



Cited
As of: Jul 08, 2011

Black v. Chase Bank of Tex. Nat'l Ass'n

CIVIL ACTION NO. 3-00CV-822-G

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
TEXAS, DALLAS DIVISION**

2001 U.S. Dist. LEXIS 18134

**November 6, 2001, Decided
November 6, 2001, Filed, Entered**

DISPOSITION: [*1] Third-party claims were dismissed without prejudice.

OUTCOME: The settlement agreement was approved.

CASE SUMMARY:

OPINION

PROCEDURAL POSTURE: Plaintiff insureds and trust brought a class action against defendant bank and financial advisor for claims related to insurance policies. The parties submitted a class action settlement agreement for approval and complied with the court's preliminary approval order regarding notice. The court held a fairness hearing to determine whether to give final approval of the settlement agreement.

JURY TRIAL DEMANDED

**ORDER APPROVING CLASS ACTION
SETTLEMENT AND DISMISSING CLASS ACTION
WITH PREJUDICE**

WHEREAS, the parties have entered into a class action settlement agreement dated July 25, 2001, together with related exhibits (collectively, the "Settlement Agreement"), to settle this class action; and

OVERVIEW: The court found that the proposed settlement agreement was fair, adequate, and reasonable based on the submissions of the parties and the class members, the testimony adduced at the fairness hearings, the pleadings on file, and the arguments of counsel. The court certified the final class, determined that the representation was adequate, and found that the notice provided in response to the preliminary approval order was sufficient. Thus, the court approved the settlement agreement, permanently enjoined the insureds and trust from bringing related claims or causes of action, and retained jurisdiction to resolve disputes arising from the settlement agreement and to enforce the settlement agreement.

WHEREAS, the Court entered an Order dated July 31, 2001 (the "Preliminary Approval Order"), preliminarily certifying the putative Class in this action for settlement purposes under *Fed. R. Civ. P. 23(b)(3)*, scheduling a Fairness Hearing for November 6, 2001, ordering individual and publication notice to potential Class Members, [*3] and providing potential Class Members with an opportunity either to exclude themselves from the settlement Class or to object to the proposed settlement; and

WHEREAS, the parties have complied with the Preliminary Approval Order;

WHEREAS, the Court held a Fairness Hearing on November 6, 2001, to determine whether to give final approval to the Settlement Agreement; and

WHEREAS, the Court is of the opinion that the Settlement Agreement is fair, adequate, and reasonable, and that it should be approved.

NOW THEREFORE, based on the submissions of the parties and Class Members, the testimony adduced at the Fairness Hearing, the pleadings on file, and the arguments of counsel, the Court hereby finds, and it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

1. *Incorporation of Defined Terms.* Unless otherwise indicated, this Order incorporates by reference the defined terms from the Settlement Agreement that are set forth in Appendix A hereto.

2. *Jurisdiction.* The Court has personal jurisdiction over all Plaintiffs, Defendants and Class Members, and it has subject-matter jurisdiction over this action. This includes, without limitation, jurisdiction to approve the [*4] proposed settlement, to grant final certification of the Class, to settle and release all claims arising out of the Released Transactions, and to dismiss this action on the merits and with prejudice.

3. *Final Class Certification.* The Class this Court previously certified in its Preliminary Approval Order is hereby finally certified for settlement purposes under *Fed. R. Civ. P. 23(b)(3)*. The Class consists of (i) all Persons who have or had an ownership interest in an Alpine Policy or who are or were insured under an Alpine Policy; (ii) all Persons who are loss payees and/or have or had any claim against any insured under an Alpine Policy or otherwise arising in connection with any such Alpine Policy; (iii) all other Persons who have as of July 25, 2001, an unpaid claim against Alpine or the Alpine Trust; and (iv) all Persons who are successors, heirs, or assignees of the foregoing Persons. Notwithstanding the foregoing, the following Persons shall be excluded from the Class: (i) Chase and PaineWebber; (ii) any present or former officers and/or directors of Chase or PaineWebber; and (iii) persons who make a timely election to be excluded from the Class. A list of those Persons [*5] who have excluded themselves from the Class, and who therefore are not bound by this Order and the accompanying Final Judgment, is attached hereto as Appendix B, which is incorporated herein and made a

part hereof for all purposes. This certification is for settlement purposes only and shall be automatically vacated if, for any reason, the Settlement Agreement is terminated in accordance with its terms.

