

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

IN RE AMBAC FINANCIAL GROUP,  
INC. SECURITIES LITIGATION

Case No. 08-cv-00411-NRB

**STIPULATION OF SETTLEMENT WITH THE UNDERWRITER DEFENDANTS**

This Stipulation of Settlement (the “Stipulation”) is entered into between and among, through their respective undersigned counsel, the following Settling Parties: (i) the Lead Plaintiffs in the Action (as defined below), the Public School Teachers’ Pension & Retirement Fund of Chicago, Arkansas Teacher Retirement System, and Public Employees’ Retirement System of Mississippi; and Plaintiff Painting Industry Insurance and Annuity Funds, on behalf of themselves and the members of the Class (as hereinafter defined), and (ii) Citigroup Global Markets, Inc., UBS Securities LLC, Goldman, Sachs & Co., J.P. Morgan Securities Inc., HSBC Securities (USA) Inc., Merrill Lynch, Pierce, Fenner, & Smith Incorporated, and Wachovia Capital Markets, LLC, now known as Wells Fargo Securities, LLC (collectively, the “Underwriter Defendants”). The Stipulation is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS:

A. All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in paragraph 1 herein.

B. Beginning on or about January 16, 2008, putative class action complaints were filed against Ambac and certain Individual Defendants in the United States District Court for the Southern District of New York, asserting violations of the federal securities laws. Pursuant to the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), notice to the public was issued setting forth the deadline by which putative class members could move the Court to be appointed to act as lead plaintiff.

C. By Order dated May 9, 2008, the Court consolidated the related actions in the Action, appointed Lead Plaintiffs as the lead plaintiffs in the Action, and appointed Bernstein

Litowitz Berger & Grossmann LLP and Kaplan Fox & Kilsheimer LLP as lead counsel in the Action (“Lead Counsel”).

D. On July 25, 2008, Plaintiff Painting Industry Insurance and Annuity Funds filed a complaint alleging Securities Act claims based on its purchase of the February 2007 Directly-Issued Subordinated Capital Securities (“DISCS”) Offering.

E. On August 25, 2008, Lead Plaintiffs filed the operative complaint in the Action, the Consolidated Amended Class Action Complaint (the “Complaint”), asserting varying claims under §§ 11, 12 and 15 of the Securities Act of 1933 and §§ 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder against some or all of Ambac, the Individual Defendants, the Underwriter Defendants, Lehman Brothers Inc. (“Lehman Brothers”), Credit Suisse Securities (USA) LLC, Banc of America Securities LLC, Keefe, Bruyette & Wood, Inc., and KPMG LLP (“KPMG”) (collectively “Defendants”).

F. On October 21, 2008, Defendants (except Lehman Brothers) moved to dismiss the Complaint, which Lead Plaintiffs opposed on December 19, 2008. Reply memoranda were filed on February 10, 2009.

G. On July 15, 2009, upon application of all parties, the Court ordered Defendants’ pending motions to dismiss withdrawn without prejudice to re-filing motions to dismiss.

H. Lead Plaintiffs and the Underwriter Defendants participated in an in-person mediation before Judge Nicholas Politan (Ret.) on July 30, 2009, in New York, New York. No settlement was reached at the mediation.

I. On August 27, 2009, renewed motions to dismiss by Defendants (except Lehman Brothers); renewed opposition thereto by Lead Plaintiffs, and Defendants' reply brief, were filed in the Action.<sup>1</sup>

J. Following a hearing held on December 17, 2009, by Order dated February 22, 2010, the Court granted in part and denied in part Defendants' motions to dismiss the Complaint, *inter alia*, sustaining claims against certain Underwriter Defendants under the Securities Act with respect to Ambac's February 2007 DISCS Offering, and dismissing claims under the Securities Act with respect to Ambac's March 2008 Offering. Accordingly, all claims against Defendants KPMG, Philip Duff, Credit Suisse Securities (USA) LLC, Banc of America Securities LLC, and Keefe Bruyette & Wood, Inc. in the Action (which related solely to Ambac's March 2008 Offering) were dismissed.

K. On March 8, 2010, certain Defendants filed a motion for interlocutory appeal of the Court's Order denying in part their motions to dismiss; other Defendants joined in the motion on March 15, 2010. Lead Plaintiffs filed their opposition on March 22, 2010, and Defendants filed their reply on March 29, 2010. The Court denied Defendants' motion for interlocutory appeal by Order dated April 29, 2010.

L. On or about April 22, 2010, Lead Plaintiffs and the Underwriter Defendants participated in a second in-person mediation session with Judge Politan. No settlement was reached at the mediation.

M. On May 7, 2010, Defendants filed Answers to the Complaint.

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<sup>1</sup> Underwriter Defendant Lehman Brothers was not included in the renewed motion to dismiss (or proceedings thereafter) as a result of the December 23, 2008 Order of Stay consistent with the Order Commencing Liquidation, dated September 19, 2008, and the Automatic Stay provisions of the United States Bankruptcy Code.

N. On or about November 10, 2010, Lead Plaintiffs and the Underwriter Defendants participated in a third in-person mediation session with Judge Politan.

O. On December 3, 2010, after considerable negotiation, Lead Plaintiffs and the Underwriter Defendants executed a Memorandum of Understanding reflecting an agreement in principle to settle claims in the Action against the Underwriter Defendants and their related parties.

