

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN  
AND FOR PALM BEACH COUNTY, FLORIDA

ROBERT ANDRZEJCZYK, derivatively  
on behalf of IMPERIAL HOLDINGS,  
INC.,

Plaintiff,

v.

ANTONY MITCHELL, RICHARD S.  
O'CONNELL, JR., JONATHAN  
NEUMAN, JEROME A. PARSLEY,  
DAVID A. BUZEN, MICHAEL A.  
CROW, WALTER M. HIGGINS III,  
ROBERT ROSENBERG, and A. PENN  
HILL WYROUGH,

Defendants,

and

IMPERIAL HOLDINGS, INC.,

Nominal Defendant.

CASE NO. 502012CA013286XXXXMB  
DIVISION: AJ

**ORDER AND FINAL JUDGMENT**

WHEREAS, on December 17, 2013, a hearing was held before this Court to determine, pursuant to § 607.07401(4) and (6), Fla. Stat. (2012): (1) whether the terms and conditions of the Stipulation and Agreement of Settlement (the "Derivative Action Derivative Action Settlement Agreement") are fair, adequate and reasonable for the settlement of all claims asserted by the Plaintiffs against the Defendants in the Complaint

now pending in this Court under the above caption, including the release of the Defendants and the Releasees as defined in the Derivative Action Derivative Action Settlement Agreement and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of the Defendants as against all Securities Holders who have not requested exclusion therefrom; and (3) whether to approve the award of attorneys' fees and of expenses to Plaintiffs' Counsel consistent with the terms of the Derivative Action Derivative Action Settlement Agreement.

WHEREAS, the Court has considered all matters submitted to it at the hearing and otherwise; and it appearing that a Notice of the hearing substantially in the form approved by the Court was mailed to all Securities Holders reasonably identifiable, and that a Publication Notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* and in the *Miami Herald* pursuant to the specifications of the Court and posted to the websites of Plaintiffs' Counsel, Imperial and the Settlement Administrator; and the Court has considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested.

**NOW, THEREFORE, IT IS HEREBY ORDERED**, as follows:

1. For purposes of this Order, all capitalized terms used herein having the meanings as set forth and defined in the Derivative Action Derivative Action Settlement Agreement.

2. This Order and Judgment incorporates and makes a part hereof the Derivative Action Derivative Action Settlement Agreement and the exhibits thereto.

3. The Court has jurisdiction over the subject matter of the Derivative Action, the Plaintiffs, all other Securities Holders, and the Defendants.

4. The Plaintiffs have held stock in Imperial continuously since the commencement of the Derivative Action and otherwise have standing to prosecute this Derivative Action on behalf of Imperial and its Securities Holders.

5. The Plaintiffs and their counsel have fully and adequately represented the interests of Imperial for purposes of entering into and implementing the Derivative Action Derivative Action Settlement Agreement and the proposed Settlement.

6. The Settling Parties filed with the Court adequate proof regarding the publication of the Publication Notice materially consistent with directives in the Preliminary Approval Order.

7. The Court finds that the Publication Notice provided to Securities Holders regarding the Derivative Action Derivative Action Settlement Agreement was simply written and readily understandable, and the Publication Notice and notice methodology: (i) constituted the best practicable notice, (ii) were reasonably calculated, under the circumstances, to apprise Securities Holders of the pendency of the Derivative Action and the claims in the Derivative Action, and their ability to object to the proposed settlement and to appear at the Fairness Hearing, (iii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice and (iv) met all applicable requirements of Florida Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Local Rules of this Court and any other applicable law.

8. The terms and provisions of the Agreement have been entered into in good faith under the auspices of an experienced mediator. The terms and provisions of the Derivative Action Derivative Action Settlement Agreement are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, Imperial and its Securities Holders, and in full compliance with all applicable requirements of the Florida Rules of Civil Procedure, Florida law, the United States Constitution (including the Due Process Clause), the Local Rules of the Court and any other applicable law.

9. The Settling Parties and their counsel are directed to implement and consummate the Derivative Action Derivative Action Settlement Agreement according to its terms and conditions.

10. The Derivative Action Derivative Action Settlement Agreement and this Order and Final Judgment shall be forever binding on the Releasors and Releasees as to all claims and issues that have been, could have been or could be raised in the Derivative Action. As to all such claims and issues, the Order and Judgment have *res judicata* and other preclusive effect in all pending and future lawsuits or other proceedings maintained by or behalf of Imperial.

11. The Releases as set forth in Section I of the Derivative Action Derivative Action Settlement Agreement and its relevant definitions (a copy of which is attached as Exhibit A to this Order and Judgment) are expressly incorporated herein in all respects. The Releases shall be effective as of the Final Settlement Date. The Settling Parties agree and acknowledge that the provisions of the Releases together constitute an essential term of the Agreement.

12. The Complaint in this case is hereby dismissed with prejudice and without costs, except as provided in the Derivative Action Derivative Action Settlement Agreement, against the Defendants, their past or present subsidiaries, parents, affiliates, partners, successors and predecessors, officers, directors, shareholders, insurers, reinsurers, agents, employees, attorneys, advisors, and investment advisors, auditors, accountants 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.

