

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

_____)	
IN RE: INSURANCE BROKERAGE)	MDL No. 1663
ANTITRUST LITIGATION)	
)	Civil No. 04-5184 (FSH)
APPLIES TO ALL ACTIONS)	
_____)	Hon. Faith S. Hochberg

ORDER APPROVING SETTLEMENT

WHEREAS, Plaintiffs and the Zurich Defendants entered into a _____, 2006 Stipulation of Settlement; and

WHEREAS, the Court entered a _____, 2006 Order (the “Preliminary Approval Order”) preliminarily certifying the putative Settlement Class¹ in this Action for settlement purposes under Fed. R. Civ. P. 23(b)(3), ordering individual and publication notice to Settlement Class Members, scheduling a Fairness Hearing for _____, 2006, and providing Settlement Class Members with an opportunity to object to the proposed settlement; and

WHEREAS, the Court held a Fairness Hearing on _____, 2006 to determine whether to give final approval to the Settlement Agreement; and

WHEREAS, the Court is contemporaneously issuing a Judgment under Fed. R. Civ. P. 54(b) that, among other things, certifies the Settlement Class, approves the Settlement Agreement and dismisses the Settlement Class Members’ claims with prejudice as to the Zurich Defendants;

1. Unless otherwise specifically defined herein, the capitalized terms in this Order Approving Settlement have the same meaning as attributed to them in the Stipulation of Settlement.

NOW THEREFORE, based on the submissions of the Parties, on the argument of counsel at the Fairness Hearing, and on this Court's Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Settlement Documents** – This Order Approving Settlement (the “Order”) incorporates and makes a part hereof:

- a. the _____, 2006 Stipulation of Settlement filed with this Court on _____, 2006; and
- b. Exhibits A through M to the Stipulation of Settlement.

The Stipulation of Settlement and all exhibits thereto shall be referred to collectively as the “Settlement Agreement.”

2. **Jurisdiction** – The Court has personal jurisdiction over all Settlement Class Members (as defined below) and has subject matter jurisdiction over this Action, including, without limitation, jurisdiction to approve the Settlement Agreement and the Plan of Allocation, grant final certification of the Settlement Class for settlement purposes and dismiss the Action with prejudice as to the Zurich Defendants; *provided however*, that such jurisdiction to enforce the Settlement Agreement and this Order shall not constitute a basis for or give rise to personal jurisdiction over Zurich Financial Services, or over any of its subsidiaries whose principal places of business are located outside of the United States to the extent such jurisdiction does not already exist.

3. **Final Settlement Class Certification** – The Settlement Class this Court preliminarily certified as an opt-out Settlement Class is hereby finally certified for settlement purposes under Fed. R. Civ. P. 23(b)(3). The Settlement Class consists of all individuals or entities, who, during the period of time from August 26, 1994 through September 1, 2005,

inclusive, engaged the services of (i) one of the Broker Defendants or any subsidiary or affiliate of a Broker Defendant in connection with a Settlement Class Policy Purchase from any Zurich Insurer or any Insurer Defendant or (ii) any other broker in connection with a Settlement Class Policy Purchase from any Zurich Insurer. The Settlement Class preliminarily certified for settlement purposes in this Action shall *not* include:

- a. such persons or entities who submitted valid and timely requests for exclusion from the Settlement Class in accordance with the procedures set out in paragraph 10 of the Preliminary Order;
- b. such persons or entities who settled an actual or threatened lawsuit or other proceeding with the Zurich Insurers, or any of them, and released the Zurich Insurers from any further claims concerning their Settlement Class Policy Purchases;
- c. such persons or entities who have elected or will elect by the Three-State Deadline to receive monetary payments pursuant to the Three-State Agreement, *provided however*, that such persons or entities who have elected or will elect by the Three-State Deadline to receive monetary payments pursuant to the Three-State Agreement shall be Settlement Class Members respecting their Settlement Class Policy Purchases that are not eligible to receive relief under the Three-State Agreement, with respect to which the Zurich Insurers shall waive enforcement of the Three-State Release to the extent that such persons or entities participate in the Settlement Class with respect to such purchases, *provided further* that the Zurich Insurers reserve the right to enforce the Three-State Release in its

entirety as to any persons or entities who have elected or will elect by the Three-State Deadline to receive monetary payments pursuant to the Three-State Agreement to the extent such persons or entities seek relief outside of this Settlement Agreement for Settlement Class Policy Purchases that are not eligible to receive relief under the Three-State Agreement;

