

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ANNMARIE MALLOZZI, individually and §
on behalf of all others similarly situated, §

Plaintiffs, §

CASE No.: 07-CV-10321 (GBD)

v. §

CLASS ACTION

INDUSTRIAL ENTERPRISES OF §
AMERICA, INC.; JOHN MAZZUTO; §
YORGE YEPES; DENNIS O'NEILL; and §
JAMES MARGULIES, §

Defendants. §

SUPERSEDING STIPULATION AND AGREEMENT OF SETTLEMENT

This Superseding Stipulation and Agreement of Settlement (the "Superseding Settlement Agreement") dated December 9, 2010 is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, this Superseding Settlement Agreement is entered into between plaintiffs Annmarie Mallozzi, Carl Meisner, on behalf of himself and his minor children, Ronald Goldenberg, and Carl Haeussler, on behalf of themselves and the Class ("the Named Plaintiffs"), and defendants Industrial Enterprises of America, Inc., ("IEAM" or the "Company"), John Mazzuto ("Mazzuto"), Jorge Yepes ("Yepes"), Dennis O'Neill ("O'Neill"), James W. Margulies ("Margulies"), and Robert "Dan" Redmond ("Redmond") (collectively, "Defendants") and ACE American Insurance Company, (collectively with the Named Plaintiffs and Defendants, the "Parties" to this Superseding Settlement Agreement by and through their respective counsel).

WHEREAS, under the caption *Mallozzi, et al. v. Industrial Enterprises of America, Inc., et al.*, Case No. 07-CV-10321, the Named Plaintiffs filed a Class Action Complaint, an Amended Class Action Complaint, and a Second Amended Class Action

Complaint, on November 14, 2007, on July 2, 2008, and November 24, 2009, respectively, and, on behalf of a purported class of shareholders, have alleged violations of federal securities laws in the United States District Court for the Southern District of New York (the "Litigation").

WHEREAS, by Order dated February 21, 2008, the Court appointed: (i) Carl Meisner, on behalf of himself and his minor children, Ronald Goldenberg, and Carl Haeussler as Lead Plaintiffs; and (ii) The Rosen Law Firm P.A. and Wolf Haldenstein Adler Freeman & Herz LLP as Lead Plaintiffs' Counsel.

WHEREAS, Defendants deny any wrongdoing whatsoever and this Superseding Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have asserted. The Parties to this Superseding Settlement Agreement recognize, however, that the Litigation has been filed by the Named Plaintiffs and defended by the Defendants in good faith and with adequate basis in fact under Federal Rule of Civil Procedure 11, that the Litigation is being voluntarily settled after advice of counsel, and that the terms of the settlement are fair, adequate and reasonable. This Superseding Settlement Agreement shall not be construed or deemed to be a concession by any Named Plaintiff of any infirmity in the claims asserted in the Litigation.

WHEREAS, the Lead Plaintiffs' Counsel have conducted an investigation relating to the claims and the underlying events and transactions alleged in the Litigation. Lead Plaintiffs' Counsel have analyzed the facts and the applicable law with respect to the claims of the Named Plaintiffs and the Class against Defendants and the potential defenses thereto, which in the Named Plaintiffs' judgment have provided an adequate and satisfactory basis for the evaluation of

an agreement to settle, as described herein.

WHEREAS, with the Court's assistance, counsel for the Parties have participated in numerous settlement conferences and conducted extensive discussions and arm's length negotiations with one another with respect to a compromise and settlement of the Litigation.

WHEREAS, based upon their investigation, Lead Plaintiffs' Counsel have concluded that the terms and conditions of this Superseding Settlement Agreement are fair, reasonable, and adequate to the Named Plaintiffs and the Class, and in their best interests, and have agreed to settle the claims raised in the Litigation pursuant to the terms and provisions of this Superseding Settlement Agreement, after considering (a) the substantial benefits that the Named Plaintiffs and the members of the Class will receive from settlement of the Litigation, (b) the attendant risks and costs of litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Superseding Settlement Agreement.

WHEREAS, the parties initially attempted to resolve this matter pursuant to a Stipulation and Agreement of Settlement that was filed with the Court as of April 8, 2009 (the "Initial Settlement Agreement"), but that settlement was terminated pursuant to the termination provisions of the Initial Settlement Agreement, when one or more of the Defendants determined that an excessive number of members of the putative settlement class had opted out of the settlement.

WHEREAS, the parties continued to negotiate following the termination of the Initial Settlement Agreement and have since entered into this Superseding Settlement Agreement.

AND WHEREAS, the Parties conditionally stipulate, for the limited purposes of this Superseding Settlement Agreement, and for the sole purpose of creating a settlement class which supersedes that of the Initial Settlement Agreement, that the Litigation shall be certified for class treatment under Rule 23 of the Federal Rules of Civil Procedure and that the stipulated

settlement class consists of Class Members, as defined below. The Defendants' conditional stipulation as to the creation of a settlement class is contingent upon the execution by the Parties of this Superseding Settlement Agreement and that this Superseding Settlement Agreement is finally approved by the Court and is not terminated. If this Superseding Settlement Agreement is for any reason not finally approved, or is otherwise terminated, the Defendants shall have the right to reassert all of their objections and defenses to certification of any class, and Plaintiffs will not offer the Defendants' conditional stipulation to certification of a class as any evidence in support of a motion to certify any class, for any purpose other than settlement.

NOW THEREFORE, without any admission or concession on the part of the Named Plaintiffs of any lack of merit of the Litigation whatsoever, and without any admission or concession on the part of Defendants of any liability or wrongdoing or lack of merit in the defenses whatsoever, it is hereby STIPULATED AND AGREED, by and among the Parties, 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 any and all claims made, or that could have been made, against the Defendants in the Litigation shall be compromised, settled, released and dismissed with prejudice and except as hereafter provided, without costs as to Plaintiffs or Defendants, subject to the approval of this Court, upon and subject to the following terms and conditions:

A. CERTAIN DEFINITIONS

As used in this Superseding Settlement Agreement, the following terms have the meanings specified below:

1. "Additional Notice Costs" means the amount of \$100,000, which may be used in connection with the preparation, printing, mailing, and publication of the Notice to the Class of

this Superseding Settlement Agreement, and is over and above the \$100,000 in notice costs that Defendants' Insurer previously advanced to give notice of the Initial Settlement Agreement. If the full amount of Additional Notice Costs is not incurred, the unexpended balance shall be paid to Escrow Account No. 1.

2. "Administration Account" means the account to be established from the Payment Fund and maintained by Lead Plaintiffs' Counsel. The Administration Account may be drawn upon by Lead Plaintiffs' Counsel for Administration expenses without further order of the Court.

3. "Administration Expenses" mean all expenses of Settlement administration; provided, however, that none of these expenses shall be deemed to include Attorneys' Fees and Expenses through the Effective Date. All Administration Expenses shall be paid from the Payment Fund.

4. "Attorneys' Fees and Expenses" means the portion of the Payment Fund and/or Holdback Fund approved by the Court for payment to Lead Plaintiffs' Counsel, including all attorneys' fees, costs, litigation expenses, fees and expenses of experts (excluding Additional Notice Costs and Administration Expenses).

5. "Authorized Claimant" means any Claimant (as defined below) whose claim for recovery has been allowed pursuant to the terms of the Superseding Settlement Agreement or by order of the Court.

6. "Awards to Lead Plaintiffs" means any award by the Court to Lead Plaintiffs of reasonable costs and expenses (including lost wages) directly relating to the representation of the Class pursuant to 15 U.S.C. § 78u-4(a)(4).

7. “Bui Shares” are those shares of IEAM stock that were the subject of the litigation captioned *Trinity Bui v. IEAM*, 08 Civ. 0583 (S.D.N.Y. Jan. 23, 2008) that was decided adversely to the plaintiffs on the merits on January 15, 2009.

