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Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS

Steve Martin, *et al.*,	)	
	)	
	)	
Plaintiffs,	)	
	)	Case No. 07-1009 JBM/JAG
v.	)	
	)	Judge Joe Billy McDade
Caterpillar Inc. *et al.*,	)	
	)	Magistrate Judge John A. Gorman
Defendants.	)	
	)	
	)	

MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

The Settling Parties[1] hereby jointly submit this memorandum of law in support of their joint motion for final approval of the Class Action Settlement.

I. INTRODUCTION

The Settlement Agreement, as amended to address the concerns of the Court, governs the resolution of this action. It will resolve class action litigation against Defendants Caterpillar Inc., Benefit Funds Committee of Caterpillar Inc., Employee Benefit Funds of Caterpillar Inc., Investment Plan Committee of Caterpillar Inc., Caterpillar Investment Management Ltd. ("CIML"), and Vice President of Human Services Division of Caterpillar Inc. ("Defendants") alleging breaches of fiduciary duties under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq*.

[1] Capitalized terms not otherwise defined in this memorandum shall have the meanings set forth in the Settlement Agreement, which, as amended, is attached hereto as Exhibit 1 and previously filed with the Court as Doc. 152-1, 167-4, 171-1, 171-2, and 174-1.

The Settlement Agreement achieves, to a significant degree, the relief sought by this litigation. The action was commenced on September 11, 2006. It sought to obtain damages and injunctive relief based on allegations that since July 1, 1992, Defendants caused the 401(k) retirement plans within the Caterpillar Inc. Investment Trust ("Master Trust") to: (1) include imprudent investment options; (2) pay excessive fees, including fees to a Caterpillar subsidiary, CIML; and (3) hold excessive levels of cash in the Caterpillar Company Stock Fund ("CSF"). The relief provided in the Settlement Agreement includes a $16,500,000 Gross Settlement Amount to be placed in the Qualified Settlement Fund, as well as certain affirmative relief.

The monetary payment and affirmative relief to Plan Participants and beneficiaries will provide meaningful relief to the Settlement Class. There are four categories of cash benefits based on the length of time Settlement Class Members held assets in a 401(k) Plan within the Master Trust: (1) 10% of the Net Settlement Amount will be divided equally among Settlement Class Members in Band 1 (Band 1 consists of approximately 26,312 Current and Former Participants in the Plans with between 1 and 12 calendar quarters of participation in one or more of the Plans); (2) 15% of the Net Settlement Amount will be divided equally among Settlement Class Members in Band 2 (Band 2 consists of approximately 18,761 Current and Former Participants in the Plans with between 13 and 25 calendar quarters of participation in one or more of the Plans); (3) 25% of the Net Settlement Amount will be divided equally among Settlement Class Members in Band 3 (Band 3 consists of approximately 18,674 Current and Former Participants in the Plans with between 26 and 47 calendar quarters of participation in one or more of the Plans); and (4) 50% of the Net Settlement Amount will be divided equally among Settlement Class Members in Band 4 (Band 4 consists of approximately 16,214 Current and

Former Participants in the Plans with between 48 and 69 calendar quarters of participation in one or more of the Plans).

Before Plaintiffs filed this case on September 11, 2006, few cases had been filed against fiduciaries in large employer 401(k) plans alleging breaches of fiduciary duties resulting in excessive recordkeeping, administrative and investment management fees, as well as excessive cash in a company stock fund. The settlement was the product of years of adversarial litigation and months of arms length negotiation and mediation. The Settling Parties respectfully submit that in light of the litigation risks further prosecution of this action would inevitably entail for all Parties, it would be proper for the Court to grant final approval of the settlement by signing and entering the proposed Final Order and Judgment. The Settling Parties' proposed Final Order and Judgment is filed with the Court, concurrently herewith.

II. THE CLAIMS IN THE CASE

Plaintiff Steve Martin is a participant in the Caterpillar 401(k) Plan and a resident of Booneville, Missouri. Plaintiff Carol Tegard is a participant in the Caterpillar 401(k) Plan and a resident of Hanna City, Illinois. Plaintiff Allen Rose is a participant in the Caterpillar Inc. Tax Deferred Savings Plan and a resident of Edwards, Illinois. Thus, Martin, Tegard, and Rose (the "Plaintiffs") are participants in Plans within the Master Trust and are members of the Settlement Class.

Defendants are alleged to be fiduciaries of the four 401(k) Plans within the Master Trust. Plaintiffs allege that effective about July 1, 1992, Defendants changed most of the Plans' investment options to mutual funds managed by its subsidiary, CIML. These mutual funds were a part of the "Preferred Group of Mutual Funds" and were marketed to investors both inside and outside of the Master Trust, who were and were not employees of or affiliated with Caterpillar Inc. The Defendants also decided to "unitize" the CSF. "Unitizing" the CSF meant that

investors in the CSF were no longer owners of shares of Caterpillar stock, but, rather, owned shares of a fund that invested primarily in Caterpillar stock, but also invested in cash and cash-equivalents. Plaintiffs allege that as Caterpillar stock appreciated in value, the cash component of the CSF caused the Fund to underperform Caterpillar stock.

In 2006, the CIML-managed investment options were removed from the Plan, but the unitized CSF remained. At about that time, Caterpillar decided to stop paying some administrative costs of the Plans.

Plaintiffs claim that the actions described above constituted breaches of Defendants' fiduciary obligations under ERISA § 404(a), 29 U.S.C. 1104(a), and that the payments of fees to CIML constituted prohibited transactions under ERISA § 406(b), 29 U.S.C. 1106(b).

Defendants adamantly deny Plaintiffs' allegations and argue, among other things, that: (1) recordkeeping fees of $47 per participant (which were not paid by the Plans until 2005) are prudent under ERISA § 404(a); (2) unitizing a company stock fund is prudent in that it allows for greater liquidity and is a hedge against stock declines, and is common in large Plans; (3) the mutual fund fees paid by the Plans were not excessive or unreasonable; and (4) the payment of these fees did not constitute a prohibited transaction because Defendants met the requirements of Prohibited Transaction Exemption 77-3 ("PTE 77-3").

III. PROCEDURAL HISTORY

On September 11, 2006, Plaintiffs filed their original complaint in the Western District of Missouri. (Doc. 1). Defendants moved to transfer venue to the Central District of Illinois (Doc. 20), and that motion was granted on December 15, 2006. (Doc. 36). On May 15, 2007, the Court granted Defendants' Motion to Dismiss the Complaint. (Doc. 57). Plaintiffs filed an Amended Complaint on May 25, 2007, and a Second Amended Complaint on July 13, 2007. (Docs. 58, 70.) Defendants filed a Motion to Dismiss the Second Amended Complaint, which

was denied on September 25, 2008. At that point, Defendants produced substantial documents in response to Plaintiffs' written discovery. On February 19, 2009, Defendants filed a Motion for Judgment on the Pleadings (Doc. 116), and on March 16, 2009, Plaintiffs filed a Motion for Leave to File a Third Amended Complaint. (Doc. 123).

Initial settlement discussions were not fruitful. However, with the advancement of meaningful settlement discussions, Plaintiffs moved to stay proceedings, and a stay was first issued on August 4, 2009. (Doc. 139). At that time, the Court denied as moot, and without prejudice, Defendants' pending Motion for Judgment on the Pleadings and Plaintiffs' Motion for Leave to File a Third Amended Complaint. (Doc. 139). In a separate pleading, Plaintiffs renewed their Motion for Leave to File Third Amended Complaint (Doc. 148), and substituted a revised Third Amended Complaint (Doc. 149-1).

IV. THE TERMS OF THE PROPOSED SETTLEMENT

In exchange for the dismissal of the Action and for entry of the Judgment as provided for in the Settlement Agreement, Defendants will make available to Settlement Class Members the benefits described below (the "Settlement Benefits").

A. Monetary Relief

Caterpillar already has deposited $16,500,000, the Gross Settlement Amount, in an interest-bearing escrow account. This account represents the Qualified Settlement Fund from which benefits to the Settlement Class will be paid, after payment of Class Counsels' fees, Incentive Awards and Administrative Expenses of the Settlement, as provided in the Settlement Agreement.

B. Non-Monetary Affirmative Relief

In addition to the Gross Settlement Amount, the Settlement Agreement provides that an Independent Monitor will review Defendants' conduct to ensure compliance with the Settlement

Agreement during its Article 15 Time Period. This monitor will receive and review certain documents from the Plans. In the event it finds that Caterpillar is not in compliance with the Settlement Agreement and ERISA, the matter will be referred to the parties for resolution, including if necessary arbitration. This monitoring will initially occur for two years and will continue for an additional two years in the event an arbitrator finds a violation of the Settlement Agreement.

During this period of oversight, Caterpillar will not use any retail mutual funds as core investment options, cannot use an affiliate as investment manager, and must limit cash holdings in the Company Stock Fund to a maximum of 1.5%, unless it receives approval of the Independent Monitor to increase that amount.

Further, the fee disclosures to participants will be expanded. Participants will receive new, and as yet not mandated, information concerning the fees they are charged for investment management and administrative services.

These benefits represent a significant value to the Plans above and beyond the monetary settlement, and will prevent the alleged conflicts of interest which led to the selection of retail mutual funds offered by the Preferred Group, and the other alleged breaches of fiduciary duty.

C. Administrative Expenses and Incentive Awards

The cost of administration of the Settlement will come out of the $16,500,000 Gross Settlement Amount. This includes payments to the Independent Monitor and Independent Fiduciary, and other costs of administering the Settlement Agreement. Incentive payments to the three Named Plaintiffs in the amount to be approved by the Court, but not more than $19,000 each, will also be paid out of the Gross Settlement Amount, an amount in line with precedent recognizing the value of Named Plaintiffs' contributions to class actions. This is particularly the case where, as here, the benefit to any individual does not outweigh the cost of prosecuting the

claim and there is significant risk, including the risk of no recovery and the risk of uncompensated time. Plaintiffs have separately moved for approval of their incentive awards. (Doc. 176).

D. Attorneys' Fees

Finally, Plaintiffs' Counsel requested attorneys' fees to be paid out of the Gross Settlement in the amount of $5,500,000 (one-third of the Gross Settlement Amount as allowed under the Settlement Agreement), plus a cost award of $308,956.78. (Doc. 176).

E. Summary

The Settlement Agreement balances the risks, costs, and uncertainties of continuing litigation with the certainty of benefits that provide substantial, meaningful recovery for the Settlement Class, as well as significant affirmative non-monetary relief which will benefit the Settlement Class in the future. The Settlement Agreement is the result of months of extensive, arm's-length negotiations, including two all day sessions with mediator Hunter Hughes, Esquire, a nationally recognized mediator who is extensively experienced in mediating major class action cases. Counsel for the Settling Parties believes the Settlement Agreement is fair, adequate, and reasonable, and in the best interests of the Settlement Class. The relief that will be provided by the Settlement Agreement is adequate, particularly when providing for the expense and delay of continuing litigation.

V. ARGUMENT

The Settlement Agreement satisfies all applicable criteria for approval, including the well-established factors frequently cited by District Courts in the Seventh Circuit. The Settlement Agreement should be approved as fair, reasonable, and adequate in all respects.

VI. ARGUMENT

A. The Applicable Legal Standards

Federal courts favor the settlement of class action litigation. *Isby v. Bayh*, 75 F.3d 1191, 1197 (7th Cir. 1996) (*citing, e.g., E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 888-89 (7th Cir. 1985), *cert. denied*, 478 U.S. 1004, 106 S. Ct. 3293 (1986)). Although such settlements must be approved by the district court, its inquiry is limited to the consideration of whether the proposed settlement is lawful, fair, reasonable, and adequate. *Id*. (*citing Hiram Walker*, 768 F.2d at 889); *Synfuel Tech., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 652 (7th Cir. 2006) (*citing* Fed. R. Civ. P. 23(e)(2)).

There is a strong presumption that a class action settlement meets this standard when it is the result of arm's length negotiations. *Great Neck Capital Appreciation Inc. Partnership, L.P. v. PricewaterhouseCoopers, LLP*, 212 F.R.D. 400, 410 (W.D. Wis. 2002); *see also, Newberg on Class Actions* § 11.41 at 11-88 (3d ed. 1992). The Settlement Agreement here is the result of lengthy, contentious and complex arm's length negotiations between the Settling Parties. Counsel on both sides are experienced and thoroughly familiar with the factual and legal issues presented.

