

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE PAUL PERELL

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)

THURSDAY, THE 6<sup>TH</sup> DAY  
OF MARCH 2014

B E T W E E N :

**MICHAEL FRANK, SHELDON ZAMICK, and  
NOR-DOR DEVELOPMENTS LIMITED**

Plaintiffs

-and-

**R. PATRICK CALDWELL, LARRY MOELLER, NEIL E. SCHWARTZMAN, JASON A.  
WILLIAMS, BRIAN L. STAFFORD, HENRY H. SHELTON, FRANK E. JAUMOT,  
KEITH J. ENGEL, RICHARD P. TORYKIAN, SR., CHARLES E. PETERS, JR., and  
DEON VAUGHAN**

Defendants

***Proceeding under the Class Proceedings Act, 1992***

**ORDER**

**THIS MOTION**, made by the Plaintiffs for an Order approving the Global Settlement Agreement and the agreement collateral to the Global Settlement Agreement made amongst the Plaintiffs, the Defendants, and the Insurer dated January 14, 2014 (the "Collateral Settlement Agreement") and fixing Class Counsel Fees was heard on March 6, 2014, at Osgoode Hall, 130 Queen Street West, Toronto.

**ON READING** the materials filed, including the Global Settlement Agreement attached hereto as Schedule "A", and the Collateral Settlement Agreement attached hereto as Schedule "B", and on hearing the submissions of Class Counsel and Counsel for the Defendants:

1. **THIS COURT DECLARES** that except as otherwise stated, this Order incorporates and adopts the definitions set out in the Collateral Settlement Agreement.

2. **THIS COURT DECLARES** that the Global Settlement Agreement and the Collateral Settlement Agreement are fair, reasonable and in the best interests of the Class.

3. **THIS COURT ORDERS** that the Global Settlement Agreement and Collateral Settlement Agreement are approved pursuant to section 29 of the *Class Proceedings Act, 1992*, SO 1992, c.6.

4. **THIS COURT ORDERS** that the Global Settlement Agreement and Collateral Settlement Agreement shall be implemented in accordance with their terms.

5. **THIS COURT DECLARES** that the Global Settlement Agreement and Collateral Settlement Agreement, in their entirety, form part of this Order and are binding on the Defendants, the Insurer, the Plaintiffs, and upon all Class Members including those persons who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are hereby disposed of.

6. **THIS COURT DECLARES** that the Plan of Allocation, attached hereto as Schedule "C", is hereby approved as fair and reasonable and that the Total Settlement Amount shall be distributed in accordance with the Plan of Allocation after the payment of Class Counsel Fees, Administration Expenses, and the honorarium amounts awarded to the Plaintiffs.

7. **THIS COURT ORDERS** that payment of Class Counsel Fees in the amount in Canadian dollars equivalent to USD\$1,186,500.00 (for fees and applicable taxes) and in the amount of \$110,292.74 (for disbursements and applicable taxes) to be paid in accordance with the terms of the Collateral Settlement Agreement, which amounts this Court finds to be fair and reasonable, is hereby approved.

8. **THIS COURT ORDERS** that payment to each of the Plaintiff Michael Frank and the Plaintiff Sheldon Zamick in the amount of \$10,000 and to the Plaintiff Nor-Dor Developments Limited in the amount of \$5,000, as compensation on the basis of *quantum meruit*, is hereby approved.

9. **THIS COURT ORDERS** that on notice to the Court but without further order of the Court, the parties to the Collateral Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Collateral Settlement Agreement.

10. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, the Releasors shall release and discharge, and shall be conclusively deemed to have fully, finally and forever released and discharged the Releasees from the Released Claims.

11. **THIS COURT ORDERS** that, upon the Effective Date, no Class Member shall institute, continue, maintain or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, proceeding, complaint, claim or demand against any Releasee or any other person who may claim any form of contribution or indemnity from any Releasee in respect of the Released Claims or any matter related thereto, and such Class Members are permanently barred and enjoined from doing so.

12. **THIS COURT ORDERS** that, upon the Effective Date, the Action shall be dismissed against the Defendants with prejudice and without costs.

*Perell J.*

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THE HONOURABLE JUSTICE PERELL

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
(FORT LAUDERDALE DIVISION)  
www.flsb.uscourts.gov

CASE NO. 10-10711-BKC-JKO, et al.  
CHAPTER 11  
(JOINTLY ADMINISTERED)

In re

PPOA HOLDING, INC. f/k/a  
Protective Products of America, Inc., et al.

Debtors.

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KENNETH A. WELT, not individually but  
as Creditor Trustee of the PPOA Holding  
Creditor Trust,

ADV. NO. 12-01034-BKC-JKO-A

Plaintiff,

v.

R. PATRICK CALDWELL, an individual,  
KEITH J. ENGEL, an individual,  
FRANK E. JAUMOT, an individual,  
LARRY G. MOELLER, an individual,  
CHARLES E. PETERS, JR., an individual,  
RICHARD P. TORYKIAN, SR., an individual,  
and DEON VAUGHAN, an individual,

Defendants.

---

AND

Court File No. CV-10-415821-CP00

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

**MICHAEL FRANK, SHELDON ZAMICK, and NORMAN SPURGEON**

Plaintiffs

and

**R.PATRICK CALDWELL, LARRY MOELLER, NEIL E. SCHWARTZMAN, JASON A. WILLIAMS, BRIAN L. STAFFORD, HENRY H. SHELTON, FRANK E. JAUMOT, KEITH J. ENGEL, RICHARD P. TORYKIAN, SR., CHARLES E. PETERS, JR., and DEON VAUGHAN,**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement (hereinafter the "Settlement Agreement") is made as of this 14th day of January, 2014, and entered into by and between: (i) Kenneth A. Welt, in his capacity as Creditor Trustee for the PPOA Holding Creditor Trust for the Debtors<sup>1</sup> ("Trustee"); (ii) Michael Frank, Sheldon Zamick, Nor-Dor Developments Limited, on behalf of themselves and others similarly situated (collectively "Shareholder Class Plaintiffs"); and (iii) Patrick Caldwell, Keith Engel, Frank E. Jaumot, Larry G. Moeller, Charles E. Peters, Jr., Richard P. Torykian, Sr., Deon Vaughan, Neil Schwartzman, Brian L. Stafford, Jason A. Williams, and Henry H. Shelton (collectively the "Defendants") (the Trustee, Shareholder Class Plaintiffs, and Defendants will sometimes be collectively referred to as the "Parties" or individually referred to as a "Party").

**WHEREAS**, on January 13, 2010 (the "Petition Date"), the Debtors each filed a voluntary bankruptcy petition for relief under Chapter 7, Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Florida (the "Bankruptcy

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<sup>1</sup> The Debtors consist of the following entities: (i) PPOA Holding, Inc. f/k/a Protective Products of America, Inc., a Delaware corporation; (ii) CPC Holding Corporation of America, a Delaware corporation; (iii) CP Corporation of America, Inc. f/k/a Ceramic Protection Corporation of America, a Delaware corporation; (iv) PPI International Corp. f/k/a Protective Products International Corp., a Florida corporation; and (v) PPNC, LLC f/k/a Protective Products of North Carolina, LLC, a North Carolina limited liability company.

