

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PAUL SEMO, RICHARD HINKLE,	:	NO. 03-00,299
JEAN RECLA, Individually and on	:	
behalf of others similarly situated,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	CIVIL ACTION - LAW
JOHN BAUSCH, WALNUT STREET	:	
SECURITIES, INC., INTERSECURITIES,	:	
INC., COMMONWEALTH EQUITY	:	
SERVICES, INC.,	:	
Defendants	:	Motion for Certification of Class Action

**OPINION AND ORDER**

Before the Court is a Motion for Certification of Class Action, filed by Plaintiffs on September 29, 2004. After a period of discovery regarding the class action allegations, a hearing on the motion was held September 16, 2005. Counsel for John Bausch<sup>1</sup> was given until October 24, 2005, to submit further authority for his position but on October 12, 2005, Plaintiffs filed an appeal of the order granting summary judgment in favor of the corporate defendants, thus staying further proceedings. When Plaintiffs withdrew the appeal, an Order was entered October 27, 2005, providing for the filing of supporting memoranda by November 14, 2005, and November 30, 2005, respectively. On November 17, 2005, this Court received correspondence from Defendant John Bausch indicating he had requested his counsel withdraw from the case, and asking the Court to enter a decision on the class certification motion without further briefing. Plaintiffs’ counsel, although provided until November 30, 2005, to file a brief, did not do so.

In accordance with Pa.R.C.P. Rule 1710 the Court makes the following:

**Findings of Fact**

1. Plaintiffs and those alleged to be similarly situated invested in the Premium Finance Trust and/or Premium Finance Trust II through Defendant John Bausch.

<sup>1</sup> Two of the corporate defendants were dismissed from the matter by entry of summary judgment in their favor on September 15, 2005. Proceedings against the third corporate defendant were stayed by agreement of the parties.

2. Plaintiffs and those alleged to be similarly situated received notification from the trust that no further principal or interest payments would be made.
3. Plaintiffs have brought against Defendant Bausch claims of negligence, breach of fiduciary duty and breach of statutory duties under the Pennsylvania Securities Act.
4. The first two claims brought against Defendant Bausch allege that Defendant Bausch negligently, and in breach in his fiduciary duties to them, failed to investigate the Trust and determine that its assets were not invested in any interest-bearing account or stock, failed to warn investors that the Trust was not licensed, failed to require the Trust to produce for inspection any prospectus concerning the funds, and instructed investors that the funds were securely invested. With respect to the third claim, Plaintiffs allege Defendant Bausch breached his statutory duties in that he failed to advise them that the Trust did not file a registration statement with the Securities Commission, engaged in a course of business which operated as a fraud or deceit upon the investors and engaged in a course of business which was fraudulent, deceptive or manipulative.
5. Defendant Bausch contends in his Answer that he had none of the alleged duties to any of the Plaintiffs. Further, he contends in response to the instant motion that a letter sent to some of the investors in 2001 absolves him from responsibility.
6. There are approximately 75 members of the proposed class.
7. Plaintiffs' counsel is an experienced civil trial attorney. Further, conduct of the litigation thus far indicates Plaintiffs have the financial wherewithal to pursue the matter to conclusion.

### **Conclusions of Law**

1. The class is so numerous that joinder of all members is impracticable.
2. There are questions of law and fact common to the class.
3. The claims of the representative parties are typical of the claims of the class.
4. The representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709. Specifically,
  - a) the attorney for the representative plaintiffs will adequately represent the interests of the class,

- b) the representative plaintiffs do not have any conflict of interest in the maintenance of the class action, and
  - c) the representative plaintiffs have adequate financial resources to assure that the interests of the class will not be harmed.
5. A class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708. Specifically,
- a) Common questions of law and fact predominate over any question affecting only individual members;
  - b) The Court foresees little difficulty managing the action as a class action.
  - c) Prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to those individual members which would as a practical matter be dispositive of the interests of other members not parties to such adjudications, or substantially impair or impede their ability to protect their interests.
  - d) There is no other litigation already commenced by members of the class involving any of the same issues.
  - e) Lycoming County is an appropriate forum for litigation of the claims of the entire class.
  - f) The Court is unable to determine whether the separate claims of individual class members would be insufficient to support separate actions or
  - g) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action, inasmuch as no evidence respecting the range of values of the claims was provided. It is noted, however, that Plaintiff Hinkle testified he invested \$125,000. Further, the Complaint seeks an award of damages in excess of \$25,000. The Court therefore does not find these factors to weigh against certification.

### **Discussion**

It appears the claims brought in this action are suitable for class action status inasmuch as the negligence and breach of duties alleged against Defendant Bausch are based on his

actions and status as a broker and will thus be proven as to all if proven as to one. While Defendant Bausch contends the defense of each individual claim is different, arguing such is dependent on the particular relationship between he and the investor, the Court believes each plaintiff's status as an investor is alone sufficient to trigger the duties alleged to have been owed, without regard to the particular relationship; i.e., the amount and duration of personal contact each plaintiff may have had with Defendant Bausch. Further, any defense based on 2001 letter from Bausch may be presented, and the affected plaintiffs distinguished as a subclass; simply because some received the letter and others did not does not justify individual lawsuits. Finally, the individual damages claims may be proved by reference to documentation alone, thus resolving any issue of individualized damages.

Accordingly, the motion will be granted, and the appropriate order entered, as follows:

**ORDER**

AND NOW, this 13<sup>th</sup> day of December 2005, for the foregoing reasons, the Motion for Certification of Class Action is hereby GRANTED and the Court hereby certifies this matter as a class action. The class shall consist of all persons who were investors of the Premium Finance Trust and/or Premium Finance Trust II, through Defendant John Bausch.

Every member of the class shall be included unless by March 31, 2006, a member files of record a written election to be excluded from the class.

Plaintiffs' counsel is advised he will be required to serve notice of this action on all members by regular mail. Within ten (10) days of this date, counsel shall submit for approval to the Court and to Defendant John Bausch a proposed form of notice. Defendant Bausch shall have ten (10) days from receipt of such proposed notice in which to file objections thereto. Further Order will be issued after receipt of the proposed notice and resolution of any objections.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joseph Orso, III, Esq.  
Thomas Myers, Jr., Esq.  
1800 East Lancaster Avenue  
Paoli, PA 19301  
Kevin Kent, Esq.  
Conrad, O'Brien, Gellman & Rohn  
1515 Market Street, 16<sup>th</sup> floor  
Philadelphia, PA 19102-1916  
Anthony Gallia, Esq.  
One Liberty Place, 39<sup>th</sup> floor  
Philadelphia, PA 19103  
Jay Kagan, Esq.  
Dilworth Paxson, LLP  
3200 Mellon Bank Center  
1735 Market Street  
Philadelphia, PA 19103-7595  
John H. Bausch, Jr.  
1834 Shore Drive S #7  
South Pasadena, FL 33707  
Gary Weber, Esq.  
Hon. Dudley Anderson