

**STATE OF VERMONT  
CHITTENDEN COUNTY, SS.**

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<b>WASHBURN'S AUTOBODY and THOMAS</b>	:	
<b>BRASSARD, on behalf of themselves and</b>	:	
<b>all others similarly situated,</b>	:	<b>CHITTENDEN</b>
	:	<b>SUPERIOR COURT</b>
	:	<b>DOCKET NO. 1122-04CnC</b>
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>PPG INDUSTRIES, INC., E.I. DuPONT</b>	:	
<b>DE NEMOURS AND CO., DUPONT</b>	:	
<b>PERFORMANCE COATINGS, INC.</b>	:	
<b>SHERWIN WILLIAMS CO., SHERWIN</b>	:	
<b>WILLIAMS AUTOMOTIVE FINISHES</b>	:	
<b>CORPORATION, BASF</b>	:	
<b>AKTIENGESELLSCHAFT, BASF</b>	:	
<b>COATINGS AG, BASF CORPORATION,</b>	:	
<b>AKZO NOBEL CAR REFINISHES B.V.,</b>	:	
<b>and</b>	:	
<b>AKZO NOBEL COATINGS INC.,</b>	:	
	:	
<b>Defendants.</b>	:	
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**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Settlement Agreement") is made and entered into this 27th day of May, 2008 (the "Execution Date"), by and among defendant BASF Corporation ("BASF") and Plaintiffs class representatives Washburn's Autobody and Thomas Brassard individually and on behalf of a class defined herein ("Plaintiffs") in the State of Vermont (the "Settlement State").

WHEREAS, the First Amended Complaint alleges, among other things, that BASF participated in an alleged unlawful conspiracy to fix, raise, maintain or stabilize the prices or cost of automotive refinishing paint sold in and/or distributed in the State of Vermont and engaged in

other conduct in violation of consumer protection laws or antitrust laws, including 9 V.S.A. § 2451 *et seq.*;

WHEREAS, BASF states that it did not engage in price-fixing or any other illegal or improper conduct alleged in the First Amended Complaint, and BASF has not conceded or admitted any liability or the applicability of the statutes cited therein, and would assert affirmative defenses to Plaintiffs' claims;

WHEREAS, Plaintiffs state that they have conducted an investigation into the facts and the law regarding the First Amended Complaint and have concluded that a settlement with BASF according to the terms set forth below is in the best interest of Plaintiffs;

WHEREAS, BASF has concluded, despite its belief that it did not engage in conduct as alleged in the First Amended Complaint and has good defenses thereto, that it will enter into this Settlement Agreement in order to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the releases, orders and judgment contemplated by this Settlement Agreement, and to put to rest with finality all claims that have or could have been asserted against BASF relating to the pricing, selling, discounting, marketing, manufacturing and/or distributing of automotive refinishing paint in the State of Vermont or for delivery in the State of Vermont insofar as they relate to indirect purchases of automotive refinishing paint; and

WHEREAS, arm's-length settlement negotiations have taken place between counsel for Plaintiffs and counsel for BASF, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement between BASF and Plaintiffs, both individually and on behalf of the Class, has been reached as a result of the parties' negotiations, subject to approval of the Court;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set

forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the First Amended Complaint and the proceedings be settled, compromised, and dismissed on the merits with prejudice as to the Releasees (as defined herein), and except as hereafter provided, without costs as to Plaintiffs, the Class, or Releasees, subject to the approval of the Court. This Settlement Agreement is intended by the settling parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the following terms and conditions:

### Definitions

The following terms, as used in this Settlement Agreement, have the following meanings:

1. "Automotive Refinishing Paint" means any liquid paint product that (among other possible uses) is commonly applied to motor vehicles subsequent to the initial manufacturing process. Automotive Refinishing Paint includes: basecoat paint, clearcoat paint, single-stage finish, primer, accelerator, activator, thinner and hardener.

