

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

<p>CITY OF ST. CLAIR SHORES GENERAL EMPLOYEES RETIREMENT SYSTEM and MADISON INVESTMENT TRUST, On behalf of Itself and All Others Similarly Situated, and Derivatively On behalf of Inland Western Retail Real Estate Trust, Inc., Plaintiffs,</p> <p>v.</p> <p>INLAND WESTERN RETAIL REAL ESTATE TRUST, INC., INLAND REAL ESTATE INVESTMENT CORPORATION; THE INLAND GROUP, INC., INLAND WESTERN RETAIL REAL ESTATE ADVISORY SERVICES, INC., INLAND SOUTHWEST MANAGEMENT CORP., INLAND NORTHWEST MANAGEMENT CORP., INLAND WESTERN MANAGEMENT CORP., ROBERT D. PARKS, BRENDA G. GUJRAL, FRANK A. CATALANO, JR., KENNETH H. BEARD, PAUL R. GAUVREAU, GERALD M. GORSKI, BARBARA A. MURPHY, STEVEN P. GRIMES, DANIEL L. GOODWIN, ROBERT H. BAUM, G. JOSEPH COSENZA, KPMG LLP, AND WILLIAM BLAIR & COMPANY, L.L.C., Defendants.</p>	<p>Case No. 07 C 6174 Judge Robert W. Gettleman</p>
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**DECLARATION OF KIMBERLY M. DONALDSON IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, CONDITIONAL
CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF NOTICE PLAN, AND
SETTING OF SETTLEMENT HEARING**

1. I, Kimberly M. Donaldson, am a partner of the firm of Chimicles & Tikellis LLP one of the Court-appointed Lead Counsel in this Action, and I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Settlement, Conditional Certification of the Settlement Class, Approval of Notice Plan, and Setting of Settlement Hearing.

2. I am admitted to practice in the Commonwealth of Pennsylvania and before a variety of federal courts. I have been admitted *pro hac vice* in connection with the above captioned action.

BACKGROUND

3. The June 12, 2008 Amended Complaint alleged that the Proxy contained materially false and misleading statements in violation of Sections 14(a) and 20(a) of the Exchange Act. ("Proxy Claims").

4. The Proxy Claims were based, *inter alia*, on the following allegations:

- i. The Advisor and Property Managers historically understated and underreported expenses which resulted in an overvaluation of the Advisor and Property Managers and excessive Internalization Consideration;
- ii. Inland Western REIT historically overpaid fees to the Property Managers, which resulted in an overvaluation of the Advisor and Property Managers and excessive Internalization Consideration;
- iii. The Proxy failed to disclose material information about the fairness of the Internalization;
- iv. The Proxy included a false and misleading opinion about the Internalization prepared by William Blair; and
- v. The Advisor's and Property Managers' financial statements, which were audited by Defendant KPMG, were false and misleading.

5. In addition, on behalf of the Company's Shareholders, the Amended Complaint contained direct claims against certain Defendants for breach of fiduciary duty and aiding and abetting breaches of fiduciary duties ("Direct BOFD Claims").

6. On behalf of Inland Western REIT, the Amended Complaint contained derivative claims against certain Defendants for breach of fiduciary duty, breach of contract and unjust enrichment ("Derivative BOFD Claims").

7. The Direct and Derivative BOFD Claims were based on allegations that certain defendants failed to supervise the related-party and non-arms length agreements between the Company and the Advisor and Property Managers, and defendants agreed to the Internalization to the detriment of the Shareholders and Company. The Derivative BOFD Claims were also based on allegations that certain defendants breached the terms of their contracts with the Company by overcharging Inland Western REIT for the fees paid to the Property Managers.

8. In a March 31, 2009 opinion and order, the Court granted in part and denied in part Defendants' Motions to Dismiss. The Court dismissed the Derivative BOFD Claims, holding that Plaintiffs did not have standing to prosecute a derivative claim because Plaintiffs could not demonstrate that it would have been futile to demand that the Company's board of directors take action to remedy the alleged wrongdoing. The Court also dismissed the Direct BOFD Claims, holding that those claims were derivative claims belonging to the Company, and, therefore, Plaintiffs did not have standing to prosecute them. As to the Proxy Claims, the Court dismissed certain of the allegations, but held that the Amended Complaint alleged viable federal securities law claims against all Defendants for their failure to disclose material information in the Proxy.

