UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROMEO JERGESS, MICHAEL DIAMOND and GLENDA DIAMOND, FREDERICK K.A. LEWERENZ and ELAINE MILLER Individually and as the Representatives of a Class of Similarly Situated Persons,

Plaintiffs,

-vs-

TRANSNATION TITLE INSURANCE COMPANY, a Foreign Insurance Company, FIRST AMERICAN TITLE INSURANCE COMPANY, a Foreign Insurance Company, CHICAGO TITLE INSURANCE COMPANY, a Foreign Insurance Company, LAWYER'S TITLE INSURANCE CORP. a Foreign Insurance Company, registered to conduct business in Michigan,

Defendants
_____/

Consolidated Case No.: 00-72124
Hon. Avern Cohn
Magistrate Judge Pepe

JOINT MOTION FOR ORDERS PRELIMINARILY APPROVING CLASS ACTION SETTLEMENTS, SCHEDULING A DATE AND TIME FOR THE SETTLEMENT FAIRNESS HEARINGS AND OTHER RELIEF

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NOW COME the parties in the above action, by and through their respective counsel and pursuant to Fed. R. Civ. P. 23(e), move that this Court preliminarily approve the proposed settlements that have been reached by the parties in this action and schedule a date and time for the Final Approval/Settlement Fairness Hearing. In support of this motion, the parties state as follows:

1. Plaintiffs in these consolidated cases filed their respective Complaints against the four Defendants alleging violations of the Real Estate Settlement Procedures Act ("RESPA"),

more specifically alleging violations of the anti-kickback provisions of 12 U.S.C. § 2607(a) and (b).

2. This Court consolidated all four cases and certified the consolidated cases as a Class Action by its Class Certification Order dated December 5, 2002, which was amended to add class members on October 31, 2003 and again on October 12, 2004.

3. For approximately five and a half years, the parties conducted extensive discovery as more fully set forth in the attached Brief in Support of this Motion, including numerous depositions, voluminous requests to produce, and interrogatories. They also engaged in significant motion practice, served over 500 subpoenas to obtain agency records, consolidated lists of potential class members, gave appropriate and Court-approved Notices, and in all ways conscientiously pursued the development of their respective claims and defenses. The Court closely supervised these proceedings as needed, holding several status conferences, taking phone calls to discuss and rule upon discovery disputes, and encouraging the parties to resolve issues and expedite discovery and notice and to move the case toward either trial or settlement.

4. In May of 2005, formal facilitation efforts were undertaken, first with a mediator selected jointly by the parties (which led to proposed settlements with three of the four Defendants) and then with a court-appointed facilitator, which resulted in a proposed agreement between the fourth Defendant and the Class Members.

5. The parties have now negotiated Settlement Agreements, Forms of Notice, and this Motion, have agreed upon a Claims Administrator and escrow agents, and have refined the details of the proposed settlements, all of which require the approval of the Court.

6. Should the Court preliminarily approve the detailed Agreements and proposals of the parties, Notice of the Proposed Settlement must now be given to those who were previously

notified of the pendency of this litigation, and another Notice must be given to those class members who have been added since the last Notices were sent and are intended to be included in the settlement but who have not yet been given notice of the pendency of these cases.

7. These Notices would advise the Class members of the status of the litigation, the terms of the proposed settlements, their rights to object or be heard, and the time and place set for the Settlement Fairness Hearing.

8. The parties and counsel further represent to the Court that:

a. The proposed settlements have been fairly and honestly negotiated, and

b. Serious questions of law and fact exist which place the ultimate outcome of the litigation in doubt.

9. Further, Class Counsel represent that the theories which have led to these proposed settlements are novel and that there is a dearth of previous Court rulings to guide the litigation as it relates to issues of the application of RESPA to the facts of this case; the value of the immediate recovery proposed by the settlements outweighs the mere possibility of future relief after protracted and expensive litigation and possible appeals; and that each of the settlements is fair, reasonable, and adequate.

WHEREFORE, the Parties and Counsel jointly request that the Court enter the Preliminary Approval Orders in the Forms approved by the parties as part of their settlement agreements and contemporaneously filed with the Court, which shall in each case provide for:

A) Preliminary Approval of the Settlements that have been reached by the parties in their written Settlement Agreements, and

B) Approval of the forms of Notice as attached to this Motion, and

C) Setting a date for the Final Settlement Hearing so that it may be included in the Notices and Publications required by this Order, and

D) The filing of Plaintiffs' Fourth Amended Complaint clarifying, updating, and restating the definitions of the Class as against each of the four Defendants; and

E) The entry of an Order Amending The Class Definition to include transactions since November 1, 2004; and

F) Approval of the time limits agreed to by the parties for sending the Notice, Opt-Out periods for those Class Members who have not previously been afforded an Opt-Out period, deadlines for mailing Notices, deadlines for publication and access to a website, and all other deadlines set forth in the accompanying Brief is Support of the Motion, including the deadline for an application for fees and costs by Class Counsel.