- d. such entities who are named defendants in the Action (including their officers and directors);
- e. any entity in which the Zurich Insurers, or any of them, has or had a controlling interest during the Settlement Class Period and the legal representatives, heirs, executors, successors or assigns of any such excluded entity, and
- f. any directors or officers of the Zurich Insurers, or any of them, during the Settlement Class Period.

4. **Issue for Certification** – The issue that the Court is deciding on a class-wide basis is whether the terms of the proposed settlement are fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23(e)(1)(C) and governing law construing that Rule. In making that determination, the Court also has considered – as discussed in paragraph 6 below – whether proper notice of the proposed settlement was given under Fed. R. Civ. 23(c)(2)(B) and 23(e)(1)(B) to the potential Settlement Class and any other relevant persons so that the settlement’s terms will have binding effect, as discussed in paragraph 9 below.

5. **Adequacy of Representation** – Plaintiffs and Co-Lead Counsel have fully and adequately represented the Settlement Class for purposes of entering into and implementing the settlement and have satisfied the requirements of Fed. R. Civ. P. 23(a)(4).

6. **Notice** – The Court finds that the distribution of the Notice, the publication of the Summary Notice, the distribution of the Claim Form and the notice methodology were all implemented in accordance with the terms of the Settlement Agreement and this Court’s Preliminary Approval Order. The Court further finds that the Notice, Summary Notice and Claim Form were simply written and readily understandable, and that the Notice, Summary Notice, Claim Form and notice methodology: (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and the claims in the Action, their right to review discovery produced to Plaintiffs by the Zurich Defendants, their rights to object to the proposed settlement and to appear at the Fairness Hearing, and their right to exclude themselves from the Settlement Class, (iii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to notice, and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of the Court and any other applicable law.

7. **Final Settlement Approval** – The terms and provisions of the Settlement Agreement have been entered into in good faith and are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the Settling Parties and the Settlement Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of the Court and any other applicable law. The Settling Parties and their counsel are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

8. **Plan of Allocation** – The Plan of Allocation is approved as a fair and reasonable method to allocate the relevant settlement proceeds among Settlement Class Members, and the Settling Parties, through the Court-approved -Administrator, are directed to implement and administer the Plan of Allocation in accordance with its terms and provisions.

9. **Binding Effect** – The terms of the Settlement Agreement and of this Order and the accompanying Judgment shall be forever binding on Plaintiffs and all Settlement Class Members, as well as their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns as to all claims and issues that have or could have been raised in this Action.

10. **Release** – The Release as set forth in Section IX of the Settlement Agreement (and as set out in Appendix A to this Order) is expressly incorporated herein in all respects. The Release shall be effective as of the Final Settlement Date.

11. **Permanent Injunction** – All Settlement Class Members (and their heirs, executors and administrators, beneficiaries, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns), any person or entity claiming by or through a Settlement Class Member, and any person or entity representing any or all Settlement Class Members, are permanently enjoined from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding against any or all Releasees or order in any jurisdiction entered against any or all Releasees that is based upon, arises out of or relates to any Released Claims. All persons or entities are permanently enjoined from organizing any Settlement Class Members for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include claims that are based upon, arise out of or relate to any Released Claims, or

by seeking class certification in a pending action) any other lawsuit against any or all Releasees that is based upon, arises out of or relates to any Released Claims.

