

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made effective on the date it has been fully executed, by and between Lead Plaintiffs in the First Amended Consolidated Class Action Complaint for Violation of Federal Securities Laws (the “Complaint”), filed on July 28, 2008 in *In Re Atlas Mining Company Securities Litigation*, in the United States District Court for the District of Idaho, Civil Action No. 07-428-N-EJL (the “Plaintiffs”) and Atlas Mining Company, in its own capacity and as successor in interest to Nano Clay Technologies, Inc. (“Atlas” or “the Company”), William Jacobsen, Robert Dumont, Barbara Suveg and Ronald Price, and their respective marital community, representatives, heirs, executors, administrators, attorneys, agents, successors and assigns (collectively, “the Parties”)

RECITALS

A. WHEREAS, the Parties are currently involved in a dispute regarding claims asserted by the Plaintiffs alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Dispute”). The Dispute is currently pending in *In Re Atlas Mining Company Securities Litigation*, in the United States District Court for the District of Idaho, including all cases consolidated under Civil Action No. 07-428-N-EJL.

B. WHEREAS, Plaintiffs and Atlas entered into a Memorandum of Understanding dated May 1, 2009, pursuant to which Plaintiffs and Atlas agreed to draft a final settlement agreement. This Agreement is intended to memorialize the final agreement of the Parties.

C. WHEREAS, the Parties have entered into this Agreement to avoid the expense, inconvenience and uncertainty of further litigation and collection efforts. The purpose of this Agreement is to achieve a full and complete settlement and compromise of all claims and counterclaims arising out of the dispute between them.

D. WHEREAS, the claims pending against Atlas’s outside auditor, non-settling defendant, Chisolm, Bierwolf & Nilson, LLC (“CBN”), remain pending and are in no way affected by this Settlement Agreement

TERMS

1. The Parties hereby incorporate all of the terms, conditions and obligations of the Stipulation of Settlement (the “Stipulation”) attached as Exhibit A and the Parties agree that Exhibit A is part of the Agreement and the Parties are bound by its terms. The Parties agree that, following the execution of this Agreement, the Parties will cooperate in good faith in preparing all necessary exhibits and submitting the Stipulation to the Court.

2. In addition to performance of the terms, conditions and obligations of the Stipulation, the Parties further agree that Atlas will afford Plaintiffs the opportunity to undertake confirmatory discovery by providing Plaintiffs the following information:

- a. a complete Atlas balance sheet as of May 1, 2009;
- b. a copy of the settlement agreement between Atlas and defendant William Jacobson and a briefing by Atlas' counsel responsible for the conduct of the settlement negotiations with respect to that settlement agreement, so as to verify Atlas' good faith efforts with respect to the settlement;
- c. a reasonable accounting by Atlas with respect to Atlas' understanding of the Atlas shares owned or controlled by William Jacobson and his family;
- d. Atlas' due diligence with respect to an evaluation of its claims against third parties related to Atlas' issuance of 14.6 million shares, as described in Atlas' August 20, 2008 Form 8-K, including a copy of Atlas' Special Litigation Committee's PowerPoint presentation to the Securities and Exchange Commission;
- e. a summary of Atlas' current geological report, which Atlas represents and warrants is an accurate representation of the report as of the date it is made available as well as making the report available as of June 12, 2009, on a read only basis for one day, at K&L Gates' Newark, New Jersey offices;
- f. a list of all shareholders who purchased Atlas stock during the Class Period, or if that list is unavailable a listing of current shareholders;

All of the information specified in this ¶2 shall be made available for confirmatory discovery only and shall be produced pursuant to a confidentiality agreement between the Parties. After completion of confirmatory discovery, to the extent that Plaintiffs in good faith and with reasonable basis seek to terminate the Agreement, the Agreement and the attached Stipulation shall become null and void and will have no legal force or effect nor will any of the provisions of these documents bind the Parties other than the confidentiality provisions contained in Section 2 of this Agreement.

3. The Parties expressly understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by any Party, either previously or in connection with this Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore made or an acknowledgment or admission by any Party of any fault or liability whatsoever to another Party, which is expressly denied. This Agreement is entered into solely in settlement of such claims and to avoid the disruption, time, and expense of litigation.

4. The United States District Court for the District of Idaho (Boise) shall retain jurisdiction to enforce this Agreement and any disputes that relate to or involve this Agreement (including all exhibits to this Agreement). The Parties agree that this Agreement and its terms and conditions shall be subject to and construed in accordance with the laws of the State of Idaho.

5. This Agreement, including all provisions of Exhibit A, constitutes the entire agreement between the Parties pertaining to the settlement of obligations between them with respect to the subject matter of this Agreement.

6. The Parties each acknowledge and agree that they have reviewed this Agreement in its entirety, and every part thereof, have had the opportunity (should they wish) to consult with counsel, and that they understand the Agreement. The Parties have in fact consulted with their respective counsel as to the Agreement, and acknowledge and agree that the terms and conditions adequately and correctly reflect their respective understandings.

7. This Agreement has been generated pursuant to the equal negotiations and advice of counsel. Accordingly, this Agreement should not be construed more favorably or unfavorably as to any Party.

8. If any term, condition or provision contained in this Agreement shall contravene or be invalid under applicable law, such contravention or invalidity shall not invalidate the whole Agreement, but the Agreement shall be construed as not containing the particular term and condition or provision held to be invalid, and the rights and obligations of the Parties shall be construed and enforced accordingly.


9. The undersigned each covenant and warrant that they have the right and authority to enter into this Agreement and carry out its terms.

10. This Agreement may be executed in counterparts, and by facsimile or other electronic transmission, all of which taken together shall constitute one agreement.

WHEREFORE, the Parties hereby acknowledge their agreement and consent to the terms and conditions set forth above through their respective signatures as contained below.

K&L GATES LLP

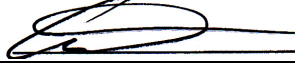
DATED: July 2, 2009



Richard A. Kirby
Philip M. Guess

ATLAS MINING COMPANY, AND AS
SUCCESSOR IN INTEREST TO NANO CLAY
TECHNOLOGIES, INC.

DATED: _____
_06/24/09_____



Andre Zeitoun
Chief Executive Officer

LITE DePALMA GREENBERG & RIVAS LLC

DATED: _____

Joseph DePalma
Katrina Carroll

DATED: _____

James O'Hern

DATED: _____

John O'Hern

DATED: _____

William Jacobson

TEMKIN WIELGA HARDT & LONGENECKER
LLP

DATED: _____

Nathan M. Longenecker

DATED: _____

Robert Dumont

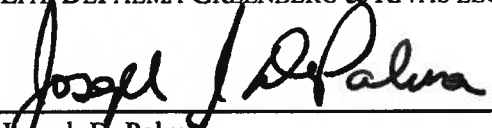
ATLAS MINING COMPANY, AND AS
SUCCESSOR IN INTEREST TO NANO CLAY
TECHNOLOGIES, INC.

