

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re

CHINA NATURAL GAS, INC.,

Debtor.

ALAN NISSELSON, as Chapter 7 Trustee of the Estate of China Natural Gas, Inc., and HAITHAM J. KOUSA, ROBERT MALLANO and RICK STEINMETZ, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

QINAN JI, ZHIQIANG WANG, LAWRENCE W. LEIGHTON, FRANK WAUNG, YANG XIANG DONG, and CHINA NATURAL GAS, INC.,

Defendants.

Chapter 7

Case No. 13-10419 (SHL)

Pending in the United States
Bankruptcy Court for the Southern
District of New York

Case No. 15-CV-00299- RGA

STIPULATION OF SETTLEMENT

This Stipulation of Settlement dated as of January 28, 2016 (the “Stipulation”), is made and entered into by and among the following parties (the “Settling Parties”): (i) Plaintiffs Haitham J. Kousa (“Kousa”), Robert Mallano (“Mallano”) and Rick Steinmetz (“Steinmetz”) (collectively “Plaintiffs”) on behalf of the Settlement Class (as defined herein); (ii) Lawrence W. Leighton (“Leighton”), Frank Waung (“Waung”) and Yang Xiang Dong (also known as Donald Yang) (“Yang”) (collectively the “Defendants”); (iii) Alan Nisselson, in his capacity as Chapter 7 trustee (“Trustee”) of the bankruptcy estate of China Natural Gas, Inc. (“CHNG” or “Company”); and (iv) XL Insurance Company SE (“Insurer”), by and through their undersigned

counsel. The Stipulation is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims (as defined below) and Released Defendants' Claims (as defined herein), upon and subject to the terms and conditions hereof, and subject to the approval of the District Court and the Bankruptcy Court (defined below).

I. SUMMARY OF THE CLAIMS AND PROCEDURAL HISTORY

A. CHNG became a public company listed on the NASDAQ Global Market ("NASDAQ") through a reverse merger in 2005 and at all relevant times was a Delaware corporation with its principal executive offices located in Xi'an, Shaanxi Province, the People's Republic of China.

B. Qinan Ji ("Ji") served as Chairman of CHNG's Board of Directors (the "Board") from May 2006 until June 2013 and as CHNG's Chief Executive Officer from May 2006 until October 4, 2011. Zhiqiang Wang ("Wang") was Vice-Chairman of the Board and an advisor to CHNG from May 2006 until at least February 2013. Yang is the managing partner and Chief Executive Officer of Abax Global Capital, an investment company whose affiliates are creditors of CHNG. He served as a director of CHNG from August 2008 until his resignation in September 2013. Waung was an independent director of CHNG from November 2010 until his resignation in May 2014. Leighton was also an independent director of CHNG from August 2008 until his resignation in May 2014.

C. On May 22, 2012, Plaintiffs brought an action against Ji, Wang, Leighton, Waung, Dong and CHNG titled *Haitham J. Kousa, et al. v. Qinan Ji, et al.*, in the Court of Chancery of the State of Delaware at Civil Action No. 7559-VCL ("Chancery Court Action"). On or about April 8, 2015, Plaintiffs and the Trustee removed the Chancery Court Action to the United States District Court for the District of Delaware at Civil Action No. 1:15-CV-299-RGA,

now titled *Alan Nisselson, as Chapter 7 Trustee of the Estate of China Natural Gas, Inc., et al. v. Qinan Ji, et al.* (the “Action”).

D. Plaintiffs alleged that in January 2010, Ji caused CHNG to make loans in the amount of \$14.3 million (the “Wang and Juntai Loans”), ostensibly to parties with whom the Company did not have a prior relationship, and that Ji did not obtain Board approval for the Wang and Juntai Loans, or immediately disclose their existence to the Board. In May 2010, the Company reported in a Form 10-K filed with the United States Securities & Exchange Commission (“SEC”) that the Company had made the Wang and Juntai Loans to Shanxi Juntai Housing Purchase Ltd (the “Juntai Loan”) and to Ms. Taoxiang Wang (the “Wang Loan”).

E. Plaintiffs’ further alleged that in February 2010, Ji caused CHNG to borrow \$17.7 million from Pudong Development Bank (the “Pudong Loan”), representing a more than 50% increase in the Company’s outstanding debt, and that Ji did not disclose the Pudong Loan to the Board until May 2010, did not report the Pudong Loan to CHNG’s auditors, and failed to cause the Company to disclose the loan in its Form 10-Q filing for the quarter ended March 31, 2010.

F. On August 13, 2010, CHNG announced in a filing with the SEC the Juntai Loan and the Wang Loan and in the same SEC filing the Company reported that in February 2010 it had obtained the Pudong Loan, all of which the Company reported had occurred “without pre-approval from the Company’s board of directors,” in addition to acquiring “4 natural gas fueling stations without pre-approval on the final acquisition price.”

G. Plaintiffs alleged that in August 2010, the Board and CHNG’s auditor learned that CHNG had borrowed the \$17.7 million Pudong Loan in February 2010, and determined that the Company would need to restate its 2009 Form 10-K and 1Q2010 Form 10-Q to properly report the loan. CHNG revealed in the August 13, 2010 SEC filing that it would restate its financial results, in part to reflect the Juntai Loan and the Wang Loan. In addition, the Board and

CHNG's auditor determined that the Pudong Loan may have violated the terms of a 2007 loan (the "Abax Loan") entered into with Abax Global Capital ("Abax") of whom Yang served as President, which gave Abax the right to declare an event of default.

H. Plaintiffs alleged that in October 2010, the Board announced the discovery of a fifth unapproved transaction by Ji — the \$3.6 million acquisition of Hanchun Makou Yuntong Compressed Natural Gas Co., Ltd., in the third quarter of 2010.

I. Plaintiffs alleged that these disclosures concerning the Company's finances caused a significant decline in the trading price of CHNG stock.

J. On September 21, 2011, the Board announced in a filing with the SEC that certain Company filings with the SEC in 2010 "should no longer be relied upon due to a failure to correctly disclose as a related party transaction" the Wang Loan.

K. Also on or about September 21, 2011, NASDAQ announced that it had halted the trading of CHNG shares.

L. On October 12, 2011, CHNG announced that Ji had resigned as CEO and the Board had appointed Shuwen Kang ("Kang") as CEO. Kang had been the vice president of CHNG's affiliate, Xi'an Xilan, since 2011. CHNG also announced that Ji would continue as Chairman of the Board.

