UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: AVANDIA MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	MDL No. 1871 07-MD-01871-CMR
THIS DOCUMENT APPLIES TO: ALL PLAINTIFFS REPRESENTED BY THE MILLER FIRM, LLC	

PLAINTIFFS' MOTION TO ENFORCE THE SETTLEMENT AGREEMENT

On May 23, 2010, The Miller Firm, LLC and Defendant GlaxoSmithKline LLC, entered into a Master Settlement Agreement ("MSA") to settle the claims of all clients, represented by The Miller Firm, alleging personal injuries from their ingestion of the pharmaceutical drug Avandia. Over 239 Plaintiffs have satisfied and resolved all Medicare and Medicaid liens and no private insurance organization, including Medicare Advantage organizations, have asserted a claim for the reimbursement of costs incurred to cover treatment for Avandia-related injuries. These Plaintiffs, by and through counsel, respectfully move this Court for an order enforcing the settlement agreement entered into between The Miller Firm and Defendant GlaxoSmithKline LLC, and requiring the disbursement of all remaining settlement funds held-back to satisfy liens and reimbursement claims.

Alternatively, Plaintiffs respectfully request that this Court issue an Order requiring any Medicare Advantage organization alleging a claim for reimbursement or subrogation against any

of the settling claimants, to assert its rights, and identify itself to The Miller Firm and GSK within thirty (30) days or waive any future right to recovery.

This Motion is supported by a memorandum of law filed herewith.

Dated: August 28, 2012

Respectfully submitted,

/s/ Michael J. Miller
Michael J. Miller (PA I.D. 95102)
David J. Dickens (VA I.D. 72891
Nathan Cromley (PA I.D. 209990)
The Miller Firm, LLC
108 Railroad Avenue
Orange, VA 22960
Tel: (540) 672-4224

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plaintiffs' Motion to Enforce the Settlement Agreement was served upon all counsel of record via ECF on this 28th day of August 2012. Additionally, a copy of Plaintiffs' Motion, Memorandum in Support of its Motion, including exhibits, were sent via United States Mail to the following:

Nina M. Gussack
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103

Kenneth Zucker
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103

Richard W. Cohen
Lowey Dannenberg Cohen & Hart, P.C.
One North Broadway, Suite 509
White Plains, NY 10601

Mark D. Fischer
Rawlings & Associates, PLLC
One Eden Parkway
LaGrange, KY 40031-8100

/s/ Michael J. Miller
Michael J. Miller
The Miller Firm, LLC
108 Railroad Avenue
Orange, VA 22960
Tel: (540) 672-4224

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: AVANDIA MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	MDL No. 1871 07-MD-01871-CMR
THIS DOCUMENT APPLIES TO: ALL PLAINTIFFS REPRESENTED BY THE MILLER FIRM, LLC	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO ENFORCE THE SETTLEMENT AGREEMENT

Two years have passed since the Miller Firm claimants agreed to settle their claims, and yet, hundreds of claimants included in that Settlement Agreement have not received the full amount of their settlement value. The 239 Plaintiffs ("Plaintiffs") that are subject to this Motion have satisfied all Medicare and Medicaid liens (or Medicare/Medicaid have affirmed that no liens exist) and no private insurer, including Medicare Advantage organizations ("MAO"), has asserted a claim for subrogation or reimbursement. Despite the fact that there is no identifiable lien on these cases, Plaintiffs are having money withheld to satisfy a *potential* obligation that *could be* asserted in the future. Defendant will not agree to release the remaining funds as there *may* be other Medicare Advantage organizations that could bring a claim seeking to enforce its claimed right as secondary payer under the Medicare Secondary Payer Act.

Without order of Court, Plaintiffs settlement funds will apparently be held ***indefinitely*** until Defendant is satisfied that every MAO has asserted or waived its reimbursement or

subrogation rights against the settling claimants. This was not the intention of the parties at the time of entering into the Settlement Agreement. Plaintiffs should not be held hostage, and prevented from resolving this litigation and receiving settlement funds, by the possibility that an MAO could bring a claim at some point in the future. Accordingly, Plaintiffs respectfully request that this Court issue an Order requiring GSK to release the remaining settlement funds to Plaintiffs or, alternatively, issue an Order requiring any and all private insurance companies with potential outstanding reimbursement and subrogation claims to come forward and assert a claim within thirty (30) days or lose all rights to funds received in the Avandia litigation.