DATED: _____

Andre Zeitoun
Chief Executive Officer

LITE DEPALMA GREENBERG & RIVAS LLC

DATED: 6/24/09



Joseph DePalma
Katrina Carroll

DATED: _____

James O'Hern

DATED: _____

John O'Hern

DATED: _____

William Jacobson

TEMKIN WIELGA HARDT & LONGENECKER
LLP

DATED: _____

Nathan M. Longenecker

DATED: _____

Robert Dumont

ATLAS MINING COMPANY, AND AS
SUCCESSOR IN INTEREST TO NANO CLAY
TECHNOLOGIES, INC.

DATED: _____

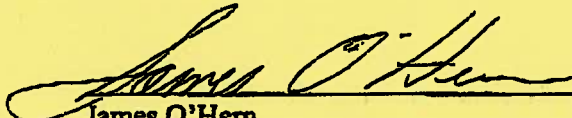
Andre Zeitoun
Chief Executive Officer

LITE DePALMA GREENBERG & RIVAS LLC

DATED: _____

Joseph DePalma
Katrina Carroll

DATED: 6-29-09 _____


James O'Hern

DATED: _____

John O'Hern

DATED: _____

William Jacobson

TEMKIN WIELGA HARDT & LONGENECKER
LLP

DATED: _____

Nathan M. Longenecker

DATED: _____

Robert Dumont

ATLAS MINING COMPANY, AND AS
SUCCESSOR IN INTEREST TO NANO CLAY
TECHNOLOGIES, INC.

DATED: _____

Andre Zeitoun
Chief Executive Officer

LITE DEPALMA GREENBERG & RIVAS LLC

DATED: _____

Joseph DePalma
Katrina Carroll

DATED: _____

James O'Hern

DATED: 6/30/09



John O'Hern

DATED: _____

William Jacobson

TEMKIN WIELGA HARDT & LONGENECKER
LLP

DATED: _____

Nathan M. Longenecker

DATED: _____

Robert Dumont

ATLAS MINING COMPANY, AND AS
SUCCESSOR IN INTEREST TO NANO CLAY
TECHNOLOGIES, INC.

DATED: _____

Andre Zeitoun
Chief Executive Officer

LITE DEPALMA GREENBERG & RIVAS LLC

DATED: _____

Joseph DePalma
Katrina Carroll

DATED: _____

James O'Hern

DATED: _____


John O'Hern

DATED: _____

William Jacobson

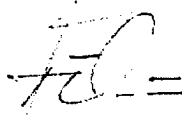
TEMKIN WIELGA HARDT & LONGENECKER
LLP

DATED: 7/1/09



Nathan M. Longenecker

DATED: 6/30/09



Robert Dumont

DATED: June 25, 2009

WINSTON & CASIATT

Courtney Beaudoin
C. Matthew Andersen
Courtney R. Beaudoin

DATED: 24 June 2009

Barbara Suveg
Barbara Suveg

ELAM & BURKE, P.A.

DATED: _____

William G. Dryden

DATED: _____

Ronald Price

WINSTON & CASHATT

DATED: _____

C. Matthew Andersen
Courtney R. Beaudoin

DATED: _____

Barbara Suveg

DATED: June 29, 2009

ELAM & BURKE, P.A.

William G. Dryden

DATED: June 29, 09

Ronald Price

DATED: June 30, 2009



William Jacobson

YARMUTH WILSDON CALFO PLLC

DATED: _____

By _____
Matthew Carvalho
Angelo J. Calfo

DATED: _____

William Jacobson

YARMUTH WILSDON CALFO PLLC

DATED: 6/30/09

By *Matthew A. Carvalho*
Matthew Carvalho
Angelo J. Calfo

EXHIBIT A

1 K&L GATES LLP
Richard A. Kirby (*Pro Hac Vice*)
2 Philip M. Guess (*Pro Hac Vice*)
925 Fourth Avenue, Suite 2900
3 Seattle, Washington 98104-1158
Telephone: (206) 623-7580
4 Facsimile: (206) 370-6371

5 Thomas A. Banducci (ISB No. 2453)
Wade L. Woodard (ISB No. 6312)
6 Banducci Woodard Schartzman, PLLC
802 West Bannock, Suite 700
7 Boise, Idaho 83702
Telephone: (208) 342-4411
8 Facsimile: (208) 342-4455

9 Counsel for Atlas Mining Company
and Nano Clay Technologies, Inc.
10
11
12

13 UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF IDAHO
(BOISE)

15 IN RE:

16 ATLAS MINING COMPANY
17 SECURITIES LITIGATION
18
19

No. 07-428-N-EJL-MHW

STIPULATION OF SETTLEMENT

20 This Stipulation of Settlement dated as of June __, 2009 (the "Stipulation"), is
21 submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the
22 approval of the Court, this Stipulation is entered into by and among the following Settling
23 Parties (as defined further in Section IV below) to the above-entitled Litigation: (i) the Lead
24 Plaintiffs (on behalf of themselves and each of the Settlement Class Members), by and
25 through their counsel of record in the Litigation; and (ii) those Defendants, as set forth below,
26

1 by and through their counsel of record in the Litigation (the “Settling Defendants”). The
2 Stipulation is intended by the Settling Parties to fully, finally and forever resolve, discharge
3 and settle the Released Claims, upon and subject to the terms and conditions hereof. This
4 Stipulation of Settlement does not discharge or release any claims that Lead Plaintiffs or the
5 Class have against Atlas’s outside auditor during the Class Period, non-settling defendant,
6 Chisolm, Bierwolf & Nilson, LLC (“CBN”).

7 **I. THE LITIGATION**

8 On and after October 11, 2007, the following actions were filed in the United States
9 District Court for the District of Idaho (Boise) as securities class actions on behalf of
10 purchasers of the securities of Atlas Mining Company (“Atlas”) during a defined period of
11 time:

	Abbreviated Case Name	Case Number	Date Filed
12			
13	(a) <i>Benson v. Atlas Mining Co., et al.</i>	C-07-428	10/11/07
14	(b) <i>Berger v. Atlas Mining Co., et al.</i>	C-07-449	10/19/07
15	(c) <i>O’Hern v. Atlas Mining Co., et al.</i>	C-07-503	11/26/07

16 These actions were consolidated for all purposes by an Order of the Court entered
17 January 22, 2008. The consolidated action, *In re Atlas Mining Securities Litigation*, No. C-
18 07-428, is referred to as the “Litigation.”

19 On March 25, 2008, the Court appointed James O’Hern and John O’Hern as Lead
20 Plaintiffs, as defined herein pursuant to §21D(a)(3)(B) of the Securities Exchange Act of 1934
21 (the “Act”), as amended by the Private Securities Litigation Reform Act of 1995, and
22 approved their selection of Lite DePalma Greenberg & Rivas, LLC as Lead Counsel.

23 The operative complaint in the Litigation is the First Amend Consolidated Class
24 Action Complaint for Violation of Federal Securities Laws (the “Complaint”), filed July 28,
25 2008. The Complaint alleges violations of §§10(b) and 20(a) of the Act.

