UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

DELTA INVESTMENTS & DEVELOPMENT, LLC,	**CASE NO. 12-01160-NPO**
DEBTOR.	**CHAPTER 7**

ORDER OVERRULING OBJECTION TO JOINT MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT RELATING TO SALE OF GRAND STATION HOTEL OWNED BY GREAT SOUTHERN INVESTMENT GROUP, INC. FILED BY AVONDALE SHIPYARDS, INC. AND ALEXANDRA TRUST

This matter came before the Court at a status conference held on September 5, 2013 (the "Status Conference") on the Objection to Joint Motion for Approval of Compromise and Settlement Relating to Sale of Grand Station Hotel Owned by Great Southern Investment Group, Inc. (the "Objection") (Dkt. No. 461) filed by Avondale Shipyards, Inc. ("Avondale") and Alexandra Trust ("Alexandra" or, together with Avondale, the "Objecting Parties"); the Response of Great Southern and M Street to *Objection to Joint Motion for Approval of Compromise and Settlement Relating to Sale of Grand Station Hotel Owned by Great Southern Investment Group, Inc.* [Dkt. No. 461] (the "Response") (Dkt. No. 473) filed by Great Southern Investment Group, Inc. ("Great Southern") and M Street Investments, Inc. ("M Street" or, together with Great Southern, the "Settling Parties"); the Reply to Response of Great Southern Investment Group, Inc.'s and M Street Investments, Inc.'s to Objection to Joint Motion for Approval of Compromise and Settlement Relating to Sale of Grand Station Hotel Owned by Great Southern Investment Group, Inc. [Dkt. 461 & 473] (the "Objecting Parties Reply") (Dkt. No. 475) filed by the Objecting Parties; the Sur-Reply of Great Southern and M Street to: *Reply to Response of Great Southern Investment Group, Inc.'s and M Street Investments, Inc.'s to*

Objection to Joint Motion for Approval of Compromise and Settlement Relating to Sale of Grand Station Hotel Owned by Great Southern Investment Group, Inc. [Dkt. 461 & 473] (Dkt. No. 477) (the "Settling Parties Surreply") filed by the Settling Parties; and the Limited Sur-Rebuttal to Sur-Reply of Great Southern and M Street to Reply to Response of Great Southern Investment Group, Inc.'s and M Street Investments, Inc.'s to Objection to Joint Motion for Approval of Compromise and Settlement Relating to Sale of Grand Station Hotel Owned by Great Southern Investment Group, Inc. (the "Objecting Parties Surrebuttal") (Dkt. No. 479) filed by the Objecting Parties in the above-referenced bankruptcy case. The Objecting Parties are represented by F. Douglas Montague, III; and the Settling Parties are represented by John D. Moore. Having considered the matter and being fully advised in the premises, the Court finds that the Objection should be overruled on the ground that the Objecting Parties lack standing to object or otherwise be heard.

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. These are core proceedings under 28 U.S.C. § 157(b)(2)(A) and (O). Notice of the Objection was proper under the circumstances.

Facts

Delta Investments & Development, LLC (the "Debtor") is the former owner and operator of a gaming casino and hotel in Vicksburg, Mississippi. The Debtor commenced this bankruptcy case on April 2, 2012, by filing a voluntary petition for relief under chapter 11 of the U.S. Bankruptcy Code.[1] (Dkt. No. 1).

[1] The Debtor's chapter 11 case was later converted to a chapter 7 case (Dkt. No. 280).

The Objecting Parties filed the Objection in response to the Joint Motion to Approve Compromise and Settlement (the "Settlement Motion") (Dkt. No. 456) filed by J. Stephen Smith, the chapter 7 trustee of the Debtor's bankruptcy estate (the "Trustee") and the Settling Parties pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.[2] Notice of the Settlement Motion was given to "the debtor, the trustee, all creditors and indenture trustees," as provided in Rule 2002 of the Federal Rules of Bankruptcy Procedure (Dkt. No. 457).

