 (D.N.J. Jul. 23, 2007) (finding receivership settlement was in best interest of receivership estate, and that “federal law and public policy favor entry of the Bar Order to facilitate settlement of this matter”); *SEC v. Parish*, No. 2:07-cv-00919-DCN, 2010 WL 8347143, at *5 (D.S.C. Feb. 10, 2010) (bar order permitted to further “proper administration of justice”).

The conflict over this fundamental question of a district court's power to extinguish claims not before the court is obvious. Five circuits have addressed the issue, with all but one claiming the inherent authority to sacrifice third-party claims for the greater good—all in the name of equity—while the Sixth Circuit firmly rejects a receivership court's power to extinguish these claims. And none of the circuit courts claim statutory authority to issue these bar orders; rather, each concludes that district courts draw the authority to extinguish third-party claims from their equitable power.

The question is a binary one: one view of a receivership court's power is right and the other is wrong. If petitioner is right, courts in California, Oregon, Washington, Nevada, Idaho, Montana, Arizona, Alaska, Hawaii, Utah, Wyoming, Colorado, New Mexico, Kansas, Oklahoma, Texas, Louisiana, Mississippi, Alabama, Georgia, and Florida—twenty-one states—have the authority to *improperly* extinguish third-party claims against non-receivership third parties without consent, and the courts and parties alike are wasting valuable resources litigating whether particular bar orders are fair or otherwise warranted under their unique facts despite courts having no power to issue the bar orders at all. If respondents are right, courts in Michigan, Ohio, Kentucky, and Tennessee lack the authority to issue bar orders, even when receivers in those states need them to collect settlements for the greater good. And although the circuit courts have developed various tests to determine when bar orders are appropriate, no purpose is served with the continued development of case law exploring the contours of

these tests if these bar orders are not even within the district court's power.

Unless this Court intervenes, geography will determine the district court's power in these cases, and the confusion and unfairness over this important question will persist. This Court's immediate review is warranted.

B. The question presented is important and recurring

1. Certiorari is also warranted because this case concerns an important and recurring issue of national significance. Whether a district court can lawfully order nonconsensual third-party releases of claims against non-receivership third parties arises with some regularity nationwide. The issue is in play anytime an equity receivership is created to take control of a distressed corporate entity. *See e.g., SEC v. Heartland Grp. Ventures, LLC*, No. 4:21-cv-01310-O-BP, 2024 U.S. Dist. Lexis 85991, at *7–8, *11–12 (N.D. Tex. Apr. 25, 2024) (recommending bar order) (adopted by 2024 U.S. Dist. Lexis 85071, at *3 (May 10, 2024)); *VC Macon Ga., LLC v. Va. Coll., LLC*, No. 5:18-cv-00388-TES, 2024 WL 5515288, at *3 (M.D. Ga. Jan. 4, 2024) (entering bar order); *SEC v. Adams*, No. 3:18-cv-252, 2021 WL 8016843, at *3–4 (S.D. Miss. Feb. 25, 2021) (same).

The issue is important because federal courts are regularly extinguishing valid and valuable claims, not on the merits, but instead to facilitate settlement of *other* claims held by *other* parties. This causes extreme prejudice to the owners of these extinguished claims. This Court already determined that the same question was important in the bankruptcy context when it granted review and resolved the issue in

Harrington—and in that case, at least there was a proposed statutory basis for extinguishing the third-party claims. *Harrington*, 603 U.S. at 227 (analyzing whether 11 U.S.C. § 1123 authorized the nonconsensual release of third-party claims). But here, no court claims statutory authority to issue these bar orders in a receivership case—these orders are based on the assertion of raw, inherent judicial power. Given that district courts overseeing receiverships arising in twenty-one states now claim authority to issue these bar orders, this Court should determine whether that authority exists before countless additional claims are extinguished.

Whether district courts can extinguish these third-party claims also seriously alters the relationship among the various stakeholders affected by a receivership. If district courts have this power, then receivers can use the claims of non-receivership third parties as bargaining chips to settle their own claims for higher values. Stated differently, the receivership is extracting value for the estate from claims it does not own at the injured party's expense. That is an extreme departure from established legal norms and further highlights why the question presented is important for this Court's review. *See Martin v. Wilks*, 490 U.S. 755, 759 (1989) (noting the settled "general rule that a person cannot be deprived of his legal rights in a proceeding to which he is not a party").

2. The question presented also merits this Court's review because of the disparate treatment of bar orders in receivership and bankruptcy cases after *Harrington*, in which this Court held that the bankruptcy code does not authorize bar orders substantively identical to those at issue here.

Harrington, 603 U.S. at 227.⁴ While the bankruptcy laws are the primary vehicle to organize distressed entities, “those laws have never provided the *only* way.” *Digital Media*, 59 F.4th at 777 (emphasis added). If a distressed entity—or its owners—believe bar orders will provide an advantage, they now have an incentive to forum shop and choose to pursue an equity receivership in the circuits that authorize bar orders (twenty-one states and counting) rather than utilize the traditional bankruptcy process. The decision whether to seek refuge in the bankruptcy laws or traditional equity receiverships should not turn on this disparate treatment of third-party claims not within the purview of either forum.

The Ninth Circuit’s position, like that of the Fifth, Tenth, and Eleventh Circuits, distorts equity receiverships, implements judicial policy judgments that Congress should make, and deprives would-be litigants of their day in court. If that position is correct, it should at least apply nationwide so that everyone is playing by the same rules.

C. This case is an ideal vehicle for review

This case is an ideal vehicle for deciding this significant question. The dispute turns on a pure question of law: whether district courts overseeing an equity receivership have the power to extinguish third-party claims against non-receivership third parties without consent. *See* App. 15a (Ovation contends “that the district court had no authority to enter the bar order[]”); App. 29a–30a (“Ovation

⁴ *See e.g.*, Michael Napoli, *Purdue Pharma Foretells a Troubled Future for Bar Orders*, The Receiver, Issue 19, Dec. 2024, reprinted in 2025 WLNR 6957992 (Mar. 13, 2025).

challenges that bar order, arguing” that “the district court had no authority to enter it”). Both courts below (the district court and Ninth Circuit in a published decision) squarely resolved the issue—holding that the district court had the power to bar Ovation’s claims against Nossaman, a non-receivership third party. App. 30a, 56a. And the question is outcome determinative. If receivership courts lack the authority to bar these claims, petitioner wins; if district courts have the inherent equitable authority to extinguish the claims, then petitioner loses.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX A

**FOR PUBLICATION
UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

U.S. SECURITIES &
EXCHANGE COMMISSION,

Plaintiff-Appellee,

v.

KIM H. PETERSON,
individually, and as Trustee of
the Peterson Family Trust dated
April 14, 1992, and as Trustee of
the Peterson Family Trust dated
September 29, 1983; KIM
FUNDING, LLC; ABC
FUNDING STRATEGIES, LLC;
ABC FUNDING STRATEGIES
MGMT., LLC; KIM MEDIA,
LLC; KIM MANAGEMENT,
INC.; KIM AVIATION, LLC;
AERO DRIVE, LLC; AERO
DRIVE THREE, LLC;
BALTIMORE DRIVE, LLC;
GEORGE PALMER
CORPORATION; KIM
FUNDING LLC DEFINED
BENEFIT PENSION PLAN; ANI
LICENSE FUND, LLC; LAURIE
PETERSON,

Appellants,

No. 22-56206

D.C. No.
3:19-cv-01628-
LAB-AHG

OPINION

v.

CHICAGO TITLE COMPANY;
CHICAGO TITLE INSURANCE
COMPANY,

Defendants-Appellees,

NOSSAMAN LLP; MARCO
COSTALES,

*Real-party-in-interest-
Appellees,*

KRISTA FREITAG, Receiver for
ANI Development, LLC,
American National Investments,
Inc., and their subsidiaries and
affiliates,

Receiver-Appellee.

U.S. SECURITIES &
EXCHANGE COMMISSION,

Plaintiff-Appellee,

v.

OVATION FUND
MANAGEMENT II, LLC,

Objector-Appellant,

No. 22-56208

D.C. No.
3:19-cv-01628-
LAB-AHG

v.

CHICAGO TITLE COMPANY;
CHICAGO TITLE INSURANCE
COMPANY,

Defendants-Appellees,

NOSSAMAN LLP; MARCO
COSTALES,

*Real-party-in-interest-
Appellees,*

KRISTA FREITAG, Receiver for
ANI Development, LLC,
American National Investments,
Inc., and their subsidiaries and
affiliates,

Receiver-Appellee.

Appeal from the United States District Court for the
Southern District of California Larry A. Burns,
District Judge, Presiding

Argued and Submitted August 13, 2024
Pasadena, California

Filed February 20, 2025

Before: David M. Ebel,* Bridget S. Bade, and
Danielle J. Forrest, Circuit Judges.

Opinion by Judge Ebel

SUMMARY**

District Court Bar Orders

The panel affirmed the district court's orders, issued as part of a global settlement, barring all ongoing and future litigation against Chicago Title Company and the Nossaman law firm stemming from a Ponzi scheme operated by Gina Champion-Cain.

Gina Champion-Cain operated a Ponzi scheme through her company ANI Development, LLC. The

* The Honorable David M. Ebel, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Securities and Exchange Commission (“SEC”) brought this civil enforcement action freezing Cain’s and ANI’s assets, appointing a receiver for ANI, and temporarily staying litigation against ANI. Temporarily unable to seek recovery for their losses from ANI, defrauded investors instead sued third parties—including Chicago Title and Nossaman. As part of a global settlement, the district court barred litigation against Chicago Title and Nossaman stemming from the Ponzi scheme. Parties whose ongoing state-court litigation against Chicago Title and Nossaman was extinguished challenged the bar orders. Appellant Kim Peterson challenged the Chicago Title bar order, while Appellant Ovation Fund Management II, LLC challenged the Nossaman bar order.

The panel rejected Appellants’ contentions that the district court had no authority to enter the bar orders and that the Anti-Injunction Act precluded those orders. A district court overseeing an SEC enforcement action has wide discretion to determine the appropriate relief in an equity receivership. The panel held that Appellants’ barred claims substantially overlapped with the Receiver’s claims and that barring Appellants’ claims was necessary to preserve the ANI receivership estate. The panel also rejected Peterson’s argument that, as a matter of equity, entering the Chicago Title bar order was unfair to him. Accordingly, the panel concluded that the district court had authority to enter both bar orders, and upheld the orders.

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OPINION

EBEL, Circuit Judge:

Gina Champion-Cain (“Cain”) operated a Ponzi scheme through her company ANI Development, LLC (“ANI”). Over eight years’ time, more than 400 investors paid approximately \$389 million into Cain’s fraudulent scheme. When the scheme unraveled, the Securities and Exchange Commission (“SEC”) brought this civil enforcement action, froze Cain’s and ANI’s assets, appointed a receiver for ANI (“Receiver”), and temporarily stayed litigation against ANI. Temporarily unable to seek recovery for their losses from ANI, defrauded investors instead sued several third parties—including Chicago Title Company (“Chicago Title”) and attorney Marcos Costales and his Nossaman law firm (collectively “Nossaman”)—in California state court, alleging that these third parties aided Cain’s Ponzi scheme.