P. Lead Counsel have conducted an extensive investigation relating to the claims and the underlying events and transactions alleged in the Complaint. Lead Counsel have analyzed evidence adduced during their investigations and in discovery and have researched the applicable law with respect to the claims of Plaintiffs and the Class against the Underwriter Defendants, as well as the potential defenses thereto.

Q. Based upon their investigation, Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Plaintiffs and the Class, and in their best interests, and have agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering (i) the substantial benefits that Plaintiffs and the Class Members will receive from resolution of the Action as against the Underwriter Defendants, (ii) the attendant risks of litigation, and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

R. Each and all of the Underwriter Defendants have denied and continue to deny that they have committed any act or omission giving rise to any liability and/or violation of law, and are entering into this Settlement to eliminate the burden and expense of further litigation and the risk of an adverse judgment were the Action to proceed. Neither the Settlement nor any of its terms shall in any way be construed or deemed to be evidence of, or an admission or concession

on the part of any of the Underwriter Defendants with respect to any claim of fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Underwriter Defendants have, or could have, asserted.

S. The Settling Parties agree that certification of a class, for settlement purposes only, is appropriate in the Action. For purposes of this Settlement only, the Class is defined in paragraph 1 below. Nothing in this Stipulation shall serve in any fashion, either directly or indirectly, as evidence or support for certification of a litigation class, and the Settling Parties intend that the provisions herein concerning certification of the Class shall have no effect whatsoever in the event the Settlement does not become Final.

NOW THEREFORE, without any admission or concession on the part of Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by the Underwriter Defendants, it is hereby STIPULATED AND AGREED, by and among the Settling 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 all Settled Claims as against the Released Parties and all Released Parties' Claims shall be fully, finally and forever compromised, settled, released, discharged and dismissed with prejudice, upon and subject to the following terms and conditions:

#### **DEFINITIONS**

1. As used in this Stipulation, the following terms shall have the meanings specified below. In the event of any inconsistency between any definition set forth below and any definition set forth in any other document related to the Settlement set forth in this Stipulation, the definition below shall control.

(a) “Action” means the action encaptioned *In re Ambac Financial Group, Inc. Securities Litigation*, No. 08-cv-411-NRB (S.D.N.Y.).

(b) “Ambac” or the “Company” means Ambac Financial Group, Inc.

(c) “Ambac Settlement” means the contemplated settlement between Plaintiffs, Ambac, and the Individual Defendants in the Action and the action encaptioned *Tolin v. Ambac Financial Group, Inc. et al.*, No. 08-cv-11241-CM (S.D.N.Y.).

(d) “Authorized Claimant” means a Class Member who submits a timely and valid Proof of Claim Form to the Claims Administrator (in accordance with the requirements established by the Court) that is approved for payment from the Net Settlement Fund.

(e) “Barred Claims” means (i) claims and claims over for contribution or indemnity (or any other claim or claim-over, however denominated on whatsoever theory) arising out of or related to the claims or allegations asserted by Lead Plaintiffs in the Action, or (ii) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person’s or entity’s actual or threatened liability to Lead Plaintiffs and/or Class Members; provided, however, that Barred Claims shall not include, and nothing in the Bar Order shall release or alter, the contractual rights, if any, (i) between or among the Underwriter Defendants under their applicable Agreement Among Underwriters relating to any offering of securities by Ambac, or (ii) between the Underwriter Defendants, on the one hand, and Ambac, on the other hand, under any applicable Underwriting Agreements with respect to any right of indemnification in connection with the payment of the Settlement Amount or incurrence of defense costs.

(f) “Claim” means a completed and signed Proof of Claim Form submitted to the Claims Administrator in accordance with the instructions on the Proof of Claim Form.

(g) “Claim Form” or “Proof of Claim Form” means the Proof of Claim Form and Release (substantially in the form attached hereto as Exhibit A-2 to Exhibit A) that a Class Member must complete if that Class Member seeks to be eligible to share in a distribution of the Net Settlement Fund.

(h) “Claimant” means a person or entity that submits a Claim Form to the Claims Administrator seeking to be eligible to share in the proceeds of the Settlement Fund.

(i) “Claims Administrator” means the claims administrator selected by Lead Counsel.

(j) “Class” means all persons or entities who purchased or acquired Ambac securities in or traceable to the February 2007 Directly-Issued Subordinated Capital Securities offering. Excluded from the Class are: Defendants; members of the immediate families of any Defendant; and their legal representatives, heirs, successors or assigns. Also excluded from the Class are any persons who exclude themselves by filing a timely and valid request for exclusion in accordance with the requirements set forth in the Notice.

(k) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(l) “Class Member” means a person or entity that is a member of the Class and that does not exclude himself, herself or itself by timely filing a request for exclusion in accordance with the requirements set forth in the Notice.

(m) “Complaint” means the complaint filed in the Action on August 25, 2008.

(n) “Court” means the United States District Court for the Southern District of New York.



(o) “Defendants” means Ambac, Genader, Leonard, Uhlein, Wallis, Callen, Lassiter, Considine, Gregory, Theobald, Unger, Wallace, Duff, the Underwriter Defendants; Lehman Brothers Inc., Credit Suisse Securities (USA) LLC, Banc of America Securities LLC, Keefe, Bruyette & Wood, Inc., and KPMG LLP.

(p) “Effective Date” means the first date by which all of the events and conditions specified in paragraph 33 of this Stipulation have been met, have been waived, or have occurred, as set forth in that paragraph.