1 **II. SETTling DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

2 The Settling Defendants have denied and continue to deny each and all of the Lead
3 Plaintiffs' claims and contentions in this Litigation. The Settling Defendants expressly have
4 denied and continue to deny all charges of wrongdoing or liability against them arising out of
5 any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in
6 the Litigation. The Settling Defendants also have denied and continue to deny, among other
7 things, the allegations that the Lead Plaintiffs or the Settlement Class have suffered and/or
8 could prove either damage or that the prices of Atlas securities were artificially inflated by
9 reasons of alleged misrepresentations, non-disclosures or otherwise, and that the Lead
10 Plaintiffs or the Settlement Class were harmed by the conduct alleged in the Complaint.

11 Nonetheless, the Settling Defendants have concluded that further conduct of the
12 Litigation would be protracted and expensive, and that it is desirable that the Litigation be
13 fully and finally settled in the manner and upon the terms and conditions set forth in this
14 Stipulation. The Settling Defendants also have taken into account the uncertainty and risks
15 inherent in any litigation, especially in complex cases like this Litigation. The Settling
16 Defendants have, therefore, determined that it is desirable and beneficial to them that the
17 Litigation be settled in the manner and upon the terms and conditions set forth in this
18 Stipulation.

19 **III. CLAIMS OF THE LEAD PLAINTIFFS AND BENEFITS OF SETTLEMENT**

20 The Lead Plaintiffs believe that the claims asserted in the Litigation have merit and
21 that the evidence developed to date supports their claims. Lead Plaintiffs believe they would
22 present supporting evidence at trial that Settling Defendants issued materially false and
23 misleading statements and omissions of material information concerning Atlas, causing the
24 price of Atlas securities to be artificially inflated during the Class Period (as defined in the
25 operative Complaint) and causing injury to Lead Plaintiffs and the Class Members.

1 Lead Plaintiffs' Counsel believes that Atlas is facing many financial pressures and that
2 the Class will benefit from securing a substantial settlement now with Settling Defendants,
3 rather than continuing to bear the risk that Atlas will be unable to fund a settlement or satisfy
4 a judgment of equivalent size to this Settlement. The Lead Plaintiffs recognize and
5 acknowledge the expense and length of continued proceedings necessary to prosecute the
6 Litigation against the Settling Defendants through trial and through appeals. The Lead
7 Plaintiffs also have taken into account the uncertain outcome and the risk of any litigation,
8 especially in complex actions such as this Litigation, as well as the difficulties and delays
9 inherent in such Litigation. The Lead Plaintiffs also are mindful of the inherent problems of
10 proof under and possible defenses to the securities law violations asserted in the Litigation.
11 Finally, given the risks associated with pending litigation involving Atlas and its insurance
12 carriers concerning the available limits of coverage, as well as Atlas' precarious financial
13 position, the Lead Plaintiffs are concerned about their ultimate ability to collect on any
14 judgment that they may obtain. The Lead Plaintiffs believe that the settlement set forth in the
15 Stipulation confers substantial benefits upon the Settlement Class. Based on their evaluation,
16 the Lead Plaintiffs and Lead Counsel have determined that the Settlement set forth in the
17 Stipulation is in the best interests of the Lead Plaintiffs and the Settlement Class.

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

19 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among
20 the Lead Plaintiffs (for themselves and the Settlement Class Members) and the Settling
21 Defendants, by and through their respective counsel or attorneys of record, that, subject to the
22 approval of the Court, the Litigation and the Released Claims shall be finally and fully
23 compromised, settled and released, and the Litigation shall be dismissed with prejudice, as to
24 all Settling Parties, upon and subject to the terms and conditions of the Stipulation, as follows.
25
26

1 **1. Definitions**

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

3 1.1 “Act” shall have the meaning set forth in Section I.

4 1.2 “Atlas” means Atlas Mining Company in its own capacity and on behalf of its
5 former wholly owned subsidiary Nano Clay Technologies, Inc.

6 1.3 “Authorized Claimant” means any Settlement Class Member whose claim for
7 recovery has been allowed pursuant to the terms of the Stipulation and Plan of Allocation,
8 defined below.

9 1.4 “Claimant” means any Settlement Class Member who files a Proof of Claim in
10 such form and manner, and within such time, as the Court shall prescribe.

11 1.5 “Claims Administrator” means the firm of Rust Consulting, Inc.

12 1.6 “Class Notice and Administration Fund” shall have the meaning set forth in
13 section 2.6 hereof.

14 1.7 “Complaint” shall have the meaning set forth in Section I.

15 1.8 “Settling Defendants” means Atlas, and its successors and assigns, and the
16 Individual Defendants.

17 1.9 “Effective Date” means the first date by which all of the events and conditions
18 specified in paragraphs 2.1 and 7.1 of the Stipulation have been met and have occurred.

19 1.10 “Escrow Agent” means the firm of Rust Consulting, Inc., which will act as the
20 Atlas Escrow Agent for the escrow accounts referred to herein.

21 1.11 “Escrow Agreement” means the escrow agreement governing the interest
22 bearing escrow account (“Atlas Escrow Account” or “Atlas Escrow Fund”) into which the
23 Settling Defendants’ funds are deposited, attached hereto as Exhibit __.

24 1.12 “Fee and Expense Application” shall have the meaning set forth in section 6.1
25 hereof.

1 1.13 "Fee and Expense Award" shall have the meaning set forth in section 5.2(a)
2 hereof.

3 1.14 "Final" means when the last of the following with respect to the Judgment
4 approving the Stipulation, substantially in the form of Exhibit __ hereto, shall occur: (i) the
5 expiration of three (3) business days after the time to file a motion to alter or amend the
6 Judgment under Federal Rule of Civil Procedure 59(e) has passed without any such motion
7 having been filed; (ii) the expiration of three (3) business days after the time in which to
8 appeal the Judgment has passed without any appeal having been taken (which date shall be
9 deemed to be thirty-three (33) calendar days following the entry of the Judgment, unless the
10 date to take such an appeal shall have been extended by Court order or otherwise, or unless
11 the 33rd day falls on a weekend or a Court holiday, in which case the date for purposes of this
12 Stipulation shall be deemed to be the next business day after such 33rd day); and (iii) if such
13 motion to alter or amend is filed or if an appeal is taken, three (3) business days after the
14 complete resolution and determination of that motion or appeal in such a manner as to permit
15 the consummation of the Settlement substantially in accordance with the terms and conditions
16 of this Stipulation. For purposes of this paragraph, an "appeal" shall not include any appeal
17 that concerns only the issue of attorneys' fees and reimbursement of costs or the Plan of
18 Allocation of the Settlement Fund.

19 1.15 "Individual Defendants" means William T. Jacobson, Robert Dumont, Ronald
20 Price and Barbara Suveg.

21 1.16 "Judgment" means the judgment to be rendered by the Court, substantially in
22 the form attached hereto as Exhibit __.

