

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re AFFILIATED COMPUTER SERVICES)	
DERIVATIVE LITIGATION)	Master File No. 3:06-CV-1110-O
)	
This Document relates to:)	ECF
)	
ALL ACTIONS)	
)	

UNOPPOSED JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Nominal Defendant Affiliated Computer Services, Inc. (“ACS” or the “Company”) and Lead Plaintiffs Alaska Electrical Pension Fund and Bennett Ray Lunceford (“Lead Plaintiffs”) jointly file this Unopposed Joint Motion for Preliminary Approval of Settlement, based on a Memorandum of Understanding dated as of April 27, 2009 (the “MOU”) and Stipulation of Settlement dated May 6, 2009 (the “Stipulation”), pursuant to Federal Rules of Civil Procedure 23.1, and in support thereof state as follows:

I. INTRODUCTION

ACS and Lead Plaintiffs (collectively, the “Settling Parties”) request that the Court enter the proposed Order submitted herewith: (i) granting preliminary approval to the proposed settlement of this derivative action as embodied in the Stipulation of Settlement filed contemporaneously herewith as Exhibit 1; (ii) approving the form and manner of giving notice of the proposed settlement to ACS Shareholders; and (iii) setting a hearing for final approval of the proposed settlement (the “Settlement Hearing”).

The settlement reached among the Settling Parties after arm’s-length, good-faith negotiations provides substantial benefits to ACS and is in the best interests of ACS and its shareholders. The Settling Parties negotiated valuable consideration for the settlement, namely the payment of \$30 million in insurance proceeds to ACS and the resolution of all claims

regarding ACS's directors and officers insurance policies. ACS acknowledges that the prosecution of this derivative action and the efforts of Lead Plaintiffs' Counsel in settlement negotiations were a substantial contributing factor in obtaining the \$30 million payment to ACS from the Insurers. The settlement also provides for an agreed upon payment of attorneys' fees and expenses to Lead Plaintiffs' Counsel by ACS.

In determining whether preliminary approval is warranted, the Court need only determine whether the proposed settlement is within the range of what might be found fair, reasonable and adequate, such that notice of the proposed settlement should be given to ACS shareholders, and a hearing scheduled to consider final settlement approval. Accordingly, ACS and Lead Plaintiffs jointly request that the Court: (i) preliminarily approve the proposed settlement; (ii) approve the form and manner of notice to ACS shareholders; and (iii) set a hearing date for final approval of the proposed settlement.

II. BACKGROUND AND DESCRIPTION OF THE DERIVATIVE ACTIONS

A. Procedural History

This is one of three derivative actions (collectively, the "Derivative Actions") filed by ACS shareholders, on behalf of and for the benefit of ACS, against certain current and former ACS directors and officers (the "Individual Defendants") concerning the Company's stock option granting practices. On or about April 7, 2006, ACS shareholders Anchorage Police & Fire Retirement System and Merl Huntsinger (collectively "Texas Plaintiffs") filed a derivative action in the District Court of Dallas County, Texas, 193rd Judicial District (the "Texas Action"). These derivative lawsuits were consolidated into the action titled *In re Affiliated Computer Services, Inc. Derivative Litigation*, No. 06-03403. In a separate lawsuit filed on or about May 2, 2006, ACS shareholder Jan Brandin (the "Delaware Plaintiff") filed a substantively

similar derivative action in the Court of Chancery of the State of Delaware styled *Brandin v. Deason, et al.*, No. 2123-VCL (the “Delaware Action”).

On or about June 22, 2006, ACS shareholder Alaska Electrical Pension Fund filed a separate derivative action making substantively similar allegations in the United States District Court for the Northern District of Texas. This lawsuit was consolidated with another derivative lawsuit filed by ACS shareholders Bennett Ray Lunceford and Ann M. Lunceford into the above-captioned and styled derivative action (the “Federal Action”). In April 2007, lead plaintiffs filed an Amended Verified Consolidated Shareholder Derivative Complaint asserting violations of federal securities laws and state common law.

