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6 *Class Counsel*

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 MARK and RACHELLE BERGER,
et al. on behalf of themselves and
12 all persons similarly situated,

13 Plaintiffs,

14 v.

15 PROPERTY I.D. CORPORATION,
et al.,

16 Defendants.

No. CV 05-5373-GHK (CWx)

**REPLY DECLARATION OF BARRY
HIMMELSTEIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF PROPOSED CLASS
ACTION SETTLEMENTS AND
CLASS COUNSEL'S MOTION FOR
AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF
EXPENSES**

17 DATE: January 26, 2009
18 TIME: 9:30 a.m.
COURTROOM: 650
19 JUDGE: Hon. George H. King

20 Discovery Cutoff: May 9, 2008
21 Pretrial: Not Set
22 Trial: Not Set

1 I, BARRY R. HIMMELSTEIN, declare and state:

2 1. I am a member in good standing of the California State Bar, and the
3 bar of this Court. I am a partner in the law firm of Lief, Cabraser, Heimann &
4 Bernstein, LLP (“LCHB”), which the Court has appointed as class counsel in this
5 action. I have personal knowledge of the matters set forth herein, and could and
6 would testify competently thereto if called upon to do so.

7 2. Attached hereto are true and correct copies of the following
8 documents:

9

Exhibit	Description
A	Objection of Joseph Palmer to Proposed Settlement and Notice of Intent to Appear
B	Excerpts of Brief of Appellees, <u>Eisen v. MGM-Pathe Communications Co.</u> , 9th Cir. No. 96-55473, 1996 WL 33469838
C	T. Allen, <u>Anticipating Claims Filing Rates in Class Action Settlements</u> , Class Action Perspectives, Vol. III No. 2, at 2 (Rust Consulting, Inc., Nov. 2008)
D	State Bar of California, Public Record of Joseph Darrell Palmer
E	Excerpts of Docket Sheet in <u>Duhaime v. John Hancock Mut. Life Ins. Co.</u> , D. Mass. No. 1:96-cv-10706-RGS
F	Final Order and Judgment in <u>In re PNC Financial Services Group, Inc. Securities Litig.</u> , W.D. Pa. Case No. 02-CV-271 (Apr. 12, 1007)
G	Excerpts of Settlement Agreement in <u>R.M. Galicia, Inc. v. Philip Franklin</u> , San Diego Super. Ct. Case No. IC859468
H	Declaration of Darrell Palmer in Support of Motions for

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	Final Approval of Class Action Settlement and for Award of Attorneys’ Fees and Costs and Service Award to Class Representative, filed in <u>R.M. Galicia, Inc. v. Philip Franklin</u> , San Diego Super. Ct. Case No. IC859468
I	Order Preliminarily Approving Class Settlement and Notice Plan, <u>R.M. Galicia, Inc. v. Philip Franklin</u> , San Diego Super. Ct. Case No. IC859468

3. LCHB has only one client that pays the firm fees on an hourly basis, an investment fund. The rest of the firm’s work is purely on contingency. Since this litigation was filed in July 2005, LCHB has incurred and paid approximately \$142 million in overhead — an average of over \$3.3 million a month — before any profits to the partners.

4. During the pendency of this lawsuit, I was lead counsel for over 100 dog owners in California whose pets were seriously injured or died as a result of ingesting contaminated dog food. LCHB lost approximately \$1 million in lodestar and costs in the case, after the arbitrator selected by the parties found insufficient evidence of causation, contrary to the findings of the federal Food and Drug Administration and the University of California at Davis School of Veterinary Medicine.

5. In 2006, I was appointed lead counsel for the MCI subscriber class in In re National Security Agency Telecommunications Records Litig., MDL Docket No. 1791. After over two years of work on the case, Congress conferred immunity

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1 on the defendants, although constitutional challenges to the legislation remain
2 pending.

3 I declare under penalty of perjury that the foregoing is true and correct.
4 Executed this 5th day of January, 2009 at Oakland, California.

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/s/Barry R. Himmelstein
Barry R. Himmelstein

EXHIBIT A

RECEIVED

DEC 21 2008

LIEFF, GARRARD, HEIMANN
& WATSON

1 Joseph Palmer
2 603 North Highway 101, Ste A
3 Solana Beach, California 92075
4 Telephone: (858) 792-5600
5 Facsimile: (858) 792-5655
6 Email: darrell.palmer@cox.net

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8 Objector in Pro Per

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 MARK AND RACHELLE BERGER, et
12 al. on behalf of themselves and all persons
13 similarly situated,
14 Plaintiffs,

15 vs.

16 PROPERTY I.D. CORPORATION, a
17 California Corporation; PROPERTY I.D.
18 OF CALIFORNIA, INC., a California
19 Corporation, et al.,
20 Defendants.

Case No. CV 05-5373 GHK (CWx)

**OBJECTION OF JOSEPH PALMER
TO PROPOSED SETTLEMENT AND
NOTICE OF INTENT TO APPEAR**

Date: January 26, 2009

Time: 9:30 a.m.

Place: Courtroom 650

Judge: Hon. George H. King

21 AND CONSOLIDATED ACTIONS

22 **OBJECTIONS AND NOTICE OF INTENT TO APPEAR**

23 COMES NOW, JOSEPH PALMER ("Objector") Class Member to this action and
24 hereby files these Objections to the Proposed Class Action Settlement, gives notice of
25 that he intends to retain counsel to appear at the fairness hearing and requests award of an
26 incentive fee for serving as a named class member.

27 Joseph Palmer is a member of the class and has received a NHD REPORT
28 SETTLEMENT CLAIM FORM bearing Claim No. PID01093535 and Control No.

ASK

1 3050416449 referring to the sale of the property located at 1239 Bermuda Lane, El
2 Cajon, CA 92021.

3 **I. Attorney Fees Should Be Paid in Installments.**

4 Class Counsel must be paid for their considerable amount of work, however Class
5 Counsel should not be before their work is done. Class Counsel certainly should not be
6 fully paid within five days of the approval of this settlement as provided in paragraph 62
7 of the Settlement Agreement.

8 In this case it appears that the provisions for the funding of the settlement are
9 aimed at accommodating a fast payout for the attorneys. No doubt paragraph 17 of the
10 Settlement Agreement was conceived so that funds would be available to pay the
11 attorneys within five days of the final approval (Sttlmt Agmt paragraph 62). But
12 according to paragraph 19 of the Settlement Agreement, the funds to pay the class do not
13 have to be deposited until 30-90 days after the claims deadline of March 27, 2009
14 depending on how long it takes the administrator to provide an "Accounting" of the total
15 claims. This means the attorney fees will be paid by January 31, 2009 but the money to
16 pay the class won't even be available for five to seven months later (June – August,
17 2009). In these precarious economic times this funding/payment schedule is
18 fundamentally unfair and demonstrates the divergence of interests between Class Counsel
19 and the Class.

20 To assure the Class, the Court, and the public that relief is being delivered
21 accurately, completely and on time, fee payments must be staggered and/or delayed until
22 the class is paid. The concept has worked well in many class actions to maintain the
23 integrity of settlement administration.

24 Judge Fernando Gaitan reacted to a similar suggestion by objectors in In re
25 Wireless Telephone Federal Cost Recovery Fees Litigation, MDL 1559 (W.D. Mo. April
26 20, 2004), aff'd on other grounds, 922 F.3d 922 (8th Cir. 2005) ("the Nextel case,") when
27 he directed the parties to respond to an objector's argument that fees must be staged,
28 rather than paid in a lump sum. The settling parties responded by amending the proposed

1 agreement to provide 75% upon final approval of the settlement, and 25% upon
2 completion of all post-settlement obligations.

3 This common-sense concept has applied successfully in many other class actions.
4 In Richard Duhaime v. John Hancock Mutual Life Insurance Company, et al., 177 F.R.D.
5 54 (D.Mass 1997), the federal court withheld 40% of the contemplated fee for a year so
6 the court could review the quality of representation provided by Lead Counsel and the
7 results achieved for the class. Similarly, in Ace Seat Cover Co., Inc., et al. v. The Pacific
8 Life Insurance Company, Case No. 97-CI-00648 (Kenton Cir. Ct. Ky., Nov. 19, 1998),
9 the court ordered 20% of the fees withheld until completion of the settlement agreement.
10 In In re: Prudential Ins. Co. of Am. Sales Practices Litig., 962 F.Supp. 450 (D.N.J. 1997),
11 aff'd re class certification and settlement but vacated and remanded re attorneys fees, 148
12 F.3d 283 (3d Cir. 1998), the court ultimately ordered that 50% of the attorney's fees be
13 withheld. Likewise, as recently as April 12, 2007, in In Re: PNC Financial Services
14 Group, Inc. Securities Litigation, Case No. 2:02-cv-00271-DSC (U.S.D.C. W.D. Pa.
15 W.D. filed April 17, 2007), Judge Cercone ordered part of the class counsel's fee
16 withheld at interest pending entry of an order of distribution. As noted in the order, at
17 page 11, the change had been suggested by an objector in that case.

18 By staggering the fees, Class Counsel can be paid for work that has been done.
19 But Class Counsel cannot get the full benefit of the Settlement until their clients, the
20 Class Members, get the full benefit of the Settlement. Basic, prudent business practices
21 dictate that people should not be paid fully until the job is done completely.

22 **II. THE REQUESTED ATTORNEY FEES ARE EXCESSIVE**

23 **A. The Court Should Closely Evaluate the Fee Application**

24 The requested 25% fee award is excessive and must be considered in light of the
25 lodestar and multiplier, and the difficulty of the work involved. Once a settlement in a
26 Class Action has been agreed upon, Defendant no longer has an incentive to negotiate
27 vigorously concerning the attorneys' fees. Especially in a case like this where the
28

1 Settlement Fund is the total amount that defendants will pay under the Settlement “for
2 any purpose.”

3 The amount of fees is also objected to because no evidence to support of the
4 amount of the fee request has been disclosed and no information regarding the class
5 counsels’ lodestar or multiplier has been disclosed to the class.

6 Further, the California Supreme Court held more than 25 years ago in Serrano v.
7 Priest, (1997) 20 Cal.3d 25 that:

8 The starting point of every fee award . . . must be a calculation of the
9 attorney’s services in terms of the time he has expended on the case.
10 Anchoring the analysis to this concept is the only way of approaching the
11 problem that can claim objectivity, a claim which is obviously vital to the
12 prestige of the bar and the courts. Recent cases confirm that the lodestar
13 method is required in all cases, including those involving “unconventional
14 “common funds.”

15 See Leallao v. Beneficial California, Inc. (2000) 82 Cal. App. 4th 19, 37-39; Dunk v.
16 Ford Motor Co. (1996) 48 Cal. App. 4th 1794, 1809-1811. Leallao, supra, at 1809; see
17 also Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal. App. 4th 615, 622-624.
18 Despite a contrary trend in the federal courts, California maintains its strict adherence to
19 the lodestar approach. As the California Supreme Court recently held Ketchum v. Moses
(2001) (24 Cal.4th 1122):

20 [B]ecause the determination of the lodestar figure is so fundamental to
21 arriving at an objectively reasonable amount, ‘ the exercise of [the trial
22 judge’s] discretion must be based on the lodestar adjustment method . . .
23 Such an approach anchors the trial court’s analysis to an objective
24 determination of the value of the attorney’s services, ensuring that the
25 amount awarded is not arbitrary.’

26 This Court must critically examine a proposed settlement to ensure that the
27 settlement is fair, adequate and reasonable and that the offer is not a mere technicality or
28 the product of collusion by and between Class Counsel and Defense Counsel. Class
action settlements are to be treated by the courts with a higher standard of scrutiny.