Court”) and all were jointly administered in the case styled *In re PPOA Holding, Inc., et al.*, Case Numbers 10-10711-BKC-JKO, et seq. (“Main Bankruptcy Case”);

**WHEREAS**, on October 5, 2011, in the Main Bankruptcy Case, the Bankruptcy Court entered an *Order Confirming Third Amended Plan of Liquidation for the Debtors Proposed by the Official Committee of Unsecured Creditors under which the Trustee*, on behalf of the PPOA Holding Creditor Trust for the Debtors and as successor to the Debtors under 11 U.S.C. §1123, received the authority to pursue, litigate, or settle adversary proceedings;

**WHEREAS**, on January 11, 2012, the Trustee commenced and prosecuted a legal action against the Defendants in the Bankruptcy Court under the case captioned *Welt v. Caldwell*, et al., case number 12-01034-JKO (the “Florida Adversary Proceeding”) in which he sought, among other relief, monetary damages against the Defendants for breach of fiduciary duty and aiding and abetting breach of fiduciary duty;

**WHEREAS**, the Trustee thereafter filed a First Amended Complaint, and after additional negotiations among the Parties through counsel, a Second Amended Complaint dismissing Defendants Williams, Schwartzman, Stafford, and Shelton, without prejudice;

**WHEREAS**, the Defendants have filed answers and affirmative defenses expressly denying each and all of the claims alleged by the Trustee in the Florida Adversary Proceeding, including all charges of wrongdoing or liability against them arising out of any conduct, acts, or omissions alleged or that could have been alleged in the Florida Adversary Proceeding;

**WHEREAS**, on December 6, 2010 the Shareholder Class Plaintiffs issued a Statement of Claim for a proposed Class Action in the Ontario Superior Court of Justice (the “Canadian Court”), styled *Frank, et al. v. Caldwell et al.*, Court File No. CV-10-415821-CP00 (the “Canadian Shareholder Class Action”) in which they sought, among other relief, monetary damages against the Defendants for purported violations of the Canadian Securities Laws;

**WHEREAS** the Canadian Shareholder Class Action was certified as a class action by the Canadian Court on April 24, 2013;

**WHEREAS**, the Defendants have filed Statements of Defense constituting answers and affirmative defenses expressly denying each and all of the claims alleged by the Shareholder Class Plaintiffs in the Canadian Shareholder Class Action, including all charges of wrongdoing or liability against them arising out of any conduct, acts, or omissions alleged or that could have been alleged in the Canadian Shareholder Class Action;

**WHEREAS**, the Defendants in both actions are "Insureds" under XL Specialty Insurance Company ("XL Specialty") Policy No. ELU 109986-09 (the "XL Policy"), as the term is defined therein, issued to the Debtors prior to the Petition Date against which claims were timely made involving the claims that are the subject of the Florida Adversary Proceeding and the Canadian Shareholder Class Action;

**WHEREAS**, another claim has been made under the XL Policy, which does not involve any of the Parties, and remains pending (the "Pending Claim"), for which XL Specialty is maintaining \$1,600,000 U.S. in reserve (the "Reserve Amount");

**WHEREAS**, after conducting substantial and extensive discovery, the parties participated in a joint mediation conference in Toronto, Canada on December 17, 2013, and as a result of settlement discussions with the assistance of a Canadian mediator and a U.S. mediator, the Trustee, the Shareholder Class Plaintiffs, and the Defendants, without the Defendants admitting any fault, liability, or wrongdoing whatsoever to the Trustee or the Shareholder Class Plaintiffs and in order to avoid the potential high costs and uncertainties attendant to litigation, desire to settle the claims amicably, the Parties agreed to settlement terms to be formalized in a settlement agreement; and



**WHEREAS**, the Parties wish to set forth the terms of their mediated settlement in this Settlement Agreement.

**NOW, THEREFORE**, in consideration of the promises aforesaid and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby stipulate and agree as follows:

1. **Recitals Incorporated.** The recitals and prefatory phrases and paragraphs set forth above are hereby incorporated in full and made a part of this Settlement Agreement.

2. **Definitions.**

a. **"Claims"**: The word "Claims" refers to claims, demands, rights, liabilities, losses, judgments, liens, sums of money, debts, damages (including but not limited to, consequential, compensatory and punitive damages, lost profits, attorney's fees and costs), actions, causes of action, injunctive relief, constructive trust, liability of any kind whatsoever, whether known or unknown, in law or in equity, whether federal, bankruptcy, state, provincial, in tort or in contract, under Canadian law or U. S. law including, but not limited to claims that were or could have been asserted in the Main Bankruptcy Case, the Florida Adversary Proceeding, and/or the Canadian Shareholder Class Action.

b. **"Final"**: As applied to orders in the Main Bankruptcy Case, the Florida Adversary Proceeding, the Canadian Shareholder Class Action and/or the Pending Claim, the orders become "final" after they are entered and either (i) the time in which to appeal the order expires without any appeal having been taken or (ii) if an appeal is taken, the order has been affirmed on appeal and the time in which to seek further

review, if any, of such order through appeal, petition for writ of certiorari, or otherwise expires without any such action having been taken.

c. "Effective Date": The words "Effective Date" refer to the date the Initial Settlement Payment is paid by or on behalf of the Defendants as provided for herein.

3. **Settlement Payment.** In consideration of and conditioned upon the mutual releases contained herein, the Trustee and Shareholder Class Plaintiffs will be paid the sums described below as full and final settlement of the Claims that were or could have been raised against the Defendants and all other Insureds, as defined in the XL Policy, in the Main Bankruptcy Case, the Florida Adversary Proceeding, or the Canadian Shareholder Class Action:

a. **Initial Payment.** Within fifteen (15) business days after the orders approving the settlement and approving the payment of XL Policy proceeds contemplated by this Agreement have become "final" in both the Canadian Shareholder Class Action and the Florida Adversary Proceeding, the following sums shall be paid, by or on behalf of the Defendants:

- i. \$3,500,000 U.S. will be paid to the "Rochon Genova Trust Account" via international wire transfer of the U.S. dollar amount converted into Canadian dollars at the exchange rate applicable at the time of transfer. Counsel for the Shareholder Class Plaintiffs will provide the wire instructions to Counsel for Defendants; and
- ii. \$1,500,000 U.S. will be paid by insurance company check made payable to "Kenneth A. Welt, Creditor Trustee for the PPOA Holding Creditor Trust" with tax ID number 26-3479709; and

b. Subsequent Payment. Upon resolution of the Pending Claim made under the XL Policy, the Trustee and Shareholder Class Plaintiffs will receive one third (33.3%) of the amount remaining of the Reserve Amount that is not used to pay the Pending Claim. XL Specialty will also provide a sworn affidavit confirming the amount remaining of the Reserve Amount and the affiant will be subject to cross-examination on the affidavit by Parties' counsel. Within fifteen (15) business days after the resolution of the Pending Claim becomes "final",

i. seventy-five percent (75%) of the Subsequent Payment will be paid into an escrow account under the control of the claims administrator in the Canadian Shareholder Class Action. The payment will be made via international wire transfer of the U.S. dollar amount converted to Canadian dollars at the exchange rate applicable at the time of transfer. Counsel for the Shareholder Class Plaintiffs will provide the wire transfer instructions to Counsel for the Defendants; and

ii. twenty-five percent (25%) of the Subsequent Payment will be made by insurance company check made payable to Kenneth A. Welt, Creditor Trustee for the PPOA Holding Creditor Trust" with tax ID number 26-3479709.

c. Nothing in this Agreement shall be deemed to constitute a waiver of any of XL Specialty's rights under the XL Policy or at law with respect to the Pending Claim, and all such rights are expressly reserved. Further, the Parties understand that the Reserve Amount is based on estimates provided to XL Specialty. Under no circumstances will XL Specialty's total liability under the XL Policy exceed, in the aggregate, the \$10 million limit of liability of the XL Policy.

4. **Mutual General Releases.**

i. Subject to ii., on the Effective Date, the Parties including any of their successors, heirs, assigns, agents, representatives, affiliates, or parent organizations, will be deemed to have fully, finally, and forever relinquished, discharged, and waived any and all Claims, causes of action, choses in action, liabilities, losses, costs, damages, expenses, remedies, transactions, loans, debts, contracts, obligations, actions, conduct, omissions, and/or performance of any agreements, commitments or obligations, whether now known or unknown, and whether pending or not yet asserted, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, against any other Party which the Party (including all Debtors), has or may have had against any Party, successor, heir, assign, agent, attorney, representative, affiliate, or parent organization, including but not limited to any officers, directors or other individual or entity that could be deemed an "insured" under the XL Policy, and XL Specialty, relating in any manner whatsoever, directly or indirectly, to the Debtors, their business and operations, the Florida Adversary Proceeding, the Canadian Shareholder Class Action or any and all Claims that were or could have been raised in the Florida Adversary Proceeding, the Canadian Shareholder Class Action and/or the Main Bankruptcy Case. To the extent that any of the Defendants submitted a claim in the Bankruptcy Case and that claim was included in the Final Confirmation Plan, those claims are specifically excluded from this Release; however, the Trustee agrees not to pursue objections to those claims based on the allegations in the Florida Adversary Proceeding or the Canadian Shareholder Class Action. The Trustee reserves his right to raise other objections to said claims.

ii. Notwithstanding the foregoing, and for greater certainty, XL Specialty will not be released from its obligations to make the Subsequent Payment to the Trustee and the Shareholder Class Plaintiffs and to provide the Parties with a sworn affidavit confirming the amount remaining on the Reserve Amount within fifteen (15 days) following "final" resolution of the Pending Claim.

