

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

MAINSTAY HIGH YIELD CORPORATE)
BOND FUND, on behalf of itself and all others)
similarly situated,)
Plaintiff,)

vs.)

HEARTLAND INDUSTRIAL PARTNERS,)
L.P., a Delaware limited liability partnership,)
HEARTLAND INDUSTRIAL ASSOCIATES,)
L.L.C., a Delaware limited company, DAVID)
A. STOCKMAN, J. MICHAEL STEPP,)
TIMOTHY D. LEULIETTE, DANIEL P.)
TREDWELL, W. GERALD MCCONNELL,)
SAMUEL VALENTI, III, JOHN A.)
GALANTE, BRYCE M. KOTH, ROBERT A.)
KRAUSE, GERALD E. JONES, DAVID R.)
COSGROVE, and ELKIN B. MCCALLUM,)
Defendants.)

Case No. 2:07-cv-10542-GER-RSW
Honorable Gerald E. Rosen

CRAIG D. EPSTEIN, individually and on)
behalf of all others similarly situated,)
Plaintiff,)

vs.)

HEARTLAND INDUSTRIAL PARTNERS,)
L.P., a Delaware limited liability partnership,)
HEARTLAND INDUSTRIAL ASSOCIATES,)
L.L.C., a Delaware limited company, DAVID)
A. STOCKMAN, J. MICHAEL STEPP, and)
BRYCE M. KOTH,)
Defendants.)

Case No. 2:06-cv-13555-GER-RSW
Honorable Gerald E. Rosen

ORDER AND FINAL JUDGMENT

On the 7th day of June, 2010, a hearing was held before this Court to determine: (1)
whether the terms and conditions of the Stipulation and Agreement of Settlement dated February
17, 2010 (the "Stipulation") are fair, reasonable, and adequate for the settlement of all claims

asserted by the MainStay Class¹ and the Egleston Class against the Defendants in the MainStay Complaint and the Egleston Complaint now pending in this Court under the above captions, including the release of the Released Parties, and should be approved; and (2) whether judgment should be entered dismissing both the MainStay Action and the Egleston Action on the merits and with prejudice. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that notices of the hearing substantially in the form approved by the Court were mailed as directed in the Orders for Notice and Hearing as set forth in the Declaration of Thomas H. Burt dated May 7, 2010 and the Declaration of John C. Browne dated May 7, 2010, and that the Egleston Publication Notice substantially in the form approved by the Court was published in the national edition of *The Wall Street Journal* pursuant to the specifications of the Court,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the MainStay Action, the Egleston Action, MainStay, Epstein, all MainStay Class Members, all Egleston Class Members and the Settling Defendants.
2. For purposes of this Settlement, the Court finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied in the MainStay Action in that: (a) the number of MainStay Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the MainStay Class; (c) the claims of MainStay are typical of the claims of the MainStay Class they seek to represent; (d) MainStay and MainStay's Lead Counsel have and will fairly and

¹ Unless otherwise defined herein, all capitalized terms used herein have the meanings defined in the Stipulation.

adequately represent the interests of the MainStay Class; (e) the questions of law and fact common to the members of the MainStay Class predominate over any questions affecting only individual members of the MainStay Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. For purposes of this Settlement, the Court finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied in the Egleston Action in that: (a) the number of Egleston Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Egleston Class; (c) the claims of Epstein are typical of the claims of the Egleston Class they seek to represent; (d) Epstein and Epstein's Lead Counsel have and will fairly and adequately represent the interests of the Egleston Class; (e) the questions of law and fact common to the members of the Egleston Class predominate over any questions affecting only individual members of the Egleston Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and for purposes of the Settlement, this Court hereby finally certifies the MainStay Action as a class action on behalf of all those who, as investment advisory or sub-advisory clients of MacKay Shields LLC, purchased or otherwise acquired C&A Notes through MacKay Shields LLC during the period between August 11, 2004 through and including May 17, 2005. No timely and valid requests for exclusion from the Class were received.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and for purposes of the Settlement, this Court hereby finally certifies the Egleston Action as a class action on behalf

of all individuals and entities who purchased or otherwise acquired the securities of C&A and who suffered damages, including without limitation the common stock of C&A and the C&A Notes, during the period between August 6, 2002 and May 17, 2005, inclusive. Excluded from the Egleston Class are the Defendants, past or present directors and officers of C&A, members of their immediate families, parents, subsidiaries and affiliates of C&A, and their legal representatives, heirs, successors or assigns and any entity in which any Defendant has or has had a controlling interest, any Released Parties, and, to the extent of their claims in the MainStay Action, MainStay Class Members. No timely and valid requests for exclusion from the Class were received.

6. For purposes of this Settlement, pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies MainStay as Class Representative in the MainStay Action, and MainStay's Lead Counsel as Class Counsel.

7. For purposes of this Settlement, pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies Epstein as Class Representative in the Egleston Action, and Egleston's Lead Counsel as Class Counsel.

8. As set forth in the Declaration of John C. Browne dated May 7, 2010, notice of the pendency of the MainStay Action as a class action and of the proposed Settlement was given to all MainStay Class Members who could be identified with reasonable effort. The Court finds and concludes that notice was given to members of the MainStay Class in compliance with the Preliminary Order for Notice and Hearing In Connection With Settlement Proceedings entered in the MainStay Action. The form and method of notifying the MainStay Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the

requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

9. As set forth in the Affidavit of Thomas H. Burt dated May 7, 2010, notice of the pendency of the Egleston Action as a class action and of the proposed Settlement was given to all Egleston Class Members who could be identified with reasonable effort. The Court finds and concludes that notice was given to members of the Egleston Class in compliance with the Preliminary Order for Notice and Hearing In Connection With Settlement Proceedings entered in the Egleston Action. The form and method of notifying the Egleston Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

10. The notice requirements set forth in the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, to the extent applicable to the MainStay Action or the Egleston Action, have been satisfied.

