

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

_____)	
In re)	
)	
INSURANCE BROKERAGE)	MDL No. 1663
ANTITRUST LITIGATION)	Civil No. 04-5184 (FSH)
)	
_____)	

MEMORANDUM OF UNDERSTANDING

WHEREAS, Zurich Financial Services Group, Zurich American Insurance Company, Steadfast Insurance Company, Fidelity & Deposit Company of Maryland, Empire Fire & Marine Insurance Company, American Guarantee & Liability Insurance Company, Empire Indemnity Insurance Company, and Assurance Company of America (collectively, the "Zurich Defendants") have been named as defendants in a putative class action styled *In re Insurance Brokerage Antitrust Litigation*, MDL No. 1663, Civil No. 04-5184 (FSH) (the "Action"), alleging that the Zurich Defendants, among other things, engaged in certain conduct in violation of federal and state statutes and common law (the "Class Action Allegations"); and

WHEREAS, Zurich Financial Services is the indirect parent of the Zurich Defendants (other than Zurich Financial Services Group (corrected to be Zurich Financial

Services)) and any and all of their respective parents, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), divisions, business units and subsidiaries; and

WHEREAS, Zurich Financial Services Group is not a legal entity; and

WHEREAS, the Zurich Defendants and certain of their insurance subsidiaries and insurance affiliates (collectively, the "Zurich Insurers") are the subject of certain governmental investigations, inquiries or proceedings that have been, or that are threatened to be, initiated (the "Governmental Proceedings") by state regulatory or prosecutorial entities (the "Governmental Entities") based upon the allegations that give rise to the claims made or that could have been made in this Action (the "Governmental Entity Claims"); *provided* that the currently pending Governmental Proceedings are listed in Exhibit A and the Zurich Insurers currently involved in Governmental Proceedings are listed in Exhibit B; *provided further* that both Exhibit A and Exhibit B are subject to modification or expansion by the Zurich Defendants to reflect new Governmental Proceedings (if any) that may be initiated and shall not be deemed to be exclusive; and

WHEREAS, a May 25, 2005 order in the Action (the "May 25 Order") appointed the law firms of Milberg Weiss Bershad & Shulman LLP and Miller Faucher and Cafferty LLP as Co-Lead Counsel of the Plaintiffs' Executive Committee ("Co-Lead Counsel"); and

WHEREAS, as of September 30, 2005, plaintiffs have obtained in excess of 12 million pages of documents from various defendants in the Action; and

WHEREAS, the May 25 Order provides that Co-Lead Counsel shall, among other things, conduct settlement negotiations on behalf of plaintiffs in this Action (“Plaintiffs”) and enter binding agreements with respect to settlement as expressly authorized; and

WHEREAS, consistent with the May 25 Order, Co-Lead Counsel has conducted extensive settlement negotiations with the Zurich Defendants on behalf of Plaintiffs and has been expressly authorized to enter into this Memorandum of Understanding (“MOU”) on behalf of Plaintiffs; and

WHEREAS, this MOU sets out the principal terms of an agreement between the Zurich Defendants and Plaintiffs (the “Settling Parties”) pursuant to which the Settling Parties agree to settle the claims that have been made or that could have been made against the Zurich Defendants in the Action; and

WHEREAS, the Governmental Proceedings have focused principally on excess casualty insurance policies sold by one or more of the Zurich Defendants through a unit exclusively dedicated to selling insurance policies brokered through Marsh & McLennan during the years 2001 through 2004; and

WHEREAS, this MOU contains certain termination provisions pursuant to which the MOU may be terminated, including with respect to the Zurich Insurers’ inability successfully to resolve each and every Governmental Proceedings; and

WHEREAS, if none of the termination provisions found in this MOU is triggered, the Settling Parties shall be bound to execute a Settlement Agreement consistent with the terms set out in this MOU; and

WHEREAS, this MOU provides that, subject to consummation of a Settlement Agreement as set out below, the Zurich Defendants shall pay or cause to be paid to Settlement Class Members (as defined below) a Settlement Amount (as defined below) consistent with the terms of this MOU and that such Settlement Amount shall be distributed to Settlement Class Members, subject to Court approval, pursuant to a plan of allocation (the "Plan of Allocation"); and

