

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE HCC INSURANCE HOLDINGS,  
INC. SECURITIES LITIGATION

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CIVIL ACTION NO. 4:07-cv-801

JUDGE SIM LAKE

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement (the “Stipulation”) is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, this Stipulation is entered into among Lead Plaintiffs Bristol County Retirement System and Plymouth County Retirement System (collectively, “Plaintiffs”) on behalf of themselves and the Class (as hereinafter defined) and Defendants HCC Insurance Holdings, Inc. (“HCC”), James R. Crane, Edward H. Ellis, Jr., Walter J. Lack, Christopher L. Martin, Michael A.F. Roberts, and Stephen L. Way (the “Individual Defendants”) (HCC and the Individual Defendants are collectively referred to as “Defendants”).

WHEREAS:

A. On March 8, 2007, a class action alleging violations of federal securities laws—*Bristol County Retirement System v. HCC Insurance Holdings, Inc., et al.*, No. 4:07-CV-0801—was filed in this Court, and is hereinafter referred to as the “Action.” The First Amended Complaint was filed shortly thereafter on March 13, 2007. On May 30, 2007, the Court appointed Bristol County Retirement System and Plymouth County Retirement System as the Lead Plaintiffs and appointed Labaton Sucharow LLP as Plaintiffs’ Lead Counsel and Chargois & Herron, LLP as Liaison Counsel. The Court also consolidated the Action and denominated it, “*In re HCC Insurance Holdings, Inc. Securities Litigation.*”

B. On July 20, 2007, a Consolidated Amended Class Action Complaint was filed (the "Complaint"). The Complaint generally alleges, among other things, that: (1) HCC and the Individual Defendants allegedly violated Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder by issuing false and misleading press releases and other statements during the Class Period—May 3, 2005, through and including November 17, 2006—regarding the dating practices for stock options issued by HCC in a scheme to artificially inflate the value of HCC securities; and (2) that the Individual Defendants, as control persons, are allegedly liable under Section 20(a) of the Securities Exchange Act of 1934. The Complaint further alleges that Plaintiffs and other Class Members purchased HCC securities during the Class Period and were damaged as a result thereof.

C. On September 21, 2007, Defendants moved to dismiss the Complaint. Before Lead Plaintiffs' time to respond had passed, the parties agreed to mediate the case before retired United States District Judge Nicholas Politan. Negotiations conducted through Judge Politan resulted in this Settlement.

D. Plaintiffs' Lead Counsel and Plaintiffs' Liaison Counsel have conducted an investigation related to the claims and the underlying events and transactions alleged in the Complaint. Plaintiffs' Lead Counsel have also analyzed the evidence adduced during confirmatory discovery and have researched the applicable law with respect to the claims of Plaintiffs and the Class against Defendants and the potential defenses thereto.

E. Based upon their investigation and confirmatory discovery as set forth above, Plaintiffs' Lead Counsel and Plaintiffs' Liaison Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Plaintiffs and the Class, and in their best interests, and have agreed to settle the claims raised in the Action pursuant to the terms

and provisions of this Stipulation, after considering (a) the substantial benefits that Plaintiffs and the members of the Class will receive from settlement of the Action, (b) the attendant risks of litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

NOW THEREFORE, without any admission or concession on the part of Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and among the parties to this Stipulation, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto from the Settlement, that all Settled Claims (as defined below) as against the Released Parties (as defined below) and all Settled Defendants' Claims (as defined below) shall be compromised, settled, released, acquitted and dismissed with prejudice, upon and subject to the following terms and conditions:

#### **CERTAIN DEFINITIONS**

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) "Authorized Claimant" means a Class Member who submits a timely and valid Proof of Claim form to the Claims Administrator.

(b) "Claims Administrator" means the firm retained by Plaintiffs' Lead Counsel and so appointed by the Court, which shall administer the Settlement.

