UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21160-CIV-MORENO/GARBER

SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.
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(A) LEAD PLAINTIFFS AND RECEIVER'S JOINT MOTION FOR FINAL APPROVAL OF SETTLEMENT AND (B) CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND EXPENSES[1]

Lead Plaintiffs Scheck Investments, L.P., Elena Parrales, individually and on behalf of Franova Investment Ltd., The PMT Irrevocable Trust, Juan Manuel Ponce De Leon, and Maria Paulina Ponce De Leon Uribe ("Lead Plaintiffs"), individually and on behalf of all Class Members similarly situated, and Roberto Martínez, as court-appointed Receiver of Mutual Benefits Corp. ("MBC") and other related entities ("Receiver"), pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, hereby jointly move for entry of an Order and Final Judgment approving the settlement with Defendant Brinkley, McNerney, Morgan, Solomon & Tatum, LLP ("BMMST") and Michael J. McNerney ("McNerney") ("BMMST and McNerney are sometimes referred to as "Settling Parties"), and their insurers, set forth in the parties' Stipulation of Settlement ("Settlement" or

[1] Both Lead Plaintiffs and the Receiver jointly move this Court for final approval of the Settlement. While the Receiver supports Class Counsel's Motion for Attorneys' Fees and Expenses, he is neither a party to the motion nor is he currently seeking fees or expenses in connection with the Settlement. The Receiver wishes to reserve his right to seek an enhancement for its work in connection with the Settlement at a later date per the Court's prior Order.

"Settlement Agreement"), certifying the Settlement Class, and awarding Class Counsel attorneys' fees and expenses.

For the reasons set forth below, the Court should approve the Settlement as fair, adequate, and in the best interest of all Class Members, certify the Settlement Class, and grant Class Counsel's request for attorneys' fees and expenses, thereby concluding the claims that the Class and the Receiver have against BMMST and McNerney completely and with finality. For the Court's convenience, a proposed Order and Final Judgment is attached hereto as Exhibit "A."

I. OVERVIEW OF THE LITIGATION

A. The SEC Action

On May 3, 2004, the Securities and Exchange Commission ("SEC") filed a Complaint against Mutual Benefits Corporation ("MBC") and other related entities and individuals, alleging that MBC's sale of viatical settlements was in violation of the federal securities laws. The SEC did not, however, sue BMMST or McNerney. On May 4, 2004, the Court entered an Order appointing Roberto Martínez as receiver for MBC and related entities. *See* ¶ 6 of Affidavit of Michael A. Hanzman (hereinafter, "Hanz. Aff."), attached hereto as Exhibit "B."

Although Lead Plaintiffs and Class Counsel were not required to participate in the SEC lawsuit (Lead Plaintiffs are not parties to the SEC lawsuit), we did not simply sit back and let the Government argue the Class's cause alone in connection with one of the most crucial issues in this case – whether MBC viatical settlements were securities. Indeed, Class Counsel filed three amicus briefs (and participated in oral argument) in support of the Class's position that MBC viatical settlements are in fact securities. Hanz. Aff. at ¶ 7. Ultimately, the Eleventh Circuit affirmed this Court's ruling that the MBC viaticals are indeed securities.

During the SEC proceedings, a separate issue arose of whether escrow purchase money should be returned to the particular class members who had sent MBC the money, or whether the escrow money should become part of the Receivership for the benefit of all Class Members. Class Counsel had a conflict in responding to this issue because certain Class Members had escrow money and others did not. Class Counsel responded by requesting that the Court appoint Robert Gilbert, Esq. as a special counsel to represent the interests of "post-closing MBC investors" since the interests of the "pre-closing MBC investors" were already being represented by Tom Tew, Esq. After this issue was fully briefed and argued before the Court, the Court entered an Order directed that all escrow monies be sent back to the investors who had originally sent the money into MBC. Hanz. Aff. at ¶ 8.

In addition to the formal participation in the SEC proceeding, Class Counsel actively participated in coordinating with the Receiver and his counsel on other essential aspects of the case, including: (1) providing factual information regarding investor knowledge and communicating investor concerns; (2) providing input regarding important Receivership issues like the disposition of policies and form of notice to investors; (3) assisting in identifying potential additional defendants and assets subject to Receiver claims; and (4) participating and coordinating settlement discussions with several defendants. Hanz. Aff. at ¶ 9.

B. The Class Action

Lead Plaintiffs have now filed a Second Amended Class Action Complaint ("Second Amended Complaint") asserting twelve separate causes of action against fifty-one defendants.[2] In

[2] Class Counsel filed its original complaint on May 17, 2004. Up and through the filing of the Second Amended Complaint, Class Counsel spent hundreds of hours on factual investigation and legal research relating to an initial wave of motions to dismiss. Based on our investigation and

response to the Second Amended Complaint, eight motions to dismiss were filed by twenty of the defendants. All of these motions were thoroughly briefed by Class Counsel. Most of the motions were then argued before Magistrate Judge Garber on November 14, 2005. The remaining motions will be argued on December 5, 2005. Since the filing of the motions to dismiss, an automatic stay has been in effect pursuant to the PSLRA. Lead Plaintiffs filed a motion to lift the stay in March 2005, but the motion was denied. Because the motions have not yet been resolved by the Court, the PSLRA's automatic stay remains in effect. Hanz. Aff. at ¶ 10.

C. BMMST and McNerney

On January 28, 2005, Lead Plaintiffs filed an Amended Class Action Complaint ("Amended Complaint"), adding claims against BMMST and McNerney. Lead Plaintiffs alleged, among other things, that BMMST and McNerney aided and abetted Anthony Livoti's breach of his fiduciary duties. BMMST and McNerney responded by denying all allegations of wrongdoing, and asserting several affirmative defenses, including lack of any cognizable duty, good faith reliance, economic loss rule and statute of limitations. Hanz. Aff. at ¶ 11.

The filing of the Amended Complaint directly led to the beginning of negotiations with BMMST, McNerney and their insurers regarding the possibility of settling this matter. During these meetings, Class Counsel and the Receiver's Counsel requested all information regarding potential insurance, as well as other potential funds available for recovery. These materials were thoroughly reviewed by Class Counsel and the Receiver's Counsel. It was discovered that the Settling Parties

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research, we dropped some defendants/claims and identified additional defendants for potential recovery – all in order to streamline the issues in this case.

had $12 million in potential malpractice insurance coverage,[3] these insurance policies were "wasting policies," the insurers had asserted significant coverage defenses, and that one of the insurers had already filed an action seeking a declaration of no coverage. We also learned that the Settling Parties themselves had no executable assets (outside of the insurance policies) that would amount to more than $10 million. Hanz. Aff. at ¶¶ 12-16.

Before any of the potential insurance proceeds were spent defending the class action, Class Counsel and the Receiver's Counsel worked with counsel for BMMST, counsel for McNerney, and counsel for their insurers (Westport and Liberty) to arrive at a potential settlement of this action. Hanz. Aff. at ¶ 13. On May 10, 2005, after several meetings in person and on the phone, an agreement was reached, resolving all issues relating to BMMST and McNerney's legal representation of MBC. This agreement was memorialized in a letter agreement of the same date. The letter agreement then contemplated execution of a formal settlement agreement. Many more meetings were held to work out the precise details of the settlement. On August 2, 2005, a formal Settlement Agreement was executed. Hanz. Aff. at ¶ 13.

The Settlement was reached after extensive arms-length negotiations. All of the parties aggressively presented their positions, and the negotiations required continuous efforts over a number of months to bear fruit. Hanz. Aff. at ¶ 14.

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[3] Specifically, BMMST made claims on two insurance policies with respect to the claims raised in the Amended Complaint. Both insurers asserted coverage defenses. Additionally, one of the insurers asserted a right to void coverage in its entirety based on an alleged material misrepresentation in the insurance application based on BMMST's alleged failure to disclose earlier filed related claims. Assuming the position asserted by this insurer was correct, then there would have only been $7 million in potential coverage.

D. Preliminary Approval and Notice

On August 18, 2005, Lead Plaintiffs and the Receiver moved for preliminary approval of the Settlement. A hearing on the motion was held on September 2, 2005. On that same date, the Court entered an Preliminary Approval Order, which, among other things, directed Class Counsel to send a form Notice to all potential Class Members. As set forth in the affidavit of Marcia A. Gomez of the Garden City Group ("Claims Administrator"),[4] Class Counsel and the Claims Administrator timely caused the Notice to be mailed by first class mail, postage prepaid, to each Class Member at their last known addresses. As of January 10, 2005, the Receiver estimated that there were 31,434 Class Members with active policies. There are 38,002 investors in MBC's database. The MBC database includes not only investors with active polices, but also those investors whose policies have matured, or had their money refunded. In an abundance of caution, the Notice was sent out to all 38,002 addresses. Gomez Aff. at ¶¶ 3-6.

The mailing was completed on September 29, 2005. Spanish translations of the Notice were sent to Class Members where it was believed that Spanish was the Class Member's first language. Of the 1,350 undeliverable notices, the Settlement Administrator found 187 updated addresses as a result of a search in the National Change of Address Database. Notice was then sent to those 187 potential class members. Gomez. Aff. at ¶ 7. Moreover, many of the Class Members have their investment in a retirement account and are using Fiserv Trust Company ("Fiserv") as the account's administrator. These accounts are set up so that all correspondence from MBC is sent to Fiserv. Upon learning of this situation, Class Counsel worked with Fiserv to forward the notices as soon as

[4] *See* Affidavit of Marcia A. Gomez (hereinafter, "Gomez Aff."), attached hereto as Exhibit "C."

practicable to potential Class Members. *See* ¶ 7 of Affidavit of Kevin B. Love (hereinafter, "Love Aff."), attached hereto as Exhibit "C."

The Receiver and Class Counsel also caused the Notice to be put on the Receiver's Website - www.mbcreceiver.com. For people who do not have internet access, Class Counsel and the Settlement Administrator established a toll-free Helpline using an interactive voice response system ("IVR"). The IVR provided answers to a number of frequently asked questions relating to the proposed settlement and an option for investors to leave a message for Class Counsel to call them back. As of November 13, 2005, the Helpline received a total of 3,631 calls. Approximately 600 Class Members left questions, all of which were transcribed and forwarded to Class Counsel for response. Gomez. Aff. at ¶ 7.

Attorneys from Class Counsel's offices responded to the Class Members who left messages and current phone numbers on the IVR prior to the deadline. Class Counsel also corresponded with investors by letter and fax, and responded to hundreds of direct investor phone calls. Finally, Class Counsel responded to investor inquiries through a dedicated e-mail address set up for this Settlement (MBC@hanzmancriden.com). Love Aff. at ¶ 8.

II. SUMMARY OF THE SETTLEMENT

Under the terms of the Settlement Agreement, Liberty and Westport (the insurers for BMMST and McNerney) will pay Ten Million Dollars ($10,000,000) to the Class to resolve this Action. The $10 million has already been paid, and is currently in an escrow account earning interest for the benefit of the Class. Hanz. Aff. at ¶ 15.

Before agreeing to the $10 million Settlement, Class Counsel and the Receiver required that both BMMST and McNerney submit a sworn statement each representing that: (i) other than

insurance policies disclosed during the settlement negotiations, there are no other potential available insurance coverage for the claims asserted in this Action or potential claims that could have been brought by the Receiver; and (ii) neither BMMST nor McNerney have within its/his possession, custody or control, assets that would be subject to execution in excess of $5,000,000. Hanz. Aff. at ¶ 16.

In addition to the $10 million common fund, Class Counsel and the Receiver were also able to obtain an "Agreement of Cooperation." Specifically, BMMST and McNerney agree to fully cooperate with any future investigation conducted by the Receiver and Class Counsel, subject to receiving assurances that the Settling Defendants are not the target of any SEC investigation. The SEC has not yet filed any action against the Settling Defendants, nor has the SEC indicated that it is inclined to do so in the future. Given that the Settling Defendants were MBC's lawyers since the beginning of the Class Period, their cooperation could prove to be invaluable to Class Counsel and the Receiver in their ongoing actions against the other Defendants. Hanz. Aff. at ¶ 17.

Finally, the Settlement includes a comprehensive release and a bar order pertaining to the subject matter of this Action, thereby promoting the conclusion of all litigation related to BMMST and McNerney's representation of MBC. Hanz. Aff. at ¶ 18.

If the Settlement is approved, Lead Plaintiffs, Class Counsel and the Receiver will have achieved an outstanding result for the Class Members – one that will provide the Class with a substantial monetary recovery relatively early on in this Action along with future cooperation by the Settling Parties against the non-settling defendants. The significant value of the financial benefits available to Class Members is enhanced by the fact that it will be provided to Class Members now,

without the delay, burden and risks of continued and potentially long-lasting litigation. Hanz. Aff. at ¶ 19.

III. THE SETTLEMENT SHOULD BE APPROVED

"Compromises of disputed claims are favored by the Courts." *Williams v. First Nat'l Bank*, 216 U.S. 582, 585 (1910). This policy applies with particular force to class-action lawsuits, the complexity and expenses of which impose special burdens borne by the judicial system as well as the litigants. *In re U.S. Oil and Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) ("Public policy strongly favors the pretrial settlement of class action lawsuits."); *see also Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) ("Particularly in class action suits, there is an overriding public interest in favor of settlement."). As Judge King observed in *Behrens v. Wometco Enter., Inc.*, 118 F.R.D. 534, 538 (S.D. Fla. 1988), settlement "has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources, and achieve the speedy resolution of justice. . . ."

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of any class-action settlement. The requirement of judicial approval, manifested in both the substantive and procedural aspects of Rule 23, is designed to afford protection to absent class members "whose interests may be compromised in the settlement process." *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1169 (5th Cir. 1978). "In determining whether to approve a proposed settlement, the cardinal rule is that the District Court must find the settlement is fair, adequate and reasonable and not the product of collusion between the parties." *Cotton*, 559 F.2d at 1330. In reaching this determination, the "inquiry should focus upon the terms of the settlement," together with "an analysis of the facts and the law relevant to the proposed compromise." *Id.*

Specifically, the settlement terms should be compared "with the likely rewards the class would have received following a successful trial of the case," subject to the following qualifications. *Id.* First, courts, including those in this Circuit, have continuously stressed that it should not "be forgotten that compromise is the essence of settlement." *Id.* As a result, in evaluating the terms of the compromise in relation to the likely benefits of a successful trial, "the trial judge ought not try the case in the settlement hearings," nor should the court "make a proponent of a proposed settlement justify each term of the settlement against a hypothetical or speculative measure of what concessions might have been gained . . . ." *Id.* To the contrary, "the court must be mindful that inherent in compromise is a yielding of absolutes and an abandonment of highest hopes." *Ruiz v. McKaskle*, 724 F.2d 1149, 1151 (5th Cir. 1984). As the former Fifth Circuit Court of Appeals succinctly stated in *Young v. Katz*, 447 F.2d 431, 432 (5th Cir. 1971), a procedure requiring a mini-trial on the underlying merits for purposes of approving a settlement "would emasculate the very purpose for which settlements are made."

Second, courts have consistently stressed that in performing the balancing test necessary to determine the proprietary of the settlement against the risk of continued litigation, the district court "is entitled to rely upon the judgment of experienced counsel for the parties." *Cotton*, 559 F.2d at 1330; *see also Behrens*, 118 F.R.D. at 539 ("The Court can rely upon the judgment of experienced counsel and, absent fraud, should be hesitant to substitute its own judgment for that of counsel."). In fact, a review of pertinent decisions leads to the conclusion that "[c]ourts have consistently refused to substitute their business judgment for that of counsel, absent evidence of fraud or overreaching." *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 625 (D. Colo. 1976).

Third, courts have also stressed that "litigants should be encouraged to determine their respective rights between themselves," and that "there is an overriding public interest in favor of settlement." *Cotton*, 559 F.2d at 1331. This principle is particularly compelling in class-action lawsuits which "have a well deserved reputation as being most complex." *Id.* As the Eleventh Circuit has emphasized:

> Public policy strong favors the pretrial settlement of class action lawsuits. Complex litigation -- like the instant case -- can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.

In re U.S. Oil and Gas, 967 F.2d at 493 (internal citation omitted); *see also Miller v. Republic Nat'l Life Ins. Co.*, 559 F.2d 426 (5th Cir. 1977) ("Settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits.").

Finally, in addition to examining the merits of the proposed settlement and ascertaining the views of counsel, the court should take into account practical considerations such as the complexity of the case and the expense and likely duration of the litigation. *Susquehanna Corp. v. Korholz*, 84 F.R.D. 316, 322 (E.D. Ill. 1979). One of those practical considerations is the vagaries of litigation and the benefits of an immediate recovery as compared "to the mere possibility of relief in the future, after protracted and expensive litigation." *In re King Resources*, 420 F. Supp. at 625. In this respect, "it has been held proper to take the bird in the hand instead of a prospective flock in the bush." *Id.*

Guided by these overriding principles, the Eleventh Circuit has outlined several factors useful in determining whether a proposed class action settlement is fair, adequate and reasonable. *See Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). These factors are: (a) the existence

of fraud or collusion behind the settlement; (b) the stage of proceedings at which the settlement is achieved as well as the complexity and expense of continuing the litigation; (c) the likelihood of success at trial; (d) the range of possible recovery; and (e) the opinion of class counsel, class representatives and the substance and amount of opposition to the settlement. *Bennett*, 737 F.2d at 986; *Behrens*, 118 F.R.D. at 538-39; *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 n. 6 (11th Cir. 1994). A review of these standards, guided by the principles described above, fully supports the conclusion that the proposed Settlement should be approved.

A. The Settlement Was Not the Product of Fraud or Collusion

In reviewing a settlement, a court must determine whether there is any indication of any fraud or collusion between the parties or their counsel in negotiating the Settlement's terms. *Bennett*, 737 F.2d at 986; *Miller v. Republic Nat'l Life Ins. Co.*, 559 F.2d 426, 428-29 (5th Cir. 1977). In this case, there is no suggestion of fraud or collusion between the parties. Hanz. Aff. at ¶ 20. Furthermore, the terms of the Settlement make it clear that the process by which the Settlement was achieved was fair. *Miller*, 559 F. 2d at 429; *Ressler v. Jacobson*, 822 F. Supp. 1551, 1554-55 (M.D. Fla. 1992). For example, the $10 million recovery amounts to 83% of the *potential* $12 million worth of insurance coverage at issue. Actually, because one insurer was asserting the right to void coverage of its $5 million policy, it is more realistic to conclude that the recovery represents 143% of the available insurance. Whatever the potential insurance coverage, it is clear from the financial affidavits obtained by Class Counsel and the Receiver that the Class could not expect much more of a recovery had they litigated this case to trial. Hanz. Aff. at ¶ 20.

B. The Settlement Avoids a Complex, Expensive and Lengthy Litigation

The Settlement provides a $10 million fund for the Class Members at a very early stage of the litigation which will be disbursed as soon as the Court approves an allocation plan. There is no question that had the parties not reached a settlement, BMMST and McNerney were prepared to vigoursly defend themselves in this case. The Settlement thus avoids the Settling Parties' insurance coverage from needlessly "wasting away" on attorney fees spent on defending this action. In other words, even if the Lead Plaintiffs and the Receiver would have prevailed at trial, it is likely that most of the insurance (assuming coverage) would have wasted away by that point and that the Lead Plaintiffs and the Receiver would have been left with a judgment that could not be executed on assets worth more than $10 million. Hanz. Aff. at ¶ 20.

Further, if the Settlement is not approved, future proceedings will likely include a lengthy trial followed by appeals. The Settlement, on the other hand, provides for definite, immediate benefits without waiting additional years. This is a further benefit to the Class. *See, e.g., In re Warner Communications Sec. Litig.,* 618 F. Supp. 735, 745 (S.D.N.Y. 1985); *see Diaz v. Hillsborough County Hospital Authority*, 2000 WL 1682918, *4 (M.D. Fla. Aug. 7, 2000) (settlement is a "desirable alternative" where "further proceedings before trial of this case would be intense, expensive, and difficult.").

C. The Likelihood of Success at Trial Supports Approval of the Settlement

While Lead Plaintiffs believe they would have ultimately prevailed on their claims against the Settling Defendants, significant obstacles certainly stood in their way. The Settling Defendants have consistently denied all liability and have asserted substantial affirmative defenses, both procedurally and substantively. Thus, while Class Counsel continues to believe in our legal

positions, we would be remiss not to acknowledge the fact that this Court has not yet ruled on whether we even state a claim against the Settling Defendants. Nor has the Court had the opportunity to rule on whether a litigation class can be certified. Finally, the Settling Defendants would likely have sought summary judgment on some or all of our claims, as well as rulings limiting possible damages, in the event that this matter had not been settled. Given these considerable open issues and the inevitable plenary appeal, the aggregate net benefits made directly available to the Class represent an extremely favorable result. If the Settlement is finally approved, Lead Plaintiffs will have achieved an excellent result for the Class Members, one that will provide them with a substantial recovery. Hanz. Aff. at ¶ 23.

In any event, the Court should not resolve the parties' disagreement on the merits by issuing an advisory opinion about Lead Plaintiffs' likely success, nor is a specific finding regarding the likelihood of success necessary or appropriate in order to evaluate the fairness of the settlement.

> As settlements are construed upon compromise, the merits of the parties' claims and defenses are deliberately left undecided. Judicial evaluation of a proposed settlement of a class action thus involves a limited inquiry into whether the possible rewards of continued litigation with its risks and costs are outweighed by the benefits of the settlement.

Ressler v. Jacobson, 822 F. Supp. 1551, 1552-53 (M.D. Fla. 1992). Such a "limited inquiry" clearly favors approval of the Settlement, given the substantial monetary recovery and other significant benefits obtained for the Class compared to the risks and expense of a trial.

D. The Proposed Settlement is in the Range of Possible Recovery that is Fair, Adequate and Reasonable

The determination of a "reasonable" settlement is not susceptible to a simple mathematical equation yielding a particular sum. Rather, "there is a range of reasonableness with respect to a

settlement." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). Or, as one court put it, "a just result is often no more than an arbitrary point between competing notions of reasonableness." *Behrens*, 118 F.R.D. at 538.

Here, the amount of losses remains unliquidated. Assuming investor losses are in the neighborhood of $250 million (estimates have ranged in the hundreds of millions of dollars) then $10 million would be 4% of total investor losses. However, this fact does not mean that the recovery is not fair and reasonable. *See id.* at 542 ("The mere fact that the proposed settlement of $.20 per share is a small fraction of the desired recovery of $3.50 per share is not indicative of an inadequate compromise. A settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery.").