PROCEDURAL BACKGROUND

On May 23, 2010, The Miller Firm, LLC ("Miller Firm") entered into a Master Settlement Agreement ("MSA") with Defendant GlaxoSmithKline LLC, formerly known as SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK") to settle the claims of all of the Miller Firm's clients who were alleging injuries from the ingestion of the pharmaceutical drug Avandia. Under the terms of the settlement agreement, The Miller Firm was to provide GSK with all information necessary to comply with the reporting requirements of Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA)(P.L. 110-173), codified 42 U.S.C. 1395y(b)(8). Additionally, prior to the distribution of any payment, the settling claimant was required to represent and warrant to GSK that all claims by any lien holders have been or will be satisfied. *Id.*

On August 4, 2010, this Court established a Qualified Settlement Fund for the Miller Firm cases and appointed The Garretson Firm Resolution Group, Inc., ("Garretson Firm") as Fund Administrator. [Doc. 729]. Pursuant to Court Order, the Fund Administrator could "not

authorize any distributions of income or principal from the Fund except pursuant to joint instruction to the Fund Administrator by GSK, or its counsel, and The Miller Firm. Id. at ¶ 3.

As part of the settlement process, GSK set aside a reserve or "hold back" for the payment and satisfaction of governmental liens, including Medicare and Medicaid. After the eligible claimants in the Miller Firm settlement group were determined, and the settlement funds were allocated among these claimants, the parties authorized The Garretson Firm to release settlement funds to the claimants while withholding a certain percentage to satisfy the healthcare liens.[1]

On November 17, 2010, Humana Medical Plan, Inc. and Humana Insurance Company (collectively "Humana") filed a class action complaint against GSK, on behalf of themselves and all others similarly situated, to recover the money that MAOs paid on behalf of enrollees for medical treatment for illness or injury attributable to the use of Avandia.[2] *Humana Medical Plan, et al. v. GlaxoSmithKline, L.L.C.*, 10-6733 (E.D. Pa.). The lawsuit was filed by Rawlings & Associates, PLLC and Lowey Dannenberg Cohen & Hart PC (collectively "Rawlings Group"). In response to the lawsuit, GSK froze the Miller Firm Settlement Fund pending resolution of the class action allegations with Humana.

Following the filing of the class action lawsuit, The Rawlings Group agreed to participate in a voluntary Medicare Part C Plan ("Part C Plan") to resolve the interests of the Part C providers with those claimants who were identified as being settling parties in the Avandia litigation and members of the Participating Plans. Each claimant was presented with educational materials explaining their potential reimbursement obligations and given the

[1] The first disbursement of funds, subject to the "hold back", were sent to Miller Firm claimants on April 15, 2011.
[2] Humana also sought damages for GSK's failure to pay such reimbursements.

opportunity to enter the Part C Plan so that any MAO interests could be identified and resolved. As a result of the agreement, GSK agreed to release funds to eligible claimants subject to a 20% holdback to satisfy any Medicare Part C liens. In accordance with the Medicare Plan, The Miller Firm authorized the release of identifying information to the Rawlings Group in order to allow them to identify claimants who received Part C benefits from Participating Providers.

In addition to the Part C Plan, The Miller Firm also entered into a Private Lien Resolution Program ("Program") to resolve potential reimbursement and subrogation claims with approximately 48 Private Healthcare organizations represented by the Rawlings Group. The Program was established to "verify, resolve, and satisfy" outstanding claims "arising from any of their private health coverages, including coverage under Medicare Part C and any managed Medicaid program." In accordance with the agreement, the Rawlings Group identified any claimant who received benefits through one of the Private Healthcare organizations.

Following a review of the Miller Firm's client-specific information, the Rawlings Group identified those claimants who were enrollees in a Medicare Part C Plan or a participating private insurance plan.[3] On August 10, 2012, The Miller Firm executed a "Joint Authorization to Unblock Account and Distribute Funds" which would release the settlement funds reserved as a Medicare Part C and private lien "hold back" to those 239 claimants who were cleared by the Rawlings Group.