(q) “Escrow Account” means an interest-bearing escrow account(s) maintained at the Escrow Agent, which account shall be under the exclusive control of Lead Counsel.

(r) “Escrow Agent” means Valley National Bank.

(s) “Escrow Agreement” means the agreement(s) among Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

(t) “Final” when referring to the Judgment means the later of: (i) if there is an appeal from the Judgment (other than an appeal pertaining solely to the Court’s approval of the Plan of Allocation and/or the Court’s award of attorneys’ fees, costs, or expenses), the date of final affirmance on appeal and the expiration of the time for any further judicial review whether by appeal, reconsideration or a petition for a writ of certiorari and, if a writ of certiorari is granted, the date of final affirmance of the Judgment following review pursuant to the grant; or (ii) the expiration of the time for the filing or noticing of any appeal from the Judgment, which shall be thirty (30) days after the Judgment is entered on the Court’s docket. Any appeal or proceeding seeking judicial review pertaining solely to (a) Court approval of the Plan of

Allocation; and/or (b) the Court's award of attorneys' fees, costs or expenses shall not affect the time set forth above for the Judgment to become Final.

(u) "Final Approval Hearing" means the hearing set by the Court under Rule 23(e) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(v) "Individual Defendants" means Michael A. Callen, Jill M. Considine, Robert J. Genader, W. Grant Gregory, Philip B. Lassiter, Sean T. Leonard, Thomas C. Theobald, John W. Uhlein, III, Laura S. Unger, Henry D.G. Wallace, David W. Wallis, Gregg L. Bienstock, Kevin J. Doyle, Philip Duff, Thomas J. Gandolfo, Kathleen McDonough, William T. McKinnon, Douglas C. Renfield-Miller, and Robert G. Shoback.

(w) "Judgment" means an order of judgment and dismissal, substantially in the form attached hereto as Exhibit B, to be entered by the Court and certified as final pursuant to Federal Rule of Civil Procedure 54(b).

(x) "KPMG" means KPMG LLP.

(y) "Lead Counsel" means the law firms of Bernstein Litowitz Berger & Grossmann LLP and Kaplan Fox & Kilsheimer LLP.

(z) "Lead Plaintiffs" means the Public School Teachers' Pension & Retirement Fund of Chicago, Arkansas Teacher Retirement System, and Public Employees' Retirement System of Mississippi.

(aa) "Litigation Expenses" means the reasonable costs and expenses incurred by Plaintiffs' Counsel in connection with commencing and prosecuting the Action, for which Lead Counsel intend to apply to the Court for reimbursement from the Settlement Fund. Litigation Expenses may also include reimbursement of the expenses of Plaintiffs in accordance with 15 U.S.C. § 78u-4(a)(4).

(bb) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; and (iv) any attorneys’ fees awarded by the Court.

(cc) “Notice” means the Notice of Pendency of Class Action and Proposed Settlement, Final Approval Hearing, and Motion for Attorneys’ Fees and Reimbursement of Litigation Expenses (substantially in the form attached hereto as Exhibit A-1 to Exhibit A), which is to be sent to the Class Members.

(dd) “Notice and Administration Costs” means the costs, fees and expenses that are incurred by the Claims Administrator in connection with (i) providing notice to the Class; and (ii) administering the Claims process.

(ee) “Plaintiffs” means Lead Plaintiffs and Plaintiffs Painting Industry Insurance and Annuity Funds.

(ff) “Plaintiffs’ Counsel” means Lead Counsel and all other counsel who, at the direction and under the supervision of Lead Counsel, represent Class Members in the Action.

(gg) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice.

(hh) “Preliminary Approval Order” means the order (substantially in the form attached hereto as Exhibit A) to be entered by the Court preliminarily approving the Settlement and directing that Notice be provided to the Class.

(ii) “Released Parties” means any and all of the Underwriter Defendants, Credit Suisse Securities (USA) LLC, Banc of America Securities LLC, and Keefe Bruyette & Wood, Inc., their past or present parents, subsidiaries, affiliates, successors and predecessors, or other individual or entity in which any of the foregoing entities has a majority interest or which

is related to or affiliated with any of the foregoing entities; and the respective officers, directors, agents, employees, attorneys, advisors, investment advisors, auditors, accountants, insurers, successors, and assigns of such entities and individuals.

(jj) “Released Parties’ Claims” means any and all claims, rights, causes of action, liabilities or any other matters, whether known or Unknown, foreseen or unforeseen, whether arising under federal, state, common or foreign law, that have been or could have been asserted in the Action or any forum by any or all of the Released Parties against Plaintiffs, the Class Members, or their attorneys, which arise out of or relate in any way to the institution, prosecution or settlement of the Action (except for claims to enforce the Settlement).

(kk) “Settled Claims” means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and Unknown Claims (including “unknown claims” as defined in Cal. Civ. Code § 1542 and analogous statutes) that (i) have been or could have been asserted in the Action by the Class Members or any of them against any of the Released Parties, (ii) arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint, and/or (iii) arise out of any purchase, sale, or holding of Ambac securities insofar as it relates in any way to any other matter covered in this definition of Settled Claims.

(ll) “Settlement” means this Stipulation of Settlement and the settlement contained herein.

(mm) “Settlement Amount” means the total amount of \$5,900,000 in cash as set forth below in paragraph 6.

(nn) “Settlement Fund” means the Settlement Amount plus accrued interest.

(oo) “Settling Parties” means the Underwriter Defendants and Plaintiffs on behalf of themselves and the Class Members.