1 Court review and approval of the settlement process serves an important function in
2 ensuring that class representatives have been faithful in carrying out their fiduciary duties
3 to the Class as a whole. The court's responsibility is to determine if a proposed
4 settlement is fair, adequate, and reasonable in light of the nature of the plaintiff's claim,
5 the possible defenses thereto, the legal and factual circumstances of the case and to apply
6 its own business judgment in order to guard against surreptitious buyouts of
7 representative plaintiffs and plaintiffs' counsel. Dunk v. Ford Motor Co., 56 Cal. Rptr.
8 2d 483 (1996), Cal. App. 4 Dist (8/30/96).

9 The Court assumes the position of a fiduciary for the Class when the question of
10 Attorneys' fees arises. At that point, Counsel and the Class have differing goals. Dozens
11 of cases have confirmed and identified this fiduciary role. For example:

12 Before considering the proper methodology for awarding attorney's fees out
13 of a common fund, the Court feels compelled to define its role in these
14 proceedings. When an attorney makes a claim for fees from a common
15 fund, his interest is adverse to the interest of the class in obtaining recovery
16 because the fees come out of the common fund set up for the benefit of the
17 class. Rawlings v. Prudential-Bache Properties, Inc., 9 F. 3d 513, 516 (6th
18 Cir. 1993). This divergence of interests requires a court to assume a
19 fiduciary role when reviewing a fee application because there is often no one
20 to argue for the interests of the class: class members with small individual
21 stakes in the outcome will often fail to file objections because they lack the
22 interest or resources to do so and the defendant who contributed to the fund
23 will usually have scant interest in how the fund is divided between the
24 plaintiffs and class counsel." In Re Copley Pharmaceutical, Inc. 1 F. Supp.
25 2d 1407 (Wyoming, 1998). (emphasis added.)

26 In Wise v. Popoff, et al. 835 F. Supp. 977, (E.D. Mich. 1993) the court describes the roles
27 as follows:

28 An attorney's role changes once he files a fee petition. No longer a fiduciary
for his client he becomes nothing more complex than another claimant
against the fund created for the client's benefit. The court must, in turn,
become "the fiduciary for the fund's beneficiaries and must carefully
monitor disbursement to the attorneys by scrutinizing the fee applications."

1 Skelton v. General Motors Corp., 860 F 2d 250, 253 (7th Cir. 1988), cert
2 denied, 493 US 810, 110 S. Ct. 53, 107 L. Ed. 2d 22 (1989). A court should
3 not “rubber stamp” fee applications In re Cincinnati Gas & Electric Co.
4 Securities Litigation, 643 F. Supp. 148, 152 (S.D. Ohio 1986). The fact that
5 the settling defendant may agree with the fee application (or, as in this case,
6 be persuaded to remain silent about it) is irrelevant to the Court’s analysis
7 because the defendant having already paid the settlement amount, has little
8 interest in the portion of the fund that the class attorney is allowed to retain”.
(emphasis added.)

9 This court, therefore, must act as a fiduciary for the Class and conduct
10 an in-depth investigation of the basis for the requested fee. The Court should at least
11 determine what the lodestar amount is (hours expended time hourly billing rate) and
12 whether that bears a rational relationship to the fee requested. The Court should
13 investigate not only the amount of time expended, but by whom it was expended. Was it
14 by a partner, an associate or a contract attorney, and were the rates charged reasonable?
15 Did one person take or defend a deposition, or were many associates in attendance? All
16 of these matters should be investigated to make sure that the Class is not being
17 overcharged.

18 It is well settled that the burden of establishing the fairness of the proposed class
19 action settlement rests squarely with the proponents of the class settlement (class counsel
20 and defense counsel). 7-Eleven Owners for Fair Franchising v. Southland Corp., (2000)
21 85 Cal. App. 4th 1135, 1165. Newberg on Class Actions, Settlement of Actions, §§ 11.41
22 and 11.42 at 11-94 3d Ed.1991. The substantive and procedural standards of California
23 class action law are set forth in Cal Civ Code § 1781(f), which states, “A class action
24 shall not be dismissed, settled, or compromised without the approval of the court.” In
25 Frank La Sala v. American Savings & Loan Association (2006) 489 P.2d 1113, 5 Cal. 3d
26 864, 872, the court noted that Federal Rule of Civil Procedure 23(e), which states, “A
27 class action shall not be dismissed or compromised without the approval of the court”
28 was similar to California class action law embodied in Cal Civ. Code § 1781. Further,
the court pointed out that in the absence of controlling California authority, trial courts

1 should utilize the class action procedures of the federal rules. Id. at 872. See also,
2 Hypertouch, Inc. v. Superior Court, (2005) 128 Cal. App. 4th 1527, 1544.

3 One of the foremost objectives of Cal. Civ. Code § 1781 is to protect the interests
4 of absent class members. “The court has long been concerned with requiring the
5 representative party to protect the interests of the absent class members, even imposing a
6 fiduciary duty to do so on the representative.” City of San Jose v. Superior Court, (1999)
7 525 P.2d 701, 713. Advancing the argument, the court in 7-Eleven Owners for Fair
8 Franchising v. Southland Corp. intimated that the judge, when reviewing settlement
9 negotiations, is a fiduciary of the absent class members and acts to ensure an equitable
10 settlement. 85 Cal. App. 4th 1135, 1151. The court has not only a duty to ensure that the
11 settlement is fair, adequate, and reasonable; it bears the additional responsibility of
12 ensuring that enough information is presented so that it can make that determination. 7-
13 Eleven, supra, 85 Cal. App. 4th 1135, 1151. This role of the court in a class settlement is
14 widely recognized by courts and legal commentators. Weinberger v. Kendrick, 698 F.2d
15 61, 69 n.10 (2d Cir. 1982), cert. denied, 464 U.S. 818, 78 L. Ed. 2d 89, 104 S. Ct. 77
16 (1983); In re "Agent Orange" Prod. Liab. Litig., 818 F.2d 216, 223 (2d Cir.), cert. denied,
17 484 U.S. 926 (1987); In re Corrugated Container Antitrust Litig., 643 F.2d 195, 225 (5th
18 Cir. 1981), cert. denied, 456 U.S. 998 (1982); Piambino v. Bailey, 610 F.2d 1306, 1327
19 (5th Cir.), cert. denied, 449 U.S. 1011, 66 L. Ed. 2d 468, 101 S. Ct. 566 (1980); 2
20 NEWBERG & CONTE, § 11.41, at 11-93 to 11-94.

21 The trial court must examine all relevant factors of a class action settlement to
22 determine not only whether the terms of the settlement are fair, adequate, and reasonable,
23 but also whether the settlement was the product of honest negotiations or collusion. 7-
24 Eleven, supra, 85 Cal. App. 4th 1135, 1145; see also, Dunk v. Ford Motor Co., (1996) 48
25 Cal. App. 4th 1794, 1801. The proponents of the settlement carry the burden of providing
26 evidence related to these factors, which support approval of the settlement. Dunk, supra,
27 at 1801.

28 B. Heightened Scrutiny Is Required Where There Is A Reversionary Fund

1 Abuses in the class action system have been the topic of numerous court decisions.
2 Saylor v. Lindsley, 456 F.2d. 896, 900-01 (DD Cir. 1972); Piabvino v. Bailey (Piabvino
3 II) 757 F.2d 1112, 1143-44 (11th Cir. 1985), cert denied 476 US1169, 106 S.Ct. 2889, 90
4 L.Ed.2d 976 (1986); Weinberger v. Great Northern Nekoosa Corp., 925 F.2d 518 (1st
5 Cir. 1991).

6 Courts have noted that the largest number of abuses occur in connection with
7 “reversionary fund settlements” which include a “clear sailing clause” and “revertible
8 clause.” A “revertible clause” settlement is one in which any settlement proceeds that are
9 not claimed by class members “revert” back to the defendant. Sylvester et al.v. Cigna
10 Corp., 369 F.Supp.2d 34 (D.Me. 2005). Such reversionary fund settlements commonly
11 include a feature under which each class member is required to return a “claims form” to
12 obtain their settlement payment. Id. However, the defendant retains any unclaimed
13 funds. A “clear sailing” clause is a provision in a class action settlement in which the
14 defendant agrees not to oppose class counsel’s attorneys’ fee request as long as the
15 requested fee does not exceed a negotiated amount. Weinberger v. Great Northern
16 Nekoosa Corp., 925 F.2d 518, 520 N.1 (1st Cir. 1991).

17 The proposed class action settlement before this Court is a reversionary fund
18 settlement with an apparent clear sailing provision. Courts have noted that when a
19 proposed settlement contains a reverter clause and/or a clear sailing clause, that the
20 proposed settlement should be viewed with even greater suspicion than the normal class
21 action settlement, and should not be presumed to be fair to the class members on whose
22 behalf it was allegedly made. International Precious Metals Corp. v. Waters, 530 U.S.
23 1223, 147 L. Ed. 2d 265, 120 S.Ct. 2237 (2000); Sylvester, et al. v. Cigna Corp., 369
24 F.Supp.2d 34 (D.Me. 2005).

25 **III. OBJECTORS’ VALUE TO CLASS-ACTION PROCESS.**

26 In their zeal to win approval of an agreement, professional class counsel and
27 professional defense counsel often overlook or deny the importance of objectors to the
28 class-action process. However, settlements, such as this one, can be so complicated that

1 only lawyers who have participated in many class action lawsuits can provide insightful
2 and useful analysis, thoughtful alternatives, and a context within which to identify flaws
3 or oversights in a settlement, and thereby assist a court in fulfilling its duty to examine
4 the settlement as an independent and impartial neutral.

5 Thus, objectors provide great value to the class action process. Without resolving
6 the issues described above, the Settlement could become a complete sham and no one
7 would be the wiser. The judicial system would have failed Class Members by requiring
8 no mechanism for assuring that the agreed relief ever is received by the persons who
9 should benefit. The foregoing observations are submitted to improve the Settlement, and
10 thereafter to guarantee it will work, and to show when and how well it is completed.
11 These improvements are developed only now because objectors offer the last opportunity
12 to preserve the adversary process which is necessary to test the fairness of a proposed
13 settlement.

14 "It is desirable to have as broad a range of participants in the fairness hearing as
15 possible because of the risk of collusion over attorneys' fees and the terms of settlement
16 generally. . . . It is impossible for a class to select, retain or monitor its lawyers as an
17 individual client would." Great Neck Capital Appreciation Inv. P'ship, L.P. v.
18 PricewaterhouseCoopers, L.L.P., 212 F.R.D. 400, 412 (E.D. Wis. 2002). "Class counsel
19 and defendants' counsel may reach a point where they are cooperating in an effort to
20 consummate the settlement." Id. "Courts, too, are often inclined toward favoring the
21 settlement, and the general atmosphere may become largely cooperative." Id.

22 "Thus, objectors serve as a highly useful vehicle for class members, for the court
23 and for the public generally." Great Neck, 212 F.R.D. at 412. "From conflicting points
24 of view come clearer thinking." Id. at 412-13. "Therefore, a lawyer for an objector who
25 raises pertinent questions about the terms or effects, intended or unintended, of a
26 proposed settlement renders an important service." Id. at 413.

27 The value of objectors is even acknowledged by attorney Melvyn Weiss, one of the
28 nation's most well-known class action attorneys, of the firm now known as Milberg

1 Weiss & Bershad LLP: "Objectors are part of the class action system and, though they
2 may be irritating from time to time, the system's been working effectively. If objectors
3 can come in and negotiate a benefit, that's great. I'm not going to criticize one of the
4 safeguards [of the class action process]. The objectors act as a check and balance to the
5 whole procedure." See, "Objectors to class action settlements: Watchdogs or scum of
6 the earth?" by Joe Frey, Insure.com website, March 23, 2000.