Eventually the district court authorized the Receiver and Chicago Title to sue each other. That led to a global settlement between primarily the Receiver and Chicago Title. As part of that global settlement, the district court barred all ongoing and future litigation against Chicago Title and Nossaman stemming from the Ponzi scheme. In these two appeals, parties whose ongoing state-court litigation against Chicago Title and Nossaman was thus extinguished challenge those bar orders. Specifically, Kim Peterson and related entities (collectively “Peterson”) challenge the Chicago Title bar order, while Ovation Fund Management II, LLC (“Ovation”) challenges the Nossaman bar order. Having jurisdiction under 28 U.S.C. § 1292(a)(1), *see Smith v. Arthur Andersen LLP*, 421 F.3d 989, 994–95, 997 (9th Cir. 2005), we AFFIRM both bar orders.

I. BACKGROUND¹

A. Cain’s fraudulent investment scheme

Cain’s scheme involved fraudulent investments purportedly based on California liquor license transfers. California law requires an applicant seeking to purchase an existing liquor license to place an amount equal to the purchase price in escrow while the State’s Department of Alcohol Beverage Control

¹ These underlying facts are generally undisputed and are based primarily on admissions Cain made in her criminal prosecution when she pled guilty to securities fraud and allegations the SEC made in this civil enforcement action, which Cain conceded were true.

(“ABC”) considers the application.² In actuality, ABC rarely enforces this requirement.

Cain, nonetheless, falsely represented to potential investors that liquor license applicants often did not want to tie up their own funds in escrow while waiting for the State to process their license applications and were willing to pay high interest rates (generally 15% to 25%) for short-term loans to fund the State-required escrow accounts. Cain purportedly offered her investors a platform by which they could make liquor license applicants these short-term, high-interest loans. Cain provided her investors a list of liquor license applicants purportedly seeking loans and the loan amount that each applicant needed; investors would choose an applicant and deposit the needed loan amount into what investors thought was an escrow account held by Chicago Title and designated for the particular applicant the investor had chosen; after the State ruled on the liquor license application, the money in escrow was to be returned to the investor; the loan applicant would purportedly pay interest on the loan for the time that the loan was held in the escrow account for the applicant’s benefit; and ANI and the investor would share that interest, with 20% going to ANI and 80% to the investor.

One of the things investors found particularly appealing about Cain’s investment scheme, as she explained it, was that their money would purportedly always remain safely in the escrow accounts. Cain told investors, and investors signed contracts with ANI and/or Chicago Title indicating, that although the

² See Cal. Bus. & Prof. Code §§ 24074–24074.3. See generally id. D. 9, Ch. 6, Art. 5.

amount of a liquor license loan would be placed in an escrow account at Chicago Title designated for a specific liquor license applicant, the investor making the loan would continue to own that escrowed money, which could not be used for any other purpose, could not be transferred, and could be returned only to the investor.

Contrary to what Cain told her investors, however, there were no liquor license applicants needing loans. Nor were there any escrow accounts. Cain instead directed investor funds into a single holding account at Chicago Title to which Cain had unfettered access. She used those funds to support her living expenses, fund her other business ventures, and repay earlier investors in the liquor license scheme.

To facilitate her fraudulent scheme, Cain bribed several Chicago Title employees—including a vice president and three escrow officers in the company's San Diego office—to provide Cain's investors with forged paperwork and false documentation indicating that the investors' funds had been placed safely in escrow accounts designated for specific (fictitious) liquor license applicants. These Chicago Title employees knew that Cain and her ANI employees were also forging escrow documents and falsifying other information given to investors. The bribed Chicago Title employees would cover for Cain when her investors, or their auditors, sought to verify that the invested money was being safely held in escrow accounts.

In addition to the bribed Chicago Title employees, several others aided Cain in operating her Ponzi scheme. Kim Peterson, a San Diego land developer

and Cain’s friend, was an early investor in the scheme. Pleased with the return he received on his initial investment, Peterson continued to invest in the scheme. In addition, he created several businesses, including Kim Funding and ABC Funding (together, the “funding entities”), to raise additional funds for Cain’s scheme by recruiting other investors. In return, ANI paid Peterson’s funding entities 80% of the interest that ANI purportedly received on each of the fictitious liquor license loans made by Peterson-recruited investors. Cain also made Kim Funding a 1% equity owner and 50% voting member in ANI.³

To aid his recruiting efforts, Peterson retained attorney Marco Costales, a partner in the Nossaman law firm. Costales, purportedly a liquor licensing expert, represented to several potential investors being recruited by Peterson that Costales had vetted Cain’s liquor license investment scheme and “could find no structural deficiencies . . . from an ABC perspective” and that he “was hard pressed to think of a situation where” invested funds placed “in the escrow could be lost.” In actuality, Costales had not investigated the liquor license scheme at all and merely passed along unverified information that Peterson gave him.

B. The fraud unraveled

When the Ponzi scheme unraveled in 2019, the SEC initiated this civil enforcement action against

³ Peterson asserts that he never knew that Cain’s investment scheme was fraudulent. This issue is currently being litigated in a suit not related to these appeals.

Cain and ANI, alleging that the fraudulent “investments” Cain offered through ANI were “securities” and that, in offering those fraudulent securities, the defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934.⁴ The district court froze Cain’s and ANI’s assets and appointed a receiver over ANI and ANI’s parent company, American National Investment.⁵ The court ordered the Receiver to take control of ANI; to collect ANI’s assets, including pursuing any causes of action belonging to ANI; to make an accounting of ANI’s financial condition and its assets; and to preserve those assets and prevent their dissipation, concealment, or disposition so that ANI’s assets could be distributed to defrauded investors. The district court also temporarily stayed all litigation against ANI.

Temporarily unable to seek recovery from ANI, defrauded investors initiated litigation in California state court against several third parties, alleging those third parties had aided Cain’s fraud. Chicago Title, with the deepest pockets, was the primary target. Peterson was among those who sued Chicago Title. Some Peterson-recruited investors also sued Peterson and his funding entities and sued each other. In the investor suits against Chicago Title, Chicago

⁴ In a separate criminal proceeding, Cain pled guilty to securities fraud and is currently serving a fifteen-year prison sentence.

⁵ Cain ran the Ponzi scheme through ANI but transferred some funds derived from the scheme from ANI to American National Investment. Cain then used those funds to buy real estate and operate her other businesses. In a separate criminal proceeding, American National Investment’s chief financial officer pled guilty to conspiracy related to the Ponzi scheme.

Title counter- or cross-claimed against Peterson and Nossaman. Likewise, in the investor suits against Peterson, Peterson filed cross-claims against Chicago Title. Chicago Title settled many of the claims against it, paying \$163 million to more than 300 defrauded investors who lost money in the Ponzi scheme.

While some of these state-court cases remained ongoing, the Receiver submitted her final accounting to the district court. Using the “money in, money out” (“MIMO”) method, the Receiver calculated that 405 investors had paid \$389 million into the Ponzi scheme. Of that number, 308 investors suffered net losses, which amounted to an aggregate net loss of \$183 million. These net losses represented only the amount investors paid into the Ponzi scheme that was never recovered and did not include any other losses investors may have suffered, such as interest, lost profits, and attorney’s fees. In contrast to the net losers, the Receiver determined that Peterson and his funding entities were net winners, earning over \$12.7 million from the Ponzi scheme, which included purported investment returns and commissions for recruiting other investors. The district court approved the Receiver’s calculations.⁶

After the Receiver’s accounting, the district court permitted the Receiver to sue Chicago Title on ANI’s behalf to recover, among other things, the amounts for which ANI would be liable to its defrauded investors

⁶ Peterson, in another pending appeal, No. 23-55252, challenges the Receiver’s determination that he and his funding entities are net Ponzi scheme winners and, thus, not entitled to participate in the ANI receivership distributions.

because of Chicago Title's complicity in the fraud.⁷ The district court authorized Chicago Title, in turn, to file counterclaims against ANI, seeking to recover the amounts Chicago Title had already expended to settle claims brought against it by Cain's defrauded investors.

The Receiver and Chicago Title ultimately reached a global settlement, which the district court approved. The settlement called for Chicago Title to pay an additional \$24 million to settle investors' claims.⁸ As a condition for the global settlement, the district court permanently barred any further litigation against either Chicago Title or Nossaman stemming from the Ponzi scheme. In the interlocutory appeals at issue here, Peterson (in appeal No. 22-56206) challenges the Chicago Title bar order, while Ovation (in appeal No. 22-56208) challenges the Nossaman bar order.⁹

⁷ Once a receiver is appointed for a business entity through which wrongdoers operated a Ponzi scheme, the business entity is itself considered a victim of the Ponzi scheme. See Zacarias v. Stanford Int'l Bank, Ltd., 945 F.3d 883, 896 & nn.32–33 (5th Cir. 2019) (citing Scholes v. Lehmann, 56 F.3d 750, 754 (7th Cir. 1995)). The business entity (here, ANI) is thus able to assert claims against the Ponzi scheme operators to recover from those alleged wrongdoers for the business entity's liability to its defrauded investors. See id. at 896, 899.

⁸ Chicago Title thus paid a total of \$187 million, most of which went toward repaying defrauded investors' net investment losses of \$183 million.

⁹ The SEC enforcement action remains ongoing. The Receiver continues to seek to recover money for the ANI receivership estate, including by pursuing several claw back actions.

II. DISCUSSION

Appellants—Peterson and Ovation—contend that the district court had no authority to enter the bar orders and further contend that the Anti-Injunction Act (“AIA”), 28 U.S.C. § 2283, precludes those orders. We reject these arguments, concluding that Appellants’ barred claims substantially overlapped with the Receiver’s claims and that barring Appellants’ claims was necessary to preserve the ANI receivership estate. Peterson also argues that, as a matter of equity, entering the Chicago Title bar order was unfair to him. We disagree, and we affirm both bar orders.

A. A district court’s general power to enter a bar order in an equitable receivership

A district court overseeing an SEC enforcement action has the equitable power to appoint a receiver over the entity through which the Ponzi scheme was operated. See SEC v. Wencke, 622 F.2d 1363, 1365, 1369 & nn.7–8 (9th Cir. 1980) (collecting cases). “Without a receiver, investors encounter a collective-action problem: each has the incentive to bring its own claims against the entity, hoping for full recovery; but if all investors take this course of action, latecomers will be left empty-handed.” Zacarias, 945 F.3d at 895–96. “The receiver, standing in the shoes of the injured corporations, is entitled to pursue the corporation’s claims ‘for the benefit not of [the wrongdoers] but of innocent investors.’” Id. at 896 (alteration in original)(footnote omitted) (quoting Scholes, 56 F.3d at 754).