Respectfully submitted,

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s/ CHARLES A. NEWMAN & DOUGLAS W. KING
Charles A. Newman
Douglas W. King
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s/ WILLIAM K. HOLMES
William K. Holmes (P15084)
Attorney for Chicago Title

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BRIEF IN SUPPORT OF JOINT MOTION FOR ORDERS PRELIMINARILY APPROVING CLASS ACTION SETTLEMENTS, SCHEDULING A DATE AND TIME FOR THE SETTLEMENT FAIRNESS HEARINGS AND OTHER RELIEF

INTRODUCTION

The named Plaintiffs, Romeo Jergess as to Defendant, Transnation Title Insurance Company ("Transnation"); Plaintiffs, Michael and Glenda Diamond as to Defendant, First American Title Insurance Company ("First American"), Plaintiff, Frederick K.A. Lewerenz as to Defendant, Chicago Title Insurance Company ("Chicago Title"); and Plaintiff, Elaine Miller as to Defendant, Lawyers Title Insurance Corporation (Lawyers Title"), individually and as the Representatives of a classes and sub-classes of similarly situated persons, by and through their

appointed counsel, Patrick J. Bruetsch, Jeffrey A. Yellen, David M. Davis and Timothy McConaghy, for the Plaintiffs; and Charles A Newman , Douglas King and Frank Ortiz for Defendant First American; William Holmes and Michael Brady for Defendant Chicago Title; and David Ettinger for Defendants Transnation and Lawyer's Title jointly move the Court for an Order Preliminarily Approving their Proposed Settlements and for other relief described herein. A copy of the negotiated *Settlement Agreements* are attached hereto as Exhibits A, B & C and a copy of the *Proposed Preliminary Orders Approving Settlement* are attached hereto as Exhibit D, E & F.

Each of the Proposed Settlements was reached after extensive discovery (described below), and arm's length negotiations. After several years of discovery, all parties attended several formal mediation sessions with William Hartgering of JAMS Resolution Services in Chicago. Subsequently, the Plaintiffs and Defendant, First American attended two formal mediation sessions with William Sankbiel, Esq. in Detroit. The proposed settlements represent an outcome for the Class[1] that will provide significant benefits to the Class and sub-classes and remove the risks and delays of further litigation and possible appeals. Further, the proposed settlements are favorable to Defendants in that such proposed settlements remove the potential for treble damages under RESPA and remove the possibility of additional significant legal expense in continuing to defend these claims.

In compliance with Fed. R. Civ. P. 23 and the requirements of due process, the following multi-step process is respectfully proposed:

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[1]/ "Class" and "Class Members" refers to all individuals and entities who meet the Class Definition as described in ¶ II.C. herein and who did not opt-out of this class action by submitting an Exclusion Form, or who responded to newspaper publication or web-site information and supplied documentary evidence that they qualify for Class Membership. The term includes all sub-classes that have been from time-to-time created by the Court as this litigation progressed.

A. Granting of preliminary approval of the Proposed Settlements, such that notice of the proposed settlements may be given as required by Fed. R. Civ. P. 23(e)(1)(B);

B. Creating a new Subclass C to add to the class persons whose transactions occurred after the end of Subclass B through the times in 2005 when the Defendants adopted different rates for new construction;

C. Approving of the form and method of providing Class Notice as follows:

i. *Notice of Proposed Settlement* to be sent via direct mail to all class members who have previously been provided Notice Of Pendency Of Class Action and Exclusion Forms;

ii. *Notice of Pendency of Class Action And Notice of Proposed Settlement And Exclusion Form* (providing an opt-out period of 45 days) to be sent via direct mail to all class members who were not previously provided Notice Of Pendency Of Class Action and Exclusion Form;

iii. *Publication Notice* to be published in the same newspapers previously approved by this Court for the two notices that have been given earlier in this case; and

iv. The utilization of the same website that provided information to claimants as part of the previous two notices which were sent in this lawsuit, updated to include details of the proposed settlement and current forms, all of which have been agreed upon by all parties.