(c) "Class" means, for the purposes of this Settlement only, all persons and entities who purchased or otherwise acquired HCC securities between May 3, 2005, and November 17, 2006, inclusive, and were allegedly damaged thereby. Excluded from the Class

are: (i) each of the Defendants; (ii) members of the family of each of the Individual Defendants; (iii) each person who at any time served as an officer or director of HCC and members of their respective families; and (iv) any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has or had a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded person or entity. 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 the Notice and Preliminary Approval Order (defined below).

(d) “Class Member” means a member of the Class.

(e) “Class Period” means, for the purpose of this Settlement only, the period of time between May 3, 2005, and November 17, 2006, inclusive.

(f) “Defendants’ Counsel” means the law firms of Baker, Keener & Nahra, LLP, Fulbright & Jaworski L.L.P., Porter & Hedges LLP, and Williams & Connolly, LLP.

(g) “Effective Date” means the date upon which the Settlement contemplated by this Stipulation shall become effective, as set forth in paragraph 21 below.

(h) “Final,” with respect to the Order and Final Judgment or an Alternative Judgment (as defined below) means: (i) if the Order and Final Judgment or an Alternative Judgment is appealed and affirmed, the day after the expiration of the time in which a party could seek, but did not, a petition for a writ of certiorari; (ii) if, after any affirmance of the Order and Final Judgment or an Alternative Judgment, a person seeks a petition for a writ of certiorari, the day after any such petition for a writ of certiorari is denied, or the date of final affirmance of the Order and Final Judgment or an Alternative Judgment following review if certiorari is

granted, (iii) if no appeal is filed, the day after the expiration date of the time for the filing or noticing of any appeal from the Court's Order and Final Judgment or an Alternative Judgment, *i.e.*, thirty (30) days after entry of the Order and Final Judgment or an Alternative Judgment, such that the judgment represents a final, unappealable and binding judgment with respect to the Action. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any plan of allocation and/or application for attorneys' fees or expenses, shall not in any way delay or preclude the Order and Final Judgment or an Alternative Judgment from becoming Final.

(i) "Notice" means the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing, which is to be sent to members of the Class identical in all material respects to the form attached hereto as Exhibit 1 to Exhibit A.

(j) "Order and Final Judgment" means the proposed order to be entered approving the Settlement identical in all material respects to the form attached hereto as Exhibit B.

(k) "Preliminary Approval Order" means the proposed order preliminarily approving the Settlement and directing notice thereof to the Class identical in all material respects to the form attached hereto as Exhibit A.

(l) "Plaintiffs' Lead Counsel" means the law firm of Labaton Sucharow LLP.

(m) "Plaintiffs' Counsel" means Plaintiffs' Lead Counsel, Chargois & Herron, LLP, and all other counsel representing Class Members or Plaintiffs in the Action.

(n) “Publication Notice” means the summary notice of proposed Settlement and hearing for publication identical in all material respects to the form attached as Exhibit 3 to Exhibit A.

(o) “Released Parties” means any and all of the Defendants and any person or entity acting or purporting to act for or on their behalf with respect to the Settled Claims, including but not limited to their past or present subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, stockholders, accountants, commercial bank lenders, representatives, affiliates, attorneys, insurers and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors-in-interest or assigns of the Defendants.

(p) “Releasing Parties” means Plaintiffs, all Class Members, and any person or entity acting or purporting to act for or on their behalf with respect to the Settled Claims, including but not limited to their respective present or former officers, directors, partners, principals, employees, members, agents, attorneys, insurers, stockholders, financial advisors, accountants, commercial bank lenders, investment bankers, representatives, affiliates, associates, parents, subsidiaries, general and limited partners and partnerships, heirs, executors, administrators, successors and assigns.