M. On November 9, 2011, NASDAQ informed CHNG that it had decided under its discretionary authority to delist CHNG's securities. According to CHNG's Form 8-K in which it disclosed this news, the reasons given by NASDAQ were: (1) the Wang and Juntai Loans made to members of Ji's family; (2) management's failure to disclose the true nature of the Wang and Juntai Loans to the Board, the Audit Committee, the special committee of the Board formed to investigate the loans and the Company's outside audit firm; (3) CHNG's failure to disclose the

related-party nature of the loans in its SEC filings; and (4) the lack of adequate controls related to the Company's disclosure and financial reporting.

N. On April 20, 2012, NASDAQ announced that the delisting decision had become final, effective April 30, 2012, and on April 30, 2012, NASDAQ delisted CHNG's securities.

O. Plaintiffs alleged that the retention by the Board of Ji as Chairman was a proximate cause of the delisting of CHNG's stock by NASDAQ, and that the delisting resulted in a further significant decline in the trading price of CHNG stock.

P. On February 8, 2013, an involuntary petition for relief under chapter 11 of title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), was filed against CHNG in the United States Bankruptcy Court for the Southern District of New York, Case No. 13-10419 (SHL) (the "Bankruptcy Case"). On July 9, 2013, the Bankruptcy Court entered an Order for Relief under chapter 11 pursuant to § 303(h) of the Bankruptcy Code.

Q. On June 5, 2014, the United States Trustee filed a motion for an order either converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or dismissing it. On July 2, 2014, the Bankruptcy Court entered an Order converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code. On July 3, 2014, the United States Trustee appointed Alan Nisselson as interim trustee for the CHNG bankruptcy estate, who thereafter qualified as permanent Trustee.

R. On December 1, 2014, the Trustee filed an Application with the Bankruptcy Court for authority to retain and employ Wohl & Fruchter LLP, one of Plaintiffs' Counsel (defined below) in the Chancery Court Action, as special litigation counsel with respect to derivative claims asserted in the Chancery Court Action that were now the property of the CHNG bankruptcy estate. The Chancery Court Action also asserted class claims against Defendants. On

December 9, 2014, the Bankruptcy Court entered an Order granting the Trustee's application to retain and employ Wohl & Fruchter LLP as special litigation counsel.

S. On April 8, 2015, in light of the pending Bankruptcy Case, Plaintiffs voluntarily removed the Chancery Court Action to the District Court.

T. On July 9, 2015, the Settling Parties participated in a voluntary mediation before Jed D. Melnick, Esq. of JAMS. As a result of that mediation and subsequent negotiations, the Settling Parties reached an agreement to settle this litigation.

II. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

U. Defendants deny each and every one of the claims and contentions alleged by Plaintiffs and the Trustee. Defendants expressly deny any and all allegations of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or which could have been alleged, in the Chancery Court Action or the Action. The Defendants also deny, *inter alia*, any and all allegations that Plaintiffs, the Trustee or the Settlement Class have suffered any damages as a result of any of the conduct, statements, acts or omissions of Defendants, alleged or otherwise.

V. Defendants have concluded that continued litigation of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. The Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Action. The Defendants have, therefore, determined that it is desirable and beneficial to them that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation.

III. CLAIMS OF PLAINTIFFS AND THE TRUSTEE AND THE BENEFITS OF THE SETTLEMENT

W. Plaintiffs and the Trustee believe that the claims asserted in the Action have merit and that the evidence developed to date supports the claims. Additionally, counsel for Plaintiffs and the Trustee have researched the applicable law with respect to their claims and believe they could successfully refute any defenses to their claims raised by Defendants. However, Plaintiffs, Plaintiffs' Counsel, the Trustee and Trustee's Counsel (defined below) recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action through trial and through appeals. Plaintiffs, Plaintiffs' Counsel, the Trustee and Trustee's Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Action, as well as the difficulties and delays inherent in such litigation. Counsel for Plaintiffs and the Trustee are also mindful of the inherent problems of proof and possible defenses to the claims asserted in the Action. Counsel for Plaintiffs and the Trustee believe that the Settlement set forth in this Stipulation confers substantial benefits upon the bankruptcy estate and the Settlement Class. Based on their evaluation, Plaintiffs, Plaintiffs' Counsel, the Trustee and Trustee's Counsel have determined that the Settlement set forth in this Stipulation is fair, reasonable, adequate and in the best interests of the Company and the Settlement Class.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs (individually and on behalf of the Settlement Class), the Trustee, Defendants, and the Insurer, by and through their undersigned attorneys, subject to the approval of the District Court and the Bankruptcy Court as described herein, for good and adequate consideration, the sufficiency of which is hereby acknowledged, that the Action, the Released Claims and the Released Defendants' Claims shall be finally and fully compromised, settled and released, and

the Action shall be dismissed with prejudice, as to all the Settling Parties, Wang, and Ji upon and subject to the terms and conditions of this Stipulation.

1. Definitions

As used in the Stipulation, the following terms shall have the meanings specified below.

1.1 “Accounts” means the interest bearing accounts that are to be maintained by the Escrow Agents and into which the Settlement Fund shall be deposited. The funds in the Accounts shall be invested to the extent possible in instruments backed by the Full Faith and Credit of the United States or an agency thereof (or a mutual fund investment solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances of less than \$250,000 may be invested in an account that is fully insured to the extent possible by the United States Government, or any agency thereof, including the FDIC.

1.2 “Authorized Claimant” means any Settlement Class Member whose claim for recovery has been allowed pursuant to the terms of the Stipulation.

1.3 “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York.

1.4 “Bankruptcy Court Fee and Expense Award” means the award to Plaintiffs’ Counsel of fees and expenses and any awarded interest thereon to be paid from the Account held by the Trustee in escrow as approved by the Bankruptcy Court and in full satisfaction of any and all claims for attorneys’ fees and expenses that have been, could be or could have been asserted by Plaintiffs’ Counsel or any other counsel with respect to the Trustee’s Claims.

1.5 “Claimant” means any Settlement Class Member who files a Proof of Claim and Release form in such form and manner, and within such time, as the District Court shall prescribe.

