

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

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2011 JUL 20 A 11:15  
GERALD E. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY

MATTHEW L. FORNSHELL, Receiver,

Plaintiff,

vs.

FIRSTMERIT BANK, N.A.,

Defendant.

) Case No. 06-CV-592402  
)  
)  
) Consolidated with  
) Case No. 04 548887  
)  
) Judge José A. Villanueva  
)  
)

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**JOINT MOTION  
FOR APPROVAL OF NEGOTIATED SETTLEMENT**

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Plaintiff Matthew L. Fornshell, as Receiver (the "Receiver") and Defendant FirstMerit Bank, N.A. ("FirstMerit") jointly move the Court to approve their proposed settlement of this lawsuit. A copy of the parties' Settlement Agreement appears as Exhibit 1 to this Motion.

As the Court will see, the settlement calls for payment by FirstMerit of Ten Million Five Hundred Thousand Dollars (\$10,500,000) in exchange for the dismissal with prejudice of all claims alleged in this action on behalf of the Receiver and the Investors, a release of all claims that Investors participating in the settlement might have against FirstMerit arising from or related to their investment with the Schneiders, and an order that permanently bars, enjoins, and restrains the Investors (except for the Young Plaintiffs and any Investors who decline to participate) from pursuing any such claims against FirstMerit. The Receiver estimates that, after payment of fees and expenses, the settlement will provide Investors with approximately 17 percent of the Proposed Schedule of Allowed Unsecured Claims of Investors filed with the Court by the Receiver on June 30, 2008. Investors will remain eligible to receive further distributions, if funds become available from other sources.

The settlement calls for the Court to enter an Order of Final Judgment, which, includes a

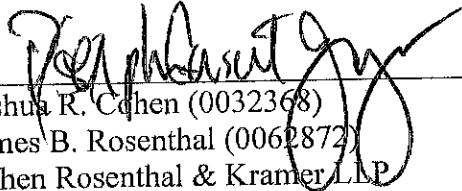
bar order precluding the future assertion of claims against FirstMerit by the participating Investors. A copy of the proposed Order of Final Judgment appears as Exhibit A to the Settlement Agreement.

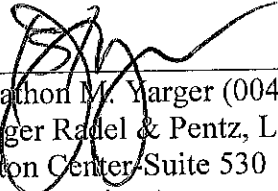
The Court has scheduled a hearing on this Joint Motion for Approval of Negotiated Settlement for Monday, August 15, 2011 at 2:00 P.M. The Receiver will serve notice of the hearing and the terms of the settlement upon all Investors on or before July 22, 2011. He will also post the notice on the website of his law firm, as he has with other filings and notices related to the Receivership. A copy of the notice appears as Exhibit B to the Settlement Agreement. The notice sets forth the procedures and schedule for Investors to object to or comment in favor of the proposed settlement, to address the Court at the scheduled hearing, and to decline to participate in the settlement.

The parties believe that the terms they have negotiated fairly and reasonably resolve this lawsuit. One or both of the parties intend to submit, by August 10, 2011, a memorandum further setting forth the grounds for this Joint Motion, and demonstrating that the proposed settlement should be approved. The Court should grant this Joint Motion for Approval of Negotiated Settlement.

Dated: July 20, 2011

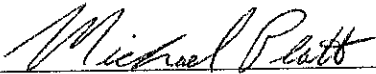
Respectfully submitted,

  
\_\_\_\_\_  
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James B. Rosenthal (0062872)  
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\_\_\_\_\_  
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*Attorneys for Plaintiff Matthew L. Fornshell*



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*Attorneys for Defendant FirstMerit Bank, N.A.*

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 20th day of July, 2011, a copy of the foregoing was served by U.S. Mail, postage pre-paid, to the following:

Julie L. Juergens  
Gallagher, Sharp Attorneys  
1501 Euclid Avenue, 6th Floor  
Cleveland, Ohio 44115  
E-mail: [jjjuergens@gallaghersharp.com](mailto:jjjuergens@gallaghersharp.com)

Thomas J. Judge  
Thompson, Loss & Judge  
1133 21st Street, NW, Suite 450  
Washington, DC 20036  
E-mail: [tjudge@tljlaw.com](mailto:tjudge@tljlaw.com)

*Attorneys for Third-Party Defendant St. Paul  
Mercury Insurance Company*



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*Attorney for Defendant  
FirstMerit Bank, N.A.*

# EXHIBIT 1

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

MATTHEW L. FORNSHELL,	)	CASE NO. 06-CV-592402
	)	
Plaintiff,	)	CONSOLIDATED WITH
	)	CASE NO. 04-CV-548887
vs.	)	
	)	
FIRSTMERIT BANK, N.A.,	)	
	)	JUDGE JOSE A. VILLANUEVA
Defendant,	)	
	)	
	)	
	)	

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**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”), is entered into as of this 19th day of July, 2011 by and between FirstMerit Bank, N.A. (“FirstMerit”) and Matthew L. Fornshell, Receiver (the “Receiver”) as the Court appointed Receiver for all assets of any kind of Joanne C. Schneider, Alan C. Schneider, Claire’s Folly, Inc., Claire’s Folly II, Inc., Claire’s Grand River Winery, Inc., Claire’s Winery, Old Mill Winery, Inc., Schneider management Co., Pearl Development Company, LLC, Garnet Development Company, LLC, Ruby Development Company, LLC, Faith One, Ltd., Faith Foundation of Cleveland and Pure Spirit Productions, Inc. (which are collectively referred to as “Receivership Defendants”). The Receiver, the Receivership Defendants and FirstMerit are collectively referred to herein as the “Parties.”

**RECITALS**

A. Upon the Motion of Plaintiff, the Director of the Ohio Department of Commerce, pursuant to Revised Code 1707.27, on February 4, 2005, in *Doug White, Director, Ohio*

*Department of Commerce v. Joanne C. Schneider, et al.*, Case No. CV-04-548887, (the “Receivership Action”) the Court of Common Pleas of Cuyahoga County, Ohio, appointed Matthew L. Fornshell as Receiver for the Receivership Defendants.

