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Securities Co., Inc., and Summit Securities, Inc.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:	)	Jointly Administered Under:
	)	No. 04-00757-W11
METROPOLITAN MORTGAGE &	)	Chapter 11
SECURITIES CO., INC.,)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW RE:
Debtor.	)	ORDER AUTHORIZING
	)	COMPROMISE OF CLAIMS,
	)	APPROVING SETTLEMENT
In re:	)	AGREEMENT WITH
	)	PRICEWATERHOUSECOOPERS,
SUMMIT SECURITIES, INC.,	)	LLP, BARRING THIRD-PARTY
	)	CLAIMS FOR CONTRIBUTION
)	OR INDEMNITY AGAINST
)	PRICEWATERHOUSECOOPERS,
Debtor.)	LLP, AND SHORTENING TIME
)	

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Findings of Fact and Conclusions of Law re: Order Authorizing Compromise
of Claims, Approving Settlement Agreement, Barring Third-Party Claims
for Contribution or Indemnity, and Shortening Time
Metropolitan\Pleadings\PwC.cn

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1 **THIS MATTER** came on regularly for hearing upon the Motion (the
2 “Motion”) filed by Metropolitan Mortgage & Securities Co., Inc. and the
3 Metropolitan Creditors’ Trust (collectively, “Metropolitan”) and Summit
4 Securities, Inc. and the Summit Creditors’ Trust (collectively, “Summit”)
5 (Metropolitan and Summit collectively, the “Movants”) for an Order Authorizing
6 Compromise of Claims, Approving Settlement Agreement with
7 PricewaterhouseCoopers, LLP, Barring Third-Party Claims for Contribution and
8 Indemnity Against PricewaterhouseCoopers, LLP, and Shortening Time. Pursuant
9 to the Motion, Movants seek an Order barring certain claims for contribution and
10 indemnity that might be asserted against PricewaterhouseCoopers, LLP (“PwC”).
11 Movants request entry of such an Order pursuant to a Settlement Agreement they
12 have entered into with PwC to resolve disputed claims that Movants asserted
13 against PwC in litigation captioned *Metropolitan Creditors’ Trust, Metropolitan*
14 *Mortgage & Securities Co., Inc., Summit Creditors’ Trust, and Summit Securities,*
15 *Inc. v. PricewaterhouseCoopers, LLP*, Case No. CV-05-290-FVS (the
16 “Litigation”).

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23 Pursuant to Bankruptcy Rule 7052, made applicable to this proceeding
24 pursuant to Bankruptcy Rule 9014, the following findings of fact shall be
25 construed as conclusions of law when appropriate, and with all capitalized terms
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1 not otherwise defined herein to be defined as set forth in the Settlement Agreement
2 filed in connection with the Motion;
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4 NOW THEREFORE, the Court makes the following Findings of Fact:

5 1. In compliance with RCW § 4.22.060(1), the Movants properly
6 transmitted notice of the Motion, including entry of the proposed bar order, on all
7 known persons with potential claims for contribution and indemnity against PwC.
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9 2. A reasonable opportunity to object and be heard (“Notice and
10 Hearing”) with respect to the Motion and the relief requested therein has been
11 afforded to all persons served with notice.
12

13 3. The Notice and Hearing constituted the equivalent of a reasonableness
14 hearing in accordance with the requirements of RCW § 4.22.060(1).
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16 4. The Court has considered the factors applicable under Bankruptcy
17 Rule 9019 in assessing the fairness, reasonableness and adequacy of the Settlement
18 Agreement. In particular, the Court has considered:
19

- 20 • The probability of success in the litigation – the complex facts
21 underlying the claims and the defenses that would be raised at trial of
22 the Litigation and the uncertain nature of its outcome make this factor
23 weigh in favor of finding the settlement is reasonable;
- 24 • The complexity of the litigation and the expense, inconvenience, and
25 delay – each of these factors militates in favor of approving the
26 settlement as reasonable, particularly the balance of a substantial
27 assured recovery now as against uncertain recovery after further
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lengthy and expensive proceedings in the Litigation and the possibility of an appeal even after conclusion of the trial;

- The paramount interest of the creditors and a proper deference to their reasonable views – the Court notes that the Trusts have previously approved the Settlement Agreement and seek approval of the proposed order approving Settlement Agreement and barring third-party claims for contribution or indemnity against PricewaterhouseCoopers, LLP.

5. The Court has also considered the factors applicable under RCW 4.60.060 in assessing the fairness, reasonableness and adequacy of the proposed settlement. In particular, the Court has considered:

- The releasing person's damages and the merits of the releasing person's liability theory – the facts concerning both the amount of damages and the elements of the underlying claim against PwC are complex and contested, and the Court presiding in the Litigation has expressed concerns over issues relating to Movants' allegations of causation and damages, so this factor weighs in favor of reasonableness.
- The merits of the released person's defense theory – PwC would have vigorously asserted defenses at trial, as to which the facts are complex and contested, so this factor weighs in favor of reasonableness.
- The risks and expenses of continued litigation – as noted above, continued litigation would be complex, lengthy, and expensive with an uncertain outcome.
- Evidence of bad faith, collusion, or fraud – the record before the Court amply demonstrates that this settlement was the result of good faith, arm-length and contested negotiations conducted by qualified counsel with the assistance of a mediator.
- The extent of the releasing person's investigation and preparation of

1 the case – the settlement occurred on the eve of trial, after the parties
2 had completed all discovery (which was very significant) and had
3 prepared their cases for trial.

