

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MARIETTA ANGEL,
on behalf of herself and a class of
others similarly situated;

Plaintiffs,

v.

Civil Action No. 06-C-855

U.S. TIRE RECOVERY, LLC; a
South Carolina LLC; THE
PARTNERSHIP DBA U.S. TIRE, an
unregistered West Virginia
partnership; BRIAN HOLDREN;
RICKY HANDLEY; DENNIS
HENDERSON; CHEMVALLEY
PROPERTIES, INC., a West Virginia
corporation; ANGUS M. PEYTON;
and LISA PEYTON MORIN;

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of 3rd day of September, 2008 (the “Settlement Agreement”), is made and entered into by and among the following Settling Parties (as defined below) to the above-captioned civil action: (i) Marietta Angel (the “Representative Plaintiff”), individually and on behalf of the Class, as defined in the Court’s August 30, 2007 Order Granting Plaintiffs’ Motion for Class Certification and as more fully and completely defined and described below, by and through Stuart Calwell and Alex McLaughlin of The Calwell Practice PLLC (“Class Counsel”); (ii) U.S. Tire Recovery, LLC, the partnership dba U.S. Tire, and Brian Holdren (collectively, the “U.S. Tire Defendants”), by and through their counsel of record, Benjamin Bryant of Carey, Scott & Douglas, PLLC; and (iii) ChemValley Properties, Inc., and Angus M. Peyton (collectively the “ChemValley Defendants”), by and through their counsel of record, William Slicer of

Shuman, McCuskey & Slicer, PLLC. This Settlement Agreement is intended by the Settling Parties fully and finally to resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

I. THE LITIGATION

On the morning of May 4, 2006, a fire started at a warehouse located on 19th Street, adjacent to the City of Nitro, West Virginia (the “May 4, 2006 fire”). The warehouse was owned and operated by the Defendant ChemValley Properties, Inc. (“ChemValley”). The precise origin of the fire remains unknown to this day. The fire quickly became uncontrollable, and shortly thereafter engulfed used rubber tires that were stored in the portion of the warehouse leased to the U.S. Tire Defendants. This fire resulted in a plume of smoke and particulate matter. On the afternoon of May 4, 2006, changes in weather patterns caused this smoke and particulate matter to move and settle over areas around Nitro and St. Albans, West Virginia. In response to this situation, beginning at approximately 3:30 p.m. Eastern Daylight Time, and continuing until the following morning, the morning of May 5, 2006, local and county authorities on the scene issued a series of “shelter-in-place” advisories for parts of the Nitro and St. Albans areas. The shelter-in-place advisories were issued through the local emergency media communications outlet, Metro Emergency Operations Center of Kanawha County (“Metro 911”).

On May 5, 2006, Plaintiff Stephen D. Gilliam, by and through his counsel, The Calwell Practice PLLC, filed a Complaint (the “*Gilliam Complaint*”), on behalf of himself and a class of similarly situated residents of Nitro and St. Albans, against ChemValley Properties, Inc. and U.S. Tire Recovery, alleging that he and the other putative class members suffered a nuisance and other cognizable damages, including loss of use and

enjoyment of property, annoyance, inconvenience, and emotional distress as a result of the fire and the defendants' alleged wrongdoing. The *Gilliam* Complaint was filed in the Circuit Court of Kanawha County as *Gilliam v. US Tire Recovery, et al.*, and assigned Civil Action Number 06-C-855. Plaintiff and current class representative Marietta Angel was substituted for Mr. Gilliam as the Plaintiff and putative class representative in Civil Action Number 06-C-855 by Order of the Court on April 3, 2007. Mr. Gilliam, although still a member of the class, was not named as a Plaintiff in the Amended Complaint filed by Order of the Court dated April 3, 2007.

This Class was certified by Order dated August 30, 2007 ("Class Certification Order"). The Class Certification Order provided that the Class was conditionally certified, and the Class as described in the Order may be altered, expanded, sub-divided, modified, or vacated before a decision on the merits. The Class Certification Order provided that the Class consists of "homeowners and leaseholders of residences located within the geographical boundaries of the shelter-in-place advisories on May 4, 2006." The Class Certification Order designated Marietta Angel as the Representative Plaintiff and the Calwell Practice as Class Counsel.

On April 11, 2008, Representative Plaintiff Marietta Angel, by and through Class Counsel, filed her Second Amended Complaint in Civil Action No. 06-C-855. The Second Amended Complaint also alleged that the Class Members suffered a nuisance and other cognizable damages, including loss of use and enjoyment of property, annoyance, inconvenience, and emotional distress as a result of the fire and ChemValley's and U.S. Tire Recovery's alleged wrongdoing. The Second Amended Complaint also included allegations and claims for nuisance and other cognizable damages against the following additional

parties and named them as defendants: the partnership dba U.S. Tire, and its individual partners, Brian Holdren, Ricky Handley, and Dennis Henderson; Angus M. Peyton, the manager of the warehouse and an employee, officer, director, and shareholder of ChemValley Properties, Inc.; and Lisa Peyton Morin, a shareholder and director of ChemValley Properties, Inc. As of the date of this Settlement Agreement, neither Ricky Handley nor Dennis Henderson has been personally served with the summons or the Second Amended Complaint. Lisa Peyton Morin, who was named only in a derivative capacity (as successor-in-interest and/or alter-ego to ChemValley Properties, Inc.), was properly served, but she was dismissed prior to answering by Notice of Rule 41 Voluntary Dismissal of Lisa Peyton Morin signed by all parties on July 21, 2008.