(pp) “Stipulation” means this Stipulation of Settlement.

(qq) “Summary Notice” means the Summary Notice, substantially in the form attached hereto as Exhibit A-3 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(rr) “Supplemental Agreement” means the Supplemental Agreement as defined below in paragraph 36.

(ss) “Taxes” means: (i) all federal, state and/or local taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, reasonable expenses of tax attorneys and accountants).

(tt) “Underwriters’ Counsel” means the law firm representing the Underwriters Defendants as indicated on the signature block below.

(uu) “Unknown Claims” means any and all Settled Claims that any Plaintiff and/or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Released Parties’ Claims that the Underwriter

Defendants, their agents or attorneys, or their current or former officers, directors or employees do not know or suspect to exist in their favor, which if known by them might have affected their settlement with and release of the Released Parties (or Plaintiffs, as appropriate), or might have affected their decision not to object to this Settlement or not exclude themselves from the Class. With respect to any and all Settled Claims and Released Parties' Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs and the Underwriter Defendants, their agents or attorneys, and their current or former officers, directors or employees shall expressly waive, and each Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by Cal. Civ. Code § 1542 and analogous statutes, and any law of any state or territory of the United States, or principle of common law, or the law of any foreign jurisdiction, that 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.**

Plaintiffs and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Settled Claims, but each Plaintiff shall expressly – and each Class Member by operation of the Judgment shall be deemed to have – upon the Effective Date, fully, finally and forever settled and released any and all settled claims as set forth below, known or Unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, reckless,

intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs and the Underwriter Defendants acknowledge, and Class Members by law and operation of the Judgment shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Settled Claims and Released Parties’ Claims was separately bargained for and was a material element of the Settlement.

### **STIPULATION OF CLASS CERTIFICATION**

2. Solely for purposes of this Settlement, the Underwriter Defendants stipulate to (i) certification of the Action as a class action, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; and (ii) the appointment of Plaintiffs as representatives of the Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. Lead Plaintiffs will move for, and the Underwriter Defendants shall not oppose, entry of the Preliminary Approval Order, substantially in the form annexed hereto as Exhibit A, which will certify the Action to proceed as a class action solely for purposes of this Settlement. If the Settlement is terminated for any reason or not approved by the Court, the conditional approval of the action as a class action shall be vacated, and the action shall proceed as if the Class had never been certified, and such appointments had not been made.

### **RELEASE OF CLAIMS**

3. Pursuant to the Judgment, upon the Effective Date, Plaintiffs and each of the Class Members shall be deemed by operation of law to have fully, finally and forever released, relinquished, waived, discharged and dismissed each and every Settled Claim, and shall forever be enjoined from prosecuting any or all Settled Claims, against any Released Party. Lead Plaintiffs further covenant on behalf of the Class not to sue any Released Party on the basis of

any Released Claim or to assist any third party in commencing or maintaining any suit related to any Released Claim.

4. Pursuant to the Judgment, upon the Effective Date, each of the Released Parties, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall be deemed by operation of law to have released, waived, discharged and dismissed each and every of the Released Parties' Claims, and shall forever be enjoined from prosecuting any or all of the Released Parties' Claims, against Plaintiffs, their officers, directors, employees, agents and attorneys, and all other Class Members.

5. Pursuant to the Judgment, upon the Effective Date, the Underwriter Defendants shall be deemed to have released claims and claims over for contribution or indemnity (or any other claim or claim-over, however denominated on whatsoever theory) against Ambac and the Individual Defendants in connection with the action encaptioned *In re Ambac Financial Group, Inc. Securities Litigation*, No. 08-cv-411-NRB (S.D.N.Y.), the action encaptioned *Tolin v. Ambac Financial Group, Inc. et al.*, No. 08-cv-11241-CM (S.D.N.Y.), and any other actions arising out of the same subject matter; provided, however, that nothing in this paragraph shall release or alter the contractual rights, if any, (i) between or among the Underwriter Defendants under their applicable Agreement Among Underwriters relating to any offering of securities by Ambac, or (ii) between the Underwriter Defendants, on the one hand, and Ambac, on the other hand, under any applicable Underwriting Agreements with respect to any right of indemnification in connection with the payment of the Settlement Amount or incurrence of defense costs, which claims as between the Underwriter Defendants and Ambac are not barred, released or discharged by the Judgment. The release provided in this paragraph shall become effective only upon



receipt by the Underwriter Defendants of a comparable release from Ambac and the Individual Defendants.

#### **THE SETTLEMENT CONSIDERATION**

6. In consideration of the Settlement of the Settled Claims against the Released Parties, the Underwriter Defendants shall pay or cause to be paid the total sum of \$5,900,000 in cash into the Escrow Account on or before thirty (30) business days after the later of (i) entry of the Preliminary Approval Order, and (ii) the provision to the Underwriter Defendants of all information necessary to effectuate a transfer of funds, including the bank name and ABA routing number, account name and number, and a signed W-9 reflecting the taxpayer identification number for the qualified settlement fund in which the Escrow Account has been established. The amount to be paid pursuant to this paragraph is to be paid by the Underwriter Defendants, severally and not jointly, according to the allocation terms determined by the Underwriter Defendants. No Underwriter Defendant shall be liable for any portion of the amount to be paid pursuant to this paragraph not paid by any other Underwriter Defendant, nor for any interest accruing for such unpaid amount, subject to Plaintiffs' right to terminate the Settlement in the event that the Settlement Amount is not fully and timely paid as set forth below.