12. Bar Order

a. Any and all persons and entities are permanently barred, enjoined and restrained from commencing, prosecuting or asserting 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 alleged injury or damage to such person or entity is that person's or entity's alleged liability to the Settlement Class or a Settlement Class Member, whether such claim is based upon, arises out of, or relates to any Released Claim belonging to the Settlement Class or a Settlement Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Consolidated Commercial Complaint, whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, including, without limitation, any claim in which a person or entity seeks to recover from any of the Releasees (i) any amounts such person or entity may become liable to pay to the Settlement Class or any of the Settlement Class Members and/or (ii) any costs, expenses, or attorneys' fees from defending any claim by the Settlement Class or any of the Settlement Class Members. All such claims are hereby extinguished, discharged, satisfied and unenforceable, subject to a hearing to be held by the Court, if necessary. The provisions of this paragraph 12.a are intended to preclude any liability of any of the Releasees to any person or entity for indemnification, contribution, or otherwise on any claim based upon, arising out of, or relating to any Released Claim belonging to the Settlement Class or a Settlement Class Member, where the alleged injury

or damage to such person or entity is that person's or entity's alleged liability to the Settlement Class or a Settlement Class Member in the Action, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Consolidated Commercial Complaint; *provided* that, with respect to any judgment against any person or entity on behalf of the Settlement Class or such Settlement Class Member based upon, arising out of, or relating to any Released Claim belonging to the Settlement Class or a Settlement Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Consolidated Commercial Complaint, that person or entity shall be entitled to a credit of the greater of (i) an amount that corresponds to the percentage of responsibility of the Zurich Defendants for the loss to the Settlement Class or such Settlement Class Member or (ii) the Initial Funding Amount. If any provision of this paragraph 12.a is subsequently held to be unenforceable, 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 arises out of or relates to any Released Claim belonging to the Settlement Class or a Settlement Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Consolidated Commercial Complaint.

b. Each and every Releasee is permanently barred, enjoined and restrained from commencing, prosecuting or asserting any claim 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 alleged injury or damage to the Releasee is the Releasee's alleged liability to the Settlement Class or a Settlement Class

Member, whether such claim is based upon, arises out of, or relates to any Released Claim belonging to the Settlement Class or a Settlement Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Consolidated Commercial Complaint, whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, including, without limitation, any claim in which the Releasee seeks to recover from any person or entity, including another Releasee (i) any amounts such Releasee has or may become liable to pay to the Settlement Class or any of the Settlement Class Members and/or (ii) any costs, expenses, or attorneys' fees from defending any claim by the Settlement Class any of the Settlement Class Members. All such claims are hereby extinguished, discharged, satisfied and unenforceable. However, notwithstanding anything stated in this Bar Order or in the Settlement Agreement, if any person or entity commences against any of the Releasees any action asserting a claim that is based upon, arises out of, or relates to any Released Claim belonging to the Settlement Class or a Settlement Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Consolidated Commercial Complaint, and if such claim is not barred by a court pursuant to paragraph 12.a above or is otherwise not barred by the Bar Order, neither the Bar Order nor the Settlement Agreement shall bar claims by that Releasee against such person or entity.

c. Notwithstanding the Bar Order or anything else in the Settlement Agreement or in this Order, 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.

13. **No Admissions** – Neither this Order and the accompanying Judgment nor the Settlement Agreement, nor any of the provisions of the Settlement Agreement or any negotiations leading to its execution, nor any other documents referred to in this Order or the accompanying Judgment, nor any action taken to carry out this Order and the Judgment is, may be construed as, offered as, received as, used as or deemed to be evidence of any kind in this Action, any other action, or any other judicial, administrative, regulatory or other proceeding, or may be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to the Zurich Insurers, or as a waiver by the Zurich Insurers of any applicable defense. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not under any circumstances be construed as, offered as, received as, used as or deemed to be evidence of, an admission or concession as to the Zurich Insurers' denials or defenses and shall not be offered or received in evidence in this Action, any other action, or any other judicial, administrative, regulatory or other proceeding against any Settling Party hereto for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Order, the accompanying Judgment and the Settlement Agreement; *provided however*, that this Order, the accompanying Judgment and the Settlement Agreement may be filed in any action against or by the Zurich Insurers or other Releasees to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

14. **Enforcement of Settlement** – Nothing in this Order or the accompanying Judgment shall preclude any action to enforce the terms of the Settlement Agreement.

