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12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION

15 THOMAS & THOMAS RODMAKERS, )	Case No. CV-99-07796-FMC(RNBx)
16 INC., et al., On Their Own Behalf and )	<b>(Consolidated)</b>
17 On Behalf of All Others Similarly )	<u>CLASS ACTION</u>
18 Situated, )	
19 Plaintiffs, )	STIPULATION OF SETTLEMENT
20 vs. )	WITH THE TORAY DEFENDANTS
21 NEWPORT ADHESIVES AND )	
22 COMPOSITES, INC., et al., )	
23 Defendants. )	

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1 This Stipulation of Settlement with the Toray Defendants dated as of September  
 2 20, 2004 (the “Stipulation”), is made and entered into by and among the following  
 3 Settling Parties (as defined further in §IV hereof): (i) the Representative Plaintiffs (on  
 4 behalf of themselves and each of the Class Members), by and through their counsel of  
 5 record in the Litigation; and (ii) the Toray Defendants by and through their counsel of  
 6 record in the Litigation. The Stipulation is intended by the Settling Parties to fully,  
 7 finally and forever resolve, discharge and settle the Released Claims (as defined  
 8 below), upon and subject to the terms and conditions hereof.

9 **I. THE LITIGATION**

10 On and after July 29, 1999, the following class actions were filed in the United  
 11 States District Court for the Central District of California (the “Court”):

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>DATE FILED</b>
<i>Thomas &amp; Thomas Rodmakers, Inc. v. Newport Adhesives and Composites, Inc.</i>	CV-99-07796GHK(CTx)	07/29/99
<i>Lamiglas, Inc. v. Hexcel Corporation</i>	SACV-99-986-GLT(EEx)	07/30/99
<i>Highland Injection Molding, Inc. v. Amoco Polymers, Inc.</i>	CV-99-08017-WDK(RC)	08/06/99
<i>Cape Composites, Inc. v. Mitsubishi Rayon Co., Ltd.</i>	CV-99-08260-RSWL(AJWx)	08/13/99
<i>Tex Tech Industries v. Amoco Polymers, Inc.</i>	SACV-99-1039-AHS(EEx)	08/19/99
<i>Gold Tip, Inc. v. Amoco Polymers, Inc.</i>	CV-99-09199-RJK(EXx)	09/09/99
<i>Royal Precision, Inc. v. Amoco Polymers, Inc.</i>	CV-99-10040-GHK(AIJx)	09/30/99

1 2 3	<i>Cannondale Corporation, Inc. v. Newport Adhesives and Composites</i>	CV-00-04913-HLH(CTx)	05/09/00
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4 By order entered September 21, 1999, the Court executed Amended Pretrial  
5 Order No. 1, in which the Court, among other things, appointed Co-Lead Counsel, and  
6 ordered the filing of a consolidated complaint. The operative complaint is the  
7 Amended and Consolidated Class Action Complaint for Violation of 15 U.S.C. §1, *et*  
8 *seq.* filed on October 5, 1999 (the “Complaint”). The Complaint and the claims  
9 contained therein are referred to herein as the “Litigation.”

10 **II. TORAY DEFENDANTS’ DENIALS OF WRONGDOING AND  
LIABILITY**

11 The Toray Defendants have denied and continue to deny each and all of the  
12 claims alleged by the Representative Plaintiffs and the Class in the Litigation. The  
13 Toray Defendants expressly have denied and continue to deny all charges of  
14 wrongdoing or liability against them arising out of any of the conduct or acts alleged,  
15 or that could have been alleged, in the Litigation. The Toray Defendants also have  
16 denied and continue to deny, *inter alia*, the allegations that the Representative  
17 Plaintiffs or the Class have suffered damage or that the Representative Plaintiffs or the  
18 Class were harmed by the conduct alleged in the Litigation.

19 Nonetheless, the Toray Defendants have concluded that further conduct of the  
20 Litigation would be protracted and expensive, and that it is desirable that the  
21 Litigation be fully and finally settled in the manner and upon the terms and conditions  
22 set forth in this Stipulation. The Toray Defendants also have taken into account the  
23 uncertainty and risks inherent in any litigation, especially in complex cases like the  
24 Litigation. The Toray Defendants have, therefore, determined that it is desirable and  
25 beneficial to them that the Litigation be settled in the manner and upon the terms and  
26 conditions set forth in this Stipulation.

1 **III. CLAIMS OF THE REPRESENTATIVE PLAINTIFFS AND**  
2 **BENEFITS OF SETTLEMENT**

3 The Representative Plaintiffs believe that the claims asserted in the Litigation  
4 have merit. However, counsel for the Representative Plaintiffs and the Class  
5 recognize and acknowledge the expense and length of continued proceedings  
6 necessary to prosecute the Litigation against the Toray Defendants through trial and  
7 subsequent appeals. Counsel for the Representative Plaintiffs and the Class also have  
8 taken into account the uncertain outcome and the risk of any litigation, especially in  
9 complex actions such as the Litigation, as well as the difficulties and delays inherent  
10 in such litigation. Counsel for the Representative Plaintiffs and the Class also are  
11 mindful of the inherent problems of proof under and possible defenses to the  
12 violations asserted in the Litigation. Counsel for the Representative Plaintiffs and the  
13 Class believe that the settlement set forth in this Stipulation confers substantial  
14 benefits upon the Class. Based on their evaluation, counsel for the Representative  
15 Plaintiffs and the Class have determined that the settlement set forth in the Stipulation  
16 is in the best interests of the Representative Plaintiffs and the Class.

