

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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

FINDINGS AND ORDER
PRELIMINARILY CERTIFYING A CLASS
FOR SETTLEMENT PURPOSES AND
PRELIMINARILY APPROVING PROPOSED SETTLEMENT

Beginning in August 2004, numerous putative class actions were filed against various insurance brokers and insurers. In _____, 2005, Zurich Financial Services Group, Zurich American Insurance Company, Steadfast Insurance Company, Fidelity and Deposit Company of Maryland, Empire Fire and Marine Insurance Company, American Guarantee and Liability Insurance Company, Empire Indemnity Insurance Company, and Assurance Company of America (collectively, the "Zurich Defendants") were added to the class actions as defendants. The class actions allege that the brokers and insurers engaged in conduct that, among other things, violated federal and state statutes and common law. These putative class actions have been consolidated into this Action.¹

In a May 25, 2005 Order, this Court appointed the law firms of Milberg Weiss Bershad & Schulman LLP and Miller Faucher and Cafferty LLP as Co-Lead Counsel for Plaintiffs. In a July 17, 2006 Order, the Court substituted the law firm of Whatley, Drake & Kallas, LLC for the law firm of Milberg Weiss Bershad & Schulman LLP as Co-Lead Counsel. The May 25 Order

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

provides that Co-Lead Counsel shall, among other things, conduct settlement negotiations on behalf of Plaintiffs in this Action and enter into binding agreements with respect to settlement.

Plaintiffs filed an amended complaint on or about August 1, 2005 and a corrected amended complaint on or about August 15, 2005. Plaintiffs make claims on behalf of a proposed class of insureds who purchased or renewed insurance policies with the defendant insurers (including the Zurich Insurers) through the defendant brokers. Plaintiffs allege (§ 1) that the defendants “engaged in a combination and conspiracy to suppress and eliminate competition in the sale of insurance by coordinating and rigging bids for insurance policies, allocating insurance markets and customers and raising, or maintaining or stabilizing premium prices above competitive levels.”

On October 14, 2005, the Zurich Defendants and Plaintiffs entered into a Memorandum of Understanding (the “MOU”) setting forth the principal terms of a settlement of the Action. Prior to entering into the MOU, Plaintiffs had obtained in excess of 12 million pages of documents from various defendants in the Action and in the related EB Action.

The MOU provided that Plaintiffs had discretion to terminate the MOU if, upon completion of confirmatory discovery, they and Co-Lead Counsel reasonably and in good faith believed that the terms of settlement set out in the MOU were not fair, reasonable and adequate. Since entering into the MOU, Co-Lead Counsel and Class Counsel have continued to pursue discovery from both the Zurich Defendants and the other defendants in the Action and in the EB Action, including collecting additional documents, and deposing or interviewing numerous individuals, including individuals currently or formerly associated with the Zurich Defendants. As of the Execution Date, Plaintiffs had obtained in excess of 17.2 million pages of documents relevant to the claims made in this Action.

The MOU provided that the Zurich Defendants had the right to terminate the MOU if they were unable to resolve successfully certain Governmental Investigations that had been, or were threatened to be, initiated by state attorneys general and state departments of insurance. In March 2006, certain of the Zurich Defendants entered into settlements that resolved the majority of the pending Governmental Investigations that had been initiated by state attorneys general. Pursuant to one such agreement – the Multi-State Settlement Agreement – certain of the Zurich Defendants agreed to pay or cause to be paid \$51,700,000 (in conjunction with the settlement relief that will be provided pursuant to the Settlement Agreement), which amount shall, if the Court approves the Settlement Agreement, be distributed to Settlement Class Members pursuant to the Plan of Allocation that will be adopted in connection with the Court’s approval of the Settlement Agreement. Certain of the Zurich Defendants have also reached settlements with certain state departments of insurance, certain of which settlements contain parallel provisions to those contained in the Multi-State Settlement Agreement.