1.6 “Claims Administrator” means the accounting and claims administration firm, Strategic Claims Services, which Plaintiffs’ Counsel requests be appointed by the Court to administer the Settlement and disseminate notice to the Settlement Class.

1.7 “Settlement Class Member” or “Member of the Class” means a Person who falls within the definition of the Settlement Class as set forth in ¶1.31 below and who has not filed a valid request to be excluded from the Settlement Class.

1.8 “Defendants’ Counsel” mean the law firms of Cozen O’Connor, Satterlee Stephens Burke & Burke, LLP, and Greenhill Law Group, LLC.

1.9 “District Court” means the United States District Court for the District of Delaware.

1.10 “District Court Fee and Expense Award” means the award to Plaintiffs’ Counsel of fees and expenses and any awarded interest thereon to be paid from the Account held by Wohl & Fruchter LLP in escrow as approved by the District Court and in full satisfaction of any and all claims for attorneys’ fees and expenses that have been, could be or could have been asserted by Plaintiffs’ Counsel or any other counsel or any Class Member.

1.11 “Effective Date” means the first date by which all of the events and conditions specified in ¶7.1 of the Stipulation have been met and have occurred.

1.12 “Escrow Agents” means (a) the law firm of Wohl & Fruchter LLP for the Stockholder Settlement Amount; and (b) the Trustee for the Trustee Settlement Amount.

1.13 “Final” means: (i) the date of final affirmance on an appeal of the Judgment, the expiration of the time for any petition for or a denial of a writ of certiorari to the Supreme Court of the United States to review the Judgment and, if certiorari is granted, the date of final affirmance of the Judgment following review pursuant to that grant; or (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on certiorari

to review the Judgment; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Judgment approving the Settlement substantially in the form of Exhibit B attached. 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, costs or expenses and/or application for a class representative award, shall not in any way delay or preclude the Judgment from becoming Final.

1.14 "Insurer" means XL Insurance Company SE.

1.15 "Judgment" means the Final Judgment and Order of Dismissal with Prejudice to be rendered by the District Court, substantially in the form attached as Exhibit B.

1.16 "Notice" means the Notice of Pendency and Proposed Settlement of Class Action, which is to be distributed to Settlement Class Members and posted to the Settlement Website substantially in the form attached as Exhibit A-1.

1.17 "Net Settlement Amount" means the Settlement Fund as defined herein less the Trustee Settlement Amount, the District Court Fee and Expense Award, any Taxes and Tax Expenses, and Notice and Administrative Expenses.

1.18 "Notice and Administration Expenses" means all costs and expenses associated with providing notice of the Settlement to Class Members, soliciting claims, administering and distributing the Settlement.

1.19 "Policy" means Management Liability and Company Reimbursement Insurance Policy No. SG000001420009A issued by XL Insurance Company Ltd. to China Natural Gas, Inc., for the Policy Period from October 16, 2009 to October 16, 2010.

1.20 "Preliminary Order" or "Notice Order" means the order preliminarily approving the Settlement and directing notice to the Settlement Class, substantially in the form attached as Exhibit A.

1.21 “Settling Parties” mean Plaintiffs, individually and on behalf of the Settlement Class, the Trustee, Defendants, and the Insurer.

1.22 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, or any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.23 “Plaintiffs’ Counsel” mean the law firms of Wohl & Fruchter LLP, Glancy Prongay & Murray LLP, Bottini & Bottini, Inc., Montgomery McCracken Walker & Rhoads LLP and Bast Amron LLP.

1.24 “Plan of Allocation” means a plan or formula of allocation of the Net Settlement Amount to Authorized Claimants. Any Plan of Allocation is not part of the Stipulation and Defendants and the Insurer shall have no responsibility or liability with respect thereto.

1.25 “Proof of Claim and Release form” means the form specified in ¶ 5.3(b) below.

1.26 “Released Claims” shall mean any and all claims, demands, rights, causes of action or liabilities, of every nature and description whatsoever, whether based in law or equity, 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 any forum by the Trustee, CHNG or Members of the Class, or any of them, or the successors or assigns of any of them, whether directly, indirectly, derivatively, representatively or in any other capacity against any of the Released Persons, for damages, injunctive relief, or any other remedy, which arise out of, concern or relate in any way, directly or indirectly, to the allegations contained in the Action and any matter that could have been asserted in the Action regarding breaches of fiduciary duty, provided, however, that the term “Released Claims” does not include (i) claims to enforce this Stipulation, (ii) claims, if any, that are included within the definition of

the assets whose sale was approved by the Bankruptcy Court by Order entered December 18, 2014 (Bankruptcy Case Dkt. No. 175), and (iii) certain claims by the Company or the Trustee against the Insurer arising under or concerning the Policy as set forth in the separate Settlement Agreement and Release among XL, the Trustee and Defendants.

1.27 “Released Defendants’ Claims” shall collectively mean all claims, demands, rights, causes of action or liabilities, of every nature and description, whether based in law or equity, 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 any forum by any of the Defendants, Ji, or Wang or the successors or assigns of any of them, whether directly, indirectly, representatively or in any other capacity against the Plaintiffs, the Settlement Class, the Trustee, Plaintiffs’ Counsel, Trustee’s Counsel, or the Insurer which arise out of, or are related in any way, directly or indirectly, to the Action or their institution, prosecution, or settlement of the Action (except for claims to enforce the Stipulation), provided, however, that “Released Defendants’ Claims” shall not include certain claims by the Defendants against the Insurer arising under or concerning the Policy as set forth in the separate Settlement Agreement and Release among XL, the Trustee and Defendants.

1.28 “Released Persons” means Plaintiffs, the Settlement Class, the Trustee, CHNG, Plaintiffs’ Counsel, Trustee’s Counsel, Defendants, Ji, Wang, the Insurer, and any Insured Person under the Policy, and any of their respective past, present or future affiliates, parents, subsidiaries, general partners, limited partners, partnerships, and as to each of the foregoing, their respective officers, directors, managing directors, members, managers, employees, agents, attorneys, advisors, insurers, accountants, auditors, trustees, financial advisors, lenders, investment bankers, associates, representatives, heirs, executors, personal representatives, estates, administrators, successors, and assigns.