7 "The law generally does not allow good Samaritans to claim a legally enforceable
8 reward for their deeds." Reynolds v. Beneficial Nat. Bank, 288 F.3d 277, 288 (7th Cir.
9 2002) (Posner, C.J.). "But when professionals render valuable albeit not bargained-for
10 services in circumstances in which high transaction costs prevent negotiation and
11 voluntary agreement, the law does allow them to claim a reasonable professional fee from
12 the recipient of their services." Id. "That is the situation of objectors to a class action
13 settlement." Id.

14 In other cases, objectors' counsel have been recognized where their efforts have
15 augmented the common fund or otherwise improved a class action settlement. See, e.g.,
16 Bowling v. Pfizer, Inc., 922 F.Supp. 1261, 1285 (S.D. Ohio), aff'd, 102 F.3d 777 (6th Cir.
17 1996); In re Domestic Air Transp. Antitrust Litig., 148 F.R.D. 257, 359-60 (N.D.Ga.
18 1993). Indeed, even in cases where objectors appeared but the settlement terms were not
19 altered, courts have recognized their value in that their presence improved the process
20 and assisted the court in its scrutiny of the settlement. See County of Suffolk v. Long
21 Island Lighting Co., 907 F.2d 1295, 1325-27 (2d Cir. 1990); Howes v. Atkins, 668
22 F.Supp. 1021, 1027 (E.D.Ky. 1987); Frankenstein v. McCrory Corp., 425 F.Supp. 762,
23 767 (S.D.N.Y. 1977); see also Domestic Air, 148 F.R.D. at 359. In In Re: PNC Financial
24 Services Group, Inc. Securities Litigation, Case No. 2:02-cv-00271-DSC (U.S.D.C. W.D.
25 Pa. W.D.), decided last month on April 12, 2007, Judge Cercone made a specific finding
26 "in recognition of the benefit to the Class created by the objection and the time spent
27 thereon by Objector's Counsel . . ." and thereby awarded compensation to Objector's
28 counsel.

1 Accordingly, Objector wishes to reserve the right to apply for reasonable and
2 appropriate compensation for the valuable and crucially important services which have
3 been provided in assisting the Court with this complex matter, preserving the adversary
4 process needed to test the Proposed Settlement, identifying problems with the Proposed
5 Settlement, and presenting substantial and workable solutions.

6 Just as objectors' counsel should be encouraged to assist the class-action process,
7 so should individual class members be encouraged to participate. Accordingly, an
8 incentive award is appropriate for Objector herein for its willingness to be a named party,
9 promoting fairness, and contributing to the common welfare of the Class.

10 **IV. REQUEST FOR COPIES OF PLEADINGS**

11 This Objector requests that Class Counsel and Defendant's counsel provide copies
12 of all briefs, pleadings, declarations and other documents filed in this case in support of
13 the settlement and the application for attorney fees, including the application/motion for
14 preliminary approval, if any; this objector will reimburse the parties for such copies and
15 postage. These pleadings are necessary to allow the Objector to fully review the
16 proposed settlement and fee applications pending before this court.

17 **V. CONCLUSION**


18 This Objector hereby adopts, subscribes to and incorporates into these Preliminary
19 Objections all other well-taken, timely filed objections. This Objector also requests an
20 incentive award as a representative of Class Members in this litigation.

21 WHEREFORE, This Objector respectfully requests that this Court:

- 22 A. Upon proper hearing, sustain these Objections;
23 B. Upon proper hearing, enter such Orders as are necessary and just to
24 adjudicate these Objections and to alleviate the inherent unfairness,
25 inadequacies and unreasonableness of the proposed settlement.
26 C. Award an incentive fee to this Objector for his service as a named
27 representative of Class Members in this litigation.
28

1 D. Order the production of the copies of documents requested in Section IV.
2 above.

3
4
5 Dated: December 15, 2008


6 Joseph Palmer

1 **Re: Berger v. Property I.D. et al**
2 **Case No. CV-05-5373-GHK (CWx)**

3
4 **DECLARATION OF SERVICE**
5 **STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

6 I, Alison Paul, declare that I am employed with the Law Offices of Darrell Palmer whose
7 address is 603 N. Highway 101, Suite A. Solana Beach, CA 92075. I am readily familiar with the
8 business practices of this office for collection and processing of correspondence for mailing with the
9 United States Postal Service; I am over the age of eighteen (18) and I am not a party to this action.

10 On December 15, 2008, I served:

11 **OBJECTION OF JOSEPH D. PALMER TO PROPOSED SETTLEMENT**
12 **AND NOTICE OF INTENT TO APPEAR**

13 on the following parties, as directed by the NOTICE OF CLASS ACTION SETTLEMENT:

14 **Clerk of the Court**
15 **United States District Court for the Central District of California**
16 **255 East Temple Street**
17 **Los Angeles, CA 90012**

18 **Barry Himmelstein**
19 **Lieff, Cabraser, Heimann & Bernstein, LLP**
20 **275 Battery Street, 30th Floor**
21 **San Francisco, CA 94111**

22 **John Schwimmer**
23 **Sussman Shank LLP**
24 **1000 SW Broadway, Suite 1400**
25 **Portland, OR 97205**

26 by placing a copy in a separate envelope, with postage fully prepaid, for each address named
27 above, into a US Postal Service depository on this day.

28 I declare under penalty of perjury under the laws of the United States that the foregoing is true
and correct. Executed at Solana Beach, California.



EXHIBIT B

FILED

AUG 1 1996

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

No. 96-55473

HERBERT EISEN, TRUSTEE FOR
MARGARET M. EISEN FAMILY TRUST,

Plaintiff-in-Intervention/Appellant

v.

MGM-PATHE COMMUNICATIONS CO., PATHE
COMMUNICATIONS CORPORATION, CREDIT
LYONNAIS BANK NEDERLAND N.V. and
GIANCARLO PARRETTI,

Defendants/Appellees.

Appeal from Final Judgment of the
United States District Court for
the Central District of California,
Western District
The Honorable Harry L. Hupp

District Court Civil No. 92-497-B(BTM)

BRIEF OF APPELLEES

MGM-PATHE COMMUNICATIONS CO., PATHE COMMUNICATIONS
CORPORATION, and CREDIT LYONNAIS BANK NEDERLAND N.V.

Travers D. Wood
Ted S. Ward
WHITE & CASE
633 W. Fifth Street, Suite 1900
Los Angeles, CA 90071-2007
(213) 620-7700

Attorneys for Appellees
MGM-PATHE COMMUNICATIONS CO., PATHE
COMMUNICATIONS CORPORATION, and
CREDIT LYONNAIS BANK NEDERLAND N.V.

I.

STATEMENT OF JURISDICTION

Defendants and Appellees MGM-Pathe Communication Co. ("MGM"), Pathe Communications Corporation, and Credit Lyonnais Bank Nederland N.V. ("CLBN") (collectively, the "Corporate Appellees") do not contest the Statement of Subject Matter and Appellate Jurisdiction of plaintiff and appellant Herbert Eisen, Trustee for Margaret M. Eisen Family Trust ("Appellant").

II.

STATEMENT ON NON-OPPOSITION AND CLARIFICATION

Corporate Appellees respectfully submit this statement of non-opposition and clarification to the appeal from final judgment of plaintiff and appellant Herbert Eisen, Trustee for Margaret M. Eisen Family Trust.

In the Stipulation of Settlement, Corporate Appellees agreed not to contest Appellant's request for attorneys' fees. (ER 198, ¶ 33)^{1/} In particular, Corporate Appellees agreed "not to challenge, oppose or comment upon negatively with respect to such applications consistent with the provisions of this Stipulation so long as the applications are limited to the amounts set forth in ¶ 32 above." (Id.) As a consequence, by submitting this brief, Corporate Appellees do not intend to

^{1/} Citations herein are to the Excerpts of Record submitted by Appellant ("ER"), the Clerk's Record ("CR"), and the Supplemental Excerpts of Record submitted by Corporate Defendants concurrently herewith ("Suppl. ER").

"challenge" Appellant's request, but instead seek to clarify certain matters for the Court.

As set forth in his brief, Appellant contends that the District Court abused its discretion by awarding attorneys' fees as a percentage of the amount of the Settlement Fund actually claimed by the class. By using such a benchmark, as opposed to the total amount of the settlement fund created, Appellant contends that the resulting amount of fees awarded by the District Court "bestows a significant windfall" on Corporate Appellees because they will receive a refund. (Appellant's Brief, p. 36, n. 23.) That is simply not the case.

As set forth in the Stipulation of Settlement, Corporate Appellees anticipated that the amount of "damages", including attorneys' fees, would be less than the total amount of the Settlement Fund.^{2/} (ER 198, ¶ 33.) As discussed during the February 12, 1996 hearing before the District Court on Appellant's motion for attorneys' fees, (transcript, p. 20), Corporate Appellees included a provision in the Stipulation of Settlement requiring that any unclaimed portion of the Settlement Fund be returned to CLBN or MGM, two of the Corporate Appellees, precisely because they anticipated that total damages would not exhaust the \$4.5 million fund. (ER 198, ¶ 26(f).) The difference between \$4.5 million and the actual damages awarded

^{2/} The terms of the Stipulation of Settlement were approved by and made part of the February 16, 1996 Order Approving Settlement, Entering Final Judgment, Dismissing Action, and Awarding Attorneys' Fees and Expenses (the "Order").

was always contemplated to be refunded. Therefore, it is disingenuous to characterize the anticipated reimbursement as a windfall.

That point is an important distinction which cannot be glossed over and which may render Appellant's reliance on Boeing Co. v. Van Gemert, 444 U.S. 472 (1980) and its progeny inappropriate. In the Boeing case, Boeing's liability was the result of a litigated judgment entered by the district court. Moreover, the judgment in Boeing set a fixed, not contingent, sum to be paid by the defendant to the class. Id. at 480 - 481 and n.5. As a consequence, the Court concluded, among other things, that the fee award was properly based on a percentage of the common fund created because the amount in the common fund was identical to the amount of damages ultimately to be paid by Boeing.

The Corporate Appellees' liability, by contrast, was the result of a stipulated settlement. As part of that stipulation, the parties, including Appellant, the class representative, agreed that any settlement funds not claimed by class members or awarded as fees and costs would be returned to CLBN or MGM. As a result and unlike Boeing, the judgment in the instant case gives those Corporate Appellees the right to receive unclaimed portions of the Settlement Fund. That is, the ultimate amount to be paid by Corporate Appellees is not fixed by or equal to the amount originally set aside in the Settlement Fund. Instead, the Settlement Fund is a cap of Corporate Appellees'

EXHIBIT C

CLASS ACTION PERSPECTIVES

TIPS AND TRENDS IN CLASS ACTION CLAIMS ADMINISTRATION AND NOTICE

VOLUME III: ISSUE 2 / NOVEMBER 2008

ANTICIPATING CLAIMS FILING RATES IN CLASS ACTION SETTLEMENTS

by Tiffany Allen; Principal Consultant, Rust Consulting, Inc.

Among the most common questions asked of a settlement administrator during pre-settlement consultation is “How many claims should we expect?” As counsel prepares for the settlement of a class action lawsuit and the subsequent administration, the defendant company, counsel for both sides and the settlement administrator alike want to determine the likely claims-filing rates. The information is useful to the parties in structuring a claims program or preparing to fund a settlement account and to the administrator’s ramp-up process.

While there is no perfect way to predict claims-filing rates for any particular settlement, there are certain factors that allow for relatively accurate estimates. The answers to the following questions provide much of the information necessary to estimate how many claims may be filed.

- ❖ What type of case is being settled?
- ❖ Is the case likely to attract unpaid media attention?
- ❖ What type and value of benefits will be distributed?
- ❖ How are the notice program and claim form designed?
- ❖ How is the claim process structured?