5. **Frustration of Purpose.** None of the Parties shall take any action to intentionally frustrate the purpose of this Settlement Agreement.

6. **Non-Approval.** In the event the Settlement Agreement or payment under the XL Policy is not approved by the Bankruptcy Court and/or the Canadian Court, or in the event that an order approving the Settlement Agreement and payment under the XL Policy is reversed on appeal, nothing herein shall be deemed a representation or admission by any Party as to any issue, and this Settlement Agreement will be deemed null and void, including the validity of any and all instruments executed by any of the Parties for its performance and implementation prior to its approval. The Parties shall be returned to the status quo each Party held prior to entry into this Settlement Agreement.

7. **Attorneys' Fees and Costs.** Each Party shall bear its/his/her own attorneys' fees and costs incurred in regard to all matters arising out of or relating to this Settlement Agreement, the Main Bankruptcy Case, the Florida Adversary Proceeding, and/or the Canadian Shareholder Class Action. This includes any and all administrative costs associated with the distribution and payment of proceeds to members of the Canadian Shareholder Class Action class. The Defendants and XL Specialty will not be liable to the Trustee or the Shareholder Class Plaintiffs for any other amounts related to the Main Bankruptcy Case, the Florida Adversary Proceeding, and/or the Canadian Shareholder Class Action.

8. **Dismissals, with prejudice:**

a. **Florida Adversary Proceeding:** Unless a dismissal with prejudice is expressly stated in the Bankruptcy Court order approving this Settlement Agreement, within ten (10) calendar days after the Canadian and U.S. orders approving the respective settlements and permitting payment under the XL Specialty Policy become "final", and upon receipt and bank clearance of the funds that are the subject of the Settlement Payment, the Trustee will file and serve a voluntary dismissal, with prejudice, of the Florida Adversary Proceeding with each Party to bear their own fees and costs.

b. **Bankruptcy Case:** Unless a waiver of objection to claims is expressly stated in the Bankruptcy Court order approving this Settlement Agreement, within ten (10) calendar days after the Canadian and U.S. orders approving settlement become "final", the Trustee will withdraw and/or dismiss, with prejudice, his objections to the Claims made by the Defendants in the Bankruptcy Case, solely to the extent that such objections are based on the allegations in the Florida Adversary Proceeding and/or the Canadian Shareholder Class Action.

c. The order of the Canadian Court approving the Settlement Agreement will include a dismissal with prejudice of all claims in the Canadian Shareholder Class Action.

9. **Use in Other Cases or Proceedings.** This Settlement Agreement shall not be admissible in, nor is it related to, any other litigation, action, proceeding, or settlement negotiation or in any other forum whatsoever, except an action to enforce the terms of this Settlement Agreement.

10. **Notices.** All notices or payments by check to be sent or information to be provided under this Settlement Agreement shall be sent to the following:

**The Trustee:**

David C. Cimo, Esq.  
Marilee A. Mark, Esq.  
GENOVESE JOBLOVE & BATTISTA, P.A.  
100 S.E. Second Street, 44th Floor  
Miami, Florida 33131  
Tel: 305.349.2300  
[dcimo@gjb-law.com](mailto:dcimo@gjb-law.com)  
[mmark@gjb-law.com](mailto:mmark@gjb-law.com)

*Counsel for the Trustee*

**Shareholder Class Plaintiffs:**

John Archibald, Esq.  
Rochon Genova LLP  
121 Richmond St. West, Suite 900  
Toronto, ON Canada M5H 2K1  
Tel: 416.363.1867  
[jarchibald@rochongenova.com](mailto:jarchibald@rochongenova.com)

*Counsel for the Shareholder Class Plaintiffs*

**Defendants:**

Lewis F. Murphy, Esq.  
Squire Sanders (US) LLP  
200 S. Biscayne Blvd., Suite 4100  
Miami, Florida 33131  
Tel: 305.577.2957  
[lewis.murphy@squiresanders.com](mailto:lewis.murphy@squiresanders.com)

John Chapman, Esq.  
Adam Stephens, Esq.  
Miller Thomson LLP  
Scotia Plaza  
40 Kings Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada M5H 3S1  
Tel: 416.595.8572  
[jchapman@millერთhompson.com](mailto:jchapman@millერთhompson.com)

*Counsel for the Defendants*

11. **Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

12. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement of the Parties hereto as to the subject matter hereof, subject to any collateral agreements that may be required in the Canadian Shareholder Class Action to implement the settlement. The undersigned acknowledge that there are no communications or oral understandings contrary, different, or that in any way restrict this Settlement Agreement, and that all prior agreements or understandings within the scope of the subject matter of this Settlement Agreement are, upon the execution and delivery of this Settlement Agreement, superseded, null and void.

13. **Amendments.** No waiver, modification or amendment of the terms of this Settlement Agreement shall be valid or binding unless made in writing, signed by the party to be charged and then only to the extent as set forth in such written waiver, modification, or amendment.

14. **Counterparts.** The Parties may execute this Settlement Agreement in whole or counterparts, and execution of counterparts shall have the same force and effect as if the Parties had signed the same instrument. Signatures transmitted by facsimile or email shall have the same effect as original signatures.

15. **Retention of Jurisdiction.** The Parties and their counsel agree that, only as to the Trustee and the U. S. Defendants, the United States Bankruptcy Court for the Southern District of Florida shall have jurisdiction for the purpose of enforcing the provisions of this Settlement Agreement that concern any issue related to the claims brought by the Trustee. Accordingly, it is further agreed among those Parties that in the event any such issue cannot be finally resolved by the Bankruptcy Court, that the United States District Court for the Southern District of Florida shall have full jurisdiction for the purpose of enforcing any and all terms of this Settlement Agreement. As to the Shareholder Class Plaintiffs, the Canadian Defendants, the Parties and their counsel agree that the Canadian Court shall have exclusive jurisdiction for



the purpose of enforcing the provisions of this Settlement Agreement that concern any issue related to the claims brought by the Shareholder Class Plaintiffs. In the event judicial enforcement of any provision of this Settlement Agreement is necessary, the Parties and their counsel agree the prevailing party will be entitled to an award of that party's attorneys' fees and costs.

16. **Choice of Law.** For the purpose of enforcing the provisions of this Settlement Agreement that concern any issue related to the claims brought by the Trustee, this Settlement Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Florida, without regard to its conflict of law principles. For the purpose of enforcing the provisions of this Settlement Agreement that concern any issue related to the claims brought by the Shareholder Class Plaintiffs, this Settlement Agreement shall be governed by, and construed and enforced in accordance with the laws of the Province of Ontario, without regard to its conflict of law principles.

17. **Best Efforts.** Within three (3) business days after receipt by counsel for the Trustee of the last signature of the Parties executing the Settlement Agreement, the Trustee shall file a Motion in the Bankruptcy Court seeking the approval of this Settlement Agreement and permitting the payments under the XL Policy. The Parties and their counsel shall use their best efforts to cause the Bankruptcy Court to approve this Settlement Agreement and to effectuate the settlement of the stated terms and conditions set forth herein. Similarly, within an agreed reasonable period of time for preparation of class action settlement motions, notices etc. commenced after receipt by counsel for the Canadian Shareholder Plaintiffs of the last signature of the Parties executing the Settlement Agreement, Canadian counsel will file the appropriate motion for, and seek the approval of, this Settlement Agreement and permitting the payments under the XL Policy. The Parties and their counsel shall use their best efforts to

cause the Canadian Court to approve this Settlement Agreement and to effectuate the settlement of the stated terms and conditions set forth herein.