7. Other than the obligation of the Underwriter Defendants to pay or cause to be paid this amount to the Escrow Agent, the Underwriter Defendants shall have no obligation to make any payment into the Escrow Account pursuant to this Stipulation. The interest earned on the Settlement Fund shall be for the benefit of the Class if the Settlement becomes Final. If the Settlement Amount is not fully deposited into the Escrow Account as set forth above, Lead Plaintiffs may, in their sole discretion: (i) enforce the Settlement; or (ii) terminate the Settlement, in which case paragraph 35 below shall govern.

**USE OF SETTLEMENT FUND**

8. The Settlement Fund shall be used to pay any: (i) Taxes; (ii) Notice and Administration Costs pursuant to paragraph 11 below and as otherwise approved by the Court; (iii) attorneys' fees awarded by the Court; (iv) Litigation Expenses awarded the Court; and (v) other Court-approved deductions. The balance remaining in the Settlement Fund shall be distributed to Authorized Claimants as provided below. The Settlement Fund shall be the sole source of attorneys' fees, and the Class shall have no recourse against the Underwriter Defendants for attorneys' fees.

9. The Net Settlement Fund shall be distributed to Authorized Claimants as provided herein. The Underwriter Defendants shall have no responsibility or liability for the maintenance or distribution of the Net Settlement Fund pursuant to this Settlement. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in excess of U.S. \$100,000 in United States Treasury Bills having maturities of 180 days or less, or money market mutual funds comprised of investments secured by the full faith and credit of the United States Government, or an account fully insured by the United States Government Federal Deposit Insurance Corporation (FDIC). Any funds held in escrow in an amount of less than U.S. \$100,000 may be held in an interest-bearing account insured by the FDIC or money market mutual funds comprised of investments secured by the full faith and credit of the United States

Government or fully insured by the United States Government. All risks related to the investment of the Settlement Fund shall be borne by the Settlement Fund.

10. The Settling Parties agree that the Settlement Fund is intended to be a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent with this paragraph and in all events shall reflect that all taxes on the income earned on the Settlement Fund shall be paid out of the Settlement Fund as provided by paragraph 11 below. Lead Counsel shall also be solely responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Underwriter Defendants agree to provide promptly to Lead Counsel the required statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the qualified settlement fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

11. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent pursuant to the disbursement instructions set forth in the Escrow Agreement, and without prior Order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events

shall reflect that all Taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Settlement Fund shall indemnify and hold all Released Parties harmless for any Taxes and related expenses of any kind whatsoever (including without limitation, taxes payable by reason of any such indemnification). The Underwriter Defendants shall notify the Escrow Agent promptly if they receive any notice of any claim for Taxes relating to the Settlement Fund.

12. This is not a claims-made settlement; there will be no reversion. Upon the occurrence of the Effective Date, the Underwriter Defendants will not have any right to the return of the Settlement Fund or any portion thereof irrespective of the number of Claims filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

13. Lead Counsel shall cause the Claims Administrator to mail the Notice and Proof of Claim to those Class Members at the address of each such person as set forth in the records of Ambac (or its transfer agent(s)), or who otherwise may be identified through further reasonable effort. Lead Counsel will cause to be published the Summary Notice pursuant to the terms of the Preliminary Approval Order or whatever other form or manner might be ordered by the Court.

14. Following entry of the Preliminary Approval Order, Lead Counsel may pay from the Escrow Account, without further approval from the Underwriter Defendants or further order of the Court, all reasonable Notice and Administration Costs. Such costs and expenses shall include, without limitation, the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses actually incurred and fees reasonably charged by the Claims Administrator in connection with providing Notice and processing the submitted claims, and the

reasonable fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs actually paid or incurred, including any related fees, will not be returned or repaid to the Underwriter Defendants or any person or entity who or which paid any portion of the Settlement Fund. Prior to final approval of the Settlement, the amount that may be paid for reasonable Notice and Administration Costs without further approval from the Underwriter Defendants or further order of the Court pursuant to this paragraph may not exceed five-hundred thousand dollars (\$500,000).

15. The Released Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the maintenance, investment or distribution of the Settlement Fund, the establishment or maintenance of the Escrow Account, the establishment or administration of the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes, the distribution of the Net Settlement Fund, the administration of the Settlement, or any losses incurred in connection with such matters. The Underwriter Defendants take no position with respect to the provisions of this Stipulation governing those issues.

#### **ATTORNEYS' FEES AND LITIGATION EXPENSES**

16. Lead Counsel will apply to the Court for a collective award of attorneys' fees to Plaintiffs' Counsel. Lead Counsel shall have the sole authority to allocate the Court-awarded attorneys' fees and Litigation Expenses amongst Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the prosecution and settlement of the Action. The Released Parties shall have no responsibility for the allocation among Plaintiffs' Counsel, and/or any other person or entity who may assert some claim thereto, of any award of

attorneys' fees or Litigation Expenses that the Court may make in the Action, and the Underwriter Defendants shall take no position with respect to such matters.

17. Lead Counsel also may apply to the Court for reimbursement of Litigation Expenses, which may include reimbursement of the expenses of Plaintiffs in accordance with 15 U.S.C. § 78u-4(a)(4). The Underwriter Defendants shall not take any position with respect to Lead Counsel's applications or awards. Such matters are not the subject of any agreement between the Settling Parties other than what is set forth in this Stipulation.

18. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Lead Counsel, with the Court's approval, immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Lead Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed. Lead Counsel shall make the appropriate refund or repayment in full no later than fifteen (15) business days after receiving from a court of appropriate jurisdiction notice of the termination of the Settlement or notice of any reduction of the award of attorneys' fees and/or Litigation Expenses. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation and is not a condition of this Stipulation. Lead Plaintiffs and Lead Counsel may not cancel or terminate the Stipulation or the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

**CLAIMS ADMINISTRATOR**

19. The Claims Administrator shall administer the process of receiving, reviewing and approving or denying claims under Lead Counsel's supervision and subject to the jurisdiction of the Court. None of the Released Parties shall have any responsibility for the administration of the Settlement or the claims process. The Underwriter Defendants and Underwriter Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

20. The Claims Administrator shall receive Claims and administer them according to the Plan of Allocation, as proposed by Plaintiffs and approved by the Court, or according to such other Plan of Allocation as the Court approves. The proposed Plan of Allocation is set forth in the Notice attached hereto as Exhibit A-1 to Exhibit A.

21. The allocation of the Net Settlement Fund among Authorized Claimants is a matter separate and apart from the proposed Settlement between the Settling Parties, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation, and it is not a condition of this Stipulation that any particular plan of allocation be approved by the Court. Plaintiffs and/or their counsel may not cancel or terminate the Stipulation or the Settlement based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in the Action. The Underwriter Defendants shall have no responsibility or liability whatsoever for allocation of the Net Settlement Fund, nor shall the Underwriter Defendants object to the Plan of Allocation proposed by Plaintiffs.

22. Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund. Neither the Underwriter Defendants



nor any other Released Party shall have any liability, obligation or responsibility whatsoever for the administration of the Settlement or disbursement of the Net Settlement Fund. Neither the Underwriter Defendants nor any other Released Party shall be permitted to review, contest or object to any Claim Form or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim Form or Claim for payment by a Class Member.

23. All Claim Forms must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice, unless such deadline is extended by Order of the Court. Any Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the Court, late-filed Claim Forms are accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment and the releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Party concerning any Settled Claim. A Claim Form shall be deemed to be 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.

24. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's Claim, including, but not limited to, the releases provided for in the Judgment, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of the Action or this Settlement in connection with the



processing of Claim Forms, provided, however, that the Underwriter Defendants may verify whether specific persons who opt out of the Class have submitted Claim Forms.

25. Lead Counsel will apply to the Court, on notice to the Underwriter Defendants, for a Class Distribution Order: (i) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (ii) approving payment of any outstanding administration fees and expenses associated with the administration of the Settlement from the Escrow Account; and (iii) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

26. Payment pursuant to the Class Distribution Order shall be final and conclusive against any and all Class Members. All Class Members whose Claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment, and the releases provided for therein, and will be permanently barred and enjoined from bringing any action against any and all Released Parties concerning any and all of the Settled Claims.

27. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

28. No person or entity shall have any claim against Lead Plaintiffs, Lead Counsel, the Released Parties, or the Underwriter Defendants' Counsel based on the administration of the Settlement, including, without limitation, the processing of claims and distributions made in

accordance with this Stipulation, the Settlement, the Plan of Allocation and/or the implementation of the Class Distribution Order.

**TERMS OF THE JUDGMENT**

29. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel shall request that the Court enter a Judgment, substantially in the form annexed hereto as Exhibit B, including, among other things, the releases, bar orders, and judgment reduction provisions provided for therein.

30. The Judgment shall contain a Bar Order substantially in the form set forth in Exhibit B that: (a) permanently bars, enjoins and restrains any person or entity from commencing, prosecuting, or asserting any Barred Claims against any of the Released Parties, whether as claims, cross-claims, counterclaims, third-party claims, or otherwise, and whether asserted in the Action or any other proceeding, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere; and (b) permanently bars, enjoins, and restrains the Released Parties from commencing, prosecuting, or asserting any Barred Claims against any person or entity, whether as claims, cross-claims, counterclaims, third-party claims or otherwise, and whether asserted in the Action or any other proceeding, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere.

31. The Judgment shall also contain a provision substantially in the form set forth in Exhibit B requiring that any final verdict or judgment that may be obtained by or on behalf of the Class or a Class Member against any person or entity subject to the Bar Order shall be reduced by the greater of: (i) an amount that corresponds to the percentage of responsibility of the

Underwriter Defendants for common damages; or (ii) the amount paid by or on behalf of the Underwriter Defendants to the Class or Class Member for common damages.

**WAIVER OR TERMINATION**

32. Within thirty (30) days of: (a) the Court's entry of an order expressly declining to enter the Preliminary Approval Order in any material respect; (b) the Court's refusal to approve this Stipulation or any material part of it; (c) the Court's declining to enter the Judgment in any material respect; or (d) the date upon which the Judgment is modified or reversed in any material respect and represents a Final decision on the matter, the Settling Parties each shall have the right to terminate the Settlement and this Stipulation, by providing written notice to the other of an election to do so. However, any decision with respect to an application for attorneys' fees or Litigation Expenses, or with respect to any plan of allocation, shall not be considered material to the Settlement and shall not be grounds for termination.

33. The Effective Date of the settlement shall be conditioned on the occurrence or waiver of all of the following events:

- a. the Underwriter Defendants have fully paid, or caused to be fully paid, the Settlement Amount, as required above;
- b. the Underwriter Defendants have not exercised their option to terminate their participation in this Stipulation pursuant to paragraph 36 hereof;
- c. the Court has approved the Settlement as described herein, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment, or a judgment substantially similar in the form and substance of Exhibit B hereto; and
- d. the Judgment has become Final, as defined above.