Starting with a presumption in favor of approving the settlement, the Court then should consider five factors in determining the "fairness" of a class action settlement. *Synfuel*, 463 F.3d at 653; *Isby*, 75 F.2d at 1198-99. Each factor is discussed below.

B. The Settlement Is Fair, Reasonable, And Adequate Under The Five Relevant Factors.

District Courts in the Seventh Circuit consider five factors in determining whether a class action settlement is fair, reasonable, and adequate: (1) "the strength of plaintiffs' case compared to the amount of defendants' settlement offer," (2) "an assessment of the likely complexity,

length and expense of the litigation," (3) an evaluation of the amount of opposition to settlement among effected parties," (4) "the opinion of competent counsel," and (5) "the stage of the proceedings and the amount of discovery completed at the time of settlement." *Synfuel*, 463 F.3d at 653; *Isby*, 75 F.2d at 1198-99.

The Court should not focus on individual components of the settlement, but rather view the settlement in its entirety. *Isby*, 75 F.2d at 1199. It should consider the facts "in the light most favorable to the settlement." *Id*. The Settling Parties respectfully submit that the five relevant factors plainly and decisively favor approval of the Settlement Agreement.

1. The strength of plaintiffs' case compared to the amount of defendants' settlement offer

The relative strength of plaintiffs' case on the merits as compared to what the defendants offer by way of settlement is the most important consideration in determining whether a settlement is fair, reasonable, and adequate. *Isby*, 75 F.3d at 1199. However, "district courts have been admonished" to "refrain from resolving the merits of the controversy or making a precise determination of the parties' respective legal rights." *Id*. at 1197. Given the uncertainty of a positive outcome for Plaintiffs should the litigation continue, along with the potential strength of arguments available to Defendants, the Gross Settlement Amount, plus non-monetary, affirmative relief, is fair when compared to the strength of Plaintiffs' case.

Plaintiffs' theory of recovery is based on Defendants' inclusion of mutual funds, and particularly the Preferred Group of Mutual Funds, as Plan investment options, instead of cheaper, separately managed accounts. On July 1, 1992, the Plans began offering Preferred Group mutual funds, for which CIML was the investment manager. CIML was a wholly-owned subsidiary of Caterpillar. CIML, in turn, contracted with various unaffiliated sub-advisors to manage the investments of the Preferred Group of Mutual Funds. Had the Defendants selected lower cost

separately managed accounts directly from these sub-advisors, rather than these retail mutual funds, Plaintiffs contend, fees would have been significantly lower. Plaintiffs thus assert that the payment of the additional mutual fund fees was imprudent under ERISA Section 404(a). Further, because CIML was a Caterpillar subsidiary, Plaintiffs contend that payments of fees to CIML were prohibited transactions in violation of ERISA Section 406.

ERISA Section 404(a)(1)(A) provides that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan." This means fiduciaries must act "with complete and undivided loyalty" and an "eye single toward the interests of the participants." *Leigh v. Engle*, 727 F.2d 113, 123 (7th Cir. 1984). "A fiduciary breaches its duty of care under section 404(a)(1)(A) whenever it acts to benefit its own interests." *Chao v. Linder*, No. 05 C 3812, 2007 WL 1655254, at * 7 (N.D. Ill. May 31, 2007) (*citing Hedrich v. Pegram*, 154 F.3d 362, 371 (7th Cir. 1998), *rev'd on other grounds*, 530 U.S. 211 (2000)).

Plaintiffs' counsel continues to believe in the merits of these claims. However, there are significant legal obstacles and defenses which render recovery in this case uncertain, and, if there is a recovery, which would affect the amount. First, the Department of Labor has exempted prohibited transactions under circumstances which Defendants believe apply here. DOL PTE 77-3 provides that if the affiliated mutual funds -- in this case the Preferred Group -- were also available to outside investors and the fees and terms of the mutual funds within the Plans were no less favorable than the fees and terms available to shareholders outside the Plans, the exemption applies. *See* PTE 77-3.

The Settling Parties disagree whether the exemption applies in this action. Although Plaintiffs have determined through extensive document review and investigation that the Preferred Group mutual funds were widely owned by other investors and large numbers of outside investors appear to have paid the same fees for investing in the funds, they believe that the requirements of PTE 77-3 are not met. Plaintiffs argue that Caterpillar was itself an investor in the Preferred Group and, by profiting from the fees it charged itself, enjoyed more favorable terms. Plaintiffs thus contend that PTE 77-3 cannot apply. However, the law has not developed under PTE 77-3 in this context, so that the issue presents significant uncertainty.

Apart from the prohibited transaction issue, Plaintiffs' claim that Defendants' investments in mutual funds are a violation of ERISA also faces uncertainties at trial, including uncertainty over the extent of any damages resulting from the use of such funds. Assuming that separately managed accounts were available and would have been cheaper, Defendants rely on a recent Seventh Circuit case upholding the dismissal of a case alleging that the retail mutual funds were imprudently expensive under ERISA Section 404(a). *See Hecker v. Deere*, 556 F.3d 575 (7th Cir. 2009)("*Hecker I*"), *rehearing denied*, 569 F.3d 708 (7th Cir. 2009) ("*Hecker II*").

In *Hecker I*, the Seventh Circuit upheld the dismissal of a claim involving retail mutual funds in a large 401(k) plan. In *Hecker II*, the Seventh Circuit affirmed its decision, reasoning that the holding was "tethered" to the facts and pleadings of that particular case, and ruling that Plaintiffs failed to allege that cheaper separately managed accounts would provide the same services as did the retail mutual funds. Plaintiffs' counsel are also counsel for the plaintiffs in *Hecker*, and are intimately familiar with the holding. A petition for *writ of certiorari* was denied in *Hecker*. The *Hecker* decision, and other litigation from outside of the Seventh Circuit, makes it less than certain that Plaintiffs would succeed on the merits of their claims in this action. At

trial, Defendants would present evidence that CIML provided valuable services for the added fee it received.

The statute of limitations also is an issue, which makes the outcome of the case uncertain. Under ERISA, the statute of limitations is three years if participants had actual knowledge of the alleged breach of fiduciary duties. In the absence of actual knowledge, the statute of limitations is six years; however, if Defendants engaged in fraud or concealment to hide their breaches, the six years does not begin to run until the date of discovery. 29 U.S.C. § 1113.

Defendants assert that all of Plaintiffs' claims are based on well-advertised facts which were known to Plaintiffs before September 2003 and, thus, are barred by ERISA's three year statute of limitations. In order for the three year statute of limitations to apply, a plaintiff must have "knowledge of the facts or transaction that constituted the alleged violation." *Rush v. Martin Peterson Co.*, 83 F.3d 894, 896 (7th Cir. 1996); *Martin v. Consultants & Adm'rs.*, 966 F.2d 1078, 1086 (7th Cir. 1992). While Plaintiffs believe key facts, including the willingness of Preferred Group sub-advisors to manage separate accounts at fees below those of the Preferred Group mutual funds, were not disclosed to participants, Defendants would present evidence at trial that the fees related to each investment option, the relationship between the Preferred Group, CIML, and Caterpillar, and the unitized nature of the CSF were routinely disclosed to participants. If the Court found that a six-year statute of limitations applied, Plaintiffs' experts calculated the total amount of investment management fees to have been $79 million of which $48 million was paid to CIML ($18 million of that for administrative services). If a three-year statute of limitations applied, estimates of what the Plans could recover at trial would be significantly lower. Plaintiffs believe disgorgement of all fees paid is a potential remedy but the

availability of that remedy, and the amount and length of time are uncertain. Moreover, recovery would be completely barred if Defendants succeeded on their statute of limitations argument.

In the absence of actual knowledge, Plaintiffs' damages would be limited to six-years from the filing of the action unless Plaintiffs demonstrated that Defendants hid their alleged breaches by "fraud or concealment." 29 U.S.C. § 1113. "The tolling provision applies to cases in which a plaintiff can prove that a defendant made knowingly false representations with the intent to defraud the plaintiffs, or took affirmative steps to conceal its own alleged breaches." *Kanawi v. Bechtel Corp*., 590 F.Supp.2d 1213, 1225-26 (N.D.Cal. 2008). More than merely a failure to disclose is required. *Id*. Plaintiffs allege various ways in which Defendants, through fraud or concealment, prevented Plaintiffs from discovering their breaches of fiduciary duty. The outcome of rulings to be made regarding the claim of fraud or concealment is uncertain.

Plaintiffs also make claims relating to the prudence of the structure of Caterpillar's CSF and for excessive recordkeeping fees since 2005. As Plaintiffs and their experts determined, the Caterpillar CSF included 3%-4% cash equivalent investments from July 1, 1992 until June 2003, at which time the cash portion was reduced to under 2%. Plaintiffs' contention is that management of the cash in the CSF was an imprudent breach of fiduciary duty reducing the return in the CSF to a level below what an outside investor in Caterpillar stock obtained. Between September 2003 and December 2008, the cash component of the CSF averaged approximately 1.25%.

While Plaintiffs believe the unitization was unnecessary and the cash component of the CSF was excessive, Defendants contend that a similar argument was recently rejected in another District, in *Taylor v. United Technologies, Corp*., No. 3:06cv1494 (WWE), 2009 WL 535779 (D.Conn. Mar. 3, 2009). That case, also a case handled by Plaintiffs' counsel, is currently on

appeal to the Court of Appeals for the Second Circuit. If liability were found on this theory, damages would vary depending on the applicable statute of limitations.

Finally, beginning in 2005, according to Plaintiffs' experts, the Plans paid recordkeeping fees to Hewitt of $47 per participant. Plaintiffs contend that these fees are excessive and unreasonable in that recordkeeping services can be obtained for significantly less for the Plans. Plaintiffs at trial would present expert testimony that a recordkeeping fee under the facts of this case above $25 per participant is excessive and unreasonable. Defendants would argue that $47 is within a reasonable range and that some other large 401(k) Plans pay significantly more than $47 per participant to their recordkeepers.

In sum, findings of liability and damages in this action are uncertain. The first factor supports the Court's granting final approval of the Settlement Agreement.

2. The likely complexity, length and expense of the litigation

This ERISA lawsuit is quite complex. First, it is one of the first cases in the country alleging breaches of fiduciary duty and prohibited transactions against a large employer and Plan fiduciaries based on the excessiveness of recordkeeping fees, investment management fees, and the inclusion of investment options managed by a subsidiary of a plan sponsor. Thus, the case presents novel legal issues. Second, to bring the case to trial, the case would require many highly experienced consulting and testifying expert witnesses and extensive expert reports, as well as considerable attorney resources. Recovery of any damages is not certain, as discussed above. Moreover, in *Hecker v. Deere*, not only was no recovery allowed, but the named plaintiffs therein were assessed over $200,000 in costs. *Hecker I*, 556 F.3d at 591.

The proposed settlement also obviates the time and costs of additional briefing on class certification, as well as the time and costs that would be inherent in briefing potential summary judgment motions. Moreover, a trial in this case would last several weeks, and involve dozens of

fact and expert witnesses. Furthermore, even if the Settlement Class were to recover a judgment at trial, the additional delay through trial, post-trial motions, and the appellate process could deny the Settlement Class any actual recovery for years, with no assurance that the final result of any appeals would be a recovery as large as that obtained under the Settlement Agreement--and indeed no assurance that they would recover at all. *See In re Lupron(R) Marketing and Sales Practices Litig.*, 228 F.R.D. 75, 97 (D. Mass. 2007). The second factor also supports the Court's granting final approval of the Settlement Agreement.

3. The amount of opposition to settlement among effected parties

Pursuant to this Court's Order preliminarily approving the settlement (Doc. 173), notice of the Settlement Agreement was mailed to approximately 80,000 Settlement Class Members. In addition, the Notice was distributed electronically and made available over the Internet via the Settlement Administrator's website. This notice complies with the requirements of Fed. R. Civ. P. 23 and due process, as it was calculated to ensure individual notice to each of the class members.