(q) “Settled Claims” means any and all claims, debts, demands, rights, actions or causes of action, obligations, losses, damages, judgments, suits, liabilities, matters and issues of any kind or nature whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether asserted individually or in a representative capacity, whether based on federal, state,

local, statutory or common law or any other law, rule or regulation (including, without limitation, Sections 10 and 20 of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j, 78t, and Rule 10b-5 promulgated thereunder, other state or federal securities laws, rules or regulations, and any and all claims involving allegations of fraud or breach of any duty, negligence or otherwise), whether fixed or contingent, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, representative or individual in nature, including both known claims and Unknown Claims (as defined below), (i) that have been asserted in this Action by Plaintiffs or any other Class Member against any of the Released Parties, or (ii) that could have been asserted in any forum by Plaintiffs or any other Class Member against any of the Released Parties, arising out of, in connection with, or directly or indirectly relating in any way to the allegations, transactions, facts, events, acts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint or any of the complaints filed in this Action and which relate in any way to the purchase or other acquisition of shares of the common stock or debt instruments of HCC during the Class Period. “Settled Claims” shall also include any and all claims arising out of, in connection with or relating in any way to the settlement or resolution of the Action, other than claims to enforce the terms of the Settlement. Settled Claims does not include any claims arising in *Bacas, et al. v. Way, et al.*, 4:07-CV-00456 (S.D. Tex.), or any criminal or regulatory action brought against Defendants by any governmental or regulatory agency.

(r) “Settled Defendants’ Claims” means any and all claims, rights, actions or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the

Defendants, on behalf of themselves or the Released Parties, or any of them or the successors and assigns of any of them against any of the Plaintiffs, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the terms of the Settlement).

(s) "Settlement" means the settlement contemplated by this Stipulation.

(t) "Unknown Claims" means any and all Settled Claims which any Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendants' Claims which any Defendant does not know or suspect to exist in his, her or its favor, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendants' Claims, the parties stipulate and agree that upon the Effective Date, Plaintiffs and Defendants shall expressly waive and relinquish to the fullest extent permitted by law, and each Class Member shall be deemed to have waived and relinquished, and by operation of the Judgment shall have expressly waived and relinquished, any and all provisions, rights and benefits conferred by federal law, any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

It is the intention of Plaintiffs and Defendants that, notwithstanding the provisions of Section 1542 or any similar provisions, rights and benefits conferred by law, and notwithstanding the possibility that Plaintiffs, Defendants, or their counsel may discover or gain a more complete understanding of the facts, events or law that, if presently known or fully understood, would have affected the decision to enter into this Stipulation, any and all Settled Claims, including



Unknown Claims, shall be fully, finally and forever settled. Plaintiffs and Defendants acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Settled Claims and Settled Defendants’ Claims was separately bargained for and was a key element of the Settlement.

#### **SCOPE AND EFFECT OF SETTLEMENT**

1. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties and any and all Settled Defendants’ Claims.

2. Upon the Effective Date of this Settlement, Plaintiffs, Class Members, and the Releasing Parties shall, with respect to each and every Settled Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties.

3. Upon the Effective Date of this Settlement, each of the Defendants, on behalf of themselves and the Released Parties, shall release and forever discharge each and every of the Settled Defendants’ Claims, and shall forever be enjoined from prosecuting the Settled Defendants’ Claims against Plaintiffs, all Class Members, and their attorneys.

#### **THE SETTLEMENT CONSIDERATION**

4. HCC and/or its insurers shall pay or cause to be paid to the Class, on behalf of and for the benefit of Defendants (and with no obligation with respect thereto by any Individual Defendant), the sum of \$10,000,000 (the “Cash Settlement Amount”) into a segregated, interest-bearing escrow account designated by Plaintiffs’ Lead Counsel (the “Settlement Fund”). The Cash Settlement Amount and any income or interest earned thereon shall be the “Gross Settlement Fund.” The “Net Settlement Fund” shall be the Gross Settlement Fund, less any amounts withdrawn for (i) taxes, (ii) reasonable costs and expenses of class notice and

administration, including escrow costs, if any, and (iii) attorneys' fees, expenses and costs, including the fees of experts and consultants, as awarded by the Court. This Stipulation and the payment of the Cash Settlement Amount are given on behalf of Defendants in return for, and are contingent upon, a full and complete release of all Settled Claims against all Released Parties. The Settlement Fund shall be funded and managed as follows:

(a) Within twenty (20) business days of the later of (i) entry of an order identical in all material respects to the Preliminary Approval Order (Exhibit A attached hereto) and (ii) the provision to HCC of all information necessary to effectuate a transfer of funds, including the bank name and ABA routing number, account name and number and a signed W-9 reflecting the taxpayer identification number for the Settlement Fund, HCC and/or its insurers shall pay or cause to be paid \$9,825,000.00, in cash, on behalf of all Defendants. The cash shall be deposited into the Settlement Fund, to earn interest at least at the 90-day United States Treasury Bill rate from the date of deposit, and with all accrued interest being for the benefit of the Class. The parties hereto intend the Settlement Fund to be a Qualified Settlement Fund in accordance with Treasury Regulation § 1.468B-1. Plaintiffs' Lead Counsel shall administer the account, and the account shall require a signature from a partner of Plaintiffs' Lead Counsel to release deposited funds. In order to effectuate notice to the Class, as provided herein, within seven (7) calendar days of the entry of an order identical in all material respects to the Preliminary Approval Order (Exhibit A attached hereto) and the provision to HCC of all information necessary to effectuate a transfer of funds, including the bank name and ABA routing number, account name and number and a signed W-9 reflecting the taxpayer identification number for the Settlement Fund, HCC and/or its insurers shall pay or cause to be paid \$175,000.00, in cash, on behalf of all Defendants. The cash shall be deposited into the

Settlement Fund. Plaintiffs' Lead Counsel shall not be permitted to withdraw any funds from the account prior to entry of the Order and Final Judgment, except to draw up to \$175,000.00 so as to pay taxes and the reasonable costs and expenses of class notice and administration of the Settlement.

(b) All reasonable costs and expenses of class notice and administration of the Settlement shall be paid from the Settlement Fund when incurred; *provided, however*, that Plaintiffs' Lead Counsel shall not be authorized to withdraw more than \$175,000.00 from the Settlement Fund until the Court has entered the Order and Final Judgment (Exhibit B, attached hereto) or, alternatively, enters an order and final judgment identical in all material respects to the proposed Exhibit B. The Settlement Fund, including any interest but less any amounts incurred for (i) taxes, and (ii) the notice and administration costs paid up to the \$175,000.00 referenced above shall revert to the persons or entities paying it into the Settlement Fund if the Settlement does not become effective.

(c) The attorneys' fees, expenses and costs, including the fees of experts and consultants, as awarded by the Court, shall be paid to Plaintiffs' Lead Counsel from the Settlement Fund, as ordered, immediately after the Court enters an Order and Final Judgment approving the Settlement and an order awarding such fees and expenses. Plaintiffs' Lead Counsel shall thereafter allocate the attorneys' fees amongst other Plaintiffs' Counsel in a manner that Plaintiffs' Lead Counsel in good faith believe reflects the contributions of such counsel to the prosecution and Settlement of the Action. Defendants shall have no obligation to make any payment other than as provided in funding the Settlement Fund and shall have no responsibility with respect to the allocation of attorneys' fees amongst Plaintiffs' Counsel.

(d) In the event that the judgment or the order awarding such fees and expenses paid to Plaintiffs' Lead Counsel pursuant to this paragraph is reversed or modified, or if this Stipulation is cancelled or terminated for any reason, then Plaintiffs' Lead Counsel shall, in an amount consistent with such reversal or modification, refund such fees, expenses and/or costs to the Settlement Fund, plus interest thereon at the same rate as earned on the Settlement Fund, within twenty (20) business days from receiving notice from Defendants' counsel or from a court of appropriate jurisdiction. Any refunds required pursuant to this paragraph shall be the joint and several obligation of all Plaintiffs' Counsel, such that the failure of any of Plaintiff's Counsel to make a required refund shall be the responsibility and obligation of any and all Plaintiffs' Counsel.

#### **ADMINISTRATION**

5. The Claims Administrator shall administer the Settlement subject to the jurisdiction of the Court. Except as stated in paragraph 12 hereof, Defendants and Defendants' Counsel shall have no responsibility for the administration of the Settlement and shall have no liability to the Class in connection with such administration. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms, including providing all information from HCC's transfer records concerning the identity of Class Members and their transactions.