The Settlement Motion, if approved, would resolve separate adversary proceedings filed against Great Southern and M Street related to the Debtor's bankruptcy case. These two adversary proceedings are *J. Stephen Smith, Trustee v. Great Southern Investment Group, Inc. and M Street Investments, Inc.* (the "Hotel Adversary") (Adv. Proc. No. 13-00033-NPO, Adv. Dkt. No. 1) and *J. Stephen Smith, Trustee, the Mayor and Alderman of City of Vicksburg and Bally Gaming, Inc. v. M Street Investments, Inc.* (the "Sale Adversary") (Adv. Proc. No. 13-00044-NPO, Adv. Dkt. No. 1). Before addressing the standing issue raised by the Settling Parties, the Court pauses here to discuss briefly the nature of the claims asserted in these adversary proceedings.

Hotel Adversary

About one year prior to its bankruptcy filing, the Debtor transferred its interest in the Grand Station Hotel (the "Hotel") to Great Southern by special warranty deed recorded on March 29, 2011. (Case No. 13-00033-NPO, Adv. Dkt. No. 1-1). In the Hotel Adversary, the Trustee

[2] In addition to the Objecting Parties, the Mayor and Alderman of the City of Vicksburg (the "City") and Bally Gaming, Inc. ("Bally") interposed objections. (Dkts. Nos. 460 & 462). Those objections have been resolved, according to the Trustee. Gary Wilburn filed a Response to Trustee's Motion for Approval of Compromise and Settlement (Dkt. No. 459), in which he indicated his consent to the proposed settlement. The Objecting Parties, therefore, are the only entities that oppose the Settlement Motion.

seeks to set aside that transfer as a fraudulent conveyance under 11 U.S.C. § 548(a)(1). Great Southern and its parent company, M Street, are named as defendants in the Hotel Adversary.

Sale Adversary

On October 23, 2012, the Court entered an order approving the sale to M Street of certain real and personal property, consisting mostly of a casino barge and the furniture, fixtures, and equipment located on the barge (the "Sale Order") (Dkt. No. 254), at a purchase price of $400,000.00. The closing on the sale authorized by the Sale Order did not take place, and the Debtor's chapter 11 case was converted to a chapter 7 case on November 30, 2012. (Dkt. No. 280).

In the Sale Adversary, the Trustee, along with Bally and the City, seek damages against M Street to recover losses caused by M Street's alleged breach of contract and their costs incurred in enforcing the Sale Order. M Street is the sole defendant in the Sale Adversary.

Proposed Settlement Agreement

The Trustee, Great Southern, and M Street reached a settlement agreement (the "Settlement Agreement") (Ex. A, Dkt. No. 456-1), subject to the Court's approval, that resolves all claims asserted in both the Hotel Adversary and the Sale Adversary. Under the terms of the parties' compromise, the Trustee would release all claims asserted in the Hotel Adversary upon payment of $150,000.00 and all claims asserted in the Sale Adversary upon payment of $31,217.89, for a total settlement amount of $181,217.89. A motivating factor for Great Southern and M Street to agree to the settlement was the then-pending offer of Vicksburg Hotel, LLC ("VH") to purchase the Hotel from Great Southern. (*Id.*). After the Settlement Agreement was reached, the Hotel was conveyed to VH by special warranty deed signed on July 15, 2013 (Dkt. No. 474).

Objecting Parties

The Objecting Parties, in response to the Settlement Motion, filed the Objection in which they oppose the settlement and seek "to enjoin the contemplated sale of the Hotel [to VH] on the commercially unreasonable terms proposed by the fraudulently constituted board of directors and slate of officers." (Obj. ¶ 9). Although the Objecting Parties are not parties to the proposed settlement or creditors of the estate, they nevertheless claim a stake in the outcome of the Settlement Motion principally because of certain interests they purportedly hold in the Settling Parties.