After having received notice and an opportunity to object, *only two out of approximately 80,000* Settlement Class Members filed timely objections with the Court. (Docs. 179, 180).[2] The rate of objections is extremely low and Courts have approved settlements where the objection rate was much higher. *See Isby*, 75 F.3d at 1200 (affirming approval of settlement where 13% of the class submitted written objections in response to the notice of settlement); *Van Horn v. Trickey*, 840 F.2d 604, 606 (8th Cir. 1988) (settlement of class action approved despite objection of 45% (180 out of 400) of the class members)).

[2] A third class member, Thomas Sharpe, mailed an objection to Class Counsel, but did not timely file his objection with the Court.

Two objections by Settlement Class Members do not present a barrier to the Court granting final approval of the Settlement Agreement. Moreover, notice was sent to the Attorneys General of all states where Settlement Class Members reside, as well as the United States Attorney General, as required under the Class Action Fairness Act, 28 U.S.C. § 1715. No objection or opposition was received from an Attorney General. The third factor supports the Court's granting final approval of the Settlement Agreement.

4. The opinion of competent counsel

Courts recognize that the opinion of experienced and informed counsel supporting settlement is entitled to considerable weight. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 461 (S.D.N.Y. 2005). Class counsel is very experienced in class action litigation generally and, in particular, class litigation arising form breaches of fiduciary duties to retirement plans and ERISA. It is Class Counsel's opinion that the proposed Settlement is fair and reasonable. J. Schlichter Decl. (Doc. 153, Ex. A).

As discussed more fully in Plaintiffs' Motion for Certification of a Settlement Class and their Memorandum in Support, multiple District Courts have certified Class Counsel as class counsel in other ERISA breach of fiduciary duty cases alleging excessive fees. (Doc 150, 151). The fifth factor supports the Court's granting final approval of the Settlement Agreement.

5. The stage of the proceedings and the amount of discovery completed at the time of settlement

Here, Plaintiffs conducted substantial discovery. Defendants provided Plaintiffs with approximately 14,500 pages of documents. Each document was electronically indexed and sorted, and thereafter, individually examined, analyzed, and catalogued by an attorney. Plaintiffs' counsel also reviewed and analyzed additional and voluminous documents provided by Named Plaintiffs and other documents obtained from public filings with the Department of

Labor. Counsel closely reviewed these documents. They also retained experts intimately familiar with financial services industry practices, retirement industry practices, and industry fiduciary practices. Those experts examined and analyzed these and other documents and provided opinions based on the record and their experience. The discovery documented the practices described herein, disclosures the Plans made to participants, the history of the Preferred Group of Mutual Funds, the history of Caterpillar's formation of CIML, the managements of the Company Stock Fund and the fees and levels of cash held therein, and the recordkeeping, administrative, and invest management fees charged to the Plans. Thus, Class Counsel extensively developed the facts relating to Plaintiffs' claims. Given the stage of this litigation, the Court reasonably can conclude that the Parties have "an accurate assessment of each party's strengths and weaknesses." *Simonet v. GlaxoSmithKline*, No. 06-1230, 2009 WL 2912482, *1 (D.P.R. Sept. 4, 2009), and that neither side entered into the proposed Settlement prematurely or without an adequate understanding of the range of possible outcomes at trial. This factor also weighs in favor of the Court's granting final approval.

VII. CONCLUSION.

The Settling Parties respectfully request that the Court finally approve the proposed Settlement Agreement as fair, reasonable, and adequate, and enter the proposed Final Order and Judgment.

Respectfully submitted,

PLAINTIFFS STEVE MARTIN, CAROL TEGARD and ALLEN ROSE

By:___s/ Jerome J. Schlichter (w/consent)_____

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August 2, 2010

CERTIFICATE OF SERVICE

I, Mark Casciari, an attorney, do hereby certify that I have caused a true and correct copy of the foregoing MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT to be served upon the following via the Court's electronic notification system on this 2nd day of August, 2010:

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Clerk, U.S. District Court, ILCD

Exhibit 1

IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS

Steve Martin, Carol Tegard and Allen Rose, on behalf of themselves and all others similarly situated, Plaintiffs, v. Caterpillar Inc., Benefit Funds Committee of Caterpillar Inc., Caterpillar Investment Management Ltd., Defendants.	Case No. 07-1009 JBM/JAG Judge Joe Billy McDade Magistrate Judge John A. Gorman

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Settlement Agreement") is entered into between and among the Class Representatives and all Settlement Class Members, and the Defendants.

1. Article 1 - Recitals

1.1 On September 11, 2006, Steve Martin, Carol Tegard, Denayer Artis, David Koch, Allen Rose and Doug Hildebrand filed a Complaint (No. 06-4208) against Caterpillar Inc., the Benefit Funds Committee of Caterpillar Inc. and Caterpillar Investment Management Ltd., in the United States District Court for the Western District of Missouri as representatives of a purported class asserting various claims for relief under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), all of which claims are disputed by Defendants.

1.2 On January 11, 2007, this action, the *Martin* case, was transferred to the Central District of Illinois and re-denominated as Case No. 07-1009 (McDade, J.; Gorman, M.J.).

1.3 On November 16, 2006, defendants moved to dismiss, or for a more definite statement of, the Complaint. On March 14, 2007, defendants moved to strike the Complaint's jury demand. On May 15, 2007, the Court granted defendants' motion to dismiss the Complaint and denied as moot the motion to strike the jury demand. The Settlement Agreement in no way suggests that Class Representatives or Class Counsel do not believe in the merits of their allegations.

1.4 On May 25, 2007, Martin, Tegard, Artis, Rose and Hildebrand filed an Amended Complaint against the same defendants. Koch was no longer named as a plaintiff.

1.5 On July 5, 2007, Martin, Tegard, Artis, Rose and Hildebrand filed a Second Amended Complaint against the same defendants. Defendants moved to dismiss, and on September 25, 2008, the Court denied defendants' motion to dismiss the Second Amended Complaint. Defendants answered the Second Amended Complaint on October 20, 2008.

1.6 On November 18, 2008, Magistrate Judge Gorman entered a scheduling order setting a discovery schedule regarding "class action issues." In December 2008, and in January and February 2009, the parties engaged in extensive discovery, including several discovery motions and written discovery exchanges, including the exchange of approximately 17,082 pages of documents.

1.7 On February 19, 2009, defendants filed a motion for judgment on the pleadings.

1.8 On February 24, 2009, Hildebrand and Artis were dismissed from the case.

1.9 On March 16, 2009, Martin, Tegard and Rose moved for leave to file a third amended complaint.

1.10 Before the Court had ruled on defendants' motion for judgment on the pleadings or any of the other pending motions, on July 31, 2009, Class Representatives and defendants jointly moved for a stay of proceedings to determine whether this matter could be resolved through mediation. The Court granted the motion to stay and has extended the stay on the motions through November 6, 2009.

1.11 On September 4, 2009, the Settling Parties conducted an all-day mediation before the Mediator in Atlanta, Georgia. A second mediation was held on September 21, 2009, also consuming an entire day, but failing to reach a settlement. The Settling Parties continued their arms-length negotiation through near-daily telephone conferences and emails, and again retained the Mediator for an extended mediation, this time by conference call, on October 16, 2009. After that mediation, negotiations continued among the Settling Parties until the execution of this Settlement Agreement.

1.12 As part of the settlement, the Settling Parties have agreed that the Second Amended Complaint shall be amended to include claims against additional 401(k) plans.

1.13 Class Representatives and Class Counsel consider it desirable and in the Settlement Class Members' best interests that Class Representatives' claims and proposed claims against Defendants be settled on behalf of the Class Representatives and the Settlement Class upon the terms set forth below, and have concluded that such terms are fair, reasonable and adequate, and that this settlement will result in substantial and material benefits to Class Representatives and the Settlement Class.

1.14 Defendants deny all liability for the claims made in the Class Action, and maintain that they are without any fault or liability. This Settlement Agreement,

and the discussions between the Settling Parties preceding it, shall in no event be construed as, or be deemed to be evidence of, an admission or concession on Defendants' part, of any fault or liability whatsoever.

1.15 The Settling Parties have concluded that the further conduct of the Class Action could be protracted and expensive, and that it is desirable that the Class Action be finally settled upon the terms and conditions set forth in this Settlement Agreement, in order to limit further expense, inconvenience, and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of their affairs and businesses without further expensive litigation and the attendant distraction and diversion of resources.

1.16 Therefore, the Settling Parties, in consideration of the promises, covenants and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows.

2. Article 2 - Definitions

As used in this Settlement Agreement and the Exhibits hereto, unless otherwise defined, the following terms have the meanings specified below:

2.1 "Administrative Expenses" means the expenses incurred in the administration of this Settlement Agreement, including, without limitation, all expenses and costs associated with providing the Settlement Notices to the Settlement Class, related tax expenses (including Taxes and Tax Expenses as defined in Paragraph 5.3), and the fees and expenses of the Independent Fiduciary, Independent Monitor, Settlement Administrator and Escrow Agent; and all expenses associated with carrying out the obligations described in Article 10 and Article 15. Administrative Expenses shall be paid from the Gross Settlement Amount.

2.2 "Active Account" means an individual account in one or more of the Plans with a balance greater than $0.

2.3 "Annual Disclosure" means a disclosure to the participants in the Plans regarding the administrative and investment fees incurred by each participant during the preceding year. The Annual Disclosure will be sent to affected Plan participants within 60 days following the date, in calendar years 2010 and 2011 (and 2012 and 2013, if there is an extension of the Settlement Period as described in Paragraph 2.48), on which the Form 5500 is filed for the Plan for the Plan year to which the disclosure relates. This disclosure will be in substantially the form attached as Exhibit 1.

2.4 "Arbitrator" means Hunter Hughes, Rogers & Hardin, 2700 International Tower, Peachtree Center, 229 Peachtree Street NE, Atlanta, Georgia 30303, or if he is unavailable, David Rotman, Gregorio Haldeman Piazza, 201 Mission St., Ste. 1900, San Francisco, California 94105.

2.5 "Attorneys' Fees" means the amount awarded by the Court as compensation for the services provided by Class Counsel and Local Counsel. The amount of Attorneys' Fees for Class Counsel and Local Counsel shall not exceed $5,500,000, which will be recovered from the Gross Settlement Amount. Class Counsel and Local Counsel will also seek reimbursement for all litigation costs, not to exceed $325,000, which also will be recovered from the Gross Settlement Amount. Defendants agree that they will take no position before the Court regarding any fee request which does not exceed these amounts.

2.6 "Authorized Former Participant" means a Former Participant who has submitted a completed, satisfactory Former Participant Claim Form by the Claims Deadline set by the Court in the Preliminary Order, and whose Former Participant Claim Form was accepted by the Settlement Administrator.

2.7 "BFC" means the Benefit Funds Committee of Caterpillar Inc.

2.8 "Claims Deadline" means the date that is no later than 30 days before the Fairness Hearing.

2.9 "Class Action" means the case captioned *Steve Martin, Carol Tegard and Allen Rose v. Caterpillar Inc., Benefit Funds Committee of Caterpillar Inc., and Caterpillar Investment Management Ltd.*, Civil Action No. 07-1009, pending before the United States District Court for the Central District of Illinois.

2.10 "Class Counsel" means Schlichter, Bogard & Denton LLP, 100 S. Fourth St., Ste. 900, St. Louis, Missouri, 63102.

2.11 "Class Period" means the period from July 1, 1992 through September 10, 2009.

2.12 "Class Representatives' Compensation" means an amount to be determined by the Court, but not to exceed $19,000 for each Class Representative, which also shall be paid from the Gross Settlement Amount.

2.13 "Class Representatives" means Steve Martin, Carol Tegard and Allen Rose.

2.14 "Confidentiality Order" means the Order Concerning Confidential Information entered by the Court on December 9, 2008 (docket no. 104).

2.15 "Court" means the United States District Court for the Central District of Illinois.

2.16 "Current Participant" is a person who participated in one or more of the Plans during the Class Period and on September 10, 2009 had an Active Account in one or more of the Plans.

