

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

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|--|---|----------------------------|
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| SECURITIES AND EXCHANGE COMMISSION, | : | |
| | : | |
| Plaintiff, | : | |
| | : | C.A. No. 15-cv-00191-S-LDA |
| - against - | : | |
| | : | |
| PATRICK CHURCHVILLE, | : | |
| CLEARPATH WEALTH MANAGEMENT, LLC, | : | |
| | : | |
| Defendants, | : | |
| | : | |
| - and - | : | |
| | : | |
| CLEARPATH MULTI-STRATEGY FUND I, L.P., | : | |
| CLEARPATH MULTI-STRATEGY FUND II, L.P., | : | |
| CLEARPATH MULTI-STRATEGY FUND III, L.P., | : | |
| HCR VALUE FUND, L.P., | : | |
| | : | |
| Relief Defendants. | : | |
| | : | |
| -----X | : | |

**REPLY BY ACREWOOD PARTIES’ TO COMMISSION’S AND RECEIVER’S
RESPONSES TO MOTION BY ACREWOOD PARTIES FOR ALLOWANCE
FOR PAYMENT OF LEGAL FEES, COSTS AND EXPENSES**

Acrewood Holdings, LLC, Acrewood Investment Management, L.P., Acrewood 2013, L.P., and Acrewood 2014, L.P. (collectively, the “Acrewood Parties”) respectfully submit this Reply Memorandum of Law in order to correct certain factual statements, answer questions posed, and clarify statements made by the Receiver and the Securities and Exchange Commission (“Commission”) in their respective Responses to Acrewood Parties’ Motion for Allowance for Payment of Legal Fees, Costs and Expenses (Docket Nos. 48 and 50). For brevity, all capitalized terms used in this statement are not redefined and have the meanings

assigned to them in the prior filings by the Acrewood Parties, Receiver and Commission related to this issue.

In this Reply, the Acrewood Parties address specific issues with either the Commission's or Receiver's Responses that require clarification or response. To the extent there are other areas of disagreement between the Acrewood Parties and the Commission and the Receiver on the subject of this motion, the Acrewood Parties rely on their prior Motion and Memorandum in support thereof.

1. The Commission stated in its November 30 Response to the Acrewood Parties November 11 petition that "[b]efore ARCO, expenses were covered by Partnership assets, not Churchville and ClearPath." This is not true in all circumstances. When an investor (in this case the Acrewood Investors) pays a management fee to a general partner (in this case HCR Value GP) in an investment fund (the HCR Value Fund), the investor expects, and the fund limited partnership agreement provides for, a certain amount of management activity to be undertaken for the fund in exchange for the management fee. Several of the actions undertaken by Acrewood, with advice of counsel, were activities that clearly should have been undertaken by the fund manager and paid for out of the management fee. These included, but are not limited to: (i) providing the Commission with all of the HCR Value Fund documents in an organized manner so that, in fulfillment of a fiduciary obligation the fund manager has to the investors, the fund and the investor's investment would not be diminished, (ii) dealing with Fox Chase Bank in the negotiations which avoided a default and execution against the collateral because of something the general partner did

(allegedly), and (iii) protecting the investor from harm engendered by the Commission's claims.

2. The Commission and Receiver omit from their arguments the fact that the Acrewood Parties continued to pay the \$25,000 per month management fee which was a part of the trade for the indemnification. Perhaps with the benefit of hindsight, the Acrewood Parties might have been better served by ceasing payment of the management fee due to the breach of contract by the fund manager in failing to provide the management services originally bargained for. In any event, the continued payment of the management fee inured to the overall benefit of the Receivership Estate.
3. The Commission suggests that the Acrewood Parties should not have the benefit of their bargain set forth in the ARCO because (i) it was negotiated in the shadow of the Commission's Complaint with a person accused of fraud, and (ii) other investors will not be able "to recoup their expenses of being victimized by the Defendant's fraud". As to argument (i), the Court will decide whether this has merit and the Acrewood Parties will not repeat arguments previously made. As to argument (ii), the Acrewood Parties are in a different posture relative to the Defendants than investors who were hit by Defendants' alleged fraud. They are not victims of the alleged fraud; but have suffered financially as collateral damage of actions undertaken on behalf of those that were. The Acrewood Parties do not agree that their non-defrauded investment should be charged with costs of compensating for fraud they did not perpetrate and for the benefit of investors with which they have no relationship.

4. As to pre-ARCO expenses which the Commission claimed would have been paid by Acrewood if there had been no Commission action, this misses the point that they would not have been incurred but for the Commission's action. The Commission seems also to suggest that pre-ARCO expenses could not be covered by a contract later put in place (i.e. the ARCO) because they had already been incurred. The Acrewood Parties submit that such business arrangements are common and pre-contract expenses can certainly be addressed in the contract and included in the benefit of the bargain reflected in the contract. The Receiver's statement that "the ARCO was a valid contract when it was entered into on May 21, 2015" is accurate. There is no basis to conclude that it is no longer a valid contract.
5. To answer the Commission's question about the HCR Value Fund GP bearing 21% of the \$20,000 Fox Chase Bank fee (Docket No. 50 at 6): prior distributions from Series B had returned capital, so that all distributions from Series B are now what is referred to generally in the industry as "in the carry." That means that they are distributed 20% to the general partner (which is the carried interest provided for in the HCR Value Fund partnership agreement) and 80% to the partners, with the 80% shared among them in proportion to their contributed capital. 1.25% of the 80% is 1%; this plus the 20% makes up the 21% distribution to the general partner. Therefore, any Series B fund expenses reduce the amount of the fund's Series B distributable cash in the 21/79 ratio.
6. The Acrewood Parties disagree with the Commission regarding what the Commission has termed the "Category 4 expenses" – namely those associated

with its Motion and supporting Memorandum regarding fees and expenses. These expenses would not have been incurred but for the Commission and the Receiver's positions and are costs incurred by reason of the "SEC Action" as defined in the ARCO.