The fact of the matter is that this is just *one* settlement with *one* defendant, and it would be unrealistic to believe that MBC's law firm would be able to, or would be willing to, pony up the total estimated losses of the Class. Instead, the $10 million fund should be analyzed in connection with the law firm's role in the alleged scheme and, more importantly, against the potential recovery against the law firm if Lead Plaintiffs were to win at trial. Hanz. Aff. at ¶ 24. Viewed through this prism, $10 million is an excellent recovery, especially since it was reached at such an early stage of this case, and represents somewhere between 83% and 143% of the available potential insurance coverage.

In addition to the $10 million common fund, Class Counsel and the Receiver were also able to obtain an Agreement of Cooperation. Both BMMST and McNerney agree to fully cooperate with any future investigation conducted by the Receiver and Class Counsel, subject to receiving assurances that the Settling Defendants are not the target of any SEC investigation. This cooperation

could prove to be invaluable to securing other settlements against the remaining defendants. *See In re Linerboard Antitrust Litigation*, 292 F. Supp. 2d 631 (E.D. Pa. 2003) (granting final approval because, among other things, the settlement obligated the settling defendants to provide significant cooperation to plaintiffs in pursuing their case against the non-settling defendants).

E. The Positive Reaction of the Class to the Settlement Supports Approval

The reaction to the Settlement by the members of the Class overwhelmingly favors approval. A detailed Notice Packet was mailed to over 38,000 potential Class Members. Gomez Aff. at ¶¶ 3-7. Only 59 Class Members have properly excluded themselves – **less than .002%** of the Class.[5] Furthermore, the fact that a few Class Members opted out of the Class does not necessarily mean they thought the settlement was not favorable. The reality is that many class members opt-out of class actions not because of the terms of the settlement, but rather "because of ignorance, fear of involvement in litigation, failure to understand the notice" or for other similar reasons. Manual for Complex Litigation, Fourth § 16:16.

More importantly, just eight investors[6] filed objections with this Court, and only four of these objections addressed the Settlement's terms (as opposed to Class Counsel's request for attorneys' fees). The fact that just 4 out of over 38,000 investors chose to object to the Settlement is powerful

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[5] Eighteen other Class Members sent in requests for exclusion, however these requests were not timely served. Because the number of Class Members who excluded themselves by the Court-ordered deadline was a crucial factor in the Settling Defendants' decision not to terminate the Settlement (as was their right), we would ask the Court to hold that these eighteen Class Members did not timely and properly exclude themselves from the Class. Otherwise, the Settling Defendants could argue that they should be given a further opportunity to trigger the Settlement's termination provision. Love Aff. at ¶ 10.

[6] To the extent that Furio and Jane Constantine's letter to the Court (D.E. #446) could be considered an objection, it was later withdrawn. Love Aff. at ¶ 9.

evidence of the fairness, reasonableness and adequacy of the Settlement. *See Maher v. Zapata Corp.*, 714 F.2d 436, 456 n.35 (5th Cir. 1983); *In re Beef Industry Antitrust Litig.*, 607 F.2d 167, 180 (5th Cir. 1979); *In re Warner Communications*, 618 F. Supp. at 746; *Ressler v. Jacobson*, 822 F. Supp. 1551, 1556 (M.D. Fla. 1992); *see also Diaz*, 2000 WL 1682918 at *5 ("The striking lack of objections to the settlement is itself a strong indication the settlement is fair.").

The four objections to the Settlement fall into two categories: one investor argues that $10 million is not sufficient to cover all investor losses; the other three investors argue that they should know how much they will receive from the Settlement prior to them agreeing to stay in the Class. While it is true that it is unlikely that $10 million will cover all investor losses, the fact remains that this is just *one* settlement in the Class Action against *one* Defendant – MBC's lawyers. It is too much to ask that this one Settlement make the Class whole. As stated above, the $10 million must be analyzed in connection with this the law firm's role in the alleged scheme and, more importantly, against the potential recovery against the law firm if Lead Plaintiffs were to win at trial. Viewed in this way, $10 million is an outstanding recovery, especially since it was reached at such an early stage of this case. Hanz. Aff. at ¶ 24.

Three other investors argue that they should not have been forced to decide whether to exclude themselves prior to knowing exactly how much each investor will get during the claims process. Yet there is good reason for leaving to a later date the precise allocation and distribution of the Settlement Fund. The process for deciding what is the most fair and reasonable allocation and distribution is likely to be a complex and time-consuming endeavor that might have derailed the Settlement itself. Any decision regarding allocation and distribution is better left unresolved until after the Court reviews the response from Class Members regarding the choice it has given them

regarding their policies. Likewise, particular allocation plans (plans based on investor losses, for example) may be impractical to implement at this point in time but may become feasible after investors make their choice regarding their policies. Hanz. Aff. at ¶ 25. The circumstances of this case call for a two-stage procedure (first, approval of the settlement, and then approval of an allocation plan), an approach which has been adopted by several courts under similar circumstances. *See, e.g., In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 480 (S.D.N.Y. 1998); *In re Michael Milken and Assoc. Sec. Litig.*, 150 F.R.D. 57, 66-67 (S.D.N.Y. 1993); *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 150-51 (E.D.N.Y. 2000).

F. Class Counsel and the Receiver Support the Settlement

The Settlement calls for an immediate recovery of $10 million. By achieving a class settlement against BMMST and McNerney relatively early in the litigation, the Class Members will receive a considerable amount of money without the uncertainty, delay and expense of protracted litigation. Furthermore, this Settlement has significant value as it is the first settlement reached in this litigation, and should increase the likelihood of future settlements, especially given BMMST and McNerney's commitment to cooperate with Class Counsel and the Receiver in the ongoing prosecution of the non-settling defendants.

Lead Plaintiffs, Class Counsel, the Receiver and the Receiver's Counsel all have concluded that it would be in the best interests of both the Class and the Receivership to enter into the Settlement Agreement with the Settling Parties because the settlement would be a fair, reasonable and adequate resolution of this Action. The Court should give "great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation." *Warren* v. *City of Tampa*, 693 F. Supp. 1051, 1060 (M.D. Fla. 1988); *see also Mashburn v. National*

Healthcare, Inc., 684 F. Supp. 660, 669 (M.D. Ala. 1988) ("If plaintiffs' counsel did not believe these factors all pointed substantially in favor of this settlement as presently structured, this Court is certain that they would not have signed their names to the settlement agreement.").

The Settlement falls well within the range of reasonableness under the criteria set forth by the Eleventh Circuit in *Bennett* and therefore should be approved.

IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED

In its September 2, 2005 Preliminary Approval Order ("PAO"), this Court preliminarily certified a Settlement Class consisting of "All persons who purchased, between October 1, 1994 and May 4, 2004, interests in discounted life insurance policies known as viatical settlements or life settlements from MBC or VBLLC and have been damaged thereby." Excluded from the Class are: Defendants, MBC and any agent or broker who offered to sell viatical settlements or life settlements through MBC or VBLLC, including any of the foregoing companies' respective subsidiaries, affiliates, officers, agents or employees. PAO at 2. Before exercising its discretion to finally certify the Settlement Class, the Court should be satisfied that the requirements of Rule 23 are met. *Amchem v. Windsor*, 117 S. Ct. 2231, 2248 (1997). Those requirements are easily met here. First, there is no question that the Settlement Class satisfies the numerosity requirement of Rule 23(a)(1). The Settlement Class includes more than 30,000 investors. As such, it is clear that joinder of all Class Members is impracticable in light of the number of Class Members alone. *Kreuzfeld, A.G. v. Carnehammar*, 138 F.R.D. 594, 599 (S.D. Fla. 1991) (certifying class with 130 members, noting cases certifying class of as few as 25-30 members).

Second, the commonality requirement of Rule 23(a)(2) is satisfied if there are some questions of law or fact common to the class. *Walco Investments, Inc. v. Thenen*, 168 F.R.D. 315, 325 (S.D.

Fla. 1996); *In re First Interregional Equity Corp.*, 227 B.R. 358, 368 (D.N.J. 1998). Courts frequently certify class actions involving Ponzi schemes, recognizing that such cases overwhelmingly turn on common issues. This case well fits that paradigm. The claims of the named Lead Plaintiffs, like all Settlement Class Members' potential claims, present overarching common issues with the violations alleged, thereby satisfying the commonality elements of Rule 23(a)(3). *Id.*

Third, the typicality requirement of Rule 23(a)(3) is satisfied where "the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984), *cert. denied*, 470 U.S. 1004 (1985); *Kennedy v. Tallant*, 710 F.2d 711, 717 (11th Cir. 1983). Factual differences between the representative's claims and those of other class members will not defeat typicality so long as the legal and remedial theories underlying the claims are similar, as they are here. *Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985), *overruled on other grounds by Green v. Mansour*, 474 U.S. 64 (1985); *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 472 (5th Cir. 1986); *Buford v. H & R Block, Inc.*, 168 F.R.D. 340, 350 (S.D. Ga. 1996). The legal and remedial theories of the Lead Plaintiffs are typical of the theories of the Settlement Class in that: (1) all Class Member claims arise from the same Ponzi scheme; (2) the legal theories of the Class based on this alleged conduct are shared in common, and (3) the relief sought by and available to all Class Members is similar. The Lead Plaintiffs' claims are, therefore, typical of those of the Class and Rule's 23(a)(3)'s typicality requirement is satisfied.

Fourth, the adequacy of representation requirement of Rule 23(a)(4), which is satisfied when the class representatives "fairly and adequately protect the interests of the class," involves two

primary components: (i) the class counsel must be qualified, experienced and generally able to conduct the litigation; and (ii) the class representatives must not have interests antagonistic to those of the rest of the class. *Kirkpatrick v. J.C. Bradford & Co.*, 827 F. 2d 718, 726 (11th Cir. 1987) (*citing Griffin v. Carlin*, 755 F.2d 1516, 1532 (11th Cir. 1985)). Here, Class Counsel have considerable experience in prosecuting large class actions and have successfully represented individuals and classes in numerous actions, some of which they have litigated to judgment and others of which they have settled. Plainly, they are well qualified to conduct the litigation and have, in fact, done so. And, the Lead Plaintiffs' legal and remedial theories are substantially similar to those of other Class Members, and the Settlement does not involve any sacrifice of the interests of some Class Members to the interests of others. Accordingly, the adequacy of representation requirement is satisfied.

In addition, Rule 23(b)(3) requires that common issues predominate. Here, the Class is "sufficiently cohesive" to satisfy the predominance requirement. *See Amchem*, 117 S. Ct. at 2249. The violations alleged present overarching common issues that predominate over individual issues at this stage. Moreover, the facts and terms of the Settlement also provide predominating common issues. *See, e.g., Kirkpatrick*, 827 F.2d at 724; *Davis v. Southern Bell Tel. & Tel. Co.*, 158 F.R.D. 173, 175 (S.D. Fla. 1994); Fed. R. Civ. P. 23(b)(3), Advisory Committee Note (1966); *see also Walco*, 168 F.R.D. at 334-35 (RICO claims alleging fraudulent Ponzi scheme held to involve common issues of law and fact that predominate over individual issues).

Under Rule 23(b)(3), the Court must also find that certification of the Class is "superior to other available methods for the fair and efficient adjudication of the controversy." This requirement is easily satisfied here because claims based on an alleged Ponzi scheme are well suited for class

certification. It follows, then, that the settlement of such a case, resulting in cash benefits for the Class, is particularly well suited for class certification. *See Walco*, 168 F.R.D. at 337 (class action held to be superior method of adjudicating controversy involving RICO claims alleging fraudulent Ponzi scheme). Here, the Settlement will provide Class Members with substantial benefits without the risks, costs and delays of litigation. Moreover, class treatment presents no manageability problems. The Receiver and the Claims Administrator possess all the information necessary to identify, notify and administer the claims of the Class Members after an allocation plan is approved by the Court. As such, class certification is superior to other available methods of resolving the Class's claims. *See Fifth Moorings Condo., Inc. v. Shere*, 81 F.R.D. 712 (S.D. Fla. 1979) (class treatment for litigation of common claims achieves "economies of time, effort and expense and promote[s] uniformity of decisions as to persons similarly situated").

For the foregoing reasons, we request that the Court certify the Class.

V. CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND EXPENSES

Class Counsel requests that the Court award Class Counsel attorneys' fees and expenses based upon the $10,000,000 Settlement Fund created through its efforts in settling the Class's claims against BMMST and McNerney. In the Settlement Agreement, Class Counsel agreed not to seek fees in an amount greater than 30% of the Settlement Fund. The Class Members were similarly informed in the Notice that Class Counsel's request would not exceed 30% of the Settlement Fund.

Consistent with the Settlement and Notice, Class Counsel now requests that the Court award it a fee which represents between 20% and 25% of the $10 million Settlement Fund.[7] While any fee

[7] Class Counsel's motion is made on behalf of Hanzman & Criden, P.A., ("H&C"), and Podhurst, Orseck, P.A. ("PO"), Co-Lead Counsel for the Class. In support of the Motion, Class Counsel has attached hereto as Exhibits D and E, respectively, the Affidavits of Kevin B. Love, on

within this range is "reasonable," an analysis of the *Camden I* factors (discussed below) favors an award toward the upper end of the range. Class Counsel also requests that it be reimbursed for $104,711.68 in incurred expenses.

A. The Fee Request Satisfies Applicable Legal Standards and Is Fair and Reasonable under the Circumstances

The Supreme Court, the Eleventh Circuit, and courts in the Southern District have all noted that "[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as whole." *See In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (*citing Boeing Co. v. Van Gemert*, 100 S. Ct. 745 (1980)); *see also Camden I Condominium Ass'n, Inc. v. Dunkle*, , 946 F.2d 768, 771 (11th Cir. 1991) ("Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval."). In *Camden I* -- the controlling authority in this circuit dealing with the issue of attorneys' fees in common-fund cases -- the Eleventh Circuit held that "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth, in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F. 2d at 774.

"There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case."

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behalf of H&C ("Love Affidavit") and Victor Diaz on behalf of PO ("Diaz Affidavit"), attesting to each firm's "lodestar," calculated at their standard hourly rates, as well as expenses incurred in this matter. The two firms have agreed to an appropriate division of any fee award authorized by this Court.

In re Sunbeam, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 774). As a blanket statement, "[t]he majority of common fund fee awards fall between 20% to 30% of the fund," although "an upper limit of 50% of the fund may be stated as a general rule." *Id.* (quoting *Camden I*, 946 F.2d at 774-75). Significantly, the Eleventh Circuit has found that "district courts are beginning to view the median of this 20% to 30% range, *i.e.*, 25% as a 'bench mark' percentage fee award which may be adjusted in accordance with the individual circumstances of each case . . . ." *Id.* (quoting *Camden I*, 946 F.2d at 775); *see also Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (Eleventh Circuit approved fee award where the district court determined that the benchmark should be 30% and then adjusted the fee award even higher based on the circumstances of the case).

The Eleventh Circuit has clarified the factors which a district court should look to in determining a reasonable percentage to award class counsel. These factors are:

> (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases.

Id.; *see also Camden I*, 946 F.2d at 772 n.3 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

In addition:

> Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or

> other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action.

In re Sunbeam, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 775). As a final note, the Eleventh Circuit has "encouraged the lower courts to consider additional factors unique to the particular case." *Id.* (quoting *Walco Investments, Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997).

B. Relevant *Camden I* Factors Support Counsels' Requested Fee

1. Time and Labor Required; The Difficulty of the Questions Involved

Class Counsel has already spent nearly four thousand hours litigating all aspects of this case, which included, among other things, the researching of the facts surrounding BMMST and McNerney's involvement in MBC's scheme and securities violations, researching the law permitting claims against a law firm under these circumstances, investigating and researching the relevant insurance issues in connection with BMMST's insurance polices, drafting and revising the complaint, refining our legal theories against BMMST and McNerney, and conducting extensive settlement negotiations – all of which directly led to the proposed settlement.

The Settlement Agreement itself took months to draft because of complex legal issues that needed to be resolved. For example, issues regarding the cooperation agreement, the releases, and the bar order, all had to be researched and resolved prior to the signing of the Settlement Agreement. Hanz Aff. at ¶¶ 26-27.

2. The Skill Requisite to Litigate a Class Action Properly; The Experience, Reputation and Ability of the Attorneys

Regarding the degree of skill, experience and competence necessary to achieve the Settlement and create the common fund, another court in this District noted -- in another case in which Class Counsel participated -- that the "experience and competency" of Class Counsel was "evident in both their pleadings and oral presentations to the Court." *Walco v. Thenen*, 168 F.R.D. 315, 327 (S.D. Fla. 1996). Here, the competence and experience of Class Counsel in class actions clearly was a significant factor in obtaining the result achieved for the Class.

In assessing the quality of representation by Class Counsel, the Court also should consider the quality of the opposition. *See, e.g., Camden I*, 946 F.2d at 772 n.3; *Johnson*, 488 F.2d at 718; *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992); *Angoff v. Goldfine*, 270 F.2d 185, 192 (1st Cir. 1959). The excellent quality of that opposition has been no less apparent. BMMST and McNerney is represented by Manny Garcia and R. Hugh Lumpkin. Westport Insurance is represented by Michael Tone and Liberty Surplus Insurance Corp. is represented by Ronald Kammer. Each lawyer has an excellent reputation in the community, as do their respective law firms.

3. The Preclusion of Other Employment by the Attorneys Due to Acceptance of the Case

Given the relatively small size of the firms representing the Class and the major commitment involved with accepting this representation, this case undoubtedly precluded the two firms from working on other matters. Hanz Aff. at ¶ 28.

4. The Customary Fee; Awards in Similar Cases

Class Counsel requests that the Court award them a fee which represents between 20% and 25% of the $10 million Settlement Fund. While Class Counsel asserts that any fee within this range

is "reasonable," we argue that an analysis of the *Camden I* factors favors an award toward the upper end of the range. The law is well established that a fee award equal to 25% of a common fund is well within the range of what may be considered customary. *See, e.g., In re Sunbeam*, 176 F. Supp. 2d at 1333-34. In fact, many recent decisions in this Circuit have routinely awarded attorneys' fees up to (and sometimes in excess of) thirty percent of the common fund, which further confirms the fairness and reasonableness of the fee requested herein. *See, e.g., Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (awarding 33 1/3% of the common fund); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323 (S.D. Fla. 2001) (awarding 25% of the common fund); *Diaz v. Hillsborough County Hosp. Authority*, 2000 WL 1682918 (M.D. Fla. Aug. 7, 2000) (awarding 30% of the common fund); *Ressler v. Jacobson*, 149 F.R.D. 654 (M.D. Fla. 1992) (awarding 30% of the common fund); *see also Tapken v. Brown*, Case No. 90-0691-CIV-Marcus (S.D. Fla. 1995) (awarding 33%); *In re Int'l Recovery Corp. Sec. Litig.*, Case No. 92-1474-CIV-Atkins (S.D. Fla. 1994) (Fee award represented 30% of class benefit); *In re Sound Advice, Inc. Sec. Litig.*, Case No. 92-6457-CIV-Ungaro-Benages (S.D. Fla. 1994) (awarding 30%); *In re Belmac Corp. Sec. Litig.*, Case No. 92-1814-CIV-T-23-(C) (M.D. Fla. 1994) (awarding 31%); *In re Perfumania, Inc. Sec. Litig.*, Case No. 92-1490-CIV-Marcus (S.D. Fla. 1993); (awarding 30%); *Kaser v. Swann*, Case No. 90-607-CIV-Orl-3A18 (M.D. Fla. 1993) (awarding 30%); *In re Home Shopping Network Sec. Litig.*, Case No. 87-428-T-13(A) (M.D. Fla. 1991) (awarding 33%).

It is also significant that the amount sought comports with the standard contingent fee amount found in the marketplace. *See, e.g., In re Continental Illinois Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) ("The object in awarding a reasonable attorneys' fee . . . is to simulate the market."); *RJR Nabisco, Inc. Sec. Litig.*, Fed. Sec. L. Rep. (CCH) ¶ 94,268 (S.D.N.Y. 1992) ("what should govern

[fee] awards is . . . what the market pays in similar cases . . . ."); *see also Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986) ("When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee is the 'market rate.'") (emphasis in original). The requested fee is consistent with practice in the private marketplace where contingent fee arrangements ranging from 30% to 40% are customary. In their concurring opinion in *Blum v. Stenson*, 465 U.S. 886 (1984), Justices Brennan and Marshall observed that:

> In tort suits, an attorney might receive one-third of whatever amount the Plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.

Blum, 465 U.S. at 904; *see also Kirchoff*, 786 F.2d at 323, 325 n.5 (observing that "40% is the customary fee in tort litigation"); *In re Public Service Co.*, Fed. Sec. L. Rep. (CCH) ¶ 96,988 at 94, 291-92 (S.D. Cal. 1992) ("If this were a non-representative litigation, the customary fee arrangement would be contingent on a percentage basis, and in the range of 30% to 40% of the recovery."). Here, had the individual investors retained counsel on an individual basis -- in the unlikely event they would have been able to do so -- they would have most likely paid a contingent fee equal to or greater than the amount requested. Hanz Aff. at ¶ 29.

5. Whether the Fee is Fixed or Contingent

"A contingency fee arrangement often justifies an increase in the award of attorneys' fees." *In re Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990)). This action was prosecuted by Class Counsel on a purely contingent basis, thereby assuming the risk of no payment for a considerable amount of work over an extended period of time. As discussed above, it is clear that the claims

against the law firm were risky and difficult. Thus, the contingency risk in this case was substantial. Hanz Aff. at ¶ 30.

6. The Amount Involved and the Results Obtained

Class Counsel was able to negotiate a settlement with BMMST and McNerney to pay $10,000,000, providing the Class with a substantial monetary recovery. The recovery amounts to between 83% and 143% of the potential insurance coverage at issue.[8] And it is clear from the financial affidavits obtained by Class Counsel and the Receiver that the Class could not expect much more of a recovery had they litigated and won this case at trial. Hanz. Aff. at ¶¶12, 16, 20, 30. Given the novelty, difficulty, and risk of the claims asserted against BMMST and McNerney, the dollar amount of the Settlement represents an excellent result.

In addition to the $10 million common fund, Class Counsel and the Receiver were also able to obtain an "Agreement of Cooperation." Both BMMST and McNerney agree to fully cooperate with any future investigation conducted by the Receiver and Class Counsel, subject to receiving assurances that the Settling Defendants are not the target of any SEC investigation. This cooperation could prove to be invaluable to securing other settlements against the remaining defendants. Hanz Aff. at ¶ 17; *see In re Linerboard Antitrust Litigation*, 292 F. Supp. 2d 631 (E.D. Pa. 2003) (granting final approval because, among other things, the settlement obligated the settling defendants to provide significant cooperation to plaintiffs in pursuing their case against the non-settling defendants).