6. Subject to the limitations provided in paragraph 4(b), Plaintiffs' Lead Counsel may pay from the Gross Settlement Fund, without further approval from the Defendants, the reasonable costs and related expenses associated with maintaining the Settlement Fund, identifying members of the Class and effecting mail Notice and Publication Notice to the Class, including the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding notice to their beneficial owners, and the administrative

expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims.

#### **ADMINISTRATION EXPENSES**

7. Plaintiffs' Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for an order (the "Class Distribution Order") approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

#### **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

8. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim (as defined in the Plan of Allocation described in the Notice annexed hereto as Exhibit 1 to Exhibit A, or in such other Plan of Allocation as the Court approves).

9. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation, and it is not a condition of this Stipulation that any particular Plan of Allocation be approved.

10. Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Claim compared to the total Recognized Claims of all Authorized Claimants. This is not a claims-made settlement. Defendants shall not be entitled to get back any of the settlement monies once the Effective Date has occurred. Defendants shall have no involvement in reviewing or challenging claims and shall have no responsibilities, obligations or liability with respect to investments, allocations or distributions in connection with the Settlement Fund.

## **ADMINISTRATION OF THE SETTLEMENT**

11. Any member of the Class who does not submit a valid Proof of Claim will not be entitled to receive any of the proceeds from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

12. The Claims Administrator shall process the Proofs of Claim and, after the Effective Date and entry of the Class Distribution Order, distribute the Net Settlement Fund to the Authorized Claimants. Except for their obligation to pay the Cash Settlement Amount, and to cooperate in the production of information with respect to the identification of Class Members from HCC's shareholder transfer records, as provided herein, Defendants and Defendants' Counsel shall have no liability, obligation or responsibility for the administration of the Settlement or disbursement of the Net Settlement Fund. Plaintiffs' Lead Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what Plaintiffs' Lead Counsel deem to be formal or technical defects in any Proofs of Claim submitted in the interests of achieving substantial justice.

13. For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an "Authorized Claimant," the following conditions shall apply:

(a) Each Class Member shall be required to submit a Proof of Claim and Release form ("Proof of Claim") (see attached Exhibit 2 to Exhibit A), supported by such documents as are designated therein, including proof of the transactions claimed and the losses incurred thereon, or such other documents or proof as the Claims Administrator, in its discretion may deem acceptable;

(b) All Proofs of Claim must be submitted by the date specified in the Notice unless such period is extended by Order of the Court. Any Class Member who fails to submit a Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this Stipulation (unless, by Order of the Court, a later submitted Proof of Claim by such Class Member is approved), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims. Provided that it is received before the motion for the Class Distribution Order is filed, a Proof of Claim shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, who shall determine in accordance with this Stipulation and the approved Plan of Allocation the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below;

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the Claimant in order to attempt to remedy the curable deficiencies in the Proofs of Claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, each Claimant whose Proofs of Claim they propose to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose claim is to be rejected

has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below;

(e) If any Claimant whose claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Plaintiffs' Lead Counsel shall thereafter present the request for review to the Court; and

(f) The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to Defendants' Counsel, for approval by the Court in the Class Distribution Order.

14. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Class Member and the validity and amount of the Claimant's claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proofs of Claim.

15. Payment pursuant to this Stipulation shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order



and Final Judgment to be entered in the Action and the releases provided for therein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

16. Any member of the Class wishing to be excluded from the Class shall mail a written request for exclusion, in the manner set forth in the Notice and Preliminary Approval Order.

17. All proceedings with respect to the administration, processing and determination of claims described by paragraph 15 of this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of this Court.

18. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator only after the Effective Date and after: (i) all Claims have been processed, and all Claimants whose Claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii) all objections with respect to all rejected or disallowed claims have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (iii) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (iv) all costs of administration have been paid.

#### **TERMS OF PRELIMINARY APPROVAL ORDER**

19. Promptly after this Stipulation has been fully executed, Plaintiffs' Lead Counsel and Defendants' Counsel jointly shall apply to the Court for entry of the Preliminary Approval Order identical in all material respects to the proposed "Preliminary Approval Order Providing for Notice and Hearing in Connection with Settlement Proceedings" attached hereto as Exhibit A.