17 **IV. TERMS OF STIPULATION AND AGREEMENT OF**  
18 **SETTLEMENT**

19 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and  
20 among the Representative Plaintiffs (for themselves and the Class Members) and the  
21 Toray Defendants, by and through their respective counsel or attorneys of record, that,  
22 subject to the approval of the Court, the Litigation and the Released Claims shall be  
23 finally and fully compromised, settled and released, and the Litigation shall be  
24 dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and  
25 conditions of the Stipulation, as follows.

26 **1. Definitions**

27 As used in the Stipulation the following terms have the meanings specified  
28 below:

1           1.1    “Authorized Claimant” means any Class Member whose claim for  
2 recovery has been allowed pursuant to the terms of the Stipulation.

3           1.2    “Carbon Fiber”, as used herein, means carbon fiber and industrial fabrics,  
4 filaments and prepregs made from or with carbon fiber.

5           1.3    “Claimant” means any Class Member who files a Proof of Claim in such  
6 form and manner, and within such time, as the Court shall prescribe.

7           1.4    “Claims Administrator” means the firm of Heffler, Radetich & Saitta  
8 L.L.P.

9           1.5    “Class” means all Persons (excluding governmental entities, Defendants,  
10 their subsidiaries and affiliates) who purchased Carbon Fiber in the United States  
11 directly from any of the Defendants or any subsidiary or affiliate thereof, at any time  
12 during the period from January 1, 1993 through January 31, 1999. Excluded from the  
13 Class are those Persons who requested exclusion pursuant to the Notice of Pendency  
14 of Class Action dated October 4, 2002.

15          1.6    “Class Member” or “Member of the Class” mean a person who falls  
16 within the definition of the Class.

17          1.7    “Class Period” means the period from January 1, 1993 through January  
18 31, 1999.

19          1.8    “Defendants” means Amoco Polymers, Inc., Cytec Fiberite, Inc., Cytec  
20 Industries, Inc., Grafil, Inc., Hexcel Corporation, Hercules, Inc., Newport Adhesives  
21 and Composites, Inc., Mitsubishi Rayon Company, Ltd., Toho Carbon Fibers, Inc.,  
22 Toho Rayon Company, Ltd., and the Toray Defendants.

23          1.9    “Effective Date” means the first date by which all of the events and  
24 conditions specified in ¶7.2 of the Stipulation have been met and have occurred.

25          1.10 “Escrow Agent” means the law firms of Lerach Coughlin Stoia Geller  
26 Rudman & Robbins LLP or its successor(s); and Barrack, Rodos & Bacine or its  
27 successor(s).

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1           1.11 “Final” means: (i) the date of final affirmance on an appeal of the  
2 Judgment, the expiration of the time for a petition for or a denial of a writ of certiorari  
3 to review the Judgment and, if certiorari is granted, the date of final affirmance of the  
4 Judgment following review pursuant to that grant; or (ii) the date of final dismissal of  
5 any appeal from the Judgment or the final dismissal of any proceeding on certiorari to  
6 review the Judgment; or (iii) if no appeal is filed, the expiration date of the time for  
7 the filing or noticing of any appeal from the Court’s Judgment approving the  
8 Stipulation substantially in the form of Exhibit B attached hereto, *i.e.*, thirty (30) days  
9 after entry of the Judgment, such that the Judgment represents a final and binding  
10 judgment with respect to the Litigation. Any proceeding or order, or any appeal or  
11 petition for a writ of certiorari pertaining solely to any plan of allocation and/or  
12 application for attorneys’ fees, costs or expenses, shall not in any way delay or  
13 preclude the Judgment from becoming Final.

14           1.12 “Judgment” means the judgment to be rendered by the Court,  
15 substantially in the form attached hereto as Exhibit B.

16           1.13 “Non-Settling Defendants” means all Defendants except the Toray  
17 Defendants.

18           1.14 “Person” means any individual, partnership, corporation, association or  
19 other business or legal entity.

20           1.15 “Plaintiffs’ Settlement Counsel” means court appointed Co-Lead  
21 Counsel: Lerach Coughlin Stoia Geller Rudman & Robbins LLP, Joy Ann Bull,  
22 Bonny E. Sweeney, 401 B Street, Suite 1700, San Diego, California 92101, Telephone  
23 (619) 231-1058; Barrack, Rodos & Bacine, Leonard Barrack, Jeffrey B. Gittleman,  
24 3300 Two Commerce Square, 2001 Market Street, Philadelphia, Pennsylvania 19103,  
25 Telephone (215)963-0600; and Barrack, Rodos & Bacine, Stephen R. Basser, 402  
26 West Broadway, Suite 850, San Diego, California 92101, Telephone (619)230-0800.

27           1.16 “Plan of Allocation” means a plan or formula of allocation of the  
28 Settlement Fund whereby the Settlement Fund shall be distributed to Authorized

1 Claimants after payment of expenses of notice and administration of the settlement,  
2 Taxes and Tax Expenses and such attorneys' fees, costs, expenses and interest as may  
3 be awarded by the Court. Any Plan of Allocation is not part of the Stipulation and the  
4 Toray Defendants shall have no responsibility or liability with respect thereto.

5 1.17 "Released Claims" means all claims for economic damages (including,  
6 but not limited to, Unknown Claims as defined in ¶1.24), losses, rights, causes of  
7 action, suits, appeals, demands, damages, penalties, sanctions, punitive, exemplary or  
8 enhanced damages, treble damages, restitution, disgorgement, costs, expenses,  
9 attorneys' fees, injunctions, and any other matters and issues, of any nature  
10 whatsoever, whether known or unknown, whether suspected or unsuspected, whether  
11 concealed or hidden, of any Representative Plaintiff or Class Member against the  
12 Toray Defendants, arising under the antitrust laws of the United States or of any state  
13 or other jurisdiction, or under any similar statute, whether sounding in antitrust, unfair  
14 or deceptive trade practices or unfair competition, consumer protection, fraud  
15 protection, price discrimination, unitary pricing, RICO, or other similar laws, that  
16 have been, might have been, or are now asserted in the Litigation and that arise out of  
17 any alleged unlawful conspiracy to fix, raise, maintain or stabilize the prices of  
18 Carbon Fiber in the United States during the Class Period. Released Claims do not  
19 include any claims against Non-Settling Defendants or any claims against any Person  
20 other than the Toray Defendants. The Released Claims shall not include any claims  
21 arising out of or solely related to non-antitrust disputes (including, without limitation,  
22 any claim for a defective product that may have arisen in the ordinary course of  
23 business).

