

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

**IN RE THORNBURG MORTGAGE, INC.
SECURITIES LITIGATION**

Case No. CIV 07-815JB/WDS

THIS DOCUMENT RELATES TO:

ALL ACTIONS

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation”) dated March 28, 2012 will be submitted to the United States District Court for the District of New Mexico (the “Court”) in the above-captioned action (the “Litigation”) pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court and the issuance of the Bankruptcy Court Order (as defined and described below), this Stipulation is entered into by and between (i) W. Allen Gage, individually and on behalf of J. David Wrather, Harry Rhodes, FFF Investments, LLC, Robert Ippolito, individually and as Trustee for the Family Limited Partnership Trust, and Nicholas F. Aldrich, Sr. (the “Lead Plaintiffs”); Betty L. Manning (“Manning”); John Learch (“Learch”); and Boilermakers Lodge 154 Retirement Plan (“Boilermakers”) (collectively with the Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the Class (as defined below); (ii) Garrett Thornburg, Larry A. Goldstone, and Clarence G. Simmons (the “Individual Defendants”); and (iii) Anne-Drue M. Anderson, David A. Ater, Joseph H. Badal, Eliot R. Cutler, Paul G. Decoff, Michael B. Jeffers, Ike Kalangis, Owen M. Lopez, Francis I. Mullin III, and Stuart C. Sherman (the “Dismissed Defendants” and together with the Individual Defendants, the “Settling Defendants”), by and through their respective

counsel in the Litigation.¹ Subject to the approval of the Court, the issuance of the Bankruptcy Court Order (as defined and described below), and certain limitations expressly provided herein, this Settlement is intended to settle and release all claims against the Settling Defendants and the other Released Parties (as defined below). This Settlement does not release any claims of the Plaintiffs and other members of the Class against the Non-Settling Defendants.²

WHEREAS, on August 21, 2007, a class action complaint alleging violations of the federal securities laws against Thornburg Mortgage, Inc. (“TMI”) and certain of the other Settling Defendants, styled *Slater v. Thornburg Mortgage, Inc. et al.*, CIV 07-815, was filed in the United States District Court for the District of New Mexico (the “First Action”). Thereafter, one “Related Action” was filed in the United States District Court for the District of New Mexico, and three “Related Actions” were filed in the United States District Court for the Southern District of New York and transferred to the District of New Mexico as follows:

Case Name	Date Filed	S.D.N.Y. Case Number	D.N.M. Case Number
<i>Gonsalves v. Thornburg et al.</i>	September 7, 2007	1:07-cv-07897	CIV 07-1069
<i>Smith v. Thornburg Mortgage, Inc. et al.</i>	September 20, 2007	1:07-cv-08206	CIV 07-1115
<i>Sedlmyer v. Thornburg Mortgage, Inc. et al.</i>	September 24, 2007	1:07-cv-08315	CIV 07-1069
<i>Syndman v. Thornburg Mortgage, Inc. et al.</i>	October 9, 2007	N/A	CIV 07-1025

¹ The following defendants in the Litigation are not parties to this Stipulation, and are referred to collectively as the “Underwriter Defendants” or the “Non-Settling Defendants”: (i) AG Edwards & Sons, Inc.; (ii) BB&T Capital Markets; (iii) UBS Securities, LLC; (iv) Citigroup Global Markets, Inc.; (v) Friedman, Billings, Ramsey & Co., Inc.; (vi) Oppenheimer & Company, Inc.; (vii) RBC Dain Rauscher Corp.; (viii) Stifel, Nicolaus & Company, Inc.; and (ix) Bear, Stearns & Co., Inc.

WHEREAS, on October 22, 2007, several class members filed motions with this Court seeking to consolidate the Related Actions with the First Action and for appointment as Lead Plaintiff and for approval of Lead Counsel.

WHEREAS, on February 8, 2008, the Court consolidated the Related Actions with the First Action under the caption: *In re Thornburg Mortgage, Inc. Securities Litigation*, Case No. CIV 07-815 JB/WDS and appointed: (i) W. Allen Gage, individually and on behalf of J. David Wrather, Harry Rhodes, FFF Investments, LLC, Robert Ippolito, individually and as Trustee for the Family Limited Partnership Trust, and Nicholas F. Aldrich, Sr., individually and on behalf of the Aldrich Family as Lead Plaintiffs; (ii) the law firms of Schiffrin Barroway Topaz & Kessler, LLP (n/k/a Kessler Topaz Meltzer & Check, LLP) and Wolf Haldenstein Adler Freeman & Herz LLP as Co-Lead Counsel for Lead Plaintiffs; and (iii) the Branch Law Firm as Liaison Counsel.

WHEREAS, on May 27, 2008, Lead Plaintiffs, Manning and Learch filed the Consolidated Class Action Complaint with the Court, alleging: (i) Violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 Promulgated Thereunder Against TMI, the Individual Defendants, Joseph H. Badal, and Paul G. Decoff (First Claim); (ii) Violation of Section 20(a) of the Exchange Act Against the Individual Defendants, Joseph H. Badal, and Paul G. Decoff (Second Claim); (iii) Violation of Section 11 of the Securities Act of 1933 (the "Securities Act") Against TMI, the Individual Defendants, the Dismissed Defendants (excepting Michael B. Jeffers), and the Underwriter Defendants (Third Claim); (iv) Violation of Section 12(a)(2) of the Securities Act Against TMI, the Individual Defendants, the Dismissed Defendants (excepting Mr. Jeffers), and the Underwriter Defendants (Fourth Claim); and (v) Violation of Section 15 of the Securities Act Against the Individual

² All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in paragraph A below.

Defendants, Joseph H. Badal, and Paul G. Decoff (Fifth Claim).

WHEREAS, on September 22, 2008, the Individual Defendants and the Dismissed Defendants (excepting Michael B. Jeffers) filed motions to dismiss the Consolidated Class Action Complaint. On December 22, 2008, Lead Plaintiffs, Manning and Learch opposed the motions to dismiss.

WHEREAS, on January 27, 2009, Lead Plaintiffs, Manning and Learch filed a motion for leave to file an amended consolidated class action complaint to add an additional representative plaintiff, Boilermakers.

WHEREAS, on April 22, 2009, the Court heard oral argument on the motions to dismiss.

WHEREAS, on May 1, 2009, TMI filed a petition for voluntary Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Maryland (the "Bankruptcy Court"). *See In re: TMST, Inc. f/k/a Thornburg Mortgage, Inc., et al.*, Case No. 09-17787. On May 5, 2009, TMI filed a Suggestion of Bankruptcy in this Court asserting that its bankruptcy filing operated as an automatic stay of judicial proceedings against it under 11 U.S.C. §§ 362(a)(1) and 362(a)(3).³

WHEREAS, by Amended Memorandum Opinion and Order dated January 27, 2010, the Court (i) dismissed all claims asserted under the Securities Act; (ii) dismissed the claims asserted under Section 10(b) of the Exchange Act, with the exception of certain claims asserted against Mr. Goldstone; (iii) dismissed all claims asserted under Section 20(a) of the Exchange Act, with the exception of those claims asserted against Mr. Simmons, Mr. Goldstone, and Mr. Decoff; and (iv) reserved judgment as to the Section 10(b) claims against TMI and the Section 20(a) claims against Mr. Simmons, Mr. Goldstone and Mr. Decoff. A separate Memorandum

Opinion and Order also issued on January 27, 2010 dismissed all claims asserted against the Underwriter Defendants.

WHEREAS, on February 5, 2010, Plaintiffs filed a Motion for Clarification of the Court's January 27, 2010 Opinions and Orders, seeking permission to file a motion for leave to amend their pleading and also requesting that the Court revisit the conclusions of its January 27, 2010 opinions and orders.