D. Scheduling of the Final Approval/Settlement Fairness Hearing concerning the proposed settlement, and setting the following deadlines leading up to that Final Approval/Settlement Fairness Hearing:

Motion For Preliminary Approval of Settlement	To Be Set by the Court
Deadline for Claims Administrator to complete Notice to Class Members by first-class mail and commencement of newspaper publication Deadline for Class Counsel to publish the website Notice and Claim Verification Forms on the Worldwide Web at www.titlecase.com	No later than 21 days after the issuance of the Court Order Granting Preliminary Approval of Settlement

Deadline for Plaintiffs to file with the Court their Motion for statutory attorneys' fees and expenses and Class Representatives enhancements	Within 21 days of the issuance of the Court order Granting Preliminary Approval of Settlement
Opt-Out Deadline for Exclusion from the case for Class Members not previously notified or given an opportunity to exclude themselves from this case	Postmarked no later than 45 days after the date Notices are mailed by the Claims Administrator to Class members who were not previously provided Notice of Pendency of Class Action and Exclusion Form
Deadline for Class Members to file and serve written objections, the basis of those objections and notice of intention to appear at the Final Settlement Hearing related to the proposed Settlement or Attorneys' Fee Motions	Postmarked no later than 45 days after the Claims Administrator mails the Notices and the Class Counsel begins publication Notice in newspapers and on the website
Deadline for Class Counsel to file a Joint Motion for final approval of the proposed settlement and Plan of Allocation	No later than 14 days after the Opt-out period expires
Proposed Final Settlement Hearing	To be set by the Court in time for the date to be included in the Notices. The parties request that the date be on or about _____

TERMS OF THE PROPOSED SETTLEMENTS

The following summarizes the principal terms of the Proposed Settlements:

A. Scope of the Proposed Settlements : The Proposed Settlements encompass all claims and defenses and all parties to this action.

B. Settlement Consideration : The total consideration is Twenty Seven Million Five Hundred Fifty Thousand U.S. Dollars ($27,550,000.00), payable by the

Defendants, without any rights of reversion[2], and at such times as set forth in the attached Settlement Agreements, as follows:

1. Transnation and Lawyers Title (jointly) - Ten Million Three Hundred Twenty Five Thousand U.S. Dollars ($10,325,000.00);

2. First American - Nine Million Five Hundred Seventy-Five Thousand U.S. Dollars ($9,575,000.00); and

3. Chicago Title - Seven Million Six Hundred Fifty Thousand U.S. Dollars ($7,650,000.00).

C. Settlement Classes : The Settlement Classes will consist of the Class as certified by this Court in its original Class Certification Order of December 5, 2002, as amended on October 31, 2003 and again on October 29, 2004 and as by the attached Order, (consistent with the latest Stipulation of the parties) to be defined as follows:

The Transnation Sub-Class:

All individuals who, between May 10, 1999 and June 30, 2005 purchased a newly constructed one to four family dwelling or condominium within the State of Michigan in a transaction

- which involved a federally related mortgage loan
- in which the individual was charged for and there was issued a loan policy of title insurance by Transnation Title Insurance Company in the name of the mortgage lender
- in which the individual purchased the dwelling or condominium from the builder and the individual was issued an owner's policy of title insurance by Transnation Title Insurance Company simultaneously with the issuance of the loan policy.

[2]/ Any unclaimed class funds will not revert back to the Defendants, they will be donated to one or more charities formed under the Internal Revenue Service Code, Section 501(c)(3) as set forth in the Settlement Agreements.

The First American Sub-Class:

All individuals who, between June 9, 1999 and June 30, 2005[3] purchased a newly constructed one to four family dwelling or condominium within the State of Michigan in a transaction

- which involved a federally related mortgage loan
- in which the individual was charged for and there was issued a loan policy of title insurance by First American Title Insurance Company in the name of the mortgage lender
- in which the individual purchased the dwelling or condominium from the builder and the individual was issued an owner's policy of title insurance by First American Title Insurance Company simultaneously with the issuance of the loan policy.

The Chicago Title Sub-Class:

All individuals who, between April 28, 2000 and May 31, 2005 purchased a newly constructed one to four family dwelling or condominium within the State of Michigan in a transaction

- which involved a federally related mortgage loan
- in which the individual was charged for and there was issued a loan policy of title insurance by Chicago Title Insurance Company in the name of the mortgage lender
- in which the individual purchased the dwelling or condominium from the builder and the individual was issued an owner's policy of title insurance by Chicago Title Insurance Company simultaneously with the issuance of the loan policy.

The Lawyers Title Sub-Class:

All individuals who, between April 28, 2000 and June 30, 2005 purchased a newly constructed one to four family dwelling or condominium within the State of Michigan in a transaction

- which involved a federally related mortgage loan

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[3]/ Except that any First American insureds charged for a "Loan Policy" after June 30, 2005, at First American's "New Construction Rate" that was in effect up through June 30, 2005, in connection with a transaction in which a First American agent had issued a title insurance commitment to that person's lender before June 30, 2005, shall also be deemed to fall within the First American Class.