Pursuant to the terms set out below, this Settlement Agreement resolves all actions and proceedings asserted or that could be asserted by or on behalf of the Representative Plaintiff and the Class against all defendants named in the Second Amended Complaint (including those defendants who were never served and those who have been voluntarily dismissed prior to this Settlement Agreement) for property damages, nuisance, inconvenience, emotional distress, or related theories of damages arising from the May 4, 2006 fire, but specifically does not resolve any personal injury claims that any Class Member may have relating to the May 4, 2006 fire. Specifically, pursuant to the terms set out below, this Settlement Agreement resolves all actions and proceedings arising from the May 4, 2006 fire and relating to property damages or nuisance, asserted or that could be asserted, by or on behalf of the Representative Plaintiff and the Class against the following individuals and entities: U.S. Tire Recovery, LLC; the partnership dba U.S. Tire; Brian

Holdren; Ricky Handley; Dennis Henderson; ChemValley Properties, Inc.; Angus M. Peyton; and Lisa Peyton Morin.

II. CLAIMS OF THE REPRESENTATIVE PLAINTIFF, THE CLASS, AND BENEFITS OF SETTLEMENT

The Representative Plaintiff and Class Counsel believe that the claims asserted in this Litigation as set forth in the Second Amended Complaint have merit. The Representative Plaintiff and Class Counsel believe that the settlement provided for in this Settlement Agreement confers substantial benefits on the Class. The Representative Plaintiff and Class Counsel also recognize the expense and length of continued proceedings necessary to prosecute the Litigation through motion practice, trial, and potential appeals. Class Counsel has also taken into account the risks and uncertain outcome of continued litigation, as well as the delays inherent in such litigation. Class Counsel has determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class.

III. DENIAL OF WRONGDOING AND LIABILITY

ChemValley Properties, Inc. denies the claims against it relating to the May 4, 2006 fire, including those asserted in the Second Amended Complaint, and believes that these claims are totally without merit. However, ChemValley Properties, Inc.'s insurer recognizes that further litigation would be protracted and expensive, and also recognizes that there are certain risks inherent in any litigation, particularly in class action litigation such as this. ChemValley Properties, Inc.'s insurer has therefore determined that it is desirable and beneficial to settle the claims against ChemValley Properties, Inc. and to include within the settlement the claims against its manager, Angus M. Peyton. Angus M. Peyton denies the

claims against him relating to the May 4, 2006 fire, including those asserted in the Second Amended Complaint, and believes that these claims are totally without merit.

The U.S. Tire Defendants deny the claims against them relating to the May 4, 2006 fire, including those asserted in the Second Amended Complaint, and believe that these claims are totally without merit. However, the U.S. Tire Defendants recognize that further litigation would be protracted and expensive, and also recognize that there are certain risks inherent in any litigation, particularly in class action litigation such as this. The U.S. Tire Defendants have therefore determined that it is desirable and beneficial to settle the claims against them and to include within the settlement the claims against the related named-but-not-served individuals, Ricky Handley and Dennis Henderson.

IV. TERMS OF SETTLEMENT

1. Definitions

1.1 “Available information and data regarding the shelter-in-place boundaries” refers to documents, which were produced by Metro 911 in response to a subpoena served on Metro 911 during the active phase of this lawsuit, that describe the shelter-in-place advisories issued on May 4 and May 5, 2006, and face-to-face communications between the Engineering and Geographic Information Systems Specialist, and the authorities from Kanawha County responsible for issuing the shelter-in-place advisories.

1.2 “Claims” means known claims and Unknown Claims, actions, allegations, demands, rights, liabilities, and causes of action of every nature and description whatsoever, whether contingent or non-contingent, and whether at law or equity.

1.3 “Claims Administration” means the processing of claims received from Class Members by the Claims Administrator, and “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration.

1.4 “Claims Administrator” means Epiq Systems Class Action and Claims Solutions (“Epiq Systems”).

1.5 “Class Area” means the area included within the geographical boundaries of the shelter-in-place advisories on May 4 and May 5, 2006, as determined by the Engineering and Geographical Information Systems Specialist based on the available information and data regarding the shelter-in-place advisories.

1.6 “Class Claimant” means a Class Member who is the head of his or her household and, within 90 days from the date of the Claims Administrator’s first mailing of the Settlement Notices, *see Exhibit A, Affidavit of Shannon R. Wheatman, Ph.D., of Hilsoft Notifications on Settlement Notice Plan and Notices*, does one of the following:

(a) Submits a valid Claim Form—the Claim Form is attached to Exhibit A, *Affidavit of Shannon R. Wheatman, Ph.D., of Hilsoft Notifications on Settlement Notice Plan and Notices*—to the Claims Administrator indicating that the putative Claimant is a Class Member, and (i) submits valid supporting documentation showing proof of residence on or around May 4, 2006 at an address located within the geographical boundaries of the Class Area, and (ii) signs the affirmation, under penalty of perjury, that the information contained on the Claim Form is true and accurate; or

(b) Submits a valid Pre-populated Claim Form—an example of the Pre-populated Claim Form is attached to Exhibit A, *Affidavit of Shannon R. Wheatman, Ph.D., of Hilsoft Notifications on Settlement Notice Plan and Notices*—to the Claims Administrator

indicating that the putative Claimant is a Class Member, and (i) the information provided by the putative Claimant matches the pre-populated information on the Pre-populated Claim Form submitted to the Claims Administrator, and (ii) the putative Claimant signed the affirmation, under penalty of perjury, that the information contained on the Claim Form is true and accurate.

1.7 “Class Member” means a homeowner or a leaseholder of a residence located within the geographical boundaries of the shelter-in-place advisories on May 4, 2006.

