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IN RE: STRUCTURED SETTLEMENT LITIGATION

RICHARD M. STUBER, et al.,

Plaintiffs,

v.

MERILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED, et al.,

Defendants

EILEEN BARME, an individual, and LEO WALDORF, an individual; On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A.; MERRILL LYNCH & CO., INC.; WELLS FARGO BANK, N.A.; STANWICH FINANCIAL SERVICES CORP., d/b/a/ SETTLEMENT SERVICES TREASURY ASSIGNMENTS, INC.; NAB ASSET CORPORATION; CONSUMER PORTFOLIO SERVICES, INC.; REUNION INDUSTRIES, INC.; CHARLES E. BRADLEY, SR.; CHARLES E. BRADLEY, JR.; ML SETTLEMENT SERVICES, INC.; JONATHAN H. PARDEE; BELLEVUE CAPITAL VENTURES, INC.; PFSI HOLDINGS, INC.; SETTLEMENT SERVICES, INC.; MERRILL LYNCH SETTLEMENT SERVICES, INC.; BANKERS TRUST COMPANY OF NEW YORK; U.S. TRUST COMPANY, N.A.; U.S. TRUST COMPANY OF NEW YORK; MORGAN STANLEY DEAN WITTER & CO.; BEAR STEARNS & COMPANY and DOES 1 through 100, inclusive

Defendants.

Case No. BC249692

[Related Case Nos. GC026372, BC243787, BC244111, BC244271, BC245412, BC245579, and BC246051]

CLASS ACTION

COMPLAINT FOR:
1) Breach of Contract; 2) Tortious Interference; 3) Negligent Interference with Economic Relations; 4) Breach of Written Continuing Guaranty Agreements; 5) Declaratory Relief; 6) Tortious Interferences with Guaranty Agreements; 7) Negligent Interference with Economic Relations; 8) Breach of Trust Agreement; 9) Breach of Trustor's Orders for Payment; 10) Fraudulent Conveyance; 11) Unfair Competition; 12) Unfair Competition and Violation of Business Code Section 17200; 13) Negligence; 14) Breach of Fiduciary Duty; 15) Knowing Participation in Breach of Fiduciary Duty; 16) Breach of the Implied Covenant of Good Faith and Fair Dealing; 17) Negligence; 18) Breach of Fiduciary Duty; and 19) Unjust Enrichment.

Judge: Peter D. Lichtman
Dept.: 322
Trial Setting: None

JURY TRIAL DEMANDED

Plaintiff, by their attorney, allege as follows:

NATURE OF THE ACTION

1. This is an unprecedented case brought about by the flagrant misconduct of some of the largest financial institutions in the country. These institutions abdicated their contractual and fiduciary duties and violated court orders by participating in transactions that permitted financial speculators to loot trust funds set aside to pay scores of victims of tortious wrongdoing.

2. This case has been brought as a class action under the law of California on behalf of plaintiffs and their conservators and other legal representatives who entered into structured settlements in settlement of claims for personal injuries. In the typical case, the plaintiff suffered catastrophic permanent injuries that will require medical treatment and financial support for the remainder of his or her life. Such plaintiff brought lawsuits against the persons alleged to be legally responsible for his or her injuries, which were resolved by settlement agreements. Rather than receiving settlement payments in lump sum payments, the plaintiffs entered into a settlement agreement with the defendants and their liability insurance carriers that provided for periodic payments to be made over time. It was agreed that the periodic payments would be funded by the interest paid on U.S. Treasury bonds or notes, with a final payment to be made when the U.S. Treasury securities matured.

3. To ensure that U.S. Treasury securities would always be held and available to fund the periodic payments, the settlements provided that the securities would be held in trust by a major national bank. Pursuant to the settlement agreements, a structured settlement company formally assumed the settling defendants' obligations to make the payments to the plaintiffs and became both trustor and beneficiary of the trust in which the U.S. Treasury securities were placed. As an integral part of the settlements, the structured settlement company gave "irrevocable orders" to the trustee bank, which held the U.S. Treasury securities, to pay the plaintiffs the amounts due under the settlement. Each of the trustee banks also signed a separate undertaking, entitled the trustee's "Guaranty," pursuant to which the trustee banks faithfully promised to pay the amounts due to the plaintiffs to the extent of the assets held in

trust. The structured settlement company was also expressly ordered by the courts which approved the settlements to make all of the required settlement payments to the plaintiffs.

4. To ensure that U.S. Treasury securities would always be held and available to fund the periodic payments, the settlements provided that the securities would be held in trust by a major national bank. Pursuant to the settlement agreements, a structured settlement company formally assumed the settling defendants' obligations to make the payments to the plaintiffs and became both trustor and beneficiary of the trust in which the U.S. Treasury securities were placed. As an integral part of the settlements, the structured settlement company gave "irrevocable orders" to the trustee bank, which held the U.S. Treasury securities, to pay the plaintiffs the amounts due under the settlement. Each of the trustee banks also signed a separate undertaking, entitled the trustee's "Guaranty," pursuant to which the trustee banks faithfully promised to pay the amounts due to the plaintiffs to the extent of the assets held in trust. The structured settlement company was also expressly ordered by the courts which approved the settlements to make all of the required settlement payments to the plaintiffs.

5. For a number of years, the plaintiffs punctually received their settlement payments. On November 15, 2000, however, plaintiffs and the members of the Class were shocked when a default occurred when the required payments were not made, in plain breach of the settlement agreements. The structured settlement company made repeated promises that the settlement payments, with interest, would resume in the near future; however, plaintiffs were not paid until February 2001. Plaintiffs have since learned that the trustees of the trust have allowed the governing trust agreement to be so fundamentally altered as to be virtually unrecognizable, and have permitted the trust assets to be sold, withdrawn, encumbered and lost, all without any notice to or consent from the intended beneficiaries of the trust. The conduct and actions of the defendants represent a staggering breach of the trust agreements to which plaintiffs agreed, as well as a breach of the Guaranty obligations undertaken by the Trustor/Guarantor Defendants. Although future payments have been promised, the structured settlement company funneled trust assets into related companies with severe financial problems and cannot assure payment.

6. The successors to both IBAR, as obligor, and Bank of America, as trustee/guarantor, have seen fit to unilaterally redraft, revise and discard restraints on their use of trust assets, despite the express purpose and irrevocable and unalterable terms of the original trust agreements. Ultimately, financial speculators used trust assets as investment capital for risky investments and loans to insiders, assisted by financial institutions that succumbed to the allure of fat commissions for their brokerage and investment banking affiliates.

7. This travesty has occurred with no notice to any of the victims, much less their consent, despite the fact that several of the Trustee/Guarantor Defendants were aware of successor obligors' intentions to gain control over trust assets. In fact, plaintiffs were not notified *even after one of the Trustee/Guarantors, Wells Fargo, asked for and received an order from this Court ruling that the victims were beneficiaries of the trust entitled to such notice!* Instead of exposing the scheme to loot trust assets, Wells Fargo leveraged its courtroom victory as trust fiduciary for its own advantage, purporting to resign without notice to the plaintiffs and stipulating to reverse the very ruling it had obtained on behalf of plaintiffs as beneficiary, in exchange for payment of its legal fees and an express indemnity against future claims by the plaintiff for breaching its acknowledged duties to these plaintiffs. Thereafter, successor trustees remained silent or actively permitted the structured settlement company to plunder the trust. None of the Trustee/Guarantor Defendants, however, can escape accountability for their breaches of fiduciary duty or on their contractual obligations as trustee/guarantors.

8. Assisted by the financial institutions, the parties controlling the structured settlement company committed fraud of enormous proportions and brazenly looted the assets of the trust, leaving insufficient resources to make the structured settlement payments due to the plaintiffs. The enormity of this offense is impossible to exaggerate. The defendants have victimized the most vulnerable and helpless persons imaginable, namely, disabled and severely injured persons, many of whom depend upon the periodic settlement payments to pay for ongoing medical care and the necessities of life. This looting occurred only because one or more of the major national banks serving as trustee improperly permitted the structured settlement company to pledge the U.S. Treasury securities as collateral for a personal line

of credit issued by another major national financial institution to the structured settlement company. The lender loaned money to the structured settlement company for its own financial gain against the U.S. Treasury securities, knowing full well or recklessly or negligently disregarding the fact that the payments owed to the plaintiffs and to members of the Class would be put into jeopardy by taking the U.S. Treasury securities as collateral for its loans. Many millions of dollars were advanced under this line of credit. In late 1997, the structured settlement company defaulted on the line of credit and, in March 1998, all of the U.S. Treasury securities that had been pledged as collateral were foreclosed upon by the lender.

9. The defendants who perpetrated this egregious fraud or permitted it to occur are liable to the plaintiffs and the Class on a variety of legal theories, and this lawsuit is brought to remedy this terrible injustice.

JURISDICTION AND VENUE

10. The amount in controversy is in excess of the jurisdictional limitations and is otherwise subject to the jurisdiction of this Court.

11. Venue is appropriate in this Court pursuant to Code of Civil Procedure §§ 395(a) and 395.5. Certain of the defendants reside in the County of Los Angeles, all of the defendants have transacted business in this district, and defendants' liability to plaintiffs and the Class arises from defendants' wrongful conduct taking place in substantial part in this County. Further, many of the settlements at issue herein were approved by this Court. Accordingly, venue is proper in this Court.

PARTIES

Plaintiffs

12. Plaintiff Eileen Barme is an individual residing in Downey, California. Ms. Barme entered into a structured settlement agreement with IBAR, Inc., among other parties. That agreement is now in default. Plaintiff Leo Waldorf is an individual residing in Los Angeles, California. Mr. Waldorf entered into a structured settlement agreement with Merrill Lynch Settlement Services, Inc. That agreement is now in default.

Defendants

13. Defendant Merrill Lynch & Co., Inc. ("Merrill Lynch") is a Delaware corporation that maintains offices and transacts business in Los Angeles County, California.

14. Defendant Merrill Lynch Settlement Services, Inc. ("MLSS") is a California corporation, which is currently suspended and which maintained its offices in Los Angeles County, California. MLSS was a wholly-owned subsidiary of Merrill Lynch engaged in the provision of settlement services to residents of the State of California and elsewhere.

