

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

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

CASE NO.: 04-21160- CIV-MORENO

Magistrate Judge Garber

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al,

Defendants.

**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.

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## **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 4<sup>th</sup> 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:

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Kevin B. Love, Esq.  
Hanzman & Criden, P.A.  
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Coral Gables, FL 33134

Victor M. Diaz, Jr.  
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Counsel for BMMST and Mc Nerney:

Maurice M. Garcia, Esq.  
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Ft. Lauderdale, FL 33309

Counsel for the Receiver

Curtis B. Miner, Esq.  
Colson Hicks Eidson  
225 Aragon Ave., 2<sup>nd</sup> Floor  
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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](http://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