2. "Settlement Class" means:

All individuals or entities (excluding government entities, Defendants, their parents, predecessors, subsidiaries, affiliates, and any person or entity proven to be their co-conspirator) who purchased automotive refinishing paint in Vermont indirectly from any of the Defendants or any predecessor, subsidiary or affiliate thereof at any time during the period from January 1, 1993 to September 24, 2004, and who do not exclude themselves from the Settlement Class pursuant to the terms of Paragraph 35 below.

3. "Settlement Class Counsel" means the law firm of Johnson & Perkinson.

4. "Settlement Class Member" means each member of the Class who does not timely and validly elect to be excluded from the Settlement Class.

5. "Class Period" means the period from January 1, 1993 through September 24, 2004. Plaintiffs state that they do not allege, have not alleged, and do not intend that their

complaints be construed as alleging, that BASF engaged in any wrongdoing after September 24, 2004.

6. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34 of the Vermont Rules of Civil Procedure, including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

7. "Effective Date" means the date on which all of the events identified in Paragraph 27 and 28 of this Settlement Agreement have occurred, and means the date on which this Settlement Agreement has become final.

8. "Escrow Account" means the account in which the Settlement Fund will be deposited and maintained.

9. "Escrow Agent" means Johnson & Perkinson.

10. "Final Judgment" means a final order approving the Settlement Agreement together with entry of the final judgment dismissing the First Amended Complaint and the proceedings and all claims therein against Releasees on the merits with prejudice as to all Settlement Class Members.

11. "Notice Administrator" means the entity or person appointed by the court to perform the functions set out in Paragraph 25 of this Settlement Agreement.

12. "Opt-Out" means a person or entity who would have been a member of the Settlement Class except for his, her, or its timely and valid request for exclusion.

13. "Preliminary Approval Order" means an Order preliminarily approving the settlement, conditionally certifying a Settlement Class, authorizing publication of notice, and staying all proceedings against Releasees except those proceedings provided for or required by this Settlement Agreement.

14. "Released Claims" means those claims released pursuant to Paragraph 29 of this Settlement Agreement.

15. "Releasees" shall refer jointly and severally, individually and collectively to BASF, BASF Aktiengesellschaft (n/k/a BASF SE), and BASF Coatings AG, and their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and the parents', subsidiaries', and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators, and assigns of the foregoing. Releasees do not include E.I. DuPont De Nemours and Co., Akzo Nobel, PPG Industries, Inc., or Sherwin-Williams Corporation.

16. "Releasers" shall refer jointly and severally, individually and collectively to Plaintiffs (Washburn's Autobody, Thomas Brassard and the Settlement Class Members), and their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and the parents', subsidiaries', and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators, insurers and assigns of each of the foregoing, and to any person or entity asserting claims on behalf of the general public in the State of Vermont.

17. "Settlement Amount" means One Hundred and Twenty-Five Thousand Dollars (\$125,000.00).

18. "Settlement Fund" means the Settlement Amount plus any interest earned on that amount.

19. "BASF" means BASF Corporation.

20. "State Complaint" refers to *Washburn's Autobody and Thomas Brassard v. PPG Industries, Inc., et al.* (Chittenden County Superior Court).

Class Certification

21. Plaintiffs shall seek, and BASF shall not object to, certification of the Settlement Class as defined above for the purposes of this Settlement Agreement only, and appointment of Class Counsel as lead counsel for the Settlement Class.

Stay of Proceedings and the First Amended Complaint

22. Within 10 calendar days after the entry of the preliminary order, Plaintiffs shall seek, and BASF shall not object to, a stay of all proceedings and discovery against Releasees, subject to Paragraph 48 herein, to the extent they are not already stayed.

Approval of this Settlement Agreement, and Dismissal of Claims

23. Plaintiffs and BASF shall use their best efforts to effectuate this Settlement Agreement, and shall cooperate to promptly seek and obtain the Court's preliminary and final approval of this Settlement Agreement (including providing class notice) and to secure the prompt, complete, and final dismissal with prejudice of the First Amended Complaint and the proceedings as to the Releasees.