2.17 "Defendants" means Caterpillar Inc., Benefits Funds Committee of Caterpillar Inc., Employee Benefits Funds of Caterpillar Inc., Investment Plans Committee of Caterpillar Inc., Caterpillar Investment Management, Ltd., and Vice President of Human Services Division of Caterpillar Inc., all of whom are named as

defendants in the Class Representatives' Third Amended Complaint attached hereto as Exhibit 2.

2.18 "Defense Counsel" means Seyfarth Shaw LLP, 131 S. Dearborn St., Ste. 2400, Chicago, Illinois, 60603-5803 and Heyl, Royster, Voelker & Allen, 124 S.W. Adams Street, Ste. 600, Peoria, Illinois 61602-1352.

2.19 "Escrow Agent" means Settlement Services, Inc., whose duties are described in Paragraph 5 of the Class Action Settlement Administration Agreement, attached hereto as Exhibit 5, and the Preliminary Order (Exhibit 3) and any subsequent Court orders.

2.20 "Fairness Hearing" means the hearing scheduled by the Court to consider any objections from the Settlement Class to the Settlement Agreement, to Class Counsel's petition for Attorneys' Fees and costs, and to Class Representatives' Compensation.

2.21 "Final Order" means the order and final judgment approving the Settlement Agreement and finally implementing the terms of this Settlement Agreement, and dismissing the Class Action with prejudice, to be proposed by the Settling Parties for approval by the Court.

2.22 "Final" means with respect to any judicial ruling, order or judgment, that the period for any motions for reconsideration, rehearing, appeals, petitions, or certiorari, or the like ("Review Proceeding") has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that it has been fully and finally resolved, either by court action or by voluntary action of any party, without any possibility of a reversal, vacating or modification of any judicial ruling, order or judgment, including the exhaustion of all proceedings in any remand or subsequent appeal and remand.

2.23 "Former Participant" is a person who participated in one or more of the Plans during the Class Period and on September 10, 2009 did not have an Active Account in one or more of the Plans.

2.24 "Gross Settlement Amount" means the sum of $16,500,000, which sum is to be placed in the Qualified Settlement Fund no later than two business days after entry of the Preliminary Order pursuant to Paragraph 2.37 below, together with interest accruing thereon. This sum shall be treated as a "Qualified Settlement Fund" within the meaning of Treas. Reg. § 1.468B-1. The Escrow Agent shall act as a trustee of the Qualified Settlement Fund and shall operate in accordance with that appointment.

2.25 "Independent Fiduciary Approval Date" means the later of the date on which the Independent Fiduciary has provided Class Counsel and Defense Counsel with its written approval of this Settlement Agreement and the date on which the BFC has concluded that the written approval contains the necessary Independent Fiduciary determinations applicable to each Plan pursuant to Paragraph 3.1. This date shall

not be later than 15 days before the deadline for filing objections to the settlement with the Court.

2.26 "Independent Fiduciary" means Evercore Trust Company which shall serve as the Independent Fiduciary for the Plans in accordance with the terms of the Independent Fiduciary Agreements.

2.27 "Independent Monitor" means Evercore Trust Company, whose service in that capacity is limited to the Settlement Period and the Article 15 Time Period, and is governed by the Independent Monitor Agreement.

2.28 "IPC" means the former Investment Plan Committee of Caterpillar Inc.

2.29 "Local Counsel" means Vonachen, Lawless, Trager & Slevin, 456 Fulton Street, Ste. 425, Peoria, Illinois, 61602.

2.30 "Mailing Information List" means an Excel spreadsheet or documents sufficient to show:

2.30.1 For Current Participants, the name, social security number and last known address of each Current Participant, together with information sufficient to show that each Current Participant had an Active Account in one or more of the Plans as of September 10, 2009, and the number of calendar quarters during which each Current Participant had an Active Account in one or more of the Plans, to be used for the purpose of distribution of the Settlement Notices.

2.30.2 For Former Participants, the name, social security number and last known address of each Former Participant, together with information sufficient to show the number of calendar quarters during which each Former Participant had an Active Account in one or more of the Plans, to be used for the purpose of distribution of the Settlement Notices and Former Participant Claim Form.

2.30.3 A Current Participant and a Former Participant must have had an Active Account for one day or more in a calendar quarter in order to be credited with the quarter.

2.31 "Mediator" means Hunter Hughes, Rogers & Hardin, 2700 International Tower, Peachtree Center, 229 Peachtree Street NE, Atlanta, Georgia 30303, or if he is unavailable, David Rotman, Gregorio Haldeman Piazza, 201 Mission St., Ste. 1900, San Francisco, California 94105.

2.32 "Monitoring Documents" means only the following documents with respect to the Plans which are first executed, filed, published or distributed to Plan participants during the Settlement Period or the Article 15 Time Period: IRS Forms 5500 and schedules thereto, the Plans, amendments to the master document for each of the four Plans, Summary Plan Descriptions, Summaries of Material Modifications,

Fund Fact Sheets, any Plan service provider request for proposal ("RFP"), lists of investment options offered to participants in each Plan, and service provider contracts.

2.33 "Net Settlement Amount" means the amount in the Qualified Settlement Fund after payment of all Attorneys' Fees and costs, Administrative Expenses and the Class Representatives' Compensation and the sequestration of an appropriate amount of money for future Administrative Expenses.

2.34 "Plan of Allocation" means the methodology for allocating and distributing the Net Settlement Amount pursuant to Article 6 below.

2.35 "Plan Sponsor" means Caterpillar Inc. as to the Caterpillar 401(k) Plan, Caterpillar Inc. Tax Deferred Savings Plan, and Caterpillar Inc. Tax Deferred Retirement Plan; and Solar Turbines Incorporated as to the Solar Turbines Savings and Investment Plan.

2.36 "Plans" means the Caterpillar 401(k) Plan, Caterpillar Inc. Tax Deferred Savings Plan, Caterpillar Inc. Tax Deferred Retirement Plan and the Solar Turbines Savings and Investment Plan, and all of their predecessor and successor plans.

2.37 "Preliminary Order" means the order to be mutually agreed upon and proposed by the Settling Parties and approved by the Court in connection with the motion for entry of the Preliminary Order to be filed by Class Representatives through Class Counsel, in substantially the form attached hereto as Exhibit 3.

2.38 "Publication Notice" means the notice in substantially the form attached hereto as Exhibit 4, which will be published on two dates in the Peoria Journal Star newspaper according to the terms of the Preliminary Order.

2.39 "Qualified Settlement Fund" means the interest-bearing Qualified Settlement Fund (within the meaning of Treas. Reg. § 1.468B-1), maintained by the Escrow Agent pursuant to the terms described in Article 5 hereof and as provided in the Preliminary Order.

2.40 "Related Parties" means each Defendant's and Solar Turbines Incorporated's past, present and future parent corporation(s), wholly and majority-owned company(ies), past, present and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, and all of their employee benefit plans, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), administrators, consultants, subcontractors, officers, directors, partners, agents, managers, members, employees, independent contractors, representatives, attorneys, administrators, fiduciaries, insurers, co-insurers, reinsurers, controlling shareholders, accountants, auditors, advisors, consultants, trustees, personal representatives, spouses, heirs, executors, administrators, associates, members of their immediate families, and all persons acting under, by, through, or in concert with any of them.

2.41 "Released Claims" means claims, demands, rights, liabilities and causes of action, in law or in equity, known or unknown, only to the extent that they fall within the scope of the following sub-Paragraphs 2.41.1 through 2.41.5:

2.41.1 Claims that were asserted in the Class Action, and any claims that might have been asserted in the Class Action arising under ERISA, or any other state or federal statute or law (or any rule or regulation associated therewith or promulgated thereunder) or the common law, that are reasonably related to acts, omissions, representations, misrepresentations, facts, events, matters, transactions or occurrences referred or in any way related to the subject matter set forth in, alleged in, or otherwise related to the Class Action;

2.41.2 Claims that were asserted in the Complaint (docket no. 1), Amended Complaint (docket no. 58), Second Amended Complaint (docket no. 67), or Third Amended Complaint (Exhibit 2) in the *Martin* case;

2.41.3 Claims and causes of action (only if brought by any Settlement Class Member) relating to the selection, oversight, and performance of the investment options available under the Plans; the selection, oversight and performance of the investments under the Plans; and any and all fees, costs or expenses charged to, paid or reimbursed by the Plans;

2.41.4 Claims for attorneys' fees, costs and expenses relating to the Class Action; and

2.41.5 Claims and causes of action against any person other than the Independent Fiduciary relating to the approval by the Independent Fiduciary or the BFC of the Settlement Agreement.

2.41.6 The Released Claims shall not include any claims that cannot be waived by law.

2.41.7 In addition, no provision in this Class Action Settlement Agreement shall constitute a release of any ERISA claim or demand arising under 29 U.S.C. section 1132(a)(1)(B) for payment of benefits under any of the Plans, provided that the claim or demand does not relate to the subject matters referred to in the Class Action, or in the Complaint, Amended Complaint, Second Amended Complaint or Third Amended Complaint.

2.41.8 Claims that do not fall within the scope of sub-Paragraphs 2.41.1 through 2.41.5, including employment discrimination, worker's compensation and tort claims, arising under state or federal law, are not released.

2.42 "Settlement Administrator" means Settlement Services, Inc., whose duties are described in Paragraph 5 of the Class Action Settlement Administration Agreement, and the Preliminary Order and any subsequent Court orders.

2.43 "Settlement Agreement Execution Date" means that date on which the final signature is affixed to this Settlement Agreement.

2.44 "Settlement Class Members" collectively means all individuals in the Settlement Class as certified by the Court.

2.45 "Settlement Class" means (a) all persons who, at any time between July 1, 1992 and September 10, 2009, inclusive, had an account in one or more of the following Plans -- the Caterpillar 401(k) Plan, the Caterpillar Inc. Tax Deferred Savings Plan, Caterpillar Inc. Tax Deferred Retirement Plan, and the Solar Turbines Savings and Investment Plan -- and their beneficiaries, alternate payees or attorneys-in-fact who are or become entitled to any portion of such an account; provided, however, that the Settlement Class shall not include: (b) any Defendant, or member of the Benefit Funds Committee of Caterpillar Inc. or the Investment Plan Committee of Caterpillar Inc. between July 1, 1992 and September 10, 2009, and as to each person within the scope of clause (b), his/her immediate family members, beneficiaries, alternate payees or attorneys-in-fact.

2.46 "Settlement Effective Date" means the date on which the Final Order has become Final and none of the events in Article 12, which events would render the Settlement Agreement null and void and of no further force or effect, have occurred.

2.47 "Settlement Notices" mean each Notice of Proposed Settlement of Class Action and Fairness Hearing to be mailed by first class mail to each Settlement Class Member following the Court's issuance of the Preliminary Order, in substantially the form attached hereto as Exhibit 6.

2.48 "Settlement Period" means the period of time which begins on the date the Final Order is entered by the Court and ends 24 months from the date of the Final Order. The Settlement Period will be suspended if a notice of appeal is filed with respect to the Final Order and will restart, after all appellate proceedings have ended without the Settlement Agreement's becoming null and void under Article 12. If the Arbitrator finds a material breach of the requirements of Article 10, the Settlement Period will be extended for an additional 24 months. In no event will the Settlement Period exceed 48 months.

2.49 "Settling Parties" means the Defendants and the Class Representatives, on behalf of themselves and each of the Settlement Class Members.

2.50 "Third Amended Complaint" means the Third Amended Complaint (Exhibit 2) that Class Representatives will seek leave to file at the time of the filing of the Settlement Agreement.

3. Article 3 - Review and Approval by Independent Fiduciary, Preliminary Settlement Approval and Notice to the Settlement Class

3.1 The Independent Fiduciary shall be retained by the BFC to determine whether to approve and authorize the settlement of the Plans' claims as set forth in the Settlement Agreement. The Independent Fiduciary shall notify the BFC of its determination in writing (with copies to Class Counsel and Defense Counsel), and shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption ("PTE") 2003-39 in making its determination, for the purpose of the BFC's reliance on PTE 2003-39. Within 10 days of receipt of the notification from the Independent Fiduciary applicable to the Plans, the BFC shall review the determination by the Independent Fiduciary and conclude whether the Independent Fiduciary has made the determinations required by the PTE, and shall notify Class Counsel and Defense Counsel in writing of its conclusion in that regard. If this Settlement Agreement is not approved by the Independent Fiduciary, or is disapproved by the Independent Fiduciary, for any reason whatsoever, or if the BFC concludes that the Independent Fiduciary's approval does not include the determinations required by the PTE, and the Settling Parties do not mutually agree to modify the terms of this Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by the PTE, this Settlement Agreement shall be terminated as provided in Article 12.

