

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION
DIVISION

In re:

CRYSTAL CRUISES, LLC, a California
limited liability company,

Case No. 2022-002742-CA-01
Lead Case

CRYSTAL HOLDINGS U.S., LLC, a
Delaware limited liability company,

Case No. 2022-002757-CA-01

CRYSTAL AIRCRUISES, LLC, a Florida
limited liability company, and

Case No. 2022-002758-CA-01

Assignors,
To:

(Jointly Administered Cases)

MARK C. HEALY,

Assignee.

**ASSIGNEE'S MOTION TO APPROVE SETTLEMENT AND
RELEASE AGREEMENT WITH THE INDEPENDENT ORDER OF FORESTERS**

**NOTICE OF OPPORTUNITY TO OBJECT
TO CREDITORS AND OTHER INTERESTED PARTIES:**

PLEASE TAKE NOTICE that, pursuant to Fla. Stat. § 727.111(4), the Assignee may enter into and consummate the settlement described herein, and the Court may consider these actions without further notice or hearing unless a party in interest files an objection within 21 days from the date this paper is served. If you object to the relief requested in this paper, you must file your objection with the Miami-Dade County Clerk of the Court at 73 W. Flagler Street, Room 133, Miami, FL 33130, and serve a copy on the Assignee's counsel, Paul Steven Singerman, Esq. and Samuel Jason Capuano, Esq., Berger Singerman LLP, 1450 Brickell Avenue, Suite 1900, Miami, FL 33131, and any other appropriate person. If you file and serve an objection within the time permitted, the Court shall schedule a hearing and notify you of the scheduled hearing. If you do not file an objection within the time permitted, the Assignee and the Court will presume that you do not oppose the granting of the relief requested in the paper.

Mark C. Healy (the “Assignee”), solely in his capacity as the Assignee for the benefit of creditors of Crystal Cruises, LLC (“Crystal Cruises”), Crystal Holdings U.S., LLC (“Crystal Holdings”), and Crystal AirCruises, LLC (“Crystal AirCruises”) (collectively, the “Assignors”), by and through his undersigned counsel and pursuant to Florida Statutes §§ 727.102, 727.108(10), 727.109(1), (4), (7), and (15), 727.111(4), 727.114, and the Court’s *Order Granting Assignee’s Motion for Entry of an Order: (1) Approving Noticing Procedures, (2) Approving Proof of Claim Forms; and (3) Extending Deadline to Serve Notice of Assignment* (the “Notice Procedures Order”) entered on March 3, 2022, files this *Motion to Approve Settlement and Release Agreement with The Independent Order of Foresters* (the “Motion”). In support of the Motion, the Assignee states:

Background

1. On February 10, 2022, the Assignors executed and delivered, and the Assignee accepted, irrevocable assignments for the benefit of creditors to the Assignee (collectively, the “Assignments”). On February 11, 2022 (the “Petition Date”), a *Petition Commencing Assignment for the Benefit of Creditors* was filed by the Assignee for each of the Assignors, thereby commencing the following assignment for the benefit of creditors cases pursuant to Section 727 of the Florida Statutes, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the “Court”): *In re Crystal Cruises, LLC*, Case No. 2022-002742-CA-01, *In re Crystal Holdings U.S., LLC*, Case No. 2022-002757-CA-01, and *In re Crystal AirCruises, LLC*, Case No. 2022-002758-CA-01 (collectively, the “Assignment Cases”).

2. Prior to the Petition Date, the Assignors were engaged in the travel and entertainment business, including operating ocean, river, and expedition cruises and conducting related activities around the world.

3. Foresters is a Canadian fraternal benefit society that provides life insurance and other financial solutions to customers in Canada, the United Kingdom, and United States. Foresters, for its product distributors and employees, entered into two incentive group contracts (as amended) with Crystal Cruises pursuant to which Foresters purchased berths from Crystal Cruises on one of its cruise ships, Crystal Symphony, with an itinerary from Rome to Venice, between June 2-9, 2022 (collectively, the “Contracts”).

4. Pursuant to the Contracts, Foresters wired funds to: (i) Crystal Cruises’ bank account at Bank of Tokyo; and (ii) Crystal Cruises’ Reserved Deposits account at CitiBank (the “CitiBank Reserved Deposits Account”).

5. The Parties dispute whether the funds deposited into the CitiBank Reserved Deposits Account are property of the Crystal Cruises estate or are entitled to a priority claim against the Crystal Cruises estate.

6. On February 25, 2022, Foresters filed *The Independent Order of Foresters’ Emergency Motion for Temporary Injunction* (“Motion for Temporary Injunction”) in the Crystal Cruises Assignment Case and, following a hearing, on March 9, 2022, the Court entered the *Order on The Independent Order of Foresters’ Emergency Motion for Temporary Injunction* (the “Temporary Injunction Order”).

7. On April 6, 2022, Foresters filed a Complaint (the “Complaint”), commencing the supplemental proceeding entitled *The Independent Order of Foresters v. Marc C. Healy, Assignee and Crystal Cruises, LLC, Assignor*, in Case No. 2022-006401 CA 44 (the “Action”), wherein it asserted a claim for declaratory relief: (i) adjudging Foresters’ ownership of the Deposits, and (ii) that the Deposits are not assets of the Crystal Cruises estate.

8. On May 16, 2022, the Assignee filed an *Answer and Affirmative Defenses to Plaintiffs' Complaint*, wherein it denied the allegations in Foresters' Complaint and asserted a number of defenses.

9. On June 8, 2022, Foresters submitted its *Proof of Claim* in the amount of \$815,849.50 (the "Foresters POC") against the Crystal Cruises estate (the "Estate").