Case Type

By examining historical claims-filing rates organized by case type, certain trends can be identified and used to help predict response rates for settlements of similar type and scope. While other factors (some of which are addressed within this paper) specific to any particular settlement may have more impact than case type, leaving a sometimes broad range of response rates even within otherwise similar cases, even these ranges provide useful information.

A typical securities settlement may conclude with between 20 and 35 percent of class members having filed claims. For labor and employment settlements, the number tends to be from 20 to as high as 85 percent.

Article continued on the next page.



Rust Consulting, Inc. is a national leader in the class action settlement administration industry. With experience on more than 2,000 cases worth billions of dollars, Rust has expertise in consumer, insurance, securities, employment, property and product liability matters. Partnered with Kinsella/Novak Communications, LLC and Complete Claim Solutions, LLC, Rust offers a full complement of services including class member location, notification, claims processing, call center, distribution and tax reporting.



With their broad range of subject matter, benefit types and amounts, and class member demographics, as well as the “hit-or-miss” availability of mailing lists, consumer settlements can draw a filing rate between two and 20 percent. An equally wide variety of claims-filing rates occurs across property-related settlements, due in large part to the supporting documents required to file claims.

The Effects of Unpaid Media

Any customer service representative working for a settlement administrator can explain the effects of unpaid media. Unpaid media, or “earned” media, means coverage of a settlement by any newspaper, magazine, website, radio or television station that was not purchased as a part of that settlement’s media notice campaign.

The first result of such media coverage, especially when it comes in the “hot media” forms of the Internet, radio or television, is a barrage of calls to the claims administrator’s toll-free number. Within a few days of the coverage, the number of incoming claim forms often increases dramatically. The effect from a single instance of media coverage may be short-lived and minimal in the overall scope of the settlement, but repeated instances can dramatically increase the number of claims filed.

As the filing deadline approached in the settlement *In re Compact Disc Minimum Advertised Price Antitrust Litigation*, MDL No. 1361 (D.Me.), the website msn.com placed a story about the settlement on its homepage. In a single day, more than 200,000 users viewed the settlement website and 140,000 filed claims—4.1 percent of all claims filed on the settlement.

In a single day, more than 200,000 users viewed the settlement website and 140,000 filed claims – 4.1 percent of all claims filed on the settlement.

It is impossible to determine precisely what settlements the media will choose to cover. However, typically large settlements with well-known defendants receive coverage. Additionally, new and unusual settlement types and settlements dealing with sensitive issues are more likely to receive unpaid media attention.

Benefit Type and Value

In short, class members want to receive as much cash as possible. Settlements offering class members a cash benefit are more likely to see high claims-filing rates than those offering other benefits, such as products, services, discounts on future purchases or vouchers for reimbursement on future purchases.

The value, or perceived value, of settlement benefits to class members is another key driver of claims-filing rates. A class member must feel the benefits being offered are worth the time and effort required to file a claim. So while cash attracts many class members, a 10-page claim form that results in a \$10 award, for example, does not. Professional, relatively wealthy class members typically would consider certain benefits too small to be worth the time required to file a claim. The converse is often also true.

Notice Design and Scope

For a class member to decide whether the effort required to file a claim and thus receive a benefit is worthwhile, he or she must first receive and understand the available options. The scope of the notice program and design of the notice itself play heavily into that decision, and thus into the eventual claim-filing rate.

With a direct mail campaign, the possession and use of a complete, up-to-date and accurate list of class members' addresses naturally increases claims-filing rates. Accurate record-keeping helps explain the disparity in claims-filing rates within consumer settlements. Consumer settlements involving certain types of industries—insurance, for example—are more likely to include client lists than those involving commercial products purchased from a retail store. With class members purchasing the product at issue from a retailer, the defendant company is not likely to have substantial information on the end-purchasers for use in the creation of a mailing list. The parties and administrator therefore cannot rely on direct mailing, and must focus on a media notice campaign.

With media notice campaigns, the use of “plain language” notice may drive claims-filing rates. According to Kinsella/Novak Communications, LLC, an advertising firm specializing in plain language in media placement for class action settlements, the use of plain language in legal documents means the organization of information, presentation, design and layout as much as clear and effective writing. For example, a publication notice written according to the principles of plain language may use the headline “Did You Purchase [Product] Between [Date] and [Date]?” while a version of the same publication notice written in a more traditional style may open with the case caption. Plain language draws in readers and helps them better understand the material being presented and its potential impact on them, and can lead to increased participation and claims-filing.

Selecting sufficient media weight and the right media vehicles to reach class members is key in determining claims filing rates.

In addition, the media selected to reach the class must be based on the demographic make-up of class members and be of sufficient weight to penetrate the target audience and allow multiple exposures to the notice. Using advertising measurements based on certified consumer surveys allows the *reach* of the class and the *frequency* of notice exposures to be calculated across the media program. Obviously, notice programs with a low reach or lack of proper demographic targeting will depress claims filing rates. Selecting sufficient media weight and the right media vehicles to reach class members is key in determining claims filing rates.

Claim Form Design and Process

It stands to reason that the design of the claim form follows some of the same ideas listed above. The design of the claim form can help or hinder a class member trying to decide whether to file a claim. A claim form with instructions written according to plain language principles makes it easier for a class member to decide whether the benefit being provided is worth his or her time. Further, when the claim form is laid out clearly, it simplifies filling out the form.

Regardless of plain language, the simpler the claim form and process, the more likely class members are to complete and submit the claim form. A settlement that requires claimants simply to sign a form will likely have a higher claims-filing rate than one requiring claimants to provide narrative responses to questions and attach documentation, all other things being equal. This is one primary reason it is difficult to provide an estimate regarding property-related settlements: the documentation required to determine class membership or benefit eligibility varies a great deal from settlement to settlement, and such documentation is often directly tied to claims-filing rates.

Settlements incorporating multi-step claims processes are also less likely to produce high claims-filing rates. Simple, one-step processes are convenient for class members, making them more likely to complete the process even when the benefit value may be low. For example, in *Broder v. MBNA Corp.*, No. 98/605153 (N.Y. Sup. Ct., County of New York), nearly 38 percent (more than 1.4 million class members from a group of 3.7 million) filed a claim form requiring just a signature despite the clear indication of the eventual benefit being a check worth slightly over \$3.

The increasing use of online claims is proving to be another method of predicting claims rates. In situations when the defendant can provide or match certain class member data to online claims, or when there is no documentation required of the class member, online claims-filing tends to increase the overall claims rate, as it is a convenient option for class members of many demographics.

Summary

Claims-filing rates will never be entirely predictable. For each predictor that indicates one thing, there is one indicating another, and industry trends change over time as counsel and defendants develop new types of settlements and class members grow used to other types of settlements or gravitate toward different methods of claims submission. However, there are certain factors that traditionally have influenced rates, including case type, unpaid media coverage, benefit value and type, notice design and program, and claim form design and process. By monitoring trends over time and tapping into industry expertise, one can make reasonable assumptions while predicting claims-filing rates for upcoming settlements.



Tiffany Allen, *Principal Consultant*

Tiffany Allen is a principal consultant at Rust Consulting, Inc. with more than 12 years of settlement administration experience, focusing on large-scale, nationwide matters. She has overseen all aspects of administration for more than 100 settlements. Ms. Allen holds a J.D. from William Mitchell College of Law.



Have a question about claims administration or an idea for an article topic? We want to hear from you:

Rust Consulting, Inc.
625 Marquette Avenue, Suite 880
Minneapolis, MN 55402

Jen Huart
612.359.2924
jhuart@rustconsulting.com

EXHIBIT D

THE STATE BAR OF CALIFORNIA

Monday, January 5, 2009

State Bar Home

Home > Attorney Search > Attorney Profile

ATTORNEY SEARCH

Joseph Darrell Palmer - #125147

Current Status: Active

This member is active and may practice law in California.

See below for more details.

Profile Information

Bar Number	125147		
Address	Law Offices of Darrell Palmer 603 N Highway 101 Ste A Solana Beach, CA, 92075	Phone Number	(858) 792-5600
		Fax Number	(858) 792-5655
		e-mail	darrell.palmer@cox.net
District	District 9	Undergraduate School	No Information Available;
County	San Diego	Law School	California Western SOL; San Diego CA
Sections	None		

Status History

Effective Date	Status Change
<i>Present</i>	Active
9/23/2002	Inactive
9/23/2002	Active
8/30/2002	Not Eligible To Practice Law
8/1/2002	Inactive
12/15/1986	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Effective Date	Description	Case Number	Resulting Status
Disciplinary and Related Actions			
11/26/2002	Public reproof with/duties	02-C-11878	
8/30/2002	Interim suspension after conviction	02-C-11878	Not Eligible To Practice Law

Administrative Actions

This member has no public record of administrative actions.

EXHIBIT E

CLOSED

**United States District Court
 District of Massachusetts (Boston)
 CIVIL DOCKET FOR CASE #: 1:96-cv-10706-RGS**

Duhaime, et al v. John Hancock Mutual, et al
 Assigned to: Judge Richard G. Stearns
 Demand: \$0
 Case in other court: First Circuit COA, 03-02350
 First Circuit COA, 98-01215
 First Circuit COA, 98-01901
 Florida Dist Ct, 95cv1556-civ-t21A

Date Filed: 04/04/1996
 Date Terminated: 09/10/2001
 Jury Demand: Plaintiff
 Nature of Suit: 890 Other Statutory
 Actions
 Jurisdiction: Federal Question

Cause: 28:1332 Diversity-Injunctive & Declaratory Relief

Date Filed	#	Docket Text
04/04/1996	1	Original file, certified copy of transfer order and docket Docket # 95-1556-civ-t-21A in other court: (fmr) (Entered: 04/04/1996)
04/05/1996	2	Motion by John Hancock Mutual, John Hancock Variabl for expedited scheduling conference and for stay of briefing and discovery pending issuance of scheduling order , filed. (lau) (Entered: 04/08/1996)
04/05/1996	3	Memorandum by John Hancock Mutual, John Hancock Variabl in support of [2-1] motion for expedited scheduling conference, [2-2] motion for stay of briefing and discovery pending issuance of scheduling order , filed. (lau) (Entered: 04/08/1996)
04/09/1996	4	Notice of appearance of attorney for Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan by Michael G. Lange, Glen DeValerio, filed. (lau) (Entered: 04/10/1996)
04/15/1996	5	Judge George A. O'Toole Jr. . Notice of Hearing/conference: set scheduling conference for 2:30 5/2/96 . Entered cc/cl (lau) (Entered: 04/16/1996)
04/19/1996	6	Notice of appearance of attorney for Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan by Lawrence D. Shubow, filed. (lau) (Entered: 04/23/1996)
04/19/1996	7	Memorandum by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan in opposition to [2-2] motion for stay of briefing and discovery pending issuance of scheduling order , filed. (lau) (Entered: 04/23/1996)
04/22/1996	8	Letter by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan by Keith M. Fleischman dated: 4/18/96 re: rescheduling of the scheduling conference, reset scheduling conference for 2:00 5/16/96 filed. (lau) (Entered: 04/24/1996)

