

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

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In re:

CHEMTURA CORPORATION, *et al.*,

Debtors.

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)  
) Chapter 11  
)  
) Case No. 09-11233 (REG)  
)  
) Jointly Administered  
)

**SETTLEMENT AGREEMENT**

1. DEFINITIONS.....	4
2. IMPLEMENTATION OF AGREEMENT .....	11
3. COMPLETE AND FINAL SETTLEMENT .....	11
4. SUBMISSION OF SETTLEMENT TO THE COURT .....	12
5. SETTLEMENT FUND.....	16
6. SETTLEMENT CLASS MEMBER AWARDS.....	19
7. CLAIM ADMINISTRATION .....	23
8. APPEAL OF DISALLOWED CLAIMS .....	30
9. NOTICE AND OPPORTUNITY FOR EXCLUSION .....	31
10. OBJECTION PROCEDURE .....	34
11. RELEASE AND WAIVER OF CLAIMS .....	35
12. AWARD OF ATTORNEYS' FEES AND COSTS .....	37
13. USE OF THIS AGREEMENT .....	39
14. WARRANTIES .....	40
15. BINDING EFFECT .....	41
16. MODIFICATION, EXECUTION AND BANKRUPTCY COURT APPROVAL.....	42
17. TERMINATION.....	43
18. OTHER TERMS AND CONDITIONS .....	43
EXHIBITS .....	46

This Settlement Agreement is entered into this 25<sup>th</sup> day of August 2010, by and between Plaintiff, Deborah Davis, individually and as representative of the proposed Settlement Class, acting by and through Class Counsel, and Defendants, Bio-Lab, Inc., Great Lakes Chemical Corporation, Larry Bloom, and Monty Eckles;

WHEREAS, on or about May 27, 2004, Proposed Class Representative Deborah Davis instituted a putative class action lawsuit against Bio-Lab, Inc. and Monty Eckles, in the Superior Court of Rockdale County, Civil Action No. 04-CV-1728-1, asserting Claims against Defendants in connection with a fire of unknown cause and origin that occurred at Bio-Lab, Inc.'s Plant 14 finished goods distribution warehouse in Conyers, Georgia on May 25 and May 26, 2004;

WHEREAS, various other Actions have been filed asserting Claims arising from the Incident;

WHEREAS, on March 18, 2009, Chemtura Corporation, Bio-Lab, Inc. and Great Lakes Chemical Corporation each commenced a Chapter 11 case by filing voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code with the Bankruptcy Court, which stayed any Actions against them;

WHEREAS, Class Counsel and the Proposed Class Representative, among other Named Plaintiffs in the Actions, have filed a purported class proof of claim on or before the Bar Date (Proof of Claim No. 9995) and have filed a motion for class certification in relation to the purported class proof of claim (Docket No. 1690);

WHEREAS, over 2,000 individual members of the proposed class have timely filed proofs of claim on or before the Bar Date;

WHEREAS, notwithstanding the commencement of Bio-Lab, Inc.'s and Great Lakes Chemical Corporation's Chapter 11 Cases, the Defendants, Proposed Class Representative and Class Counsel have continued to explore consensual resolution and settlement of the Actions;

WHEREAS, this Settlement Agreement resolves potential objections of Bio-Lab, Inc., Great Lakes Chemical Corporation, and Chemtura Corporation to the individual Settlement Class Members' proofs of claim and the Proposed Class Representative's purported class proof of claim and motion for certification of the class proof of claim;

WHEREAS, in evaluating the terms of this Settlement Agreement, Proposed Class Representative and Class Counsel have considered: (a) the consideration agreed to be paid, as hereinafter set forth; (b) the substantial benefits that would inure to Settlement Class Members; (c) the attendant risks of litigation and the uncertainty of the outcome of the Actions; and (d) the desirability of permitting the settlement to be consummated as provided by the terms of this Settlement Agreement;

WHEREAS, the Proposed Class Representative, voluntarily and with full knowledge of the rights and the provisions herein, having the benefit and advice of Class Counsel, desires to settle, compromise, and dispose of all Claims that the Settlement Class Members may have against Defendants arising from or relating to the Incident, and to dismiss this Lawsuit with prejudice and to settle with and release Defendants upon the terms and conditions hereinafter set forth;

WHEREAS, Defendants deny that they have, or any of them has, negligently or intentionally committed any wrongful or tortious acts or omissions, or breached any duties of any kind whatsoever, and deny that they are in any way liable to any Settlement Class Member, and aver, to the contrary, that they have at all times acted lawfully and with full and proper concern for the

health, safety, and welfare of the public, and further deny all allegations of wrongdoing, violations of law, or breaches of duty;

WHEREAS, Defendants assert that (i) the Claims that were or could have been alleged in the Actions have no substance in fact or law, (ii) Defendants have meritorious defenses to such Claims, (iii) Defendants have affirmative defenses that bar such Claims, and (iv) judgment should be entered in favor of Defendants in the Actions;

WHEREAS, Defendants, nevertheless, have agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of expensive, burdensome, and protracted litigation, and to obtain total and final peace, satisfaction, and protection from the Claims and controversies arising from, related to, or connected with the Actions;

WHEREAS, Defendants voluntarily and with full knowledge of their rights in the provisions herein, having the benefit and the advice of counsel, and without any admission of liability, misconduct, or wrongdoing, now desire to settle, compromise, and dispose of the Actions, and all Claims that the Proposed Class Representative and the Settlement Class Members have or might have against Defendants arising from or relating to the Incident, upon the terms and conditions hereinafter set forth;

WHEREAS, Bio-Lab, Inc. and Great Lakes Chemical Corporation have concluded that the Settlement is fair, reasonable and adequate and is in the best interests of their respective Chapter 11 estates;

WHEREAS, subject to Court approval, it is hereby stipulated and agreed by the Parties to this Settlement Agreement that, upon entry by the Court of a Final Order approving the Settlement and



directing its implementation, all pending Actions shall then be settled and compromised upon the terms and conditions set forth below;

NOW THEREFORE, in consideration of the foregoing, and of the promises and mutual covenants contained herein, and other valuable consideration, it is hereby agreed as follows:

## **1. DEFINITIONS**

1.1 **"Actions"** means the following putative class actions and other lawsuits:

- (a) *Deborah Davis, et al. v. BioLab, Inc., et al*, Superior Court of Rockdale County, Civil Action No. 04-CV-1728-I;
- (b) *Billy R. Brown, et al. v. BioLab, Inc., Great Lakes Chemical Corp., Chemtura Corp., and Gallagher Bassett Services Inc.*, Superior Court of Rockdale County, Civil Action No. 2006-CV-2905-I;
- (c) *James and Carla Brown, et al. v. BioLab, Inc., et al*, Superior Court of Rockdale County, Civil Action No. 2006-2893-1;
- (d) *Emma Burtts, et al. v. BioLab, Inc., et al.*, Superior Court of Fulton County, Civil Action No. 2004-CV-8755-0 (dismissed June 29, 2005);
- (e) *Dan Chapman, P.C., et al. v. BioLab, Inc., et al*, Superior Court of Rockdale County, Civil Action No. 2006-CV-2904-I;
- (f) *Daniel Wayne Hill, et al. v. BioLab, Inc., et al.*, State Court of Fulton County, Civil Action No. 04VS069348-C (dismissed August 24, 2005); and
- (g) *Bill Martin, et al. v. BioLab, Inc., et al*, District Court, Northern District of Georgia, Atlanta Division, Civil Action No. 05-CV-0835.

1.2 **"Bankruptcy Code"** means Title 11 of the United States Code.

1.3 **"Bankruptcy Court"** means the United States Bankruptcy Court for the Southern District of New York.

1.4 **"Bankruptcy Rules"** means the Federal Rules of Bankruptcy Procedure.

1.5 **"Bar Date"** means October 30, 2009.

1.6 **"Chapter 11 Cases"** means the Chapter 11 cases of Bio-Lab, Inc., Great Lakes Chemical Corporation, and Chemtura Corporation, which are being jointly administered under the Chapter 11 case of Chemtura Corporation under case number 09-11233 (REG) in the Bankruptcy Court.

1.7 **"Claim Form"** means a Settlement Class Member's request for either an Ordinary Settlement Award or Extraordinary Damages in the appropriate form agreed to by the Parties which will be filed with the Claims Administrator.

1.8 **"Claimant"** means any Settlement Class Member who submits a request for payment from the Settlement Fund, on behalf of himself, herself, or itself or through a Personal Representative.

1.8.1 **"Business Claimant"** means a Claimant seeking compensation for alleged damages, past, present, or future, known or unknown, for business interruption, lost revenue, lost profits, lost enterprise value, workers' compensation claims, products liability claims, and diminution in value, replacement costs, and loss of business equipment and inventory.

1.8.2 **"Individual Claimant"** means a Claimant seeking compensation for alleged damages, past, present, or future, known or unknown, other than damages to property or businesses, arising from the Incident, including, but not limited to, damages for personal injuries, wrongful death, medical expenses, lost wages, additional living expenses, inconvenience, and emotional distress, as well as claims derivative of other persons, including, but not limited to, wrongful death, loss of support, and loss of consortium.

1.8.3 **"Property Claimant"** means a Claimant seeking compensation for alleged damages to personal or real property, past, present, or future, known or unknown, including loss of use and enjoyment of property, annoyance, irritation, diminution in property value, and loss of use value or loss of rental value.