[8] As explained above, both insurers were asserting substantial coverage defenses and one of the insures even filed a declaratory action in order to void coverage in its entirety based on alleged material misrepresentations in BMMST's insurance application.

7. The Undesirability of the Case

"A court's consideration of this factor recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk. Such aversion could be due to any number of things, including social opprobrium surrounding the parties, thorny factual circumstances, or the possible financial outcome of a case. All of this and more is enveloped by the term 'undesirable.'" *In re Sunbeam*, 176 F. Supp. 2d at 1336. Here, not only was the financial outcome uncertain, but the representation involved bringing claims that were relatively difficult and risky, and against a local law firm. Hanz Aff. at ¶ 31.

C. The "Other" Factors Identified in *Camden I* Support Counsels' Requested Fee Award

Notices were sent to over 38,000 investors, yet only six investors timely objected to the fee request. More importantly, all but one of these objections contend that an award of 30% would not be reasonable.[9] Given that Class Counsel has made a request for an award in the range of 20% to 25% of the Settlement Fund, the Court need not decide whether 30% would be a fair and reasonable fee. One objector, North American Individual Investors, believes that *Camden I* does not govern here, but rather that *Kuhnlein v. Department of Revenue*, 662 So.2d 308 (Fla. 1995), applies because Class Counsel has asserted only common law claims against the Settling Defendants. In support of this argument, the objector cites cases in which *statutory* fees are at issue, but does not cite one case

[9] For example, Objector Chet Splitt believes that 20% to 25% is a reasonable range for attorneys' fees. Ellen Livingston contends that a $3 million fee seems to be excessive. Similarly, Mary Hutchison and Lindsay Fry state that 33% appears too high given that the attorneys have already been paid (of course, Class Counsel has not yet been paid for nearly 4,000 hours of work on this case). Reuben Nieswander believes awarding one-half of the Settlement Fund would not be reasonable. Lastly, Buster and Mary Simmons ask the Court to award reasonable attorneys' fees.

in which a common fund was at issue. The Court should reject this objection for the following reasons. First, this is not a case involving statutory fees, but rather is one applying the common fund doctrine. Second, had this case proceeded past the motion to dismiss stage, there is no reason to think Class Counsel might not have amended the complaint to add other causes of action against the Settling Defendants, some of which might have been federal causes of action. Third, this Court previously addressed this issue in *Walco Investments, Inc. v. Thenen*, 975 F. Supp. 1468 (S.D. Fla. 1997) (Moreno), and the Court rejected this very same argument. Specifically, the Court found that this Court "is bound by the Eleventh Circuit analysis in *Camden I* because the federal claims dominated the state claims raised in this proceeding." *Id.* at 1471. The Court should similarly find that the federal securities issues dominate this proceeding. Lastly, even if the Court were bound to use the lodestar approach, we believe it would arrive at the same award, as discussed below.[10] We therefore request that the Court overrule all objections timely filed with the Court, and grant Class Counsel's motion for fees and expenses.

D. The Requested Fee Is Also Reasonable When Checked Against the "Lodestar" Approach

Some courts use the lodestar method as a cross-check of the percentage of the fund approach. *Id.* at 1336 (citing *Ressler*, 149 F.R.D. at 653 n.4). In a pre-*Camden I* case in this District, Judge King performed both methods of analysis and gathered cases on the range of fee awards under either method and noted that lodestar multiples "in large and complicated class actions" range from 2.26 to 4.5, while "three appears to be the average." *Behrens v. Wometco Enter., Inc.*, 118 F.R.D. 534

[10] Class Counsel has also filed other objections and comments that were not timely and not properly filed with the Court by Class Members relating to Class Counsel's request for fees. *See* Love Aff. at ¶ 11. To the extent that these objections and comments should be considered, they do not add anything to the objections addressed above.

(S.D. Fla. 1988). But in many cases, including cases in this jurisdiction, multiples much higher than three have been approved. *See, e.g., Weiss v. Mercedes-Benz of North America, Inc.*, 1995 U.S. Dist. LEXIS 14708 (D.N.J. 1995) (multiple of 9.3 times lodestar); *In re RJR Nabisco, Inc. Sec. Litig.*, Fed. Sec. L. Rep. (CCH) ¶ 96,984 (S.D.N.Y. 1992) (multiple of 6 times lodestar); *Cosgrove v. Sullivan*, 759 F. Supp. 166 (S.D.N.Y. 1991) (multiple of 8.74); *Grimshawe v. New York Life Insurance Co.*, Case No. 96-0746-Civ-Nesbitt (S.D. Fla. 1996) (percentage-based fee award equivalent to a multiple of 8.5).

In this case, Class Counsel's combined lodestar, calculated at each firm's regular hourly rates, is $1,430,310. Diaz Affidavit at ¶ 3 ($614,862); Love Aff. at ¶ 3 ($815,448). If the Court awards $2,500,000, then the award would correspond to a 1.75 multiple of Class Counsel's lodestar; if the Court awards $2,000,000, then the award be 1.4 times lodestar. Thus, assuming that the Court enters a fee award between $2,000,000 and $2,500,000, the award would fall well within the range of lodestar multiples deemed to be fair and reasonable in this Circuit.

The requested attorneys' fees and expenses are fair and reasonable. The fee request easily satisfies the guidelines of *Camden I*, especially in light of the complicated nature of the case, and the time, effort and skill required to create the common fund, and the outstanding results obtained. For these reasons, Class Counsel respectfully requests that the Court grant its motion for fees and expenses.

VI. CONCLUSION

For the reasons set forth above, Lead Plaintiffs, Class Counsel and the Receiver respectfully request that this Court finally approve the Settlement, certify the Settlement Class, and enter the proposed Order and Final Judgment. Class Counsel also requests that the Court grant its request for attorneys' fees and expenses.

Respectfully submitted,

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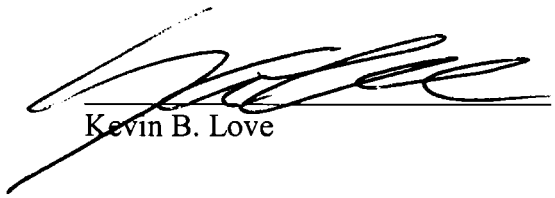
CLASS COUNSEL FOR LEAD PLAINTIFFS AND THE CLASS

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been served via U.S. Mail this 29th day of November, 2005, upon all persons on the attached service list, as well as the following objectors: Chet Splitt, 10197 W. Bairstow Avenue, Beach Park, IL 60087; Esperanza Esteban Rodriguez-Esquire, Esteban & Associates, Ave. Main Bloque 51 #31, Urbanizacion Santa Rose, Bayamon, Puerto Rico; North American Individual Investors, Jenkins & Carter, Nathan M. Jenkins, Esquire, Co-Counsel for NAII, 501 Hammill Lane, Reno, Nevada 89511; Pardo, Gainsburg & Barrow LLP, Carla M. Barrow, Esquire, Co-Counsel for NAII, 2 South Biscayne Boulevard., Suite 2475, Miami, Florida 33131; Ellen E. Livingston, 1213 Davis Street, Cleburne, TX 76033; Dr. Richard A. Solberg, P.O. Box 187, 275 Glenwood Road, Whitefish, MT 59937; Mary R. Hutchinson, 305 Peregrine Circle, Broomfield, CO 80020-1278; Reuben Neiswander (no address);Buster & Mary Simmons,1294 Jones Ferry Road, Elberton, GA 30635.



Kevin B. Love

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SERVICE LIST (Scheck v. Viatical Benefactors, LLC, et al.)

Case No.: 04-21160 CIV-Moreno

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EXHIBIT "A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21160-CIV-MORENO/GARBER

SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.
_____/

ORDER AND FINAL JUDGMENT

Lead Plaintiffs Scheck Investments, L.P., Elena Parrales, individually and on behalf of Franova Investment Ltd., The PMT Irrevocable Trust, Juan Manuel Ponce De Leon, and Maria Paulina Ponce De Leon Uribe ("Lead Plaintiffs"), individually and on behalf of all Class Members similarly situated, and Roberto Martinez, as court-appointed Receiver of Mutual Benefits Corp. ("MBC") and other related entities ("Receiver"), and Defendant Brinkley, McNerney, Morgan, Solomon & Tatum, LLP and Michael J. McNerney ("Settling Defendants"), and the Settling Defendants' insurers, Westport Insurance Corporation and Liberty Surplus Insurance Corporation, Inc., have submitted for final approval a proposed settlement that is memorialized in the Stipulation of Settlement executed August 2, 2005 (" Settlement Agreement").[1] Class Counsel has also moved for an award of attorney fees and costs.

[1] All capitalized terms used herein shall have the meanings set forth in the Settlement Agreement.

For the reasons set out in detail below, the Court has determined that the Settlement is fair, reasonable and adequate, and should therefore be approved. The Court has also determined that Class Counsel's Motion for Fees and Costs should be granted. Accordingly, this Court enters this Order and Final Judgment, approves the Settlement, certifies the settlement class, overrules all of the Class Members' objections, approves an award of attorneys' fees and costs, and dismisses this action against BMMST with prejudice, and therefore:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. This Court has federal question jurisdiction, pursuant to 28 U.S.C. § 1331. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

2. On December 2, 2005, the Court held a hearing to consider the fairness, reasonableness and adequacy of the proposed Settlement ("Final Approval Hearing").

3. In reaching its decision in this case, the Court considered the Settlement Agreement, the objections to the Settlement filed with this Court by Class Members, the extensive Court file in this case and related MBC cases, and the presentations by Class Counsel, the Receiver, and Counsel for the Settling Defendants in support of the fairness, reasonableness and adequacy of the Settlement.

Class Certification

4. The Class is defined in the Settlement Agreement to include: "All persons who purchased, between October 1, 1994 and May 4, 2004, interests in discounted life insurance policies known as viatical settlements or life settlements from MBC or VBLLC and have been damaged thereby." Excluded from the Class are: Defendants, MBC and any agent or broker who offered to sell viatical settlements or life settlements through MBC or VBLLC, including any of the foregoing companies' respective subsidiaries, affiliates, officers, agents or employees.

5. In its Preliminary Approval Order, the Court conditionally certified the Class for the purpose of settlement under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. In entering this Order and Final Judgment, the Court has once again considered the class certification prerequisites set forth in Rule 23(a) and (b)(3) and again finds that these prerequisites are satisfied in this case.

6. The Court now affirms its prior Class certification, which was conditional pending further review, and finds that: (a) the Class is so numerous that joinder of all members is impracticable; (b) there are questions of both law and fact common to the Class; (c) the Lead Plaintiffs' claims are typical of the claims of all members of the Class; and (d) the Lead Plaintiffs and Class Counsel have fairly and adequately represented and will fairly and adequately protect the interests of the Class, all pursuant to Fed. R. Civ. P. 23(a).

7. The Court additionally finds that questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and that this class action is superior to other available methods for the fair and efficient adjudication of this controversy, pursuant to Fed. R. Civ. P. 23(b). In making the latter determination the Court has considered the following: (a) the interest of members of the Class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the Class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (d) the difficulties likely to be encountered in the management of a class action. The Class, as defined above, is now finally certified.

8. Fifty-nine Class Members have timely and properly requested to be excluded from the Settlement; their names are listed on Exhibit 1 attached hereto. The Class Members on Exhibit 1 are not bound by the Settlement, not subject to the release included herein, and cannot participate in the distribution of the Settlement Fund.

9. Class Counsel has informed the Court that eighteen other Class Members sent in requests for exclusion, however the requests were not timely served. Because the number of Class Members who excluded themselves by the Court-ordered deadline was a crucial factor in the Settling Defendants' decision not to terminate the Settlement (as was their right), the Court holds that these eighteen Class Members shall not be permitted to exclude themselves. These eighteen Class Members shall be bound by the Settlement and Release, but they will be permitted to participate in the distribution of the Settlement Fund. Class Counsel shall promptly inform these eighteen Class Members of the Court's decision regarding this matter.

Notice to the Class

10. In its Preliminary Approval Order, this Court approved the Notice attached to Class Counsel's motion, and found that the proposed form and content thereof satisfied Rule 23(c)(2) and (e) of the Federal Rules of Civil Procedure, the Local Rules of this Court, as well as the requirements of due process.

11. As set forth in the affidavit of Marcia A. Gomez of the Garden City Group ("Claims Administrator"), Class Counsel and the Claims Administrator timely caused the Notice to be mailed by first class mail, postage prepaid, to each Class Member at their last known addresses. As of January 10, 2005, the Receiver estimated that there were 31,434 Class Members with active policies. There are 38,002 investors in MBC's database. The MBC database includes not only investors with

active polices, but also those investors whose policies have matured, or had their money refunded. In an abundance of caution, the Notice was sent out to all 38,002 addresses.

12. The mailing was completed on September 29, 2005. Spanish translations of the Notice were sent to Class Members where it was believed that Spanish was the Class Member's first language. Of the 1,350 undeliverable notices, the Settlement Administrator found 187 updated addresses as a result of a search in the National Change of Address Database. Notice was then sent to those 187 potential class members. Moreover, many of the Class Members have their investment in a retirement account and are using Fiserv Trust Company ("Fiserv") as the account's administrator. These accounts are set up so that all correspondence from MBC is sent to Fiserv. Upon learning of this situation, Class Counsel worked with Fiserv to forward the notices as soon as practicable to potential Class Members.

13. The Receiver and Class Counsel also caused the Notice to be put on the Receiver's Website - www.mbcreceiver.com. Moreover, Class Counsel and the Settlement Administrator established a toll-free Helpline using an interactive voice response system ("IVR"). The IVR provided answers to a number of frequently asked questions relating to the proposed settlement and an option for investors to leave a message for Class Counsel to call them back. As of November 13, 2005, the Helpline received a total of 3,631 calls. Approximately 600 Class Members left questions, all of which were transcribed and forwarded to Class Counsel for response.

14. Attorneys from Class Counsel's offices responded to the Class Members who left messages and current phone numbers on the IVR prior to the deadline. Class Counsel also corresponded with investors by letter and fax, and responded to hundreds of direct investor phone

calls. Finally, Class Counsel responded to investor inquiries through a dedicated e-mail address set up for this Settlement (MBC@hanzmancriden.com).

15. As noted elsewhere in this Final Judgment, a handful of investors responded to the Notice by filing exclusions, objections to and comments in support of the Settlement.

16. This Court has again reviewed the Notice and the accompanying documents and finds that the "best practicable" notice was given to the Class and that the Notice was "reasonably calculated" to: (a) describe this case and Class Members' rights in it; and (b) apprise interested parties of the pendency of this case and of their right to have their objections to the Settlement heard. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810 (1985); *accord* Fed. R. Civ. P. 23(c)(2) ("best notice practicable under the circumstances, including notice to all members who can be identified through reasonable effort," shall be given to class members); Fed. R. Civ. P. 23(e) ("notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs."). The Notice was reasonably calculated to advise each member that: (a) the Court would exclude the member from the Class if the member so requested by a specified date; (b) this Order and Final Judgment, whether favorable or not, would include all Class Members who did not request exclusion; and (c) any Class Member who did not request exclusion could, if the Class Member desired, enter an appearance. The Court thus reaffirms its findings that the Notice given to the Class Members satisfies the requirements of due process and holds that it has personal jurisdiction over all Class Members.

The Settlement

17. The Settlement includes, among other things, the establishment of a total common fund in the amount of Ten Million Dollars ($10,000,000.00) for the benefit of the Class. This

amount, less Class Counsels' fees and expenses as awarded by the Court, and less the expenses of administering the Settlement ("Net Class Settlement Amount"), shall be distributed to Class Members based upon a Court-approved allocation plan to be presented to this Court by Class Counsel and the Receiver at a future date. In return, all claims alleged by Lead Plaintiffs and the Class (and that could have been alleged by the Receiver) against the Settling Defendants shall be dismissed with prejudice (as set forth in the Settlement Agreement and herein).

18. In addition to the $10 million common fund, Class Counsel and the Receiver were able to obtain an "Agreement of Cooperation." Specifically, the Settling Parties agree to fully cooperate with any future investigation conducted by the Receiver and Class Counsel, subject to receiving assurances that the Settling Defendants are not the target of any SEC investigation. The Court takes note that the SEC has not yet filed any action against the Settling Defendants, nor has the SEC indicated that it is inclined to do so in the future. Given that the Settling Defendants were MBC's lawyers since the beginning of the Class Period, their cooperation could prove to be invaluable to Class Counsel and the Receiver in their ongoing actions against the other Defendants. *See In re Linerboard Antitrust Litigation*, 292 F. Supp. 2d 631 (E.D. Pa. 2003) (granting final approval because, among other things, the settlement obligated the settling defendants to provide significant cooperation to plaintiffs in pursuing their case against the non-settling defendants).

19 The Court must determine whether the proposed Settlement is "fair, adequate and reasonable and is not the product of collusion" between the parties. *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 207 (5th Cir. 1981). In making this determination, the Court considers six factors: (1) the likelihood that Plaintiffs would prevail at trial; (2) the range of possible recovery if Plaintiffs prevailed at trial; (3)

the fairness of the settlement compared to the range of possible recovery, discounted for the risks associated with litigation; (4) the complexity, expense, and duration of litigation; (5) the substance and amount of opposition to the Settlement; and (6) the stage of the proceedings at which the Settlement was achieved. *Bennett*, 737 F.2d at 986; *Corrugated Container*, 643 F.2d at 212; *Behrens v. Wometco Enters, Inc.*, 118 F.R.D. 534, 538-90 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990). In considering this Settlement, the Court need not and does not decide the merits of this Action.

20. This Court, after considering the aforementioned factors, finds that the Settlement provides for a reasonable and adequate recovery that is fair to all Class Members. *See Bennett*, 737 F.2d at 986-87.

21. The Court's review of the file demonstrates that there remains substantial risk and uncertainty in Lead Plaintiffs ultimately prevailing on their claims and upholding such an outcome on appeal. Lead Plaintiffs' claims against MBC's law firm has not yet been tested to see whether their claims even state a claim, let alone whether they could survive a summary judgment motion or a trial. Given the open issues regarding the law firm's ultimate culpability for investor losses and the uncertainty of any future litigation against them, including any plenary appeal, the creation of a $10 million common fund represents an excellent result. *See Bennett*, 737 F.2d at 986-87. Furthermore, if this case were to proceed without settlement, the subsequent motion practice, resulting trial and the inevitable appeal would be complex, lengthy and expensive. The Settlement eliminates a substantial risk that the Class would walk away empty-handed after the conclusion of such appeals. *See Ressler v. Jacobson*, 822 F. Supp. 1551, 1554 (M.D. Fla. 1992). Further, BMMST has vehemently denied any wrongdoing and has indicated that it would continue to

vigorously defend the lawsuit absent settlement. Without the Settlement, it could be years before Class Members would see any recovery even if they were to prevail on the merits, which might not produce a better recovery than they have achieved in this Settlement. *Behrens*, 118 F.R.D. at 543 (settlement "shortened what would have been a very hard-fought and exhausting period of time, which may have realistically ended with a decision similar to the terms of this settlement").

22. The Court also concludes that the $10 million Settlement Fund is fair and reasonable given the fact that, the extent of the Settling Defendants' potential insurance coverage, at most, is $12 million (and more likely was $7 million), that the policies are "wasting policies," that several coverage issues exist (a declaratory action was filed by one of the insurers to void the policy for a material misrepresentation in the insurance application; the case remains pending), and that neither the law firm nor McNerney himself has over $5 million in executable assets. If the Settlement is approved, Lead Plaintiffs and the Receiver will have achieved an excellent result for the Class Members – one that will provide the Class with a substantial monetary recovery very early on in this Action that will, among other things, prevent the Settling Defendants from wasting the proceeds of their insurance policies on their attorneys in further defense of this Action. *See, e.g., Denney v. Jenkens & Gilchrist*, 2004 WL 1197251 (S.D.N.Y. 2004) (preliminarily approving settlement because, among other reasons, the insurance policies at issue were "wasting" away, reducing the amount available for the Class); *see also Denney v. Jenkens & Gilchrist*, 230 F.R.D. 317 (S.D.N.Y. 2005) (motion for final approval granted).

23. Also weighing in favor of approving the Settlement is the fact that out of 31,000-plus investors, just eight investors filed objections with this Court, and only four of these objections actually addressed the Settlement (as opposed to Class Counsel's request for attorneys' fees). This

fact weighs heavily in favor of approving the Settlement. *Id.* at 988 n.10 (holding that the district court properly considered the number of objections in approving a class settlement). Also, as noted below, some investors called and sent letters to Class Counsel expressing support for the Settlement.

24. One investor objects that $10 million is not sufficient to cover all investor losses. While this may be true, the objection nonetheless misses the mark. This is just *one* settlement in the Class Action against *one* Defendant – MBC's lawyers. It is too much to ask that this Settlement make the Class whole. As stated above, the $10 million must be analyzed in connection with this Defendant's role in the alleged fraud and, more importantly, against the potential recovery against this Defendant if Lead Plaintiffs were to win at trial. Viewed through this prism, $10 million is an excellent recovery, especially since it was reached at such an early stage of this case.

25. Three other investors do not necessarily object to the $10 million settlement itself, but rather to the fact that they were forced to decide whether to exclude themselves prior to knowing exactly how much each investor will get during the claims process. Yet there is good reason for leaving to a later date the precise allocation and distribution of the Settlement Fund. The process for deciding what is the most fair and reasonable allocation and distribution is likely to be a complex and time-consuming endeavor that might have derailed the Settlement itself. Moreover, the Court finds that any decision regarding allocation and distribution is better left unresolved until after the Court reviews the response from Class Members regarding the choice it has given them regarding their policies. Likewise, particular allocation plans (plans based on investor losses, for example) may be impractical to implement at this point in time but may become feasible after investors make their choice regarding their policies. The Court therefore finds it appropriate and prudent to follow a two-stage procedure (first, approval of the settlement, and then approval of an allocation plan), an

approach which has been adopted by several courts in similar circumstances. *See, e.g., In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 480 (S.D.N.Y. 1998); *In re Michael Milken and Assoc. Sec. Litig.*, 150 F.R.D. 57, 66-67 (S.D.N.Y. 1993); *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 150-51 (E.D.N.Y. 2000).

26. The Court has also reviewed objections and comments which were either not timely filed with the Court or which were not timely served on counsel. The objections either mirror the objections discussed above or focus on Class Counsel's request for attorneys' fees. For the reasons stated above, the Court overrules all objections to the Settlement filed with the Court.