3.2 Class Representatives, through Class Counsel, shall file with the Court motions seeking preliminary approval of this Settlement Agreement, and for certification of Settlement Class and appointment of Class Counsel, and entry of the Preliminary Order in substantially the form attached hereto as Exhibit 3. The Preliminary Order to be presented to the Court shall, among other things:

3.2.1 Certify the Settlement Class for settlement purposes only pursuant to Fed. R. Civ. P. 23(b)(1);

3.2.2 Designate the Class Representatives as representatives of the Settlement Class;

3.2.3 Designate Class Counsel as counsel for the Settlement Class;

3.2.4 Approve substantially in the form attached hereto as Exhibit 6 the text of the Settlement Notices for mailing to Settlement Class Members to notify them of the Fairness Hearing, the Former Participant Claim Form (Exhibit 7), and the Publication Notice (Exhibit 4);

3.2.5 Cause the Settlement Administrator to (i) mail by first class mail the appropriate Settlement Notice to each Settlement Class Member, and the Former Participant Claim Form to each Former Participant; and (ii) publish the Publication Notice on the Sunday and Wednesday following the mailing of the Settlement Notices;

3.2.6 Determine that pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, the Settlement Notices and Publication Notice constitute the best notice practicable under the circumstances, and due and sufficient notice of the hearing and the rights of all Settlement Class Members has been provided, complying fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable law;

3.2.7 Provide that, pending final determination of whether the Settlement Agreement should be approved, no Settlement Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against the Defendants, the Related Parties or the Plans;

3.2.8 Set the Fairness Hearing for no sooner than 100 days after the date of the motion for entry of the Preliminary Order is filed to determine whether (i) the Court should approve the settlement embodied in this Settlement Agreement as fair, reasonable and adequate, (ii) the Court should enter the Final Order, and (iii) the Court should approve the application for Attorneys' Fees and costs, Class Representatives' Compensation, and Administrative Expenses incurred to date, and a reserve for anticipated future Administrative Expenses;

3.2.9 Provide that any objections to any aspect of the Settlement Agreement shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Fairness Hearing only if, on or before the date that is 30 days before the Fairness Hearing persons filing objections filed notice of their intention to appear and copies of any papers in support of their position with the Clerk of the Court and served such notice and papers on Class Counsel and Defense Counsel;

3.2.10 Provide that any party may file a response to an objection by a Settlement Class Member at least 10 days before the Fairness Hearing;

3.2.11 Set a deadline of no later than 30 days before the Fairness Hearing by which each Former Participant must file a Former Participant Claim Form with the Settlement Administrator in order to be considered as eligible to participate in the distribution pursuant to the Plan of Allocation; and

3.2.12 Provide that the Fairness Hearing may, without further direct notice to the Settlement Class, other than by notice to Class Counsel, be adjourned or continued by order of the Court.

3.3 The Class Representatives have asserted that the Class Action should be certified as a class action as defined in the Federal Rules of Civil Procedure. For settlement purposes only, Defendants do not object to such certification on the

terms set forth in this Settlement Agreement. The Settling Parties agree that if the Settlement Agreement is terminated for any reason, no statement or action of any Defendant will be relied upon in connection with any further proceedings with respect to class certification and no such statement or action will be construed as an admission that a class should continue to be certified for litigation purposes.

3.4 Caterpillar Inc. has provided to the Settlement Administrator information necessary to prepare the Mailing Information List. Before mailing the Settlement Notices and Former Participant Claim Form, the Settlement Administrator shall use reasonable efforts to verify the last known addresses of the Settlement Class Members and to update such addresses as needed. Caterpillar Inc. shall determine the method of transmission of both the Mailing Information List and account information described above to the Settlement Administrator in a manner to protect the confidential nature of the information. The Settlement Administrator shall not use or disclose any information provided under this Paragraph to any third party except as necessary to comply with the terms of the Preliminary Order or the Final Order. The Settlement Administrator shall use social security numbers solely for the purpose of updating last known addresses of Settlement Class Members for mailing of the Settlement Notices and Former Participant Claim Form, verifying identities of Settlement Class Members, processing of claims, or complying with applicable tax laws, and for no other purpose. Class Counsel and the Settlement Administrator shall treat all information provided under this Paragraph as "Confidential" pursuant to the Confidentiality Order and in accordance with all applicable laws. The Settlement Administrator shall be deemed an Independent Consultant, as defined in, and be bound by the terms of, the Confidentiality Order.

3.5 On the date and in the manner set by the Court in the Preliminary Order, the Settlement Administrator shall:

3.5.1 Cause to be mailed to each Settlement Class Member a Settlement Notice according to the schedule to be set by the Court and in a form and manner to be approved by the Court, which shall be in substantially the form attached hereto as Exhibit 6. These materials shall be sent by first-class mail, postage prepaid, to the last known address of each Settlement Class Member provided by Caterpillar Inc., unless an updated address is obtained by the Settlement Administrator through its efforts to verify last known addresses provided by Caterpillar Inc. Class Counsel shall also post a copy of the Settlement Notices on the Internet site, www.caterpillarerisasettlement.com. The Settlement Administrator shall use reasonable efforts to locate any Settlement Class Member whose Settlement Notice is returned and re-mail such notice one additional time. The Settlement Notices shall describe the Class Action and its status, and specify in reasonable detail the terms of the Settlement Agreement. The Settlement Notices shall also inform Settlement Class Members of a Fairness Hearing to be held before the United States District Court for the Central District of Illinois, on a date

to be determined by the Court, at which any Settlement Class Member satisfying the conditions set forth in the Preliminary Order and the Settlement Notice may be heard regarding the terms of the Settlement Agreement and the petition of Class Counsel for award of Attorneys' Fees and costs, for payment of and reserve for Administrative Expenses, and for Class Representatives' Compensation.

3.5.2 Cause the Former Participant Claim Form, which shall be in substantially the form attached hereto as Exhibit 7, to be included with the Settlement Notice which is mailed to the Former Participants. The Former Participant Claim Form shall inform Former Participants of the deadline by which they must file a completed Former Participant Claim Form in order to be eligible for a distribution pursuant to the Plan of Allocation.

3.5.3 Cause the Publication Notice, which shall be substantially in the form attached hereto as Exhibit 4, to be published in the Peoria Journal Star on the Sunday and Wednesday following the mailing of the Settlement Notices by the Settlement Administrator.

4. Article 4 – Final Settlement Approval

4.1 No later than 10 business days before the Fairness Hearing, Class Counsel and Defense Counsel shall submit to the Court a motion for entry of the Final Order which shall request approval by the Court of the terms of this Settlement Agreement and shall provide for the following, among other things:

4.1.1 Approval of the class settlement of the claims covered by this Settlement Agreement adjudging the terms of the Settlement Agreement to be fair, reasonable and adequate to the Plans and the Settlement Class, and requiring the Settling Parties to take the necessary steps to effectuate the terms of the Settlement Agreement;

4.1.2 A determination pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure that the Settlement Notices and Publication Notice constitute the best notice practicable under the circumstances, and that due and sufficient notice of the Fairness Hearing and the rights of all Settlement Class Members has been provided;

4.1.3 Dismissal with prejudice of the Class Action and all claims asserted therein whether asserted by Class Representatives on their own behalf or on behalf of the Settlement Class, or derivatively to secure relief for the Plans, without costs to any of the Settling Parties other than as provided for in this Settlement Agreement;

4.1.4 That each Settlement Class Member shall be (i) conclusively deemed to have, and by operation of the Final Order shall have, fully, finally and forever settled, released, relinquished, waived and discharged

Defendants, the Plans and the Related Parties from all Released Claims, and (ii) barred from suing Defendants, the Plans or the Related Parties in any action or proceeding alleging any of the Released Claims, even if any Settlement Class Member may thereafter discover facts in addition to or different from those which the Settlement Class Members or Class Counsel now know or believe to be true with respect to the Class Action and the Released Claims, whether or not such Settlement Class Members have executed and delivered a Former Participant Claim Form, whether or not such Settlement Class Members have filed an objection to the settlement embodied in this Settlement Agreement or to any application by Class Counsel for an award of Attorneys' Fees and costs, and whether or not the objections or claims for distribution of such Settlement Class Members have been approved or allowed; and

4.1.5 That the Plans shall be (i) conclusively deemed to have, and by operation of the Final Order shall have, fully, finally and forever settled, released, relinquished, waived and discharged Defendants and the Related Parties from all Released Claims, and (ii) barred from suing Defendants or the Related Parties in any action or proceeding alleging any of the Released Claims, even if the Plans may thereafter discover facts in addition to or different from those which the Plans now know or believe to be true with respect to the Class Action and the Released Claims.

4.2 The Final Order shall provide that upon its entry all Settlement Class Members and the Plans shall be bound by the Settlement Agreement and by the Final Order.

5. Article 5 – Establishment of Qualified Settlement Fund And Settlement Payments

5.1 Defendants will deposit the Gross Settlement Amount into an escrow account with the Escrow Agent within two business days after entry of the Preliminary Order, but in any event no sooner than November 16, 2009. The Parties agree that the escrow account will and is intended to be an interest-bearing Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1. In addition, the Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

5.2 For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Settlement Administrator. The Settlement Administrator shall timely and properly cause to be filed all informational and other tax returns necessary or

advisable with respect to the Gross Settlement Amount (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such returns as well as the election described in Paragraph 5.1 shall be consistent with this Article and, in all events, shall reflect that all Taxes (including any estimated Taxes, interest, or penalties) on the income earned by the Gross Settlement Amount shall be paid out of the Gross Settlement Amount as provided in Paragraph 5.3 hereof.

5.3 All (1) taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Gross Settlement Amount, including any taxes or tax detriments that may be imposed upon Defendants or Defense Counsel with respect to any income earned by the Gross Settlement Amount for any period during which the Gross Settlement Amount does not qualify as a "qualified settlement fund" for federal or state income tax purposes ("Taxes"), and (2) expenses and costs incurred in connection with the operation and implementation of this Article (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Article ("Tax Expenses"), shall be paid out of the Gross Settlement Amount; in no event shall the Defendants or Defense Counsel have liability or responsibility for the Taxes or the Tax Expenses. Taxes and Tax Expenses shall be treated as, and considered to be, Administrative Expenses and shall be timely paid by the Escrow Agent out of the Gross Settlement Amount without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Settlement Class Member any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendants nor Defense Counsel are responsible nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Article.

5.4 Within 15 days or as soon as practicable after the Settlement Effective Date, the Gross Settlement Amount will be distributed from the Qualified Settlement Fund as follows: First, all Attorneys' Fees and costs shall be paid from the Gross Settlement Amount to Class Counsel and Local Counsel. Second, all Class Representative's Compensation shall be paid from the Gross Settlement Amount to Class Representatives. Third, all Administrative Expenses not previously paid shall be paid to the respective administrative service providers. Fourth, an amount for estimated Administrative Expenses incurred, but not yet paid, before the Settlement Effective Date, and an amount for estimated Administrative Expenses to be incurred after the Settlement Effective Date but before the end of the Settlement Period and Article 15 Time Period (as defined in Paragraph 15.1), will be set aside for payment of such expenses. Fifth, all remaining amounts (the "Net Settlement Amount") will be distributed pursuant to the Plan of Allocation. Pending final distribution of the Net Settlement Amount in accordance with the

Plan of Allocation, the Net Settlement Amount shall remain in the Qualified Settlement Fund, which shall be invested by the Escrow Agent in "The Guaranteed Now Account" at Capital City Bank.