On August 16, 2012, prior to the execution of the Joint Authorization by the Garretson Firm, GSK rescinded their authorization as a result of assertions by "Rawlings & Associates

[3] The moving Plaintiffs represent the 239 claimants who were not identified as having any reimbursement obligations to the Private Healthcare organizations represented by the Rawlings Group.

and Lowey Dannenberg Cohen & Hart that claims are being pursued by Medicare Advantage carriers, which are not covered by the Private Lien Resolution Program for Medicare Advantage that was entered by those firms and The Miller Firm." Exhibit A; Letter from K. Zucker to M. Miller. To date, neither The Miller Firm nor the Garretson Firm has received notice of a claim by any MAO asserting its reimbursement rights for any of the Plaintiffs that are subject to this Motion.

ARGUMENT

Settlement is a judicially favored manner to terminate litigation. *See Petty v. General Accidental Fire & Life Assurance Corp.,* 365 F. 2d 419, 421 (3d Cir. 1966). It is well settled that "a district court has 'inherent authority to enforce agreements settling litigation before it.'" *McClure v. Township of Exeter*, (E.D. Pa. Sept. 27, 2006); *quoting New Castle County v. U.S. Fire Ins. Co.,*728 F. Supp. 318, 319 (D. Del. 1989). A district court can enforce settlement agreements summarily, upon motion. *Gross v. Penn Mutual Life Ins. Co*., 396 F. Supp. 373, 374 (E.D. Pa. 1975).

A settlement agreement is a contract that must be interpreted and enforced in accordance with the principles of contract law. *Joy Techs., Inc. v. North American Rebuild Co.,* 2012 U.S. Dist.LEXIS 68062, 14-15 (W.D. Pa. May 15, 2012); *quoting Enterprise Energy Corp. v. United States*, 50 F.3d 233, 238 (3d Cir. 1995). Under Delaware law, a settlement agreement and release is a contract, and construction of the contract is a matter of law.[4] *Jackson v. Carroll*, 643 F. Supp. 2d 602, 612 (D. Del. 2009). To state a claim for breach of contract, plaintiffs must allege: 1) the existence of an enforceable contract; 2) a breach of a contractual obligation; and 3) resulting damages. *MacKay v. Donovan*, 2012 U.S. Dist. LEXIS

[4] The Settlement Agreement provides that Delaware law will apply to disputes between the parties under the Agreement.

18606, at * 6-7 (E.D. Pa. Feb. 14, 2012); quoting *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

Under Delaware law, the courts must determine the parties' shared intent, "looking first at the relevant document, read as a whole, in order to divine that intent." *Future Fibre Techs. Pty. Ltd. v. Optellios, Inc.*, 2011 U.S. Dist. LEXIS 90548, 9-10 (D. Del. Aug. 15, 2011); *quoting MicroStrategy, Inc. v. Acacia Research Corp.*, No. 5735-VCP, 2010 Del. Ch. LEXIS 254, 2010 WL 5550455, *5 (Del. Ch. Dec. 30, 2010). As part of that review, the Court interprets the words "using their common or ordinary meaning, unless the contract clearly shows that the parties' intent was otherwise." Id.

I. The MSA Describes The Specific Responsibilities Of Both Parties With Respect To Third Party Liens

In the negotiation of the MSA, The Miller Firm and GSK negotiated and specifically detailed the parties' responsibilities with respect to liens, assignment rights and other third party payor claims. Section IV(M) of the MSA provides in pertinent part:

> Each settling Participating Claimant shall identify all statutory lien holders; any other holders of liens as to which the Participating Claimant or his or her respective Participating Law Firm(s) has received notice; parties to lawsuits or interventions, including by subrogation; and also, regardless of notice, government payors, including Medicare and Medicaid liens if they exist (collectively "lien holders"), through procedures and protocols to be established by the parties, having or asserting claims for and/or having reimbursed settling Participating Claimants or interests they represent for hospital expenses, medical expenses, physician expenses, or any other health care provider expenses or drug costs arising from or based upon the provision of medical care or treatment in connection with any claimed injury due to the use of Avandia.