8. “Claimant” means any Class member who files a Proof of Claim and Release (as defined below) in such form and manner, and within such time, as set forth in this Superseding Settlement Agreement, or as the Court shall prescribe.

9. “Claims Administrator” means the accounting and claims administration firm of Strategic Claims Services located in Media, Pennsylvania.

10. “Class” and “Class Members” mean, for purposes of this Settlement, all persons other than those set forth in Paragraph 20 below who purchased or otherwise acquired any common stock of IEAM directly or indirectly during the period from December 4, 2006 through and including November 7, 2007, and were damaged thereby. Also excluded from the Class are (1) Defendants, (2) the members of Defendants’ immediate families, (3) Defendants’ legal representatives, heirs, predecessors, successors and assigns, and any entity in which any Defendant has or had a controlling interest, (4) Trinity Bui, with respect to the Bui Shares, (5) Peter Vanucci, (6) Catherine Tamme, (7) River Valley Asset Management, LLC, and (8) any entity in which Peter Vanucci, Catherine Tamme, and River Valley Asset Management, LLC, has or had a controlling interest. Also excluded from the Class are those persons who file valid and timely requests for exclusion in accordance with the Court’s Order of Preliminary Approval of Settlement (“Order of Preliminary Approval”) concerning this Superseding Settlement Agreement.

11. “Class Distribution Order” means the order entered by the Court, upon application of Lead Plaintiffs’ Counsel following the occurrence of the events identified in paragraph D. 13

below, which authorizes the Claims Administrator to distribute the Net Settlement Fund to the Class.

12. "Class Period" means the period from December 4, 2006 through November 7, 2007, inclusive.

13. "Court" means the United States District Court for the Southern District of New York.

14. "Defendants" means Industrial Enterprises of America, Inc., ("IEAM" or the "Company"), John Mazzuto ("Mazzuto"), Jorge Yepes ("Yepes"), Dennis O'Neill ("O'Neill"), James W. Margulies ("Margulies"), and Robert "Dan" Redmond ("Redmond").

15. The law firm of Cozen O'Connor, counsel for Defendant IEAM, and the law firm Hoguet Newman Regal & Kenney LLP, counsel for Mazzuto, the law firm Podvey, Meanor, Catenacci, Hildner, Coccoziello & Chattman, P.C., counsel for Margulies, the law firm of Wollmuth Maher & Deutsch LLP, counsel for Yepes, and the law firm of Feder Kaszovitz LLP, counsel for O'Neill, shall be referred to collectively as "Defendants' Counsel."

16. "Defendants' Insurer" means ACE American Insurance Company, which issued ACE Advantage Management Protection Policy No. DON G21653378 002 (the "Policy") to IEAM for the Policy Period of June 1, 2007 to June 1, 2008. The Policy has a limit of liability of Five Million Dollars (\$5,000,000) (the "Limit of Liability").

17. "Effective Date" means the date on which all of the conditions set forth below in paragraph K. 1. shall have been satisfied and the Court's Order and Final Judgment, substantially in the form of Exhibit B hereto, becomes "final", which shall be deemed to be when either of the following has occurred: (a) if an appeal or review is not sought by any person from the Order

and Final Judgment, the day following the expiration of the time to appeal or petition from the Order and Final Judgment; or (b) if an appeal or review is sought from the Order and Final Judgment, the day after such Order and Final Judgment is affirmed or the appeal or review is dismissed or denied and such Order and Final Judgment is no longer subject to further judicial review.

18. "Escrow Account No. 1" means the interest-bearing account to be established and maintained at TD Bank, N.A., Pennsylvania, or any successor institution selected by the First Escrow Agent, who will hold all monies constituting the Payment Fund, and all such monies must be deposited in this account. Escrow Account No. 1 will be managed by First Escrow Agent, for the benefit of Lead Plaintiffs and the Class until the Effective Date of the Settlement. Escrow Account No. 1 shall also include the Notice Account and the Administration Account.

19. "Escrow Account No. 2" means the interest-bearing account to be established and maintained at TD Bank, N.A., Pennsylvania, or any successor institution jointly selected by the Second Escrow Agent. Escrow Accounts Nos. 1 and 2 will be separate and distinct from one another, but each will have the same Taxpayer Identification Number. All funds constituting the Holdback Fund will be held in Escrow Account No. 2. Escrow Accounts No. 1 and 2 are collectively referred to as the "Escrow Accounts."

20. "Existing Opt Out Parties" means each person or entity that timely requested exclusion from the settlement class certified by the Court's Order filed and entered as of April 17, 2009, and, therefore, includes the parties set forth in Exhibit A to the Second Amended Complaint.

21. "First Escrow Agent" means Laurence M. Rosen, Esq., or his duly appointed agent(s), who shall perform the duties as set forth in this Superseding Settlement Agreement.

22. "Gross Settlement Amount" means the sum of settlement consideration, in the amount of three million four hundred thousand dollars (\$3,400,000), less \$100,000 for previously incurred notice costs that were paid by Defendants' Insurer, and shall be comprised of \$2,300,000 in the Payment Fund and \$1,000,000 in the Holdback Fund.

23. "Holdback Fund" means the fund into which the proceeds of the second settlement payment, in the amount of \$1,000,000, will be deposited within the time set forth herein.

24. "Holdover Proceedings" means any Settled Claims that one or more Existing Opt Out Parties or any Prospective Opt Out Party may bring against one or more Defendants at any time up to and including two years and a day from the last date for a class member to become a Prospective Opt Out Party (the "Statutory Run Date").

25. "IEAM Bankruptcy Proceedings" means those consolidated bankruptcy proceedings known as *In re Pitt Penn Holding Company, Inc.*, United States Bankruptcy Court for the District of Delaware, Docket No. 09-11475-BLS.

26. "Lead Plaintiffs" mean Carl Meisner, on behalf of himself and his minor children, Ronald Goldenberg, Carl Haeussler, individually and as representatives of the members of the Class.

27. "Lead Plaintiffs' Counsel" means The Rosen Law Firm P.A. and Wolf Haldenstein Adler Freeman & Herz LLP.

28. "Legal Fee Auditor" means the entity to be chosen by Defendants' Counsel or, in the absence of agreement, the Court, that will be charged with receiving billing statements of Defendants' Counsel in connection with any Holdover Proceeding and certifying their billing statements if it would be unreasonable to withhold certification, and billing rates at the same

level as heretofore charged by Defendants' Counsel in connection with this action or such rates as increased to address inflation shall be *per se* reasonable and not a basis for withholding certification.

29. "Named Plaintiffs" means the Lead Plaintiffs and Annmarie Mallozzi.

30. "Net Settlement Fund" means the Payment Fund, less: (i) Attorneys' Fees and Expenses; (ii) Administration Expenses; (iii) taxes; (iv) Awards to Lead Plaintiffs; and (v) other fees and expenses authorized by the Court.

31. "Notice Account" means the account to be established from the Payment Fund and maintained by Lead Plaintiffs' Counsel. The Notice Account may be drawn upon by Lead Plaintiffs' Counsel for Additional Notice Costs without further order of the Court.

32. "Order and Final Judgment" means the order and judgment entered by the Court approving the Settlement and dismissing the Litigation as against all Defendants with prejudice and without costs to any party.

33. "Parties" means the Named Plaintiffs, Defendants, and Defendants' Insurer.

34. "Payment Fund" means the fund into which the proceeds of the first settlement payment, totaling \$2,300,000, will be deposited within the time set forth herein. The Payment Fund will, however, be deemed to also include the \$100,000 that Defendants' Insurer previously paid to serve and publish notice of the now-terminated Initial Settlement Agreement, such that the gross amount of the Payment Fund is agreed to be \$2,400,000 (minus any previously incurred notice expenses).