34. Upon the occurrence of all of the events referenced in paragraph 33 above, any and all remaining interest or right of the Underwriter Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the releases herein shall be effective, except as otherwise stated herein.

35. If the Underwriter Defendants exercise their right to terminate their participation in this Stipulation and Settlement as provided in paragraph 36 herein or the Court does not approve the Settlement:

- a. This Stipulation shall be canceled and terminated unless Lead Counsel and Underwriter Defendants' Counsel otherwise mutually agree in writing and the Court allows the Settling Parties to proceed with this Stipulation;
- b. Plaintiffs and the Underwriter Defendants shall be restored to their respective positions as of December 3, 2010;
- c. the terms and provisions of this Stipulation, with the exception of paragraphs 11, 14, 18, 25, 37, 41, 42, and 56 herein, shall have no further force and effect with respect to the Settling Parties and shall not be used in the litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and
- d. within ten (10) business days after written notification of termination is sent by Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest), less expenses and any costs which have either been disbursed, or are determined to be incurred and chargeable to Notice and Administration Expenses and less any Taxes paid or owing pursuant to paragraphs 11 and 14 hereto, shall be refunded by the Escrow Agent to the Underwriter Defendants. For purposes of calculating the

amounts to be refunded under the circumstances addressed in this subparagraph, interest, Taxes and Notice and Administration Expenses shall be attributed pro rata based on the amounts paid into the Settlement Fund. At the request and under the direction of counsel for the Underwriter Defendants, the Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to the Underwriter Defendants, on a pro rata basis.

36. If a portion of the Class, equal to or greater than the portion specified in a separate supplemental agreement between Plaintiffs and the Underwriter Defendants (the “Supplemental Agreement”) who would otherwise be Class Members choose to exclude themselves from the Class, then the Underwriter Defendants shall have the option to terminate their participation in this Stipulation and the Settlement, pursuant to the terms set forth in the Supplemental Agreement.

37. The Supplemental Agreement is confidential and shall not be filed with the Court, but may be examined *in camera*, if so requested by the Court (unless otherwise required by court rule, or unless and until a dispute as between or among Plaintiffs and the Underwriter Defendants concerning their interpretation or application arises).

38. The proposed schedule reflected in the proposed Preliminary Approval Order and proposed Notice shall provide that any request for exclusion must be submitted for receipt at least twenty-one (21) calendar days prior to the Final Approval Hearing.

39. Copies of any request for exclusion from the Class received by the Claims Administrator (or other person designated to receive exclusion requests) shall be provided to Lead Counsel and Underwriter Defendants’ Counsel within five (5) business days of receipt

thereof and, in the event that any request for exclusion from the Class is received within ten (10) business days of the Final Approval Hearing, such request(s) shall be provided to Lead Counsel and Underwriter Defendants' Counsel by e-mail or facsimile within three (3) business days of its/their receipt by the Claims Administrator. If the threshold set forth in the Supplemental Agreement is reached, the Underwriter Defendants shall have until five (5) business days prior to the Final Approval Hearing to inform Lead Counsel, in writing, that they elect to exercise their option to terminate the Settlement. Lead Counsel shall have the right to communicate with the holders of such shares and, if, prior to the conclusion of the Final Approval Hearing, a sufficient number of them withdraw in writing their requests for exclusion such that the remaining "opt outs" represent less than the threshold, the notice(s) of termination shall be deemed withdrawn.

40. In the event the Ambac Settlement is terminated or is not approved, but the Underwriter Settlement is approved, the Underwriter Settlement shall proceed as set forth in this Stipulation without further notice to the Class.

41. Except as otherwise provided herein, in the event the Settlement is terminated, the Settlement termination shall be without prejudice, and none of the terms shall be effective or enforceable and the facts of the Settlement shall not be admissible in any trial of the Action, and the Settling Parties shall be deemed to have reverted to their respective status in this Action as of December 3, 2010, and, except as otherwise expressly provided, this Stipulation shall be null and void and shall have no further force or effect, the Settling Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered, and any portion of the Settlement consideration previously paid or caused to be paid by the Underwriter Defendants, including, but not limited to, any funds disbursed in payment of Litigation Expenses and attorneys' fees, together with any interest earned or appreciation thereon, less any Taxes paid or due with respect

to such income, and less Notice and Administration Costs incurred and paid or payable, shall be returned to the Underwriter Defendants within fifteen (15) business days after written notification of such event by Lead Counsel to the Escrow Agent, pursuant to the terms of the Escrow Agreement.