Once the lien holders were identified, it was the "sole responsibility of the Participating Claimant and his or her respective Participating Law Firm(s)" to satisfy or resolve any and all liens, assignments or other claims made by third parties. As such, "[p]rior

to distribution of any payment, the settling Participating Claimant and his or her respective Participating Law Firm(s) shall represent and warrant that all claims by any of the foregoing lien holders have been ***or will be*** satisfied or otherwise resolved by the Participating Claimant in a manner acceptable to GSK, ***which acceptance shall not be unreasonably withheld***. MSA:Section IV(M)(emphasis added). *Id*.

The Joint Authorization for the release of the final hold-back funds for each of the 239 Plaintiffs provide Defendants with a representation and warranty regarding the satisfaction of liens and assignments. The Joint Authorization provides[5]:

> By executing this Joint Authorization, MLF represents and warrants that any liens, assignment rights or other claims addressed in Section IV. M of the MSA have been or will be satisfied for each Claimant whose settlement disbursement is included within this Joint Authorization. By executing this Joint Authorization, GRG represents and warrants that any reimbursement obligations related to Medicare Part A & B and Medicaid and any MMSEA reporting obligations of GSK have been or will be satisfied….GRG also represents and warrants that all obligations of which GRG was notified….including Medicare C-related claims against those of the listed Claimants who opt into any private lien resolution program in which GRG is involved, have been or will be satisfied.

Plaintiffs have waited patiently while all Medicaid, Medicare and private liens have been negotiated and resolved. Plaintiffs have satisfied all governmental liens and any private liens, including those asserted by MAOs, for which they have been provided notice. Additionally, Plaintiffs have expressly represented to Defendant that all identified liens have been or will be satisfied. Having met their contractual requirements under the MSA, Defendant cannot unreasonably withhold the remaining settlement funds on the basis of a third party representation that another insurance company *may* have a potential lien.

[5] The Joint Authorization contains confidential information regarding the 239 Plaintiffs at issue in this Motion. Accordingly, Plaintiff has not filed the Joint Authorization as an Exhibit to this Motion. Should the Court so require, Plaintiffs can provide a copy of this document to the Court, under seal.

II. The Parties Did Not Intend That All Private Insurance Liens, Including Medicare Advantage Claims, Be Satisfied Prior to The Distribution of Final Payment To Eligible Claimants

Under Delaware law, the courts must determine the parties' shared intent, "looking first at the relevant document, read as a whole, in order to divine that intent." *Future Fibre Techs. Pty. Ltd. v. Optellios, Inc*., 2011 U.S. Dist. LEXIS 90548, 9-10 (D. Del. Aug. 15, 2011); *quoting MicroStrategy, Inc. v. Acacia Research Corp*., No. 5735-VCP, 2010 Del. Ch. LEXIS 254, 2010 WL 5550455, *5 (Del. Ch. Dec. 30, 2010). The language of the settlement agreement clearly dictates that Plaintiff had a responsibility to: (1) provide GSK with all information that GSK may need to comply with reporting requirements applicable to it, including under Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007; and (2) identify holders of liens as to which they "received notice" and warrant that all known liens have been or will be satisfied. The parties never intended, at the time of entering into the MSA, that all liens, including those of Medicare Advantage carriers, be identified and satisfied prior to the release of settlement funds.

The intent of the parties is evident in GSK's Motion to Dismiss the Complaint of Humana Insurance Company. See Exhibit B; *Humana Medical Plan, Inc. v. GlaxoSmithKline, LLC, et al*., 2:10-cv-06733 [Doc. 8]. As GSK explained the "claims asserted here by plaintiffs on behalf of the putative class of Medicare Advantage organizations do not constitute liens for which GSK is responsible to assure payment." *Id*. at 2. The understanding that there was no "statutory obligation of reimbursement to MA organizations by primary payers" was shared by the parties at the time of entering into the MSA. *Id*. at 4. Further, as GSK recognizes in its Motion, MAOs have an obligation to come forward and inform the parties of the identity of

individuals for whom they are asserting a claim; an obligation these insurers failed to meet. *Id*. at 5, 16.