27. This Court may also consider the opinions of the parties and their counsel. *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir.), *cert. denied*, 459 U.S. 828 (1982). Here, Class Counsel, the Receiver, and the Receiver's counsel all have considerable experience in the prosecution of large, complex class actions. Counsel for the Settling Parties are likewise experienced in complex litigation. This Court gives credence to the opinions of these counsel, amply supported by the Court's independent review, that this Settlement is a beneficial resolution of the claims alleged by the Class against the Settling Parties.

28. In addition to finding the terms of the proposed Settlement fair, reasonable and adequate, this Court must determine that there was no fraud or collusion between the parties or their counsel in negotiating the Settlement's terms. *Bennett*, 737 F.2d at 986; *Miller v. Republic Nat'l Life Ins. Co.*, 559 F.2d 426, 428-29 (5th Cir. 1977). In this case, there is no suggestion of fraud or collusion between the parties. Furthermore, the terms of the Settlement make it clear that the process by which the Settlement was achieved was fair. *Miller*, 559 F. 2d at 429; *Ressler*, 822 F. Supp. at 1554-55.

29. Based on the above findings, the Court approves the terms of the Settlement Agreement as fair, reasonable, adequate and in the best interests of the Class. The Settlement shall be consummated in accordance with the terms and conditions of the Agreement. The Settlement Agreement is hereby approved and adopted as an Order of this Court. The Court directs all of the Parties and their Counsel to cooperate with the consummation of the terms of the Settlement Agreement.

Request for Attorney Fees and Expenses

30. The Settlement Agreement provides that Class Counsel will make an application to this Court for an award of attorneys' fees up to 30% of the Settlement Fund. Class Counsel requests that the Court award them a fee which represents between 20% and 25% of the $10 million Settlement Fund. While Class Counsel asserts that any fee within this range is "reasonable," they argue that an analysis of the *Camden I* factors (discussed below) favors an award toward the upper end of the range.

31. Pursuant to *Camden I Condominium Assoc. v. Dunkle,* 946 F.2d 768, 774 (11th Cir. 1991), an attorneys' fee award should be "based on a reasonable percentage of the fund established for the benefit of the class." The Court has applied all of the relevant *Camden I* factors to the circumstances of this case in general, and in particular, this Settlement, and it finds the following facts relevant to its decision: (1) Although this case came after the SEC filed its case, Class Counsel sued the Settling Parties, which were not parties to the SEC lawsuit (not to mention that suing a local law firm for wrongdoing is generally anathema to many attorneys); (2) Although Lead Plaintiffs and Class Counsel were not required to participate in the SEC lawsuit (Lead Plaintiffs are not parties to the SEC lawsuit), they did not simply sit back and let the Government argue the Class's cause alone

in connection with one of the most crucial issues in this case – whether MBC viatical settlements were securities. Instead, Class Counsel filed three amicus briefs (and participated in oral argument) in support of the Class's position that MBC viatical settlements are in fact securities; (3) Class Counsel obtained a $10 million settlement prior to establishing that they could state a claim against the Settling Defendants; (4) The Settlement was negotiated so that limited insurance monies were not wasted on defending the claims; (5) Class Counsel obtained a Cooperation Agreement from the Settling Defendants – a very important concession that could end up meaning more to the Class than the $10 million Settlement Fund; (6) Class Counsel also negotiated a bar order which shall finally resolve all claims for the Settling Parties – obviating the need for satellite litigation amongst the parties, thereby further streamlining the rest of this litigation; and (7) Class Counsel, as opposed to the Claims Administrator, chose to directly respond to investor questions regarding the Settlement. Not only did this save the Class money, but it benefitted the Class to have an attorney answer their questions regarding the first settlement in this case. The preceding observations attest to the considerable experience, reputations and abilities of Class Counsel.

32. My decision is also based on the fact that this case has certainly precluded Class Counsel from acceptance of other cases; that Class Counsel is working on a pure contingent basis; and that the customary fee in a case such as this is generally between 20%-30%, with a 25% benchmark being accepted as the norm in this Circuit.

33. Based on the foregoing analysis, the Court finds that an award of _____% of the $10 million Settlement Fund (or $_____) in attorneys' fees would be fair and reasonable in this case. The Court finds that Class Counsel's request to be reimbursed for $104,711.68 in expenses is reasonable, and therefore awards Class Counsel, in addition to the fee award,

$\_\_\_\_\_$ for costs. The fee and cost award, which totals $\_\_\_\_\_$ shall be paid exclusively from the Settlement Fund as provided in the Settlement Agreement.

34. This award is also fair and reasonable when cross-checked against Class Counsel's lodestar. According to Class Counsel, it has already spent 3,919 hours litigating this case for a total lodestar of $1,430,310. Thus, the fee award represents a small multiplier well within the range of what is fair and reasonable given the circumstances of this case.

35. The Court has also reviewed all of the objections filed with the Court by Class Members relating to Class Counsel's request for fees. Most of the objections state that 30% is too high and that a fee within the range of 20 to 25 percent would be more reasonable. Given the Court's fee award, these objections are moot. Finally, one objector believes that *Camden I* does not govern my analysis here, but rather that *Kuhnlein v. Department of Revenue*, 662 So.2d 308 (Fla. 1995), applies because Class Counsel has asserted only common law claims against the Settling Defendants. In support of this argument, the objector cites cases in which *statutory* fees were at issue, but does not cite one case in which a common fund was at issue. The Court rejects this objection for the following reasons. First, this is not a case involving statutory fees, but rather the common fund doctrine. Second, had this case proceeded past the motion to dismiss stage, there is no reason to think Class Counsel might not have amended the complaint to add other causes of action against the Settling Defendants, some of which might have been federal causes of action. Third, this Court previously addressed this issue in *Walco Investments, Inc. v. Thenen*, 975 F. Supp. 1468 (S.D. Fla. 1997) (Moreno), and the Court rejected this very same argument. Specifically, the Court found that this Court "is bound by the Eleventh Circuit analysis in *Camden I* because the federal claims dominated the state claims raised in this proceeding." *Id.* at 1471. In this case, the

Court similarly finds that the federal securities issues dominate this proceeding. Lastly, the Court concludes that even if it were bound to use the lodestar approach, it would arrive at the same award, as evidenced by the discussion of the lodestar cross-check above. The Court has reviewed all other objections (whether properly filed or not) and find that they are not relevant and do not warrant further discussion. All objections filed with the Court related to Class Counsel's fee and expense request are overruled.

Miscellaneous

36. Any and all reasonable expenses that are not included in Class Counsel's fee and expense request related to the dissemination of the Notice or administration of the Settlement Fund shall be paid out from the Settlement Fund upon Court approval. The Settlement Fund, after deducting the monies awarded in this Final Judgment, shall remain in escrow earning interest until the Court approves a plan of allocation and distribution.

37. All claims alleged by Lead Plaintiffs and the Class against BMMST shall be, and the same are, hereby dismissed on the merits with prejudice, without fees and costs to any party, except as provided in the Settlement Agreement and approved by the Court herein.

38. Each Releasee (as that term is defined in the Settlement Agreement) shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature whatsoever, known or unknown, in law or in equity, which a Class Member that is not listed on Exhibit 1 ("Releasor"), whether or not they make a claim on or participate in the Settlement Fund, ever had, now have or hereafter can, shall or may have, which arise out of McNerney's, BMMST's or any of its partners or its employees' representation of MBC, and all of its past, present or future parent companies, subsidiaries, divisions, affiliates,

predecessors or successors; and each and all of the preceding entities' officers, directors, shareholders, employees, partners, agents, attorneys, representatives, heirs, executors, personal representatives, administrators and assigns, if any. The claims covered by the foregoing release are referred to herein collectively as the "Released Claims." Each Releasor shall not hereafter seek to establish liability against any Releasee based in whole or in part on any Released Claims.

39. The Court further bars and enjoins any non-settling defendant in the Action from commencing, prosecuting or asserting any claim for contribution or indemnity against BMMST or McNerney, individually, arising out of, or in any way related to, the Action or their legal representation of MBC or affiliated entities or to any future action filed by the Receiver or the receivership entities; in addition, BMMST and McNerney, individually, shall be barred from commencing, prosecuting or asserting any claim for contribution or indemnity against any non-settling defendant arising out of, or in any way related to, the Action or their legal representation of MBC or affiliated entities; in addition, notwithstanding any provision of Florida law to the contrary, the total damages awarded against the non-settling defendants as a result of a trial of this Action, or any related lawsuit, including but not limited to, any pending or future action filed by the Receiver, shall be reduced dollar-for-dollar up to the full amount of the Settlement Fund ($10,000,000), or by another amount as ordered by the Court at a later date.

40. Without in any way affecting the finality of this Order and Final Judgment, this Court hereby retains jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Order and Judgment, and for any other necessary purpose.

41. Because there are multiple parties and claims presented in this case, the Court makes an express determination that there is no just reason for delaying the entry of this Order and Final Judgment, and therefore directs the immediate entry of this Order and Final Judgment.

DONE AND ORDERED in Chambers in the Southern District of Florida, at Miami, Florida this _____ day of _____, 2005.

_____

THE HONORABLE FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of record

L:\2979\Settlement Lawfirm\McNerney Final Approval Order.wpd

Exclusion List

First Name	Mid	Last Name	Street	City	State	Zip Code
Lila	E.	Albertson	2400 N.E. 60th Street	Gladstone	MO	64118
Ralph		Azuz	04940 Picciola Road	Fruitland Park	FL	34731
Jean		Bower	100 Edgewood Dr. Apt. 2111	Maumelle	AR	72113
Don & Virginia	R.	Britton	6912 Stonehenge Rd.	Odessa	TX	79765
Wilma	B.	Browning	Rt. 2 Box 76	Castlewood	VA	24224
Marie		Brzana	4836 Onyx Lane	New Port Richey	FL	34652
Humberto	A.	Castellanos Peña	Carrera 41 No. 105A-23 Apt. 501	Bogota	Colombia	
Elbon	L.	Christian	4439 Briar Glen Dr.	Birmingham	AL	35243
William & Rhea		Coleman	1312 West Lindberg St.	Springfield	MO	65807
Joanna		Copoulos	447 Saint Georges Ct.	Satellite Beach	FL	32937
James	A.	Crilly	11200 102nd Ave. Unit 97	Seminole	FL	33788
Stella	C.	De Echeverri	Carrera 58 No. 66-117	Barranquilla	Colombia	
Javier		De La Rosa	3313 W. 62 Pl.	Chicago	IL	60629
Kim	A.	Denison	244 Cartall St.	St. James	MO	65559
Victor	H.S.	Dominguez	2560 Herrera & Cairo, Ladron de Guevara colony	Guadalajara,Jalisco	Mexico	44680
William	F.	Dykema	136 Buddy LN.	Summerville	SC	29485
Donna	M.	Erickson	810 N. 2nd St.	Rochelle	IL	61068
Sindia & Jaime		Galvez Muro	1725 Greenwood Rd.	Glenview	IL	60026
Milton	B.	Gambles	331 Court St.	Soda Springs	ID	83276
Phillip & Ann Marie	M.	Gebauer	15839 Hough Rd.	Allenton	MI	48002
Dorothy & Howard	W.	Gibbons	P.O. Box 676	Palm City	FL	34991
Elfredda & Ray	W.	Gould	4543 E. 41 St N.	Idaho Falls	ID	83401
Toby		Gravley	2432 Cambridge Street	Odessa	TX	79761
Clarence & Hilda		Haines	413 Acacia Cr.	Harbor Oaks	FL	32127
Herbert	T.	Harris	4824 Coach Hill Dr.	Greenville	SC	29615
Timothy & Janette	C.	Hart	6043 Shotka Street	Garden City	MI	48135
Ronald & Jean	P.	Hawkins	920 Royalette Ave.	North Augusta	SC	29841
Julia & Alvin	C.	Herndon	801 Oak Place	Aiken	SC	29801
Margy		Howard	436 N 4200 E	Rigby	ID	83442
Clifford	J.	Janes	107 West Park Ave.	Bourbon	IN	46504
Bernard	E.	Jenkins	1751 Carolyn Lake Cr.	Thomson	GA	30824
John	R.	Johnson	198 Franklin St.	Barnwell	SC	29812
Ester	M.	Johnson	6141 N. 18th Dr.	Phoenix	AZ	85015
Leo	J.	Kelly	2923 Concord Street	Sarasota	FL	34231
Paul	R.	Kennedy	504 Providence Square	Greenville	SC	29615
Carolyn	S.	Kight	71 Clemson Street (P.O. Box 236)	Williston	SC	29853
Hector		Lagos Cue	Hamburgo 190 Col. Juarez	Mexico, D.F.	Mexico	
Robert	D.	Lawson	4066 Burning Tree Lane	Augusta	GA	30906
Edna	O.	Layden-Shanky	9720 Fairway Circle	Leesburg	FL	34788
William & Sally	E.	Looney	P.O. Box 355	Jackson	SC	29831
Cheryl		Looney Thompson	105 Rhodes Street	Jackson	SC	29831
Deborah		Looney Tollison	108B Pauline Street	Jackson	SC	29831
Nancy	L.	Lucas	P.O. Box 370	Allenhurst	GA	31301
Michael	W.	Lunsford	225 Goodnight Trail	Longview	TX	75605
Jean		Macdonald	20056 Tappan Zee Dr.	Prot Charlotte	FL	33952
Marie	S.	Maddux	321 Water Street, Apt. 5	Kerrville	TX	78028
Alice		Mamarchev	1667 Brookhouse Cr. BR-129	Sarasota	FL	34231
Eldon	E.	Moore	1504 W. Garden Street	Mesa	AZ	85201
Larry	A.	Moyer	2912 Wagener Rd.	Aiken	SC	29801
Ethel	L.	Mutchler	2566 Alabama Ave. NW	North Lawrence	OH	44666
Edward	J.	Norman	240 Hightower Trail	Conyers	GA	30012
Herbert	J.	Orski Jr.	9216 Tiara Court	New Port Richey	FL	34655
Arthur	L.	Posey	1729 Ridgecrest Ave.	Aiken	SC	29801
Jonaleen		Posnick	303 Conklin Street	Syracuse	NY	13209
Frank & Evelyn		Puchel	2855 S. Airport Rd.	Saginaw	MI	48601
Wayne		Rabalais	301 E. Kaliste Saloom Road Suite 200	Lafayette	LA	70508
Jeffrey	G.	Tarver	8319 Sterlingshire	Houston	TX	77078
George & Ovida	D.	Thomas	708 Courtland	Odessa	TX	79763
Wai Ling		Tsang	Flat B, 8th Floor, Block B Sheung Shui D.S.Q 9 Po Wing Rd.	Sheung Shui, New Territories	Hong Kong	

EXHIBIT 1

EXHIBIT "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21160-CIV-MORENO/GARBER

SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.
_____/

AFFIDAVIT OF MICHAEL A. HANZMAN

STATE OF FLORIDA)
)ss.
COUNTY OF MIAMI-DADE COUNTY)

BEFORE ME, the undersigned, personally appeared **MICHAEL A. HANZMAN**, and after being duly sworn, hereby deposes and says:

1. I am an attorney licensed to practice law in the State of Florida. I am a shareholder in the firm of Hanzman & Criden, P.A. I submit this Affidavit, made on personal knowledge, in support of Lead Plaintiffs and Receiver's Motion for Final Approval of Settlement and Class Counsel's Motion for Attorneys' Fees and Expenses.

2. I received my law degree from the University of Florida in 1985. I am licensed by the State of Florida to practice law and am an active member in good standing of the Florida Bar, United States District Court for the Southern District of Florida, United States District Court for the Middle District of Florida, United States Court of Appeals for the Eleventh Circuit, the American Bar Association and the Dade County Bar Association.

3. Over the last eighteen years my practice has included the representation of both plaintiffs and defendants in class actions, pending and concluded in both state and federal courts, in the Southern District of Florida, and elsewhere throughout the country. Many of those matters involved antitrust, RICO, securities and consumer-fraud claims. Examples include: *Walco Investments, Inc. v. Premium Sales, Inc.* et al., Case No. 93-2534-Civ-Moreno (represented class of approximately 1,500 investors who suffered losses in excess of two hundred and fifty million dollars ($250,000,000)); *Singer v. AT&T*, Case No. 95-2738 Civ-Kehoe (class action RICO claim with class recovery of twenty million dollars ($20,000,000)); *Shea v. New York Life Insurance Co.,* Case No. 96-0746 Civ-Nesbitt (class members received one hundred eighty seven million dollars ($187,000,000) which represented 100 % of the class's collective losses); *Aylward v. Paine Webber, Inc.,* Case No. Case No. 96-2831 (obtained a thirteen million dollar ($13,000,000) settlement on behalf of the class); *Wegweiser v. Great Western Securities Corp. et al.,* Case No. 95-8543 Civ-Hurley (six million dollar ($6,000,000.00) settlement in securities fraud class action); *Scharlow v. Pensco Pension Services, et al.*, Case No. 01-8364-Civ-Hurley (S.D. Fla.) (RICO class action on behalf of a class of investors); *Fabricant v. Sears Roebuck & Co.*, 202 F.R.D. 310 (S.D. Fla. 2001) (TILA and state-law restitution claims involving the sale of credit insurance); *Vista Healthplan, Inc. v. Bristol-Myers Squibb Co.*, Case No. 1:01CV01295 (EGS) (Antitrust action; settlement of $15 million for class of managed care companies).

4. Aside from serving as lead or co-lead counsel in a number of class actions, I have also, on a contingent fee basis, represented thousands of individuals in cases alleging complex fraud related claims. I have also served as lead counsel in numerous large commercial matters litigated in this district and have served as a court appointed Special Master and Arbitrator in a variety of complex disputes.

5. Over the last 10 years I have been retained numerous times to give my opinion as an expert on the fairness of class action settlements, petitions for attorneys' fees and costs, and other matters connected with class actions.

6. On May 3, 2004, the Securities and Exchange Commission ("SEC") filed a Complaint against Mutual Benefits Corporation ("MBC") and other related entities and individuals, alleging that MBC's sale of viatical settlements was in violation of the federal securities laws. The SEC did not, however, sue BMMST or McNerney. On May 4, 2004, the Court entered an Order appointing Roberto Martinez as receiver for MBC and related entities.

7. Although Lead Plaintiffs and Class Counsel were not required to participate in the SEC lawsuit (Lead Plaintiffs are not parties to the SEC lawsuit), we did not simply sit back and let the Government argue the Class's cause alone in connection with one of the most crucial issues in this case – whether MBC viatical settlements were securities. Indeed, Class Counsel filed three amicus briefs (and participated in oral argument) in support of the Class's position that MBC viatical settlements are in fact securities. Ultimately, the Eleventh Circuit affirmed the Court's ruling that the MBC viaticals are securities.

8. During the SEC proceedings, a separate issue arose of whether escrow purchase money should be returned to the particular class members who had sent MBC the money, or whether the escrow money should become part of the Receivership for the benefit of all Class Members. Class Counsel had a conflict in responding to this issue because certain Class Members had escrow money and others did not. Class Counsel responded by requesting that the Court appoint Robert Gilbert, Esq. as a special counsel to represent the interests of "post-closing MBC investors" since the interests of the "pre-closing MBC investors" were already being represented by Tom Tew, Esq. After this issue was fully briefed and argued before the Court, the Court entered an Order directed

that all escrow monies be sent back to the investors who had originally sent the money into MBC.

9. In addition to the formal participation in the SEC proceeding, Class Counsel actively participated in coordinating with the Receiver and his counsel on other essential aspects of the case, including: (1) providing factual information regarding investor knowledge and communicating investor concerns; (2) providing input regarding important Receivership issues like the disposition of policies and form of notice to investors; (3) assisting in identifying potential additional defendants and assets subject to Receiver claims; and (4) participating and coordinating settlement discussions with several defendants.

10. Lead Plaintiffs have now filed a Second Amended Class Action Complaint ("Second Amended Complaint") asserting twelve separate causes of action against fifty-one defendants.[1] In response to the Second Amended Complaint, eight motions to dismiss were filed by twenty of the defendants. All of these motions were thoroughly briefed by Class Counsel. Most of the motions were then argued before Magistrate Judge Garber on November 14, 2005. The remaining motions will be argued on December 5, 2005. Since the filing of the motions to dismiss, an automatic stay has been in effect pursuant to the PSLRA. Lead Plaintiffs filed a motion to lift the stay in March 2005, but the motion was denied. Because the motions have not yet been resolved by the Court, the PSLRA's automatic stay remains in effect.

11. On January 28, 2005, Lead Plaintiffs filed an Amended Class Action Complaint ("Amended Complaint"), adding claims against BMMST and McNerney. Lead Plaintiffs alleged, among other things, that BMMST and McNerney aided and abetted Anthony Livoti's breach of his

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[1] Class Counsel filed its original complaint on May 17, 2004. Up and through the filing of the Second Amended Complaint, Class Counsel spent hundreds of hours on factual investigation and legal research relating to an initial wave of motions to dismiss. Based on our investigation and research, we dropped some defendants/claims and identified additional defendants for potential recovery – all in order to streamline the issues in this case.

fiduciary duties. BMMST and McNerney responded by denying all allegations of wrongdoing, and asserting several affirmative defenses, including lack of any cognizable duty, good faith reliance, economic loss rule and statute of limitations.

12. The filing of the Amended Complaint directly led to the beginning of negotiations with BMMST, McNerney and their insurers regarding the possibility of settling this matter. During these meetings, Class Counsel and the Receiver's Counsel requested all information regarding potential insurance, as well as other *potential* funds available for recovery. These materials were thoroughly reviewed by Class Counsel and the Receiver's Counsel. It was discovered that the Settling Parties had $12 million in potential malpractice insurance coverage,[2] these insurance policies were "wasting policies," the insurers had asserted significant coverage defenses, and that one of the insurers had already filed an action seeking a declaration of no coverage.

13. Before any of the potential insurance proceeds were spent defending the class action, Class Counsel and the Receiver's Counsel worked with counsel for BMMST, counsel for McNerney, and counsel for their insurers (Westport and Liberty) to arrive at a potential settlement of this action. On May 10, 2005, after several meetings in person and on the phone, an agreement was reached, resolving all issues relating to BMMST and McNerney's legal representation of MBC. This agreement was memorialized in a letter agreement of the same date. The letter agreement then contemplated execution of a formal settlement agreement. Many more meetings were held to work out the precise details of the settlement. On August 2, 2005, a formal Settlement Agreement was

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[2] Specifically, BMMST made claims on two insurance policies with respect to the claims raised in the Amended Complaint. Both insurers asserted coverage defenses. Additionally, one of the insurers asserted a right to void coverage in its entirety based on an alleged material misrepresentation in the insurance application based on BMMST's alleged failure to disclose earlier filed related claims. Assuming the position asserted by this insurer was correct, then there would have only been $7 million in potential coverage.

executed.