4. *Adequacy of Representation.* The following appointments from the Preliminary Approval Order are fully and finally confirmed: (i) Robert L. Brace of Hollister & Brace as Lead Counsel for the Class; (ii) Robert Craig as Trustee Ad Litem; and (iii) the Plaintiffs as Class representatives. The Court finds that Lead Counsel, Trustee Ad Litem and the Plaintiffs have fully and adequately represented the Class, Alpine and the Alpine Trust for purposes of entering into and implementing the settlement and have satisfied the requirements of *Fed. R. Civ. P. 23(a)(3)*.

5. *Class Notice.* The Court finds that the distribution of the class notice and the publication of the publication notice in accordance with the terms of the Settlement Agreement and this Court's Preliminary [*6] Approval Order:

(a) constituted the best practicable notice to Class Members under the circumstances of this action;

(b) were reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of this class action, (ii) their right to exclude themselves from the Class and the proposed settlement, (iii) their right to object to any aspect of the proposed settlement (including final certification of the settlement class, the fairness, reasonableness or adequacy of the proposed settlement, the adequacy of the Class's representation by Plaintiffs or Plaintiffs' counsel, and/or the award of attorneys' and Trustee Ad Litem fees and expenses), (iv) if they did not exclude themselves from the Class, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and (v) the binding effect of the orders and Final Judgment in this action, whether favorable or unfavorable, on all persons who do not request exclusion from the Class;

(c) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and

(d) fully satisfied the requirements of the Federal Rules [*7] of Civil Procedure (including *Fed. R. Civ. P. 23(c)(2)* and (e)), the United States Constitution

(including the Due Process Clause), the Rules of this Court, and any other applicable law.

6. *Final Settlement Approval.* The terms and provisions of the Settlement Agreement, including all amendments and exhibits, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the Plaintiffs and the Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and any other applicable law. The parties and Class Members are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

7. *Binding Effect.* The terms of the Settlement Agreement and of this Order and the accompanying Final Judgment shall be forever binding on Plaintiffs and all other Class Members, as well as their heirs, executors and administrators, successors and assigns, and those terms shall have res judicata and other preclusive effect in all pending [*8] and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in this action or are otherwise encompassed by the Release described in the next paragraph of this Order.

8. *Release.* The Release contained in Section V of the Settlement Agreement, which is also set forth in full in Appendix A hereto, is expressly incorporated herein in all respects, is effective as of the date of this Order and the accompanying Final Judgment, and forever discharges the Releasees from any claims or liabilities arising from or related to the Released Transactions.

9. *Permanent Injunction.* The Plaintiffs, Alpine, the Alpine Trust and all Class Members who have not been timely excluded from the Class are hereby permanently barred and enjoined from (a) filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction against the Releasees based [*9] on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this action and/or the Released Transactions, and (b) organizing or soliciting the participation of any

Class Members in a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit or other proceeding against the Releasees based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this action and/or the Released Transactions. This injunction does not apply to litigation brought against the Bank of New York or other Third Parties who are not Releasees. The Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over this action and to protect and effectuate the Court's Final Judgment.

10. *Enforcement of Settlement.* Nothing in this Order or the accompanying Final Judgment shall preclude any action to enforce the terms of the Settlement Agreement, nor shall anything in this Order or the Final Judgment preclude [*10] Plaintiffs or Class Members from participating in the Claim Resolution Process described in the Settlement Agreement if they are entitled to do so under the terms of the Settlement Agreement.