15. Defendant Wells Fargo Bank, N.A. ("Wells Fargo") is a California corporation with its principal place of business in San Francisco, California. Wells Fargo is engaged in the business of, among other things, providing trust services to persons in the State of California and elsewhere.

16. Defendant Bank of America , N.A., ("Bank of America") is Delaware corporation which engaged in the business of providing trust services to persons in the State of California and in other states.

17. Defendant Bankers Trust Company of New York ("Bankers Trust") is a New York corporation engaged in the business of providing trust services to persons in the State of California.

18. Defendant U.S. Trust Company, N.A. ("U.S. Trust. Co."), formerly known as U.S. Trust Company, N.A., is a California corporation with its principal place of business in Los Angeles, California. U.S. Trust Co. is engaged in the business of providing trust services to persons in the State of California and elsewhere.

19. Defendant U.S. Trust Company of New York ("U.S. Trust N.Y.") is a New York corporation with its principal place of business in New York, New York. U.S. Trust N.Y. is engaged in the business of providing trust services to persons in the State of New York and elsewhere.

20. Defendant Morgan Stanley Dean Witter & Co. ("Morgan Stanley") is a Delaware corporation engaged in the business of providing investment banking and financial services to persons in the State of California and elsewhere.

21. Defendant Bear Stearns & Company ("Bear Stearns") is a Delaware corporation engaged in the business of providing investment banking and financial services to persons and businesses in the State of California.

22. Defendant Stanwich Financial Services Corp., d/b/a Settlement Services Treasury Assignments, Inc. ("Stanwich"), is a Rhode Island corporation with its principal place of business in Stamford, Connecticut. Defendant Stanwich is the successor by merger to defendant ML Settlement Services, Inc. Stanwich is controlled by, and the alter ego of, defendants Charles E. Bradley, Sr. and his son, Charles E. Bradley, Jr. Charles E. Bradley, Sr. is the President and Chairman of the Board of Stanwich. Defendants Charles E. Bradley, Sr. and Charles E. Bradley, Jr. collectively own 92.5% of Stanwich.

23. Defendant NAB Asset Corporation ("NAB") is a Texas corporation with its principal place of business in Mission Viejo, California. NAB is engaged in sub-prime and prime residential mortgage banking, residential construction lending and commercial financial services. In 1997, NAB sold its interest in its retail automobile sales business. Charles E. Bradley, Sr. is Chairman and Chief Executive Officer of NAB. As of December 31, 1999, NAB had indebtedness to Stanwich totaling $9,277,000. NAB has for many years relied on Stanwich to provide funds to support the growth of the company.

24. Defendant Consumer Portfolio Services, Inc. ("CPS") is a California corporation with its principal place of business in Irvine, California. CPS buys, sells and services vehicle loans made to subprime borrowers — customers who cannot get traditional financing because of bad credit, limited credit or low income. Defendant Charles E. Bradley, Sr. is the founder of CPS and Chairman of its Board of Directors, and owns nearly 25% of CPS's stock. Defendant Charles E. Bradley, Jr. has been the President and a director of CPS since its formation in 1991. Thomas P. Chrystie, a long-time director of CPS, previously served as defendant Merrill Lynch's Chief Financial Officer. As of December 31, 1999, CPS had indebtedness to Stanwich totaling $20,500,000.

25. Defendant Reunion Industries, Inc. ("Reunion") is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. Reunion is engaged in the business of designing and manufacturing industrial parts and products. Defendant Charles E. Bradley, Sr. is also the Chairman, Chief Executive Officer and a director of Reunion Industries, Inc.

26. Defendant Charles E. Bradley, Sr. is the President and owner of the stock of defendant Stanwich, and is a director, officer and shareholder of numerous other related corporations.

27. Defendant Charles E. Bradley, Jr. is a resident of Laguna Beach, California, and a director, officer and shareholder of defendant Stanwich and numerous other related corporations. Charles E. Bradley, Jr. is also a director, officer and shareholder of numerous related companies.

28. Defendants Charles E. Bradley, Sr. and Charles E. Bradley, Jr. have at all times acted in concert with each other and have at all times controlled the activities of defendants Stanwich, NAB, CPS and Reunion such that these companies are the alter egos and instrumentalities of Bradley, Sr. and Bradley, Jr. Equity and good conscience requires that the separate corporate existence of said defendants be disregarded in order to avoid fraud and injustice. (Defendants Stanwich, NAB, CPS, Reunion, Bradley, Sr. and Bradley, Jr. are collectively referred to herein as the "Bradley Defendants.")

29. Defendant ML Settlement Services, Inc. ("MLSSI") was a California corporation engaged in the structured settlement industry with its principal place of business in Los Angeles, California. MLSSI was originally incorporated as IBAR, Inc. On June 28, 1982, its name was changed to Merrill Lynch IBAR, Inc. On February 28, 1984, its name was changed to Merrill Lynch Settlement Services, Inc. On June 7, 1988, its name was changed to ML Settlement Services, Inc. On July 8, 1992, its name was changed to Settlement Services Treasury Assignments, Inc. In December 1994, it was merged into Settlement Services Treasury Assignments, Inc., a newly-formed Rhode Island corporation. Thereafter, on May 29, 1997, the surviving corporation changed its name to Stanwich Financial Services Corp., but continued to do business under the name Settlement Services Treasury Assignments, Inc.

30. Defendant Jonathan H. Pardee ("Pardee") is an individual residing in Newport, Rhode Island.

31. Defendant Bellevue Capital Ventures, Inc. ("Bellevue") is a Rhode Island corporation with its principal place of business in Newport, Rhode Island. Pardee has at all times acted in concert with and controlled the activities of Bellevue such that Bellevue is the alter ego and instrumentality of Pardee. Equity and good conscience require that the separate corporate existence of Bellevue be disregarded in order to avoid fraud and injustice.

32. Defendant PFSI Holdings, Inc. ("PFSI") is a California corporation with its principal place of business in Newport, Rhode Island. Pardee has at all times acted in concert with and controlled the activities of PFSI such that PFSI is the alter ego and instrumentality of Pardee. Equity and good conscience require that the separate corporate existence of PFSI be disregarded in order to avoid fraud and injustice.

33. Defendant Settlement Services, Inc., ("SSI") is a California Corporation engaged in the business of originating and administering structured settlements. Plaintiffs are informed and believe that during the relevant time frame from 1990 through 1995, defendants MLSS, doing business as ML Settlement Services, and SSI shared common officers and directors and operated as sister companies in the marketing and administration of structured settlements.

34. Plaintiffs are ignorant of the true names and identities of the defendants identified herein as Does 1 through 100, inclusive. Plaintiffs are informed and believe that defendants Does 1 through 100 have acted in combination or conspiracy with or aided and abetted the other defendants named herein or are otherwise responsible for the acts and omissions of defendants as alleged herein. Plaintiffs will seek leave to amend this complaint to identify said defendants, if and as they become known to plaintiffs.

THE BACKGROUND OF THIS LAWSUIT

A. Overview of the Structured Settlement Business

35. A structured settlement is one of a number of different types of arrangements which can be used to resolve legal disputes, most notably tort actions for personal injury, products liability, medical malpractice and similar types of actions. Prior to the development of various types of structured

settlements, tort cases were typically resolved by way of a lump sum payment by the defendants alleged to be legally responsible for the plaintiffs' injuries or their liability insurers.

36. Structured settlements offered a number of advantages in the settlement of personal injury cases. First, if properly structured, the benefits received by the injured victim are generally non-taxable. Second, due in part to the tax benefits, the use of structured settlements reduced the cost, or increased the benefits of a settlement when compared to conventional lump sum settlements. Third, structured settlements acted as a sort of "spendthrift trust" preventing the injured party from unwisely spending the settlement proceeds, which assured funds for ongoing medical care and maintenance. Fourth, structured settlements were especially useful in cases of profoundly injured persons where the injured party will require long-term, often lifetime, medical services, and living income.

37. In 1969, Robert Schultz and Ray Schultz, who had been members of the faculty of the School of Business of the University of Southern California, formed a corporation called IBAR, Inc. ("IBAR"). Beginning in about 1980, IBAR began to participate in arranging structured settlements of tort cases. To assure favorable tax treatment, IBAR developed a structure which utilized United States Treasury bonds. This type of structure is referred to herein as a "Treasury Bond Trust." All of the events described in this complaint relate to defendants' acts and omissions concerning numerous Treasury Bond Trust structures established by IBAR and its successors.

38. The typical "Treasury Bond Trust" structured settlement was effectuated through several interrelated documents: a Settlement Agreement (between the plaintiffs, defendants and an insurance carrier), an Assumption and Assignment Agreement (between the settling parties and the structured settlement company), a so-called Master Trust Agreement (between the structured settlement company and a major national bank as trustee), a Guaranty (signed by the trustee, undertaking to make payments to the plaintiffs), and the "Trustor's Order" (instructing the trustee to make payment to the plaintiffs at specified amounts and times).

39. The settlement agreements were often approved by court orders that require the structured settlement company to make the annual and lump sum payments to the plaintiffs. For example, a typical court order provides that:

> "Notwithstanding any other provision of this order, [the structured settlement company] shall at all times remain directly responsible for the payment of all sums and obligations contained in the order until such time as the terms of the order are fully satisfied."

40. In a similar vein, the settlement agreements specifically require the structured settlement company to make payments to the plaintiffs. As an example, one such settlement provides that: "[n]otwithstanding any other provision of this Settlement Agreement, Merrill Lynch IBAR, Inc., following an assignment . . . , shall at all times remain directly responsible for the payment of all sums and obligations contained in paragraph 3 of the Settlement Agreement until such time as the terms of the Settlement Agreement are fully satisfied," and that "the assignee [i.e., the structured settlement company] shall at all times remain directly and solely liable for the payments of all such sums and obligations."