After extensive litigation of various issues such as attempts to take ACS private, on December 13, 2007, this Court issued a ruling granting in part, and denying in part, defendants’ various motions to dismiss. Lead Plaintiffs filed a Second Amended Complaint for Violations of the Federal Securities Laws and Supplemental State Law Claims on February 1, 2008, making the following claims: (1) violations of § 10(b) of the Securities Exchange Act of 1934, (2) violations of § 14(a) of the Securities Exchange Act of 1934, (3) violations of § 20(a) of the Securities Exchange Act of 1934, (4) accounting, (5) breach of fiduciary duty, (6) aiding and abetting, (7) abuse of control, (8) gross mismanagement, (9) unjust enrichment, (10) rescission, and (11) breach of contract. Defendants’ motion to dismiss the Second Amended Complaint was denied on November 18, 2008.

On September 18, 2008, this Court denied a motion filed by ACS to stay all proceedings and a separate motion filed by Lead Plaintiffs to enjoin settlement activities in the Texas Action and/or the Delaware Action that did not have the pre-approval of the Federal Court. This Court also denied a second motion to stay pending a proposed settlement of the Texas and Delaware

Actions on November 26, 2008. On December 15, 2008, the Court issued its Scheduling Order, setting a trial date of December 7, 2009.

B. State Court Settlement

The parties to the three Derivative Actions have engaged in several mediations, beginning in March 2007. After an initial unsuccessful mediation, the parties to the Texas Action and the Delaware Action, without the presence of Lead Plaintiffs in the Federal Action, engaged in formal mediation sessions in February and April of 2008 under the auspices of Hon. Layn R. Phillips (U.S. District Judge, retired). After subsequent arms-length negotiations, the parties to the Texas Action and the Delaware Action arrived at an agreement and executed a memorandum of understanding on October 22, 2008. The proposed settlement was expressly made subject to the approval of a Special Litigation Committee of the ACS Board of Directors.

On May 22, 2008, the outside directors of the ACS Board of Directors appointed the Special Litigation Committee (the "SLC"). The SLC was granted the exclusive authority "to determine what action the Company should take with respect to the Derivative [Actions]" and any other matter arising out of allegations of stock option backdating. The SLC was empowered to seek to stay the Derivative Actions, or to prosecute, dismiss or compromise the claims asserted therein. The SLC engaged Ropes & Gray LLP as its independent counsel and retained Navigant Consulting, Inc. to advise on financial and related matters. On October 21, 2008, the SLC approved the settlement between the parties to the Texas Action and the Delaware Action and on November 20, 2008, the court in the Texas Action granted preliminary approval to that settlement and ordered notice of the settlement to ACS shareholders. Notice was sent to ACS shareholders pursuant to the Texas court's order on December 10, 2008.

On January 23, 2009, Lead Plaintiff Bennett Ray Lunceford objected (the “Objection”) in the Texas Action to the entry of an Order of Final Approval and a Judgment that dismisses all derivative claims brought on behalf of ACS. On February 4, 2009, the parties to the Texas Action and the Delaware Action executed a Stipulation of Settlement (the “State Stipulation”) that provides for the compromise and dismissal of those actions, on the terms set forth therein. The court in the Texas Action has scheduled a final settlement approval hearing for May 18, 2009.

C. Insurance Coverage Issues and Federal Court Settlement

ACS currently has director and officer insurance policies consisting of an underlying primary policy with coverage of loss for non-indemnifiable claims with several layers of excess coverage. There are also three additional layers of excess coverage for the officers and directors only. The issuers to ACS of certain of these insurance policies (the “Insurers”) have contested their obligation to provide coverage for certain legal expenses and settlement expenses in connection with all Derivative Actions (the “Insurance Dispute”).