5.5 The Settlement Administrator is solely responsible for making provision for the payment from the Qualified Settlement Fund of all Taxes and Tax Expenses, if any, owed with respect to the Qualified Settlement Fund and for all tax reporting and withholding obligations, if any, for amounts distributed from it. Neither Defendants nor Defense Counsel have responsibility for any Taxes or Tax Expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

5.6 No later than February 15 of the year following the calendar year in which Defendants make a transfer to the Qualified Settlement Fund pursuant to the terms of this Article 5, Defendants shall timely furnish a statement to the Settlement Administrator that complies with Treas. Reg. § 1.468B-3(e)(2) (a "§ 1.468B-3 Statement"), which may be a combined statement under Treas. Reg. § 1.468B-3(e)(2)(ii), and shall attach a copy of the statement to their federal income tax returns filed for the taxable year in which Defendants make a transfer to the Qualified Settlement Fund.

6. Article 6 – Plan of Allocation

6.1 The Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed to the Plans and Authorized Former Participants after the Settlement Effective Date and in accordance with the following Plan of Allocation.

6.2 In order to be eligible for a distribution from the Net Settlement Amount, a person must be either a (i) Current Participant or (ii) Authorized Former Participant. Current Participants shall receive their settlement payments as contributions to their Plan accounts as described in this Article, unless as of the date of the settlement payments, they no longer have an Active Account in any Plan. Former Participants shall receive their settlement payments in the form of checks as described in this Article.

6.3 To facilitate administration, the Net Settlement Amount will be distributed based upon the number of calendar quarters during which each Settlement Class Member had an Active Account in one or more of the Plans. The Net Settlement Amount will be allocated in shares to four settlement bands, with each band containing the approximate number of Settlement Class Members stated in Paragraph 6.4. Each Settlement Class Member's band has been determined as follows:

6.3.1 For each Current or Former Participant who participated in only one of the Plans, the Settlement Administrator will total the number of

calendar quarters as of September 10, 2009 in which he/she had Active Accounts in that one Plan.

6.3.2 For each Current or Former Participant who had Active Accounts in more than one of the Plans, the Settlement Administrator will determine the number of calendar quarters as of September 10, 2009 during which he/she had an Active Account in any of the Plans. If a Current Participant simultaneously had an Active Account in more than one of the Plans in any calendar quarter, it will be counted as one calendar quarter of participation.

6.4 The four bands identified by the Settling Parties are as follows:

6.4.1 Band 1 consists of approximately 26,312 Current and Former Participants in the Plans with between 1 and 12 calendar quarters of participation in one or more of the Plans.

6.4.2 Band 2 consists of approximately 18,761 Current and Former Participants in the Plans with between 13 and 25 calendar quarters of participation in one or more of the Plans.

6.4.3 Band 3 consists of approximately 18,674 Current and Former Participants in the Plans with between 26 and 47 calendar quarters of participation in one or more of the Plans.

6.4.4 Band 4 consists of approximately 16,214 Current and Former Participants in the Plans with between 48 and 69 calendar quarters of participation in one or more of the Plans.

6.5 The Net Settlement Amount shall be allocated to the settlement bands as follows: 10% to Band 1; 15% to Band 2; 25% to Band 3; and 50% to Band 4. The amount allocated to each Band shall then be divided by the sum of (a) the total number of Current Participants in that Band and (b) the total number of Authorized Former Participants in that Band. The resulting amount will be paid to each member of that Band, according to the methodology set forth in this Article for Current Participants and Authorized Former Participants.

6.6 Current Participants will not be required to submit a Former Participant Claim Form in order to receive a settlement payment. After the Settlement Administrator has completed all payment calculations for all Current Participants, the Settlement Administrator will provide the Plans' recordkeeper, the Plans' administrators and Caterpillar Inc. (through Defense Counsel and James B. Buda, Esq.) with an Excel spreadsheet for each of the Plans providing the name, social security number and the amount of the settlement payment for each of the Current Participants. Thereafter, upon 10 business days advance written notice to the duly-authorized representative of the Plans, the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund of the total amount of settlement payments for the Current Participants to the Caterpillar Inc. Investment

Trust. The Plan Administrator shall direct the Plans' recordkeeper to credit the individual accounts of the Current Participants in the amounts stated on the spreadsheet provided by the Settlement Administrator. The settlement payment for Current Participants will be invested in accordance with their investment instructions then on file. If there are no instructions on file for a Current Participant, then such Current Participant shall be deemed to have directed such payment to be invested in the Plans' "Model Portfolio – Moderately Aggressive." The settlement amount will be reflected in the individual's account as pre-tax dollars. The Plans' recordkeeper shall credit the amounts within 20 days of receiving this direction from the Plan Administrator for any Current Participant. The Plans will be amended, in substantially the form attached hereto as Exhibit 8, to provide for the contributions to Current Participants' accounts in accordance with this Article.

6.7 The settlement payment to Current Participants who had Active Accounts in more than one of the Plans will be credited in equal amounts to their account in each of the Plans in which the Current Participant maintains an Active Account as of the date of distribution.

6.8 If, as of the date of distribution, a Current Participant no longer has any Active Accounts, he/she will be treated as an Authorized Former Participant for purposes of the settlement distribution only and will receive his or her payment in one settlement check as described in Paragraph 6.9, regardless of the number of Plans in which the Current Participant once had Active Accounts. A Current Participant who no longer has any Active Accounts on the date of his/her settlement distribution need not complete a Former Participant Claim Form.

6.9 For each Authorized Former Participant who is to receive a settlement payment, the Settlement Administrator will issue a single check from the funds in the Qualified Settlement Fund and mail it to the address of such claimant listed in his/her Former Participant Claim Form from the funds in the Qualified Settlement Fund. The Settlement Administrator shall further: (i) calculate and withhold any applicable tax withholdings for Authorized Former Participants; (ii) report such distributions and remit any applicable tax withholdings for the Authorized Former Participants, to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to the Authorized Former Participants.

6.10 Before performing any allocations in this Plan of Allocation, the Settling Parties shall direct the Settlement Administrator to set aside a contingency reserve not to exceed $450,000 for settlement-related payments for additional Administrative Expenses associated with the Plans or for adjustment of data or calculation errors. In the event that funds remain in the contingency reserves after the completion of settlement administration and payment distributions to all Current Participants and Authorized Former Participants, the residue shall be disposed of as provided in Paragraph 6.15. If Administrative Expenses exceed the reserve, the Settling Parties shall be responsible for the payment of the excess, each side to pay half.

6.11 The Settling Parties have formulated this Plan of Allocation based upon preliminary data regarding the Settlement Class Members who may be entitled to settlement payments and their best estimates of individual account values and of settlement participation rates for Former Participants. If the Settling Parties mutually agree that it is impracticable to implement any provision of this Plan of Allocation, the Settling Parties will promptly modify the terms of this Plan of Allocation and present such modified terms first to the Independent Fiduciary for its review and approval, and second, to the Court for its approval. Direct mailed notice to Settlement Class Members of such proposed modification of the Plan of Allocation shall not be required. However, notice of such proposed modification, and any modification itself, shall be posted on the settlement website, within 5 business days of the proposed modification or modification.

6.12 Within 10 business days of completing all aspects of this Plan of Allocation, the Settlement Administrator shall send the Settling Parties one or more affidavits stating the following: (a) the name and address of each Settlement Class Member to whom the Settlement Administrator sent the Settlement Notices or the Former Participant Claim Form; (b) the date(s) upon which the Settlement Administrator sent the Settlement Notices or the Former Participant Claim Form; (c) the name of each Settlement Class Member whose Settlement Notice or Former Participant Claim Form was returned as undeliverable; (d) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice or Former Participant Claim Form for each such Settlement Class Member; and (e) the name and social security number of each Settlement Class Member to whom the Administrator made a distribution from the Net Settlement Amount, together with the amount of the distribution, the name of the payee, the date of distribution, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable.

6.13 The Settling Parties acknowledge that any payments to Settlement Class Members or their attorneys may be subject to applicable tax laws. Except as required by law, Defendants, Class Counsel and Class Representatives will provide no tax advice to the Settlement Class Members and make no representation regarding the tax consequences of any of the settlement payments described in this Article. To the extent that any portion of the settlement money is subject to income or other tax, the recipient of the money shall be responsible for payment of tax. Deductions will be made, and reporting will be performed, as required by law as to all payments made under the Settlement Agreement. Payments of Attorneys' Fees and costs shall not be considered to be wages by the Settling Parties.

6.14 Each of the Settlement Class Members who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state or local taxes resulting from or attributable to the payment received by such person. Each Settlement Class Member shall indemnify and hold Caterpillar Inc., Defense Counsel, Class Counsel, Local Counsel and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the

Settlement Agreement, and shall indemnify and hold Caterpillar Inc. harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.

6.15 Any amounts attributable to the Net Settlement Amount, including amounts for checks issued but not cashed by Authorized Former Participants and the balance of any amounts set aside but not used for Administrative Expenses, remaining in the Qualified Settlement Fund 30 days after the Settlement Administrator certifies that all Administrative Expense disbursement checks have been mailed, following the end of the Article 15 Time Period, shall be contributed, in equal amounts, to the Pension Research Council and the American Savings Education Council.

7. Article 7 – Attorneys' Fees

7.1 Class Counsel and Local Counsel will seek to recover their attorneys' fees, not to exceed $5,500,000, and litigation costs, not to exceed $325,000, from the Gross Settlement Amount. Class Counsel and Local Counsel will file a motion for an award of attorneys' fees and costs at least 30 days before the deadline set in the Preliminary Order for objections to the proposed settlement, which will be supplemented thereafter. Defendants will not oppose any efforts by Class Counsel and Local Counsel to file documents in support of their motion for attorneys' fees and costs under seal, provided Settlement Class Members are not prohibited from viewing such documents upon request to Class Counsel and after executing a Confidentiality Agreement. Defendants will take no position with the Court regarding Class Counsel's request for attorneys' fees and costs, which does not exceed the amounts set forth in this Paragraph.

7.2 All payments of Attorneys' Fees and costs awarded by the Court shall be made from the Qualified Settlement Fund within 15 days of the Settlement Effective Date.

8. Article 8 – Release and Covenant Not to Sue

8.1 As of the Settlement Effective Date, each Class Representative and Settlement Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors and assigns, shall forever release, acquit, satisfy and discharge Defendants, the Plans and all Related Parties from the Released Claims. As of the Settlement Effective Date, each of the Plans and the Settlement Class Members on behalf of each of the Plans, shall forever release, acquit, satisfy and discharge Defendants and Related Parties from Released Claims.

8.2 As of the Settlement Effective Date, the Settlement Class Members and the Plans expressly agree that they, acting individually or together, shall not seek to institute, maintain, prosecute, sue or assert in any action or proceeding, any cause of action, demand or claim on the basis of, connected with, arising out of, or

substantially related to, any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement.

8.3 Class Counsel, the Settlement Class Members or the Plans may hereafter discover facts in addition to or different from those which they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with Defendants, the Plans and the Related Parties or release, relinquish, waive and discharge the Released Claims, or might have affected the decision of a Settlement Class Member not to object to the settlement embodied in this Settlement Agreement. Notwithstanding the foregoing, each Settlement Class Member shall expressly, upon the entry of the Final Order, be deemed to have, and by operation of the Final Order, shall have, fully, finally and forever settled, released, relinquished, waived and discharged any and all Released Claims. The Settlement Class Members acknowledge and shall be deemed by operation of Final Order to have acknowledged that the foregoing waiver was separately bargained for and a key element of this settlement embodied in this Settlement Agreement for which this release is a part.

8.4 Each Settlement Class Member hereby stipulates and agrees with respect to any and all Released Claims that, upon the entry of the Final Order, the Settlement Class Members shall be conclusively deemed to, and by operation of the Final Order shall, waive and relinquish any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims, including without limitation, Section 1542 of the California Civil Code, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Also, the Settlement Class Members with respect to the Released Claims shall, upon the entry of the Final Order, waive any and all provisions, rights and benefits conferred by any law of any State or territory of the United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

9. Article 9 – Representations and Warranties

9.1 The Settling Parties represent:

9.1.1 That they are voluntarily entering into this Settlement Agreement as a result of arm's length negotiations among their counsel, that in executing this Settlement Agreement they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims

hereunder and regarding all matters that relate in any way to the subject matter hereof;

9.1.2 That they assume the risk of mistake as to facts or law;

9.1.3 That they recognize that discovery in the Class Action has not been completed and that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement;

9.1.4 That they have carefully read the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each individual executing this Settlement Agreement on behalf of each of the Settling Parties; and

9.1.5 That they have made such investigation of the facts pertaining to the Settlement, this Settlement Agreement and all matters pertaining thereto, as they deem necessary.

9.2 Each individual executing this Settlement Agreement on behalf of a Settling Party does hereby personally represent and warrant to the other Settling Parties that he/she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal that each such individual represents or purports to represent.

10. Article 10 – Conduct During the Settlement Period

10.1 During the Settlement Period, Caterpillar Inc. agrees to do the following:

10.1.1 .

10.1.2 The Plans will issue, in 2010 and 2011 (and 2012 and 2013, if there is an extension of the Settlement Period as described in Paragraph 2.48), the Annual Disclosure within 60 days following the date on which the Form 5500 is filed for the Plan for the calendar year to which the disclosures relate. The cost for preparing and disseminating the Annual Disclosure, including programming charges, printing, mailing and fulfillment charges, and consultant fees will constitute Administrative Expenses and will be paid from the Qualified Settlement Fund. If during the Settlement Period, any statute or regulation becomes effective and requires a different disclosure regarding the Plans' fees, the new statute or regulation will govern the Plans' disclosures or fees upon its effective date and the Plans will no longer be required to provide the Annual Disclosure described in this Paragraph.

10.1.3 .

10.1.4 The Plans currently provide that if the cash and/or cash equivalents portion of the Caterpillar Stock Fund rises above 1.5% of the total asset

value of the Caterpillar Stock Fund, the BFC (or its designee) shall promptly direct the trustee of the Caterpillar Inc. Investment Trust to purchase shares of Caterpillar Inc. common stock to restore the cash and/or cash equivalents portion of the Caterpillar Stock Fund to a level below 1.5% of the total asset value of the Caterpillar Stock Fund. Notwithstanding the foregoing, if there are material circumstances that necessitate the cash and/or cash equivalents portion of the Caterpillar Stock Fund to be maintained at a level which is higher than 1.5% of the total asset value of the Caterpillar Stock Fund, the Plan Sponsor will amend the Plans to permit a higher cash and/or cash equivalents level, provided the Independent Monitor agrees that such amendment is necessary, which agreement shall not be unreasonably withheld. If the Independent Monitor withholds agreement, and does not receive an assurance that the 1.5% threshold will not be exceeded, it shall so notify Class Counsel within 5 business days.

10.1.5 .

10.2 During the Settlement Period, the Settling Parties will cause the Independent Monitor to be paid from the Qualified Settlement Fund to determine whether the obligations specified in Paragraphs 10.2.1 through 10.2.4 have been met. The Independent Monitor's review will be limited as follows:

10.2.1 Within 60 days after the Settlement Period begins, Caterpillar Inc. will provide to the Independent Monitor the following documents in effect as of the beginning of the Settlement Period for the Plans: IRS Forms 5500 and schedules thereto, the Plans, amendments to the master document for each of the four Plans, Summary Plan Descriptions, Summaries of Material Modifications, Fund Fact Sheets, lists of investment options offered to participants in each Plan, and service provider contracts. Thereafter, on or shortly after the filing dates for Forms 5500 which occur during the Settlement Period or Article 15 Time Period, Caterpillar Inc. will provide to the Independent Monitor the Monitoring Documents and a representative copy of the Annual Disclosure, if the Annual Disclosure was required by the Settlement Agreement to be issued that year. Caterpillar Inc. also will provide to the Independent Monitor the Monitoring Documents that post-date the fifth submission thereof one month before the end of the Article 15 Time Period. The Independent Monitor will keep the Monitoring Documents confidential and not disclose them to Class Counsel unless the Independent Monitor makes a finding described in Paragraph 10.2.3 and believes it necessary to disclose the Monitoring Documents to Class Counsel, at which time it may disclose to Class Counsel only those Monitoring Documents relevant to the finding as "Confidential" documents subject to the Confidentiality Order. Other than as provided in Paragraph 10.2.2, neither Caterpillar Inc. nor any of the Defendants will be under an obligation to provide any other documents or

information to the Independent Monitor, the Independent Monitor will have no authority to require any Defendant to provide information other than the Monitoring Documents, through any means (e.g., discovery request or subpoena), and the Independent Monitor will have no duty to consider information not contained in the Monitoring Documents.

10.2.2 During the Settlement Period only (not Article 15 Time Period), when Caterpillar Inc. provides the Monitoring Documents, it also will provide to the Independent Monitor a written statement reflecting the average daily percentage of cash and/or cash equivalents held in the Caterpillar Stock Fund during the preceding Plan year. If the reported percentage exceeds 1.5% during the Settlement Period, the Independent Monitor will conduct a reasonable inquiry to determine why this occurred. The Independent Monitor then will recommend whether enforcement action as provided in Paragraph 10.5 is warranted. If the Independent Monitor determines that no enforcement action is warranted, then no enforcement action may be undertaken. Additionally, when Caterpillar Inc. provides the Monitoring Documents during the Settlement Period and Article 15 Time Period, it will provide to the Independent Monitor a written statement certifying that it has complied with Paragraphs 10.1.2, 10.4 and 15.2.1 (except to the extent the terms of this Settlement Agreement no longer require such compliance). If during the Settlement Period or Article 15 Time Period, the Independent Monitor does not receive the statement certifying compliance with Paragraphs 10.1.2, 10.4 and 15.2.1 (except to the extent the terms of this Settlement Agreement no longer require such compliance), the Independent Monitor shall attempt to contact Caterpillar Inc. to determine whether the statement is forthcoming. The Independent Monitor then will recommend whether enforcement action as provided in Paragraph 10.5 is warranted. If the Independent Monitor determines that no enforcement action is warranted, then no enforcement action may be undertaken.

10.2.3 The Independent Monitor will report to Class Counsel and Defendants if it believes, based on its review of information provided to it pursuant to Paragraphs 10.2.1 and 10.2.2, (1) that Defendants have materially failed to comply with any of the provisions of Article 10 or Article 15, or (2) that, based on its review of the Monitoring Documents on a "red flag" basis, that is, applying a "clearly inconsistent with fiduciary duties under ERISA" standard, Defendants violated the fiduciary duty provisions of ERISA.

10.2.4 The Settling Parties agree that they, or any of them, will not ask or compel the Independent Monitor to testify at any subsequent court or arbitration hearing or proceeding.

10.3 The Plan Sponsor shall not amend any or all of the Plans in a manner that violates the express terms of this Settlement Agreement, and the Plan fiduciaries shall not take any action or make any changes with respect to any or all of the Plans that violate the express terms of this Settlement Agreement. Notwithstanding any other provision of this Settlement Agreement, nothing shall prevent the Plan Sponsor from terminating any or all of the Plans, or eliminating a Plan investment option.

10.4 Caterpillar Inc. represents that it currently receives no compensation for services provided to the Plans. However, Caterpillar Inc. represents that it does on occasion pay administrative expenses on behalf of a Plan and then is reimbursed from that Plan's assets. It is expressly agreed that this practice of paying administrative expenses on behalf of a Plan and then being reimbursed may continue. Nothing in this Paragraph prohibits Caterpillar Inc. from charging one or more Plans, during the Settlement Period, at cost, for the services it currently provides to the Plans. Except as described in the preceding sentence, Caterpillar Inc. shall not charge the Plans for any services Caterpillar Inc. provides to the Plans during the Settlement Period.

10.5 Should a dispute of any nature whatsoever arise concerning compliance with Article 10 or Article 15 (and no other Article of the Settlement Agreement), Class Counsel and Defendants agree to resolve the dispute exclusively as follows:

10.5.1 If Class Counsel or Defense Counsel has reason to believe that a legitimate dispute exists, the initiating party shall first promptly give written notice to the other party, including: (a) a reference to all specific provisions of Article 10 or Article 15 that are involved; (b) a statement of the issue; (c) a statement of the remedial action sought by the initiating party; and (d) a brief statement of the specific facts, circumstances and any other arguments supporting the position of the initiating party;

10.5.2 Within 20 days after receiving such notice, the non-initiating party shall respond in writing to the statement of facts and arguments set forth in the notice and shall provide its written position, including the facts and arguments upon which it relies in support of its position;

10.5.3 Class Counsel and Defense Counsel shall undertake good-faith negotiations, including meeting or conferring by telephone or in person, to attempt to resolve the issues in dispute or cure the alleged noncompliance;

10.5.4 If the Settling Parties' good-faith efforts to resolve the matter have failed, and after written notice of an impasse by the initiating party to the non-initiating party or parties, Class Counsel or Defense Counsel will ask the Mediator to assist with resolution of the dispute or the issues of non-compliance, provided, however, that such request shall be

limited to the dispute(s) or issue(s) as to which the Settling Parties have met and conferred as described in this Article;

10.5.5 The non-moving Settling Parties will have 15 days to respond to any such request;

10.5.6 The Mediator shall attempt within 15 days after receipt of the non-initiating party's response to resolve the dispute and may schedule a meeting for that purpose;

10.5.7 Within 30 days of the conclusion of the Mediator's attempt to resolve the dispute, if the dispute persists, the Mediator shall serve as Arbitrator and Arbitrator shall issue a written determination, including findings of fact if requested by any party. The only remedy the Arbitrator may impose is issuing an order requiring Defendants to comply with the terms of this Article; in addition, the Arbitrator shall state whether Defendants have materially breached the provisions of this Article, and may award fees and costs to Class Counsel if they prevail. The Arbitrator's order may be enforced under federal or Illinois law governing the enforcement of arbitration awards.

10.5.8 The provisions of this Paragraph do not prevent Class Counsel or Defense Counsel from promptly bringing an issue directly before the Mediator when exigent facts or circumstances require immediate Mediator action to prevent a serious violation of the terms of this Article, which otherwise would be without a meaningful remedy. The request to the Mediator shall explain the facts and circumstances that allegedly necessitate immediate action by the Mediator. The Mediator in his discretion may set such procedures for emergency consideration as are appropriate to the particular facts or circumstances.

10.6 The Settling Parties shall bear their own attorneys' fees, costs and expenses of counsel for all work performed under this Article, except as provided in Paragraph 10.5.7.

10.7 Any dispute or claim arising under or involving the application or interpretation of the Plans relating to any claim for benefits under the Plans shall be resolved initially through the claim and appeal procedures set forth in the appropriate Plan and thereafter through other procedures provided by law.

11. Article 11 – Other Agreements

11.1 Caterpillar Inc. will conduct an RFP for recordkeeping services for the Plans when the current contract with Hewitt Associates expires, which is scheduled to occur no later than 2012. Caterpillar Inc. and the fiduciaries of the Plans are under no obligation to select a recordkeeping provider other than Hewitt Associates and it is expressly agreed that retaining Hewitt Associates could be a

prudent decision under ERISA in light of all relevant factors. Caterpillar Inc. will advise Class Counsel, by affidavit, whether it has conducted the RFP as promised, and the names of all RFP recipients, within 45 days of the initiation of the RFP process.

12. Article 12 – Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

12.1 The Settlement Agreement shall be terminated, be deemed null and void, and have no further force or effect if:

12.1.1 the Independent Fiduciary does not approve the Settlement Agreement, or disapproves the Settlement Agreement, or the BFC concludes that the written approval does not contain the necessary Independent Fiduciary determinations applicable to each Plan pursuant to Paragraph 3.1;

12.1.2 the Preliminary Order and the Final Order are not entered by the Court in the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties;

12.1.3 this Settlement Agreement is disapproved by the Court or fails to become effective for any reason whatsoever;

12.1.4 the Preliminary Order or Final Order is finally reversed on appeal, or modified on appeal and the Settling Parties do not mutually agree to any such changes to the terms of this Settlement Agreement.

12.2 If the Settlement Agreement is terminated, deemed null and void or has no further force or effect, the Class Action and the claims asserted by Class Representatives shall for all purposes with respect to the Settling Parties revert to their status as of the day immediately before the Settlement Agreement Execution Date, and all funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to Caterpillar Inc.

12.3 It shall not be deemed a failure to approve the Settlement Agreement if the Court denies, in whole or in part, Class Counsel's request for attorneys' fees or Class Representatives' Compensation.

12.4 In the event that the Settlement Agreement is terminated, the Settling Parties shall evenly split and pay for all Administrative Expenses incurred prior to the termination.

13. Article 13 – Public Comments Regarding The Class Action or Settlement Agreement

13.1 Class Counsel, Class Representatives and Settlement Class Members shall have no communication(s) nor cause anyone to have any communication with any person or entity (other than the Court or Settlement Class Members) regarding the

destruction of documents or Class Representatives' claim for Negligent Spoliation of Evidence.

13.2 The Settling Parties shall issue on the date of the filing of the motion for entry of the Preliminary Order a Joint Press Release, attached hereto as Exhibit 9 (which shall be the only written press release). The Settling Parties agree that no Settling Party or their attorney, representative or agent will issue any other press release related to the Class Action.

13.3 To the extent not prohibited by Paragraphs 13.1 or 13.2, following the filing of the motion for entry of the Preliminary Order, Class Representatives and Class Counsel will limit all public statements to matters disclosed in either the Joint Press Release or in non-confidential documents filed of record in this case, and to information posted on the website www.caterpillarerisasettlement.com. To the extent not prohibited by Paragraphs 13.1 or 13.2, nothing prevents Class Representatives and Class Counsel from describing to anyone the benefits to Settlement Class Members of this Settlement Agreement. Nothing in this Paragraph 13.3 prevents Class Counsel, the Class Representatives or Settlement Class Members from responding to a request by referring the inquirer to the documentation made available on the settlement website or providing such documentation in response to a request after the website is no longer maintained, or from providing publically filed documents except for those which are subject to 13.1.

13.4 The Settling Parties agree to keep confidential the settlement negotiations, except that they may discuss the negotiations with Settlement Class Members, the Independent Fiduciary, insurers and tax advisors.

13.5 Class Counsel will establish a website, www.caterpillarerisasettlement.com, at which it will post the following documents or links to the following documents: Joint Press Release, Third Amended Complaint, this Settlement Agreement and its Exhibits, Settlement Notices, Publication Notice, Former Participant Claim Form, Class Representatives' Motion for attorneys' fees and costs and award of compensation to Class Representatives, any Court orders related to settlement and post-dating the Settlement Agreement, and any other documents or information mutually agreed upon by the Settling Parties. No other information or documents will be posted on this website. Class Counsel will end the www.caterpillarerisasettlement.com website within 90 days after the Final Order becomes Final.

13.6 Nothing in this Article prohibits Class Counsel from stating to anyone that the claims asserted in the Class Action are described in the Third Amended Complaint (Exhibit 2) and are included in the documents posted on www.caterpillarerisasettlement.com.

14. Article 14 – General Provisions

14.1 The undersigned counsel, on behalf of themselves and the Settling Parties, agree to cooperate fully with each other in seeking Court approvals of the Preliminary Order and the Final Order, and to do all things as may reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms.

14.2 Class Representatives and Class Counsel covenant and agree on their own behalf, and on behalf of the Settlement Class, within 14 days after the Settlement Effective Date, (1) to destroy all confidential documents and any materials that contain proprietary or confidential information, whether obtained from Defendants or other sources, that is in the possession, custody or control of Class Representatives or Class Counsel, including materials designated "Confidential" pursuant to the Confidentiality Order, and (2) to certify in writing to Defense Counsel that they have complied with the terms of this Paragraph.

14.3 This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder are not, and shall not be construed as, deemed to be, or offered as evidence of, or received as evidence of, an admission by or on the part of Defendants of fiduciary status under ERISA or any liability or wrongdoing whatsoever in connection with the claims in the Class Action, or in any other litigation matter, and Defendants expressly deny and disclaim any such liability or wrongdoing and deny each and every claim asserted in the Class Action. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder, shall not be construed against Defendants or any of the Related Parties as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial contemplated hereunder. The Settlement Agreement in no way suggests that Class Representatives or Class Counsel do not believe in the merits of their allegations.

14.4 Only Class Counsel or Defense Counsel shall have standing to seek enforcement of this Settlement Agreement. Any individual concerned about Defendants' compliance with this Settlement Agreement may so notify Class Counsel and direct any requests for enforcement to them. Class Counsel shall have the full and sole discretion to take whatever action or refrain from taking any action they deem appropriate in response to such request.

14.5 This Settlement Agreement shall be interpreted, construed and enforced in accordance with applicable federal law and, to the extent that federal law does not govern, Illinois law. Any lawsuit to enforce this Settlement Agreement shall be filed in a court located in Peoria County, Illinois. In any action to enforce this Settlement Agreement, the Court may award reasonable attorneys' fees and costs to Settlement Class Members if they prevail. The Settling Parties agree to expedite resolution of such an action, and agree that the discovery period for such action shall not exceed 90 days.

14.6 The Settlement Agreement may be executed by exchange of faxed or scanned .pdf executed signature pages, and any signature transmitted by facsimile or e-mail attachment of scanned signature pages for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. The Settlement Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

14.7 Each party to this Settlement Agreement hereby acknowledges that he, she or it has consulted with and obtained the advice of counsel prior to executing this Settlement Agreement, and that this Settlement Agreement has been explained to that party by his, her or its counsel.

14.8 The headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Articles or Paragraphs they caption. References to a person are also to the person's permitted successors and assigns. Whenever the words "include," "includes" or "including" are used in this Settlement Agreement, they shall not be limiting but shall be deemed to be followed by the words "without limitation."

14.9 Before entry of the Preliminary Approval Order and approval of the Independent Fiduciary, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties. Following approval by the Independent Fiduciary, this Settlement Agreement may be modified or amended only if such modification or amendment is set forth in a written agreement signed by or on behalf of all Settling Parties and only if the Independent Fiduciary approves such modification or amendment in writing. Following entry of the Preliminary Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Settling Parties, and only if the modification or amendment is approved by the Independent Fiduciary in writing and approved by the Court.

14.10 The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver of any breach of this Settlement Agreement by any party shall not be deemed to be or construed as a waiver of any other breach or waiver by any other party, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

14.11 The provisions of this Settlement Agreement are not severable.

14.12 All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No Settling Party is relying on any oral representations or oral agreements.

14.13 All of the exhibits attached hereto are incorporated by reference as though fully set forth herein.

14.14 No provision of the Settlement Agreement, or of the exhibits attached hereto, shall be construed against or interpreted to the disadvantage of any party to the Settlement Agreement because that party is deemed to have prepared, structured, drafted or dictated the provision.

14.15 Any notice, demand or other communication under this Settlement Agreement (other than the Settlement Notices, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier:

IF TO THE SETTLEMENT CLASS:

Jerome J. Schlichter (jschlichter@uselaws.com)
Daniel V. Conlisk (dconlisk@uselaws.com)
Heather Lea (hlea@uselaws.com)
Mark G. Boyko (mboyko@uselaws.com)
SCHLICHTER, BOGARD & DENTON LLP
100 S. Fourth St., Ste. 900
St. Louis, Missouri 63102
Tel: (314) 621-6115
Fax: (314) 621-7151

IF TO DEFENDANTS:

Mark Casciari (mcasciari@seyfarth.com)
Ian H. Morrison (imorrison@seyfarth.com)
Ada W. Dolph (adolph@seyfarth.com)
SEYFARTH SHAW LLP
131 South Dearborn Street, Ste. 2400
Chicago, Illinois 60603
Tel: (312) 460-5000
Fax: (312) 460-7000

CATERPILLAR INC.
Attn: General Counsel
100 NE Adams Street
Peoria, Illinois 61629-0002
Tel: (309) 675-1000
Fax: (309) 675-1182

14.16 This Settlement Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereof shall be binding upon and shall inure to the benefit of the Settling Parties and their respective estates, heirs,

executors, administrators, legal representatives, personal representatives, agents, spouses, successors, and assigns, merged entities, purchasers, parent corporations, subsidiaries, divisions, joint venturers, and spin-off entities.

15. Article 15 – Additional Agreements by Defendants

15.1 For the purposes of this Paragraph 15.1, the Independent Monitor will assume the additional role of Independent Fiduciary. The time period which applies to this Article 15 begins on the date the Final Order is entered by the Court and ends 60 months from the date of the Final Order, except as follows: If after 24 months of adhering to this Article, the BFC determines, applying the duty of prudence, that it is in the best interest of the participants of a Plan or Plans to deviate from any agreement set forth in this Article 15, the BFC may so deviate provided it submits to the Independent Fiduciary the basis for its decision and the Independent Fiduciary agrees with the BFC that such deviation is in the best interests of the Plan participants. If the Independent Fiduciary withholds agreement, and does not receive an assurance that the BFC will not deviate from the requirements of this Article 15, it shall so notify Class Counsel within 5 business days. The time period that applies to this Article 15 is referred to as the "Article 15 Time Period." The Article 15 Time Period will be suspended if a notice of appeal is filed with respect to the Final Order and will restart after all appellate proceedings have ended without the Settlement Agreement's becoming null and void under Article 12. In no event shall the Article 15 Time Period exceed 60 months.

15.2 The following requirements apply during the Article 15 Time Period:

15.2.1 The BFC agrees not to engage any investment consultant as an investment manager for the Plans, except as to transition management services. The BFC represents that its only investment consultant at this time is Russell Investments or its subsidiaries or affiliates, including Russell Investment Management Ltd.

15.2.2 With the exception of funds available through a Plan's brokerage window, the Plans will not offer any retail mutual fund investment options during the Settlement Period. Retail mutual funds are defined as mutual funds available to retail investors, e.g., Fidelity Magellan Fund, Vanguard Windsor Fund or American Funds Capital Income Builder Fund, with either no minimum investment level or a minimum investment level that does not exceed $50,000.

15.2.3 The fees paid to the Plan recordkeeper (currently Hewitt Associates) for recordkeeping services will not be set or determined on percentage of assets basis. Nothing in this Settlement Agreement prohibits the Plans from allocating recordkeeping expenses to participants on a percentage of assets basis.

15.3 During the Article 15 Time Period, the Settling Parties will cause the fees of the Independent Monitor in connection with this Article 15 to be paid from the Qualified Settlement Fund.

15.4 The Independent Monitor's review will be limited as specified in Paragraphs 10.2.1, 10.2.2, 10.2.3 and 10.2.4.

15.5 Should a dispute of any nature whatsoever arise concerning compliance with this Article 15, Class Counsel and Defendants agree to resolve the dispute exclusively as indicated in Paragraph 10.5, including its sub-Paragraphs.

15.6 The Settling Parties shall bear their own attorneys' fees, costs and expenses of counsel for all work performed under this Article 15, except as provided in Paragraph 10.5.7.

IN WITNESS HEREOF, the Settling Parties have executed this Settlement Agreement on the dates set forth below.

CLASS REPRESENTATIVES:

_____ Dated: _____
Steve Martin, Individually and As
Representative of the Settlement Class

_____ Dated: _____
Carol Tegard, Individually and As
Representative of the Settlement Class

_____ Dated: _____
Allen Rose, Individually and As
Representative of the Settlement Class

Lead Class Counsel:

_____ Dated: _____
Jerome J. Schlichter
Schlichter, Bogard & Denton LLP

DEFENDANTS:

Defendant Caterpillar Inc.

_____ Dated: _____
By: James B. Buda, Esq.
General Counsel Caterpillar Inc.

Defendant Caterpillar Investment Management Ltd.

_____ Dated: _____
By: James B. Buda, Esq.
General Counsel Caterpillar Inc.

Defendant Investment Plan Committee of Caterpillar Inc.

_____ Dated: _____
By: James B. Buda, Esq.
General Counsel Caterpillar Inc.

Defendant Vice President Human Services Division

_____ Dated: _____
By: Greg Folley
Vice President Human Services Division

Defendants Benefit Funds Committee of Caterpillar Inc. Dated: _____

_____
By: Jonathan D. Ginzel, Member and on behalf of
Benefit Funds Committee of Caterpillar Inc.

Lead Defense Counsel:

_____ Dated: _____
Mark Casciari
Seyfarth Shaw LLP