WHEREAS, on February 27, 2010, the Court issued a memorandum opinion and order granting the motion filed by Lead Plaintiffs, Manning and Leach for leave to file an amended consolidated class action complaint to add an additional representative plaintiff, Boilermakers.

WHEREAS, on July 5, 2010, the Court issued a memorandum opinion and order granting Plaintiffs' Motion for Clarification of the Court's January 27, 2010 Opinions and Orders.

WHEREAS, on July 9, 2010, Plaintiffs moved for leave to amend the Consolidated Class Action Complaint and for reconsideration of the Court's January 27, 2010 opinions and orders.

WHEREAS, on March 31, 2011, the Court entered an order granting in part and denying in part Plaintiffs' Omnibus Motion for (i) Leave to Amend the Consolidated Class Action Complaint and (ii) for Reconsideration of the Court's January 27, 2010 Memorandum Opinions and Orders Granting in Part and Denying in Part Defendants' Motions to Dismiss the Consolidated Amended Complaint.

WHEREAS, on June 2, 2011, the Court entered a memorandum opinion fully detailing the basis for its order dated March 31, 2011, and further ordered that it had reconsidered its January 27, 2010 Memorandum Opinions and Orders and would make no substantive change to its decisions, except for its decision to reserve ruling on the dismissal of the Plaintiffs' Section

³ The following Thornburg entities are also parties to the TMI bankruptcy: TMST Acquisition Subsidiary, Inc. f/k/a Thornburg Acquisition Subsidiary, Inc. (Case No.: 09-17790); TMST Home Loans, Inc. f/k/a Thornburg Mortgage

20(a) claims against defendants Larry A. Goldstone, Clarence G. Simmons, and Paul G. Decoff. The Court ruled that it would not dismiss the Section 20(a) claims against Mr. Goldstone and Mr. Simmons, but that it would dismiss the Section 20(a) claim against Mr. Decoff. The Court also granted the Plaintiffs leave to file an amended complaint, because the amendment might cure deficiencies in the Plaintiffs' allegations establishing Section 20(a) liability against Mr. Thornburg.

WHEREAS, on June 14, 2011, Plaintiffs filed their Consolidated Amended Class Action Complaint (the "Complaint") with the Court, alleging: (i) Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Against TMI and the Individual Defendants, Joseph H. Badal, and Paul G. Decoff (First Claim); (ii) Violation of Section 20(a) of the Exchange Act Against the Individual Defendants, Joseph H. Badal, and Paul G. Decoff (Second Claim); (iii) Violation of Section 11 of the Securities Act Against TMI, the Individual Defendants, the Dismissed Defendants (excepting Michael B. Jeffers), and the Underwriter Defendants (Third Claim); and (iv) Violation of Section 15 of the Securities Act Against the Individual Defendants, Joseph H. Badal, and Paul G. Decoff (Fourth Claim).

WHEREAS, on March 2, 2012, Plaintiffs voluntarily dismissed TMI from the Litigation with prejudice.

WHEREAS, Plaintiffs and the Settling Defendants (together, the "Settling Parties"), by and through their counsel, began discussing a possible resolution of the Litigation. The Settling Parties' settlement negotiations continued over the course of months, with the Settling Parties reaching an agreement in principle to settle the Litigation in January, 2012.

WHEREAS, the Individual Defendants and the Dismissed Defendants deny any

wrongdoing whatsoever and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Settling Defendants with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that any of the Settling Defendants have asserted. Nonetheless, the Settling Defendants are entering into this Stipulation to eliminate the burden and expense of further litigation and the risk of not prevailing at trial and, therefore, have determined that it is desirable that the Litigation fully and finally be settled in the manner and upon the terms and conditions set forth in this Stipulation.

WHEREAS, the Settling Parties do not dispute that the Litigation has been filed by Plaintiffs and defended by the Individual Defendants and the Dismissed Defendants in good faith and with adequate basis in fact under Federal Rule of Civil Procedure 11, and that the Litigation is being voluntarily settled after comprehensive and extensive good faith negotiations and on advice of counsel.

WHEREAS, Co-Lead Counsel have conducted an investigation relating to the claims and the underlying events and transactions alleged in the Litigation. Co-Lead Counsel have analyzed the facts and the law applicable to the remaining claims of the Plaintiffs against the Settling Defendants and the potential defenses thereto, which in the Plaintiffs' judgment has provided an adequate and satisfactory basis for the evaluation of an agreement to settle, as described herein.

WHEREAS, the Settling Parties engaged in settlement discussions, exchanged information on their respective positions, and have conducted extensive discussions and arm's-length and good faith negotiations with each other with respect to a compromise and settlement of the Litigation.

WHEREAS, based upon their investigation and negotiations with the Settling

Defendants, Plaintiffs, with the advice of Co-Lead Counsel, have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate as to the Class, and in the Class Members' best interests, and have agreed to settle the claims raised in the Litigation pursuant to the terms and provisions of this Stipulation, after considering: (i) the benefits that the members of the Class will receive from settlement of the Litigation, (ii) the attendant risks of going forward with litigation, (iii) the difficulties, expense and delays inherent in such Litigation; and (iv) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

AND WHEREAS, the Settling Parties conditionally stipulate, for the limited purposes of this Stipulation, and for the sole purpose of the Settlement, that the Litigation shall be certified for class treatment under Rule 23 of the Federal Rules of Civil Procedure and that the stipulated settlement class consists of Class Members as defined below. The Individual Defendants' and the Dismissed Defendants' conditional stipulation to the creation of a settlement class is contingent upon the completion of all terms of this Stipulation, the Court's final approval of the Settlement and the occurrence of the Effective Date as set forth in paragraph J.1. If this Stipulation or any of the orders contemplated herein are for any reason not finally approved or entered, or if this Stipulation is otherwise terminated, the Individual Defendants and the Dismissed Defendants reserve the right to assert all of their objections and defenses to certification of any class, and Plaintiffs will not offer the Individual Defendants' and Dismissed Defendants' willingness to make any of the agreements set forth herein in support of a motion to certify any class for trial purposes.

NOW THEREFORE, without any admission or concession on the part of the Plaintiffs of any lack of merit of the Litigation whatsoever, and without any admission or concession on the

part of the Individual Defendants and the Dismissed Defendants of any liability or wrongdoing or lack of merit in their defenses whatsoever, it is hereby

STIPULATED AND AGREED, by and among the Settling Parties, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Settling Parties from the Settlement herein set forth, that this case shall be settled (except as provided herein with respect to the Non-Settling Defendants), and dismissed with prejudice and (except as hereafter provided) without costs as to Plaintiffs, the Individual Defendants, or the Dismissed Defendants, subject to the approval of the Court and the issuance of the Bankruptcy Court Order, upon and subject to the following terms and conditions:

A. CERTAIN DEFINITIONS

As used in this Stipulation, and any exhibits attached hereto and made a part hereof, the following terms have these meanings:

1. "Attorneys' Fees and Expenses" means the attorneys' fees and expenses awarded by the Court to Co-Lead Counsel, to be paid from the Gross Settlement Fund.
2. "Authorized Claimant" means any Claimant who submits a valid Proof of Claim and Release to the Claims Administrator and whose claim for recovery has been allowed pursuant to the terms of this Stipulation or by order of the Court.
3. "Bankruptcy Court" means the United States Bankruptcy Court for the District of Maryland, acting in *In re: TMST, Inc. f/k/a Thornburg Mortgage, Inc., et al.*, Case Nos. 09-17787, 17790, 17791, 17792 (Jointly Administered under Case No. 09-17787).
4. "Bankruptcy Court Order" means an order to be entered by the Bankruptcy Court modifying the automatic stay to allow funding of the Settlement Amount from the D&O insurance proceeds, substantially in the form set forth in Exhibit F.