1.8 “Defect letter” is a letter advising a putative Class Member and Class Claimant of a technical defect with his or her Claim Form and/or submission and providing the putative Claimant with a fixed period of time, generally 15 days, in which to correct the defect. Examples of defects for which a defect letter would be sent include missing signatures and failure to provide required documentation.

1.9 “Effective Date” means the first date by which all of the events and conditions specified in paragraph 10.1 hereof have occurred and have been met.

1.10 “Engineering and Geographic Information Systems Specialist” means Engineering Perfection, PLLC.

1.11 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as that term is defined herein); (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affordance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any

fee award made in this case shall not affect whether the Judgment is “Final” as defined in the preceding sentence, or any other aspect of the Judgment.

1.12 “Head of household” means a married or unmarried person who supports and maintains, in one household, one or more persons who are closely related by blood, marriage, or adoption. A single person supporting only him- or herself may qualify as a head of household. Where two or more persons jointly contribute to the support and maintenance of a household, for purposes of this Settlement Agreement the “head of household” shall refer to the member of the household who is identified by the deed or lease as the owner or lessee of the property in which the household resides. Where two or more persons jointly contribute to the support and maintenance of a household and two or more of those contributing persons are also identified as owners or lessees of the property in which the household resides, any one of the contributing persons may qualify for purposes of this Settlement Agreement as the “head of household”; provided, however, that for purposes of this Settlement Agreement there may be only one “head of household” per household.

1.13 “Homeowner” means a person who is listed on the property deed as the owner of the property in which his or her household resides. For purposes of this definition, “property” refers to any property unit intended for human occupancy that has a separate unit postal address, and includes mobile homes intended for permanent residency.

1.14 “Judgment” means a judgment rendered by the Court, in the form attached hereto as Exhibit C, or a judgment substantially similar to such form in both terms and cost.

1.15 “Leaseholder” means a person who has, pursuant to a written lease agreement, the legal right to occupy the property in which his or her household resides for a fixed period of time. For purposes of this definition, “property” refers to any property unit intended for

human occupancy that has a separate unit postal address, and includes mobile homes intended for permanent residency.

1.16 “Named Plaintiff” means Marietta Angel.

1.17 “Notice Specialist” means Hilsoft Notifications, Souderton, Pennsylvania.

1.18 “Opt-Out Date” means the date by which members of the Settlement Class must mail their requests to be excluded from the Settlement Class in order for that request to be effective. The postmark date shall be the mailing date.

1.19 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representative, or assignees.

1.20 “Plaintiff’s Counsel” means Class Counsel.

1.21 “Related Parties” means an entity’s past or present directors, offices, employees, contractors, auditors, principals, partners, agents, attorneys, predecessors, successors, parents, subsidiaries, divisions and related or affiliated entities, and includes, without limitation, any Person related to such entity who is, was or could have been named as a defendant in the Litigation.

1.22 “Released Claims” shall collectively mean any and all Claims for property damages, loss of property value, nuisance, loss of the use and enjoyment of property, annoyance and inconvenience, injunctive relief, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, restitution, and any other form of relief that either has been asserted or could have been asserted by any Class Member against any

of the Released Persons based on, relating to, concerning or arising out of the allegations, facts, or circumstances alleged in the Litigation. “Released Claims” as used herein does not include any claims that Class Members may have for personal injuries related to or arising out of the May 4, 2006 fire, which claims were never included within or part of this Litigation or the class allegations in this Litigation.

1.23 “Released Persons” means the ChemValley Defendants, the U.S. Tire Defendants, and their respective Related Parties, included but not limited to Lisa Peyton Morin, Rick Handley, and Dennis Henderson.

1.24 “Settling Parties” means Marietta Angel (the “Representative Plaintiff”), individually and on behalf of the Class, as defined in the Court’s August 30, 2007 Order Granting Plaintiffs’ Motion for Class Certification and as more fully and completely defined and described below; U.S. Tire Recovery, LLC, the partnership dba U.S. Tire, and Brian Holdren (collectively, the “U.S. Tire Defendants”); and ChemValley Properties, Inc. and Angus M. Peyton (collectively the “ChemValley Defendants”).

1.25 “Shelter-in-place advisory” means a duly authorized public advisory, communicated through emergency media communications systems, that advises residents of a given geographical area to remain indoors, to close all windows and doors, and to turn off any circulating air systems such as heating and cooling systems.

1.26 “Unknown Claims” means any of the Released Claims that any Class Member, including the Representative Plaintiff, does not know or suspect to exist in his favor at the time of the release of the Released Persons which, if known by him or her, might have affected his or her settlement with and release of the Released Persons, or might have affected his or her decision not to object to and/or to participate in this settlement.

2. The Settlement

2.1 ChemValley Properties, Inc. and the U.S. Tire Defendants agree to contribute a combined total of \$1,175,000 (the “Settlement Funds”) to settle the claims in this class action, of which \$978,000 will be paid by or on behalf of ChemValley Properties, Inc. and \$197,000 will be paid by or on behalf of the U.S. Tire Defendants. It was agreed that the total sum of \$1,175,000 includes the following: payments to the Class Members; the Representative Plaintiff’s and Class Counsel’s attorneys fees, costs, and expenses; the costs of providing notice to Class Members of this Settlement Agreement and the fairness hearing, and of their rights relating to the Settlement Agreement; and the costs of claims administration and processing. The parties have agreed upon the following allocation and distribution of the Settlement Funds:

(a) \$700,000 will be set aside for distribution to Class Claimants (the “Class Trust”), as more fully described and set forth in paragraphs 2.2 through 2.11, below.

(b) Any unclaimed remainder after distribution of the Class Trust pursuant to the procedures described in paragraphs 2.2 through 2.11 (the “Unclaimed Remainder of the Class Trust”) will be donated to the Nitro Fire Department and the St. Albans Fire Department¹ in equal shares.