A district court overseeing the SEC enforcement

action has “wide discretion to determine the appropriate relief in an equity receivership.” SEC v. Hardy, 803 F.2d 1034, 1037 (9th Cir. 1986) (quoting SEC v. Lincoln Thrift Ass’n, 577 F.2d 600, 606 (9th Cir. 1978)). One way in which a district court overseeing an equitable receivership may aid a receiver in gathering and distributing the receivership’s assets equitably among defrauded investors is by issuing bar orders like the ones challenged here.¹⁰ “Of course, there are limits to a receivership court’s power”—“the receivership court cannot reach claims that are independent” of the receivership “and that do not involve assets claimed by the receivership.” Zacarias, 945 F.3d at 897.

B. Appeal No. 22-56206: Peterson’s challenge to the Chicago Title bar order

Peterson asserts that the district court had no authority to enter the Chicago Title bar order and that the AIA precludes it; he also argues that, even if the district court had authority to enter the bar order, it was inequitable to do so under these circumstances. We reject each argument in turn.

1. The district court had authority to enter the Chicago Title bar order

As we explain next, we agree with the district court that it had authority to bar Peterson’s claims against Chicago Title because 1) the Receiver’s and Peterson’s

¹⁰ See, e.g., SEC v. Stanford Int’l Bank, Ltd., 112 F.4th 284, 291 (5th Cir. 2024); SEC v. Quiros, 966 F.3d 1195, 1197 (11th Cir. 2020); SEC v. DeYoung, 850 F.3d 1172, 1175, 1182–83 (10th Cir. 2017).

claims against Chicago Title substantially overlapped; and 2) the bar order was necessary to protect the ANI receivership's assets.¹¹

a. The Receiver's and Peterson's claims against Chicago Title substantially overlapped, both seeking to recover for the same losses stemming from the Ponzi scheme

The Receiver's and Peterson's claims against Chicago Title substantially overlapped because they both sought to recover from Chicago Title for the same losses stemming from the Ponzi scheme. The Receiver sought to recover from Chicago Title, among other damages, the amount for which the ANI receivership would be liable to all investors and others who lost money in the Ponzi scheme because of Chicago Title's conduct. Similarly, Peterson sought to recover from Chicago Title the amount of his alleged losses from the Ponzi scheme¹² because of Chicago Title's same conduct. The district court, therefore, had authority to bar Peterson's pending claims against Chicago Title

¹¹ The district court has in rem, or quasi-in-rem, jurisdiction over the property in the receivership res, including the receivership entity ANI's legal claims, and to resolve any pending claims to that res. See Stanford Int'l Bank, 112 F.4th at 292; Digit. Media Sols., LLC v. S. Univ. of Ohio, LLC, 59 F.4th 772, 774, 778–79 (6th Cir. 2023); Zacarias, 945 F.3d at 902–03. In addition, the Receiver has “standing” to assert claims on behalf of the receivership entity ANI for injuries to ANI. See DeYoung, 850 F.3d at 1181–82; Scholes, 56 F.3d at 753–54.

¹² The losses that Peters on seeks to recover from Chicago Title are not limited to his investment losses but also include losses that he allegedly suffered in recruiting other investors. However, all such losses are allegedly attributed to the Ponzi scheme.

in order to prevent that litigation from interfering with the Receiver's efforts to recover from Chicago Title for the same losses arising from the same fraudulent conduct. See Rotstain v. Mendez, 986 F.3d 931, 940–41 (5th Cir. 2021) (relying on Zacarias, 945 F.3d at 900–01); DeYoung, 850 F.3d at 1175–76 (upholding order barring investors' claims against a third party that stemmed "from the same loss, from the same entities, relating to the same conduct, and arising out of the same transactions and occurrences by the same actors" as the receiver's claims).

The Fifth Circuit's decision in Zacarias, in particular, is closely analogous to the situation presented here and supports our conclusion that the district court had authority to bar Peterson's claims against Chicago Title. Zacarias stemmed from a Ponzi-scheme involving fraudulent certificates of deposit ("CDs") issued by the Antigua-based Stanford Bank. 945 F.3d at 889–90. With the help of its insurance brokers, the Bank was able to give investors the false impression that the CDs were insured, when they were not. Id. Like Chicago Title's role in this case, the insurance brokers played a "key" and "central" role in the Stanford Bank Ponzi scheme by making the fraudulent investments appear safe to investors. Id. at 890. When that Ponzi scheme unraveled, a number of defrauded investors sought to recover their losses from the third-party insurance brokers. Id. at 893–94. The receiver for the Bank also sued the insurance brokers for their "participation in the [Ponzi] scheme." Id. at 900. As a part of a global settlement between the receiver and the insurance brokers, the district court permanently barred all claims against the brokers stemming from the Bank's

Ponzi scheme. Id. at 894. The Fifth Circuit upheld that bar order, id. at 889, 894, 902, because the receiver was seeking to recover from the insurance brokers for the same losses as those claimed by the defrauded investors. This was so, notwithstanding that the receiver and the defrauded investors may have been asserting different legal theories, because the losses all ultimately stemmed from the Ponzi scheme. Id. at 898–900. Zacarias supports our conclusion here that the district court had authority to enter the Chicago Title bar order.

Contrast Zacarias with the Fifth Circuit’s earlier decision in SEC v. Stanford International Bank, Ltd., 927 F.3d 830 (5th Cir. 2019), on which Peterson relies. That case, which stemmed from the same Stanford Bank Ponzi scheme, involved the Bank’s professional liability insurance, which covered both the Bank and its officers, directors, and employees (collectively, “officers”). Id. at 836–37. That professional liability insurance was distinct from the Ponzi scheme. See id. When the Receiver sued the Bank officers for the harm their conduct during the Ponzi scheme caused the Bank, the officers sought coverage under the professional liability policies for the cost of their defense and indemnity for any liability the officers might incur. Id. at 837–39, 844. When the professional liability insurance Underwriters denied the officers coverage, the officers sued the Underwriters, alleging, among other claims, that the Underwriters had tortiously denied the officers coverage in bad faith and, in doing so, had also violated the Texas Insurance Code. Id. at 839, 845, 847. The Fifth Circuit held that the officers’ extracontractual bad-faith claims were independent of

any claims belonging to the Receiver because the bad-faith claims “lie directly against the Underwriters and do not involve proceeds from the insurance policies or other receivership assets.” *Id.* at 847. Any recovery on those bad-faith claims “would not reduce or affect the policies’ coverage limits” and, thus, would not come from the receivership res. *Id.* at 836. Under those circumstances, the Fifth Circuit held that the district court supervising the Bank receivership lacked the authority to bar the Bank officers’ extracontractual bad-faith claims against the professional liability insurance Underwriters. *Id.* at 847–49.

The bad-faith claims at issue in Stanford International Bank, however, are distinguishable from the situation presented here involving Peterson’s and the Receiver’s claims, which seek to recover from Chicago Title for the same Ponzi scheme conduct and losses. Our situation is more closely analogous to the claims at issue in Zacarias.

In a later case, the Fifth Circuit similarly distinguished Zacarias and Stanford International Bank. Specifically, the Fifth Circuit explained that the defendant professional liability insurance Underwriters in Stanford International Bank

had not participated in the Ponzi scheme and the claims brought by the Stanford managers and employees were for “a distinct tort injury not based on any conduct in furtherance of the Ponzi scheme.” In contrast, the defendants in Zacarias were “active co-conspirators in the Ponzi scheme,” and

the investors' claims arose from conduct in furtherance of that scheme.

Rotstain, 986 F.3d at 940 (quoting Zacarias, 945 F.3d at 901, and distinguishing it from Stanford Int'l Bank).¹³

b. The bar order was necessary to protect the receivership assets

Barring Peterson's claims against Chicago Title was necessary to protect ANI receivership's assets for three reasons. First, the bar order was a necessary condition of the global settlement between the Receiver and Chicago Title, which benefitted the receivership estate as a whole by bringing in more than \$24 million to pay defrauded investors' net losses. See DeYoung, 850 F.3d at 1182–83 (upholding bar order where “settlement offered the highest potential recovery for the Receiver Estate . . . [and] the Claims Bar Order was necessary to that settlement”).

Second, without the global settlement, the Receiver would have had to continue to expend

¹³ Another case on which Peterson relies, Digital Media Solutions, LLC v. South University of Ohio, LLC, 59 F.4th 772 (6th Cir. 2023), is similarly distinguishable. That case involved, not a Ponzi scheme, but a receivership for a company in significant debt. Id. at 774–75. The Sixth Circuit held that the district court overseeing the receivership had overstepped its authority by issuing bar orders that precluded third parties' claims, not only against the receivership, but also against other third parties outside the receivership. Id. at 774, 777, 781. Unlike this case (and Zacarias), there the improperly barred claims were for an injury that the receivership entity itself did not suffer and, therefore, the receiver could not assert claims for the same alleged losses. Id. at 776, 783–85.

receivership resources litigating against Chicago Title. In addition, the Receiver would likely have been drawn into the investors' state-court actions against Chicago Title, also depleting receivership resources. Although Peterson asserts that "the mere possibility of future litigation costs is too speculative to directly affect the Receivership's assets," Zacarias considered additional legal expenses that the receiver might have to incur before upholding a global settlement and bar order in that case. See 945 F.3d at 900–01; see also DeYoung, 850 F.3d at 1182–83. Furthermore, the possibility that the Receiver would be brought into other existing and threatened lawsuits centered on the Ponzi scheme is not speculative.

Third, if the Receiver had not settled with Chicago Title, and if Peterson (or any other defrauded investors) had then succeeded in winning a judgment against Chicago Title for losses stemming from the Ponzi scheme, Chicago Title could have turned around and sought equitable indemnification from the ANI Receiver for any such judgment. See Stanford Int'l Bank, 927 F.3d at 843 (distinguishing SEC v. Kaleta, 530 F.App'x 360 (5th Cir. 2013), where this possibility "would have diminished the recovery of all creditors against receivership assets," justifying a bar order to protect the receivership estate). That would have required an additional expenditure of receivership assets to defend against Chicago Title's indemnification claims and, if that defense failed, the cost of indemnification.

Peterson counters this third reason by arguing that, under California law, Chicago Title, as an intentional tortfeasor, could not have sought equitable indemnity against another intentional tortfeasor (the

receivership entity ANI). There are several problems with Peterson’s argument.