9. On May 1, 2009, Plaintiffs filed the Second Amended Complaint. The Second Amended Complaint sought damages and injunctive relief on behalf of a proposed class of Inland Western REIT's shareholders who were entitled to vote on the matters that were the subject of the Proxy and who suffered harm as a result. The Second Amended Complaint alleges that that Proxy was materially false and misleading because, among other things:

- i. The Advisor's and Property Managers' operations and profitability were inflated. Their financial statements: (a) understated their expenses; and (b) overstated the fees paid by Inland Western REIT to the Property Managers. These material misstatements resulted in an overvaluation of the Advisor and Property Managers in the Internalization;
- ii. It misrepresented that the Internalization was fair, and that opinion by William Blair was misleadingly based on inflated financial statements and unsound methodologies;
- iii. It misrepresented and inflated the amounts that Inland Western REIT would have had to pay to acquire the Advisor and Property Managers based on "Purchase Option Formulas" that were part of its contracts with the Advisor and Property Managers.
- iv. KPMG's independent auditors' reports falsely opined that the Advisor and Property Managers' financial statements were presented fairly and were in conformity with Generally Accepted Accounting Principles ("GAAP") and Generally Accepted Auditing Standards ("GAAS");
- v. It omitted information about alternatives to the Internalization and the potential negative impact of the Internalization.

10. On May 29, 2009, Defendants moved to dismiss the Second Amended Complaint, and on June 4, 2009, the Court denied the motion. Defendants answered to the Second Amended Complaint on July 2, 2009, which answers included several affirmative defenses. For example, Defendants asserted that: (a) Plaintiffs lack standing and have no valid Section 14(a) claim because they were aware of the alleged false statements and omissions in the Proxy prior to the stockholder vote; (b) None of the alleged misstatements or omissions was untrue or misleading at the time the Proxy Statement was issued or at the time shareholders voted on the matters

presented therein; (c) Any alleged misstatements or omissions were immaterial to the voting decisions of reasonable shareholders; (d) Plaintiffs' claims are barred by plaintiffs' failure to mitigate damages or seek the appropriate remedy at the appropriate time; (e) Plaintiffs suffered no damages or actual losses; and (f) Plaintiffs' claims are barred to the extent that Defendants acted in good faith and did not directly or indirectly induce the act or acts constituting the violation of the cause of action.

11. Co-Lead Counsel's and Co-Lead Plaintiffs' investigation of the claims commenced before the filing of the Initial Complaint and involved, among other things, working with several experts and consultants:

- a. From the inception of the investigation, Co-Lead Counsel worked with: a forensic financial expert highly experienced in evaluating complex transactions in the real estate industry such as the Internalization; a business valuation expert; a commercial real estate expert; and, forensic accountants.
- b. In this connection, Co-Lead Counsel and their experts accessed and analyzed thousands of pages of filings made by IWEST with the SEC, as well as other publicly-available information relating to the non-traded REIT industry, Internalization-type transactions and IWEST's business.
- c. This information, among other things, was utilized in forming the allegations and claims asserted in the Initial and Amended Complaints filed in this Action, and utilized in opposing Defendants' Motions to Dismiss.

12. Although formal discovery was stayed while the motions to dismiss the Amended Complaint were pending and under consideration by the Court, Co-Lead Counsel continued to

actively monitor and analyze all matters relating to IWEST that were publicly available and that impacted IWEST and the asserted claims.

13. Following the filing of the Operative Complaint and Defendants' Answers, Co-Lead Counsel commenced a significant amount of discovery in summer 2009. Defendants propounded discovery – in the form of document requests and interrogatories – from the Co-Lead Plaintiffs. Co-Lead Plaintiffs sought a significant amount of discovery - in the form of documents requests and interrogatories – from all Defendants.

14. Co-Lead Plaintiffs also sought the production of documents from numerous third parties, including: Silver Portal Capital (financial advisors to the Advisor and Property Managers), Hewitt Associates LLC (retained by Special Committee to assist in its review of executive compensation in connection with the proposed internalization transaction), Morrow & Company, Inc. (proxy solicitor, called stockholders who had not yet voted), Wolf & Company LLC (auditor of the financial statements of the Property Managers prior to the Internalization), Duane Morris LLP (Counsel for Inland REIT), Sidley Austin LLP (Counsel for Special Committee), Jenner & Block LLP (Counsel for the Advisors and Property Managers), and Inland American Holdco (Identified in Defendants' Initial Disclosures as having information relating to the operations, procedures and financial statements of the Property Managers and IWEST).