35. "Person" means any individual, corporation, partnership, limited liability partnership, limited partnership, professional corporation, association, affiliate, joint stock

company, trust, estate, unincorporated association, government or any political subdivision or agency thereof, any other type of legal or political entity, any legal representative, and as applicable their respective spouses, heirs, predecessors, successors, trustees, representatives, or assignees.

36. "Prospective Opt Out Parties" includes, apart from the Existing Opt Out Parties, each additional member of the Class that may request exclusion from the Class within such time as the Court may fix.

37. "Released Parties" means the Defendants, Defendants' Insurer, and any of their current, former or future parents, subsidiaries, affiliates, trustees, partners, joint venturers, officers, directors, principals, shareholders, members, agents (acting in their capacity as agents), employees, attorneys (including, but not limited to, Margulies & Levinsohn, LLP, and the shareholders, partners, principals, employees, and agents thereof, and Margulies Law Group, Inc., and the shareholders, partners, principals, employees, and agents thereof), insurers, reinsurers, advisors, accountants, associates and/or any other individual or entity in which any Defendant or Defendants' Insurer has a controlling interest or which is related to or affiliated with any of the Defendants or Defendants' Insurer, and the current, former and future legal representatives, spouses, heirs, executors, successors in interest or assigns of the Defendants and/or Defendants' Insurer, and each of them.

38. "Second Escrow Agent" means Lawrence M. Rosen, Esq., or his duly appointed agent(s), who shall perform the duties set forth in this Superseding Settlement Agreement.

39. "Settled Claims" means any and all claims, debts, demands, liabilities, rights and causes of action of every nature and description whatsoever (including but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs,

expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims (as defined below), (i) that have been asserted in the Litigation by the Named Plaintiffs and/or Class Members or any of them against any of the Released Parties, including without limitation any claim arising out of or relating to any of the acts, omissions, misrepresentations, facts, events, matters, transactions or occurrences referred to in the Litigation or otherwise alleged, asserted or contended in the Litigation; or (ii) that could have been alleged, asserted or contended in any forum by the Named Plaintiffs or Class Members or any of them against any of the Released Parties which arise out of or relate to or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Litigation or which arise out of or relate to the purchase of IEAM common stock during the Class Period, including, without limitation, claims for fraud, negligent misrepresentation, negligence, gross negligence, breach of duty of care, breach of duty of loyalty, fraud, negligent misrepresentation, breach of fiduciary duty, or violations of any state or federal statutes or regulations, based upon or related in any way to the purchase, acquisition, sale or holding of IEAM common stock during the Class Period by the Named Plaintiffs or any Class Member, on behalf of themselves, their current and former heirs, executors, administrators, successors, trustees, and assigns, and all persons or entities claiming through or under them, against Defendants or the Released Parties or any of them. Settled Claims also include any and all claims arising out of, relating to, or in connection with the Settlement or resolution of the Litigation against the Released Parties (including Unknown Claims that arise out of relate to, or are in connection with the Settlement or resolution of the

Litigation against the Released Parties), except claims to enforce any of the terms of this Superseding Settlement Agreement.

40. "Settled Defense Fees" means covered attorneys' fees and costs incurred by Defendants in connection with defending the Litigation. The Settled Defense Fees shall not exceed \$1,113,175. Through November 1, 2010, the Settled Defense Fees billed and paid by Defendants' Insurer were \$998,279.78. It is estimated that, assuming the Settlement and this Superseding Settlement Agreement are not terminated, prior to the Effective Date, an additional \$114,895 of Settled Defense Fees will be incurred, and Defendants' Insurer agrees to pay Settled Defense Fees up to that amount, submitted in accordance with the Policy.

41. "Settled Defendants' Claims" means all claims, demands, rights, duties, remedies, liabilities and causes of action of every nature and description whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known and Unknown Claims, that have been or could have been asserted in the Litigation by Defendants, Defendants' Insurer, or any of them, or the successors and assigns of any of them, against any of the Named Plaintiffs, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or Settlement of this Litigation or the Settled Claims, including but not limited to all claims for malicious prosecution or sanctions, except claims to enforce any of the terms of this Superseding Settlement Agreement and except claims by IEAM that in any way arise out of the acquisition or transfer of IEAM stock during the Class Period, other than as to lawful and proper purchases on the open market. The excluded claims include but are not limited to claims for: (i) turnover arising under Sections 542-543 of the Bankruptcy Code, 11 U.S.C. §§ 542-543; (ii) fraudulent transfer; (iii) unjust enrichment; or (iv) any

other legal or equitable claim for the improper acquisition, transfer, or inadequate payment of IEAM stock.

42. "Settled Insurance Claims" means all claims, demands, rights, duties, remedies, liabilities and causes of action of every nature and description whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known and Unknown Claims, based upon, arising from or involving in any way the following:

- a. the Litigation;
- b. any and all causes of action, suits, debts, sums of money, accounts, controversies, agreements, promises, damages and claims that have been or could have been asserted by the Named Plaintiffs and the Class Members, or any of them, against the Defendants, or any of them, arising out of or in connection with the facts and events alleged in the Litigation;
- c. the Policy; and
- d. any statute, contract or common law for violations of rights or breach of duties, breach of warranty, breach of express or implied duty of good faith and fair dealing, negligence, gross negligence or intentional acts, or any bad faith or other extra-contractual claims arising out of or in connection with the Releasees' conduct with regard to the Litigation or the payment of Policy proceeds.

43. "Settlement" means the settlement contemplated by this Superseding Settlement Agreement.

44. "Settlement Hearing" means the final hearing to be held by the Court to determine: (1) whether the proposed Settlement should be approved as fair, reasonable and adequate; (2) whether all Settled Claims should be dismissed with prejudice; (3) whether an

order approving the Settlement should be entered thereon; (4) whether the allocation of the Net Settlement Fund should be approved; (5) whether the application for an award of Attorneys' Fees and Expenses and an Award to Lead Plaintiffs should be approved.

45. "Unknown Claims" means any Settled Claim which any Lead Plaintiff or member of the Class does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, which if known by him, her or it, might have affected his, her or its decision with respect to the Settlement, including, but not limited to, the decision not to object to the Settlement, and any Settled Defendants' Claims which any Defendant, Defendants' Insurer, or any of them does not know or expect 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, the Named Plaintiffs and Defendants shall expressly, and each of the members of the Class shall be deemed to have, and by operation of the Order and Final Judgment shall 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, 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 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."

B. SCOPE AND EFFECT OF SETTLEMENT

1. The obligations incurred pursuant to this Superseding Settlement Agreement shall be in full and final disposition of the Litigation and any and all Settled Claims

as against all Released Parties and any and all Settled Defendants' Claims as against the Named Plaintiffs, the Class Members, or their attorneys.

2. Pursuant to the Order and Final Judgment, upon the Effective Date of this Settlement, the Named Plaintiffs and each of the Class Members on behalf of themselves, their current and former heirs, executors, administrators, successors, trustees and assigns, and all persons or entities claiming through or under them, shall, with respect to each and every Settled Claim, release and forever relinquish and discharge, and shall forever be enjoined from prosecuting, all Settled Claims and any and all claims arising out of, relating to, or in connection with the Settlement or resolution of the Litigation against the Released Parties whether or not such Class Member executes and delivers the Proof of Claim and Release, except claims to enforce any of the terms of this Superseding Settlement Agreement. Further, the Named Plaintiffs and all Class Members on behalf of themselves, their current and former heirs, executors, administrators, successors, attorneys, insurers and assigns, expressly covenant not to assert any claim or action against any of the Defendants derivatively on behalf of IEAM that (i) arises out of or relates to any of the acts, omissions, misrepresentations, facts, events, matters, transactions or occurrences referred to in the Litigation or otherwise alleged, asserted or contended in the Litigation or (ii) that could have been alleged, asserted or contended in any forum by the Class Members or any of them against any of the Released Parties which arise out of, relate to, or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Litigation, and shall forever be enjoined from commencing, instituting or prosecuting any such claim.