10. Following mediation, the Parties have settled all disputes relating to the Motion for Temporary Injunction, the Foresters POC, and the Complaint filed in the Action.

The Settlement

11. To avoid the cost and uncertainty of litigation, the Assignee and Foresters (collectively, the "Parties") have negotiated a settlement (the "Settlement") with respect to the disputes between them and have entered into the attached Settlement and Release Agreement (the "Settlement Agreement"), attached hereto as **Exhibit "1,"** subject to this Court's approval. The pertinent terms of the Settlement Agreement¹ are set forth below:

- A. In consideration for Foresters' promises made in the Settlement Agreement, including, but not limited to, its agreement to release its claims against the Assignee, Assignors, Estate, and any Defendant Released Parties², Assignee shall, in full satisfaction of the Foresters POC and in connection with the Complaint filed in the Action: (i) pay Foresters the total amount of One Hundred Sixty-Six Thousand Three Hundred Six and 25/100 Dollars (\$166,306.25) (the "Settlement Amount"), and (ii) confirm to New Crystal, solely in connection with Foresters' efforts to obtain a New Crystal Credit and not for any other reason, that Foresters has a validated claim in the Crystal Cruises Assignment Case in the amount of \$649,543.25 (*i.e.*, the \$815,849.50 Foresters POC amount less the \$166,306.25 Settlement Amount).
- B. The Settlement Agreement shall not take effect unless and until the Court's Order approving the Settlement Agreement (the "Approval Order"), which Approval Order shall be in a form acceptable to both Parties, becomes final

¹ The following is a summary of the terms of the Settlement Agreement. The terms of the Settlement Agreement shall control, and creditors and parties-in-interest are urged to review the Settlement Agreement for its complete terms.

² All terms not defined herein shall have the meanings ascribed to them in the Settlement Agreement.

and non-appealable. In the event that the Court does not approve the Settlement Agreement, nothing in the Settlement Agreement shall be deemed a representation or admission by any Party as to any issue, and the Parties shall be returned to the status quo prior to the entry into the Settlement Agreement.

- C. The Parties shall cause to be filed a stipulation dismissing the Complaint with prejudice against both the Assignee and Crystal Cruises in substantially the form of Exhibit A attached to the Settlement Agreement within five (5) business days of the Approval Order becoming final and non-appealable. Foresters shall also file a withdrawal of its Motion for Temporary Injunction within five (5) business days of the Approval Order becoming final and non-appealable. The Parties shall also cause to be filed a joint motion to modify the Temporary Injunction Order to extinguish and release its requirements, in substantially the form of Exhibit B attached to the Settlement Agreement within five (5) business days of the Approval Order becoming final and non-appealable. Each Party shall bear its own costs and fees incurred in connection with the Action, the Motion for Temporary Injunction, the Foresters POC, and in connection with any legal work or expenses incurred in relation to, or in connection with, the Action, the Motion for Temporary Injunction, the Foresters POC, the Mediation, and/or the Settlement Agreement.
- D. The Settlement Amount shall be paid by wire transfer within five (5) business days after the Approval Order becomes final and non-appealable in the manner provided for in the Settlement Agreement.
- E. Foresters acknowledges and agrees that its claims against Crystal Cruises (including the Foresters POC and any claims asserted in the Action) are general unsecured claims. Foresters acknowledges and agrees that no escrow, trust (express or implied), or other similar relationship or arrangement existed between Foresters and Crystal Cruises.
- F. The Settlement Agreement provides for mutual general releases.
- G. The Parties agree that the Court shall retain jurisdiction to enforce the Settlement Agreement.

Relief Requested

12. The Assignee, in an exercise of his business judgment, believes that the Settlement is in the best interest of the estates and creditors. The Settlement is fair and reasonable, and the Assignee submits that the Court should approve the Settlement Agreement.

13. Pursuant to Fla. Stat. 727.109(7), the Court has the power to “hear and determine a motion brought by the assignee for approval of ... the compromise or settlement of a controversy ...” Further, the Court has the power to “[a]llow or disallow claims against the estate and determine their priority ...” and the Court is authorized to “[e]xercise any other powers that are necessary to enforce or carry out the provisions of this chapter.” Fla. Stat. § 727.109(4) and (15).

14. Although Chapter 727 provides for court approval of settlements proposed by an assignee, the statutes do not set forth any specific criteria for approving settlements. The Assignee submits that analogous bankruptcy principles should guide this Court’s evaluation of the Settlement Agreement. “State courts often look to federal bankruptcy law for guidance as to legal issues arising in proceedings involving assignments for the benefit of creditors.” *Moecker v. Antoine*, 845 So. 2d 904, 911 n. 10 (Fla. 1st DCA 2003).

15. It is generally recognized that the law favors compromise of disputes over litigation. *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993). In *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), the court enunciated certain factors which must be considered in determining whether to approve a compromise. These factors include the following: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *Id.*

16. The terms of the Settlement satisfy the above *Justice Oaks* factors. The first factor – the probability of success in litigation – weighs in favor of approval. While the Assignee asserts that he would prevail in the Action, there is always risk in litigation. The second factor – the difficulties to be encountered in the matter of collection – is neutral, as the Assignee is settling

claims against the Assignors' estates and litigation against the Assignee. The third factor – the complexity, expense, inconvenience, and delay of the litigation – also weighs heavily in favor of approval. The litigation between the Assignee and Foresters has been expensive and time-consuming, and continued litigation would result in precious estate resources being siphoned towards continued discovery, dispositive motion practice, and trial. Lastly, the Settlement is in the best interest of creditors, putting an end to the expensive litigation and resolving the Foresters POC.