24. Within ten (10) business days after the Execution Date, Plaintiffs shall submit to the Court the Settlement Agreement together with a motion requesting entry of an order preliminarily approving the settlement and providing for notice (the "Preliminary Approval Order"), requesting, *inter alia*, the preliminary approval of the settlement set forth in the Settlement Agreement, approval of the form and manner of publication of the settlement notice, certification of the Class for settlement purposes only, and a stay of all proceedings against Releasees, except those proceedings provided for, or required by, the Preliminary Approval Order.

25. Upon preliminary approval by the Court of this Settlement Agreement, the Notice Administrator, subject to such supervision by Plaintiffs and their counsel and/or the Court as the circumstances may require, shall, in accordance with the Court's Preliminary Approval Order, publish notice of the settlement in newspapers, trade journals and any other means as the Court shall require. The Notice Administrator shall take all necessary and appropriate steps to ensure that notice of the settlement hearing is provided in accordance with the order of the Court as soon as reasonably practicable after entry of the Preliminary Approval Order.

26. Plaintiffs shall request that, after notice is given, the Court hold a hearing and approve the settlement as set forth herein. Plaintiffs shall use their best efforts to obtain a final judgment order, as described in the next paragraph below, within 6 months of the Execution Date.

27. Plaintiffs shall seek, and BASF shall not object to, entry of a final judgment order:

a) Approving finally this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members and directing its consummation according to its terms;

b) Directing that, as to Releasees, the First Amended Complaint and the proceedings be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs;

c) Reserving exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of this settlement;

d) Finding that there is no just reason for delay and directing that the judgment of dismissal as to Releasees shall be final and entered forthwith, thereby releasing BASF and other Releasees as set forth herein;

e) Finding that the Settlement Class satisfies the requirements of numerosity, commonality, typicality, and adequacy of representation; that common questions of law and fact predominate over individual questions; and that this action is superior to other methods for the fair and efficient adjudication of this controversy; and

f) Finding that BASF's election not to object to these findings for the purposes of the settlement of these actions only does not constitute a waiver of the right to contest the certification of a litigation class should the Settlement Agreement be terminated pursuant to Paragraph 33 or 45.

28. This Settlement Agreement shall become final only upon: (a) the entry by the Court of the Final Judgment, and (b) the expiration of the time for appeal or to seek permission to appeal from the Court's approval of the Settlement Agreement and entry of the Final Judgment or, if an appeal from an approval and Final Judgment is taken, the affirmance of such Final Judgment in its entirety, without modification, by the court of last resort to which an appeal of such Final Judgment may be taken. It is agreed that Rule 25 of the Vermont Rules of Appellate Procedure will not be taken into account in determining the above-stated times.

#### Release and Discharge

29. Upon the occurrence of the Effective Date and in consideration of payment of the Settlement Amount, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties, and attorneys' fees that Releasers, or any one of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Releasees, whether known or unknown,



relating in any way to any conduct by the Releasees prior to the Effective Date concerning the pricing, selling, discounting, marketing, manufacturing and/or distributing of Automotive Refinishing Paint, (or concerning any statements or omissions made relating to the pricing, selling, discounting, marketing, manufacturing and/or distributing of Automotive Refinishing Paint) insofar as such claims relate to indirect purchases of Automotive Refinishing Paint (or relate to the purchase of motor vehicle repair services that include the use or purchase of Automotive Refinishing Paint) in the State of Vermont. The Released Claims include but are not limited to claims related to or arising out of the facts, occurrences, transactions, or other matters alleged in the First Amended Complaint during the Class Period, and include but are not limited to claims under antitrust or consumer protection laws or doctrines, including but not limited to 9 V.S.A. § 2451 *et seq.* However, nothing herein shall preclude the Releasers from participating in or benefiting from any relief or other recovery as part of a settlement or judgment on behalf of a class of direct purchasers of Automotive Refinishing Paint (such reservation by the Releasers of any right to participate in any relief or other recovery as part of a settlement or judgment on behalf of a class of direct purchasers of Automotive Refinishing Paint shall under no circumstances be construed to constrain the Releasees from asserting any defense or opposing the certification of any putative class of direct purchasers of Automotive Refinishing Paint). The Releasers shall not, after the Effective Date of this Settlement Agreement, seek to recover against any of the Releasees for any of the Released Claims.