13. The Court permanently bars and enjoins (i) all Securities Holders and their heirs, executors, administrators, trustees, predecessors, successors, Affiliates, representatives, and assigns – and anyone else purporting to act on behalf of, for the benefit of, or derivatively for any of them – from filing, commencing, prosecuting, intervening in, participating in (as a nominal defendant or otherwise), or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding (as well as a motion or complaint in intervention in the Derivative Action if the person or entity filing such motion or complaint in intervention purports to be acting as, on behalf of, for the benefit of, or derivatively for any of the above persons or entities) or order, in any jurisdiction or forum, that is based upon, arises out of, or relates to any Released Securities Holder/Company Claims as to any Releasee, including any Claim that is based upon, arises out of, or relates to the Derivative Action or the transactions and occurrences referred to in the Complaint, and (ii) all persons and entities from filing,

commencing, or prosecuting any other lawsuit as a derivative action or other proceeding (including by seeking to amend a pending complaint to include derivative allegations) on behalf of any Securities Holder as to the Releasees, if such other lawsuit is based upon, arises out of, or relates to any Released Securities Holder/Company Claims, including any Claim that is based upon, arises out of, or relates to the Derivative Action or the transactions and occurrences referred to in the Complaint.

14. To effectuate the Settlement, the Court hereby enters the following Complete Bar Order:

a. Any and all persons and entities are permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any Claim against any Releasee arising under any federal, state, or foreign statutory or common-law rule, however styled, whether for indemnification or contribution or otherwise denominated, including Claims for breach of contract or for misrepresentation, where the Claim is or arises from a Released Securities Holder/Company Claim and the alleged injury to such person or entity arises from that person's or entity's alleged liability to Imperial, including any Claim in which a person or entity seeks to recover from any of the Releasees (i) any amounts such person or entity has or might become liable to pay to Imperial and/or (ii) any costs, expenses, or attorneys' fees from defending any Claim by or on behalf of Imperial. All such Claims are hereby extinguished, discharged, satisfied, and unenforceable, subject to a hearing to be held by the Court, if necessary. The provisions of this Complete Bar Order are intended to preclude any liability of any of the Releasees to any person or entity for indemnification, contribution, or otherwise on any

Claim that is or arises from a Released Securities Holder/Company Claim belonging to Imperial where the alleged injury to such person or entity arises from that person's or entity's alleged liability to Imperial; *provided, however,* that, with respect to any judgment against any person or entity on behalf of Imperial or a shareholder bringing a claim derivatively on behalf of Imperial based upon, arising out of, or relating to any Released Securities Holder/Company Claim, including, without limitation, any claim that is based upon, arises out of or relates to the Derivative Action, or the transactions and occurrences that are alleged in the Company or the Demand, that person or entity shall be entitled to a credit of an amount that corresponds to the percentage of responsibility of the Releasee for the loss to Imperial.

b. Each and every Releasee is permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any Claim against any other person or entity (including any other Releasee) arising under any federal, state, or foreign statutory or common-law rule, however styled, whether for indemnification or contribution or otherwise denominated, including Claims for breach of contract and for misrepresentation, where the Claim is or arises from a Released Securities Holder/Company Claim and the alleged injury to such Releasee arises from that Releasee's alleged liability to Imperial, including any Claim in which any Releasee seeks to recover from any person or entity (including another Releasee) (i) any amounts any such Releasee has or might become liable to pay to Imperial and/or (ii) any costs, expenses, or attorneys' fees from defending any Claim by or on behalf of Imperial. All such Claims are hereby extinguished, discharged, satisfied and unenforceable.

c. Each and every Releasee is permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any Claim against any Releasor arising under any federal, state, or foreign statutory or common-law rule, however styled, whether for indemnification or contribution or otherwise denominated, including Claims for breach of contract and for misrepresentation, where the Claim is or arises from any and all Released Defendants' Claims, except to the extent otherwise expressly specified in the Derivative Action Settlement Agreement.

d. Each and every Releasee is permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any Claim against any other Releasee arising under any federal, state, or foreign statutory or common-law rule, however styled, whether for indemnification or contribution or otherwise denominated, including Claims for breach of contract and for misrepresentation, where the Claim is or arises from or relates to the Derivative Action, Released Securities Holder/Imperial Claims or Released Defendants' Claims, except to the extent otherwise expressly specified in the Derivative Action Settlement Agreement; *provided however*, that Defendants and their attorneys do not release any Claims relating to unpaid attorneys' fees and expenses, and Imperial and the Individual Defendants do not release any Claims relating to their insurance or reinsurance policies except to the extent that Imperial and/or the Individual Defendants have otherwise agreed.

e. Notwithstanding anything stated in this Complete Bar Order, if any person or entity (for purposes of this Complete Bar Order, a "petitioner") commences against any of the Releasees any action either (i) asserting a Claim that is or arises from a



