

IN THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR HILLSBOROUGH COUNTY

MARION BARNER, TOM CARDILLO,
LENORE KOHN, SIDNEY KRONICK,
SYLVIA KRONICK, JAMES LACEY,
ABRAHAM J. PASTMAN, ADELLE
PASTMAN, ALMA D. PATTON,
THE ESTATE OF FRANK PATTON,
BY AND THROUGH LEE C. PATTON,
ADMINISTRATOR, JOHN
TODD and JEAN WOLFF,

Plaintiffs,

vs.

KPMG PEAT MARWICK LLP and
WILLIAM WATHEN,

Defendants.

GENERAL CIVIL DIVISION

CASE NO. 98-7697 (DIVISION I)

**PRELIMINARY APPROVAL ORDER IN CONNECTION
WITH SETTLEMENT PROCEEDINGS**

WHEREAS, on or about December 30, 2008, the Plaintiffs in the above-entitled action (the "Action") entered into a Stipulation and Agreement of Settlement (the "Stipulation") with Defendants KPMG Peat Marwick LLP ("KPMG"), its successors and assigns, including KPMG LLP, and William Wathen ("Wathen") (the "Defendants"), which is subject to approval by the court under Rule 1.220 of the Florida Rules of Civil Procedure ("Fla.R.Civ.P."). The Stipulation, which together with the exhibits thereto, sets forth the terms and conditions for the proposed settlement and

dismissal of the claims of the Class certified by Court Order rendered on January 3, 2007, alleged against the Defendants in the Class Action Complaint and Demand for Jury Trial (the "Complaint");

WHEREAS, the Court having read and considered the Stipulation and the accompanying documents; and the parties to the Stipulation having consented to the entry of this Order; and all capitalized terms used herein having the meanings defined in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 22nd day of January, 2009 that:

1. The Settlement set forth in the Stipulation is preliminarily approved for the purpose of sending Notice to the Class, subject to further consideration at the Settlement Fairness Hearing described below.

2. A hearing (the "Settlement Fairness Hearing") pursuant to Fla.R.Civ.P. 1.220 is hereby scheduled to be held before the Court on March 25, 2009, at 1:30 p.m. for the following purposes:

(a) to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be approved by the Court;

(b) to determine whether the Order and Final Judgment as provided under the Stipulation should be entered, dismissing the Complaint on the merits and with prejudice;

(c) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable, and should be approved by the Court;

(d) to consider Plaintiffs' Counsel's application for an award of attorneys' fees and expenses; and

(e) to rule upon such other matters as the Court may deem appropriate.

3. The Court approves the form, substance and requirements of the Notice of Proposed Settlement of Class Action, Settlement Fairness Hearing and Motion for Attorneys' Fees and

Reimbursement of Litigation Expenses (the "Settlement Notice"), and the Proof of Claim Form annexed hereto as Exhibits 1 and 2 respectively.

4. The Court approves the selection of Complete Claim Solutions, LLC by Plaintiffs' Counsel as the Claims Administrator. Not later than ten (10) days from the date hereof, the Claims Administrator, under the supervision of Plaintiffs' Counsel, shall cause the Settlement Notice and the Proof of Claim, substantially in the forms annexed hereto, to be mailed, by first class mail, postage prepaid, to all Class Members who can be identified with reasonable effort by Plaintiffs' Counsel. Plaintiffs' Counsel shall, at or before the Settlement Fairness Hearing, file with the Court proof of mailing of the Settlement Notice and Proof of Claim.

5. The Court approves the form of Publication Notice of the proposed Settlement and Settlement Fairness Hearing in substantially the form and content annexed hereto as Exhibit 3 and directs that Plaintiffs' Counsel shall cause the Publication Notice to be published once in the *Tampa Tribune* within ten (10) days of the mailing of the Settlement Notice. Plaintiffs' Counsel shall, at or before the Settlement Fairness Hearing, file with the Court proof of publication of the Publication Notice.

6. The form and method set forth herein of notifying the Class of the Settlement and its terms and conditions meet the requirements of Rule 1.220 of the Florida Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

7. Plaintiffs' Counsel may expend from the Gross Settlement Fund, without further approval from the Defendants or the Court, up to \$40,000 to pay the reasonable initial costs and expenses associated with providing notice to the Class and the administration of the Settlement, including without limitation, the costs of identifying members of the Class, the costs of publishing,

printing and mailing the Settlement Notice, and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims.

8. In order to be entitled to participate in the distribution of the Net Settlement Fund, in the event the Settlement is effectuated in accordance with all of the terms and conditions set forth in the Stipulation, each Class Member shall take the following actions and be subject to the following conditions:

(a) A properly executed Proof of Claim (the "Proof of Claim"), substantially in the form annexed hereto as Exhibit 2, must be submitted to the Claims Administrator, at the Post Office Box indicated in the Settlement Notice, postmarked not later than April 30, 2009. Such deadline may be further extended by Court Order. Each Proof of Claim shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first class mail, postage prepaid) provided such Proof of Claim is actually received prior to the motion for an order of the Court approving distribution of the Net Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Settlement Notice.