3. The Proof of Claim and Release to be executed by the Class Members shall be substantially in the form and content contained in Exhibit A-3 to the Order of Preliminary Approval attached hereto as Exhibit A.

4. Pursuant to the Order and Final Judgment, upon the Effective Date of this Settlement, each of the Defendants and the Defendants' Insurer, 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 as against any of the Named Plaintiffs, Class Members, or their attorneys, including but not limited to claims for malicious prosecution or sanctions.

5. Pursuant to the Order and Final Judgment, upon the Effective Date of this Settlement, IEAM, on its own behalf and on behalf of its parent corporations, subsidiaries, affiliates, predecessors, successors, assigns, attorneys, agents, representatives, employees, trustees, executors, administrators and each of their present and former directors and officers, and all other Defendants, on their own behalf and on behalf of each of their respective successors, assigns, representatives, employees, heirs and personal representatives, hereby release and forever discharge Defendants' Insurer and its affiliates, parent corporations, subsidiaries, directors, officers, agents, brokers, employees, attorneys, insurers, reinsurers, predecessors, successors, executors, administrators, representatives and assigns from any and all liability under or in connection with the Settled Insurance Claims.

6. The Defendants agree not to seek any payments or reimbursements from Defendants' Insurer, in connection with the Settled Insurance Claims, in addition to the amounts agreed in Paragraph C.1; provided, however, that the releases set forth in Paragraph B.5 are not intended, and shall not be construed, to release a claim for covered "Defense Costs" (as defined by

the Policy) to the extent — and only to the extent — that a regulatory investigation covered by the Policy is commenced by the U.S. Securities and Exchange Commission against one or more of the Individual Insureds as defined by the Policy and such “Defense Costs” (as defined by the Policy) are incurred with the Defendants’ Insurer’s written prior consent. In no event shall the liability of Defendants’ Insurer for “Defense Costs” as set forth in this Paragraph B.6 exceed the total amount of Two Hundred Thousand Dollars (\$200,000.00). The Defendants agree that nothing in this Paragraph B.6 is intended to be, and shall not be construed as, a waiver of Defendants’ Insurer’s rights under the Policy regarding any regulatory investigation commenced by the U.S. Securities and Exchange Commission, and ACE expressly reserves all such rights.

C. THE SETTLEMENT CONSIDERATION

1. a. Subject to the terms of this Superseding Settlement Agreement, within ten (10) business days of the entry of the Order of Preliminary Approval, Defendants’ Insurer shall pay from the Policy’s Limit of Liability the sum of one hundred thousand dollars (\$100,000) to Lead Plaintiffs’ Counsel to defray Additional Notice Costs, as authorized by this Superseding Settlement Agreement. Payment of this sum will be charged against the Payment Fund.

b. Subject to the terms of this Superseding Settlement Agreement, within five (5) business days of the entry of the Order and Final Judgment, Defendants’ Insurer shall (1) pay or cause the net amount of \$2,200,000 to be paid from the Policy’s Limit of Liability into Escrow Account No. 1, which will constitute the Payment Fund; and (2) pay or cause the net amount of \$1,000,000 to be paid from the Policy’s Limit of Liability into Escrow Account No. 2, which will constitute the Holdback Fund. Funds from the Payment Fund, net of any Taxes (as defined below) on the income thereof and any Tax Expenses (as defined below) and along with any balance from the Additional Notice Costs, shall be used to pay (i) the Administration Expenses,

as authorized by this Superseding Settlement Agreement, (ii) Attorneys' Fees and Expenses, (iii) Awards to Lead Plaintiffs, and (iv) other fees and expenses authorized by the Court. The balance of the Payment Fund after the above payments shall be the Net Settlement Fund which shall be distributed to the Authorized Claimants.

c. The Holdback Fund may be drawn upon only if Holdover Proceedings are filed against one or more of the Defendants. If this occurs, the Holdback Funds may be used to pay the reasonable attorneys' fees and other defense costs which any of Defendants incur in defending, litigating, or otherwise resisting the Holdover Proceedings. The Holdback Fund will be disbursed once the Legal Fee Auditor has reviewed the attorneys' fees and other defense costs for which payment is sought and certified them as reasonable, whereupon the Second Escrow Agent will be required to remit payment from the Holdback Fund.

The Holdback Fund will also be used in good faith to pay any settlements, judgments, or awards in the Holdover Proceedings. Plaintiffs, however, must be given at least thirty (30) days' notice before any such payment is made, and, after reviewing the proposed payment, may ask the Court to resolve any disputes by submitting a written request to the Court within twenty-one days from receiving the written notification from Defendants. The Second Escrow Agent will be required to remit payment from the Holdback Fund with respect to any final settlements, judgments or awards in any Holdover Proceedings.

If no Holdover Proceedings are brought against any Defendant, or, if such proceedings are brought and are finally terminated without exhausting the Holdback Fund, the Second Escrow Agents will remit the balance to the First Escrow Agent for deposit to the Payment Fund by the later of: (1) thirty days after the Statutory Run Date, if no Holdover Proceedings have been filed or otherwise commenced; or (2) within sixty days of the termination of the Holdover Proceedings. In the event

there are no Prospective Opt Out Parties, and only in such event, the Second Escrow Agent will remit the balance of the Holdback Fund to the First Escrow Agent for deposit to the Payment Fund by the later of: (1) February 4, 2012 if no Holdover Proceedings have been filed or otherwise commenced by December 4, 2011; or (2) within sixty days of the termination of the Holdover Proceedings. In either case, the Holdback Fund will then be released to the Payment Fund for supplemental distribution to Authorized Claimants on a *pro rata* basis, less attorneys fees at the same percentage awarded by the Court for the Payment Fund, in the same manner as the distribution of the Payment Fund as set forth herein. Plaintiffs shall have the right to seek payment of supplemental attorneys' fees and costs to Lead Plaintiffs' Counsel as the Court may award.

d. Notwithstanding any other provision hereof, if any, some, or all of the Existing Opt Out Parties choose to return to the Class and participate in the within settlement prior to the Effective Date or such other deadline as may be fixed by the Court, the Holdback Fund will be reduced by \$0.17 for each Damaged Share and the Payment Fund will be increased accordingly. In no event, however, may the Holdback Fund be reduced to less than \$750,000, regardless of the number of Existing Opt Out Parties who return to the Class (except if all such parties opt back in and accept the settlement terms without condition).

e. Within thirty (30) days of the Effective Date, Plaintiffs will dismiss with prejudice all claims for relief that they have prosecuted in the IEAM Bankruptcy Proceedings.

f. By this Superseding Settlement Agreement, Defendants hereby release the Named Plaintiffs, all members of the Class, and Plaintiffs' Counsel from Settled Defendants' Claims.

g. Subject to the terms of this Superseding Settlement Agreement, within five (5) business days of the entry of the Order and Final Judgment, Defendants' Insurer will reimburse Defendants for Settled Defense Fees.

h. All parties acknowledge that Defendants' Insurer, and not Defendants themselves, shall be solely liable for payment of the Gross Settlement Amount from the Policy's Limit of Liability; that Defendants shall have no liability in the event Defendants' Insurer is unable or unwilling to fund the Settlement Amount; that under no circumstances shall Defendants' Insurer be responsible to pay into Escrow Account No. 1 and Escrow Account No. 2 more than the Gross Settlement Amount, and that the Gross Settlement Amount reduces the Policy's Limit of Liability.

i. By this Superseding Settlement Agreement, the Lead Plaintiffs and all Class members hereby assign to IEAM any and all claims not released by this settlement that they have or may have against persons other than Defendants which arose out of or relate to the issuance or transfer of IEAM stock, assets or property.

