

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MAR - 4 2009

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| IN RE THE MILLS CORPORATION |) | CIVIL ACTION NO. |
| SECURITIES LITIGATION |) | 1:06-cv-00077 (LO-TRJ) |
| |) | |
| This Document relates to: |) | |
| 1:06-cv-00077 (LO-TRJ) |) | |
| 1:06-cv-00247 (LO-TRJ) |) | |
| 1:06-cv-00265 (LO-TRJ) |) | |
| 1:06-cv-00304 (LO-TRJ) |) | |
| 1:06-cv-01446 (LO/TRJ) |) | |
| 1:07-cv-00296 (LO/TRJ) |) | |

**ORDER PRELIMINARILY APPROVING SETTLEMENT AND
SETTING SETTLEMENT HEARING ("ORDER FOR NOTICE AND HEARING")**

WHEREAS:

A. Lead Plaintiffs and defendants The Mills Corporation ("Mills") and The Mills Limited Partnership ("Mills LP") (collectively the "Mills Entities") on behalf of themselves and for the benefit of the other Settling Defendants, the Purchasers, the Former Defendants and other Released Parties, have entered into a Stipulation and Agreement of Settlement dated January 14, 2009 (the "Stipulation") in full and final settlement of each and every Settled Claim against the Settling Defendants and the other Released Parties (the "Settlement"), the terms of which are set forth in the Stipulation:

B. Lead Plaintiffs and the Mills Entities have moved, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order preliminarily approving the Settlement in accordance with the terms of the Stipulation and providing for notice to the Class; and,

C. The Court having read and considered the Stipulation and exhibits thereto, including the proposed (i) Notice to the Class; (ii) Publication Notice; and (iii) Judgment, and finding that substantial and sufficient grounds exist for entering this Order.

NOW; THEREFORE, IT IS HEREBY ORDERED:

1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Stipulation.

2. The Court hereby certifies the Action to proceed as a class action for purposes of the Settlement only, pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of all persons who purchased or otherwise acquired Mills' publicly traded common stock and preferred stock, during the period from February 27, 2001 through August 10, 2006, and who were damaged thereby. Excluded from the Class are: (a) Defendants and all persons and entities who (i) during the Class Period, were Defendants' officers, directors and partners or members of Defendants' immediate families or controlled by a Defendant or (ii) at any time, were Defendants' legal representatives, heirs, successors or assigns and assert a claim on the Settlement Fund based on a Defendant's purchase or other acquisition of Mills' publicly traded common stock or preferred stock; and (b) persons who purchased and sold all of their Mills securities before the close of the market on October 31, 2005. Also excluded from the Class are any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in this Order and the Notice.

3. The Court finds, for the purposes of the Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the named representatives are typical of the claims of the Class they seek to represent; (d) Lead Plaintiffs, additional named plaintiffs C. Bickley Foster, Frederic Elliott and Vernon E. Rudolph, and Lead Counsel have and will fairly and adequately represent the interests of the

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

4. The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Lead Plaintiffs Iowa Public Employees' Retirement System and the Public Employees' Retirement System of Mississippi and additional named plaintiffs C. Bickley Foster, Frederic Elliott and Vernon E. Rudolph are adequate class representatives and certifies them as Class Representatives for the Class. The Court further certifies Lead Counsel as Class Counsel.

5. The Court preliminarily approves the Settlement on the terms set forth in the Stipulation, subject to further consideration at the Settlement Hearing to be held before this Court on June 18, 2009, at 2:00 p.m., at the United States District Court for the Eastern District of Virginia, Alexandria Division, Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Courtroom 7, Alexandria, VA 22314 (the "Settlement Hearing"):

(a) to determine whether this Action should be finally certified, for settlement purposes, as a class action under Rules 23(a) and (b) of the Federal Rules of Civil Procedure;

(b) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate and should be approved by the Court;

(c) to determine whether the Judgment as provided for under the Stipulation should be entered dismissing the Settled Claims against the Settling Defendants and the other Released Parties with prejudice as set forth in the Stipulation; and

(d) to rule upon such other matters as the Court may deem appropriate.

6. The Court reserves the right to approve the Settlement with or without modification and with or without further notice of any kind.