41. The Assumption and Assignment agreement assigned the duties and obligations in the settlement agreement to the structured settlement company. The structured settlement company, upon receipt of the settlement funds, was required to promptly purchase the U.S. Treasury bonds or notes dictated by the settlement, and form a trust to hold the U.S. Treasury securities in accordance with the Master Trust Agreement, in which it was designated as trustor and beneficiary. The trustor was also required to give irrevocable orders of payment to the trustee. For example, the agreements to which Merrill Lynch IBAR, Inc. is a party state: "Merrill Lynch IBAR, Inc. agrees that it will instruct (and not revoke said instruction) the issuers of the annuities and the Trustee . . . to make the periodic payments . . "

42. An integral part of each set of settlement document is a Guaranty signed by the trustee bank which includes a statement that the bank agrees to serve as trustee and further provides:

> "The Bank, in its capacity as Trustee of the Trust and solely to the extent of the trust assets, hereby promises fulfillment of the obligations set forth in the [settlement agreement] which have been assumed by [the structured settlement company]."

43. The Master Trust Agreement provides that "Such Bonds and Notes and any other property that may become subject to this trust shall constitute the Trust Estate and shall be held and administered as hereafter set forth; provided, however, that the Trust Estate shall not be disposed of except to carry out the provisions of this Agreement." The Master Trust Agreement also includes an anti-hypothecation clause that limits the ability of the plaintiffs and the trustor to encumber any of the trust assets:

> "No person entitled to receive income or principal of the trust shall have any right, power, or authority to sell mortgage, assign, pledge, or in any other manner anticipate, encumber, alienate, or impair all or any part of any payment which such person is to receive."

44. A specimen Trust Agreement was an integral part of each structured settlement, as an attachment to each Settlement Agreement and/or Assumption and Assignment Agreement. The Trust Agreements were at first documented individually and later, as the use of structured settlements expanded, through a Master Trust Agreement between IBAR and Bank of America dated January 4, 1982 ("IBAR Master Trust Agreement"). In critical part, the Trust Agreements in each of the subject structured settlement agreements contained functionally identical provisions that: (a) required the trustee to purchase U.S. Treasury securities; (b) prohibited disposition of the securities; (c) specified the dates, amounts and recipients of periodic and final distributions from the trust and (d) prohibited revocation or amendment of the trust.

45. The IBAR Master Trust Agreement and preexisting individual Trust Agreements did not confer any right to replace the trustee, but did contain provisions for the appointment of a successor trustee in the event of resignation. Each required court confirmation of the appointment of any successor trustee, and further required that any successor trustee succeed to all of the same rights and duties as its predecessor.

46. Hundreds of personal injury plaintiffs settled their cases using the Treasury Trust Bond structure, including the plaintiffs. While the payments provided by the settlement was tailored to the facts of the case and the needs of these particular injured plaintiffs, the settlement agreement contained written undertakings by the structured settlement company and the trustee banks that were for all relevant purposes identical to the obligation described above.

47. In 1981, defendant Merrill Lynch approached the Schultzes and offered to acquire the stock and business of IBAR. At the time, the Schultzes were the only officers and shareholders of IBAR. The Schultzes negotiated with Merrill Lynch and reached an agreement under which Merrill Lynch acquired all of the stock of IBAR and the Schultzes became employees of the corporation under contracts of employment. The transaction closed on or about March 31, 1982. Merrill Lynch Life, a wholly owned subsidiary of Merrill Lynch, was the acquiring party. The name of the corporation was changed to Merrill Lynch IBAR, Inc. ("ML IBAR"). Merrill Lynch consented to the use of its name and logo by ML IBAR.

48. The Schultzes remained with the company for approximately two years in a management role. In February 1984, after disagreements between the Schultzes and Merrill Lynch arose, the Schultzes left the company. Shortly thereafter, ML IBAR changed its name to Merrill Lynch Settlement Services, Inc. ("MLSS"). Merrill Lynch also consented to the use of its name and logo by MLSS.

49. Merrill Lynch caused advertisements regarding its structured settlement services to be published and circulated in California and promotional materials to be distributed to Class members. Attached hereto as Exhibit "A" is a true and correct copy of a marketing brochure distributed by Merrill Lynch IBAR in 1983. In the 1993 marketing brochure, which plaintiffs are informed and believe Merrill Lynch authorized to be distributed, it was represented that the financial strength of Merrill Lynch stood behind the business of Merrill Lynch IBAR to guarantee payment of Class members' claims. Among the statements and representations that Merrill Lynch authorized to be made to Class members were:

> "We also function as a valuable addition to the broad spectrum of products and services offered by Merrill Lynch & Co., Inc., one of the largest, strongest and most diversified financial services firms in the world."
>
> "Primary trusts that provide ongoing support income are irrevocable and nondiscretionary."
>
> "The plaintiffs must sign a release before this transfer of liabilities can be accomplished. Obviously, plaintiffs are far more likely to agree to the transfer if they know the promise of future payments is made by an affiliate of Merrill Lynch, a name they know and trust. At the end of 1982, Merrill Lynch's assets totaled more than $17 billion and its net worth (calculated on a consolidated basis) was more than $1 billion."
>
> "Our clients enjoy the confidence of receiving a full range of services from a firm whose experience, expertise and resources are unequaled. <u>In addition, they obtain the security of dealing with Merrill Lynch, one of the most prominent financial services firms in the world</u>." (Emphasis added.)

In addition to treasury bond trusts, Merrill Lynch IBAR marketed insurance annuities which were sometimes combined with treasury bond trusts ("hybrid structured settlements"). To induce Class members to enter into hybrid structured settlements marketed by Merrill Lynch IBAR, Merrill Lynch agreed to contribute up to One Hundred Million Dollars ($100,000,000) to its wholly owned insurance company subsidiary which sold annuities to Merrill Lynch IBAR; a true and correct copy of the letter evidencing that commitment is attached hereto as Exhibit "B". As a result of these actions, Merrill Lynch IBAR, MLSS, and ML Settlement Services were the actual or ostensible agents of Merrill Lynch.

50. The promotional brochures authorized by Merrill Lynch for distribution to a tort plaintiff who might wish to participate in structured settlements were designed to induce the plaintiff to enter into structured settlements with MLSS. For example, the brochures stated that the "respected name of Merrill Lynch inspires the confidence of plaintiffs and their counsel." The brochures also acknowledged that the plaintiff was more likely to agree to utilize MLSS because it was "an affiliate of Merrill Lynch, a name they know and trust."

51. The foregoing advertising and promotional materials distributed by Merrill Lynch and MLSS were designed to assure a settling plaintiff that if they entered into Treasury Bond Trusts with MLSS, MLSS and its principal, Merrill Lynch, would be responsible for making the structured settlement payments throughout the term of the settlement.

B. <u>The Fraudulent Scheme to Loot the Trust</u>

52. In or about April 1988, Merrill Lynch, through Merrill Lynch Life Agency, Inc., sold eighty percent of the structured settlement portion of MLSS's business to Laugharn Associates, Inc., a California corporation, C. John Laugharn ("Laugharn"), an individual, since deceased, and Hubert F. Laugharn, Jr. In consideration for the sale, the Laugharns paid $1. The Laugharns changed the name of the company to ML Settlement Services, Inc. ("MLSSI"). As part of the transaction, Merrill Lynch kept a portion of the assets that were supposed to be used to pay the structured settlement payments. The transfer to the Laugharn's was in violation of the representations made and obligations undertaken by MLSS and Merrill Lynch to ensure that the structured settlement payments would be made to plaintiffs.

53. In or about October 1991, Merrill Lynch, through Merrill Lynch Life Agency, Inc., sold the remaining twenty-percent interest in MLSSI to C. John Laugharn and Jonathan Pardee. In consideration for the sale, Laugharn and Pardee paid $1.

54. Once Pardee obtained control of MLSSI, he and defendants MLSS and SSI embarked on a fraudulent scheme to loot the assets of the trust. Plaintiffs are informed and believe that Pardee was at the time an officer of both MLSS and SSI, and both MLSS and SSI participated in the fraudulent scheme to loot the assets of the trust. The first step in the scheme was to obtain total control over the U.S. Treasury securities that were being held by the bank trustee to make the periodic settlement payments to the plaintiffs. At the time, the trustee was defendant Wells Fargo, which had succeeded to this role when it acquired a portion of Bank of America's private trust business in early 1987.

55. Wells Fargo refused to assist Pardee, and, as a result, in September 1991, MLSSI sued Wells Fargo in Los Angeles County Superior Court. In the lawsuit, MLSSI sought to remove Wells Fargo as trustee and transfer administration of the trust to U.S. Trust Co. The trial court responsible for the MLSSI lawsuit, however, rejected MLSSI's petition and ruled that "considering the express purpose and provisions of the Trust taken as a whole, [MLSSI] is not the sole beneficiary of the trust;" and that MLSSI could not remove Wells Fargo as trustee without giving notice to the plaintiffs. The trial court granted Wells Fargo's demurrer and its demurrer to MLSSI's first amended complaint.

56. MLSSI appealed the ruling. While the case was on appeal, Wells Fargo, MLSSI and SSI settled — agreeing to *(1)* reverse the trial court's findings that MLSSI was not the sole beneficiary of the trust and that necessary parties (the plaintiffs) had not been notified of the action, *(2)* indemnification by MLSSI of Wells Fargo against any claims that might be brought against it by the plaintiffs, and *(3)* payment of Wells Fargo's attorneys' fees. The stipulation was approved by the court in a non-adversarial setting without notice to or binding effect on plaintiffs or members of the Class.

57. Wells Fargo's agreement to step aside and failure to notify the plaintiffs of the controversy and its settlement with MLSSI was in blatant disregard of the rights of the plaintiffs and the members of the Class.

58. In November 1992, Wells Fargo resigned and transferred its responsibilities as the trustee to U.S. Trust Co. Pardee then sought to have the new trustee, U.S. Trust Co., give him or SSTAI, the successor to MLSSI, control over the treasury securities.

59. During the pendency of the litigation with Wells Fargo, sometime in or about 1992, Laugharn sold or transferred his interest in MLSSI to Pardee, who later changed the name of the company to Settlement Services Treasury Assignments, Inc. ("SSTAI").

60. In early 1992, Laugharn founded Settlement Services, Inc., ("SSI"), a California corporation engaged in the business of selling and managing structured settlements. Laugharn took a portion of MLSSI's structured settlement accounts with him to SSI.