24 1.18 "Released Persons" means each and all of the Toray Defendants.

25 1.19 "Representative Plaintiffs" means Thomas & Thomas Rodmakers, Inc.,  
26 Lamiglas, Inc., Gold Tip, Inc., Cannondale Corporation, and Royal Precision, Inc.

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1           1.20 “Representative Plaintiffs’ Counsel” means counsel who have appeared  
2 for any of the Representative Plaintiffs in the Litigation or who have performed work  
3 on behalf of the Class at the request of Plaintiffs’ Settlement Counsel.

4           1.21 “Settlement Fund” means the principal amount of Eleven Million Dollars  
5 (\$11,000,000), plus any interest that may accrue thereon as provided for herein.

6           1.22 “Settling Parties” means, collectively, each of the Toray Defendants and  
7 the Representative Plaintiffs on behalf of themselves and the Members of the Class.

8           1.23 “Toray Defendants” means Toray Composites (America), Inc., Toray  
9 Industries, Inc., and Toray Carbon Fibers America, Inc. and their predecessors,  
10 successors, parents, subsidiaries, divisions and related or affiliated entities, present or  
11 former officers, directors, employees, attorneys and insurers, and specifically excludes  
12 all Non-Settling Defendants and their predecessors, successors, parents, subsidiaries,  
13 divisions and related or affiliated entities.

14           1.24 “Unknown Claims” means any Released Claims which any  
15 Representative Plaintiff or Class Member does not know or suspect to exist in his, her  
16 or its favor at the time of the release of the Released Persons which, if known by him,  
17 her or it, might have affected his, her or its settlement with and release of the Released  
18 Persons, or might have affected his, her or its decision not to object to this settlement.  
19 With respect to any and all Released Claims, the Settling Parties stipulate and agree  
20 that, upon the Effective Date, the Representative Plaintiffs shall expressly waive and  
21 each of the Class Members shall be deemed to have, and by operation of the Judgment  
22 shall have, expressly waived, the provisions, rights and benefits of Cal. Civ. Code  
23 §1542, which provides:

24                   A general release does not extend to claims which the creditor  
25                   does not know or suspect to exist in his favor at the time of executing the  
26                   release, which if known by him must have materially affected his  
27                   settlement with the debtor.  
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1 The Representative Plaintiffs shall expressly waive and each of the Class Members  
2 shall be deemed to have, and by operation of the Judgment shall have, expressly  
3 waived any and all provisions, rights and benefits conferred by any law of any state or  
4 territory of the United States, or principle of common law, which is similar,  
5 comparable or equivalent to Cal. Civ. Code §1542. The Representative Plaintiffs and  
6 Class Members may hereafter discover facts in addition to or different from those  
7 which any of them now knows or believes to be true with respect to the subject matter  
8 of the Released Claims, but each Representative Plaintiff shall expressly and each  
9 Class Member, upon the Effective Date, shall be deemed to have, and by operation of  
10 the Judgment shall have, fully, finally, and forever settled and released any and all  
11 Released Claims, known or unknown, suspected or unsuspected, contingent or non-  
12 contingent, whether or not concealed or hidden, which now exist, or heretofore have  
13 existed upon any theory of law or equity now existing or coming into existence in the  
14 future, including, but not limited to, conduct which is negligent, intentional, with or  
15 without malice, or a breach of any duty, law or rule, without regard to the subsequent  
16 discovery or existence of such different or additional facts. The Representative  
17 Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the  
18 Judgment to have acknowledged, that the foregoing waiver was separately bargained  
19 for and a key element of the settlement of which this release is a part.

20 **2. The Settlement**

21 **a. The Settlement Fund**

22 2.1 The principal amount of \$11,000,000 (plus any interest that may accrue  
23 thereon as provided for herein) shall constitute the Settlement Fund. The cash amount  
24 of \$11,000,000 shall be paid by the Toray Defendants by wire transfer into an interest  
25 bearing account maintained by the Escrow Agent at San Diego National Bank within  
26 five (5) business days from the date the Toray Defendants execute the Stipulation. If  
27 the \$11,000,000 is not transferred to the Escrow Agent by the agreed upon date,  
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1 interest will accrue at the rate of 5% per annum from such date until the date such sum  
2 is transferred to the Escrow Agent.

3 **b. Cooperation of Toray Defendants**

4 2.2 Upon the request of the Representative Plaintiffs, Toray Composites  
5 (America), Inc., Toray Industries, Inc. and Toray Carbon Fibers America, Inc. agree to  
6 provide declarations from a custodian or other qualified employee, to the extent they  
7 can in good faith using best efforts, that:

8 (a) The documents listed in the declarations to be provided were  
9 produced in this Litigation by the Toray Defendants and were produced from the  
10 Toray Defendants' files which were maintained in the ordinary course of the Toray  
11 Defendants' business.

12 (b) The Toray documents listed in the declarations to be provided were  
13 marked by the Toray Defendants with a prefix and bates number.