15. Plaintiffs received and reviewed thousands of pages of documents from Defendants and these third parties.

16. Throughout the mediation and settlement negotiation process, Co-Lead Counsel conducted discovery, including receiving and analyzing substantial numbers of documents. In addition, Co-Lead Counsel conducted in-depth interviews of several key witnesses: Mr.

Goodwin, Mr. Grimes, Mr. Gauvreau (chair of the Special Committee), Phillip Reitz, a representative of William Blair, and Ray Milnes, a representative of KPMG.

17. In November 2009, the parties agreed to proceed with a non-binding mediation. The parties agreed to use Jonathan Marks of MarksADR, LLC (“Mediator”), who has 29 years experience as a mediator and who has presided over numerous mediations involving federal securities claims. In early January 2010, counsel for the parties met in Chicago, Illinois, with the Mediator. Extensive factual and legal written and oral presentations were exchanged between the parties advocating their respective positions on liability and damages issues. The intensive mediation effort continued through frequent teleconferences with the Mediator and among the parties’ counsel. At times throughout the mediation process it appeared that the parties would not be able to reach an agreement on the terms of an acceptable settlement. After several months of at times contentious negotiations, on July 14, 2010, the parties entered into the Stipulation of Settlement.

STIPULATION OF SETTLEMENT

18. The Stipulation of Settlement (Exhibit 1 to the Memorandum) provides for the return of 9,000,000 IWEST shares (“Settlement Shares”) from the portion of the Internalization Consideration that was being held in an escrow account pursuant to an Escrow Agreement between IWEST and IREIC.

19. In addition, KPMG LLP is paying the reasonable costs and expenses relating to Class Notice and Summary Notice up to \$150,000.

20. Furthermore, IWEST shall cause to be paid on behalf of the Settlement Class (described below), a fee award to Co-Lead Counsel in the amount awarded by the Court, but not to exceed \$10,000,000, inclusive of expenses and costs. The Stipulation provides that the failure

of the Court to approve Co-Lead Counsel's fee application shall not relieve the parties of their respective obligations set out in the Stipulation of Settlement.

21. In addition, the Stipulation of Settlement provides the parties agree to seek certification of the following Settlement Class under Fed. R. Civ. P. ("Rule") 23(b)(2) and 23(b)(3):

Shareholders of IWEST, and their parents, subsidiaries, affiliates, predecessors, successors, heirs, legatees, beneficiaries, trustees, personal representatives, and assigns, who were shareholders of record as of the close of business on August 31, 2007 and entitled to vote on the matters that were the subject of the Schedule 14A proxy statement that was filed with the SEC by IWEST on September 10, 2007, pursuant to Section 14(a) of the Securities Exchange Act of 1934, as amended or supplemented on October 10, October 12, and November 9, 2007.

22. Excluded from the Settlement Class are the Defendants, officers and directors of Defendants, members of each individual Defendants' immediate family, any entity in which any Defendant has a controlling interest, and the legal affiliates, representatives, heirs, beneficiaries, trustees, personal representatives, controlling persons, successors or predecessors in interest or assigns of any such excluded person or entity.

23. Co-Lead Plaintiffs and the Settlement Class, under the terms of the Stipulation of Settlement, will release all Settled Equitable Claims and all Settled Legal Claims as against each of the Released Persons.

24. In settling the Settled Equitable Claims, pursuant to Rule 23(b)(2), members of the Settlement Class will have no right to be excluded. In settling the Settled Legal Claims, pursuant to Rule 23(b)(3), members of the Settlement Class shall be given notice (by means of the Class Notice) and opportunity to request exclusion from the Settlement Class with respect to, and only with respect to, the Settled Legal Claims. The Stipulation defines Settled Equitable Claims and Settled Legal Claims as follows:

- i. "Settled Equitable Claims" means any and all claims, duties, obligations, demands, actions, causes of action, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of whatever kind, nature, character, or description for equitable relief, whether arising in tort, contract, or otherwise, whether known or Unknown Claims, whether anticipated or unanticipated, whether or not matured, accrued, or ripe, or whether or not alleged in the Action, based upon, related to, or arise out of in whole or in part (i) the Proxy, including all independent auditors' reports contained therein; (ii) the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Action; or (iii) any count or allegation contained in any complaint in the Action by any of the Co-Lead Plaintiffs against any one or more of the Released Persons through the date when Judgment is entered dismissing the action with prejudice.
- ii. "Settled Legal Claims" means any and all claims, duties, obligations, demands, actions, causes of action, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of whatever kind, nature, character, or description for legal relief, whether arising in tort, contract, or otherwise, whether known or Unknown Claims, whether anticipated or unanticipated, whether or not matured, accrued, or ripe, or whether or not alleged in the Action, based upon, related to, or arise out of in whole or in part (i) the Proxy, including all independent auditors' reports contained therein; (ii) the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Action; or (iii) any count or allegation contained in any complaint in the Action by any of the Co-Lead Plaintiffs against any one or more of the Released Persons through the date when Judgment is entered dismissing the action with prejudice.

25. Section 8 of the Stipulation of Settlement includes the following Denial Of Liability by Defendants.

Defendants have denied and continue to deny that they have committed any act or omission giving rise to any liability and/or any violation of law or any act of negligence or misconduct, and state they are entering into the Stipulation of Settlement to eliminate the burden and expense of further litigation. Further, by entering into this Stipulation of Settlement, Defendants do not admit any fault or liability with respect to any claim of wrongdoing or damage whatsoever or any infirmity in the defenses asserted by the Defendants.

SUMMARY ASSESSMENT OF CASE MEASURED AGAINST THE SETTLEMENT

26. Co-Lead Plaintiffs believe they have a strong case on the merits. Plaintiffs believe that the evidence uncovered as a result of discovery and their independent investigation would establish at trial that all Defendants solicited IWEST shareholder votes to ratify the Internalization pursuant to a materially false and misleading proxy solicitation in violation of the Exchange Act.

27. Plaintiffs' evidence would show that, among other things, the Proxy, including the financial statements and opinions provided by William Blair and KPMG, misrepresented the fairness of implementing the Internalization for 37.5 million shares of IWEST stock.

28. While Plaintiffs believe in the strength of their case, they must realistically acknowledge that the case could be lost. This case also presented many other risks and uncertainties relating to liability and damages and potential relief. Moreover, the proposed Settlement makes final decision on several disputed factual and legal issues unnecessary. For example:

29. *Misleading and Inflated Financial Statements of the Advisor and Property Managers:*

a. Plaintiffs alleged that the Proxy included false and misleading financial statements of the Advisor and Property Managers that overstated their profitability and value by understating their expenses. In response, Defendants asserted that not only were the financial statements prepared in accordance with GAAP, but also they were not misleading because the Proxy clearly stated and explained that the Advisor and Property Managers were fully reimbursed by IWEST for their expenses. Moreover, Defendants point specifically to language in the Proxy and financial

statements and assert that it put IWEST shareholders on notice about the nature of the related party relationships and the entities' expenses: "[i]n the opinion of management, the aforementioned administrative costs and rent are believed to be reasonable; however, it is not necessarily indicative of the expense the [Advisor] may have incurred on its own account." At trial, a fact finder could determine that the financial statements were not materially misleading because they complied with GAAP and included this cautionary disclosure.

b. Plaintiffs also alleged that the Property Manager's financial statements overstated their profitability and value by reporting fees to which the Property Managers were not contractually entitled to because they were not "market fees." Reading all of the Company documents that address the Property Management fee, the fact finder at trial could conclude that language of the Property Management Agreement, which provides that the Property Managers can charge up to 4.5% - which is what IWEST paid- controls. And, as to whether or not those fees IWEST paid were comparable to fees paid in arms-length transactions by other real estate companies for property management services, a fact finder could conclude that the fees were comparable to "market fees." This latter assessment would hinge upon the competing testimony of industry experts.

30. *Purchase Option Formulas:* Plaintiffs alleged that the Proxy falsely represented that IWEST would have had to pay over \$541 million for the Advisor and Property Managers under the contractually provided for "Purchase Option Formulas." Plaintiffs alleged that these amounts were overstated and inflated to make the \$375 million Internalization Consideration

appear reasonable and fair. In order for Plaintiffs to prevail on this claim, Plaintiffs would need to prove first that the financial statements were inflated (discussed in Paragraph 29).

31. *Strategic Alternatives.* Plaintiffs alleged that the Proxy failed to give shareholders meaningful reasons for the Internalization and whether it would be in their best interest if some exit strategy other than an Internalization and subsequent listing of the shares on a national stock exchange were pursued (such as a buyout of the shareholders' interests or a liquidation of the Company). The Defendants point to language in the Proxy that discussed the possible business alternatives that were considered by the Special Committee.