WHEREAS, the Settling Parties agree that, to facilitate the Zurich Insurers' resolution of the Governmental Entity Claims, the Plan of Allocation shall be prepared by Co-Lead Counsel in consultation with the Governmental Entities and shall take account of the alleged damages and the equities of the Settlement Class; and

WHEREAS, neither the Zurich Defendants' agreement to the principal terms set out in this MOU, their execution of this MOU nor their good faith negotiation and execution of a Settlement Agreement shall constitute or be construed to be an admission by the Zurich Defendants, by the Zurich Insurers, by Zurich Financial Services or by any of them that any wrongdoing has taken place, that any federal or state laws or common law have been violated, or that any antitrust injury has occurred; and

WHEREAS, the Settling Parties have agreed that they will act in good faith to reach a Settlement Agreement consistent with the terms set out in this MOU; and

WHEREAS, the Settling Parties wish to memorialize the principal terms of their agreement in this MOU.

NOW, THEREFORE, the Settling Parties, by and through their duly authorized representatives, enter into this MOU pursuant to which they agree as follows:

PRINCIPAL TERMS OF SETTLEMENT

A. Subject to Section B below, the Settling Parties shall negotiate a Settlement Agreement in good faith, the principal terms of which shall be as follows:

1. The Settlement Class Period shall be from August 26, 1994 to September 1, 2005, inclusive.
2. The Settlement Class shall consist of all individuals or entities who, during the Class Period, engaged the services of (i) one of the Broker Defendants or any subsidiary or affiliate of a Broker Defendant (as the term "Broker Defendant" is defined in the First Consolidated Amended Commercial Class Action Complaint filed in the Action on or about August 1, 2005 (the "Consolidated Complaint")) in connection with the purchase or renewal of insurance or reinsurance pursuant to a contract, policy, agreement, arrangement or understanding with any Insurer Defendant (as that term is defined in the Consolidated Complaint) where the insurance or reinsurance (a) involved an insured or a policy owner or an affiliate thereof, any of which was either domiciled in or resident in, or had any other significant contact with, the United States, its territories or possessions, (b) involved a contract, policy, agreement, arrangement or understanding entered into in the United States, its territories or possessions, (c) involved a contract, policy, agreement, arrangement or understanding subject to federal law or to the law of any of the states of the United States, its territories or possessions, or (d) provided coverage for an insurable exposure in the United States, its territories or possessions, or (ii) any other broker in connection with the purchase or renewal of insurance or reinsurance pursuant to a contract, policy, agreement, arrangement or understanding with

a Zurich Insurer where the insurance or reinsurance (a) involved an insured or a policy owner or an affiliate thereof any of which was either domiciled in or resident in, or had any other significant contact with, the United States, its territories or possessions, (b) involved a contract, policy, agreement, arrangement or understanding entered into in the United States, its territories or possessions, (c) involved a contract, policy, agreement, arrangement or understanding subject to federal law or to the law of any of the states of the United States, its territories or possessions, or (d) provided coverage for an insurable exposure in the United States, its territories or possessions; *provided* that the Settlement Class shall be modified as necessary to include any other individuals or entities who are certified by the Court as members of any other class in the Action.

3. Subject to Section B.2 relating to confirmatory discovery, the Zurich Defendants shall pay or cause to be paid one hundred million dollars (\$100,000,000) as the Settlement Amount, with such payment to be made within thirty (30) days following the date on which approval of the settlement becomes final and no longer subject to appeal; *provided* that the Zurich Defendants shall pay interest on the Settlement Amount, with such interest to be calculated at the one-year LIBOR rate for the period starting the day following the day on which the Court approves the Settlement Agreement until such date as the Settlement Amount is paid. The Zurich Defendants agree that, after reaching agreement on all the terms and conditions of consideration to the Settlement Class and the other material terms of the settlement, they will address with Plaintiffs the issue of the amount of fees and expenses to be paid to Plaintiffs. Subject to reaching an agreement with Plaintiffs as to the amount of fees and expenses to be paid to

Plaintiffs in connection with the settlement of the Action and subject to Court approval of such agreed-upon amount, the Zurich Defendants shall pay that amount of fees and expenses (or any lesser amount as ordered by the Court) to Plaintiffs in addition to the Settlement Amount.