WHEREFORE, the Assignee respectfully requests the Court enter an Order, in the form attached hereto as **Exhibit “2”**, (i) granting this Motion; (ii) approving the Settlement Agreement in its entirety; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: May 23, 2023

BERGER SINGERMAN LLP
Counsel for Assignee
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: /s/ Samuel J. Capuano
Paul Steven Singerman
Florida Bar No. 378860
singerman@bergersingerman.com
Samuel J. Capuano
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scapuano@bergersingerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing was served via the Florida Court's e-Filing Portal on May 23, 2023 to all parties that have entered an appearance in this case; on counsel for the Assignors, Adam Losey, Esq., Losey PLLC, 1420 Edgewater Drive, Orlando, FL 32804, via email to alosey@losey.law; via email to cbl44@jud11.flcourts.org pursuant to CBL Rule 2.2; and via e-mail to all creditors and interested parties on the e-mail service list pursuant to the Notice Procedures Order.

By: /s/ Samuel J. Capuano
Samuel J. Capuano

EXHIBIT 1
(Settlement Agreement)

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT (this “**Agreement**”) is made this 17th day of May, 2023 (the “**Effective Date**”), by and between THE INDEPENDENT ORDER OF FORESTERS (“**Foresters**” or “**Plaintiff**”) and MARK C. HEALY (“**Assignee**” or “**Defendant**”), solely in his capacity as the Assignee for the benefit of creditors of Crystal Cruises, LLC (“**Crystal Cruises**”), Crystal Holdings U.S. LLC, and Crystal Aircruises LLC (collectively, the “**Assignors**”) (each, a “**Party**,” and collectively, the “**Parties**”).

RECITALS

WHEREAS, on February 10, 2022, the Assignors executed and delivered, and the Assignee accepted, irrevocable assignments for the benefit of creditors to the Assignee (collectively, the “**Assignments**”). On February 11, 2022 (the “**Petition Date**”), a *Petition Commencing Assignment for the Benefit of Creditors* was filed by the Assignee for each of the Assignors, thereby commencing the following assignment for the benefit of creditors cases pursuant to Section 727 of the Florida Statutes, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the “**Court**”): *In re Crystal Cruises, LLC*, Case No. 2022-002742-CA-01, *In re Crystal Holdings U.S., LLC*, Case No. 2022-002757-CA-01, and *In re Crystal AirCruises, LLC*, Case No. 2022-002758-CA-01 (collectively, the “**Assignment Cases**”);

WHEREAS, prior to the Petition Date, the Assignors were engaged in the travel and entertainment business, including operating ocean, river, and expedition cruises and conducting related activities around the world.

WHEREAS, Foresters is a Canadian fraternal benefit society that provides life insurance and other financial solutions to customers in Canada, the United Kingdom, and United States.

WHEREAS, Foresters, for its product distributors and employees, entered into two incentive group contracts (as amended) with Crystal Cruises pursuant to which Foresters purchased berths from Crystal Cruises on one of its cruise ships, Crystal Symphony, with an itinerary from Rome to Venice, between June 2-9, 2022 (collectively, the “**Contracts**”).

WHEREAS, pursuant to the Contracts, Foresters wired funds to: (i) Crystal Cruises’ bank account at Bank of Tokyo; and (ii) Crystal Cruises’ Reserved Deposits account at CitiBank (the “**CitiBank Reserved Deposits Account**”).

WHEREAS, the Contracts had to be amended and modified several times because of the COVID-19 Pandemic, and during such time, Crystal Cruises provided refunds to Foresters, and Foresters made additional deposits to Crystal Cruises.

WHEREAS, Foresters deposited an aggregate sum of \$815,849.50 with Crystal Cruises, net of refunds. Foresters asserts that \$665,255 of the \$815,849.50 was deposited in the CitiBank Reserved Deposits Account. The Assignee asserts that \$382,812 of the \$815,849.50 was deposited in the CitiBank Reserved Deposits Account.

WHEREAS, the Parties dispute whether the funds deposited into the CitiBank Reserved Deposits Account are property of the Crystal Cruises estate or are entitled to a priority claim against the Crystal Cruises estate.

WHEREAS, on February 25, 2022, Foresters filed *The Independent Order of Foresters' Emergency Motion for Temporary Injunction* (“**Motion for Temporary Injunction**”) in the Crystal Cruises Assignment Case and, following a hearing, on March 9, 2022, the Court entered the *Order on The Independent Order of Foresters' Emergency Motion for Temporary Injunction* (the “**Temporary Injunction Order**”).

WHEREAS, on April 6, 2022, Foresters filed a Complaint (the “**Complaint**”), commencing the supplemental proceeding entitled *The Independent Order of Foresters v. Marc C. Healy, Assignee and Crystal Cruises, LLC, Assignor*, in Case No. 2022-006401 CA 44, in the Court (the “**Action**”), wherein it asserted a claim for declaratory relief: (i) adjudging Foresters' ownership of the Deposits, and (ii) that the Deposits are not assets of the Crystal Cruises estate.

WHEREAS, on May 16, 2022, the Assignee filed an *Answer and Affirmative Defenses to Plaintiffs' Complaint*, wherein it denied the allegations in Foresters' Complaint and asserted a number of defenses.

WHEREAS, on June 8, 2022, Foresters submitted its *Proof of Claim* in the amount of \$815,849.50 (the “**Foresters POC**”) against the Crystal Cruises estate (the “**Estate**”).