11. *Attorneys' and Trustee Ad Litem's Fees and Expenses.* Counsel of record for the Class are awarded attorneys' fees and reimbursement of their disbursements and expenses as set out in the Order Re: Plaintiffs' Motion for Payment of Attorneys' Fees and Reimbursement of Costs and Fees. Lead Counsel, in his sole discretion, shall allocate and distribute the award of attorneys' fees and expenses among any other counsel for the Class, if any. The above-described award of fees and expenses includes reimbursement to Lead Counsel for the fees and expenses of the Trustee Ad Litem through the date of the Fairness Hearing. Pursuant to the terms of the Settlement Agreement, the Trustee Ad Litem may subsequently apply to the Court for additional awards of fees and expenses incurred by Trustee Ad Litem in administering the Settlement Agreement after the date of the Fairness Hearing. Any such subsequent awards shall be paid solely from the Settlement Funds.

12. *No Other Payments.* The preceding [*11] paragraph of this Order covers, without limitation, any and all claims for attorneys' fees and expenses, Trustee Ad Litem fees and expenses, costs or disbursements incurred by Lead Counsel or any other counsel representing Plaintiffs or Class Members, and costs or disbursements incurred by Plaintiffs or the Class

Members, or any of them, in connection with or related in any manner to this action, the settlement of this action, the administration of such settlement, and/or the Released Transactions except to the extent otherwise specified in this Order or the Settlement Agreement. The Defendants shall not be liable to Plaintiffs, Alpine, the Alpine Trust, or the Class Members for any additional attorneys' fees, Trustee Ad Litem fees, or expenses.

13. *Modification of Settlement Agreement.* The parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such amendments to, and modifications and expansions of, the Settlement Agreement as are consistent with this Order and do not limit the rights of Class Members under the Settlement Agreement.

14. *Retention of Jurisdiction.* The Court has jurisdiction to enter this Order and [*12] the accompanying Final Judgment. Without in any way affecting the finality of this Order and the accompanying Final Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement and of this Order and the accompanying Final Judgment, including, without limitation, for the purpose of:

(a) enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, this Order or the Final Judgment (including, without limitation, whether a person or entity is or is not a Class Member; whether claims or causes of action allegedly related to this case are or are not barred by this Order and the Final Judgment; etc.);

(b) entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and the Final Judgment approving the Settlement Agreement, dismissing all claims on the merits and with prejudice, and permanently enjoining Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly [*13] administration of this settlement; and

(c) entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction.

15. *No Admissions.* Neither this Order nor the accompanying Final Judgment nor the Settlement Agreement (nor any other document referred to here, nor any action taken to effectuate and implement the Settlement Agreement) is, may be construed as, or may be used as an admission or concession by or against the Defendants of the validity of any claim or any actual or potential fault, wrongdoing or liability whatsoever. Additionally, negotiating, entering into or carrying out the Settlement Agreement shall not in any event be construed as, or deemed evidence of, an admission or concession by any party, and shall not be offered or received in evidence in any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Order, the Final Judgment and the Settlement Agreement. Notwithstanding the foregoing, however, that this Order, the accompanying Final Judgment and the Settlement [*14] Agreement may be filed in any action against or by the Defendants or Releasees to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

16. *Dismissal of Action.* This action, including all individual and Class claims resolved in it, is hereby dismissed on the merits and with prejudice against Plaintiffs and all other Class Members, without fees or costs to any party except as otherwise provided in this Order and the Final Judgment. Notwithstanding the foregoing, the third-party claims filed by Chase against Stephen Webber, Edmond H. Benton, and James Southland Bowers are dismissed without prejudice.

17. *Separate Final Judgment.* Pursuant to *Fed.R.Civ.P. 58*, the Court will separately enter the accompanying Final Judgment.

Signed this 6 day of November, 2001.

A. Joe Fish

United States District Judge

APPENDIX A

I.

DEFINITIONS

A. *Alpine*. "Alpine" means Alpine Assurance Company, Ltd., an insurance company currently or formerly existing under the laws of [*15] the Turks and Caicos Islands, in all capacities including but not limited to corporate, in liquidation or otherwise.