05/06/1996	9	Motion by John Hancock Mutual, John Hancock Variabl to stay discovery , filed. (lau) (Entered: 05/08/1996)
05/06/1996	10	Memorandum by John Hancock Mutual, John Hancock Variabl in support of [9-1] motion to stay discovery , filed. (lau) (Entered: 05/08/1996)
05/10/1996	11	Joint statement by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock Mutual, John Hancock Variabl , re: scheduling conference, filed. (lau) (Entered: 05/15/1996)
05/15/1996	13	Motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan for Melvyn I. Weiss, Barry A. Weprin, Keith M. Fleischman and Janine L. Pollack to appear pro hac vice , filed. (lau) (Entered: 05/17/1996)
05/15/1996	14	Certificate of Good Standing by Attorney Melvyn I. Weiss, filed. (lau) (Entered: 05/17/1996)
05/15/1996	15	Certificate of Good Standing by Attorney Barry A. Weprin, filed. (lau) (Entered: 05/17/1996)
05/15/1996	16	Certificate of Good Standing by Attorney Keith M. Fleischman, filed. (lau) (Entered: 05/17/1996)
05/15/1996	17	Certificate of Good Standing by Attorney Janine L. Pollack, filed. (lau) (Entered: 05/17/1996)
05/15/1996	18	Unopposed Motion by John Hancock Mutual, John Hancock Variabl for Edwin G. Schallert to appear pro hac vice , filed. (lau) (Entered: 05/17/1996)
05/15/1996	19	Certificate of Good Standing by Attorney Edwin G. Schallert, filed. (lau) (Entered: 05/17/1996)
05/16/1996		Scheduling conference held . (lau) (Entered: 05/17/1996)
05/16/1996	12	Judge George A. O'Toole Jr. . Clerk's Notes: re: scheduling conference; no objections to the motions pro hac vice Weiss, Fleichman, Pollack, Shallott and ?. The parties agree in general to the proposed schedule re; motion to stay discovery the Court feels that a stay is not appropriate however, it should not be done all out at this point, before the class certification is decided. Motion hearingre; motion to dismiss and motion for class certification 7/10/96 at 2:00 p.m. Court adopts proposed schedule under plaintiff's A & B, which get us to the motion stage, the dates set by Magistrate Piso shall stand. (lau) (Entered: 05/17/1996)
05/28/1996		Judge George A. O'Toole Jr. . Endorsed Order entered granting [18-1] motion for Edwin G. Schallert to appear pro hac vice. Entered cc/cl (lau) (Entered: 05/30/1996)
05/30/1996	20	Joint motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock Mutual, John Hancock Variabl to modify briefing schedule and new date for oral argument , filed. . (lau) (Entered: 05/31/1996)
06/06/1996		Judge George A. O'Toole Jr. . Endorsed Order entered granting [13-1] motion

		for Melvyn I. Weiss, Barry A. Weprin, Keith M. Fleischman and Janine L. Pollack to appear pro hac vice. Entered cc/cl (lau) (Entered: 06/10/1996)
06/11/1996	21	Notice of appearance of attorney for Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan by Kenneth G. Gilman, David Pastor, Douglas M. Brooks, filed. (lau) (Entered: 06/12/1996)
06/12/1996		Judge George A. O'Toole Jr. . Endorsed Order entered granting [20-1] joint motion to modify briefing schedule and new date for oral argument. A hearing date will be established by a future order. Entered cc/cl (lau) (Entered: 06/12/1996)
06/12/1996	22	Joint motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock Mutual, John Hancock Variabl concerning Policyholder Information , filed. . (lau) (Entered: 06/12/1996)
06/14/1996		Judge George A. O'Toole Jr. . Endorsed Order entered granting [22-1] joint motion concerning Policyholder Information. Entered cc/cl (lau) (Entered: 06/17/1996)
07/09/1996	23	Joint motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock Mutual, John Hancock Variabl to stay , filed. . (lau) (Entered: 07/09/1996)
07/16/1996		Judge George A. O'Toole Jr. . Endorsed Order entered withdrawing [23-1] joint motion to stay, pursuant to conversation with counsel. . (lau) (Entered: 07/17/1996)
07/18/1996	24	Second Joint motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock John Hancock Variabl for new briefing schedule and new date for oral argument , filed. . (lau) (Entered: 07/18/1996)
08/16/1996		Judge George A. O'Toole Jr. . Endorsed Order entered granting [24-1] joint motion for new briefing schedule and new date for oral argument, Motion hearing will be held at 2:00 p.m. 1/15/97 . Entered cc/cl (lau) (Entered: 08/20/1996)
09/27/1996	25	Notice of change of address filed by Stephen Hubbard by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan . (lau) (Entered: 09/30/1996)
10/18/1996	26	Third Joint motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock John Hancock Variabl for new briefing schedule and new date for oral argument , filed. . (lau) (Entered: 10/23/1996)
10/30/1996		Judge George A. O'Toole Jr. . Endorsed Order entered granting [26-1] joint motion for new briefing schedule and new date for oral argument, status conference set for 2:00 1/29/97 . Entered cc/cl (lau) (Entered: 10/31/1996)
11/20/1996	27	Joint motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock Mutual, John Hancock Variabl for new briefing schedule and new date for oral argument , filed. . (lau) (Entered: 11/20/1996)

		11/22/1996)
12/11/1996		Judge George A. O'Toole Jr. . Endorsed Order entered granting [27-1] joint motion for new briefing schedule and new date for oral argument, reset status conference for reset to 2:00 3/6/97 . Entered cc/cl (lau) (Entered: 12/12/1996)
12/19/1996	28	Fifth Joint motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock John Hancock Variabl for new briefing schedule and new date for oral agrument , filed. . (lau) (Entered: 12/19/1996)
12/23/1996		Judge George A. O'Toole Jr. . Endorsed Order entered granting [28-1] joint motion for new briefing schedule and new date for oral agrument. Entered cc/cl (lau) (Entered: 12/24/1996)
01/31/1997	29	Sixth Joint motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock John Hancock Variabl for new briefing schedule and new date for oral argument , filed. . (lau) (Entered: 02/03/1997)
02/05/1997		Judge George A. O'Toole Jr. . Endorsed Order entered granting [29-1] joint motion for new briefing schedule and new date for oral argument. Entered cc/cl (lau) (Entered: 02/07/1997)
02/19/1997	30	Motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan for Joseph D. Ament, Michael B. Hyman and William H. London to appear pro hac vice , filed. (lau) (Entered: 02/21/1997)
02/19/1997	31	Certificate of Good Standing by Attorney Joseph D. Ament, filed. (lau) (Entered: 02/21/1997)
02/19/1997	32	Certificate of Good Standing by Attorney William H. London, filed. (lau) (Entered: 02/21/1997)
02/19/1997	33	Letter by John G. Fabiano dated: 2/19/97 to: Ms. Dello Russo re: 3/5/97 hearing, set status conference for 2:15 3/5/97 filed. (lau) (Entered: 02/21/1997)
03/05/1997		Status conference held . (lau) (Entered: 03/06/1997)
03/05/1997	34	Judge George A. O'Toole Jr. . Clerk's Notes: re: status conference; the case is progressing, still have some discovery to complete; set status conference for 2:30 6/10/97 (lau) (Entered: 03/06/1997)
03/10/1997		Terminated document: mootng [9-1] motion to stay discovery, mootng [2-1] motion for expedited scheduling conference, mootng [2-2] motion for stay of briefing and discovery pending issuance of scheduling order Requested by ctd. (fmr) (Entered: 03/10/1997)
04/24/1997		Judge George A. O'Toole Jr. . Endorsed Order entered granting [30-1] motion for Joseph D. Ament, Michael B. Hyman and William H. London to appear pro hac vice .cc/cl (fmr) (Entered: 04/25/1997)
04/24/1997	35	Notice of appearance of attorney for Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan by Joseph D. Ament,

		Michael B. Hyman, William H. London, filed. cc/cl (fmr) (Entered: 04/25/1997)
06/06/1997	36	Amended complaint by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan filed. (Answer due 6/16/97 for John Hancock Variabl, for John Hancock Mutual) . (lau) (Entered: 06/09/1997)
06/10/1997		Status conference held. (fmr) (Entered: 06/11/1997)
06/11/1997	37	Joint motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock Mutual, John Hancock Variabl to file documents under seal/impound , filed. . (lau) (Entered: 06/16/1997)
06/12/1997		Judge George A. O'Toole Jr. . Endorsed Order entered granting [37-1] joint motion to file documents under seal/impound. Entered cc/cl (lau) (Entered: 06/16/1997)
06/12/1997	38	SEALED DOCUMENT placed in vault. (lau) (Entered: 06/16/1997)
06/13/1997	39	Judge George A. O'Toole Jr. . Order entered. (UNDER SEAL) (lau) (Entered: 06/16/1997)
06/13/1997	40	Judge George A. O'Toole Jr. . Order entered. The Court's Findings and Order entered this day are to remain under seal until June 24, 1997, or until further order of this Court. Entered cc/cl (lau) (Entered: 06/16/1997)
06/19/1997	41	Joint motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock Mutual, John Hancock Variabl to vacate [40-1] order sealing documents , filed. . (lau) (Entered: 06/20/1997)
06/19/1997	42	Joint motion by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock Mutual, John Hancock Variabl for leave to amend stipulation of settlement , filed. . (lau) (Entered: 06/20/1997)
06/19/1997		Judge George A. O'Toole Jr. . Endorsed Order entered granting [41-1] joint motion to vacate [40-1] order sealing documents and so ordered. Entered cc/cl. (lau) (Entered: 06/20/1997)
06/19/1997	44	STIPULATION OF SETTLEMENT by Richard Duhaime, Maureen Hahn, Theodore A. Peck, John Sullivan, Clarissa Sullivan, John Hancock John Hancock Variabl , filed. (lau) (Entered: 07/07/1997)
06/20/1997		Judge George A. O'Toole Jr. . Endorsed Order entered granting [42-1] joint motion for leave to amend stipulation of settlement. Entered cc/cl (lau) (Entered: 06/20/1997)
06/25/1997	43	Judge George A. O'Toole Jr. . Clerk's Notes: re: conference; the parties have signed an agreement and seek preliminary approval. The COurt will approve the order. Court Reporter: Ruggieri (lau) (Entered: 06/27/1997)
07/22/1997	45	Letter from Mrs. Walterine Watts filed. (lau) (Entered: 07/23/1997)
08/04/1997	46	Letter from James P. Boudreau dated: 8/4/97 re: class action filed. (lau) (Entered: 08/13/1997)

		all counsel of record and Mr. T.W. Olick. Document forwarded to Court of Appeals. (Entered: 02/28/2006)
03/02/2006	325	Supplemental Record on Appeal transmitted to US Court of Appeals re 316 Notice of Appeal, 302 Notice of Appeal, Documents included: 324 (Ramos, Jeanette) (Entered: 03/02/2006)
03/03/2006		Filing fee: \$ 255.00, receipt number 70505 regarding notice of appeal. Receipt as proof of payment forwarded to U.S. Court of Appeals. (Flaherty, Elaine) (Entered: 03/03/2006)
03/20/2006	326	Supplemental Record on Appeal transmitted to US Court of Appeals re 316 Notice of Appeal, Documents included: filing fee paid receipt (Ramos, Jeanette) (Entered: 03/20/2006)
09/15/2006	327	USCA Judgment as to 302 Notice of Appeal, filed by Thomas W. Olick. This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts. Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The orders of the district court are affirmed. Appellant Thomas W. Olick's motion, filed in appeal number 05-1485, to file a supplemental brief and appendix is denied. (Ramos, Jeanette) (Entered: 09/15/2006)
09/15/2006	328	MANDATE of USCA as to 302 Notice of Appeal, filed by Thomas W. Olick, (Ramos, Jeanette) (Entered: 09/15/2006)
09/15/2006	329	USCA Judgment as to 316 Notice of Appeal, filed by Thomas W. Olick. This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts. Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The orders of the district court are affirmed. Appellant Thomas W. Olick's motion, filed in appeal number 05-1485, to file a supplemental brief and appendix is denied. (Ramos, Jeanette) (Entered: 09/15/2006)
09/15/2006	330	MANDATE of USCA as to 316 Notice of Appeal, filed by Thomas W. Olick, (Ramos, Jeanette) (Entered: 09/15/2006)