14 (c) The documents listed in the declarations to be provided constitute  
15 originals or duplicates of regularly conducted activity:

16 • Made at or near the time of the occurrence of the matters set  
17 forth by, or from information transmitted by a person with knowledge of those  
18 matters; and

19 • Were kept in the ordinary course of the regularly conducted  
20 activity; and

21 • Were made by the regularly conducted activity as a regular  
22 practice.  
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24 (d) In the case of memoranda, e-mails, calendars, correspondence and  
25 diaries indicating a Toray author, addressee or both, the documents listed in such  
26 declarations were produced from the files maintained by or for the author or  
27 addressee.  
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1 (e) The documents listed in the declarations to be provided were  
2 prepared on or about the date shown on the documents.

3 **c. The Escrow Agent**

4 2.3 The Escrow Agent shall invest the Settlement Fund deposited pursuant to  
5 ¶2.1 above in instruments backed by the full faith and credit of the United States  
6 Government or fully insured by the United States Government or an agency thereof  
7 and shall reinvest the proceeds of these instruments as they mature in similar  
8 instruments at their then current market rates. The Escrow Agent shall bear all risks  
9 related to investment of the Settlement Fund.

10 2.4 The Escrow Agent shall not disburse the Settlement Fund except as  
11 provided in the Stipulation or with the prior written agreement of counsel for the  
12 Toray Defendants and Plaintiffs' Settlement Counsel.

13 2.5 The Escrow Agent is authorized to execute such transactions on behalf of  
14 the Class Members as are consistent with the terms of the Stipulation.

15 2.6 All funds held by the Escrow Agent shall be deemed and considered to be  
16 in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court,  
17 until such time as such funds shall be distributed pursuant to the Stipulation.

18 2.7 Within ten (10) days after payment of the Settlement Fund to the Escrow  
19 Agent pursuant to ¶2.1, the Escrow Agent may establish a "Notice and Administration  
20 Fund," and may deposit up to \$100,000 from the Settlement Fund in it. The Notice  
21 and Administration Fund may be used by Plaintiffs' Settlement Counsel to pay the  
22 Toray Defendants' *pro rata* share of the costs and expenses reasonably and actually  
23 incurred in connection with providing notice to the Class, locating Class Members,  
24 assisting with the filing of claims, administering and distributing the Settlement Fund  
25 to Authorized Claimants, processing Proof of Claim and Release forms and paying  
26 escrow fees and costs, if any. Toray Defendants' *pro rata* share shall be calculated as  
27 a percentage of the principal amount of the total settlement monies included in the  
28 Notice and Summary Notice referenced in ¶3.1 hereof. The Notice and

1 Administration Fund may also be invested and earn interest as provided for in ¶2.3 of  
2 this Stipulation.

3 **d. Taxes**

4 2.8 Settling Parties and the Escrow Agent agree to treat the Settlement Fund  
5 as being at all times a “qualified settlement fund” within the meaning of Treas. Reg.  
6 §1.468B-1. In addition, the Escrow Agent shall timely make such elections as  
7 necessary or advisable to carry out the provisions of this ¶2.8, including the “relation-  
8 back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted  
9 date. Such elections shall be made in compliance with the procedures and  
10 requirements contained in such regulations. It shall be the responsibility of the  
11 Escrow Agent to timely and properly prepare and deliver the necessary documentation  
12 for signature by all necessary parties, and thereafter to cause the appropriate filing to  
13 occur.

14 (a) For the purpose of §468B of the Internal Revenue Code of 1986, as  
15 amended, and the regulations promulgated thereunder, the “administrator” shall be the  
16 Escrow Agent. The Escrow Agent shall timely and properly file all informational and  
17 other tax returns necessary or advisable with respect to the Settlement Fund  
18 (including, without limitation, the returns described in Treas. Reg. §1.468B-2(1)).  
19 Such returns (as well as the election described in this ¶2.8) shall be consistent with  
20 this ¶2.8 and in all events shall reflect that all Taxes as defined in subsection (b) below  
21 (including any estimated Taxes, interest or penalties) on the income earned by the  
22 Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.8(b)  
23 hereof.

24 (b) All (i) Taxes (including any estimated Taxes, interest or penalties)  
25 arising with respect to the income earned by the Settlement Fund, including any Taxes  
26 or tax detriments that may be imposed upon the Toray Defendants with respect to any  
27 income earned by the Settlement Fund for any period during which the Settlement  
28 Fund does not qualify as a “qualified settlement fund” for federal or state income tax

1 purposes (“Taxes”), and (ii) expenses and costs incurred in connection with the  
2 operation and implementation of this ¶2.8 (including, without limitation, expenses of  
3 tax attorneys and/or accountants and mailing and distribution costs and expenses  
4 relating to filing (or failing to file) the returns described in this ¶2.8) (“Tax  
5 Expenses”), shall be paid out of the Settlement Fund; in all events the Toray  
6 Defendants shall not have any liability or responsibility for the Taxes or the Tax  
7 Expenses. The Escrow Agent shall indemnify and hold each of the Toray Defendants  
8 harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by  
9 reason of any such indemnification). Further, Taxes and Tax Expenses shall be  
10 treated as, and considered to be, a cost of administration of the Settlement Fund and  
11 shall be timely paid by the Escrow Agent out of the Settlement Fund without prior  
12 order from the Court and the Escrow Agent shall be obligated (notwithstanding  
13 anything herein to the contrary) to withhold from distribution to Authorized Claimants  
14 any funds necessary to pay such amounts including the establishment of adequate  
15 reserves for any Taxes and Tax Expenses (as well as any amounts that may be  
16 required to be withheld under Treas. Reg. §1.468B-2(1)(2)). The Settling Parties  
17 hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys  
18 and accountants to the extent reasonably necessary to carry out the provisions of this  
19 ¶2.8.

20 (c) For the purpose of this ¶2.8, references to the Settlement Fund  
21 shall include both the Settlement Fund and the Notice and Administration Fund and  
22 shall also include any earnings thereon.

