

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>In re</b>	)	
<b>COLONIAL BANCGROUP, INC.</b>	)	<b>Civil Action No.</b>
<b>SECURITIES LITIGATION</b>	)	<b>2:09-CV-00104-RDP-WC</b>
	)	

**ORDER PRELIMINARILY APPROVING AND  
PROVIDING FOR NOTICE AND HEARING  
IN CONNECTION WITH PARTIAL CLASS ACTION SETTLEMENT**

This case is before the court on the Public Pension Group’s Motion for Approval of Partial Settlement and Certification of Class for Settlement Purposes. (Doc. #444). On or about September 14, 2011, Lead Plaintiffs Arkansas Teacher Retirement System, State-Boston Retirement System, Norfolk County Retirement System and City of Brockton Retirement System (collectively, “Lead Plaintiffs”), on behalf of themselves and the putative Settlement Class, and the Settling Defendants<sup>1</sup> entered into an Amended and Restated Stipulation and Agreement of Settlement with Officer and Director Defendants (Doc. #456) (the “Stipulation”) in the above-titled litigation (the “Action”), which is subject to review under Federal Rule of Civil Procedure 23 and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed partial settlement of the claims alleged in the First Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws (the “Amended Complaint”) against the Settling Defendants on the merits and with prejudice (the “Settlement”). The court has reviewed and considered the Stipulation and the

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<sup>1</sup> The Settling Defendants are Robert E. Lowder, Sarah H. Moore, T. Brent Hicks, Lewis E. Beville, William Britton, Jerry J. Chessner, Augustus K. Clements, III, Robert S. Craft, Patrick F. Dye, Hubert L. Harris, Jr., Clinton O. Holdbrooks, Harold O. King, Deborah L. Linden, John Ed Mathison, Milton E. McGregor, John C.H. Miller, Jr., Joseph D. Mussafer, William E. Powell, III, James W. Rane, Simuel Sippial, Jr., Edward V. Welch, Sheila P. Moody and Kamal Hosein.

accompanying exhibits; and the Settling Parties to the Stipulation have consented to the entry of this Order.<sup>2</sup>

NOW, THEREFORE, IT IS ORDERED as follows:

1. The court has reviewed the Stipulation and preliminarily finds the Settlement set forth therein to be fair, reasonable and adequate, subject to further consideration at the Settlement Hearing described below. To be clear, the court's approval is only preliminary and the court has not yet answered the ultimate question: whether, as a final matter, the Settlement is fair, reasonable, and adequate. When the court is called upon to make that ultimate determination, the court will consider the "*Bennett factors*," which include: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or before the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense, and duration of the litigation; (5) the substance and amount of opposition, if any, to the settlement; and (6) the stage of the proceedings at which the settlement was reached. *See Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984)); *see also Smith v. Wm. Wrigley Jr. Co.*, 2010 WL 240 1149 at \*2 (S.D. Fla. June 15, 2010); *In re Winn-Dixie Stores, Inc. ERISA Litig.*, 2008 WL 815724, at \*6 (M.D. Fla. Mar. 20, 2008).

Indeed, the Settling Parties here have requested only that the court take the first step in the settlement approval process and grant preliminary approval of the Settlement such that Notice of the Settlement can be given to the Settlement Class. The court has preliminarily reviewed the factors applied by courts in considering approval of class action settlements and that review indicates that this Settlement is well within the range of possible approval.

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<sup>2</sup> All capitalized terms used in this Order that are not otherwise defined herein having the meanings defined in the Stipulation.

2. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, for the purposes of the Settlement only, the court hereby certifies the Action as a class action on behalf of all persons or entities who purchased: (i) the common stock of the Colonial BancGroup, Inc. (“Colonial”); (ii) Colonial's common stock traceable to the Company's April 23, 2008 stock offering pursuant to the Registration Statement and Prospectus filed with the Securities and Exchange Commission (the “Stock Offering”); and (iii) the \$250 million worth of Subordinated Notes due in 2038, paying 8.875% interest on a quarterly basis, pursuant or traceable to Colonial's Form S-3/A Shelf Registration Statement and Prospectus dated November 12, 2004 and Form 424 (b)(2) Prospectus Supplement dated February 28, 2008 (the “Note Offering” and together with Colonial's common stock and the Stock Offering (“Colonial Securities”)) during the period between April 18, 2007 and August 6, 2009, inclusive (the “Settlement Class Period”), and were allegedly damaged thereby (the “Settlement Class”). Excluded from the Settlement Class are: the current and former defendants in the Action; the current and former officers and directors of the Company; members of the immediate families of the current and former defendants in the Action; the subsidiaries and affiliates of the Company; any entity in which the current and former defendants in the Action have or had a controlling interest; and the legal representatives, heirs, successors or assigns of any excluded person. Also excluded from the Settlement Class will be any person who timely and validly seeks exclusion from the Settlement Class in accordance with the requirements set forth in the Notice.

3. The court finds and concludes that the prerequisites of class action certification under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedures have been satisfied for the Settlement Class defined herein and for the purposes of the Settlement only, in that:

(a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members is impracticable;

(b) there are questions of law and fact common to the Settlement Class Members;

(c) the claims of Lead Plaintiffs are typical of the Settlement Class's claims;

(d) Lead Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of the Settlement Class;

(e) the questions of law and fact common to Settlement Class Members predominate over any individual questions; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering that the claims of Settlement Class Members in the Action are substantially similar and would, if tried, involve substantially identical proofs and may therefore be efficiently litigated and resolved on an aggregate basis as a class action; the amounts of the claims of many of the Settlement Class Members are too small to justify the expense of individual actions; and it does not appear that there is any interest among Settlement Class Members in individually controlling the litigation of their claims.

(g) The court's preliminary certification of the Settlement Class as provided herein: (i) is made for purposes of approving the Settlement Class only and is without effect on any of the Non-Settling Defendants; (ii) is without prejudice to all Non-Settling Defendants' rights to oppose class certification in this case or any other related case; and (iii) shall not be construed as or received in evidence as an admission, concession, or presumption that class certification is appropriate as to any claims against the Non-Settling Defendants.

4. Pursuant to Federal Rule of Civil Procedure 23, and for the purposes of the Settlement only, Lead Plaintiffs and additional named plaintiffs The Horace F. Moyer and Joan M. Moyer

Living Trust and City of Worcester are certified as Class Representatives for the Settlement Class and the law firm of Labaton Sucharow LLP is appointed Class Counsel for the Settlement Class.

5. **A hearing (the “Settlement Hearing”) pursuant to Rule 23(e) of the Federal Rules of Civil Procedure will be scheduled by separate order** and will be conducted for the following purposes:

- (a) to determine whether the proposed Settlement is fair, reasonable and adequate, and should be approved by the court;
- (b) to determine whether the proposed Final Order and Judgment as to Officer and Director Defendants (“Judgment”) as provided under the Stipulation should be entered, and to determine whether the release by the Settlement Class of the Released Claims, as set forth in the Stipulation, should be provided to the Released Defendant Parties;
- (c) to determine, for purposes of the Settlement only, whether the Settlement Class should be finally certified; whether Lead Plaintiffs and the additional named plaintiffs should be finally certified as Class Representatives for the Settlement Class; and whether the law firm of Labaton Sucharow LLP should be finally appointed as Class Counsel for the Settlement Class;
- (d) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved by the court;
- (e) to consider Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses (which may include an application for an award to Lead Plaintiffs for reimbursement of their reasonable costs and expenses directly related to their representations of the Settlement Class, pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”)); and
- (f) to rule upon such other matters as the court may deem appropriate.

6. The court reserves the right to approve the Settlement with or without modification and with or without further notice of any kind. The court further reserves the right to enter the Judgment approving the Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and/or expenses. The court may also adjourn the Settlement Hearing or modify any of the dates herein without further notice to members of the Settlement Class.

