

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation,
DANA J. BERMAN, as Owner and Managing
Member,

Defendants,

and,

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

THE ORIGINAL FILED
ON APR 16 2008
IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL
CIVIL DIVISION

**PLEASE READ THIS MOTION CAREFULLY AS IT MAY
AFFECT YOUR RIGHTS. PLEASE CONSULT YOUR
ATTORNEY IF YOU HAVE ANY QUESTIONS.**

**THIS COURT WILL HOLD A HEARING AT THE MIAMI-DADE
COURTHOUSE ON APRIL 29, 2008 AT 11:00 A.M. TO CONSIDER THIS
MOTION AND THE RELIEF REQUESTED HEREIN. IF YOU HAVE ANY
OBJECTION TO THE APPROVAL OF THE MOTION AND RELIEF
REQUESTED, YOU MUST ATTEND THE HEARING, OTHERWISE YOU
WILL BE BOUND BY THE TERMS OF THE BAR ORDER.**

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**RECEIVER'S MOTION AUTHORIZING RELEASE REGARDING
INSURANCE CLAIM OF DB BILOXI, LLC AND ENTRY OF A BAR ORDER
ENJOINING ALL NOTICED PARTIES FROM PROSECUTING CLAIMS
AGAINST LANDMARK AMERICAN INSURANCE COMPANY AND
APPROVING A PAYMENT PRIORITY FOR ALL INSURANCE
PROCEEDS AND PROCEEDS FROM THE SALE OF THE PROPERTY**

Michael I. Goldberg ("Receiver"), the court-appointed receiver for M.A.M.C.

Incorporated ("MAMC") and D.B. Biloxi, LLC which shall hereafter collectively be referred to as the ("Receivership Entities"), files this motion seeking an Order authorizing him to sign the attached release agreement regarding the settlement the Receiver has entered into with Landmark American Insurance Company ("Landmark"), and the entry of a bar order enjoining the Lenders (as defined herein) and Claimants (as defined herein) from prosecuting claims against Landmark and forever establishing a priority of payment from the settlement proceeds and proceeds of the sale of the property. In support of this motion, the Receiver states as follow:

1. Prior to receivership, MAMC was in the business of lending money to high credit risk borrowers including single purpose real estate LLCs owned by the principal of MAMC, Dana Berman ("Borrower(s)").
2. To fund its operations and the loans made to Borrowers, MAMC raised funds from approximately 640 individuals, some of whom directly invested in the loans to D.B. Biloxi, LLC (the "Lenders").
3. The Lenders interest in the assets of Borrower are evidenced by listing of all Lenders as owning an undivided interest in certain notes and mortgages.
4. Receiver contends that Dana Berman has no interest in the assets of Borrower by virtue of this court's order dated December 11, 2007 and shall be forever barred from making a claim against the assets of Borrower.

5. All Claimants are known parties claiming an interest in the assets of Borrower, other than Lenders and are noticed by this motion to make a claim. All Claimants are listed on the service list attached hereto as Exhibit 1.

6. By Order dated December 11, 2007, Michael I. Goldberg was appointed as Receiver over the Receivership Entities (the "Receivership Order").

7. Pursuant to the Receivership Order, the Receiver is authorized to take control of the Receivership Entities, manage their operations and assets, wind up their business affairs and exercise all rights afforded under Florida law and as set forth in the Receivership Order.

8. The Receiver inherited pending litigation against Landmark for hurricane losses sustained by Borrower. This Borrower's claim was mediated and settled, and the amount of the settlement was approved, after hearing, by this court ("The Settlement Agreement"). The net proceeds after paying litigation costs and fees are \$1,680,893.62. The Receiver will proceed to market and sell the property. The Settlement Agreement is attached hereto as Exhibit 2.