Together, Avondale and NIT Management, Inc. own a majority interest in M Street; M Street, in turn, is the parent company of Great Southern. These ownership interests are undisputed. (Ex. A, Dkt. No. 461-1). In addition to these interests, however, Alexandra contends that it owns Avondale and, moreover, that Alexandra is the sole beneficiary of NIT Management Inc.'s interest in M Street. (Obj. ¶¶ 3-4). These alleged interests of Alexandra are disputed. The chart below provides a summary of the Objecting Parties' claims regarding their purported ownership interests in the Settling Parties:

<table>
<tr><td colspan="2">Alexandra</td><td colspan="2"></td></tr>
<tr><td>Avondale

(30%)</td><td>NIT Management, Inc.

(25%)</td><td>Venture Fund LP

(25%)</td><td>Ronald K. Lewis

(20%)</td></tr>
<tr><td colspan="4">M Street</td></tr>
<tr><td colspan="4">Great Southern</td></tr>
</table>

(Ex. A, Dkt. No. 461-1).

At the Status Conference, the Settling Parties questioned whether the Objecting Parties have standing to object to the Settlement Motion. Neither one of the Objecting Parties is a creditor in this case. The Court instructed the parties to submit briefs on the standing issue by a

specific date. The parties then filed the Response, the Objecting Parties Reply, the Settling Parties Surreply, and the Objecting Parties Surrebuttal.[3]

Discussion

The sole issue here is whether the Objecting Parties have standing to object or otherwise be heard on the pending Settlement Motion. Because it is the Objecting Parties that seek to be heard, they bear the burden of establishing that they have standing to do so. *Time Warner Cable, Inc. v. Hudson*, 667 F.3d 630, 635 (5th Cir. 2012). In considering the standing issue, the Court is "free to weigh the evidence and resolve factual disputes." *Montez v. Dept of Navy*, 392 F.3d 147, 149 (5th Cir. 2004).

Article III of the U.S. Constitution grants jurisdiction to the federal courts only over claims that constitute "cases" or "controversies." U.S. CONST. art. III, § 2, cl. 1. "[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citing *Allen v. Wright*, 468 U.S. 737, 751 (1984)). The three elements necessary for Article III standing are: (1) an injury-in-fact, (2) causation, and (3) redressability. *Id.* First, there must be "an injury-in-fact caused by a defendant's challenged conduct that is redressable by a court." *K.P. v. LeBlanc*, 627 F.3d 115, 122 (5th Cir. 2010) (citation omitted). Second, there must be "a causal connection between the injury and the conduct complained of" such that the injury is traceable to the challenged conduct. *Lujan*, 504 U.S. at 560. Third, "it must be likely, as opposed to merely speculative, that a

[3] The Objecting Parties filed the Objecting Parties Reply one day late. In the Objecting Parties Surrebuttal, which the Objecting Parties filed without leave of Court, they explain that the Objecting Parties Reply was filed late because their counsel did not understand the Court's electronic filing system. Given this explanation, the short duration of the delay, and the lack of prejudice to the Settling Parties, the Court will allow the late filing of the Objecting Parties Reply under the excusable neglect standard of Rule 9006(b) of the Federal Rules of Bankruptcy Procedure.

favorable decision will redress the plaintiff's injury." *S. Christian Leadership Conference v. Supreme Court of the State of La.*, 252 F.3d 781, 788 (5th Cir. 2001). "[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his *every* injury." *LeBlanc*, 627 F.3d at 123 (quoting *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982)). These constitutional requirements of standing apply to contested matters in bankruptcy cases. *City of Farmers Branch v. Pointer* (*In re Pointer)*, 952 F.2d 82, 85 (5th Cir. 1992).