WHEREAS, beginning on May 2, 2023, the Parties participated in a private mediation session before Eric N. Assouline, of Assouline & Berlowe, P.A., in an attempt to resolve all disputes between Foresters, the Assignee, and the Assignors, including the claims stemming from the Motion for Temporary Injunction, the Foresters POC, and the Complaint filed in the Action (the “**Mediation**”).

WHEREAS, the Parties hereto desire to compromise, settle, and release any and all claims arising out of and relating to the Motion for Temporary Injunction, the Foresters POC, and the Complaint filed in the Action.

WHEREAS, the Assignee sold substantially all of the assets of Crystal Cruises to a new company (“**New Crystal**”). New Crystal has offered certain customers, including Foresters, a credit on future bookings on New Crystal in connection with the amount of any validated claim in the Crystal Cruises Assignment Case (a “**New Crystal Credit**”). The offering and terms of a New Crystal Credit are in the sole discretion of New Crystal and the Assignee has no authority to approve or deny any New Crystal Credit.

NOW THEREFORE, in consideration of the terms, conditions, and promises set forth herein, the value and adequacy of which consideration the Parties hereby acknowledge, the Parties agree as follows:

TERMS AND SETTLEMENT

1. **Adoption of Recitals**. The above recitals are true and correct, are incorporated herein by this reference, and constitute a part of this Agreement.

2. **Settlement Amount.** In consideration for Foresters' promises made herein, including, but not limited to, its agreement to release its claims against the Assignee, Assignors, Estate, and any Defendant Released Parties (as defined below), Assignee shall, in full satisfaction of the Foresters POC and in connection with the Complaint filed in the Action: (i) pay Foresters the total amount of One Hundred Sixty-Six Thousand Three Hundred Six and 25/100 Dollars (\$166,306.25) (the "**Settlement Amount**"), and (ii) confirm to New Crystal, solely in connection with Foresters' efforts to obtain a New Crystal Credit and not for any other reason, that Foresters has a validated claim in the Crystal Cruises Assignment Case in the amount of \$649,543.25 (*i.e.*, the \$815,849.50 Foresters POC amount less the \$166,306.25 Settlement Amount).

3. **Court Approval.** Within five (5) business days of the Parties executing this Agreement, the Assignee shall file a motion seeking the Court's approval of this Agreement. This Agreement shall not take effect unless and until the Court's Order approving this Agreement (the "**Approval Order**"), which Approval Order shall be in a form acceptable to both Parties, becomes final and non-appealable. In the event that the Court does not approve this Agreement, nothing herein shall be deemed a representation or admission by any Party as to any issue, and the Parties shall be returned to the status quo prior to the entry into this Agreement.

4. **Dismissal of Complaint and Termination of the Action; Withdrawal of the Motion for Temporary Injunction; Modification of the Temporary Injunction Order.** The Parties shall cause to be filed a stipulation dismissing the Complaint with prejudice against both the Assignee and Crystal Cruises in substantially the form of **Exhibit A** hereto within five (5) business days of the Approval Order becoming final and non-appealable. Foresters shall also file a withdrawal of its Motion for Temporary Injunction within five (5) business days of the Approval Order becoming final and non-appealable. The Parties shall also cause to be filed a joint motion to modify the Temporary Injunction Order to extinguish and release its requirements, in substantially the form of **Exhibit B** hereto within five (5) business days of the Approval Order becoming final and non-appealable. Each Party shall bear its own costs and fees incurred in connection with the Action, the Motion for Temporary Injunction, the Foresters POC, and in connection with any legal work or expenses incurred in relation to, or in connection with, the Action, the Motion for Temporary Injunction, the Foresters POC, the Mediation, and/or this Agreement.

5. **Payment of Settlement Amount.** The Settlement Amount shall be paid by wire transfer within five (5) business days after the Approval Order becomes final and non-appealable. Foresters' wire transfer instructions are as follows:

Bank: PNC Bank

ABA #: 031000053

Account No.: 5323502673

Contact Person: Mary Walker, mwalker@foresters.com

Account Name: The Independent Order of Foresters

Bank Address: 500 First Ave., Pittsburgh, PA 15219

6. **Full and Complete Settlement.** Payment of the Settlement Amount is made in full and complete settlement of any and all claims, including claims asserted in the Action, the Motion for Temporary Injunction, the Foresters POC, and any and all causes of action Foresters could have asserted in the Action or in the Assignment Cases, or in any other action or proceeding against the Assignee, Crystal Cruises, the Estate, or the Defendant Released Parties on or before the Effective Date, and shall serve to fully compensate Foresters for any damages it allegedly suffered as a result of any prior dealings between itself and Crystal Cruises, the Assignee, or the Defendant Released Parties, and for any expenses, costs, or attorney's fees it has incurred that are in any way related to Crystal Cruises, the Assignee, the Action, or any prior dealings Foresters has had with Crystal Cruises, the Assignee, or the Defendant Released Parties.

The Assignee also acknowledge that the Agreement is a complete settlement of any and all claims, including claims asserted in the Action (if any), and any and all causes of action the Assignee could have asserted in the Action or in the Assignment Cases or in any other action or proceeding against Foresters or the Plaintiff Released Parties on or before the Effective Date.

7. **Foresters' Acknowledgement of General Unsecured Claim.** Foresters acknowledges and agrees that its claims against Crystal Cruises (including the Foresters POC and any claims asserted in the Action) are general unsecured claims. Foresters acknowledges and agrees that no escrow, trust (express or implied), or other similar relationship or arrangement existed between Foresters and Crystal Cruises

8. **Non-Admission of Liability by Assignee.** Foresters acknowledges that this Agreement is entered into in compromise of disputed claims and that neither its execution by the Assignee nor the payment of consideration pursuant to this Agreement is, or shall be deemed or construed as, an admission of wrongdoing or liability, express or implied, on the part of the Assignee, any of the Defendant Released Parties, or of any other person or business entity.