1.9 **"Claims"** means any and all past, present, or future claims, demands, obligations, actions, causes of action, damages, costs, liabilities, expenses, and compensation of any kind or nature whatsoever against Defendants, known or unknown, accrued or not yet accrued, including, but not limited to, any claims for subrogated interests arising out of or relating to the Incident, and

actual or alleged airborne pollution, emissions, releases, spills and discharges, exposure to hazardous substances, air contaminants, toxic pollutants, particulates, or odors which have emanated or are alleged to have emanated into the air or water from the Incident, which were or could have been pleaded in the Actions, whether legal or equitable, including but not limited to claims premised on theories of trespass, trespass to land, trespass to chattel, nuisance, private nuisance, public nuisance, attractive nuisance, negligence, negligence per se, gross negligence, criminal negligence, ultra-hazardous activity, strict liability, vicarious liability, emotional distress, intentional infliction of emotional distress, negligent infliction of emotional distress, reckless endangerment, assault, battery, false imprisonment, kidnapping, fraud, mutual mistake, stubborn litigiousness, punitive damages, vindictive damages, medical monitoring, fear of future diseases, wrongful death, stigma, loss of support, loss of consortium and other derivative claims, and claims based on alleged statutory or regulatory provisions such as the Georgia Air Quality Act, Georgia Water Quality Act, the federal Comprehensive Environmental Response, Compensation and Liability Act, the federal Resource Conservation and Recovery Act, the federal Clean Air Act, the federal Occupational Safety and Health Act, the federal Insecticide, Fungicide and Rodenticide Act, the Civil Rights Act, state and federal "RICO" statutes, and all other federal, state, county, city, and local statutes, rules, regulations, and ordinances of every kind and nature for:

- 1.9.1 Any and all alleged damages or injury to personal or real property, past, present, or future, known or unknown, direct or derivative, including loss of use and enjoyment of property, annoyance, irritation, diminution in property value, and loss of use value or loss of rental value arising out of or related to the Incident;
- 1.9.2 Any and all alleged damages, past, present, or future, known or unknown, for personal injuries and medical expenses, to individuals known and unknown, direct or derivative, whether such injuries have manifested themselves or not arising out of or related to the Incident;
- 1.9.3 Any and all alleged damages, past, present, or future, known or unknown, for business interruption, lost revenue, lost profits, lost enterprise value,

workers' compensation claims, products liability claims, diminution in value of business equipment, replacement costs for business equipment, and inventory diminution in value and loss arising out of or related to the Incident;

- 1.9.4 Any and all alleged damages, past, present, or future, known or unknown, for additional living expenses, lost wages, or inconvenience; arising out of or related to the Incident;
- 1.9.5 Any and all response costs, remediation costs, restitution, equitable reimbursements, or other types of recovery, past, present, or future, known or unknown, under any equitable, legal, or statutory theory; arising out of or related to the Incident; and
- 1.9.6 All related claims for the recovery of attorneys' fees, costs, expenses, or disbursements in connection with any claim or theory of recovery arising out of or related to the Incident.

1.10 **"Claims Administrator"** shall be the person designated by the Court to execute the terms and conditions of this Settlement Agreement, with duties as more fully set forth in Section 7 of this Agreement.

1.11 **"Class Counsel"** includes but, as discussed more fully in Section 12, is not limited to:

W. Lewis Garrison, Jr. and  
Heninger, Garrison & Davis,  
LLC  
2224 First Avenue North  
Birmingham, Alabama 35203  
Phone: 205-326-3336  
Fax: 205-326-3332

Barry G. Reed and  
Zimmerman Reed, PLLP  
14646 N. Kierland Blvd.  
Suite 145  
Scottsdale, Arizona 85254-  
2762  
Phone: 480-348-6400  
Fax: 480-348-6415

Roger W. Orlando and  
The Orlando Firm, P.C.  
Suite 400  
The Wachovia Building  
315 West Ponce De Leon Ave.  
Decatur, Georgia 30030  
Phone: 404-373-1800  
Fax: 404-373-6999

M. David Karnas and  
Bellovin & Karnas, P.C.  
131 East Broadway Blvd.  
Tucson, Arizona 85701  
Phone: 520-571-9700  
Fax: 520-571-8556

Newton B. Schwartz, Sr. and  
Law Office of Newton B.  
Schwartz, Sr.  
1911 Southwest Freeway  
Houston, Texas 77098  
Phone: 713-630-0708/  
800-536-6006  
Fax: 713-630-0789

1.12 **"Court"** means the United States Bankruptcy Court for the Southern District of New York; provided, however, that if the reference is withdrawn or it is determined that the United States Bankruptcy Court for the Southern District of New York does not have jurisdiction to assume responsibility for approval and supervision of the implementation of the Settlement Agreement, "Court" shall mean the United States District Court for the Southern District of New York as provided in Section 4.1 hereof.

1.13 **"Defendants"** means Bio-Lab, Inc., Great Lakes Chemical Corporation, Chemtura Corporation, Larry Bloom and Monty Eckles.

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

1.15 **"Escrow Agent"** means the escrow agent appointed under Section 5.3 hereof.

1.16 **"Evacuation Area"** means the area designated for mandatory or voluntary evacuation by the Rockdale County Sheriffs Department, the boundaries of which are shown on Exhibit A.

1.17 **"Extraordinary Damages"** means damages awarded pursuant to Sections 6.4, consisting of documented actual damages that exceed the total amount of Ordinary Settlement Awards available under Section 6.1.

1.18 **"Final Fairness Hearing"** means the hearing on the question whether this Settlement Agreement should be approved as fair, reasonable, and adequate.

1.19 **"Incident"** means the fire of unknown cause and origin that occurred at the Plant on May 25 and May 26, 2004.

1.20 **"Lawsuit"** means *Deborah Davis, et al v. BioLab, Inc., et al*, Civil Action No. 04-CV-1728, pending in the Superior Court of Rockdale County.

1.21 **"Named Plaintiff"** means any person or entity that is or was a party plaintiff in any of the Actions.

1.22 **"Opt-Out"** means a former member of the Settlement Class who timely requests, or on whose behalf a Personal Representative timely requests, exclusion from the Settlement Class in accordance with the provisions of this Settlement Agreement and the Orders of the Court.

1.23 **"Ordinary Settlement Awards"** are those set forth in Section 6.1.

1.24 **"Parties"** means the parties to this Agreement who are the Proposed Class Representative, Class Counsel, Bio-Lab, Inc., Great Lakes Chemical Corporation, Larry Bloom, and Monty Eckles.

1.25 **"Plant"** means Bio-Lab, Inc.'s former Plant 14 finished goods distribution warehouse, previously having had a street address of 1650 Old Covington Highway, Conyers, Georgia, and all adjacent or contiguous property owned, operated, controlled, or otherwise used at any time by Defendant Bio-Lab, Inc. for its business purposes.

1.26 **"Personal Representative"** means :

1.26.1 In the case of each minor Settlement Class Member, his or her natural guardian or a conservator who is legally qualified under Chapters 2 and 3 of Title 29 of the Official Code of Georgia Annotated ("O.C.G.A").

1.26.2 In the case of each adult Settlement Class Member who is not legally competent to enter into the settlement, a guardian or conservator who has become legally qualified under Chapters 4 and 5 of Title 29 of the O.C.G.A.

1.26.3 In the case of each deceased person who otherwise would have been a Settlement Class Member, an executor, administrator, or personal representative who has become legally qualified under Chapter 6 of Title 53 of the O.C.G.A.

1.27 **"Proposed Class Representative"** means the Named Plaintiff, Deborah Davis.

1.28 **"Releasees"** means the Defendants and any current and former affiliated corporations, predecessors, successors, subsidiaries, parents, and purchasers and their insurers,

attorneys, employees, agents, representatives, officers, directors, managers, members, assigns, heirs, personal representatives, and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be acquired and/or affiliated.

1.29 **"Settlement Class"** means all of those persons or entities (including, but not limited to, proprietorships, unincorporated associations, partnerships, institutions, corporations, trusts and their successors in title or interest) who resided, were located, were present, were working, were scheduled to work, or owned property or one or more places of business within the Settlement Class Area on May 25 and/or May 26, 2004, as well as all persons or entities who are or have been plaintiffs in any of the Actions. Excluded from the class are judges to whom any of the actions listed herein are assigned.

1.30 **"Settlement Class Area"** is defined as follows: The area of Rockdale County, Georgia, as depicted on Exhibit A, extending four (4) miles due north of the I-20 right of way, and one (1) mile due south of the I-20 right of way, running between the Sigman Road Exit on I-20 and a point 10 miles east of the Sigman Road Exit on I-20.

1.31 **"Settlement Class Member"** means a member of the Settlement Class who has not, or on whose behalf a Personal Representative has not, filed a timely and valid request for exclusion from the Settlement Class.

1.32 **"Settlement Effective Date"** means the last date of the full and complete satisfaction of each of the following:

- 1.32.1 The Court's entry of an Order preliminarily approving this Agreement and Settlement and conditionally certifying the Settlement Class pursuant to Fed. R. Civ. P. 23 or Bankruptcy Rule 7023, and approving this Agreement and Settlement pursuant to Bankruptcy Rule 9019;
- 1.32.2 The Court's adjudication of any and all objections to the fairness and reasonableness of the class settlement, if any;
- 1.32.3 The Court's entry of a final Order approving this Agreement and Settlement;



1.32.4 Entry in each of the Actions that have been filed as putative class actions, of final judgments of dismissal with prejudice against the respective Named Plaintiffs and without costs to any Party, except that class representatives in the Actions reserve their rights to benefits as class members;

1.32.5 Entry in the action captioned *Billy R. Brown, et al. v. BioLab Inc., Great Lakes Chemical Corp., Chemtura Corp., and Gallagher Bassett Services Inc.*, Superior Court of Rockdale County, Civil Action No. 2006-CV-2905-I, of a final judgment of dismissal with prejudice against those Named Plaintiffs in that action who remain in the Settlement Class, without prejudice against those Named Plaintiffs in that action who request exclusion from the Settlement Class, and without costs to any Party; and

1.32.6 The final resolution of any appeals of such Orders and Judgment (including petitions for certiorari) or the expiration of the time for appeal.