1.29 “Settlement Class” means all CHNG stockholders and their successors in interest and transferees, immediate and remote, on April 30, 2012, inclusive. Excluded from the Settlement Class are Defendants, Ji, and Wang and any of their immediate family members. Also excluded from the Settlement Class are those Persons who submit a valid request to be excluded from the Settlement Class pursuant to the Notice and the Request for Exclusion as described herein.

1.30 “Settlement Fund” means the principal amount of \$1,400,000 paid by Insurer on behalf of the Defendants, Ji, and Wang, pursuant to ¶2.1 of the Stipulation and delivered to the Escrow Agents, plus any accrued interest. Defendants, Ji, and Wang shall not be obligated to make any payments hereunder.

1.31 “Stockholder Settlement” means the settlement of any and all claims asserted by the Settlement Class in the Action.

1.32 “Stockholder Settlement Amount” means the amount of \$1,150,000, to be taken from the Settlement Fund to settle the direct claims of the Settlement Class asserted in the Action.

1.33 “Settlement Hearing” means the hearing described more fully in ¶3.2 below to be held by the District Court to determine whether the proposed Stockholder Settlement should be approved as fair, reasonable and adequate; whether to enter the Judgment in the form attached as Exhibit B; and to approve the District Court Fee and Expense Award.

1.34 “Trustee Settlement” means the settlement of all claims asserted by the Trustee in the Action, including all derivative claims on behalf of CHNG.

1.35 “Trustee Settlement Amount” means the amount of \$250,000 to be taken from the Settlement Fund to settle the claims of the Trustee in the Action, including all derivative claims on behalf of CHNG.

1.36 “Summary Notice” means the Summary Notice to be published in the national edition of the *Investor’s Business Daily* and on the internet via *GlobeNewswire*, substantially in the form of Exhibit A-2.

1.37 “Trustee’s Counsel” means special counsel Wohl & Fruchter LLP and general counsel Windels Marx Lane & Mittendorf, LLP (“Windels Marx”).

1.38 “Unknown Claims” means any Released Claims that Plaintiffs, any Member of the Class, the Trustee or any of them, do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons, and any Released Defendants’ Claims that any Defendants, Wang or Ji do 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 settlement and release of the Released Defendants’ Claims, or might have affected his, her, or its decision not to object to the Settlement. Upon the Effective Date, the Settling Parties, and all other Persons and entities whose claims are being released, shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

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

Plaintiffs, the Trustee, Defendants and the Released Persons have, and each Member of the Class shall be deemed by operation of the Judgment to have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable and equivalent to California Civil Code § 1542. Plaintiffs, the Trustee, Defendants and the Released Persons may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims or the Released Defendants’

Claims, but Plaintiffs, the Trustee and Defendants shall expressly, and each Member of the Class and Released Person, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts, and, including without limitation, any Unknown Claims. Plaintiffs, the Trustee and Defendants acknowledge, and the Members of the Class and Released Persons shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver of Unknown Claims was separately bargained for and a key element of the Settlement of which this release is a part.

2. The Settlement

a. The Settlement Fund

2.1 Trustee's Counsel shall provide all necessary instructions for payment by wire to Insurer no later than five (5) business days after full execution of the Stipulation. By no later than fifteen (15) business days after the entry of a Preliminary Order, the Insurer will pay \$1,400,000 in U.S. funds into the Accounts to form the Settlement Fund on behalf of the Plaintiffs, the Trustee and the Settlement Class. The Accounts will be held on behalf of the Settlement Class and the Trustee pending disbursement, at institutions designated by the Escrow Agents. Defendants, Ji, and Wang shall not be responsible for payment of any portion of the Settlement Fund.

b. Handling and Disbursement of Funds by the Escrow Agents

2.2 The Escrow Agents shall invest, to the extent possible, the Settlement Fund deposited pursuant to ¶2.1 in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. The Escrow Agents shall be liable only for acts of gross negligence or willful misconduct.

2.3 The Escrow Agents shall not disburse the Stockholder Settlement Amount or Trustee Settlement Amount except as provided in the Stipulation, by an order of the District Court or Bankruptcy Court, or with the written agreement of the Insurer, Defendants' Counsel, Trustee's Counsel and Plaintiffs' Counsel.

2.4 Subject to further orders and/or directions as may be made by the District Court or Bankruptcy Court, the Escrow Agents are authorized to execute such transactions on behalf of Members of the Class as are consistent with the terms of the Stipulation.

2.5 All funds held by the Escrow Agents shall be deemed and considered to be in *custodia legis* of the District Court, and shall remain subject to the jurisdiction of the District Court until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the District Court and Bankruptcy Court.

2.6 Immediately after entry of the Preliminary Order, the Escrow Agents may pay up to \$150,000.00 from the Stockholder Settlement Fund without further approval from the Insurer, Defendants, the Trustee or the District Court or Bankruptcy Court, for costs and expenses reasonably and actually incurred in connection with Notice and Administration Expenses. To the extent that the Notice and Administration Expenses exceed \$150,000.00, after the Effective Date, the Escrow Agents may withdraw such amounts from the Stockholder Settlement Fund as may

be necessary to pay any additional Notice and Administration Expenses without further order of the District Court or Bankruptcy Court.

2.7 (a) Settling Parties and the Escrow Agents agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agents shall timely make such elections as necessary or advisable to carry out the provisions of this ¶2.7, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agents to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of §1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agents. The Escrow Agents shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶2.7(a) hereof) shall be consistent with this ¶2.7 and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the cash portion of the Settlement Fund shall be paid out of the Settlement Fund (“Taxes”) as provided in ¶2.7(c) hereof.