23 **e. Termination of Settlement**

24 2.9 In the event that the Stipulation is not approved, or is terminated,  
25 canceled, or fails to become effective for any reason, including, without limitation, in  
26 the event the Judgment is reversed or vacated following any appeal taken therefrom,  
27 the Settlement Fund (including accrued interest) less the Toray Defendants’ *pro rata*  
28 share of reasonable expenses actually incurred or due and owing from the Notice and

1 Administration Fund, shall be refunded to the Toray Defendants as described in ¶7.5  
2 below.

3 **3. Notice Order and Settlement Hearing**

4 3.1 Promptly after execution of the Stipulation, the Representative Plaintiffs  
5 shall submit the Stipulation together with its Exhibits to the Court and shall apply for  
6 entry of an order (the “Notice Order”), substantially in the form and content of Exhibit  
7 A attached hereto, requesting, *inter alia*, the preliminary approval of the settlement set  
8 forth in the Stipulation, and approval for the mailing and publication of a settlement  
9 notice substantially in the form and content of Exhibits A-1 (the “Notice”), and A-3  
10 (the “Summary Notice”) hereto. The Notice shall include the general terms of the  
11 settlement set forth in the Stipulation, the proposed Plan of Allocation, the general  
12 terms of the Fee and Expense Application as defined in ¶6.1 below and the date of the  
13 Settlement Hearing as defined below.

14 3.2 The Settling Parties request that after notice is given, the Court hold a  
15 hearing (the “Settlement Hearing”) and approve the settlement of the Litigation as set  
16 forth herein. At or after the Settlement Hearing, Plaintiffs’ Settlement Counsel also  
17 may request that the Court approve the proposed Plan of Allocation and the Fee and  
18 Expense Application.

19 **4. Releases**

20 4.1 Upon the Effective Date, as defined in ¶1.9, the Representative Plaintiffs  
21 and each of the Class Members shall be deemed to have, and by operation of the  
22 Judgment shall have, fully, finally, and forever released, relinquished and discharged  
23 all Released Claims against the Released Persons, whether or not such Class Member  
24 executes and delivers a Proof of Claim and Release. The Released Claims do not  
25 include claims for breach of the Stipulation. All rights of any Class Member against  
26 the Non-Settling Defendants or any other Person other than the Released Persons are  
27 specifically reserved by the Representative Plaintiffs and Class Members. In addition,  
28 any sales of the Toray Defendants in the United States shall remain in the Litigation as

1 against the Non-Settling Defendants as a basis for damage claims and shall be part of  
2 any joint and several liability claims against the Non-Settling Defendants in the  
3 Litigation.

4 4.2 The Proof of Claim and Release to be executed by Class Members shall  
5 release all Released Claims against the Released Persons and shall be substantially in  
6 the form and content contained in Exhibit A-2 attached hereto.

7 4.3 Upon the Effective Date, as defined in ¶1.9, each of the Released Persons  
8 shall be deemed to have, and by operation of the Judgment shall have, fully, finally,  
9 and forever released, relinquished and discharged each and all of the Class Members  
10 and Representative Plaintiffs' Counsel from all claims (including "Unknown  
11 Claims"), arising out of, in any way relating to, or in connection with the institution,  
12 prosecution, assertion, settlement or resolution of the Litigation or the Released  
13 Claims, except for claims for breach of the Stipulation.

14 **5. Administration and Calculation of Claims, Final Awards**  
15 **and Supervision and Distribution of the Settlement Fund**

16 5.1 Plaintiffs' Settlement Counsel, or their authorized agents, acting on  
17 behalf of the Class, and subject to such supervision and direction of the Court as may  
18 be necessary or as circumstances may require, shall administer and calculate the  
19 claims submitted by Class Members and shall oversee distribution of the Net  
20 Settlement Fund (defined below) to Authorized Claimants. The Settlement Fund shall  
21 be applied as follows:

22 (a) To pay all the costs and expenses reasonably and actually incurred  
23 in connection with providing notice, locating Class Members, assisting with the filing  
24 of claims, administering and distributing the Settlement Fund to Authorized  
25 Claimants, processing Proof of Claim and Release forms and paying escrow fees and  
26 costs, if any;

27 (b) To pay the Taxes and Tax Expenses described in ¶2.8 above;

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1 (c) To pay to Representative Plaintiffs' Counsel attorneys' fees,  
2 expenses and costs with interest thereon (the "Fee and Expense Award"); and

3 (d) To distribute the balance of the Settlement Fund (the "Net  
4 Settlement Fund") to Authorized Claimants as allowed by the Stipulation, the Plan of  
5 Allocation, or the Court.

6 5.2 Upon the Effective Date and thereafter, and in accordance with the terms  
7 of the Stipulation, the Plan of Allocation, or such further approval and further order(s)  
8 of the Court as may be necessary or as circumstances may require, the Net Settlement  
9 Fund shall be distributed to Authorized Claimants, subject to and in accordance with  
10 the following:

11 (a) Within one-hundred twenty (120) days after the mailing of the  
12 Notice or such other time as may be set by the Court, each person claiming to be an  
13 Authorized Claimant shall be required to submit to the Claims Administrator a  
14 completed Proof of Claim and Release, substantially in the form of Exhibit A-2  
15 attached hereto, signed under penalty of perjury and supported by such documents as  
16 specified in the Proof of Claim and Release and as are reasonably available to the  
17 Authorized Claimant.

18 (b) Except as otherwise ordered by the Court, all Class Members who  
19 fail to timely submit a Proof of Claim and Release within such period, or such other  
20 period as may be ordered by the Court, or otherwise allowed, shall be forever barred  
21 from receiving any payments pursuant to the Stipulation and the settlement set forth  
22 herein, but will in all other respects be subject to and bound by the provisions of the  
23 Stipulation, the releases contained herein, and the Judgment.