PACER Service Center			
Transaction Receipt			
01/05/2009 20:37:41			
PACER Login:	lc0346	Client Code:	3125-0001
Description:	Docket Report	Search Criteria:	1:96-cv-10706-RGS
Billable Pages:	19	Cost:	1.52

EXHIBIT F

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**IN RE PNC FINANCIAL SERVICES
GROUP, INC. SECURITIES
LITIGATION**

Case No. 02-CV-271

JUDGE CERCONE

**THIS DOCUMENT RELATES TO ALL
ACTIONS**

FINAL ORDER AND JUDGMENT

AND NOW, this 12th day of April, 2007, after a hearing before this Court to determine (1) whether the terms and conditions of the Stipulation and Agreement of Settlement with Ernst & Young LLP (“E&Y”) dated December 19, 2006 (the “Stipulation”) are fair, reasonable and adequate for the settlement of all claims asserted by the Class against E&Y in the Second Consolidated and Amended Complaint dated March 31, 2005 (the “Second Amended Complaint”) in this action, including the release of E&Y and the Released Parties, and whether the Stipulation should be approved; (2) whether judgment should be entered dismissing the Second Amended Complaint on the merits and with prejudice in favor of E&Y and as against all persons or entities who are Class Members herein and who have not requested exclusion from the Class; and (3) whether and in what amount to award Plaintiffs’ Co-Lead Counsel in attorneys’ fees and for reimbursement of expenses; and the Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all persons or entities reasonably identifiable, who purchased the common stock of PNC Financial Services Group, Inc. (“PNC”), purchased call options on PNC common stock, or who wrote (sold) put options on PNC common stock, from July 19, 2001 through July 18, 2002 inclusive (the “Class Period”), and the PNC Incentive Savings Plan on behalf of itself and its present and former participants and

beneficiaries who purchased or otherwise acquired PNC common stock during the Class Period through the PNC Incentive Savings Plan, except those persons or entities excluded from the definition of the Class, as shown by the records compiled by the Claims Administrator in connection with the previous mailing of the notice of settlement with the PNC Defendants, AIG-FP, A&P and BI (the “PNC Settlement”), at the respective addresses set forth in such records, and that a summary notice of the hearing substantially in the form approved by the Court was published in the national edition of *The Wall Street Journal* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys’ fees and expenses requested; and the Court having previously approved the notice program and Plan of Allocation as fair and reasonable in its Order and Final Judgment filed July 13, 2006 (the “July 13th Final Order”) approving the PNC Settlement; and all capitalized terms used herein having the meanings as set forth and defined in the Stipulation;

IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Litigation, Lead Plaintiffs, all Class Members and E&Y.
2. The Court finds that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of Lead Plaintiffs are typical of the claims of the Class they seek to represent; (d) Lead Plaintiffs have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the Class Members predominate over any questions affecting only individual Class Members; and (f) a

class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure this Court hereby finally certifies the Litigation, for purposes of the Settlement, as a class action on behalf of all persons who purchased PNC common stock, who purchased call options on PNC common stock, or who wrote (sold) put options on PNC common stock, from July 19, 2001 through July 18, 2002 inclusive (the “Class Period”), and the PNC Incentive Savings Plan on behalf of itself and its present and former participants and beneficiaries who purchased or otherwise acquired PNC common stock during the Class Period through the PNC Incentive Savings Plan. Excluded from the Class are all Defendants in the Litigation, AIG Financial Products Corp., Arnold & Porter LLP, and Buchanan Ingersoll PC, any entity in which any Defendant, AIG Financial Products Corp., Arnold & Porter LLP, or Buchanan Ingersoll PC has a controlling interest or which is a parent or subsidiary of or is controlled by any Defendant, AIG Financial Products Corp., Arnold & Porter LLP, or Buchanan Ingersoll PC, and the officers, directors, partners, members, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns of any of the Defendants, AIG Financial Products Corp., Arnold & Porter LLP, or Buchanan Ingersoll PC, except that this exclusion shall not apply to persons in their capacity as present or former participants in or beneficiaries of the PNC Incentive Savings Plan. Also excluded from the Class are the putative Class Members who requested exclusion from the Class (as listed on Exhibit 1 annexed hereto) and the putative Class Members who previously requested exclusion from the Class in connection with the PNC Settlement (as listed on Exhibit 2 annexed hereto).

4. Notice of the proposed settlement of the Litigation was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the

Class of the pendency of the Litigation as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. The Settlement is approved and so ordered as fair, reasonable and adequate, and the Class Members and the Parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

6. The Second Amended Complaint is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against E&Y.

7. Lead Plaintiffs, the Class, and Class Members (including, but not limited to, for this purpose the current and former participants and beneficiaries of the PNC Incentive Savings Plan) and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting, either directly, in a derivative, or in any other capacity, any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, derivative, or individual in nature, including both known claims and Unknown Claims: (i) that have been asserted in the Litigation by Lead Plaintiffs, the Class, or any Class Member (including but not limited to, for this purpose, the PNC Incentive Savings

Plan and any current or former participant or beneficiary of the PNC Incentive Savings Plan) against any of the Released Parties; (ii) that could have been asserted in any forum by Lead Plaintiffs, the Class, or any Class Member (including but not limited to, for this purpose, the PNC Incentive Savings Plan and any current or former participant or beneficiary of the PNC Incentive Savings Plan) against any of the Released Parties, which arise out of, relate to, or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in any of the complaints filed in the Litigation and relate to the acquisition or ownership of shares of, or call or put options on, the common stock of PNC during the Class Period; or (iii) that were asserted by Andrew J. Gosline in his demand letter dated June 10, 2003 (“Gosline Demand Letter”) or that were asserted in any other derivative demands that have been made or may be made in connection with the PAGIC transactions that are described in the Second Amended Complaint (the “Settled Claims”) against E&Y, its predecessors, successors and assigns, its past and present parents, subsidiaries, partners, principals, employees, representatives, agents, insurers and reinsurers, and any entity in which E&Y has a controlling interest or which is related to or affiliated with E&Y (the “Released Parties”). Settled Claims shall include the claims that were assigned to Lead Plaintiffs and the Class under the terms of the December 17, 2004 Memorandum of Understanding and pursuant to Paragraph 11 of the July 13th Final Order. The Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Released Parties on the merits and with prejudice by virtue of the proceedings herein and this Final Order and Judgment.

8. “Unknown Claims” means any and all Settled Claims which any Lead Plaintiff, the Class, or any Class Member (including, but not limited to, for this purpose the PNC Incentive Savings Plan and any current or former participant or beneficiary of the PNC Incentive Savings

Plan) does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendant's Claims which E&Y does not know or suspect to exist in its favor, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendant's Claims, the Parties stipulate and agree that upon the Effective Date, Lead Plaintiffs and E&Y shall expressly waive, and each Class Member (including, but not limited to, for this purpose the PNC Incentive Savings Plan and any current or former participant or beneficiary of the PNC Incentive Savings Plan) and Released Party shall be deemed to have waived, and by operation of the Final Order and Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiffs and E&Y acknowledge, and Class Members and the Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims and Settled Defendant's Claims was separately bargained for and was a key element of the Settlement.

9. E&Y is hereby permanently barred and enjoined from instituting any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Litigation or any forum by

E&Y against any Lead Plaintiff, the Class, or any Class Member solely in his, her or its capacity as a Class Member, or their attorneys, relating to the institution, prosecution, or settlement of the Litigation and/or the claims asserted by Andrew J. Gosline in his demand letter dated June 10, 2003 (except for claims to enforce the Settlement) (the “Settled Defendant’s Claims”). The Settled Defendant’s Claims are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Final Order and Judgment.

10. Valid Proof of Claim forms submitted by Class Members in connection with the PNC Settlement shall be effective to participate in this Settlement and shall be of full force and effect for all releases provided for herein.

11. Valid Proof of Claim forms submitted by Class Members in connection with the PNC Settlement and/or this Settlement shall be effective to participate in the Restitution Fund.

12. Valid and timely Proof of Claim forms submitted by Class Members in connection with this Settlement shall be effective to participate in the PNC Settlement and shall be of full force and effect for all releases provided for in the July 13th Final Order.

13. The Court finds that all of the Parties have fulfilled their obligations to obtain releases as set forth under ¶ 16 of the July 13th Final Order.

14. Neither this Final Order and Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against E&Y as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by E&Y with respect to the truth of

any fact alleged by any of Lead Plaintiffs, the Class, or any Class Member, or the validity of any claim that has been or could have been asserted in the Litigation or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation or in any litigation, or of any liability, negligence, fault, or wrongdoing of E&Y;

(b) offered or received against E&Y as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by E&Y;

(c) offered or received against E&Y as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against E&Y in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation and this Final Order and Judgment; provided, however, that if the Stipulation is approved by the Court, E&Y may refer to it to effectuate the liability protection granted it hereunder;

(d) construed against E&Y as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered from E&Y after trial; and

(e) construed as or received in evidence as an admission, concession or presumption against Lead Plaintiffs or any of the Class Members that any of their claims are without merit, or that any defense asserted by E&Y has any merit, or that damages recoverable under the Complaints would not have exceeded the E&Y Gross Settlement Fund.

15. Plaintiffs' Co-Lead Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with the Plan of Allocation approved by the July 13th Final Order.

16. The Restitution Fund established pursuant to the Deferred Prosecution Agreement (the "DPA") entered into on June 2, 2003 by the United States Department of Justice ("DOJ") and PNC ICLC Corp., an indirect non-bank subsidiary of PNC, to which payments have been made, or may be made by PNC ICLC Corp., AIG Financial Products Corp.,¹ and E&Y, is independent of, and not part of, the Settlement Fund. Pursuant to the terms of the DPA, none of the proceeds of the Restitution Fund shall be payable as attorneys' fees, nor shall Class Counsel seek a fee award based upon sums disbursed from the Restitution Fund to Lead Plaintiffs, the Class, or any Class Member. Funds obtained on behalf of the Class from the Restitution Fund shall be distributed to Authorized Claimants in conjunction with the distribution of the Net Settlement Fund, and in accordance with the Plan of Allocation approved by the July 13th Final Order.

17. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

18. Plaintiffs' Counsel are hereby awarded 28% of the E&Y Gross Settlement Fund in fees, which sum the Court finds to be fair and reasonable, and \$42,198.15 in reimbursement of expenses, which expenses shall be paid to Plaintiffs' Co-Lead Counsel from the E&Y Settlement Fund with interest from the date such Settlement Fund was funded to the date of payment at the

¹ Pursuant to paragraph 7 of the Deferred Prosecution Agreement dated November 30, 2004, entered into between the DOJ and AIG Financial Products Corp., the DOJ had discretion to direct to the Restitution Fund a portion of AIG Financial Products Corp.'s payment to the United States Treasury.

same net rate that the Settlement Fund earns. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Plaintiffs' Co-Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the Litigation.

19. In making this award of attorneys' fees and reimbursement of expenses to be paid from the E&Y Gross Settlement Fund, the Court has considered and found that:

(a) the Settlement has created a fund of \$9,075,000 in cash that is already on deposit, plus interest thereon and that numerous Class Members will benefit from the Settlement created by Plaintiffs' Counsel;

(b) Over 147,000 copies of the Notice were disseminated to putative Class Members indicating that Plaintiffs' Co-Lead Counsel were moving for attorneys' fees in the amount not greater than 28% of the Gross Settlement Fund and for reimbursement of expenses in the approximate amount of \$150,000 and one objection was filed against the terms of the proposed Settlement or the ceiling on the fees and expenses requested by Plaintiffs' Co-Lead Counsel contained in the Notice;

(c) Plaintiffs' Counsel have conducted the Litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) The action involves complex factual and legal issues and was actively prosecuted over four years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(e) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the Class may have recovered less or nothing from E&Y

or that the July 13th Final Order would be overturned in connection with E&Y's appeal of that Order;

(f) Since their application in connection with the PNC Settlement, Plaintiffs' Counsel have devoted over 2,100 hours in prosecuting this Litigation, with a lodestar value of \$997,230.00, to achieve the Settlement; and

(g) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases, including the award set forth in the July 13th Final Order.