First, there has been no adjudication of Chicago Title’s liability as an intentional tortfeasor for its role in the Ponzi scheme’s fraud. In fact, Peterson’s now-barred claims against Chicago Title involved both intentional and unintentional theories of recovery. Furthermore, the claims that the Receiver asserted against Chicago Title were not for intentional torts, but instead alleged respondeat superior, negligence, and breach of contract. See Leko v. Cornerstone Bldg. & Inspection Serv., 103 Cal. Rptr. 2d 858, 866 (Cal. Ct. App. 2001) (holding that it was error to grant judgment on the pleadings on a claim for equitable indemnity where the “complaint is not limited to intentional torts, and nothing precludes [one alleged tortfeasor] from seeking indemnity [from the other alleged tortfeasor] to the extent they are held liable for unintentional torts”).

Second, even assuming that Chicago Title would have been adjudicated to be an intentional tortfeasor, there is no categorical bar forbidding one intentional tortfeasor from seeking equitable indemnity against another; it is a case-specific inquiry. See Baird v. Jones, 27 Cal. Rptr. 2d 232, 233–34, 237–38 (Cal Ct. App. 1993); see also Henry v. Lehman Com. Paper (In re First All. Mortg. Co.), 471 F.3d 977, 1005 (9th Cir. 2006) (recognizing that California law allows “for comparative equitable indemnification among joint intentional tortfeasors” (citing Baird, 27 Cal. Rptr. 2d at 238)).¹⁴

¹⁴ See generally Leko, 104 Cal. Rptr. 2d at 864–65 (stating that, under California law, “[i]ndemnification between joint

Peterson argues that, even if Chicago Title could bring an equitable indemnification claim against ANI, equity likely would not allow Chicago Title to recover on that claim because Chicago Title's indemnification would deplete the ANI receivership estate, which would otherwise be distributed to innocent defrauded investors. Although any Chicago Title equitable indemnity claim asserted against the ANI Receiver might be unsuccessful, that is an argument that the parties would have had to litigate, and any such litigation would further deplete the ANI receivership's assets. See Zacarias, 945 F.3d at 900–01.

Peterson also asserts that California law would preclude Chicago Title from asserting an equitable indemnification claim against the Receiver because the ANI receivership was insolvent. But Peterson fails to cite any case in support of this argument. And even if Peterson's argument ultimately prevailed, it would again require further litigation that would have depleted the ANI receivership res. Id.

For the foregoing reasons, then, the district court did not err in deeming the Chicago Title bar order

tortfeasors is an equitable rule created to correct potential injustice, and the doctrine is not available where it would operate against public policy"; further explaining, however, that "[i]n the great majority of cases . . . equity and fairness call for an apportionment of loss between the wrongdoers in proportion to their relative culpability, rather than the imposition of the entire loss upon one or the other tortfeasor" (citations omitted)). Also the California state trial judge overseeing the defrauded investors' claims against third parties arising from this Ponzi scheme has held that equitable indemnification claims under California law could go forward among those third parties alleged to have participated, knowingly or unwittingly, in Cain's Ponzi scheme.

necessary to protect the ANI receivership's assets.

c. Conclusion: The district court had authority to enter the Chicago Title bar order

We conclude that the district court had authority to enter the Chicago Title bar order because Peterson's claims substantially overlapped with the ANI Receiver's claims against Chicago Title and both sets of claims sought damages from Chicago Title for the same Ponzi scheme losses. Barring Peterson's claims against Chicago Title was necessary to preserve the ANI receivership res.

2. The Anti-Injunction Act does not preclude the Chicago Title bar order

Peterson next argues that the Chicago Title bar order violates the AIA, which provides that a "court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The district court held that the Chicago Title bar order did not violate the AIA because that bar order was "necessary in aid" of the federal court's in rem "jurisdiction" over the ANI receivership's property. We agree. See Zacarias, 945 F.3d at 902–03 (holding that order barring state proceeding that threatens receivership property was not precluded by the AIA because it was in aid of federal court's jurisdiction over that property); see also Stanford Int'l Bank, 927 F.3d at 850–51.

3. The district court did not abuse its discretion in deeming the global settlement and the related Chicago Title bar order to be equitable

Peterson next asserts that the global settlement and Chicago Title bar order are unfair and inequitable. This court reviews for an abuse of discretion “the fairness of a settlement in an equity receivership proceeding” and the entry of a related bar order. Stanford Int’l Bank, 927 F.3d at 839.

Peterson first contends that the bar order, which extinguished his pending claims against Chicago Title, was inequitable because now he “can neither share in the Receiver’s settlement with Chicago Title” (because he is a net Ponzi-scheme winner who will not recover through the distribution of the receivership estate) nor “seek direct relief from Chicago Title.”

The Fifth Circuit has noted the importance of allowing receivership claimants whose claims against third parties were extinguished by a bar order an opportunity to recover for their losses instead through distributions from the receiver estate. See Stanford Int’l Bank, 927 F.3d at 845–47. In Stanford International Bank, the district court had barred the Bank officers’ contractual claims seeking coverage as co-insureds under the same professional liability insurance policies under which the Receiver sought coverage. Id. at 835–36, 839, 845. Those policies and their proceeds were part of the Bank’s receivership estate. Id. at 840. The Fifth Circuit held that, although barring the Bank officers’ contractual claims seeking recovery under the policies might have been appropriate, it was inequitable to bar the Bank

officers' contractual claims without at least allowing the Bank officers "to access the [policies] proceeds through the Receiver's claims process." *Id.* at 845. There, the global settlement "expressly foreclose[d] the [Bank officers] from sharing in the insurance policy proceeds of which they [were] coinsureds" and also did not allow the Bank officers "to file claims against the Receivership estate." *Id.* at 846.

That is not what occurred here, however. Peterson, in fact, was able to file claims seeking to recover for his Ponzi scheme losses through the receivership estate's distributions, just like all other claimants. Peterson was ultimately unable to recover on his claims only because the receivership had sufficient funds only to pay defrauded investors a percentage of their net losses, and the district court determined that Peterson was, instead, a net Ponzi scheme winner.¹⁵ Thus, Peterson's properly-filed claim against the receivership estate was unsuccessful only because of a payment formula adopted by the Receiver that applied equally to all investors. Under those circumstances, the district court did not abuse its discretion by determining that an order barring Peterson's state-court claims against Chicago Title was not inequitable.

Next, Peterson points out that the Receiver is currently seeking to claw-back the \$12.7 million Peterson purportedly made from the Ponzi scheme. That is a separate ongoing proceeding, however, that is not before this court.

¹⁵ Peterson is challenging the district court's determination that he is a net Ponzi scheme winner in a separate appeal.

Peterson also asserts that the global settlement between Chicago Title and the Receiver is unfair because it allows Chicago Title to participate, to a limited degree, in future distributions from the receivership estate. Peterson fails to explain how this provision of the settlement is unfair to him, a net Ponzi-scheme winner not entitled to recover anything from the receivership estate. In any event, the district court did not abuse its discretion by deeming the global settlement as a whole to be “fair and equitable and in the best interests of the estate.” *Id.* at 840 (quoting Ritchie Cap. Mgmt., L.L.C. v. Kelley, 785 F.3d 273, 278 (8th Cir. 2015)).

4. In conclusion, we uphold the Chicago Title bar order

For the foregoing reasons, we conclude that the district court had authority to enter the Chicago Title bar order and did not abuse its discretion in doing so.

C. Appeal No. 22-56208: Ovation’s challenge to the Nossaman bar order¹⁶

Ovation, for its part, challenges the Nossaman bar order, which extinguished Ovation’s state-court claims against Nossaman, Peterson’s lawyer. Ovation, which manages an investment fund, invested over \$50 million of its clients’ money in the

¹⁶ We GRANT Nossaman’s and Ovation’s unopposed motions for judicial notice (Dkt. Nos. 41, 50) of documents filed in a California state court action, Ovation v. Chicago Title, No. 37-2020-00034947-CU-FR-CTL, and documents filed in the federal district court case underlying this appeal after this appeal was taken. See DeFiore v. SOC LLC, 85 F.4th 546, 559 n.10 (9th Cir. 2023).

Ponzi scheme, ultimately losing more than \$25 million. After the scheme unraveled, Ovation initially sued Chicago Title seeking to recover both for its investors' losses and for the management fees that Ovation lost when its clients left the Ovation-managed investment fund after it became known that Ovation had invested its clients' money in a Ponzi scheme. Ovation did not sue Nossaman at that time but instead entered into an agreement with Nossaman tolling the time for Ovation to sue Nossaman. Chicago Title, nevertheless, brought Nossaman into the Ovation-Chicago Title litigation by filing a cross-claim against Nossaman.

That litigation ended in a settlement. Chicago Title agreed to pay Ovation \$47 million, which covered all of Ovation's investors' losses, Ovation's attorneys' fees, and some (\$10 million) of the management fees Ovation alleged that it lost as a result of the Ponzi scheme. Chicago Title also settled its cross-claim against Nossaman when Nossaman agreed to pay Chicago Title \$4.75 million.

Thereafter, when the Receiver and Chicago Title asked the district court to approve their global settlement, they requested that the district court also include an order barring claims against Nossaman stemming from the Ponzi scheme. While that request for the Nossaman bar order was pending, Ovation filed suit against Nossaman in California state court and then objected in federal court to the requested Nossaman bar order. The district court entered the Nossaman bar order over Ovation's objection, extinguishing Ovation's then pending state-court claims against Nossaman. Ovation challenges that bar order, arguing that 1) the district court had no

authority to enter it; and 2) the bar order violated the AIA. We reject both arguments and affirm the Nossaman bar order.

1. The district court had authority to enter the Nossaman bar order

We agree with the district court that it had authority to enter the Nossaman bar order based on the same reasoning that supported entry of the Chicago Title bar order: 1) Ovation's claims against Nossaman would have substantially overlapped with claims that the ANI Receiver could have brought against Nossaman seeking to recover for the same losses caused by Nossaman's alleged conduct during the Ponzi scheme;¹⁷ and 2) barring Ovation's claims against Nossaman was necessary to protect the ANI receivership res.¹⁸

¹⁷ In fact, Nossaman actually sought approval from the district court to sue the Receiver, but as noted infra p. 30, the district court deemed that motion to be moot after issuing the Nossaman bar order. And, if the court had permitted Nossaman's claims against the Receiver, it likely would have led to further litigation in which the Receiver would have sued Nossaman.

¹⁸ Ovation asserts in a Fed. R. App. P. 28(j) letter that the Supreme Court's recent decision in Harrington v. Purdue Pharma L.P., 603 U.S. 204 (2024), supports its argument that "a district court may not 'permanently bar and extinguish independent, non-derivative third party-claims that do not affect the res of the receivership estate.'" (quoting Stanford Int'l Bank, 927 F.3d at 843). Harrington does not apply here because it specifically addressed whether the bankruptcy code permitted the court overseeing Purdue Pharma's bankruptcy to bar claims against, not the debtor itself, but individuals who own the corporate debtor. See 603 U.S. at 209. That case construed several specific bankruptcy code provisions, see id. at 214, that are not implicated here.

a. Ovation’s claims against Nossaman substantially overlapped with, and sought to recover the same Ponzi-scheme losses as, claims that the Receiver could have asserted against Nossaman

The Receiver could have asserted claims against Nossaman seeking to recover for “additional liability” that the ANI receivership incurred as a result of Nossaman’s conduct during the Ponzi scheme. Rotstain, 986 F.3d at 941. That is what Ovation sought from Nossaman—losses that Ovation suffered as a result of Nossaman’s conduct in helping dupe Ovation into investing its clients’ money in the Ponzi scheme. See Zacarias, 945 F.3d at 904–05; see also DeYoung, 850 F.3d at 1175–76.