14. The Settlement was reached after extensive arms-length negotiations. All of the parties aggressively presented their positions, and the negotiations required continuous efforts over a number of months to bear fruit.

15. Under the terms of the Settlement Agreement, Liberty and Westport (the insurers for BMMST and McNerney) will pay Ten Million Dollars ($10,000,000) to the Class to resolve this Action. The $10 million has already been paid, and is currently in an escrow account earning interest for the benefit of the Class.

16. Before agreeing to the $10 million Settlement, Class Counsel and the Receiver required that both BMMST and McNerney submit a sworn statement each representing that: (i) other than insurance policies disclosed during the settlement negotiations, there are no other potential available insurance coverage for the claims asserted in this Action or potential claims that could have been brought by the Receiver; and (ii) neither BMMST nor McNerney have within its/his possession, custody or control, assets that would be subject to execution in excess of $5,000,000.

17. In addition to the $10 million common fund, Class Counsel and the Receiver were also able to obtain an "Agreement of Cooperation." Specifically, BMMST and McNerney agree to fully cooperate with any future investigation conducted by the Receiver and Class Counsel, subject to receiving assurances that the Settling Defendants are not the target of any SEC investigation. The SEC has not yet filed any action against the Settling Defendants, nor has the SEC indicated that it is inclined to do so in the future. Given that the Settling Defendants were MBC's lawyers since the beginning of the Class Period, their cooperation could prove to be invaluable to Class Counsel and the Receiver in their ongoing actions against the other Defendants.

18. Finally, the Settlement includes a comprehensive release and a bar order pertaining

to the subject matter of this Action, thereby promoting the conclusion of all litigation related to BMMST and McNerney's representation of MBC.

19. If the Settlement is approved, Lead Plaintiffs, Class Counsel and the Receiver will have achieved an outstanding result for the Class Members – one that will provide the Class with a substantial monetary recovery relatively early on in this Action along with future cooperation by the Settling Parties against the non-settling defendants. The significant value of the financial benefits available to Class Members is enhanced by the fact that it will be provided to Class Members now, without the delay, burden and risks of continued and potentially long-lasting litigation.

20. There was no fraud or collusion among the parties during the negotiation process. Furthermore, the terms of the Settlement make it clear that the process by which the Settlement was achieved was fair. For example, the $10 million recovery amounts to 83% of the *potential* $12 million worth of insurance coverage at issue. Because one insurer was asserting the right to void coverage of its $5 million policy, it is probably more realistic to conclude that the recovery represents 142% of the available insurance. Whatever the potential insurance coverage, it is clear from the financial affidavits obtained by Class Counsel and the Receiver that the Class could not expect much more of a recovery had they litigated this case to trial.

21. There is no question that had the parties not reached a settlement, BMMST and McNerney were prepared to vigorously defend themselves in this case. The Settlement thus avoids the Settling Parties' insurance coverage from needlessly "wasting away" on attorney fees spent on defending this action. In other words, even if the Lead Plaintiffs and the Receiver would have prevailed at trial, it is likely that most of the insurance (assuming coverage) would have wasted away by that point and that the Lead Plaintiffs and the Receiver would have been left with a judgment that

could not be executed on assets worth more than $10 million.

22. Further, if the Settlement is not approved, future proceedings will likely include a lengthy trial followed by appeals. The Settlement, on the other hand, provides for definite, immediate benefits without waiting additional years. This is a further benefit to the Class.

23. While Class Counsel believes it would have ultimately prevailed on their claims against the Settling Defendants, significant obstacles certainly stood in our way. The Settling Defendants have consistently denied all liability and have asserted substantial affirmative defenses, both procedurally and substantively. Thus, while Class Counsel continues to believe in our legal positions, we would be remiss not to acknowledge the fact that this Court has not yet ruled on whether we even state a claim against the Settling Defendants. Nor has the Court had the opportunity to rule on whether a litigation class can be certified. Finally, the Settling Defendants would likely have sought summary judgment on some or all of our claims, as well as rulings limiting possible damages, in the event that this matter had not been settled. Given these considerable open issues and the inevitable plenary appeal, the aggregate net benefits made directly available to the Class represent an extremely favorable result. If the Settlement is finally approved, we will have achieved an excellent result for the Class Members, one that will provide them with a substantial recovery.

24. It is also significant that this is just *one* settlement with *one* defendant, and it would be unrealistic to believe that MBC's law firm would be able to, or would be willing to, pony up the total estimated losses of the Class (which some have estimated to be in the hundreds of million of dollars). Instead, the $10 million fund should be analyzed in connection with the law firm's role in the alleged scheme and, more importantly, against the potential recovery against the law firm if Lead Plaintiffs were to win at trial. Viewed through this prism, $10 million is an excellent recovery,

especially since it was reached at a relatively early stage of this case, and represents somewhere between 83% and 143% of the available potential insurance coverage.

25. Turning to allocation issues, there is good reason for leaving to a later date the precise allocation and distribution of the Settlement Fund. The process for deciding what is the most fair and reasonable allocation and distribution is likely to be a complex and time-consuming endeavor that might have derailed the Settlement itself. Any decision regarding allocation and distribution is better left unresolved until after the Court reviews the response from Class Members regarding the choice it has given them regarding their policies. Likewise, particular allocation plans (plans based on investor losses, for example) may be impractical to implement at this point in time but may become feasible after investors make their choice regarding their policies. The circumstances of this case call for a two-stage procedure (first, approval of the settlement, and then approval of an allocation plan), an approach which has been adopted by several courts under similar circumstances.

26. Class Counsel has already spent nearly four thousand hours litigating all aspects of this case, which included, among other things, the researching of the facts surrounding BMMST and McNerney's involvement in MBC's scheme and securities violations, researching the law permitting claims against a law firm under these circumstances, investigating and researching the relevant insurance issues in connection with BMMST's insurance polices, drafting and revising the complaint, refining our legal theories against BMMST and McNerney, conducting extensive settlement negotiations – all of which directly led to the proposed settlement.

27. The Settlement Agreement itself took months to draft because of complex legal issues that needed to be resolved. For example, issues regarding the cooperation agreement, the releases, and the bar order, all had to be researched and resolved prior to the signing of the Settlement Agreement.

28. Given the relatively small size of the two firms representing the Class and the major commitment involved with accepting this representation, this case undoubtedly precluded Class Counsel from working on other matters.

29. Here, had the individual investors retained counsel on an individual basis -- in the unlikely event they would have been able to do so -- they would have most likely paid a contingent fee equal to or greater than the amount requested.

30. This action was prosecuted by Class Counsel on a purely contingent basis, thereby assuming the risk of no payment for a considerable amount of work over an extended period of time. As discussed above, it is clear that the claims against the law firm were risky and difficult. Thus, the contingency risk in this case was substantial.

31. Here, not only was the financial outcome uncertain, but the representation involved bringing claims that were relatively difficult and risky, and against a local law firm.

32. Based upon the authorities contained in our Memorandum of Law, Victor Diaz and I both firmly believe: (1) the Settlement is an outstanding result for the Class and should be approved by the Court as fair and reasonable; and (2) the amount requested as a total attorneys' fee is reasonable and warranted in light of the extensive time incurred by Class Counsel, the complexity and difficulty of the case, and most importantly, the results achieved on behalf of the Class Members.

FURTHER AFFIANT SAYETH NAUGHT.

MICHAEL A. HANZMAN

The foregoing instrument was acknowledged before me this 29th day of November, 2005, by MICHAEL A. HANZMAN, who is personally known to me ✓ or who has produced _____ as identification.

DATED this 29th day of November, 2005

Madeline T. Llanez
Commission #DD187463
Expires: Feb 24, 2007
Bonded Thru
Atlantic Bonding Co., Inc.

Madeline T. Llanez
Print or Stamp Name
Notary Public, State of Florida
Commission No.
My Commission Expires:

L:\2979\Settlement Lawfirm\Hanzman Affidavit.wpd

EXHIBIT "C"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

SCHECK INVESTMENTS, et al., individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al,

Defendants.
_____/

CASE NO.: 04-21160- CIV-MORENO

Magistrate Judge Garber

AFFIDAVIT OF SERVICE

MARCIA A. GOMEZ, being duly sworn, deposes and says:

1. I am a Senior Project Manager employed by The Garden City Group, Inc. ("GCG"), a company located in Melville, New York and specializing in class action settlement administration. I have personal knowledge of the facts stated herein.

2. GCG has been the settlement administrator in hundreds of class action cases in the antitrust, victim's rights, insurance, securities, and consumer fraud contexts. Recent cases we have handled include the Indirect Vitamins Antitrust Litigation, the Non-Starlink Farmers Litigation, and the Lucent Technologies Securities Litigation.

3. GCG was retained by Plaintiffs' Counsel to act as the noticing agent in the above captioned matter. In connection with that role, and pursuant to paragraph 7 of the *Order Certifying Settlement Class and Preliminarily Approving Proposed Settlement*, GCG printed and mailed the *Notice of*

Pendency of Class Action, Proposed Settlement and Fairness Hearing (the "Notice") to potential Class Members. A copy of the Notice is attached as Exhibit A.

4. With respect to the mailing, Plaintiffs' Counsel provided GCG with a file containing the names and addresses of 38,002 potential Class Members.

5. On September 27, 2005, GCG prepared and transmitted a total of 2 mailing files to Rolls Offset, the printing and mailing vendor chosen by GCG to disseminate the Notice. The first file (the "English Only File") consisted of the names and last known addresses of 32,417 potential Class Members. The second file (the "English and Spanish File") consisted of the names and last known addresses of 5,585 potential Class Members.

6. On September 29, 2005, Rolls Offset, at the direction of GCG, mailed via First Class Mail: (i) a copy of the Notice to each of the 32,417 potential Class Members listed in the English Only File; and (ii) a copy of the Notice, together with a Spanish translation of the Notice, to each of the 5,585 potential Class Members listed in the English and Spanish File. The mailing was completed on September 29, 2005. The Affidavit of John Pizzuto, President of Rolls Offset, attesting to this mailing, is attached hereto as Exhibit B.

7. On October 18, 2005, GCG ran the names and addresses of 1,350 potential Class Members, whose Notices were returned to GCG by the US Postal Service as undeliverable, through the National Change of Address ("NCOA") database to obtain the most recent address information from the United States Postal Service. A total of 187 updated addresses were located as a result of the NCOA Processing. GCG then downloaded the updated address information into the database established specifically for this Settlement. On October 20, 2005 GCG mailed another copy of the Notice to those 187 potential Class Members for whom an updated address was obtained.

8. To assist potential Class Members, GCG established a toll-free Helpline using an Interactive Voice Response system ("IVR"), which was designed with a script approved by Plaintiffs' Counsel. The IVR provided answers to a number of frequently asked questions relating to the Proposed Settlement and an option for callers to leave a message for someone to call them back. As of November 13, 2005, the Helpline has received a total of 3,631 calls. Of those calls, a total of 596 left messages, all of which were transcribed and forwarded to Plaintiffs' Counsel for response.

9. In addition to calls received through the toll-free Helpline, GCG also received a number of telephone inquiries through its main office number. All of those inquiries were forwarded to my attention for handling. In turn, I directed each caller to the toll-free Helpline and the website being maintained by the Mutual Benefits Corporation Receiver (www.mbcreceiver.com).

10. GCG opened a dedicated PO Box for the receipt of mail in this case. All correspondence from potential Class Members received at that PO Box was forwarded to Plaintiffs' Counsel for handling.

JOO YOUN KIM
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES AUGUST 01, 2010

MARCIA A. GOMEZ

Sworn to before me this
21 day of November, 2005

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

SCHECK INVESTMENTS, et al., individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al,

Defendants.
_____/

CASE NO.: 04-21160- CIV-MORENO

Magistrate Judge Garber

NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT AND FAIRNESS HEARING

THIS NOTICE EXPLAINS YOUR RIGHTS.
PLEASE READ IT CAREFULLY.

THIS IS NOT A LAWSUIT AGAINST YOU.
IT IS THE SETTLEMENT OF A LAWSUIT IN WHICH YOU MAY BE ENTITLED TO RECEIVE MONETARY COMPENSATION.

TO: ALL PERSONS WHO PURCHASED INTERESTS IN DISCOUNTED LIFE INSURANCE POLICIES KNOWN AS VIATICAL SETTLEMENTS OR LIFE SETTLEMENTS FROM MUTUAL BENEFITS CORPORATION OR VBLLC.

IF YOU HAVE RECEIVED THIS NOTICE, YOU HAVE ALREADY BEEN IDENTIFIED AS A POTENTIAL CLASS MEMBER.

I. PURPOSE OF NOTICE

The Plaintiffs in the above-captioned class action ("Action"), pending before the Honorable Federico A. Moreno in the United States District Court for the Southern District of Florida ("Court"), and Roberto Martinez, the Receiver for Mutual Benefits Corporation, have agreed to a settlement with Brinkley, McNerney, Morgan, Solomon & Tatum, LLP, Michael J. McNerney, and their insurers to resolve all claims in connection with Brinkley, McNerney, Morgan, Solomon & Tatum, LLP and Michael J. McNerney's legal representation of Mutual Benefits Corporation. The Plaintiffs and the Receiver shall continue to pursue their claims against the non-settling defendants for their involvement with Mutual Benefits

EXHIBIT "A"

Corporation. The Settlement is described in more detail in Section IV below. The proposed Settlement is subject to approval by the Court at a final approval hearing (discussed below in Section VII).

The purpose of this Notice is to inform members of the Settlement Class (described below) of their rights. The provisions in this Notice are qualified and subject in their entirety to the terms of the Stipulation of Settlement, copies of which are available for review in the manner provided in Section VIII below. Capitalized terms used but not defined herein have the meanings given to them in the Stipulation of Settlement.

II. THE SETTLEMENT CLASS

The "Settlement Class" or "Class," which this Court has conditionally certified for the purposes of the Settlement, consists of all persons who purchased, between October 1, 1994 and May 4, 2004, interests in discounted life insurance policies known as viatical settlements or life settlements from MBC or VBLLC and have been damaged thereby. Excluded from the Class are: Defendants, MBC and any agent or broker who offered to sell viatical settlements or life settlements through MBC or VBLLC, including any of the foregoing companies' respective subsidiaries, affiliates, officers, agents or employees.

III. BACKGROUND TO THIS LITIGATION

On May 3, 2004, the Securities and Exchange Commission ("SEC") filed a Complaint against Mutual Benefits Corporation ("MBC") and other related entities and individuals, alleging that MBC's sale of viatical settlements was in violation of the federal securities laws. On May 4, 2004, the Court entered an Order appointing Roberto Martinez as receiver for MBC and related entities.

On May 17, 2004, Plaintiffs filed a class action complaint against numerous parties in connection with the demise of MBC. On January 28, 2005, Plaintiffs filed an Amended Class Action Complaint ("Amended Complaint") and added claims against Brinkley, McNerney, Morgan, Solomon & Tatum, LLP ("BMMST") and Michael J. McNerney ("McNerney"). In particular, Plaintiffs alleged, among other things, that BMMST and McNerney aided and abetted Anthony Livoti's (one of the Trustees overseeing MBC's premium escrow accounts) breach of his fiduciary duties. On May 26, 2005, Plaintiffs filed a Second Amended Class Action Complaint ("Second Amended Complaint") alleging, among other things, that BMMST had committed negligence in connection with its representation of MBC.

On July 5, 2005, BMMST filed an Answer to the Second Amended Complaint, denying all allegations of any wrongdoing, and asserting several affirmative defenses, including lack of any cognizable duty, good faith reliance, economic loss rule and statute of limitations. Since the filing of this Action, both Class Counsel and the Receiver's Counsel have engaged in an investigation relating to the claims and underlying events alleged in the Second Amended Complaint, and are thoroughly familiar with issues relating to the claims asserted in the Second Amended Complaint and the defenses asserted by BMMST in its Answer.

Moreover, both Class Counsel and the Receiver's Counsel met several times with counsel for BMMST, counsel for McNerney, and counsel for their insurers to discuss the potential settlement of this action. During these meetings, Class Counsel and the Receiver's Counsel received information regarding defenses to this Action as well as potential funds available for recovery. These materials were thoroughly

reviewed by Class Counsel and the Receiver's Counsel. On May 10, 2005, Class Counsel and the Receiver reached a binding settlement with BMMST and McNerney and their insurers ("Settling Parties"), resolving all issues relating to BMMST and McNerney's representation of MBC. A written Settlement Agreement was executed on August 2, 2005, and was preliminarily approved by the Court on September 2, 2005.

Plaintiffs, Class Counsel, the Receiver and the Receiver's Counsel all have concluded that it would be in the best interests of both the Class and the Receivership to enter into the Settlement Agreement with the Settling Parties because the settlement is a fair, reasonable and adequate resolution of this Action. The Settlement calls for the BMMST and McNerney's insurers to immediately pay $10 million into a fund for the benefit of Class Members, just a little more than a year after this case was filed. By achieving a class settlement against BMMST and McNerney relatively early in the litigation, the Class Members will receive a considerable amount of money without the uncertainty, delay and expense of protracted litigation. Furthermore, the settlement shall provide Plaintiffs and Class Counsel with potential funds to pursue the litigation against the non-settling defendants. Finally, this settlement has significant value as it is the first settlement reached in this litigation, and should increase the likelihood of future settlements.

BMMST and McNerney, while continuing to deny vigorously Plaintiffs' allegations and any liability with respect to any and all claims asserted in this Action, nevertheless recognize the costs and uncertainties attendant upon further litigation of the claims in this Action, and have therefore concluded that it is desirable to enter into the proposed Settlement to avoid further expense.

IV. PROPOSED SETTLEMENT OF THE ACTION

After extensive negotiations among the attorneys for the parties to the Action, the parties have agreed to a Settlement of the Action ("Settlement"), subject to final approval by the Court. The parties agree that the Settlement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing or of the truth of any of the claims or allegations in the Action. The terms and conditions of the Settlement are incorporated in a Stipulation of Settlement, which is on file with the Court. The following is a summary description of the Stipulation of Settlement:

Settlement Fund

The primary terms of the Settlement are as follows. First, BMMST and McNerney's insurers shall pay a total of **Ten Million Dollars ($10,000,000)** ("Settlement Fund") to the Class in exchange for a release of all claims asserted against BMMST and McNerney by Plaintiffs, claims that could have been brought against BMMST and McNerney by the Receiver, and for other promises and consideration set forth in the Settlement Agreement. Second, Class Counsel and the Receiver have required the Settling Parties to submit sworn affidavits representing that: (i) other than insurance policies already disclosed, there are no other potential available insurance coverage for the claims asserted in this Action or potential claims that could have been brought by the Receiver; and (ii) neither BMMST nor McNerney have within its/his possession, custody or control, assets that would be subject to execution in excess of $5,000,000.

The Settlement Fund, net of attorneys' fees and expenses as awarded by the Court, and net of the expenses of administering the Settlement ("Net Settlement Fund") will be transferred to the Receiver for future distribution to the Class as ordered by the Court. Specifically, if the Court grants final approval of

this Settlement at the Fairness Hearing, the Receiver, in consultation with Plaintiffs and Class Counsel, shall then submit a proposed Distribution Plan to the Court. After proper notice to the Class, the Receiver shall seek final approval of its Distribution Plan. If approved, distribution of the Net Settlement Fund would immediately proceed in accordance with the approved Distribution Plan.

Cooperation

Both BMMST and McNerney have agreed to fully cooperate with the prosecution of the non-settling defendants in this Action (subject to receiving adequate assurances that they are no longer a target of any SEC investigation or potential action).

Attorneys' Fees and Costs

The award of attorneys' fees to Class Counsel is a matter committed to the sole discretion of the Court. The Settlement provides that Class Counsel and the Receiver will apply for an award of: (1) attorneys' fees not to exceed thirty percent (30%) of the Settlement Fund, that is, not to exceed $3,000,000, and (2) reimbursement of their reasonable expenses and costs incurred in connection with prosecuting this action (the "Fee Request"). Any award made by the Court in response to the Fee Request shall be paid from the Settlement Fund. The fairness, reasonableness and adequacy of the Settlement may be considered and ruled upon by the Court independently of any award of attorneys' fees and costs.

V. RELEASE AND DISCHARGE OF CLAIMS

The following is a summary of the Release agreed to by the Settling Parties as part of the settlement: In the event that the Court grants final approval to this Settlement Agreement, BMMST and McNerney, and each and all of their respective past, present or future parent companies, subsidiaries, divisions, affiliates, predecessors, successors, insurers and reinsurers; and each and all of the preceding entities' past, present and future officers, directors, shareholders, partners, agents, employees, attorneys, representatives, heirs, executors, personal representatives, administrators, and assigns, if any, past, present and future, shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature whatsoever, known or unknown, in law or in equity, which a Class Member, whether or not the Class Member later makes a claim on or participates in the Settlement Fund, ever had, now has or hereafter can, shall or may have, which arise out of BMMST or McNerney's legal representation of MBC. The Settlement also includes a Bar Order which essentially prevents any of the non-settling defendants from suing the Settling Parties, and provides that any future judgment against the non-settlement defendants shall be reduced by the amount of the settlement fund or by another amount decided by the Court. The precise language of the Release and Bar Order can be found in the Stipulation of Settlement.

VI. YOUR RIGHT TO BE EXCLUDED FROM THE SETTLEMENT

If the Settlement is finally approved, you will be bound by the final judgment and release as entered by the Court unless you exclude yourself from the Settlement. Thus, if you are a Class Member, you have a choice whether or not to remain a member of the Class. This choice will have consequences that you should understand before making your decision.

If you want to remain a member of the Class, you are not required to do anything at this time. By remaining in the Class, you will have the opportunity at a later date to receive a distribution in accordance

with the Distribution Plan approved by the Court. But by remaining a Class Member, you will not be able to assert any claims against BMMST and McNerney arising from their representation of MBC in any other lawsuit.

If you want to be excluded from the Class for any reason, you must make a written request for exclusion from the Class, and send it to: Brinkley McNerney Settlement Exclusion, c/o Hanzman & Criden, P.A., 220 Alhambra Circle, Suite 400, Coral Gables, FL 33134, by first class mail, **to be received no later than November 9, 2005.** Your request for exclusion should include: (1) your name; (2) your address; and (3) a statement that you want to be excluded from the Class. By making this election to be excluded, you will not share in any recovery to be paid to the Class as a result of the Settlement of this Action, you will not be entitled to appear at the Fairness Hearing discussed in Section VII below, and you will not be bound by the Release set forth in the Stipulation of Settlement. Under the Settlement, the Settling Parties have the right to terminate the Settlement if a certain number of Class Members elect to exclude themselves from the Settlement.