4. Settlement Class Members shall release the Zurich Defendants, the Zurich Insurers, Zurich Financial Services, any and all of their respective parents, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), divisions, business units and subsidiaries, and, subject to Section 8 below, each such entity's respective past and present directors, officers, employees, members, partners, principals, agents, attorneys and insurance carriers (but only to the extent such insurance carriers provide insurance coverage or indemnity to one or more Releasee for losses incurred in connection with the Action) (collectively, the "Releasees") from each and every claim, whether known or unknown, whether arising under any federal law, state law, foreign law, common law, rule, regulation or otherwise, (i) that has been asserted in the Action and/or in a Governmental Proceeding or (ii) that could have been asserted in the Action, in any forum by any Class Member or in a Governmental Proceeding against any of the Releasees where the claim, whether known or unknown, arises out of or is based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth or referred to in the Consolidated Complaint and/or in a Governmental Proceeding (the "Released Claims"). Released Claims shall not include claims, whether known or unknown, of Settlement Class Members to enforce the terms of coverage contained in contracts of insurance or reinsurance issued by a Zurich Insurer or pending

claims (if any) related to (i) workers compensation (as identified in Exhibit C), (ii) securities fraud, (iii) derivative litigation or (iv) claims on behalf of beneficiaries of employee benefit plans sponsored by Releasees.

5. The Settling Parties shall request that the Court enter a complete bar order at the time the Court approves the Settlement Agreement, which complete bar order shall provide as follows:

a. Any and all persons and entities (who have not opted out) are permanently barred, enjoined and restrained from commencing, prosecuting or asserting any claim (whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued) against any Releasee arising under state, federal or common law, however styled, whether for indemnification or contribution or otherwise denominated, including, without limitation, claims for breach of contract and for misrepresentation, where the claim is based upon, arises out of, or relates to any claim in which such person or entity seeks to recover from any or all of the Releasees (i) any amounts such person or entity has paid or may become liable to pay to any of the Settlement Class Members with respect to any Released Claim that (a) has been asserted in the Action and/or in a Governmental Proceeding or (b) that could have been asserted in the Action, in any forum by any Settlement Class Member or in a Governmental Proceeding against any of the Releasees where the claim, whether known or unknown, arises out of or is based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth or referred to in the Consolidated Complaint and/or in a Governmental Proceeding (collectively, the

“Barred Claims”) and/or (ii) any costs, expenses, or attorneys’ fees from defending Barred Claims. All Barred Claims are hereby extinguished, discharged, satisfied and unenforceable, subject to a hearing to be held by the Court, if necessary. This provision is intended to preclude any liability of any and all of the Releasees to any person or entity for indemnification, contribution, or otherwise on any Barred Claim; *provided* that, any judgment or award obtained by a Settlement Class Member against any defendant in the Action or against any third party shall be reduced by an amount or percentage (if any) equal to the amount or percentage determined by the Court under applicable law to be necessary to compensate such defendant or third party for the loss of any such Barred Claims against any or all of the Releasees.

b. Each and every Releasee is permanently barred, enjoined and restrained from commencing, prosecuting or asserting any claim (whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued) against any person or entity (including any other Releasee) arising under state, federal, or common law, however styled, whether for indemnification or contribution, or otherwise denominated, including, without limitation, claims for breach of contract and for misrepresentation, where the claim is based upon, arises out of, or relates to any claim in which such Releasee seeks to recover from any person or entity, including another Releasee, (i) any amounts any such Releasee has paid or may become liable to pay to any of the Class Members with respect to any Barred Claim and/or (ii) any costs, expenses, or attorneys’ fees from defending any Barred Claims. All such Barred Claims are hereby extinguished, discharged, satisfied, and

unenforceable. However, notwithstanding anything stated in the complete bar order (or any other provision of the Settlement Agreement), if any person or entity commences, prosecutes or asserts any claim against any Releasee arising under state, federal, or common law, however styled, whether for indemnification or contribution, or otherwise denominated, including, without limitation, claims for breach of contract and for misrepresentation, where the claim is based upon, arises out of, or relates to any Barred Claim and such claim is not barred pursuant to the bar order, the bar order shall not bar any claims by that Releasee against the person or entity who has commenced, prosecuted or asserted the claim.