5. “Claimant” means any Person that submits a Proof of Claim and Release to the Claims Administrator seeking to be potentially eligible to share in the proceeds of the Net Settlement Fund.

6. “Claims Administrator” means Strategic Claims Services (“SCS”), to be appointed by the Court to administer the Settlement, disseminate notice to the Class, and review and process Proofs of Claim, among other work.

7. “Class” and “Class Members” means, for purposes of this Settlement, all persons and entities who purchased or otherwise acquired TMI common stock and/or preferred stock in the open market and/or in or traceable to the Offerings during the Class Period and who were damaged thereby. Excluded from the Class are:

a. TMI, the Defendants, the director and officers of TMI, members of the immediate families and their legal representatives, heirs, successors or assigns, and any entity in which any of the Defendants have or had a controlling interest; and

b. All Persons who file valid and timely requests for exclusion from the Class in accordance with the requirements set forth in the Court’s Preliminary Approval Order and Notice, in substantially the form as set forth in and attached as Exhibit A and Exhibit C hereto.

8. “Class Distribution Order” means the order entered by the Court, upon application of Co-Lead Counsel following the occurrence of the events identified in paragraph D.12. below, which authorizes and directs the Claims Administrator to distribute the Net Settlement Fund to the Class.

9. “Class Period” means the period between April 19, 2007 and March 19, 2008, inclusive.

10. “Co-Lead Counsel” means the law firms of Kessler Topaz Meltzer & Check, LLP and Wolf Haldenstein Adler Freeman & Herz LLP.
11. “Complaint” means the Consolidated Amended Class Action Complaint dated June 14, 2011.
12. “Court” means the United States District Court for the District of New Mexico and The Honorable James O. Browning, United States District Judge for the District of New Mexico, or any successor judge appointed to this case.
13. “Custodial Account” means the account in which the Settlement Amount shall be deposited and held.
14. “Defendants” means, collectively, the Individual Defendants, the Dismissed Defendants and the Non-Settling Defendants.
15. “Dismissed Defendants” means Anne-Drue M. Anderson, David A. Ater, Joseph H. Badal, Eliot R. Cutler, Paul G. Decoff, Michael B. Jeffers, Ike Kalangis, Owen M. Lopez, Francis I. Mullin III, and Stuart C. Sherman.
16. “Effective Date” means the date on which all of the conditions set forth in paragraph J.1. herein shall have been satisfied.
17. “Final,” with respect to an order or judgment, including the Bankruptcy Court Order and the Order and Final Judgment, means the later of: (i) if there is an appeal from the order or judgment, the date of final affirmance on appeal and the expiration of the time for any further judicial review whether by appeal, reconsideration or a petition for a *writ of certiorari* and, if *certiorari* is granted, the date of final affirmance of the order or judgment following review pursuant to the grant; or (ii) the date of final dismissal of any appeal from the order or judgment or the final dismissal of any proceeding on *certiorari* to review the order or

judgment; or (iii) the expiration of the time for the filing or noticing of any appeal from the order or judgment (or, if the date for taking an appeal or seeking review of the order or judgment shall be extended beyond this time by order of the court, by operation of law or otherwise, or if such extension is requested, the date of expiration of any extension if any appeal or review is not sought).

18. “Financial Institution” means the federally-insured financial institution where the Custodial Account shall be established in accordance with paragraph C.2.

19. “Gross Settlement Fund” or “Settlement Fund” means the Settlement Amount plus all interest earned thereon, as is established after the payment of the Settlement Amount in accordance with paragraph C.1.

20. “Individual Defendants” means Garrett Thornburg, Larry A. Goldstone, and Clarence G. Simmons.

21. “Individual Defendants’ and Dismissed Defendants’ Counsel” or “Settling Defendants’ Counsel” means the law firms of Wilmer Cutler Pickering Hale and Dorr LLP and Tax, Estate & Business Law, N.A., LLC (counsel for Larry A. Goldstone and Clarence G. Simmons); Boies, Schiller & Flexner, LLP, and Thompson, Hickey, Cunningham, Clow & April, P.A. (counsel for Anne-Drue M. Anderson, David A. Ater, Eliot R. Cutler, Ike Kalangis, Francis I. Mullin III, and Garrett Thornburg); and Freedman Boyd Hollander Goldberg Ives & Duncan, P.A (counsel for Joseph H. Badal, Paul G. Decoff, Michael B. Jeffers, Owen M. Lopez, and Stuart C. Sherman).

22. “Insurer” means the Individual Defendants’ and the Dismissed Defendants’ directors’ and officers’ liability insurer, Federal Insurance Company.

23. “Lead Plaintiffs” means W. Allen Gage, individually and on behalf of J.

David Wrather; Harry Rhodes; FFF Investments, LLC; Robert Ippolito, individually and as Trustee for the Family Limited Partnership Trust; and Nicholas F. Aldrich, Sr.

24. “Liaison Counsel” means the Branch Law Firm.

25. “Net Settlement Fund” means the Gross Settlement Fund, less:

- a. Taxes, if any;
- b. Attorneys’ Fees and Expenses; and
- c. Notice and Administration Expenses.

26. “Non-Settling Defendants” or the “Underwriter Defendants” means AG Edwards & Sons, Inc.; BB&T Capital Markets; UBS Securities, LLC; Citigroup Global Markets, Inc.; Friedman, Billings, Ramsey & Co., Inc.; Oppenheimer & Company, Inc.; RBC Dain Rauscher Corp.; Stifel, Nicolaus & Company, Inc.; and Bear, Stearns & Co., Inc.

27. “Notice” shall mean the Notice of Pendency of Class Action, Proposed Settlement, Settlement Fairness Hearing and Motion for Attorneys’ Fees and Expenses substantially in the form attached hereto as Exhibit C.

28. “Notice and Administration Expenses” means all costs, fees and expenses incurred (whether or not yet paid) in connection with (i) providing notice to the Class; (ii) administering the claims process, including distribution of the Net Settlement Fund; and (iii) any expenses incurred in connection with the Custodial Account, all of which shall be paid from the Gross Settlement Fund; provided, however, that none of these expenses shall be deemed to include Attorneys’ Fees and Expenses.

29. “Offerings” means the May 2007 Offering, June 2007 Offering, September 2007 Offering, and January 2008 Offerings as described in the Consolidated Amended Class Action Complaint dated June 14, 2011.

30. “Order and Final Judgment” means the Order and Final Judgment entered by the Court, finally approving the Settlement and dismissing the Litigation as against the Individual Defendants and the Dismissed Defendants with prejudice and without costs to any party, substantially in the form set forth hereto as Exhibit B.

31. “Person” means any individual, corporation, partnership, limited liability corporation or partnership, limited partnership, professional corporation, association, affiliate, joint stock company, joint venture, trust, estate, unincorporated association, government or any political subdivision or agency thereof, and any other business, legal or political entity and, as applicable their/its respective spouses, heirs, predecessors, successors, representatives, or assignees.

32. “Plaintiffs” means Allen Gage, individually and on behalf of J. David Wrather, Harry Rhodes, FFF Investments, LLC, Robert Ippolito, individually and as Trustee for the Family Limited Partnership Trust; Nicholas F. Aldrich, Sr.; Betty L. Manning; John Learch; and Boilermakers Lodge 154 Retirement Plan.

33. “Plaintiffs’ Counsel” means Co-Lead Counsel, Liaison Counsel and all legal counsel who, at the direction and under the supervision of Co-Lead Counsel, performed work on behalf of the Plaintiffs.