2. Any sums required to be held in escrow hereunder to pay Additional Notice Costs shall be held by the First Escrow Agent for the benefit of the Named Plaintiffs and the Class until the Effective Date of the Settlement. All funds held by the First Escrow Agent and the Second Escrow Agent shall be deemed to be in *custodia legis* and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to this Superseding Settlement Agreement, or further order of the Court. Except to pay Additional Notice Costs, the First Escrow Agent shall not disburse the Payment Fund, or any portion thereof, except as provided in this Superseding Settlement Agreement, or upon Order of the Court.

3. At the time provided under Paragraph C.1, Defendants' Insurer shall pay from the Policy's Limit of Liability the Additional Notice Costs into the Notice Account. In order to pay Additional Notice Costs, up to \$100,000 may be withdrawn from the Notice Account. The Notice Account may be drawn upon by Plaintiffs' Lead Counsel for Additional Notice Costs without further Court approval.

4. Any taxes or other expenses incurred in connection with the Additional Notice Costs and the Administration Expenses, respectively, shall be paid from the Notice Account and the Administration Account, respectively, or from the remainder of the Payment Fund. Neither Defendants nor Defendants' Insurer will have any obligation for payment of taxes or other expenses associated with the Additional Notice Costs or Administration Expenses. No Administration Expenses shall be paid until after the Effective Date.

5. Lead Plaintiffs' Counsel and Defendants' Counsel shall have access to all records of Escrow Account No. 1 and Escrow Account No. 2, and upon request made to the First Escrow Agent and/or the Second Escrow Agent, shall receive copies of all records of disbursements, deposits and statements of accounts.

6. After the Effective Date, Defendants' Insurer shall have no interest in the Gross Settlement Amount, the Net Settlement Fund, the Payment Fund, the Holdback Fund, or any monies held in escrow hereunder. Neither Defendants nor Defendants' Insurer will be liable for the loss of any portion of the Net Settlement Fund (including without limitation any losses arising from the investment of the escrowed Net Settlement Fund) nor have any liability, obligation, or responsibility for the payment of claims, taxes, legal fees or any other expenses payable from the Payment Fund.

D. ADMINISTRATION AND CALCULATION OF CLAIMS, FINAL

AWARDS AND DISTRIBUTION OF NET SETTLEMENT FUND

1. The Claims Administrator shall administer and calculate the claims that shall be allowed and oversee distribution of the Net Settlement Fund, under the supervision of Lead Plaintiffs' Counsel, and subject to appeal to, and exclusive jurisdiction of, the Court. Neither Defendants nor Defendants' Insurer shall have any liability, obligation, or responsibility for the administration of the Payment Fund or Net Settlement Fund or the distribution of the Net Settlement Fund.

2. Except as otherwise provided below, on and after the Effective Date, the Payment Fund shall be applied as follows:

a. To the extent not paid from the Notice Account and Administration Account, to pay without prior order of the Court, the expenses incurred in connection with administering and distributing the Net Settlement Fund to Class Members, processing Proofs of Claim, processing requests for exclusion, escrow fees and costs, and any applicable taxes;

b. In addition to the Attorneys' Fees and Expenses paid pursuant to paragraph H.2. herein, to pay any additional Attorneys' Fees and Expenses as may be awarded to Lead Plaintiffs' Counsel by the Court pursuant to paragraph H.1. herein;

c. To pay any Court-approved Awards to Lead Plaintiffs; and

d. Subject to the approval and further order(s) of the Court, the Net Settlement Fund shall be allocated to Authorized Claimants as set forth in paragraph F. below.

3. Each Class Member wishing to participate in the Settlement shall be required to submit a Proof of Claim and Release (in substantially the form set forth in Exhibit A-3 hereto,

which, *inter alia*, releases all Settled Claims against all Released Parties), signed under penalty of perjury by the beneficial owner(s) of the securities which are the subject of the Proof of Claim and Release or by someone with documented authority to sign for the beneficial owners and supported by such documents as specified in the instructions accompanying the Proof of Claim and Release.

4. All Proofs of Claim must be postmarked or received within the time prescribed in the Order of Preliminary Approval unless otherwise ordered by the Court. Any Class Member who fails to submit a properly completed Proof of Claim within such period as shall be authorized by the Court shall be forever barred from receiving any payments pursuant to this Superseding Settlement Agreement or from the Net Settlement Fund (unless, by Order of the Court, a later submitted Proof of Claim by such Class Member is approved), but will in all other respects be subject to the provisions of this Superseding Settlement Agreement and Order and Final Judgment, including, without limitation, the release of the Settled Claims and dismissal of the Litigation. 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.

5. Each Proof of Claim shall be submitted to the Claims Administrator who shall determine, under the supervision of Lead Plaintiffs' Counsel, in accordance with this Superseding Settlement Agreement and any applicable orders of the Court, the extent, if any, to which each claim shall be allowed, subject to appeal to the Court. Prior to disbursement of the

Net Settlement Fund, Defendants will receive a list of Proofs of Claim received by the Claims Administrator indicating which Proofs of Claim have been allowed by the Claims Administrator.

6. Lead Plaintiffs' Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim filed in the interest of achieving substantial justice.

7. Proofs of Claim that do not meet the filing requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the Claimant in order to remedy curable deficiencies in the Proof of Claim submitted. The Claims Administrator, under the supervision of Lead Plaintiffs' Counsel, shall notify in a timely fashion in writing, all Claimants whose Proofs of Claim they propose to reject in whole or in part, setting forth the reasons thereof, and shall indicate in such notice that the Claimant whose claims are to be rejected has the right to review by the Court if the Claimant so desires and complies with the requirement of subparagraph (8) below.

8. 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 by subparagraph (7) above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's ground 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, Lead Plaintiffs' Counsel shall thereafter present the request for review to the Court.

9. The administrative determination 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.

10. 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 Litigation or Settlement in connection with processing of the Proofs of Claim.

11. Payment pursuant to this Superseding Settlement Agreement 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 and/or the Holdback Fund, but are otherwise bound by all of the terms of the Order and Final Judgment to be entered in the Litigation and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

12. All proceedings with respect to the administration, processing and determination of claims described by this paragraph of this Superseding Settlement Agreement 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 exclusive jurisdiction of the Court.

13. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator upon application to the Court by Lead Plaintiffs' Counsel for a Class Distribution Order 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; and (iii) all matters with respect to Attorneys' Fees and Expenses, 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.

14. If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, any balance remaining in the Net Settlement Fund one (1) year after the initial distribution of such funds shall be redistributed, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re distribution, to Class Members who have cashed their checks and who would receive at least \$10.00 from such re-distribution. If after six months after such re-distribution any funds shall remain in the Net Settlement Fund, then such balance shall be contributed to non-sectarian, not for-profit, 501(c)(3) organization(s) designated by Lead Plaintiffs' Counsel.

E. TAX TREATMENT

1. The Parties agree to treat the funds held in the Payment Fund and Holdback Fund as being at all times a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1 and Section 468B of the Internal Revenue Code, as amended, for the taxable years of the Payment Fund and Holdback Fund, beginning with the date created. In addition, the First Escrow Agent and, as required, the Second Escrow Agent shall jointly and timely make such elections as are necessary or advisable to carry out the provisions of this paragraph, 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 Lead Plaintiffs' Counsel 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.

2. For purposes of Section 468B of the Internal Revenue Code, as amended, and the regulations promulgated thereunder, the "administrator" of the Payment Fund shall be Lead Plaintiffs' Counsel. Lead Plaintiffs' Counsel shall timely and properly file all tax returns necessary or advisable with respect to the Payment Fund and Holdback Fund, and make all required tax payments, including deposits of estimated tax payments in accordance with Treas. Reg. § 1.468B-2(k). Such returns (as well as the election described in paragraph E. 1. hereof) shall be consistent with this paragraph and reflect that all taxes (including any interest or penalties) on the income earned by the Payment Fund and Holdback Fund shall be paid out of the Payment Fund and Holdback Fund as provided in paragraph E.3. hereof.