1.33 **"Settlement Fund"** means the Seven Million Dollars (\$7,000,000.00) to be paid pursuant to Section 5.

1.34 **"Third Party Payor"** means any person or entity, including but not limited to Medicaid, Medicare, or a private health or property insurance company, who has paid a Settlement Class Member's medical expenses, workers' compensation benefits, and all other similar or related expenses pertaining to, arising out of or in connection with the released Claims and who has a lien or claim against any payment to the Settlement Class Member under this Agreement or an original or subrogation claim against any of the Defendants arising out of the Incident.

1.35 A **"Validated Claimant"** is a Claimant whose request for payment has been validated pursuant to the provisions of Section 7 or 8 of this Agreement.

## **2. IMPLEMENTATION OF AGREEMENT**

The Parties agree to cooperate in good faith, to use their best efforts, and to take all lawful steps necessary to implement and effectuate this Agreement and the settlement provided for herein.

## **3. COMPLETE AND FINAL SETTLEMENT**

This Agreement is a complete, total, and final settlement, release, and satisfaction of all Claims



asserted by the Proposed Class Representative and the Settlement Class Members. The Proposed Class Representative and the Settlement Class Members, and their Personal Representatives, shall look solely to the Settlement Fund for settlement and satisfaction of all Claims against the Defendants. Putative Class Representatives in the Actions shall enjoy the same rights and benefits under this settlement as other absent class members. All proofs of claims filed in the Chapter 11 Cases by the Proposed Class Representative, Class Counsel and Settlement Class Members, including the purported class proof of claim, shall be deemed withdrawn with prejudice.

#### **4. SUBMISSION OF SETTLEMENT TO THE COURT**

4.1 As soon as practicable after the execution of this Agreement, Defendants shall submit this Agreement to the Bankruptcy Court for preliminary and final approval pursuant to Bankruptcy Rules 9019 and 7023. In the event that the reference is withdrawn or it is determined that the Bankruptcy Court does not have jurisdiction with respect to matters concerning this Settlement Agreement, the Parties agree nevertheless to abide by all the terms of the Settlement Agreement except that they will amend each Exhibit hereto as necessary to conform the Exhibits to reflect this change and they will request the District Court rather than the Bankruptcy Court to enter the Orders described in this Agreement. The Parties shall initially request an Order of Preliminary Approval substantially in the form attached as Exhibit B, including the following terms:

- 4.1.1 Approving the Settlement Agreement under Bankruptcy Rule 9019;
- 4.1.2 Conditionally certifying the Settlement Class and preliminarily approving the Settlement Agreement under Fed. R. Civ. P. 23 or Bankruptcy Rule 7023;
- 4.1.3 Setting the Final Fairness Hearing to consider whether this Settlement Agreement should be approved as fair, reasonable, and adequate, as well as the schedule for considering any issues presented by Class Counsel, including any requests for attorneys' fees and reimbursement of expenses;

- 4.1.4 Prescribing the method of giving notice to the Settlement Class Members as set forth in Section 9 of this Settlement Agreement;
- 4.1.5 Approving the form of the Notices to the Settlement Class Members in the form of attached Exhibits C and D;
- 4.1.6 Holding that, in connection with the subsequent settlement proceedings, each minor member of the Settlement Class will be represented by his or her natural guardian or a conservator who is legally qualified under Chapters 2 and 3 of Title 29 of the Official Code of Georgia Annotated ("O.C.G.A."), consistent with Fed. R. Civ. P. 17(c) or Bankruptcy Rule 7017(c).
- 4.1.7 Holding that, in connection with the subsequent settlement proceedings, each adult member of the Settlement Class who is not legally competent to enter into the settlement will be represented by a guardian or conservator who has become legally qualified, under Chapters 4 and 5 of Title 29 of the O.C.G.A., consistent with Fed. R. Civ. P. 17(c) or Bankruptcy Rule 7017(c).
- 4.1.8 Holding that, in connection with the subsequent settlement proceedings, the estate of each deceased person who otherwise would have been a member of the Settlement Class will be represented by an executor, administrator, or personal representative who has become legally qualified, under Chapter 6 of Title 53 of the O.C.G.A., and who has been legally substituted pursuant to Fed. R. Civ. P. 25 or Bankruptcy Rule 7025.
- 4.1.9 Prescribing a period of time during which Settlement Class Members or their Personal Representatives may file requests to be excluded from the Settlement Class, in no event less than sixty (60) days before the date set for the Final Fairness Hearing;
- 4.1.10 Prescribing a period of time during which written objections to the Settlement Agreement or any request for attorneys' fees and expenses by Class Counsel must be submitted to the Court and counsel for the Parties;
- 4.1.11 Prescribing a period of time during which Settlement Class Members or their Personal Representatives may submit Claim Forms, in the form of attached Exhibit E; and
- 4.1.12 Containing such other and further provisions consistent with the terms of this Settlement Agreement as the Court may deem advisable.

4.2 If the Court finally approves this Settlement Agreement after notice and hearing, a final Judgment, substantially in the form of the Order Granting Final Approval of Settlement attached as Exhibit F, shall be entered, which shall include at least the following terms:

- 4.2.1 Approving this Settlement Agreement and all of its terms and conditions as being negotiated in good faith and as being a fair, reasonable, and adequate settlement of all of the Claims against Defendants and directing consummation of this Settlement Agreement pursuant to its terms;
- 4.2.2 Providing that each Settlement Class Member on behalf of himself, herself, or itself or through a legally qualified guardian, conservator, executor, administrator, or personal representative, and on behalf of each Settlement Class Member's heirs, successors, assigns, and insurers shall be deemed to have individually executed a Release and Covenant Not To Sue in the form set forth in attached Exhibit G;
- 4.2.3 Permanently barring and enjoining the Proposed Class Representative and all Settlement Class Members, their legally qualified Personal Representatives, and their insurers from asserting any Claims against Defendants, either directly or in a representative capacity, in any court, tribunal, or administrative body;
- 4.2.4 Finding that the notice given to the Settlement Class is the best notice practicable, and that the notice complies with Fed. R. Civ. P. 23 or Bankruptcy Rule 7023 and the requirements of due process in all respects, including, but not limited to, the form of notice and the methods of giving notice to the Settlement Class Members;
- 4.2.5 With respect to Settlement Class Members who are minors, approving the settlement, finding that the settlement is fair and in their best interests, and finding that each has been properly represented for purposes of this settlement by a natural guardian or conservator who has become legally qualified, under Fed. R. Civ. P. 17(c) or Bankruptcy Rule 7017(c), to enter into this settlement on behalf of the minor;
- 4.2.6 With respect to Settlement Class Members who are adults but are not legally competent to enter into the settlement, approving the settlement, finding that the settlement is fair and in their best interests, and finding that each of them has been properly represented for purposes of this settlement by a guardian or conservator who has become legally qualified, under Chapters 4 and 5 of Title 29 of the O.C.G.A., consistent with Fed. R. Civ. P. 17(c) or Bankruptcy Rule 7017(c), to enter into this settlement on behalf of the incapacitated adult;
- 4.2.7 With respect to the estates of deceased persons who otherwise would have been Settlement Class Members, approving the settlement, finding that the settlement is fair and in their best interests, and finding that each of them has been properly represented for purposes of this settlement by an executor, administrator, or personal representative who has become legally qualified, under Chapter 6 of Title 53 of the O.C.G.A. and substituted for the deceased

person pursuant to Fed. R. Civ. P. 25 or Bankruptcy Rule 7025, to enter into this settlement on behalf of the deceased person's estate;

4.2.8 Reserving jurisdiction over all matters relating to the administration of this Agreement, including allocation and distribution of the Settlement Fund; and,

4.2.9 Containing such other and further provisions consistent with the terms of this Settlement Agreement as the Court may deem advisable.

4.3 The Order Granting Final Approval of Settlement and this Settlement Agreement shall be binding on all Settlement Class Members. All Settlement Class Members shall be deemed to have released all Claims against Releasees and shall be forever barred from instituting or prosecuting, either directly or through a representative, any other action, in any court or tribunal, asserting or making any Claim against Defendants, except to enforce the terms and conditions of this Settlement Agreement.

4.4 To the extent this Agreement is not fully approved by the Court or if the Court's Order approving this Agreement is reversed on appeal, this Agreement shall be null and void *ab initio*.

4.5 Before the Final Fairness Hearing, Class Counsel shall prepare and provide to Defendants' counsel stipulations of dismissal with prejudice in each of the Actions, except that the action captioned *Billy R. Brown, et al. v. BioLab Inc., Great Lakes Chemical Corp., Chemtura Corp., and Gallagher Bassett Services Inc.*, Superior Court of Rockdale County, Civil Action No. 2006-CV-2905-I, shall be dismissed with prejudice against those Settlement Class Members in that action who have not timely requested exclusion, and without prejudice against those Named Plaintiffs in that action who timely request exclusion from the Settlement Class. Defendants' counsel will hold those stipulations in escrow and file them only when the final judgment to be entered pursuant to Section 4.2 becomes final, including the final resolution of any appeals of that Judgment (including petitions for certiorari) or the expiration of the time for appeal.

## **5. SETTLEMENT FUND**

5.1 In consideration of the dismissal of the Claims and the releases of Defendants from the Proposed Class Representative and the Settlement Class Members, Defendants Bio-Lab, Inc. and Great Lakes Chemical Corporation will pay Seven Million Dollars (\$7,000,000.00), which will constitute the Settlement Fund. The Settlement Fund will be distributed pursuant to the Settlement Fund distribution formula provided herein. No Settlement Class Member and no legally qualified Personal Representative thereof shall have any recourse against Defendants once the Settlement Fund is delivered in accordance with this Section. Once this Settlement is finally approved by the Court, and any appeals have been resolved, unless otherwise ordered by the Court, neither Defendants nor their insurers shall be entitled to any portion of the Settlement Fund. Defendants shall not be liable for any costs in connection with the prosecution of any of the Actions (including any fees or expenses incurred by Class Counsel, Proposed Class Representative, or any Settlement Class Member or Personal Representative in connection with any of the Actions), the administration of this Agreement, and the administration and distribution of the Settlement Fund.