30. BASF and the Settlement Class agree that no valid and enforceable claim for contribution and/or indemnification against any Releasee is likely to exist as a matter of law, but, in any event, the parties agree that any such claim would be barred under existing laws. However, if for any reason, such claims are not barred, then, notwithstanding anything to the contrary contained in this Settlement Agreement, in consideration of the terms hereof and in

order to induce BASF to enter into this Settlement Agreement, Class Members shall exclude from the dollar amount of any judgment collectable against any person or entity in the First Amended Complaint, other than Releasees, or any other action on any final judgment on any claim comparable to the Released Claims, an amount equal to the percentage or amount of such judgment for which any Releasee would be responsible pursuant to a valid and enforceable claim for contribution and/or indemnification, if any (other than any such claim that arises out of any voluntarily assumed contribution and/or indemnification obligation of such Releasee). Class Members and BASF agree that at this time no such valid and enforceable claim for contribution and/or indemnification presently exists as a matter of U.S. law. The Class Members agree that the undertaking set forth in this Paragraph is not only for the benefit of the Releasees, but also for the benefit of any person against whom any such judgment is entered in the First Amended Complaint and that this undertaking may be enforced by any such person as third-party beneficiary hereof.

#### Payment

31. Subject to the provisions hereof, and in full, complete, and final settlement of the First Amended Complaint as provided herein, BASF agrees to pay into the Escrow Account the Settlement Amount within ten (10) business days after entry of the Preliminary Approval Order.

#### Determination of Opt-Outs

32. Within ten (10) business days after the Court-ordered deadline by which members of the Class may exclude themselves from the Settlement Class, Class Counsel and counsel for BASF shall serve on each other a list of all persons or entities ("Opt-Outs") who timely served them with notices of exclusion.

33. BASF shall have the option to terminate the Settlement in the event that the amount of purchases of Automotive Refinishing Paint by Opt-Outs who would otherwise be

entitled to participate as members of the Settlement Class, but who timely and validly request exclusion subject to the provisions of Paragraphs 34 and 35 hereof, is in excess of \$50,000. If and when BASF exercises this option, any and all amounts then constituting the Settlement Fund shall be returned forthwith to BASF, except for such disbursements made or incurred in accordance with Paragraph 37 of this Settlement Agreement. Notice of such rescission shall be provided to Class Counsel in writing, by facsimile or overnight courier, and by filing a copy of such notice with the Court, no later than twenty (20) business days after BASF's receipt of the list of Opt-Outs from Class Counsel. BASF's obligations pursuant to this Settlement Agreement shall cease, including BASF's obligations to make payments, as of the date such notice is sent.

34. It is expressly understood and agreed that the only persons or entities who may submit requests for exclusion at this time are those persons and entities who are members of the Settlement Class. Any member of the Settlement Class may request exclusion from the Settlement through the method described below. Plaintiffs will recommend that the Court approve an Opt-Out Date that is thirty days prior to the hearing on final approval of the settlement.

35. Each member of the Settlement Class wishing to opt out of the Settlement must individually sign and submit written notice to counsel for Plaintiffs, Settling Defendant and the Court by the Opt-Out Date. Each such notice shall set forth the purchases of Automotive Refinishing Paint made by that person or entity and contain the following information regarding each purchase: product purchased, date and amount of purchase, and the best available evidence thereof. Plaintiffs' Counsel reserves the right to contact members of the Settlement Class not represented by counsel, who express an intention to opt out of the Settlement, in order to attempt to convince them to remain in the Settlement Class.