61. On December 1, 1992, SSTAI and U.S. Trust Co. California entered into an agreement entitled "Settlement Services Treasury Assignments, Inc. Amended and Restated Master Trust Agreement", dated December 1, 1992 (the "First SSTAI Master Trust Agreement").

62. The First SSTAI Master Trust Agreement referenced, attached and purported to supercede all previously existing Trust Agreements. In so doing, it omitted or revised several material portions of the prior Trust Agreements. It deleted the prohibition contained in all previous Trust Agreements against revocation or alteration of the terms of the trust. It revised the anti-hypothecation provisions to specify that they applied only to the plaintiffs, rather than to any party entitled to payment from the trust (a definition that had included SSTAI as the nominal trust beneficiary). It created a right of SSTAI to replace the trustee at its discretion, and deleted the requirement that successor trustees assume all obligations of the prior trustee. This last revision was apparently intended to facilitate still another material alteration: inclusion in the new Trust Agreement purportedly providing for an express, unilateral renunciation by U.S. Trust Co. California of any obligations of prior trustees not specified in the new trust agreement, presumably in an effort to extinguish the trustee Guaranty.

63. The First SSTAI Master Trust Agreement continued to preserve certain essential trust protections. Like its predecessors, it acknowledged that the purpose of the Master Trust Agreement was to facilitate payment of the Trustor's obligations to plaintiffs, incorporated by reference the Trustor's Orders for Payment, provided that the Trustee would be transferred U.S. Treasury securities and would hold them in segregated accounts, recited that such securities constitute the Trust Estate, and directed that

"the Trust Estate shall not be disposed of except to carry out the provisions of this Master Trust Agreement." It also specified that "In no event shall the Trustee have the power or authority to dispose of the securities designated in the Orders."

64. SSTAI then renewed its demands that the trustee give it control over the treasury securities. U.S. Trust Co. California did not notify plaintiffs of these demands. Instead, it resigned and was succeeded by Bankers Trust. Neither court confirmation nor the consent of the plaintiffs was sought for the resignation of U.S. Trust Co. or the appointment of Bankers Trust as successor trustee.

65. Bankers Trust and SSTAI entered into a second "Settlement Services Treasury Assignments, Inc. Master Trust Agreement," dated January 7, 1994 (the "Second SSTAI Master Trust Agreement"). This remarkable document completely eviscerated the original trust. The Second SSTAI Master Agreement no longer provided that the trust estate would consist of U.S. Treasury securities, but permitted it to consist of whatever property was supplied to Bankers Trust by SSTAI. It further provided that SSTAI could decide in its discretion whether Bankers Trust was holding more assets than it needed to meet payment obligations and instruct Bankers Trust to remit the surplus, and Bankers Trust would have no liability for any act done pursuant to the Trustor's written instructions. It gave the Trustor new powers to invest the trust funds in virtually any conceivable type of investment vehicle, and to sell the U.S. Treasury securities or original trust property upon specific written instructions by the Trustor. It granted "SSTAI as Trustor and sole beneficiary of this Master Trust Agreement . . . the right to amend, restate, or terminate this trust at its discretion." For its part, the Trustee was entitled to derive income from managing trust funds or from affiliated brokers, and was specifically authorized to utilize affiliated brokerage firms. The Trustee also disclaimed any liability under "ancillary" documents to the original Master Trust Agreement.

66. The Second SSTAI Master Trust Agreement also purported to permit Bankers Trust to derive earnings and commissions from the management of the trust funds. It also purported to permit Bankers Trust to serve as the broker on securities transactions entered into by SSTAI. These provisions of the Master Trust Agreement and others tied Bankers Trusts' compensation to the making of investment transactions, including investments in common stock, repurchase agreements and other forms of

investments where the principal would be at risk, with the proceeds of loans to SSTAI collateralized with the U.S. Treasury securities.

67. Bankers Trust and SSTAI entered into a third "Settlement Services Treasury Assignments, Inc. Master Trust Agreement," dated July 12, 1995 ("Third SSTAI Master Trust Agreement"). This document reinforced the Second SSTAI Master Trust Agreement and continued to permit the hypothecation of the U.S. Treasury securities held in the trust.

68. With the Third SSTAI Master Trust Agreement in hand, Pardee embarked on his fraudulent scheme to loot the trust assets. Pardee and SSTAI obtained millions of dollars from the trust using the U.S. Treasury securities as collateral for a line of credit issued by Morgan Stanley or its predecessors, which Pardee and SSTAI then used for their own financial gain. Pardee entered into repurchase agreements with Morgan Stanley and other financial institutions. Pardee sold the U.S. Treasury securities to Morgan Stanley and agreed to repurchase the securities at a specified date at higher price. The goal of the enterprise was simple: invest the proceeds of the repurchase agreement in investments which would yield a greater return than the interest on the repurchase agreement. Pardee kept the difference.

69. Pardee and SSTAI made loans to affiliated entities using funds that were obtained through the Morgan Stanley line of credit, including loans to his affiliates Bellevue Capital Ventures, Inc. and PFSI Holdings, Inc., and others. At the time of the loans, Pardee, SSTAI and his affiliates recognized that it was apparent that these loans would not be repaid and that, as a result, there would be insufficient monies to make the structured settlement payments to the plaintiffs. Pardee also used the funds obtained through the Morgan Stanley to make personal investments.

70. In or about 1996 or 1997, Pardee hired Bear Stearns to assist him in the sale of SSTAI. Bear Stearns actively marketed and sold SSTAI as a vehicle for obtaining large amounts of capital through loan and repurchase agreements. Bear Stearns prepared sales literature explaining the nature of SSTAI's business and detailing exactly how the purchaser of SSTAI would control nearly $100 million (face value) of U.S. Treasury securities with high coupon rates that could be used in repurchase agreements with large financial institutions to generate large amounts of cash that in turn could be invested as the owner of SSTAI saw fit. Bear Stearns advertised the sale of SSTAI and eventually

facilitated the sale of SSTAI to Stanwich and the Bradleys. On information and belief, Bear Stearns received a large commission for selling SSTAI to the Bradleys.

71. In or about May of 1997, Pardee sold SSTAI to the Bradleys. Immediately after closing the sale, the Bradleys entered into a repurchase agreement with Morgan Stanley and used the proceeds to pay Pardee approximately $16 million dollars of the purchase price for SSTAI.

72. The Bradleys thereafter continued the practice of selling the U.S. Treasury securities pursuant to repurchase agreements with Morgan Stanley. Pursuant to instructions from Bradley Sr. and Bradley Jr., Stanwich loaned at least $46 million to companies under the control of the Bradleys, including NAB, CPS and Reunion. These loans were made to companies in precarious financial condition, and the loans had little or no prospect of being repaid. Stanwich, again at the instruction of the Bradleys, made significant loans to both Bradley, Sr. and Bradley, Jr.

73. At the times when Morgan Stanley made such loans for its own financial gain, it knew or recklessly or negligently disregarded the fact that the pledging of the US Treasury securities violated the rights of plaintiffs and the Class and exposed them to tremendous risk.

74. In December 1997, Morgan Stanley notified Stanwich that it intended to terminate the repurchase agreements and that Stanwich either had to repurchase the U.S. Treasury securities or Morgan Stanley would sell them. Morgan Stanley refused to roll over the agreements as it had done in the past. After several extensions of time from Morgan Stanley, Stanwich, however, was unable to make payment or to find another institution to take over the repurchase agreements. As a result, in March 1998, Morgan Stanley sold the U.S. Treasury securities paid itself from the proceeds and remitted the balance to Stanwich. Stanwich did not disclose to the plaintiffs the loss of the U.S. Treasury securities.

75. In September 1998, Bankers Trust resigned and U.S. Trust N.Y. was substituted for Bankers Trust as trustee under a Tri-Party Agreement. Like those before it, Bankers Trust and U.S. Trust N.Y. failed to disclose to the plaintiffs the prior wrongful conduct or take any action to preserve the trust assets. Instead, Stanwich concealed the loss of the U.S. Treasury securities and Morgan Stanley's actions by directing the plaintiffs not to contact the trustee, but instead to only contact Stanwich's attorney.

76. The Tri-Party Agreement contained schedules of all assets stated to represent the trust estate. Bankers Trust, as trustee, represented that it was in possession of $3,020,358 in U.S. Treasury

securities and cash at the time. Meanwhile, Stanwich, as trustor, represented it was in possession of trust assets with "a value in excess of $83 million as of the date hereof," including approximately $69 million in loans and equity investments, primarily in affiliated entities, $2,477,540 in Treasury Bonds, and $2,100,899 in cash and cash equivalents deposited with various institutions.

77. On November 15, 2000, Stanwich defaulted on its obligations to make payments to the plaintiffs. In December 2000, defendant Stanwich sent a letter signed by defendant Charles E. Bradley, Sr., which included questions and answers regarding the reason for the non-payment and a promise of payment with interest by December 8, 2000. In that document, defendants Stanwich and Bradley stated that:

> "SSTAI no longer owns any Treasury Securities. They were sold in March 1998. The sale was not initiated by SSTAI, but by Morgan Stanley & Co. over SSTAI's protest. The securities were pledged to Morgan Stanley as collateral for "repurchase agreement" loans to SSTAI. Morgan Stanley notified SSTAI in December 1997 that it intended to terminate the lending arrangement. SSTAI then attempted, unsuccessfully, to find a replacement lender. Morgan Stanley terminated the loan arrangement in March, 1998 and over SSTAI's strong objections, sold the Treasury securities to repay the loans." (Emphasis added.)

78. In fact, Stanwich loaned nearly $46 million to three Bradley-controlled public companies: approximately $20 million to CPS, $9 million to NAB and about $16 million to Reunion. Stanwich also made millions of dollars of loans to and investments in other privately-held Bradley companies.

CLASS ACTION ALLEGATIONS

79. Plaintiffs bring this action on their own behalf and on behalf of all persons and entities who entered into structured settlements with IBAR, Inc., Merrill Lynch IBAR, Inc., Merrill Lynch Settlement Services, Inc., or ML Settlement Services, Inc., who are entitled to receive periodic structured settlement payments thereunder, and their successors-in-interest ("the Class"). The Class excludes the defendants, the members of the families of the individual defendants, all officers and directors of the corporate defendants and any person or other entity that is affiliated with any of the defendants, and the heirs, successors, and assigns of any excluded party.