The Objecting Parties contend that they have met the standing requirement because they are parties in interest. The term "party-in-interest" appears in many different sections of the Bankruptcy Code but is not defined in 11 U.S.C. § 101. The legislative history suggests the term was intentionally omitted from the list of definitions in 11 U.S.C. § 101 to allow some flexibility in its use. *See In re N. Am. Oil & Gas, Inc.*, 130 B.R. 473, 479 (Bankr. W.D. Tex. 1990), *abrogated on other grounds by Pritchard v. U.S. Trustee (In re England)*, 153 F.3d 232 (5th Cir. 1998). A non-exhaustive list of examples of parties-in-interest appears in 11 U.S.C. § 1109. Although that provision applies in the context of chapter 11 cases, the examples listed are instructive here. They include "the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee."[4] 11 U.S.C. § 1109. Notably, all of these entities have some type of direct relationship to the debtor or estate property. Consistent with the principles of Article III standing, courts generally have interpreted party-in-interest to include any person whose pecuniary interest is directly affected by the matter at hand. *Yates v. Forker (In re Patriot Co.)*, 303 B.R. 811, 815 (B.A.P. 8th Cir. 2004); *Yadkin*

[4] The term "equity security holder" means the holder of an equity security of the *debtor*, which the Objecting Parties do not claim to be. 11 U.S.C. § 101(17).

Valley Bank & Trust Co. v. McGee (*In re Hutchinson)*, 5 F.3d 750, 756 (4th Cir. 1993). The Court next applies these standing requirements to Alexandra and Avondale separately.

A. Alexandra

Alexandra is not listed as a creditor in the Debtor's bankruptcy schedules and has not filed a proof of claim. *See* 11 U.S.C. § 101(10). Moreover, Alexandra has no direct relationship to the Debtor and no direct pecuniary interest in the Hotel or to any property of the bankruptcy estate. Except for the present matter, Alexandra has not participated in the Debtor's bankruptcy case. *See Acceptance Loan Co. v. S. White Transp., Inc. (In re S. White Transp., Inc.),* 725 F.3d 494, 498 (5th Cir. 2013) (defining "participation" as connoting some activity in a case). Alexandra asserts standing based on certain ownership interests in the Settling Parties but provides no evidence in support of its claims. The exhibits the Objecting Parties attached to the Objection and the Objecting Parties Reply relate mostly to their version of what happened at the shareholder's meeting. (Exs. B-E, Dkt. Nos. 461-2 to 461-5; Ex. A, Dkt. No. 475-1).

Accordingly, the Court finds no evidence disputing the Settling Parties' assessment of Alexandra as a "stranger" in this case. (Resp. at 1). As such, there is simply nothing in the record to suggest that Alexandra has any pecuniary interest whatsoever that could be directly affected by the approval or disapproval of the proposed settlement. Therefore, the Court finds that Alexandra has failed to meet its burden of establishing standing to be heard on the Settlement Motion.

B. Avondale

Like Alexandra, Avondale is not listed as a creditor of the Debtor's bankruptcy estate and has not filed a proof of claim. *See* 11 U.S.C. § 101(10). Also like Alexandra, Avondale has no direct relationship to the Debtor and has no direct pecuniary interest in the Hotel or to any

property of the estate. Moreover, until the filing of the Objection, Avondale has not participated in the bankruptcy case. *See White Transp., Inc.*, 725 F.3d at 498. Unlike Alexandra, however, Avondale has shown that it does have an ownership interest in M Street, one of the Settling Parties. Avondale insists that its ownership interest in M Street, the parent company of Great Southern, is sufficient to confer standing upon it to be heard on its objection to Great Southern's sale of the Hotel to VH.

Avondale's opposition to the Settlement Agreement is that "the contemplated purchase price" of the Hotel is "unconscionably low and commercially unreasonable" and the "contemplated sale was made by a fraudulently constituted slate of officers and directors of M Street and Great Southern." (Obj. ¶ 20). Avondale makes these allegations regarding the terms of the sale although it admits that it does not know what price VH actually paid for the Hotel. (Obj. P. Reply ¶ 7).

The source of Avondale's malcontent can be traced to a meeting of M Street's shareholders held at the Hotel on June 27, 2012. At that meeting, Avondale claims that Jeffrey W. Parlin ("Parlin") "forged" Avondale's voting proxy to gain majority control of M Street by appointing himself its sole director and officer.[5] (Obj. ¶ 30 & Ex. B). According to Avondale, by gaining control of M Street, Parlin also gained control over Great Southern and its sole asset, the Hotel.