## The Settlement Fund

36. Each Class Member shall look solely to the Settlement Fund for settlement and satisfaction, as provided herein, of all claims released by the Releasors pursuant to Paragraph 29 herein. Except as provided by order of the Court, no Class Member shall have any interest in the Settlement Fund or any portion thereof.

37. Before the Effective Date, disbursements for expenses associated with providing notice of the settlement to the Class, expenses associated with administering the settlement, and any payments and expenses incurred in connection with taxation matters relating to the settlement and this Settlement Agreement may be made from the Settlement Fund, and such amounts shall not be refundable to BASF in the event the Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective. Court approval shall not be required for disbursements or distributions in amounts not to exceed \$25,000.00 in the aggregate for the purposes set forth in this Paragraph.

38. This Settlement Fund shall be invested in United States Government Treasury obligations or STI United States Treasury Money Market funds. All interest earned by the Settlement Amount shall become and remain part of the Settlement Fund.

39. The Escrow Agent will open the Escrow Account and act without compensation from BASF or the Settlement Fund for its services as Escrow Agent. The Escrow Agent's signature shall be required for any transactions involving payment or distribution of any funds from the Settlement Fund.

40. BASF shall not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, use, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution, or administration, except as otherwise provided in this Settlement Agreement. All funds held by

the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order of the Court.

41. The Escrow Agent shall indemnify, defend, and hold harmless BASF from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by the Escrow Agent with funds in the Settlement Fund not strictly in accordance with the provisions of this Settlement Agreement or any implementing order of the Court.

42. After the Effective Date, Plaintiffs and Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses ("Reimbursable Expenses") including, but not limited to, attorneys' fees incurred during the litigation and/or administration of the settlement, and past, current, or future litigation expenses (such as experts' and consultants' fees and expenses). No disbursements for Reimbursable Expenses may be made from the Settlement Fund without prior approval of the Court. BASF agrees to take no position with respect to any application to the Court by Class Counsel for any requests concerning Reimbursable Expenses or for any enhancement payments to the named plaintiffs.

43. Any plan of allocation of settlement proceeds shall be considered by the Court separately from approval of the Settlement Agreement and shall not be grounds for denying approval of or modifying this Settlement Agreement.

44. After making the payment described in Paragraph 31 of this Settlement Agreement, BASF shall have no responsibility whatsoever for the allocation or distribution of the Settlement Fund and shall not be responsible or otherwise liable for any costs or disputes relating to the amount, allocation, or distribution of any fees, costs, or awards. Further, after making the payment described in Paragraph 31 of this Settlement Agreement, BASF shall not be

liable for any additional payments to the Class Members or Class Counsel pursuant to this Settlement Agreement.

#### Rescission

45. If the Court does not enter a Preliminary Approval Order as defined in Paragraph 13 (including each element in that definition), or if the Court does not enter a final judgment order containing each of the elements set out in Paragraph 27, or if such final judgment is materially modified or set aside on appeal, or if the Court does not certify a Settlement Class in this proceeding, or if the Court finds that a conflict exists precluding a common Settlement Class or common representation of a Settlement Class, then BASF shall, in its sole discretion, have the option to rescind this Settlement Agreement in its entirety, and any and all amounts constituting the Settlement Fund shall be returned forthwith to BASF, except for any disbursements made in accordance with Paragraph 37 of this Settlement Agreement. The Escrow Agent shall disburse the Settlement Fund to BASF in accordance with this Paragraph within fifteen (15) business days after receipt of either (i) written notice signed by counsel for BASF and Class Counsel stating that this Settlement Agreement has been rescinded, canceled or terminated, or (ii) any order of the Court so directing. If the Settlement Agreement is rescinded, canceled, or terminated pursuant to this Paragraph, any obligations pursuant to this Settlement Agreement (other than disbursement of the Settlement Fund to BASF as set forth above) shall cease immediately.