B. *Alpine Policy*. "Alpine Policy" shall refer to any policy of insurance, bond, other insuring agreement or product issued or assumed by Alpine prior to the Execution Date of this Settlement Agreement, irrespective of whether same is in force, lapsed, was cancelled or otherwise terminated.

C. *Alpine Trust*. "Alpine Trust" means that trust established pursuant to the "NAIC Standard Form Trust Agreement for Alien Surplus Lines Insurers" executed by and between Alpine and Ameritrust Texas National Association on December 20, 1991, as amended.

D. *Claim*. "Claim" means a claim by a Class Member, or his or her representative, timely submitted to the Claim Resolution Process.

E. *Claim Resolution Process*. "Claim Resolution Process" means the procedures described in Section IV of the Settlement Agreement for the presentation, evaluation, and resolution of Claims.

F. *Class*. The "Class" shall consist of: (i) all Persons who have or had an ownership interest in an Alpine Policy or who are or were insured under [*16] an Alpine Policy; (ii) all Persons who are loss payees and/or have or had any claim against any insured under an Alpine Policy or otherwise arising in connection with any such Alpine Policy; (iii) all other Persons who have as of the Execution Date an unpaid claim against Alpine or the Alpine Trust; and (iv) all Persons who are successors, heirs, or assignees of any of the foregoing Persons. Notwithstanding the foregoing, the following Persons shall be excluded from the Class: (i) Chase and PaineWebber; (ii) any present or former officers and/or directors of Chase or PaineWebber; and (iii) Persons who make a timely election to be excluded from the proposed Class.

G. *Class Members*. "Class Members" shall mean members of the Class who do not timely opt out of the Class.

H. *Chase*. "Chase" shall mean The Chase Manhattan Bank, J.P. Morgan Chase & Company, Chase Bank of

Texas, N.A., Texas Commerce Bank National Association, Texas Commerce Trust Company, and Ameritrust Texas National Association, and their respective parents, subsidiaries, present and former employees, agents, representatives, predecessors, successors, assigns, affiliates, or persons acting on [*17] behalf of any of the foregoing.

I. *Court*. The "Court" shall mean the United States District Court for the Northern District of Texas, or any other court in which the Lawsuit is pending at or prior to the Final Settlement Date.

J. *Chase's Counsel*. "Chase's Counsel" means the following:

Kirte M. Kinser

Roger B. Cowie

LOCKE LIDDELL & SAPP LLP

2200 Ross Avenue, Suite 2200

Dallas, Texas 75201-6776

(214) 740-8000 (telephone)

(214) 740-8800 (telecopier)

K. *Defendants*. "Defendants" shall mean Chase and PaineWebber.

L. *Final Order and Judgment*. "Final Order and Judgment" means this Order approving this Settlement Agreement.

M. *Final Settlement Date*. "Final Settlement Date" shall refer to the date upon which the Court's Final Order and Judgment becomes final and is no longer subject to appeal, or such other date after entry of the Final Order and Judgment that Lead Counsel, Chase's Counsel and PaineWebber's counsel may agree to in writing.

N. *Lawsuit*. "Lawsuit" means the suit styled Amarilis Black and Robert Craig, as the Joint Official Liquidator of Alpine Assurance Company, on behalf [*18] of herself and all others similarly situated v. Chase Bank of Texas National Association f/k/a Texas Commerce Bank, N.A., f/k/a Ameritrust of Texas, N.A., et al., Civil Action No. 3-00CV-0855-G, pending in the United States District Court for the Northern District of Texas.

O. *Lead Counsel*. "Lead Counsel" means the following:

Robert L. Brace

HOLLISTER & BRACE

1126 Santa Barbara Street

Santa Barbara, California 93101

(805) 963-6711 (telephone)

(805) 965-0329 (telecopier)

P. *PaineWebber*. "PaineWebber" shall mean UBS PaineWebber, Inc., sued as PaineWebber, Inc., and its present and former employees, agents, representatives, purchasers, successors, assigns, affiliates, or persons acting on behalf of any of the foregoing.