24 (c) The Net Settlement Fund shall be distributed to the Authorized  
25 Claimants substantially in accordance with a Plan of Allocation to be described in the  
26 Notice and approved by the Court.

27 5.3 The Toray Defendants shall have no responsibility for, interest in, or  
28 liability whatsoever with respect to the investment or distribution of the Settlement

1 Fund, the Plan of Allocation, or the determination, administration, or calculation of  
2 claims.

3 5.4 Without waiving the Toray Defendants' right to reimbursement under  
4 ¶¶6.2, 7.5 and 7.6, no person shall have any claim against Representative Plaintiffs'  
5 Counsel or any claims administrator, or other agent designated by Plaintiffs'  
6 Settlement Counsel, or the Toray Defendants or their counsel based on distributions  
7 made substantially in accordance with the Stipulation and the settlement contained  
8 herein, the Plan of Allocation, or further orders of the Court.

9 5.5 If there is any balance remaining in the Net Settlement Fund after six (6)  
10 months from the date of distribution of the Net Settlement Fund (whether by reason of  
11 tax refunds, uncashed checks or otherwise) Plaintiffs' Settlement Counsel shall  
12 reallocate such balance among Authorized Claimants in an equitable and economic  
13 fashion.

14 5.6 It is understood and agreed by the Settling Parties that any proposed Plan  
15 of Allocation of the Net Settlement Fund including, but not limited to, any  
16 adjustments to an Authorized Claimant's claim set forth therein, is not a part of the  
17 Stipulation and is to be considered by the Court separately from the Court's  
18 consideration of the fairness, reasonableness and adequacy of the settlement set forth  
19 in the Stipulation, and any orders or proceedings relating to the Plan of Allocation  
20 shall not operate to terminate or cancel the Stipulation or affect the finality of the  
21 Court's Judgment approving the Stipulation and the settlement set forth herein, or any  
22 other orders entered pursuant to the Stipulation.

23 **6. Representative Plaintiffs' Counsel's Attorneys' Fees and**  
24 **Reimbursement of Expenses and Service Awards for**  
**Representative Plaintiffs**

25 6.1 Representative Plaintiffs' Counsel may submit an application (the "Fee  
26 and Expense Application") for distributions to them from the Settlement Fund for: (a)  
27 an award of attorneys' fees from the Settlement Fund; and (b) reimbursement of  
28 expenses and costs incurred in connection with prosecuting the Litigation, plus any

1 interest on such attorneys' fees, costs and expenses at the same rate and for the same  
2 periods as earned by the Settlement Fund (until paid) as may be awarded by the Court.  
3 Representative Plaintiffs' Counsel reserve the right to make additional applications for  
4 fees and expenses incurred. In no event shall the Toray Defendants be required to pay  
5 attorneys' fees and expenses over and above the sums paid from the Settlement Fund.

6       6.2 The attorneys' fees and expenses, including the fees of experts and  
7 consultants, as awarded by the Court, shall be paid to Plaintiffs' Settlement Counsel  
8 from the Settlement Fund, as ordered, immediately after the Court executes an order  
9 awarding such fees and expenses. Plaintiffs' Settlement Counsel shall thereafter  
10 allocate the attorneys' fees amongst Representative Plaintiffs' Counsel in a manner in  
11 which they in good faith believe reflects the contributions of such counsel to the  
12 prosecution and settlement of the Litigation. In the event that the Effective Date does  
13 not occur, or the Judgment or the order making the Fee and Expense Award is  
14 reversed or modified, or the Stipulation is canceled or terminated for any other reason,  
15 and in the event that the Fee and Expense Award has been paid to any extent, then  
16 Plaintiffs' Settlement Counsel shall within five (5) business days from receiving  
17 notice from the Toray Defendants' counsel or from a court of appropriate jurisdiction,  
18 refund to the Settlement Fund, for refund to the Toray Defendants in accordance with  
19 ¶2.9 hereof if applicable, the fees, expenses and costs previously paid to them from  
20 the Settlement Fund plus interest thereon at the same rate as earned on the Settlement  
21 Fund in an amount consistent with such reversal or modification. Each Representative  
22 Plaintiffs' Counsel's law firm and each Plaintiffs' Settlement Counsel, as a condition  
23 of receiving such fees and expenses, on behalf of itself and each partner and/or  
24 shareholder of it, agrees that the law firm and its partners and/or shareholders are  
25 subject to the jurisdiction of the Court for the purpose of enforcing the provisions of  
26 this paragraph.

27       6.3 The procedure for and the allowance or disallowance by the Court of any  
28 applications by any of the counsel to the Representative Plaintiffs for attorneys' fees,

1 costs and expenses to be paid out of the Settlement Fund, are not part of the settlement  
2 set forth in the Stipulation, and are to be considered by the Court separately from the  
3 Court's consideration of the fairness, reasonableness and adequacy of the settlement  
4 set forth in the Stipulation, and any orders or proceedings relating to the Fee and  
5 Expense Application, or any appeal from any order relating thereto or reversal or  
6 modification thereof, shall not operate to terminate or cancel the Stipulation, or affect  
7 or delay the finality of the Judgment approving the Stipulation and the settlement of  
8 the Litigation set forth herein.

9       6.4 The Toray Defendants shall have no responsibility for, and no liability  
10 whatsoever with respect to the allocation among Representative Plaintiffs' Counsel  
11 and/or any other person who may assert some claim thereto, of any Fee and Expense  
12 Award that the Court may make in the Litigation.