c. If, notwithstanding the bar order, a person or entity obtains a judgment against any or all of the Releasees on any Barred Claim to recover, directly or indirectly, from such Releasee, any amounts that the person or entity that obtained such judgment might become liable to pay to any of the Settlement Class Members the Settlement Class Members agree that they will reduce or credit any judgment or settlement (up to the amount of such judgment or settlement) that they might obtain against that person or entity by an amount equal to the amount of that person's or entity's judgment against the Releasee.

d. If any term of the complete bar order entered by the Court is held to be unenforceable after the date the Court enters the bar order, such provision shall be substituted with such other provision as may be necessary to afford all of the Releasees the fullest protection permitted by law from any claim that is based upon, arises out of, or relates to any Barred Claim.

e. Notwithstanding the bar order or anything else in the Settlement Agreement, nothing shall release, interfere with, limit or bar the assertion by any Releasee of any claim for insurance coverage under any insurance or indemnity policy that provides coverage respecting the conduct at issue in the Action.

6. Plaintiffs will support any motion filed by the Zurich Defendants with the Court seeking to have the Court declare as unenforceable any claim that the Zurich Insurers, or any one of them, are required to pay any contingent commissions under agreements, arrangements or understandings with the Broker Defendants (or any of their affiliates or subsidiaries).

7. The Settlement Agreement shall include as exhibits the following, among other, documents, which documents shall be submitted to the Court for approval at the time the Settlement Agreement is submitted to the Court:

- a. an individual notice to be mailed to Class Members.
- b. a summary notice to be published as agreed upon by the Settling Parties.
- c. a preliminary order that the Settling Parties will ask the Court to enter at the time it preliminarily approves the Settlement Agreement, which order shall include, among other things, (i) preliminary certification of the Settlement Class described above, (ii) findings regarding the adequacy of the notice and notice methodology pursuant to which notice will be provided to Settlement Class Members, and (iii) a preliminary injunction barring (a) Settlement Class Members (who have not opted out) from filing any other lawsuits or other proceedings based upon Released

Claims and (b) all persons or entities from filing any other lawsuits or other proceedings as a class action on behalf of Settlement Class Members (who have not opted out) based upon Released Claims.

d. a judgment that the Settling Parties will ask the Court to enter at the time it approves the Settlement Agreement.

e. an order approving the settlement that the Settling Parties will ask the Court to enter at the time it approves the Settlement Agreement, which order shall include, among other things, (i) final certification of the Settlement Class described above, (ii) findings regarding the adequacy of the notice and notice methodology pursuant to which notice will be provided to Class Members, (iii) the bar order described in Section A above, (iv) incorporation of the release described in Section A above in its entirety, (v) dismissal of the Action as to the Zurich Defendants with prejudice, (vi) a permanent injunction barring (a) Settlement Class Members (who have not opted out) from filing any lawsuits or other proceedings based upon Released Claims and (b) all persons or entities from organizing Settlement Class Members (who have not opted out) for the purposes of pursuing a class action based upon Released Claims, (vii) a provision pursuant to which, without affecting the finality of the approval order, the Court retains jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement and (viii) a request that the Settling Parties jointly prepare and submit findings of fact and conclusions of law to the Court.

f. Unless otherwise ordered by the Court, the Plan of Allocation, which shall be prepared by Co-Lead Counsel upon consultation with, and

with the cooperation of, the Governmental Entities that reach settlement with the Zurich Insurers (or any of them).