Ovation contends, to the contrary, that the losses it seeks to recover from Nossaman—Ovation’s lost management fees—are distinct losses unique to Ovation as an investment fund manager because the Receiver did not claim, nor could she, that the receivership estate had such a claim. But Ovation’s lost management fees still resulted from the Ponzi scheme, even though Ovation sought to recover based on a different legal theory than the defrauded investors asserted. See Zacarias, 945 F.3d at 900; DeYoung, 850 F.3d at 1175–76. That is enough. ANI would have been liable to Ovation for the losses Ovation suffered as the result of the Ponzi scheme. The Receiver, in turn, could have recovered from Nossaman for any liability that ANI would have because of Nossaman’s participation, even unwittingly, in the Ponzi scheme.

Ovation counters that, although the Receiver could have asserted claims against Nossaman for any liability that ANI might have because of Nossaman's conduct, the Receiver never actually asserted such claims. That does not deprive the district court of the authority to enter the Nossaman bar order, however, because the claims among the third parties who allegedly facilitated Cain's Ponzi scheme, including ANI, Chicago Title, and Nossaman, are all intertwined and would be based on the alleged harm caused by the Ponzi scheme. See DeYoung, 850 F.3d at 1175–76. Although the Receiver could have brought claims against Nossaman seeking to recover for ANI's liability to those who lost money in the Ponzi scheme, including Ovation, the Receiver did sue Chicago Title, which in turn brought Nossaman into that case via a cross-claim against Nossaman. This entanglement is further illustrated by Ovation's recovery from Chicago Title of some of its lost management fees. Furthermore, once Ovation sued Nossaman, after the motion for the Nossaman bar order was filed, Nossaman requested the district court's permission to assert equitable indemnity claims against the Receiver. The district court deemed that motion moot after issuing the Nossaman bar order. Given the entanglement among all those who allegedly operated and facilitated the Ponzi scheme, the district court had authority to bar claims against Nossaman to prevent those claims from interfering with administration of the ANI receivership.

**b. The bar order was necessary to
protect the ANI receivership assets**

We further conclude, as did the district court, that

entering the Nossaman bar order was necessary to protect the ANI receivership's res because, if any party who lost money because of the Ponzi scheme succeeded in winning a judgment against Nossaman, Nossaman in turn could have pursued equitable indemnification claims against the ANI Receiver. The Receiver would have had to expend receivership assets to defend such claims, even if the Receiver ultimately prevailed.

Ovation asserts that barring claims against Nossaman was not necessary to protect the receivership res because, under California law, 1) Nossaman, an intentional tortfeasor, cannot seek equitable indemnification from ANI, another intentional tortfeasor; and 2) even if Nossaman could assert such a claim against the ANI receivership, Nossaman would not prevail. We previously rejected both arguments in discussing Peterson's claims against Chicago Title. See supra pp. 21–23.¹⁹ That same reasoning applies here. We therefore conclude that the district court had authority to enter the Nossaman bar order, and the bar order was necessary to protect the receivership res.

¹⁹ Ovation asserts that California Civil Procedure Code § 875(d) also precludes Nossaman from obtaining indemnity against the Receiver. Section 875 addresses judgments against two or more defendants in a tort action. Cal. Civ. Proc. Code § 875. Section 875(d) provides that “[t]here shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person.” Ovation contends that this provision addressing “contribution” would also applies to equitable indemnity. Regardless of whether such a claim would ultimately prevail, that is another issue that the parties would have to litigate to resolve, thereby expending receivership assets.

2. The Anti-Injunction Act does not preclude the Nossaman bar order

Lastly, Ovation argues that the AIA precludes the Nossaman bar order. As a threshold matter, Nossaman contends that the AIA does not apply to this order because Ovation had not yet sued Nossaman at the time that the Receiver filed her motion asking the district court to issue the Nossaman bar.

The AIA does “not preclude injunctions against the [future] institution of state court proceedings, but only bar[s] stays of suits already instituted.” Dombrowski v. Pfister, 380 U.S. 479, 484 n.2 (1965). Here, the relevant chronology is as follows: The Receiver moved for the Nossaman bar order in this SEC federal action; Ovation then sued Nossaman in California state court; and, thereafter, the federal court issued the challenged Nossaman bar order. Other circuits are divided as to whether the AIA applies in such a situation.²⁰

²⁰ The Seventh Circuit has held that the AIA does not apply to state-court litigation that is initiated after a motion for an order enjoining state-court litigation is filed in federal court. See Barancik v. Inv. Funding Corp., 489 F.2d 933, 936–38 (7th Cir. 1973); see also Hyde Park Partners, L.P. v. Connolly, 839 F.2d 837, 842 n.6 (1st Cir. 1988) (dicta); Nat’l City Line, Inc. v. LLC Corp., 687 F.2d 1122, 1127–28 (8th Cir. 1982). Other circuits, however, have rejected Barancik’s reasoning and concluded, instead, that the AIA applies when a state-court case is initiated before the federal court rules on the motion for an order enjoining state-court litigation. See Denny’s, Inc. v. Cake, 364 F.3d 521, 528–31 (4th Cir. 2004); Roth v. Bank of Commonwealth, 583 F.2d 527, 528 (6th Cir. 1977); see also Standard Microsystems Corp. v. Tex. Instruments Inc., 916 F.2d 58, 61–62 (2d Cir. 1990) (not deciding the question but criticizing Barancik’s reasoning and

We need not decide that question here, however. Even assuming the AIA applies, the Nossaman bar order falls within the AIA's exception for an injunction enjoining state-court litigation that is "necessary in aid" of the federal court's jurisdiction. 28 U.S.C. § 2283. The Nossaman bar order was "necessary in aid" of the district court's in rem jurisdiction over the ANI receivership's res. See Zacarias, 945 F.3d at 902–03; see also Stanford Int'l Bank, 927 F.3d at 850–51.

III. CONCLUSION

For the foregoing reasons, we conclude that the district court had authority to enter the challenged bar orders and that the AIA did not preclude them. Moreover, we reject Peterson's argument that the Chicago Title bar order, in particular, was unfair to him.

AFFIRMED.

noting "considerable doubt [as to] whether the Barancik rule should be adopted").

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. GINA CHAMPION- CAIN and ANI DEVELOPMENT, LLC, Defendants, and AMERICAN NATIONAL INVESTMENTS, INC., Relief Defendants.	Case No.: 19-cv-1628- LAB-AHG ORDER: 1) OVERRULING OBJECTIONS TO GLOBAL SETTLEMENT AND BAR ORDERS [Dkt. 824, 832, 835, 839, 841, 842, 843, 851-1]; and 2) GRANTING REQUESTS FOR JUDICIAL NOTICE [Dkt. 795-5, 902-4]; 3) DENYING MOTION FOR RELIEF FROM STAY AS MOOT [Dkt. 849]; 4) GRANTING LEAVE TO FILE OPPOSITION [Dkt. 823]; and 5) GRANTING LEAVE TO APPEAR TELEPHONICALLY [Dkt. 873]
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Krista Freitag (the "Receiver"), the Court-appointed permanent receiver for Defendant ANI Development, LLC, Relief Defendant American National Investments, Inc., and their subsidiaries and affiliates (the "Receivership Entities"), moved for an order approving the settlement agreement (the "Global Settlement") between Chicago Title Company and Chicago Title Insurance Company (collectively, "Chicago Title") and the Receivership Entities. (Dkt. 795). The Receiver also requests the entry of two bar orders: the first in favor of Chicago Title (the "Chicago Title Bar Order") and the second in favor of Nossaman LLP and Marco Costales (collectively, "Nossaman" and the "Nossaman Bar Order"). Chicago Title and Nossaman filed joinders in support of the Global Settlement and bar orders, (Dkt. 796, 799), which were opposed by numerous non-parties. (Dkt. 824, 832, 835, 839, 841, 842, 843, 851-1).

Following proper notice and a hearing on these matters, and having considered the filings and heard the arguments of counsel, the Court **OVERRULES** the objections. By separate Orders, the Court **GRANTS** the motion, **APPROVES** the Global Settlement, and **ENTERS** the Chicago Title Bar Order and Nossaman Bar Order.

I. BACKGROUND

A. SEC Action and Settlement Negotiations

In August 2019, the U.S. Securities and Exchange Commission ("SEC") initiated this enforcement action against Gina Champion-Cain, ANI Development, LLC, and American National Investments, Inc., alleging that Champion-Cain defrauded investors

through a fraudulent, multi-level investment scheme she operated through the defendant entities. (*See generally* Dkt. 1, Compl.). Champion-Cain claimed investors could earn large returns quickly by investing in short-term, high-interest loans to parties applying for California liquor licenses. Participating investors were directed to deposit funds in specified escrow accounts allegedly controlled by Chicago Title. These investment opportunities were fictitious, and no loans were made to liquor license applicants. In the parallel criminal case, Champion-Cain entered into a plea agreement in which she admitted the liquor license loan investment opportunities she offered to investors were part of a fraudulent Ponzi scheme. (*See* Dkt. 795-7)¹ Following the SEC's motion, the Court appointed the Receiver to manage the Receivership Entities, accounting for their assets and distributing funds received through illegal conduct back to investors. (Dkt. 6).

After the Receiver's appointment, many defrauded investors brought state law claims against Chicago Title for its alleged role as escrow agent in the scheme. In January 2022, with the Court's permission, (Dkt.

¹ The Court **GRANTS** the Receiver's request for judicial notice of the plea agreement signed by Gina Champion-Cain in *United States v. Champion-Cain*, No. 20-cr-2115-LAB-1 (S.D. Cal. July 22, 2020), ECF No. 5. (Dkt. 795-5). Courts may "judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Proper subjects for judicial notice include "proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (internal citation and quotation marks omitted).

737), the Receiver brought claims against Chicago Title in state court. Chicago Title has received leave of Court to bring crossclaims against the Receiver, (Dkt. 758), though it hasn't done so yet. Chicago Title has since reached settlements with more than 300 investors with net losses in the scheme, returning more than \$163 million to investors. (Dkt. 795-1 at 8–9; Dkt. 796 at 6).

