

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

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

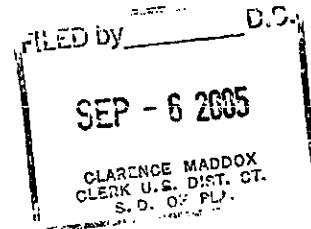
SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.



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**ORDER CERTIFYING SETTLEMENT CLASS AND  
PRELIMINARILY APPROVING PROPOSED SETTLEMENT**

The Court, having reviewed and considered Lead Plaintiffs' Motion for Preliminary Approval of Settlement, and having reviewed and considered the Stipulation of Settlement ("Settlement Agreement") executed on behalf of 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, individually, and on behalf of the Settlement Class (as defined below), 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., it is hereby **ORDERED** and **ADJUDGED** as follows:

**Preliminary Approval of Settlement and  
Conditional Certification of the Settlement Class**

1. The Court finds that it has jurisdiction over this Action.

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2. The terms of the Settlement Agreement provide for the immediate payment of \$10 million by the Settling Defendants' insurers, as well as full cooperation by the Settling Defendants (subject to no longer being a target of investigation by the SEC) in exchange for a full release of claims associated with the Settling Defendants' representation of Mutual Benefits Corporation.
3. The Court finds that the settlement reached in the Settlement Agreement is sufficiently within the range of reasonableness to warrant preliminary approval, subject to further consideration at the Fairness Hearing provided for below. Notice of the proposed settlement shall be given as provided below.
4. For purposes of settlement only, the Court conditionally certifies the following Settlement Class ("Class"), solely with respect to the Settling Defendants:

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. The Court conditionally finds that Lead Plaintiffs are adequate class representatives for the Class. If the Settlement Agreement is terminated or is not consummated for any reason whatsoever, the certification of the Class shall be void, and the Settling Defendants shall have reserved all of their rights to oppose any and all class certification motions and to contest the adequacy of Lead Plaintiffs as representatives of any putative class.

6. Pursuant to the Reform Act, the Court has already appointed Hanzman & Criden, P.A. and Podhurst Orseck, P.A. as Lead Counsel for the Class ("Class Counsel"). In accordance with Rule 23, the Court hereby approves Class Counsel as best able to represent the interests of the Class under Rule 23. Class Counsel, in consultation with the Receiver, shall retain a Settlement Administrator to assist in notifying the Class of this Settlement.

**Notice to Potential Class Members**

7. Within 20 business days after this Order is entered, the Settlement Administrator shall mail by first class mail, postage prepaid, (and/or by e-mail if addresses are available) copies of the Notice of Pendency of Class Action, Proposed Settlement and Fairness Hearing ("Notice"), substantially in the form attached as Exhibit "C" to the Motion for Preliminary Approval, to all potential members of the Class, to the extent that they can be identified by reasonable diligence. A Spanish translation of the Notice shall be included in the Notice package.
8. Notice of the settlement shall also be posted on the Receiver's website.
9. Given the Receiver's database of names and addresses of Class Members, and the success of the Receiver's Website, I find that publication notice is not necessary to advise Class Members of the Settlement.
10. At least 10 days before the Fairness Hearing, the Settlement Administrator or Class Counsel shall file with the Court a sworn statement attesting to compliance with the provisions of paragraphs 7 and 8.
11. The Notice to be provided to potential class members as set forth in paragraphs 7 and 8 is found to be the best means of providing notice practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the

Fairness Hearing to all persons affected by and/or entitled to participate in the settlement reached by the parties, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

**Requests for Exclusion From the Class**

12. Any member of the Class who wishes to be excluded from the Class shall mail a written request for exclusion ("Notice of Exclusion") to Class Counsel, to be received by Class Counsel no later than forty (40) calendar days after Notice is mailed out to Class Members. All original Notices of Exclusion shall be filed with the Court by Class Counsel at or before the Final Hearing.
13. Any Class Member that submits a valid and timely Notice of Exclusion shall not be bound by the Settlement Agreement, shall not be entitled to share in the benefits of the Settlement, and shall not be bound by the Final Order and Judgment, whether favorable or adverse.
14. Any potential member of the Class that does not properly and timely mail a Notice of Exclusion shall be included in the Class, and shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such potential member of the Class shall have objected to the Settlement, whether or not such potential member of the Class received actual notice, and whether or not such potential member of the Class makes a claim upon or participates in the Settlement.

**Fairness Hearing**

15. A Fairness Hearing shall be held on (90 days after the entry of this Order) Friday December 2, 2005 at 9:00 a.m. in Courtroom IV, United States Courthouse, Tenth Floor, Federal Justice Building, 99 Northeast 4<sup>th</sup> Street, Miami, Florida 33132, before the undersigned to consider:

(i) the fairness, reasonableness and adequacy of the Settlement;(ii) Class Counsel's motion for attorney's fees and expenses; (iii) conditional certification of the Class; and (iv) such other matters as the Court may deem necessary or appropriate.

16. At least seven days prior to the date of the Fairness Hearing, Class Counsel shall file its motion for final approval and its motion for attorney's fees and expenses.
17. Any Class Member who has not filed a written Notice of Exclusion from the Class and who wishes to object to the fairness, reasonableness, or adequacy of this Stipulation, must serve upon Class Counsel, the Receiver's Counsel, and the Settling Defendants' Counsel, and file with the Court, received by Counsel and the Court no later than forty (40) calendar days after Notice is mailed, a statement of objection, as well as the specific reasons, if any, for each objection, including any legal support the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of the objection.
18. Any Class Member that has not filed a Notice of Exclusion in the manner set forth above may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to: the fairness, reasonableness and adequacy of the Settlement; or Class Counsel's motion for attorney's fees and expenses; provided, however, that no person shall be heard, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless on or before forty (40) calendar days after Notice is mailed, such person: (a) files with the Clerk of the Court a notice of such person's intention to appear along with a statement (including any supporting documentation) that indicates the basis for such person's opposition to the fairness, reasonableness and adequacy of the Settlement or Class Counsel's motion for

attorney's fees and expenses; and (b) serves copies of such notice, statement and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon Class Counsel, the Receiver's Counsel and the Settling Defendants' Counsel.

19. The date and time of the Fairness Hearing shall be set forth in the Notice, but shall be subject to adjournment by the Court without further notice to the members of the Class other than that which may be posted at the Court and on the Court's website.
20. The Court may finally approve the proposed Settlement at or after the Fairness Hearing with any modification agreed to by the Settling Parties and without further notice to the Class.

**Other Provisions**

21. Terms used in this Order that are defined in the Settlement Agreement, unless otherwise defined in this Order, are used in this Order as defined in the Settlement Agreement.
22. In the event the Settlement is terminated in accordance with the provisions of the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement.
23. If the Settlement is terminated or ultimately not approved, the Court will modify any existing scheduling order to ensure that the parties will have sufficient time to prepare for the resumption of litigation.

*Open Court*  
**DONE AND ORDERED** in *Chambers* at Miami, Florida, this 2<sup>nd</sup> day of ~~August~~ *September*, 2005.

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

Copies provided to: Counsel of Record

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