B. The Order appointing the Receiver was amended by Orders entered February 28, 2005, and May 20, 2005.

C. In a Supplemental Order dated May 23, 2006, the Court “granted authority” to the Receiver “to represent and pursue directly the interests of the Investors against FirstMerit Corporation and/or its affiliates . . . arising out of or related to the conduct of the Schneiders” and related parties. The term “Investors,” as used herein, shall mean all persons listed on Exhibit A to the Receiver’s Revised Proposed Schedules of Allowed Unsecured Claims of Investors, filed herein on or about June 30, 2008.

D. On May 24, 2006, the Receiver commenced an action in the Cuyahoga County Court of Common Pleas captioned as *Mathew L. Fornshell, Receiver vs. FirstMerit Corporation*, Case No. CV-06-592402. This case was consolidated into the Receivership Action on April 23, 2007. The Complaint was subsequently amended to substitute FirstMerit in place of FirstMerit Corporation.

E. The Receiver has asserted that FirstMerit is liable for acts, omissions, and conduct of FirstMerit generally in connection with the Schneider scheme to unlawfully sell promissory notes. FirstMerit denies the assertions of the Receiver.

F. The Parties have vigorously litigated, over the course of more than five years, the claims made against FirstMerit in this action, and have engaged in extensive motion practice and discovery. The Parties recognize the time and expense that would be incurred by further litigation of this action and the uncertainties inherent in such litigation.

G. The Parties wish to resolve between and among them all existing and potential claims and disputes arising out of alleged acts, omissions transactions or practices of FirstMerit or any of its current or former employees. In undertaking to do so, the Parties agree and acknowledge that this Agreement is not premised on any finding or ruling by any court or other authority, or any admission by FirstMerit that there has been any fraud or other misconduct on the part of the FirstMerit with respect to the above-referenced claims or disputes.

H. Counsel for the Parties have engaged in arms'-length negotiations concerning a settlement of this action.

I. In addition to the Receivership Action, there is an action pending in the Court of Common Pleas, Cuyahoga County, Ohio, captioned *Young, et al. v. FirstMerit Bank, N.A.*, Case No. 591332 (the "Young Action"), in which fourteen Investors seek to assert claims against FirstMerit. (Those fourteen Investors – Katherine Young, James Cramer, Sherry Cramer, Louis Mate, Karen Barton, Jack Barton, Betty Kordos, Dan Milchak, James Noble, Ralph Eagle Eye, Guy Krueger, John Strouhal, Michael Pacak, and Denise Pacak – are referred to herein as the "Young Plaintiffs").

J. This Settlement Agreement is subject to approval by the Cuyahoga County Court of Common Pleas, Cuyahoga County, Ohio in the Receivership Action, and such determinations or findings the Court deems necessary or appropriate to effectuate the Agreement and to provide for the implementation of the Agreement, including but not limited to the payment of fees and expenses related to the Agreement.

K. The Receiver receives the Settlement Payment contemplated by this Agreement pursuant to the Order appointing the Receiver, entered on February 4, 2005, as amended by the Orders entered on February 28, 2005, and May 20, 2005, and pursuant to the Supplemental

Order entered by the Court on May 23, 2006, which "granted authority" to the Receiver "to represent and pursue directly the interests of the Investors against FirstMerit Corporation and/or its affiliates . . . arising out of or related to the conduct of the Schneiders and/or the Company Defendants."

L. Terms not otherwise defined herein shall have the meaning assigned to them in the Findings and Order of Distribution entered herein on December 21, 2007.

**NOW THEREFORE**, the Parties, for the consideration recited and as set forth herein, and, subject to the Order of Final Judgment (as defined in Paragraph 2(a)), intending to be legally bound, hereby agree as follows:

1. **Cash Payment.** Within five (5) business days following satisfaction of the General Conditions for Payment of Settlement Payment (as defined in Paragraph 2), FirstMerit shall pay and shall cause its insurer to pay to the Receiver amounts that, in total, comprise the sum of Ten Million Five Hundred Thousand Dollars (US\$10,500,000.00) (the "Settlement Payment"). In the case of FirstMerit, the Settlement Payment shall be made by wire transfer to an interest bearing account established by the Receiver (the "Account"). In the case of FirstMerit's insurer, the Settlement Payment shall be made by check payable to the Receiver, delivered to counsel for the Receiver, and must be deposited to the Account. Prior to such wire transfer or deposit, the Receiver shall provide FirstMerit and its insurer with IRS forms W-9 reflecting the applicable tax identification number. The Settlement Payment shall be held by the Receiver in the Account, subject to Paragraph 3 hereof, and shall be segregated from all other assets of the Receivership. The Receiver shall provide FirstMerit with a copy of the account statement for the Account on a monthly basis, on or before the fifteenth day of each month following FirstMerit's payment of the Settlement Payment, and until the Order of Final

Judgment becomes "Final" (as defined in Paragraph 6). The Receiver, under the supervision of the Court in the Receivership Action, shall bear sole responsibility for any distribution or apportionment of the Settlement Payment. FirstMerit shall have no responsibility or liability for the distribution or apportionment of the Settlement Payment among any Investor, any parties to the Receivership Action, or any person claiming any right to distribution thereof in the administration of the Receivership Estate. The Receiver and/or any person to whom all or any part of the Settlement Payment shall be distributed shall be solely responsible for any tax consequences that may arise from acceptance of the Settlement Payment or any portion thereof.

2. **General Conditions for Payment of Settlement Payment.** Upon satisfaction of all of the conditions of subparagraphs (a) and (b) below, FirstMerit shall make, or cause its insurer to make, the Settlement Payment:

(a) The Settlement Agreement has been approved by the Court in accordance with the terms of this Agreement, and the Court has issued a final order pursuant to Ohio R. Civ. P. 54(b) with respect thereto that is identical in substance to that set forth in Exhibit A to this Agreement (the "Order of Final Judgment"); and

(b) The settlement has achieved the Required Minimum Participation as of the date of entry of the Order of Final Judgment. The Required Minimum Participation shall mean Investors:

(i) who (x) do not object to the settlement or the Court's approval thereof, or whose objections are withdrawn prior to the entry of the Order of Final Judgment, or (y) are Young Plaintiffs and who affirmatively elect to participate in the settlement pursuant to Paragraph 11; and

(ii) whose Allowed Unsecured Claims total an amount in excess of an amount

mutually-agreed upon by the Parties in a separate letter agreement. The letter agreement shall be kept confidential except as to the Court, which shall upon request be provided with a copy of the letter agreement for *in camera* review.