18. **Neutral Interpretation.** In the event any dispute arises among the Parties with regard to the interpretation of any term of this Settlement Agreement, or any agreement attached hereto, all of the Parties shall be considered collectively to be the drafting party and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall be inapplicable.

19. **Authority.** Each Party to this Settlement Agreement warrants and represents that the person signing this Settlement Agreement on its, his, or her behalf is duly authorized to enter into this Settlement Agreement on behalf of such Party. Each Party signing this Settlement Agreement separately acknowledges and represents that this representation and warranty is an essential and material provision of this settlement and shall survive execution of this Settlement Agreement.

20. **Illegality.** If any clause, provision, or paragraph of this Settlement Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or enforceability shall not affect any other clause, provision, or paragraph of this Settlement Agreement, and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, paragraph, or other provision had not been contained herein.


21. **Advice of Counsel.** The Parties acknowledge they have been represented by counsel of their own choice in the negotiations leading up to the execution of this Settlement Agreement, have read this Settlement Agreement, and have had the opportunity to receive an explanation from legal counsel regarding the legal nature and effect of same. The Parties have had the Settlement Agreement fully explained to them by their respective counsel and understand the terms and provisions of this Settlement Agreement and its nature and effect.

The Parties further represent that they are entering into this Settlement Agreement freely and voluntarily, relying solely upon the advice of their own counsel, and not relying on the representation of any other Party or of counsel for any other Party.

22. **Acknowledgement.** This Settlement Agreement was executed after arm's length negotiations and mediation between the Parties and their respective counsel, and reflects the conclusion of the Parties that this Settlement Agreement is in the best interests of the Parties.

23. **Divisions and Headings.** The divisions of this Settlement Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Settlement Agreement.

**IN WITNESS HEREOF,** the undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below:


The Trustee	Shareholder Class Plaintiffs
By: <u>Kenneth E. Welt, as the Creditor Trustee of the PPOA Holding Creditor Trust</u>  Date: _____	By: <u></u> Michael Frank, on behalf of himself and others similarly situated in the Canadian Class Action  Date: <u>Jun 15/2014</u>
By: <u>David C. Cimo, Counsel for the Trustee</u>  Date: _____	By: <u>Sheldon Zarnick, on behalf of himself and others similarly situated in the Canadian Class Action</u>  Date: _____

The Parties further represent that they are entering into this Settlement Agreement freely and voluntarily, relying solely upon the advice of their own counsel, and not relying on the representation of any other Party or of counsel for any other Party.


22. **Acknowledgement.** This Settlement Agreement was executed after arm's length negotiations and mediation between the Parties and their respective counsel, and reflects the conclusion of the Parties that this Settlement Agreement is in the best interests of the Parties.

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**IN WITNESS HEREOF**, the undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below:

The Trustee	Shareholder Class Plaintiffs
By: _____ Kenneth E. Welt, as the Creditor Trustee of the PPOA Holding Creditor Trust	By: _____ Michael Frank, on behalf of himself and others similarly situated in the Canadian Class Action
Date: _____	Date: _____
By: _____ David C. Cimo, Counsel for the Trustee	By:  Sheldon Zamick, on behalf of himself and others similarly situated in the Canadian Class Action
Date: _____	Date: <u>JANUARY 14, 2014</u>

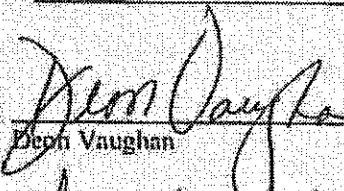
	<p>By: <u>James Spurgeon</u>  James Spurgeon for Nor-Dor  Developments Limited, on behalf of itself and  others similarly situated in the Canadian  Class Action</p> <p>Date: <u>January 14, 2014</u></p>
<b>Defendants</b>	<b>XL Specialty</b>
<p>By: _____  Frank E. Jaumot, on behalf of  himself and the other Defendants</p> <p>Date: _____</p>	<p>By: _____  Rebecca Pidlak, XL Specialty  Insurance Company</p> <p>Date: _____</p>
<p>By: _____  Deon Vaughan, on behalf of herself  and the other Defendants</p> <p>Date: _____</p>	<p>By: _____  Daniel Standish, Counsel for XL  Specialty Insurance Company</p> <p>Date: _____</p>
<p>By: _____  Jason Williams, on behalf of himself  and the other Defendants</p> <p>Date: _____</p>	

	<p>By: _____  James Spurgeon for Nor-Dor  Developments Limited, on behalf of itself and  others similarly situated in the Canadian  Class Action</p> <p>Date: _____</p> <p>By:  _____  John Archibald, Lead Counsel for the  Class Plaintiffs  <i>January 14, 2014</i>  <b>XL Specialty</b></p>
<p><b>Defendants</b></p>	
<p>By: _____  Frank E. Jaumot</p>	<p>By: _____  Rebecca Pidlak, XL Specialty  Insurance Company</p>
<p>Date: _____</p>	<p>Date: _____</p>
<p>By: _____  Deon Vaughan</p>	<p>By: _____  Daniel Standish, Counsel for XL  Specialty Insurance Company</p>
<p>Date: _____</p>	<p>Date: _____</p>
<p>By: _____  Jason Williams</p>	
<p>Date: _____</p>	

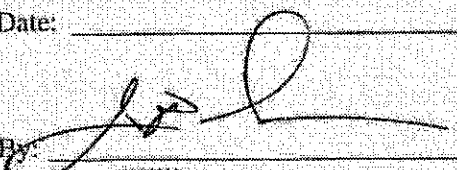
	<p>By: <u>James Spurgeon for Nor-Dor Developments Limited, on behalf of itself and others similarly situated in the Canadian Class Action</u></p> <p>Date: _____</p>
<p style="text-align: center;"><b>Defendants</b></p> <p>By: <u>Frank E. Jaumot</u></p> <p>Date: _____</p>	<p style="text-align: center;"><b>XL Specialty</b></p> <p>By: <u>Rebecca Pidlak</u> Rebecca Pidlak, XL Specialty Insurance Company</p> <p>Date: <u>1/14/14</u></p>
<p>By: <u>Dean Vaughan</u></p> <p>Date: _____</p>	<p>By: <u>Daniel Standish</u> Daniel Standish, Counsel for XL Specialty Insurance Company</p> <p>Date: <u>1/14/14</u></p>
<p>By: <u>Jason Williams</u></p> <p>Date: _____</p>	

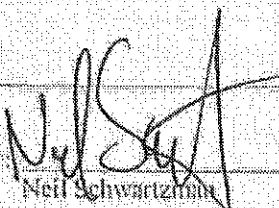
	By: <u>James Spurgeon for Nor-Dor Developments Limited, on behalf of itself and others similarly situated in the Canadian Class Action</u> Date: _____
<p style="text-align: center;"><b>Defendants</b></p> By: <u></u> Frank E. Joumer Date: <u>January 14, 2014</u>	<p style="text-align: center;"><b>XL Specialty</b></p> By: <u>Rebecca Pidlak, XL Specialty Insurance Company</u> Date: _____
By: <u>Deon Vaughan</u> Date: _____ By: <u>Jason Williams</u> Date: _____	By: <u>Daniel Standish, Counsel for XL Specialty Insurance Company</u> Date: _____



	By: _____ James Spurgeon for Nor-Dor Developments Limited, on behalf of itself and others similarly situated in the Canadian Class Action Date: _____
<b>Defendants</b>	<b>XL Specialty</b>
By: _____ Frank E. Jaumot	By: _____ Rebecca Pidlak, XL Specialty Insurance Company
Date: _____	Date: _____
By:  Dean Vaughan	By: _____ Daniel Standish, Counsel for XL Specialty Insurance Company
Date: Jan 14, 2014	Date: _____
By: _____ Jason Williams	
Date: _____	

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	By: _____ James Spurgeon for Nor-Dor Developments Limited, on behalf of itself and others similarly situated in the Canadian Class Action  Date: _____
<b>Defendants</b>	<b>XL Specialty</b>
By: _____ Frank E. Jaumot  Date: _____	By: _____ Rebecca Pidlak, XL Specialty Insurance Company  Date: _____
By: _____ Deon Vaughan  Date: _____	By: _____ Daniel Standish, Counsel for XL Specialty Insurance Company  Date: _____
By:  _____ Jason Williams  Date: <u>01-14-2014</u>	