9. The Receiver seeks court authority to disperse the settlement proceeds to the first secured lender TransCapital Bank, who holds a 1st Secured mortgage with a principal balance of \$3,500,000. Thereafter the Receiver proposes the following waterfall of disbursements of the sales proceeds from the sale of the assets:

- (a) Marketing costs.
- (b) Legal Fees.
- (c) Balance of the TransCapital loan until paid in full.
- (d) The Lenders, holding secured mortgages until paid in full.
- (e) Kenny Lobel holding a third position secured mortgage until paid in full.
- (f) Johns Mansville holding a mechanic's lien.

- (g) Vendors claiming an interest in the sales proceeds.
- (h) Any remaining funds shall be paid to the Receiver to be held in trust for the benefit of The Group of Lenders and distributed after further order of this Court.

10. **THE MATERIAL TERMS OF THE SETTLEMENT AGREEMENT HAVE BEEN POSTED ON THE RECEIVER'S WEB PAGE WHICH IS:**

WWW.BERMANMORTGAGEINFO.COM.

THE LENDERS AND CLAIMANTS AND ALL OTHER INTERESTED PARTIES ENTITLED TO NOTICE IN THIS CASE ARE URGED TO READ THE SETTLEMENT AGREEMENT IN ITS ENTIRETY.

11. The Receiver intends to execute the attached general release in favor of Landmark and seeks a court order forever barring all claims by any noticed party against Landmark ("The Bar Order").

12. The Settlement Agreement provides that in exchange for the gross settlement amount of \$2,436,533.13 Landmark shall receive a general release of all claims from the Borrower and The Bar Order.

13. The Receiver believes the Settlement Agreement is in the best interest of all Lenders and the receivership estate. First, the Receiver entered into the Settlement Agreement only after a thorough analysis of each of the claims and after consulting with expert attorneys in the area of hurricane insurance claims, Robert Parks and Mark Hicks. The Settlement was recommended by the mediator, a former State and Federal Court trial judge and after considering the risks and benefits of proceeding to a jury trial.

14. By constitution and statute, the circuit courts of Florida are vested with exclusive equity jurisdiction. Art. V, § 5(b), Fla. Const.; § 26.012(2)(c), Fla. Stat.; *Terex Trailer Corp. v.*

McIlwain, 579 So.2d 237, 241 (Fla. 1 Dist. 1991); *English v. McCray*, 348 So.2d 293, 298 (Fla. 1977), citing *State ex rel. B.F. Goodrich Co., et al. v. Trammell, et al.*, 140 Fla. 500, 192 So. 175 (1939). As a court of equity, this court is vested with jurisdiction to enter the Bar Order.

15. The avoidance of a multiplicity of lawsuits is a basis to invoke equitable jurisdiction. See *Realty Bond & Share Co. v. Englar*, 142 So. 152, 154, 104 Fla. 329 (Fla. 1932) (The prevention of a multiplicity of actions at law is one of the special grounds of equity jurisdiction and for that purpose the remedy by injunction is freely used). See also *Dotolo v. Schouten*, 426 So.2d 1013, 1015 (Fla. 2d DCA 1983); *NEC Electronics, Inc. v. VG Sales Co.*, 655 So.2d 1146, 1147 (Fla. 4th DCA 1995).

16. The Receiver seeks the entry of a Bar Order in order to prevent the multiplicity of suits against Landmark. The Settlement Agreement allows the First Mortgage holder's claim to be reduced and the mature loan extended to provide time to sell the property and maximize the recovery to the Lenders and if possible the claimants.

17. A copy of this motion is being sent to (i) all persons who have filed a Notice of Appearance in this case; (ii) Landmark; and (iii) all of the Lenders and Claimants (collectively the "Noticed Parties").

18. The Noticed Parties have been informed that they have an opportunity to attend the hearing on approval of this motion and entry of the Bar Order and to object or otherwise comment prior to the entry of the Bar Order.