Under the express terms of the MSA, the parties agreed that Participating Claimants would identify statutory lien holders, Medicare and Medicaid liens, and "any other holders of liens as to which the Participating Claimant or his or her respective Participating Law Firm(s) has received notice." MSA; Section IV(M). The parties entered into the contract with the understanding that GSK did not have a statutory obligation, and would not, assure payment to MAOs. Further, the parties agreed that any obligation for reporting and satisfying claims with MAOs would be governed by the insurance contracts entered into by the Participating Claimants. There is absolutely nothing within the MSA that prevents GSK from issuing final payments to Plaintiffs following a representation that all liens have been or will be satisfied.

III. The Third Circuit's Ruling in *In re Avandia Marketing, Sales Practices and Products Liability Litigation*, 685 F.3d 353 (3rd Cir. 2012) Does Not Prevent GSK From Releasing Final Payment to Plaintiffs

By Order of June 13, 2011, this Court dismissed Humana's class action complaint finding that a "private cause of action within the MSP Act did not apply to MAOs, nor did the secondary payer provision in the MA statute create a private right of action for MAOs. [Doc. 1523]; *In re Avandia Marketing, Sales Practices and Products Liability Litigation*, 685 F.3d 353 (3d Cir. 2012). Recently, the Third Circuit reversed this Court's dismissal of the complaint finding that affording MAOs access to a private cause of action "comports with the broader policy goals of the MA program." *Id.* Accordingly, the Third Circuit remanded the case for further proceedings. Importantly, the Third Circuit opinion did not address whether

GSK was required to reimburse Humana, or other MAOs, for costs incurred to cover treatment for Avandia-related illnesses and injuries on behalf of Participating Claimants.[6]

While the Third Circuit held that 42 U.S.C. § 1395y(b)(3)(A) does provide Humana with a private cause of action, the issue of notice was not presented to the Third Circuit. Guidance on this issue is clear and it is the MAOs who are responsible for identifying primary payers and the amounts payable. The procedures and obligations of MAOs are detailed in 42 CFR 422.108 which provides:

> (b) Responsibilities of the MA organization. The MA organization must, for each MA Plan--
>
> (1) Identify payers that are primary to Medicare under section 1862(b) of the Act and part 411 of this chapter;
>
> (2) Identify the amounts payable by those payers;
>
> (3) Coordinate its benefits to Medicare enrollees with the benefits of the primary payers, including reporting, on an ongoing basis, information obtained related to requirements in paragraphs (b)(1) and (b)(2) of this section in accordance with CMS instructions.[7]

As a result of the Third Circuit opinion and the guidance provided by the Federal Regulations, GSK may arguably be warranted in holding funds for those Claimants that have been identified as having received benefits from an MAO that has come forward and asserted its reimbursement rights through the Rawlings Group.[8] Plaintiffs, however, do *not* have a

---

[6] Humana appealed only the issue of whether a private cause of action in the MSP Act extended to MAOs. Humana did not appeal this Court's denial of its claim for equitable relief where it was seeking GSK to disclose the identity of every MAO insured individual with whom GSK has settled.

[7] The Medicare Statute authorizes the Secretary to establish standards by regulation for MAOs "provided that any standard so established shall supersede any State law or regulation…to the extent such law or regulation is inconsistent with such standards. The Secretary adopted Federal Regulation Section 422.108.

[8] For these cases, GSK may have an argument that the contractual language that the warranty that all lien holders have or will be satisfied "in a manner acceptable to GSK" precludes releasing funds until

reimbursement obligation to any of the MAOs who have failed to provide notice to the Miller Firm, Garretson Firm or GSK. As no MAOs have come forward asserting its rights against these Plaintiffs, there is no justifiable reason for continuing to hold these Plaintiffs funds.

IV. Should The Court Deny Plaintiffs' Motion to Enforce The Settlement, Any Medicare Advantage Organization Asserting A Claim For Reimbursement Should Be Required To Come Forward And Assert Its Rights Within 30 Days Or Waive Its Subrogation Rights

As the obligation to come forward and assert its right of recovery lies with the MAOs, Plaintiffs settlement funds could be held **indefinitely** until Defendant is satisfied that no MAO MAO will ever be asserting a claim against any of the settling plaintiffs. This was surely not Congress's goal in creating the Medicare Advantage Program. If Defendant is permitted to hold funds, with no identifiable lien, based solely on the representation of a third party that other MAOs may assert a claim seeking reimbursement for costs incurred to cover treatment for Avandia-related injuries, there must be a time limit for these carriers to come forward.