5.2 Within 45 days after the Settlement Effective Date, Defendants Bio-Lab, Inc. and Great Lakes Chemical Corporation will deposit the Settlement Fund of \$7 million less any Court-approved administrative expenses previously paid by Defendants pursuant to Section 5.4 of this Agreement into an escrow account in the name of the Settlement Fund at Citibank, N.A., or another banking association or institution that (i) is federally chartered or a member of the Federal Reserve System, and (ii) is in good standing among other comparable banks, has a reasonably acceptable SAS 70 report, is capable of executing securities trades initiated by the

Escrow Agent, has the necessary programming and software to facilitate paying claimants (e.g. ReadyPay), and has capital assets in excess of one billion dollars (\$1,000,000,000.00).

5.3 Citibank, N.A., or another escrow agent mutually agreed upon by the Parties (the "Escrow Agent") shall hold the Settlement Fund (including any interest earned thereon), subject to the terms of this Agreement and to the control and supervision of the Court. An escrow agreement substantially in the form of the escrow agreement attached as Exhibit H shall govern the engagement of the Escrow Agent. The Escrow Agent shall invest and reinvest the Settlement Fund in United States Government securities (or such other high grade investment securities upon which the Parties may agree). Any interest earned on the Settlement Fund once so invested shall become and remain a part of the Settlement Fund. The Escrow Agent may from time to time apply to the Court for instructions and/or Orders concerning the administration of the Settlement Fund. Subject to the Court's approval, the Escrow Agent will be reimbursed out of the Settlement Fund for all expenses and costs incurred in the administration of the Settlement Fund.

5.4 All costs of the administration of this Settlement, approved by the Court, including the costs of notice to class members and the fees and costs of the Claims Administrator and the Escrow Agent, and any bank fees, shall be paid from the Settlement Fund, provided that Defendants Bio-Lab, Inc. and Great Lakes Chemical Corporation shall not be obligated to pay any costs of administration in excess of \$250,000 that are incurred prior to the date when Defendants decide whether to void the Settlement Agreement pursuant to Paragraph 9.8 of this Agreement. If the Court approves the payment of costs prior to the date on which the Escrow Account is set up and funded pursuant to Section 5.2 of this Agreement, Defendants Bio-Lab, Inc. and Great Lakes Chemical Corporation shall pay those Court-approved administrative costs directly; such amounts paid by the Defendants directly shall be deducted from the \$7 million Settlement Fund to be deposited in escrow

pursuant to Section 5.2. Any legal fees, costs, or expenses incurred by Class Counsel in representing any minors and incapacitated adults, and any Personal Representatives of either, and in representing the Personal Representative of the estate of any deceased Settlement Class Member shall be included in Class Counsel's petition for attorneys' fees as provided in Section 12.1 and shall be paid from the Settlement Fund as part of, and not in addition to, any award pursuant to Section 12 of this Agreement.

5.5 Except as provided in Section 5.4, with respect to the expenses of notice and the administration of the Settlement Fund, and in accordance with a payout schedule as approved by the Court, the Settlement Fund shall be maintained in full, including accrued interest, and no release or distribution of any portion of the Settlement Fund shall be made until, at the earliest, 60 days after the Settlement Effective Date.

5.6 All disbursements from the Settlement Fund by the Escrow Agent shall be expressly conditioned upon an Order of the Court permitting such disbursements, and a copy of such order shall be served upon Class Counsel and counsel for Defendants.

5.7 In the event that this Settlement is voided or fails to become final and effective for any reason, the Settlement Fund together with any accrued interest, less disbursements made pursuant to this Agreement, shall be returned to Bio-Lab, Inc. and Great Lakes Chemical Corporation.

5.8 In no event shall Defendants, or any of their present or former parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, representatives, or assigns, or Proposed Class Representative or Class Counsel, and their respective agents or employees, have any liability for claims of wrongful or negligent conduct on the part of the Escrow Agent or his, her, or its agents.



## **6. SETTLEMENT CLASS MEMBER AWARDS**

6.1 Except as provided in Section 6.4 concerning Settlement Class Members who submit a claim for Extraordinary Damages, each Validated Claimant shall receive payments of Ordinary Settlement Awards as follows:

- 6.1.1 Each Validated Individual Claimant who resided or was working or present or scheduled to work in the Evacuation Area at the time of the Incident will receive \$230.00.
- 6.1.2 Each Validated Individual Claimant who resided or was working or present or scheduled to work in the Settlement Class Area, but was not within the Evacuation Area, at the time of the Incident, will receive \$59.00.
- 6.1.3 Each Validated Property Claimant who owned residential property within the Evacuation Area at the time of the Incident will receive \$245.00.
- 6.1.4 Each Validated Property Claimant who owned residential property within the Settlement Class Area, but not within the Evacuation Area, at the time of the Incident will receive \$70.00.
- 6.1.5 Each Validated Business Claimant that operated a business that was physically located within the geographical boundaries of the Evacuation Area at the time of the Incident will receive an amount up to \$4000.00, upon the submission of receipts of actual expenditures or other documents that demonstrate an actual expense or other cost or damage actually incurred as a proximate result of the Incident.
- 6.1.6 Each Validated Business Claimant that operated a business that was physically located within the geographical boundaries of the Settlement Class Area, but not within the Evacuation Area, at the time of the incident will receive an amount up to \$1000.00, upon the submission of receipts of actual expenditures or other documents that demonstrate an actual expense or other cost or damage actually incurred as a proximate result of the Incident.
- 6.1.7 Each Validated Claimant who is a Named Plaintiff in any Action but who does not meet any of the criteria and definitions set forth in Sections 6.1.1 through 6.1.6 will receive \$100.00.

6.2 The Individual Claimant payments referenced in Sections 6.1.1 and 6.1.2 shall be awarded one per eligible claimant. Similarly, the Property Claimant payment referenced in Sections 6.1.3 and 6.1.4 shall be limited to one per eligible real property. Thus, a family of four



owning their home and living at the same real property will be eligible for four (4) Individual Claimant payments but only one Property Claimant payment. However, a single person or entity who owns multiple real properties within the Class Area may be a Property Claimant with respect to each eligible property under Sections 6.1.3 and 6.1.4. Business Claimant payments referenced in Sections 6.1.5 and 6.1.6 shall be limited to one per eligible business, regardless of how many persons or entities own the business. If more than one Claimant is Validated with respect to either a Property or Business Claim, the award shall be allocated among the Claimants on an equitable basis.

6.3 The Ordinary Settlement Awards are based on the assumption that 50% of the estimated Settlement Class Member population will submit claims forms. Pursuant to the provisions of Section 6.8, in the event that more than 50% of the Settlement Class Members submit valid claims forms, then the amounts of Ordinary Settlement Awards should decrease, and in the event that less than 50% of the Settlement Class Members submit valid Claim Forms, the amounts of Ordinary Settlement Awards should increase.

6.4 In the event that a Settlement Class Member believes he or she has suffered actual damages that exceed the Ordinary Settlement Awards referenced in Section 6.1, he or she may submit a claim for Extraordinary Damages in accordance with the provisions of this Section 6.4.

6.4.1 A claim for Extraordinary Damages is made in lieu of a claim for Ordinary Settlement Awards, and as a result, a claimant who elects to submit a claim for Extraordinary Damages waives his or her right to collect the full amount of the Ordinary Settlement Awards described in Section 6. This waiver applies regardless of whether the Claims Administrator ultimately denies the Extraordinary Damage claim in its entirety or awards an amount that is less than the applicable Ordinary Settlement Awards amount under Section 6.1.

6.4.2 Extraordinary Damages must be supported by receipts of actual expenditures or other documents that demonstrate an actual expense or other cost or damage actually incurred as a proximate result of the

Incident. The factual circumstances supporting the claim must be sworn to under penalty of perjury.

- 6.4.3 In assessing the validity of a claim for Extraordinary Damages, the Claims Administrator shall exercise reasonable discretion to determine whether the Extraordinary Damages claimed were in fact proximately caused by the Incident.
- 6.4.4 Extraordinary Damages for an individual Settlement Class Member are capped at a maximum of \$10,000, and the aggregate total amount of Extraordinary Damages awarded in connection with this Agreement is capped at a maximum of \$400,000. In the event that the aggregate amount of valid and approved Extraordinary Damages claims equals an amount greater than \$400,000, then all individual Extraordinary Damages claims will be reduced proportionately until the aggregate amount of awarded Extraordinary Damages is equal to \$400,000.
- 6.4.5 In the event that the Claims Administrator denies a Settlement Class Member's Extraordinary Damages claim in its entirety or determines an Extraordinary Damages amount that is less than 25% of the amount that the Settlement Class Member would have been entitled to if he or she had made a claim for Ordinary Settlement Awards, then the Claims Administrator shall make an award to the Settlement Class member in an amount equal to 0.25 times the Ordinary Settlement Awards that the Settlement Class Member would be entitled to under Section 6.1 as adjusted under Section 6.8.

6.5 A Claimant who has previously received compensation from any Defendant or its representative for alleged injuries or damages incurred as a result of the Incident is not precluded from submitting a Claim Form for compensation against the Settlement Fund, whether or not that Claimant previously has executed a release in return for previously received compensation. However, there will be no double recovery under this Section for expenditures previously paid or reimbursed by any Defendant or its representative following the Incident. Accordingly, the compensation awarded to any Claimant, as determined pursuant to Sections 6.1 and 6.4 hereof, will be decreased or eliminated by the amount previously received by the Claimant.

