

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

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

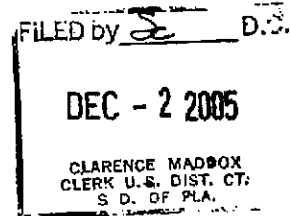
SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.



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**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, Michael J. McNerney, Westport Insurance Corporation and Liberty Surplus Insurance Corporation, Inc. (collectively, "BMMST Parties"), have submitted for final approval a proposed settlement that is memorialized in the Stipulation of Settlement executed August 2, 2005 ("Settlement Agreement").<sup>1</sup> Class Counsel has also moved for an award of attorney fees and costs.

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<sup>1</sup> All capitalized terms used herein shall have the meanings set forth in the Settlement Agreement.

4/17/05

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 BMMST and McNerney 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 BMMST Parties' 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 policies, 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](http://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](mailto: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 BMMST and McNerney 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, BMMST and McNerney agree to fully cooperate with any future investigation conducted by the Receiver and Class Counsel, subject to receiving assurances that BMMST and McNerney are not the target of any SEC investigation. The Court takes note that the SEC has not yet filed any action against BMMST and McNerney, nor has the SEC indicated that it is inclined to do so in the future. Given that BMMST was MBC's law firm 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 BMMST and McNerney's 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 BMMST and McNerney from wasting the proceeds of their insurance policies on their attorneys in further defense of this Action. *See, e.g., Denney v. Jenkins & 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. Jenkins & 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 BMMST and McNerney.

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 BMMST and McNerney, 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 BMMST and McNerney; (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 BMMST and McNerney – 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 25 % of the \$10 million Settlement Fund (or \$ 2.5 Million) 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, \$ 104,711 for costs. The fee and cost award, which totals \$ 2,604,711 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 BMMST and McNeerney. 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 BMMST and McNeerney, 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 <sup>BY THE GREATER OF (i)</sup> dollar-for-dollar up to the full amount of the Settlement Fund <sup>(ii)</sup> (\$10,000,000), or by another amount as ordered by the Court at a later date. <sup>^</sup>



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 2<sup>nd</sup> day of December, 2005.

  
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**THE HONORABLE FEDERICO A. MORENO**  
**UNITED STATES DISTRICT JUDGE**

Copies furnished to:  
Counsel of record

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## Exclusion List

<u>First Name</u>	<u>Mid</u>	<u>Last Name</u>	<u>Street</u>	<u>City</u>	<u>State</u>	<u>Zip Code</u>
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	Carraera 41 No. 105A-23 Apt. 501	Bogota	Colombia	
Eibon	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	Carera 58 No. 66-117	Barranquilla	Colombia	
Javier		De La Rosa	3313 W. 62 Pl.	Chicago	IL	60628
Kim	A.	Denison	244 Cartall St.	St. James	MO	65569
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
Elfreda & 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	8043 Shotka Street	Garden City	MI	48135
Ronald & Jean	P.	Hawkins	920 Royalette Ave.	North Augusta	SC	29841
Julia & Alvin	C.	Hemdon	801 Oak Place	Aiken	SC	29801
Margy		Howard	436 N 4200 E	Rigby	ID	83442
Clifford	J.	Janes	107 West Park Ave.	Bourbon	IN	48504
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.	Kighl	71 Clemson Street (P.O. Box 236)	Williston	SC	29853
Hector		Lagos Cue	Hamburgo 190 Col. Juarez	Mexico, D.F.	Mexico	
Robert	D.	Lawson	4086 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	1088 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	1687 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	2955 S. Airport Rd.	Saginaw	MI	48601
Wayne		Rabalais	301 E. Kalliste 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	Fiat B, 8th Floor, Block B Sheung Shui D.S.Q 9 Po Wing Rd.	Sheung Shui, New Territories	Hong Kong	

**EXHIBIT 1**