For purposes of the calculations provided for in this Paragraph 2, the Allowed Unsecured Claims shall be based on Exhibit A to the Receiver's Revised Proposed Schedules of Allowed Unsecured Claims of Investors, filed herein on or about June 30, 2008.

3. **Restriction on Distribution of Settlement Payment.** Notwithstanding satisfaction of the conditions specified in Paragraph 2, the Receiver shall not distribute to any person any portion of the Settlement Payment until the Order of Final Judgment becomes "Final" (as defined in Paragraph 6).

4. **Effect of Court Disapproval.** In the event the Court or any other court:
- (a) disapproves or sets aside this Agreement or any material part hereof for any reason;
  - (b) declines for any reason to enter or give effect to an Order of Final Judgment identical in substance to that set forth in Exhibit A to this Agreement; or
  - (c) holds that the Order of Final Judgment, or any judgment entered pursuant thereto, should in any material part be vacated, overturned, or modified in any material way;

then this Agreement shall become null and void, this action shall be deemed to revert to its status as of the date and time immediately prior to the execution of this Agreement, any Settlement Payment made to the Receiver pursuant to Paragraphs 1 and 2 shall be returned to FirstMerit and its insurer in the amount of such payment made by each of them plus any accrued interest, the parties shall jointly move that any and all orders entered pursuant to this Agreement be vacated, the parties shall proceed with this action as if this Agreement had never been executed, and neither this Agreement, nor anything contained herein, nor anything done or disclosed by any person or party in connection with this Agreement, shall be deemed to prejudice in any way the

positions of any party with respect to this action or any other legal proceeding; provided, however, that, in the event that either party, within ten (10) days after any such action of any court, elects to appeal from or otherwise seek review or reconsideration of such court action, this Agreement shall not be deemed null and void until such time as such court action becomes final after any proceedings arising directly or indirectly from such party's appeal(s) or other attempt(s) to have such court action reversed, withdrawn or overturned.

5. **Effect of Failure to Achieve the Required Minimum Participation.** In the event that the settlement fails to achieve the Required Minimum Participation as of the date of entry of the Order of Final Judgment, then this Agreement shall become null and void, this action shall be deemed to revert to its status as of the date and time immediately prior to the execution of this Agreement, the parties shall jointly move that any and all orders entered pursuant to this Agreement be vacated, the parties shall proceed with this action as if this Agreement had never been executed, and neither this Agreement, nor anything contained herein, nor anything done or disclosed by any person or party in connection with this Agreement, shall be deemed to prejudice in any way the positions of any party with respect to this action or any other legal proceeding; provided; however, that, in the event that FirstMerit, within ten (10) days after entry of the Order of Final Judgment, elects to waive the failure to achieve the Required Minimum Participation, this Agreement shall not be deemed null and void.

6. **Date Judgment Becomes "Final".** The judgment entered pursuant to the Order of Final Judgment shall be deemed "Final" on the later of (i) the date upon which the judgment is no longer subject to any further appeal, or (ii) the date upon which the judgment is no longer subject to a motion or request for judicial reconsideration or review filed within thirty (30) days following entry of the Order of Final Judgment. Thus, "Final" includes, without limitation, the

date of expiration of the time for the filing or noticing of any appeal from the judgment entered pursuant to the Order of Final Judgment, without any appeal having been filed or noticed; or, if an appeal from the judgment entered pursuant to the Order of Final Judgment is timely filed or noticed, the date on which all appellate and/or other judicial proceedings resulting from such filing(s) or notice(s) have been finally terminated.

7. Further Restriction on Distribution of Settlement Payment.

Notwithstanding satisfaction of the conditions specified in paragraph 2(a) and (b), and the date that the Order of Final Judgment becomes "Final" pursuant to Paragraph 6, the Receiver shall not distribute to any person any portion of the Settlement Payment, and no benefit under this Agreement shall flow to or inure to the benefit of such person, if such person:

(a) declines to participate in this settlement by (i) making an objection to this settlement in accordance with the procedures set forth in the Notice of Proposed Settlement and Hearing (attached hereto as Exhibit B), which objection is not withdrawn prior to the entry of the Order of Final Judgment, or (ii) appealing the Order of Final Judgment (such person hereinafter referred to as a "Non-Participating Investor");

(b) is a Young Plaintiff (except for any Young Plaintiff who affirmatively elects to participate in the settlement pursuant to Paragraph 11); or

(c) is not an Investor.

Each Investor, as a condition of receiving any distribution of the Settlement Payment from the Receiver, must execute a document (which document may be appended to or made a part of any instrument of payment issued or used by the Receiver to distribute funds to Investors, and the endorsement thereof shall constitute a sufficient execution) in which the Investor agrees to release FirstMerit and all of its direct or indirect subsidiaries, parents and other affiliates, and

its respective past and present employees, officers, directors, and attorneys, whether in a representative or individual capacity, from all manner of actions, causes of action, suits, debts, dues, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages and expenses (including attorneys' fees and costs) of any nature whatsoever, in law or equity, that they have had, now have, or may in the future have, known or unknown, that are based upon, arise from, or related in any way to the claims or allegations in the Receivership Action.

8. **Order of Final Judgment.** At the Final Settlement Hearing set by the Court, the parties shall ask the Court immediately to enter an Order of Final Judgment identical in substance to the form attached hereto as Exhibit A.

9. **Enforcement of Bar Order.** The Receiver agrees that he shall take and bear the expense of any action as is reasonably necessary to enforce or defend on appeal the injunction and bar order set forth in the Order of Final Judgment. FirstMerit will reasonably cooperate with all such efforts by the Receiver and will take or propose no positions or arguments in opposition to the enforcement, consummation or implementation of the Settlement Agreement or the Order of Final Judgment.