6.6 A Claimant whose expenses resulting from the Incident have been paid or reimbursed by a Third Party Payor is not precluded from submitting a Claim Form for

compensation against the Settlement Fund. However, to the extent that the Third Party Payor has a lien or claim against any payments from the Settlement Fund or an original or subrogation claim against any of the Defendants arising out of the Incident, the Settlement Class Members are responsible for satisfying all such liens, claims, and subrogation interests of the Third Party Payors and they agree to indemnify and hold harmless the Releasees against any and all claims, suits, complaints or causes of action brought against any of the Releasees by any Third Party Payor. If, notwithstanding the provisions of this Section, any lien, claim, or subrogation interest of a Third Party Payor is paid out of the Settlement Fund, the compensation awarded to the respective Claimant, as determined pursuant to Sections 6.1 and 6.3 hereof, will be decreased or eliminated by the amounts paid out.

6.7 Subsequent to an order of the Court approving this Settlement Agreement and Settlement Class, and prior to any Settlement Fund payments being made to any Medicare eligible Settlement Class Members (with eligibility being determined by a signed Claim Form), the Parties, by and through the Claims Administrator, will negotiate and enter into an agreement with the United States to settle and resolve all claims, actions, causes of action, demands, rights, damages, costs, loss of service expenses, and reporting requirements which the United States now has or which hereafter may accrue in connection with the Settlement Fund (including any claims against any Settlement Class Member, the Parties, the Escrow Agent, or the Claims Administrator) under the Medicare Secondary Payor Statute, 42 U.S.C. §1395y(b), including the Medicare Secondary Payor Mandatory Reporting Provisions in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (the “2007 Act”) found at 42 U.S.C. §1395y(b)(7) and (b)(8), or the Medical Care Recovery Act, 42 U.S.C. §§2651-2653. As Medicare has represented that they have not come to a consensus on the reporting requirements for settlements

of mass tort claims, such as this, under the 2007 Act, all Parties to this Agreement, as potential Responsible Reporting Entities, agree to enter into a written agreement with the United States Center for Medicare and Medicaid Services to ensure that the Parties are in full compliance with any Medicare reporting requirements.

6.8 In the event the dollar amount of the aggregate of the Ordinary Settlement Awards to Validated Claimants pursuant to Section 6.1 is either greater than or less than the amount available for distribution in the Settlement Fund after the payment of the costs of settlement administration, the amounts awarded to Class Counsel for attorneys' fees and costs, any incentive award to the Individual Class Representative, and the amounts awarded as Extraordinary Damages pursuant to Section 6.4, all Ordinary Settlement Awards to Validated Claimants will be adjusted on a pro rata basis as provided in Sections 7.13 and 7.14.4.

## **7. CLAIM ADMINISTRATION**

7.1 The Parties agree that Ed Gentle of Gentle Pickens & Turner (or another person or entity mutually agreed upon by the parties and approved by the Court) will serve as the Claims Administrator for the purposes of executing and administering the terms and conditions of this Agreement. The duties, responsibilities, and procedures that the Claims Administrator shall follow are specifically provided for below. The general powers of the Claims Administrator shall include, but not be limited to, determining the amount of money that each Claimant shall receive under the Settlement pursuant to the Settlement Fund distribution formula; applying to the Internal Revenue Service for such rulings with respect to the Settlement Fund as he may consider appropriate; and directing the Escrow Agent to make all payments out of the Settlement Fund, subject to Court oversight and approval.

7.2 Compensation for the Claims Administrator shall be made directly out of the Settlement Fund and is subject to Court approval. The Claims Administrator shall petition the Court for all fees and costs requested for services. After the Court approves such requests, the Claims Administrator may be compensated out of the Settlement Fund.

7.3 The Claims Administrator shall maintain records of its activities in a computerized database electronically accessible to the Parties in a secure, read-only environment and shall provide such periodic and special reports as the Court or the Parties may request.

7.4 All requests by Claimants for payment under the Settlement will be commenced by filing with the Claims Administrator the Claim Form applicable to the type of claim being made (Ordinary Settlement Award or Extraordinary Damages), contained in the Claim Form Package attached as Exhibit E. Any person or entity who believes that he, she, or it may be an eligible Claimant, or who is or intends to become legally qualified to represent a Settlement Class Member who is a minor, an incapacitated adult, or deceased person, shall contact the Claims Administrator to request a Claim Form. The Claims Administrator shall promptly assign a claim number and provide a Claim Form to every person or entity requesting one.

7.5 To demonstrate that a person is legally qualified to represent a minor or incapacitated adult for purposes of this settlement, each person shall either (a) submit to the Claims Administrator proof that the person currently is the legally qualified guardian or conservator of the minor or incapacitated adult, or (b) undertake and complete the procedures necessary to legally qualify as such as required under Chapters 2 and 3 of Title 29 of the O.C.G.A. (in the case of a minor Settlement Class Member), or as required under Chapters 4 and 5 of Title 29 of the O.C.G.A. (in the case of an incapacitated adult Settlement Class Member), consistent with Fed. R. Civ. P. 17(c) or Bankruptcy Rule 7017(c), prior to the Final Fairness Hearing. To the extent that any

person seeking to become a legally qualified guardian or conservator requires legal services to do so, reasonable services to assist such qualified persons shall be provided by Class Counsel.

7.6 To demonstrate that a person is legally qualified to represent the estate of a deceased person who otherwise would have been a Settlement Class Member, each person shall either (a) submit to the Claims Administrator proof that the person currently is the legally qualified executor, administrator, or personal representative of the deceased person's estate, or (b) undertake and complete the procedures necessary to legally qualify as such as required under Chapter 6 of Title 53 of the O.C.G.A, consistent with Fed. R. Civ. P. 25 or Bankruptcy Rule 7025, prior to the Final Fairness Hearing. To the extent that any person seeking to become a legally qualified executor, administrator, or personal representative requires legal services to do so, those services shall be provided by Class Counsel.

7.7 To be eligible to receive a settlement payment, a Claimant or his or her legally qualified Personal Representative must send a completed Claim Form, along with all proof required by Section 7.9, to the Claims Administrator, by first class mail, postmarked no later than the date established by the Court pursuant to Section 4.1.11.

7.8 To validate a request for payment of either Extraordinary or Ordinary Settlement Awards, a Claimant or his or her Personal Representative must verify his, her, or its request for payment by affirming in the Claim Form that (i) the Claimant resided, was located, was working, was scheduled to work, owned property, owned or operated one or more places of business within the Settlement Class Area, or is a named plaintiff in one of the Actions and (ii) was exposed to, and claims damages from, emissions from the Incident.

7.9 To validate a request for payment of either Extraordinary or Ordinary Settlement Awards, the Claimant shall also adduce evidence substantiating the request for payment as follows:

- 7.9.1 In order to substantiate ownership of property within the Settlement Class Area during May 25 and/or 26, 2004, a Claimant must attach proof of ownership to his or her Claim Form by presentment of a copy of a deed or equivalent document. Each Claimant must document the time period of his, her, or its ownership of the property. If the property is jointly owned, the Claimant must identify any other joint owners of the property.
- 7.9.2 In order to substantiate that a Claimant was located within the Settlement Class Area during May 25 and/or 26, 2004, a Claimant must attach to his or her Claim Form proof of residency, employment, school enrollment, or other evidence demonstrating that the Claimant had cause to be located or was in fact present within the Settlement Class Area during the Incident. Proof of residency may be established with bills or equivalent records.
- 7.9.3 In order to substantiate that a Claimant was a business located within the Settlement Class Area during May 25 and/or 26, 2004, a Claimant must attach to its Claim Form proof that the business was located or operated within the Settlement Class Area, such as utility bills or bank statements addressed to the business at the address. To substantiate the amount claimed, the Claimant must attach to its Claim Form receipts of actual expenditures or other documents that demonstrate an actual expense or other cost or damage actually incurred as a proximate result of the Incident. The Claims Administrator shall exercise reasonable discretion to determine whether or not the claimed expense was proximately caused by the Incident.
- 7.9.4 All persons or entities claiming under Section 6.1.7 must attach evidence that he, she, or it is a Named Plaintiff in one of the Actions.
- 7.9.5 All persons or entities claiming Extraordinary Damages under Section 6.4 must provide, in addition to all the documentation required to establish an Ordinary Settlement Award, documentation required under Section 6.4.2.
- 7.9.6 Each Claimant must provide verified information concerning whether a Third Party Payor has a lien or claim against the compensation claimed by the Claimant from the Settlement Fund or an original or subrogation claim against any of the Defendants arising out of the Incident.

7.10 The Claims Administrator shall have 180 days from the date the request for payment is postmarked or otherwise received to validate and certify each such valid request for



payment or to notify the Claimant of a rejection of all or part of the request along with the reasons for the rejection. A rejected Claimant or his or her legally qualified Personal Representative shall have fifteen (15) days from the day the notice is postmarked or otherwise received to resubmit an amended request for payment. The Claims Administrator then shall have fifteen (15) days from the date the notice is postmarked or otherwise received to accept or reject the amended request for payment. If the Claims Administrator disallows all or part of the amended request for payment, he shall advise the Claimant or legally qualified Personal Representative of the right to appeal to the Court within 15 days of the filing of the Claims Administrator's Disallowed Claims Report as provided in Section 7.11 hereof.

7.11 When the Claims Administrator has reviewed and responded to all of the amended requests for payment, he will submit a Disallowed Claims Report to the Court which identifies each Claimant whose amended request for payment has been disallowed in whole or in part, what part of the request for payment was disallowed, and the reasons for the disallowance. At the same time, the Claims Administrator will send, by first class mail, a Disallowed Claim Notice to each Claimant whose amended request for payment has been disallowed in whole or in part. The Disallowed Claim Notice will advise the Claimant of (a) what part of the request for payment was disallowed, and (b) the reason for the disallowance, just as provided to the Court in the Disallowed Claims Report. The Disallowed Claim Notice will also advise the Claimant of the Claimant's option to appeal to the Court, and provide instructions for filing such an appeal in accordance with Section 8 hereof.