By:   
Neil Schwartzman

Date: 1-15-2014

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R. Patrick Caldwell

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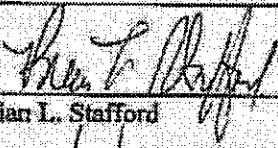
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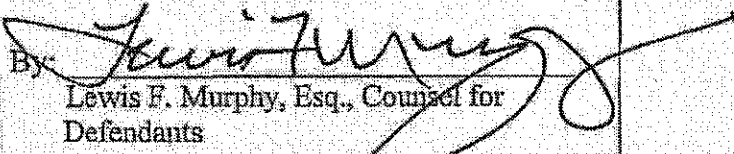
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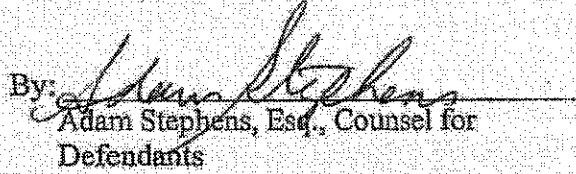
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Date: <u>1/15/2014</u>	

By: \_\_\_\_\_  
Charles E. Peters, Jr.

Date: \_\_\_\_\_

By:   
Lewis F. Murphy, Esq., Counsel for  
Defendants

Date: 14 Jan 14

By:   
Adam Stephens, Esq., Counsel for  
Defendants

Date: 15 Jan 14

**COLLATERAL AGREEMENT TO THE GLOBAL SETTLEMENT AGREEMENT**

**MADE AS OF THE 14<sup>TH</sup> DAY OF JANUARY, 2014**

**BETWEEN**

**MICHAEL FRANK, SHELDON ZAMICK, and NOR-DOR DEVELOPMENTS  
LIMITED**

**– and –**

**R. PATRICK CALDWELL, LARRY MOELLER, NEIL E. SCHWARTZMAN, JASON A.  
WILLIAMS, BRIAN L. STAFFORD, HENRY H. SHELTON, FRANK E. JAUMOT,  
KEITH J. ENGEL, RICHARD P. TORYKIAN, SR., CHARLES E. PETERS, JR., AND  
DEON VAUGHAN**

**– and –**

**XL SPECIALTY INSURANCE COMPANY**

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## COLLATERAL AGREEMENT TO THE GLOBAL SETTLEMENT AGREEMENT

Subject to the approval of the Court as provided herein, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and the global settlement agreement amongst the parties to the Action and the Creditor Trustee Action, and the Insurer, dated January \_\_, 2014 (the "Global Settlement Agreement") and upon the Approval Order becoming a Final Order and the order of the U.S. Bankruptcy Court approving the Global Settlement Agreement and payment under the Policy becoming "final" (as defined in the Global Settlement Agreement) , this Action will be settled and compromised on the terms and conditions contained herein.

### SECTION 1 – RECITALS

#### WHEREAS:

- A. On December 6, 2010, the Plaintiffs commenced this Action under Part XXIII.1 of the *Securities Act* against the Defendants alleging, among other things, that the Defendants failed to disclose material information relating to the IOTV Contract (the "Non-Disclosures"), and that the Non-Disclosures were misrepresentations and material changes as defined by the *Securities Act*.
- B. This Action has been certified by the Court on consent as a class proceeding on behalf of a class of persons, wherever they may reside or be domiciled, other than Excluded Persons, who voluntarily disposed of Shares between October 8, 2009 and January 13, 2010 inclusive or who held Shares as of January 13, 2010. The Parties acknowledge that certification by the Court is not a decision on the merits of the class action.
- C. The Defendants have filed a Statement of Defence denying that the Non-Disclosures were "misrepresentations" or "failures to disclose material changes" and denying that the non-disclosed information relating to the IOTV Contract was material. They have further denied and continue to deny the Class's claims and deny any wrongdoing or liability to the Class of any kind, and have raised numerous affirmative defences, including, among others, the Plaintiffs' lack of standing to pursue an action under Part XXIII.1 of the *Securities Act*.
- D. On or about January 11, 2012, the Creditor Trustee for PPA commenced the Creditor Trustee Action. There is significant overlap between this Action and the Creditor Trustee Action with the latter also based on, among other things, the failure to publicly disclose PPA's receipt of the IOTV Contract.
- E. The Plaintiffs and Defendants have engaged in hard-fought litigation and arm's-length negotiation.
- F. Following a joint mediation for the Action and the Creditor Trustee Action on December 17, 2013 in Toronto, and based on an analysis of the facts and law applicable to the issues in the Action, and taking into account the extensive burdens, complexity, risks and expense of continued litigation, the determination of the Defendants' liability and potential limits thereto,

the determination of damages to the Class, any potential appeals, and fair, cost-effective and assured resolution of the Class's claims, the Plaintiffs, with the benefit of advice from Class Counsel, concluded that the Global Settlement Agreement is fair and reasonable, and in the best interests of the Class.

G. The Defendants similarly have concluded that the Global Settlement Agreement is desirable in order to avoid the time, risk and expense, including the executive time and expense, of continuing with the litigation, including any potential appeals, and to resolve finally and completely the pending claims of the Class.

H. The Parties, by way of the Global Agreement, agreed to and do finally resolve the Action, the Creditor Trustee Action, and all claims that were or could have been asserted in it against the Defendants, subject to the approval of the Court and subject to the U.S. Bankruptcy Court's approval of the settlement in the Creditor Trustee Action:

NOW, THEREFORE, FOR VALUE RECEIVED, the Parties stipulate and agree, subject to the approval of the Court, that implementation of the Settlement for purposes of the Action shall proceed on the terms and conditions set forth in this Agreement.

## SECTION 2 – DEFINITIONS

In this Agreement, including the recitals hereto:

(1) **Action** means *Frank et al. v Caldwell et al.* brought in the Ontario Superior Court of Justice, Court File number CV-10-415821-CP00.

(2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement including the costs of publishing and delivering notices, the fees, disbursements and taxes paid to the Administrator, and any other expenses approved by the Court which shall all be paid from the Settlement Amount.

(3) **Administrator** means the third-party professional firm selected at arm's-length by Class Counsel and appointed by the Court to administer this Agreement, the Global Settlement Agreement, the Notice Plan, and the Plan of Allocation, and any employees of such firm.

(4) **Agreement** means this agreement, including the recitals and Schedules, which is a collateral agreement to the Global Settlement Agreement.

(5) **Approval Hearing** means the hearing for approval of the Settlement and Class Counsel Fees.

(6) **Approval Motion** means a motion to be brought by the Plaintiffs in the Court for the Approval Order.

(7) **Approval Order** means the order made by the Court in connection with the Approval Motion for approval of the Settlement and Plan of Allocation, such order to be substantially in the form attached as Schedule "A" or fixed by the Court.

(8) **Authorized Claimant** means any Class Member who has submitted a completed Claim Form which, pursuant to the terms of this Agreement, has been approved for compensation by the Administrator in accordance with the Plan of Allocation.

(9) **Claim Form** means the form, substantially in the form of Schedule "D" or in a form to be approved by the Court which, when completed and submitted in a timely manner to the Administrator, constitutes a Class Member's claim for compensation pursuant to the Settlement.

(10) **Claims Bar Deadline** means the date by which each Class Member must file a Claim Form and all required supporting documentation with the Administrator, which date shall be **thirty (30) days** after the date of the Approval Hearing, by which the Claim Form must be either received by the Administrator or postmarked.

(11) **Class or Class Members** means all persons and entities, wherever they may reside or be domiciled, other than Excluded Persons and Opt-Out Parties, who voluntarily disposed of Shares during the Class Period or who held Shares as of the end of the Class Period.

(12) **Class Counsel** means *Rochon Genova LLP*.

(13) **Class Counsel Fees** means the fees, disbursements, costs, HST and other applicable taxes or charges of Class Counsel.

(14) **Class Period** means the period from October 8, 2009 through January 13, 2010, inclusive.

(15) **Court** means the Ontario Superior Court of Justice.