The proposed Global Settlement and bar orders emerged from extensive negotiations between the Receiver, Chicago Title, and the ten investors with suits still pending against Chicago Title (the “Plaintiff Investors”). Although Court-ordered mediation sessions with the Honorable Steven R. Denton didn't initially lead to a global resolution, (Dkt. 795-1 at 12; Dkt. 796 at 7), the Global Settlement was ultimately reached following additional negotiations between the Receiver and Chicago Title, (Dkt. 795-1 at 12–13; Dkt. 796 at 8). The investors yet to settle with Chicago Title—including the Plaintiff Investors and four investors without suits pending against Chicago Title—were given the opportunity to join the Global Settlement: seven joined (the “joining investors”) and seven didn't (the “non-joining investors”). (Dkt. 795-1 at 13).

In addition to the suits involving Chicago Title, there is also a state court action pending against Nossaman brought by Ovation Management. Ovation reached a \$47 million dollar settlement with Chicago Title and seeks additional recovery from Nossaman for alleged misrepresentations about the Ponzi scheme's legitimacy. (Dkt. 833 at 9–14, 21).

B. The Global Settlement

The Global Settlement, a copy of which is attached as Exhibit A to the Receiver's declaration in support of the motion to approve the Global Settlement, (Dkt. 795-4), will provide global resolution to all claims arising from Chicago Title's alleged relationship with Champion-Cain and the Receivership Entities. Under its terms, Chicago Title will pay \$24,359,133.64 (the "Settlement Payment"). Chicago Title will pay the joining investors directly and transfer the remainder of the Settlement Payment to the Receiver for distribution to the non-joining investors once the Court approves the proposed distribution plan. (Dkt. 795-4 ¶ 4; see also Dkt. 807, Proposed Distribution Plan). The Plaintiff Investors will receive 100% of their money-in, money-out ("MIMO") net losses, while the remaining investors will receive 70% of their MIMO net losses.² To secure 100% of the payments for the Plaintiff Investors, Chicago Title received a limited right to share in future distributions of the Receivership Estate in place of the Plaintiff Investors. (Dkt. 795-4 ¶ 4; *see also* Dkt. 795-1 at 14; Dkt. 860 at 6). In the event a non-joining investor appeals, the Global Settlement details the treatment for that investor's portion of the Settlement Payment. (Dkt. 795-4 ¶ 15). If the Global Settlement is approved, the Receiver expects an eventual recovery between 90% and 95% of aggregate investor MIMO net losses. (Dkt. 795-1 at 5). This is a remarkably favorable recovery for investors in this Court's experience.

² MIMO net loss figures for each investor are based on the Receiver's forensic accounting investigation and MIMO calculations. (*See* Dkt. 795-1 at 10–12).

In exchange for the Settlement Payment, the Receivership Estate and Chicago Title mutually release all pending or potential claims against one another. (*Id.* ¶ 5). The Global Settlement is conditioned on the Court entering the Chicago Title Bar Order, permanently enjoining all claims against Chicago Title arising from the investment scheme. (*Id.* ¶ 7.b).

In addition to the terms between the Receiver and Chicago Title, the Global Settlement also requires the Receiver to support the entry of the Nossaman Bar Order in the event of a settlement between Chicago Title and Nossaman. (Dkt. 795-4 ¶ 10; Dkt. 795-1 at 28). The anticipated settlement was reached between Chicago Title, Nossaman, and the Receiver (the “Nossaman Settlement”), a copy of which is attached as Exhibit 12 to Chicago Title’s joinder in support of the Receiver’s motion. (Dkt. 796-14). The Receiver’s motion requests that the Court enter the Nossaman Bar Order, which would bar all pending or future claims against Nossaman related to the Ponzi scheme.³

C. Notice and Hearing

The Receiver has moved for approval of the Global Settlements, (Dkt. 795), and proposed a notice plan, (Dkt. 798). The Court approved the form and manner of notice and set a ninety-day briefing and hearing

³ Nossaman filed a motion for relief from the stay of litigation against the Receivership Entities. (Dkt. 849). As the motion noted, because the Court will enter the Nossaman Bar Order, there is no need to grant the requested relief. Accordingly, the motion for relief from the stay is **DENIED AS MOOT**.

schedule.⁴ (Dkt. 812). The Receiver posted the motion and supporting documents on the longstanding receivership website and emailed a summary of the same materials and a hyperlink to the website to all known investor and creditor email addresses. (Dkt. 815). The Court permitted those opposing the Global Settlement—the non-joining investors, Kim Peterson, and entities associated with Peterson (collectively, the “Objectors”)—to file briefs opposing the global settlement and bar orders, (Dkt. 812)⁵; allowed interest investors to attend the hearing both in person and telephonically, (Dkt. 874); permitted extensive oral argument on the Global Settlement and proposed bar orders, (Dkt. 884); and ordered supplemental briefing on issues unresolved after the hearing, (Dkt. 877, 885).

II. LEGAL STANDARD

The “primary purpose of [federal] equity

⁴ The SEC filed a motion to appear telephonically at the August 31, 2022 hearing on the Receiver’s motion, and did so with leave of Court. (Dkt. 874). The Court therefore **GRANTS** the SEC’s motion to appear telephonically. (Dkt. 873).

⁵ 2Budz Holding, LLC, Wakefield Capital, LLC, and Wakefield Investments, LLC (collectively, the “Wakefield Parties”) filed an *ex parte* motion for leave file oppositions and joinders to oppositions to the Receiver’s motions for (1) approval of the Global Settlement and (2) approval of the proposed distribution plan on July 25, 2022. (Dkt. 823). In its June 8, 2022 Order, the Court permitted non-parties to file oppositions to either or both motions by July 25, 2022. (Dkt. 812). The Wakefield Parties subsequently filed oppositions to both motions, (Dkt. 840, 842), and a joinder to other oppositions, (Dkt. 843), which the Court took into consideration in reaching its decision. The Wakefield Parties’ *ex parte* motion is therefore **GRANTED**. (Dkt. 823).

receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors.” *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). Federal courts have broad “power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership.” *SEC v. Cap. Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (internal citations and quotation marks omitted). This “authority derives from the inherent power of a court of equity to fashion effective relief,” *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980), and includes the power to compromise claims by approving settlements, *see SEC v. Stanford Int’l Bank, Ltd. (Stanford)*, 927 F.3d 830, 840 (5th Cir. 2019), and to enjoin all claims against a party, *see Wencke*, 622 F.2d at 1369.

Receivership courts may “exercise [their] discretion to approve settlements of disputed claims to receivership assets, provided that the settlements are ‘fair and equitable and in the best interests of the estate.’” *Stanford*, 927 F.3d at 840 (quoting *Ritchie Cap. Mgmt., L.L.C. v. Kelley*, 785 F.3d 273, 278 (8th Cir. 2015)). To determine whether a compromise is “fair and equitable,” courts evaluate the probability of success in litigation; any difficulties that may be encountered in collection; the complexity of the litigation and the expense, inconvenience, and delay necessarily attending; and the interest of the receivership entities’ creditors and their reasonable views. *See In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988) (discussing factors for evaluating settlements in bankruptcy context); *see also SEC v. Cap. Consultants, LLC*, 397 F.3d 733, 745 (9th Cir. 2005)

(finding bankruptcy law “analogous” to and, therefore, persuasive in the administration of receivership estates).

When approving receivership settlements, courts may bar claims against third parties. *See, e.g., SEC v. Aequitas Mgmt., LLC*, 2020 WL 7318305, at *1 (D. Or. Nov. 10, 2020) (“Where creditors of a receivership estate may have claims against third parties, . . . numerous district courts in receivership actions have barred certain further claims against those [third parties] in conjunction with authorizing settlements of certain other claims against the [third parties].”), *report and recommendation adopted*, 2020 WL 7318129, at *1 (D. Or. Dec. 11, 2020). The Court may enter bar orders to protect the receivership’s settlements with third parties when those settlements are conditioned on the entry of a bar order protecting the third parties. *See Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883, 902 (5th Cir. 2019); *id.* at 899–900 (finding the authority to enter bar orders extends to barring claims against alleged third-party tortfeasors); *see also SEC v. DeYoung*, 850 F.3d 1172, 1183 n.5 (10th Cir. 2017) (collecting cases where district courts entered bar orders in favor of third parties to secure settlements). This authority is an exception to the Anti-Injunction Act, 28 U.S.C. § 2283. *See Zacarias*, 945 F.3d at 902–03.

The Court can bar investor claims against a third party that are “derivative of and dependent on the receiver’s claims and compete with the receiver for [available] dollars.” *Zacarias*, 945 F.3d at 900. Such claims are derivative of and dependent on the receiver’s claims when the receiver “seeks recovery for injury to the [receivership] entities in the form of the

entities’ additional liability to investors due to [third party] conduct.” *Rotstain v. Mendez*, 986 F.3d 931, 941 (5th Cir. 2021). If investors seek recovery for the same injury as the receiver, the investors’ claims depend on the same loss: “[i]f the [receivership] entities had suffered no injury, the investors would have no claims.” *Id.*

Before issuing a bar order affecting the rights of non-parties, the Court should “afford[] [objectors] all the process due: notice and opportunity to be heard on the proposed settlement and bar orders.” *Zacarias*, 945 F.3d at 903. Notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections . . . and it must afford a reasonable time for those interested to make their appearance.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

III. DISCUSSION

The Objectors oppose the Global Settlement, Chicago Title Bar Order, and Nossman Bar Order, advancing numerous arguments for why the Court can’t or shouldn’t approve the Global Settlement or enter the bar orders. For the following reasons, the Court **OVERRULES** those objections.

A. The Court Can Bar the Objectors’ Claims Against Chicago Title and Nossaman

The Objectors advance several arguments concerning the Court’s lack of authority to enter the bar orders. For the following reasons, the Court

disagrees and overrules those objections.

**1. The Objectors' Claims are Derivative
Of and Dependent On the Receiver's
Claims**

The Objectors argue their claims can't be barred because they are sufficiently independent of the Receiver's claims. The Court can bar the Objectors' claims against Chicago Title and Nossaman if the claims are "derivative of and dependent on the [R]eceiver's claims and compete with the [R]eceiver for the dollars" available. *Zacarias*, 945 F.3d at 900. Here, the Court finds the Objectors' claims are derivative of and dependent on the Receiver's claims because the Receiver "seeks recovery for injury to the [Receivership Entities] in the form of the [E]ntities' additional liability to investors due to [Chicago Title and Nossaman's] conduct." *Rotstain*, 986 F.3d at 941. The Objectors' claims depend on the same loss as the Receiver's claims: "[i]f the [Receivership Entities] had suffered no injury, the [Objectors] would have no claims." *Id.*; see also *DeYoung*, 850 F.3d at 1176 (finding the district court could bar investor claims that were "substantially identical" to the receiver's because "[t]he claims [were] all from the same loss, from the same entities, relating to the same conduct, and arising out of the same transactions and occurrences by the same actors").