With the Court’s approval, Plaintiffs and the Zurich Defendants extended the deadline by which the MOU required the Settling Parties to negotiate a settlement agreement. Following months of arm’s-length and protracted negotiation, Plaintiffs and the Zurich Defendants entered into a Stipulation of Settlement on July 26, 2006, the terms of which will fully settle all claims that have been asserted or that could be asserted in this Action as to the Zurich Defendants. Attached to the Stipulation of Settlement as exhibits are the documents necessary to implement the settlement. The Stipulation of Settlement and its exhibits are collectively referred to in this Order as the “Settlement Agreement.” If approved, the Settlement Agreement would result in dismissal of this Action with prejudice as to the Zurich Defendants.

On _____, 2006, the Court held a Preliminary Approval Hearing to determine whether, among other things, to certify a class preliminarily for settlement purposes and to authorize the issuance of notice to members of the settlement class.

Upon reviewing the Settlement Agreement and the application of Plaintiffs and the Zurich Defendants, and the matter having come before the Court for the Preliminary Approval Hearing, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Class Findings** – For purposes of the settlement of the claims against the Zurich Defendants in the Action (and only for such purposes, and without an adjudication of the merits), the Court preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met in that:

a. Certain of the members of the Settlement Class, as defined in paragraph 2 below, are ascertainable from records kept by the Zurich Defendants (or their affiliates or subsidiaries) and/or their agents, and from other objective criteria, and the Settlement Class Members are so numerous that their joinder before the Court would be impracticable.

b. The commonality requirement of Fed. R. Civ. P. 23(a) is satisfied insofar as Plaintiffs have alleged one or more questions of fact and law common to the Settlement Class, including whether the Zurich Defendants violated federal and state statutes and common law by allegedly engaging in efforts to allocate insurance markets and customers, and allegedly raising, maintaining or stabilizing prices above competitive levels with respect to commercial insurance policies, and by allegedly engaging in related bid-rigging activities.

c. Based on Plaintiffs' allegations that the Zurich Defendants engaged in uniform misconduct affecting members of the Settlement Class, the Court preliminarily finds

that the claims of Plaintiffs are typical of the claims of the Settlement Class, and that Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Settlement Class, in that (i) the interests of Plaintiffs and the nature of their alleged claims are consistent with those of members of the Settlement Class, (ii) there appear to be no conflicts between or among Plaintiffs and other Settlement Class Members, (iii) Plaintiffs have been and appear to be capable of continuing to be active participants in both the prosecution and the settlement of this Action, and (iv) Plaintiffs and Settlement Class Members are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated class actions, including class actions based upon violations of antitrust and insurance law.

d. The Court preliminarily finds that, for settlement purposes, questions of law or fact common to members of the Settlement Class predominate over questions affecting only individual members of the Settlement Class and that a class-action resolution in the manner proposed in the Settlement Agreement would be superior to other available methods for a fair and efficient adjudication of the Action. In making these preliminary findings, the Court has considered, among other factors, (i) the interest of members of the Settlement Class in individually controlling the prosecution or defense of separate actions, (ii) the impracticability or inefficiency of prosecuting or defending separate actions, (iii) the extent and nature of any litigation concerning these claims already commenced, and (iv) the desirability of concentrating the litigation of the claims in a particular forum.

2. **Preliminary Class Certification for Settlement Purposes** – Based on the findings set forth in paragraph 1 above, the Court preliminarily certifies the Class 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, any Insurer Defendant or any insurance company that is not an affiliate or subsidiary of a Zurich Insurer, 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 submit valid and timely requests for exclusion from the Settlement Class in accordance with the procedures set out in paragraph 10 below;
- 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.

The Court finds that, for the sole purpose of settlement, and without an adjudication of the merits, the Settlement Class is sufficiently well-defined and cohesive. 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 this Action prior to the time that Notice is mailed to the Settlement Class.