Avondale insists that there are dire consequences to the Settling Parties if the Court approves the Settlement Motion. "For the Court to authorize Great Southern's sale of the Hotel under the terms in question would cause catastrophic, permanent and irreparable injury to Great

[5] The Settling Parties allege that a representative of Avondale was present at that same meeting. (Resp. ¶ 29).

Southern, and its owner M Street" and "would . . . perpetrate a fraud upon the Court." (Obj. ¶¶ 32 & 34).

Curiously, Avondale does not mention in the Objection any dire consequences to the estate if the settlement is approved. In an attempt to rebut the Settling Parties' contention that its concern for Great Southern is misdirected, Avondale makes a fleeting reference in the Objecting Parties Reply to "the best interest of [the debtor]." (Obj. P. Reply ¶ 12). It is clearly the disposition of the Hotel by Great Southern, however, that drives Avondale's objection. Yet, whether the compromise is "fair and equitable and in the best interest of the *estate*" are the standards that the Court must consider in evaluating the proposed compromise. *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980) (emphasis added); *see Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968).

Making what is essentially a derivative argument, Avondale seeks to step into the shoes of Great Southern to undo the sale of the Hotel to VH. According to Avondale, "[t]he presently constituted board[s] of directors seeks to do nothing more than to bleed Great Southern of its only asset on unconscionable terms." (Obj. ¶ 35). Avondale concedes that "party-in-interest standing proscribes seeking to assert a derivative claim," but then cites Mississippi statutory law on shareholder derivative actions,[6] MISS. CODE ANN. §§ 79-4-7.41 to 79-4-7.42. (Obj. P. Reply

[6] "A derivative action is a suit brought by one or more shareholders to enforce a right of action belonging to the corporation, which it could have asserted, but did not." 2-18 LIABILITY OF CORPORATE OFFICERS & DIRECTORS, § 18.01 (Matthew Bender & Company, Inc. 2012). It is questionable whether the Court would have authority to decide a shareholder derivative action between the Objecting Parties and M Street. *Stern v. Marshall*, 131 S. Ct. 2594 (2011) (holding that bankruptcy court lacked authority to enter final judgment on debtor's state-law counterclaim); *Frazin v. Haynes & Boone, L.L.P. (In re Frazin)*, 732 F.3d 313 (5th Cir. 2013) (holding that under *Stern* bankruptcy court lacked authority to rule upon debtor's counterclaim for alleged violations of the Deceptive Trade Practices Act).

¶¶ 16-17). Avondale's argument is not a model of clarity but it appears that Avondale expects the Court to "wait-and-see" if Avondale might be successful in litigating a shareholder derivative action against M Street before considering the merits of the compromise.

As previously noted, Avondale is not a creditor and would not receive any distribution from the bankruptcy estate. These facts alone have been held sufficient by another bankruptcy court in this same district to preclude standing. "In determining whether a party has standing to be heard, . . . party in interest standing may depend on whether there is an interest in the distribution from the estate." *In re Delta Underground Storage Co.*, 165 B.R. 596, 598 (Bankr. S.D. Miss. 1994).

In another instructive case, *Krys v. Official Committee of Unsecured Creditors of Refco Inc. (In re Refco Inc.)*, 505 F.3d 109 (2d Cir. 2007), a group of investors in Sphinx Managed Futures Fund SPC ("Sphinx"), objected to a proposed settlement between Sphinx and the debtor, Refco Inc. ("Refco"). The settlement, if approved, would resolve an adversary proceeding initiated by the Official Committee of Unsecured Creditors of Refco Inc. (the "Committee") to recover as a preferential transfer approximately $300 million that Sphinx had withdrawn from Refco's accounts shortly before Refco declared bankruptcy. As part of a settlement reached between Sphinx and the Committee, Sphinx agreed to return $263 million to Refco's bankruptcy estate. The investors of Sphinx opposed the settlement, claiming that Sphinx had colluded with Refco in negotiating the settlement and had "simply threw the fight in order to protect its own insiders, and others, from scrutiny and legal exposure." *Masonic Hall & Asylum Fund v. Official Comm. of Unsecured Creditors of Refco Inc. (In re Refco Inc.)*, No. 05-60006, 2006 WL 3409088 (S.D.N.Y. Nov. 16, 2006), *aff'd sub nom. Krys v. Official Comm. of Unsecured Creditors (In re Refco Inc.)*, 505 F.3d 109 (2d Cir. 2007). The investors argued they were