Counsel for the Lead Plaintiffs in the Federal Action, counsel for ACS and its SLC, and counsel for the Insurers engaged in extensive arm’s-length negotiations relating to the Federal Action, the Lead Plaintiffs’ Objection, and the insurance dispute in a mediation conducted by Hon. Layn R. Phillips (U.S. District Judge, retired). As part of such mediation, Lead Plaintiffs insisted that they would not settle the Federal Action and the Objection if the Insurers would not agree to make a significant payment to ACS. The mediation resulted in the joint resolution of the Federal Action, the Objection and the Insurance Dispute, which included the agreement in principle by the Insurers to pay \$30 million to ACS (the “Settlement”). On April 27, 2009,

ACS and Lead Plaintiffs entered into a Memorandum of Understanding (“MOU”) memorializing the Settlement.

III. THE SETTLEMENT TERMS

Subject to the terms and conditions set forth in the MOU and Stipulation, and upon final judicial approval, the parties have agreed to the following Settlement terms.

The Insurers have agreed to pay the aggregate sum of \$30 million in cash to ACS, and ACS and its SLC agree that the Federal Action and the efforts of Lead Plaintiffs’ counsel in the Federal Action were material factors and instrumental in obtaining the \$30 million payment to ACS from the Insurers. As part of the Settlement, Lead Plaintiffs, derivatively on behalf of ACS and all ACS shareholders, have agreed to release any claim that they have brought, or that they might have brought, against the Individual Defendants arising from or relating to the matters or occurrences that were or could have been alleged in this derivative action. ACS has agreed to pay attorneys’ fees and expenses to Lead Plaintiffs’ counsel in an aggregate cash amount equal to the value of 180,000 shares of the common stock of ACS (determined as of the close of the market) on whichever is higher of either (1) the date the MOU is executed; (2) the date of the public announcement of the Settlement, if it is announced before the close of the market; or (3) the following trading day after the public announcement, if the announcement is made after the close of the market (the “Fees and Expenses”). After and contingent upon the issuance and entry of an Order finally approving the Settlement and notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, ACS has agreed to pay the Fees and Expenses three (3) business days after the issuance and entry of an Order finally approving the Settlement, but under no circumstances shall this payment be made any earlier than June 15, 2009.

IV. ARGUMENT AND AUTHORITIES

A. The Role of the Court in the Approval of a Derivative Settlement

“The role of the court and the criteria to be considered in evaluating the adequacy and fairness of a derivative settlement are substantially the same as in a class action.” 7 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 22.110, at 476 (4th ed. 2002); Fed. R. Civ.

P. 23.1. The procedure for review of a proposed settlement is well established:

District court review of a ... settlement proposal is a two-step process. The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is “within the range of possible approval.” The hearing is not a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing. If the district court finds a settlement “within the range of possible approval,” it then proceeds to the second step in the review process, the fairness hearing. Class members are notified of the proposed settlement and of the fairness hearing at which they and all interested parties have an opportunity to be heard. The goal of the fairness hearing is to adduce all information necessary to enable the judge intelligently to rule on whether the proposed settlement is “fair, reasonable, and adequate.”

Manual for Complex Litigation at 57 (citations omitted). On the basis of all information available to the court, the district court should decide whether or not to approve the proposed settlement. *See Armstrong v. Bd. of School Directors*, 616 F.2d 305, 314 (7th Cir. 1980).

B. The Proposed Settlement Is Within the Range of Possible Approval

“Where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted.” *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997); *see also McNamara v. Bre-X Minerals Ltd.*, 214 F.R.D. 424, 430 (E.D. Tex. 2002). Preliminary approval permits notice to be given to ACS shareholders in the manner directed by the Court, at which time those shareholders and the Settling Parties may

be heard with respect to final approval. The proposed settlement now before this Court was achieved after serious, well-informed, vigorous, arm's-length negotiations, including multiple mediation sessions with a highly regarded mediator. Further, the Settlement falls squarely within the range of reasonableness, warranting preliminary approval of the Settlement and the notice to ACS shareholders in the form described herein.