23 1.17 "Lead Counsel" or "Lead Plaintiffs' Counsel" means Lite DePalma Greenberg
24 & Rivas, LLC, Joseph DePalma, Katrina Carroll and Jennifer Sarnelli, Two Gateway Center,
25 12th Floor, Newark, NJ 07102;

1 1.18 "Liaison Counsel" means Holland & Hart, B. Newal Squyres and Ted C.
2 Murdock, PO Box 2527, Boise, ID 83701.

3 1.19 "Lead Plaintiffs" mean James O'Hern and John O'Hern.

4 1.20 "Net Settlement Fund" shall have the meaning set forth in section 5.2(d)
5 hereof.

6 1.21 "Notice" shall have the meaning set forth in section 3.1 hereof.

7 1.22 "Notice and Administrative Expenses" means all expenses associated with
8 giving notice to Class Members and the administration of the Settlement contemplated by this
9 Stipulation, including, but not limited to, the expenses associated with: printing and mailing
10 the Notice to Class Members; publishing the Summary Notice; reimbursements to brokers and
11 other nominees for identifying and forwarding notice to beneficial owners, and assisting Class
12 Members with filing Proofs of Claim; processing Proofs of Claim; setting up and maintaining
13 the toll-free telephone number; provided however, that Notice and Administrative Expenses
14 shall not include the amount of the Attorneys' Fees and Expenses Award or any award of
15 reasonable time and expense granted to the Lead Plaintiffs by the Court.

16 1.23 "Notice Order" shall have the meaning set forth in section 3.1 hereof.

17 1.24 "Person" means an individual, corporation, partnership, limited partnership,
18 association, joint stock company, estate, legal representative, trust, unincorporated
19 association, government or any political subdivision or agency thereof, and any business or
20 legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

21 1.25 "Plan of Allocation" means a plan or formula of allocation of the Settlement
22 Fund to be prepared by Lead Plaintiffs' expert whereby the Settlement Fund shall be
23 distributed to Authorized Claimants after payment of Notice and Administrative Expenses,
24 Taxes and Tax Expenses, and such attorneys' fees, costs, expenses and interest as may be
25 awarded by the Court. The Plan of Allocation is not part of the Stipulation and may be altered
26

1 by the Court in response to an objection or in equity. The Settling Defendants and their
2 Related Parties shall have no responsibility therefore or liability with respect thereto.

3 1.26 “Related Parties” means each of a Settling Defendants’ past or present
4 directors, officers, employees, partners, insurers, co-insurers, reinsurers, agents, controlling
5 shareholders, attorneys, accountants or auditors, advisors, investment advisors, personal or
6 legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures,
7 assigns, spouses, heirs, related or affiliated entities, any entity in which a Defendant has a
8 controlling interest, any members of an Individual Defendant’s immediate family, or any trust
9 of which the Individual Defendant is the settlor or which is for the benefit of the Individual
10 Defendant’s family.

11 1.27 “Released Claims” shall collectively mean any and all claims (including
12 “Unknown Claims” as defined in ¶1.37 hereof), demands, rights, liabilities and causes of
13 action of every nature and description whatsoever, known or unknown, whether or not
14 concealed or hidden, asserted or that might have been asserted, including, without limitation,
15 claims for negligence, gross negligence, breach of duty of care and/or breach of duty of
16 loyalty, fraud, breach of fiduciary duty, or violations of any state or federal statutes, rules or
17 regulations, by the Lead Plaintiffs or any Settlement Class Member against the Settling
18 Defendants or their Related Parties arising out of, relating to, or in connection with the
19 purchase or acquisition of Atlas securities by the Lead Plaintiffs or any Settlement Class
20 Member during the Settlement Class Period, and any and all claims arising out of, relating to,
21 or in connection with the Settlement or resolution of this matter.

22 1.28 “Released Parties” means each and all of the Settling Defendants and each and
23 all of their Related Parties.

24 1.29 “Settlement Class” means all Persons who purchased or acquired Atlas
25 securities during the Settlement Class Period, inclusive. Excluded from the Settlement Class
26 are Defendants, members of the immediate families of the Individual Defendants and the legal

1 representatives, heirs, successors, or assigns of any such excluded person or entity. Also
2 excluded from the Settlement Class are those Persons who timely and validly request
3 exclusion from the Settlement Class pursuant to the Notice of Pendency and Proposed
4 Settlement of Class Action. While Atlas shareholders David Taft (Atlas Board Member) and
5 IBS, Andre Zeitoun (Atlas Chief Executive Officer), Chris Carney (Atlas Chief Financial
6 Officer), and Eric Basroon would, under ordinary circumstances, be eligible to be part of the
7 Settlement Class, as indicated in the Forbearance Agreements attached as Exhibit __, they
8 have agreed that to facilitate this Settlement they will not submit claims. This forbearance is
9 being done to accommodate settlement and the Company may determine in its business
10 judgment to compensate these class members separately in a reasonable manner for their
11 consideration in forbearing the assertion of such claims. In no event shall such compensation
12 referred to in the preceding sentence exceed the amount said individual would have received
13 under the Plan of Allocation if he submitted a claim.

14 1.30 “Settlement Class Member” or “Member of the Settlement Class” means a
15 Person who falls within the definition of the Settlement Class as set forth in ¶1.29 of the
16 Stipulation.

17 1.31 “Settlement Class Period” means the Class Period alleged in the Complaint,
18 between January 19, 2005 and October 8, 2007, inclusive.

19 1.32 “Settlement Fund” means the principal amount of One Million Two Hundred
20 Fifty Thousand Dollars (\$1,250,000) in cash, subsequent to the transfer of this amount to the
21 Escrow Agent pursuant to ¶2.1(b) of this Stipulation, plus all interest earned thereon pursuant
22 to ¶¶2.2 and 2.6.

23 1.33 “Settlement Hearing” shall have the meaning set forth in section 3.2 hereof.

24 1.34 “Settling Parties” means, collectively, each of the Settling Defendants, and the
25 Lead Plaintiffs on behalf of themselves and Settlement Class Members.

26 1.35 “Taxes” shall have the meaning set forth in section 2.7(c) hereof.

1 1.36 "Tax Expenses" shall have the meaning set forth in section 2.7(c) hereof.