80. This action is properly maintainable as a class action pursuant to § 382 of the Code of Civil Procedure for the following reasons:

(a) The Class is ascertainable and has a well-defined community of interest. The members of the Class are so numerous that joinder of all Class members is impracticable. While

the precise number of Class members is unknown to plaintiffs at this time and can only be ascertained through proper discovery, plaintiffs believe that there are several hundred members in the Class.

(b) There are questions of law and fact which are common to the members of the Class and which predominate over any questions affecting only individual members, including whether defendants breached statutory, contractual, and common law duties by encumbering and transferring, or permitting the encumbrance and transfer of U.S. Treasury securities that were supposed to be kept in trust to fund the structured settlement payments owed to the members of the Class.

(c) The claims of the plaintiffs are typical of the claims of the other members of the Class. Plaintiffs and the members of the Class have sustained injury as a result of defendants' course of conduct as alleged in this complaint.

(d) Plaintiffs are members of the Class and will fairly and adequately protect the interests of the Class. They have retained competent counsel experienced in conducting class and complex business litigation, and they have no interests that are adverse or antagonistic to the interests of the Class. Accordingly, plaintiffs are adequate representatives of the Class.

(e) The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

(f) A class action is superior to the other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the Class is impracticable. There will be no difficulty in the management of this case as a class action.

FIRST CAUSE OF ACTION
(Against MLSS, MLSSI and Stanwich for Breach of Contract)

81. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

82. Plaintiffs and members of the Class are each parties to contracts, namely the Assignment and Assumption Agreements, with defendants MLSS, MLSSI, and Stanwich, either directly or as successors-in-interest. A copy of the contract of plaintiff Eileen Barme is attached hereto as Exhibit "C".

83. Defendants MLSS, MLSSI, and Stanwich breached express contractual obligations under the structured settlement agreements with plaintiffs and the other members of the Class by failing to make the periodic and/or lump sum payments as required by the agreements.

84. Defendants MLSS, MLSSI, and Stanwich breached their obligations to plaintiffs and members of the Class under the contracts by hypothecating or selling the trust assets and failing to effectuate and further the nature and purposes of the structure settlements.

85. Plaintiffs and members of the Class have performed all conditions, covenants, and promises required by them on their part to be performed in accordance wit the terms and condition of the subject contracts, to their knowledge, or those performance obligations have been excused or waived by the conduct of defendants.

86. The plaintiffs and the other members of the Class have been damaged by not receiving their periodic and/or lump sum payments, the amounts of which are readily ascertainable and will be proved at the time of trial as they are set forth on the face of the agreements.

SECOND CAUSE OF ACTION

(Against Well Fargo, Bankers Trust, U.S. Trust Co., U.S. Trust N.Y.,Morgan Stanley, Bear Stearns, SSI, Pardee, Bradley, Sr. and Bradley, Jr. for Tortious Interference with Structured Settlement Agreements)

87. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

88. Defendants Wells Fargo, Bankers Trust, U.S. Trust Co., U.S. Trust N.Y., Morgan Stanley, Bear Stearns, Pardee, Bradley, Sr. and Bradley, Jr., knowingly, intentionally, and unlawfully interfered with the express contractual rights of plaintiffs and the other members of the Class under the structured settlement agreements. The defendants' knowing and intentional conduct, as fully described above, resulted in the unlawful hypothecation and foreclosure of the U.S. Treasury securities, as a further consequence of which the plaintiffs are no longer receiving the payments to which they are entitled.

89. Plaintiffs and the other members of the Class have been injured and sustained many millions of dollars of damage as a direct and proximate result of these defendants' tortious interference

with the agreements, which agreements have been breached by those charged with making the periodic and/or lump sum payments.

90. Defendants acted with fraud, oppression and malice, and with reckless and callous indifference to the rights of plaintiffs and the members of the Class, and, as a result, plaintiffs are entitled to punitive damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION

(Against Wells Fargo, Bankers Trust, U.S. Trust Co., U.S. Trust N.Y.,Morgan Stanley, Bear Stearns, SSI, Pardee, Bradley, Sr. and Bradley, Jr. for Negligent Interference with Economic Relations)

91. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

92. Defendants Wells Fargo, Bankers Trust, U.S. Trust Co., U.S. Trust N.Y., Morgan Stanley, Bear Stearns, Pardee, Bradley, Sr. and Bradley, Jr., negligently interfered with the economic relations and contractual rights of the plaintiffs and the other members of the Class under the agreements. The defendants' negligent conduct, as fully described above, resulted in the unlawful hypothecation and foreclosure of the U.S. Treasury securities, as a further consequence of which the plaintiffs are no longer receiving the payments to which they are entitled.

93. Plaintiffs and the other members of the Class have been injured and sustained many millions of dollars of damage as a direct and proximate result of these defendants' negligent interference with the agreements, which agreements have been breached by those charged with making the periodic and/or lump sum payments.

FOURTH CAUSE OF ACTION

(Against Bank of America, Wells Fargo, U.S. Trust Co., Bankers Trust and U.S. Trust Co. of New York for Breach of Written Continuing Guaranty Agreement)

94. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

95. As alleged above, the set of documents that memorialized each structured settlement transaction included a Guaranty executed by the trustee, pursuant to which the trustee banks agreed as follows:

> The Bank, in its capacity as Trustee of the Trust and solely to the extent of the trust assets, hereby promises fulfillment of the obligations set forth in the [settlement agreement] which have been assumed by Merrill Lynch IBAR, Inc. [or other structured settlement company]

96. Defendants Bank of America, Wells Fargo, and U.S. Trust Co. breached their express contractual duties to fulfill the obligations they undertook, namely, to make the required periodic and lump sum payments to the plaintiffs and the other members of the Class, to the extent of the trust assets. Instead, and in breach of their obligations, the defendant banks abdicated their responsibilities, and, by so doing, allowed the trust assets to be hypothecated and otherwise used improperly for purposes other than the making of the periodic and lump sum payments to plaintiffs and the members of the Class. As a direct and proximate result of the defendants' breaches of the Guaranty agreements, the trust assets have been misappropriated and there are no funds readily available to make the periodic and lump sum payments for which the plaintiffs and the other members of the Class are in such dire need.

97. From and after 1981, plaintiffs and other members of the Class and IBAR and defendant MLSS and its successors entered into written Assignment and Assumption Agreements, a sample copy of which is attached hereto as Exhibit "C". The Assignment and Assumption Agreements provided that IBAR and defendants MLSS and its successors would purchase U.S. Treasury Bonds which defendants would deliver to Bank of America as Trustee of numerous Trust, together with a document entitled "Trustor's Order for Payment", a sample copy of which is attached hereto as Exhibit "D".

98. In consideration for being named as trustee of the trusts and the payment of fees, defendant Bank of America provided to plaintiffs and Class members a written continuing Guaranty of payment, a true and correct sample copy of one such Guaranty is attached hereto as Exhibit "E".

99. By the terms of the continuing Guaranty between plaintiffs and the other Class members as creditors and Bank of America as surety and guarantor, Bank of America promised to fulfill the obligations set forth in plaintiffs' and the other Class members' Settlement Agreements which had been assumed by IBAR, defendant MLSS and its successors.

100. Defendant Bank of America has never resigned in writing as trustee of the trusts established for plaintiffs and the other Class members, never petitioned the Superior Court to accept its

resignation as trustee of the trusts, and has never revoked the written continuing Guaranty that it provided to plaintiffs and the members of the Class.

101. In December of 1986, defendant Wells Fargo purchased a portion of Bank of America's private Trust Business, including the trusts established by IBAR, defendant MLSS and its successors. Under the purchase agreement, Wells Fargo assumed Bank of America's obligations under the Guarantees Bank of America entered into with the structured settlement companies and the payees.

102. Wells Fargo began serving as the trustee for structured settlement payees who had already entered into settlements. Moreover, Wells Fargo also served as the trustee for Class members who entered into Assignment and Assumption Agreements with defendant MLSS and its successors after the date of the purchase of defendant Bank of America's Trust Business.

103. While serving as trustee of the trusts established by IBAR and defendant MLSS, defendant Wells Fargo Bank provided written continuing Guaranty to Class members who entered into Assignment and Assumption Agreements.

104. Defendant Wells Fargo Bank never notified Class members to whom it provided written continuing Guarantees that it was canceling or revoking the continuing Guaranty.

105. In November of 1992, defendant Wells Fargo Bank resigned as trustee and transferred its responsibilities to U.S. Trust Co., and U.S. Trust Co. of N.Y. began serving as the trustee of the trusts that had been established by IBAR and defendant MLSS and its successors, and also served as the trustee for Class members who entered into Assignment and Assumption Agreements with defendant MLSS and its successors after the date of the transfer from Wells Fargo.

106. While serving as trustee of the trusts established by IBAR and defendant MLSS, defendant, U.S. Trust Co. provided written continuing Guarantees to Class members who entered into Assignment and Assumption Agreements.

107. Defendant U.S. Trust Co. never notified Class members to whom it provided written continuing Guarantees that it was canceling or revoking the continuing Guaranty.

108. Defendants Bankers Trust and U.S. Trust Co. of New York are successor Trustees who assumed the obligations under the Guarantees made to the plaintiffs and members of the Class.

109. Defendants MLSS, SSTAI, and Stanwich have breached the terms of the Assignment and Assumption Agreements that they entered into with Class members who were provided written continuing Guarantees by defendants Bank of America, Wells Fargo, U.S. Trust Co., Bankers Trust, and U.S. Trust Co. of New York. Defendants MLSS, SSTAI and Stanwich have failed to make, and defendant defendants have failed and refused to make the defaulted payments.

110. Pursuant to the terms of the written continuing Guaranty agreements that they provided, defendants Bank of America, Wells Fargo, U.S. Trust Co., Bankers Trust, and U.S. Trust Co. of New York are obligated to make the defaulted payments that they Guaranteed to plaintiffs and members of the Class in an amount according to proof at the time of trial.