20. In full and complete resolution of the objection filed by Carole Blankowski, Plaintiffs' Co-Lead Counsel and Objector's Counsel have agreed that: [i] there will be no application by Co-Lead Counsel for additional fees and expenses incurred in administering the settlement and distributing the settlement proceeds to the Class Members, [ii] \$100,000 of the amount awarded as attorneys' fees will be segregated and will not be paid out of the Gross Settlement Fund (except as provided below) until after the Court has entered an Order of Distribution, approving the distribution of the Net Settlement Fund, [iii] the \$100,000 will earn interest at the same rate as the rest of the Gross Settlement Fund, and [iv] in recognition of the benefit to the Class created by the objection and the time spent thereon by Objector's Counsel, the Court has been asked to approve of the payment of \$17,500 to be paid to counsel for the Objector out of the attorneys' fees awarded to Co-Lead Counsel. Having reviewed the benefit created by Objector's Counsel under the facts and circumstances of this action, the Court finds that attorneys' fees in the amount of \$17,500 are hereby awarded to Objector's counsel, to be paid at the same time as Co-Lead Counsel is paid, out of the \$100,000 in segregated funds referenced

previously in this paragraph, and the balance (\$82,500) shall remain segregated and paid as provided above.

21. Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to the Litigation, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Final Order and Judgment.

22. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

Dated: Pittsburgh, Pennsylvania

4-12, 2007



Honorable David Stewart Cercone
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

**List of Persons and Entities Excluded from the Class in the
In re PNC Financial Services Group, Inc. Securities Litigation
in connection with the E&Y Settlement**

The following persons and entities, and only the following persons and entities, have properly excluded themselves from the Class in the *In re PNC Financial Services Group, Inc. Securities Litigation* in connection with the E&Y Settlement:

Patricia A. Aronica-Pollak 2708 Neonlight Drive York, Pennsylvania 17402-8410	Richard C. Osborne 25633 North Mosiertown Road Edinboro, Pennsylvania 16412-4149
Richard Pierce 37 Timberwood Drive Danville, Pennsylvania 17821	Libra Global Limited PO Box 88, 1 Grenville Street, St. Helier, Jersey JE4 9PF, Channel Islands
Thomas H. Butler 128 Lake Side Drive Montgomery, Texas 77356	

EXHIBIT 2

List of Persons and Entities Excluded from the Class in the *In re PNC Financial Services Group, Inc. Securities Litigation* in connection with the PNC Settlement

The following persons and entities, and only the following persons and entities, have properly excluded themselves from the Class in the *In re PNC Financial Services Group, Inc. Securities Litigation* in connection with the PNC Settlement:

Roberta L. Szydlowski 960 West Maplehurst Drive Roscommon, Michigan 48653	Gerald A. Feldman 6 E. Seymour Avenue Cincinnati, Ohio 45216-2023
Dr. Lillian Paule Charie 307 S. Dithridge Street Apartment 210 Pittsburgh, Pennsylvania 15213-3514	Christopher L. Renzi 146 Old Forge Crossing Devon, Pennsylvania 19333-1121
Marilyn D. Bull, individually and as Trustee of the Clive A. Bull Revocable Trust under Trust Agreement dated July 13, 1995 c/o Patrick A. Davis, P.A. P.O. Box 15933 Clearwater, Florida 33766-5933	

previously in this paragraph, and the balance (\$82,500) shall remain segregated and paid as provided above.

21. Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to the Litigation, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Final Order and Judgment.

22. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

Dated: Pittsburgh, Pennsylvania

_____, 2007

Honorable David Stewart Cercone
UNITED STATES DISTRICT JUDGE

EXHIBIT G

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN DIEGO

3 R.M. GALICIA, INC., dba PROGRESSIVE
4 MANAGEMENT SYSTEMS,

5 Plaintiff,

6 vs.

7 PHILLIP FRANKLIN,

8 Defendant.

Case No.: IC859468

SETTLEMENT AGREEMENT

9 PHILLIP FRANKLIN, on behalf of himself
10 and all others similarly-situated,

11 Cross-Complainant,

12 vs.

13 Scripps HEALTH; and DOES 1-50, inclusive,

14 Cross-Defendants.

15 Cross-Complainant Phillip Franklin, by and through his counsel, and Scripps Health
16 (“SCRIPPS”) hereby enter into this Agreement pursuant to the terms and conditions set forth
17 below, and subject to the approval of the court in the Action, as defined herein.

18 WHEREAS, Cross-Complainant has filed a class action complaint styled *R.M. Galicia v.*
19 *Franklin; Franklin v. Scripps Health*, alleging that Cross-Defendant SCRIPPS charged uninsured
20 patients unlawful, unfair and excessive prices for medical products, services, and procedures
21 performed at SCRIPPS during the Class Period;

22 WHEREAS, SCRIPPS denies all of the aforementioned allegations, denies any and all
23 allegations of wrongdoing, fault, liability or damage of any kind to Cross-Complainant and the
24 Class, denies that it acted improperly or wrongfully in any way, and believes that this litigation
25 has no merit;

26 WHEREAS, the Parties to this Agreement have conducted a thorough examination and
27 investigation of the facts and law relating to the subject matters set forth in the Complaint and the
28 claims set forth therein;

1 relating to the negotiation, execution or implementation of this Agreement, nor any
2 reports or accounts thereof, is intended to be, or shall be construed as, or deemed to be
3 evidence of any admission or concession by SCRIPPS of any liability or wrongdoing or
4 of the truth of any allegations in the Complaints, nor shall be disclosed or referred to for
5 any purpose, or offered or received in evidence, in any further proceeding in these
6 Actions, or any other civil, criminal or administrative action or proceeding against
7 SCRIPPS or any Related Party except for purposes of settling these Actions pursuant to
8 this Agreement. The limitations set forth in this Section do not apply to use and/or
9 disclosure by SCRIPPS or any Related Party against Class Members or third parties for
10 purposes of supporting a defense or counterclaim of res judicata, collateral estoppel,
11 release, good faith settlement, judgment bar or reduction or any other theory or claim of
12 issue preclusion or similar defense or counterclaim.

13 **X. ATTORNEYS' FEES AND ADMINISTRATIVE EXPENSES**

14 **A. Lead Class Counsel Fees and Costs.**

15 1. Amount.

16 Lead Class Counsel shall be entitled to apply to the Court for an award of
17 attorneys' fees, costs and expenses in a total amount not to exceed \$1,100,000, an
18 amount agreed to by the Parties before a neutral mediator. This amount is to be
19 inclusive of all fees and costs for Lead Class Counsel and all other counsel for
20 Cross-Complainant in the Action. Lead Class Counsel shall not be permitted to
21 petition the Court for any additional payments for fees, and the award shall be for
22 all claims for attorneys' fees, costs and expenses past, present and future incurred
23 in the litigation. The actual amount of any award of attorneys' fees, costs, and
24 expenses will be determined by the Court.

25 2. SCRIPPS' Non-Opposition.

26 SCRIPPS and its attorneys agree not to oppose any applications for attorneys' fees,
27 costs or expenses by Lead Class Counsel provided that such applications are
28

1 consistent with the provisions of this Agreement and that such amount does not
2 exceed \$1,100,000.

3 3. Timing of Fee Payment.

4 Any attorneys' fees, costs or expenses payable to Lead Class Counsel shall be
5 funded by SCRIPPS into an interest-bearing escrow account upon the date of the
6 Preliminary Approval Order. SCRIPPS shall pay such attorneys' fees, costs or
7 expenses, with interest earned from the date of funding, within fourteen (14) days
8 of the date of the Final Order and Judgment. SCRIPPS shall send such payment as
9 directed by Lead Class Counsel. SCRIPPS shall have no liability or other
10 responsibility for the allocation of such attorneys' fees among and between Lead
11 Class Counsel and any other counsel. In the event that any dispute arises relating
12 to the allocation of fees, then Lead Class Counsel agrees to indemnify Scripps and
13 all Related Parties and to hold them harmless from any and all liabilities, costs and
14 expenses.

15 4. Satisfaction of Fee and Cost Obligations under the Settlement.

16 SCRIPPS' payment of Lead Class Counsel's attorneys' fees, costs and expenses as
17 described herein shall constitute full satisfaction of SCRIPPS' obligation to pay
18 any person, attorney or law firm for attorneys' fees, costs, and expenses incurred
19 on behalf of any Cross-Complainant and the Settlement Class, and shall relieve
20 SCRIPPS from any other claims or liability to any other attorney or law firm or
21 person for any attorneys' fees, expenses and costs to which any of them may claim
22 to be entitled on behalf of Cross-Complainant and the Settlement Class that are in
23 any way related to the Released Claims.

24 5. Process for Determining Fees.

25 Although the amount of fees and costs agreed to by the Parties before a neutral
26 mediator will be set forth in the Notice sent to Settlement Class Members, the
27 Court's decision to allow or disallow any application for attorneys' fees, costs,
28 expenses, or reimbursement to be paid to Lead Class Counsel are not part of the

EXHIBIT H

1 Darrell Palmer (125147)
2 LAW OFFICES OF DARRELL PALMER
3 603 North Highway 101, Suite A
4 Solana Beach, CA 92075
5 Telephone: (858) 792-5600
6 Facsimile: (858) 792-5655

7 *Attorneys for Cross-Complainant Franklin and Class*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10
11 R.M. GALICIA, INC., dba
12 PROGRESSIVE MANAGEMENT
13 SYSTEMS,

14 Plaintiff,

15 vs.

16 PHILLIP FRANKLIN,

17 Defendant.

18 PHILLIP FRANKLIN, on behalf of
19 himself and all others similarly-situated,

20 Cross-Complainant,

21 vs.

22 SCRIPPS HEALTH; and DOES 1-50,
23 inclusive,

24 Cross-Defendants.

Case No.: IC859468

**DECLARATION OF DARRELL PALMER
IN SUPPORT OF MOTIONS FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND FOR AWARD OF
ATTORNEYS' FEES AND COSTS AND
SERVICE AWARD TO CLASS
REPRESENTATIVE**

Date: June 6, 2008
Time: 10:30 a.m.
Place: Department 73
Judge: Hon. Steven R. Denton

25 I, DARRELL PALMER, declare as follows:

26 1. I am an attorney in good standing, duly licensed and admitted to the Bar of
27 the State of California. I am a partner with the Law Offices of Darrell Palmer, one of the counsel
28 of record in the Franklin v. Scripps Health action. The testimony set forth in this declaration is
based on first-hand knowledge, about which I would and could testify competently in open court

1 if called upon to do so, and on contemporaneously-generated records kept in the ordinary course
2 of law practice.

3 2. This firm has been associated as counsel of record for Cross-Complainant
4 in the above-captioned action.

5 3. The Law Offices of Darrell Palmer have prosecuted these claims solely on
6 a contingent fee basis, and have been completely at risk that they would not receive any
7 compensation for prosecuting these claims against the Defendant. While the Law Offices of
8 Darrell Palmer devoted their time and resources to this matter, they have foregone other legal
9 work for which they would have been compensated.

10 4. Information about the Law Offices of Darrell Palmer is attached hereto as
11 Exhibit A.