- in which the individual was charged for and there was issued a loan policy of title insurance by Lawyers Title Insurance Corporation in the name of the mortgage lender
- in which the individual purchased the dwelling or condominium from the builder and the individual was issued an owner's policy of title insurance by Lawyers Title Insurance Corporation simultaneously with the issuance of the loan policy.

The Settlement Class does not include any Class Members who have previously elected to opt out of this matter in response to the Court's prior notices, or to those new class members who may choose to opt out of this litigation pursuant to the separate Notice proposed for approval as a part of this Settlement that will go to class members who have not previously received notice of this action.

Counsel representing all parties have agreed to the filing of the Plaintiffs' Fourth Amended Complaint (attached as Exhibit G) and the entry of an Order Amending Class Definition As To Each Defendant (attached as Exhibit H).

D. Plan Of Allocation : The Settlement Agreements contemplate, subject to the Court's approval, that the Plan of Allocation be administered based upon the following formula:

1. Each Defendant's proportional share of the total Settlement is as follows: Transnation and Lawyers Title 37.48%; First American 34.75%; and Chicago Title 27.77%. [4] The funds are not being pooled, but these percentages are necessary to apportion fees, costs, and expenses.
2. The total of any Court awarded statutory attorneys' fees and cost reimbursements, as well as the costs of Notices and Claims Administration will be allocated to each Defendant in proportion to its share of the total Settlement, then deducted from each Defendant's Settlement contribution;
3. The Class Representative incentive awards, if any, will be deducted from their respective Defendant's Settlement contribution; and
4. The remainder for each defendant is that defendant's "Distributable Settlement Fund." Each Class Member's Settlement Payment from their Defendant's Distributable Settlement Fund shall be calculated as follows:

[4]/ This is computed by dividing each Defendant's settlement contribution by the total of all the contributions, *i.e.*, Transnation and Lawyers Title ($10,325,000 / $27,550,000 = 37.48%); First American ($9,575,000 / $27,550,000 = 34.75%); and Chicago Title ($7,650,000 / $27,550,000 = 27.77%).

the loan policy premium reportedly paid by each Class Member shall be multiplied by a fraction, the numerator of which shall be the amount of that Defendant's Distributable Settlement Fund and the denominator of which shall be the sum of the loan policy premiums reportedly paid by all known Class Members for that Defendant.

5. This formula will fully allocate the Distributable Settlement Funds among all known class members, and there will be unclaimed funds only if payments to one or more class members are returned as undeliverable after reasonably diligent efforts to find them.

6. Because there is no reversion of any portion of the Settlement Fund to any Defendant, any portion of the Total Settlement Fund which cannot be distributed under the above formula will be donated to charities identified in the Settlement Agreements.

E. Released Claims : Generally, the Class Representatives and all Class Members will release all claims arising out of conduct during the class periods applicable to their respective Defendants, except for any claims under the policy of title insurance.

F. Notice : Attached as Exhibits "I" through "O" are the Notices for which all Parties seek this Court's approval to disseminate as notice to the Class Members, pursuant to Fed. R. Civ. P. 23(e)(B).

1. Exhibits I, J & K are the *Notices of Proposed Settlement* (for First American, Lawyers & Transnation, and Chicago Title, respectively) to be sent via direct mail to all class members who were previously provided a Notice Of Pendency Of Class Action and Exclusion Form;

2. Exhibits L, M & N are the *Notices of Pendency of Class Action And Notice of Proposed Settlement And Exclusion Form* (for First American, Lawyers & Transnation, and Chicago Title, respectively) to be sent via direct mail to all class members who were not previously provided a Notice Of Pendency Of Class Action and Exclusion Form; and

3. Exhibit O is the *Publication Notice* to be published in the same newspapers in which previous Notices have been provided in this case, except those which may no longer be publishing or be out of business since the time of the first Notice.

THE PROPOSED SETTLEMENTS MEET THE JUDICIAL STANDARDS FOR APPROVAL UNDER FED. R. CIV. P. 23(e)

Although the procedure for approval of a class action settlement is not specifically delineated in Fed. R. Civ. P. 23, a two-step procedure is set forth and approved in the Federal Judicial Center's Manual for Complex Litigation § 21.632 at p. 414 (4th ed. 2004), and is universally followed by federal courts considering class action settlements. In the first stage, the Parties submit the Proposed Settlement to the Court for preliminary approval. In the second stage, following preliminary approval, the Class Members are notified of the Proposed Settlement (and of their right to object thereto) and a Fairness Hearing (Final Settlement Hearing) is scheduled at which the Court will determine whether or not to approve the Settlement.

Judicial application of Rule 23(e) has firmly established that the issues for determination are whether the settlement is "fair, adequate and reasonable," that is, does it protect the interests of the Class Members, and to assure that the proposed settlement is not the product of fraud or collusion. Van Horn v. Trickey, 840 F.2d 604, 606 (8th Cir.1988); In re Flight Transp. Corp. Sec. Litig., 730 F.2d 1128, 1135 (8th Cir.1984), *cert. denied*, 469 U.S. 1207 (1985).

Although in approving a settlement the district court need not undertake the type of detailed investigation that trying the case would involve, it must nevertheless reach well-reasoned conclusions. Van Horn, 840 F.2d at 607. In Lessard, et al. v. City Of Allen Park, et al., 372 F. Supp.2d 1007, 1009 (E.D. Mich. 2005), Judge Feikens stated:

> "In deciding whether to give final approval to a class action settlement, a court should determine whether that settlement is fair, adequate, and reasonable to those it affects and whether it is in the public interest. *Williams v. Vukovich*, 720 F.2d 909, 921-3 (6th Cir.1983). In determining fairness, a court should consider whether the interests of counsel and the named plaintiffs are "unjustifiably advanced at the expense of unnamed class members." *Id*. at 923. In determining adequacy, a court should weigh Plaintiffs' likelihood of success on the merits against the amount and form of the relief offered. *Id.* at 922."

Although this Court has wide discretion in determining whether to approve a class action settlement, the Supreme Court has cautioned that in reviewing a proposed class settlement, a court should "not decide the merits of the case or resolve unsettled legal questions." See Carson v. American Brands, Inc., 450 U.S. 79, 88 n. 14 (1981). As the object of any settlement is to avoid, not confront, contested issues, the settlement approval process should not be an abbreviated trial on the merits.

The Court in Van Horn v. Trickey, 840 F.2d 604, 607 (8th Cir. 1987) explained:

> "The district court must consider a number of factors in determining whether a settlement is fair, reasonable, and adequate: the merits of the plaintiff's case, weighed against the terms of the settlement; the defendant's financial condition; the complexity and expense of further litigation; and the amount of opposition to the settlement. *Grunin,* 513 F.2d at 124 (citations omitted); *see also In re Flight Transp.,* 730 F.2d at 1135. Although in approving a settlement the district court need not undertake the type of detailed investigation that trying the case would involve, *see Armstrong v. Bd. of School Directors of Milwaukee,* 616 F.2d 305, 314-15 (7th Cir.1980), it must nevertheless provide the appellate court with a basis for determining that its decision rests on " 'well-reasoned conclusions' " and not " 'mere boilerplate.' " *In re Flight Transp.,* 730 F.2d at 1136 (quoting *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson,* 390 U.S. 414, 434, 88 S.Ct. 1157, 1168, 20 L.Ed.2d 1 (1968))."

The Court should consider whether the proposed settlement is "fair, reasonable, and adequate." Gottlieb v Wiles, 11 F.3d 1004, 1014 (10th Cir. 1993) (citing Jones v Nuclear Pharmacy, Inc., 741 F.2d 322, 324 (10th Cir 1984)), *see also* Fed. R. Civ. P. 23(e)(1)(c). In determining whether the proposed Settlement meets the standard for approval, the Court is required to "ensure that the agreement is not illegal, a product of collusion, or against the public interest." U.S. v State of Colo., 937 F.2d 505, 509 (10th Cir. 1991).

The Court in Jones v Nuclear Pharmacy, Inc., 741 F.2d 322 (10th Cir. 1984) (citing In re King Resources Co. Sec. Litig.,420 F. Supp 610 (D. Colo. 1976)), identified the following four

factors that a trial court should consider in determining whether a proposed settlement is "fair, reasonable and adequate:"

A) Whether the proposed settlement was fairly and honestly negotiated;

B) Whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;

C) Whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and

D) The judgment of the parties that the settlement is fair and reasonable.

741 F.2d at 324. See also Gottlieb v Wiles, 11 F.3d at p. 1014, (10th Cir. 1993) (to the same effect).

As this Court noted in In re Jackson Lockdown / MCO Cases, 107 F.R.D. 703, 707 (E.D. Mich. 1985), the Court must also consider whether "the settlement is consistent with the public interest." This Court also commented that "'[T]here is an overriding public interest in settling and quieting litigation.' VanBronkhorst v. Safeco Corp., 529 F.2d 943, 950 (9th Cir.1976). 'Voluntary out-of-court settlement of disputes is highly favored in the law.' In re "Agent Orange" Product Liability Litigation, 597 F.Supp. 740, 758-59 (E.D.N.Y. 1984)." In re Jackson Lockdown / MCO Cases, supra.

A review of all the relevant factors demonstrates that the Proposed Settlements in this case satisfy these criteria and merit this Court's approval.

THE PROPOSED SETTLEMENT AGREEMENTS WERE FAIRLY AND HONESTLY NEGOTIATED

In examining the fairness of a proposed settlement the Court may scrutinize the fairness and the honesty of the settlement negotiations leading to the settlement. Gottlieb, 11 F.3d

at 1014. With no evidence to the contrary, the Court should presume that the settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion. Newberg on Class Actions § 11.28, at 11-59 (3d ed. 1992) (counsel are "not expected to prove the negative proposition of a noncollusive agreement.").

As will be noted in some detail below, Plaintiffs' Counsel engaged in extensive discovery and over 55 hours of formal, in person, facilitation sessions prior to reaching a proposed settlement with all four Defendants. This action was originally filed with this Court over five years ago, on May 9, 2000. All counsel have brought their knowledge and experience to bear in the settlement negotiations with opposing counsel, and the Proposed Settlements reflect extremely informed considerations of the complex array of factual, proof and legal issues. Indeed, during the past five years that this action was pending, counsel for Plaintiffs have become fully versed in RESPA and in assessing the merits of Plaintiffs' claims. Similarly, counsel for Defendants have also become extremely knowledgeable about Plaintiffs' claims and the defenses thereto.

On May 4, 2005 all counsel (along with several of the Defendants' key employees and corporate counsel) attended a 10-hour Mediation session with William Hartgering of JAMS resolution center in Chicago, Illinois, a nationally recognized and highly experienced mediator whom the parties selected jointly from a long list of potential facilitators. The Mediation continued on May 5, and at approximately 8:30 p.m. a Proposed Settlement was reached with Defendant, Chicago Title in the amount of $7,650,000. Immediately thereafter, direct talks began with the LandAmerica (Transnation and Lawyers Title) Defendants. The Mediation was adjourned at approximately 3:30 a.m. on May 6, 2005. Upon returning to Detroit later in the day of May 6, a further Mediation session was scheduled for May 7 at the Westin Hotel at the Detroit Metropolitan Airport. The May 7, 2005 continued Mediation session was attended by William

Hartgering, all Plaintiffs' counsel and the LandAmerica counsel and corporate counsel. This 10-hour session failed to produce a proposed settlement. Discussions and an exchange of several e-mails continued for the next several days until a Proposed Settlement was reached with the LandAmerica Defendants (Transnation and Lawyers Title) in the amount of $10,325,000.

On May 12, 2005, a further Mediation session was conducted with William Hartgering, Plaintiffs' counsel and First American's counsel and corporate counsel in Chicago. No Proposed Settlement was reached between Plaintiffs and First American at that time. Subsequently, this Court appointed William Sankbeil, Esq. as the Mediator to determine the value of a comparable settlement with respect to the claims against First American. Two formal Mediation sessions were held with William Sankbeil, Plaintiffs' counsel and First American's counsel and corporate counsel on August 4 and September 12, 2005. At the conclusion of the second day of formal Mediation sessions no Proposed Settlement had been reached.
Mr. Sankbeil, continuing his efforts, both over the phone and through various e-mails, advised the parties of the amount he believed represented a comparable settlement for First American. Both Plaintiffs Michael and Glenda Diamond, acting as class representatives, and Defendant First American agreed to accept the Mediator's determination. Thus, the claims against First American were settled for $9,575,000 on September 20, 2005. Lengthy negotiations were then held to determine the non-monetary aspects of the settlement which have continued up until the time this Motion was prepared and filed.

There should be no doubt but that the settlement negotiations were lengthy, involved knowledgeable counsel, and were at arm's length and without collusion between or among any of the parties.

THE PROPOSED SETTLEMENTS ARE FAVORABLE TO BOTH PLAINTIFFS AND DEFENDANTS

As evidenced by the zealousness with which this matter has been litigated by both Plaintiffs and Defendants, each of the parties was optimistic about its/their chances of ultimate success in this matter. However, Plaintiffs recognized that continuing the litigation would result in a long delay in obtaining damages and further, as inherent with any litigation, there would be the risk that ultimately Plaintiffs might not prevail, thereby receiving nothing, or would be subjected to a lengthy trial and probable appeals on issues decided in the pre-trial period, plus any that arose during the trial.

Similarly, Defendants faced the risk that a jury might find against them and award the treble damages available under RESPA. Further, although in this event, an appeal would be a certainty, Defendants had no assurances that any verdict in favor of Plaintiffs would be reversed or set aside. Thus, there was risk on both sides, and this risk is even more acute in a RESPA class action, a complex and minimally developed area of law. As this Court is well aware, this case is extremely unique, and there is scant case law covering the various issues raised in this case.

While the Plaintiffs believe the liability in this case is extremely strong, if the litigation were to continue, the Class would face numerous defenses which have been raised by the defendants in the past.[5]

Evidence of the parties' willingness to vigorously prosecute and defend this action is demonstrated by the copious substantive motions which have been filed by the parties in the past five and one half years of litigation. These motions include Defendants' several Motions to

[5] For example, Defendants have argued that there is no requirement that both the Owner's and the Loan Policies of Title Insurance be issued by the same insurer; that there is no evidence of a referral for the sale of the Loan Policy of Title Insurance; and in the normal market place, absent a referral, the Owner's and the Loan Policies of Title Insurance would likely be issued by the same insurer.

Dismiss, Defendants' Motions for Partial Summary Judgment, Defendants' Motions for Summary Judgment, Plaintiffs' Motion for Partial Summary Judgment, Plaintiffs' Motion for Summary Judgment, and Plaintiffs' Motion to Certify the Class. It should also be noted that the all Defendants filed an Interlocutory Appeal of this Court's Decision Certifying Case As A Class Action.

The Proposed Settlements totaling $27,550,000 in cash, and the fact that each Defendant has, with the approval of the Michigan Insurance Commissioner, modified its Michigan Rate Manual to change its new construction rate and eliminate the alleged referral scheme from affecting all future residential real estate transactions which occur in Michigan should be regarded as a fair, reasonable, and adequate settlement.

THE VALUE OF AN IMMEDIATE REMEDY OUTWEIGHS THE POSSIBILITY OF FUTURE RELIEF AFTER PROTRACTED, RISKY, AND EXPENSE LITIGATION

RESPA class action litigation is relatively unique and the facts presented in this action have not been presented in any published decision. The demands on counsel and the Court are complex and have required a devotion of significant time and resources. Plaintiffs have already participated in a massive amount of discovery.[6]

If the Proposed Settlement is not approved, a substantial amount of work would still need to be accomplished by both Plaintiffs and Defendants, including the completion of defense

[6] Such discovery included Plaintiffs having served numerous sets of document requests on Defendants seeking dozens of types of information; Plaintiffs have served over 500 Subpoenas on agents and third-party witnesses; Plaintiffs have obtained and reviewed over thirty thousand pages of home closing documents as well as over two million electronic records of home closing transactions in pursuit of this case; Plaintiffs have argued 11 motions thus far in this litigation; and Plaintiffs have retained 7 experts, each of whom have been deposed. For several years, Plaintiffs have employed a lawyer/records custodian whose primary duty has been to input and retrieve documents related to this case.

expert discovery, designation of witnesses and exhibits, preparation of pre-trial memoranda and proposed jury instructions, presentation of witnesses and evidence at trial. Defendants would likely continue their vigorous defense of this case through their several pending summary judgment motions and through trial and a probable appeal, were a verdict to be entered in favor of the Plaintiffs. The Proposed Settlement obviates this delay and will, if approved, advance the recovery to the Class, possibly several years prior to any likely recovery subsequent to a trial and appeals. Further, a significant result of this litigation is the change in Defendants' Michigan Rate Manuals to eliminate the alleged referral scheme from affecting all future residential real estate transactions which occur in Michigan. Defendants have already implemented the changes in the rate structure apart from the approval of this Settlement, but the change in the rates provides an end-date to the class for each defendant and allows the Court to approve the settlements without any concern for future claims or litigation.

These factors favor preliminary approval of the Proposed Settlement.

CLASS COUNSEL BELIEVE THAT THE PROPOSED SETTLEMENTS ARE FAIR, REASONABLE, AND ADEQUATE

The view of experienced counsel favoring a settlement is accorded "great weight" in appraising the fairness and adequacy of a proposed settlement. Gottlieb v Wyles, 11 F.3d 1004, 1014 (10th Cir. 1993) [citing Malchman v Davis, 706 F.2d 426, 443 (2d Cir. 1983)]. A settlement enjoys a presumption of regularity if it is the product of fully informed, adequately prepared and arms-length negotiations by competent counsel with experience in class action litigation. Newberg § 11.41, at p. 1188.

Counsel for Plaintiffs are in a strong position to evaluate the strengths and weaknesses of their case. The issues in the present case are extremely well developed and class counsel have carefully researched the relevant law, have an extremely broad understanding of the issues

involved, as well as all of the facts, and are in an ideal position to evaluate the merits of this case and the Proposed Settlement. Based upon their experience and knowledge, class counsel believe that the Proposed Settlements achieved here are fair, reasonable, adequate and in the best interests of the Plaintiffs. This evaluation of counsel should weigh heavily in favor of preliminary approval.