9. **Non-Admission of Liability by Foresters.** Assignee acknowledges that this Agreement is entered into in compromise of disputed claims and that its execution by Foresters shall not be deemed or construed as, an admission of wrongdoing or liability, express or implied, on the part of Foresters, any of the Plaintiff Released Parties, or of any other person or business entity.

10. **Release of Claims By Foresters.** In consideration of the promises contained herein and the relinquishment of its legal rights regarding any claims asserted in, arising out of, or related to the Assignee, Crystal Cruises, the Estate, the Assignment Cases, or the Action, Foresters, on behalf of itself and its representatives, attorneys, executors, administrators, successors and assigns, and all other persons claiming by or through it, irrevocably and unconditionally releases, acquits, and forever discharges the Assignee, Crystal Cruises, and the Estate, and all of their past, present, and future affiliated corporations, partnerships, limited liability companies, limited liability partnerships, and other related entities, parents, subsidiaries, affiliates, divisions, joint venturers, predecessors, successors, assigns, insurers, consultants, subcontractors, and any of their shareholders, officers, directors, managers, partners, agents, employees, representatives, attorneys, insurers, and all persons acting under, by, through or in concert with any of them, and each of them (all of whom are collectively referred to herein as "**Defendant Released Parties**"), from any and all actions, claims, liabilities, demands, suits and causes of action of every nature and kind, whether

known or unknown, in law or in equity, whether or not such claims were or could have been brought in the Assignment Cases or the Action, from the beginning of time to the date Foresters executes this Agreement. Notwithstanding anything to the contrary contained herein, the Defendant Released Parties shall not include New Crystal.

11. **Release of Claims By Defendants.** In consideration of the promises contained herein and the relinquishment of their legal rights regarding any claims asserted in, arising out of, or related to Foresters, the Assignment Cases, or the Action, the Assignee, on behalf of himself and his representatives, attorneys, executors, administrators, successors and assigns, and all other persons claiming by or through them, irrevocably and unconditionally release, acquit, and forever discharge Foresters and all of Foresters' past, present, and future affiliated corporations, partnerships, limited liability companies, limited liability partnerships, and other related entities, parents, subsidiaries, affiliates, divisions, joint venturers, predecessors, successors, assigns, insurers, consultants, subcontractors, and any of their shareholders, officers, directors, managers, partners, agents, employees, representatives, attorneys, insurers, and all persons acting under, by, through or in concert with any of them, and each of them (all of whom are collectively referred to herein as "**Plaintiff Released Parties**"), from any and all actions, claims, liabilities, demands, suits and causes of action of every nature and kind, whether known or unknown, in law or in equity, whether or not such claims were or could have been brought in the Assignment Cases or the Action, from the beginning of time to the date Defendants execute this Agreement.

12. **Mutual Release of Unknown Claims.** This Agreement covers and includes all claims that the Parties have against each other and/or the Plaintiff Released Parties and/or the Defendant Released Parties up to and including the date of this Agreement, whether actually known or not, despite the fact that any applicable state and/or federal law may provide otherwise. The Parties hereby waive any rights or benefits under applicable federal or state laws that may provide that: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties acknowledge that they understand said provisions and expressly waive and relinquish all rights and benefits they have or may have under any applicable federal or state laws. The Parties acknowledge that they may hereafter discover facts different from or in addition to those they now know or believe to be true in respect to the claims, demands, damages, debts, liabilities, actions, or causes of action herein released, and hereby agree that this release shall be and remain in effect in all respects as a complete, general release as to the matters released, notwithstanding any such different or additional facts. The Parties agree that, by executing this Agreement, they are expressly accepting and assuming the risk of such possible difference of facts, and that the consideration set forth above fully compensates the Parties for said risk.

13. **Assigns and Successors-in-Interest.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the Parties hereto.

14. **Full Understanding of Agreement.** This Agreement has been carefully read by the Parties and the contents are known and understood by the Parties. The Parties have each had

the opportunity to consult with legal counsel of their choice at all times in the negotiation and execution of this Agreement and to consult with legal counsel regarding the meaning and effect of the terms and provisions contained herein. The Parties acknowledge that they have executed this Agreement after independent investigation and without fraud, duress, or undue influence. Each person executing this Agreement on behalf of a Party hereby warrants that he or she has full authority to do so.

15. **Applicable Law.** The existence, validity, construction and operation of this Agreement, and all of its covenants, agreements, representations, warranties, terms, and conditions, shall be determined in accordance with the laws of the State of Florida.

16. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties, and fully supersedes any and all prior and/or contemporaneous agreements or understandings between the Parties, which pertain to the subject matter hereof. The terms of this Agreement may not be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence whatsoever may be introduced to vary its terms in any judicial proceeding involving this Agreement.

17. **Non-Waiver.** The failure of any Party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof, or deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of the Agreement.

18. **Modification.** This Agreement may be modified, but only if the modification is in writing and signed by the Parties to this Agreement.

19. **Severability.** Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal or invalid part, term, or provision shall be deemed not to be part of this Agreement.

20. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed or scanned signatures may be accepted as originals.