VII. THE FAIRNESS HEARING

The Court has scheduled a hearing to be held on **Friday, December 2, 2005 at 9:00 a.m.** before the Honorable Federico A. Moreno, Judge of the United States District Court for the Southern District of Florida, at the United States Courthouse, Tenth Floor, Courtroom No. IV, 99 Northeast 4th Street, Miami, FL 33132, for the purpose of determining whether to: finally approve the terms of the Settlement, approve counsel's motion for attorneys' fees and costs, finally certify the Settlement Class, and such other matters that the Court deems appropriate to consider ("Fairness Hearing"). The time and date of the Fairness Hearing may be continued or rescheduled by the Court without further notice. Furthermore, the Court may approve the proposed Settlement at or after the Fairness Hearing with any modification agreed to by the parties to the settlement and without further notice to the Class.

If you wish to comment in support of, or in opposition to, the Settlement or motion for attorneys' fees and costs, you may do so, but **you must first mail** your comments and/or objections in writing, postage prepaid, upon Class Counsel, Receiver's Counsel and Counsel for BMMST and McNerney (addresses below), **and file your comments and/or objections with the Court, received by Counsel and the Court no later than November 9, 2005.** You must include your name and current address with your comments and/or objections.

If you also wish to be heard at the Fairness Hearing in person or through your own attorney, you or your attorney must file a written Notice of Appearance with the Clerk of the Court for the United States District Court for the Southern District of Florida, 301 North Miami Avenue, Room 150, Miami, FL 33128, on or before **November 9, 2005**, and include a statement of the position to be asserted and the reasons for your position, together with copies of any supporting papers or briefs. Your notice must include in a prominent location the name of the case (Scheck Investments v. Kensington Management, Inc.) and the case number (No. 04-21160- Civ-Moreno). You must also mail a copy of your Notice of Appearance along with all accompanying papers to Class Counsel, the Receiver's Counsel and Counsel for BMMST and McNerney (addresses below).

Counsel for Plaintiffs and the Class:

Michael Hanzman, Esq.
Kevin B. Love, Esq.
Hanzman & Criden, P.A.
220 Alhambra Cir., Suite 400
Coral Gables, FL 33134

Victor M. Diaz, Jr.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, Florida 33130

Counsel for BMMST and McNerney:

Maurice M. Garcia, Esq.
Greenspoon Marder, P.A.
100 W. Cypress Creek Rd., Suite 700
Ft. Lauderdale, FL 33309

Counsel for the Receiver

Curtis B. Miner, Esq.
Colson Hicks Eidson
225 Aragon Ave., 2nd Floor
Coral Gables, FL 33134

Except as provided herein, no person shall be entitled to contest the terms and conditions of the Settlement, or to object to counsel's motion for attorneys' fees and costs, and persons who fail to object as provided herein shall be deemed to have waived and shall be foreclosed forever from raising any such objections. You need not appear at the hearing in order to object.

VIII. ADDITIONAL INFORMATION

The above is only a summary of the Settlement. A copy of the Stipulation of Settlement, which includes the Release, as well as other pleadings, are on public file with the Clerk of the Court for the United States District Court for the Southern District of Florida, 301 North Miami Avenue, Room 150, Miami, FL 33128. In addition, Class Counsel will file with the Court their motion for attorneys' fees and costs as previously described on or before November 25, 2005. The Stipulation of Settlement and counsel's Motion for Attorneys' Fees and Costs will be available for inspection during normal business hours at the Office of the Clerk.

The Stipulation of the Settlement, as well as additional information, can be reviewed at the Receiver's Website - www.mbcreceiver.com.

For further information, you may call **1-800-264-6574** for a prerecorded message. If you wish you may also leave a message with: (i) your name; (ii) your phone number; and (iii) your question(s) about the settlement. Your call will be returned as soon as possible as long as your question involves the settlement.

PLEASE DO NOT CONTACT THE COURT REGARDING THE SETTLEMENT

Dated: September 2, 2005

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

SCHECK INVESTMENTS, et al., individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al,

Defendants.
_____/

CASE NO.: 04-21160- CIV-MORENO

Magistrate Judge Garber

AFFIDAVIT OF SERVICE

STATE OF NEW JERSEY :
ss:
COUNTY OF BERGEN :

John Pizzuto, being duly sworn, deposes and states:

1. I am the President of Rolls Offset Group. Our business address is 370 North Street, Teterboro, New Jersey 07608.

2. On September 29, 2005, I served true and correct copies of: (i) the *Notice of Pendency of Class Action, Proposed Settlement and Fairness Hearing* (the "Notice"), attached hereto as Exhibit "A", on each of the individuals identified in the service list attached hereto as Exhibit "C"; and (ii) the Notice, together with a Spanish translation of the Notice, attached hereto as Exhibit "B", on each of the individuals identified in the service list attached hereto as Exhibit "D", by depositing said document(s) in sealed, postage paid envelopes addressed with the last known address of each individual and by depositing said envelopes at a United States Post Office for delivery by the United States Postal Service via First Class Mail.

DATED: November 28, 2005

John Pizzuto

MARTIN A. BELOTTI
Notary Public, State of New Jersey
My Commission Expires Sept. 22, 2010

Sworn to before me this
28 day of November, 2005.

EXHIBIT "B"

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

SCHECK INVESTMENTS, et al., individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al,

Defendants.
_____/

CASE NO.: 04-21160- CIV-MORENO

Magistrate Judge Garber

NOTICE OF PENDENCY OF CLASS ACTION,
PROPOSED SETTLEMENT AND FAIRNESS HEARING

THIS NOTICE EXPLAINS YOUR RIGHTS.
PLEASE READ IT CAREFULLY.

THIS IS NOT A LAWSUIT AGAINST YOU.
IT IS THE SETTLEMENT OF A LAWSUIT IN WHICH YOU MAY BE ENTITLED TO RECEIVE MONETARY COMPENSATION.

TO: ALL PERSONS WHO PURCHASED INTERESTS IN DISCOUNTED LIFE INSURANCE POLICIES KNOWN AS VIATICAL SETTLEMENTS OR LIFE SETTLEMENTS FROM MUTUAL BENEFITS CORPORATION OR VBLLC.

IF YOU HAVE RECEIVED THIS NOTICE, YOU HAVE ALREADY BEEN IDENTIFIED AS A POTENTIAL CLASS MEMBER.

I. PURPOSE OF NOTICE

The Plaintiffs in the above-captioned class action ("Action"), pending before the Honorable Federico A. Moreno in the United States District Court for the Southern District of Florida ("Court"), and Roberto Martinez, the Receiver for Mutual Benefits Corporation, have agreed to a settlement with Brinkley, McNerney, Morgan, Solomon & Tatum, LLP, Michael J. McNerney, and their insurers to resolve all claims in connection with Brinkley, McNerney, Morgan, Solomon & Tatum, LLP and Michael J. McNerney's legal representation of Mutual Benefits Corporation. The Plaintiffs and the Receiver shall continue to pursue their claims against the non-settling defendants for their involvement with Mutual Benefits

Corporation. The Settlement is described in more detail in Section IV below. The proposed Settlement is subject to approval by the Court at a final approval hearing (discussed below in Section VII).

The purpose of this Notice is to inform members of the Settlement Class (described below) of their rights. The provisions in this Notice are qualified and subject in their entirety to the terms of the Stipulation of Settlement, copies of which are available for review in the manner provided in Section VIII below. Capitalized terms used but not defined herein have the meanings given to them in the Stipulation of Settlement.

II. THE SETTLEMENT CLASS

The "Settlement Class" or "Class," which this Court has conditionally certified for the purposes of the Settlement, consists of all persons who purchased, between October 1, 1994 and May 4, 2004, interests in discounted life insurance policies known as viatical settlements or life settlements from MBC or VBLLC and have been damaged thereby. Excluded from the Class are: Defendants, MBC and any agent or broker who offered to sell viatical settlements or life settlements through MBC or VBLLC, including any of the foregoing companies' respective subsidiaries, affiliates, officers, agents or employees.

III. BACKGROUND TO THIS LITIGATION

On May 3, 2004, the Securities and Exchange Commission ("SEC") filed a Complaint against Mutual Benefits Corporation ("MBC") and other related entities and individuals, alleging that MBC's sale of viatical settlements was in violation of the federal securities laws. On May 4, 2004, the Court entered an Order appointing Roberto Martinez as receiver for MBC and related entities.

On May 17, 2004, Plaintiffs filed a class action complaint against numerous parties in connection with the demise of MBC. On January 28, 2005, Plaintiffs filed an Amended Class Action Complaint ("Amended Complaint") and added claims against Brinkley, McNerney, Morgan, Solomon & Tatum, LLP ("BMMST") and Michael J. McNerney ("McNerney"). In particular, Plaintiffs alleged, among other things, that BMMST and McNerney aided and abetted Anthony Livoti's (one of the Trustees overseeing MBC's premium escrow accounts) breach of his fiduciary duties. On May 26, 2005, Plaintiffs filed a Second Amended Class Action Complaint ("Second Amended Complaint") alleging, among other things, that BMMST had committed negligence in connection with its representation of MBC.

On July 5, 2005, BMMST filed an Answer to the Second Amended Complaint, denying all allegations of any wrongdoing, and asserting several affirmative defenses, including lack of any cognizable duty, good faith reliance, economic loss rule and statute of limitations. Since the filing of this Action, both Class Counsel and the Receiver's Counsel have engaged in an investigation relating to the claims and underlying events alleged in the Second Amended Complaint, and are thoroughly familiar with issues relating to the claims asserted in the Second Amended Complaint and the defenses asserted by BMMST in its Answer.

Moreover, both Class Counsel and the Receiver's Counsel met several times with counsel for BMMST, counsel for McNerney, and counsel for their insurers to discuss the potential settlement of this action. During these meetings, Class Counsel and the Receiver's Counsel received information regarding defenses to this Action as well as potential funds available for recovery. These materials were thoroughly

reviewed by Class Counsel and the Receiver's Counsel. On May 10, 2005, Class Counsel and the Receiver reached a binding settlement with BMMST and McNerney and their insurers ("Settling Parties"), resolving all issues relating to BMMST and McNerney's representation of MBC. A written Settlement Agreement was executed on August 2, 2005, and was preliminarily approved by the Court on September 2, 2005.

Plaintiffs, Class Counsel, the Receiver and the Receiver's Counsel all have concluded that it would be in the best interests of both the Class and the Receivership to enter into the Settlement Agreement with the Settling Parties because the settlement is a fair, reasonable and adequate resolution of this Action. The Settlement calls for the BMMST and McNerney's insurers to immediately pay $10 million into a fund for the benefit of Class Members, just a little more than a year after this case was filed. By achieving a class settlement against BMMST and McNerney relatively early in the litigation, the Class Members will receive a considerable amount of money without the uncertainty, delay and expense of protracted litigation. Furthermore, the settlement shall provide Plaintiffs and Class Counsel with potential funds to pursue the litigation against the non-settling defendants. Finally, this settlement has significant value as it is the first settlement reached in this litigation, and should increase the likelihood of future settlements.

BMMST and McNerney, while continuing to deny vigorously Plaintiffs' allegations and any liability with respect to any and all claims asserted in this Action, nevertheless recognize the costs and uncertainties attendant upon further litigation of the claims in this Action, and have therefore concluded that it is desirable to enter into the proposed Settlement to avoid further expense.

IV. PROPOSED SETTLEMENT OF THE ACTION

After extensive negotiations among the attorneys for the parties to the Action, the parties have agreed to a Settlement of the Action ("Settlement"), subject to final approval by the Court. The parties agree that the Settlement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing or of the truth of any of the claims or allegations in the Action. The terms and conditions of the Settlement are incorporated in a Stipulation of Settlement, which is on file with the Court. The following is a summary description of the Stipulation of Settlement:

Settlement Fund

The primary terms of the Settlement are as follows. First, BMMST and McNerney's insurers shall pay a total of **Ten Million Dollars ($10,000,000)** ("Settlement Fund") to the Class in exchange for a release of all claims asserted against BMMST and McNerney by Plaintiffs, claims that could have been brought against BMMST and McNerney by the Receiver, and for other promises and consideration set forth in the Settlement Agreement. Second, Class Counsel and the Receiver have required the Settling Parties to submit sworn affidavits representing that: (i) other than insurance policies already disclosed, there are no other potential available insurance coverage for the claims asserted in this Action or potential claims that could have been brought by the Receiver; and (ii) neither BMMST nor McNerney have within its/his possession, custody or control, assets that would be subject to execution in excess of $5,000,000.

The Settlement Fund, net of attorneys' fees and expenses as awarded by the Court, and net of the expenses of administering the Settlement ("Net Settlement Fund") will be transferred to the Receiver for future distribution to the Class as ordered by the Court. Specifically, if the Court grants final approval of

this Settlement at the Fairness Hearing, the Receiver, in consultation with Plaintiffs and Class Counsel, shall then submit a proposed Distribution Plan to the Court. After proper notice to the Class, the Receiver shall seek final approval of its Distribution Plan. If approved, distribution of the Net Settlement Fund would immediately proceed in accordance with the approved Distribution Plan.

Cooperation

Both BMMST and McNerney have agreed to fully cooperate with the prosecution of the non-settling defendants in this Action (subject to receiving adequate assurances that they are no longer a target of any SEC investigation or potential action).

Attorneys' Fees and Costs

The award of attorneys' fees to Class Counsel is a matter committed to the sole discretion of the Court. The Settlement provides that Class Counsel and the Receiver will apply for an award of: (1) attorneys' fees not to exceed thirty percent (30%) of the Settlement Fund, that is, not to exceed $3,000,000, and (2) reimbursement of their reasonable expenses and costs incurred in connection with prosecuting this action (the "Fee Request"). Any award made by the Court in response to the Fee Request shall be paid from the Settlement Fund. The fairness, reasonableness and adequacy of the Settlement may be considered and ruled upon by the Court independently of any award of attorneys' fees and costs.

V. RELEASE AND DISCHARGE OF CLAIMS

The following is a summary of the Release agreed to by the Settling Parties as part of the settlement: In the event that the Court grants final approval to this Settlement Agreement, BMMST and McNerney, and each and all of their respective past, present or future parent companies, subsidiaries, divisions, affiliates, predecessors, successors, insurers and reinsurers; and each and all of the preceding entities' past, present and future officers, directors, shareholders, partners, agents, employees, attorneys, representatives, heirs, executors, personal representatives, administrators, and assigns, if any, past, present and future, shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature whatsoever, known or unknown, in law or in equity, which a Class Member, whether or not the Class Member later makes a claim on or participates in the Settlement Fund, ever had, now has or hereafter can, shall or may have, which arise out of BMMST or McNerney's legal representation of MBC. The Settlement also includes a Bar Order which essentially prevents any of the non-settling defendants from suing the Settling Parties, and provides that any future judgment against the non-settlement defendants shall be reduced by the amount of the settlement fund or by another amount decided by the Court. The precise language of the Release and Bar Order can be found in the Stipulation of Settlement.

VI. YOUR RIGHT TO BE EXCLUDED FROM THE SETTLEMENT

If the Settlement is finally approved, you will be bound by the final judgment and release as entered by the Court unless you exclude yourself from the Settlement. Thus, if you are a Class Member, you have a choice whether or not to remain a member of the Class. This choice will have consequences that you should understand before making your decision.

If you want to remain a member of the Class, you are not required to do anything at this time. By remaining in the Class, you will have the opportunity at a later date to receive a distribution in accordance

with the Distribution Plan approved by the Court. But by remaining a Class Member, you will not be able to assert any claims against BMMST and McNerney arising from their representation of MBC in any other lawsuit.

If you want to be excluded from the Class for any reason, you must make a written request for exclusion from the Class, and send it to: Brinkley McNerney Settlement Exclusion, c/o Hanzman & Criden, P.A., 220 Alhambra Circle, Suite 400, Coral Gables, FL 33134, by first class mail, **to be received no later than November 9, 2005.** Your request for exclusion should include: (1) your name; (2) your address; and (3) a statement that you want to be excluded from the Class. By making this election to be excluded, you will not share in any recovery to be paid to the Class as a result of the Settlement of this Action, you will not be entitled to appear at the Fairness Hearing discussed in Section VII below, and you will not be bound by the Release set forth in the Stipulation of Settlement. Under the Settlement, the Settling Parties have the right to terminate the Settlement if a certain number of Class Members elect to exclude themselves from the Settlement.

VII. THE FAIRNESS HEARING

The Court has scheduled a hearing to be held on **Friday, December 2, 2005 at 9:00 a.m.** before the Honorable Federico A. Moreno, Judge of the United States District Court for the Southern District of Florida, at the United States Courthouse, Tenth Floor, Courtroom No. IV, 99 Northeast 4th Street, Miami, FL 33132, for the purpose of determining whether to: finally approve the terms of the Settlement, approve counsel's motion for attorneys' fees and costs, finally certify the Settlement Class, and such other matters that the Court deems appropriate to consider ("Fairness Hearing"). The time and date of the Fairness Hearing may be continued or rescheduled by the Court without further notice. Furthermore, the Court may approve the proposed Settlement at or after the Fairness Hearing with any modification agreed to by the parties to the settlement and without further notice to the Class.

If you wish to comment in support of, or in opposition to, the Settlement or motion for attorneys' fees and costs, you may do so, but **you must first mail** your comments and/or objections in writing, postage prepaid, upon Class Counsel, Receiver's Counsel and Counsel for BMMST and McNerney (addresses below), **and file your comments and/or objections with the Court, received by Counsel and the Court no later than November 9, 2005.** You must include your name and current address with your comments and/or objections.

If you also wish to be heard at the Fairness Hearing in person or through your own attorney, you or your attorney must file a written Notice of Appearance with the Clerk of the Court for the United States District Court for the Southern District of Florida, 301 North Miami Avenue, Room 150, Miami, FL 33128, on or before **November 9, 2005**, and include a statement of the position to be asserted and the reasons for your position, together with copies of any supporting papers or briefs. Your notice must include in a prominent location the name of the case (Scheck Investments v. Kensington Management, Inc.) and the case number (No. 04-21160- Civ-Moreno). You must also mail a copy of your Notice of Appearance along with all accompanying papers to Class Counsel, the Receiver's Counsel and Counsel for BMMST and McNerney (addresses below).

Counsel for Plaintiffs and the Class:

Michael Hanzman, Esq.
Kevin B. Love, Esq.
Hanzman & Criden, P.A.
220 Alhambra Cir., Suite 400
Coral Gables, FL 33134

Victor M. Diaz, Jr.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, Florida 33130

Counsel for BMMST and McNerney:

Maurice M. Garcia, Esq.
Greenspoon Marder, P.A.
100 W. Cypress Creek Rd., Suite 700
Ft. Lauderdale, FL 33309

Counsel for the Receiver

Curtis B. Miner, Esq.
Colson Hicks Eidson
225 Aragon Ave., 2nd Floor
Coral Gables, FL 33134

Except as provided herein, no person shall be entitled to contest the terms and conditions of the Settlement, or to object to counsel's motion for attorneys' fees and costs, and persons who fail to object as provided herein shall be deemed to have waived and shall be foreclosed forever from raising any such objections. You need not appear at the hearing in order to object.

VIII. ADDITIONAL INFORMATION

The above is only a summary of the Settlement. A copy of the Stipulation of Settlement, which includes the Release, as well as other pleadings, are on public file with the Clerk of the Court for the United States District Court for the Southern District of Florida, 301 North Miami Avenue, Room 150, Miami, FL 33128. In addition, Class Counsel will file with the Court their motion for attorneys' fees and costs as previously described on or before November 25, 2005. The Stipulation of Settlement and counsel's Motion for Attorneys' Fees and Costs will be available for inspection during normal business hours at the Office of the Clerk.

The Stipulation of the Settlement, as well as additional information, can be reviewed at the Receiver's Website - www.mbcreceiver.com.

For further information, you may call **1-800-264-6574** for a prerecorded message. If you wish you may also leave a message with: (i) your name; (ii) your phone number; and (iii) your question(s) about the settlement. Your call will be returned as soon as possible as long as your question involves the settlement.

PLEASE DO NOT CONTACT THE COURT REGARDING THE SETTLEMENT

Dated: September 2, 2005

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

SCHECK INVESTMENTS, et al., individualmente y en nombre de otros en situación similar,

Demandantes,

v.

KENSINGTON MANAGEMENT, INC., et al,

Demandados.
_____/

CASE NO.: 04-21160- CIV-MORENO

Juez Garber

NOTIFICACIÓN DE DEMANDA COLECTIVA, PROPUESTA DE ARREGLO Y AUDIENCIA DE APROBACIÓN

LA PRESENTE NOTIFICACIÓN EXPLICA SUS DERECHOS.
LÉALA ATENTAMENTE.

ESTO NO ES UN PLEITO EN CONTRA USTED.
ES EL ARREGLO DE UN JUICIO EN EL CUAL ES POSIBLE QUE USTED TENGA EL DERECHO DE RECIBIR UNA COMPENSACIÓN MONETARIA.

A: TODAS AQUELLAS PERSONAS QUE COMPRARON INTERESES EN PÓLIZAS DE SEGURO DE VIDA CON DESCUENTO CONOCIDAS COMO ARREGLOS DE SEGUROS DE VIÁTICO O ARREGLOS DE SEGUROS DE VIDA DE MUTUAL BENEFITS CORPORATION O VBLLC.

SI USTED RECIBIÓ ESTA NOTIFICACIÓN, YA SE LE HA IDENTIFICADO COMO UN POSIBLE MIEMBRO DE LA CLASE.

I. PROPÓSITO DE LA NOTIFICACIÓN

Los demandantes de la demanda colectiva cuyo título aparece más arriba (la "Demanda"), que está pendiente ante el Honorable Federico A. Moreno juez del Tribunal Federal de los Estados Unidos para el Distrito Sur de la Florida (el "Tribunal") y Roberto Martínez, el Síndico de Mutual Benefits Corporation, han acordado un arreglo con el bufete de abogados Brinkley, McNerney, Morgan, Solomon & Tatum, LLP, Michael J. McNerney y sus aseguradores con el propósito de resolver todas las reclamaciones relacionadas con la representación legal de Mutual Benefits Corporation por parte de Brinkley, McNerney, Morgan, Solomon & Tatum, LLP y Michael J. McNerney. Los demandantes y el Síndico continuarán sosteniendo sus reclamaciones contra los demandados que no participen en el arreglo por su vinculación con Mutual Benefits Corporation. El Arreglo se describe en mayor detalle en la Sección IV más abajo. El Arreglo propuesto está sujeto a la aprobación del Tribunal en una audiencia de aprobación definitiva (que se describe más abajo en la Sección VII).