13       **7. Conditions of Settlement, Effect of Disapproval,  
14       Cancellation or Termination**

15       7.1 Promptly after execution of the Stipulation, Plaintiffs' Settlement  
16 Counsel agree to withdraw in writing all current document requests, interrogatories, or  
17 deposition notices served on the Toray Defendants, and not to serve any such  
18 discovery requests on the Toray Defendants in the future nor to seek to compel the  
19 pre-trial or trial testimony of any of the Toray Defendants. If the Settlement is  
20 terminated in accordance with ¶2.9 above, Plaintiffs' Settlement Counsel shall have  
21 the right to reinstate such discovery against the Toray Defendants or seek to compel  
22 the pre-trial testimony of any of the Toray Defendants.

23       7.2 The Effective Date of the Stipulation shall be conditioned on the  
24 occurrence of all of the following events:

25           (a) The Toray Defendants have made or caused the contributions to be  
26 made to the Settlement Fund as required by ¶2.1 above;

27           (b) The Court has entered the Judgment, or a judgment substantially in  
28 the form of Exhibit B attached hereto; and

1 (c) The Judgment has become Final, as defined in ¶1.11, above.

2 7.3 Upon the occurrence of all of the events referenced in ¶7.2 above, any  
3 and all remaining interest or right of the Toray Defendants in or to the Settlement  
4 Fund, if any, shall be absolutely and forever extinguished.

5 7.4 If all of the conditions specified in ¶7.2 are not met, then the Stipulation  
6 shall be canceled and terminated subject to ¶7.6 unless Plaintiffs' Settlement Counsel  
7 and counsel for the Toray Defendants mutually agree in writing to proceed with the  
8 Stipulation.

9 7.5 In the event the Stipulation shall terminate, or be canceled, or shall not  
10 become effective for any reason, within five (5) business days after written  
11 notification of such event is sent by counsel for the Toray Defendants or Plaintiffs'  
12 Settlement Counsel to the Escrow Agent, the Settlement Fund (including accrued  
13 interest), plus any amount then remaining in the Notice and Administration Fund  
14 (including accrued interest) less the Toray Defendants' *pro rata* share of expenses and  
15 any costs that have either been properly disbursed pursuant to ¶¶2.7 or 2.8 herein, or  
16 are determined to be chargeable to the Notice and Administration Fund, shall be  
17 refunded by the Escrow Agent pursuant to written instructions from counsel for the  
18 Toray Defendants. At the request of counsel for the Toray Defendants, the Escrow  
19 Agent or its designee shall apply for any tax refund owed to the Settlement Fund and  
20 pay the proceeds, after deduction of any fees or expenses reasonably incurred in  
21 connection with such application(s) for refund on a *pro rata* basis to those entities  
22 contributing to the Settlement Fund.

23 7.6 In the event that the Stipulation is not approved by the Court or the  
24 settlement set forth in the Stipulation is terminated or fails to become effective in  
25 accordance with its terms, the Settling Parties shall be restored to their respective  
26 positions in the Litigation as of September 19, 2004. In such event, the terms and  
27 provisions of the Stipulation, with the exception of ¶¶1.1-1.24, 2.3-2.8, 7.4-7.6, 8.2,  
28 8.4, and 8.10-8.14 herein, shall have no further force and effect with respect to the

1 Settling Parties and shall not be used in the Litigation or in any other proceeding for  
2 any purpose, and any judgment or order entered by the Court in accordance with the  
3 terms of the Stipulation shall be treated as vacated, *nunc pro tunc* (unless the  
4 Judgment has become Final in accordance with the terms hereof). No order of the  
5 Court or modification or reversal on appeal of any order of the Court concerning the  
6 Plan of Allocation or the amount of any attorneys' fees, costs, expenses and interest  
7 awarded by the Court to the Representative Plaintiffs or any of their counsel shall  
8 constitute grounds for cancellation or termination of the Stipulation. If the Effective  
9 Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither  
10 the Representative Plaintiffs nor any of their counsel shall have any obligation to  
11 repay any amounts actually and properly disbursed from the Notice and  
12 Administration Fund. In addition, any expenses already incurred and properly  
13 chargeable to the Notice and Administration Fund pursuant to ¶2.7 hereof at the time  
14 of such termination or cancellation but which have not been paid, shall be paid by the  
15 Escrow Agent in accordance with the terms of the Stipulation prior to the balance  
16 being refunded in accordance with ¶7.5 above.

17       7.7 If a case is commenced in respect to any of the Toray Defendants under  
18 Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator  
19 is appointed under any similar law, and in the event of the entry of a final order of a  
20 court of competent jurisdiction determining the transfer of the Settlement Fund, or any  
21 portion thereof, by or on behalf of a Toray Defendant to be a preference, voidable  
22 transfer, fraudulent transfer or similar transaction, then, as to that Defendant only, the  
23 releases given and Judgment entered in favor of such Defendant pursuant to this  
24 Stipulation shall be null and void, and, as to such Defendant, the Settling Parties shall  
25 thereupon be restored to their respective positions as of September 19, 2004.

26       **8. Miscellaneous Provisions**

27       8.1 The Settling Parties: (a) acknowledge that it is their intent to consummate  
28 this agreement; and (b) agree to cooperate to the extent reasonably necessary to

1 effectuate and implement all terms and conditions of the Stipulation and to exercise  
2 their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

3 8.2 The Toray Defendants warrant that, at the time the payment provided for  
4 herein is made, they are not insolvent and the payment will not render them insolvent.  
5 This representation is made by each Toray Defendant, and is not made by counsel for  
6 the Toray Defendants.