## **TERMS OF ORDER AND FINAL JUDGMENT**

20. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the parties shall request that the Court enter an Order and Final Judgment identical in all material respects to the “Order and Final Judgment” attached hereto as Exhibit B.

## **EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

21. The “Effective Date” of Settlement shall be the date when all of the following shall have occurred:

(a) approval by the Court of the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

(b) entry by the Court of an Order and Final Judgment, identical in all material respects to the “Order and Final Judgment” attached hereto as Exhibit B, which has become Final or, in the event that the Court enters an order and final judgment in a form other than that provided herein (“Alternative Judgment”) and none of the parties hereto elect to terminate the Settlement, the date that such Alternative Judgment becomes Final.

22. Defendants or Plaintiffs, through counsel, shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to all other parties hereto within thirty (30) days of: (a) the Court’s entry of a Preliminary Approval Order differing in any material respect from the attached Exhibit A; (b) the Court’s refusal to approve this Stipulation or any material part of it; (c) the Court’s entry of an Order and Final Judgment differing in any material respect from the attached Exhibit B; (d) the date upon which the Order and Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court, or otherwise does not become Final; (e) the date upon which an Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court, or otherwise does not become Final.

23. In addition, Plaintiffs and Defendants through their respective counsel are executing a "Supplemental Agreement" setting forth certain conditions under which this Stipulation and Settlement may be terminated by Defendants, in their sole discretion, if potential Class Members who purchased in excess of a certain number of shares of HCC stock purchased during the Class Period exclude themselves from the Class. Defendants, through counsel, shall exercise this discretion, should they choose to do so, by providing a Termination Notice to all other parties hereto so that it is received by 5:00 pm Eastern Time on the second business day prior to the Settlement Fairness Hearing. The Supplemental Agreement shall not be filed with the Court unless a dispute arises as to its terms. In the event of a termination of this Settlement pursuant to the Supplemental Agreement, this Stipulation shall become null and void and of no further force and effect and the provisions of paragraphs 24 and 26 shall apply.

24. Except as otherwise provided herein, in the event the Settlement is terminated, then (i) the parties to this Stipulation shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of the Memorandum of Understanding dated February 6, 2008 and executed by the parties (the "Memorandum of Understanding"), (ii) the parties shall proceed in all respects as if this Stipulation and any related orders had not been entered, (iii) the termination shall constitute a failure of a condition of the Settlement, as described in paragraph 1 of the Memorandum of Understanding and the provisions of paragraph 12 of the Memorandum of Understanding shall apply; and (iv) any portion of the Cash Settlement Amount previously paid by Defendants or caused to be paid by Defendants, together with any income or interest earned thereon, less any taxes due with respect to such income and less costs of notice and administration actually incurred and, to the extent authorized herein, paid or payable from the Cash Settlement Amount, shall be returned to the persons paying the same

within ten (10) business days of receipt of the Termination Notice. In addition to this paragraph 24, paragraphs 26 and 29 of this Stipulation shall survive any termination of this Stipulation.

#### **NO ADMISSION OF WRONGDOING**

25. Defendants have vigorously denied and continue to deny vigorously having committed or attempted to commit any violations of law or otherwise having acted in any improper manner or having any liability arising from the matters released and enter into this Settlement solely to eliminate the burden and expense of further litigation. Plaintiffs also believe that the claims in the Action are strong and meritorious and enter into this Stipulation without admitting or conceding any lack of merit of the Action.