7. The Court approves the form, substance and requirements of the Notice of Pendency of Class Action, Proposed Settlement and Settlement Fairness Hearing (the "Notice"); and the Summary Notice of Pendency of Class Action, Proposed Settlement and Settlement Fairness Hearing ("Publication Notice") (together the "Settlement Notices"), and finds that the procedures established for publication, mailing and distribution of such Settlement Notices substantially in the manner and form set forth in paragraphs 8 and 9 of this Order constitute the best notice practicable under the circumstances and are in full compliance with the notice requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, Section 27 of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, and 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.

8. Lead Counsel shall cause the Notice, substantially in the form annexed hereto as Exhibit 1, to be mailed, by first-class mail, postage prepaid, on or before thirty (30) calendar days from the date of entry of this Order, to all Class Members at the address of each such person or entity, as set forth in the records of Mills or its transfer agent or who otherwise may be identified through reasonable effort. For the purpose of identifying and providing notice to the Class, Mills shall make reasonable efforts to provide, or cause to be provided, to the Claims Administrator (at no cost to the Settlement Fund, Plaintiffs' Lead Counsel or the Claims Administrator) its security holder lists (consisting of security holder names and addresses) applicable to purchases of Mills common or preferred stock during the Class Period, in electronic form, if available in such form, within fifteen (15) days of the date of entry of this Order. Mills

shall bear all costs or expenses associated with providing the Claims Administrator with such stock transfer records. Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of mailing of the Notice.

9. Lead Counsel shall cause the Publication Notice, substantially in the form annexed hereto as Exhibit 2, to be published once each in the national edition of *The Wall Street Journal* and over the *PR Newswire* within ten (10) business days of the mailing of the Notice. Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of publication of the Publication Notice.

10. Lead Counsel shall use reasonable efforts to give notice to nominee owners such as brokerage firms and other persons or entities who purchased or otherwise acquired Mills' publicly traded common stock and/or preferred stock during the Class Period as record owners but not as beneficial owners. Such nominees who hold or held such Mills' common stock and/or preferred stock for beneficial owners who are Class Members are directed either (i) to send a copy of the Notice to the beneficial owner of the shares postmarked no more than fourteen (14) calendar days from the date of receipt of the Notice, or (ii) to provide the names and addresses of such persons no later than fourteen (14) calendar days from the date of receipt of the Notice to the Claims Administrator, c/o Heffler, Radetich & Saitta LLP, at the address specified in the Notice, who shall promptly send a copy of the Notice to each such beneficial owner. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund.

11. The Court approves the selection of Heffler, Radetich & Saitta LLP by Lead Counsel as the Claims Administrator. Lead Counsel may pay from the Settlement Fund, without further approval from the Mills Entities or further order of the Court, all reasonable Notice and Administration Costs actually incurred up to the amount of U.S. \$500,000. Such costs and expenses shall include, without limitation, the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing Notice and processing the submitted claims, and the fees, if any, of the Escrow Agent.

12. Lead Counsel or their agents are authorized and directed to prepare any tax returns required to be filed for the Settlement Fund and to cause any Taxes due and owing to be paid from the Settlement Fund without further Order of the Court, and to otherwise perform all obligations with respect to Taxes and any reportings or filings in respect thereof as contemplated by the Stipulation without further order of the Court.

13. Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless such persons request exclusion from the Class in a timely and proper manner, as hereinafter provided. A Class Member wishing to make such request shall mail the request in written form by first-class mail to the address designated in the Notice, such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing. Such request for exclusion shall clearly indicate the name, address and telephone number of the person seeking exclusion and that the sender requests to be excluded from the Class in the *In re The Mills Corporation Securities Litigation*, and must be signed by such person. Such persons requesting exclusion are also directed to state: the date(s), price(s), and

number(s) of shares of all purchases, acquisitions, and sales of Mills' publicly-traded common stock and/or preferred stock during the Class Period. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

14. Any Class Member that requests to be and is excluded from the Class shall not be entitled to receive any payment out of the Net Settlement Fund as described in the Stipulation and Notice.