7.12 Within thirty (30) days after the later of (a) the date the Court has resolved all appeals from Claimants pursuant to Section 8 hereof, and (b) the date of the resolution of any additional claims pursuant to Sections 6.7 and 7.13 hereof, the Claims Administrator shall file



with the Court and serve upon Class Counsel and Defendants' counsel a Proposed Distribution Report identifying the Validated Claimants and the amount recommended to be distributed to each such Claimant, together with all other recommended distributions from the Settlement Fund including distributions, if any, to Third Party Payors that have been identified pursuant to Section 7.13. The Claims Administrator shall further provide the Court with a proposed Distribution Order adopting the recommendations of the Proposed Distribution Report. No funds shall be distributed to any Claimant until ten (10) days after the later of (a) the expiration of the time for appeal of the entry of the order authorizing such distribution or the final resolution of any appeals of that order and (b) the deposit of the Settlement Fund monies into the escrow account as provided in Section 5.2.

7.13 The Claims Administrator shall not make any determination of the amount recommended to be distributed to each Validated Claimant until the Claims Administrator determines whether there are any liens or claims against each Claimant's compensation, or an original or subrogation claim against any of the Defendants arising out of that Claimant's Claims arising from the Incident, and, if so, the amount of such lien or subrogation interest that must be deducted from the amount recommended to be distributed to each Validated Claimant.

7.14 To determine the recommended dollar amounts to be paid out of the Settlement Fund to each Validated Claimant for his Proposed Distribution Report, the Claims Administrator shall:

- 7.14.1 Determine the total amount paid or to be paid from the Settlement Fund pursuant to Sections 5.3, 5.4, 7.2, 9.3, 9.4, 12.1, and 12.3;
- 7.14.2 Determine the total validated Extraordinary Damages as limited by the \$10,000 individual cap per claimant and set forth the amount due to each individual Extraordinary Damages claimant. If the total exceeds \$400,000, the Claims Administrator will reduce each claim pro rata and set forth the final payment amount for each Extraordinary Damages Claimant; if the total is less than \$400,000, the Claims Administrator will

assign the appropriate amount to each claimant without any increase or reduction.

- 7.14.3 Determine the value of the remaining balance of the Settlement Fund, net of the amounts to be paid pursuant to Sections 7.14.1 and 7.14.2, and the aggregate values of the validated Ordinary Settlement Awards awarded to each claimant using the dollar values assigned to each type of claim in Section 6.1.
- 7.14.4 If the balance of the Settlement Fund is insufficient to pay the aggregate of the amounts of the validated Ordinary Settlement Awards awarded to each claimant using the dollar values assigned to each type of claim in Section 6.1, reduce the payment amounts pro rata so as to pay out the entire balance of the Settlement Fund; or, if the balance of the Settlement Fund exceeds the aggregate of the amounts of the validated Ordinary Settlement Awards awarded to each claimant using the dollar values assigned to each type of claim in Section 6.1, increase the payments pro rata so as to pay out the entire balance of the Settlement Fund.
- 7.14.5 Reduce the payment due to each Validated Claimant as determined in Sections 7.14.1 through 7.14.4, if applicable, in accordance with any agreement with the United States pursuant to Section 6.7 above, or to the extent that the Claims Administrator determines that another Third Party Payor has a valid lien on the payment.

7.15 As soon as practicable after the expiration of the ten-day period set forth in Section 7.12, the Claims Administrator shall instruct the Escrow Agent to pay the amount to be distributed pursuant to the Order.

7.16 Defendants and Defendants' counsel, as well as Class Counsel, shall have no responsibility for or liability whatsoever with respect to the investment or administration of the Settlement Fund or the review, determination, administration, calculation, or payment of requests for payment from such fund.

7.17 In no event shall Defendants, or any of their present or former parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, insurers, representatives, or assigns, or the Proposed Class Representative or Class Counsel, and their respective agents or

employees, have any liability for claims of wrongful or negligent conduct on the part of the Claims Administrator or any of his agents.

## **8. APPEAL OF DISALLOWED CLAIMS**

8.1 To the extent that a Claimant is not satisfied with the Claims Administrator's ruling on his or her amended request for payment submitted pursuant to Section 7.10, the Claimant may move for reconsideration in accordance with Bankruptcy Rule 3008. The following procedures will govern any appeal of the disallowance of any part or all of a Claimant's request for payment by the Claims Administrator.

- 8.1.1 The Claimant or Claimant's Personal Representative will have fifteen (15) days from the date the Disallowed Claim Notice is postmarked or otherwise received by the Claimant to file an appeal with the Court.
- 8.1.2 Any appeal of the Claims Administrator's decision shall set forth the Claimant's reasons for believing that the Claims Administrator's decision is incorrect and shall include a copy of the Claim Form initially submitted, all other correspondence between the Claimant and the Claims Administrator, and any other information concerning the request for payment that the Claimant wishes the Court to consider.
- 8.1.3 The appeal shall be filed with the Clerk of the Court. Additionally, one copy of the appeal shall be served upon each of the following counsel:

William F. Kiniry, Jr.  
DLA Piper US LLP  
One Liberty Place  
1650 Market Street, Suite 4900  
Philadelphia, Pennsylvania 19103

W. Lewis Garrison, Jr.  
Heninger Garrison Davis, LLC  
2224 1<sup>st</sup> Avenue North  
Birmingham AL 35203.

Natasha Labovitz  
Craig A. Bruens  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022

8.2 The Court shall determine whether the appealing Claimant is entitled to compensation under the Settlement Agreement.

## **9. NOTICE AND OPPORTUNITY FOR EXCLUSION**

9.1 Within thirty (30) days after the date that the Court preliminarily approves this Agreement, Class Counsel shall provide notice of this Class Settlement in accordance with the terms and conditions of this Agreement and the Order of the Court.

9.2 Notice shall be given to the Settlement Class as follows:

9.2.1 Publication of a Summary Notice substantially in the form of attached Exhibit C, in the *Rockdale Citizen* (a newspaper of general circulation in Rockdale County), and the *Atlanta Journal Constitution* on two (2) different days or on such other schedule as the Court may direct.

9.2.2 Written notice shall be provided by Class Counsel to all members of the Class whose names and addresses are known to Class Counsel or whose names and addresses are reasonably ascertainable, by sending a Detailed Notice with the Claim Form Package substantially in the form of attached Exhibits D and E, by first class mail, postage prepaid, to each such person.

9.3 At least 15 days prior to the Fairness Hearing, Class Counsel shall file an affidavit documenting compliance with Section 9.2.1 regarding publication notice and also a list of the last known addresses for each individual to whom written notice was sent under Section 9.2.2. The costs of providing the mail and publication notice will be paid from the Settlement Fund in accordance with the provisions of Section 5.4.

9.4 Class Counsel in cooperation with the Claims Administrator shall also establish a toll-free telephone number and a website approved by Defendant Bio-Lab, Inc. accessible to class members within thirty (30) days after the date that the Court approves this Agreement. All notices, Claim Forms, and class releases shall be made available for downloading from the website for all class members. The costs of providing the website and toll-free telephone number and any required maintenance or hosting fees will be paid from the Settlement Fund. The Claims Administrator shall maintain the toll-free telephone number and website for 90 days after the final distribution of the Settlement Fund to answer questions by the Settlement Class Members.

9.5 All inquiries and responses arising out of notice to the class shall be retained by Class Counsel until such time as the Court issues an order authorizing destruction.

9.6 A Class Member who does not wish to participate in the Settlement Class must opt out by submitting a signed request for exclusion to Class Counsel. If the Class Member is represented by individual counsel, the attorney's name, contact information, and signature must be included on the request for exclusion. This request for exclusion must be postmarked or personally delivered on such schedule as the Court may direct. In seeking preliminary approval of this Settlement, the Parties will request that the deadline for submission of requests for exclusion shall be set on a date no less than thirty (30) days after notice is given and no less than sixty (60) days before the date of the Final Fairness Hearing. Within seven (7) days after the closing of the opt out period, Class Counsel shall provide counsel for Defendants, by electronic mail, facsimile, and/or hand delivery, with a list identifying each person who has requested exclusion from the Settlement Class and attach copies of all such requests for exclusion. In addition, should any Named Plaintiff in any of the Actions opt out, Class Counsel shall simultaneously provide Bio-Lab, Inc. with all available information concerning that person or entity's alleged damages.

9.7 The Parties intend this Agreement to serve as a complete resolution of the class proof of claim filed in the Chapter 11 Cases and the individual proofs of claims filed in the Chapter 11 Cases by all Class Members who do not opt out of the Settlement Class. The Parties' proposed Order Granting Final Approval of Settlement shall provide that any Class Member who opts out of the Settlement Class will be barred from prosecuting Claims against the Chapter 11 Defendants if the Class Member has not timely filed an individual proof of claim with the Bankruptcy Court on or before the Bar Date.

9.8 In the sole discretion of the Defendants, this Settlement Agreement may be unilaterally voided if the number of Settlement Class members opting out or the potential liability threatened by those opting out, reaches a level that, in the reasonable exercise of those Defendants' sole judgment, threatens to frustrate the purpose of this Agreement. In such event, the Defendants shall meet and confer with Class Counsel and after providing an opportunity to cure, may advise Class Counsel and the Court, in writing, of this election within thirty (30) days after receiving the list of Opt-Outs pursuant to Section 9.6. If the Defendants exercise their right to void this Settlement Agreement, then this Settlement Agreement shall be null and void *ab initio*. In such event, this Settlement Agreement may not be offered or received into evidence or utilized for any other purpose in any action, suit, or proceeding. Further, in such event, Defendants' obligation to pay any costs of administration of the Settlement Agreement shall be limited to \$250,000 in accordance with Paragraph 5.4 hereof.