3. All (i) taxes (including any interest or penalties) arising with respect to the income earned by the Payment Fund and Holdback Fund, including any taxes or tax detriments that may be imposed upon Defendants with respect to any income earned by the Payment Fund and Holdback Fund for any period during which the Payment Fund and Holdback Fund does not qualify as a qualified settlement fund for Federal or state income tax purposes ("Taxes"); and (ii) expenses and costs incurred in connection with the operation and implementation of this paragraph (including without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph) ("Tax Expenses"), shall be paid out of the Payment Fund and Holdback Fund; in all events the Released Parties shall have no liability for Taxes or

the Tax Expenses with respect to the Payment Fund and the Holdback Fund and Lead Plaintiffs and Lead Plaintiffs' Counsel agree to indemnify and hold the Released Parties harmless for Taxes and Tax Expenses with respect to the Payment Fund and the Holdback Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid by the First Escrow Agent and/or Second Escrow Agent out of the Payment Fund and Holdback Fund respectively without prior order from the Court. The First Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to members of the Class 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. § 1468B-2(1)(2)); the Released Parties are not responsible and shall have no liability therefor. The Parties hereto agree to cooperate with the First Escrow Agent, the Second Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

F. ALLOCATION OF NET SETTLEMENT FUND

1. The Net Settlement Fund shall be allocated among the Authorized Claimants in accordance with the "Plan of Allocation" set forth in Schedule A. The amount so allocated to each Authorized Claimant constitutes and is referred to herein as the Authorized Claimant's "Payable Claim." The Plan of Allocation is based upon Lead Plaintiffs' Counsel's assessment of the merits and the relative strengths and weaknesses, including recoverable damages, of the claims of the members of the Class.

2. Nothing in this Plan of Allocation shall constitute or be deemed an admission by any of the Defendants that there is liability or damage of any kind or that the dollar amounts set

forth in this Plan of Allocation reflect actual or potential damages to the Class. Neither Defendants nor Defendants' Counsel were involved in the development of the Plan of Allocation and they take no position with respect to the Plan of Allocation.

3. Payment in the manner set forth above shall be deemed conclusive compliance with this Superseding Settlement Agreement against all Authorized Claimants. All Class Members who fail to submit valid and timely Proofs of Claim shall be barred from participating in the distribution of the Net Settlement Fund or Holdback Fund but otherwise shall be bound by all of the terms of this Superseding Settlement Agreement, including the terms of any Order and Final Judgment entered and the releases given.

4. The Released Parties shall have no responsibility for and no obligations or liabilities of any kind whatsoever in connection with the determination, administration, calculation or payment of claims to members of the Class.

5. The Defendants and Defendants' Insurer shall have no involvement in the solicitation of, or review of Proofs of Claim, or involvement in the administration process itself, which will be conducted by the Claims Administrator in accordance with this Superseding Settlement Agreement and the Order and Final Judgment to be entered by the Court.

6. No Authorized Claimant shall have any claim against Lead Plaintiffs' Counsel, Defendants, Defendants' Counsel, Defendants' Insurer or the Claims Administrator based on, or in any way relating to the distributions from the Net Settlement Fund or Holdback Fund that have been made substantially in accordance with this Superseding Settlement Agreement and any applicable orders of the Court.

7. Any change in the allocation of the Net Settlement Fund or Holdback Fund ordered by the Court shall not affect the validity or finality of this Settlement.

G. OBLIGATIONS OF AND LIMITATIONS OF LIABILITY OF FIRST ESCROW AGENT

The First Escrow Agent shall not be responsible for the payment of any sums due to Authorized Claimants or other Persons except to the extent of maintaining account of and appropriately paying sums as required by this Superseding Settlement Agreement, but only to the limited extent that such sums have been delivered into Escrow Account No. 1, as required by this Superseding Settlement Agreement. The First Escrow Agent shall be liable only for acts of gross negligence or willful misconduct. The assumption of duties as First Escrow Agent shall not preclude Lead Plaintiffs' Counsel from continuing to represent, as the case may be, Lead Plaintiffs or Class Members.

H. LEAD PLAINTIFFS' COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

1. Lead Plaintiffs' Counsel intend to submit an application to the Court, on notice to Defendants' Counsel, for the payment of attorneys' fees and expenses, including, but not limited to, (i) an award of attorneys' fees up to one-third of the Payment Fund and any amounts to be paid to Payment Fund from the Holdback Fund as set forth in ¶¶ C.1.c, C.1.d; and (ii) reimbursement of litigation costs and expenses, plus interest, including fees and expenses of experts, incurred in connection with the prosecution of the Litigation and Awards to Lead Plaintiffs (for reimbursement of time and expenses). All such amounts shall be paid from the Payment Fund. Defendants shall take no position, and will not oppose any application concerning Lead Plaintiffs' Counsel's request for the payment of Attorneys' Fees and Expenses or Awards to Lead Plaintiffs. Lead Plaintiffs' Counsel reserve the right to make additional

applications for payment for fees and expenses incurred after the Settlement Hearing, but Defendants reserve the right to oppose such requests to the extent that they would affect the Holdback Fund.

2. Such Attorneys' Fees and Expenses as are awarded by the Court shall be paid from the Payment Fund to Lead Plaintiffs' Counsel immediately after the Court executes an order awarding such fees and expenses or award to Lead Plaintiffs.

3. In the event that the Effective Date does not occur, or the Judgment or the order making the Attorneys' Fees and Expenses is reversed or modified, or the Superseding Settlement Agreement is terminated, and in the event that any Fees and Expenses Award has been paid to any extent, then each Plaintiffs Counsel, including Lead Plaintiffs' Counsel, shall within five (5) business days from receiving notice from Defendants' counsel or from a court of appropriate jurisdiction, refund to Defendants' Insurer, any fees, expenses and costs previously paid or otherwise transferred to them from the Payment Fund or Holdback Fund plus interest thereon at the same rate as earned on the Payment Fund or Holdback Fund: (a) in the full amount if the Effective Date does not occur or the Superseding Settlement Agreement is terminated, or (b) in such other amount corresponding to that portion of any Fees and Expenses Award that is reversed or modified.

4. Lead Plaintiffs' Counsel shall allocate the Attorneys' Fees and Expenses award among all Plaintiffs' counsel in a fashion which, in the opinion and sole discretion of Lead Plaintiffs' Counsel, fairly compensates Plaintiffs' counsel for their respective contributions to the prosecution of the Litigation. Neither Defendants nor Defendants' Insurer shall have any responsibility or liability whatsoever with respect to such allocation of Attorneys' Fees and Expenses among Plaintiffs' counsel.

5. It is agreed that the procedure for, and the allowance or disallowance by the Court, of any applications by Lead Plaintiffs' Counsel for Attorneys' Fees and Expenses, including fees for experts and consultants to be paid out of the Payment Fund or Holdback Fund, and any order or proceeding relating thereto, shall not operate to terminate or cancel this Superseding Settlement Agreement or affect its finality, and shall have no effect on the terms of this Superseding Settlement Agreement or on the enforceability of this Settlement.

I. THE ORDER OF PRELIMINARY APPROVAL

Within thirty (30) day of the execution of this Superseding Settlement Agreement, Lead Plaintiffs and Defendants shall move the Court for entry of the Order of Preliminary Approval, substantially in the form of Exhibit A hereto, providing for, among other things, preliminary approval of the Settlement and notice to the Class of the Settlement Hearing. The Order of Preliminary Approval (Exhibit A hereto) to be submitted to the Court shall contain exhibits substantially in the form set forth in (i) the Notice of Pendency and Settlement of Class Action (the "Notice") (Exhibit A-1 to the Order of Preliminary Approval); (ii) the Summary Notice of Pendency and Settlement of Class Action ("Summary Notice") (Exhibit A-2 to the Order of Preliminary Approval); and (iii) the Proof of Claim and Release (Exhibit A-3 to the Order of Preliminary Approval). Defendants and Defendants' Insurer are not liable or responsible for the method of, or representations made in, the Notice or Summary Notice.