(c) \$475,000 will be set aside for Class Counsel’s documented costs and expenses; notice expenses, including the costs of providing notice to Class Members of this Settlement Agreement and their rights; administrative expenses, including the costs of claims

¹ The Parties agree that the intent and purpose of the donations is to enable the fire departments to purchase additional equipment or to replace existing equipment, at their discretion, not to cover ordinary operating expenses. The donations will be made in a manner to be determined by the Parties and approved by the Court that will best carry out that intent and purpose.

administration and processing; and Class Counsel's attorneys fees (the "Costs, Expenses, and Fees Trust"). The distribution of the Costs, Expenses, and Fees Trust is more fully described and set forth in paragraphs 7.1 through 7.6, below, but briefly, it can be divided into (i) costs and expenses that have already been incurred, (ii) estimated future costs and expenses, and (iii) Class Counsel's attorneys fees, as follows:

(i) Class Counsel incurred approximately \$47,506.93 in documented costs and expenses during the active phase of this Litigation, i.e., prior to reaching any type of agreement with regard to settlement.

(ii) Class Counsel has obtained written estimates from the following specialists for work relating to (A) the final determination and communication of the geographical boundaries of the Class Area and the times and affected areas of the individual shelter-in-place advisories, (B) the effective notification to Class Members of their rights and responsibilities in relation to this settlement, and (C) the fair and efficient administration and processing of Class Members' claims under the settlement:

(A) Class Counsel has retained Engineering Perfection, PLLC to perform services relating to its expertise in engineering and geographic information systems. Engineering Perfection, PLLC's principal, Seward G. Gilbert, served as an expert witness during the active phase of this Litigation and his report on the geographical boundaries of the shelter-in-place advisories supported the Representative Plaintiff's Motion for Class Certification. Engineering Perfection, PLLC's primary continuing responsibility is

the determination and effective communication of the precise geographical boundaries of shelter-in-place advisories on May 4 and May 5, 2006, and the times that the advisories were in effect for certain areas within the Class Area based on the available information and data regarding the shelter-in-place boundaries. Engineering Perfection, PLLC estimates that its work on these and related tasks will cost an additional \$3,400.

(B) Class Counsel has retained Hilsoft Notifications, the firm that performed the work on the original Notice Plan that was submitted pursuant to the Class Certification Order, to prepare the Settlement Notice Plan and the Settlement Notice forms and Claim Forms. Hilsoft Notifications estimates that its work on these tasks will cost an additional \$59,375.

(C) Class Counsel has retained Epiq Systems Class Action and Claims Solutions to serve as the Claims Administrator and to provide services with regard to mailing, claims administration, and claims processing. Epiq Systems estimates that its work as Claims Administrator will cost \$68,706.

(iii) The Settling Parties agree that Class Counsel's attorneys fees will be either

(A) the remainder of the Costs, Expenses, and Fees Trust after the payment of all documented costs and expenses, incurred or to be incurred, as outlined in this section 2.1(c), or

(B) twenty-five percent (25%) of the \$1,175,000 combined total Settlement Funds, whichever is determined to be lower, and will be determined after the final accounting of all documented costs and expenses, incurred or to be incurred, as outlined in this section 2.1(c) and more fully described in paragraphs 7.1 through 7.6, below.

(d) Any remainder of the Costs, Expenses, and Fees Trust, after the final accounting of all documented costs and expenses, incurred or to be incurred, as outlined in this subparagraph 2.1(c) and more fully described in paragraphs 7.1 through 7.6, below, and the payment of, and limitation on, Class Counsel's reasonable attorneys fees, as described in paragraph 2.1(c)(iii), will be donated to the Nitro Fire Department and the St. Albans Fire Department in equal shares.

2.2 The Settling Parties agree that the \$700,000 set aside for distribution to Class Claimants (the "Class Trust") will be distributed between and among the Class Claimants according to a time-weighted formula based on the number of hours, rounded to the nearest tenth of an hour, that individual Class Claimants' residences were under shelter-in-place advisory following the outbreak of the May 4, 2006 fire.

2.3 All Class Claimants will receive an equal distribution per hour that the Claimants' residences were under shelter-in-place advisory.²

² There may be a limited number of circumstances in which more than one homeowner or leaseholder, as defined in sections 1.13 and 1.15, above, resided in a single residential unit within the Class Area on May 4, 2006. The most likely example would be two unrelated roommates who both signed the lease agreement for a rental property. In this scenario, both roommates would qualify as "leaseholders" under the terms of this Settlement Agreement and both would therefore qualify as independent Class Members and potentially independent Class Claimants. In the event that both submitted valid Claim Forms for the same residential unit and both became Class Claimants, the Claim would be divided

2.4 Since Class Claimants who lived in different residential areas within the Class Area on May 4, 2006, were under shelter-in-place advisory for different periods and different lengths of time on and May 4 and May 5, 2006, the total payments to individual Class Claimants will vary, based on the formula described in sections 2.2 above.