8. The Zurich Defendants on behalf of themselves and all other Releasees shall agree to act with reasonable diligence in fully and completely cooperating in response to Co-Lead Counsel's inquiries in connection with the continued prosecution of any claims in the Action subject to the terms of a confidentiality agreement pursuant to which Plaintiffs and their counsel shall agree to keep any information obtained from the Zurich Defendants confidential; *provided however*, that, subject to the appropriate protection of trade secrets and confidential commercial information, Co-Lead Counsel shall be able to use information obtained from the Zurich Defendants in any judicial proceedings involving nonsettling defendants in this Action and the related Employee Benefits Action; *provided further* that any former employee of a Zurich Defendant or a Zurich Insurer who has pled (or in the future pleads) guilty, or has been (or in the future is) indicted in connection with, a Governmental Proceeding shall not be a Releasee under the Settlement Agreement unless such individual agrees to comply with this Section 8; *provided further* that, if any Settlement Class Member obtains a judgment against any such unreleased former employee, such Settlement Class Member (i) will not seek to recover any portion of that judgment from any Releasee and (ii) will reduce its judgment against any such former employee by any amount that the former employee might recover from any Releasee, to ensure that such Releasee will not have to make any payments to or on behalf of that former employee; *provided however*, that the Zurich

Insurers shall oppose any effort by a noncooperating former employee to recover any such amount from a Releasee.

9. The Zurich Defendants and Plaintiffs each will have the discretion (but not the obligation) to terminate the Settlement Agreement if (i) the Court, or any appellate court, rejects, modifies or denies approval of any portion of the Settlement Agreement that the terminating party reasonably and in good faith determines is material or (ii) the Court, or any appellate court, does not enter or completely affirm, or alters or expands, any portion of the preliminary approval order, the order approving the settlement, the judgment, or any of the Court's findings of fact and conclusions of law as proposed by the Settling Parties that the terminating party believes in good faith is material. Notwithstanding such a termination provision, neither Plaintiffs nor Co-Lead Counsel shall be able to terminate the Settlement Agreement on the basis of the Attorneys' Fees and Expenses Award ordered, or as modified, by the Court or any appellate court.

10. The Zurich Defendants will have the discretion (but not the obligation) to terminate the Settlement Agreement if (i) the aggregate amount of premium that is attributable to Settlement Class Members who request exclusion from the Class for excess casualty policies that are covered by the Settlement Agreement is equal to or in excess of five percent (5%) of the aggregate amount of premium paid to Zurich Insurers by all Settlement Class Members for excess casualty policies that are covered by the Settlement Agreement, (ii) the Governmental Entities (or any one of them) fail to execute an agreement with the Zurich Insurers (or any one of them) resolving the Governmental

Entity Claims consistent with the terms of this MOU, (iii) the Governmental Entities (or any one of them) object to the terms of the Settlement Agreement, (iv) Zurich Financial Services' Board of Directors fails to approve the terms of the Settlement Agreement or (v) any state class action based upon the Class Action Allegations in which a class has been certified remains unresolved as of the date on which the Settlement Agreement becomes final and no longer subject to appeal.

11. The Zurich Defendants expressly deny the wrongdoing alleged in the Consolidated Complaint and do not concede any wrongdoing or liability in connection with any facts or claims that have been or could have been alleged.

12. Neither the Zurich Defendants' good faith negotiation nor execution of a Settlement Agreement shall constitute or be construed to be an admission by the Zurich Defendants, by the Zurich Insurers, by Zurich Financial Services or by any of them that any wrongdoing has taken place, that any federal or state laws or common law have been violated, or that any antitrust injury has occurred.

13. The Settling Parties shall coordinate any public announcement of the settlement in this Action.

14. Plaintiffs agree that, for a period of three years from the date on which the Settlement Agreement is executed or until the final pre-trial conference in the Action (whichever is sooner), unless present circumstances materially change such that Plaintiffs reasonably conclude that the prospect or amount of ultimate recovery from any remaining Insurer Defendant is substantially lessened or reduced, they will not enter into a settlement of the Action with any remaining Insurer Defendant of comparable

culpability that is more favorable to such Insurer Defendant insofar as it relates to the Settlement Amount without offering similar terms to the Zurich Defendants; *provided* that any dispute between the Settling Parties as to (i) whether any other Insurer Defendant with which Plaintiffs settle is of comparable culpability, (ii) whether a settlement with any other Insurer Defendant is more favorable to such Insurer Defendant as it relates to the Settlement Amount or (iii) whether any terms offered to the Zurich Defendants under this Section 14 are similar to those in a settlement with another Insurer Defendant shall be submitted to the Court for binding mediation.