C. Consideration of Final Approval Criteria Supports Preliminary Approval

The general standard for final approval of a proposed settlement, as repeatedly enunciated by the Fifth Circuit, is whether the proposed settlement is “fair, adequate and reasonable” and has been entered into without collusion between the parties. *See Newby v. Enron Corp.*, 394 F.3d 296, 301 (5th Cir. 2004) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)). In applying this standard, the Court must determine whether, in light of the claims and defenses asserted by the parties, the proposed compromise represents a “reasonable evaluation of the risks of litigation.” *Florida Trailer & Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). As a result, in determining whether to approve the Settlement, the Court is not required to decide the merits of the action or substitute a different view of the merits for that of the parties or counsel. *See Maher v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983) (approving derivative settlement).

The compromise of disputed claims is favored by federal courts. *See Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910); *Maher*, 714 F.2d at 455 (“Settlement of shareholder derivative actions are particularly favored because such litigation is notoriously difficult and unpredictable.”) (quotations omitted). Delaware law also favors settlement, especially in the derivative context. *Polk v. Good*, 507 A.2d 531, 535 (Del. 1986) (“Delaware law favors the

voluntary settlement of contested issues”).¹ The Fifth Circuit has consistently held that, as a result of their highly favored status, settlements “will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits.” *Miller v. Republic Nat’l Life Ins. Co.*, 559 F.2d 426, 428 (5th Cir. 1977); *see also Maher*, 714 F.2d at 455 (noting that the courts “do not lightly reject” derivative settlements). Thus, the negotiated settlement of litigation is generally favored, especially with respect to derivative litigation in which complex securities fraud is alleged. *See Maher*, 714 F.2d at 455; *Cotton*, 559 F.2d at 1331 (in representative actions, “there is an overriding public interest in favor of settlement,” because such suits “have a well deserved reputation as being most complex”).

Further, in weighing the benefits obtained by settlement against benefits dependent on the likelihood of recovery on the merits, the courts are not expected to balance the scales perfectly. The “trial court should not make a proponent of a proposed settlement ‘justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and an abandoning of highest hopes.” *Cotton*, 559 F.2d at 1330 (quoting *Milstein v. Werner*, 57 F.R.D. 515, 524-25 (S.D.N.Y. 1972)). The very object of a compromise “is to avoid the determination of sharply contested and dubious issues.” *Young v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971) (quotations omitted).

Where, as here, experienced counsel have negotiated the settlement at arm’s length, with the assistance of an experienced former federal judge as mediator, a strong initial presumption is created that the compromise is fair and reasonable. *See United States v. Texas Educ. Agency*, 679 F.2d 1104, 1108 (5th Cir. 1982) (indicating a settlement negotiated through “hard-minded and diligent efforts ... is entitled to a presumption of validity”). The Fifth Circuit has recognized

¹ ACS is a Delaware corporation.

that courts must rely to a large degree on the judgment of competent counsel, terming such counsel the “linchpin” of an adequate settlement. *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *see also Newby*, 394 F.3d at 301; *Cotton*, 559 F.2d at 1331. Thus, if experienced counsel determine that a settlement is in the best interests of all parties, “the attorneys’ views must be accorded great weight.” *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1216 (5th Cir. 1978).

When examined under the applicable criteria, this settlement is an excellent result for ACS and its shareholders. ACS receives an enormous benefit in the form of \$30 million in cash from insurance proceeds that had otherwise been denied. Without this Settlement, ACS would be forced to pay enormous costs in defending itself and advancing costs under indemnity obligations for former and current directors and officers, with the possibility of no recovery from the Insurers. The Settlement therefore provides substantial benefits to ACS and its shareholders.