10. **Releases.** Effective only upon the satisfaction of the conditions set forth above in Paragraphs 1 and 2 above:

(a) FirstMerit, on its own behalf and on behalf of all of its direct or indirect subsidiaries, parents and other affiliates, and its respective past and present employees, officers, directors, successor and predecessor entities, and attorneys, whether in a representative or individual capacity, jointly and severally, fully and forever, release and covenant not to sue any Investor eligible to receive a distribution from the Settlement Payment, the Receiver in his

capacity as Receiver or the Receivership Defendants, and all of their direct or indirect subsidiaries, parents and other affiliates, all general and limited partners and investors, and their respective past and present creditors, claimants, investors, employees, officers, directors, and attorneys, whether in a representative or individual capacity, from all manner of actions, causes of action, suits, debts, dues, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages and expenses (including attorneys' fees and costs) of any nature whatsoever, in law or equity, that FirstMerit had, now has, or may in the future have, known or unknown, that are based upon, arise from, or related in any way to the claims or allegations in the Receivership Action.

The release and covenant not to sue in this Paragraph 10(a) does not extend to claims against any Investor relating to a debtor-creditor relationship between FirstMerit and that Investor that exists independent of the Receivership Action.

(b) The Receiver in his capacity as Receiver and the Receivership Defendants, and the Receiver pursuant to the authority granted to him to pursue the interests of the Investors, on their own behalf and on behalf of all of their direct or indirect subsidiaries, parents and other affiliates, all general and limited partners, and their respective past and present creditors, claimants, investors, employees, officers, directors, successor and predecessor entities, and attorneys, whether in a representative or individual capacity, jointly and severally, fully and forever, release and covenant not to sue FirstMerit and all of its direct or indirect subsidiaries, parents and other affiliates, and its respective past and present employees, officers, directors, and attorneys, whether in a representative or individual capacity, from all manner of actions, causes of action, suits, debts, dues, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages and expenses (including attorneys' fees and costs) of any

nature whatsoever, in law or equity, that they have had, now have, or may in the future have, known or unknown, that are based upon, arise from, or related in any way to the claims or allegations in the Receivership Action.

(c) The Parties shall not institute or prosecute against each other any administrative, civil or judicial process, action or proceeding or suit that relates to the facts alleged or that could have been alleged or liabilities or damages sought or that could have been sought arising out of or related to the Receivership Action or the Young Action, except as may be necessary to enforce this Agreement or a breach thereof.

(d) The releases herein shall be construed in accordance with Ohio Rev. Code Ann. § 2307.28 (West 2007) and *Comer v. Risko*, 833 N.E.2d 712, 717 (Ohio 2005) to bar any claims for contribution or equitable indemnity against FirstMerit and all of its direct or indirect subsidiaries, parents and other affiliates, and its respective past and present employees, officers, directors, and attorneys, whether in a representative or individual capacity. For the avoidance of doubt, the Parties agree that they interpret these authorities to cover all claims, whether or not such claims sound in tort, contract, or federal or state statutory law. Moreover, the Parties agree that this release covers any claim by the Receiver, any Receivership Defendant, any Claimant or Creditor of the Receivership Action, and any Investor against FirstMerit on any legal or equitable theory for any claims arising out of or that relate in any way to the claims or allegations in the Receivership Action.

11. **Exclusion of the Young Plaintiffs and Any Non-Participating Investor.** The Parties agree that no aspect of this Settlement Agreement shall bind the Young Plaintiffs or any Non-Participating Investor, provided, however, that any of the Young Plaintiffs may affirmatively elect to participate in the settlement and be bound by the terms of this Settlement

Agreement and the Order of Final Judgment by sending written notice to the Receiver or his counsel at any time prior to entry of the Order of Final Judgment.

12. **Attorneys Fees and Costs.** Each Party shall bear its own costs and attorneys' fees incurred in the Receivership Action, and the Young Action, and in performing its covenants under this Agreement. The Receiver will pay all out-of-pocket costs for the printing and mailing of the Notice of Proposed Settlement and Hearing.

13. **No Publicity.** The Parties agree to jointly issue, at a mutually-agreeable time, a press release in form and substance agreeable to the Parties (the "Joint Press Release"). With the exception of the Joint Press Release, the Parties shall not issue any press releases or initiate contact, direct or indirect, with the public media on the subject of this Agreement or the settlement of this action. The Parties and their counsel agree that, in responding to any inquiries from the public media concerning this action and/or the settlement of this action, the parties and their counsel will limit their comments to the provision of such factual information as is contained in the Notice of Proposed Settlement and Hearing, this Agreement, the pleadings, and/or any of the various court orders in this action, and may further state to the effect that "the matter has been settled to the satisfaction of all parties." Nothing in this paragraph shall limit the Receiver's or his counsels' ability to communicate with their respective employees and representatives, the Investors, other professionals, or in connection with securities industry- or bar-association- related conferences, seminars, panels or activities, or the Court concerning this action or its settlement, or FirstMerit's ability to communicate with its employees or with shareholders and securities market analysts. FirstMerit may make such public disclosures about this action and its settlement as are required by the federal securities laws or any other applicable laws or regulations.

14. **No Admission/Waiver.** The Parties expressly understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. Nothing in this Agreement, or in any document or instrument contemplated hereby, is to be construed as an admission of the truth or falsity of any claims heretofore made or an acknowledgment of any wrongdoing or liability by any Party, such wrongdoing and liability being expressly denied, and no final adjudication thereof having been made in this action. This Agreement is entered into solely in settlement of such claims and to avoid the disruption, time, and expense of litigation. Accordingly, this Agreement may not be used by any third party against any Party. Pursuant to Ohio Evid.R. 408, the entering into and carrying out of this Agreement, the exhibits hereto, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed evidence of, an admission or concession by any of the Parties or a waiver of any applicable statute of limitations, and shall not be offered or received into evidence in any action or proceeding against any of the Parties in any court, administrative agency, arbitral forum, or other tribunal for any purpose whatsoever, other than to enforce the provisions of this Agreement or the provisions of any related agreement or exhibit hereto.

15. **Continuing Jurisdiction.** The Court of Common Pleas, Cuyahoga County, Ohio shall retain jurisdiction to enforce this Agreement and any related disputes that relate to or involve this Agreement.