J. ORDER AND FINAL JUDGMENT TO BE ENTERED BY THE COURT APPROVING THE SETTLEMENT

The Parties shall seek to have the Court enter an Order and Final Judgment substantially in the form of Exhibit B hereto.

K. CONDITIONS OF SETTLEMENT

1. The Effective Date of the Settlement shall be conditioned upon the occurrence of ALL of the following events:

a. The Court shall enter the Order of Preliminary Approval in all material respects, as required by paragraph I. above;

b. The Defendants have not exercised within the required time period their right to terminate the Settlement as permitted by paragraph L. below;

c. The Court shall enter the Order and Final Judgment in all material respects, as required by paragraph J. above;

d. The Order and Final Judgment shall have become "final" as described in paragraph A.17. hereof.

2. Upon occurrence of ALL of the events referenced in paragraph K.1 above, each of the Lead Plaintiffs shall have, and each and all of the members of the Class shall hereby be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever, released, settled and discharged, in accordance with the terms of paragraph B. above, the Released Parties from and with respect to the Settled Claims, whether or not such members of the Class execute and deliver a Proof of Claim.

3. Upon occurrence of ALL of the events referenced in paragraph K.1 above, the obligation of the First Escrow Agent to return funds from the Payment Fund to Defendants and/or Defendants' Insurer pursuant to paragraph L.10. or any other provision hereof shall be absolutely and forever extinguished.

L. RIGHTS OF TERMINATION AND EFFECTS THEREOF

1. Each of the Defendants shall have the right but not the obligation to terminate the Superseding Settlement Agreement and withdraw from the Settlement in the event that the amount of "Damaged Shares" held by Class Members who would otherwise be entitled to participate as members of the Class, but who timely and validly requested exclusion, in accordance with the provisions of the Preliminary Approval Order and the notice given pursuant thereto, is in excess of an amount set forth in the Supplemental Agreement between the parties. A Damaged Share is defined as a share of IEAM common stock held by Class Members that was purchased or otherwise acquired during the Class Period and was still held on November 7, 2007.
2. It is expressly understood and agreed that the only persons and entities who may file requests for exclusion are those persons and entities who would otherwise be Class Members.
3. Upon receiving any request(s) for exclusion pursuant to the Notice of Pendency and Settlement of Class Action, Lead Plaintiffs' Counsel shall notify all Defendants' counsel no later than fifteen (15) days prior to the Settlement Hearing of each request for exclusion and shall provide such counsel with copies of each such request for exclusion.
4. If any Defendant elects to exercise their right to terminate the Superseding Settlement Agreement and withdraw from the Settlement pursuant to the terms of this Superseding Settlement Agreement, written notice of such election signed by the withdrawing Defendant's counsel must be provided to Lead Plaintiffs' Counsel and counsel for the other Defendants not less than five (5) business days prior to the Settlement Hearing, provided that in no event will any Defendant have less than five days from the date of notification of requests for exclusion sufficient to allow for withdrawal from the Settlement, pursuant to the terms of the

Supplemental Agreement, before that Defendant must provide written notice of election to withdraw from the Settlement.

5. In the event that any Defendant files a written notice of intent to terminate its participation in the Settlement, the terminating Defendant may withdraw its election to terminate by providing written notice to Lead Plaintiffs' Counsel and counsel for the other Defendants of such withdrawal of its election to terminate no later than 5:00 P.M. Eastern Daylight Time on the day before the Settlement Fairness Hearing, or by such later date as shall be agreed upon in writing by Lead Plaintiffs' Counsel and IEAM's counsel.

6. If any Defendant elects to terminate, Lead Plaintiffs' Counsel may review the validity of any Notice of Exclusion by any Class Member and may attempt to cause retraction or withdrawal of any request for exclusion. If a sufficient number of requests for exclusion are either (i) deemed invalid by agreement of the parties hereto or by order of the District Court, or (ii) withdrawn or retracted, such that the number of shares represented by the remaining requests for exclusion does not constitute grounds for termination of the Settlement, then any such termination by the withdrawing Defendant shall automatically be deemed to be a nullity. To retract or withdraw a prior request for exclusion, a member of the Class must file a written notice with the Court stating the person's or entity's desire to retract or withdraw his, her or its request for exclusion and that person's or entity's desire to be bound by any judgment and settlement. The filing of such written notice may be effected by Lead Plaintiffs' Counsel as long as it is personally executed by a member of the Class.

7. If any Defendant exercises its right to terminate the Superseding Settlement Agreement and withdraw from the Settlement pursuant to Paragraph L.4 herein, and if such election is not retracted or withdrawn pursuant to Paragraph L.6 herein:

a. The Settlement shall be withdrawn and the Superseding Settlement Agreement (except for paragraphs C.2, C.4, C.5, C.6 E., G., L.10, L.11, L.12, M.10, M.12, and M.13 thereof) shall be terminated and deemed null and void, and the provisions of paragraphs C.2, C.4, C.5, C.6, E., G., L.10, L.11, L.12, M.10, M.12, and M.13 of the Superseding Settlement Agreement shall survive that withdrawal and termination;

b. Except as provided in Paragraph L.7(a), all of the Parties to this stipulation shall be deemed to have reverted to their respective status and positions in the Litigation prior to the execution of this Superseding Settlement Agreement, and they shall proceed in all respects as if this Superseding Settlement Agreement had not been executed and the related orders had not been entered, preserving in that event all of their respective claims and defenses in the Litigation.

8. Defendants' Counsel and Lead Plaintiffs' Counsel shall each have the right to withdraw from the Settlement and terminate this Superseding Settlement Agreement by providing written notice of their election to do so ("Termination Notice") to all other Parties hereto within thirty (30) days of:

a. entry of a Court order declining to enter the Order of Preliminary Approval in any material respect;

b. entry of a Court order refusing to approve this Superseding Settlement Agreement or any material part of it;

c. the Court's declining to enter the Order and Final Judgment in all material respects as required by paragraph J. above;

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

e. in the event that the Court enters an order and final judgment in a form other than that provided above (an "Alternative Judgment"), and none of the Parties hereto elect to terminate this Settlement, the date that such Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

9. If Defendants' Insurer shall fail to pay the Settlement Amount or any portion thereof pursuant to the terms of this Superseding Settlement Agreement, the Lead Plaintiffs may either: (a) terminate the Settlement by providing written notice to all parties; or (b) seek to enforce the terms of the Settlement and this Superseding Settlement Agreement against Defendants' Insurer, in which event the terms of this Settlement and this Superseding Settlement Agreement shall be, as to Defendants, fully effective and binding.

10. Upon termination of the Superseding Settlement Agreement pursuant to its terms, the Payment Fund and Holdback Fund (assuming each has been funded), less amounts reasonably expended from the Additional Notice Costs for giving notice to the Class, shall be refunded to Defendants' Insurer by the First Escrow Agent and Second Escrow Agent within ten (10) business days (the "Returned Settlement Amount").

11. If this Superseding Settlement Agreement is terminated pursuant to its terms, and at the request of counsel for Defendants' Insurer, the First Escrow Agent and Second Escrow Agent or their designees shall apply for any tax refund owed to the Payment Fund and Holdback Fund and pay the proceeds, after deduction of any fees and expenses incurred in connection with such application(s) for refund, to Defendants' Insurer.

12. No order of the Court or modification or reversal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs, and expenses

awarded by the Court shall constitute grounds for cancellation or termination of the Superseding Settlement Agreement.

M. MISCELLANEOUS PROVISIONS

1. The Parties hereto: (a) acknowledge that it is their intent to consummate the Settlement contemplated by this Superseding Settlement Agreement; and (b) agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of this Superseding Settlement Agreement; and (c) agree to exercise their best efforts and to act in good faith to accomplish the foregoing terms and conditions of the Superseding Settlement Agreement.