1. The Fifth Circuit’s Six-Pronged Fairness Test

Once satisfied that counsel adequately represented those for whom the litigation is brought, and has bargained for the proposed settlement in good faith, the “only question” for the Court to determine “is whether the settlement, taken as a whole, is so unfair on its face as to preclude judicial approval.” *McNary v. Am. Sav. & Loan Ass’n*, 76 F.R.D. 644, 649 (N.D. Tex. 1977). The Fifth Circuit has established a six-pronged test to be applied to proposed settlements:

- (1) The assurance that there is no fraud or collusion behind the settlement;
- (2) The stage of the proceedings and the amount of discovery completed;
- (3) The probability of the plaintiffs’ success on the merits;
- (4) The range of possible recovery;
- (5) The complexity, expense and likely duration of the litigation; and
- (6) The opinions of counsel, lead plaintiffs, and absent shareholders.

Reed v. Gen. Motors Corp., 703 F.2d 170, 172 (5th Cir. 1983); *see also Newby*, 493 F.3d at 301; *Salinas v. Roadway Express, Inc.*, 802 F.2d 787, 789 (5th Cir. 1986). The Settlement clearly meets this test.

a. Fraud and Collusion Are Absent from the Settlement

There is no collusion in the Settlement. The Settlement resulted from active, arm's-length negotiations between experienced counsel knowledgeable about the strengths and weaknesses of the claims made and the potential defenses to them. An agreement was reached only after multiple negotiations involving counsel for ACS, Lead Plaintiffs, the Insurers, and an experienced former federal judge as mediator. In addition, Lead Plaintiffs have made it clear that they would press their claims absent a proper settlement, having filed an Objection to the proposed settlement in the Texas Action. ACS, Lead Plaintiffs, and the Insurers are represented by firms with national reputations concerning the litigation of complex representative and insurance matters, and have been involved in the settlement of numerous similar actions. Good faith negotiations based upon extensive, relevant experience, not collusion, led to the settlement of this derivative action.

b. The Stage of Proceedings and the Amount of Discovery Conducted Supports Settlement

The Settlement will foreclose the substantial expense of continued litigation and trial preparation, including the enormous indemnity obligations to the various Individual Defendants who have been sued in this derivative action. In addition, the Settlement will avoid the incalculable cost of time and attention diverted from the day-to-day business operation of ACS, and the burden to the Court of protracted and complex litigation. The parties are well informed about the relevant facts. Lead Plaintiffs' Counsel have received and reviewed over one million pages of documents, including ACS's public filings, documents produced to the SEC, discovery

conducted in the Texas and Delaware Action, and other documents reviewed by the SLC, and have retained experts in multiple fields to assist in the Objection to the settlement in the Texas Action and in presentation of the Federal Action. Having completed sufficient investigation to properly evaluate the case, the parties settled this lawsuit on a highly favorable basis to ACS and its shareholders, thus eliminating the substantial risk and uncertainty of continued litigation and harm to ACS's business prospects. Accordingly, preliminary approval of the Settlement is warranted on this factor as well. *See Cotton*, 559 F.2d at 1332 (noting that the attorney had indicated that they had "achieved the desired quantum of information to achieve a settlement").

c. The Probability of Success on the Merits Supports Settlement

As in every complex case, Lead Plaintiffs face formidable obstacles to recovery at trial. ACS and the Individual Defendants have denied the claims made by Lead Plaintiffs and have asserted that they acted properly at all times, exercised sound business judgment, and acted in a manner they believed to be in the best interests of ACS. Further, the risks of establishing liability posed by the conflicting testimony and evidence would be exacerbated by the risks inherent in this type of litigation. As well, ACS and the Individual Defendants have reached a settlement with the derivative plaintiffs in the Texas and Delaware Actions, which purports to release all derivative claims on behalf of ACS. Although believing it would ultimately be unsuccessful, Lead Plaintiffs recognize that ACS would argue that the release of claims extends to the federal securities claims pending in this Federal Action, and that there is a potential risk to establishing liability due to this release. Therefore, the probability of success on the merits, given the strengths and weaknesses of the parties' arguments, and the uncertainty involved, supports resolving this derivative action in the best interests of ACS.