"parties in interest" under 11 U.S.C. § 1109(b) and had standing to challenge the settlement on the bases of fraud and breach of fiduciary duty. *Refco*, 505 F.3d at 119.

The Second Circuit Court of Appeals in *Refco* affirmed the district court's dismissal of the investors' objection. The Second Circuit held that the investors did not have party-in-interest standing because the settlement affected them only indirectly. The investors were seeking to enforce rights that belonged to Sphinx as a creditor of Refco, and party in interest standing does not arise when a party seeks to assert a right that is derivative of another party's rights. Because Sphinx was a single legal entity, distinct from its investors, the Second Circuit concluded that only Sphinx could negotiate the settlement. *Refco*, 505 F.3d at 117 n.10.

Here, Avondale is even further removed from the Debtor and property of the estate than the investors of Sphinx. Whereas the Sphinx investors were creditors of a creditor of the debtor, Avondale has no relationship whatsoever traceable to the Debtor. Avondale is merely a shareholder of a shareholder of Great Southern. The alleged loss of value in the shares Avondale holds in M Street (purportedly caused by Great Southern's sale of the Hotel to VH for inadequate consideration) is too remote and attenuated for Avondale to be directly affected by the approval or disapproval of the proposed settlement. *In re Lehman Bros. Holdings Inc.*, No. 11 Civ. 3760, 2012 WL 1057952 (S.D.N.Y. Mar. 26, 2012) (holding that a creditor of a creditor of the debtor lacked standing although the debtor's ability to pay its creditor could affect the creditor's ability to pay its creditor).

Even if Avondale did have standing to challenge the compromise, its objections (that the price VH paid for the Hotel was unreasonable and Great Southern lacked authority to sell the Hotel to VH) do not warrant disapproval of the proposed settlement. *See* MISS. CODE ANN. § 79-4-3.04 (providing that with some exceptions, such as shareholder claims, "the validity of

corporate action may not be challenged on the ground that the corporation lacks or lacked power to act"). The sale of the Hotel to VH is related only tangentially to the controversy over the proposed settlement. Obviously, the sale to VH occurred well after the alleged fraudulent transfer of the Hotel by the Debtor to Great Southern. It is the alleged fraudulent transfer of the Hotel to Great Southern, however, and not the sale of the Hotel to VH, that is the principal subject of the Hotel Adversary. The Objecting Parties are incorrect when they claim, "the Hotel sale [to VH] is the principal subject of the [Settlement Motion]." (Obj. ¶ 6). On the other hand, the Settling Parties are just as incorrect when they claim, "the [Settlement Motion] has nothing to do with the sale of the Hotel by Great Southern to [VH]." (Resp. at 2). The sale of the Hotel to VH is relevant to the Settlement Motion, but its relevancy is limited to the extent it reflects the value of the Hotel at the time of the alleged fraudulent transfer. The price that VH paid is only one of many factors that the Court could consider in determining whether to approve or disapprove the settlement. Other factors, for example, would include the amount of legal and equitable liens on the Hotel, including ad valorem property taxes of more than $1 million, and the likelihood that the avoidance action would succeed.

Other courts have rejected standing to object to a compromise on similar facts. *See, e.g.*, *Stark v. Moran (In re Moran)*, 385 B.R. 799 (6th Cir. B.A.P. 2008) (holding that the debtor's brother-in-law, who was not a creditor of the estate, lacked standing to object to settlement in which the bankruptcy trustee agreed to sell property of the estate to the debtor, and not to the brother-in-law even though the brother-in-law had offered a higher price); *Andrews Davis Law Firm v. Loyd (In re S. Med. Arts Cos.)*, 343 B.R. 258, 263 (10th Cir. B.A.P. 2006) (holding that law firm did not have standing to object to settlement agreement given that the law firm's claim against the estate had been disallowed); *In re Huggins*, 460 B.R. 714, 719-20 Bankr. E.D. Tenn.