(16) **Creditor Trustee Action** means an adversary proceeding against certain of the Defendants in Florida styled, *Kenneth A. Welt, Creditor Trustee of the PPOA Holding Creditor Trust v. R. Patrick Caldwell et al.*, Adversary Case No. 12-01034-BKC-JKO-A.

(17) **Defendants** means R. Patrick Caldwell, Larry Moeller, Neil E. Schwartzman, Jason A. Williams, Brian L. Stafford, Henry H. Shelton, Frank E. Jaumot, Keith J. Engel, Richard P. Torykian, Sr., Charles E. Peters, Jr., and Deon Vaughan.

(18) **Effective Date** means the date on which the Insurer on behalf of the Defendants has paid the Initial Settlement Payment into the Escrow account.

(19) **Eligible Shares** means Shares acquired by a Class Member or Opt-Out party prior to the commencement of the Class Period and held as of the close of trading on October 7, 2009.



(20) **Escrow Account** means the interest bearing trust account with one of the Canadian Schedule 1 banks in Ontario initially under the control of *Rochon Genova LLP* and then transferred to the control of the Administrator within ten (10) days of the Effective Date.

(21) **Escrow Settlement Amount** means the Initial Settlement Payment and any Reserve Savings paid into the Escrow Account plus any interest accruing thereon.

(22) **Excluded Persons** means the Defendants, PPA's past or present subsidiaries, affiliates, legal representatives, heirs, predecessors, successors and assigns, and all members of the Defendants' immediate families, and any entity in which any of the Defendants has or had a controlling interest.

(23) **Final Order** means any order contemplated by this Agreement from which no appeal lies or in respect of which any right of appeal has expired without the initiation of proceedings in respect of that appeal such as the delivery of a notice of motion for leave to appeal or notice of appeal.

(24) **Initial Settlement Payment** means the payment in Canadian dollars equivalent to USD\$3,500,000 based on the exchange rate applicable at the time the payment is wired to the Escrow Account, as contemplated by the Global Settlement Agreement.

(25) **Insurer** means XL Specialty Insurance Company.

(26) **IOTV Contract** means the contract awarded to PPA by the U.S. Army for orders of up to 736,000 improved outer tactical vests and 253,000 deltoid axillary protection systems.

(27) **Leave & Certification Order** means the order dated April 24, 2013 granting leave for the Action to proceed under Part XXIII.1 of the *Securities Act* and certifying the Action as a class proceeding.

(28) **Notice Motion** means a motion brought before the Court for an order that, among other things:

(i) sets the date for the Approval hearing;

(ii) approves the form of and authorizes the manner of publication and dissemination of the Notice of Settlement and Approval Hearing.

(29) **Notice of Settlement and Approval Hearing** means the long-form notices and short-form notices to the Class substantially in the forms attached as Schedules "B" and "C" or in the forms as approved by the Court.

(30) **Opt-Out Party** means any person who would otherwise be a Class Member who validly opted out of the Action by September 1, 2013 pursuant to the Leave & Certification Order.

(31) **Parties** means the Plaintiffs and the Defendants in this Action and the Insurer.

(32) **Plaintiffs** means Michael Frank, Sheldon Zamick, and Nor-Dor Developments Limited.

(33) **Plan of Allocation** means the distribution plan stipulating the proposed implementation and administration of the Settlement which shall be substantially in the form attached as Schedule "F" or fixed by the Court.

(34) **Plan of Notice** means the plan for disseminating the Notice of Settlement and Approval Hearing which shall be substantially in the form attached as Schedule "E" or fixed by the Court.

(35) **Policy** means the Management Liability and Company Reimbursement Insurance Policy issued to PPA by the Insurer (Policy ELU109986-09) with an aggregate limit of \$10 million, including defense expenses.

(36) **PPA** means Protective Products of America Inc.

(37) **Releasees** means the Defendants and their heirs, executors, administrators, successors and assigns, and any other persons insured under the Policy.

(38) **Releasors** means, jointly and severally, the Plaintiffs, the Class Members (excluding Opt-Out Parties), and their respective past and present directors, officers, employees, agents, trustees, servants, representatives, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, as the case may be.

(39) **Reserve Savings** means 25% of any savings on an estimated USD\$1.6 million reserve established by the Insurer against the Policy in respect of a pending, unrelated claim against the Policy, which savings are to be paid to the Plaintiffs as contemplated by the Global Settlement Agreement.

(40) **Securities Act** means *Securities Act*, R.S.O. 1990 c. S.5, as amended.

(41) **Settlement** means the settlement provided for in the Global Settlement Agreement.

(42) **Shares** means the common shares of PPA which were either voluntarily disposed of during the Class Period or held by Class Members as of the end of the Class Period.

(43) **Total Settlement Amount** means the Initial Settlement Payment and the Reserve Savings, if any, inclusive of the Administration Expenses, Class Counsel Fees, applicable taxes, and any other costs or expenses related to the Action or the Settlement.

(44) **U.S. Bankruptcy Court** means the United States Bankruptcy Court, Southern District of Florida.

## **SECTION 3 – APPROVAL AND NOTICE PROCESS**

### **3.1 Notice Motion**

(1) The Plaintiffs will, as soon as is reasonably possible following the execution of this Agreement and the Global Settlement Agreement, bring the Notice Motion. Subject to the content of the Notice of Settlement and Approval Hearing and the order sought by the Notice Motion being satisfactory to the Defendants, and for the purpose of this Agreement and the Global Settlement Agreement only, the Defendants will consent to the order being sought.

(2) Class Counsel shall cause the Notice of Settlement and Approval Hearing to be published in accordance with the directions of the Court.

### **3.2 Approval Motion**

The Plaintiffs will thereafter bring the Approval Motion before the Court in accordance with its directions. Subject to the order sought by the Approval Motion being satisfactory to the Defendants, and for the purpose of this Agreement and the Global Settlement Agreement only, the Defendants will consent to the Approval Order.

### **3.3 Notice of Termination**

If the Global Agreement is terminated, a notice of the termination will be given to the Class. Class Counsel or the Administrator, as the case may be, will cause the notice of termination, in a form approved by the Court, to be published and disseminated as the Court directs.

## **SECTION 4 – PAYMENT OF SETTLEMENT BENEFITS**

### **4.1 Escrow Account**

Following the Effective Date, any amounts paid into the Escrow Account, as contemplated by this Agreement and the Global Settlement Agreement, shall only be paid out in accordance with the terms of this Agreement or pursuant to an order of the Court made on notice to the Parties.

### **4.2 Taxes on Interest**

All taxes payable on any interest which accrues in relation to amounts paid into the Escrow Account pursuant to the Global Settlement Agreement, shall be the responsibility of the Class and shall be paid by *Rochon Genova LLP* or the Administrator, as appropriate, from the Escrow Settlement Amount, or by the Class as the Administrator considers appropriate.

## **SECTION 5 - DISTRIBUTION OF THE ESCROW SETTLEMENT AMOUNT**

### **5.1 First Distribution**

On or after the Effective Date, the Administrator shall distribute the Escrow Settlement Amount in accordance with the following priorities:

- (a) to pay Class Counsel Fees;
- (b) to pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices as contemplated by the Notice Plan;
- (c) to pay all of the Administration Expenses. For greater certainty, the Defendants are specifically excluded from eligibility for any payment of costs and expenses under this subsection;
- (d) to pay any taxes required by law to be paid to any governmental authority;
- (e) to pay the Plaintiffs Michael Frank and Sheldon Zamick in the amount of \$10,000 each and the Plaintiff Nor-Dor Developments Limited in the amount of \$5,000 as compensation on the basis of *quantum meruit*; and
- (f) to pay a *pro rata* share of the balance of the Escrow Settlement Amount to each Authorized Claimant in proportion to his, her or its claim as recognized in accordance with the Plan of Allocation.

### **5.2 Subsequent Distribution**

To the extent Reserve Savings are paid into the Escrow Account, as contemplated by the Global Settlement Agreement, following the First Distribution described in 5.1, the Administrator shall distribute the Escrow Settlement Amount in accordance with the following priorities:

- (a) to pay Class Counsel Fees provided that Class Counsel brings a further application for additional Class Counsel Fees and such additional Class Counsel Fees are approved by the Court;
- (b) to pay any outstanding Administration Expenses;
- (c) to pay any outstanding taxes required by law to be paid to any governmental authority;
- (d) to pay a *pro rata* share of the balance of the Escrow Settlement Amount to each Authorized Claimant in proportion to his, her or its claim as recognized in accordance with the Plan of Allocation.