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

3. This Superseding Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties to this Superseding Settlement Agreement or their successors-in-interest.

4. This Superseding Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Parties hereto and no representations, warranties or inducements have been made to any party concerning this Superseding Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

5. Except as otherwise provided herein, each party shall bear its own costs. Attorneys' Fees and Expenses, subject to Court approval, shall be paid only out of the Payment Fund and Holdback Fund and neither the Defendants nor Defendants' Insurer shall have any obligation with respect to the payment of said Attorneys' Fees and Expenses.

6. Lead Plaintiffs' Counsel, on behalf of the Class, are expressly authorized to take all appropriate action required or permitted to be taken by the Class pursuant to this Superseding Settlement Agreement to effectuate its terms and, subject to section M.3 above, are also expressly authorized to enter into any modifications or amendments to this Superseding Settlement Agreement on behalf of the Class.

7. Counsel for the Parties represent that they are authorized to sign this Superseding Settlement Agreement on behalf of their respective clients.

8. This Superseding Settlement Agreement may be executed in one or more original, photocopied or facsimile counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties to this Superseding Settlement Agreement shall exchange among themselves original signed counterparts and a complete set of original executed counterparts shall be filed with the Court.

9. This Superseding Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, heirs and legal representatives of the Parties hereto. No assignment shall relieve any party hereto of obligations hereunder.

10. All terms of this Superseding Settlement Agreement and all exhibits hereto shall be governed and interpreted according to the laws of the State of New York without regard to its rules of conflicts of law, except to the extent that federal law requires that federal law governs, and in accordance with the laws of the United States.

11. Defendants and Lead Plaintiffs on behalf of themselves and each member of the Class hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Superseding Settlement Agreement or the

applicability of this Superseding Settlement Agreement. The administration and consummation of the Settlement as embodied in this Superseding Settlement Agreement 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 Lead Plaintiffs' Counsel, Awards to Lead Plaintiffs and enforcing the terms of this Superseding Settlement Agreement.

12. None of the Parties hereto shall be considered to be the drafter of this Superseding Settlement Agreement or any provision hereof for purposes of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. Because of the arm's length negotiations which preceded the execution of this Superseding Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of this Superseding Settlement Agreement.

13. Neither this Superseding Settlement Agreement, nor the fact of the Settlement is an admission or concession by any Defendant of any liability or wrongdoing whatsoever. This Superseding Settlement Agreement is not a finding of the validity or invalidity of any claims in the Litigation or of any wrongdoing by any of the Defendants named therein. Neither this Superseding Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related documents, shall be used or construed as an admission or concession of any fault, liability or wrongdoing by any person, or deemed to be evidence of or an admission or concession of the truth of any fact or the validity of any claim. Neither this Superseding Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related documents shall be offered or received in evidence, or otherwise used, as an admission, concession, presumption

or inference against any party in any proceeding other than such proceedings as may be necessary to consummate or enforce this Superseding Settlement Agreement.

14. The Parties to this Superseding Settlement Agreement 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, unless the Settlement does not become Final, Lead Plaintiffs and the Defendants agree not to assert in any forum that the litigation was brought by Lead 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 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Litigation. 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.


15. The headings in this Superseding Settlement Agreement are used for purposes of convenience and ease of reference only and are not meant to have any legal effect, nor are they intended to influence the construction of this Superseding Settlement Agreement in any way.

16. The waiver of one party of any breach of this Superseding Settlement Agreement by any other party shall not be deemed a waiver of any other breach of this Superseding Settlement Agreement. The provisions of this Superseding Settlement Agreement may not be waived except by a writing signed by the adversely affected party, or counsel for that party.

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IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby,
have caused this Stipulation to be executed, by their duly authorized attorneys, as of the day and
year first above written.

LEAD PLAINTIFF AND THE CLASS

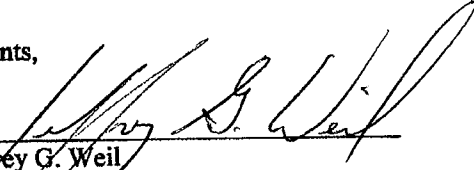
By: 
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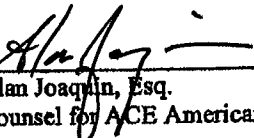
JAMES W. MARGULIES

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HILDNER, COCOZIELLO &
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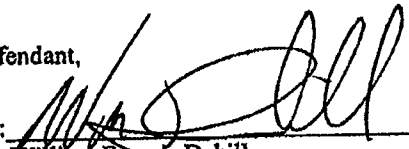
ACE AMERICAN INSURANCE
COMPANY

Defendants' Insurer,

By: 
Alan Joaquin, Esq.
Counsel for ACE American Insurance
Company

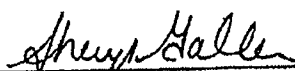
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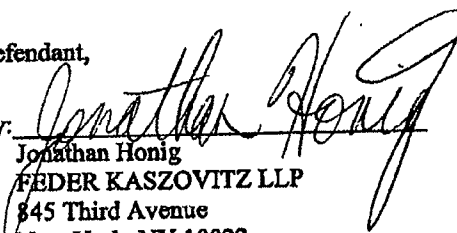
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SCHEDULE A

THE PLAN OF ALLOCATION

1. The Net Settlement Fund will be allocated among the Authorized Claimants in accordance with this "Plan of Allocation."
2. For Class members who conducted multiple transactions in IEAM common stock during the Class Period, the earliest subsequent sale shall be matched first against those shares in the Claimant's opening position on the first day of the Class Period for each type of security, and then matched chronologically thereafter against each purchase made during the Class Period.
3. Transactions during the Class Period resulting in a gain shall be netted against the Class Members transactions resulting in a loss to arrive at the Recognized Loss.
4. Any Class members whose collective transactions in IEAM common stock during the Class Period resulted in a net gain shall not be entitled to share in the Net Settlement Fund.
5. The purchase and sales prices exclude any brokerage commissions, transfer taxes or other fees.
6. The covering purchase of a short sale is not an eligible purchase. Gifts and transfers are not eligible purchases.
7. Shares of stock sold at a loss before October 15, 2007 are not entitled to any payment from the Net Settlement Fund for any such shares. However, said members are entitled to a payment for any shares held on October 15, 2003 or later.
8. The Recognized Loss of each Authorized Claimant shall be calculated as follows:
 - A. For Shares purchased during the period December 4, 2006 through and including October 14, 2007, recognized per share loss is calculated as follows:
 - i) For each Share sold prior to October 15, 2007, the recognized loss is zero.
 - ii) For each Share sold between October 15, 2007 and November 7, 2007 (inclusive), recognized loss per share is the lesser of (a) the price paid less the price received, (b) the price paid less \$3.37, and (c) \$0.62.
 - iii) For each Share sold between November 8, 2007 and February 5, 2008, recognized loss per share is the lesser of (a) the price paid less the price received, (b) the price paid less the mean closing Share price for each of the trading days from November 8, 2007 to the date of sale, (c) the price paid less \$0.80, and (d) \$2.11
 - iv) For each Share held on February 5, 2008, recognized loss per share is the lesser of (a) the price paid less \$0.80, and (b) \$2.11.

B. For Shares purchased during the period October 15, 2007 through and including November 7, 2007, recognized per share loss is calculated as follows:

- i) For each Share sold prior to November 8, 2007, the recognized loss is zero.
 - ii) For each Share sold on or between November 8, 2007 and February 5, 2008, recognized loss per share is the lesser of (a) the price paid less the price received, (b) the price paid less the mean closing Share price for each of the trading days from November 8, 2007 to the date of sale, (c) the price paid less \$0.80, and (d) \$1.49
 - iii) For each Share held on February 5, 2008, recognized loss per share is the lesser of (a) the price paid less \$0.80, and (b) \$1.49.
9. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's Aggregate Recognized Loss described above. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants.