

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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| IN RE SCOR HOLDING (SWITZERLAND) |) | |
| AG LITIGATION |) | MASTER FILE |
| |) | 04 Civ. 7897 (DLC) |
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| This Document Relates to: |) | |
| All Cases |) | |
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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENTS
AND APPROVAL OF NOTICE TO THE CLASS**

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INTRODUCTION

The Public Employees' Retirement System of Mississippi ("MPERS") and Avalon Holdings ("Avalon") (collectively "Plaintiffs"), on behalf of themselves and the Class, and defendants SCOR Holding (Switzerland) AG ("SHS") and Zurich Financial Services ("ZFS") have reached separate agreements to settle this class action litigation (the "Action") for a total payment of \$84.6 million in cash to the Class certified by the Court in its Opinion and Order dated March 6, 2008 and its Order dated March 19, 2008 (the "Class Certification Orders"). There are two separate settlement agreements: an agreement with SCOR (the "SHS Settlement"), pursuant to which \$75 million in cash will be paid to the Class, and an agreement with ZFS (the "ZFS Settlement"), pursuant to which \$9.6 million in cash will be paid to the Class. The SHS Settlement and ZFS Settlement are referred to collectively herein as the "Settlements." At the final settlement approval hearing (the "Fairness Hearing"), the Court will have before it more extensive motion papers submitted in support of the proposed Settlements, and will be asked to make a determination as to whether the Settlements are fair, reasonable and adequate under all of the circumstances surrounding the Action. At this juncture, however, Plaintiffs request only that the Court grant preliminary approval of the SHS Settlement and the ZFS Settlement and certify the class in the ZFS Settlement for settlement purposes so that notice of the Settlements may be sent to the Class. This Memorandum describes the basis for the Motion for Preliminary Approval of Settlement, and sets forth a proposed schedule for the process going forward.

Plaintiffs respectfully request that this Court enter the proposed Order Preliminarily Approving Proposed Settlements ("Preliminary Approval Order"), attached as Exhibit 1 to the accompanying Notice of Motion, which, among other things, will:

- (i) preliminarily approve the SHS Settlement on the terms set forth in the Stipulation of Settlement as to SCOR Holding (Switzerland) AG;

- (ii) preliminarily approve the ZFS Settlement on the terms set forth in the Amended Stipulation of Settlement as to Zurich Financial Services;
- (iii) certify for the purposes of the ZFS Settlement the same class certified by the Class Certification Orders;
- (iv) approve the form, substance and requirements of the Notice of: (1) Pendency and Proposed Settlements of Class Action and (2) Hearing on Proposed Settlements (the “Individual Notice”), Summary Notice of: Pendency and Proposed Settlements of Class Action and (2) Hearing on Proposed Settlements (the “Summary Notice” and, together with the Individual Notice, the “Notices”), and the Proof of Claim form (the “Claim Form”);
- (v) find that the procedures established for publication, mailing and distribution of the Notices substantially in the manner and form set forth in the Preliminary Approval Order constitute the best notice practicable under the circumstances, and are in full compliance with the notice requirements of due process, Fed. R. Civ. P. 23 and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act (the “PSLRA”); and
- (vi) set forth a schedule and the procedures for dissemination or publication of the Notices, for requesting exclusion from the Class, for submitting papers in support of final approval of the Settlement, for objecting to the Settlement, and for the Fairness Hearing.

I. DESCRIPTION OF THE LITIGATION

SHS is the successor to Converium Holding AG (“Converium” or the “Company”), which was at all relevant times a global reinsurance company with headquarters in New York City and Zurich, Switzerland. As a reinsurer, Converium was required to establish loss reserves to reflect its contractual obligation to pay future claims from clients it insured. The establishment of such reserves offsets income, thereby reducing earnings. The gravamen of Plaintiffs’ allegations is that Defendants issued a series of materially false and misleading statements that, among other things, materially overstated Converium’s earnings and its overall financial condition by concealing a massive deficiency in Converium’s loss reserves.

Specifically, as alleged in the Consolidated Amended Class Action Complaint (the “Complaint”), prior to Converium’s December 11, 2001 initial public offering (the “IPO”), an independent actuarial consulting firm identified a reserve deficiency at Converium’s North American division of approximately \$350 million. Despite being informed of that deficiency, the Company proceeded with the IPO without sufficiently increasing its loss reserves. Thereafter, and throughout the period from January 7, 2002 to September 2, 2004 (the “Class Period”), the Complaint alleges that the Company and its senior officers touted Converium’s continuously improved financial condition while concealing a growing reserve deficiency in North America. After a second independent actuarial consultant determined that the reserve deficiency had grown to approximately \$437 million as of year-end 2002, the Company engaged in a scheme to conceal that deficiency by “novating,” or transferring, millions of dollars in poorly performing contracts from North America to Converium’s Zurich division, and by reorganizing the Company to no longer report financial results by geographic division. Ultimately, the Company was unable to continue concealing its reserve deficiency and, on July 20, 2004, announced that Converium would take a charge of at least \$400 million to increase its reserves. That disclosure caused the price of Converium’s American Depositary Shares (“ADSs”), which traded on the New York Stock Exchange, to collapse nearly 50%. Subsequent disclosures by the Company revealed that the charge would be more than \$500 million, and drove the price of Converium’s ADSs down further. On September 2, 2004, Standard & Poor’s announced a downgrade of the Company’s credit rating in response to the reserve increase. Shortly thereafter, Converium put its North American business into runoff.

Beginning in October 2004, seven putative class actions were filed by certain purchasers of Converium securities against Converium, certain of Converium’s officers and directors, and

ZFS alleging violations of the federal securities laws. On July 14, 2005, the Court appointed MPERS and Avalon as Lead Plaintiffs, and approved Lead Plaintiffs' selection of Bernstein Litowitz Berger & Grossmann LLP, Cohen, Milstein, Hausfeld & Toll, P.L.L.C., and Spector, Roseman & Kodroff, P.C. as Lead Counsel for the putative class ("Lead Counsel"). On September 23, 2005, Plaintiffs filed the Complaint, which named as defendants Converium; Company officers Dirk Lohmann, Martin Kauer, and Richard Smith (the "Officer Defendants"); Company directors Terry G. Clarke, Peter C. Colombo, George F. Mehl, Jurgen Foerterer, Anton K. Schnyder, Derrell J. Hendrix, and George G.C. Parker (the "Director Defendants"); ZFS; and UBS AG and Merrill Lynch International (the "Underwriter Defendants"), the lead underwriters in the IPO. The Complaint asserts claims under the Securities Act of 1933 (the "Securities Act") against all defendants, and claims under the Securities Exchange Act of 1934 (the "Exchange Act") against Converium, ZFS, and the Officer and Director Defendants (other than Mr. Clarke).

On December 28, 2006, the Court issued Orders (i) dismissing the Securities Act claims against all defendants, (ii) dismissing the Exchange Act claims based on alleged misrepresentations or omissions in connection with the Converium IPO, (iii) denying dismissal of the Exchange Act claims against Converium and the Officer Defendants based on alleged misrepresentations or omissions after the Converium IPO, and (iv) denying Plaintiffs' motion to amend the Complaint. On January 12, 2007, Plaintiffs moved for reconsideration of the Court's December 28, 2006 Order to the extent that it had dismissed (i) the Exchange Act § 10(b) claim on behalf of aftermarket purchasers against Converium and the Officer Defendants based on alleged misrepresentations or omissions in connection with the Converium IPO, (ii) the Exchange Act § 20(a) claims against ZFS and the Officer and Director Defendants (other than Mr. Clarke) arising from Converium's alleged liability to the aftermarket purchasers based on

purported misrepresentations or omissions in connection with the Converium IPO, and (iii) the Securities Act claims against all defendants. Plaintiffs also asked the Court to reconsider its denial of leave to amend the Complaint. In orders entered on April 9 and September 14, 2007, the Court denied Plaintiffs' motion for reconsideration of the dismissal of the Securities Act claims against all defendants, but granted reconsideration of the dismissal of the Exchange Act § 10(b) claims against Converium and the Officer Defendants and the Exchange Act § 20(a) claims against ZFS and the Officer and Director Defendants on behalf of aftermarket purchasers alleging misrepresentations or omissions in connection with the Converium IPO. The Court also declined to reconsider its refusal to allow Plaintiffs to amend the Complaint.

On August 24, 2007, Plaintiffs moved for preliminary approval of a settlement with ZFS, and for certification of a class for settlement purposes. Pursuant to that proposed settlement, ZFS was to pay \$30 million to settle the claims of all persons who purchased Converium shares on the SWX Swiss stock exchange or ADSs on the New York Stock Exchange during the period from December 11, 2001 through September 2, 2004. On September 4, 2007, the Court granted preliminary approval of that proposed settlement and certified for settlement purposes a class consisting of all persons who purchased Converium shares on the SWX Swiss stock exchange or ADSs on the New York Stock Exchange during the period from December 11, 2001 through September 2, 2004. The Court did not rule at that time on Plaintiffs' request for approval of the form of notice to be published to the Class.

On September 28, 2007, Plaintiffs moved to certify a class consisting of all persons who purchased Converium shares on the Swiss stock exchange or ADSs on the New York Stock Exchange during the period from December 11, 2001 through September 2, 2004. On March 6, 2008, the Court issued an Opinion and Order granting in part and denying in part the motion for

class certification. Specifically, the Court certified a class of all persons who purchased Converium ADSs on the New York Stock Exchange, and all U.S. residents who purchased Converium shares on the SWX Swiss stock exchange, during the period from January 7, 2002 through September 2, 2004. The Court held that it lacked subject matter jurisdiction over the claims of foreign investors who purchased shares on the Swiss stock exchange and, accordingly, excluded such persons from the Class. On March 19, 2008, the Court entered an Order certifying the Class described in the March 6, 2008 Order and Opinion. On March 20 and April 2, 2008, Plaintiffs moved the Court to reconsider that part of the Class Certification Orders that excluded from the Class foreign investors who purchased Converium shares on the SWX Swiss exchange.

Plaintiffs and Lead Counsel engaged in extensive settlement negotiations with SHS both prior to and following entry of the Class Certification Orders. As a result of those negotiations, SHS agreed to pay \$75 million to resolve the claims against it and against the Officer Defendants. In addition, following the entry of the Class Certification Orders, Plaintiffs and Lead Counsel entered into further negotiations with ZFS concerning the impact of those Orders upon the previously agreed to settlement with ZFS. As a result of those negotiations, ZFS agreed to modify the original settlement agreement – which had contemplated the global release of claims by all persons who purchased Converium shares or ADSs during an expanded time period – such that ZFS will pay \$9.6 million to settle the claims of the Class certified by the Class Certification Orders against ZFS, the Underwriters and the Director Defendants.¹ Both SHS and ZFS are also contributing to separate settlements with foreign investors who purchased

¹ In Lead Counsel's June 13, 2008 letter to the Court, the anticipated contribution by ZFS to the Class settlement was described as \$10.3 million. The modification of the ZFS Settlement to \$9.6 million reflects ZFS' agreement to forego a judgment-reduction provision, included in the original ZFS Stipulation of Settlement, pursuant to which ZFS's settlement contribution would have been reduced to reflect any indemnity ZFS was required to pay to the Officer Defendants. *See* Amended Stipulation of Settlement as to Zurich Financial Services ¶¶3-4.

Converium shares on the SWX Swiss exchange (the “Foreign Investor Settlement”).² The Settlements and the Foreign Investor Settlement are independent, and the former are not conditioned on the successful completion of the latter.

Lead Counsel conducted an extensive investigation and thorough discovery relating to the claims and the underlying events and transactions alleged in the Complaint, including the review of nearly four million pages of documents produced by Defendants and third parties and the deposing of approximately twenty-seven fact witnesses as of the date the agreement in principle to settle was reached. When the parties agreed in March 2007 to settle this Action, fact discovery, which was ongoing, was scheduled to be completed by March 14, 2008, followed by expert discovery, which was to be completed by April 25, 2008. Lead Counsel analyzed the evidence adduced during pretrial discovery and researched the applicable law with respect to the claims of Plaintiffs and the other members of the Class against the Defendants and the potential defenses thereto.

Based on Plaintiffs’ thorough understanding of their case, they recognized that there were serious risks as to whether they would ultimately prevail. Defendants vehemently disputed liability. While Plaintiffs believed there was substantial evidence to support their claims, they also recognized, for example, that the actuarial analyses of loss reserves at the heart of this case are subjective, and presented serious issues as to the ability to prove at trial that the Defendants acted with scienter.

II. THE PROPOSED SETTLEMENTS WARRANT PRELIMINARY APPROVAL

“It is well established that there is an overriding public interest in settling and quieting litigation, and this is particularly true in class actions.” *In re Prudential Sec. Inc. Ltd. P’ships*

² Specifically, SHS is paying \$40 million and ZFS is paying \$18.4 million to fund the Foreign Investor Settlements. Those settlements will be submitted to the Amsterdam Court of Appeals for judicial approval pursuant to the Netherlands Act on Collective Settlement of Mass Damage Claims.

Litig., 163 F.R.D. 200, 209 (S.D.N.Y. 1995).

As courts in this Circuit have stated:

In considering whether to grant preliminary approval to a class action settlement agreement, courts make a preliminary evaluation of the fairness of the settlement, prior to a hearing on notice. Where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval should be granted.

In re Nasdaq Market-Makers Antitrust Litig., No. 94 CIV. 3996(RWS), 1997 WL 805062, at * 8 (S.D.N.Y. Dec. 31, 1997), citing *Manual for Complex Litigation* (“MCL”) § 30.41, at 237 (West 1995). The preliminary approval hearing “is not a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” *Armstrong v. Bd. of Sch. Dirs. of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980) (footnote omitted).

The parties here request only that the Court take the first step in this process, which is to grant preliminary approval of the proposed Settlements, because the Settlements satisfy the standard for such approval. The proposed Settlements, which provide the sum of \$84.6 million in cash for distribution to eligible Class Members after deduction of Court-awarded fees and expenses, is clearly beneficial to the Class. Given the complexities of this Action, and the continued risks if the parties were to proceed to trial, the Settlements represent a reasonable resolution, and eliminate the risk that the Class might not otherwise recover from Defendants. *See, e.g., In re Prudential Sec. Litig.*, 163 F.R.D. at 210 (“Instead of the lengthy, costly, and uncertain course of further litigation, the settlement provides a significant and expeditious route to recovery for the Class.”)

Moreover, reference to the factors set forth above considered by courts in granting preliminary approval of class action settlements lend support to the proposition that the

Settlement is well within the range of possible approval. First, the terms of the proposed Settlements are the product of extensive arm's-length negotiations. This Action was actively prosecuted for over three years. Settlement discussions were held in 2007 and 2008 with the assistance of the Honorable Daniel Weinstein, who served as mediator for discussions between Plaintiffs and SHS. Accordingly, there is no evidence here of any collusion between the parties. Nor is there any evidence that Plaintiffs will improperly receive preferential treatment. To the contrary, MPERS will be treated exactly the same as any other Class Member. *See* 15 U.S.C. § 78u-4(a)(4). MPERS is also highly experienced as a lead plaintiff in securities class action litigation, and is represented by the Mississippi Attorney General. MPERS, after being fully apprised of the evidence obtained through discovery and the risks of continuing to prosecute this Action, and based upon the advice of the Office of the Attorney General, believes that the proposed Settlements are fair, reasonable and adequate, and in the best interests of the Class. Moreover, Lead Counsel have significant experience in securities and other complex class action litigation, and have negotiated hundreds of other substantial class action settlements throughout the country. Lead Counsel have taken extensive discovery, and are thus "well informed as to the operative facts" and "considerable risks" of the Action. *See Reade-Alvarez v. Eltman, Eltman & Cooper, P.C.*, 237 F.R.D. 26, 34 (E.D.N.Y. 2006). It is Lead Counsel's informed opinion that, given the uncertainty and further substantial expense of pursuing this Action through trial and possible appeals, the proposed Settlements are fair, reasonable and adequate, and in the best interests of the Class.

At this point, the Court need not answer the ultimate question: whether the Settlements are fair, reasonable and adequate. The Court is only being asked to permit notice of the terms of the Settlements to be sent to the Class, and to schedule a hearing, pursuant to Federal Rule of

Civil Procedure 23(e), to consider any views expressed by Class Members as to the fairness of the Settlements, the plan of allocation, and Lead Counsel's request for an award of attorneys' fees and expenses. 5 James Wm. Moore, *Moore's Federal Practice* §23.85[3], at 23-353 to 23-354 (3d ed. 1999).

As outlined in the Preliminary Approval Order, Plaintiffs will notify Class Members of the Settlements by mailing the Individual Notice and Claim Form to Class Members no later than fourteen (14) days after entry of the Preliminary Approval Order. The Individual Notice will advise Class Members of the essential terms of the Settlements, of information regarding Lead Counsel's fee application, and of the proposed plan for allocating the proceeds of the Settlements among Class Members. It also will set forth the procedure for objecting to the Settlements, Plan of Allocation or the request for an award of attorneys' fees and reimbursement of litigation expenses, or opting out of the Class, and will provide specifics on the date, time and place of the Fairness Hearing. The proposed Preliminary Approval Order further requires Plaintiffs to cause the Summary Notice to be published once each in the global edition of *The Wall Street Journal*, the European edition of *The Economist*, the *Neue Zürcher Zeitung* (Zurich, Switzerland), and *Le Temps* (Geneva, Switzerland), and once over *PR Newswire* within twenty-one (21) days after entry of the Preliminary Approval Order. Lead Counsel believe that, because the Individual Notice and Summary Notice fairly apprise Class Members of their rights with respect to the Settlement, they represent the best notice practicable under the circumstances and should be approved by the Court.

Finally, certification of a class for purposes of the ZFS Settlement is warranted. The Court's findings in the Class Certification Orders are equally applicable to the certification of the same Class with regard to its claims against ZFS, and may be adopted by the Court for purposes

of certifying for settlement purposes a class of all persons who purchased Converium ADSs on the New York Stock Exchange, and all U.S. residents who purchased Converium shares on the SWX Swiss stock exchange, during the period from January 7, 2002 through September 2, 2004. Significantly, ZFS does not oppose the certification of such a class for settlement purposes. Certification of a settlement class “has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants.” *In re Prudential Sec. Litig.*, 163 F.R.D. at 205. Indeed, this Court previously recognized the appropriateness and utility of certifying a class for purposes of effectuating a settlement with ZFS in this Action.

III. SCHEDULE OF EVENTS

In connection with preliminary approval of the Settlements, the Court must set a final approval hearing date, dates for mailing and publication of the Individual Notice and Summary Notice, and deadlines for submitting claims, for opting out of the Class or for objecting to the Settlements. Plaintiffs propose the following schedule:

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| Individual Notice mailed to Class. | 14 days after entry of the Preliminary Approval Order. |
| Summary Notice published. | 21 days after entry of the Preliminary Approval Order. |
| Last day for submitting claims. | 120 days after entry of the Preliminary Approval Order. |
| Last day to opt-out or object to Settlement. | 20 days prior to the date of the Fairness Hearing. |
| Papers in support of final approval. | 7 days prior to the date of the Fairness Hearing. |
| Fairness Hearing. | A date to be set at the Court’s convenience, not less than 90 days after entry of the Preliminary Approval Order. |

IV. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully submit that the proposed Settlements should be preliminarily approved by the Court allowing notification of the pendency of the Action, the terms of the Settlements and the date of the Fairness Hearing to be sent to Class Members, pursuant to Notices submitted to the Court herewith.

Dated: New York, New York
July 25, 2008

Respectfully submitted,

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