(c) Defendants, Ji, Wang, Insurer and their counsel shall have no liability or responsibility for any Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon Defendants, Ji, Wang, Insurer or their counsel with respect to any income

earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes. All (i) Taxes and (ii) expenses and costs incurred in connection with the operation and implementation of this ¶2.7 (including, without limitation, expenses of tax attorneys or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶2.7) (“Tax Expenses”) shall be paid out of the Settlement Fund; in all events Defendants, Ji, Wang, Insurer, and their counsel shall have no liability or responsibility for the Taxes or Tax Expenses. The Escrow Agents shall indemnify and hold each of the Defendants, Ji, Wang, Insurer, and their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agents out of the Settlement Fund without prior order from the District Court or the Bankruptcy Court, and the Escrow Agents shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Defendants, Ji, Wang, Insurer, or their counsel are responsible nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agents, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶2.7.

c. Termination of Settlement

2.8 Plaintiffs, on behalf of the Settlement Class, the Trustee, or Defendants, and any of them, 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 Settling Parties within thirty

(30) days of: (a) the District Court declining to: (i) approve the Stockholder Settlement or any material part of it, or (ii) enter the Preliminary Order in any material respect, or (iii) enter the Judgment in any material respect; (b) the Bankruptcy Court declining to approve the Trustee Settlement Amount; (c) the date upon which the Judgment is modified or reversed in any material respect following an appeal or appeals; (d) the date upon which an Alternative Judgment (defined below) is modified or reversed in any material respect following an appeal or appeals; or (e) Defendants' election to rescind pursuant to the Parties' Supplemental Agreement.

3. Notice Order and Settlement Hearing

3.1 Promptly after execution of the Stipulation, Plaintiffs' Counsel or Trustee's Counsel shall file a motion with the Bankruptcy Court for an order authorizing the Trustee to enter into and perform the Stipulation on behalf of the bankruptcy estate and approving the Trustee Settlement Amount, including the Bankruptcy Court Fee and Expense Application. Simultaneously with the submission to the Bankruptcy Court, Plaintiffs' Counsel shall submit the Stipulation together with its Exhibits to the District Court and shall apply for entry of the Preliminary Order, substantially in the form of Exhibit A attached, requesting, *inter alia*, the certification of the Settlement Class for settlement purposes only, preliminary approval of the Stockholder Settlement, and approval for the mailing of the Notice, publication of the Summary Notice and publication of the Settlement Website which will contain the Notice, as well as other relevant documents to the litigation substantially in the form of Exhibits A-1, A-2, and A-3 attached. The Notice shall include the general terms of the Settlement set forth in the Stipulation, the proposed Plan of Allocation, the general terms of the Fee and Expense Applications as defined in ¶6.1 below, the date of the Settlement Hearing, and shall provide that all proceedings in the Action, except those related to the Settlement, be stayed until the resolution of all such Settlement-related proceedings.

3.2 Plaintiffs' Counsel shall request that after preliminary approval of the Stockholder Settlement is given, the District Court hold a hearing to approve the Stockholder Settlement as set forth herein. At or after the Settlement Hearing, Plaintiff's Counsel also will request that the District Court approve the proposed Plan of Allocation and the District Court Fee and Expense Application.

4. Releases and Released Claims

4.1 The obligations incurred pursuant to this Stipulation shall be a full and final disposition of the Action, any and all Released Claims, and any and all Released Defendants' Claims.

4.2 Upon the Effective Date, as defined in ¶1.12, Plaintiffs, the Settlement Class, the Trustee and CHNG shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against Defendants, and each of them, and any and all of the Released Persons, whether or not any individual Settlement Class Member executes and delivers the Proof of Claim and Release form. Delivery of a Proof of Claim and Release form, executed by Members of the Class, which is substantially in the form contained in Exhibit A-3 attached, shall release all Released Claims against the Defendants and all of the Released Persons.

4.3 The Parties agree to entry of a Judgment providing that Plaintiffs, Members of the Class and the Trustee, on behalf of themselves, their heirs, executors, administrators, successors and assigns, shall, with respect to each and every Released Claim, release and forever discharge, and shall forever be enjoined from prosecuting all Released Claims and shall covenant to refrain from instituting, commencing, or prosecuting either directly, indirectly, representatively, or in any other capacity, all Released Claims against any of the Released Persons, whether or not such

Settlement Class Member executes and delivers the Proof of Claim and Release form, or otherwise shares in the Settlement Fund.

4.4 Upon the Effective Date, as defined in ¶1.12, Defendants, Ji, and Wang, and each of them, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Defendants' Claims against the Plaintiffs, the Settlement Class, the Trustee, CHNG, Plaintiffs' Counsel, Trustee's Counsel, and the Insurer, and Defendants, Ji, and Wang shall be forever enjoined from prosecuting the Released Defendants' Claims.

4.5 The Parties agree to entry of a Judgment providing that to the full extent provided by law, any and all claims by any Party, any Person that could be a Class Member and has not opted out, or any third party so permitted by law, related, directly or indirectly, to the facts of the Action, shall be barred (the "Bar Order").

5. Administration and Calculation of Claims, Final Awards, and Supervision and Distribution of Settlement Fund

5.1 The Claims Administrator, subject to such supervision and direction of the District Court or Plaintiffs' Counsel or Trustee's Counsel as may be necessary, shall receive Proof of Claim and Release forms from Members of the Class and determine, first whether such claim is an Authorized Claim, in whole or in part; and second each Authorized Claimant's *pro rata* share of the Net Settlement Amount. Following the Effective Date, the Net Settlement Amount will be distributed by the Claims Administrator pursuant to the Plan of Allocation approved by the District Court. The Plan of Allocation 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.

5.2 The Settlement Fund shall be applied as follows:

- (a) To pay any Taxes and related Tax Expenses;
- (b) To pay the Notice and Administration Expenses;

(c) To pay the Trustee Settlement Amount (including the Bankruptcy Fee and Expense Award with interest thereon to the extent allowed by the Bankruptcy Court out of the Trustee Settlement Amount);

(c) To pay the District Court Fee and Expense Award with interest thereon to the extent allowed by the District Court; and

(d) To distribute the balance of the Settlement Fund (the “Net Settlement Amount”) to Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, and the District Court.