Q. *PaineWebber's Counsel*. "PaineWebber's Counsel" shall mean:

Steven W. Hawkins, Esq.

MUNGER, TOLLES & OLSON,
LLP

355 South Grand Avenue, 35th Floor

Los Angeles, CA 90071-1580

R. *Person or Persons*. "Person" or "Persons" shall include all individuals or entities of any kind, including but not limited to corporations, partnerships, associations, sole proprietorships and limited liability [*19] companies.

S. *Plaintiffs*. "Plaintiffs" shall mean Amarilis Black, Robert Craig in his capacity as Joint Official Liquidator of Alpine, and the Trustee Ad Litem.

T. *Release*. The "Release" shall refer to the release and related covenants set forth in Section II below.

U. *Releasees*. The "Releasees" shall mean (i) Chase and PaineWebber (as defined herein); (ii) any of Chase's or PaineWebber's past, present or future officers, directors, employees, agents, general agents, attorneys, representatives, shareholders, parents, subsidiaries or affiliates; and (iii) any predecessors, successors, assigns,

or persons acting on behalf of any of the foregoing.

V. *Trustee Ad Litem*. "Trustee Ad Litem" means Robert Craig in his capacity as trustee ad litem of Alpine and the Alpine Trust, or such other person as may be duly appointed trustee, successor trustee or trustee ad litem as to Alpine and the Alpine Trust.

II.

RELEASE AND RELATED COVENANTS

A. *Release of Claims by Plaintiffs, Class Members, Alpine and the Alpine Trust*. Effective upon the Final Settlement Date, the Plaintiffs, all Class Members, Alpine and the Alpine [*20] Trust do hereby release, acquit, and forever discharge the Releasees (in all capacities whether fiduciary, corporate or otherwise) from the Released Transactions, and they agree not to institute, maintain, or assert any claims against the Releasees based on the Released Transactions. The term "Released Transactions" shall mean any and all causes of action, claims, damages, equitable relief, legal relief, and demands or rights, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, or based on any statute, regulation or common law of any country, state, province, county, city or municipality that have been, could have been, may be, or could be alleged or asserted now or in the future by Alpine, the Alpine Trust, Plaintiffs or any Class Member against the Releasees (or any of them) in the Lawsuit or in any other court action or before any administrative body (including any Department of Insurance or other regulatory commission), tribunal or arbitration panel on the basis of, connected with, arising out of, or related in whole or in part to:

(1) any or all of the acts, omissions, facts, matters, transactions or occurrences that were directly [*21] or indirectly alleged, asserted, described, set forth or referred to in the Lawsuit;

(2) the Alpine Trust and/or the Releasees' conduct in connection therewith and/or representations and omissions relating thereto;

(3) any Alpine Policies;

(4) any claim that the Releasees

engaged in fraudulent conduct or a conspiracy to defraud in connection with the Alpine Trust or Alpine;

(5) any claim that the Releasees aided and abetted, or in any way gave assistance to, or failed to act to stop the fraudulent sale of insurance policies and/or other products and services of or by Alpine; and

(6) any or all acts, omissions, facts, matters, transactions, occurrences or representations relating to the Settlement Agreement, except as provided in Section II.J. below.

B. Release of Regulatory Remedies. Effective upon the Final Settlement Date, the Plaintiffs and all Class Members further (i) release and waive any claim to or right in any money damages or equitable or other relief that might be awarded or made available against the Releasees as a result of any action or proceeding by a department of insurance, regulatory body or other governmental agency or entity [*22] in any way arising from or relating in whole or in part to the Released Transactions and (ii) assign any such claim or right to the Releasees against whom any such awards, if any, are assessed.

C. Attorneys' Fees and Expenses. The Release contained herein covers, without limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Lead Counsel or any other counsel representing Plaintiffs or any Class Member, or by Plaintiffs or any Class Member in connection with or related in any manner to the Lawsuit, the settlement of the Lawsuit, the administration of such settlement, the Claim Resolution Process, and/or the Released Transactions except to the extent otherwise specified in the Settlement Agreement.