El propósito de la presente notificación consiste en informar de sus derechos a los miembros de la Clase del Arreglo (según se lo describe más abajo). Las disposiciones de la presente Notificación están limitadas y sujetas por entero a los

términos de la Estipulación del Arreglo; copias de que se disponen para su examen del modo indicado en la Sección VIII más abajo. Los términos en mayúscula que se usen en este documento pero que no se definan tendrán el significado que se les asigne en la Estipulación del Arreglo.

II. LA CLASE DEL ARREGLO

La "Clase del Arreglo" o "Clase" condicionalmente certificado por el Tribunal para los fines de este Arreglo consiste en todas aquellas personas que, en el periodo comprendido entre el 1 de octubre de 1994 y el 4 de mayo de 2004, compraron intereses en pólizas de seguro de vida descontadas de MBC o de VBLLC, conocidas como arreglos de seguro de viático (viatical settlements) o arreglos de seguro de vida (life settlements), y han sufrido daños como consecuencia de ello. Excluidos de la Clase son: los Demandados, MBC y los agentes o corredores que ofrecieron vender arreglos de seguro de viático o arreglos de seguro de vida a través de MBC o VBLLC, inclusive las subsidiarias, filiales, funcionarios, agentes o empleados respectivos de las compañías mencionadas más arriba.

III. ANTECEDENTES DE ESTE LITIGIO

El 3 de mayo de 2004, la Comisión Oficial del Mercado de Valores (Securities and Exchange Commission - "SEC") presentó una Demanda contra Mutual Benefits Corporation ("MBC") y otras entidades y personas relacionadas, alegando que la venta de arreglos de seguro de viáticos por MBC estaba en contravención de las leyes de valores federales. El 4 de mayo de 2004, el Tribunal emitió una resolución judicial nombrando a Roberto Martínez como síndico para MBC y otras entidades relacionadas.

El 17 de mayo de 2004, los Demandantes presentaron una demanda colectiva contra numerosas partes en relación al colapso de MBC. El 28 de enero de 2005, los Demandantes presentaron una Demanda Colectiva Enmendada (la "Demanda Enmendada") y agregaron reclamaciones contra el bufete Brinkley, McNerney, Morgan, Solomon & Tatum, LLP ("BMMST") y Michael J. McNerney ("McNerney"). En particular, los Demandantes alegaron, entre otras cosas, que BMMST y McNerney colaboraron con Anthony Livoti (uno de los fiduciarios a cargo de las cuentas de primas bloqueadas de MBC) y lo instigaron a violar sus responsabilidades fiduciarias. El 26 de mayo de 2005, los Demandantes presentaron una segunda Demanda Colectiva Enmendada (la "Segunda Demanda Enmendada") alegando, entre otras cosas, que BMMST había sido negligente en relación con su representación legal de MBC.

El 5 de julio de 2005, BMMST presentó una Respuesta a la Segunda Demanda Enmendada, negando todo alegato de acciones ilícitas y sosteniendo varias defensas afirmativas, inclusive la falta de deber sujeto a la jurisdicción de un tribunal, confianza en la buena fe, regla sobre pérdidas económicas y estatuto de limitaciones. A partir de la presentación de esta Demanda, los Abogados Representando la Clase y el Asesor Legal del Síndico se han ocupado de una investigación relacionada con los reclamos y los acontecimientos subyacentes alegados en la Segunda Demanda Enmendada; están totalmente familiarizados con los asuntos relacionados con las reclamaciones sostenidas en la Segunda Demanda Enmendada y las defensas sostenidas por BMMST en su Respuesta.

Además, los Abogados Representando la Clase y el Asesor Legal de Síndico se reunieron varias veces con el abogado de BMMST, el abogado de McNerney y el abogado de sus aseguradores para discutir un posible arreglo de esta demanda. En el curso de estas reuniones, los Abogados Representando la Clase y el Asesor Legal del Síndico recibieron información sobre las defensas en esta demanda y los posible fondos disponibles para la recuperación. Estos documentos fueron examinados en profundidad por los Abogados Representando la Clase y el Asesor Legal del Síndico. El 10 de mayo de 2005, los Abogados Representando la Clase y el Asesor Legal del Síndico llegaron a un arreglo obligatorio con BMMST y McNerney y sus aseguradores (las "Partes del Arreglo"), que resolvía todos los asuntos relacionados con la representación de MBC por parte de BMMST y de McNerney. Se firmo un Acuerdo de Arreglo por escrito el 2 de agosto de 2005, que fue aprobado en forma preliminar por el Tribunal el 2 de septiembre de 2005.

Los Demandantes, los Abogados Representando la Clase, el Síndico y el Asesor Legal del Síndico llegaron a la conclusión de que sería en el mejor interés de la Clase y de la Sindicatura llegar a un Acuerdo de Arreglo con las Partes del Arreglo porque el arreglo constituye una resolución justa, razonable y adecuada de esta Demanda. El Arreglo exige que los aseguradores de BMMST y de McNerney depositen inmediatamente **Diez Millones de Dolores ($10,000,000)** en un fondo para beneficio de los Miembros de la Clase, apenas poco después de que se cumpliera un año desde la presentación de esta causa. Al alcanzar un arreglo de la demanda contra BMMST y McNerney relativamente pronto en el curso del litigio, los Miembros de la Clase recibirán una cantidad considerable de dinero sin tener que soportar las incertidumbres, demoras y gastos asociados con un litigio prolongado. Además, el arreglo proporcionará potencialmente a los Demandantes y a los Abogados Representando la Clase fondos para continuar con el litigio contra los demandados que no participan en el arreglo. Finalmente, este arreglo tiene un valor significativo porque es el primer arreglo alcanzado en este litigio, lo cual probablemente aumentará la probabilidad de otros arreglos en el futuro.

BMMST y McNerney, aunque continúan negando vigorosamente los alegatos de los Demandantes y toda responsabilidad civil con respecto a todas y cada una de las reclamaciones sostenidas en esta Demanda, reconocen por otra parte los costos e incertidumbres relacionados con la continuación del litigio en esta Demanda, y por lo tanto llegaron a la conclusión de que es deseable llegar a este Acuerdo el Arreglo propuesto para evitar gastos ulteriores.

IV. PROPUESTA DE ARREGLO DE LA DEMANDA

Después de negociaciones intensas entre los abogados de las partes de la Demanda, las partes acordaron un Arreglo de la Demanda (el "Arreglo"), sujeto a la aprobación definitiva del Tribunal. Las partes acuerdan que el Arreglo no será considerado ni interpretado como una admisión o prueba de infracciones de ninguna ley o estatuto ni de responsabilidad civil o de acción ilícita ni de la veracidad de ninguna de las reclamaciones o alegatos de la Demanda. Los términos y condiciones del Arreglo se incorporan en una Estipulación de Arreglo, que se encuentra en los archivos del Tribunal. Lo siguiente es una descripción resumida de la Estipulación del Arreglo:

Fondo del Arreglo

Los términos principales del Arreglo son como sigue. En primer lugar, los aseguradores de BMMST y McNerney pagarán a la Clase un total de **Diez Millones de Dólares ($10,000,000)** ("Fondo del Arreglo") a cambio de un descargo de todas las reclamaciones sostenidas contra BMMST y McNerney por los Demandantes, las reclamaciones que podrían haber sido entabladas por el Síndico contra BMMST y McNerney, y de otras promesas y consideraciones establecidas en el Acuerdo de Arreglo. En segundo lugar, los Abogados Representando la Clase y el Síndico exigen que las Partes del Arreglo presenten declaraciones juradas declarando que: (i) aparte de las pólizas de seguro ya reveladas, no existe ninguna otra cobertura potencial de seguro disponible para las reclamaciones sostenidas en esta Demanda ni para las posibles reclamaciones que podrían haber sido entabladas por el Síndico; y (ii) ni BMMST ni McNerney cuentan dentro de sus posesiones, custodia o control activos en exceso de $5,000,000 que podrían estar sujetos a mandamiento judicial.

El Fondo del Arreglo, neto de los honorarios y gastos de abogado según los otorgue el Tribunal y neto de los gastos de administración del Arreglo (el "Fondo Neto del Arreglo") será transferido al Síndico para su distribución futura a la Clase según lo ordene el Tribunal. Específicamente, si el Tribunal otorga su aprobación definitiva al Arreglo en el curso de la Audiencia de Aprobación, el Síndico, en consulta con los Demandantes y con los Abogados Representando la Clase, presentará al Tribunal un propuesto Plan de Distribución. Después de notificación propia al Grupo, el Síndico intentará obtener la aprobación definitiva del Plan de Distribución. Si recibe la aprobación, se procederá inmediatamente con la distribución del Fondo Neto del Arreglo según el Plan de Distribución aprobado.

Cooperación

BMMST y McNerney acordaron cooperar plenamente con el enjuiciamiento de los demandados que no se acogieron al arreglo en esta Demanda (sujeto a recibir garantías adecuadas de que ellos ya no son un blanco de investigaciones o acciones potenciales por parte de la SEC).

Honorarios y costos de abogado

El otorgamiento de honorarios profesional a los Abogados Representando la Clase es un asunto que depende exclusivamente de la discreción del Tribunal. El Arreglo dispone que los Abogados Representando la Clase y el Síndico solicitarán el otorgamiento de: (1) honorarios de abogado que no superen el treinta por ciento (30%) del Fondo del Arreglo, o sea que no superen los $3,000,000, y (2) el reembolso de los gastos y costos razonables incurridos por ellos en relación con la prosecución de esta demanda (la "Solicitud de Honorarios"). Cualquier otorgamiento hecho por el Tribunal en respuesta a la Solicitud de Honorarios se pagará con el Fondo del Arreglo. Es posible que el Tribunal considere y decida si el Arreglo es justo, razonable y adecuado, independientemente de todo otorgamiento de honorarios y costos de abogado.

V. CESIÓN Y DESCARGO DE LAS RECLAMACIONES

Lo siguiente es un resumen del Descargo que las Partes del Arreglo acordaron como parte del arreglo: En caso de que el Tribunal apruebe en forma definitiva este Acuerdo de Arreglo, BMMST y McNerney, y todas y cada una de sus respectivas compañías matrices, subsidiarias, divisiones, filiales, predecesoras, sucesoras, aseguradoras y reaseguradoras pasadas, presentes o futuras; y todos y cada uno de los respectivos funcionarios, directores, accionistas, socios, agentes, empleados, abogados, representantes, herederos, albaceas, representantes personales, administradores y cesionarios, si los hay, pasados, presentes y futuros de las entidades mencionadas más arriba, serán relevados y por siempre descargados de toda forma de reclamaciones, demandas, acciones, juicios, causas de acción, daños y perjuicios cuando quiera que fueran incurridos y responsabilidades de cualquier naturaleza, conocidos o no conocidos, según la ley o derecho de equidad, que un Miembro de la Clase ha tenido, ahora tiene o mas adelante puede tener, tanto si dicho Miembro de la Clase hace una reclamación o participa más adelante en el Fondo del Arreglo como si nunca lo hubiera hecho, en relación con la representación legal de MBC por parte de BMMST o de McNerney. El Arreglo incluye también una Orden de Prohibición que esencialmente impide que cualquiera de los demandados que no participan en el arreglo entable juicio contra las Partes del Arreglo, y dispone que cualquier sentencia futura contra los demandados que no participan del arreglo será reducida por la cantidad del fondo del arreglo o por cualquier otra cantidad según lo decida el Tribunal. El texto exacto del Descargo y de la Orden de Prohibición se encuentra en la Estipulación del Arreglo.

VI. EL DERECHO DE QUE SE LE EXCLUYA DEL ARREGLO

Si el Arreglo se aprueba en forma definitiva, usted estará obligado por la sentencia definitiva y descargo dispuestos por el Tribunal, a menos que se excluya voluntariamente del Arreglo. Por lo tanto, si usted es un Miembro de la Clase, puede optar por seguir siéndolo o no. Esta opción tiene consecuencias que usted debe comprender antes de tomar su decisión.

Si desea continuar siendo un Miembro de la Clase, no hace falta que haga nada en estos momentos. Al permanecer dentro de la Clase, tendrá la oportunidad de recibir, en una fecha posterior, una distribución según el Plan de Distribución aprobado por el Tribunal. Pero, al permanecer como Miembro de la Clase, no podrá imponer ninguna reclamación contra BMMST y McNerney que surge de la representación de MBC por parte de ellos en ningún otro juicio.

Si, por cualquier motivo, desea que se le excluya de la Clase, se requiere que presente una solicitud de exclusión de la Clase por escrito, y enviarla a: Brinkley McNerney Settlement Exclusion, c/o Hanzman & Criden, P.A., 220

Alhambra Circle, Suite 400, Coral Gables, FL 33134, por correo de primera clase, **para que sea recibida el 9 de noviembre de 2005 a más tardar.** Su solicitud de exclusión voluntaria debe incluir: (1) su nombre; (2) su dirección; y (3) una declaración que indica que desea que se le excluya de la Clase. Al optar por ser excluido, no compartirá en cualquier recuperación que se pagará a la Clase como resultado del Arreglo de esta Demanda, no tendrá el derecho de comparecer en la Audiencia de Aprobación según se describe en la Sección VII a continuación, y no estará obligado por el Descargo establecido en la Estipulación del Arreglo. Según el Arreglo, las Partes del Arreglo tienen el derecho de poner término al Arreglo si cierto número de Miembros de la Clase opta por excluirse del Arreglo.

VII. LA AUDIENCIA DE APROBACIÓN

El Tribunal ha programado una audiencia a celebrarse el **viernes 2 de diciembre de 2005 a las 9:00 de la mañana** ante el Honorable Federico A. Moreno, Juez del Tribunal Federal de los Estados Unidos para el Distrito Sur de la Florida, en la United States Courthouse, Décimo Piso, Sala No. IV, 99 Northeast 4th Street, Miami, FL 33132, con el propósito de determinar si: aprobar en forma definitiva los términos del Arreglo, aprobar la moción de los abogados para el otorgamiento de honorarios y costos de abogados, certificar la Clase del Arreglo en forma definitiva y otros asuntos que el Tribunal considere pertinentes (la "Audiencia de Aprobación"). El horario y la fecha de la Audiencia Imparcial pueden ser aplazados o cambiados por el Tribunal sin aviso previo. Además, el Tribunal puede aprobar el arreglo propuesto después de celebrar la Audiencia de Aprobación, con cualquier modificación acordada por las Partes del Arreglo y sin aviso adicional a la Clase.

Si desea presentar comentarios a favor o en contra del Arreglo o de la moción para obtener honorarios y costos de abogado, puede hacerlo pero **primero se requiere que envíe** sus comentarios y/o objeciones por escrito con el franqueo prepagado a los Abogados Representando la Clase, el Asesor Legal del Síndico y el Asesor Legal de BMMST y McNerney (encontrará las direcciones a continuación), **y presentar sus comentarios y/o objeciones ante el Tribunal, y que sean recibidos por los Asesores y el Tribunal el 9 de noviembre de 2005 a más tardar.** Se requiere que incluye su nombre y dirección actual con sus comentarios y/o objeciones.

Si también desea que se le escuche en persona o a través de su abogado en la Audiencia de Aprobación, se requiere que usted o su abogado presente una Notificación de Comparecencia por escrito ante el Secretario del Tribunal para el Tribunal Federal de los Estados Unidos para el Distrito Sur de la Florida, 301 North Miami Avenue, Room 150, Miami, FL 33128, el **9 de noviembre de 2005** o antes de dicha fecha, incluyendo una declaración que indica la posición que se adoptará y los motivos de dicha posición, juntamente con copias de documentos o resúmenes de apoyo. Se requiere que su notificación incluye en un lugar destacado el nombre de la causa (Scheck Investments v. Kensington Management, Inc.) y el número de la causa (No. 04-21160- Civ-Moreno). También se requiere que envíe una copia de su Notificación de Comparecencia con todos los documentos adjuntos a los Abogados Representando la Clase, el Asesor Legal del Síndico y el Asesor legal de BMMST y McNerney (encontrará las direcciones a continuación).

Abogados Representando a los Demandantes y la Clase:

Michael Hanzman, Esq.
Kevin B. Love, Esq.
Hanzman & Criden, P.A.
220 Alhambra Cir., Suite 400
Coral Gables, FL 33134

Victor M. Diaz, Jr.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, Florida 33130

Asesores Legales de BMMST y McNerney:

Maurice M. García, Esq.
Greenspoon Marder, P.A.
100 W. Cypress Creek Rd., Suite 700
Ft. Lauderdale, FL 33309

Asesor Legal del Síndico

Curtis B. Miner, Esq.
Colson Hicks Eidson
225 Aragon Ave., 2nd Floor
Coral Gables, FL 33134

A excepción de lo proporcionado aquí, ninguna persona tendrá el derecho de refutar los términos y condiciones del Arreglo ni de objetar la moción de los asesores legales en pos de los honorarios y costos de abogado, y se considerará que las personas que no objeten según las disposiciones del presente han renunciado a sus derechos y se les prohibirá para siempre presentar objeciones de ese tipo. No es necesario que comparezca en la audiencia para poder objetar.

VIII. INFORMACIÓN ADICIONAL

Lo que antecede solo es un resumen del Arreglo. Una copia de la Estipulación del Arreglo, que incluye el Descargo, y otros alegatos, están en los archivos públicos del Secretario del Tribunal del Tribunal Distrito de los Estados Unidos para el Distrito Sur de la Florida, 301 North Miami Avenue, Room 150, Miami, FL 33128. Además, el 25 de noviembre de 2005, o con anterioridad a esa fecha, el Asesor Legal de la Clase presentará ante el Tribunal su moción solicitando los honorarios y costos de abogado según se lo describió más arriba. La Estipulación del Arreglo y la Moción del Asesor Legal de la Clase solicitando honorarios y costos de abogado estarán disponibles para su inspección en el horario normal de trabajo de la Oficina del Secretario.

La Estipulación del Arreglo, además de información adicional, están disponibles para su examen en el sitio Web del Síndico: www.mbcreceiver.com.

Si desea recibir información adicional, puede llamar al **1-800-264-6574** y encontrará un mensaje grabado. Si lo desea, también puede dejar un mensaje grabado con: (i) su nombre; (ii) su número de teléfono; y (iii) su(s) pregunta(s) relacionada(s) con el arreglo. Se le devolverá la llamada en cuanto sea posible siempre y cuando su pregunta se refiera al arreglo.

NO INTENTE PONERSE EN CONTACTO CON EL TRIBUNAL CON RESPECTO AL ARREGLO

Fechado: 2 de septiembre de 2005

POR RESOLUCIÓN JUDICIAL DEL TRIBUNAL
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

EXHIBIT C (REDACTED)

EXHIBIT D (REDACTED)

EXHIBIT "D"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21160-CIV-MORENO/GARBER

SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.
_____/

AFFIDAVIT OF KEVIN B. LOVE IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS

STATE OF FLORIDA)
)ss.
COUNTY OF MIAMI-DADE COUNTY)

Kevin B. Love, being duly sworn on oath, deposes and states:

1. I am a partner in the law firm of Hanzman & Criden, P.A., Co-Lead Counsel for the plaintiffs in the above-styled action ("Action").

2. Our Firm's compensation for the services rendered were wholly contingent. Any fees and reimbursement of expenses will be limited to such amounts as may be awarded by this Court.

3. During the period from the inception of the Action through November 18, 2005, my firm performed 1955.10 hours of work in connection with the prosecution of the Action. Based upon historical hourly rates ordinarily charged to my firm's clients, the lodestar value of my firm's time is $815,448. A summary of my firm's lodestar is provided immediately below:

Name	Status	Rate	Hours	Amount
Michael A. Hanzman	Partner	500	540.5	$270,250

Kevin B. Love	Partner	450	737.75	$331,987
Robert Gilbert	Of Counsel	450	58.50	$26,325
Jeffrey Kravetz	Of Counsel	350	246.20	$86,170
Jared Levy	Partner	325	86.25	$28,031
Richard Brenner	Of Counsel	275	238.40	$65,560
Nicole Trujillo	Paralegal	150	42.50	$6,375
Maria Alonso	Paralegal	150	5.0	$750

4. Detailed itemization of the services rendered during the period for which fees are sought are available for the Court's review upon request.

5. During the period from the inception of the Action through November 18, 2005, my firm incurred expenses in the sum of $55,153.79, $19,000 of which was paid to the Settlement Administrator for costs associated with the dissemination of the Notice. These expenses were reasonably and necessarily incurred in connection with the prosecution of the Action. The expenses incurred are reflected on the books and records of my firm. I expect that we will incur future costs in connection with this settlement, including, but not limited to, charges by the Settlement Administrator in connection with the distribution of the Settlement Fund to Class Members.

6. All of the services performed by my firm were reasonably necessary in the prosecution of the Action. There has been no unnecessary duplication of services for which my firm now seeks compensation.

7. Moreover, many of the Class Members have their investment in a retirement account and are using Fiserv Trust Company ("Fiserv") as the account's administrator. These accounts are set up so that all correspondence from MBC is sent to Fiserv. Upon learning of this situation, Class

Counsel worked with Fiserv to forward the notices as soon as practicable to potential Class Members.

8. Attorneys from Class Counsel's offices also responded to the Class Members who left messages and current phone numbers on the IVR prior to the deadline. Class Counsel also corresponded with investors by letter and fax, and responded to hundreds of direct investor phone calls. Finally, Class Counsel responded to investor inquiries through a dedicated e-mail address set up for this Settlement (MBC@hanzmancriden.com).

9. To the extent that Furio and Jane Constantine's letter to the Court (D.E. #446) could be considered an objection, it was later withdrawn during a phone call with the objector..

10. A total of 59 investors properly excluded themselves. Eighteen other Class Members sent in requests for exclusion, however these requests were not timely served. Attached hereto as Exhibit 1 is a list of untimely exclusions received by Class Counsel after the Court-ordered deadline of November 9, 2005. Because the number of Class Members who excluded themselves by the Court-ordered deadline was a crucial factor in the Settling Defendants' decision not to terminate the Settlement (as was their right). If these eighteen Class Members are permitted to exclude themselves from the Class, the Settling Defendants would argue that they should be given a further opportunity to trigger the Settlement's termination provision.

11. Class Counsel has also filed other objections and comments that were not timely and not properly filed with the Court by Class Members relating to Class Counsel's request for fees. I have attached most of these untimely and/or not properly filed objections and comments to the extent that the Court would want to consider them. See Exhibit 2.

FURTHER AFFIANT SAYETH NAUGHT.

KEVIN B. LOVE

The foregoing instrument was acknowledged before me this 29th day of November, 2005, by KEVIN B. LOVE, who is personally known to me ✓ or who has produced _____ as identification.