32. *William Blair & KPMG:* These Defendants have asserted that the PSLRA requires that in order for them to be held liable under the federal securities law, Plaintiffs must meet a heightened burden of proof, and demonstrate that their opinions alleged to have been misleading, were both objectively and subjectively false. This is a difficult burden of proof to meet, and if not met, these Defendants would have been dismissed from the Action.

33. *Relief and Damages:* Defendants claim that Plaintiffs will be unable to show they suffered any damages as a result of the Internalization.

a. Defendants have offered evidence that IWEST has benefitted from the Internalization. Defendants also assert that the Advisor's financial statements do not reflect *all* of the fees the Advisor were entitled to because the Advisor forewent \$110 Million in fees.

b. In addition, under the facts and circumstances of this Action, one way to determine the maximum amount of monetary damages would be to calculate the amount the REIT would pay for the Internalization under the contractually provided for Purchase Option Formulas, adjusting the revenue and

income amounts used in the Formulas to comport with the SAC's allegations that these amounts were inflated. Employing this method, Plaintiffs estimate that the Purchase Option Formulas would yield for the Advisor and Property Managers at least 12.21 million IWEST shares. In light of that, even if Plaintiffs were successful at trial on all of their claims, a jury could conclude that the maximum amount of recoverable damages was approximately 25 million IWEST shares. The Stipulation, which provides for the return of 9 million shares, represents a 35% recovery of this estimated maximum amount of recoverable damages, as calculated by the Plaintiffs for purposes of this Motion.

34. The Settlement will have the effect of reducing the Internalization Consideration from 37.5 million shares to 28.5 million shares. This significant reduction in the Internalization Consideration benefits IWEST and its shareholders, in addition to reducing the dilutive impact on the shareholders resulting from the Internalization.

35. Moreover, the Settlement will have the effect of reducing the net amount that Inland Western REIT paid in Internalization Consideration from 37.5 million shares to 28.5 million shares. Based on the approximately 451 million shares outstanding pre-Internalization, this differential equates to an equity enhancement of approximately \$.20 per share, as of the time of the Internalization.

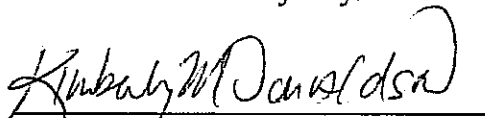
36. Co-Lead Counsel estimates the value of the Settlement Shares to be \$90,000,000, using the \$10.00 value used by IWEST to calculate the Internalization Consideration. Changes in IWEST's reported share values for Employee Retirement Income Security Act purposes (which share values were \$8.50 as of December 31, 2008 and \$6.85 as of December 31, 2009) have occurred since the Internalization.

37. The Stipulation provides that Defendants will not oppose Co-Lead Counsel's seeking from the Court an award of attorneys' fees and expenses of up to \$10 million, to be paid by IWEST. Co-Lead Counsel expect, by the time of the Settlement Hearing, that they will have incurred a lodestar of approximately \$4.5 million. Also, Co-Lead Counsel estimate that the litigation expenses in this Action will equal approximately \$800,000, exclusive of Class Notice expenses which are being paid by Defendants. An award of \$10 million in fees and expenses, inclusive, represents only 11% of the \$90,000,000 of value ascribed to the Settlement Shares (utilizing the share price used to calculate the Internalization Consideration). Moreover, Co-Lead Counsel expended and will continue to expend considerable time (approximately \$4.5 Million in lodestar) in litigating this Action. A fee application of \$9,200,000 (\$10 million less \$800,000 in expenses) would represent a multiplier of approximately two (2) times Co-Lead Counsel's lodestar, which is reasonable in light of the favorable results achieved at this stage of the Litigation.

38. In view of the foregoing, the Settlement, which represents the recovery of a substantial percentage of the Internalization Consideration -- 24% of Internalization Consideration paid or, alternatively, 35% of Plaintiffs' estimate of the maximum recoverable damages -- is fair, reasonable and should be preliminarily approved.

39. The Settlement was reached only after arms-length negotiations which were presided over by a widely respected Mediator with significant experience in mediating complex securities actions, and the Settlement is not the product of collusion in any way.

Dated: July 14, 2010



Kimberly M. Donaldson