15. The Settlement Agreement shall be governed by and interpreted according to the laws of the State of New York, excluding its conflict of laws provisions.

16. The Court in which the Action is pending shall retain subject matter jurisdiction to the extent necessary to implement, enforce and interpret the Settlement Agreement; *provided however*, that such subject matter jurisdiction over the Settlement Agreement shall not constitute a basis for nor give rise to personal jurisdiction over Zurich Financial Services.

TERMINATION PROVISIONS

B. This MOU shall terminate under the following circumstances:

1. This MOU shall terminate if the Settling Parties are unable successfully to negotiate a Settlement Agreement that includes, among other things, the principal terms described in Section A above.

2. Plaintiffs have the absolute discretion (but not the obligation) to terminate this MOU upon written notification to the Zurich Defendants if, upon

completion of confirmatory discovery, they and Co-Lead Counsel reasonably and in good faith do not believe that the terms of the settlement are fair, reasonable and adequate.

3. The Zurich Defendants have the discretion (but not the obligation) to terminate this MOU upon written notification to Plaintiffs if:

a. One or more of the Zurich Insurers is unable to reach an agreement with one or more Governmental Entities to resolve Governmental Entity Claims consistent with the terms of this MOU.

b. Any state class action based upon the Class Action Allegations in which a class has been certified is not resolved.

4. This MOU shall terminate without further action by anyone if a Settlement Agreement is not executed within six (6) months of the date on which this MOU is executed and the Settling Parties have not agreed to extend this period of time.

C. If this MOU is terminated, it shall be null and void and shall have no force or effect, and none of the Settling Parties shall be bound by any of its terms, except as follows:

1. The negotiations, statements and proceedings relating to this MOU shall be without prejudice to the rights of the Zurich Defendants, Plaintiffs or any Settlement Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this MOU.

2. Neither this MOU, nor the fact of its having been made, shall be admissible or entered into evidence for any purpose whatsoever.

3. Neither the Zurich Defendants' agreement to the terms set out in this MOU, their execution of this MOU nor their good faith negotiation of a Settlement Agreement shall constitute or be construed to be an admission by the Zurich Defendants, by the Zurich Insurers, by Zurich Financial Services or by any of them that any wrongdoing has taken place, that any federal or state laws or common law have been violated, or that any antitrust injury has occurred.

4. The confidentiality terms set out in Section E below shall remain in full force and effect.

GENERAL MATTERS

D. Promptly after this MOU is executed, the Settling Parties shall jointly move that the Action be stayed as to the Zurich Defendants, *provided however*, that should this MOU or the Settlement Agreement terminate for any reason, the Zurich Defendants shall not oppose an immediate lifting of the stay; *provided further* that if this MOU or the Settlement Agreement is terminated and the stay is lifted, the Zurich Defendants will engage in expedited discovery so that the Action is not delayed as a result of this MOU or the Settlement Agreement as to the Zurich Defendants or any other defendant.

E. Except as set out below, the Settling Parties agree to keep the fact that they have executed this MOU, the terms of this MOU, and any negotiations relating to the execution of this MOU and/or of the Settlement Agreement confidential.

1. The Settling Parties may disclose the fact that they have executed this MOU to the Court and to other parties in the Action and to each of the Governmental Entities.

2. The Zurich Defendants, the Zurich Insurers, Zurich Financial Services and their affiliates may disclose the fact that the Settling Parties have executed this MOU to, and may discuss the terms of this MOU with, their independent auditors and with each of the Governmental Entities.