5.3 Upon the Effective Date and thereafter, and in accordance with the terms of the Stipulation, the Plan of Allocation, or such further approval and further orders of the District Court as may be necessary or as circumstances may require, the Net Settlement Amount shall be distributed to Authorized Claimants, subject to and in accordance with the following:

(a) Any Person falling within the definition of the Settlement Class may be excluded from the Settlement Class by submitting to the Claims Administrator a request for exclusion (“Request for Exclusion”), which complies with the requirements set forth in the Preliminary Order, Exhibit A, and is timely postmarked pursuant to the terms of the Preliminary Order. All Persons who submit valid and timely Requests for Exclusion shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Amount, and shall not be bound by the Stipulation or the Judgment. However, a Settlement Class Member may submit a written revocation of a Request for Exclusion up until the Bar Date (defined below) and receive payments pursuant to this Stipulation provided the Settlement Class Member also submits a valid Proof of Claim and Release form, as set forth in subparagraph 5.3(b), below, prior to the Bar Date;

(b) Within one hundred-twenty (120) days of the mailing of the Notice (or the first business day thereafter if the 120th day falls on a weekend day or national holiday), or such other time as may be set by the District Court (hereafter “Bar Date”), each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim and Release form, signed under penalty of perjury and supported by such documents as specified in the Proof of Claim and Release form, or such other documents or proof, as are reasonably available to the Authorized Claimant, as Plaintiffs’ Counsel, in their discretion, may deem acceptable;

(c) Except as otherwise ordered by the Court, all Members of the Class who fail to timely submit a Proof of Claim and Release by the Bar Date, or such other period as may be ordered by the District Court, or otherwise allowed, or who file a Proof of Claim and Release form that is rejected, shall be forever barred from receiving any payments pursuant to this Stipulation, but will in all other respects be subject to and bound by the provisions of this Stipulation, the releases contained herein, and the Judgment and will be barred and enjoined from bringing any action against the Released Persons concerning the Released Claims. Notwithstanding the foregoing, Plaintiffs’ Counsel may in their discretion, accept for processing late filed claims so long as the distribution of the Net Settlement Amount is not materially delayed; and

(d) Simultaneously herewith, Plaintiffs’ Counsel, Defendants’ Counsel, and Insurer’s counsel are executing a “Supplemental Agreement” setting forth certain conditions under which the Stipulation may be withdrawn or terminated by any of the Defendants or the Insurer if, prior to the Settlement Hearing, Members of the Class beneficially owning an agreed-upon number of shares of common stock of CHNG have submitted valid and timely Requests for Exclusion. For the purposes of determining whether the conditions set forth

in the Supplemental Agreement have occurred, copies of all Requests for Exclusion timely received, together with copies of all written revocations of Requests for Exclusion, shall be delivered to Defendants' Counsel and Insurer's counsel within three (3) days of receipt by Plaintiffs' Counsel, but in no event later than ten (10) business days before the Settlement Hearing in the District Court. The Supplemental Agreement shall not be filed unless required by the District Court, a dispute arises regarding its terms, or Defendants or Insurer exercise their rights thereunder. In the event of a withdrawal from this Stipulation in accordance with the terms of the Supplemental Agreement, this Stipulation shall become null and void and of no further force and effect except the provisions of ¶2.9 shall apply. Notwithstanding the foregoing, the Stipulation shall not become null and void as a result of the election by any of the Defendants or the Insurer to exercise their option to withdraw from the Stipulation pursuant to the Supplemental Agreement until the conditions set forth in the Supplemental Agreement have been satisfied.

5.4 This is not a claims-made settlement. Defendants or Insurer may not recoup any portion of the Settlement Fund in the event the District Court enters the Judgment approving the Settlement, except as provided for in this Stipulation or the terms of the Supplemental Agreement executed herewith. The Net Settlement Amount shall be distributed to the Authorized Claimants substantially in accordance with the Plan of Allocation described in the Notice and approved by the District Court. However, if there is any balance remaining in the Net Settlement Amount after six (6) months from the date of distribution of the Net Settlement Amount (whether by reason of tax refunds, uncashed checks or otherwise), Plaintiffs' Counsel shall reallocate such balance among Authorized Claimants in an equitable and economic fashion. Thereafter, any balance which still remains in the Net Settlement Amount shall be donated to a 501(c)(3) non-profit legal charity as agreed to by Defendants' Counsel and Plaintiffs' Counsel.

5.5 The Defendants, Defendants' Counsel and the Insurer (except as provided in ¶7.4) shall have no responsibility for, interest in, or liability whatsoever with respect to the distribution of the Net Settlement Amount, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of any associated taxes, or any losses incurred in connection therewith or with the distribution of the Trustee Settlement Amount. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

5.6 No Person shall have any claim against Plaintiffs' Counsel, the Trustee, Trustee's Counsel, the Claims Administrator, Members of the Class or any other Person, based on the distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the District Court or Bankruptcy Court.

5.7 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Amount including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of the Stipulation and is to be considered by the District Court separately from its consideration of the fairness, reasonableness and adequacy of the Stockholder Settlement set forth in the Stipulation, and any orders or proceedings relating to the Plan of Allocation shall not operate to terminate or cancel the Stipulation or affect the finality of the District Court's Judgment approving the Stipulation and the Settlement set forth therein, or any other orders entered pursuant to the Stipulation.

6. Plaintiffs' Counsel's and Trustee's Counsel's Attorneys' Fees and Reimbursement of Expenses and Service Award

6.1 Plaintiff or Plaintiffs' Counsel and Trustee or Trustee's Counsel (except Windels Marx) will submit to the District Court and Bankruptcy Court separate applications (the "Fee and Expense Applications") for distributions to Plaintiffs' Counsel out of the Stockholder Settlement Amount and Trustee's Counsel out of the Trustee Settlement Amount for: (a) an award of

attorneys' fees payable from the Stockholder Settlement Amount and Trustee Settlement Amount, respectively, in an amount not to exceed 25% of the Settlement Fund; plus (b) reimbursement of actual expenses, including the fees and expenses of any experts or consultants, incurred in connection with prosecuting the Action, not to exceed an amount of \$40,000. Plaintiffs Kousa, Mallano, and Stinmetz will also seek approval of service awards in the aggregate amount not to exceed \$10,000 to be divided among them and to be paid out of the Fee and Expense Awards, in recognition of their participation and efforts in the prosecution of the Action. Defendants and Insurer will not oppose the Fee and Expense Applications, so long as they are in accordance with this Stipulation.