2 1.37 "Unknown Claims" shall collectively mean any and all claims, demands,
3 rights, liabilities, and causes of action of every nature and description which the Lead
4 Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her or its
5 favor at the time of the release of the Released Parties which, if known by him, her or it,
6 might have affected his, her or its settlement with and release of the Released Parties, or
7 might have affected his, her or its decision not to object to this Settlement. The Lead
8 Plaintiffs and Settlement Class Members may discover facts in addition to or different from
9 those which he, she or it now knows or believes to be true with respect to the subject matter of
10 the Released Claims, but the Lead Plaintiffs shall expressly fully, finally and forever settle
11 and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to
12 have, and by operation of the Judgment shall have, fully, finally, and forever settled and
13 released, any and all Released Claims, known or unknown, suspected or unsuspected,
14 contingent or non-contingent, whether or not concealed or hidden, which now exist, or
15 heretofore have existed, upon any theory of law or equity now existing or coming into
16 existence in the future, including, but not limited to, conduct which is negligent, intentional,
17 with or without malice, or a breach of any duty, law or rule, without regard to the subsequent
18 discovery or existence of such different or additional facts. The Lead Plaintiffs acknowledge,
19 and the Settlement Class Members shall be deemed by operation of the Judgment to have
20 acknowledged, that the foregoing waiver was separately bargained for and a key element of
21 the Settlement of which this release is a part.

22 **2. The Settlement**

23 2.1

24 **a. The Settlement Consideration**

25 (a) Atlas shall take all necessary and appropriate steps to cause the sum of one million
26 two hundred and fifty thousand dollars (\$1,250,000.00) to be paid to the Escrow Agent in

1 exchange for this Settlement, as per the process described in this paragraph. Subsequent to
2 the execution of the Settlement Agreement, Settling Defendants shall file a consent motion in
3 the pending Interpleader Action, *Navigators Insurance Company (“Navigators”) v. Atlas*
4 *Mining Company, et al.*, Case No. 2:08-cv-00216-EJL (D. Idaho) (“Interpleader Action”),
5 seeking an order approving the distribution of the alleged available limits of coverage
6 (“Consent Motion to Distribute”), including a deposit by Navigators of \$1,250,000 into the
7 Court registry. Atlas represents and warrants that Navigators has agreed to deposit
8 \$1,250,000 into the Court Registry upon Court approval of the Consent Motion to Distribute.
9 Within five (5) business days after the Judgment approving this Stipulation becomes Final,
10 Atlas shall take appropriate steps to facilitate the transfer of the \$1,250,000, as well as any
11 interest that has accrued on any funds while held in the Court registry, to the Escrow Agent.

12 (b) Notwithstanding the preceding ¶2.1(a), Atlas shall also pay up to, but not
13 exceeding, seventy five thousand dollars (\$75,000) for the express purpose of providing
14 notice of the Settlement in this Action and to administer the Atlas Escrow Account and the
15 Settlement Fund (the “Notice and Administration Fund”), consistent with ¶¶3.1-3.2 hereto.
16 This amount will be transferred to the Escrow Agent to establish the Notice and
17 Administration Fund within seven (7) days after the Court’s entry of the Preliminary
18 Approval Order. The Escrow Agent shall submit invoices and billing records to Lead
19 Plaintiffs’ Counsel and Atlas on a monthly basis sufficient to demonstrate the basis for the
20 expenses incurred and deducted from the Notice and Administration Fund. If Atlas objects to
21 the reasonableness of any expense, it must notify the Escrow Agent and Lead Plaintiffs’
22 Counsel of the objection within fourteen (14) days of receiving the record of the expense.
23 Should a dispute arise as to the reasonableness of any expense, Atlas and Lead Plaintiffs agree
24 to submit such dispute to mediator Jed Melnick, with determinations by Mr. Melnick to be
25 binding upon the parties. Any portion of the Notice and Administration Fund which is not
26 required for the payment of Notice costs and to administer the Atlas Escrow Account and the

1 Settlement Fund will be returned to Atlas by the Escrow Agent. Any notice and
2 administrative costs in excess of seventy five thousand dollars (\$75,000) shall be paid
3 following the Effective Date from the Settlement Fund upon Lead Plaintiffs' Counsel's
4 approval. In no event, shall Atlas be responsible for any amounts of Notice and
5 Administrative expenses in excess of seventy five thousand dollars (\$75,000).

6 (c) Upon execution of the Settlement Agreement, Atlas shall provide reasonable
7 assistance to Lead Plaintiffs and Lead Counsel with respect to their pending claims against
8 defendant Chisolm, Bierwolf & Nilson, LLC. Such assistance shall include, but not be
9 limited to, providing a copy of the contract between Atlas and NaturalNano, Inc. related to the
10 sale of halloysite announced in Atlas' January 19, 2005 press release. In the event that there
11 is a concern regarding this paragraph, Atlas, Lead Plaintiffs, and Lead Counsel, agree to
12 submit the matter to Jed Melnick and Mr. Melnick's decision shall be binding.

13 **b. The Escrow Agent**

14 2.2 Any sums required to be held in escrow subsequent to the transfer pursuant to
15 ¶2.1(b) shall be held by the Escrow Agent. The Escrow Agent shall invest the Escrow Funds
16 and the Settlement Fund in instruments backed by the full faith and credit of the United States
17 Government or fully insured by the United States Government or an agency thereof and shall
18 reinvest the proceeds of these instruments as they mature in similar instruments at the current
19 market rates. All interest accruing on the Escrow Funds and the Settlement Fund and any
20 funds generated by investment of the Escrow Funds and the Settlement Fund shall be for the
21 benefit of the Settlement Class.

22 2.3 The Escrow Agent shall not disburse the Escrow Funds or the Settlement Fund
23 except as provided in the Stipulation, the Escrow Agreement, by an order of the Court
24 consistent with the terms of the Stipulation, or with the written agreement of Lead Plaintiffs'
25
26

1 Counsel after the Effective Date if in conformity with the Stipulation and any order of the
2 Court.

3 2.4 Subject to further order and/or direction as may be made by the Court, the
4 Escrow Agent is authorized to execute such transactions on behalf of the Settlement Class
5 Members as are consistent with the terms of the Stipulation and the Escrow Agreement.

6 2.5 All funds held by the Escrow Agent pursuant to the Escrow Agreement shall
7 be deemed and considered to be in Court custody, and shall remain subject to the jurisdiction
8 of the Court, until such time as such funds shall be distributed pursuant to the Stipulation, the
9 Escrow Agreement and/or further order(s) of the Court consistent with the terms of the
10 Stipulation. The Escrow Agent's acceptance and administration of the Escrow Funds and the
11 Settlement Fund shall constitute its submission to the jurisdiction of the Court for the
12 purposes of carrying out the Escrow Agreement.

13 2.6 The Escrow Agent shall bear all risks related to the use of any monies
14 reimbursed by Atlas pursuant to ¶2.1(b). In no event shall Settling Defendants or their
15 Related Parties have any responsibility for, or liability with respect to, the Escrow Agent or its
16 use of any such funds.

17 **c. Taxes**

18 2.7

19 2.7(a) The Parties hereto and the Escrow Agent agree to treat the Escrow Funds and
20 the Settlement Funds as being at all times a "qualified settlement fund" within the meaning of
21 Tres. Reg. Section 1.468B-1. In addition, the Escrow Agent and, as required, the Settling
22 Defendants and their insurance carriers shall jointly and timely make the "relation-back
23 election" (as defined in Treas. Reg. Section 1.468B-1) back to the earliest permitted date.
24 Such election shall be made in compliance with the procedures and requirements contained in
25 such regulations. It shall be the responsibility of the Escrow Agent to timely and properly
26

1 prepare, and deliver the necessary documentation for signature by all necessary parties, and
2 thereafter to cause the appropriate filing to occur.