3. **Issue for Certification** – The issue that will be subject to class-wide treatment is whether the terms of the proposed settlement are fair, reasonable and adequate pursuant to Federal Rule of Civil Procedure 23(e)(1)(C) and governing law construing that Rule. In making that determination, the Court also has considered (and will consider in an Order to be issued after

the Fairness Hearing) whether proper notice of the proposed settlement is being given under Fed. R. Civ. P. 23(c)(2)(B) and 23(e)(1)(B) to the potential Settlement Class and any other relevant person so that the proposed settlement's terms can be binding if the Court ultimately approves the proposed settlement.

4. **Findings Regarding Proposed Settlement** – The Court finds that *(i)* the Settlement Agreement resulted from extensive arm's-length negotiations and was concluded only after Class Counsel had conducted broad discovery and the parties had consulted independent experts about the issues raised by the Consolidated Commercial Complaint, and *(ii)* the Settlement Agreement is sufficiently fair, reasonable and adequate to warrant sending notice of the Action and Settlement Agreement to Settlement Class Members and holding a full hearing on the proposed settlement.

5. **Fairness Hearing** – The Court hereby schedules a hearing (the “Fairness Hearing”) for _____, 2006 at _____ a.m. E_T to consider, among other things:

- a. whether the Settlement Class should be finally certified as a class for settlement purposes;
- b. whether the proposed settlement should be approved as fair, reasonable and adequate and the Action dismissed with prejudice as to the Zurich Defendants pursuant to the terms of the Settlement Agreement;
- c. whether the Notice, Summary Notice, Claim Form and notice methodology implemented pursuant to the Settlement Agreement *(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, of the effect of the

Settlement Agreement (including the Release) of their rights to object to the proposed settlement and to appear at the Fairness Hearing and of 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;

- d. whether Plaintiffs and Class Counsel have adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;
- e. whether Settlement Class Members (including Settlement Class Members who are parties to any other litigation, arbitrations or other proceedings pending on the Final Settlement Date, to the extent such litigation, arbitration or other proceeding is based upon a Released Claim and is brought against any or all of the Releasees), on behalf of themselves, their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), assigns, any person or entity claiming by or through any of the Settlement Class Members and any person or entity representing any or all Settlement Class Members, should be bound by the Release set forth in the Settlement Agreement;
- f. whether Settlement Class Members (including Settlement Class Members who are parties to any other litigation, arbitrations or other proceedings

pending on the Final Settlement Date, to the extent such litigation, arbitration or other proceeding is based upon a Released Claim and is brought against any or all of the Releasees), on behalf of themselves, their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), assigns, any person or entity claiming by or through any of the Settlement Class Members and any person or entity representing any or all Settlement Class Members, should be permanently barred, enjoined and restrained 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 brought against any or all of the Releasees or order in any jurisdiction entered against any or all of the Releasees that is based upon, arises out of or relates to any Released Claim;

- g. whether any and all persons and entities should be permanently barred and enjoined from organizing any Settlement Class Members for the purposes of pursuing as a purported class action (including seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit against any or all of the Releasees that is based upon, arises out of or relates to any Released Claim;
- h. whether a complete bar (the "Bar Order") should be entered that, among other things, (i) permanently bars, enjoins and restrains any and all

persons or entities from commencing, prosecuting or asserting any claim (including any claim for indemnification, contribution or attorneys' fees) against any Releasee where the alleged injury to the barred person or entity is based upon that person's or entity's alleged liability to the Settlement Class or a Settlement Class Member, (ii) permanently bars, enjoins and restrains any and all Releasees from commencing, prosecuting or asserting any claim (including any claim for indemnification or contribution) against any other person or entity where the Releasee's alleged injury is based upon the Releasee's alleged liability to the Settlement Class or a Settlement Class Member and (iii) provides for a judgment-reduction credit reducing any judgment that the Settlement Class or a Settlement Class Member might obtain against any barred person or entity in connection with a Released Claim by the greater of (x) the settlement amount paid by the Zurich Defendants or (y) an amount that corresponds to the Zurich Defendants' percentage of responsibility for the loss to the Settlement Class or Settlement Class Member;

- i. whether the application for attorneys' fees and expenses that will be filed by Class Counsel should be approved and whether Class Counsel's request to make a payment to each class representative from any amount of attorneys' fees and expenses that may be awarded by the Court based upon the effort that each class representative Plaintiff has devoted to this litigation should be approved.