15. The Court will consider comments and/or objections to the Settlement by Class Members only if such comments or objections and any supporting papers are filed in writing with the Clerk of the Court, United States District Court for the Eastern District of Virginia, Alexandria Division, Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria VA, 22314, no later than twenty-one (21) calendar days before before the Settlement Hearing and copies of all such papers and briefs (which must contain proof of all purchases or acquisitions and sales of Mills publicly-traded common stock and/or preferred stock during the Class Period), are served, such that they are received no later than twenty-one (21) calendar days before the Settlement Hearing by each of the following: Lead Counsel, Steven B. Singer, Esq., Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, New York, New York 10019 and Jeffrey W. Golan, Esq., Barrack, Rodos & Bacine, 3300 Two Commerce Square, 2001 Market Street, Philadelphia, PA 19103, and counsel for the Mills Entities, George H. Mernick, III, Hogan & Hartson, LLP, 555 13th Street, N.W., Washington, D.C. 20004. Attendance at the hearing is not necessary, however, persons wishing to be heard orally in opposition to the approval of the Settlement are required to indicate in their written objection their intention to appear at the Settlement Hearing. Persons who intend to object to the Settlement and desire to

present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

16. Any Class Member who does not object in the manner prescribed above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement or the Judgment to be entered approving the Settlement.

17. Lead Counsel shall submit their papers in support of final approval of the Settlement by no later than seven (7) calendar days before the Settlement Hearing.

18. The Court expressly reserves the right to adjourn the Settlement Hearing, or any adjournment thereof, without any further notice to Class Members other than an announcement at the Settlement Hearing, or any adjournment thereof, and to approve the Stipulation with modification approved by the parties to the Stipulation without further notice to Class Members.

19. Neither the Mills Entities nor any other Released Party shall have any responsibility whatsoever for the Plan of Allocation that will be presented to the Court at a later date nor for any application for attorneys' fees or reimbursement of Litigation Expenses submitted by Lead Counsel, and such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

20. In order to be eligible to participate in the distribution of the Net Settlement Fund, Class Members will be required to submit Proof of Claim forms, in the form to be approved by the Court and distributed at a later date, that comply with the requirements of the Stipulation and further Orders of the Court.

21. Neither the Mills Entities nor any other Released Party shall have any responsibility whatsoever for the administration of the Settlement or the disbursement of the Net Settlement Fund and shall not be permitted to review, contest or object to any Claim Form or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim Form or Claim for payment by a Class Member except as specifically provided in paragraph 26 of the Stipulation.

22. All funds held in the Escrow Account shall be deemed and considered to be *in custodia legis* and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Stipulation and/or further order of the Court.

23. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and the Stipulation shall be null and void, and without prejudice, and none of their terms shall be effective or enforceable and the facts of the Settlement shall not be admissible in any trial of this Action, and the Settling Parties and the other Settling Defendants shall be deemed to have reverted to their respective status in this Action immediately prior to November 12, 2008 and, except as otherwise expressly provided, the parties shall proceed in all respects as if the Stipulation and any related orders had not been entered, and any portion of the Settlement Amount previously paid or caused to be paid by the Mills Entities into the Escrow Account, including, but not limited to, any funds disbursed in payment of Litigation Expenses and attorneys' fees, together with any interest earned or appreciation thereon at the same net rate as earned by the Settlement Fund, less any Taxes paid or due with respect to such interest income and/or appreciation, and less Notice and Administration Costs actually incurred and paid or payable, shall be returned to the Mills Entities or their designee(s), as appropriate, within ten (10) business days after written notification of such event by the Mills Entities to the Lead Counsel.

24. The administration of the proposed Settlement and the determination of all disputed questions of law and fact with respect to the validity of any Claim or right of any person or entity to participate in the distribution of the Net Settlement Fund shall be under the authority of this Court.

25. Pending final determination of whether the Settlement should be approved, Lead Plaintiffs and all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action that asserts any Settled Claims against any of the Released Parties.

26. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

Dated: Alexandria, VA
March 4, 2009


HONORABLE LIAM O'GRADY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

MAR - 3 2009
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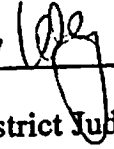
Civil Action No. 1:06-cv-00077

ORDER

Before the Court is the Motion to Dismiss the Proposed Second Amended Class Action Complaint by KanAm Services, L.P., KanAm Management L.L.C., KanAm L.L.C., KanAm Providers, Inc., KanAm Realty, Inc., KanAm US, Inc., KanAm America, Inc. (Dkt. No. 419). Upon consideration of the motion, for the reasons stated at oral argument and for good cause shown, it is hereby

ORDERED that Defendants' Motion to Dismiss (Dkt. No. 419) is DENIED.

ENTERED on this 3rd day of March, 2009.

/s/ 
Liam O'Grady
United States District Judge
Liam O'Grady
United States District Judge

Alexandria, Virginia