16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to the conflicts of law principles thereof.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between and among the Parties regarding the claims and matters discussed herein. Except as expressly set

forth in this Agreement, there are no representations, warranties, or endorsements, whether oral, written, expressed or implied, that in any way affect or condition the validity of this Agreement or any of its conditions or terms. Any other provisions of this Agreement to the contrary notwithstanding, this Agreement may be modified only by a writing signed by all Parties and this provision cannot be orally waived.

**18. Representations.** This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties, with the full intent of releasing all claims against each other. Each Party acknowledges that:

- a) It has read this Agreement;
- b) It has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of its own choice;
- c) It understands the terms and conditions, provisions, and consequences of this Agreement and of the agreements it contains; and
- d) It is fully aware of the legal and binding effect of this Agreement.

**19. Waiver of Breach.** The waiver by one party of any breach of this Agreement by any other party shall not be deemed a waiver, by that party or by any other undersigned party, of any other prior or subsequent breach of this Agreement.

**20. Successors and Assigns.** This Agreement shall be binding on, and inure to the benefit of, each of the Parties and all corporate successors or assigns, provided that no assignment shall relieve the assignor from its obligations under the Agreement unless the other Party agrees in writing to the assignment.

**21. Authority.** Each person executing this Agreement on behalf of any other person or persons hereby represents and warrants that it has full authority to do so.

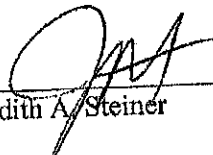
22. Facsimile or PDF Signatures. Execution of this Agreement may be by facsimile or PDF signature, which shall be deemed to constitute an original.

23. Counterparts. This Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the undersigned parties shall exchange among themselves original signed counterparts.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, on the respective dates set forth below.

Dated: July 19, 2011

FIRSTMERIT BANK, N.A.

By:   
Judith A. Steiner  
Its: Executive Vice President  
General Counsel & Corporate Secretary

Dated: July 19, 2011

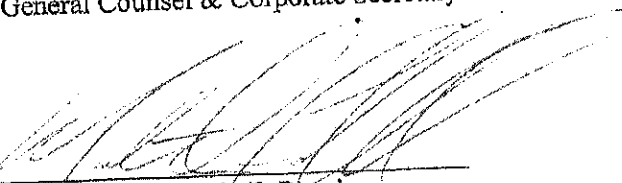
By:   
Matthew L. Fornshell, Receiver

EXHIBIT A

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

MATTHEW L. FORNSHELL,	)	CASE NOS. 04-CV-548887
	)	06-CV-592402
Plaintiff,	)	
	)	
-vs-	)	JUDGE JOSÉ A. VILLANUEVA
	)	
FIRSTMERIT BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

ORDER OF FINAL JUDGMENT

WHEREAS, plaintiff Matthew L. Fornshell, Receiver (the "Receiver") and defendant FirstMerit Bank, N.A. ("FirstMerit") entered into a Settlement Agreement dated as of July 19, 2011 (the "Settlement") in connection with the above-captioned action (the "Receivership Action");

WHEREAS, notice of the Settlement was mailed to all Investors (as defined in Paragraph C of the Settlement Agreement) on \_\_\_\_\_, 2011;

WHEREAS, on \_\_\_\_\_, 2011, the Receiver and FirstMerit filed a motion (the "Motion") seeking a determination that the Settlement is fair and reasonable, and should be approved; and

WHEREAS, in addition to the Receivership Action, there is an action pending in the Court of Common Pleas, Cuyahoga County, Ohio, captioned *Young, et al. v. FirstMerit Bank N.A.*, Case No. 591332 (the "Young Action"), in which fourteen Investors seek to assert claims against FirstMerit (Those fourteen Investors – Katherine Young, James Cramer, Sherry Cramer, Louis Mate, Karen Barton, Jack Barton, Betty Kordos, Dan Milchak, James Noble, Ralph Eagle Eye, Guy Krueger, John Strouhal, Michael Pacak, and Denise Pacak – are referred to herein as the "Young Plaintiffs"); and

WHEREAS, due and proper notice of the Motion and this hearing having been given to all interested persons, and the Court having considered the papers filed by the Receiver in support of the Motion, and all objections to the Motion, and such other and further evidence and argument as were presented at the hearing held in connection with the Motion on August 15, 2011,

NOW, THEREFORE, THE COURT HEREBY FINDS AND CONCLUDES that:

1. This Court has jurisdiction over the subject matter of this action as well as over all parties represented in this action, including the Investors.

2. Having reviewed the Notice of Proposed Settlement of Action and Hearing thereon ("Notice of Settlement Hearing"), this Court hereby finds that the form, content, and method of dissemination of the Notice of Settlement Hearing was adequate and reasonable. The Court further finds that the procedures and schedule set forth in the Notice of Settlement Hearing for Investors to object to or comment on the subject of the Settlement are adequate and reasonable.

3. The Notice of Settlement Hearing satisfied the requirements of due process and constituted due and sufficient notice of the matters set forth therein.

4. The Settlement set forth in the Settlement Agreement is fair and reasonable.

5. The Receiver and its counsel have fairly and adequately represented the interests of the Receivership and the Investors (pursuant to this Court's May 23, 2006 Supplemental Order) in connection with the Settlement.

6. The Receiver and all Investors, except for those Investors set forth in subparagraphs (a) and (b), are hereby bound by the terms of the Settlement set forth in the Settlement Agreement:

(a) any Investor who has declined to participate in this settlement by

(i) lodging with the Court and counsel for the Parties an objection to the Settlement in accordance with the procedures set forth in the Notice of Settlement Hearing, which objection is not withdrawn prior to the entry of this Order, or (ii) appealing this Order (such Investor hereinafter referred to as a “Non-Participating Investor”);

(b) any Young Plaintiff who has not affirmatively elected to participate in the Settlement pursuant to Paragraph 11 of the Settlement Agreement.

7. Those Investors who properly lodged an objection to the Settlement in accordance with the procedures set forth in the Notice of Settlement Hearing, and whose objection has not been withdrawn as of the date hereof are identified as: [insert names]. Those Young Plaintiffs who have affirmatively elected to participate in the Settlement pursuant to Paragraph 11 of the Settlement Agreement are identified as: [insert names].