6. **Notice to Class Members** – Notice of the settlement of this Action shall be provided to Settlement Class Members as follows:

- a. No later than _____, 2006, the Settling Parties shall cause the Notice, in a form substantially as set out in Exhibit G to the Settlement Agreement and approved by the Court, to be mailed, by first-class mail, postage prepaid, (i) to each person or entity in the Settlement Class who made a Settlement Class Policy Purchase and can be identified by reasonable effort and (ii) in cases of pending litigation, arbitration or mediation against the Zurich Insurers, or any of them, involving any Released Claims, to all legal counsel known by the Zurich Insurers to represent the Settlement Class Member in such litigation, arbitration or mediation.
- b. If the mailings described in the preceding paragraph results in any Notice being returned to the Administrator with an updated address, the Notice shall be re-mailed to the addressee within two (2) business days of receipt of the updated address; *provided however*, that if such updated address is received by the Administrator less than five (5) business days prior to (or after) the date of the Fairness Hearing, no re-mailing shall be required.
- c. No later than _____, (i) the Settling Parties shall cause the Administrator to publish the Notice, Summary Notice and Claim Form on its website, (ii) Co-Lead Counsel shall cause the Notice to be published on the websites of Co-Lead Counsel and of Lerach Coughlin Stoia Geller Rudman & Robbins, LLP, Zwerling, Schachter & Zwerling, LLP, Foote

Meyers, Mielke & Flowers, Levin, Fishbein, Sedran & Berman, Lite DePalma Greenberg & Rivas, LLC and The Furth Firm LLP, and (iii) the Zurich Defendants shall cause the Notice to be published on the website found at *www.zurichna.com*.

- d. No later than _____, the Settling Parties shall cause the Summary Notice, in a form substantially as set out in Exhibit M to the Settlement Agreement and approved by the Court, to be published two times in all editions of *The New York Times*, *The Wall Street Journal* and *USA Today*, and one time in the newspaper with the highest circulation in each of the 50 states and in the District of Columbia (as identified by the Administrator, subject to the approval of Co-Lead Counsel, the State Liaison Counsel and the Zurich Defendants, which approval shall not be unreasonably withheld), and in *Business Insurance* and *RM Magazine*.

At or before the Fairness Hearing, the Settling Parties and/or the Administrator shall file with the Court proof of (i) mailing of the Notice pursuant to paragraph 6.a above, (ii) publication of the Notice on the websites identified in paragraph 6.c above, and (iii) publication of the Summary Notice pursuant to paragraph 6.d above.

7. **Findings Concerning Notice** – Having considered the forms and methods of providing notice to Settlement Class Members, the Court finds that notice given in the form and manner provided in paragraph 6 above (i) is the best practicable notice and (ii) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of this Action, the claims alleged in the Class Action, the effect of the Settlement Agreement (including the Release), their right to object to the proposed settlement and their right exclude

themselves from the Settlement Class. The Court further finds that the Notice, Summary Notice and Claim Form provided in the Settlement Agreement are simply written and will be readily understandable by Settlement Class Members and that the Notice, Summary Notice, Claim Form and notice methodology are reasonable, constitute due, adequate and sufficient notice to all persons entitled to be provided with notice, and meet the requirements of the Federal Rules of Civil Procedure (including Fed. R. Civ. P. 23(c)(2) and (e)), the United States Constitution (including the Due Process Clause), the Rules of the Court and any other applicable law.

