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May 9, 2011

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May 9, 2011

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VIA FAX AND U.S. MAIL

Hon. David G. Larimer
U.S. District Court Judge
2500 U.S. Courthouse
100 State Street
Rochester, New York 14614

Re: *Frommert, et al v. Conkright, et al.*
Case No. 6:00-06311

Dear Judge Larimer:

This letter is submitted by defendants in accordance with this Court's March 21, 2011 and April 27, 2011 Orders, requesting that the parties summarize their respective positions as to what motions are currently pending that need to be decided by the Court, as well as motions that need to be briefed either for the first time or with supplemental briefing in light of the decisions from the Second Circuit Court of Appeals and the United States Supreme Court in *Conkright v. Frommert* ("*Frommert*"). See *Frommert*, 130 S. Ct. 1640 (2010).

We are unclear at this time as to whether each of the named plaintiffs is actually represented by counsel following the death of their counsel, Robert H. Jaffe of Robert H. Jaffe & Associates, P.A. We understand from George A. Schell, Jr., Esq., that he has advised the Court that he is not representing any of the plaintiffs in this action or any related action. We have received notice that several of the plaintiffs are represented by Stris & Maher, LLP. Plaintiffs Frommert, Leonardo, Jr. and Gagnier, also appear to have retained the law offices of Chamberlain, D'Amanda, Oppenheimer & Greenfield, LLP ("*Chamberlain*") and the Law Offices of John A. Strain to represent them in this matter. Joseph McNeil, who has filed a motion to intervene in this matter, is also represented by Chamberlain and the law offices of Shapiro Haber & Urmy, LLP.

Currently pending before the Court is plaintiffs' motion to re-enter judgment and defendants' cross motion for adoption of the plan administrator's interpretation. The issues on these motions have been fully briefed in light of the Supreme Court's decision in *Frommert* and oral argument is set for June 2, 2011 at 2:00 PM. Defendants do not believe that any additional briefing on these motions is necessary for the Court to render a decision.

Hon. David G. Larimer
May 9, 2011
Page 2

However, there were a number of motions filed with this Court, which were stayed by Order of this Court dated August 5, 2009, as the result of the grant of defendants' petition for certiorari. Not all of these motions have been fully briefed and they are as follows:

- A Motion to Intervene, filed February 20, 2009 by Joseph McNeil (already a plaintiff in the related *Kunsman v. Conkright* action). (*Dkct. No.* 167). Defendants submitted papers in opposition to this motion, including the Affidavit of Margaret A. Clemens, Esq. and a Memorandum of Law, each dated April 1, 2009. Plaintiffs submitted reply papers. No oral argument was heard. It is defendants' position that the issues have been fully briefed.
- Plaintiffs' Motion for Declaratory Judgment (seeking class-wide relief) and an Order Awarding Pre-Judgment/Post-Judgment Interest, filed April 23, 2009 (*Dkct. No.* 181). Plaintiffs filed the Affidavit of Robert Jaffe, sworn to April 29, 2009 and a letter dated April 27, 2009, in lieu of a formal brief supplementing their motion papers. Defendants submitted papers in opposition to this motion, including the Affidavit of Margaret A. Clemens, Esq. and a Memorandum of Law, each dated May 27, 2009. Depending on the outcome of the pending motion to re-enter judgment and defendants' cross-motion, additional briefing may be required by the parties.
- Plaintiffs' Motion for Sanctions in the form of attorneys fees, filed May 13, 2009 (*Dkct. No.* 184) and Plaintiffs' Motion for Attorneys' Fees, filed June 4, 2009. (*Dkct. No.* 186). Defendants previously advised the Court that they intend to oppose any motion by plaintiffs for attorneys fees (whether brought as a motion for sanctions or as a motion for an award of attorneys fees), but no briefing schedule was issued by the Court prior to the grant of defendants' motion for a stay. With respect to plaintiffs' June 4, 2009 Motion for Attorneys' Fees, John A. Strain has advised the Court that he represents the Jaffe law firm in connection with the pending motion and has requested the entry of a motion scheduling order. By letter dated February 4, 2011, defendants again advised the Court that they intend to oppose the motion and also requested that a motion scheduling order be entered. To date, no motion scheduling order has been entered. The issue of attorneys' fees needs to be fully briefed by the parties.

Hon. David G. Larimer
May 9, 2011
Page 3

Respectfully submitted,

A handwritten signature in black ink that reads "Maggie Clemens". The signature is written in a cursive, flowing style.

Margaret A. Clemens

MAC/smb

cc: Matthew J. Fusco
Peter K. Stris
Adam M. Stewart
Edward F. Haber
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