

CAUSE NO. D-1-GN-11-000644

**DR. GARY CAIN and
BARRY EDELSTEIN,
Plaintiffs,**

v.

**KIESLING, PORTER, KIESLING
& FREE, P.C.,
Defendant.**

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**IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS**

200TH JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JUN 29 2011 BP

At
Amalia Rodriguez-Mendoza, Clerk

ORDER PRELIMINARILY APPROVING SETTLEMENT

Upon consideration of the Parties' application for an order preliminarily approving the settlement of the Civil Actions (the "Settlement"), in accordance with the Settlement Agreement dated June 28, 2011 (the "Settlement Agreement"), including the certification of the Settlement Class pursuant to Rule 42 of the Texas Rules of Civil Procedure and distribution of the Notice of Settlement as set forth therein, and the Court's review of the terms of the Settlement, the relevant authorities, and the complete record and materials on file in this matter, IT IS HEREBY ORDERED AS FOLLOWS:

1. All capitalized terms contained herein shall have the same meanings as set forth in the Settlement Agreement (in addition to those capitalized terms defined herein).
2. The Court finds the Settlement is fair, reasonable and adequate, and does hereby preliminarily approve the Settlement Agreement, subject to further consideration at the Settlement Hearing described below, including the terms and conditions for Settlement and dismissal with prejudice of the Civil Actions.
3. The Court further finds that under the circumstances, the Class Members will achieve the maximum benefit possible through this Settlement by providing the Receiver with

the Settlement Fund to help maintain the insurance policies, rather than each Class Member receiving a portion of the Settlement Fund. The Receiver may, however, seek Court approval to use the Settlement Fund for other purposes should the Receiver no longer be obligated to pay premiums.

4. Pursuant to the Settlement Agreement, the Class is preliminarily certified under Rule 42(b)(2) of the Texas Rules of Civil Procedure as follows:

Any and all Persons who, for purposes of participating in Retirement Value's Re-Sale Life Insurance Program or any similar program specifically marketed by Retirement Value, either (i) invested, lent money, or otherwise caused funds to be paid with regard to such program or (ii) signed a Retirement Value Policy Participation Agreement. The Settlement Class includes the 1252 Persons listed on Exhibit "C" of the Settlement Agreement, which are the names of the known investors in Retirement Value identified to date by the Receiver and the State.

5. Pursuant to Rule 42(g) of the Texas Rules of Civil Procedure, the Court appoints as Class Counsel, Geoffrey D. Weisbart, Esq. of HANCE SCARBOROUGH, L.L.P., 111 Congress Avenue, Suite 500, Austin, Texas 78701.

6. The Court approves, as to substance, form and manner of notice, the Notice of a Proposed Class Action Settlement (the "Notice"), attached as Exhibit "A" to the Settlement Agreement, and finds that the distribution of the Notice substantially in the manner set forth in ¶ VI(C) of the Settlement Agreement is the best notice practicable under the circumstances, and shall constitute due and sufficient notice of the matters set forth therein for all purposes and to all persons entitled to such notice.

7. Within ten (10) days after the issuance of this Order Preliminarily Approving Settlement, the Receiver will identify all Class Members and will provide to Class Counsel the name, social security number and last known address of each Class Member. Within twenty-one

(21) days after the issuance of this Order Preliminarily Approving Settlement, the Class Counsel will mail by United States first class mail, postage prepaid, the Notice to each Class Member.

8. At least five (5) calendar days prior to the Settlement Hearing, Class Counsel shall provide the Court proof, by affidavit or declaration, of due diligence and proof of mailing with regard to the mailing of the Notice to proposed Class Members.

9. Any Class Member may appear and show cause, if he, she or it has any reason why the terms of the Settlement Agreement and/or the Settlement of the Civil Actions should not be approved as fair, reasonable and adequate, or why a Judgment should not be entered thereon, provided however, unless otherwise ordered by the Court, no Class Member shall be heard or entitled to contest the approval of all or any of the terms and conditions of the Settlement Agreement and/or the Settlement, or, if approved, the Judgment to be entered thereon approving the same, unless that Person has, within thirty-five (35) days after the Notice being mailed to Class Members, filed with the Court, with copies served on Class Counsel and Counsel for KPKF (delivered by hand or sent by first class mail to the addresses provided in the Notice), written objections, including a detailed description of the basis of therefore. Any Class Member who does not make his, her or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement as incorporated in the Settlement Agreement, unless otherwise ordered by the Court, but shall otherwise be bound by the Final Approval order and Judgment to be entered and the releases to be given.

10. The Parties shall file all papers in support of Final Approval of the Settlement and for certification of the Settlement Class no later than twenty-one (21) days after the deadline for Class Members to object to the Settlement.

11. A Settlement Hearing shall take place on Oct 4, 2011 at 9:50 .m., at the District Court of Travis County Texas, 200th Judicial District, 1000 Guadalupe, 5th Floor, Austin, Texas before the Honorable Gisela D. Triana-Doyal, to determine whether the proposed settlement of the Civil Actions on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate, and should be finally approved by the Court pursuant to Rule 42(e) of the Texas Rules of Civil Procedure, and whether the claims asserted against KPKF in the Civil Actions, as well as the Released Claims, should be dismissed pursuant to the Settlement.

12. Pending Final Approval, each member of the Settlement Class is preliminarily barred and enjoined from commencing, prosecuting or maintaining in any court other than this Court any claim, action or other proceeding that challenges or seeks review of or relief from any order, judgment, act, decision or ruling of this Court in connection with this Settlement Agreement.

13. As of the date hereof, all discovery and other proceedings in Cause No. D-1-GN-11-000644 and Cause No. D-1-GN-11-000645 are stayed until further order of this Court, except as may be necessary to implement the Settlement Agreement. Further, as of the date hereof, the current Scheduling Orders in those cases are vacated.

14. If the Settlement Agreement is not approved by the Court, is terminated, rescinded or fails to become effective in accordance with its terms, the Civil Actions shall proceed, completely without prejudice to any Party as to any matter of law or fact, as if the Settlement Agreement had not been made and had not been submitted to the Court, and neither the Settlement Agreement, nor any provision contained therein, any action undertaken pursuant

thereto, nor the negotiation thereof by any Party, shall be deemed an admission or offered or received in evidence at any proceeding in the Civil Actions or any other action or proceeding.

IT IS SO ORDERED, this 29 day of June, 2011.

Gisela P Triana - Doyal
HONORABLE GISELA D. TRIANA-DOYAL