9.9 Defendants and their counsel shall have no responsibility for or liability whatsoever with respect to the giving of Notice to members of the Settlement Class or their Personal Representatives, and no member of the Settlement Class or any of their Personal Representatives shall have any claim in connection therewith.

9.10 In addition to the Notice required pursuant to Sections 9.1 through 9.4 hereof, within ten days after the date that the Court preliminarily approves this Agreement, the Defendants shall provide notice to the Attorney General of the United States and the Attorney General of Georgia of this proposed Settlement. This notice shall consist of:

9.10.1 a copy of the complaint in *Deborah Davis, et al. v. BioLab, Inc., et al*, Superior Court of Rockdale County, Civil Action No. 04-CV-1728-I;

9.10.2 notice of Final Fairness Hearing;

9.10.3 a copy of the notice to the Settlement Class Members approved by the Court;

- 9.10.4 a copy of this Settlement Agreement;
- 9.10.5 any proposed final judgment or notice of dismissal;
- 9.10.6 a reasonable estimate of the number of class members; and,
- 9.10.7 any written judicial opinion relating to this Settlement.

## **10. OBJECTION PROCEDURE**

10.1 Each Settlement Class Member wishing to object to the Settlement (other than with respect to approval under Bankruptcy Rule 9019, which shall take place in connection with the Preliminary Approval Order as set forth in Section 4 above) shall file a timely written notice of his, her or its objection postmarked no less than sixty (60) days before the date of the Final Fairness Hearing, the exact calendar date to be specified in the Preliminary Approval Order of the Court. The objection must be signed by the Settlement Class Member or Personal Representative and, if the Settlement Class Member or Personal Representative thereof is represented by counsel, by the objector's attorney, and must state (i) the objector's name and address, (ii) the basis or bases on which the objector claims Settlement Class Membership, (iii) whether the objector plans to appear at the Final Fairness Hearing, and (iv) the reason or reasons for the objection(s), along with whatever legal authority, if any, the objector asserts supports the objection. The objection shall be filed with the Clerk of the Court. Additionally, one copy of the written objection shall be served upon each of the following counsel:

William F. Kiniry, Jr.  
DLA Piper US LLP  
One Liberty Place  
1650 Market Street, Suite 4900  
Philadelphia, Pennsylvania 19103

W. Lewis Garrison, Jr.  
Heninger Garrison Davis, LLC  
2224 1<sup>st</sup> Avenue North  
Birmingham AL 35203.

Natasha Labovitz  
Craig A. Bruens  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022



## **11. RELEASE AND WAIVER OF CLAIMS**

11.1 In consideration of the payment of the Settlement Fund as set forth in Section 5, the sufficiency of which is hereby acknowledged, the Proposed Class Representative, individually and as a representative for all Settlement Class Members, their heirs, executors, administrators, representatives, successors, insurers and assigns, completely releases, acquits, and forever discharges the Releasees in a general release of the Claims, as more fully set forth in Exhibit G.

11.2 The Proposed Class Representative further agrees that each Settlement Class Member, or Personal Representative thereof, has accepted the consideration specified herein as a complete compromise of matters involving disputed issues of law and fact. The Proposed Class Representative, on behalf of each Settlement Class Member and his, her or its Personal Representative, understands and agrees that if the law or facts, with respect to which this Settlement Agreement is executed, are found to be different than currently understood by any of the Parties, then the Settlement Class Members and their Personal Representatives expressly accept and assume the risk of these possible differences in law or fact for each Settlement Class Member and agree that this Settlement Agreement shall be and remain effective notwithstanding any such difference.

11.3 On the Settlement Effective Date, each Settlement Class Member, on behalf of himself, herself, or itself or through his, her, or its Personal Representative, and on behalf of each Settlement Class Member's heirs, successors, and assigns, shall be deemed to have individually executed a Release and Covenant Not To Sue in the form set forth in attached Exhibit G, and the Final Order and Judgment to be entered by the Court in connection with the approval of this Settlement shall so provide. A Release and Covenant Not to Sue in the form set forth in Exhibit



G or in another form consented to by Defendants, shall be described in the Notice of Class Action Settlement to be mailed to all potential members of the Settlement Class whose names and addresses are known to Class Counsel or whose names and addresses are reasonably ascertainable.

11.4 Each Claimant, on behalf of himself, herself, or itself or through a Personal Representative, and on behalf of that Claimant's respective heirs, successors and assigns, shall execute a Release in the form set forth in Exhibit G or in another form consented to by the Defendants. To facilitate compliance with this Section, the Release shall be incorporated into the Claim Form. Settlement Class Members shall not be entitled to separately prosecute proofs of claim in the Chapter 11 Cases.

11.5 The Settlement Class Members and their Personal Representatives, if applicable, are responsible for satisfying all liens, subrogation interests (including, but not limited to, subrogation claims brought by Medicaid, Medicare or private health or property insurance companies), medical expenses, workers' compensation benefits, and all other similar or related expenses pertaining to, arising out of or in connection with the released Claims. Class Counsel will indemnify and hold harmless the Releasees against any and all Claims, suits, complaints, or causes of action pertaining to, arising out of, or in connection with the released Claims brought against any of the Releasees by a Third Party Payor. Class Counsel will be responsible for the Releasees' costs of defending against these Claims, suits, complaints, and causes of action, including any legal fees and court costs and agree to indemnify and hold harmless the Releasees for all such fees and expenses as set forth in this Section. Class Counsel will be responsible for paying any judgment against Releasees, and Releasees are not responsible for the expenses, costs, or liabilities

described in this Section, and Defendants' monetary obligations under the Agreement are expressly limited to the settlement amounts set forth in Section 5 of this Agreement.

11.6 Upon entry of an Order granting final approval of the Settlement, all Settlement Class Members shall be enjoined from filing or becoming part of any action, including, without limitation, any putative class actions, filed against the released persons or any other person or entity, insofar as those actions relate to any of the released Claims or otherwise interfere with this Agreement or the settlement of the class action claims generally.

## **12. AWARD OF ATTORNEYS' FEES AND COSTS**

12.1 The Parties agreed to all substantive terms of this Agreement prior to reaching any agreement concerning attorneys' fees. Settlement Class Counsel shall be paid reasonable attorneys' fees and out-of-pocket expenses (including the costs to provide notice to the absent class members as required under Fed. R. Civ. P. 23 or Bankruptcy Rule 7023 arising from their representation of the Settlement Class Members in this case) from the Settlement Fund. Settlement Class Counsel shall file a motion with the Court seeking such fees and expenses, and the Defendants agree not to oppose Settlement Class Counsel's fee application or appeal the amounts awarded as fees and expenses by the Court, as long as all fees and expenses are drawn exclusively from the Settlement Fund and the amount of the fees does not exceed \$2,450,000.00. The payment of such fees and expenses shall be subject to the approval of the Court. No later than twenty one (21) days prior to the date of the Final Fairness Hearing, Class Counsel shall apply to the Court for approval of the payment of their attorneys' fees and expenses from the Settlement Fund. An award to Class Counsel is for the value of their efforts in the protection and the advancement of the interests of the Proposed Class Representative and the Settlement Class Members. The award of attorneys' fees and costs shall be deducted from the Settlement Fund prior

to determining the amounts to be distributed to the Claimants. Notwithstanding the above, the Court's entry of an Order for Class Counsel's attorneys' fees below the amount requested shall not be grounds to void this Settlement Agreement. The only remedy in the event of a fee award below the amount requested shall be a separate appeal by Class Counsel of the attorneys' fees award provided by the Court.

12.2 Class Counsel is aware of other plaintiffs' attorneys, not identified in Section 1.11, who were previously involved in the matter, with whom the Class Counsel are and have been affiliated, and who are believed to currently represent some Settlement Class Members. These other plaintiffs' attorneys include, but may not be limited to, Seth Cortigene, Henry T. Dart, Richard Hendrix, Richard Kopelman, and Mark Tate. Class Counsel will advise each of these individual plaintiffs' counsel, and any others of whom they are aware, of the execution of this Settlement Agreement and all deadlines set by the Court that are relevant to this Agreement. Class counsel recognize that these other plaintiffs' attorneys have at times represented putative class members but are not Class Counsel. To the extent that any of these attorneys claim an interest in the fees sought in Class Counsel's petition, such attorneys shall, no later than twenty-one (21) days prior to the Fairness Hearing, file a separate motion for common benefit fees setting forth, in detail, the basis for their claim to fees sought by Class Counsel, as well as a detailed description of the benefits they have provided to the class in this settlement. Under no circumstances shall Defendants be in any way liable for attorneys fees, costs or items identified above and beyond those awarded as part of the seven million dollar (\$7,000,000) settlement fund. Class counsel agree to pay for the defense, and to indemnify and hold harmless Defendants, Defendants' counsel, and Defendants' insurers with respect to any and all claims asserted by or that may be asserted by these other plaintiffs' attorneys or their representatives as

a direct result of this settlement. This indemnification shall not include any claim related to proceeds from any claims of Opt-Outs.

12.3 Class Counsel may at their sole discretion, no later than 21 days prior to the Final Fairness Hearing, file a motion with the Court seeking an incentive award for the individual Settlement Class Representative and the Defendants agree not to oppose Settlement Class Counsel's motion for Settlement Class Representative's incentive award as long as the incentive award is drawn exclusively from the Settlement Fund and the amount does not exceed \$2,500.00.

12.4 Any Settlement Class Member or Party who wishes to file any objection to Settlement Class Counsel's fee petition or the petition for incentive awards shall file such objection in writing with the Court no later than seven (7) days prior to the Fairness Hearing in conformance with any requirements the Court may impose.