Several Objectors argue their claims are independent of the Receiver's because they advance claims based on distinct legal theories. However, these "distinct claims" all seek recovery for injuries suffered as a direct result of the Ponzi scheme and, therefore, remain "derivative of and dependent on the

[R]eceiver's claims.” *Zacarias*, 945 F.3d at 900. Attempts to distinguish a claim based on a different theory of liability in pursuit of additional recovery is “word play” and don’t impart independence on the Objectors’ claims. *Id.*

The Court finds the Objectors’ claims against Chicago Title and Nossaman are derivative of and dependent on the Receiver’s claims.

2. The Bar Orders Protect the Receivership *Res*

The Objectors argue the proposed bar orders aren’t necessary to protect the Receivership *res*. But the Receiver points out the bar orders protect the *res* by eliminating the threat of equitable indemnity claims against the Receivership, securing the Global Settlement and Nossaman Settlement, and, through the Settlement Payment, reducing or eliminating investor claims to Receivership assets. The Court agrees with the Receiver.

The Objectors have pending state law claims against Chicago Title and Nossaman in California state superior court. If the Objectors succeed in these state court actions, Chicago Title and Nossaman could, and likely would, bring equitable indemnity claims against the Receivership. Even if the Objectors’ claims fail, this Court has already granted Chicago Title permission to bring equitable indemnity claims against the Receivership for prior settlements, (Dkt. 758), and, if the Global Settlement is rejected, Chicago Title has made clear it will bring these Court-approved claims, (Dkt. 796 at 16). Regardless of the outcomes in these potential equitable indemnity

actions, the Receivership res will be diminished by the costs associated with continuing litigation.

At the August 31, 2022 hearing on the Global Settlement, the Objectors argued that California state law bars Chicago Title and Nossaman from bringing equitable indemnity claims against the Receivership. Specifically, they argued that California law prohibits either alleged or actual intentional tortfeasors from bringing equitable indemnity claims against another intentional tortfeasor. On September 1, 2022, the Court ordered supplemental briefing to address this state law question. (Dkt. 877, 885). After careful review of the briefing and relevant state law, the Court finds that California law permits Chicago Title and Nossaman—as alleged intentional tortfeasors—to bring equitable indemnity claims against the Receivership. *See Leko v. Cornerstone Building Inspection Serv.*, 86 Cal. App. 4th 1109, 1120 (2001) (allowing alleged intentional tortfeasors to bring equitable indemnity claims against another tortfeasor); Min. Order, *Kim Funding LLC v. Chicago Title Co.*, No. 37-2019-00066633-CU-FR-CTL (Cal. Super. Ct. Apr. 1, 2022) (holding Chicago Title may, as an alleged intentional tortfeasor, bring equitable indemnity claims against concurrent tortfeasors);⁶ *Baird v. Jones*, 21 Cal. App. 4th 684, 693 (1993) (holding that an intentional tortfeasor may obtain

⁶ The Court **GRANTS** Chicago Title’s request for judicial notice of (1) the April 1, 2022 minute order in the state court action *Kim Funding LLC v. Chicago Title Co.*, No. 37-2019-00066633-CU-FR-CTL, and (2) the transcript of this Court’s August 31, 2022 hearing, (Dkt. 902-4). State court proceedings are a proper subject for judicial notice “if those proceedings have a direct relation to matters at issue.” *Bias*, 508 F.3d at 1225.

equitable indemnity from another intentional tortfeasor).

The proposed bar orders are also necessary to secure the Receivership's settlements with Chicago Title and Nossaman. Federal receivership courts may enter bar orders to protect the receivership's settlements with third parties when those settlements are conditioned on the entry of a bar order protecting the third parties. *See Zacarias*, 945 F.3d at 902. Here, the proposed bar orders are necessary conditions for two settlements to which the Receiver is a party: the Global Settlement, (*see* Dkt. 795-4), and the Nossaman Settlement, (*see* Dkt. 796-14).

Finally, the proposed Chicago Title Bar Order is a necessary precondition for the transfer of the Settlement Payment, which will itself protect the *res* by reducing or eliminating claims to Receivership assets. The Settlement Payment will be distributed to the remaining investors in two ways. For the joining investors, Chicago Title Company will pay the designated amount directly to each investor. For the non-joining investors, Chicago Title Company will transfer the remaining balance of the Settlement Payment to the Receiver, who will distribute the amount designated for each non-joining investor at the conclusion of any such investor's appeal (or back to Chicago Title Company if an appeal is successful). Regardless of how an investor receives their settlement payment, each payment will reduce or eliminate that investor's claim to the Receivership's assets, thus protecting the *res* by preserving the remaining balance for future distribution. (*See* Dkt. 860 at 14).

For the forgoing reasons, the Court finds the proposed bar orders protect the Receivership *res*.

3. The Anti-Injunction Act Doesn't Prohibit the Bar Orders

The Objectors argue that the proposed bar orders violate the Anti-Injunction Act (“AIA”) by staying state court proceedings. 28 U.S.C. § 2283. The AIA prohibits federal courts from staying state court proceedings unless certain exceptions apply. *Id.* As relevant here, a federal court may stay state court proceedings “where necessary in aid of its jurisdiction.” *Id.* In the receivership context, federal courts exercise jurisdiction over the receivership estate and there is “a threat to the court’s jurisdiction’ where ‘a state proceeding threatens to dispose of property that forms the basis for federal in rem jurisdiction.’” *Zacarias*, 945 F.3d at 902–03 (quoting *Texas v. United States*, 837 F.2d 184, 186 n.4 (5th Cir. 1988)).

Here, the Objectors seek to continue to litigate against Chicago Title and Nossaman in state court. If the Objectors prevail in their actions, Chicago Title or Nossaman could bring equitable indemnity claims against the Receivership, which would incur additional legal expenses and could result in a money judgment against the Receivership. Additionally, the Global Settlement is contingent on the Court entering the Chicago Title Bar Order. Without the bar order, the Receivership Estate will not receive the \$24.3 million payment from Chicago Title. The Court finds the proposed bar orders are necessary to aid its jurisdiction over the Receivership Estate. *See* 28 U.S.C. § 2283.

4. Bankruptcy Rules Against Nonconsensual Releases Don't Prohibit the Bar Orders

The Objectors argue that the Court should follow bankruptcy court rules precluding nonconsensual third-party releases. But this isn't a bankruptcy proceeding, and this Court isn't bound by the strictures of bankruptcy law. *See SEC v. Sunwest Mgmt., Inc.*, 2009 WL 3245879, at *8 (D. Or. Oct. 2, 2009) ("Federal equity receivership courts are not required to exercise bankruptcy powers [] nor to strictly apply bankruptcy law."). While bankruptcy courts are barred by statute from issuing nonconsensual releases in certain situations, there is no such barrier to entering the proposed bar orders here. *Compare In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995) (holding the Bankruptcy Code bars bankruptcy courts from releasing third parties from liability), *with SEC v. Kaleta*, 2012 WL 401069, at *8 (S.D. Tex. Feb. 7, 2012) (issuing a bar order when "the undersigned is an Article III judge who is not impaired by Article I bankruptcy judges' lack of plenary authority"). Just the opposite is true: the Court has broad "power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership," *Cap. Consultants*, 397 F.3d at 738, including the power to bar third party claims, *see Wencke*, 622 F.2d at 1369. Accordingly, the Court finds bankruptcy rules don't prohibit the proposed bar orders.

5. Objectors Were Provided Due Process

The Court may bar the Objectors' claims only if the Objectors received "all the process due: notice and

opportunity to be heard on the proposed settlement and bar orders.” *Zacarias*, 945 F.3d at 903; *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (holding due process consists of adequate notice and an opportunity to be heard). Notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections . . . and it must afford a reasonable time for those interested to make their appearance.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Here, the Court ordered the Receiver to file a notice plan “reasonably calculated under all the circumstances to apprise interested parties of the pendency of the [motions] and afford them an opportunity to present their objections.” (Dkt. 789 at 3 (quoting *Mullane*, 339 U.S. at 314) (alternation in original)). The Court approved the proposed notice plan, (Dkt. 812), and the Receiver posted the motion and supporting documents on the longstanding receivership website and emailed a summary of the same materials and a hyperlink to the website to all known investor and creditor email addresses, (Dkt. 815). The Court permitted the Objectors to file briefs opposing the Global Settlement and bar orders; set a hearing date more than ninety days after the motion was filed, (Dkt. 812); allowed interested investors to attend the hearing both in person and telephonically, (Dkt. 874); permitted extensive oral argument at the hearing, (Dkt. 884); and, after the hearing, ordered supplemental briefing on unresolved issues, (Dkt. 877, 885). The Court finds the Objectors were provided notice and an opportunity to be heard sufficient to

satisfy the requirements of due process.

**B. The Global Settlement is Fair,
Reasonable, and in the Best Interests of
the Receivership**

**1. The Global Settlement is Fair with
Respect to the Receivership as a
Whole**

The Objectors argue that the Court should reject the Global Settlement because it's unfair to them individually. When supervising a receivership, a court may approve "settlements [that] are 'fair and equitable and in the best interests of the estate.'" *Stanford*, 927 F.3d at 840 (quoting *Ritchie Cap. Mgmt., L.L.C.*, 785 F.3d at 278). Courts determine whether a compromise is "fair and equitable" by evaluating the probability of success in litigation; any difficulties that may be encountered in collection; the complexity of the litigation and the expense, inconvenience, and delay necessarily attending; and the interest of the receivership entities' creditors and their reasonable views. *See In re Woodson*, 839 F.2d at 620.

If the Global Settlement is approved, non-joining investors will receive 100% of their MIMO net losses, joining investors will receive 70% of their MIMO net losses, and the Receivership will receive \$2.1 million for distribution to other investors with MIMO net losses. (Dkt. 795-1 at 18–19). The proposed bar orders will eliminate equitable indemnity claims against the Receivership. The Receiver estimates the Global Settlement will "pave the way" for an aggregate investor recovery between 90% and 95%. (Dkt. 795-1

at 5).

If, however, the Global Settlement is not approved, Chicago Title won't make any settlement payments and state court litigation will continue, which will necessarily delay distributions from the Receivership Estate. The Receivership would remain liable to the Plaintiff Investors and expend additional resources defending against equitable indemnity claims. The outcome and duration of this complex litigation is uncertain and would delay and reduce future distributions.

After considering the facts uncovered in her investigation, the risk of continued litigation, and the potential recovery, the Receiver determined that the Global Settlement was favorable and in the best interests of the Estate and investors as a whole. (Dkt. 795-1 at 29). The Court agrees and finds the Global Settlement to be fair, equitable, and in the best interest of the Receivership Estate.