7. The court approves the form, substance and requirements of the Notice of Pendency of Class Action and Proposed Partial Settlement (the "Notice") and the Proof of Claim and Release form ("Proof of Claim"), substantially in the forms annexed hereto as Exhibits 1 and 2, respectively.

8. The court approves the retention of Strategic Claims Services as the Claims Administrator. The Claims Administrator shall cause the Notice and the Proof of Claim, substantially in the forms annexed hereto, to be mailed, by first-class mail, postage prepaid, on or before ten (10) business days after the date of entry of the Bankruptcy Court Approval Order ("Notice Date"), to all Settlement Class Members who can be identified with reasonable effort. The Settling Defendants shall utilize their best efforts, to the extent they have not already done so, to have Colonial provide to Lead Counsel, or the Claims Administrator: a list, in electronic searchable form, of the names and last known addresses of all persons and entities who purchased Colonial Securities during the Settlement Class Period, no later than ten (10) calendar days after entry of this Order.

9. The Claims Administrator shall be supervised by the court, with the assistance of Lead Counsel, and shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities who purchased Colonial Securities during the Settlement Class Period as record owners but not as beneficial owners. Such nominee purchasers are directed, within seven (7) calendar days of their receipt of the Notice, to either (i) provide the

Claims Administrator with lists of the names and last known addresses of the beneficial owners, and the Claims Administrator is ordered to send the Notice and Proof of Claim promptly to such identified beneficial owners by first-class mail, or (ii) request additional copies of the Notice and Proof of Claim, and within seven (7) calendar days of receipt of such copies send them by first-class mail directly to the beneficial owners. Nominee purchasers who elect to send the Notice and Proof of Claim to their beneficial owners shall also send a statement to the Claims Administrator confirming that the mailing was made as directed. Additional copies of the Notice shall be made available to any record holder requesting such for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from the Settlement Fund, after receipt by the Claims Administrator of proper documentation, for their reasonable expenses actually incurred in sending the Notices and Proofs of Claim to beneficial owners.

10. Lead Counsel shall, at or before the Settlement Hearing, file with the court proof of mailing of the Notice and Proof of Claim.

11. The court approves the form of the Summary Notice of Pendency of Class Action and Proposed Partial Settlement (“Summary Notice”) substantially in the form annexed hereto as Exhibit 3, and directs that Lead Counsel shall cause the Summary Notice to be published in *Investor's Business Daily* and transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date. Lead Counsel shall, at or before the Settlement Hearing, file with the court proof of publication of the Summary Notice.

12. The form and content of the notice program described herein, and the methods set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 27 of the Securities Act of 1933, 15 U.S.C. §77z-1(a)(7), as amended by the PSLRA, Section 21D(a)(7) of the Securities

Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

13. In order to be eligible to receive a distribution from the Net Settlement Fund, in the event the Settlement is effected in accordance with the terms and conditions set forth in the Stipulation, each Settlement Class Member shall take the following actions and be subject to the following conditions:

(a) A properly executed Proof of Claim, substantially in the form annexed hereto as Exhibit 2, must be submitted to the Claims Administrator, at the address indicated in the Notice, postmarked no later than 120 calendar days after the Notice Date. Such deadline may be further extended by court Order or by Lead Counsel in their discretion. Each Proof of Claim shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first-class mail, postage prepaid) provided such Proof of Claim is actually received prior to the motion for an order of the court approving distribution of the Net Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice. Any Settlement Class Member who does not timely submit a Proof of Claim within the time provided for shall be barred from sharing in the distribution of the Net Settlement Fund, unless otherwise ordered by the court.

(b) The Proof of Claim submitted by each Settlement Class Member must satisfy the following conditions, unless otherwise ordered by the court: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized



statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by Lead Counsel; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of her current authority to act on behalf of the Settlement Class Member must be included in the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) As part of the Proof of Claim, each Settlement Class Member shall submit to the jurisdiction of the court with respect to the claim submitted.