d. The Range of Possible Recovery and the Difficulties in Proving Damages Support Settlement

Courts agree that determination of a “reasonable” settlement is not susceptible to a single mathematical equation yielding a particularized sum. Rather, the relief proposed must fall within a “range of reasonableness” for approval. *See Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at *18 (N.D. Tex. Nov. 8, 2005); *see also In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 213 (5th Cir. 1981). Here, the Settlement consists of the payment of \$30 million to ACS from its director and officer liability insurance carriers. This payment provides significant benefits to ACS and its shareholders, which may not have been available without the Settlement. Thus, the Settlement clearly falls within the range of reasonableness. *See In re Zoran Corp. Derivative Litig.*, No. C 06-05503 WHA, 2008 WL 4104517, at *1 (N.D. Cal. Sept. 8, 2008) (approving settlement of derivative action supported by more than \$3 million in payment from insurers). The Court should therefore preliminarily approve the Settlement and provide notice to shareholders.

The difficulty of proving damages particular to the claims in this action further argues in favor of the Settlement. Even if Lead Plaintiffs were successful in avoiding the preclusive effect of any releases of claims against the Individual Defendants and establishing liability at trial, they would face substantial risks in proving damages. A double recovery would not be permitted and Lead Plaintiffs would be required to show damages distinct from those arising from the claims in the Texas and Delaware Actions. *See Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 384 (1996) (“Congress plainly contemplated the possibility of dual litigation in state and federal courts relating to securities transactions. And all that Congress chose to say about the consequences of such litigation is that plaintiffs ought not obtain double recovery.”) (citations omitted). Lead Plaintiffs have avoided this uncertainty through the Settlement, which provides

substantial benefits to ACS, while providing the Company with an opportunity for closure without the need for potentially many more years of litigation.

e. The Complexity, Expense and Likely Duration of Further Litigation Support Settlement

Another reason for the Court to approve the Settlement is the complexity, duration and risks of further litigation. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (court must consider “the complexity, expense, and likely duration of such litigation”); *Manchaca v. Chater*, 927 F. Supp. 962, 966 (E.D. Tex. 1996) (approving settlement of “complex, expensive and ... substantial” litigation implicating “complex fact issues”). Here, several factors make it more likely that, without the Settlement, this case would require additional large expenditures and years of litigation, with the significant risk that ACS and ACS’s shareholders could obtain results less beneficial than the ones provided by the Settlement. These factors include:

(i) ACS and the Individual Defendants are represented by capable counsel who are familiar with the defense of complex actions such as this derivative litigation. Since the inception of the litigation, the Individual Defendants have denied liability, asserted that they have acted in good faith at all times, and repeatedly sought dismissal of this action.

(ii) The insurance carriers have contested coverage for defense of all claims made by the various derivative plaintiffs and have refused to make certain payments to cover the costs of defending the claims. Should this derivative action proceed to conclusion and any of the Individual Defendants be found liable, the Insurers may not be required to cover any of the expenses in defending those claims – thus reducing the net benefit of any benefit to ACS and its shareholders. The Settlement therefore resolves the amount of money that the Insurers will pay to ACS to cover the defense of the derivative claims.

(iii) The SLC has conducted a review of pending derivative actions and determined that the Federal Action should be dismissed. Lead Plaintiffs would challenge the ability of the SLC to dismiss the Federal Action.

(iv) The discovery process has just begun and the parties will likely dispute the scope of discovery that is appropriate to the procedural posture of this case, the resolution of which would require the parties and the Court to expend significant time to effectuate a ruling as to the proper scope of discovery.

(v) A trial would unquestionably entail several weeks and involve the introduction of hundreds of exhibits dealing with financial matters, vigorously contested motions and the expenditure of millions of dollars in additional out-of-pocket expenses.