7. If the Court were inclined to adopt the Receiver's fair value argument (Docket No. 48 at 6 *et seq.*), the Acrewood Parties do not agree that the fair value of services rendered needs to be based on the rates established for the Receiver in this case. The Acrewood Parties are not privy to the factors that influenced such negotiated rates and believe that, if fair value is to be determined, it should be based on the Court's assessment of fair value in light of all facts and circumstances relevant to the particular matter of the legal services. The Acrewood Parties' chose counsel for this work based on the counsels' specialized knowledge of the fund industry and the legal requirements for fund operations and believe that should affect the fair value decision and negotiated rates with those counsel. In the case of Pepper, which is Acrewood's regular outside fund counsel, the rates were negotiated well prior to the institution of this case. The Acrewood Parties maintain that the rates charged by Pepper, Dechert and Adler are fair and reasonable.
8. The Acrewood Parties would agree with the Receiver and the Commission that absent the indemnification/offset in the ARCO certain expenses would be fund expenses for Series B (and thus borne in the 21/79 ratio described above) and certain expenses would be Acrewood Parties' expenses. This is reflected in the distribution of Series B's cash which the Acrewood Parties calculated (in their

role as manager of Series B) and previously provided to the Receiver. A copy of this is attached as Exhibit 1. These distributions were made on November 16, 2015.

In conclusion, the Acrewood Parties reiterate their request for reimbursement of the fees and expenses they have had to bear by reason of the Commission's action against Defendants in this case and in management of Series B as set forth in their Motion and supporting Memorandum filed with this Court on November 11, 2015.

Dated: Providence, Rhode Island
December 7, 2015

Acrewood Holdings, LLC, Acrewood Investment Management, L.P., Acrewood 2013, L.P., and Acrewood 2014, L.P.,
By their Attorneys,

/s/ Jeffrey K. Techentin
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CERTIFICATE OF SERVICE

I, Jeffrey K. Techentin, hereby certify that I filed the within Response to Motion by Acrewood Parties to Commission's and Receiver's Responses to Acrewood Parties' Motion For Allowance for Payment of Legal Fees, Costs And Expenses on the 7th day of December, 2015, and that notice will be sent electronically to all counsel who are registered participants identified on the Mailing Information for Case No. 15-cv-00191-S-LDA.

/s/ Jeffrey K. Techentin

Distribution of Proceeds - No Indemnity/Offset Case

| | <u>Total</u> | <u>Acrewood 2013, LP</u> | <u>Acrewood 2014, LP</u> | <u>HCR Value Fund GP, LLC</u> | <u>HCR Value Fund GP, LLC 20% Carried Interest</u> | <u>HCR Value Fund GP, LLC Mgmt. Fees / Other</u> | <u>Held by Fund</u> | <u>HCR Value Fund GP, LLC Total</u> |
|---|---------------------|------------------------------|------------------------------|-----------------------------------|--|--|---------------------|--|
| Total Cash Available | \$5,995,418 | 4,121,850 | 1,798,625 | 74,943 | - | - | - | 74,943 |
| Reallocations and Expenses | | | | | | | | |
| Mgmt. Fees: June - November | - | (103,125) | (45,000) | (1,875) | - | 150,000 | - | 148,125 |
| Reserve for Tax Preparation, Wind Up and Other Operating Expenses | - | (13,750) | (6,000) | (250) | - | - | 20,000 | (250) |
| Pepper Hamilton LLP Invoices - SEC Production Expenses | (25,480) | (17,517) | (7,644) | (318) | - | - | - | (318) |
| Pepper Hamilton LLP Invoices - Management Expenses | (67,839) | (46,640) | (20,352) | (848) | - | - | - | (848) |
| Pepper Hamilton LLP Invoices - Bank Fees and Expenses | (3,128) | (2,151) | (939) | (39) | - | - | - | (39) |
| Adler Pollock and Sheehan PC Invoices | (3,805) | (2,616) | (1,142) | (48) | - | - | - | (48) |
| Dechert LLP Invoices | (28,851) | (19,835) | (8,655) | (361) | - | - | - | (361) |
| Total Reallocations and Expenses | (129,103) | (205,634) | (89,731) | (3,739) | - | 150,000 | 20,000 | 146,261 |
| Distributable Cash Flow Prior to Carried Interest | 5,866,315 | 3,916,216 | 1,708,894 | 71,204 | - | 150,000 | 20,000 | 221,204 |
| Carried Interest Calculation | | | | | | | | |
| Remaining Unreturned Capital Contributions | 3,200,000 | 2,200,000 | 960,000 | 40,000 | - | - | - | 40,000 |
| Gain Prior to Carried Interest Calculation | | 1,716,216 | 748,894 | 31,204 | - | - | - | 31,204 |
| 20% Carried Interest Reallocation | 20% | (343,243) | (149,779) | (6,241) | 499,263 | - | - | 493,022 |
| Cash Distributed on November 16, 2015 - No Indemnity/Offset Case | 5,866,314.70 | 3,572,973.09 | 1,559,115.53 | 64,963.15 | 499,262.94 | 150,000.00 | 20,000.00 | 714,226.09 |