

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE HCC INSURANCE HOLDINGS,
INC. SECURITIES LITIGATION

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CIVIL ACTION NO. 4:07-cv-801
JUDGE SIM LAKE

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation”) is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, this Stipulation is entered into among Lead Plaintiffs Bristol County Retirement System and Plymouth County Retirement System (collectively, “Plaintiffs”) on behalf of themselves and the Class (as hereinafter defined) and Defendants HCC Insurance Holdings, Inc. (“HCC”), James R. Crane, Edward H. Ellis, Jr., Walter J. Lack, Christopher L. Martin, Michael A.F. Roberts, and Stephen L. Way (the “Individual Defendants”) (HCC and the Individual Defendants are collectively referred to as “Defendants”).

WHEREAS:

A. On March 8, 2007, a class action alleging violations of federal securities laws—*Bristol County Retirement System v. HCC Insurance Holdings, Inc., et al.*, No. 4:07-CV-0801—was filed in this Court, and is hereinafter referred to as the “Action.” The First Amended Complaint was filed shortly thereafter on March 13, 2007. On May 30, 2007, the Court appointed Bristol County Retirement System and Plymouth County Retirement System as the Lead Plaintiffs and appointed Labaton Sucharow LLP as Plaintiffs’ Lead Counsel and Chargois & Herron, LLP as Liaison Counsel. The Court also consolidated the Action and denominated it, “*In re HCC Insurance Holdings, Inc. Securities Litigation.*”

B. On July 20, 2007, a Consolidated Amended Class Action Complaint was filed (the "Complaint"). The Complaint generally alleges, among other things, that: (1) HCC and the Individual Defendants allegedly violated Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder by issuing false and misleading press releases and other statements during the Class Period—May 3, 2005, through and including November 17, 2006—regarding the dating practices for stock options issued by HCC in a scheme to artificially inflate the value of HCC securities; and (2) that the Individual Defendants, as control persons, are allegedly liable under Section 20(a) of the Securities Exchange Act of 1934. The Complaint further alleges that Plaintiffs and other Class Members purchased HCC securities during the Class Period and were damaged as a result thereof.

C. On September 21, 2007, Defendants moved to dismiss the Complaint. Before Lead Plaintiffs' time to respond had passed, the parties agreed to mediate the case before retired United States District Judge Nicholas Politan. Negotiations conducted through Judge Politan resulted in this Settlement.

D. Plaintiffs' Lead Counsel and Plaintiffs' Liaison Counsel have conducted an investigation related to the claims and the underlying events and transactions alleged in the Complaint. Plaintiffs' Lead Counsel have also analyzed the evidence adduced during confirmatory discovery and have researched the applicable law with respect to the claims of Plaintiffs and the Class against Defendants and the potential defenses thereto.

E. Based upon their investigation and confirmatory discovery as set forth above, Plaintiffs' Lead Counsel and Plaintiffs' Liaison Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Plaintiffs and the Class, and in their best interests, and have agreed to settle the claims raised in the Action pursuant to the terms

and provisions of this Stipulation, after considering (a) the substantial benefits that Plaintiffs and the members of the Class will receive from settlement of the Action, (b) the attendant risks of litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

NOW THEREFORE, without any admission or concession on the part of Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and among the parties to this Stipulation, 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 parties hereto from the Settlement, that all Settled Claims (as defined below) as against the Released Parties (as defined below) and all Settled Defendants' Claims (as defined below) shall be compromised, settled, released, acquitted and dismissed with prejudice, upon and subject to the following terms and conditions:

CERTAIN DEFINITIONS

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) "Authorized Claimant" means a Class Member who submits a timely and valid Proof of Claim form to the Claims Administrator.

(b) "Claims Administrator" means the firm retained by Plaintiffs' Lead Counsel and so appointed by the Court, which shall administer the Settlement.

(c) "Class" means, for the purposes of this Settlement only, all persons and entities who purchased or otherwise acquired HCC securities between May 3, 2005, and November 17, 2006, inclusive, and were allegedly damaged thereby. Excluded from the Class

are: (i) each of the Defendants; (ii) members of the family of each of the Individual Defendants; (iii) each person who at any time served as an officer or director of HCC and members of their respective families; and (iv) any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has or had a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded person or entity. Also excluded from the Class are any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice and Preliminary Approval Order (defined below).

(d) “Class Member” means a member of the Class.

(e) “Class Period” means, for the purpose of this Settlement only, the period of time between May 3, 2005, and November 17, 2006, inclusive.

(f) “Defendants’ Counsel” means the law firms of Baker, Keener & Nahra, LLP, Fulbright & Jaworski L.L.P., Porter & Hedges LLP, and Williams & Connolly, LLP.

(g) “Effective Date” means the date upon which the Settlement contemplated by this Stipulation shall become effective, as set forth in paragraph 21 below.

(h) “Final,” with respect to the Order and Final Judgment or an Alternative Judgment (as defined below) means: (i) if the Order and Final Judgment or an Alternative Judgment is appealed and affirmed, the day after the expiration of the time in which a party could seek, but did not, a petition for a writ of certiorari; (ii) if, after any affirmance of the Order and Final Judgment or an Alternative Judgment, a person seeks a petition for a writ of certiorari, the day after any such petition for a writ of certiorari is denied, or the date of final affirmance of the Order and Final Judgment or an Alternative Judgment following review if certiorari is

granted, (iii) if no appeal is filed, the day after the expiration date of the time for the filing or noticing of any appeal from the Court's Order and Final Judgment or an Alternative Judgment, *i.e.*, thirty (30) days after entry of the Order and Final Judgment or an Alternative Judgment, such that the judgment represents a final, unappealable and binding judgment with respect to the Action. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any plan of allocation and/or application for attorneys' fees or expenses, shall not in any way delay or preclude the Order and Final Judgment or an Alternative Judgment from becoming Final.