8. **Retention of Administrator** – The Court authorizes the Settling Parties to retain an Administrator who will act on behalf of the Court pursuant to Rule 53(c) of the Federal Rules of Civil Procedure. The Administrator will assist the Settling Parties in, among other things, (i) mailing or arranging for the mailing (and re-mailing, if required) of the Notice; (ii) arranging for publication of the Summary Notice; (iii) publishing the Notice, Summary Notice and Claim Form on the Administrator’s website; (iv) providing Claim Forms to those Settlement Class Members who are required to submit such forms in order to receive settlement relief; (v) answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Co-Lead Counsel or its designee(s); (vi) receiving and maintaining on behalf of the Court any requests for exclusion received from potential Settlement Class Members and receiving and maintaining on behalf of Class Counsel all Claim Forms submitted by Settlement Class Members; (vii) establishing a call center with a toll-free number and e-mail address to answer inquiries from Settlement Class Members, including a system for e-mail inquiries and replies; (viii) providing additional copies of the Notice, upon request, to Settlement Class Members; (ix) calculating and arranging for allocation of the Net Cash Settlement Amount to Settlement Class Members consistent with the Plan of Allocation; and (x) otherwise assisting Co-Lead

Counsel or their designees and the Zurich Defendants' Counsel or their designees with administration and implementation of this Settlement Agreement.

9. **Communications with Class Members** – The Zurich Insurers maintain the right to communicate orally and in writing with, and to respond to inquiries from, Settlement Class Members, including, without limitation: (i) communications between Settlement Class Members and representatives of the Zurich Insurers whose responsibilities include client relations, to the extent such communications are initiated by Settlement Class Members; (ii) communications between Settlement Class Members who are ongoing clients of any of the Zurich Insurers, or who seek to become clients of any of the Zurich Insurers, regarding the insurance products they have purchased or might purchase from the Zurich Insurers; *provided* that if any such client has questions about the terms of this Settlement Agreement, the Zurich Insurers shall refer such client to the toll-free number or e-mail address for the Administrator; and (iii) communications that might be necessary to conduct the Zurich Insurers' normal business.

10. **Exclusions** – Any potential Settlement Class Member who wishes to be excluded from the Settlement Class must mail by first-class mail or otherwise deliver a written request to the Clerk of the Court, care of the address provided in the Notice postmarked or delivered no later than _____. A request for exclusion shall include the following information: (i) the potential Settlement Class Member's name, (ii) his, her or its address, (iii) his, her or its telephone number, and (iv) information respecting each Settlement Class Policy Purchase, including the following: (a) the insurer that issued each policy, (b) the policy number, (c) the broker used, (d) the face amount of each policy, (e) the annual premium associated with each policy, and (f) the effective date and expiration date for each policy. A list of the persons and entities who have requested exclusion shall be provided to the Court by the

Settling Parties at or before the Fairness Hearing. A potential Settlement Class Member who wishes to be excluded from the Settlement Class must comply with the procedures in this paragraph even if he, she or it has pending, or later initiates, any other litigation, arbitration or proceeding based on or involving Released Claims.

11. **Objections** – Any Settlement Class Member who wishes to object to the fairness, reasonableness or adequacy of this Settlement Agreement, to the Plan of Allocation, to any term(s) of the Settlement Agreement or to the proposed Attorneys’ Fees and Expenses Award must both file with the Court and serve on Class Counsel, the Zurich Defendants’ Counsel and the State Liaison Counsel (as identified in the Notice) a statement of his, her or its objection(s). The Settlement Class Member’s statement of objection shall provide evidence of the objector’s membership in the Settlement Class and shall state the specific reason(s), if any, for each such objection, including any legal support the Settlement Class Member wishes to bring to the Court’s attention and any evidence the Settlement Class Member wishes to introduce in support of such objection. Such statement of objection must be received by the Court and counsel identified in the Notice by no later than _____. If a Settlement Class Member hires an attorney to represent him, her or it in connection with filing an objection, the attorney must both file with the Court and serve on Class Counsel, the Zurich Defendants’ Counsel and the State Liaison Counsel (as identified in the Notice) a notice of appearance. Such notice of appearance must be received by the Court and the counsel identified in the Notice by no later than _____.