**NO ADMISSION OF WRONGDOING**

42. Whether or not the Settlement is approved by the Court, and whether or not the Settlement is consummated, the fact and terms of this Stipulation, including exhibits, all negotiations, discussions, drafts and proceedings in connection with the Settlement, and any act performed or document signed in connection with the Settlement:

(a) shall not be admissible in any action or proceeding for any reason, other than an action to enforce the terms hereof;

(b) shall not be described as, construed as, offered or received against any Released Party as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any Released Party of: the truth of any fact alleged by Plaintiffs; the validity of any claim that has been or could have been asserted in the Action or in any litigation; the deficiency of any defense that has been or could have been asserted in the Action or in any litigation; or any liability, negligence, fault, or wrongdoing of any Released Party;

(c) shall not be described as, construed as, offered or received against Lead Plaintiffs or any Class Member as evidence of any infirmity in the claims of said Lead Plaintiffs and the Class or that damages recoverable in the Action would not have exceeded the Settlement Amount;

(d) shall not be described as, construed as, offered or received against any of the Settling Parties in any other civil, criminal or administrative action or proceeding; provided,

however, that (i) if it is necessary to refer to this Stipulation to effectuate the provisions of this Stipulation, it may be referred to in such proceedings, and (ii) if this Stipulation is approved by the Court, the Released Parties may refer to it to effectuate the liability protection granted them hereunder; and

(e) shall not be described as or construed against any of the Released Parties, Plaintiffs or any other Class Member(s) as an admission, concession or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial.

#### **MISCELLANEOUS PROVISIONS**

43. All of the following exhibits attached hereto are hereby incorporated by reference as though fully set forth herein: proposed Preliminary Approval Order, Notice, Proof of Claim Form, Summary Notice and proposed Judgment.

44. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by others, then, at the election of Lead Counsel, (i) the Settling Parties shall jointly move the Court to vacate and set aside the releases given and the Judgment entered pursuant to this Stipulation, which shall be null and void, and the Settling Parties shall be restored to their respective positions in the litigation as of December 3, 2010, upon repayment to the Underwriter Defendants of the full amount paid into the Settlement Fund pursuant to paragraph 6 above (less any Taxes paid or due with respect to such income, and less Notice and Administration Costs incurred and paid or payable) as provided in paragraph 41, or (ii) the Settling Parties shall jointly



move the Court to vacate and set aside the releases given and the Judgment entered pursuant to this Stipulation in respect of the Underwriter Defendant which is the subject of such order, the Judgment entered pursuant to this Stipulation shall be null and void as against such Underwriter Defendant, and Plaintiffs and such Underwriter Defendant shall be restored to their respective positions in the litigation as of December 3, 2010, but the Settlement and Judgment shall remain effective in respect of all other Settling Parties.

45. The Underwriter Defendants each warrant as to themselves that, as to the payments made by or on behalf of him, her or it, at the time of such payment made pursuant to paragraph 6 above, he, she or it was not insolvent, nor will the payment required to be made by or on behalf of him, her or it render him, her or it insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by the Underwriter Defendants and not by their respective counsel.

46. Plaintiffs and the Class agree that they will not appeal the Court's Order dated February 22, 2010, unless and until the Settlement does not become Final.

47. The Settling Parties intend this Settlement to be a final and complete resolution of all disputes asserted or that could be asserted by the Plaintiffs or any other Class Member(s) against all Released Parties with respect to all Settled Claims. Accordingly, the Settling Parties agree not to assert in any forum that the Action was brought by Plaintiffs or Lead Counsel, or defended by the Underwriter Defendants or Underwriter Defendants' Counsel, in bad faith or without a reasonable basis. The Settling Parties agree that the amount paid and the other terms of this Settlement were negotiated at arm's length and in good faith, including in connection with a mediation conducted by a professional mediator, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel. The parties hereto shall assert no

claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the maintenance, defense or settlement of the Action.

48. This Stipulation, including the exhibits to this Stipulation and the Supplemental Agreement referred to in paragraph 36 above, may not be modified or amended, nor may any of its provisions be waived, except by a signed writing. Any condition in this Stipulation may be waived by the party entitled to enforce the condition in a writing signed by that party or its counsel. The waiver by any party of any breach of this Stipulation by any other party shall not be deemed a waiver of the breach by any other party, or a waiver of any other prior or subsequent breach of this Stipulation by that party or any other party. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

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

50. The administration and consummation of this Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of, *inter alia*, entering orders providing for the enforcement of the terms of this Stipulation, including, but not limited to, the releases provided for herein, and awards of attorneys' fees and Litigation Expenses to Lead Counsel.

51. This Stipulation, its exhibits and the Supplemental Agreement constitute the entire agreement among the Settling Parties concerning this Settlement, and no representations, warranties or inducements have been made by any Settling Party concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

52. This Stipulation may be executed in one or more original, e-mailed and/or faxed counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

53. This Stipulation shall be binding upon, and inure to the benefit of, the successors, trustees, and assigns of the parties hereto.

54. The Settling Parties shall use their best efforts to consummate the Settlement.

55. The Settling Parties agree that, prior to final approval by the appropriate court(s) of the Settlement, the Honorable Nicholas H. Politan will continue to serve as a mediator for any disputes or issues that may arise relating to the Settlement.

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

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

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

59. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the

full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

60. Lead Counsel and Underwriter Defendants' Counsel agree to cooperate reasonably in seeking Court approval of the Preliminary Approval Order, the Stipulation and this Settlement, and to use reasonable efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

61. The parties stipulate and agree that all litigation activity, except that contemplated herein and in the Preliminary Approval Order, the Notice, and the Judgment, shall be stayed and all hearings, deadlines, and other proceedings in this action, except a preliminary approval hearing (if any) and the Final Approval Hearing, shall be taken off calendar.

62. If any party is required to give notice to the other parties under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt by hand delivery, facsimile transmission or electronic mail to the recipients in the signature block below.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys as of May 4, 2011.

On behalf of *Lead Plaintiffs, Plaintiff Painting Industry Insurance and Annuity Funds, and the Class*

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On behalf of *the Underwriter Defendants*

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