- 4 • The interests of the parties not being released – no other persons or
5 entities were parties to the Litigation other than Movants and PwC.
6 Moreover, no parties who would be affected by the order have
7 objected to its entry.

8 6. The Court’s consideration of these factors leads it to conclude that the
9 proposed settlement was entered into in good faith and is a fair, adequate and
10 reasonable settlement of the released claims.
11

12 WHEREFORE, having entered the foregoing Findings of Fact, the Court
13 hereby makes the Conclusions of Law set forth hereafter. To the extent any of the
14 following Conclusions of Law constitute Findings of Fact, they are adopted as
15 such.
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17 1. The Court has subject matter jurisdiction over the claims being
18 released against PwC and the authority to determine the reasonableness of the
19 settlement pursuant to Bankruptcy Code §105 and Bankruptcy Rules 7016 and
20 9019.
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22 2. The factors considered by the Court in assessing the fairness,
23 reasonableness and adequacy of the proposed settlement are factors applicable
24 under Bankruptcy Rule 9019.
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1 3. The factors considered by the Court in assessing the fairness,
2 reasonableness and adequacy of the proposed settlement are factors applicable
3 under RCW 4.60.060.
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5 4. The Settlement Agreement was entered into in good faith and is a fair,
6 adequate and reasonable settlement of the released claims and is sufficient to
7 discharge PwC from all such claims. PwC is entitled to be discharged from
8 liability from third parties for contribution or indemnification or any other claims
9 where the claimant's injury is liability to the Movants, as provided under RCW
10 4.60.060.
11

12 5. Movants have shown under applicable law that an Order should be
13 entered providing that all persons or entities who are not parties to the Settlement
14 Agreement are permanently barred, enjoined and restrained from commencing,
15 prosecuting or asserting any claim against PwC, however styled, whether legal or
16 equitable, known or unknown, whether for indemnification or contribution or
17 otherwise denominated (including claims for breach of contract or
18 misrepresentation), where the claimant's injury is the claimant's liability to the
19 Movants and where the claim is based on any claims released by the Movants
20 pursuant to the Settlement Agreement, including, without limitation, any claim in
21 which such non-settling party seeks to recover from PwC (1) any amounts that
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1 such non-settling party has paid, become liable to pay, or may become liable to pay
2 in any proceeding commenced by Movants against such non-settling party and in
3 any settlement with Movants based on claims Movants have released pursuant to
4 the Settlement Agreement, or (2) any costs, expenses, or attorney fees that a non-
5 settling party has incurred or may incur in defending against any such claim
6 asserted against it by Movants (hereafter “Barred Claims”), and further that all
7 Barred Claims should be extinguished, discharged, satisfied and made
8 unenforceable.

12 6. Because non-settling parties are barred from asserting any Barred
13 Claims against PwC, any final verdict or judgment entered in favor of Movants
14 against a non-settling party in a proceeding brought against it by the Movants,
15 based on claims that would have given rise to a right by such non-settling parties to
16 assert Barred Claims but for the terms of the Order, should be reduced by the
17 amount, if any, that such non-settling party can prove it would have been entitled
18 to recover from PwC under a Barred Claim as determined by and provided for
19 under the law applicable to any such Barred Claims.

23 7. The proposed Order Authorizing Compromise of Claims, Approving
24 Settlement Agreement with PricewaterhouseCoopers, LLP, Barring Third-Party
25 Claims for Contribution and Indemnity Against PricewaterhouseCoopers, LLP,
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1 and Shortening Time, submitted concurrently herewith, is substantially in the form
2 attached to the Movants' Memorandum In Support Of Motion For Order
3
4 Authorizing Compromise Of Claims, Approving Settlement Agreement With
5 PricewaterhouseCoopers, LLP, And Establishing Bar Order as Exhibit 3, and
6
7 should be entered.

8
9 Presented by:

10 SUSMAN GODFREY L.L.P.

11 /s/ Parker C. Folse, III


12 Parker C. Folse, III, WSBA No. 24895
13 Attorney for Metropolitan Mortgage &
14 Securities Co., Inc., the Metropolitan
15 Creditors' Trust, Summit Securities, Inc.,
and the Summit Creditors' Trust

16 DAVIDSON ❖ MEDEIROS

17 /s/ Barry W. Davidson

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19 Attorneys for Metropolitan Mortgage &
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21 Creditors' Trust, Summit Securities, Inc.,
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28 
Patricia C. Williams
Bankruptcy Judge

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