3. Plaintiffs, Co-Lead Counsel, the Zurich Defendants, the Zurich Insurers, Zurich Financial Services and their affiliates may make any and all disclosures regarding the existence of this MOU and its terms that they believe may be required by any federal or foreign governmental, regulatory or prosecutorial entity, including in any public filings required by federal, state or foreign law.

F. Confirmatory discovery that is conducted in connection with the settlement will be conducted pursuant to a confidentiality stipulation pursuant to which, among other things, Plaintiffs and Co-Lead Counsel shall agree that all such discovery will be used solely for the purposes of assessing the fairness, reasonableness and adequacy of the settlement terms and that it will be kept confidential from all third parties; *provided* that, subject to obtaining agreement to the terms of the confidentiality stipulation by any such experts, Plaintiffs may share the confirmatory discovery contemplated by this Section F with experts retained by Plaintiffs to evaluate the terms of this MOU and any settlement. The confirmatory discovery described in this Section F

shall be in addition to the information to be provided by the Zurich Defendants pursuant to Section A.8.

G. This MOU shall be governed by and interpreted according to the laws of the State of New York, excluding its conflict of laws provisions. All matters relating to the enforcement and interpretation of this MOU shall be subject to the jurisdiction of the Court in which the Action is pending; *provided however*, that the Court's exercise of subject matter jurisdiction over the MOU shall not constitute a basis for nor give rise to personal jurisdiction over Zurich Financial Services.

H. Melvyn I. Weiss and Edith M. Kallas, on behalf of Milberg Weiss Bershad Schulman LLP, and Bryan L. Clobes, on behalf of Miller Faucher and Cafferty LLP, represent that they are authorized, consistent with the May 25 Order, to enter into this MOU on behalf of Plaintiffs and any other attorneys who have represented or now represent Plaintiffs or Settlement Class Members in the Action with respect to the claims in the Action and/or the Released Claims.

I. Ralph C. Ferrara represents that he is authorized to enter into this MOU on behalf of the Zurich Defendants and any other attorneys who have represented or now represent the Zurich Defendants in the Action.

J. This MOU may be signed in counterparts, each of which shall constitute a duplicate original. Execution by facsimile or by an electronically transmitted signature shall be fully and legally binding on a Settling Party.

K. This MOU shall be deemed to be executed on the date by which all of the Settling Parties have executed it.

Executed this 14th day of October, 2005.

Melvyn I. Weiss
Edith M. Kallas
Milberg Weiss Bershad & Schulman LLP
One Pennsylvania Plaza
49th Floor
New York, New York 10119

Bryan L. Clobes
Miller Faucher and Cafferty LLP
One Logan Square, Suite 1700
18th and Cherry Streets
Philadelphia, Pennsylvania 19103

On Behalf of Plaintiffs

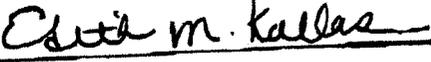


Ralph C. Ferrara
LeBoeuf, Lamb, Greene & MacRae, LLP
1875 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20009

On Behalf of the Zurich Defendants

K. This MOU shall be deemed to be executed on the date by which all of the
Signling Parties have executed it.

Executed this 14th day of October, 2005.


Melvyn I. Weiss
Edith M. Kallas
Milberg Weiss Bershad & Schulman LLP
One Pennsylvania Plaza
49th Floor
New York, New York 10119


Bryan L. Clabes
Miller Faucher and Cafferty LLP
One Logan Square, Suite 1700
18th and Cherry Streets
Philadelphia, Pennsylvania 19103

On Behalf of Plaintiffs

Ralph C. Ferrara
LeBoeuf, Lamb, Greene & MacRae, LLP
1875 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20009