34. “Plan of Allocation” means the plan for allocating the Net Settlement Fund (in substantially the form as set forth in Exhibit C, the Notice).

35. “Preliminary Approval Order” means the order preliminarily approving the Settlement and directing notice thereof to the Class, to be entered by the Court substantially in the form attached hereto as Exhibit A.

36. “Proof of Claim” means the Proof of Claim and Release form,

substantially in the form attached hereto as Exhibit D, that a Claimant must complete should that Claimant seek to be potentially eligible to share in the proceeds of the Net Settlement Fund.

37. “Released Parties” means TMI, the Individual Defendants, the Dismissed Defendants, and any of their current or former, subsidiaries, affiliates, partners, joint ventures, officers, directors, principals, shareholders, members, agents (acting in their capacity as agents), employees, attorneys, insurers, including the Insurer, reinsurers, advisors, accountants, associates and/or any other individual or entity in which any of TMI, the Individual Defendants, or the Dismissed Defendants has a controlling interest or which is related to or affiliated with any of TMI, the Individual Defendants, or the Dismissed Defendants and the current or former legal representatives, heirs, successors in interest or assigns of any of TMI, the Individual Defendants, or the Dismissed Defendants; provided, however, that “Released Parties” does not include any of the Non-Settling Defendants, nor any of their respective parents, successors, subsidiaries, and affiliates and any entity in which any of them have or had a controlling interest and the officers and directors thereof.

38. “Settled Claims” means any and all claims, debts, demands, liabilities, rights and causes of action of every nature and description whatsoever (including but not limited to any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims (as defined herein), (i) that have been asserted in the Litigation by the Plaintiffs and/or Class Members or any of them against any of the Released Parties; or (ii) that could have been alleged, asserted or

contended in any forum by Plaintiffs and /or Class Members or any of them, or the successors and assigns of any of them against the Released Parties which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint (or any preceding complaints) and which relate to the purchase or acquisition of TMI common stock and/or preferred stock in the open market and/or in or traceable to the Offerings during the Class Period; provided, however, that Settled Claims do not include (i) any claims to enforce any of the terms of this Settlement, and any claims that could be asserted in response to such a claim to enforce or (ii) any claims against the Non-Settling Defendants.

39. “Settled Defendants’ Claims” means any and all claims, debts, demands, liabilities, rights and causes of action of every nature and description whatsoever (including but not limited to any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known and Unknown Claims (as defined herein), (i) that have been asserted in the Litigation by the Released Parties or any of them against the Plaintiffs, any Class Member or any of their attorneys or (ii) that could have been alleged, asserted or contended in any forum by the Released Parties, or the successors and assigns of any of them against the Plaintiffs, any Class Member or any of their attorneys which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint (or any preceding complaints) and which relate to the purchase or acquisition of TMI common stock and/or preferred stock in the open

market and/or in or traceable to the Offerings during the Class Period; provided, however, that Settled Defendants' Claims do not include (i) any claims to enforce any of the terms of this Settlement, and any claims that could be asserted in response to such a claim to enforce or (ii) any claims against the Non-Settling Defendants.

40. "Settlement" means the settlement memorialized in this Stipulation.

41. "Settlement Amount" means \$2,000,000 in cash.

42. "Settlement Fund Administrator" means the Financial Institution or other Person designated by Co-Lead Counsel to be the administrator of the Settlement Fund, as that term is used in Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder.

43. "Settlement Hearing" means the hearing to be held by the Court to determine: (i) whether the proposed Settlement should be approved as fair, reasonable and adequate; (ii) whether all Settled Claims should be dismissed with prejudice; (iii) whether an order approving the Settlement should be entered thereon; (iv) whether the Plan of Allocation of the Net Settlement Fund should be approved; and (v) whether the application(s) for an award of Attorneys' Fees and Expenses should be approved.

44. "Settling Defendants" means, collectively, the Individual Defendants and the Dismissed Defendants.

45. "Settling Parties" means, collectively, the Plaintiffs, on behalf of themselves and on behalf of Class Members, the Individual Defendants, and the Dismissed Defendants.

46. "Summary Notice" means the Summary Notice of Pendency and Proposed Class Action Settlement to be published substantially in the form attached hereto as Exhibit E.

47. “Unknown Claims” means any and all Settled Claims which Plaintiffs and/or any member of the Class does not know or suspect to exist in his, her or its favor as of the Effective Date, which if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement, and any Settled Defendants’ Claims which any Released Party does not know or suspect to exist in his, her or its favor as of the Effective Date, which if known by him, her or it might have affected his or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendants’ Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Plaintiffs, the Individual Defendants, and Dismissed Defendants shall expressly waive, and each Class Member and Released Party shall be deemed to have waived and by operation of the Order and Final Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” The Settling Parties acknowledge, and Class Members and Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Settled Claims and Settled Defendants’ Class was separately bargained for and was a key element of the Settlement.

B. SCOPE AND EFFECT OF SETTLEMENT

1. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Litigation (except as provided herein with respect to the Non-Settling Defendants) and any and all Settled Claims as against all Released Parties and any and all Settled Defendants’ Claims as against the Plaintiffs, the Class Members, or their attorneys.

2. Pursuant to the Order and Final Judgment, upon the Effective Date of this Settlement, the Plaintiffs and all Class Members, on behalf of themselves, their current and former heirs, executors, administrators, successors, and assigns, shall be deemed to have released and to have forever relinquished and discharged each and every one of the Settled Claims as against the Released Parties, whether or not such Class Members execute and deliver a Proof of Claim.

3. Pursuant to the Order and Final Judgment, upon the Effective Date of this Settlement, each of the Released Parties, on behalf of themselves, their current and former heirs, executors, administrators, successors, and assigns, shall be deemed to have released and to have forever relinquished and discharged each and every one of the Settled Defendants' Claims as against the Plaintiffs, any of the Class Members, or their attorneys.

4. Pursuant to the Order and Final Judgment, upon the Effective Date of this Settlement, the Settling Parties and anyone acting or purporting to act for any of them, shall be permanently and forever enjoined from prosecuting, attempting to prosecute, or assisting others in the prosecution of, any Settled Claims and Settled Defendants' Claims.

5. The Order and Final Judgment shall include a bar order as provided by 15 U.S.C. § 78u-4(f)(7) and as broad as permitted by law, that bars all claims by any Person against the Individual Defendants, the Dismissed Defendants, or the Released Parties, or by any of them against any Persons, for contribution, indemnification, or under any other theory, based upon, or related to any fact or circumstance involved in or arising out of the Litigation.

C. THE SETTLEMENT CONSIDERATION

1. Subject to the terms of this Stipulation, no later than fifteen (15) business days after the later of: (i) the entry of the Preliminary Approval Order; (ii) the Bankruptcy Court Order becoming Final; or (iii) Co-Lead Counsel providing Settling Defendants' Counsel with the

information needed to deposit the Settlement Amount, the Settling Defendants shall pay or cause to be paid the Settlement Amount, which shall be deposited into the Custodial Account as set forth below. Plaintiffs recognize and acknowledge that the Individual Defendants and the Dismissed Defendants are not personally liable to pay any of the Settlement Amount into the Custodial Account under this Stipulation. However, if the Settlement Amount is not paid in accordance with this paragraph, none of the Settling Defendants will get the releases provided for in this Stipulation and the terms of the Settlement will be null and void.