2.5 The number of hours that individual Class Claimants' residences were under shelter-in-place advisory will be determined according to the following:

(a) Based on the available information and data regarding the shelter-in-place boundaries, the Engineering and Geographic Information Systems Specialist has determined that the geographical descriptors of the shelter-in-place advisories issued by authorities on May 4 and May 5, 2006 describe four overlapping geographical zones. *See Exhibit D, Affidavit of Seward G. Gilbert of Engineering Perfection, PLLC.*

(b) Based on the available information and data regarding the shelter-in-place boundaries, the Engineering and Geographic Information Systems Specialist has determined that the four overlapping geographical zones described in section 2.5(a) can be separated into four non-overlapping geographical zones. *See Exhibit D-1, Map Depicting the Four Non-Overlapping Geographical Zones Associated with the Shelter-in-Place Advisories.*

(c) Based on the available information and data regarding the shelter-in-place boundaries, the Engineering and Geographic Information Systems Specialist has determined the number of hours that Class Claimants' residences were under shelter-in-place advisory for each of the four non-overlapping geographical zones described. *See Exhibit D-2, Table Showing Times and Total Number of Hours Under Shelter-in-Place Advisory for Each of the Four Non-Overlapping Geographical Zones Depicted in Exhibit D-1.*

between the independent Class Claimants, similar to their interest in the property, and each would receive only a corresponding share of the per hour distribution.

(d) The appropriate geographical zone for each of the residences of the individual Class Claimants will be determined and assigned by matching the street address with the Map on Exhibit D-1 and other geographic information, and each individual Class Claimant will be assigned the number of hours under shelter-in-place advisory that corresponds to the number of hours under shelter-in-place advisory for the non-overlapping geographical zone in which the Claimant's residence is located, according to the Table on Exhibit D-2.

2.6 At a reasonable time after the claims period has ended, not less than seven (7) days after the deadline for submitting a Claim Form, the total number of hours that all Class Claimants were under shelter-in-place advisory will be determined by the Claims Administrator by summing the number of hours for each of the individual Class Claimants.

2.7 The Class Trust of \$700,000 will then be divided by the total number of hours as determined in section 2.6. The result will be the number of dollars per shelter-in-place hour available.

2.8 Reasonable estimates based on census data and other population data for the Nitro and St. Albans areas suggest that if all of the households that are eligible to submit a valid Claim Form do in fact submit a valid Claim Form—that is, if there is 100% participation by the Class Members' households—there will be approximately fourteen dollars (\$14) per shelter-in-place hour available.³

³ The data supporting this estimate, which is not presented in this Settlement Agreement, comes from multiple sources. The Engineering and Geographic Systems Specialist, Engineering Perfection, PLLC, acquired and utilized data from the U.S. Census Bureau. The Claims Administrator, Epiq Systems, has acquired relevant data from Maonics and MelissaData pursuant to the Settlement Notice Plan prepared by the Notification Specialist. See Exhibit A, *Affidavit of Shannon R. Wheatman, Ph.D., of Hilsoft Notifications on Settlement Notice Plan and Notices*, ¶ 19. Based on informal conversations by and between Class Counsel, Engineering Perfection, and representatives of Epiq Systems, it appears that the difference between estimates obtained from the two sources is less than 10%.

2.9 The “actual per hour payout”—i.e., the number of dollars actually paid to each Class Claimant per hour that the Claimant’s residence was under shelter-in-place advisory—will be determined as follows:

(a) If the number of dollars per shelter-in-place hour available, as derived in section 2.7, is fifteen (\$15) or fewer, then that number will be the actual per hour payout. In this event, there will be no Unclaimed Remainder of the Class Trust for donation as described in section 2.1(b), above.

(b) If the number of dollars per shelter-in-place hour available, as derived in section 2.7, is greater than fifteen (\$15), then the actual per hour payout will be capped at fifteen dollars (\$15) per shelter-in-place hour. In this event, there will be an Unclaimed Remainder of the Class Trust, which will be donated as described in section 2.1(b).

2.10 Reasonable estimates of total payments to Class Claimants based on the available information and data regarding the shelter-in-place advisories,⁴ when applied to (a) the estimate assuming 100% participation, as described in section 2.8, and (b) the cap, as described in section 2.9(b), above, are, respectively:

(a) If the actual per hour payout is \$14 per shelter-in-place hour:

(i) Class Claimants who resided in the St. Albans portion of the Class Area on May 4, 2006 will receive approximately \$68.60.

(ii) Class Claimants who resided in the Nitro portions of the Class Area on May 4, 2006 will receive anywhere from approximately \$214.20 to

Nonetheless, it is reasonable to expect that the population and household estimates, and therefore any estimates related to the number of dollars per shelter-in-place hour available assuming 100% participation, could be off by as much as 20% in either direction.

⁴ See Exhibit D-4, Table Showing Times and Total Number of Hours Under Shelter-in-Place Advisory for Each of the Four Non-Overlapping Geographical Zones Depicted in Exhibit D-3.

approximately \$271.60, depending on where the Claimant resided within the Nitro area.

(b) If the actual per hour payout is \$15 per shelter-in-place hour:

(i) Class Claimants who resided in the St. Albans portion of the Class Area on May 4, 2006 will receive approximately \$73.50.

(ii) Class Claimants who resided in the Nitro portions of the Class Area on May 4, 2006 will receive anywhere from approximately \$229.50 to approximately \$291.00, depending on where the Claimant resided within the Nitro area.

2.11 The Settling Parties agree that the method of determining the actual per hour payout described in section 2.9, above, and, in particular, the cap on the actual per hour payout described in section 2.9(b) is fair and in the best interests of the Class Members, including those Class Members who do not opt-out of the Class but whose households nonetheless do not submit a Claim Form (whether by conscious decision, oversight, neglect, or otherwise) and therefore do not actively participate in this settlement. The Settling Parties agree that \$15 per shelter-in-place hour and the estimated total payouts to Class Claimants based on a cap of \$15 per shelter-in-place hour, *see* section 2.10(b), above, is fair, reasonable, and adequate compensation to the Class Members for the kinds of damages described in the Second Amended Complaint and which the Class Members suffered or are alleged to have suffered as a result of the May 4, 2006 fire.⁵ Class Counsel believes, and the

⁵ The Representative Plaintiff and Class Counsel agree that the Settlement provided for in this Settlement Agreement is fair, reasonable, and adequate even in the event that the best population estimates available to Class Counsel dramatically under-estimate the number of Class Members and the actual per hour payout and the total payout to Class Claimants turns out to be less than the estimates provided in sections 2.8 and 2.9(a), respectively. This is

Settling Parties agree, that the interests of those Class Members who do not submit a Claim Form would be better served by donating the unclaimed portion of the Class Trust to the fire departments that ably and nobly responded to, fought, and put out the May 4, 2006 fire than by distributing the unclaimed portion of the Class Trust to actual Class Claimants as a potential “windfall”—i.e., a payment over and above the amount of money specifically set aside pursuant to this Settlement Agreement for compensation to individual Class Members assuming 100% participation.