46. In the event that BASF exercises its option to rescind the Settlement Agreement pursuant to Paragraph 45 above, the Settlement Fund, plus any interest earned thereon less any amounts properly paid or reserved for payment from those funds, pursuant to Paragraph 37, shall be returned to BASF within thirty (30) days and any releases provided to BASF shall become null and void and the parties to such action(s) shall be returned to their respective positions immediately prior to the Execution Date of this Settlement Agreement.

47. BASF and Plaintiffs expressly reserve all of their respective rights to the extent that the Settlement Agreement does not become effective or if the Settlement Agreement is rescinded or terminated by BASF pursuant to Paragraphs 33 or 45 of this Settlement Agreement. Such rights shall include, but not be limited to, BASF's right to contest the appropriateness of certifying a class or classes with respect to the First Amended Complaint.

#### Limited Cooperation and Discovery

48. It is acknowledged by all parties to this Settlement Agreement that a material element of consideration for BASF is the desire to be relieved of discovery and other obligations arising from pending litigation. Plaintiffs therefore agree that, except as set out in this paragraph, BASF and the Releasees shall not be obligated to provide any cooperation or discovery whatsoever, or to produce any witnesses to appear at any trial, hearing, deposition, or other proceeding.

a) BASF agrees to make available to Plaintiffs, upon request and subject to the protective order governing confidential information already operative in the underlying action, all of the discovery that BASF made available, in electronic format, to plaintiffs' counsel in the MDL action. It is hereby agreed that Plaintiffs will bear the cost of duplicating the CDs containing this information and that Plaintiffs' option to obtain said discovery will expire upon final approval of the Settlement Agreement by the Court. To the extent plaintiffs seek production of documents not previously produced in an electronic format, it is hereby agreed that Plaintiffs will bear the cost of transferring such discovery to electronic format.

b) If a dispute arises in the future between the Settlement Class or Plaintiffs' Counsel on the one hand and any Defendant other than BASF on the other hand about the authenticity of documents previously produced by BASF and that dispute

cannot be resolved by declaration, stipulation or any other means prior to trial, BASF will use its reasonable efforts to make available for deposition prior to trial, if requested to do so by Plaintiffs' Counsel, and at trial, if requested by the Court, a knowledgeable employee to testify about the authenticity of such disputed documents. The cost of any such depositions or trial appearances shall be evenly divided between BASF and the Plaintiffs.

### Taxes

49. Class Counsel shall be solely responsible for directing the Escrow Agent to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Further, Class Counsel shall be solely responsible for directing the Escrow Agent to take out of the Settlement Fund, as applicable and when legally required, any tax payments, including interest and penalties due, on income earned by the Settlement Fund. BASF shall have no responsibility to make any tax filings relating to the Settlement Fund and shall have no responsibility to pay tax on any income earned by the Settlement Fund or to pay any taxes on the Settlement Fund unless the settlement is not consummated and the Settlement Fund is returned to BASF. Other than as specifically set forth herein, BASF shall have no responsibility for the payment of taxes or tax expenses. If for any reason, for any period of time, BASF is required to pay taxes on income earned by the Escrow Account, the Escrow Agent shall, upon written instructions from BASF with notice to Class Counsel, timely pay to BASF sufficient funds to enable it to pay all taxes (state, federal, or other) on income earned by the Escrow Account.

50. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "Administrator" of the Escrow Account shall be the Escrow Agent, who shall timely and properly file or cause to be filed on a timely basis, all



tax returns necessary or advisable with respect to the Escrow Account (including without limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B-2(1)).

51. The parties to this Settlement Agreement and their counsel shall treat, and shall cause the Escrow Agent to treat, the Escrow Account as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The parties, their counsel, and the Escrow Agent agree that they will not ask the Court to take any action inconsistent with the treatment of the Escrow Account in such manner. In addition, the Escrow Agent and, as required, the parties shall timely make such elections as 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)) 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 Agent timely and properly to prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Escrow Account being a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1.