26. This Stipulation, whether or not consummated, and any proceedings taken pursuant to it:

(a) shall not be invoked, offered or received against any of the Released Parties as evidence of, or interpreted, construed as or deemed to be evidence of any presumption, concession, or admission or finding by or against 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 Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation;

(b) shall not be invoked, offered or received against any of the Released Parties as evidence of, or interpreted, construed as or deemed to be evidence of, any presumption, concession or admission or finding of any breach of duty, liability, negligence, fault, misrepresentation, omission or any other wrongdoing, or in any way referred to for any other reason as against any of the Released Parties, in this Action or in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to

effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, the Released Parties may refer to it to effectuate the liability protection granted them hereunder;

(c) shall not be invoked, offered or received against any of the Released Parties as evidence of, or interpreted, construed as or deemed to be evidence of, any presumption, admission, concession, or finding that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial;

(d) shall not be invoked, offered or received against any of the Released Parties in connection with any motion for class certification (the parties agree that the class certification, as provided in the attached Order and Final Judgment, shall be for settlement purposes only); and

(e) shall not be invoked, offered or received against the Plaintiffs or any of the Class Members as evidence of, or interpreted, construed as or deemed to be evidence of, any presumption, admission, concession or finding that any of their claims are without merit, or that any defenses asserted by the Released Parties have any merit, or that damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.

#### **MISCELLANEOUS PROVISIONS**

27. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

28. The parties to this Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against the Released Parties with respect to the Settled Claims. Accordingly, Plaintiffs and Defendants agree that the Action was filed, prosecuted and defended in accordance with Rule 11 of the Federal Rules of Civil Procedure (“Rule 11”) and agree not to assert in any forum that the

litigation was brought by Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The parties hereto shall assert no claims of any violation of Rule 11 relating to the prosecution, defense, or settlement of the Action. The parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's length in good faith by the parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

29. All agreements made and orders entered during the course of the Action relating to confidentiality of information shall survive this Stipulation.

30. Nothing in this Stipulation or the negotiations or proceedings relating to the Stipulation and Settlement is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity.

31. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all parties hereto or their successors-in-interest.

32. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

33. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation.

34. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

35. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement among the parties hereto concerning the Settlement of the Action, and no

representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its exhibits or the Supplemental Agreement other than those contained and memorialized in such documents.

36. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

37. This Stipulation shall be binding upon, and inure to the benefit of, the parties hereto and their respective agents, executors, heirs, successors and assigns.

38. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of Texas without regard to conflicts of laws, except to the extent that federal law requires that federal law governs.

39. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's-length negotiations between the parties and all parties have contributed substantially and materially to the preparation of this Stipulation.

40. Plaintiffs' Lead Counsel and Plaintiffs' Liaison Counsel represent that they are not aware of any current or prospective client or other person or entity who is contemplating in any way the prosecution of any claim against any of the Released Parties arising from or related in any way to the allegations, facts, events, transactions, acts, occurrences, statements, representations, misrepresentations, or omissions alleged or set forth in the Complaint. If any action or proceeding is instituted in any state or federal court by any Class Member asserting any Settled Claim prior to the Effective Date of the Settlement, Plaintiffs' Lead Counsel and

Plaintiffs' Liaison Counsel shall cooperate with Defendants in obtaining the stay or withdrawal of any such action or proceeding, including, where appropriate, joining in any motion to stay any such action or proceeding pending the Effective Date. Upon the occurrence of the Effective Date, Plaintiffs' Lead Counsel and Plaintiffs' Liaison Counsel shall cooperate with Defendants in obtaining the dismissal or withdrawal of any such action or proceeding, including, where appropriate, joining in any motion to dismiss any such action or proceeding.

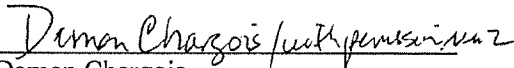
41. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

42. Plaintiffs' Lead Counsel, Plaintiffs' Liaison Counsel, and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order, the Stipulation, and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

Dated: March 25, 2008



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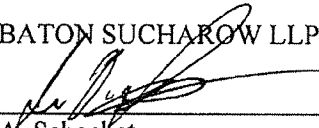
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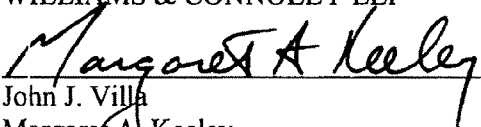
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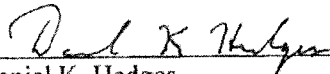
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