On Behalf of the Zurich Defendants

EXHIBIT A**GOVERNMENTAL PROCEEDINGS**

STATE	AUTHORITY
California	California Attorney General
Colorado	Colorado Attorney General
Delaware	Delaware Department of Insurance
Florida	Florida Attorney General Florida Department of Financial Services Florida Office of Insurance Regulation
Iowa	Iowa Insurance Division
Illinois	Illinois Department of Financial and Professional Regulation Division of Insurance
Maryland	Maryland Attorney General
Massachusetts	Massachusetts Attorney General
Minnesota	Minnesota Attorney General Minnesota Department of Commerce
Nebraska	Nebraska Department of Insurance
New York	New York Attorney General New York Department of Insurance
North Carolina	North Carolina Department of Insurance
Ohio	Ohio Attorney General Ohio Department of Insurance
Oklahoma	Oklahoma Commissioner of Insurance
Pennsylvania	Commonwealth of Pennsylvania Attorney General
Texas	Texas Attorney General
West Virginia	West Virginia Attorney General

EXHIBIT B

ZURICH INSURERS INVOLVED IN GOVERNMENT PROCEEDINGS

Zurich American Insurance Company (Zurich North America)

Zurich Insurance Group

Zurich American Insurance Company of Illinois

American Zurich Insurance Company

American Guarantee & Liability Insurance Company

Steadfast Insurance Co.

Fidelity & Deposit Company of Maryland

Maryland Casualty Company

Assurance Company of America

Colonial American Casualty & Surety Company

Zurich American Insurance Agency

Northern Insurance Company of New York

Empire Fire and Marine Insurance Company

Centre Insurance Co.

Farmers New World Life Insurance Company

Kemper Investors Life Insurance Company

EXHIBIT C

Released Claims do not include any claims asserted in the following actions:

- 1) *Sandwich Chef of Texas, Inc. v. Reliance National Indemnity Insurance Co.*, Civil Action No. H-98-1484 (United States District Court for the Southern District of Texas).
- 2) *Foodarama Supermarkets, Inc., et al. v. Allianz Insurance Co., et al.*, Docket No. L-3556-97 (Superior Court of New Jersey, Law Division: Morris County)
- 3) *Bristol Hotel Asset Co., et al. v. The Aetna Casualty and Surety Co., et al.*, Civil Action No. 97-92-I (Chancery Court for Davidson County, Tennessee)
- 4) *Foodarama Supermarkets, Inc., et al. v. Allianz Insurance Company Group, et al.*, No. 1138 (Court of Common Pleas, Philadelphia County Civil Division, Commonwealth of Pennsylvania)
- 5) *Bristol Hotel Management Corp., et al. v. The Aetna Casualty and Surety Company, et al.*, Cause No. 97-2240-CIV-MORENO (United States District Court for the Southern District of Florida)
- 6) *Bristol Hotel Management Corp., et al. v. The Aetna Casualty and Surety Company, et al.*, Cause No. CL-97-00727 (Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida)
- 7) *Melvin Simon & Associates, Inc., et al. v. Standard Fire Insurance Company, et al.*, No. 97-RCCV-28 (Georgia Superior Court, Richmond County)
- 8) *CR/PL Management Co., et al. v. Allianz Insurance Company Group, et al.*, No. 98 CH 01635 (Circuit Court of Cook County, Illinois)
- 9) *Hill-Behan Lumber Co. v. Hartford Insurance Company, et al.*, No. 982-00338 (Circuit Court of the City of St. Louis, Missouri)
- 10) *Dal-Tile Corporation, et al. v. National Council on Compensation Insurance, Inc., et al.*, Case No. 311263 (Superior Court of the State of California, County of Riverside)
- 11) *Alumax, Inc., et al. v. Allianz Insurance Company, et al.*, Civil Action No. CV 9803222 (Circuit Court of Jefferson County, Alabama)
- 12) *Payless Cashways, Inc., et al. v. National Surety Corp., et al.*, Civil Action No. 98 CI 2388 (Fayette Circuit Court, Commonwealth of Kentucky)
- 13) *American Association of Retired Persons, et al. v. National Surety Corp., et al.*, Case No. 98-820589 CZ (Circuit Court for the County of Wayne, Michigan)

14) *Burnham Services Corporation, et al. v. National Council on Compensation Insurance, Inc., et al.*, No. 98603231 (Supreme Court of the State of New York, County of New York)

15) *Albany International Corporation, et al. v. American Home Assurance Company, et al.*, Case No. CV 98-11695 (Arizona Superior Court, Maricopa County)