

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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STATE OF NEW YORK and ELIOT SPITZER,
Attorney General of the State of New York, for and
on Behalf of the People of the State of New York,

Plaintiffs,

Index No. 02/403855

-against-

Part 56

(Hon. Richard B. Lowe III)

CLARK E. McLEOD,

Defendant.

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SETTLEMENT AGREEMENT

Pursuant to the provisions of Article 23-A of the General Business Law and §63(12) of the Executive Law, the State of New York and Eliot Spitzer, Attorney General of the State of New York (the “Attorney General”), on his own behalf and on behalf of the People of the State of New York (collectively, “Plaintiffs”), asserted claims against Clark E. McLeod (“McLeod”) and others in a complaint, amended complaint and second amended complaint (collectively, the “Complaint”) filed in the Supreme Court of the State of New York, New York County, Index No. 02/403855 (the “Action”).

WHEREAS, Plaintiffs and McLeod (collectively, the “Settling Parties”) have agreed to enter into a settlement of the Action (the “Settlement”), the Settling Parties stipulate and agree as follows:

IT IS AGREED that McLeod shall pay to Plaintiffs the sum of four million four hundred thousand dollars (\$4,400,000) (the “Settlement Amount”) in consideration for the settlement and discontinuance of this Action pursuant to the terms of this Settlement Agreement;

and

IT IS FURTHER AGREED that within 30 business days following delivery to counsel for McLeod of a fully executed copy of this Settlement Agreement (the “Delivery Date”), McLeod will cause the Settlement Amount to be delivered to the Attorney General or his designee; and

IT IS FURTHER AGREED that the Attorney General or his designee shall distribute the Settlement Amount to New York law schools and/or not-for-profit entities, selected exclusively by the Attorney General or his designee, which promote the interests of investors residing in the State of New York; and

IT IS FURTHER AGREED that Plaintiffs release and discharge McLeod (and his heirs, executors, administrations, successors, and assigns) from any and all actions, claims, suits, prosecutions, damages, and demands relating to or concerning the allegations set forth in the Complaint; and

IT IS FURTHER AGREED that the Settlement Amount shall be paid exclusively from McLeod’s personal funds and that McLeod shall neither seek nor accept from any person or entity indemnification or contribution, in whole or part, which pays for or otherwise relates to the Settlement Amount, except that nothing in this Paragraph shall prohibit McLeod from seeking indemnification or contribution from any insurer for any legal fees or costs related to the Action; and

IT IS FURTHER AGREED that McLeod will not seek or assert a deduction, offset or loss of any kind relating to his payment of the Settlement Amount in connection with the payment or assessment of any actual or potential tax obligation, except that McLeod shall be permitted to seek and assert deductions arising from investment losses incurred in liquidating

investments for the purposes of paying the Settlement Amount; and

IT IS FURTHER AGREED that this Settlement Agreement is intended to be and is a settlement and compromise of a dispute between the Settling Parties, and the Settling Parties do not intend, other than as expressly contemplated herein, that this Settlement Agreement: (i) shall constitute an admission or denial of liability of any kind (other than a liability created by this Settlement Agreement); (ii) be admissible, or have value as precedent, in any other proceeding; or (iii) be construed as containing or making any adjudicated findings of fact; and

IT IS FURTHER AGREED that the Settlement Amount and the other terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after full investigation, consultation with experienced legal counsel and arms'-length negotiation; and

IT IS FURTHER AGREED that nothing contained herein shall be construed so as to create any third party rights or private rights of action; and

IT IS FURTHER AGREED that nothing contained herein shall be construed so as to deprive any third party individual or entity of any private right under the law; and

IT IS FURTHER AGREED that this Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of New York; and

IT IS FURTHER AGREED that concurrent with delivery by counsel for Plaintiffs to counsel for McLeod of an executed copy of this Settlement Agreement, counsel for Plaintiffs shall deliver to counsel for McLeod an executed Stipulation of Discontinuance with Prejudice in the form annexed hereto as Exhibit A and that McLeod shall file said Stipulation of Discontinuance with Prejudice with the Clerk of the Court and need not give any further notice thereof to the Plaintiffs; and

IT IS FURTHER AGREED that this Settlement Agreement constitutes the entire agreement between the Settling Parties concerning the subject matter of the Action and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning said subject matter; and

IT IS FURTHER AGREED that this Settlement Agreement shall not be amended, changed, or modified except by a writing signed by the Settling Parties; and

IT IS FURTHER AGREED that this Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall be deemed to constitute one instrument.

AGREED TO BY AND BETWEEN,

Dated: July __, 2006
New York, New York

ELIOT SPITZER,
Attorney General of the State of New York,
on behalf of Plaintiffs,

By: _____
Andrew J. Lorin
Assistant Attorney General

Dated: July __, 2006
Cedar Rapids, Iowa

CLARK E. MCLEOD

By: _____
Clark E. McLeod