12 5. The Law Offices of Darrell Palmer have participated in this litigation and
13 have performed work on behalf of Cross-Complaint in connection with the prosecution of this
14 litigation, particularly we have reviewed discovery, attended and reviewed depositions, prepared
15 pleadings, attended hearings, conferred with counsel for plaintiffs and defendant, participated in
16 settlement discussions and mediation.

17 6. All attorneys, paralegals, and law clerks at the Law Offices of Darrell
18 Palmer are instructed to maintain contemporaneous time records reflecting the time spent on this
19 and other matters. Up to and including May 20, 2008, the our attorneys and paralegals have spent
20 164.5 hours prosecuting this litigation. The personnel and billing rates who billed to this file
21 are: Darrell Palmer: 118.5 hours at \$425.00/hour; paralegals: 46 hours at \$125/hour.

22 7. These hours are fully documented and detailed in the time records and
23 calendar entries maintained in the regular course of the firm's law practice. The total lodestar
24 amount for the attorney and paralegal time based on the firm's current rates is \$75,662.50. None
25 of the time included in this fee application represents any work done in connection with preparing
26 this declaration.

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8. The time reflected in this declaration was time actually spent, in the exercise of reasonable judgment by the law firms and staff involved. We were careful not to expend unnecessary hours and not to duplicate work done by others.

9. Attached hereto as Exhibit B is a true and correct accounting of the unreimbursed costs incurred by the Law Offices of Darrell Palmer during the course of this litigation. The firm has expended a total of \$1,424.40 in unreimbursed expenses in connection with the prosecution of this litigation. The expenses incurred in this case are reflected in the books and records of the firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was prepared at Solana Beach, California, on May 25, 2008.



DARRELL PALMER

EXHIBIT I

1 Kelly M. Dermody (State Bar No. 171716)
2 Jahan C. Sagafi (State Bar No. 224887)
3 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
4 Embarcadero Center West
5 275 Battery Street, 30th Floor
6 San Francisco, CA 94111-3339
7 Telephone: (415) 956-1000
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9 *Attorneys for Cross-Complainant Franklin and Class*

FILED
Clerk of the Superior Court
FEB 1 2008
By: S. WEAVER, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

R.M. GALICIA, INC., dba
PROGRESSIVE MANAGEMENT
SYSTEMS,

Plaintiff,

vs.

PHILLIP FRANKLIN,

Defendant.

PHILLIP FRANKLIN, on behalf of
himself and all others similarly-situated,

Cross-Complainant,

vs.

SCRIPPS HEALTH; and DOES 1-50,
inclusive,

Cross-Defendants.

Case No.: IC859468

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS SETTLEMENT AND
NOTICE PLAN**

Place: Department 73
330 W. Broadway, 6th Floor
San Diego, California

Judge: Hon. Steven R. Denton
Trial Date: None Set

741496.2

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT AND NOTICE PLAN

1 **I. INTRODUCTION**

2 Cross-Complainant has moved the Court for an Order (1) preliminarily approving
3 the Settlement; (2) directing distribution of Notice to the Class and finding the proposed notice
4 plan to comport with all due process requirements; (3) appointing a claims administrator; and (4)
5 setting a hearing date for final approval of the settlement.

6 This Court, having fully considered Cross-Complainant's Notice of Motion and
7 Motion, the memorandum of points and authorities in support thereof, the declaration in support
8 thereof, the Settlement Agreement itself, the proposed form of class notice and claim form, and
9 the oral arguments presented to the Court at hearing on February 1, 2008, and in recognition of
10 the Court's duty to make a preliminary determination as to the reasonableness of any proposed
11 class action settlement and to conduct a final fairness hearing as to good faith, fairness, adequacy,
12 and reasonableness of any proposed settlement, **HEREBY ORDERS and MAKES**
13 **DETERMINATIONS** as follows:

14 **I. Definitions**

15 The capitalized terms used in this Order shall have the meanings and/or definitions
16 given to them in the Settlement Agreement.

17 **II. Preliminary Approval Of The Settlement Agreement**

18 The Court has reviewed the Settlement Agreement and the proposed Class Notice
19 and Claim Form, which are incorporated herein by reference. The Court finds, on a preliminary
20 basis, that the Settlement appears to be within the range of reasonableness of a settlement that
21 could ultimately be given final approval by this Court. It appears to the Court on a preliminary
22 basis that:

23 a. The settlement benefits are fair, adequate, and reasonable to all
24 potential Class Members in that the Settlement distributes monetary relief to each Class Member
25 irrespective of his or her financial status at the time of treatment; and provides relief for Class
26 Members' retrospective harm (in the form of damages). The Settlement also affords substantial
27 prospective relief, in that it provides mechanisms and safeguards for ensuring that uninsured
28 persons do not suffer the same harm in the future. This is an excellent result for Class Members,

1 particularly when balanced against the probable outcome of further litigation on Class liability
2 and damages issues; and

3 b. Settlement at this time will avoid additional substantial costs, delay,
4 and risks inherent in further litigation; and

5 c. The proposed settlement has been reached as the result of intensive,
6 serious, and non-collusive arm's-length negotiations.

7 **III. Approval Of Distribution Of The Notice Of Settlement**

8 This Court finds the proposed Class Notice and Claim Form fairly and adequately
9 advise the potential Class Members of the terms of the proposed settlement. Specifically, the
10 Class Notice describes the nature of the litigation; the scope of the Class; the terms of the
11 proposed Settlement; the procedure by which Class Members may submit Claims; Class
12 Counsel's proposed fee and cost application; the proposed Service Award for the Class
13 Representative; the date, time and place of the Final Fairness Hearing; and the procedure and
14 deadlines for opting out of the proposed Settlement or for submitting comments and objections.

15 The Notice also fulfills the requirement of neutrality in class notices.
16 Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality
17 required of a settlement Class Notice disseminated under authority of the Court.

18 The Court further finds that the Class Notice and proposed distribution of such
19 Notice by first-class mail to each identified Class Member at his or her last known address
20 (updated using the National Change of Address System), supplemented by publication notice
21 readily comports with all constitutional requirements, including those of due process, and also
22 fully complies with Cal. Rule of Court 3.769(f).

23 Accordingly, good cause appearing therefor, the Court hereby approves the
24 proposed Class Notice and Claim Forms (attached to the Settlement Agreement and incorporated
25 by reference), and adopts the following dates and deadlines:

26 February 21, 2008 (within Scripps to provide database of Settlement
27 20 days after Preliminary Class Members to Claims Administrator.
28 Approval):

1	March 22, 2008 (within 30 days after provision of database):	Direct mailing of Notice and Publication of Notice completed by Claims Administrator.
2		
3	April 21, 2008 (within 30 days after direct mailing of Notice):	Claims Administrator to provide affidavits to the Court attesting to the measures undertaken to effect Notice.
4		
5	May 6, 2008 (within 45 days after direct mailing of Notice):	Last day for Class Members to submit a request for exclusion from the proposed Settlement. Last day for Class Members to submit objections to or comments on the proposed Settlement.
6		
7		
8	May 30, 2008 (7 days before the Final Fairness Hearing):	Last day for filing and service of papers in support of final Settlement approval and requests for attorneys' fees and expenses.
9		
10	June 6, 2008 (76 days after direct mailing of Notice):	Final Fairness Hearing.
11		
12	July 25, 2008 (125 days after direct mailing of Notice)	Postmark deadline for Class Members to submit Claims Form.
13		

IV. Approval Of Claims Administrator

The parties have jointly selected Rust Consulting, a well-known and experienced third party class action claims administrator, to administer the settlement. The Court hereby approves that selection.

V. Final Approval Hearing

A. Logistics

The Court hereby grants Cross-Complainant's motion to set a fairness hearing for final approval of the Settlement Agreement on June 6, 2008 at ____ a.m./p.m. in Department 73 of this Court (approximately 126 days from the date of Preliminary Approval). At the Final Fairness Hearing, the Court will consider: (a) the fairness, reasonableness, and adequacy of the proposed Settlement; (b) whether the Settlement should be finally approved by the Court; (c) the application for an award of attorneys' fees and costs to Class Counsel in this action; (d) objections to the Settlement, or any of its terms; and (e) such other matters as the Court may deem proper and necessary.

1 Any briefs and other papers in support of the final approval of the Settlement, and
2 Class Counsel's application for an award of attorneys' fees and costs, shall be filed with the Court
3 no later seven (7) days before the Fairness Hearing. After the Fairness Hearing, the Court may
4 enter an order approving the Settlement and enter final judgment in this action, which will
5 adjudicate the rights of all Settlement Class Members. The Fairness Hearing may be postponed,
6 adjourned, or continued by order of the Court without further notice to the Settlement Class.

7 **B. Objections**

8 Members of the class who object to the proposed settlement may appear and
9 present such objections at the Final Approval Hearing in person or by counsel, provided that the
10 objecting Class Member submits a written statement containing the name and address of the
11 objecting Class Member and the basis of that person's objections, together with a notice of the
12 intention to appear, if appropriate, which must be filed with the Claims Administrator no later
13 than May 6, 2008. The Claims Administrator shall then record the date of receipt of the
14 Objection and forward it to both Scripps and Lead Class Counsel within two (2) business days
15 following receipt. The Claims Administrator shall also file the original objections (if any) with
16 the Clerk of this Court no later than five (5) days prior to the scheduled Fairness Hearing date.

17 No person shall be heard, and no briefs or papers shall be received or considered,
18 unless the foregoing documents have been filed with the Claims Administrator as described in
19 this Order, except as this Court may permit for good cause shown.

20 **C. Requests for Exclusion (Opt-Outs)**

21 Members of the Settlement Class may elect to opt out of this Settlement
22 Agreement, relinquishing their rights to benefits thereunder (except to the extent that prospective
23 relief under the Settlement Agreement shall apply to such persons). Members of the Settlement
24 Class who opt out of the Settlement will not release their claims under the terms of the Settlement
25 Agreement. All notices of intent to opt out of the Settlement must be received by the Claims
26 Administrator postmarked by May 6, 2008, and must include the Settlement Class member's
27 name, address, and telephone number, with a statement that includes the following language: "I
28

1 understand that I am requesting to be excluded from the class monetary settlement and that I will
2 receive no monetary refund or debt reduction under the settlement entered into by SCRIPPS. I
3 understand that if I am excluded from the class settlement, I may bring a separate legal action, but
4 may receive nothing or less than what I would have received if I had filed a claim under the
5 settlement procedure in this case.” The Claims Administrator shall record the date of receipt of
6 the Request for Opt Out and forward it to both Scripps and Lead Class Counsel within two (2)
7 business days following receipt. The Claims Administrator shall also file the original Requests to
8 Opt Out (if any) with the Clerk of the Court no later than five (5) days prior to the scheduled
9 Fairness Hearing date.

10 Members of the Settlement Class who fail to submit a valid and timely request for
11 exclusion shall be bound by all terms of the Settlement Agreement and the Final Order and
12 Judgment, regardless of whether they have requested exclusion from the Settlement. Any
13 Settlement Class member who submits a timely request for exclusion or opt-out may not file an
14 Objection to the Settlement and shall be deemed to have waived any rights or benefits under the
15 Settlement Agreement (except to the extent that prospective relief under the Settlement
16 Agreement shall apply to such persons).

17 **IT IS FURTHER ORDERED** that, if for any reason the Court does not grant
18 final approval of the Settlement, all documents, evidence, interactions, and proceedings in
19 connection therewith shall be without prejudice to the status quo ante rights of the parties to the
20 litigation, as more specifically set forth in the Settlement Agreement

21 **IT IS SO ORDERED.**

22
23 February 1, 2008

24 STEVEN R. DENTON
25 _____
26 Hon. Steven R. Denton
27 JUDGE OF THE SUPERIOR COURT