12. **Appearance at Fairness Hearing** – Any Settlement Class Member who files and serves a written objection in accordance with paragraph 11 above – and only such Settlement Class Members – may appear at the Fairness Hearing, either in person or through counsel hired

at the Settlement Class Member's expense, to object to (i) the fairness, reasonableness or adequacy of this Settlement Agreement, (ii) the Plan of Allocation, or (iii) any term(s) of the Settlement Agreement (including, without limitation, the proposed Attorneys' Fees and Expenses Award). Settlement Class Members or their attorneys intending to make an appearance at the Fairness Hearing must both file with the Court and serve on Class Counsel, the Zurich Defendants' Counsel and the State Liaison Counsel (as identified in the Notice) a notice of intention to appear. Such notice of intention to appear must be received by the Court and the counsel identified in the Notice by no later than _____.

13. **Post-Office Box(es)** – The Settling Parties or their designated agents are directed to establish a post-office box or boxes to be used for receiving any communications regarding the Settlement Agreement. No one other than the Court, the Clerk of the Court, Co-Lead Counsel and the Zurich Defendants' Counsel (or their designated agents) shall have access to the post-office box or boxes.

14. **Access to Discovery Materials** – Any Settlement Class Member who wishes to review the discovery materials produced by the Zurich Defendants in the Action to assess the Settlement Agreement (and for that purpose only) may do so under the terms of the Settlement Agreement and upon execution of the Stipulation of Confidentiality in substantially the form attached as Exhibit L to the Settlement Agreement. The terms of the Stipulation of Confidentiality are hereby incorporated into this Preliminary Approval Order, and any breach of the Stipulation of Confidentiality shall constitute a violation of this Preliminary Approval Order and may, upon application to this Court by any aggrieved party, result in an order of contempt of Court and/or other sanctions.

15. **Preliminary 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 preliminarily 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 administrative, regulatory 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 preliminarily enjoined from filing, commencing or prosecuting any other lawsuit against any or all Releasees as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of any Settlement Class Member(s) if such other lawsuit is based on, arises out of or relates to the Released Claims. The Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's jurisdiction over this Action.

16. **Binding Effect** – All Settlement Class Members and their heirs, executors and administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns will be bound by all proceedings, orders and judgments relating to the Settlement Agreement, even if such Settlement Class Members have previously initiated or subsequently initiate litigation, arbitration or other proceedings, or have any other claim against any or all of the Releasees relating to any of the Released Claims.

17. **Service of Papers** – Class Counsel and the Zurich Defendants' Counsel shall serve on each other, on the State Liaison Counsel and on all other parties who have filed notices

of appearance, at or before the Fairness Hearing, any further documents in support of the Settlement Agreement, including responses to any papers filed by Settlement Class Members and/or Settlement Class Members' counsel. Class Counsel and the Zurich Defendants' Counsel shall promptly furnish to each other and to the State Liaison Counsel any and all objections, notices of appearance and notices of intention to appear that may come into their possession, and if those papers are not on file with the Court, shall file them with the Court on or before the date of the Fairness Hearing.

18. **Termination of Settlement** – This Order shall become null and void, and shall be without prejudice to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (i) the proposed settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Agreement, or (ii) the Settlement Agreement is terminated or does not become effective in accordance with the terms of the Settlement Agreement for any other reason. In such event, the Settlement Agreement shall become null and void and be of no further force or effect, and neither the Settlement Agreement nor any Court order regarding the Settlement Agreement, including this Order, shall be used or referred to for any purpose whatsoever.

19. **Use of Order** – This Order shall be of no force or effect if the Settlement Agreement does not become final and shall not be construed or used as an admission, concession or declaration by or against the Zurich Insurers or Releasees, or any of them individually, of any fault, wrongdoing, breach or liability. Nor shall the Order be construed or used as an admission, concession or declaration by or against Plaintiffs or any Settlement Class Member that their claims lack merit or that the relief requested in the Consolidated Commercial Complaint is

inappropriate, improper or unavailable, or as a waiver by any Settling Party of any defenses or claims he, she or it may have.

20. **Continuance of Hearing** – The Court reserves the right to continue the Fairness Hearing without further written notice.

SO ORDERED this ____ day of _____, 2006.

HONORABLE FAITH S. HOCHBERG
UNITED STATES DISTRICT COURT JUDGE