DATED this 29th day of November, 2005

Madeline T. Llanez
Print or Stamp Name
Notary Public, State of Florida
Commission No.
My Commission Expires:

L:\2979\Settlement Lawfirm\KBL affidavit fees and expenses.wpd

Madeline T. Llanez
Commission #DD187463
Expires: Feb 24, 2007
Bonded Thru
Atlantic Bonding Co., Inc.

Exclusions Received after 11/9/05 by Class Counsel

First Name	Middle	Last Name	Street	City	State	Zip Code	Date
Maria	V.	Acebedo Acebedo	Carrera 80 No. 32-78 Apt. 301	Medellin	Colombia		11/17/2005
Carol & William		Bryan	137 Ouzts Road	Edgefield	SC	29824	11/16/2005
Dolores & Leon		Cox	1394 Dug Gap Rd.	Dalton	GA	30720	11/10/2005
Eunice	G.	Duhon	1544 Riceland Road	Duson	LA	70529	11/10/2005
Calvin & Audrey	J.	Duhon	313 Renwood Circle	Lafayette	LA	70503	11/10/2005
Ella		Duplechien	45 Audubon Oaks Blvd. #B	Lafayette	LA	70506	11/14/2005
Russell		Duplechien	45B Audubon Oaks Blvd.	Lafayette	LA	70506	11/14/2005
James		Duplechien	P.O. Box 118	Cecilia	LA	70521	11/14/2005
Orlando	S.	Gasca	Trv. 5u #183-50 Casa 53	Bogota	Colombia		11/14/2005
Paul	A.	Hansen	107 Spruce Ave	Norfolk	NE	68701	11/14/2005
Emma		Jara de Vanegas	Calle 127A No.54-61 Torre 3 Apt. 202	Bogota	Colombia		11/10/2005
Douglas	B.	LeBlanc	404 Touchet Road	Lafayette	LA	70506	11/10/2005
Earline	M.	LeBlanc	404 Touchet Road	Lafayette	LA	70506	11/10/2005
Claude		LeBlanc Jr.	404 Touchet Road	Lafayette	LA	70506	11/10/2005
John & Diane	F.	Menard	130 Playfair Dr.	Lafayette	LA	70503	11/14/2005
Gail	H.	Nord	8413 Roan Lane	Austin	TX	78736	11/10/2005
Marion	F.	Percival	301 N. Silverton St.	Jackson	SC	29831	11/10/2005
Janalice	D.	Watkins Duplechien	505 Avatar Dr.	Lafayette	LA	70503	11/14/2005

EXHIBIT "1"

Kevin Love
Hanzman Criden
220 Alhambra Circle
Suite 400
Coral Gables, Florida 33134

Dear Mr. Kevin Love;

I wanted to express my deep gratitude for what you are doing to try and help us. As an individual my resources and abilities are severely limited. The money in question was the bulk of my retirement money. There is absolutely no way I could attempt to recover any of the funds on my own. I am 50 years old and I was crushed thinking my retirement was lost. I have tried to start a retirement savings over again, but at this point I will never be able to build up any way near the amount of money I lost.

I have been a classified employee of the Sarasota County School Board for 16 years so I don't make a very large salary. I can't thank you and your associates enough for trying to recover as much of my losses as possible.

If you need witnesses to testify or etc. please let me know. I will be glad to do whatever I can to assist you and your associates.

Sincerely,

Lynn M. Tressler

Lynn Tressler
2636 Sapphire Road
Venice, Florida 34293

EXHIBIT "2"

November 4 2005

RE: Sheck Investments
v.
Kensington Management
Case # 04-21160-CIV-Moreno
Magistrate Judge Garber

Victor M. Diaz
Podhurst Orseck
25 W. Flagler St.
Suite 800
Miami, Florida 33130

I am very pleased to see this matter finally come to some kind of resolution. This issue has created a great deal of anxiety and uncertainty, given the fact that the funds invested by me were a part of my retirement portfolio.

Although my anxiety levels are somewhat lessened, I'm still concerned about the award of attorney's fees and expenses; 30% of the settlement fund plus reimbursement of expenses and costs appears to be totally exorbitant and excessive bordering on greed. Once the attorneys take their cut of the pie, what will be left for the victims (investors) in this matter? I am therefore imploring that the Court give this matter by attorney fees and expenses a great deal of deliberation before making the award that is being requested.

Respectfully,
Gary Barsoom
740 W. Kippatrick Dr., Reedley, CA 93654

Melvin L. Herring
CERTIFIED PUBLIC ACCOUNTANT
5013 Tyrone Rd.
Fort Wayne, Indiana 46809

November 4, 2005

Honorable Federico A. Moreno
Judge of the U.S. District Court
Southern District of Florida
U.S. Court House
10th Floor - Courtroom No. IV
99 Northeast 4th Street
Miami, FL 33132

This letter is to protest any awarding or authorizing the payment of expenses.

It has been historic that those who are in business that all expenses are deducted from the gross income that is generated.

Why should attorneys be awarded a huge settlement, in this case a purposed 30%, and then in addition be rewarded again by paying their expenses. This means the law firm risked nothing by taking this case.

Those of us who are in the settlement class have already been harmed by not receiving our investment back plus the interest that was promised in writing, in my wife's case 14%.

I do not believe it is right or correct to allow one class of citizen, i.e. attorneys, who are the only ones who can bring a class action suit and end up being the only ones who benefit from such suit.

I am also against the high percentage that was originally an arbitrary figure that has now begun to be considered as customary.,

By now you can see by the above that my wife and I are not pleased with the financial position that we find ourselves in. We in good faith invested in this Viatical because we were assured that not only were we helping a person who was diagnosed as having a terminal illness but we would also receive our original investment plus interest. Now it seems that there will be no chance for this to happen.

So in summary, no award for the expenses should be made.

Sincerely,

Melvin L. Herring / Barbara H. Herring

MELVIN L. HERRING / BARBARA H. HERRING

To:
The Honorable Federico A. Moreno,
Counsel for Plaintiffs and the Class,
Counsel for BMMST and McNerney and
Counsel for the Receiver

Re: CASE NO:004-21160-CIV-MORENO
SCHECK INVESTMENTS, et al.
vs
KENSINGTON MANAGEMENT, INC., et al

In accordance with the instructions in the "Notice of Pendency of Class Action, Proposed Settlement and Fairness Hearing", this communication addresses the FAIRNESS HEARING, WITH REGARDS TO ATTORNEYS' FEES AND COSTS.

Attorneys deserve reimbursements for reasonable costs and fees. The key word here is reasonable. They spent time on this and deserve to be paid. However, stories abound about how attorneys get paid high fees in some class action suits and the class members get pennies on the dollar. Many of us class members need the full value of our investment. If we class members are not going to receive full value, then whatever percentage of our investment you will be awarding. The attorneys should receive that same percentage of their reasonable costs.

Thank you for listening to my opinion.

Sincerely,

Claudia C. Loomis 10-31-05

Claudia C. Loomis
1086 Cal Henry Rd.
Roseburg, OR 97470

10312 N. Harrison Ct
Kansas City, MO 64155
October 31, 2005

Regarding: **Scheck Investments v. Kensington Management, Inc.**
Case number (No. 04-21160-Civ-Moreno)

Counsel for Plaintiffs and the Class:

Michael Hanzman, Esq.
Kevin B. Love, Esq.
Hanzman & Criden, P.A.
220 Alhambra Cir., Suite 400
Coral Gables, FL 33134

Victor M. Diaz, Jr.
Podhurst Orseck, P.A.
25 West Flager Street, Suite 800
Miami, FL 33130

Counsel for BMMST and McNerney:

Maurice M. Garcia, Esq.
Greenspoon Marder, P.A.
100 W. Cypress Creek Rd., Suite 700
Ft. Lauderdale, FL 33309

Counsel for the Receiver:

Curtis B. Miner, Esq.
Colson Hicks Eidson
225 Aragon Ave., 2nd Floor
Coral Gables, FL 33134

Concerning **The Fairness Hearing:**

I would like to express my gratitude to those that have brought this terrible scandal to light and the courts. As a small investor I would appeal to the name of this hearing, Fairness, and plead with the judge in consideration of this matter that the attorneys in this matter should be given a fair return for their efforts rather than a windfall of 30% plus expenses. No investor was expected to get a 30% return for his investments. A more reasonable and fair approach would be to have the attorney fees be either their reasonable costs or a percentage similar to what the investors were promised but not both.

Respectfully submitted,

Harold Peters

Kerry L. Peters

Harold O. Peters
Kerry L. Peters
10312 N. Harrison Court
Kansas City, MO 64155

Ms. Anne M Ventimiglia
7235 Metropolitan Ave Apt Bb
Middle Vlg NY 11379

October 24, 2005

The Garden City Group, Inc
Notices Agent for Class Counsel &
Receiver - Mutual Benefits Settlement

Thank you for your recent communication regarding Mutual Benefits Settlement. I have been quite concerned regarding this matter since I am a Senior citizen who does not appreciate losing hard earned income

Any effort on your part to settle this matter in favor of those of us who participated in mutual benefits is greatly appreciated

Please continue to keep me posted

Sincerely,

November 3, 2005

Kevin B. Love. Esq.
Hanzman & Criden, P.A.
220 Alhambra Cir., Suite 400
Coral Gables, FL 33134

Mr. Love,

Recently, it has been brought to my attention, that my boy-friends mother, a 76-year old widow was conned out of her entire life's savings and all of her retirement money in the amount of $84,356.97 (eighty four thousand three hundred fifty six dollars and ninety-seven cents). Her real name is Nerine Bressie, her friends and family call her Pat and she is a wonderful, quick witted, gray-haired, loving, little old lady. I have been asked to do whatever I can to assist her during this time; which is why I am pleading her cause to you. This is her story of a terrible injustice, a most heartless crime against her that must be righted, in some form or fashion. Please help us, I am appealing to your sense of justice to help her get back what was taken from her by premeditated, calculated deceit. She is a class member in the case number: **04-21160-CIV-MORENO**.

I have been informed that she was told that she could purchase 2 separate life insurance policies in 1996 totaling $84,356.97 and that she would receive $219,000.00 (two hundred nineteen thousand dollars in combined interest) in return and would have to wait 36 to 40 months to get all of her money back plus interest.

She has received nothing back and she has lost her entire retirement security that her life's savings would have afforded her. She is 76, widowed, and living in poverty, in a small house in Farmers Branch, Texas. She has no comfort of having the nest egg she diligently saved, and she has no means to enjoy her golden years with any level of comfort that she would have had, if she had not been insidiously deceived into handing her life's savings over to those criminals.

It is a terrible thing to endure to see her tears & suffering, to see her son give her hugs and to hear her quietly crying and it is just the worst, heart-rending sight to witness her suffering. To see her worrying and to see how this crime has hurt her on so many levels and she continues to suffer. I plead with you to help us get her money back to her, as quickly and with all expediency as possible. She has talked about some of the things she had wanted to do during her retirement, and she has not been able to do anything but pinch pennies and struggle to get by while living in poverty. She feels badly that she was conned, but of all the cons that I have seen come and go over the years this was by far the most elaborate. I try to reassure her that we will set things right, as much as possible, without raising her hopes to high. We have all of her paperwork and can send you any and all forms of verification.

Please understand, that waiting until all judgments are handed down and all litigation is finished and monies divided and handed out, please realize that Nerine Bressie, "Pat" does not have any guarantee that she will live to see justice or be healthy enough to even enjoy the fruits of her life-long labor that she saved for this period of her life. Please understand and have compassion for her plight and tell me what we must do to get her justice and get her money back to her while she can still enjoy it. With our deepest gratitude we thank you over and over in advance for championing her plight. Also, please call us if you have any questions or if you want to talk to "Pat" or myself or her son, we would welcome your call and do anything to assist you in this request.

Sincerely,

Jessica Steele & Joe Bressie & Nerine "Pat" Bressie

Steven Chan &Anne Wong-Chan
2205 Koa Ct.
Antioch, CA. 94509

Honorable Judge Federico A. Moreno
Case No. 04-21160-Civ-Moreno (Scheck Investments v. Kensington Management, Inc.)
The United States District Court for the Southern District of Florida
301 North Miami Avenue, Room 150
Miami, FL 33128

November 1, 2005

Dear Honorable Judge Federico A. Moreno,

As class members, we are writing to submit our comments in response to the notice that we have received *regarding the proposed Settlement and the motion for attorneys' fees and costs for Case No. 04-21160-Civ-*Moreno (Scheck Investments v. Kensington Management, Inc.). We appreciate the notice and the update on the pendency of the class action.

In considering the proposed Settlement and the associated attorneys' fees, we prefer the Court's actions and judgments that lead to fund disbursements in the following order of priority:
(1) Recover all the investors' interests plus all the accrued gains (expected to be 12.5% per year)
(2) The attorneys' fees and costs

We suggest that investors' interests be placed on the highest level in the attempt to reach the final decision of this Class Action, and that attorney's fees and costs should be dependent upon attorneys' performance (how much they can recover for the investors, stated as a percentage of the investors' original investments). Another consideration will be the ability to expedite the process and bring the case to a fair and just closure to the investors as soon as possible.

Thank you for allowing me the chance to submit my comments. We appreciate your consideration.

Sincerely Yours,
Steven Chan & Anne Wong-Chan

Forward to H. Love

NOTICE OF APPEARANCE

SCHECK INVESTMENTS V. KENSINGTON MANAGEMENT, INC.

No. 04-21160-Civ-Moreno

I, Ronald D. Carrier, wish to be heard at the Fairness Hearing on December 2, 2005 on behalf of my parents, Leon and Mary Carrier of Campbell, Ohio who are both ailing now in their seventies. Their $20,000.00 disappeared in April 1998 into the pockets of an unscrupulous corporation represented by Attorney Michael McNerney. While I applaud the efforts of Plaintiffs and Class Counsel, I feel that the proposed Settlement falls short of fairness. My position is for Mr. McNerney's insurers to write $20,000.00 Pay to the order of Leon and Mary Carrier. It was to him that my parents and 30,998 unsuspecting investors wrote their checks – not Mutual Benefits Corporation (MBC), not Peter Lombardi, not the infamous Steinger brothers, not Anthony Livoti.

On October 4, 2002, Debbie Gonzalez, a representative from Mr. McNerney's law office made a copy of every document regarding the four policies assigned to my parents by MBC. Two weeks later Scott Chitoff, also from Mr. McNerney's law office, explained unconvincingly why one of the four policies) was replaced by an unknown male 3 one month after was initially assigned. My suspicion was that Rita had passed away and her policy was not disbursed according to the terms of the Trust Agreement. Another questionable policy (s issued 18 days *after* he was declared terminally ill. (See attached)

On November 13, 2003, during a telephone conversation with Dr. Clark Mitchell personally, I learned the extent of Mr. McNerney's involvement in viaticals fraud. I called Dr. Mitchell (o express my skepticism with the legitimacy of viaticals, specifically, the medical records conveniently provided to him by MBC. Without actually seeing the sick person himself seemed procedurally odd. At the time the four "terminally ill" individuals assigned to my parents were already two years beyond their life expectancy. Before I mentioned any particular person's name, Dr. Mitchell said emphatically, "Sue McNerney because whatever your worst suspicions are, they're all true!" Dr. Mitchell explained how MBC, represented by Mr. McNerney, paid him $25.00 for every affidavit he signed and Mr. McNerney received a percentage of each viatical investment. Notes of the entire conversation were included with the complaint package I sent to Investigator Glen Hughes in December 2003.

Mr. McNerney represented a fraudulent operation and got caught. Did he accept my parent's life savings on behalf of MBC as a favor...out of the goodness of his heart? Now his insurers are willing to spend ten million dollars "to avoid further expense". As far as Plaintiffs and Class Counsel's fees are concerned, I shamefully hope they get filthy rich from this case. But, somewhere in the remaining millions, $20,000.00 rightfully belongs to Leon and Mary Carrier; not a penny more – not one cent less. That's fairness! Thank you for the opportunity to be heard.

Ronald D. Carrier
405 N. Ocean Blvd. #109
Pompano Beach, FL 33062

October 10, 2005

Dear Sirs,

I am a member of the Class of Case No - 04-21160-CIV- Moreno, Saheck Investments v. Kensington Management, Inc. & wish to make the following comments.

This is the second case of investment fraud that I have been involved in through insurance agent, Daniel F Smith of N. Ft. Myers, FL. The first was an investment in Offshore Securities in Canada. I traveled to Ottawa, Ontario, Canada to testify before the Crown last year. In June, I received a letter from the Counsel that Donald Galna was convicted & is in prison.

I also made an investment in Mutual Benefits Corporation through the same agent, Daniel F Smith. For the past several months, I tried in vain to obtain information about it through MBC & never know why. I was very concerned about this because I am 75 years old & can't afford to lose $35,000. I hope that the Settlement will be approved & I can recover my money.

Harold L. Reed
2301 Valparaiso Blvd.
N Ft. Myers, FL 33917

Oct 4 '05

Dear Sirs.

Please include me in the "Class" against Mutual Benefits.

My husband, an Ex Pow WW. 2 veteran who put his life on the line for this country - its so sad that evil salespeople for M.B. can take advantage, taking money we really need.

Enclosed find the case numbers.

Please do what you can to get some of our money back.

Thank you,

Marie Franke

My husband is now an Alzheimer patient.

Case # 04-21160 CIV-Moreno
Magistrate Judge Garber

Helen Woods
228 Pond St
Po Box 838
Mitchell ON N0K 1N0

Festival Inn

Mr Patrick J Woods
228 Pond St
PO Box 838
Mitchell ON N0K 1N0

Helen Woods
228 Pond St
Po Box 838
Mitchell ON N0K 1N0

Your Honors

Patrick & Helen Woods wish strongly to be included for the Class Action

We want to share in the recovery of this settlement due to us.

Thank you for working on our behalf.

Sincerely Yours
Helen Woods

Our Insured Person
John P. Castagnetti
expired Sept 7-2003

Mary Maurer
1022-B Phillips Court
Montrose, CO 81401

email:

August 17, 2005

Victor M. Diaz, Jr.
Podhurst Orseck, P.A.
25 West Flagler Street
Suite 800
Miami, L 33130

RE: Case No. 04-21160-CIV-Moreno

To Whom It May Concern:

Today, I received notice of the Fairness Hearing on Friday, December 2, 2005 at 9:00 a.m.

I was one of the plaintiffs and am part of the class action proposed settlement.

The loss of this money, taken by people who don't seem to care about the impact on those who lost their money, has greatly effected my retirement funds.

I hope the court will see fit to settle this suit as quickly as possible so that I may have at least a portion of my money returned.

Thank you for your attention to this matter.

Sincerely,
Mary Maurer
Mary Maurer

October 11, 2005

FROM: Monique Norwood
1207 Commonwealth Circle Apt. B 101
Naples, Florida 34116

TO: **Counsel for the Receiver**
Curtis B. Miner Esq.
Colson Hicks Edison
225 Aragon Ave., 2nd Floor
Coral Gables, Fl. 33134

Counsel for the Plaintiffs and the Class
Michael Hanzman, Esq.
Kevin B. Love, Esq.
Hanzman & Criden, P.A
220 Alhambra Cir. Suite 400
Coral Gables, Fl. 33134

Victor M. Diaz, Jr.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, Fl 33130

Counsel for BMMST and McNerney
Maurice M. Garcia, Esq.
Greenspoon Marder, P.A.
100 W. Cypress Creek Rd., Suite 700
Ft. Lauderdale, Fl. 33309

REGARDING: Case No.: 04-21160- CIV-MORENO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

SCHECK INVESTMENTS, et. al., individually, and on behalf of all others,

Including Class Member (Monique Norwood)

Plaintiff,

vs.

KESSINGTON MANAGEMENT, INC., et al,

Defendant

PURPOSE OF LETTER

I Monique Norwood support this Class Action. Please confirm I, Monique Norwood am a Class Member of the said CLASS ACTION, PROPOSED SETTLEMENT as my name is not visible in any of the documents provided. It is very important that I recover my full investment regarding:

Insured Case File#:

Purchase Amount: $ 20,000

Purchase Date: January 17, 2003

PLEASE CONFIRM IN WRITING BY MAIL:

Monique Norwood
1207 Commonwealth Circle Apt. B 101
Naples, Florida 34116

This is a bit confusing so I thank you for your assistance and please feel free to contact me if I can be of help by calling

Dated this 11th day of October, 2005

EXHIBIT "E"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21160-CIV-MORENO/GARBER

SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.
_____/

AFFIDAVIT OF VICTOR M. DIAZ, JR. IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS

STATE OF FLORIDA)
)ss.
COUNTY OF MIAMI-DADE COUNTY)

Victor M. Diaz, Jr., being duly sworn on oath, deposes and states:

1. I am a partner in the law firm of Podhurst Orseck, P.A., Co-Lead Counsel for the plaintiffs in the above-styled action ("Action").

2. Our Firm's compensation for the services rendered were wholly contingent. Any fees and reimbursement of expenses will be limited to such amounts as may be awarded by this Court.

3. During the period from the inception of the Action through November 18, 2005, my firm performed 1,964.50 hours of work in connection with the prosecution of the Action. Based upon historical hourly rates ordinarily charged to my firm's clients, the lodestar value of my firm's time is $614,862.50. A summary of my firm's lodestar is provided immediately below:

Name	Status	Rate	Hours	Amount
Victor M. Diaz, Jr.	Partner	500	849.00	424,500.00
Aaron S. Podhurst	Partner	600	2.50	1,500.00
Joel D. Eaton	Partner	450	4.00	1,800.00
Xavier Martinez	Associate	275	197.00	54,175.00
Stephen F. Rosenthal	Associate	275	35.75	9,831.25
Ricardo Martinez-Cid	Associate	225	6.00	1,350.00
Maria Kayanan	Associate	225	117.00	26,325.00
Mary R. Andrews	Associate	225	12.25	2,756.25
Law Clerks	Law Clerks	125	741.00	92,625.00

4. Detailed itemization of the services rendered during the period for which fees are sought are available for the Court's review upon request.

5. During the period from the inception of the Action through November 18, 2005, my firm incurred expenses in the sum of $49,557.89 expenses were reasonably and necessarily incurred in connection with the prosecution of the Action. The expenses incurred are reflected on the books and records of my firm.

6. All of the services performed by my firm were reasonably necessary in the prosecution of the Action. There has been no unnecessary duplication of services for which my firm now seeks compensation.

FURTHER AFFIANT SAYETH NAUGHT.

VICTOR M. DIAZ, JR.

The foregoing instrument was acknowledged before me this 28th day of November, 2005, by Victor M. Diaz, Jr., who is personally known to me.

Print or Stamp Name
Notary Public, State of Florida
Commission No.
My Commission Expires:

Lidia Aja
My Commission DD326729
Expires July 17 2008

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