(vi) A trial would necessarily involve complex issues resulting in conflicting expert testimony, the outcome of which is not certain. Thus, if there were further litigation and a trial, there is a risk that Lead Plaintiffs would fail to convince the trier of fact of the merits of their case and that the Individual Defendants could obtain judgment in their favor.

(vii) Any future trial judgment would still be subject to the continuing risks and vicissitudes of litigation, through possible appeals. Even very large judgments, recovered after lengthy litigation and trial, can be completely lost post-trial or on appeal. *See, e.g., In re Apollo Group, Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2008 WL 3072732 (D. Ariz. Aug. 4, 2008) (overturning jury verdict of \$277 million in favor of shareholders based on insufficient evidence).

Given these factors, counsel believe that were this derivative action tried to conclusion rather than settled, the recovery to ACS could fall short of what the Company would receive through this Settlement.

f. The Opinion of Counsel Support Settlement

As noted above, counsel for the Settling Parties are experienced in the field of complex litigation. After substantial arm's-length negotiations, they have concluded that the Settlement is fair, reasonable and adequate. Counsel have acquired a thorough understanding of this case and request that the Court grant preliminary approval.

D. Notice of the Settlement to ACS Shareholders Is Appropriate

Pursuant to the Stipulation, ACS and Lead Plaintiffs request approval of the notices substantially in the form attached to this motion. The Stipulation provides for the publication of the Notice to Shareholders on ACS's website within three (3) days from the date that the Court preliminarily approves the Settlement. This method of notice is far more efficient and effective to reach a large number of ACS shareholders than direct mailing notice, which takes time, is expensive, and relies on shareholder transfer records that may be outdated. In addition, ACS will file the Notice to Shareholders as part of a Form 8-K filing with the SEC within four (4) days from the date of the Court's Order preliminarily approving the Settlement. The Notice to Shareholders provides information on the terms of the Settlement and the rights of shareholders, including the right to be heard at the Settlement Hearing. Finally, the proposed Notice provides the name, address and phone number of ACS's and Lead Plaintiffs' counsel for inquiries. Thus, the form and manner of notice proposed fulfill all of the requirements of Federal Rule of Civil Procedure 23.1 and due process. *See, e.g., Maher*, 714 F.2d at 451-52 (approving notice where it adequately described the nature of the pending action, the claims asserted therein, and the general terms of the proposed settlement, informed shareholders that additional information was available in the court's files, and informed shareholders of the time and place of the settlement hearing).

V. PROPOSED SCHEDULE OF EVENTS

In connection with preliminary approval of the Settlement, the parties request that the Court establish dates by which the Notice to Shareholders will be posted on ACS's website and filed with the SEC and by which date shareholders may object to the Settlement, and to set the final approval hearing date. The following schedule is proposed:

Notice posted on ACS website	No later than 3 calendar days after entry of Order
Form 8-K filing with SEC	No later than 4 calendar days after entry of Order
Date by which to file papers in support of final approval	5 calendar days prior to the Settlement Hearing
Last day for objections to be filed	10 calendar days prior to the Settlement Hearing
Settlement Hearing	At least 45 calendar days from entry of Order

This schedule is similar to those used in many other derivative settlements and provides due process to ACS shareholders with respect to their rights concerning the Settlement.

VI. CONCLUSION

For all the foregoing reasons, ACS and Lead Plaintiffs respectfully request that the Court: (i) preliminarily approve the proposed Settlement; (ii) approve the form and manner of the Notice to Shareholders; and (iii) set a hearing date for final approval of the Settlement.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Nominal Defendant ACS conferred with counsel for the Individual Defendants on May 5, 2009 and was told that the Individual Defendants do not oppose this Motion for Preliminary Approval.

/s/ M. Scott Barnard

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 2009, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record in this case who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Hamilton P. Lindley