6.2 The Fee and Expense Awards shall be paid to Plaintiffs' Counsel and Trustee's Counsel (except Windels Marx) from the Stockholder Settlement Amount, as ordered, immediately and, at the latest, within five (5) business days after the District Court or the Bankruptcy Court enter orders awarding fees and expenses, or as such orders may otherwise provide, notwithstanding the existence of any timely-filed objections, or potential appeal therefrom, or collateral attack on the Settlement or any part thereof. The Fee and Expense Awards shall further be paid to Plaintiffs' Counsel and Trustee's Counsel (except Windels Marx) from the Trustee Settlement Amount, as ordered, immediately and, at the latest, within fifteen (15) business days after the Effective Date, or as such orders may otherwise provide. Plaintiffs' Counsel and Trustee's Counsel may at their discretion allocate the attorneys' fees among the firms in a manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Action. In the event attorneys' fees or expenses are awarded by the District Court and/or Bankruptcy Court pursuant to ¶6.1 hereof, all Plaintiffs' Counsel and Trustee's Counsel who receive any payment of attorneys' fees or expenses agree that they accept payment subject to the joint and several obligation of each and every Plaintiffs'

Counsel and Trustee's Counsel (including their respective partners, shareholders and firms), receiving payments to make repayment to the Settlement Fund within ten (10) business days from receiving notice from Defendants' Counsel or from a court of appropriate jurisdiction, of the entire amount required by any court or appellate court, with accrued interest, in the event, for any reason, including without limitation, appeal, further proceeding on remand or successful collateral attack, the attorneys' fee or expense award is reduced or reversed. Furthermore, all Plaintiffs' Counsel and Trustee's Counsel (including their respective partners, shareholders and/or firms) agree that they remain subject to the continuing jurisdiction of the District Court and/or Bankruptcy Court for the purpose of enforcing their joint and several obligation to repay required attorneys' fees and expenses to the Settlement Fund as provided in this paragraph.

6.3 The procedure for and the allowance or disallowance by the District Court and/or Bankruptcy Court of any Fee and Expense Awards to be paid out of the Settlement Fund, are not part of the Settlement set forth in the Stipulation, and are to be considered by the District Court and the Bankruptcy Court separately from the consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the Stipulation, and any order or proceedings relating to the Fee and Expense Applications, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving the Stipulation and the settlement of the Action set forth therein.

6.4 Defendants and Insurer and their Released Persons shall have no responsibility for, and no liability whatsoever with respect to, any payment to Plaintiff's Counsel or Trustee's Counsel or any other counsel or Person who receives payment from the Settlement Fund.

6.5 Defendants and Insurer and their Released Persons shall have no responsibility for, and no liability whatsoever with respect to the allocation among Plaintiffs' Counsel or

Trustee's Counsel and/or any other Person who may assert some claim thereto, of any Fee and Expense Awards that the District Court and/or Bankruptcy Court may make in the Action, and Defendants and their respective Released Persons take no position with respect to such matters.

7. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

(a) Insurer has made payment to the Settlement Fund as required by ¶2.1;

(b) The Bankruptcy Court has approved the Trustee Settlement;

(c) The District Court has approved the Stockholder Settlement substantially in the form proposed in the Stipulation, has entered the Preliminary Order, substantially in the form attached as Exhibit A, has approved the Settlement, following Notice to the Settlement Class, and following the Settlement Hearing has entered the Judgment as set forth in ¶4.3 or a judgment substantially in the form of Exhibit B attached; and

(e) The Judgment has become Final, as defined in ¶1.14 above, or, in the event that the District Court enters a judgment in a form other than that provided above ("Alternative Judgment") and which has the consent of the Settling Parties, when such Alternative Judgment becomes Final.

7.2 Upon the occurrence of all of the events referenced in ¶7.1 hereof, any and all remaining interest or right of Defendants or Insurer in or to the Settlement Fund, if any, shall be absolutely and forever extinguished. On and as of the Effective Date, the Trustee Settlement Amount shall irrevocably be deemed to be property of the CHNG bankruptcy estate. Payment of the Bankruptcy Court Fee and Expense Award shall be made within fifteen (15) business days after the Effective Date.

7.3 If some or all of the conditions specified in ¶7.1 are not met, or in the event that this Stipulation is not approved by the District Court, or the Bankruptcy Court fails to approve the Trustee Settlement Amount, or the Settlement set forth in the Stipulation is terminated or fails to become effective in accordance with its terms, then this Stipulation shall be canceled and terminated subject to ¶7.6 hereof unless Plaintiffs' Counsel, Trustee's Counsel, Defendants' Counsel and the Insurer mutually agree in writing to proceed with the Stipulation. None of the Settling Parties, or any of them, shall have any obligation whatsoever to proceed under any terms other than provided for and agreed herein. If any of the Settling Parties engages in a material breach of the terms hereof, any other party, provided that it is in substantial compliance with the terms of this Stipulation, may terminate this Stipulation on notice to all of the Settling Parties.

7.4 Unless otherwise ordered by the District Court, if this Stipulation is terminated or fails to become effective for any of the reasons set forth in ¶¶7.1 and 7.3 above, the Settling Parties shall be restored to their respective positions in the Action as of September 1, 2015. In such event:

(a) Any Judgment or other order entered by the Bankruptcy Court and/or the District Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*;

(b) The Settlement Fund, less any Taxes or tax related expenses due with respect to any interest earned by the fund and less expenses actually incurred and disbursed, pursuant to ¶¶2.6 or 2.7 hereof, or due and owing in connection with Notice costs and administration of the Settlement provided herein, shall be returned to Insurer's Counsel by the Escrow Agents within 10 (ten) business days after written notification of such event is sent by Defendants' Counsel or Insurer's counsel. At the written request of Defendants' Counsel or the Insurer's counsel, the Escrow Agents or its designee shall apply for any tax refund owed to the

Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such applications for refund, to the Insurer.

7.5 No order of the District Court or modification or reversal on appeal of any order of the District Court concerning the Plan of Allocation or the amount of any Fee and Expense Award awarded to the Plaintiffs or to any Plaintiff's Counsel or to Trustee or Trustee's Counsel shall constitute grounds for cancellation or termination of the Stipulation, unless the District Court otherwise orders.

7.6 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither the Plaintiffs nor any of Plaintiffs' Counsel nor the Trustee nor Trustee's Counsel shall have any obligation to repay any amounts actually and properly disbursed for the items set forth in ¶7.4(b) for which proof is shown that such amounts have already been properly incurred as expenses. In addition, any expenses set forth in ¶7.4(b) already incurred and chargeable at the time of such termination or cancellation but which have not been paid, shall be paid by the Escrow Agents from the Settlement Fund in accordance with the terms of this Stipulation prior to the balance being refunded in accordance with ¶7.4(b) above.