3 (b) For the purposes of Section 468B of the Internal Revenue Code of 1986, and
4 Treas. Reg. Section 1.468B, the “administrator” shall be the Escrow Agent. The Escrow
5 Agent shall timely and properly file all informational and other tax returns necessary or
6 advisable with respect to the Escrow Funds or the Settlement Fund (including, without
7 limitation, the returns described in Treas. Reg. Section 1.468B-2(1)). Such returns (as well as
8 the election described in ¶2.7(a)) shall be consistent with this ¶2.7 and in all events shall
9 reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned
10 by the Escrow Funds or the Settlement Fund shall be paid out of the Escrow Funds or the
11 Settlement Fund as provided in ¶2.7(c) hereof.

12 (c) All (i) taxes (including any estimates taxes, interest or penalties) arising with
13 respect to the income earned (“Taxes”), and (ii) expenses and costs incurred in connection
14 with the operation and implementation of this ¶2.7 (including, without limitation, expenses of
15 tax attorneys and/or accountants and mailing and distribution costs and expenses relating to
16 the filing (or failing to file) the returns described herein (“Tax Expenses”)), shall be paid out
17 of the escrow account for which the accrual of interest necessitates the payment of taxes,
18 namely the Atlas Escrow Account, if the payment of taxes is necessary before the Effective
19 Date, or from the Settlement Fund if payment of taxes is due after the Effective Date; in all
20 events the Settling Defendants and their Related Parties shall not have any liability or
21 responsibility for the Taxes, the Tax Expenses, or the filing of any tax returns or other
22 documents with the Internal Revenue Service or any other state or local taxing authority. The
23 Escrow Agent shall indemnify and hold the Settling Defendants and their Related Parties
24 harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason
25 of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and
26 considered to be, a cost of administration of the Settlement and shall be timely paid by the

1 Escrow Agent out of the escrow account for which the accrual of interest necessitates the
2 payment of taxes without prior order from the Court, and the Escrow Agent shall be obligated
3 (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized
4 Claimants any funds necessary to pay such amounts (as well as any amounts that may be
5 required to be withheld under Treas. Reg. Section 1.468B-2(1)(2)); the Settling Defendants
6 and their Related Parties are not responsible and shall have no liability therefor, or for any
7 reporting requirements that may relate thereto. The Parties hereto agree to cooperate with the
8 Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably
9 necessary to carry out the provisions of this ¶2.7.

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

11 3.1 Promptly after execution of the Stipulation, the Settling Parties shall submit the
12 Stipulation together with its Exhibits to the Court and shall jointly apply for entry of an order
13 (the “Preliminary Approval Order”), substantially in the form of Exhibit __, requesting, *inter*
14 *alia*, the preliminary approval of the Settlement set forth in the Stipulation, the certification of
15 the Settlement Class for settlement purposes, and approval for mailing the Notice of Pendency
16 and Proposed Settlement of Class Action (the “Notice”), substantially in the form of Exhibit
17 __ and publication of a summary notice, substantially in the form of Exhibit __. The Notice
18 shall include the general terms of the settlement set forth in the Stipulation, the proposed Plan
19 of Allocation, the general terms of the Fee and Expense Application and the date of the
20 Settlement Hearing. Atlas, within three (3) days following the entry of the Preliminary
21 Approval Order, authorize the appropriate Atlas transfer agent to release any and all available
22 records that contain the names and addresses of potential Settlement Class Members for the
23 purpose of giving the best notice practicable to the Settlement Class Members.

24 3.2 Lead Counsel shall request that after notice is given, the Court hold a hearing
25 (the “Settlement Hearing”) and approve the settlement of the Litigation as set forth herein. At
26

1 or after the Settlement Hearing, Lead Counsel also will request that the Court approve the
2 proposed Plan of Allocation and the Fee and Expense Application.

3 **4. Releases**

4 4.1 Upon the Effective Date, as defined in ¶1.9 hereof, the Lead Plaintiffs, and
5 each of the Settlement Class Members (except those Settlement Class Members who have
6 excluded themselves from the Settlement in accordance with the requirements set forth in the
7 notice) shall be deemed to have, and by operation of the Judgment shall have, fully, finally,
8 and forever released, relinquished and discharged all Released Claims against the Released
9 Parties, whether or not such Settlement Class Member executes and delivers a Proof of Claim
10 and Release form.

11 4.2 The Proof of Claim and Release to be executed by Settlement Class Members
12 shall release all Released Claims against the Released Parties and shall be substantially in the
13 form contained in Exhibit ___.

14 4.3 Upon the Effective Date, as defined in ¶1.9 hereof, each of the Released
15 Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally,
16 and forever released, relinquished and discharged the Lead Plaintiffs, each and all of the
17 Settlement Class Members and Lead Counsel from all claims (including Unknown Claims)
18 arising out of, relating to, or in connection with the institution, prosecution, assertion,
19 settlement or resolution of the Litigation or the Released Claims.

20 **5. Administration and Calculation of Claims, Final Awards and Supervision**
21 **and Distribution of Settlement Fund**

22 5.1 The Claims Administrator shall administer and calculate the claims submitted
23 by Settlement Class Members.

24 5.2 The Settlement Fund shall be applied as follows:

25 (a) to pay any costs and expenses reasonably and actually incurred in connection
26 with providing notice in excess of amounts reimbursed by Atlas pursuant to ¶2.1(a), locating

1 Settlement Class Members, assisting with the filing of claims, administering and distributing
2 the Settlement Fund to Authorized Claimants, processing Proof of Claim and Release forms
3 and paying escrow fees and costs, if any;

4 (b) to pay the Taxes and Tax Expenses described in ¶2.7 hereof; and

5 (c) to pay Lead Counsel’s attorneys’ fees and expenses with interest thereon (the
6 “Fee and Expense Award”), if and to the extent allowed by the Court;

7 (d) to pay any award to the Lead Plaintiffs as reimbursement for reasonable time
8 and expenses and to the extent not already paid from the Atlas Escrow Account; and

9 (e) to distribute the balance of the Settlement Fund (the “Net Settlement Fund”) to
10 Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, or the Court.

11 5.3 Upon the Effective Date and thereafter, and in accordance with the terms of the
12 Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court
13 as may be necessary or as circumstances may require, the Net Settlement Fund shall be
14 distributed to Authorized Claimants, subject to and in accordance with the following.

15 (a) Within one hundred eighty (180) days after the mailing of the Notice or such
16 other time as may be set by the Court, each Person claiming to be an Authorized Claimant
17 shall be required to submit to the Claims Administrator a completed Proof of Claim and
18 Release, substantially in the form of Exhibit __, signed under penalty of perjury and
19 supported by such documents as are specified in the Proof of Claim and Release and as are
20 reasonably available to the Authorized Claimant.