3. Order of Preliminary Approval and Publishing of Notice of Final Fairness Hearing

3.1 As soon as practicable after the execution of the Settlement Agreement, Class Counsel and Counsel for the other Settling Parties shall jointly submit this Settlement Agreement to the Court, and, within 7 calendar days thereafter, Class Counsel shall file a motion for preliminary approval of the settlement with the Court and apply for entry of an order (the “Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing”), in the form attached hereto as Exhibit B, or an order substantially similar to such form in both terms and costs, requesting the following:

(a) preliminary approval of the settlement as set forth herein;

(b) approval of the Notice Plan and Notices as set forth and described in Exhibit A, *Affidavit of Shannon R. Wheatman, Ph.D., of Hilsoft Notifications on Settlement Notice Plan and Notices*, including approval of the customary form of summary notice (the “Summary Notice”) in the form identified in and attached to Exhibit A, and a customary long form

based on the expense and length of continued proceedings necessary to prosecute the Litigation through motion practice, trial, and potential appeals, and takes into account the risks and uncertain outcome of continued litigation, as well as the delays inherent in such litigation. See section II, above.

notice (“Detailed Notice”) in the form identified in and attached to Exhibit A, which together shall include a fair summary of the parties’ respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time, and place of the Final Fairness Hearing;

(c) appointment of Engineering Perfection, PLLC as Engineering and Geographic Informations Systems Specialist;

(d) appointment of Hilsoft Notifications as Notice Specialist;

(e) appointment of Epiq Systems Class Action and Claims Solutions as Claims Administrator; and

(f) approval of the Claim Form and Pre-populated Claim Form identified in and attached to Exhibit A, *Affidavit of Shannon R. Wheatman, Ph.D., of Hilsoft Notifications on Settlement Notice Plan and Notices*.

3.2 Class Counsel shall assume the administrative responsibility of overseeing and coordinating the implementation of the Settlement Notice Plan described in Exhibit A, *Affidavit of Shannon R. Wheatman, Ph.D., of Hilsoft Notifications on Settlement Notice Plan and Notices*, by the Claims Administrator, including the provision of notice to the Class Members in accordance with the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing. The costs of implementing the notice plan and providing the notice, together with the costs of Claims Administration, shall be paid out of the Costs, Expenses, and Fees Trust described in section 2.1(c), above.

3.3 Class Counsel and the Settling Parties shall request that after notice is given, the Court hold a hearing (the “Final Fairness Hearing”) and grant final approval of the settlement set forth herein.

3.4 Class Counsel and the Settling Parties further agree that the proposed Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing shall contain, among other things, the following provision: All discovery and pretrial proceedings in the Litigation, other than confirmatory discovery provided for herein, are stayed and suspended until further order of this Court. Pending the final determination of the fairness, reasonableness, and adequacy of the settlement set forth in the Settlement Agreement, no Class Member, either directly, representatively, or in any other capacity, shall institute, commence, or prosecute against the Released Persons any of the Released Claims in any action or proceeding in any court or tribunal.

4. Opt-Out Procedures

4.1 Class Members who wish to exclude themselves from the Class and the settlement must submit written requests for exclusion. To be effective, such a request must include the Class Member’s name and address, a statement that the Class Member wishes to be excluded from the Class, and the signature of the Class Member. The request must be mailed to the Claims Administrator at the address provided in the Notice and must be postmarked no later than fourteen (14) days before the date set for the Final Fairness Hearing.

5. Objection Procedures

5.1 Class Members who do not request exclusion from the Class may object to the proposed settlement. Class Members who choose to object to the proposed

settlement must file written notices of intent to object. Any Class Member may appear at the Final Fairness Hearing, in person or by counsel, and be heard to the extent allowed by the Court, in opposition to the fairness, reasonableness, and adequacy of the proposed settlement, and on the application for an award of attorneys' fees and costs. The right to object to the proposed settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass.

5.2 To be effective, a notice of intent to object to the proposed settlement must:

(a) Include the name of the case and case number;

(b) Provide the name, address, telephone number and signature of the Class Member filing the objection;

(c) Indicate the specific reasons why the Class Member objects to the Proposed Settlement;

(d) Be filed with the Clerk of the Court not later than fourteen (14) days before the date set in the Class Notice for the Settlement Approval Hearing; and

(e) Be sent to the Claims Administrator by first-class mail, postmarked no later than fourteen (14) days before the date set in the Class Notice for the Settlement Approval Hearing.

6. Releases

Upon the Effective Date, each Class Member, including the Representative Plaintiff, who has not requested exclusion from the Class pursuant to the procedures described in paragraph 4.1 shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date of the settlement, and to the fullest extent permitted by law, each

Class Member, including the Representative Plaintiff, who has not requested exclusion from the Class pursuant to the procedures described in paragraph 4.1 shall, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

6.2 Upon the Effective Date, the ChemValley Defendants and the U.S. Tire Defendants shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Representative Plaintiff, each and all of the Class Members, and Class Counsel from all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the Settlement Agreement as to such matters as pertain to each of them.

