

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

_____ individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

1
IMPERIAL HOLDINGS, INC., ANTONY 2
MITCHELL, RICHARD O'CONNELL JR.,
4 JEROME A. PARSLEY, JONATHAN 5
NEUMAN, DAVID A. BUZEN, FBR 7
95MS CAPITAL MARKETS & CO., JMP 7
SECURITIES LLC and WUNDERLICH 9
SECURITIES, INC.,

Defendants.

Case No. **2011CAO 15075 XXXXNB**

CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS

AD

CLASS REPRESENTATION

YK-4

FILED

SEP 29 2011

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

Plaintiff [REDACTED] ("Plaintiff") makes the following allegations, except as to allegations specifically pertaining to Plaintiff and Plaintiff's counsel, based upon the investigation undertaken by Plaintiff's counsel, which included analysis of publicly available news articles and reports, public filings, securities analysts' reports and advisories about Imperial Holdings, Inc. ("Imperial Holdings" or the "Company"), press releases and other public statements issued by the Company, and media reports about the Company and believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a securities class action on behalf of a class consisting of all persons, other than Defendants, who purchased the common stock of Imperial Holdings pursuant and/or traceable to the Company's initial public offering on or about February 7, 2011 (the "IPO" or the "Offering") through September 27, 2011, seeking to pursue remedies under the Securities Act of 1933 (the "Securities Act").

JURISDICTION AND VENUE

2. The claims asserted herein arise under §§11 and 15 of the Securities Act, 15 U.S.C. §77k and 77o.

3. Jurisdiction is conferred by §22 of the Securities Act, 15 U.S.C. §77v, and venue is proper pursuant to §22 of the Securities Act.

4. In connection with the IPO, Defendants used the instrumentalities of interstate commerce and the U.S. mail. Section 22 of the Securities Act explicitly states that "[t]he district courts of the United States . . . shall have jurisdiction . . . concurrent with State and Territorial courts" of actions filed under the Securities Act. The statute also states that "[e]xcept as provided in section 16(c), no case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court in the United States." Section 16(c) refers to "covered class actions,"

which are defined as lawsuits brought as class actions or brought on behalf of more than 50 persons asserting claims under state or common law. This is a class action asserting federal law claims. Thus, it does not fall within the definition of a "covered class action" under §16(c) and therefore is not removable to federal court under the Securities Litigation Uniform Standards Act of 1998. See *Zia v. Med. Staffing Network*, 336 F. Supp. 2d 1306, 1309 (S.D. Fla. 2004).

5. The violations of law complained of herein occurred in this county, including the dissemination of materially false and misleading statements complained of herein. Members of the Class (defined below) purchased or otherwise acquired Imperial Holdings common stock pursuant and/or traceable to the IPO in this county, and Imperial Holdings conducts business and is headquartered in this county.

PARTIES

6. Plaintiff purchased Imperial Holdings common stock, as set forth in his certification, pursuant and/or traceable to the IPO and was damaged thereby.

7. Defendant Imperial Holdings, through its subsidiaries, operates as a specialty finance company in the United States. It focuses on providing premium financing for individual life insurance policies issued by insurance companies and purchasing structured settlements. The Company was founded in 2006 and has its headquarters at 701 Park of Commerce Blvd., Suite 301, Boca Raton, Florida 33487.

8. (a) Defendant Antony Mitchell ("Mitchell") was, at all relevant times, Chief Executive Officer and a Director of Imperial Holdings. Defendant Mitchell signed the Registration Statement issued in connection with the IPO (defined below).

(b) Defendant Richard O'Connell Jr. ("O'Connell") was, at all relevant times, Chief Financial Officer and Chief Credit Officer of Imperial Holdings. Defendant O'Connell signed the Registration Statement issued in connection with the IPO.

(c) Defendant Jerome A. Parsley ("Parsley") was, at all relevant times, Director of Finance and Accounting of Imperial Holdings. Defendant Parsley signed the Registration Statement issued in connection with the IPO.