11. The Court finds and concludes that the Settlement is fair, reasonable and adequate and in the best interests of the MainStay Class and the Egleston Class, approves the Settlement,

adopts the terms of the Settlement, and directs the parties to consummate the Settlement in accordance with its terms and provisions.

12. Pursuant to this Order and Final Judgment, upon the Effective Date of the Settlement, the Releasors shall forever release and discharge, and shall forever be enjoined from prosecuting, any and all Released Claims against any of the Released Parties.

13. Pursuant to this Order and Final Judgment, upon the Effective Date of the Settlement, the Settling Defendants shall forever release and discharge, and shall forever be enjoined from prosecuting, any and all Settled Defendants' Claims against the Releasors.

14. Neither this Order and Final Judgment, the Stipulation, nor any of its terms, provisions and exhibits, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against any of the Released Parties as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Released Parties with respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has been or could have been asserted in the MainStay Action or the Egleston Action or in any other litigation or proceeding, or the deficiency of any defense that has been or could have been asserted in the MainStay Action or the Egleston Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of any of the Released Parties;

(b) offered or received against any of the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the Released Parties;

(c) offered or received against any of the Released Parties as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Released Parties, in any other civil, criminal administrative or other proceeding, other than such proceedings as may be necessary to effectuate or enforce the provisions of the Stipulation; provided, however, that any of the Released Parties may refer to it to effectuate or enforce the releases or any other rights, terms or provisions set forth therein, and to that end may use the Stipulation or this Order and Final Judgment in any action or other proceeding to support a defense, claim, counter-claim or cross-claim based on principles of contract law, res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or similar principle, claim, defense, counter-claim or cross-claim;

(d) construed against any of the Released Parties as a presumption, concession or admission that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

(e) construed as or received in evidence as a presumption, concession or admission against MainStay or any of the other MainStay Class Members or Epstein or any of the other Egleston Class Members that any of their claims are without merit, or that any defenses asserted by any of the Settling Defendants have any merit, or that damages recoverable under the MainStay Complaint would not have exceeded the amounts received in the Settlement.

15. The Court permanently bars and enjoins MainStay, the MainStay Class, Epstein and the Egleston Class and all other Releasers from commencing or prosecuting, either directly

or indirectly, any Released Claims in this or any other forum against any or all of the Released Parties.

16. Pursuant to Section 21D(f)(7)(A) of the Securities Exchange Act of 1934, as amended by the PSLRA, 15 U.S.C. § 78u-4(f)(7)(A), the Court permanently bars and enjoins any person from bringing a claim for contribution arising out of the Actions (i) by any person against any or all of the Settling Defendants, and (ii) by any Settling Defendant against any person, other than a person whose liability has been extinguished by the Settlement.

17. The Court dismisses the MainStay Action against the Defendants with prejudice and without costs except as provided for in this Order and Final Judgment.

18. The Court dismisses the Egleston Action against the Defendants with prejudice and without costs except as provided for in this Order and Final Judgment.

19. The Court finds and concludes, pursuant to Section 27(c)(1) of the Securities Act of 1933 and Section 21D(c)(1) of the Securities Exchange Act of 1934, as amended by the PSLRA, 15 U.S.C. §§ 77z-1(c)(1), 78u-4(c)(1), that MainStay, MainStay's Counsel, Epstein, Epstein's Counsel, the Settling Defendants and Defendants' Counsel have complied with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion filed in the Actions.

20. This Order and Final Judgment, the Settlement, and any of their terms, and all negotiations, discussions and proceedings in connection with this Order and Final Judgment and the Settlement, shall not constitute any evidence, or an admission by any of the Settling Defendants or the other Released Parties, that any acts of wrongdoing have been committed and

shall not be deemed to create any inference that there is any liability on the part of any of the Settling Defendants or the other Released Parties.

21. The Order and Final Judgment, the Settlement, and any of their terms, and all negotiations, discussions and proceedings in connection with this Order and Final Judgment and the Settlement, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration tribunal, or other forum of any kind or character in the United States or any other country except as necessary to enforce the terms of the Order and Final Judgment and/or the Settlement.

22. In the event that the Settlement fails to become effective in accordance with its terms, or if this Order and Final Judgment is reversed, vacated, or materially modified on appeal (and, in the event of material modification, if any party elects to terminate the Settlement), this Order and Final Judgment (except this Paragraph) shall be null and void, the Settlement (except Paragraphs 21 and 52 of the Stipulation) shall be deemed terminated, and the parties shall return to their pre-settlement positions as provided for in the Stipulation.

23. Exclusive jurisdiction is hereby retained over the Parties and the MainStay Class Members for all matters relating to the MainStay Action, including without limitation the consideration of any allocation of the proceeds of the Settlement, and MainStay's Counsel's application for an award of attorneys' fees and reimbursement of expenses, and for the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, including enforcement of the Note, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the MainStay Class.

24. Exclusive jurisdiction is hereby retained over the Parties and the Egleston Class Members for all matters relating to the Egleston Action, including without limitation the consideration of any allocation of the proceeds of the Settlement, and Epstein's Counsel's application for an award of attorneys' fees and reimbursement of expenses, and for the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, including enforcement the Note, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Egleston Class.

25. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

26. There is no just reason for delay in the entry of this Order, and immediate entry of this Order by the Clerk of the Court is expressly directed in both Actions pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: June 10, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 10, 2010, by electronic and/or ordinary mail.

s/Ruth A. Gunther
Case Manager