Released Securities Holder/Company Claim and where the alleged injury to such person or entity arises from that person's or entity's alleged liability to Imperial or (ii) seeking contribution or indemnity for any liability or expenses incurred in connection with any such Claim, and if such action or Claim is not barred by a court pursuant to this Complete Bar Order or is otherwise not barred by the Complete Bar Order, neither the Complete Bar Order nor the Derivative Action Settlement Agreement shall bar Claims by that Releasee against (a) such petitioner, (b) any person or entity who is or was controlled by, controlling, or under common control with the petitioner, whose assets or estate are or were controlled, represented, or administered by the petitioner, or as to whose Claims the petitioner has succeeded, and (c) any person or entity that participated with any of the preceding persons or entities described in items (a) and (b) of this subparagraph 14(c) in connection with the assertion of the Claim brought against the Releasee(s); *provided, however,* that nothing in this Complete Bar Order or the Derivative Action Settlement Agreement shall prevent the Settling Parties from taking such steps as are necessary to enforce the terms of the Derivative Action Settlement Agreement.

f. If any term of the Complete Bar Order entered by the Court is held to be unenforceable after the date of entry, such provision shall be substituted with such other provision as may be necessary to afford all of the Releasees the fullest protection permitted by law from any Claim that is based upon, arises out of, or relates to any Released Securities Holder/Company Claim.

g. Notwithstanding the Complete Bar Order or anything else in the Derivative Action Settlement Agreement, nothing shall release, interfere with, limit, or

bar the assertion by any Releasee of any Claim for insurance coverage under any insurance, reinsurance or indemnity policy that provides coverage respecting the conduct at issue in the Derivative Action.

15. Notwithstanding the permanent injunction or complete bar set out in paragraphs 13 and 14, respectively, of this Order and Final Judgment, neither the Releasees nor Imperial shall be barred from asserting any defense or any claim against any non-Releasee in any pending or future judicial, administrative, regulatory, arbitration or other proceeding other than the Derivative Action.

16. Plaintiffs, Plaintiffs' Counsel, all other Securities Holders, Imperial, and all Releasers shall be deemed to have hereby fully, finally, and forever released, relinquished, settled, and discharged all claims as specified in paragraph 87 of the Derivative Action Settlement Agreement.

17. Each and every Releasee shall be deemed to have hereby fully, finally, and forever released, relinquished, settled, and discharged all claims as specified in paragraph 88 of the Derivative Action Settlement Agreement.

18. Neither the Derivative Action Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

a. offered or received against the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants of the truth of any fact alleged by Plaintiffs or the validity of any claim that has been or could have been or could be asserted in the Derivative Action or in any

litigation, or the deficiency of any defense that has been or could have been asserted in the Derivative Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendants;

b. offered or received against the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant, or against the Plaintiffs or the other Securities Holders as evidence of any infirmity in the claims of Plaintiffs and the other Securities Holders;

c. offered or received against the Defendants as evidence of a presumption, concession or admission of any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties to the Derivative Action Settlement Agreement, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Derivative Action Settlement Agreement;

d. construed against the Defendants or the Plaintiffs and the other Securities Holders as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and/or

e. construed as or received in evidence as an admission, concession or presumption against Plaintiffs or the other Securities Holders or any of them that any of their claims are without merit.

19. Nothing in this Order and Judgment shall preclude any action to enforce the terms of the Derivative Action Settlement Agreement.

20. The provision for attorneys' fees and expenses provided in Section G of the Derivative Action Settlement Agreement is hereby approved. This provision covers, without limitation, any and all claims for attorneys' fees and expenses, costs or disbursements incurred by Plaintiffs' Counsel or by any other counsel of record representing Securities Holders in this Derivative Action.

21. Exclusive jurisdiction is hereby retained over the parties and the Securities Holders for all matters relating to this litigation, including the administration, interpretation, effectuation or enforcement of the Derivative Action Settlement Agreement and this Order and Final Judgment.

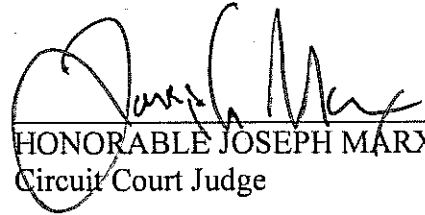
22. Approval of this Derivative Action Settlement Agreement is conditioned upon final approval of the Securities Class Action Settlement Agreement and upon execution of the Insurance Settlement Agreement.

23. An appeal of the portion of this Order which awards attorneys' fees or expenses, shall have no effect whatsoever on the finality of any other portion of this Order and Final Judgment or the Effective Date of the Settlement as provided in the Derivative Action Settlement Agreement.

24. Without further order of the court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Derivative Action Settlement Agreement.

25. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed.

**DONE AND ORDERED** in West Palm Beach, Palm Beach, Florida, this 17th  
day of December, 2013.

  
HONORABLE JOSEPH MARX  
Circuit Court Judge

cc: Jill & Weiss, Esq.  
Joseph Weiss, Esq.  
Robert Weiss, Esq.  
Larry Stumpf, Esq.  
Stanley Wakshlag, Esq.  
Jonathan Etra, Esq.