2011) (holding that buyer of cause of action from the estate who was not a creditor of the bankruptcy estate lacked standing to object to settlement although there was a possibility that the value of the cause of action that he acquired might be negatively affected by the settlement); *In re Malone Properties, Inc.*, No. 8607364SGR, 1992 WL 611459 (Bankr. S.D. Miss. June 17, 1992) (holding that insurer of debtor lacked standing to object to order lifting stay).

The Court's conclusion that Avondale lacks standing is not to say that the allegations of fraud and collusion raised by the Objecting Parties are not serious or that they lack merit. The Objection simply is not the appropriate vehicle for addressing a thinly disguised shareholder derivative claim. As the Court in *Refco* explained, "a bankruptcy court's obligation [in a settlement hearing] is to determine whether a settlement is in the best interests of *the estate*, not to ensure that the *creditors'* representatives are honoring their fiduciary duties." *Refco*, 505 F.3d at 119.

Moreover, the Court disagrees that approval of the settlement would prejudice the ability of Avondale to challenge the Hotel sale to VH in another forum. Because Avondale lacks standing to challenge the proposed settlement, Avondale would not be estopped from asserting a claim, for example, that Great Southern's board of directors breached the fiduciary duty to its shareholders by agreeing to sell the Hotel to VH for inadequate consideration. *See State ex rel. Moore v. Molpus*, 578 So. 2d 624, 640 (Miss. 1991) (collateral estoppel/issue preclusion "precludes parties from relitigating issues authoritatively decided on their merits in prior litigation to which they were parties or in privity"); *see Delta Underground*, 165 B.R. at 598 (rejecting argument that legal rights of law firm would not be preserved for later adjudication); *Savage & Assocs. v. K&L Gates LLP (In re Teligent, Inc.)*, 640 F.3d 53, 61 (2d Cir. 2011) (holding that because law firm lacked standing to be heard in bankruptcy court on approval of

settlement, law firm was not estopped from asserting defense in legal malpractice action relating to validity of that amount).

Conclusion

The tangential interest of the Objecting Parties in the approval or disapproval of the Settlement Motion does not give rise to standing to interject themselves into this matter. Allowing the Objecting Parties to do so, when they have no legal interest in the distribution of the Debtor's estate and only a remote interest in the settlement because of the Hotel sale, would permit them to usurp the Trustee's ability to act expeditiously in the best interests of the estate. Any other result would require bankruptcy trustees to negotiate settlements not only with the legal representatives of non-debtor corporations but also with all of their shareholders. Moreover, at the Status Conference, the Objecting Parties stated their intent to conduct prolonged discovery on numerous factual issues related to their allegations of unauthorized corporate actions of M Street and Great Southern. It is thus likely that their involvement at a hearing on the Settlement Motion would complicate and delay the Debtor's bankruptcy case. In a chapter 7 case like this one, however, the role of the Court is to facilitate the orderly and efficient liquidation of the Debtor's assets. It is not the role of the Court to determine whether a corporate representative of a non-debtor honored his fiduciary duty to the shareholder of the corporation when he agreed to the settlement. *See Refco,* 505 F.3d at 118 (granting peripheral parties status as "parties in interest" thwarts the traditional purpose of bankruptcy laws, which is to provide reasonably expeditious rehabilitation of financially stressed debtors). Accordingly, the Court finds that the Objection should be overruled. The Court will consider the merits of the Settlement Motion at a hearing scheduled by separate notice.

IT IS, THEREFORE, ORDERED that the Objection is hereby overruled on the ground that the Objecting Parties lack standing.

SO ORDERED.

Neil P. Olack
United States Bankruptcy Judge
Dated: November 22, 2013