21. **Attorney's Fees and Breach of this Agreement.** If a Party to this Agreement files a lawsuit to enforce any term or condition herein, the Party that prevails in such a lawsuit shall be entitled to an award of all attorneys' fees, professional fees, expert witness fees and disbursements it incurred prosecuting or defending such action.

22. **Retention of Jurisdiction.** The Parties agree that the Court shall retain jurisdiction to enforce this Agreement.

23. **Cooperation and Best Efforts.** The Parties hereto agree to cooperate fully in the execution of any documents or performance in any way which may be reasonably necessary to carry out the purposes of this Agreement and to effectuate the intent of the Parties hereto, and the Parties shall use their best efforts to obtain Court approval of the Agreement.

24. **Non-Disparagement.** The Parties agree that they will not make, publish, or communicate to any person or entity or in any public forum any defamatory, or maliciously false, or disparaging remarks, comments, or statements concerning the other Party.

25. **Mutual Drafting.** This Agreement is the product of negotiations “at arm’s length” between the Parties, who have been represented by legal counsel of their choice. As such, the terms of this Agreement are mutually agreed upon, and no part of this Agreement will be construed against the drafter.

IN WITNESS WHEREOF, by affixing their respective signatures hereto, each of the Parties do hereby execute this Agreement to be effective as of the Effective Date, regardless of the actual date of execution.

Signature Page to Settlement and Release Agreement

DATED: May ___, 2023.

THE INDEPENDENT ORDER OF FORESTERS

By: _____

Title: _____

DATED: May 17, 2023.

MARK C. HEALY, Solely in his Capacity as the Assignee for the Benefit of Creditors of the Assignors, Crystal Cruises, LLC, Crystal Holdings U.S. LLC, and Crystal Aircruises LLC

By: _____ 

Signature Page to Settlement and Release Agreement

DATED: May 16, 2023.

THE INDEPENDENT ORDER OF FORESTERS

By:  _____

Title: Global Chief Legal Officer

DATED: May ____, 2023.

MARK C. HEALY, Solely in his Capacity as the Assignee for the Benefit of Creditors of the Assignors, Crystal Cruises, LLC, Crystal Holdings U.S. LLC, and Crystal Aircruises LLC

By: _____

EXHIBIT A

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

In re:

CRYSTAL CRUISES, LLC, a California
Limited Liability Company,

CRYSTAL HOLDINGS U.S. LLC, a
Delaware Limited Liability Company,

CRYSTAL AIRCRUISES, LLC, a Florida
Limited Liability Company, and

Assignors,

To:

MARK C. HEALY,

Assignee.

COMPLEX BUSINESS LITIGATION
DIVISION

CASE No. 2022-002742-CA 44
(Lead Case)

CASE NO. 2022-002757 CA 44

CASE NO. 2022-002758 CA 44

(Jointly Administered Assignment for
the Benefit of Creditors Cases)

THE INDEPENDENT ORDER OF
FORESTERS,

Plaintiff,

v.

MARK C. HEALY, Assignee and CRYSTAL
CRUISES, LLC, Assignor,

Defendants.

CASE NO. 2022-006401 CA 44

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, THE INDEPENDENT ORDER OF FORESTERS (“**Foresters**”), and
Defendants, MARK C. HEALY (“**Healy**”) as assignee for CRYSTAL CRUISES, LLC (“**Crystal
Cruises**” and together with Healy, the “**Defendants**”) (each a “**Party**,” and, collectively, the
“**Parties**”), agree and stipulate to dismissal *with prejudice* of all claims brought by Foresters in the
above-captioned action, as follows:

- (i) Foresters agrees to voluntary dismiss the *Complaint*, and all allegations and claims asserted therein against the Defendants, *with prejudice*; and
- (ii) Defendants consent to voluntarily dismiss the *Complaint*, and all allegations and claims asserted therein against Defendants, *with prejudice*.

WHEREFORE, the Parties respectfully request that, in accordance with the terms of this Joint Stipulation, the Court enter the Order attached hereto as ***Exhibit A*** dismissing this action *with prejudice*.

Dated: _____, 2023.

Respectfully submitted,

BERGER SINGERMAN LLP
Counsel for Assignee
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: /s/ _____
Paul Steven Singerman
Florida Bar No. 378860
singerman@bergersingerman.com
Samuel J. Capuano
Florida Bar No. 90946
scapuano@bergersingerman.com

/s/ _____
Luis Salazar
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SALAZAR LAW
2121 S.W. 3 Avenue, Suite 200
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*Attorneys for The Independent Order of
Foresters*

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

In re:

CRYSTAL CRUISES, LLC, a California
Limited Liability Company,

CRYSTAL HOLDINGS U.S. LLC, a
Delaware Limited Liability Company,

CRYSTAL AIRCRUISES, LLC, a Florida
Limited Liability Company, and

Assignors,

To:

MARK C. HEALY,

Assignee.

THE INDEPENDENT ORDER OF
FORESTERS,

Plaintiff,

v.

MARK C. HEALY, Assignee and CRYSTAL
CRUISES, LLC, Assignor,

Defendants.

COMPLEX BUSINESS LITIGATION
DIVISION

CASE No. 2022-002742-CA 44
(Lead Case)

CASE NO. 2022-002757 CA 44

CASE NO. 2022-002758 CA 44

(Jointly Administered Assignment for
the Benefit of Creditors Cases)

CASE NO. 2022-006401 CA 44

ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE came on before the Court pursuant to the Joint Stipulation of Dismissal *with Prejudice*. The Court having reviewed the Joint Stipulation of Dismissal *with Prejudice* and the file, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. Plaintiff, THE INDEPENDENT ORDER OF FORESTERS' Complaint, and all allegations and claims asserted therein against Defendants, MARK C. HEALY, and CRYSTAL CRUISES, LLC, is dismissed *with prejudice*.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this ____ day of _____, 2023.