D. Release of Future Obligations. The Settling Parties acknowledge and agree that the Release contained herein releases the Releasees from any past, present, and future obligations under the Alpine Trust, and they further acknowledge and agree that the Alpine Trust terminated and Chase was fully discharged as trustee no later than March 31, 1999, and the Releasees have no further obligations thereunder.

*E. Release of Unknown [*23] Claims.* Plaintiffs, Chase, PaineWebber and the Class Members expressly

understand that principles of law such as Section 1542 of the Civil Code of the State of California provide that a general release does not extend to claims which a creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. To the extent that California or other law may be applicable as a result of, or notwithstanding, the choice of law provisions in the Settlement Agreement, Plaintiffs, Chase, PaineWebber and the Class Members hereby agree that the provisions of Section 1542 and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction which may be applicable herein, are hereby knowingly and voluntarily waived and relinquished by Plaintiffs Chase, PaineWebber and the Class Members and further agree and acknowledge that this is an essential term of this Release. In connection with this Release, Plaintiffs, Chase, PaineWebber and the Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or [*24] facts in addition to or different from those that they now know or believe to be true with respect to the matters released herein or with respect to Alpine, the Alpine Trust, the Alpine Policies or the Releasees. Nevertheless, it is the intention of Plaintiffs, Chase, PaineWebber and the Class Members in executing this Release to fully, finally and forever settle and release Alpine and its estate and the Releasees as to all such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Released Transactions and as otherwise set forth in this Agreement.

F. Release of Claims by Chase and PaineWebber. Effective upon the Final Settlement Date, Chase and PaineWebber do hereby release, acquit, and forever discharge each other (in all capacities whether fiduciary, corporate or otherwise) from the Released Transactions, and they agree not to institute, maintain, or assert any claims against each other based on the Released Transactions for contribution, indemnity, or otherwise. While Chase and PaineWebber agree that this release to cover unknown [*25] claims concerning the Released Transactions, as described in the preceding paragraph, this release shall not, however, extend to other disputes, not based on the Released Transactions, that may exist between Chase and PaineWebber.

G. Release of Alpine. Effective upon the Final

Settlement Date, Chase and PaineWebber do hereby release, acquit, and forever discharge Alpine from any and all claims of concerning the Released Transactions, and they agree not to institute, maintain, or assert any claims against Alpine or the Alpine Liquidation estate based on the Released Transactions.

H. *Protection Against Third Party Claims.* The Plaintiffs have notified the Defendants that they intend to pursue claims on behalf of themselves and the Class against the Bank of New York and potential other third parties (collectively, the "Third Parties") relating to the Released Transactions. It is the Settling Parties' intent, however, that the Releasees shall not have to pay anything further or in addition, directly or indirectly, for any damages that the Plaintiffs or Class Members may have suffered arising from the Released Transactions. Accordingly, the Plaintiffs and Class [*26] Members hereby (i) release the Third Parties from any liability they may have to the Plaintiffs or Class Members to the limited extent, if any, that the Releasees would be obligated to reimburse or otherwise pay to the Third Parties for such liability under principles of contribution, indemnity, or otherwise, and (ii) agree to indemnify,

defend, and hold harmless the Releasees from any such claims of contribution, indemnity, or otherwise by the Third Parties.

I. *Taxes.* The Plaintiffs, Class Members and Alpine, as the case may be, shall be solely responsible for the payment of any and taxes or other obligations that may be required in connection with this Settlement Agreement. Neither Chase nor PaineWebber shall be responsible for the payment of any portion of such amounts. Chase and PaineWebber shall follow their respective tax reporting procedures and otherwise comply with domestic federal and state laws in connection therewith.

J. *Enforcement of Settlement Agreement and Policies.* Nothing in the Release contained herein shall: (a) preclude any action to enforce the terms of this Settlement Agreement or the Final Order and Judgment; or (b) preclude Plaintiffs [*27] or Class Members from participating in the Claim Resolution Process.

APPENDIX B:

OPT-OUT LIST