FIFTH CAUSE OF ACTION

**(Against Bank of America, Wells Fargo, U.S. Trust Co.,
Bankers Trust, and U.S. Trust Co. of New York for Declaratory Relief)**

111. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

112. Plaintiffs incorporate by reference and realleges paragraphs 93 through 109, above, as if fully set forth herein.

113. An actual controversy has arisen and now exists between plaintiffs and defendants concerning their respective rights and duties. Plaintiffs contend that defendants Bank of America, Wells Fargo, U.S. Trust Co., Bankers Trust, and U.S. Trust Co. of New York owe an obligation to make periodic and lump sum payments under the Guaranty Agreements either signed or assumed by the defendants, whereas defendants dispute these contentions and contend that they do not owe a continuing obligation.

114. An actual controversy has arisen and now exists relating to the rights and duties of the parties herein in that plaintiffs contend that the Guaranty Agreements are valid and enforceable in all

respects, whereas defendants contend that the Guaranty Agreements are invalid and unenforceable for the reason that defendants Bank of America, Wells Fargo, and U.S. Trust Co., and Bankers Trust are no longer the trustee. Plaintiffs dispute defendants' contentions and assert that the reasons asserted by defendants do not affect the validity or enforceability of the Guaranty Agreements.

115. Plaintiffs desire a judicial determination of their rights and duties and a declaration as to whether the written Guaranty Agreements are valid and whether plaintiffs' interpretation of the agreement is correct.

116. A judicial declaration is necessary and appropriate at this time under the circumstances in order that the plaintiffs may ascertain their rights under the Guaranty Agreements.

SIXTH CAUSE OF ACTION

(Against MLSS, Merrill Lynch, Bear Stearns, SSI, Stanwich, Bradley, Sr., Bradley, Jr., Pardee, Bellevue, PFSI, CPS, NAB, Reunion, and Morgan Stanley for Tortious Interference with Guarantee Agreements)

117. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

118. Defendants MLSS, Merrill Lynch, Bear Stearns, Stanwich, Bradley, Sr., Bradley, Jr., Pardee, Bellevue, PFSI, CPS, NAB, Reunion and Morgan Stanley knowingly, intentionally, and unlawfully interfered with the express contractual rights of the plaintiffs and the other members of the Class under the Guaranty agreements signed by the bank defendants. Specifically, the defendants conspired with and caused defendant Bankers Trust to release and/or make possible the release of the trust assets for purposes other than the making of the periodic and lump sum payments, which rendered performance of the Guaranty Agreements impossible.

119. Plaintiffs and the other members of the Class have been injured and sustained many millions of dollars of damage as a direct and proximate result of these defendants' tortious interference with the Guaranty agreements, which agreements have been breached by the trustee banks.

120. Defendants acted with fraud, oppression and malice, and with reckless and callous indifference to the rights of plaintiffs and the members of the Class, and, as a result, plaintiffs are entitled to punitive damages in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION

(Against MLSS, Merrill Lynch, Bear Stearns, SSI, Bradley, Sr., Bradley, Jr., Pardee, Bellevue, PFSI, CPS, NAB, Reunion, and Morgan Stanley for Negligent Interference with Economic Relations)

121. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

122. Defendants MLSS, Merrill Lynch, Bear Stearns, Bradley, Sr., Bradley, Jr., Pardee, Bellevue, PFSI, CPS, NAB, Reunion and Morgan Stanley negligently interfered with the economic relations and contractual rights of the plaintiffs and the other members of the Class under the Guaranty Agreements. Specifically, defendants negligently caused the trustee banks to abdicate their responsibilities and release and/or make possible the release of the trust assets for purposes other than the making of the periodic and lump sum payments to plaintiffs and the members of the Class, which rendered performance of the Guaranty agreements impossible.

123. Plaintiffs and the members of the Class have been injured and sustained many millions of dollars of damage as a direct and proximate result of these defendants' negligent interference with the Guaranty Agreements, which agreements have been breached by the trustee banks.

EIGHTH CAUSE OF ACTION

(Against Bank of America, Wells Fargo, U.S. Trust Co., U.S. Trust N.Y., and Bankers Trust for Breach of Trust Agreements)

124. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

125. Article II of the original Master Trust Agreement provides that the "Bonds and Notes and any other property that may become subject to this trust shall constitute the Trust Estate and shall be held and administered as hereafter set forth; provided, however, that the Trust Estate shall not be disposed of except to carry out the provisions of this Agreement." The Trust also contains an anti-hypothecation or spendthrift clause, which prohibits, among other things, the sale or hypothecation of the trust assets:

> No person entitled to receive income or principal of the trust shall have any right, power, or authority to sell, mortgage, assign, pledge, or in any other manner anticipate, encumber, alienate, or impair all or any art of any payment which such person is to receive.

126. Plaintiffs and the other members of the Class are intended beneficiaries of the trusts established to maintain the assets from which the periodic and final settlement payments were to be made. Accordingly, the members of the Class are beneficiaries of the trust agreements pursuant to which defendants Bank of America, Wells Fargo, U.S. Trust Co., U.S. Trust N.Y., and Bankers Trust agreed to be responsible for the maintenance of the U.S. Treasury securities and the distribution of the trust assets.

127. The trustee bank defendants breached their express contractual obligations by abdicating their responsibilities, which abdication permitted the trust assets to be used for purposes other than as provided in the trust, as well as by allowing the hypothecation and ultimate foreclosure of the U.S. Treasury securities. The plaintiffs and the other members of the Class have been damaged by not receiving their periodic and/or lump sum payments, the amounts of which are readily ascertainable and will be proved at the time of trial as they are set forth on the face of the agreements.

NINTH CAUSE OF ACTION

(Against Bank of America, Wells Fargo, U.S. Trust Co., U.S. Trust N.Y., and Bankers Trust for Breach of Trustor's Orders for Payment)

128. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

129. In each of the structured settlement agreements, the Trustor issued a written document entitled "Trustor's Order for Payment" to the Trustee ("Order"); a sample copy of an Order is attached hereto as Exhibit "D". The 1984 Master Trust Agreement provided, in Article I, that when delivered to the Trustee, the Orders "shall be considered to be a part of this Master Trust Agreement until the payments required therein have been paid in full or otherwise satisfied."

130. The Orders were the documents which defendant MLSS, as Trustor, utilized to transmit the U. S. Treasury Bonds to the Trustee of the Master Trust. The plaintiffs and Class members whose structured settlements included Orders are intended third-party beneficiaries of the Orders delivered to

defendants Bank of America, Wells Fargo, U.S. Trust Co., U.S. Trust N.Y., and Bankers Trust, and each of these defendants agreed pursuant to the terms of the Order to be responsible for the safekeeping of the U.S. Treasury Bonds while serving as Trustee of the Trusts.

131. The trustee bank defendants breached their express contractual obligations set forth in the Orders by abdicating their responsibilities, which abdication permitted the trust assets to be used for purposes other than as provided in the trusts, as well as by allowing the hypothecation and ultimate foreclosure of the U.S. Treasury securities. The plaintiffs and the other members of the Class have been damaged in that defendant Stanwich no longer has the U.S. Treasury securities to fund periodic or lump sum payments owed to the plaintiffs and members of the Class, the amounts of which are readily ascertainable and will be proved at the time of trial as they are set forth on the face of the agreements.

TENTH CAUSE OF ACTION

(Against Pardee, Bradley Sr., Bradley Jr., SSTAI, Bankers Trust, Morgan Stanley, Bear Stearns, CPS, NAB, Bellevue, PFSI, Reunion and Does 20 through 30 to Set Aside or Annul a Fraudulent Transfer)

132. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

133. Plaintiffs and the members of the Class who entered into Assignment and Assumption Agreements that were to be funded by U.S. Treasury Bonds are and were general creditors of defendants IBAR and MLSS as its successors in interest, including defendant SSTAI, for periodic and lump sum payments that were to be made to them pursuant to the terms of the Agreements.

134. Defendants SSTAI and Bankers Trust, in their capacity as successor Trustor and Trustee respectively, were the owners or had possession of U.S. Treasury Bonds purchased with funds from settling defendants to make periodic and lump sum payments to plaintiffs and the other Class members who entered into Assignment and Assumption Agreements.

135. Plaintiffs are informed and believe that defendants Pardee, Bradley, Sr. and Bradley, Jr., and Bankers Trust caused defendant SSTAI to transfer the U. S. Treasury Bonds from the trusts to defendant Morgan Stanley as collateral for loans made pursuant to repurchase agreements by

defendant Morgan Stanley to defendant SSTAI with actual intent to hinder, delay or defraud the timely payment of periodic and lump sum payments that were owed to plaintiffs and the Class members who entered into Assignment and Assumption Agreements. Plaintiffs are further informed and believes that defendant Pardee, in turn, caused defendant SSTAI to utilize the loan proceeds it received to, in turn, make loans to defendants Bellevue and PFSI, and defendants Bradley, Sr. and Bradley, Jr., in turn, caused defendant SSTAI to utilize the loan proceeds it received from defendant Morgan Stanley to be loaned to defendants Reunion, NAB, and CPS.

136. Plaintiffs are further informed and believes that as defendant SSTAI did not receive a reasonably equivalent value when it utilized the loan proceeds it obtained from defendant Morgan Stanley to make loans to defendants CPS, NAB, Reunion, Bellevue, PFSI and Does 20 through 30, and that as a result of making the loans to defendants CPS, NAB, Reunion, Bellevue, PFSI and Does 20 through 30, defendant SSTAI was rendered unable to make timely payments to plaintiffs and the other members of the Class.

137. Plaintiffs are informed and believe that when defendant Morgan Stanley received the U.S. Treasury Bonds pursuant to the repurchase agreement with defendant SSTAI, Morgan Stanley knew, or had notice of facts and circumstances that formed a duty of inquiring, that the U.S. Treasury Bonds were in trusts and were to be utilized to make periodic and lump sum payments to plaintiffs and the Class members who had entered into Assignment and Assumption Agreements. Defendant Morgan Stanley had knowledge that defendants SSTAI, Pardee, Bradley, Sr. and Bradley, Jr. intended to utilize the loan proceeds to make loans to defendants CPS, NAB, Reunion, Bellevue, PFSI and Does 20 through 30, and that the effect of SSTAI making said loans would hinder or delay the payment of the periodic and lump sum payments owed to plaintiffs and the other Class members or would defraud plaintiffs who were owed payments.