12.5 Each Claimant who submits a Claim Form for processing under this Agreement may be represented by Claimant's counsel of the Claimant's choice, but all fees and expenses for an individual Claimant's counsel shall be paid by the Claimant.

### **13. USE OF THIS AGREEMENT**

13.1 This Settlement Agreement is a compromise and settlement of disputed Claims and any Settlement Payment from the Settlement Fund shall not be construed as an admission of liability on the part of Defendants, who expressly deny liability and intend merely to avoid further litigation.

13.2 This Agreement, the Settlement provided for herein (whether or not consummated), and any proceedings taken pursuant to this Agreement shall not be:

13.2.1 Construed by anyone for any purpose whatsoever as, or deemed to be, evidence of a presumption, concession, or an admission by Defendants of the truth of any fact alleged or the validity of any Claims, or of the

deficiency of any defense that has or could have been asserted in the Actions or of any liability, fault, or wrongdoing on the part of Defendants; or

13.2.2 Offered or received as evidence of a presumption, concession, or an admission of any liability, fault, or wrongdoing, or referred to for any other reason by the Proposed Class Representative, Settlement Class Members or legally qualified guardians, conservators, executors, administrators, or personal representatives thereof, or Class Counsel in any action or proceeding other than such proceedings as may be necessary to effectuate the provisions of this Agreement; or

13.2.3 Construed by any Party to this agreement or their counsel as an admission or concession that the Settlement Fund represents the amount which could be or would have been recovered after trial.

#### **14. WARRANTIES**

14.1 The Proposed Class Representative represents and acknowledges that she is acting on her own behalf and on behalf of all Settlement Class Members and any Personal Representative thereof, in making this Settlement and executing this Agreement.

14.2 The Proposed Class Representative, on her own behalf, represents that she has not assigned any Settled Claims to anyone; has received no payment with respect to these Claims from any other person or source; and will defend and indemnify Defendants if the foregoing is not true and any Claim is made against Defendants with respect to such an assignment or payment.

14.3 Proposed Class Representative covenants and represents that:

14.3.1 She has had the advice of Class Counsel prior to the execution of this Settlement Agreement; and

14.3.2 No promises, inducements or agreements not herein expressed have been made to her.

14.4 Class Counsel hereby warrant that this Agreement is entered into in good faith, that no conflicts of interest exist on their part, and that in their opinion the Settlement Fund represents fair consideration for and an adequate settlement of the Claims of the Settlement Class Members released herein.

14.5 Class Counsel represent and warrant that they do not currently represent any person or entity relative to the acts, omissions, or occurrences complained of in the Actions other than the Settlement Class Members.

14.6 Class Counsel represent and warrant that they and their clients who are Named Plaintiffs in any of the Actions and who have not timely requested exclusion have agreed that each of the Actions should be dismissed; that the Lawsuit should be dismissed with prejudice against the Proposed Class Representative and all Settlement Class Members and without costs to any Party; that any of the Actions that were filed as putative class actions shall be dismissed with prejudice against the respective Named Plaintiffs and that the action captioned *Billy R. Brown, et al. v. BioLab Inc., Great Lakes Chemical Corp., Chemtura Corp., and Gallagher Bassett Services Inc.*, Superior Court of Rockdale County, Civil Action No. 2006-CV-2905-I, shall be dismissed with prejudice against the Named Plaintiffs in that action who remain in the Settlement Class, without prejudice against those Named Plaintiffs in that action who request exclusion from the Settlement Class, and without costs to any Party. Nothing herein shall be construed to limit the rights of these dismissing plaintiffs to participate fully as putative members of the class in this settlement.

14.7 Subject to the approval of the Bankruptcy Court, the undersigned represent and warrant that they have taken all actions and have secured the consents of all persons necessary to authorize the execution of this Agreement and related documents and the performance of the acts necessary to fulfill the terms and conditions of this Agreement and that they are fully authorized to enter into and execute this Agreement on behalf of the Parties.

## **15. BINDING EFFECT**

15.1 All covenants, terms, conditions, and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective predecessors and successors, and

past and present assigns, heirs, executors, administrators, personal representatives, legal representatives, trustees, subsidiaries, divisions, affiliates, parents (and subsidiaries thereof), partnerships and partners, guardians, conservators, officers, directors, agents, employees and attorneys, both past and present, of each of the Parties hereto. It is understood that the terms of this Agreement are contractual and not a mere recital.

15.2 This Agreement, with the attached Exhibits, sets forth the entire understanding of the Parties. Any previous discussions, agreements, or understandings between or among the Parties regarding the subject matter herein are hereby merged into and superseded by this Agreement.

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

## **16. MODIFICATION, EXECUTION AND BANKRUPTCY COURT APPROVAL**

16.1 This Settlement Agreement and its Exhibits may be executed in one or more counterparts, all of which together shall be considered one instrument, and each of the executed counterparts shall be considered a duplicate original.

16.2 Change or modification of this Agreement, or waiver of any of its provisions, shall be valid only if contained in a writing executed on behalf of all the Parties hereto by their duly authorized representatives.

16.3 This Agreement shall become effective and binding (subject to all terms and conditions herein) upon the Parties (except for Bio-Lab, Inc. and Great Lakes Chemical Corporation, whose participation is subject to Bankruptcy Court approval) and their counsel when it has been executed by the undersigned representatives of the Parties.



16.4 This Agreement shall become effective and binding upon Bio-Lab, Inc. and Great Lakes Chemical Corporation upon approval by the Bankruptcy Court of the Agreement pursuant to Bankruptcy Rule 9019.

## **17. TERMINATION**

17.1 This Settlement Agreement is contingent upon Court approval. If this Settlement Agreement with all attached Exhibits is not approved in its entirety by the Court, then this Settlement Agreement shall be null and void *ab initio*; and, in such event, this Settlement Agreement may not be offered or received into evidence or utilized for any other purpose in any action, suit, or proceeding.

17.2 Each term of this Agreement is material to the Agreement and not severable except as provided in Section 12.1. In the event any Judgment or Order relative to this Agreement is reversed in part or in total, this Agreement will become null and void *ab initio*, except as provided in Section 13.

## **18. OTHER TERMS AND CONDITIONS**

18.1 In the event that the Order Granting Final Approval of Settlement is appealed, Class Counsel shall be responsible for responding to any such appeal, provided that Defendants may file any response they deem appropriate at their sole expense. Class Counsel shall be solely responsible for the costs and fees incurred by Class Counsel in responding to any such appeal.

18.2 Without further Order of the Court, the Parties to this Settlement Agreement may agree in writing to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement.

18.3 All Parties waive their right to a jury trial. The Court shall retain jurisdiction as the sole decider of questions of law and fact with respect to the interpretation and enforcement of the terms of this Settlement Agreement. This includes, but is not limited to, all matters related to the

settlement and the determination of all controversies relating thereto, including disputed questions of law or fact with respect to the validity of any Settlement Class Member's decision to participate in or to be excluded from the Class.

18.4 The Parties agree that there are no third-party beneficiaries of this Settlement Agreement. A Releasee shall not be deemed to be a third-party beneficiary.

18.5 The validity, construction, and enforcement of this Settlement Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia.

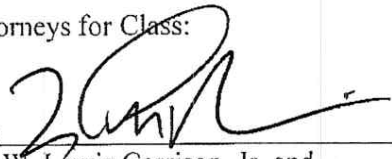
18.6 This Settlement Agreement has been negotiated and jointly drafted by the Parties and shall not be construed against any Party based upon the drafting of any portion of the Settlement Agreement.

18.7 The Parties agree that they will not make any disparaging statements about any other party to the news media or any person or entity with respect to this Settlement. The Parties agree that substantive responses to inquiries from members of the media or government shall be directed to legal counsel or other representative of Defendants, but that the Parties are permitted to decline comment, to state their support for the settlement, or to state their awareness that a disputed Claim was resolved prior to trial (or words to that effect).

18.8 The Parties agree that only three (3) press releases shall be issued, and the press releases shall be jointly prepared and issued upon (1) the submission of the Settlement Agreement to the Court pursuant to Section 4; (2) the entry by the Court of the Order of Preliminary Approval; and (3) the entry by the Court of the Order of Final Approval.

WHEREFORE, the Parties and their respective counsel hereto agree to the foregoing terms.

Attorneys for Class:

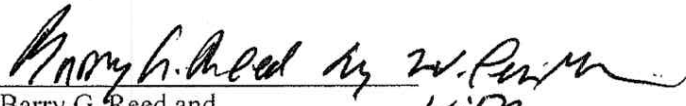
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*Aug. 25, 2010*

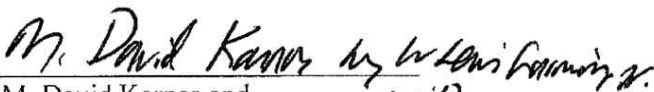
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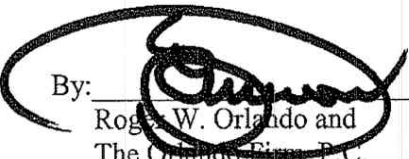
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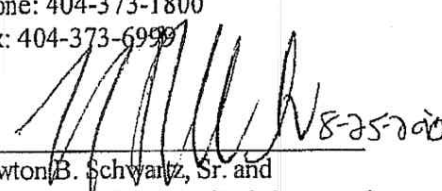
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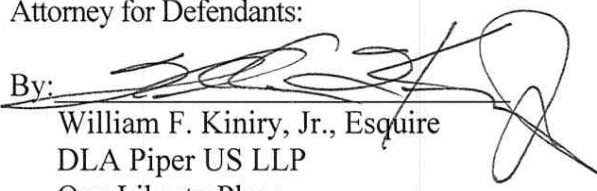
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