14. Settlement Class Members shall be bound by all orders, determinations and judgments in this Action, whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such an exclusion request shall mail the request in written form by first-class mail to the address designated in the Notice for such exclusions. Such request for exclusion must state the name, address and telephone number of the person seeking exclusion, that the sender requests to be “excluded from the Settlement Class in *In re Colonial BancGroup, Inc. Securities Litigation*, 2:09-CV-00104-RDP-WC” and must be signed by such person. Such persons requesting exclusion are also directed to state: the date(s), price(s), and number(s) of shares of all purchases, acquisitions and sales of Colonial Securities during the Settlement Class Period. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the court. **The date by which requests for exclusion must be filed will be by separate order.**

15. Settlement Class Members requesting exclusion from the Settlement Class shall not be eligible to receive any payment out of the Net Settlement Fund as described in the Stipulation and Notice.

16. The court will consider any Settlement Class Member's objection to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees or reimbursement of expenses. Objections must be served upon Lead Counsel, James W. Johnson, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, and Defendants' Counsel, James F. Hughey, III, Lightfoot, Franklin & White, LLC, 400 20th Street North, Birmingham, Alabama 35203-3200 and Larry B. Childs, Waller Lansden Dortch & Davis LLP, 1901 Sixth Avenue North, Suite 1400, Birmingham, Alabama 35203-3200 and file said objections and supporting papers with the Clerk of the Court, United States District Court for the Middle District of Alabama, Northern Division, P.O. Box 711, Montgomery, AL 36101-0711. Any Settlement Class Member who does not make his, her or its objection in the manner provided for in the Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, to the Plan of Allocation, or to the request for attorneys' fees and expenses, unless otherwise ordered by the court, but shall otherwise be bound by the Judgment to be entered and the releases to be given. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and other expenses are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing.

Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval. **The date by which objections must be filed will be set by separate order.**

17. Pending final determination of whether the Settlement should be approved, Lead Plaintiffs, all Settlement Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Claims against the Released Defendant Parties.

18. As provided in the Stipulation, prior to the Effective Date, Lead Counsel may pay the Claims Administrator a portion of the reasonable fees and costs associated with giving notice to the Settlement Class and the review of claims and administration of the Settlement out of the Settlement Fund without further approval from the Defendants and without further order of the court.

19. All papers in support of the Settlement, Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and expenses shall be filed with the court and served on all parties. If reply papers are necessary, they are to be filed with the court and served no later than seven (7) calendar days prior to the Settlement Hearing. **The date by which papers in support of the Settlement and Plan of Allocation must be submitted, and the date by which motions for attorneys' fees must be filed, will be by separate order.**

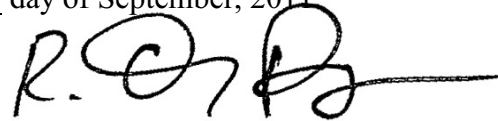
20. The passage of title and ownership of the Settlement Fund to the Escrow Agent in accordance with the terms and obligations of the Stipulation is approved. No person who is not a Settlement Class Member or Lead Counsel shall have any right to any portion of, or to any distribution of, the Net Settlement Fund unless otherwise ordered by the court or otherwise provided in the Stipulation.

21. All funds held in escrow shall be deemed and considered to be in custodia legis of the court, and shall remain subject to the jurisdiction of the court until such time as such funds shall be disbursed as authorized and/or further order of the court.

22. If the Settlement fails to become effective as defined in the Stipulation or is terminated, then, in any such event, the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Settling Parties, and the Settling Parties shall be deemed to have reverted to their respective litigation positions in the Action as of May 24, 2011.

23. The court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

**DONE** and **ORDERED** this 20th day of September, 2011

A handwritten signature in black ink, appearing to read 'R. David Proctor', written over a horizontal line.

**R. DAVID PROCTOR**  
UNITED STATES DISTRICT JUDGE