The requirements for intervention under Fed. R. Civ. P. 24 provide guidance as to setting a time limit for a third party to assert its rights in a litigation. One of the fundamental requirements for intervention is "timeliness". "Timeliness is fundamental not only to intervention, but to the overall conduct of a lawsuit." *Reid v. Illinois State Board of Education*, 289 F. 3d 1009, 1017-18 (7th Cir. 2002). "The purpose of the timeliness requirement is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal." *Id.* at 1018; *quoting Sokaogon Chippewa Community v. Babbitt*, 214 F. 3d 941, 949 (7th Cir. 2000).

Here, the lawsuit is finally "within sight of the terminal." After two years, Plaintiffs have been cleared as having resolved any and all liens and reimbursement obligations related

---

the claims with the MAOs who have come forward are resolved. Here, Plaintiffs have been cleared as not having any liens with the identifiable MAOs.

to their Avandia-related injuries. Furthermore, each Plaintiff was encouraged and given the opportunity to participate in the Part C Plan in an effort to proactively identify and address any potential MAO interests. This Court should not allow further delay as a result of eleventh-hour measures taken by MAOs who have slept on their claims until this date. The unnamed MAOs knew or should have known about the creation of the Avandia MDL in 2007, the settlement of these cases in May 2010, and the filing of the Humana lawsuit in November 2010. Despite this knowledge, these organizations never contacted Plaintiffs, The Miller Firm, or GSK about the possibility of seeking reimbursement for expended costs on injuries related to this litigation. The prejudice to Plaintiffs in withholding their remaining settlement funds would far outweigh any prejudice to a sophisticated insurer who knew of this litigation but "were content to participate on the sidelines for a long period of time." *Reid*, 289 F. 3d at 1018. "Any such loss is of their own making." *Id.*

If the Court should deny Plaintiffs Motion to Enforce the Settlement, Plaintiffs respectfully request that the Court require any additional MAOs, not previously identified, to come forward within 30 days or lose their right of recovery. Thirty days is more than sufficient to allow any un-named MAO to come forward and assert its rights.

CONCLUSION

The 239 Plaintiffs who are subject to this Motion have waited patiently to resolve this litigation and be paid the full settlement value for their injuries. Each of the Plaintiffs has expressly warranted that they have or will satisfy any and all liens, assignment rights or other claims related to their injuries. Neither Plaintiff nor GSK have identified, or been notified, of any additional liens or other claims relating to this litigation. Accordingly, Plaintiffs have

satisfied their obligations under the Master Settlement Agreement and GSK should be ordered to release the remaining funds.

Alternatively, this Court should issue an Order that any additional Medicare Advantage organizations who may have a potential claim against Plaintiffs to come forward and assert its rights within 30 days or forever waive its rights for reimbursement. These insurers were on ample notice of their claims and chose not to take any action. Under the Medicare laws and regulations, it incumbent upon these insurers to take affirmative steps to protect their interests. Plaintiffs should not continue to be punished for these organizations failure to act.

Respectfully submitted,

/s/ Michael J. Miller

Michael J. Miller (PA I.D. 95102)
David J. Dickens (VA I.D. 72891
Nathan Cromley (PA I.D. 209990)
The Miller Firm, LLC
108 Railroad Avenue
Orange, VA 22960
Tel: (540) 672-4224

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plaintiffs' Motion to Enforce Settlement was served upon all counsel of record via ECF on this 28th day of August 2012. Additionally, a copy of Plaintiffs' Motion, Memorandum in Support of its Motion, including exhibits, were sent via United States Mail to the following:

Nina M. Gussack
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103

Kenneth Zucker
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103

Richard W. Cohen
Lowey Dannenberg Cohen & Hart, P.C.
One North Broadway, Suite 509
White Plains, NY 10601

Mark D. Fischer
Rawlings & Associates, PLLC
One Eden Parkway
LaGrange, KY 40031-8100

/s/ Michael J. Miller
Michael J. Miller
The Miller Firm, LLC
108 Railroad Avenue
Orange, VA 22960
Tel: (540) 672-4224