WHEREFORE, the Receiver, Michael I. Goldberg, requests this Honorable Court to: (i) enter an Order granting the Motion; (ii) enjoin the Noticed Parties from prosecuting claims against Landmark provided it performs all of its obligations under the Settlement Agreement;

(iii) reserve jurisdiction to enforce the terms of the Settlement Agreement; and (iv) grant such other relief as is just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail/Federal Express (2-Day) and/or U.S. Mail on this **16th day of April 2008**, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2nd Avenue, Suite N-708, Miami, Florida 33128; to **Alan M. Sandler, Esquire, Counsel for Defendants, Joel and Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer IRA, Lawrence Meyer Roth IRA and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA**, of SANDLER & SANDLER, 117 Aragon Avenue, Coral Gables, Florida 33134; to **Allan A. Joseph, Esquire, Counsel for The Amid Companies and Amedia Family Investors**, DAVID AND JOSEPH, P.L., 1001 Brickell Avenue, Suite 2002, Miami, Florida 33131; to **Richard R. Robles, Esquire**, LAW OFFICES OF RICHARD ROBLES, P.A., *Counsel for the Four Ambassadors Association, Inc.*, 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131; to **Daniel Kaplan, Esquire, Counsel for Deborah A. Berman**, at the LAW OFFICES OF DANIEL KAPLAN, P.A., Turnberry Plaza, Suite 600, 2875 N.E. 191st Street, Aventura, Florida 33180; to **Howard N. Kahn, Esquire, Attorneys for Intervenor, Ira Sukoff**, KAHN & CHENKIN, 2924 Davie Road, Suite 200, Davie, Florida 33314; to **Robert L. Parks, Esquire and Gabrielle D'Alemberte, Esquire**, LAW OFFICES OF ROBERT L. PARKS, P.L., 2121 Ponce de Leon Boulevard, Suite 505, Coral Gables, Florida 33134; to **Mark Hicks, Esquire**, HICKS & KNEALE, P.A., 799 Brickell Plaza, Suite 900, Miami, Florida 33131; to **William S. Berk, Esquire and Melissa McMilian Sims, Esquire, Attorneys for Landmark Insurance**, BERK, MERCHANT & SIMS, PLC, 2100 Ponce de Leon Boulevard, Penthouse 1, Coral Gables, Florida 33134; to

Courtney Murphy, Esquire and Eric T. Krejci, Esquire, Co-Counsel for Landmark Insurance,
CLAUSEN MILLER, PC, One Chase Manhattan Plaza, 39th Floor, New York, New York 10005; and
served by 2-day Federal Express on Lenders and Claimants listed on the attached Exhibit 2.

Respectfully Submitted,

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By: _____

JAMES D. GASSENHEIMER

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cc: The Honorable Thomas Wilson, Jr. *(via hand-delivery)*
Michael Goldberg, Esq. *(via email)*
M.A.M.C. Inc. – Investor Group *(via email)*

Attachments:

1. List of Lenders and Claimants served by Federal Express (2-Day Delivery)
2. Settlement Agreement and Release

cc: The Honorable Thomas Wilson, Jr. *(via Hand-Delivery)*
Michael Goldberg, Esq., as Receiver *(via email)*
The Investor Group *(via email)*

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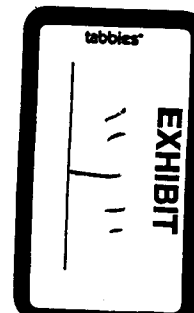
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Miami, FL 33173

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Suite 501
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Yonkers, NY 10705

Mr. Steven Newman
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Hollywood, FL 33021

Mr. Forrest Nichols
1301 7 Street South
Unit 201
Naples, FL 34102

Mr. Keith Lawrence Novak
KLN Mortgage, Inc.
304 Continental Plaza
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Coconut Grove, FL 33133

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Suite 65
Los Angeles, CA 90064

Oakshores Condominium Assoc.
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Hollywood, FL 33021

Mr. Ramesh Outram
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Miramar, FL 33027