8. Miscellaneous Provisions

8.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement; and (b) agree, subject to their fiduciary and other obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Stipulation. Plaintiffs' Counsel, Trustee's Counsel and Defendants' Counsel agree to cooperate with one another in seeking judicial approval of the Stipulation, the Settlement and the Preliminary Order and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.

8.2 The Settling Parties intend this Stipulation to be a final and complete resolution of all disputes between them with respect to the Action. The Settlement compromises claims which are contested and shall not be deemed an admission by any of the Settling Parties as to the merits of any claim or defense. The Settling Parties will not deny any statement made to any media representative that the Action is being settled voluntarily after consultation with competent legal counsel. The Settling Parties agree that the Action was resolved in good faith following arm's-length negotiations. The Settling Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement were negotiated at arms' length and in good faith by the Settling Parties, and that the Settlement was reached voluntarily after consultation with competent legal counsel. The Settling Parties agree not to assert in any forum that the Action was brought by Plaintiffs, Trustee and the Settlement Class, or each or any of them, or defended by any of the Defendants, or each or any of them, in bad faith or without a reasonable basis.

8.3 Whether or not the Effective Date occurs or this Stipulation is terminated, neither this Stipulation nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement:

(a) Is, may be deemed, or shall be used, offered or received against Defendants, or any of the Released Persons, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiffs or Trustee and the Settlement Class, or any of them, the deficiency of any defense that has been or could have been asserted in the Action, or of any alleged wrongdoing, liability, negligence, fault of the Defendants or any of the Released Persons, or any of them;

(b) Is, may be deemed, or shall be used, offered or received against Defendants, or each or any of them, as an admission, concession or evidence of, any fault,

misrepresentation or omission with respect to any statement or written document approved or made by any Defendant and by any of the Released Persons;

(c) Is, may be deemed, or shall be used, offered or received against Plaintiffs, Trustee and the Settlement Class, or each or any of them, as an admission, concession or evidence of, the validity of any of the Released Defendants' Claims, the infirmity of any claims raised in the Action, the truth of any fact alleged by Defendants, or the availability of meritorious defenses to the claims raised in the Action;

(d) Is, may be deemed, or shall be used, offered or received against Plaintiffs, Trustee and the Settlement Class and, or each or any of them, or against Defendants, or any of the Released Persons, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any of the Settling Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal, other than in such proceedings as may be necessary to effectuate the provisions of this Stipulation. However, if this Stipulation is approved by the District Court and Bankruptcy Court, any Released Person may file this Stipulation and/or the Judgment in any action that may be brought against such Person or Persons in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(e) Is, may be deemed, or shall be construed against Plaintiffs, Trustee and the Settlement Class or against any of the Released Persons as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount which could have or would have been recovered after trial; and

(f) Is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs, Trustees and the Settlement Class, or each and

any of them, that any of their claims are without merit or that damages recoverable under complaints filed in these Action would not have exceeded the \$1,400,000 amount of the Settlement Fund.

8.4 The headings used herein are for convenience only and are not meant to have legal effect.

8.5 The waiver by one of the Settling Parties of any breach of this Stipulation by any other party shall not be deemed as a waiver of any other prior or subsequent breaches of this Stipulation.

8.6 All of the Exhibits to this Stipulation are material and integral parts thereof and are fully incorporated herein by this reference.

8.7 This Stipulation may be amended or modified only by written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest and consented to in writing by the Insurer.

8.8 The Stipulation and the Exhibits attached and the Supplemental Agreement constitute the entire agreement among the Settling Parties and no representations, warranties or inducements have been made to any Settling Party concerning the Stipulation or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. Except as otherwise provided therein, there are no third-party beneficiaries to this Stipulation and each Settling Party shall bear its own costs and attorneys' fees.

8.9 Plaintiffs' Counsel, on behalf of the Settlement Class, are expressly authorized by the Plaintiffs to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Stipulation to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to the Stipulation on behalf of the Settlement Class which they deem appropriate.

8.10 Each counsel or other Person executing the Stipulation or any of its Exhibits on behalf of any Settling Party hereby warrants that such Person has the full authority to do so.

8.11 Plaintiffs and Plaintiffs' Counsel represent that they are not aware of Settlement Class Members who intend to opt out of the Settlement of these Action by executing a Request for Exclusion and that none of them will solicit, encourage or contact any Class Member about the prospect of opting out of this Settlement.

8.12 The Parties agree to use their best efforts to prevent, stay, or seek dismissal of or oppose entry of any interim or final relief in favor of any member of the Settlement Class in any other litigation in any court or tribunal against any of the Released Persons who challenges the Settlement or otherwise involves, without limitation, any of the Released Claims.

8.13 The 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. A complete set of original executed counterparts shall be filed with the Court.

8.14 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties and their Released Persons.

8.15 The District Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all Settling Parties submit to the jurisdiction of the District Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

8.16 Any action arising out of or relating to this Stipulation shall be brought exclusively in the District Court.

8.17 This Stipulation is deemed to have been prepared by counsel for all Settling Parties, as a result of arm's-length negotiation among the Settling Parties. Whereas all Settling

Parties have contributed substantially and materially to the preparation of this Stipulation, it shall not be construed more strictly against one Settling Party than another.

8.18 This Stipulation shall be governed by the laws of the State of Delaware, irrespective of its choice of law provisions.

8.19 Any provision of this Stipulation that is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, the Settling Parties have caused the Stipulation to be executed, by their duly authorized attorneys.

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IN WITNESS WHEREOF, the Settling Parties have caused the Stipulation to be executed, by their duly authorized attorneys.

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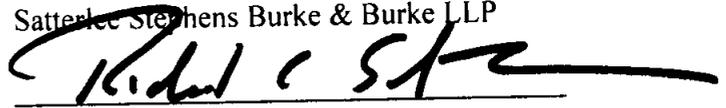
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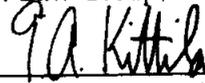


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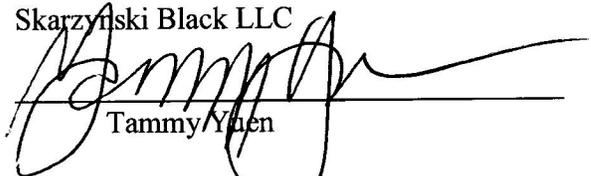
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