(d) Defendant Jonathan Neuman ("Neuman") was, at all relevant times, President, Chief Operating Officer and a Director of Imperial Holdings. Defendant Neuman signed the Registration Statement issued in connection with the IPO.

(e) Defendant David A. Buzen ("Buzen") was, at all relevant times, a Director of Imperial Holdings. Defendant Buzen signed the Registration Statement issued in connection with the IPO.

(f) The Defendants referenced in paragraphs (a)-(e) above are collectively referred to herein as the "Individual Defendants."

9. By reason of their management positions and their ability to make public statements in the name of Imperial Holdings, the Individual Defendants were and are controlling persons, and had the power and influence to cause (and did cause) Imperial Holdings to engage in the conduct complained of herein.

10. Defendants FBR Capital Markets & Co., JMP Securities LLC and Wunderlich Securities, Inc. (collectively, the "Underwriter Defendants") served as co-lead underwriters for the IPO.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

11. Plaintiff brings this action as a class action pursuant to Rule 1.220(a) and (b)(3) of the Florida Rules of Civil Procedure on behalf of a class consisting of all persons who purchased or otherwise acquired Imperial Holdings common stock pursuant and/or traceable to the IPO, and were damaged thereby (the "Class"). Excluded from the Class are Defendants, members of the immediate families of the Individual Defendants, any subsidiary or affiliate of Imperial Holdings and the

directors, officers and employees of Imperial Holdings or its subsidiaries or affiliates, or any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

12. The members of the Class are so numerous that joinder of all members is impracticable. Imperial Holdings sold more than 16.6 million shares of common stock in the IPO. The precise number of Class members is unknown to Plaintiff at this time but is believed to be in the thousands. In addition, the names and addresses of the Class members can be ascertained from the books and records of Imperial Holdings or its transfer agent or the underwriters to the IPO. Notice can be provided to such record owners by a combination of published notice and first-class mail, using techniques and a form of notice similar to those customarily used in class actions arising under the securities laws.

13. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained competent counsel experienced in class action litigation under the securities laws to further ensure such protection and intends to prosecute this action vigorously.

14. Plaintiff's claims are typical of the claims of the other members of the Class because Plaintiff's and all the Class members' damages arise from and were caused by the same false and misleading representations and omissions made by or chargeable to Defendants. Plaintiff does not have any interests antagonistic to, or in conflict with, the Class.

15. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to seek redress for the wrongful conduct alleged. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

16. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether §§11 and 15 of the Securities Act were violated as alleged herein;
- (b) whether the Registration Statement and Prospectus (defined below) issued by Defendants to the investing public in connection with the IPO negligently omitted and/or misrepresented material facts about Imperial Holdings and its business; and
- (c) the extent of injuries sustained by members of the Class and the appropriate measure of damages.

SUBSTANTIVE ALLEGATIONS

17. Defendant Imperial Holdings describes itself as a “specialty finance company with a focus on providing premium financing for individual life insurance policies issued by insurance companies.”

18. On or about February 7, 2011, Imperial Holdings filed with the Securities and Exchange Commission (“SEC”) a Form S-1/A Registration Statement (the “Registration Statement”) for the IPO.

19. On or about February 8, 2011, the Prospectus (the “Prospectus”) with respect to the IPO, which forms part of the Registration Statement, became effective and 16,666,667 shares of Imperial Holdings common stock were sold to the public at \$10.75 per share, thereby raising more than \$179 million.

20. The Registration Statement and Prospectus were negligently prepared and, as a result, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading and were not prepared in accordance with the rules and regulations governing their preparation.

21. Specifically, the Registration Statement and Prospectus failed to disclose that, at the time of the IPO, the Company had engaged in wrongdoing with respect to its life finance business. As a result of this wrongdoing, the Company and certain of its employees, including Defendants Mitchell and Neuman, are under investigation in the District of New Hampshire. Moreover, the FBI raided the Company's Boca Raton offices to gather evidence pursuant to a search warrant issued by the U.S. Attorney's Office in New Hampshire. On news of the raid, the New York Stock Exchange halted trading of Imperial Holdings shares on September 27, 2011.