Mr. George Oyarzun
5008 Quayside Terrace
Miami, FL 33138

Ms. Judy Parker
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Miami, FL 33156

Mr. Charles Pariagrecó
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Ball Ground, GA 30107

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Fort Lauderdale, FL 33062

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Edgewater, FL 32132

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Delray Beach, FL 33484

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The Berman Group

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Coral Gables, FL 33146-1424

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Captain
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Miami, FL 33060

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Woodland Hills, CA 91365

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c/o Shellie Sims
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The Tiger Organization
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Wellington FL 33414

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Ms. Judith Trontz
168-01 12th Avenue
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Whitestone, NY 11357

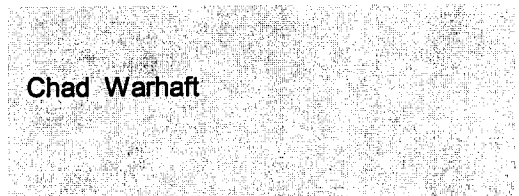
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Mr. Howard Young
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Mr. & Mrs. Michael Zager
2843 Executive Park Drive
Weston, FL 33331

DOC # 1036271 v1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "AGREEMENT"), is entered into between D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC and LANDMARK AMERICAN INSURANCE COMPANY (hereinafter "LANDMARK") on April __, 2008.

WHEREAS, LANDMARK issued a policy of insurance to D.B. Biloxi, LLC dba Edgewater Garden Apartments under Policy No. LHD340684 for the period of April 26, 2005 to April 26, 2006; a policy of insurance to D.B. Biloxi II, LLC; Le Chateau Condominium Homeowners Assoc., Inc. c/o Berman Mortgage Corp. under Policy No. LHD067476 for the period of December 17, 2004 to December 17, 2005; and a policy of insurance to D.B. Biloxi III, LLC dba Oakwood Apartments under Policy No. LHD340648 for the period of April 25, 2005 to April 25, 2006 (collectively referred to hereinafter as the "POLICIES");

WHEREAS, D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC contend that on or about August 29, 2005, as a result of Hurricane Katrina, they suffered property damage (from wind and rain), Business Interruption and Extra Expenses (as a result of direct damage) to the following insured properties (hereinafter the "LOSS"):

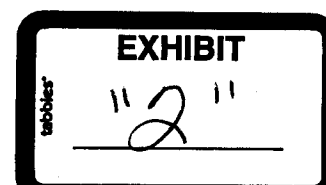
- 1) Edgewater Garden Apartments, located at 2660 Beach Boulevard, Biloxi, Mississippi;
- 2) Le Chateau Condominiums, located at 1994 Beach Boulevard, Biloxi, Mississippi; and
- 3) Oakwood Apartments, located at 1664 Beach Boulevard, Biloxi, Mississippi.

WHEREAS, D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC have submitted a claim for the LOSS under the POLICIES to LANDMARK (hereinafter as the "CLAIM");

WHEREAS, D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC commenced a lawsuit against LANDMARK entitled "D.B. BILOXI, LLC, EDGEWATER GARDEN APARTMENTS; D.B. BILOXI II LE CHATEAU CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.; AND D.B. BILOXI III LLC OAKWOOD APARTMENTS V. LANDMARK AMERICAN INSURANCE COMPANY" in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, under Case No: 06-04465 CA 10 (hereinafter the "LAWSUIT") to recover alleged losses arising from the LOSS and the CLAIM under the POLICIES;

WHEREAS, by this AGREEMENT, the Parties herein intend to adopt a full and final settlement of any and all claims by D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC against LANDMARK in connection with any and all damages and losses arising from the LOSS, the CLAIM, and the LAWSUIT under the POLICIES; and

WHEREAS, by this AGREEMENT, D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC intend to discontinue the LAWSUIT with prejudice, without costs to any party as against the other.