138. Plaintiffs are informed and believe that defendants SSTAI, Pardee, Bradley, Sr., Bradley, Jr., Bankers Trust, Morgan Stanley, NAB, CPS, Reunion, Bellevue, PFSI and Does 20 through 30, inclusive, agreed and knowingly and willfully conspired between themselves to hinder, defraud and delay

1 the plaintiffs and the other Class members in receiving payment of their claims for periodic and lump sum
2 payments from defendant SSTAI.
3 139. Defendants, and each of them, did the acts and things alleged pursuant to, and in
4 furtherance of, the conspiracy and agreement alleged herein.
5
6 140. Plaintiffs and the other Class members who entered into Assignment and Assumption
7 Agreements funded by U.S. Treasury Bonds have been damaged in that there are no longer U.S. Treasury
8 Bonds or other funds readily available to enable defendant SSTAI to make the periodic and lump sum
9 payments.
10 141. Pursuant to the provisions of Business and Professions Code §17200 and Civil Code
11 §3439.04(a), plaintiffs and the other Class members are entitled to injunctive relief including setting aside
12 or annulling the collateral interest of defendant Morgan Stanley, and restitution by requiring all
13 defendants to repurchase sufficient U.S. Treasury Bonds to enable defendant SSTAI to pay to plaintiffs
14 and the other Class members the periodic and lump sum payments to which they are entitled pursuant to
15 the terms of the Assignment and Assumption Agreements.
16
17 142. At all times mentioned herein, defendant Morgan Stanley, Bankers Trust, MLSS, SSTAI,
18 Pardee, Bradley, Sr., Bradley, Jr., NAB, CPS, Reunion, Bellevue, PFSI and Does 20 through 30,
19 inclusive, knew that plaintiffs' and the other Class members' payments could only be satisfied from the
20 income and principal of the U.S. Treasury Bonds. Notwithstanding this knowledge, said defendants
21 willfully, fraudulently, and maliciously conspired together to do the acts herein alleged to defraud and
22 oppress plaintiffs and the other Class members who entered into Assignment and Assumption
23 Agreements funded by U.S. Treasury Bonds. Plaintiffs and the other Class members are therefore entitled
24 to exemplary and punitive damages from all defendants according to proof at the time of trial.
25
26 **ELEVENTH CAUSE OF ACTION**
27 **(Against MLSS and Merrill Lynchfor Unfair Competition)**
28 143. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if
fully set forth herein.

144. The defendants' representations to consumers that they were affiliated with Merrill Lynch, and that the affiliation further assured that plaintiffs and the other members of the Class would receive their structured settlement payments as set forth in the Assignment and Assumption Agreements, as fully described above, were unlawfully unfair, a fraudulent business practice as defined in section 17200 of the Business and Professions Code, and also constituted misleading advertising under sections 17200 and 17500, commonly known as the Unfair Competition Law.

145. Plaintiffs and the members of the Class are entitled to equitable and injunctive relief as a consequence of defendants' unfair competition, including restitution.

TWELFTH CAUSE OF ACTION

(Against Merrill Lynch; Bank of America; Wells Fargo; Stanwich, d/b/a/ SSTAI; Charles E. Bradley, Sr.; Charles E. Bradley, Jr.; MLSS; Jonathan H. Pardee; SSI; MLSSI; Bankers Trust Company of New York; U.S. Trust Co.; U.S. Trust Co. Of New York; Morgan Stanley Dean Witter & Co. For Unfair Competition and Violation of Business & Professional Code Section 17200)

146. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

147. By their wrongful conduct as set forth above, defendants, and each of them, engaged in an unlawful business act or unlawful business practices in violation of California Business & Professions Code Section 17200 *et seq*.

148. By their wrongful conduct as set forth above, defendants, and each of them, engaged in an unfair business act or unfair business practices in violation of California Business & Professions Code Section 17200 *et seq*.

149. By their wrongful conduct as set forth above, defendants, and each of them, engaged in a deceptive business act or deceptive business practices in violation of California Business & Professions Code Section 17200 *et seq*.

150. Pursuant to California Business & Professions Code Section 17203, plaintiffs and the members of the Class, on behalf of themselves and on behalf of the public, seek an order of this Court enjoining the defendants, and each of them, from continuing their unfair, unlawful and/or deceptive business act or practices in the State of California. The public, the plaintiffs and the members of the Class will be irreparably harmed if such an order is not granted.

151. Further, pursuant to California Business & Professions Code Section 17203, plaintiffs and the members of the Class, on behalf of themselves and on behalf of the public, seek restitution and disgorgement of the revenue collected and/or profits realized by defendants, and each of them, as a result of the unfair, unlawful, and/or deceptive business act or practices.

THIRTEENTH CAUSE OF ACTION

(Against Merrill Lynch, Bank of America, Wells Fargo, U.S. Trust Co., U.S. Trust N.Y., and Bankers Trust for Negligence)

152. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

153. Defendants, Bank of America, Wells Fargo, U.S. Trust Co., U.S. Trust N.Y. and Bankers Trust owed plaintiffs and the members of the Class a duty of care in the manner in which they discharged their duties as trustees, and Merrill Lynch had a duty of due care as Trustor of the Trusts, and in the disclosures they made.

154. Defendants Bank of America, Wells Fargo, U.S. Trust Co., U.S. Trust N.Y., and Bankers Trust owed plaintiffs and the members of the Class a duty of care in the manner in which they discharged their duties and in the disclosures they made. In light of the purpose of the structured settlement agreements, the dependent position of plaintiffs and the members of the Class and the protective role they voluntarily agreed to assume, among other factors, a duty of care arose on the part of these defendants to safeguard the assets in their possession or control. Such duty exists in light of the circumstances alleged above and considering the following criteria: *(1)* the extent to which the transaction was intended to affect the plaintiffs, *(2)* the foreseeability of harm to the plaintiffs, *(3)* the degree of certainty that the plaintiffs suffered injury, *(4)* the closeness of the connection between the defendant's conduct and the injury suffered, *(5)* the moral blame attached to the defendant's conduct and *(6)* the policy of preventing future harm.

155. Defendants breached their duty of case in the manner alleged herein.

156. The plaintiffs and the other members of the Class have been damaged by not receiving their periodic and/or lump sum payments, the amounts of which are readily ascertainable and will be proved at the time of trial as they are set forth on the face of the agreements.

FOURTEENTH CAUSE OF ACTION

(Against Merrill Lynch, MLSS, MLSSI, Stanwich, Bank of America, Wells Fargo, U.S. Trust, and Bankers Trust for Breach of Fiduciary Duty)

157. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

158. Defendants owe the plaintiffs and the other members of the Class fiduciary duties. The duties arise as a result of both the special degree of trust and confidence that the plaintiffs and the members of the Class, many of them senior citizens and disabled individuals, necessarily placed upon the defendants and because plaintiffs are the intended beneficiary of the Master Trust Agreements. The fundamental responsibility with which the defendants were entrusted by the plaintiffs and the members of the Class was to safely manage and administer the pool U.S. Treasury Bonds that would fund the payments upon which the plaintiffs and the members of the Class depend for their basic maintenance and continuing healthcare needs.

159. Moreover, the trust was established to ensure that plaintiffs would receive their settlement payments without incurring any tax liability. United States Code, Title 26, Section 130, grants trusts holding qualified assets, either annuities or treasury bonds, tax advantages. Defendants, as Trustees, owed the plaintiffs and other members of the Class a duty to ensure that the trust's tax free status not be jeopardized.

160. The sole purpose of the entire structured settlements program was to ensure that the basic maintenance and healthcare needs of the plaintiffs were met. The program was not designed, for instance, so that Morgan Stanley could obtain security for the loans it made to otherwise unworthy borrowers or so that the Bradleys could keep their family businesses afloat longer. The program was also and especially not designed so that Merrill Lynch could build a structured settlements business using its good name and reputation to lure customers to sign on to its program, only to later sell it to unscrupulous individuals without as much as a word about it to the hundreds of elderly and incapacitated individuals who relied on Merrill Lynch's reputation and standing in deciding to participate in the program. Nevertheless, all of this and much more happened.

161. The defendants breached the trust and confidence that were placed upon them by acting in their own self-interest and to the very substantial detriment of and damage to those who entrusted them

with many of their basic and fundamental life needs. As a direct and proximate result of their breaches of fiduciary duty, the U.S. Treasury Bonds that were supposed to provide for the life and healthcare needs of the plaintiffs and the members of the Class have been looted and there is no money in the trusts with which to make the payments on which the plaintiffs and the members of the Class depend.

162. The defendants further breached the trust and confidence that were placed upon them by acting in their own self-interest and jeopardizing the tax free nature of the trust.

163. The plaintiffs and the members of the Class, as a proximate result of the aforementioned wrongful conduct of Defendants, have been damaged by not receiving their periodic and/or lump sum payments, the amounts of which are readily ascertainable and will be proved at the time of trial as they are set forth on the face of the agreements.

164. The aforementioned acts of Defendants, and each of them, were done maliciously, oppressively, and/or with the intent to defraud, and plaintiffs and the Class are entitled to punitive and exemplary damages in an amount to determined according to the proof at the time of trial.

FIFTEENTH CAUSE OF ACTION

(Against Pardee, Charles E. Bradley, Sr., Charles E. Bradley, Jr., Morgan Stanley, Bear Stearns, SSI, CPS, NAB, and Reunion for Knowing Participation in Breach of Fiduciary Duty)

165. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

166. Defendants Pardee, Charles E. Bradley, Sr., Charles E. Bradley, Jr., Morgan Stanley, Bear Stearns, CPS, NAB, and Reunion knew that the sole purpose of the entire structured settlements program was to Guaranty the payments to the plaintiffs and the other members of the Class in order to ensure that their basic maintenance and healthcare needs were met. The defendants also knew that the U.S. Treasury Bonds being held in trust, along with proceeds of those bonds, were only to be used by the fiduciaries who assumed the responsibility to manage and administer the program to make the required payments to the plaintiffs and the other members of the Class.