(b) The Proof of Claim submitted by each Class member must satisfy the following conditions; (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) if requested, it must be accompanied by adequate supporting documentation for the transactions reported therein as is deemed adequate by Plaintiffs' Counsel in its discretion; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of his current authority to act on behalf of the Class Member must be included in the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no

material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) As part of the Proof of Claim, each Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall (subject to effectuation of the Settlement) release all Settled Claims as provided in the Stipulation.

9. Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless such person(s) has/have requested exclusion from the Class in a timely and proper manner as set forth in the Notice of Pendency of Class Action dated August 15, 2007.

10. Class Members who have requested exclusion from the Class shall not be entitled to receive any payment out of the Net Settlement Fund as described in the Stipulation and Settlement Notice.

11. All Class Members may enter appearances in the Action, at their own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will continue to be represented by Plaintiffs' Counsel, Berman DeValerio, 4280 Professional Center Drive, Suite 350, Palm Beach Gardens, Florida 33410.

12. The Court will consider comments and/or objections to the Settlement, the Plan of Allocation, or the award of attorneys' fees and reimbursement of expenses only if such comments or objections and any supporting papers are filed in writing with the Clerk of the Court, Clerk of the Circuit Court, Civil Division Thirteenth Judicial Circuit, 800 E. Twiggs Street, Tampa, Florida 33602, and copies of all such papers are received, no later than fourteen (14) days prior to the Settlement Fairness Hearing by each of the following: Michael J. Pucillo, Esq., Berman DeValerio, 4280 Professional Center Drive, Suite 350, Palm Beach Gardens, Florida 33410, on behalf of

Plaintiffs; and Edward A. Marod, Esq., Edward A. Marod, P.A., 400 S. Australian Avenue, Suite 750, West Palm Beach, Florida 33401, on behalf of Defendants. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the request for attorneys' fees and reimbursement of expenses are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Settlement, the Plan of Allocation, and/or counsel's application for an award of attorneys' fees and expenses and desire to present evidence at the Settlement Fairness Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. Any Class Member who does not object in this manner shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement, to any Final Judgment that may be entered, to any Fee and Expense Award to Plaintiffs' Counsel, and to the Plan of Allocation. Class members need not appear at the hearing or take any other action to indicate their approval.

13. Only Class Members shall have any rights with respect to approval of or objection to the Settlement, the Plan of Allocation or Plaintiffs' Counsel's request for Attorneys' Fees and Expenses.

14. To assist the Court in preparing for the Settlement Fairness Hearing, counsel may submit, no later than twenty (20) days prior to the Settlement Fairness Hearing, all briefs, affidavits or other documents related to the findings that this Court is required to make. Counsel may submit papers in response to any objections that may be filed no later than five (5) calendar days prior to the Settlement Fairness Hearing.

15. Pending final determination of whether the Settlement should be approved, the Plaintiffs, all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Settled Claims against any Released Party.

16. If: (a) the Settlement is terminated in accordance with the terms of the Stipulation; (b) any specified condition to the Settlement set forth in the Stipulation is not satisfied and the satisfaction of such condition is not waived in writing by Plaintiffs' Counsel and Defendants' Counsel; (c) the Court rejects, in any material respect, the Order and Final Judgment in substantially the form and content annexed to the Stipulation as Exhibit B and/or Plaintiffs' Counsel and Defendants' Counsel fail to consent to the entry of another form of order in lieu thereof; (d) the Court rejects the Stipulation, including any amendment thereto approved by Plaintiffs' Counsel and Defendants' Counsel; or (e) the Court approves the Stipulation, including any amendment thereto approved by Plaintiffs' Counsel and Defendants' Counsel, but such approval is reversed on appeal and such reversal becomes final by lapse of time or otherwise, then, in any such event, the Stipulation, including any amendment(s) thereof shall be null and void, of no further force or effect, and without prejudice to any party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity, and each party shall be restored to his, her or its respective position as it existed on September 9, 2008.

17. In the event the Settlement is disapproved or terminated in accordance with the terms of the Stipulation, the Escrow Agent(s) shall, within ten days of notice of disapproval or termination, refund the Cash Settlement Amount, plus all accrued interest thereon to KPMG LLP, except for any Taxes due, and/or Notice and administration expenses up to \$40,000 incurred in issuing notice to the Class.

18. The Court reserves the right to adjourn or continue the date of the Settlement Fairness Hearing and approve the Settlement with or without modification and with or without further notice to the Class. The Court further reserves the right to enter its Order and Final Judgment approving the Stipulation and dismissing the Complaint on the merits and with prejudice regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

19. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement, and any suit, action, proceeding or dispute arising out of or related to the Settlement.

DONE and ORDERED, in Chambers, in Tampa, Hillsborough County, Florida this _____ day of _____, 2009.

ORIGINAL SIGNED
CONFORMED COPY
JAN 22 2009

RALPH C. STODDARD
Honorable Ralph C. Stoddard
CIRCUIT JUDGE

Copies furnished to:

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