8. For purposes of this Order, the term “FirstMerit” refers to defendant FirstMerit Bank, N.A., and its direct or indirect subsidiaries, parents and other affiliates, and its respective past and present employees, officers, directors, successor and predecessor entities, and attorneys, and each of them.

9. For purposes of this Order, the term “Receivership Defendants” refers to Joanne C. Schneider, Alan C. Schneider, Claire’s Folly, Inc., Claire’s Folly II, Inc., Claire’s Grand River Winery, Inc., Claire’s Winery, Old Mill Winery, Inc., Schneider management Co., Pearl Development Company, LLC, Garnet Development Company, LLC, Ruby Development Company, LLC, Faith One, Ltd., Faith Foundation of Cleveland and Pure Spirit Productions, Inc. and any affiliates, and their respective past and present employees, officers, directors, successor and predecessor entities, and attorneys, and each of them.

10. For purposes of this Order, the term “Receiver” refers to Matthew L. Fornshell, in his capacity as Receiver.

11. For purposes of this Order, the term "Investors" refers all persons listed on Exhibit A to the Receiver's Revised Proposed Schedules of Allowed Unsecured Claims of Investors, filed herein on or about June 30, 2008.

12. For purposes of this Order, the term "Barred Parties" refers to:

- A. all parties, other than FirstMerit, and other than the Receiver and the Receivership Defendants in the Receivership Action;
- B. all Investors;
- C. the Division, as that term is defined in the Findings and Order of Distribution entered in the Receivership Action on December 21, 2007 ("Findings and Order of Distribution"); and
- D. any other person or entity that directly or through his/her/its counsel has been served with notice of the hearing on the Motion.

Notwithstanding the foregoing, the term "Barred Parties" does not include:

- (a) any Non-Participating Investor; or
- (b) any Young Plaintiff who has not affirmatively elected to participate in the

Settlement pursuant to Paragraph 11 of the Settlement Agreement.

13. The provisions of the Settlement Agreement, including definitions of the terms used therein and to the extent not defined in this Order, are hereby incorporated by reference as though fully set forth herein.

NOW, THEREFORE, IT IS HEREBY **ORDERED AND ADJUDGED** that:

14. The Settlement set forth in the Settlement Agreement is fair and reasonable, and the Parties shall consummate the Settlement Agreement in accordance with its terms and provisions.

15. Judgment shall be, and hereby is, entered dismissing with prejudice all claims that

were or could have been asserted against FirstMerit in the Receivership Action, on the merits, and without taxation of costs in favor of or against any party.

16. FirstMerit is hereby conclusively deemed to have forever released and covenanted not to sue any Investor eligible to receive a distribution from the Settlement Payment, the Receiver in his capacity as Receiver or the Receivership Defendants, and all of their direct or indirect subsidiaries, parents and other affiliates, all general and limited partners and investors, and their respective past and present creditors, claimants, investors, employees, officers, directors, and attorneys, whether in a representative or individual capacity, from all manner of actions, causes of action, suits, debts, dues, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages and expenses (including attorneys' fees and costs) of any nature whatsoever, in law or equity, that FirstMerit had, now has, or may in the future have, known or unknown, that are based upon, arise from, or related in any way to the claims or allegations in the Receivership Action. Such release and covenant not to sue does not extend to claims against any Investor relating to a debtor-creditor relationship between FirstMerit and that Investor that exists independent of the Receivership Action.

17. ~~The Receiver in his capacity as Receiver, the Receivership Defendants, and the~~ Receiver pursuant to the authority granted to him to pursue the interests of the Investors, on their own behalf and on behalf of all of their direct or indirect subsidiaries, parents and other affiliates, all general and limited partners, and their respective past and present creditors, claimants, investors, employees, officers, directors, successor and predecessor entities, and attorneys, whether in a representative or individual capacity, jointly and severally, are hereby deemed to have forever released and covenanted not to sue FirstMerit from all manner of actions, causes of action, suits, debts, dues, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages and expenses (including attorneys' fees and costs) of any

nature whatsoever, in law or equity, that they have had, now have, or may in the future have, known or unknown, that are based upon, arise from, or related in any way to the claims or allegations in the Receivership Action.

18. Each Investor who receives any portion of the Settlement Payment or who negotiates or endorses any instrument representing payment of any portion of the Settlement Payment on their own behalf and on behalf of all of their direct or indirect subsidiaries, parents and other affiliates, all general and limited partners, and their respective past and present creditors, claimants, investors, employees, officers, directors, successor and predecessor entities, and attorneys, whether in a representative or individual capacity, jointly and severally, are hereby deemed to have forever released and covenanted not to sue FirstMerit from all manner of actions, causes of action, suits, debts, dues, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages and expenses (including attorneys' fees and costs) of any nature whatsoever, in law or equity, that they have had, now have, or may in the future have, known or unknown, that are based upon, arise from, or related in any way to the claims or allegations in the Receivership Action.

19. ~~Each of the Barred Parties is hereby permanently barred, enjoined and restrained~~ from commencing, prosecuting, or asserting any claim against FirstMerit arising out of or relating in any way to the claims or allegations in the Receivership Action. Any Barred Party who violates this injunction shall pay the costs and attorneys' fees incurred by any of the Parties as a result of a violation of the Court's injunction.

20. FirstMerit on the one hand, and the Receiver and the Receivership Defendants on the other hand, are hereby permanently barred, enjoined and restrained from commencing, prosecuting, or asserting any claim against one another arising out of or relating in any way to the claims or allegations in the Receivership Action.

21. Neither the Settlement, nor any of the Settlement Agreement's terms or provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

- A. construed as or deemed in any judicial, administrative, arbitration or other type of proceeding to be evidence of a presumption, concession, or an admission by FirstMerit of any liability or wrongdoing or the truth of any fact alleged or the validity of any claim that has been, could have been, or in the future might be asserted against FirstMerit;
- B. construed as a concession or an admission by FirstMerit that any person or entity has suffered any damage.

22. The Court shall have and retain jurisdiction for all matters related to the administration, interpretation, effectuation, or enforcement of this Order, the Settlement Agreement between and among FirstMerit and the Receiver and any related disputes.

