

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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IN RE MARSH & MCLENNAN COMPANIES,  
INC., SECURITIES LITIGATION

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: CIVIL ACTION  
: NO.: 04-CV-08144 (CM)

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: **DECLARATION OF JUDGE**  
: **DANIEL H. WEINSTEIN (RET.)**  
: **IN SUPPORT OF MOTION FOR**  
: **FINAL APPROVAL OF**  
: **SETTLEMENT**  
:

I, Judge Daniel H. Weinstein (Ret.), hereby declare as follows:

**Background**

1. From 1982 through 1988, I served as a Judge of the Superior Court of the State of California, County of San Francisco. I also served as an Associate Justice *Pro Tem* of the California Supreme Court, and of the First District Court of Appeal. Since retiring from the bench, I have been a full-time mediator. For the past twenty years, I have presided over the mediation of countless disputes, including many of the most complex multi-party disputes throughout the United States. By way of example, only, I have mediated dozens of federal securities class actions involving public companies such as Enron, Homestore, Qwest, Adelphia, Dynegy, Providian, Clarent, and other major New York Stock Exchange and NASDAQ corporations. I have also mediated a host of other types of class actions, including product liability actions, toxic tort cases, environmental litigation, and litigation brought by borrowers, credit card customers, insurance purchasers, air crash victims, and others. Many of the cases in which I am involved present complex fact patterns and legal issues, and involve hundreds of millions (or billions) of dollars in claimed damages. Often, they include numerous plaintiffs and plaintiffs' counsel, as well as numerous defendants (issuers, directors, officers, insurance carriers, professional firms, et cetera) and defense counsel. For each of the last ten years, I have assisted parties in forging settlements of complex disputes involving billions of dollars in the aggregate.

2. I served as the mediator in connection with the proposed settlement of the above-referenced action, entitled *In re Marsh & McLennan Companies, Inc. Securities Litigation*, pending in the United States District Court for the Southern District of New York.

3. I set forth my background as a mediator, above, to provide context for the comments that follow, and to demonstrate that my perspective on the settlement of this action is rooted in significant experience in the resolution of complex litigation. As described below, this action presented legal, factual and practical issues as complicated as any that I have ever encountered. The parties were represented during the mediation process through zealous and able counsel, who negotiated aggressively and at arm's-length. I am very strongly of the view that the settlement of this Action reached at the end of the mediation process represents a reasonable and practical resolution of highly uncertain litigation. The Court, of course, will make determinations as to the "fairness" of the settlement under applicable legal standards. From a mediator's perspective, however, I can say that I unreservedly recommend the settlement that has been reached as reasonable, hard-fought, arms-length, and accurately reflective of the risks and potential rewards of the claims being settled.

#### **The Mediation Sessions**

4. The first mediation was held on April 7, 2008 in Napa, California. The parties subsequently met with me in person for two additional mediation sessions over the next year and a half, both in New York. The parties submitted extensive confidential mediation briefs and documentary evidence.

5. In addition to these sessions, and working closely with my associate mediator, Michelle Yoshida, and my neutral economist, Chad Coffman of Winnemac Consulting, we have had dozens of telephone conferences and separate meetings with counsel for the parties, both individually and together as a group to get a fuller understanding of the full range of disputes that needed to be settled. These include meetings with Marsh & McLennan Cos. General Counsel and Chief Financial Officer, representatives of the Attorneys General from both Ohio and New Jersey, and conferences with the Attorneys General from both Ohio and New Jersey. There were continuous, ongoing, and repeated discussions with Lead Counsel.

6. In these numerous sessions among all parties, and in small groups, various counsel made vigorous and substantive media and oral presentations regarding their clients' positions on key contested issues and damages, and their adversaries responded in kind. All groups negotiated aggressively, effectively, and at arm's length. I believe that the parties' advocacy and ultimate compromise of the formidable disputed issues were the result of reasonable, arms-length

bargaining and represent reasonable settlement terms in light of the strengths and weaknesses of the parties' factual and legal positions.

7. In addition to these sophisticated and strongly-disputed legal claims, defenses and damages issues, there were challenging and complicated financial issues due to the amount of damages being sought for settlement from the defendant Company. My neutral economist, Chad Coffman, reviewed all of the expert reports in this case and communicated with the parties' experts regarding loss causation and damages. The parties' early settlement demands and offers reflected vastly different views about the merits, damages, and available financial resources to resolve the concerns. I do not intend to minimize the importance of these negotiations, all of which were formidable and ultimately compromised by the parties in the interest of reaching a settlement.

8. The parties' settlement discussions culminated in a Mediator's Proposal in October 2009. I made this proposal because of my belief that the Settling Parties were not, through traditional negotiations, moving towards a settlement that was acceptable to either side. Rather than allow the negotiations to come to an impasse, and giving due consideration to the confidential mediation submissions and the extensive negotiations, I made a proposal and provided the parties with my reasoning as to why we believed it to be fair, reasonable, and deserving of their earnest consideration. The Mediator's Proposal was in a range that I believed reasonably reflected the parties' factual, legal, and financial positions, and also took into consideration the risks and costs of litigation, should this matter not settle.

9. Following some very strong advocacy on behalf of each group, the Mediator's Proposal was extended several times to give the parties additional time to consider the proposal. During this time, I had numerous meetings and telephone conversations in an attempt to bridge the gaps and continue to position the litigation for resolution. Ultimately, the last deadline to respond to the Mediator's Proposal lapsed without all parties having responded to it.

10. During the following week, the Settling Parties resolved the matter consistent with the Mediator's Proposal with the additional assistance of Judge McMahon.

11. The Settlement of this Action provides monetary consideration to the Class of approximately Four Hundred Million Dollars (\$400,000,000).

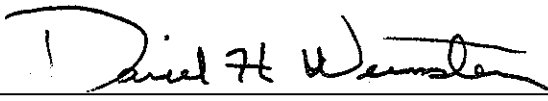
12. In light of the formidable and sophisticated factual, legal, damages, and financial issues involved and the significant time to litigate and negotiate this resolution, I view the total

settlement in large part as a testament to the abilities and efforts of a highly talented and committed group of counsel and dedicated principals on both sides. I can state that each settlement term represents a heavily-negotiated and arms-length compromise of disputed claims among experienced and able counsel.

13. Based on, and as a result of the foregoing, I state to the Court that I am satisfied that the proposed settlement is fair, reasonable and adequate. There is substantial monetary consideration flowing to the Class, with due recognition to the complexity of the facts and legal contentions at issue, and a real threat of years of litigation and appeals. I believe that the settlement agreement was the highest number that the plaintiffs could have achieved at this time.

14. Therefore, based on my knowledge of this Action, all of the materials provided to me, the efforts of counsel, the intensity of the negotiations, the litigation risks, and the benefits reached in the proposed settlement, I believe that this is a fair, reasonable and adequate settlement of all claims against the Settling Defendants, and I respectfully recommend that it be approved by the District Court.

Respectfully submitted this 18th day of December, 2009.

  
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Hon. Daniel H. Weinstein (Ret.)

## CERTIFICATE OF SERVICE

The undersigned, hereby certifies that the foregoing declaration / exhibit in support of its referenced motion was served with the clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record identified on the Court's ECF service list.

I additionally certify that the counsel listed below have been additionally served with the same documents via electronic mail.

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Executed: December 18, 2009

/s/ Keith M. Fleischman

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