2. No later than fifteen (15) business days after the later of: (i) the entry of the Preliminary Approval Order; (ii) the Bankruptcy Court Order becoming Final; or (iii) Co-Lead Counsel providing Settling Defendants' Counsel with the information needed to deposit the Settlement Amount, Co-Lead Counsel shall establish at a federally-insured financial institution (the "Financial Institution") an account (the "Custodial Account") for the purpose of holding the Settlement Amount plus any interest earned thereon (the "Settlement Fund"). The Custodial Account shall be governed by a Custodial Account Agreement in a form to be approved by Settling Defendants and the Insurer, which approval shall not be unreasonably withheld. Further, Co-Lead Counsel shall select the Financial Institution with approval of the Insurer, which approval shall not be unreasonably withheld. The Settlement Fund's assets shall include and retain all income and interest earned therefrom, and the monies in the Settlement Fund shall be considered a common fund created as a result of the Litigation. Until the Effective Date, Co-Lead Counsel, or the Financial Institution at Co-Lead Counsel's instruction, shall provide copies of any Custodial Account statements to Settling Defendants as such statements are regularly issued, either electronically or in hard copy, by the Financial Institution.

3. Co-Lead Counsel or other Person designated by Co-Lead Counsel shall be

the administrator of the Settlement Fund, as that term is used in Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder (the "Settlement Fund Administrator"). The Settlement Fund Administrator shall: (i) obtain and provide Settling Defendants' Counsel with the federal taxpayer identification number and Form W-9 for the Settlement Fund, wire transfer instructions, and any other information necessary for the Insurer to effectuate the payment of funds described in paragraph C.1.; (ii) prepare and file all income tax and information returns required to be filed with respect to any interest or other income earned by the Settlement Fund, and provide the Settling Parties with copies of such returns; and (iii) from the Settlement Fund, pay all federal, state, or local taxes that may apply to interest or income earned by the Settlement Fund, and provide the Settling Parties with documentation of all such payments.

4. The Settlement Fund shall be used to pay: (i) any Taxes (as defined below); (ii) Notice and Administration Expenses; and (iii) Attorneys' Fees and Expenses. At a time following the Effective Date and pursuant to an order of the Court, the balance remaining in the Settlement Fund (the "Net Settlement Fund"), after all administrative determinations are made by the Claims Administrator with regard to the Proofs of Claim submitted by Class Members, shall be distributed to the Authorized Claimants as set forth in paragraph F. below.

5. The Settlement Fund shall be deemed to be in the custody of the Court to be held exclusively for the purpose of effecting the Settlement until such time as the assets of the Settlement Fund are disbursed pursuant to the Stipulation and/or further order of the Court. The Settlement Fund Administrator shall not disburse the Gross Settlement Fund, or any portion thereof, except as provided in this Stipulation, or upon Order of the Court.

6. Assets held in the Settlement Fund shall be invested only in short term

United States Treasury securities and/or securities of United States agencies backed by the full faith and credit of the United States Treasury, and/or in a demand deposit account that qualifies for unlimited FDIC insurance coverage or for amounts less than \$250,000, and/or in an interest bearing savings account insured by the FDIC. The Individual Defendants, the Dismissed Defendants and the Insurer will take no position on and will have no rights with regard to or liability for the management, investment or distribution of the Gross Settlement Fund or Net Settlement Fund or any losses suffered by, or fluctuations in the value of them; provided, however, that nothing herein limits the Individual Defendants', the Dismissed Defendants', and the Insurer's rights to receive repayment of the Gross Settlement Fund, less any Notice and Administration Expenses and/or any Taxes if the Effective Date does not occur and the Settlement does not become Final. If applicable, the Settlement Fund Administrator will maintain in liquid investments such amounts of the Gross Settlement Fund as it deems necessary to pay the Notice and Administration Expenses.

7. The Notice and Administration Expenses shall be paid from the Gross Settlement Fund, on Co-Lead Counsel's review and approval, and without further order of the Court or approval of the Settling Defendants, up to an amount of \$100,000.00. In the event that the Settlement is not consummated, money paid or incurred for this purpose shall not be returned or paid to the Settling Defendants, the Insurer, and/or such other persons or entities funding the Settlement.

8. All other costs reasonably incurred by the Financial Institution and/or the Settlement Fund Administrator arising from the establishment and maintenance of the Settlement Fund, pursuant to cost schedules approved by Settling Defendants, shall be considered a cost of administration of the Settlement, shall be paid solely from the Settlement Fund, and shall be

timely paid without further order of the Court.

9. After the Effective Date, Individual Defendants, Dismissed Defendants, the Insurer and/or such other persons and or entities funding the Settlement shall have no interest in the Gross Settlement Fund or in the Net Settlement Fund and no funds will be returned to the Individual Defendants, the Dismissed Defendants, the Insurer or such other persons and or entities funding the Settlement. (The Settlement is non-recapture, i.e., it is not a claims-made settlement.)

D. ADMINISTRATION AND CALCULATION OF CLAIMS, FINAL AWARDS AND DISTRIBUTION OF NET SETTLEMENT FUND

1. The Claims Administrator shall administer the Settlement, including but not limited to calculating the claims of Class Members and overseeing distribution of the Net Settlement Fund, under the supervision of Co-Lead Plaintiffs' Counsel, and subject to appeal to, and jurisdiction of, the Court. Neither the Released Parties, nor the Insurer shall have any rights with regard to or liability, obligation or responsibility for the administration of the Settlement or the distribution of the Net Settlement Fund, except for the Settling Defendants' obligation to pay or cause to be paid the Settlement Amount as provided in paragraph C.1. herein, and shall not comment thereon or on the Claims Administrator's determinations on Proofs of Claim.

2. Each Class Member wishing to participate in the Settlement shall be required to submit a Proof of Claim (in substantially the form set forth in Exhibit D, in which, *inter alia*, each Class Member acknowledges in writing that he, she, or it has released all Settled Claims against all Released Parties as set forth in this Stipulation and the Order and Final Judgment), signed under penalty of perjury by the beneficial owner(s) of the TMI securities that are the subject of the Proof of Claim or by someone with documented authority to sign for the beneficial owners as specified in the instructions accompanying the Proof of Claim.

3. All Proofs of Claim must be postmarked or received within the time prescribed in the Preliminary Approval Order (and specified in the Notice) unless otherwise ordered by the Court. Any Class Member who fails to submit a properly completed Proof of Claim within the period authorized by the Court shall be forever barred from receiving any payments pursuant to this Stipulation or from the Net Settlement Fund (unless, by Order of the Court, a later-submitted Proof of Claim by such Class Member is approved), but will in all other respects be subject to the provisions of this Stipulation and the Order and Final Judgment, including, without limitation, the release of the Settled Claims and dismissal of the Litigation. A Proof of Claim shall be deemed to have been submitted when posted, if received with a legible postmark indicated on the envelope and if mailed by first-class or other posted mail and addressed in accordance with the instructions thereon; in all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator.

4. Each Proof of Claim shall be submitted to the Claims Administrator who shall determine, in accordance with this Stipulation and any applicable orders of the Court, the extent, if any, to which each claim should be allowed, subject to appeal to the Court.

5. Co-Lead Counsel shall have the right, but not the obligation, to waive what they deem to be a technical defect in any Proofs of Claim, in the interest of achieving substantial justice; provided, however, that the failure to sign the written acknowledgment referred to in paragraph D.2. is never to be deemed a technical defect, nor a defect otherwise subject to waiver by Co-Lead Counsel.

6. Proofs of Claim that do not meet the filing requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the Claimant in order to allow him/her/it to remedy curable deficiencies in the Proof of Claim

submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all Claimants whose Proofs of Claim it proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose claims are to be rejected has the right to review by the Court if the Claimant so desires and complies with the requirements of paragraph D.7. below.

7. If any Claimant whose claim has been rejected in whole or in part wishes to contest such rejection, the Claimant must, within thirty (30) calendar days after the date of mailing of the notice required by paragraph D.6. above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's ground for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Co-Lead Counsel shall thereafter present the request for review to the Court.