7 8.3 The Settling Parties intend this settlement to be a final and complete  
8 resolution of all disputes between them with respect to the Litigation. The settlement  
9 compromises claims which were contested and shall not be deemed an admission by  
10 any Settling Party as to the merits of any claim or defense. The Final Judgment will  
11 contain a statement that during the course of the Litigation, the Settling Parties and  
12 their respective counsel at all times complied with the requirements of Federal Rule of  
13 Civil Procedure 11. The Settling Parties agree that the amount paid to the Settlement  
14 Fund and the other terms of the settlement were negotiated in good faith by the  
15 Settling Parties, and reflect a settlement that was reached voluntarily after consultation  
16 with competent legal counsel.

17 8.4 Neither the Stipulation nor the settlement, nor any act performed or  
18 document executed pursuant to or in furtherance of the Stipulation or the settlement:  
19 (a) is or may be deemed to be or may be used as an admission of, or evidence of, the  
20 validity of any Released Claim, or of any wrongdoing or liability of the Toray  
21 Defendants; or (b) is or may be deemed to be or may be used as an admission of, or  
22 evidence of, any fault or omission of the Toray Defendants in any civil, criminal or  
23 administrative proceeding in any court, administrative agency or other tribunal. The  
24 Toray Defendants may file the Stipulation and/or the Judgment in any action that may  
25 be brought against them in order to support a defense or counterclaim based on  
26 principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment  
27 bar or reduction or any other theory of claim preclusion or issue preclusion or similar  
28 defense or counterclaim.

1           8.5    The Settling Parties agree that there is no need for an additional opt-out  
2 period pursuant to Rule 23(e) of the Federal Rules of Civil Procedure since prior  
3 notice of the pendency of the Litigation dated May 3, 2002 was sent to the Class.  
4 However, in the event the Court decides to allow an additional opportunity to opt-out  
5 of the Class, Plaintiffs' Settlement Counsel will provide counsel for the Toray  
6 Defendants with a list of those Class Members who timely request exclusion from the  
7 class within ten (10) days following the Court's deadline for such exclusion from the  
8 Class. The Settling Parties agree that, in the event the Court allows additional opt-  
9 outs from the Class, the Toray Defendants shall have the option to rescind this  
10 settlement if the purchases of current Class Members who request exclusion exceeds  
11 an amount specified in a separate Supplemental Agreement between the Settling  
12 Parties. The Supplemental Agreement will not be filed with the Court unless and until  
13 a dispute among the Settling Parties concerning its interpretation or application arises.

14           8.6    The Settling Parties and their counsel agree that, other than through the  
15 filing of papers necessary for Court approval of the Settlement and the mailing and  
16 publication of notices as may be required for settlement approval or otherwise by the  
17 Court, they shall not affirmatively publicize the fact or terms of the settlement.

18           8.7    All agreements made and orders entered during the course of the  
19 Litigation relating to the confidentiality of information shall survive this Stipulation.

20           8.8    All of the Exhibits to the Stipulation are material and integral parts hereof  
21 and are fully incorporated herein by this reference.

22           8.9    The Stipulation may be amended or modified only by a written  
23 instrument signed by or on behalf of all Settling Parties or their respective successors-  
24 in-interest.

25           8.10   The Stipulation and the Exhibits attached hereto constitute the entire  
26 agreement between Representative Plaintiffs and the Class on the one hand, and the  
27 Toray Defendants on the other hand, and supercedes and replaces all prior  
28 negotiations and proposed or actual agreements whether written or oral. No

1 representations, warranties or inducements have been made to any party concerning  
2 the Stipulation or its Exhibits other than the representations, warranties and covenants  
3 contained and memorialized in such documents. Except as otherwise provided herein,  
4 each party shall bear its own costs.

5 8.11 The undersigned Plaintiffs' Settlement Counsel are fully authorized to  
6 enter into the terms and conditions of the Stipulation and settlement on behalf of the  
7 Representative Plaintiffs and Class Members and to execute and legally bind the  
8 Representative Plaintiffs and all Class Members to the terms of the Stipulation.  
9 Plaintiffs' Settlement Counsel are expressly authorized to enter into any modifications  
10 or amendments to the Stipulation on behalf of the Class which they deem appropriate  
11 and to take all appropriate action required or permitted to be taken by the Class  
12 pursuant to the Stipulation to effectuate its terms.

13 8.12 Each counsel or other person executing the Stipulation or any of its  
14 Exhibits on behalf of any party hereto hereby warrants that such person has the full  
15 authority to do so.

16 8.13 The Stipulation may be executed in one or more counterparts. All  
17 executed counterparts and each of them shall be deemed to be one and the same  
18 instrument. A complete set of executed counterparts shall be filed with the Court.

19 8.14 The Stipulation shall be binding upon, and inure to the benefit of, the  
20 successors and assigns of the Settling Parties.

21 8.15 This Stipulation has been negotiated among and drafted by all  
22 signatories. To the extent there is any uncertainty or ambiguity in the Stipulation,  
23 none of the signatories shall be deemed to have caused such uncertainty or ambiguity.

24 8.16 In the event any one or more of the provisions contained in the  
25 Stipulation shall for any reason be held by a court of competent jurisdiction to be  
26 invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable  
27 provision shall be ineffective but shall not in anyway invalidate or otherwise affect  
28 any other provision.

1           8.17 The Court shall retain jurisdiction with respect to implementation and  
2 enforcement of the terms of the Stipulation, and all Settling Parties submit to the  
3 jurisdiction of the Court for purposes of implementing and enforcing the settlement  
4 embodied in the Stipulation.

5           8.18 The Stipulation and the Exhibits hereto shall be considered to have been  
6 negotiated, executed and delivered, and to be wholly performed, in the State of  
7 California, and the rights and obligations of the Settling Parties shall be construed and  
8 enforced in accordance with, and governed by, the internal, substantive laws of the  
9 State of California without giving effect to that State's choice of law principles.

10           IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be  
11 executed, by their duly authorized attorneys, dated as of September 20, 2004.

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