CIRCUIT COURT JUDGE

Copies furnished to all counsel of record

EXHIBIT B

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION
DIVISION

In re:

CRYSTAL CRUISES, LLC, a California
limited liability company,

Case No. 2022-002742-CA-01
Lead Case

CRYSTAL HOLDINGS U.S., LLC, a
Delaware limited liability company,

Case No. 2022-002757-CA-01

CRYSTAL AIRCRUISES, LLC, a Florida
limited liability company, and

Case No. 2022-002758-CA-01

To: Assignors,

(Jointly Administered Cases)

MARK C. HEALY,

Assignee.

_____ /

**JOINT MOTION BY ASSIGNEE AND THE INDEPENDENT ORDER OF
FORESTERS TO MODIFY THIS COURT’S ORDER ON THE INDEPENDENT
ORDER OF FORESTERS’ EMERGENCY MOTION FOR TEMPORARY INJUNCTION**

Mark C. Healy (the “Assignee”), solely in his capacity as the Assignee for the benefit of creditors of Crystal Cruises, LLC (“Crystal Cruises”), Crystal Holdings U.S., LLC (“Crystal Holdings”), and Crystal AirCruises, LLC (“Crystal AirCruises”) (collectively, the “Assignors”), and The Independent Order of Foresters (“Foresters”), jointly file this motion (the “Joint Motion”) to modify the Court’s March 9, 2022 *Order on The Independent Order of Foresters’ Emergency Motion for Temporary Injunction* (the “Temporary Injunction Order”).

1. On February 10, 2022, the Assignors executed and delivered, and the Assignee accepted, irrevocable assignments for the benefit of creditors to the Assignee (collectively, the “Assignments”). On February 11, 2022 (the “Petition Date”), a *Petition Commencing Assignment*

for the Benefit of Creditors was filed by the Assignee for each of the Assignors, thereby commencing the following assignment for the benefit of creditors cases pursuant to Section 727 of the Florida Statutes, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the “Court”): *In re Crystal Cruises, LLC*, Case No. 2022-002742-CA-01, *In re Crystal Holdings U.S., LLC*, Case No. 2022-002757-CA-01, and *In re Crystal AirCruises, LLC*, Case No. 2022-002758-CA-01 (collectively, the “Assignment Cases”).

2. On February 25, 2022, Foresters filed *The Independent Order of Foresters’ Emergency Motion for Temporary Injunction* (“Motion for Temporary Injunction”) in the Crystal Cruises Assignment Case and, following a hearing, on March 9, 2022, the Court entered Temporary Injunction Order.

3. On April 6, 2022, Foresters filed a Complaint (the “Complaint”), commencing the supplemental proceeding entitled *The Independent Order of Foresters v. Marc C. Healy, Assignee and Crystal Cruises, LLC, Assignor*, in Case No. 2022-006401 CA 44 (the “Action”).

4. Foresters asserted both in the Motion for Temporary Injunction and in its Complaint that certain of its deposits with Crystal Cruises were not property of the estate. The Assignee disagreed and asserted various defenses.

5. The Assignee and Foresters have resolved their disputes and entered into a mediated settlement agreement. Under the terms of the settlement agreement, the Assignee and Foresters are required to file the instant Joint Motion, and Foresters is required to withdraw the Motion for Temporary Injunction. Additionally, the Complaint is to be dismissed with prejudice.

6. Paragraph 1 of the Temporary Injunction Order provides: “The Assignee shall maintain a balance of \$1,000,000 in the Crystal Cruises, LLC account held by the Assignee at Axos Bank, account ending in #4663. If the Assignee needs to expend funds that cause the

Assignee's trust account to go below the \$1,000,000 balance, prior Court approval upon notice and hearing is required." The Temporary Injunction Order also states that the Court reserves its ruling on the merits of the Motion for Temporary Injunction.

7. Accordingly, given the resolution of the disputes between the Assignee and Foresters, and the withdrawal of the Motion for Temporary Injunction by Foresters, the Assignee and Foresters submit that the requirements in paragraph 1 of the Temporary Injunction Order are no longer necessary, and jointly request that the Court modify the Temporary Injunction Order to extinguish and release the requirements in paragraph 1.

WHEREFORE, the Assignee and Foresters respectfully request the Court enter an Order, in the form attached hereto as **Exhibit "1"**, (i) granting this Joint Motion; (ii) extinguishing and releasing the requirements in paragraph 1 of the Temporary Injunction Order; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: _____, 2023

| | |
|--|---|
| <p>BERGER SINGERMAN LLP <i>Counsel for Assignee</i> 1450 Brickell Avenue, Suite 1900 Miami, FL 33131 Telephone: (305) 755-9500 Facsimile: (305) 714-4340</p> <p>By: <u>/s/</u> _____ Paul Steven Singerman Florida Bar No. 378860 singerman@bergersingerman.com Samuel J. Capuano Florida Bar No. 90946 scapuano@bergersingerman.com</p> | <p><u>/s/</u> _____ Luis Salazar Fla Bar No. 14778 Jose A. Ceide Fla Bar No.: 15937 SALAZAR LAW 2121 S.W. 3 Avenue, Suite 200 Miami, Florida 33129 Telephone: 305.374.4848 Luis@Salazar.law Ceide@Salazar.law Lee-Sin@Salazar.law eService@Salazar.law</p> <p><i>Attorneys for The Independent Order of Foresters</i></p> |
|--|---|

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** a true and correct copy of the foregoing was served via the Florida Court’s e-Filing Portal on _____, 2023 to all parties that have entered an appearance in this case; on counsel for the Assignors, Adam Losey, Esq., Losey PLLC, 1420 Edgewater Drive, Orlando, FL 32804, and via email to alosey@losey.law; via email to cbl44@jud11.flcourts.org pursuant to CBL Rule 2.2.