8. The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court for its approval.

9. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Class Member and the validity and amount of the Claimant's claim. No discovery shall be allowed on the merits of the Litigation or Settlement in connection with processing of the Proofs of Claim, nor shall any discovery from or of the *Individual Defendants, the Dismissed Defendants, the Released Parties, or the Insurer* be allowed on any topic.

10. Payment pursuant to this Stipulation shall be deemed final and conclusive

against all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but are otherwise bound by all of the terms of the Order and Final Judgment entered in the Litigation and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

11. All proceedings with respect to the administration, processing and determination of claims described by this paragraph of this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the exclusive jurisdiction of the Court.

12. The Net Settlement Fund shall be distributed to Authorized Claimants only after the Effective Date and after: (i) all claims have been processed, and all Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to appeal to the Court such rejection or disallowance; (ii) all objections with respect to all rejected or disallowed claims have been resolved by the Court, and all appeals therefrom have been resolved or the time therefore has expired; and (iii) all matters with respect to Attorneys' Fees and Expenses and Notice and Administration Expenses have been resolved by the Court, and all appeals therefrom have been resolved or the time therefore has expired; and (iv) all Notice and Administration Expenses have been paid or set aside; provided, however, that the Settling Parties reserve the right to agree to go forward with a distribution pending an appeal or other ancillary proceeding if they choose and subject to Court approval.

13. If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net

Settlement Fund cash their distribution checks and in no event earlier than one (1) year after the initial distribution of such funds, Lead Plaintiffs may file a motion with the Court, with notice to all Parties, seeking permission to either perform a second distribution, if economically feasible, ~~or contribute any balance remaining in the Net Settlement Fund to Center for Civic Values (Albuquerque, New Mexico).~~

*removed
pursuant to
Court Order*

E. TAX TREATMENT AND PAYMENTS

1. The Settlement Fund shall be structured and managed to qualify as a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder, and no Settling Party shall take any position in any filing or before any tax authority that is inconsistent with such treatment. In addition, Plaintiffs and, as required, the Individual Defendants and the Dismissed Defendants, shall jointly and timely make such elections as are necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Fund Administrator to timely and properly prepare, and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

2. The Settlement Fund Administrator shall be authorized to retain a certified public accounting firm for purposes of preparing and filing any income tax and information returns on behalf of the Settlement Fund.

3. The following costs shall be considered a cost of administration of the Settlement, shall be paid solely from the Settlement Fund, and shall be timely paid without further order of the Court: (i) all taxes on income and interest earned by the Settlement Fund, as provided for in paragraph C.3.; and (ii) all reasonable tax-related expenses incurred in

connection with the Settlement Fund, including without limitation any expenses arising from the retention of a certified public accounting firm to prepare and file any tax returns on behalf of the Settlement Fund, as provided for in paragraph E.2. (collectively, the "Taxes"). Co-Lead Counsel shall be obligated to withhold from distribution to Class Members any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes (as well as any amounts that may be required to be withheld under Treas. Reg. § 1468B-2(l)(2)). The Settling Parties agree to cooperate with each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

4. The Individual Defendants, the Dismissed Defendants, and the Insurer shall have no liability for or obligations with regard to any Taxes. The Gross Settlement Fund shall indemnify and hold each of the Individual Defendants, the Dismissed Defendants, the Insurer, and each of the Released Parties harmless for any Taxes (including, without limitation, any Taxes payable by reason of such indemnification).

F. ALLOCATION OF NET SETTLEMENT FUND

1. The distribution of the Net Settlement Fund to eligible members of the Class shall be subject to a plan of allocation to be proposed by Co-Lead Counsel and approved by the Court (the "Plan of Allocation").

2. The Individual Defendants, the Dismissed Defendants, and the Insurer do not and shall not comment on or take any position as to the proposed Plan of Allocation and shall have no responsibility for and no obligations or liabilities of any kind whatsoever in connection with the Plan of Allocation or the determination of or administration and calculations under the Plan of Allocation.

3. The Individual Defendants, the Dismissed Defendants, and the Insurer shall have no involvement in the collection, or review, of Proofs of Claim, or involvement in the

administration process itself, which will be conducted by the Claims Administrator in accordance with this Stipulation and the orders entered by the Court.

4. No Class Member or Claimant shall have any claim against Plaintiffs, Plaintiffs' Counsel or the Claims Administrator, or any other agent designated by Co-Lead Counsel based on, or in any way relating to, the distributions from the Net Settlement Fund that have been made substantially in accordance with this Stipulation and any applicable orders of the Court.

5. No Class Member or Claimant shall have any claim against the Individual Defendants, the Dismissed Defendants, the Settling Defendants' Counsel, the Insurer, or any of the Released Parties based on, or in any way relating to, the administration of or distributions from the Net Settlement Fund, the determination, administration, calculation or payment of claims, the administration of the Custodial Account, or any losses incurred in connection therewith, the Plan of Allocation, or the giving of notice to Class Members.

6. The Plan of Allocation, or any other allocation plan approved by the Court, is neither part of this Stipulation nor a necessary term or condition of the Settlement. For this reason, the approval of, or any change in, the Plan of Allocation or the allocation of the Net Settlement Fund approved by the Court shall be deemed severable from and will not affect the validity or finality of this Settlement.

G. PLAINTIFFS' COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

1. Co-Lead Counsel, on behalf of Plaintiffs' Counsel, will submit an application to the Court for the payment of Attorneys' Fees and Expenses, including (i) an award of attorneys' fees from the Gross Settlement Fund up to an amount specified in the Notice (which amount include interest); and (ii) reimbursement of litigation costs and expenses,

including fees and expenses of experts, incurred in connection with the prosecution of the Litigation, plus interest earned on such amount at the same rate earned on the Gross Settlement Fund. Co-Lead Counsel's application is subject to the Court's approval, and any such amounts awarded by the Court to Co-Lead Counsel shall be paid from the Gross Settlement Fund. Co-Lead Counsel reserve the right to make additional application or applications for payment from the Gross Settlement Fund for fees and expenses incurred after the Settlement Hearing. The Settling Defendants take and will take no position on any application concerning any request for Attorneys' Fees and Expenses. Nor shall the Settling Defendants or the Insurer bear any responsibility or liability for any taxes due on or as a result of such award. Such Attorneys' Fees and Expenses as are awarded by the Court shall be paid from the Gross Settlement Fund to Co-Lead Counsel immediately upon entry of the Court's order awarding Attorneys' Fees and Expenses, notwithstanding the existence of any timely filed objections, appeal, or collateral attack on the Settlement or any part thereof, subject to Co-Lead Counsel's joint and several obligation to immediately make appropriate refunds or repayments to the Settlement Fund plus accrued interest at the same rate as is earned by the Settlement Fund, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the award of Attorneys' Fees and Expenses is reduced or reversed or for whatever reason the Settlement is terminated pursuant to paragraph K. hereof. Such an order awarding Attorneys' Fees and Expenses will be separate from the Order and Final Judgment. Co-Lead Counsel shall have sole discretion in the allocation of attorneys' fees among Plaintiffs' Counsel.

2. It is agreed that the procedure for, and the allowance or disallowance by the Court, of any applications by Co-Lead Counsel for Attorneys' Fees and Expenses, including fees for experts and consultants to be paid out of the Gross Settlement Fund, and any order or

proceeding relating thereto, are not terms of nor a condition of this Settlement. For this reason, the allowance, disallowance, or any other Court order with respect to, Attorneys' Fees and Expenses (and any appeal from, or any other form of review of, any order with respect to Attorneys' Fees and Expenses) shall not operate to terminate or cancel this Stipulation or affect its finality, and shall have no effect on the terms of this Stipulation or on the enforceability of this Settlement or of the Order and Final Judgment (including, without limitation, the releases contained therein).