6.3 Upon the Effective Date, the ChemValley Defendants and the U.S. Tire Defendants shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged each other, and one another's respective subsidiaries, divisions, affiliates, and members of and from only those claims based upon or arising out of the institution, prosecution, assertion, settlement or resolution of the Litigation or the Released Claims (except for the enforcement of the Settlement Agreement as to such matters as pertain to each of them), including (without limitation) any Claim for indemnification or contribution in respect of, or for attorneys' fees or costs incurred by reason of, the Litigation or the Released Claims.

6.5 Notwithstanding any term herein, neither the ChemValley Defendants nor the U.S. Tire Defendants shall be deemed to have released, relinquished, or discharged any claim or defense against any Person other than each other, the Released Parties, the Representative Plaintiff, Class Counsel, and each Class Member who has not requested exclusion from the Class pursuant to the procedures described in paragraph 4.1, above.

7. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses; Notice Expenses; and Administrative Expenses

7.1 As described in section 2.1(c), above, the Settling Parties agree that \$475,000 of the total Settlement Funds of \$1,175,000 will be set aside for the following: Class Counsel's documented costs and expenses; notice expenses, including the costs of providing notice to Class Members of this Settlement Agreement and their rights; administrative expenses, including the costs of claims administration and processing; and Class Counsel's attorneys fees (the "Costs, Expenses, and Fees Trust"). The distribution of the Costs, Expenses, and Fees Trust can divided into costs and expenses that have already been incurred, estimated future costs and expenses, and Class Counsel's attorneys fees.

7.2 Class Counsel incurred approximately \$47,506.93 in costs and expenses during the active phase of this Litigation, i.e., prior to reaching any type of agreement with regard to settlement. Class Counsel will be permitted to recover these and any other documented costs that have been incurred, subject to reasonable documentation, from the Costs, Expenses, and Fees Trust.

7.3 Class Counsel has obtained written estimates from the following specialists for work relating to (a) the final determination and communication of the geographical boundaries of the Class Area and the times and effected areas of the individual shelter-in-place advisories, (b) the effective notification to Class Members of their rights and

responsibilities in relation to this settlement, and (c) the fair and efficient administration and processing of Class Members' claims under the settlement:

(a) Class Counsel has retained Engineering Perfection, PLLC to perform services relating to its expertise in engineering and geographic information systems. Engineering Perfection, PLLC's principal, Seward G. Gilbert, served as an expert witness during the active phase of this Litigation and his report on the geographical boundaries of the shelter-in-place advisories supported the Representative Plaintiff's Motion for Class Certification. Engineering Perfection PLLC's primary continuing responsibility is the determination and effective communication of the precise geographical boundaries of shelter-in-place advisories on May 4 and May 5, 2006, and the times that the advisories were in effect for certain areas within the Class Area based on the available information and data regarding the shelter-in-place boundaries. Engineering Perfection, PLLC estimates that its work on these and related tasks will cost an additional \$3,400.

(b) Class Counsel has retained Hilsoft Notifications, the firm that performed the work on the original Notice Plan that was submitted pursuant to the Class Certification Order, to prepare the Settlement Notice Plan and Notice and Claim Forms. Hilsoft Notifications estimates that its work on these tasks will cost an additional \$59,375.

(c) Class Counsel has retained Epiq Systems Class Action and Claims Solutions to serve as the Claims Administrator and to provide services with regard to claims administration and claims processing. Epiq Systems estimates that its work as Claims Administrator will cost \$68,706.

7.4 Class Counsel will pay, subject to reasonable documentation, invoices for services actually performed and costs and expenses actually incurred by the specialist firms

as described in paragraph 7.3, above, from the Costs, Expenses, and Fees Trust. Within a reasonable time after the distribution of the Class Trust to Class Claimants and distribution of any Unclaimed Remainder of the Class Trust (see paragraphs 9.1 to 9.10, below), each specialist firm identified in paragraph 7.3 shall submit to Class Counsel a final invoice for all services performed and all costs and expenses incurred pursuant to paragraph 7.3.

7.5 Class Counsel and the Settling Parties agree that Class Counsel's attorneys fees will be either the remainder of the Costs, Expenses, and Fees Trust after the payment of all documented costs and expenses, incurred or to be incurred, as outlined in this section 2.1(c), or twenty-five percent (25%) of the \$1,175,000 combined total Settlement Funds, whichever is determined to be lower. Class Counsel's fees will be determined after the final accounting of all documented costs and expenses, incurred or to be incurred, as described in paragraphs 7.1 through 7.4, above, and will be paid out of the Costs, Expenses, and Fees Trust.

7.6 Any Unused Remainder of the Costs, Expenses, and Fees Trust, after the final accounting of all documented costs and expenses, incurred or to be incurred, as described in paragraphs 7.1 through 7.4, and the payment of, and limitation on, Class Counsel's reasonable attorneys fees, as described in paragraph 7.5, will be donated to the Nitro Fire Department and the St. Albans Fire Department in equal shares.

8. Payment of the Settlement Funds; Establishment of the Class Trust and the Costs, Fees, and Expenses Trust

8.1 Within seven (7) days of the Effective Date of this settlement, ChemValley Properties, Inc. and the U.S. Tire Defendants agree to tender checks for \$978,000 and \$197,000, respectively, payable to The Calwell Practice as Class Counsel and Trustees for the Nitro Tire Fire Class.