By: /s/ _____
Samuel J. Capuano

EXHIBIT 1
(Proposed Order)

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION
DIVISION

In re:

CRYSTAL CRUISES, LLC, a California
limited liability company,

Case No. 2022-002742-CA-01
Lead Case

CRYSTAL HOLDINGS U.S., LLC, a
Delaware limited liability company,

Case No. 2022-002757-CA-01

CRYSTAL AIRCRUISES, LLC, a Florida
limited liability company, and

Case No. 2022-002758-CA-01

Assignors,
To:

(Jointly Administered Cases)

MARK C. HEALY,

Assignee.

_____ /

**ORDER GRANTING JOINT MOTION
BY ASSIGNEE AND THE INDEPENDENT ORDER OF
FORESTERS TO MODIFY THIS COURT’S ORDER ON THE INDEPENDENT
ORDER OF FORESTERS’ EMERGENCY MOTION FOR TEMPORARY INJUNCTION**

THIS MATTER came before the Court upon the *Joint Motion by Assignee and The Independent Order of Foresters to Modify This Court’s Order on The Independent Order of Foresters’ Emergency Motion for Temporary Injunction* (the “Joint Motion”) filed on _____, 2023 by Mark C. Healy (the “Assignee”), solely in his capacity as the Assignee for the benefit of creditors of Crystal Cruises, LLC (“Crystal Cruises”), Crystal Holdings U.S., LLC (“Crystal Holdings”), and Crystal AirCruises, LLC (“Crystal AirCruises”) (collectively, the “Assignors”), and The Independent Order of Foresters (“Foresters”). The Court, having reviewed the Joint Motion and the record in this case, noting the settlement reached between the Assignee and Foresters and the withdrawal by Foresters of *The Independent Order of Foresters’*

Emergency Motion for Temporary Injunction, finding that notice of the Joint Motion was sufficient under the circumstances, noting that no objection to the Joint Motion was filed by any party, finding that the relief requested in the Joint Motion is in the best interests of the estates of the Assignors, and otherwise finding that good and sufficient cause exists for granting the relief set forth herein, does hereby **ORDER AND ADJUDGE** that:

1. All terms not otherwise defined herein shall have the meanings ascribed to them in the Joint Motion.

2. The Joint Motion is **GRANTED**.

3. The Court's March 9, 2022 *Order on The Independent Order of Foresters' Emergency Motion for Temporary Injunction* (the "Temporary Injunction Order") is modified such that the following provisions in paragraph 1 of the Temporary Injunction Order are extinguished and released: "The Assignee shall maintain a balance of \$1,000,000 in the Crystal Cruises, LLC account held by the Assignee at Axos Bank, account ending in #4663. If the Assignee needs to expend funds that cause the Assignee's trust account to go below the \$1,000,000 balance, prior Court approval upon notice and hearing is required."

4. The Court shall retain jurisdiction to enforce this Order and the Settlement Agreement.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida on _____, 2023.

CIRCUIT COURT JUDGE

EXHIBIT 2
(Proposed Order)

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION
DIVISION

In re:

CRYSTAL CRUISES, LLC, a California
limited liability company,

Case No. 2022-002742-CA-01
Lead Case

CRYSTAL HOLDINGS U.S., LLC, a
Delaware limited liability company,

Case No. 2022-002757-CA-01

CRYSTAL AIRCRUISES, LLC, a Florida
limited liability company, and

Case No. 2022-002758-CA-01

Assignors,
To:

(Jointly Administered Cases)

MARK C. HEALY,

Assignee.

**ORDER GRANTING ASSIGNEE'S MOTION TO APPROVE SETTLEMENT AND
RELEASE AGREEMENT WITH THE INDEPENDENT ORDER OF FORESTERS**

THIS MATTER came before the Court upon the *Assignee's Motion to Approve Settlement and Release Agreement with The Independent Order of Foresters* (the "Motion") filed on _____, 2023 by Mark C. Healy (the "Assignee"), solely in his capacity as the Assignee for the benefit of creditors of Crystal Cruises, LLC ("Crystal Cruises"), Crystal Holdings U.S., LLC ("Crystal Holdings"), and Crystal AirCruises, LLC ("Crystal AirCruises") (collectively, the "Assignors"). The Court, having reviewed the Motion and the record in this case, finding that notice of the Motion was properly served on interested parties as required by Fla. Stat. § 727.111(4) and the Court's *Order Granting Assignee's Motion for Entry of an Order: (1) Approving Noticing Procedures, (2) Approving Proof of Claim Forms; and (3) Extending Deadline to Serve Notice of Assignment* (the "Notice Procedures Order") entered on March 3, 2022, noting that no objection

to the Motion was filed by any party, finding that the relief requested in the Motion is in the best interests of the estates of the Assignors, and otherwise finding that good and sufficient cause exists for granting the relief set forth herein, does hereby **ORDER AND ADJUDGE** that:

1. All terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The Motion is **GRANTED**.

3. The Settlement and all terms and conditions thereof are authorized and approved in all respects.

4. The Court shall retain jurisdiction to enforce this Order and the Settlement Agreement.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida on _____, 2023.

CIRCUIT COURT JUDGE