3. The Settling Parties agree and represent that none of them have in any respect discussed the amount or substance of any application by Co-Lead Counsel for Attorneys' Fees and Expenses.

H. THE PRELIMINARY APPROVAL ORDER AND THE BANKRUPTCY COURT ORDER

1. Promptly after execution of this Stipulation, Co-Lead Counsel shall submit the Stipulation and its exhibits to the Court and shall apply for entry of a Preliminary Approval Order substantially in the form annexed hereto as Exhibit A, providing for, among other things, preliminary approval of the Settlement and notice to the Class of the Settlement Hearing. The Stipulation also contains exhibits substantially in the form set forth in (i) the Order and Final Judgment (Exhibit B); (ii) the Notice (Exhibit C); (iii) the Proof of Claim (Exhibit D); (iv) the Summary Notice (Exhibit E); and (v) the proposed Bankruptcy Court Order (Exhibit F).

2. The Settling Defendants have submitted a motion to the Bankruptcy Court for relief from the automatic stay to allow for the funding of the Settlement Amount from the D&O insurance proceeds and the entry of the Bankruptcy Court Order, substantially in the form annexed hereto as Exhibit F.

I. ORDER AND FINAL JUDGMENT TO BE ENTERED BY THE COURT APPROVING THE SETTLEMENT

The Settling Parties shall seek to have the Court enter an Order and Final Judgment substantially in the form of Exhibit B hereto.

J. CONDITIONS OF SETTLEMENT

1. The Effective Date of the Settlement shall be conditioned upon the occurrence of all of the following events:

a. The Court's entry of the Preliminary Approval Order in all material respects, as required by paragraph H. above and substantially in the form set forth as Exhibit A;

b. The Bankruptcy Court's entry of the Bankruptcy Court Order in all material respects, as required by paragraph H. above and substantially in the form set forth as Exhibit F, and such Bankruptcy Court Order has become Final;

c. Payment of the Settlement Amount in conformity with paragraph C. above;

d. Neither the Individual Defendants, the Dismissed Defendants, nor the Plaintiffs have exercised within the required time period their right to terminate the Settlement as permitted by paragraph K. below;

e. Approval of the Settlement by the Court, following notice to the Class and the Settlement Hearing; and

f. The Court's entry of the Order and Final Judgment in all material respects, as required by paragraph I. above and substantially in the form set forth as Exhibit B, and such Order and Final Judgment has become Final.

2. Upon occurrence of all of the events referenced in paragraph J.1. above, the obligation of Co-Lead Counsel to return funds from the Gross Settlement Fund to the Individual Defendants, the Dismissed Defendants, the Insurer and/or other persons or entities funding the

Settlement pursuant to paragraph K.3. or any other provision hereof shall be absolutely and forever extinguished.

K. RIGHTS OF TERMINATION AND EFFECTS THEREOF

1. The Individual Defendants, the Dismissed Defendants, and Plaintiffs each shall have the right to terminate the Settlement and this Stipulation by having their counsel provide written notice of their election to do so ("Termination Notice") to all other counsel of the Settling Parties hereto within thirty (30) days of any of these events:

a. The Settlement Amount is not paid in a timely fashion into the Custodial Account in accordance with paragraph C. above;

b. The Court declines to enter the Preliminary Approval Order in any material respect without leave to amend and resubmit;

c. The Bankruptcy Court declines to enter the Bankruptcy Court Order in any material respect without leave to amend and resubmit or the Bankruptcy Court Order does not become Final;

d. The Court declines to approve the Settlement as set forth in this Stipulation or any material part of it without leave to amend or resubmit;

e. The Court declines to enter the Order and Final Judgment in all material respects as required by paragraph I. above without leave to amend or resubmit;

f. The Order and Final Judgment does not become Final; or

g. The Bankruptcy Court Order or the Order and Final Judgment is modified or reversed in any material respect by the Court, the district court reviewing the Bankruptcy Court Order; the Court of Appeals; or the Supreme Court.

2. In addition to the above, if prior to the Settlement Hearing, Persons who otherwise would be Class Members have submitted valid and timely requests for exclusion

("Requests for Exclusion") from the Class (excluding any Requests for Exclusion that may have been validly retracted) in accordance with the provisions of the Preliminary Approval Order and the notice given pursuant thereto, and such Persons in the aggregate purchased and/or acquired TMI stock during the Class Period in an amount greater than the amounts specified in a separate Supplemental Exclusion Agreement between the Settling Parties (the "Supplemental Exclusion Agreement"), Individual Defendants, in their sole and absolute discretion, shall have the option to terminate this Stipulation and the Settlement in strict accordance with the requirements and procedures set forth in the Supplemental Exclusion Agreement ("Opt-out Termination Option"). Unless the Court orders otherwise, the Supplemental Exclusion Agreement will not be filed with the Court unless and until a dispute among the Settling Parties concerning its interpretation or application arises, and then will be filed under seal. If required by the Court, the Supplemental Exclusion Agreement and/or any of its terms may be disclosed in camera to the Court for purposes of approval of the Settlement. Any filing or such disclosure of the Supplemental Exclusion Agreement shall be carried out to the fullest extent possible in accordance with the practices of the Court so as to preserve the confidentiality of the Supplemental Exclusion Agreement, particularly the threshold aggregate number of shares discussed therein.

3. If this Stipulation is terminated pursuant to its terms, *(i)* the Settlement shall be without prejudice, and none of its terms shall be effective; *(ii)* the Settlement Amount (to the extent it has been funded), plus interest, less any reasonable amounts incurred for Notice and Administration Expenses and/or any Taxes, shall be returned to the Person(s) paying it into the Settlement Fund within ten (10) business days pursuant to their written instructions; *(iii)* all of the Settling Parties shall be deemed to have reverted to their respective status on the day immediately prior to the execution of this Stipulation, and they shall proceed in all respects as if

this Stipulation had not been executed and the related orders had not been entered, preserving in that event all of their respective claims and defenses in the Litigation, and shall revert to their respective positions in the Litigation; (iv) the fact and terms of the Stipulation and this Settlement shall not be admissible in any trial of the Litigation; (v) to the extent that the funds returned to the Insurer are less than \$2,000,000, any deficit will be deemed a Loss, as that term is defined in the policies of insurance under which coverage for this matter is being afforded to the Settling Defendants; and (vi) the Stipulation and this Settlement shall be without prejudice, and none of its terms shall be effective, except that paragraphs A.1 through A.47, C.6, E.4, G.1, and paragraphs K1 through K.4 shall survive termination.

4. No order of the Court or modification or reversal of any order of the Court concerning the Plan of Allocation, the amount of any Attorneys' Fees and Expenses awarded by the Court, or the distribution of the Net Settlement Fund shall constitute grounds for cancellation or termination of the Stipulation.

L. MISCELLANEOUS PROVISIONS

1. The Settling Parties: (i) acknowledge that it is their intent to consummate the Settlement contemplated by this Stipulation; (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation; and (iii) agree to exercise their best efforts and to act in good faith to accomplish the foregoing terms and conditions of the Stipulation.