Objectors also argue that the Global Settlement is unfair because of Chicago Title's limited right to share in future distributions (the "participation right") and the protective bar order. The participation right secured settlement payments covering 100% of the non-joining investors' MIMO net losses, (Dkt. 795-1 at 14; Dkt. 860 at 6), and the Chicago Title Bar Order is a prerequisite to the Global Settlement, (Dkt. 796 at 9 ("An essential component of the Global Settlement is its Bar Order, without which Chicago Title would not have agreed to its terms.")). In the Receiver's business judgment, both concessions were necessary to secure favorable settlement terms. *See Aequitas Mgmt., LLC*, 2020 WL 7318305 at *1 (accepting the "Receiver's

business judgment” as to the fairness of settlement compromises). The Court finds the participation right and Chicago Bar order fair, equitable, and in the best interests of the Receivership Estate.

2. The Negotiations Leading to the Global Settlement were Procedurally Fair

Finally, the Objectors argue the negotiations leading to the Global Settlement were procedurally unfair. The Global Settlement was reached after (1) extensive factual investigation by both the Receiver and Chicago Title and (2) vigorous, good faith, arm’s-length, mediated negotiations between the Receiver, Chicago Title, and the Plaintiff Investors. The facts of the fraudulent scheme at the heart of this case have been thoroughly investigated. The Receiver conducted a thorough, years-long investigation of the Ponzi scheme and the Receivership Entities. (Dkt. 860 at 8). Chicago Title conducted extensive discovery in state court, the fruits of which were available to the Receiver during the negotiations with Chicago Title. (*Id.*). In January 2022, the Receiver, Chicago Title, and the Plaintiff Investors attempted to reach a global resolution in Court-ordered mediation sessions with the Honorable Steven R. Denton.(Dkt. 795-1 at 12; Dkt. 796 at 7). Post-mediation negotiations between the Receiver and Chicago Title resulted in the proposed Global Settlement, which the remaining investors were given the opportunity to join. (Dkt. 795-1 at 12–13; Dkt. 796 at 8). When the non-joining investors rejected the Global Settlement, the Receiver determined that moving forward with the Global Settlement was in the best interest of the Receivership and investors as a whole. (Dkt. 860 at 9).

The Court finds that the negotiations leading to the Global Settlement were conducted in good faith, at arm's-length, by competent counsel, and were procedurally fair.

IV.CONCLUSION

The Court **OVERRULES** the objections and, by separate Orders, **GRANTS** the motion, **APPROVES** the Global Settlement, and **ENTERS** the Chicago Title Bar Order and Nossaman Bar Order.

IT IS SO ORDERED.

Dated: November 23, 2022

s/ Larry Alan Burns
Hon. Larry Alan Burns
United States District Judge

APPENDIX C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

AMERICAN NATIONAL
INVESTMENTS, INC.,

Defendants.

AMERICAN NATIONAL
INVESTMENTS, INC.,

Relief Defendants.

Case No.: 19-cv-1628-
LAB-AHG

**ORDER
ENTERING
NOSSAMAN BAR
ORDER**

Non-parties Chicago Title Company (“CTC”) and Chicago Title Insurance Company (“CTIC” and, together with CTC, “Chicago Title”), have requested the Court enter a bar order in favor of Nossaman LLP and Marco Costales (the “Nossaman Bar Order”) in connection with the Nossaman Settlement Agreement (the “Agreement”), a copy of which is attached as Exhibit 12 to Chicago Title’s joinder in support of the Receiver’s motion for approval of the settlement agreement with Chicago Title (the “Motion”). (Dkt. 796-14). The Court-appointed Receiver Krista L. Freitag (the “Receiver”) supports the request. (Dkt. 795-1 at 28). Following notice and a hearing, and having considered the filings and heard the arguments of counsel, the Court granted the

Receiver's Motion and approved the settlement agreement between Chicago Title and the Receiver. (Dkt. 927). The Court now **GRANTS** Chicago Title's request to enter the Nossaman Bar Order.

Accordingly, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Agreement was entered into amongst the following:
 - a. CTC and CTIC, inclusive of each's past, present and/or future parent companies, including but not limited to Fidelity National Financial, Inc., subsidiaries, affiliates, officers, directors, agents, employees, including but not limited to Adelle (Della) DuCharme, Betty Elixman, Thomas Schwiebert, and their heirs, executors, representatives, and/or trusts, if any, predecessors, successors, assigns, sureties, insurers, excess insurers, reinsurers, and any and all of their respective shareholders, owners, and/or partners, limited, general or limited liability (collectively, the "Chicago Title Parties");
 - b. Nossaman LLP ("Nossaman"), inclusive of its past, present and/or future parent companies, subsidiaries, affiliates, officers, directors, owners, partners, agents, employees, heirs, executors, representatives, and/or trusts, if any, predecessors, successors, assigns, sureties, insurers, excess insurers, reinsurers, and any and all of their respective shareholders, owners, and/or partners, whether general or limited liability, including but not limited to Marco D.

Costales (collectively, the “Nossaman Parties”);
and

- c. The Receiver for ANI Development, LLC, American National Investments, Inc. and their subsidiaries and affiliates (the “Receivership Entities”)
2. In August 2019, the Securities and Exchange Commission initiated this action against Gina Champion-Cain and the Receivership Entities, styled as *SEC v. Gina Champion-Cain, et al.*, Case No. 19-cv-1628-LAB-AHG, in connection with a fraudulent liquor license loan program (the “Program”).
 3. There is other currently pending litigation, in the California Superior Court for San Diego County, relating to the Program and styled as *Ovation Finance Holdings 2 LLC, Ovation Fund Management II, LLC, and Banc of California, N.A. v. Chicago Title Insurance Company, et al.*, Case No. 37-2020-00034947-CU-FR-CTL (the “Ovation/BoC Action”); *Banc of California, N.A. v. Laurie Peterson, et al.*, Case No. 37-2019-00060809 (the “BoC Action”); *CalPrivate Bank v. Chicago Title Company, et al.*, Case No. 37-2020-00039790-CU-FR-CTL (“CalPrivate Action I”); *CalPrivate Bank v. Kim H. Peterson, Trustee of the Peterson Family Trust dated April 14, 1992*, Case No. 37-2019-00058664-CU-BC-CTL (“CalPrivate Action II”); *Kim Funding, LLC, et al. v. Chicago Title Company, et al.*, Case No. 37-2019-00066633-CU-FR-CTL (the “Kim Funding Action”); *Krista Freitag, Court-appointed permanent receiver for ANI Development, LLC, American National*

Investments, Inc., and their subsidiaries and affiliates v. Chicago Title Company, et al., Case No. 37-2022-00000818-CU-FR-CTL (the “Receiver/CTC Action”); *Susan Heller Fenley Separate Property Trust, DTD 03/04/2010, et al. v. Chicago Title Company, et al.*, Case No. 37-2020-00022394 (the “Heller-Fenley Action”); and *Wakefield Capital LLC, Wakefield Investments, LLC, 2Budz Holdings, LLC, Doug and Kristine Heidrich, and Jeff and Heidi Orr v. Chicago Title Company, et al.*, Case No. 37-2020-00012568-CU-FR-CTL (the “Wakefield Action” and, together with the Ovation/BoC Action, the BoC Action, CalPrivate Action I, CalPrivate Action II, the Kim Funding Action, the Receiver/CTC Action, and the Heller-Fenley Action, the “State Court Actions”).

4. CTC and CTIC have also brought crossclaims for equitable indemnity in six of the State Court Actions against the Nossaman Parties, including specifically, but not limited to, Marco D. Costales, (the “Nossaman Crossclaims”).
5. On or about April 26, 2022, the Chicago Title Parties and the Receiver entered into a Settlement and Mutual Release Agreement (the “Receiver Settlement”), which was subject to this Court’s approval, and which, among other things, includes that as part of any such settlement between the Chicago Title Parties and the Nossaman Parties, the Chicago Title Parties would request and the Receiver would support the entry of a bar order in favor of the Nossaman Parties, thereby furthering the goals of global peace and finality that motivated the Receiver Settlement.

6. The notice of the Motion provided by the Receiver was reasonably calculated, under all the circumstances, to apprise interested parties of the relief sought in the Motion and afforded them an opportunity to present their objections and a reasonable time to make their appearance.
7. The Court hereby permanently bars and enjoins all persons and entities whatsoever, including but not limited to the Chicago Title Parties; Ovation Finance Holdings 2 LLC; Ovation Fund Management II, LLC; Banc of California, N.A.; CalPrivate Bank (f/k/a San Diego Private Bank) and inclusive of C3 Bank (f/k/a First National Bank of Southern California); Susan Heller Fenley; the Susan Heller Fenley Separate Property Trust, DTD 03/04/2010; the Susan Heller Fenley Inherited ROTH IRA; Shelley Lynn Tarditi; the Shelley Lynn Tarditi Trust; ROJ, LLC; John Milito; Wade Wakefield; Stacy Wakefield; Wakefield Capital LLC; Wakefield Investments, LLC; 2Budz Holding LLC; Doug Heidrich; Kristine Heidrich; Living at the Next Level, LLC; Heidi Orr; Jeffrey Orr; Greg Glassberg; Joseph J. Cohen; ABC Funding Strategies, LLC; ABC Funding Strategies Management, LLC; Laurie Peterson; Kim H. Peterson; Kim Funding, LLC; the Peterson Family Trust dated 4/14/1992; the Peterson Family Trust dated 9/29/1983; Kim Media, LLC; Kim Management, Inc.; Kim Aviation, LLC; Aero Drive, LLC; Aero Drive Three, LLC; Baltimore Drive, LLC; George Palmer Corporation; Kim Funding LLC Defined Benefit Pension Plan; ANI License Fund, LLC; Payson R. Stevens; Kamaljit K. Kapur; the Payson R. Stevens and Kamaljit Kaur

Kapur Trust Dated March 28, 2014; the Babette Newman Trust; Anthony D. Radojevich; Eugene Shapiro; Robert McArdle; Gina Champion-Cain; the Receiver and the Receivership Entities; any and all persons or entities who have been, are, or will be subject to any fraudulent transfer claim brought by the Receiver; any and all persons or entities who brought any of the State Court Actions and/or previously put any of the Nossaman Parties on notice of a claim or a potential claim; and any and all persons or entities who have submitted investor claim forms with the Receiver, or anyone else whomsoever that has a claim arising from the Program, from commencing, instituting, prosecuting, maintaining, or continuing, directly or indirectly, any lawsuit, action, cause of action, claim, crossclaim, third-party claim, demand, controversy, claim over, appeal (except for an appeal from this Court as it pertains to its approval of the Receiver Settlement and/or this Bar Order) or other action, of whatsoever nature at common law, statutory, legal, or equitable, or otherwise, including but not limited to any claim seeking damages, indemnity, contribution, or otherwise, in any forum against the Nossaman Parties related to or arising from, directly or indirectly any damages, injuries, or losses allegedly sustained by, or related directly or indirectly, to the subject matter of SEC v. Champion-Cain, the State Court Actions, and/or the Nossaman Crossclaims.

IT IS SO ORDERED.

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Dated: November 23, 2022

s/ Larry Alan Burns
Hon. Larry Alan Burns
United States District Justice