23. There is no just reason for delay in the entry of final judgment, and the Court hereby directs the clerk to enter judgment as to FirstMerit pursuant to Rule 54(b) of the Rules of Civil Procedure.

24. In the event that this judgment does not become "Final" in accordance with paragraph 6 of the Settlement Agreement, then the judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement, and this Order of Final Judgment shall be vacated. In such event, all orders entered in connection with the Settlement shall be null and void. In such event, this action shall return to its status prior to execution of the Settlement Agreement.

25. The clerk shall promptly serve copies of this Order upon all parties to this action.

26. The Receiver shall promptly serve all other persons whom he believes may be

subject to any provision of this Order, and shall, within thirty (30) calendar days from the date of entry of this Order, submit to this Court an affidavit identifying the name, address, date of service, and manner of service of each such Person he served with a copy of this Order in compliance with this provision.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JOSÉ A. VILLANUEVA

EXHIBIT B

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

MATTHEW L. FORNSHELL, )  
 ) CASE NO. 06-CV-592402  
 )  
 Plaintiff, )  
 ) CONSOLIDATED WITH  
 ) CASE NO. 04-CV-548887  
 )  
 vs. )  
 )  
 FIRSTMERIT BANK, N.A., )  
 ) JUDGE JOSE A. VILLANUEVA  
 )  
 Defendant, )  
 )  
 )  
 )  
 )

NOTICE OF PROPOSED SETTLEMENT AND HEARING

TO: All persons or entities that are listed on Exhibit A to the Receiver's Revised Proposed Schedules of Allowed Unsecured Claims, filed on or about June 30, 2008 in the action captioned *Doug White, Director, Ohio Department of Commerce v. Joanne C. Schneider et al.*, Case No. CV-04-548887 (referred to hereinafter as the "Investors").

*This Notice describes a lawsuit commenced by Matthew L. Fornshell, as Receiver, on behalf of the Investors and against defendant FirstMerit Bank, N.A. ("FirstMerit") to recover the Investors' losses through the receivership (the "Action"), and it also describes the proposed settlement of the Action. You have received this Notice because you may be one of the people whose rights will be affected by the Action and the proposed settlement. If you wish to object to or comment in favor of the proposed settlement, you must do so in the manner described below on or before August 10, 2011.*

*This Notice contains important information. You should read it carefully and discuss it with your attorney, if you have one in this case. (If you do not have an attorney, you may wish to consult one.) You may review documents related to the proposed settlement at the Receiver's website: [www.szd.com/schneider](http://www.szd.com/schneider).*

On Monday, August 15, 2011, at 2:00 P.M., the Court will conduct a hearing on whether to approve the proposed settlement. Investors need not attend the hearing or take any action in order to remain eligible to share in the proposed settlement. They may object to or comment in favor of the settlement and address the Court, if they so choose, in keeping with the procedure described below.

**I. Purpose of this Notice**

This Notice is given to you pursuant to the proposed settlement of the Action. The Notice tells you about the Action, the proposed settlement, the attorneys' fees and expenses of Mr. Fornshell's counsel, your right to object to or comment in favor of the proposed settlement, and your right to participate in the final hearing on the proposed settlement.

**II. History of Lawsuit**

Mr. Fornshell filed the Action against FirstMerit in May 2006. He did so pursuant to the Court's order that explicitly authorized him "to represent and pursue directly the interests of the Investors against FirstMerit Corporation and/or its affiliates . . . arising out of or relating to the conduct of the Schneiders" and/or the companies they controlled.

In the Action, Mr. Fornshell alleges that FirstMerit bears responsibility for the Investors' losses, given the assistance it allegedly lent to the Schneiders in their fraudulent scheme to sell promissory notes. FirstMerit denies all wrongdoing and disputes its liability under the claims brought by Mr. Fornshell.

The parties have vigorously litigated the Action over the course of more than five years, and have engaged in extensive motion practice and discovery. The Parties recognize the time and expense that would be incurred by further litigation of this action and the uncertainties inherent in such litigation.

Counsel for the parties engaged in good faith, arms'-length negotiations concerning a possible settlement of the Action, and entered into a Settlement Agreement on July 19, 2011.

Mr. Fornshell's entry into the Settlement Agreement was not an admission as to the lack of merit of any of the claims asserted in the Action, and FirstMerit's entry into the Settlement Agreement was not an admission of wrongdoing or liability. FirstMerit denies all allegations of wrongdoing, fault, liability or damage to the Receiver or the Investors, denies that it engaged in any wrongdoing or violation of law or breach of duty, and believes that it acted properly at all times, but wishes to settle the litigation on the terms and conditions stated in the Settlement Agreement in order to eliminate the burden and expense of further litigation and to put the claims to be released hereby to rest finally and forever.

The Court has not made any decisions on the claims made in the Action.

**III. Terms of Proposed Settlement**

What follows is a summary of the terms of the proposed settlement that are fully set forth in the Settlement Agreement. Further information may be had by referring to the Settlement Agreement and other papers in the Action that (1) are filed with the Clerk of the Court, all of which may be inspected during regular business hours at the Court, or (2) are available at the Receiver's website: [www.szd.com/schneider](http://www.szd.com/schneider).

The principal terms of the proposed settlement are as follows:

**A. Consideration Given to the Receivership and the Investors**

Under the terms of the proposed settlement, if certain conditions are satisfied, FirstMerit will cause to be paid a total of Ten Million Five Hundred Thousand Dollars (US\$10,500,000) (the "Settlement Payment"). The Settlement Payment would be paid to the Receiver within five (5) business days following entry of an Order of Final Judgment in the Action. After payment of attorneys' fees and litigation expenses, Mr. Fornshell intends to distribute the remainder to Investors in proportion to the size of their authorized claims against the Receivership. The payment of attorneys' fees and litigation expenses and distribution to the Investors would occur after the Order of Final Judgment has become "Final" pursuant to the Settlement Agreement.

If the Court approves the proposed settlement and Mr. Fornshell's plan of distribution, Mr. Fornshell estimates that the Settlement Payment will cover approximately 17 percent of the Proposed Schedule of Allowed Unsecured Claims of Investors filed with the Court by Mr. Fornshell on June 30, 2008. Investors may eventually receive further distributions from the Receivership, to the extent such funds become available from other sources.