8.2 Within seven (7) days of receipt of the funds from the checks identified in paragraph 8.1, above, Class Counsel will establish and fund the Class Trust, described in paragraph 2.1(a), above, which will be administered by the Claims Administrator in accordance with the terms of this Settlement Agreement, paragraphs 2.1 through 2.10, above, and paragraphs 9.1 through 9.10, below, and the Costs, Fees, and Expenses Trust, described in paragraph 2.1(c), above, which will be administered by Class Counsel in accordance with the terms of this Settlement Agreement, paragraph 2.1(c) and paragraphs 7.1 through 7.6, above.

9. Administration of Claims

9.1 Within thirty (30) days of the date of the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing, the Claims Administrator shall implement the Settlement Notice Plan set forth in Exhibit A, *Affidavit of Shannon R. Wheatman, Ph.D., of Hilsoft Notifications on Settlement Notice Plan and Notices*, and mail the Settlement Notices and Pre-populated Claim Forms, unless otherwise directed by the Court.

9.2 Unless otherwise directed by the Court, Class Members who qualify as the head of their respective households, see paragraph 1.12 above, shall have 90 days from the date of the Claims Administrator's first mailing of the Settlement Notices pursuant to paragraph 9.1 to become Class Claimants by performing one of the following two actions:

(a) Submitting a valid Claim Form to the Claims Administrator indicating that the putative Claimant is a Class Member, and (i) submitting valid supporting documentation showing proof of residence on or around May 4, 2006 at an address located within the geographical boundaries of the Class Area, and (ii) signing the affirmation, under penalty of perjury, that the information contained on the Claim Form is true and accurate; or

(b) Submitting a valid Pre-populated Claim Form to the Claims Administrator indicating that the putative Claimant is a Class Member, and (i) the information provided by the putative Claimant matches the pre-populated information on the Pre-populated Claim Form submitted to the Claims Administrator, and (ii) the putative Claimant has signed the affirmation, under penalty of perjury, that the information contained on the Claim Form is true and accurate.

Only one Class Member per household may submit a Claim Form and thereby become a Class Claimant.

9.3 The deadline for submitting Claim Forms is a mailing deadline. If a Claim Form is postmarked within 90 days from the date of the first mailing of the Settlement Notices, the Claim Form shall be deemed to have been timely submitted.

9.4 The Claims Administrator shall administer the claims submitted by Class Claimants under paragraph 9.2. Class Counsel and the Settling Parties shall be given reports as to claims submitted and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Claims Administrator's determination of the validity or invalidity of any such claims shall be binding.

9.5 Not less than seven (7) days after the deadline for submitting Claim Forms described in paragraphs 9.2 and 9.3, or the deadline for responding to a defect letter, whichever is later, but not more than thirty (30) days after the later deadline, the Claims Administrator shall perform the calculations described in paragraphs 2.2 through 2.9, above, and determine (a) the actual per hour payout, (b) the total payment to each individual Class Claimant, (c) the sum of all the individual Class Claimants' total payments, and (d) the

value of the Unclaimed Remainder of the Class Trust, if any, and the donations to be made to the Nitro and St. Albans Fire Departments. The Claims Administrator shall prepare and provide a report to Class Counsel and the Settling Parties containing this information. Class Counsel and the Settling Parties shall have the right to review the report and challenge the calculations or submitted claims if they believe them to be inaccurate or inadequate.

9.6 The Settling Parties shall have fifteen (15) days from the date of receipt of the report described in paragraph 9.5 in which to exercise their right to challenge the submitted claims or the Claims Administrator's calculations. The Claims Administrator's determination of the validity or invalidity of any such claims and calculations shall be binding.

9.7 After the expiration of the fifteen (15) day period described in paragraph 9.6, above, and the resolution of any challenges, the Claims Administrator shall promptly distribute the funds in the Class Trust to the individual Class Claimants and make the charitable donations of the Unclaimed Remainder of the Class Trust, as provided for in this Settlement Agreement.

9.8 Except as otherwise ordered by the Court, all Class Members who fail to timely submit a Claim Form for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to and bound by the provisions of the Settlement Agreement, the releases contained herein, and the Judgment.

9.9 No Person shall have any claim against the Claims Administrator, Class Counsel, the ChemValley Defendants, or the U.S. Tire Defendants based on distributions of

benefits made substantially in accordance with the Settlement Agreement and the settlement contained herein, or further order(s) of the Court.

9.10 All payments and distributions hereunder, unless expressly provided otherwise, shall be made within 90 days of the deadline for filing claims, or 90 days of the Effective Date, whichever is later.

10. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

10.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

(a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing as required by paragraph 3.1;

(b) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and

(c) the Judgment has become Final, as defined in paragraph 1.10.

10.2 If all of the conditions specified in paragraph 10.1 are not satisfied, then the Settlement Agreement shall be canceled and terminated subject to 10.1, unless Class Counsel and the Settling Parties mutually agree in writing to proceed with the Settlement Agreement.

10.3 Within ten (10) days after the deadline established by the Court for Class Members to request exclusion from the Class, the Claims Administrator shall furnish to counsel for the Settling Parties a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

10.4 In the event that the Settlement Agreement is not approved by the Court, the Settling Parties shall be restored to their respective positions in the Litigation, except that all

scheduled litigation deadlines shall be reasonably extended so as to avoid prejudice to any Settling Party or litigant. In such event, the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, and expenses awarded to Class Counsel shall constitute grounds for cancellation or termination of the Settlement Agreement.

11. Miscellaneous Provisions

11.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement; and (c) to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

11.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to this Litigation. The settlement compromises claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention

made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

11.3 Neither the Settlement Agreement nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons, in any civil, criminal or administrative proceeding in any court, administrative agency, or other tribunal.

**End of Settlement Agreement
(signatures on next page)**

Executed:

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