167. Despite knowing that by doing so they were aiding and abetting a breach of duty by the fiduciaries, the defendants conspired with the fiduciary defendants to cause the U.S. Treasury Bonds to be used for purposes other than the making of required payments to the plaintiffs and the members of the

Class, as previously described in detail. As a direct and proximate result of the defendants' knowing participation in the breaches of fiduciary duty, the U.S. Treasury Bonds that were supposed to provide for the life and healthcare needs of the plaintiffs and the members of the Class have been looted and there is no money in the trusts with which to make the payments on which the plaintiffs and the members of the Class depend.

168. The plaintiffs and the other members of the Class have been damaged by not receiving their periodic and/or lump sum payments, the amounts of which are readily ascertainable and will be proved at the time of trial as they are set forth on the face of the agreements.

169. The conduct of Defendants Merrill Lynch, MLSSI,, MLSS, Pardee, Stanwich, Bradley, Sr., and Bradley, Jr., was despicable conduct and subjected plaintiffs and the other members of the Class to cruel and unjust hardship and conscious disregard of plaintiffs' and the Class' rights so as to justify an award of exemplary and punitive damages.

SIXTEENTH CAUSE OF ACTION

(Against Merrill Lynch, MLSSI, MLSS, Bank of America, Wells Fargo, U.S. Trust Co., U.S. Trust N.Y., Bankers Trust, Pardee, Stanwich, Bradley, Sr., and Bradley, Jr., for Breach of the Implied Covenant of Good Faith and Fair Dealing)

170. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

171. Implied in the Assignment Agreements entered into between plaintiffs and the other Class members and defendants MLSS and Merrill Lynch, and SSTAI was a covenant of good faith and fair dealing that neither party to the Assignment and Assumption Agreement would do anything to deprive the other of the benefits of the Agreement.

172. Defendants MLSSI, MLSS, and Merrill Lynch, breached the duty of good faith and fair dealing due and owing to plaintiffs and the other members of the Class by allowing the United States Treasury bonds, the corpus of the Trust, to be dissipated, removed, or lost, thus causing plaintiffs and the other members of the Class to sustain damages by not timely receiving the payment due and owing on November 15, 2000 and by calling into question the ability of plaintiffs and the other members of the Class to receive subsequent payments.

173. As a direct and legal result of the breach of the implied covenant of good faith and fair dealing, plaintiffs and the other members of the Class have sustained damages in a sum according to proof.

SEVENTEENTH CAUSE OF ACTION

(Against SSI for Negligence)

174. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

175. Prior to February, 1993, Laugharn owned fifty percent of both SSI and MLSS and Pardee owned the remaining fifty percent of both SSI and MLSS. Defendants SSI and MLSS operated together to jointly market and administer the structured settlements which had been originated by IBAR, Inc. and MLSS. Defendants SSI and MLSS alone had knowledge of Pardee's business plans to change the nature of the trusts to allow MLSS to utilize the treasury bonds as collateral for loans. By virtue of its knowledge of the business plans to Pardee to change the trusts to allow the treasury bonds to be utilized as collateral for loans, defendant SSI had a duty to disclose to the Class members the general nature of Pardee's plans for MLSS.

176. Plaintiffs are informed and believe that in February of 1993, Laugharn and Pardee agreed to split the business of MLSS so that SSI, which would be solely owned and operated by Laugharn, would market structured settlements in the Western United States, and MLSS, which would be solely owned and operated by Pardee, would market structured settlements in the Northeastern United States. After the separation of the business in February of 1993, defendant SSI retained some of the treasury bond trusts, and negligently allowed Pardee to take over MLSS which retained the majority of the treasury bond trusts without disclosing to plaintiffs and the other Class members the nature of Pardee's plans to change that trust instruments retained by MLSS to allow borrowing against the treasury bonds retained by the trusts.

177. Defendant SSI breached its duty to disclose to plaintiffs and the other Class members the business of defendant Pardee for the continued administration of the structured settlements.

178. Plaintiffs and the other members of the Class have been damaged by not receiving their periodic and/or lump sum payments, the amounts of which readily ascertainable and will be proved at the time of trial.

EIGHTEENTH CAUSE OF ACTION

(Against Merrill Lynch for Breach of Fiduciary Duty)

179. Plaintiffs incorporate by reference and reallege paragraphs 1 through 80, and paragraphs 145 through 150, above, as if fully set forth herein.

180. Defendant Merrill Lynch specifically solicited other Class members who entered into Assignment and Assumption Agreements with defendant MLSS and ML Settlement Services to do so based on trust and confidence in Merrill Lynch itself and not just in MLSS. Defendant Merrill Lynch encouraged Class members to repose trust and confidence in Merrill Lynch by, inter alia, authorizing the distribution of a marketing brochure to Class members who entered into Assignment and Assumption Agreements with MLSS and ML Settlement Services which stated that:

"At the same time, the respected name of Merrill Lynch inspires the **confidence** of plaintiffs and their counsel."

"Plaintiffs are far more likely to agree to the transfer of liability if they know the promise of future payments is funded with annuities issued by highly rated insurance companies or United States obligations and is made by an affiliate of Merrill Lynch, a name they know and **trust.**" (Emphasis added.)

181. A true and correct copy of a marketing brochure distributed by Merrill Lynch in 1984 is attached hereto as Exhibit "F". A fiduciary or a confidential relationship existed between Merrill Lynch and the Class members who entered into Assignment and Assumption Agreements with MLSS and ML Settlement Services during the time period that Merrill Lynch was a direct or indirect shareholder of MLSS based on defendant Merrill Lynch express representations in the marketing brochure to the Class members that they could repose trust and confidence in Merrill Lynch.

182. A fiduciary or a confidential relationship existed between Merrill Lynch and the Class members who entered into Assignment and Assumption Agreements with MLSS and ML Settlement Services during the time period that Merrill Lynch was a direct or indirect shareholder of MLSS based on

defendant Merrill Lynch express representations in the marketing brochure to the Class members that they could repose trust and confidence in Merrill Lynch.

183. Defendant Merrill Lynch breached its fiduciary duty when it sold its interest in defendant MLSS to Laugharn and Pardee without conducting any due diligence as to the business background of Pardee. Plaintiffs are informed and believe that at the time Merrill Lynch transferred its remaining shares of MLSS, it knew that defendant Pardee had already acquired one-half of Laugharn's shares in MLSS, and that when it transferred its remaining shares that defendant Pardee would then own one-half of all the outstanding shares of MLSS. Plaintiffs are further informed and believe that had defendant Merrill Lynch conducted a reasonable investigation into the business background and future business plans of defendant Pardee for MLSS when it transferred the shares in MLSS to Pardee it would have learned that Pardee had an unsavory business reputation and should not to be trusted with equal control of a company which was the sole trustor and beneficiary of the trust which held the treasury bonds. The Class members who reposed trust and confidence in Merrill Lynch were third-party beneficiaries of the trusts over which Pardee would obtain control.

184. Defendant Merrill Lynch breached its fiduciary duty to plaintiffs and the other Class members who reposed trust and confidence in Merrill Lynch by failing to conduct a reasonable investigation into the business reputation and character of defendant Pardee prior to agreeing to sell its remaining share in MLSS to Pardee, and in failing to disclose to the Class members that it was selling a portion of its remaining stock in MLSS to an individual whose business background it had not investigated, and who would have equal control of MLSS.

185. Plaintiffs and the Class members to whom Merrill Lynch owed a fiduciary duty were harmed by the breach of fiduciary duty in that the treasury bonds on which they relied for their periodic and lump sum payments have been sold, and they have suffered damages in an amount to be proved at trial.

186. In breaching its fiduciary duty to plaintiffs and the other Class members who reposed trust and confidence in Merrill Lynch, Merrill Lynch acted with malice and/or oppressive conscious disregard for the rights of the Class members, who are therefore entitled to an award of punitive damages.

NINETEENTH CAUSE OF ACTION

(Against Pardee and Bear Stearns for Unjust Enrichment)

187. Plaintiffs incorporate by reference and realleges paragraphs 1 through 80, above, as if fully set forth herein.

188. As a result of the wrongful acts of defendants, and each of them, defendants have been unjustly enriched at the expense of plaintiffs and the members of the Class, while plaintiffs and the Class have been unjustly deprived of the benefits of their Treasury Bond Trusts.

189. Defendants have been and will be unjustly enriched if allowed to retain funds and benefits, and therefore, a constructive trust should be imposed on all monies and benefits wrongfully obtained by defendants, and each of them.

190. Plaintiffs and the members of the Class seek restitution from defendants, and each of them, and seek an order of this Court disgorging all profits, benefits, and other compensation obtained by defendants from their wrongful conduct.

PRAYER

WHEREFORE, plaintiffs prays for judgment and relief as follows:

1. Certifying this action as a plaintiff class action, the plaintiffs as the representatives of the Class, and their counsel as Class counsel; Certifying this action as a plaintiff class action, the plaintiffs as the representatives of the Class, and their counsel as Class counsel;

2. Awarding the plaintiffs and the other members of the Class damages according to proof and prejudgment interest at the maximum legal rate;

3. Granting injunctive relief, including preliminary injunctive relief;

4. Awarding punitive damages based on the Second, Sixth, Tenth, Fourteenth, Fifteenth, and Eighteenth causes of action;

5. For a declaration that Bank of America, Wells Fargo, U.S. Trust Co.; and Bankers Trust owe an obligation to make continuing payments under the Guaranty Agreements executed or assumed by them;

6. For the imposition of a constructive trust against Pardee and Bear Stearns;

7. For restitution and disgorgement;

8. Awarding plaintiffs the costs and disbursements of this action, including reasonable attorneys' pursuant to C.C.P. § 1021.5 and experts' fees;

9. Awarding treble damages pursuant to Business and Professions Code § 17206.1 and Civil Code § 3345 for Class members who are elderly or disabled as defined in Civil Code § 1761, subdivision (f) and (g); and

10. Granting such other and further relief as this Court deems to be just and proper.

DATED: April ____, 2001

FOLEY & BEZEK, LLP

By: ___________________________
THOMAS G. FOLEY, JR.
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