21 (b) Except as otherwise ordered by the Court, all Settlement Class Members who
22 fail to timely submit a valid Proof of Claim and Release within such period, or such other
23 period as may be ordered by the Court, or who have not already done so, shall be forever
24 barred from receiving any payments of money pursuant to the Stipulation and the Settlement
25 set forth herein, but will in all other respects be subject to and bound by the provisions of the
26 Stipulation, the Settlement and releases contained herein, and the Final Judgment and Order.

1 5.5 Except as otherwise ordered by the Court, all Settlement Class Members who
2 fail to timely submit a Proof of Claim and Release within such period, or such other period as
3 may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any
4 payments pursuant to the Stipulation and the Settlement set forth herein, but will in all other
5 respects be subject to and bound by the provisions of the Stipulation, the releases contained
6 herein, and the Judgment.

7 5.6 The Net Settlement Fund shall be distributed to the Authorized Claimants
8 substantially in accordance with a Plan of Allocation to be described in the Notice and
9 approved by the Court. If there is any balance remaining in the Net Settlement Fund after six
10 (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax
11 refunds, un-cashed checks or otherwise), Lead Counsel shall, if feasible, reallocate such
12 balance among Authorized Claimants in an equitable and economic fashion. Thereafter, any
13 balance which still remains in the Net Settlement Fund shall be donated to an appropriate non-
14 profit organization.

15 5.7 This is not a claims-made settlement and, if all conditions of the Stipulation are
16 satisfied and the Settlement becomes Final, no portion of the Settlement Fund will be returned
17 to the Defendants. The Settling Defendants and their Related Parties shall have no
18 responsibility for, interest in, or liability whatsoever with respect to the distribution of the Net
19 Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of
20 claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in
21 connection therewith. No Person shall have any claim against Lead Counsel, the Claims
22 Administrator or other entity designated by Lead Counsel based on distributions made
23 substantially in accordance with the Stipulation and the Settlement contained herein, the Plan
24 of Allocation, or further order(s) of the Court.

25 5.8 It is understood and agreed by the Settling Parties that any proposed Plan of
26 Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an

1 Authorized Claimant's claim set forth therein, is not a part of the Stipulation and is to be
2 considered by the Court separately from the Court's consideration of the fairness,
3 reasonableness and adequacy of the Settlement set forth in the Stipulation, and any order or
4 proceeding relating to the Plan of Allocation shall not operate to terminate or cancel the
5 Stipulation or affect the finality of the Court's Judgment approving the Stipulation and the
6 Settlement set forth therein, or any other orders entered pursuant to the Stipulation.

7 **6. Lead Counsel's Attorneys' Fees and Reimbursement of Expenses**

8 6.1 Lead Counsel may submit an application or applications (the "Fee and Expense
9 Application") for distributions to them from the Settlement Fund for: (a) an award of
10 attorneys' fees; plus (b) reimbursement of actual expenses, including the fees of any experts
11 or consultants, incurred in connection with prosecuting the Litigation, plus any interest on
12 such attorneys' fees and expenses at the same rate and for the same periods as earned by the
13 Settlement Fund (until paid), as may be awarded by the Court. Lead Counsel reserves the
14 right to make additional applications for fees and expenses incurred. The Settling Defendants
15 shall take no position as to any Fee and Expense application made by Lead Counsel. For
16 avoidance of doubt, Lead Counsel shall not receive any distribution for fees and expenses
17 prior to the transfer of monies to the Escrow Agent pursuant to ¶2.1(b).

18 6.2 The attorneys' fees and expenses, as awarded by the Court, shall be paid to
19 Lead Counsel from the Settlement Fund, as ordered, immediately after the Court executes an
20 order awarding such fees and expenses. In the event that the order making the Fee and
21 Expense Award is reversed or modified, and in the event that the Fee and Expense Award has
22 been paid to any extent, then Lead Counsel shall within five (5) business days from receiving
23 notice that the Fee and Expense Award is reversed or modified, refund to the Settlement Fund
24 the fees and expenses previously paid to them from the Settlement Fund plus interest thereon
25 at the same rate as earned on the cash portion of the Settlement Fund in an amount consistent
26 with such reversal or modification.

1 6.3 The procedure for and the allowance or disallowance by the Court of any
2 applications by Lead Counsel for attorneys' fees and expenses, including the fees of experts
3 and consultants, to be paid out of the Settlement Fund, are not part of the Settlement set forth
4 in the Stipulation, and are to be considered by the Court separately from the Court's
5 consideration of the fairness, reasonableness and adequacy of the Settlement set forth in the
6 Stipulation, and any order or proceedings relating to the Fee and Expense Application, or any
7 appeal from any order relating thereto or reversal or modification thereof, shall not operate to
8 terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving
9 the Stipulation and the Settlement of the Litigation set forth therein.

10 6.4 For the avoidance of doubt, the releases herein establish that Settling
11 Defendants and their Related Parties shall have no responsibility for or liability with respect
12 to any payment of attorneys' fees and expenses to Lead Counsel, except as provided in
13 ¶2.1(a).

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

16 7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of
17 all of the following events:

18 (a) The transfer to the Escrow Agent of \$1,250,000 in a timely manner as required
19 by ¶2.1(b) hereof;

20 (b) The entry of the Preliminary Approval Order, in all material respects, as
21 required by ¶3.1 hereof;

22 (c) Approval by the Court of the Settlement, following notice to the Class and a
23 hearing (the "Settlement Fairness Hearing"), as prescribed by Rule 23 of the Federal Rules of
24 Civil Procedure;

25 (d) the Court has entered the Final Judgment and Order, or a judgment
26 substantially in the form of Exhibit __ hereto; and

1 (e) the Judgment has become Final, as defined in ¶1.13 hereof.

2 7.2 With respect to the provisions of Paragraph 7.2 above:

3 (a) Upon the occurrence of all of the events referenced in ¶7.1 hereof, any and all
4 remaining interest or right of Settling Defendants in or to the Settlement Fund, if any, shall be
5 absolutely and forever extinguished. If all of the conditions specified in ¶7.1 hereof are not
6 met, then the Stipulation shall be canceled and terminated subject to ¶7.3 hereof unless Lead
7 Counsel and counsel for Settling Defendants mutually agree in writing to proceed with the
8 Stipulation.

9 (b) Simultaneously herewith, the Parties are executing a “Supplemental Agreement”
10 setting forth certain conditions under which this Stipulation may be terminated by the Settling
11 Defendants, if potential Settlement Class Members with claims and/or losses above certain
12 parameters seek to exclude themselves from the Settlement Class. The Supplemental
13 Agreement shall not be filed prior to the Settlement Fairness Hearing unless a dispute arises
14 as to its terms. In the event Atlas terminates this Stipulation pursuant to the Supplemental
15 Agreement, this Stipulation shall become null and void and of no further force and effect.
16 Notwithstanding the foregoing, the Stipulation shall not become null and void as a result of
17 the election by Atlas to exercise its option to terminate the Stipulation pursuant to the
18 Supplemental Agreement until the conditions set forth in the Supplemental Agreement have
19 been satisfied.