#### Miscellaneous

52. This Settlement Agreement does not settle or compromise any claim other than the Released Claims against the Releasees. All rights of any Class Member against any person or entity other than the Releasees for sales made by BASF are specifically reserved by Plaintiffs and the Class Members. BASF's sales of Automotive Refinishing Paint shall remain in the State Complaint against the remaining Defendants and/or any future defendants other than the Releasees as a basis for damage claims, and shall be part of any joint and several liability claims

in the State Complaint against the remaining Defendants and/or any future defendants or any persons or entities other than the Releasees.

53. Plaintiffs shall not attempt, in any case, lawsuit or proceeding alleging a Released Claim, to certify a class that would encompass as class members any person or entity who is not a member of the Class that is settling with BASF pursuant to this Settlement Agreement.

54. Plaintiffs waive California Civil Code Section 1542 and similar provisions in other states. Plaintiffs certify that they are aware of and have read and reviewed the following provisions of California Civil Code Section 1542 ("Section 1542"): "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." The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. Plaintiffs hereby expressly waive and relinquish any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above. The references in this paragraph to the laws of California and other states is not intended to imply that the law of any state other than the State of Vermont is necessarily relevant to the Released Claims or to the this Settlement Agreement.

55. This Settlement Agreement constitutes the entire agreement among Plaintiffs and BASF pertaining to the settlement of the First Amended Complaint against Releasees and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and BASF in

connection therewith. This Settlement Agreement may be modified or amended only by a writing executed by Class Counsel and BASF and approved by the Court.

56. BASF has denied and continues to deny any wrongdoing or legal liability alleged in the First Amended Complaint. Whether or not the Effective Date occurs, neither this Settlement Agreement, nor any of its provisions, exhibits or other contents, nor evidence of any negotiations, drafts, or proceedings in pursuance of the settlement set forth in this Settlement Agreement, nor settlement-related documents or communications of any kind, or any other material or event relating to the Settlement Agreement (the "Settlement Materials and Events") shall be offered or received in any action or proceeding, as an admission, evidence, or concession of any fact, liability, violation of law, or wrongdoing of any nature on the part of BASF, other Releasees, or anyone acting on its behalf, or an admission that the class alleged in the First Amended Complaint may be certified as a class action for any purpose other than the settlement contemplated by this Settlement Agreement. The Settlement Materials and Events shall be deemed confidential settlement materials.

57. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of Vermont without regard to its choice of law or conflict of law principles.

58. Neither BASF nor Plaintiffs, nor any one of them, shall be considered to be the drafter of this Settlement Agreement, or any of its provisions, for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement.

59. Nothing expressed or implied in this Settlement Agreement is intended to or shall be construed to confer upon or give any person or entity other than Plaintiffs, Class Members,

BASF, Releasors, and Releasees any right or remedy under or by reason of this Settlement Agreement.

60. The Superior Court of Chittenden County, Vermont retains exclusive jurisdiction over all matters relating to the implementation and enforcement of the Settlement Agreement.

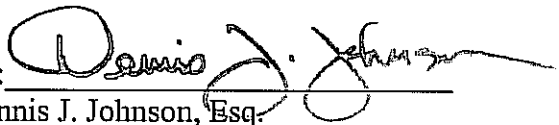
61. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and Releasees. Without limiting the generality of the foregoing: (a) each and every covenant and agreement made herein by Plaintiffs shall be binding upon all Class Members and Releasors, and (b) each and every covenant and agreement made herein by BASF shall be binding upon all Releasees.

62. Where this Settlement Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by facsimile, e-mail or letter by overnight delivery at the address reflected on the signature pages.

63. This Settlement Agreement may be executed in counterparts by Plaintiffs and BASF, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

64. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the date first herein written above.

By:   
\_\_\_\_\_

Dennis J. Johnson, Esq.  
Eben F. Duval, Esq.  
JOHNSON & PERKINSON  
1690 Williston Road  
South Burlington, Vermont 05407

Counsel for Plaintiffs Washburn's  
Autobody, Thomas Brassard, and the  
Plaintiff Class

By:   
\_\_\_\_\_

Stephen Fishbein, Esq.  
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Counsel for Defendant BASF Corporation