(i) "Notice" means the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing, which is to be sent to members of the Class identical in all material respects to the form attached hereto as Exhibit 1 to Exhibit A.

(j) "Order and Final Judgment" means the proposed order to be entered approving the Settlement identical in all material respects to the form attached hereto as Exhibit B.

(k) "Preliminary Approval Order" means the proposed order preliminarily approving the Settlement and directing notice thereof to the Class identical in all material respects to the form attached hereto as Exhibit A.

(l) "Plaintiffs' Lead Counsel" means the law firm of Labaton Sucharow LLP.

(m) "Plaintiffs' Counsel" means Plaintiffs' Lead Counsel, Chargois & Herron, LLP, and all other counsel representing Class Members or Plaintiffs in the Action.

(n) “Publication Notice” means the summary notice of proposed Settlement and hearing for publication identical in all material respects to the form attached as Exhibit 3 to Exhibit A.

(o) “Released Parties” means any and all of the Defendants and any person or entity acting or purporting to act for or on their behalf with respect to the Settled Claims, including but not limited to their past or present subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, stockholders, accountants, commercial bank lenders, representatives, affiliates, attorneys, insurers and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors-in-interest or assigns of the Defendants.

(p) “Releasing Parties” means Plaintiffs, all Class Members, and any person or entity acting or purporting to act for or on their behalf with respect to the Settled Claims, including but not limited to their respective present or former officers, directors, partners, principals, employees, members, agents, attorneys, insurers, stockholders, financial advisors, accountants, commercial bank lenders, investment bankers, representatives, affiliates, associates, parents, subsidiaries, general and limited partners and partnerships, heirs, executors, administrators, successors and assigns.

(q) “Settled Claims” means any and all claims, debts, demands, rights, actions or causes of action, obligations, losses, damages, judgments, suits, liabilities, matters and issues of any kind or nature whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether asserted individually or in a representative capacity, whether based on federal, state,

local, statutory or common law or any other law, rule or regulation (including, without limitation, Sections 10 and 20 of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j, 78t, and Rule 10b-5 promulgated thereunder, other state or federal securities laws, rules or regulations, and any and all claims involving allegations of fraud or breach of any duty, negligence or otherwise), whether fixed or contingent, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, representative or individual in nature, including both known claims and Unknown Claims (as defined below), (i) that have been asserted in this Action by Plaintiffs or any other Class Member against any of the Released Parties, or (ii) that could have been asserted in any forum by Plaintiffs or any other Class Member against any of the Released Parties, arising out of, in connection with, or directly or indirectly relating in any way to the allegations, transactions, facts, events, acts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint or any of the complaints filed in this Action and which relate in any way to the purchase or other acquisition of shares of the common stock or debt instruments of HCC during the Class Period. “Settled Claims” shall also include any and all claims arising out of, in connection with or relating in any way to the settlement or resolution of the Action, other than claims to enforce the terms of the Settlement. Settled Claims does not include any claims arising in *Bacas, et al. v. Way, et al.*, 4:07-CV-00456 (S.D. Tex.), or any criminal or regulatory action brought against Defendants by any governmental or regulatory agency.

(r) “Settled Defendants’ Claims” means any and all claims, rights, actions or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the

Defendants, on behalf of themselves or the Released Parties, or any of them or the successors and assigns of any of them against any of the Plaintiffs, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the terms of the Settlement).

(s) “Settlement” means the settlement contemplated by this Stipulation.

(t) “Unknown Claims” means any and all Settled Claims which any Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendants’ Claims which any Defendant does not know or suspect to exist in his, her or its favor, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendants’ Claims, the parties stipulate and agree that upon the Effective Date, Plaintiffs and Defendants shall expressly waive and relinquish to the fullest extent permitted by law, and each Class Member shall be deemed to have waived and relinquished, and by operation of the Judgment shall have expressly waived and relinquished, any and all provisions, rights and benefits conferred by federal law, 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 favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

It is the intention of Plaintiffs and Defendants that, notwithstanding the provisions of Section 1542 or any similar provisions, rights and benefits conferred by law, and notwithstanding the possibility that Plaintiffs, Defendants, or their counsel may discover or gain a more complete understanding of the facts, events or law that, if presently known or fully understood, would have affected the decision to enter into this Stipulation, any and all Settled Claims, including

Unknown Claims, shall be fully, finally and forever settled. Plaintiffs and Defendants acknowledge, and Class Members 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’ Claims was separately bargained for and was a key element of the Settlement.

SCOPE AND EFFECT OF SETTLEMENT

1. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties and any and all Settled Defendants’ Claims.

2. Upon the Effective Date of this Settlement, Plaintiffs, Class Members, and the Releasing Parties shall, with respect to each and every Settled Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties.

3. Upon the Effective Date of this Settlement, each of the Defendants, on behalf of themselves and the Released Parties, shall release and forever discharge each and every of the Settled Defendants’ Claims, and shall forever be enjoined from prosecuting the Settled Defendants’ Claims against Plaintiffs, all Class Members, and their attorneys.

THE SETTLEMENT CONSIDERATION

4. HCC and/or its insurers shall pay or cause to be paid to the Class, on behalf of and for the benefit of Defendants (and with no obligation with respect thereto by any Individual Defendant), the sum of \$10,000,000 (the “Cash Settlement Amount”) into a segregated, interest-bearing escrow account designated by Plaintiffs’ Lead Counsel (the “Settlement Fund”). The Cash Settlement Amount and any income or interest earned thereon shall be the “Gross Settlement Fund.” The “Net Settlement Fund” shall be the Gross Settlement Fund, less any amounts withdrawn for (i) taxes, (ii) reasonable costs and expenses of class notice and