22. The fact that the Company had engaged in wrongdoing with respect to its life finance business was a material fact because it substantially changed the risk profile for the Company and its business. Accordingly, the omitted facts would have been viewed by investors as substantially altering the total mix of information available to investors and were therefore required to be disclosed in the Registration Statement.

23. Imperial Holdings has two main business segments: (1) Life Finance or Premium Finance Transactions; and (2) Structured Settlements. The Registration Statement represented that the Company intended to use approximately \$130 million of the net proceeds to support its premium finance transactions.

24. According to the Registration Statement, a premium finance transaction is a "transaction in which a life insurance policyholder obtains a loan to pay insurance premiums for a fixed period of time, which allows a policyholder to maintain coverage without having to make premium payments during the term of the loan." The Company's typical premium finance loan is "approximately two years in duration and is collateralized by the underlying life insurance policy." Imperial Holdings "generate[s] revenue from [its] premium finance business in the form of agency fees from referring agents, interest income and origination fees[.]"

25. Imperial Holdings describes its "Structured Settlements" segment as follows:

Structured settlements refer to a contract between a plaintiff and defendant whereby the plaintiff agrees to settle a lawsuit (usually a personal injury, product liability or medical malpractice claim) in exchange for periodic payments over time. A defendant's payment obligation with respect to a structured settlement is usually assumed by a casualty insurance company. This payment obligation is then satisfied by the casualty insurer through the purchase of an annuity from a highly rated life insurance company which provides a high credit quality stream of payments to the plaintiff.

Recipients of structured settlements are permitted to sell their deferred payment streams pursuant to state statutes that require certain disclosures, notice to the obligors and state court approval. Through such sales, we purchase a certain number of fixed, scheduled future settlement payments on a discounted basis in exchange for a single lump sum payment, thereby serving the liquidity needs of structured settlement holders.

26. The Registration Statement positively described the Company's business, in pertinent part, as follows:

We are a specialty finance company with a focus on providing premium financing for individual life insurance policies and purchasing structured settlements. We manage these operations through two business segments: premium finance and structured settlements. In our premium finance business we earn revenue from interest charged on loans, loan origination fees and agency fees from referring agents. In our structured settlement business, we purchase structured settlements at a discounted rate and sell such assets to, or finance such assets with, third parties.

Since 2007, the United States' capital markets have experienced extensive distress and dislocation due to the global economic downturn and credit crisis. As a result of the dislocation in the capital markets, our borrowing costs increased dramatically in our premium finance business and we were unable to access traditional sources of capital to finance the acquisition and sale of structured settlements. At certain points, we were unable to obtain any debt financing.

We expect that the net proceeds from this offering will be used to finance and grow our premium finance and structured settlement businesses. We intend to originate new premium finance loans without relying on debt financing. We intend to use a portion of the net proceeds from this offering, together with debt financing, to continue to finance the acquisition and sale of structured settlements.

27. The Registration Statement described the Company's "Premium Finance Business," in pertinent part, as follows:

A premium finance transaction is a transaction in which a life insurance policyholder obtains a loan to pay insurance premiums for a fixed period of time, which allows a policyholder to maintain coverage without additional out-of-pocket costs. Our typical

premium finance loan is approximately two years in duration and is collateralized by the underlying life insurance policy. The life insurance policies that serve as collateral for our premium finance loans are predominately universal life policies that have an average death benefit of approximately \$4 million and insure persons over age 65.

We expect that, in the ordinary course of business, a large portion of our borrowers may default on their loans and relinquish beneficial ownership of their life insurance policy to us. Our loans are secured by the underlying life insurance policy and are usually non-recourse to the borrower. If the borrower defaults on the obligation to repay the loan, we generally have no recourse against any assets except for the life insurance policy that collateralizes the loan.