THE PROPOSED NOTICE TO THE CLASS SATISFIES FED. R. CIV. P. 23 AND ALL DUE PROCESS REQUIREMENTS

The parties have agreed upon proposed forms of Class Notice, attached hereto as Exhibits "I" through "O." The purpose of the Class Notice is to fulfill the requirements of due process by informing members of the Class of the Proposed Settlement and their opportunity to appear and be heard at the Final Settlement/Fairness Hearing.

To satisfy due process, notice to the Class must be "reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v Central Hanover Bank & Trust Co., 339 US 306, 314 (1950). Notice should also provide a "very general description of the proposed settlement." Weinberger v Kendrick, 698 F. 2d 61, 70 (2d Cir. 1982). The proposed forms of Class Notice in this matter describe, in plain English, the terms and operation of the Settlement Agreements, the considerations that caused Plaintiffs' Counsel and the Class Representatives to conclude that the settlement is fair, reasonable, and adequate; the fact that Plaintiffs' Counsel will be seeking statutory attorney fees and that Class Representatives enhancements will be sought; the procedure for objecting to the Proposed Settlements; and the location, date, and place of the Fairness Hearing. With the Court's approval, the Class Notice will be mailed to each Class Member, no later than 60 days prior to the Fairness Hearing, and the same Notice will also be published on the previously established website of www.titlecase.com. Additionally, a

summary Notice will be published in over 100 newspapers throughout the State of Michigan. These proposed forms of Notice will fairly apprise Class Members of the Proposed Settlements and their options with respect thereto, direct those wanting more information to an informative website, and thereby fully satisfy all due process requirements[7].

CONCLUSION

For the foregoing reasons, Plaintiffs' Counsel respectfully request that the Court grant their Motion and enter an Order providing for the following:

A) Preliminary Approval of the Settlements that have been reached by the parties in their written Settlement Agreements, and

B) Approval of the forms of Notice as attached to this Motion, and

C) Setting a date for the Final Settlement Hearing so that it may be included in the Notices and Publications required by this Order, and

D) The filing of Plaintiffs' Fourth Amended Complaint clarifying, updating, and restating the definitions of the Class as against each of the four Defendants; and

E) The entry of an Order Amending The Class Definition to include transactions since November 1, 2004; and

F) Approval of the time limits agreed to by the parties for sending the Notice, Opt-Out periods for those Class Members who have not previously been afforded an Opt-Out period, deadlines for mailing Notices, deadlines for publication and access to a website, and all other deadlines set forth in the accompanying Brief is Support of the Motion, including the deadline for an application for fees and costs by Class Counsel.

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[7]/ All counsel have agreed upon using Rust Consulting, Inc. as the company providing Notice to all Class Members and as the Claims Administrator. Rust Consulting, Inc., located in Minneapolis, MN, has been the noticing company and Claims Administrators in class action matters involving in excess of 50 million claims in hundreds of class action matters.

Respectfully submitted,

s/ PATRICK J. BRUETSCH
Patrick J. Bruetsch (P28050)
Attorney for Plaintiffs

s/ JEFFREY A. YELLEN
Jeffrey A. Yellen (P39938)
Co-Counsel for Plaintiffs

Defendants Chicago Title, Transnation Title, Lawyers Title and First American concur in the relief requested, support the motion to approve the Settlement Agreements, and affirm that the Settlement Agreements in this matter were the product of good faith and protracted negotiations involving a third party mediator, and in the case of First American there was a second, court appointed, mediator involved. All Defendants further approve of the entry of the following Orders:

a) Proposed Orders Approving Settlements attached hereto as exhibits "D," "E," and "F;"
b) An Order allowing the Plaintiffs' to file their Fourth Amended Complaint attached hereto as exhibit "G;"
c) The Order Amending Class Definition As To Each Defendant attached hereto as exhibit "H;" and
d) The Courts endorsement on each of the Notices attached hereto as exhibits "I," through "O."

s/ DAVID A. ETTINGER
David A. Ettinger (P26537)
Attorney for Defendants
Transnation Title and Lawyers Title

s/ CHARLES A. NEWMAN & DOUGLAS W. KING
Charles A. Newman
Douglas W. King
Attorneys for First American

s/ WILLIAM K. HOLMES
William K. Holmes (P15084)
Attorney for Chicago Title

Dated: February 8, 2006

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2006 I electronically filed the foregoing *Joint Motion For Orders Preliminarily Approving Class Action Settlements, Scheduling A Date And Time For The Settlement Fairness Hearings And Other Relief* and *Brief In Support Of Joint Motion For Orders Preliminarily Approving Class Action Settlements, Scheduling A Date And Time For The Settlement Fairness Hearings And Other Relief* paper with the Clerk of the U.S. Federal District Court (Eastern District of Michigan, Southern Division) using the ECF system which will send notification of such filing to the following:

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