2. In the event of the entry of a Final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of any of the Released Parties or the Insurer to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by others, then, at the election of

Plaintiffs, the Settling Parties shall jointly move the Court to vacate and set aside the releases given and the Order and Final Judgment entered in favor of the Settling Defendants and the other Released Parties pursuant to this Stipulation, which releases and Order and Final Judgment shall be null and void, and the Settling Parties shall be restored to their respective positions in the Litigation the day immediately prior to the execution of the Stipulation, and any cash amounts in the Settlement Fund, as well as any Attorneys' Fees and Expenses paid to Plaintiffs' Counsel, shall be returned as provided in paragraph K.3. above, provided, however, that the provisions in this paragraph requiring return of funds shall expire and terminate upon the initial distribution from the Net Settlement Fund to Class Members pursuant to a Class Distribution Order.

3. This Stipulation may be amended or modified only by a written instrument signed by Individual Defendants' and Dismissed Defendants' Counsel, and Co-Lead Counsel or their successors-in-interest.

4. This Stipulation and the exhibits attached hereto, and the Supplemental Exclusion Agreement, constitute the entire agreement among the Settling Parties, and no representations, warranties or inducements have been made to any Settling Party concerning this Stipulation, its exhibits, or the Supplemental Exclusion Agreement, other than the representations, warranties and covenants contained and memorialized in such documents. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

5. Whenever this Stipulation requires or contemplates that a Settling Party shall or may give notice to the other, unless otherwise specified, notice shall be provided by email and/or next-day (excluding Saturday and Sunday) express delivery service as follows, and shall be deemed effective upon delivery to the indicated electronic or physical address, as the case

may be, below:

(i) If to Plaintiffs or the Class:

Andrew Zivitz
Benjamin J. Sweet
Kessler Topaz Meltzer & Check LLP
280 King of Prussia Road
Radnor, PA 19087
azivitz@ktmc.com
bsweet@ktmc.com

Betsy C. Manifold
Patrick H. Moran
Wolf, Haldenstein, Adler, Freeman & Herz, LLP
750 B Street, Suite 2770
San Diego, CA 92101
manifold@whafh.com
moran@whafh.com

(ii) If to Larry A. Goldstone and Clay G. Simmons:

Jonathan A. Shapiro
P. Patty Li
Elizabeth H. Skey
Wilmer Cutler Pickering Hale and Dorr LLP
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Palo Alto, CA 94304
jonathan.shapiro@wilmerhale.com
patty.li@wilmerhale.com
elizabeth.skey@wilmerhale.com

Clinton W. Marrs
Tax, Estate & Business Law, N.A., LLC
4811-A Hardware Drive NE, Suite 4
Albuquerque, NM 87109
cmarrs@smidtlaw.com

(iii) If to Anne-Drue M. Anderson, David A. Ater, Eliot R. Cutler, Ike Kalangis, Owen M. Lopez, Francis I. Mullin III, Stuart C. Sherman, and Garrett Thornburg:

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Philip C. Korologos
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Amy L. Neuhardt
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aneuhardt@bsfllp.com

David F. Cunningham
Thompson, Hickey, Cunningham, Clow, April & Dolan, P.A.
460 St. Michael's Drive, Suite 1000
Santa Fe, NM 87505
dfc@catchlaw.com

- (iv) If to Joseph H. Badal, Paul G. Decoff, Michael B. Jeffers, Owen M. Lopez, and Stuart C. Sherman:

Joseph Goldberg
David Freedman
Freedman Boyd Hollander Goldberg Ives & Duncan, P.A.
20 First Plaza, Suite 700
Albuquerque, NM 87102
jg@fbdlaw.com
daf@fbdlaw.com

6. Except as otherwise provided herein, each Settling Party shall bear his, her or its own costs. The Attorneys' Fees and Expenses, subject to Court approval, shall be paid only out of the Gross Settlement Fund and the Individual Defendants, Dismissed Defendants, and the Insurer shall have no obligation with respect to the payment of said Attorneys' Fees and Expenses.

7. By the Preliminary Approval Order, Co-Lead Counsel, on behalf of the Class, is expressly authorized to take all appropriate action required or permitted to be taken by the Class pursuant to this Stipulation to effectuate its terms.

8. Individual Defendants' and Dismissed Defendants' Counsel and Co-Lead Counsel represent that they are authorized to sign this Stipulation on behalf of their respective clients.

9. This Stipulation may be executed in one or more original, photocopied, facsimile or electronic mail counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

10. This Stipulation shall be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, heirs and legal representatives of the Settling Parties. No assignment shall relieve any party hereto of obligations hereunder.

11. All terms of this Stipulation and all exhibits hereto shall be governed and interpreted according to the laws of the State of Maryland without regard to its rules as to conflicts of law, except to the extent that federal law requires that federal law governs, and in accordance with the laws of the United States.

12. The Individual Defendants, the Dismissed Defendants, and Plaintiffs, on behalf of themselves and each member of the Class, Class Members, and Claimants, each hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Stipulation or the applicability of this Stipulation. The administration and consummation of the Settlement as embodied in this Stipulation shall be made under the authority of the Court and the Court shall retain exclusive jurisdiction for the purpose of entering orders providing for awards of Attorneys' Fees and Expenses, and enforcing the terms of this Stipulation, including with regard to any actions required of or related to the Insurer.

13. None of the Settling Parties shall be considered to be the drafter of this Stipulation or any provision hereof for purposes of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. Given the arm's-length negotiations which preceded the execution and drafting of this

Stipulation, and given its drafting, all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

14. This Stipulation and all negotiations, statements, and proceedings in connection therewith, and the fact of the Settlement, shall not, in any event, be construed or deemed to be evidence of an admission or concession by Plaintiffs, any Settling Defendant, any member of the Class, or any other Person, of any liability or wrongdoing whatsoever by them, or any of them, and shall not be offered or received in evidence in any action or proceeding (except an action to enforce the Stipulation and Settlement contemplated thereby), or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that the Plaintiffs, any member of the Class, or any other Person, has or has not suffered any damage. This Stipulation is not a finding of the validity or invalidity of any claims in the Litigation or of any wrongdoing by any of the Settling Defendants named therein.

15. The Settling Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against the Individual Defendants or the Dismissed Defendants, with respect to the Settled Claims. Accordingly, the Settling Parties agree not to assert in any forum that the Litigation was brought, defended, or litigated by any of them in bad faith, without a reasonable basis, or in violation of Rule 11 of the Federal Rules of Civil Procedure. The Settling Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily, after consultation with experienced legal counsel after a full and fair opportunity to review the settlement papers and consider alternatives to settlement.

16. The headings in this Stipulation are used for purposes of convenience and ease of reference only and are not meant to have any legal effect, nor are they intended to influence the construction of this Stipulation in any way.

17. The waiver of one Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed a waiver of any other breach of this Stipulation. The provisions of this Stipulation may not be waived except by a writing signed by the affected Settling Party, or counsel for that Settling Party.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Settling Parties hereto, intending to be legally bound hereby, have caused this Stipulation to be executed, by their duly authorized attorneys, as of the day and year first above written.

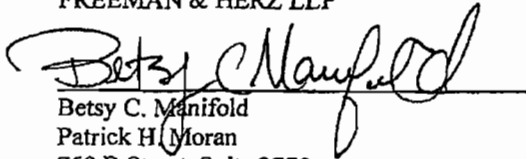
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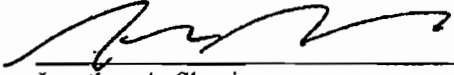
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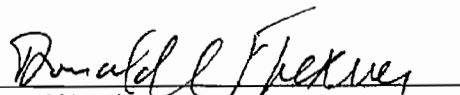
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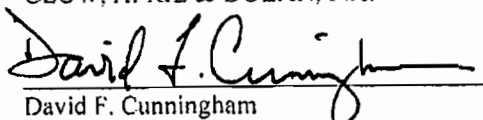


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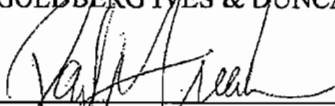
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