Dislocations in the capital markets have forced us to pay higher interest rates on borrowed capital since the beginning of 2008. Every credit facility we have entered into since December 2007 for our premium finance business has required us to obtain lender protection insurance for each loan originated under such credit facility. This coverage provides insurance on the value of the life insurance policy serving as collateral underlying the loan should our borrower default. After a payment default by the borrower, subject to the terms and conditions of the lender protection insurance policy, our lender protection insurer has the right to direct control or take beneficial ownership of the life insurance policy, and we are paid a claim equal to the insured value of the policy. While lender protection insurance provides us with liquidity, it prevents us from realizing the appreciation, if any, of the underlying policy when a borrower relinquishes ownership of the policy upon default. As of September 30, 2010, 94.6% of our outstanding premium finance loans have collateral whose value is insured. As of January 1, 2011, we ceased originating premium finance loans with lender protection insurance. As a result, we currently have ceased originating new premium finance loans under our credit facilities.

We have experienced two adverse consequences from our high financing costs: reduced profitability and decreased loan originations. While the use of lender protection insurance allowed us to access debt financing to support our premium finance business, the cost of lender protection insurance substantially reduced the earnings from our premium finance segment. Additionally, coverage limitations related to our use of lender protection insurance reduced the number of otherwise viable premium finance transactions that we could complete. During the nine months ended September 30, 2010, these coverage limitations became even stricter and further reduced the number of loans we could originate. We believe that the net proceeds from this offering will allow us to increase the profitability and number of new premium finance loans by eliminating the cost of debt financing and lender protection insurance and the limitations on loan originations that our lender protection insurance imposed.

28. The Registration Statement described the Company's "Competitive Strengths,"

stating, in pertinent part, as follows:

Complementary mix of business lines. Unlike many of our competitors who are focused on either structured settlements or premium financings, we operate in both lines of business. This diversification provides us with a complementary mix of business lines as the revenues generated by our structured settlement business are generally short-term cash receipts in comparison to the revenue from our premium financing business which is collected over time.

* * *

Strength and financial commitment of management team with proven track record. Our senior management team is experienced in the premium finance and structured settlement industries. In the mid-1990s, several members of our management team worked together at Singer Asset Finance, where they were early entrants in structured settlement asset classes. After Singer was acquired in 1997 by Enhance Financial Services Group Inc., several members of our senior management team joined Peach Holdings, Inc. At Peach Holdings, they held senior positions, including Chief Operating Officer, Head of Life Finance and Head of Structured Settlements. In addition, Antony Mitchell, our chief executive officer, and Jonathan Neuman, our president and chief operating officer, each have over \$7 million of their own capital invested in our company. This financial commitment aligns the interests of our principal executive officers with those of our shareholders.

29. The Registration Statement also described the Company's strategy that it intends to pursue following the IPO in order to "increase [its] revenues and generate new profits." In that regard, the Registration Statement stated, in pertinent part, as follows:

Reduce or eliminate the use of debt financing in our premium finance business. The capital generated by this offering will enable us to fund new premium finance loans and provide us with the option to retain investments in life insurance policies that we acquire upon relinquishment by our borrowers without the need for additional debt financing. In contrast to our existing leveraged business model that has made us reliant on third-party financing that is often unavailable or expensive, we intend to use equity capital from this offering to engage in premium finance transactions at profit margins significantly greater than what we have historically experienced. In the future, we expect to consider debt financing for our premium finance transactions and structured settlement purchases only if such financing is available on attractive terms.

30. The statements reference above in ¶¶24-29 were inaccurate statements of material fact because they failed to disclose that the Company had engaged in wrongdoing with respect to its life finance business, which would expose Imperial Holdings and certain of its employees, including

Defendants Mitchell and Neuman, to an investigation by the FBI, in conjunction with the U.S. Attorney's Office for the District of New Hampshire.

31. On September 27, 2011, Imperial Holdings issued a press release announcing that it and certain of its employees, including Defendants Mitchell and Neuman, are under investigation in the District of New Hampshire with respect to the Company's life finance business. The press release stated, in pertinent part, as follows:

Imperial Holdings, Inc. (NYSE:IFT - News) ("Imperial") was served today with a search warrant issued by a Magistrate Judge for the U.S. District Court in the Southern District of Florida.

Imperial is a specialty finance company providing liquidity solutions with a focus on individual life insurance policies and purchasing structured settlement payments. The Company understands that it and certain of its employees, including its chairman and chief executive officer, and its president and chief operating officer, are under investigation in the District of New Hampshire with respect to its life finance business.

During the exercise of the warrant the Company fully cooperated. There has been no action taken against the Company's structured settlement business and the Company anticipates normal operations, across all of its business segments, will resume tomorrow.

"Today's action comes as a complete surprise. We are not aware of any wrongdoing and will cooperate fully with all relevant authorities to assist them in their investigation," said Antony Mitchell, chairman and chief executive officer, Imperial Holdings, Inc.

The Company has retained the law firm of Greenburg Traurig to assist the Company with responding to the investigation. A meeting of the company's board of directors is scheduled for later tonight and the company will provide updates on a periodic basis as developments warrant.

32. In response to this announcement and news of the FBI raid on the Company's headquarters, on September 28, 2011, the price of Imperial Holdings stock declined from \$6.30 per share to \$2.19 per share, on extremely heavy trading volume.

FIRST CAUSE OF ACTION

**Violations of §11 of the Securities Act
Against All Defendants**

33. Plaintiff repeats and realleges each and every allegation contained above.

34. This Count is brought pursuant to §11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against all Defendants.

35. The Registration Statement for the IPO was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

36. Imperial Holdings is the registrant for the IPO. The Defendants named herein were responsible for the contents and dissemination of the Registration Statement and the Prospectus.

37. As issuer of the shares, Imperial Holdings is strictly liable to Plaintiff and the Class for the misstatements and omissions.

38. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement and the Prospectus were true and without omissions of any material facts and were not misleading.

39. By reasons of the conduct herein alleged, each Defendant violated, and/or controlled a person who violated, §11 of the Securities Act.

40. Plaintiff acquired Imperial Holdings shares pursuant and/or traceable to the Registration Statement.

41. Plaintiff and the Class have sustained damages. The value of Imperial Holdings common stock has declined substantially subsequent to and due to Defendants' violations.

42. At the times they purchased Imperial Holdings shares, Plaintiff and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to September 27, 2011. Less than one year

has elapsed from the time that Plaintiff discovered or reasonably could have discovered the facts upon which this complaint is based to the time that Plaintiff filed its complaint.

SECOND CAUSE OF ACTION

**Violations of §15 of the Securities Act
Against the Individual Defendants**

43. Plaintiff repeats and realleges each and every allegation contained above.

44. This Count is brought pursuant to §15 of the Securities Act against the Individual Defendants.

45. Each of the Individual Defendants was a control person of Imperial Holdings by virtue of his or her position as a director and/or senior officer of Imperial Holdings. The Individual Defendants each had a series of direct and/or indirect business and/or personal relationships with other directors and/or officers and/or major shareholders of Imperial Holdings.

46. Each of the Individual Defendants was a culpable participant in violation of §11 of the Securities Act alleged in Count I above, based on their having signed the Registration Statement and having otherwise participated in the process which allowed the IPO to be successfully completed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and the Class, prays for judgment as follows:

A. Declaring this action to be a class action properly maintainable pursuant to Rule 1.220 of the Florida Rules of Civil Procedure on behalf of the Class, and declaring Plaintiff to be a proper Class representative;

B. awarding Plaintiff and other members of the Class damages together with interest thereon;

C. awarding Plaintiff and other members of the Class their costs and expenses of this litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs and disbursements; and

D. awarding Plaintiff and other members of the Class such other and further relief as may be just and proper under the circumstances.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury

DATED: September 29, 2011