NOW, THEREFORE, in consideration of good and valuable consideration, the sufficiency and adequacy of which is acknowledged, the parties to this AGREEMENT agree as follows:

1. D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC hereby release and forever discharge LANDMARK from any and against any and all actions, causes of actions, claims, suits, reimbursements, obligations, costs, expenses, debts, judgments, liabilities, damages and demands of any kind, whether matured or un-matured, whether at law or in equity, whether before a local, state, or federal court or state or federal administrative agency, arbitration or commission, and whether now known or unknown, foreseen or unforeseen, liquidated or unliquidated, under the POLICIES, that D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC now has or may have had, or hereafter claim to have, on behalf of itself, or any other person or entity, including those which arise out of or are related in any way to:

- a) the LOSS or CLAIM;
- b) damages of any nature sustained directly, indirectly or otherwise for the LOSS or CLAIM;
- c) the LAWSUIT; and
- d) any claim or cause of action for compensatory, punitive, statutory or extra-contractual damages arising out of or related to the POLICIES, CLAIM, and/or LAWSUIT and actual or alleged insurance coverage for the LOSS based upon i) any alleged violation of the duty of good faith and fair dealing by LANDMARK; or, ii) any allegation of bad faith conduct by LANDMARK; or, iii) any allegations that LANDMARK committed any unfair claims practices; or, iv) any allegation that LANDMARK violated any applicable deceptive trade practices act; or, v) any allegation that LANDMARK violated any applicable insurance code; or, vi) any allegation that LANDMARK committed any other improper act or omission in connection with the investigation, handling, adjustment or settlement arising from the CLAIM and/or LOSS; or, vii) any claims for attorney's fees, costs or expenses.

2. It is agreed that this AGREEMENT shall be effective as a bar to all matters and claims released herein, notwithstanding the discovery or existence of any additional or different facts or claims. D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC acknowledges that this AGREEMENT covers not only facts and/or claims which arise out of or are related in any way to the matters released herein which are presently known, but also to any further facts and/or claims which arise out of or in any way are related to the matters released herein that are not now known or anticipated but which may later develop or be discovered, including all unanticipated effects or consequences thereof.

3. Michael Goldberg shall petition the Receivership court for entry of a bar Order enjoining all claims against LANDMARK by secured mortgage holders, the unit owners of Le Chateau Homeowner's Association, Inc., Le Chateau Homeowner's Association, Inc., Plaintiffs

to the LAWSUIT, their officers, directors and members and any lien holders or loss payees under the policies. In the event the Receiver is unable to obtain a bar Order, this AGREEMENT shall be null and void and the Receiver shall return the SETTLEMENT AMOUNT to LANDMARK.

4. The undersigned warrants and represents that he/she is authorized to and does execute the AGREEMENT on behalf of D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC and acknowledges that his/her signature will constitute ratification of the undersigned's authority to execute this document on behalf of D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC and its assent to the terms of the AGREEMENT.

IN WITNESS WHEREOF and in AGREEMENT herewith, D.B. BILOXI, LLC, D.B. BILOXI II, LLC and D.B. BILOXI III, LLC have caused this Settlement Agreement and Release to be executed on their behalf, in favor of LANDMARK, as of the date first written above.

D.B. BILOXI, LLC

D.B. BILOXI II, LLC

DB BILOXI III, LLC

By: Name: _____
Print Name: _____
Position: _____

By: Name: _____
Print Name: _____
Position: _____

By: Name: _____
Print Name: _____
Position: _____

Sworn and subscribed before me this

___ day of _____, 2008

Notary Public
Print Name: _____
Fla. Bar or Notarial No.: _____
My commission expires: _____

LANDMARK AMERICAN INSURANCE COMPANY

By: Name: _____
 Print Name: _____

 Position: _____

Sworn and subscribed before me this
____ day of _____, 2008

Notary Public
Print Name: _____
Fla. Bar or Notarial No.: _____
My commission expires: _____