20 7.3 In the event that the Stipulation is not approved by the Court, the Settling
21 Parties shall be restored to their respective positions in the Litigation as of April 30, 2009. In
22 such event, the terms and provisions of the Stipulation, with the exception of ¶2.7, 7.3, and
23 7.4 hereof, shall have no further force and effect with respect to the Settling Parties and shall
24 not be used in this Litigation or in any other proceeding for any purpose, and any judgment or
25 order entered by the Court in accordance with the terms of the Stipulation shall be treated as
26 vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any

1 order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees,
2 costs, expenses and interest awarded by the Court to Lead Counsel shall constitute grounds
3 for cancellation or termination of the Stipulation.

4 7.4 Each of the Settling Defendants warrants and represents that she, he or it is not
5 "insolvent" within the meaning of 11 U.S.C. §101(32) as of the time this Stipulation is
6 executed and as of the time any payments are transferred or made as required by this
7 Stipulation, nor will such payments render any Settling Defendant insolvent within the
8 meaning of and/or for the purposes of the United States Bankruptcy Code.

9 7.5 In the event any case is commenced under the United States Bankruptcy Code
10 in which Atlas is the debtor-in-possession, whether any such proceeding is commenced
11 voluntarily or involuntarily (the "Bankruptcy Case"), Atlas will not contend that there was no
12 consideration provided for any payment made pursuant to this Stipulation, including any
13 payment made by any insurance carrier, nor will it seek to set aside the terms of this
14 Stipulation pursuant to 11 USC §§ 543, 547, or 548. If a case is commenced with respect to
15 Atlas under the Bankruptcy Code, or a trustee, receiver or conservator is appointed under any
16 similar law, and in the event of the entry of a final order of a court of competent jurisdiction
17 determining the payment of the Escrow Funds or the Settlement Fund to be a preference,
18 voidable transfer, fraudulent transfer or similar transaction, and that any of these findings
19 preclude payment all or a material amount of the initial total of the Escrow Funds or the
20 Settlement Fund, and such funds are in fact not then distributed then, at the election of Lead
21 Plaintiffs' Counsel, the Parties hereto shall jointly move the Court to vacate and set aside both
22 the releases and the Final Judgment and Order entered in favor of the Settling Defendants
23 pursuant to this Settlement. In addition, this Stipulation and Settlement shall be null and void,
24 and the Parties hereto shall be restored to their respective positions in the litigation
25 immediately prior to the execution of this Stipulation including, without limitation, the return
26 of all funds to Atlas.

1 **8. Miscellaneous Provisions**

2 8.1 The Settling Parties (a) acknowledge that it is their intent to consummate this
3 agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and
4 implement all terms and conditions of the Stipulation and to exercise their reasonable best
5 efforts to accomplish the foregoing terms and conditions of the Stipulation.

6 8.2 The Settling Parties intend this Settlement to be a final and complete resolution
7 of all disputes between them with respect to the Litigation. The Settlement compromises
8 claims which are contested and shall not be deemed an admission by any Settling Party as to
9 the merits of any claim or defense. The Final Judgment will contain a statement that during
10 the course of the Litigation, the parties and their respective counsel at all times complied with
11 the requirements of Federal Rule of Civil Procedure 11. While retaining their right to deny
12 liability, the Settling Defendants agree that the amount paid to the Settlement Fund and the
13 other terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect
14 a settlement that was reached voluntarily after consultation with competent legal counsel.
15 The Settling Parties reserve their right to rebut, in a manner that such party determines to be
16 appropriate, any contention made in any public forum that the Litigation was brought or
17 defended in bad faith or without a reasonable basis.

18 8.3 Neither the Stipulation nor the Settlement contained therein, nor any act
19 performed or document executed pursuant to or in furtherance of the Stipulation or the
20 Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of,
21 the validity of any Released Claim, or of any wrongdoing or liability of the Settling
22 Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence
23 of, any fault or omission of any of the Settling Defendants in any civil, criminal or
24 administrative proceeding in any court, administrative agency or other tribunal. The Settling
25 Defendants may file the Stipulation and/or the Judgment in any action that may be brought
26 against them in order to support a defense or counterclaim based on principles of *res judicata*,

1 collateral estoppel, release, good faith settlement, judgment bar or reduction or any other
2 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

3 8.4 All agreements made and orders entered during the course of the Litigation
4 relating to the confidentiality of information shall survive this Stipulation.

5 8.5 All of the Exhibits to the Stipulation are material and integral parts hereof and
6 are fully incorporated herein by this reference.

7 8.6 The Stipulation may be amended or modified only by a written instrument
8 signed by or on behalf of all Settling Parties or their respective successors-in-interest.

9 8.7 The Settling Parties agree that this Stipulation has been generated pursuant to
10 the equal negotiations and advice of counsel. Accordingly, this Agreement should not be
11 construed more favorably or unfavorably as to any party.

12 8.8 The Stipulation and the Exhibits attached hereto and the Supplemental
13 Agreement constitute the entire agreement among the parties hereto and no representations,
14 warranties or inducements have been made to any party concerning the Stipulation, its
15 Exhibits, or the Supplemental Agreement other than the representations, warranties and
16 covenants contained and memorialized in such documents. Except as otherwise provided,
17 Atlas and the Class Plaintiffs shall each bear their own costs.

18 8.9 Lead Counsel, on behalf of the Settlement Class, are expressly authorized by
19 the Lead Plaintiffs to take all appropriate action required or permitted to be taken by the
20 Settlement Class pursuant to the Stipulation to effectuate its terms and also are expressly
21 authorized to enter into any modifications or amendments to the Stipulation on behalf of the
22 Settlement Class which they deem appropriate.

23 8.10 Each counsel or other Person executing the Stipulation or any of its Exhibits on
24 behalf of any party hereto hereby warrants that such Person has the full authority to do so.

1 8.11 The Stipulation may be executed in one or more counterparts. All executed
2 counterparts and each of them shall be deemed to be one and the same instrument. A
3 complete set of original executed counterparts shall be filed with the Court.

4 8.12 The Stipulation shall be binding upon, and inure to the benefit of, the
5 successors and assigns of the parties hereto.

6 8.13 The Court shall retain jurisdiction with respect to implementation and
7 enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of
8 the Court for purposes of implementing and enforcing the Settlement embodied in the
9 Stipulation.

10 8.14 The Stipulation and the Exhibits hereto shall be considered to have been
11 negotiated, executed and delivered, and to be wholly performed, in the State of Idaho, and the
12 rights and obligations of the parties to the Stipulation shall be construed and enforced in
13 accordance with, and governed by, the internal, substantive laws of the State of Idaho without
14 giving effect to that State's choice-of-law principles.

15 DATED: _____, 2009.

17 K&L GATES LLP

18 By _____

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By _____

Its: _____