15. **Attorneys' Fees and Expenses** – Class Counsel are hereby awarded Attorneys' Fees and Expenses for attorneys' fees and related expenses in the amount of _____, which amount the Zurich Defendants shall pay or cause to be paid in accordance with the terms of the Settlement Agreement. In no event will Attorneys' Fees and Expenses be paid from the Combined Settlement Amount, as that term is defined in the Settlement Agreement. The Court hereby approves Class Counsel's request to pay up to _____ to each class representative Plaintiff from the Attorneys' Fees and Expenses Award based upon the effort that each class representative Plaintiff has devoted to this litigation.

16. **No Other Payments** – Paragraph 15 of this Order covers, without limitation, any and all claims for attorneys' fees and expenses, costs or disbursements incurred by Co-Lead Counsel, Class Counsel or any other counsel of record representing Plaintiffs or Settlement Class Members in this Action, or incurred by Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to this Action, the settlement of this Action, the administration of the Settlement Agreement and/or the Released Claims except to the extent otherwise specified in this Order and the Settlement Agreement.

17. **Modification of Settlement Agreement** – The parties are hereby authorized, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement, provided that such amendments, modifications and expansions of the Settlement Agreement are not materially inconsistent with this Order and the accompanying Judgment and do not materially limit the rights of Settlement Class Members under the Settlement Agreement; *provided further* that a decision by the Settling Parties to modify the Plan of Allocation shall not be deemed to be a change that materially limits the rights

of Settlement Class Members under this Settlement Agreement to the extent such modification involves an amount equal to or less than ten percent (10%) of the Net Cash Settlement Amount.

18. **Findings of Fact and Conclusions of Law** – The Settling Parties have been directed to jointly prepare proposed findings of fact and conclusions of law in support of the Court’s Judgment and this Order.

19. **Retention of Jurisdiction** – The Court has jurisdiction to enter this Order and the accompanying Judgment. Without in any way affecting the finality of this Order and the accompanying Judgment, this Court expressly retains exclusive and continuing jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement, and of this Order and the accompanying Judgment, and for any other necessary purposes, including, without limitation:

a. enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, this Order or the Judgment (including, without limitation, whether a person or entity is or is not a Settlement Class Member, and whether claims or causes of action allegedly related to this Action are or are not barred by the Judgment or Release);

b. entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and the Judgment approving the Settlement Agreement, dismissing all claims with prejudice, and permanently enjoining Settlement Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; and

c. entering any other necessary or appropriate orders to protect and effectuate this Court’s retention of continuing jurisdiction; *provided, however*, that nothing in this

paragraph 20 is intended to restrict the ability of the parties to exercise their rights under paragraph 18 of this Order; *provided further* that nothing in this paragraph 20 shall constitute a basis for nor give rise to personal jurisdiction over Zurich Financial Services, or over any of its subsidiaries whose principal places of business are located outside of the United States to the extent such jurisdiction does not already exist.

20. **Rule 11 Findings** – The Courts finds that the Consolidated Commercial Complaint was filed as to the Zurich Defendants on a good faith basis and in accordance with Rule 11 of the Federal Rules of Civil Procedure based upon all publicly available information. The Court finds that all Settling Parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

21. **Dismissal of Action** – This Action, including all individual claims and Settlement Class claims resolved by it, is hereby dismissed with prejudice as to the Zurich Defendants against Plaintiffs and all other Settlement Class Members, without fees or costs to any Settling Party except as otherwise provided in this Order and the accompanying Judgment.

22. **Entry of Judgment** – Because it is in the best interests of the Settlement Class Members that the settlement proceeds be disbursed as soon as possible and because the Settlement Agreement resolves all claims as to the Zurich Defendants, the Court finds that there is no just reason to delay the Judgment regarding the Settlement Agreement. Accordingly, the Court expressly directs that the Judgment regarding the Settlement Agreement be entered as to less than all parties and all claims in the Action pursuant to Federal Rule of Civil Procedure 54(b).

SO ORDERED this _____ day of 2006.

HONORABLE FAITH S. HOCHBERG
UNITED STATES DISTRICT COURT JUDGE