## **SECTION 6 – TERMINATION OF THE GLOBAL AGREEMENT AND THIS AGREEMENT**

(1) In the event the Court does not grant the Approval Order or the Approval Order does not become a Final Order, or in the event the Global Settlement Agreement or payment under the Policy is not approved by the U.S. Bankruptcy Court or the U.S. Bankruptcy Court's order approving the Global Settlement Agreement and payment under the Policy is reversed and does not become "final" as defined in the Global Settlement Agreement, the Global Settlement Agreement and this Agreement shall be deemed terminated.

(2) The failure of the Court to approve in full the request by Class Counsel for Class Counsel Fees shall not be grounds to terminate this Agreement or the Global Agreement.

(3) In the event this Agreement is terminated based on 7.1(1):

(a) the Plaintiffs and the Defendants will be restored to their respective positions prior to the execution of this Agreement;

(b) this Agreement will have no further force and effect and no effect on the rights of the Plaintiffs or the Defendants except as specifically provided for herein;

(c) this Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendants;

(d) the Defendants and Insurer shall have no responsibility to pay any amount relating to costs or expenses incurred in connection with the implementation or termination of the Global Settlement Agreement.

(4) Notwithstanding the provisions of section 7(3)(b), if this Agreement is terminated, the provisions of this section and sections 2, 4.1, 4.2, 7. (4), and 12.5 and the recitals applicable thereto shall survive termination and shall continue in full force and effect.

## **SECTION 7 – DETERMINATION THAT THE SETTLEMENT IS FINAL**

(1) The Settlement shall be considered final on the Effective Date.

(2) Within ten (10) days after the Effective Date, *Rochon Genova LLP* shall transfer the Escrow Account to the Administrator.

## **SECTION 8 – ADMINISTRATION**

### **8.1 Appointment of the Administrator**

The Court will appoint the Administrator to serve until such time as the Escrow Settlement Amount is distributed in accordance with the Plan of Allocation, and to implement this Agreement, the Global Settlement Agreement, and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in this Agreement, the Global Settlement Agreement, and the Plan of Allocation.

## **8.2 Information and Assistance from the Defendants and the Insurer**

(1) The Defendants and Insurer agree to make reasonable efforts to answer any reasonable inquiry from Class Counsel and/or the Administrator in order to facilitate the administration and implementation of this Agreement, the Global Settlement Agreement, the Plan of Notice and the Plan of Allocation, including providing any information necessary to identify "Excluded Persons" and any non-privileged, non-confidential information necessary to confirm the amount of the Reserve Savings.

(2) Class Counsel and/or the Administrator may use the information obtained in accordance with sections 13.2(1) for the purposes of administering and implementing this Agreement, the Global Settlement Agreement, the Plan of Notice and the Plan of Allocation.

(3) Any information obtained or created in the administration of this Agreement and the Global Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of this Agreement and the Plan of Allocation.

## **8.3 Claims Process**

(1) In order to seek payment from the Total Settlement Amount, a Class Member must submit a completed Claim Form to the Administrator, in accordance with the provisions of the Plan of Allocation, on or before the Claims Bar Deadline. Class Members shall be bound by the terms of the Settlement regardless of whether they submit a completed Claim Form or receive payment from the Total Settlement Amount.

(2) In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of thirty (30) days from the date of the request from the Administrator or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request for information within this period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the Court to the contrary, but will in all other respects be subject to, and bound by, the provisions of this Agreement and the releases contained herein.

(3) By agreement between the Administrator and Class Counsel, the Claims Bar Deadline may be extended. Class Counsel and the Administrator shall agree to extend the Claims Bar Deadline if, in their opinions, doing so will not adversely affect the efficient administration of the Settlement and it is in the best interests of the Class to do so.

#### **8.4 Disputes Concerning the Decisions of the Administrator**

(1) In the event that a Class Member disputes the Administrator's decision, whether in whole or in part, the Class Member may appeal the decision to the Court. The decision of the Court will be final with no right of appeal.

(2) No action shall lie against Class Counsel or the Administrator for any decision made in the administration of this Agreement, the Global Settlement Agreement, and Plan of Allocation without an order from the Court authorizing such an action.

#### **8.5 Conclusion of the Administration**

(1) Following the Effective Date, and in accordance with the terms of this Agreement, the Plan of Allocation, and such further approval or order of the Court as may be necessary, or as circumstances may require, the Administrator shall distribute the Escrow Settlement Amount to Authorized Claimants.

(2) No claims or appeals shall lie against Class Counsel or the Administrator based on distributions made substantially in accordance with this Agreement, the Total Settlement Agreement, the Plan of Allocation, or with any other order or judgment of the Court.

(3) Upon the conclusion of the administration, or at such other time as the Court directs, the Administrator shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed and obtain an order from the Court discharging it as Administrator.

(4) For greater certainty, the administration shall not be concluded until after the Insurer has caused the Reserve Savings to be paid into the Escrow Account and provided a sworn affidavit confirming the amount of the Reserve Savings as contemplated by the Global Settlement Agreement.

### **SECTION 9 – THE FEE AGREEMENT AND CLASS COUNSEL FEES**

#### **9.1 Motion for Approval of Class Counsel Fees**

(1) At the Approval Hearing, Class Counsel may seek approval of Class Counsel Fees to be paid as a first charge on the Initial Settlement Payment. Class Counsel are not precluded from making additional applications to the Court for expenses incurred as a result of implementing the terms of the Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Total Settlement Amount.

(2) The Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the

amount of Class Counsel Fees and they will not take any position or make any submissions to the Court concerning Class Counsel Fees.

(3) The procedure for, and the allowance or disallowance by the Court of any requests for Class Counsel Fees to be paid out of the Total Settlement Amount are not part of the Agreement provided for herein, except as expressly provided in section 5(a), and are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.

(4) Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or the Global Settlement Agreement or affect or delay the finality of the Approval Order and the Settlement of this Action provided herein.

## **9.2 Payment of Class Counsel Fees**

Forthwith after the Settlement becomes final, as contemplated in section 8, the Class Counsel Fees approved by the Ontario Court from the Escrow Account to *Rochon Genova LLP* in trust.

## **SECTION 10 – COMPENSATION TO REPRESENTATIVE PLAINTIFFS**

Class Counsel will seek approval from the Court payment from the Total Settlement Amount to the Plaintiffs Michael Frank and Sheldon Zamick in the amount of \$10,000 each and the Plaintiff Nor-Dor Developments Limited in the amount of \$5,000 as compensation on the basis of *quantum meruit*. If approved by the Court, such payments will be made in accordance with the distribution set out in Section 5.

## **SECTION 11 – MISCELLANEOUS**

### **11.1 Motions for Directions**

(1) Any one or more of the Parties, Class Counsel, or the Administrator may apply to the Court for directions in respect of any matter in relation to this Agreement, the Global Settlement Agreement, and the Plan of Allocation.

(2) All motions contemplated by this Agreement shall be on notice to the Parties.

### **11.2 Defendants Have No Responsibility or Liability for Administration**

Except for the obligation to provide the information and assistance contemplated by section 9.2, the Defendants shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of this Agreement, the Global Settlement Agreement, the Notice Plan, and Plan of Allocation.

### **11.3 Insurer Has No Responsibility or Liability for Administration**



Except for the obligation to pay the Initial Settlement Payment, on behalf of the Defendants, and the Reserve Savings and provide a sworn affidavit confirming the amount of the Reserve Savings, as contemplated by the Global Settlement Agreement, and provide the information and assistance contemplated by section 9.2, the Insurer shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of this Agreement, the Global Settlement Agreement, the Notice Plan, and Plan of Allocation.