**B. Dismissal With Prejudice and Release of Claims**

If the settlement is approved by the Court, all claims that were or could have been asserted in the Action on behalf of the Receivership or the Investors will be dismissed with prejudice and on the merits. By accepting a distribution from the settlement, each Investor will be deemed to have released all claims they might have against FirstMerit arising from or related in any way to their investment with the Schneiders. In addition, the Court will enter an order that permanently bars, enjoins, and restrains the Investors, with certain exceptions set forth in Section V of this Notice, from pursuing any such claims against FirstMerit (the "Injunction"). However, accepting a distribution from this settlement will not preclude an Investor from participating in other distributions from the Receivership, if any funds become available.

**IV. Attorneys' Fees and Expenses**

The law firms of Cohen Rosenthal & Kramer LLP and Yarger Radel & Pentz LLP represent Mr. Fornshell in the lawsuit against FirstMerit. The firms have received no compensation for their work to-date on the Action, and have advanced out-of-pocket costs associated with the litigation.

Under the terms of their written agreement with the Receivership, attorneys for the Receiver will receive one-fourth of the settlement proceeds, or Two Million Six Hundred Twenty Five Thousand Dollars (\$2,625,000), as their fees in the case. The law firms will also receive reimbursement of their expenses, which currently total approximately One Hundred Twenty Seven Thousand Dollars (\$127,000). FirstMerit shall have no responsibility for, and no liability with respect to, the fee and expense allocation among Mr. Fornshell's counsel and/or any other person who may assert any claim thereto.

## V. Exclusion of the Young Plaintiffs and Non-Participating Investors

Fourteen Investors are plaintiffs or have asked to become plaintiffs in their own lawsuit against FirstMerit, captioned *Young v. FirstMerit Bank, N.A.*, Case No. 06-CV-591332 (the "Young Plaintiffs"). The Young Plaintiffs will not participate in, and are not bound by, the proposed settlement, including the Injunction. However, any Young Plaintiff wishing to participate in the proposed settlement, and thereby become subject to and bound by the Injunction, may affirmatively choose to do so by sending written notice to Joshua R. Cohen, counsel for Mr. Fornshell, at Cohen Rosenthal & Kramer LLP, 700 West St. Clair Avenue, Suite 400, Cleveland, Ohio 44113, jcohen@crklaw.com. Such written notice will be effective only if it is received prior to the Court's issuance of an order approving the settlement.

Any Investor may decline to participate in the proposed settlement by making an objection in accordance with the procedures set forth in Section VIII of this Notice, and by not withdrawing that objection prior to the entry of any order approving the settlement. Any Investor may also decline to participate in the proposed settlement by filing an appeal from any order approving the proposed settlement. Investors who decline to participate in the proposed settlement are referred to as "Non-Participating Investors." Non-Participating Investors will not be subject to or bound by the Injunction. *However, Non-Participating Investors will not be eligible to receive any portion of the Settlement Payment.*

## VI. Questions About the Proposed Settlement

Investors may review a copy of the proposed Settlement Agreement and related documents at [www.szd.com/schneider](http://www.szd.com/schneider). Investors may also direct questions concerning the settlement to Attorney Joshua R. Cohen either by telephone (216.781.7956) or e-mail (jcohen@crklaw.com). **Please do not call or e-mail the Court or the Clerk of the Court with questions about the proposed settlement.**

## VII. The Final Settlement Hearing

On Monday, August 15, 2011 at 2:00 P.M., the Court will hold a hearing (the "Final Settlement Hearing") to consider: (a) whether the proposed settlement should be approved as fair and reasonable; and (b) whether a final judgment should be entered dismissing the claims on behalf of the Receiver and the Investors with prejudice and on the merits, and imposing the Injunction, as required by the Settlement Agreement. The Final Settlement Hearing will be held before the Honorable José A. Villeneuve, Cuyahoga County Justice Center, Courtroom 20-A, 1200 Ontario Street, Cleveland, Ohio 44113-1678. The hearing is open to the public.

## VIII. Opportunity to Be Heard

At the Final Settlement Hearing, Investors may (a) object to or comment in favor of the proposed settlement; (b) submit written materials for the Court's consideration; and/or (c) ask to be personally heard at the hearing, or have their personal attorney do so, at their own expense.

However, Investors and/or their attorneys are entitled to object to or comment on the proposed settlement, have any written materials considered by the Court, or be heard at the Final Settlement Hearing only if they file with the Clerk of the Court and serve upon counsel for Mr. Fornshell and FirstMerit, by no later than August 10, 2011, the following materials: (a) a notice of intent to appear, which must include the following caption and case number:

Matthew L. Fornshell, Receiver vs. FirstMerit Bank, N.A.  
Case No. 06-CV-592402  
PROPOSED SETTLEMENT -- OBJECTION/COMMENT

(b) a detailed statement of any specific objections to or comments on the proposed settlement or any other matter relating to the proposed settlement; and (c) all written materials, including any evidence, that the Investor and/or his counsel wishes the Court to consider. Investors must also indicate on their submission whether they wish to address the Court at the hearing.

The above materials shall be considered filed with the Clerk of the Court on the date they are hand delivered or postmarked, first class mail, postage prepaid, to:

Clerk of Courts  
Cuyahoga County Court of Common Pleas  
1200 Ontario Street  
Cleveland, Ohio 44113-1678;

and shall be considered served upon counsel for Mr. Fornshell and FirstMerit on the date they are hand delivered or postmarked, first class mail, postage prepaid, or e-mailed to both:

Joshua R. Cohen  
Cohen Rosenthal & Kramer LLP  
700 West St. Clair Avenue, Suite 400  
Cleveland, Ohio 44113  
jcohen@crklaw.com

-and-

David F. Adler  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
dfadler@jonesday.com

**Any person who does not make his objections known in the manner and within the time provided above shall be deemed to have waived such objections; shall be foreclosed from ever making objections to the proposed settlement and to any Order of Final Judgment that the Court may enter; and shall be foreclosed from appealing such Order of Final**

**Judgment. If you are satisfied with the proposed settlement and do not wish to be heard with respect to its terms, you need not appear at the Final Settlement Hearing or take any other action.**

Dated: July 20, 2011