#### **11.4 Headings, etc.**

(1) In this Agreement:

- (a) the division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (b) the terms "the Agreement", "this Agreement", "herein", "hereto" and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement;
- (c) all amounts referred to are in lawful money of Canada unless otherwise indicated; and
- (d) "person" means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

(2) In the computation of time in this Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

#### **11.5 Governing Law**

(1) The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

(2) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over this Action, the Parties, the Insurer, and Class Members to interpret and enforce the terms, conditions and obligations under this Agreement and the Approval Order.

#### **11.6 Severability**

(1) Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

#### **11.7 Entire Agreement**

(1) This Agreement, along with the Global Settlement Agreement, constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Agreement and the Global Settlement Agreement, unless expressly incorporated herein. This Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by the Court.

#### **11.8 Binding Effect**

(1) If the Settlement is approved by the Court and becomes final as contemplated in the Global Settlement Agreement, this Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Class Members, the Defendants, the Insurer, the Releasees, the Releasors and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

#### **11.9 Survival**

The representations and warranties contained in this Agreement shall survive its execution and implementation.

#### **11.10 Negotiated Agreement**

This Agreement, the Global Settlement Agreement, and the underlying settlement have been the subject of arm's-length negotiations and many discussions among the undersigned and counsel. Each of the undersigned has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

#### **11.11 Recitals**

(1) The recitals to this Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Agreement.

### **11.12 Authorized Signatures**

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the party for whom he or she is signing.

### **11.13 Counterparts**

This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

### **11.14 Confidentiality and Communications**

(1) In any public discussion of, comment on, press release or other communication of any kind (with the media or otherwise) about this Agreement and the Plan of Allocation, the Plaintiffs and Class Counsel agree and undertake to describe the Settlement and the terms of this Agreement as fair, reasonable and in the best interests of the Class.

(2) Nothing in this section shall prevent the Parties or their counsel, or any of them, from reporting to their clients, from complying with any order of the Court, or from making any disclosure or comment required by this Agreement, or from making any necessary disclosure or comment for the purposes of any applicable securities or tax legislation or from making any disclosure or comment to Class Members or the Court or for the purposes of any proceedings as between the Defendants.

(3) Without limiting the generality of the foregoing, the Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process. In addition, to the extent that there is public discussion of, comment on or communication of any kind about this Agreement, the Parties and their counsel agree and undertake to make no statement or comment that the Agreement is other than fair, reasonable and in the best interests of the Class.

### **11.15 Notice**

Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with this Agreement or any other report or document to be given by any party to any other party shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid:

For Michael Frank, Sheldon Zamick, and Nor-Dor Developments Limited:

John Archibald  
**Rochon Genova LLP**  
 121 Richmond Street West, Suite 900  
 Toronto ON M5H 2K1

Telephone: 416-363-1867  
 Facsimile: 416-363-0263  
 Email: jarchibald@rochongenova.com

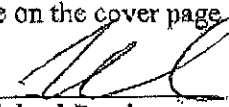
For R. Patrick Caldwell, Larry Moeller, Neil E. Schwartzman, Jason A. Williams, Brian L. Stafford, Henry H. Shelton, Frank E. Jaumot, Keith J. Engel, Richard P. Torykian, Sr., Charles E. Peters, Jr., and Deon Vaughan:

John Chapman  
 Adam Stephens  
**Miller Thomson LLP**  
 Scotia Plaza  
 40 King Street West, Suite 5800  
 P.O. Box 1011  
 Toronto, ON M5H 3S1  
 Telephone: 416-595-8500  
 Facsimile: 416-595-8695  
 Email: astephens@millerthomson.com

For XL Speciality Insurance Company:

Daniel J. Standish  
**Wiley Rein LLP**  
 1776 K Street NW  
 Washington, DC 20006  
 Telephone: 202-719-7130  
 Facsimile: 202-974-1407  
 Email: dstandish@wilevrein.com

The parties have executed this Agreement as of the date on the cover page.

  
 Michael Frank

Sheldon Zamick

Nor-Dor Developments Limited  
 Per: \_\_\_\_\_  
 I have authority to bind the corporation.

John Archibald  
**Rochon Genova LLP**  
 121 Richmond Street West, Suite 900  
 Toronto ON M5H 2K1

Telephone: 416-363-1867  
 Facsimile: 416-363-0263  
 Email: jarchibald@rochongenova.com

For R. Patrick Caldwell, Larry Moeller, Neil E. Schwartzman, Jason A. Williams, Brian L. Stafford, Henry H. Shelton, Frank E. Jaumot, Keith J. Engel, Richard P. Torykian, Sr., Charles E. Peters, Jr., and Deon Vaughan:

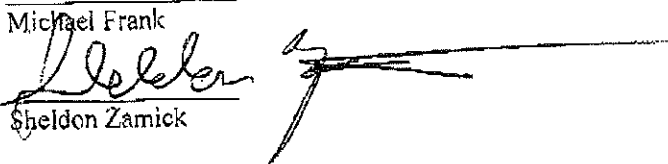
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Telephone: 416-363-1867  
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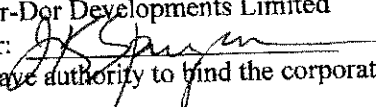
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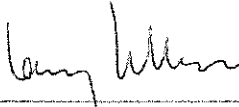
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Sheldon Zamick

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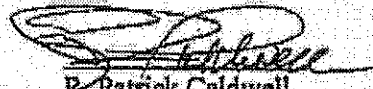
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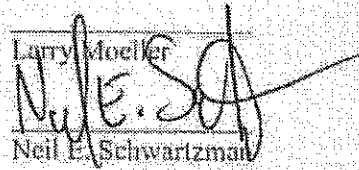
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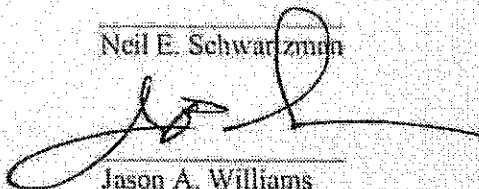
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R. Patrick Caldwell

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Neil E. Schwartzman



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Jason A. Williams

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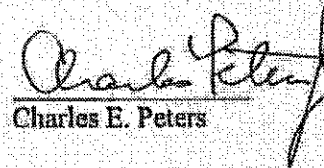
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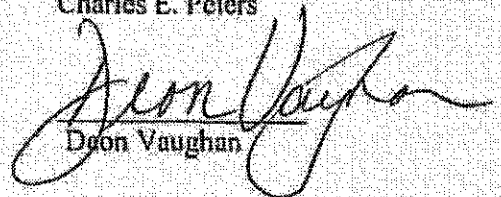
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Protective Products of America Inc. Securities Class Action

**PLAN OF ALLOCATION**

**Defined Terms**

1. For the purposes of this Plan of Allocation, the definitions set out in the Collateral Settlement Agreement dated January 14, 2014 apply to and are adopted. In addition, the following definitions apply:

(a) "Authorized Claimant" means a Class Member who submits a properly completed Claim Form and all required supporting documentation to the Administrator, on or before the Claims Bar Deadline; and

(b) "Net Settlement Amount" means the amount of the Total Settlement Amount remaining in the Escrow Account after payment of Administration Expenses, Class Counsel Fees, and any payments to the representative plaintiffs approved by the Court as compensation on the basis of *quantum meruit*.

(c) "Net Reserve Savings" means the amount of Reserve Savings remaining in the Escrow Account after payment of any administration expenses and, subject to court approval of any additional application by Class Counsel, Class Counsel Fees.

**Initial Distribution**

On the later of the Effective Date or a date within one hundred and twenty (120) days after the Claims Bar Deadline, the Administrator shall distribute the Net Settlement Amount to the Authorized Claimants *pro rata* based on their holdings of Eligible Shares.

**Potential Future Distribution**

If, following the initial distribution, any Reserve Savings are paid into the Escrow Account by the Insurer, the Administrator shall distribute the Net Reserve Savings to the Authorized Claimants *pro rata* based on their holdings of Eligible Shares without further order of the Court.

MICHAEL FRANK, *et al.*                      v.                      R. PATRICK CALDWELL, *et al.*  
Plaintiffs    Defendants

MICHAEL FRANK, *et al.*                      v.                      R. PATRICK CALDWELL, *et al.*  
Plaintiffs    Defendants

## Class Counsel