



SANTA CLARA COUNTY COUNSEL • CITY ATTORNEY OF SAN FRANCISCO

# NEWS RELEASE

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## For Immediate Release

### **PUBLIC ENTITIES RECEIVE \$8.7 MILLION IN SETTLEMENT FUNDS FROM BANKRUPT DEFENDANT IN LEAD PAINT LITIGATION**

*Court overrules defendants' demurrer in ongoing litigation against remaining defendants*

San Jose, Calif.– (June 23, 2011) – Ten major California counties and cities today announced that they received a total of \$8.7 million under a court-approved settlement with bankrupt Millennium Holdings LLC. Millennium Holdings, a successor to Glidden Paint, paid this amount in order to be dismissed from a pending public nuisance abatement suit. Ten California county counsel and city attorneys are jointly prosecuting that action against multiple defendants who marketed and promoted lead pigment for use in paints, despite knowledge of the harm lead paint causes. The settlement funds will be divided among the ten jurisdictions, and used primarily to fund lead paint abatement efforts.

“This settlement marks the first major recovery for the public entities that have been diligently pursuing these claims on behalf of the people of California since 2000,” said Miguel Márquez, County Counsel for the County of Santa Clara. “It provides funds that will go directly toward our lead paint abatement efforts, in order to improve the public health and welfare of the residents in our community.”

Millennium Holdings LLC and its affiliates filed for bankruptcy under Chapter 11 of Title 11 of the U.S. Code on January 6, 2009. The settlement was reached by and among Millennium Holdings LLC and the following public entities: Santa Clara County, the City and County of San Francisco, Alameda County, the City of Los Angeles, Los Angeles County, Monterey County, the City of Oakland, the City of San Diego, San Mateo County, and Solano County.

“We’re gratified to see a company step up and take responsibility for the health hazards posed by lead paint,” said San Francisco City Attorney Dennis Herrera. “While the size of the settlement we secured from Millennium Holdings is obviously limited by the realities of bankruptcy law, it’s an important step in the right direction to hold other defendants accountable for their deliberate wrongdoing.”

MORE

The litigation against the remaining defendants is progressing after California appellate courts rejected two prior defense efforts to derail the case. On June 14, 2011, Santa Clara Superior Court Judge James P. Kleinberg issued an order on three motions filed by the defendants in response to the public entities' fourth amended complaint. The Court overruled the defendants' motion to have the complaint dismissed, holding that the complaint stated a case for public nuisance since it alleged that the defendants had sufficient knowledge of the hazards caused by lead paint, and that the defendants' actions were a substantial factor in the creation of the public nuisance caused by lead paint in the public entities' jurisdictions.

"The Court's ruling is a big victory for the public entities prosecuting this action," said Nancy Fineman, an attorney with Cotchett, Pitre & McCarthy, which is assisting the public attorneys in the case. "It brings us one step closer to reaching the merits of this case and to holding the promoters of lead pigment accountable for the health hazards they created in the State of California."

The litigation is currently in the discovery stage. The Court anticipates setting a trial date sometime in the first quarter of 2012. The county counsel and city attorneys bringing the case are being assisted by the law firms of Cotchett, Pitre & McCarthy of Burlingame, CA; Motley Rice LLC of Providence, RI; Mary Alexander & Associates of San Francisco; and Thornton & Naumes of Boston, MA.

# # #

**AGREEMENT AMONG MILLENNIUM HOLDINGS LLC  
AND THE CALIFORNIA PUBLIC ENTITIES RESOLVING  
THE LEAD CLAIMS FILED BY MOTLEY  
RICE LLC ON BEHALF OF THE CALIFORNIA PUBLIC ENTITIES**

This agreement (the “Agreement”) is made by and among Millennium Holdings LLC (“Millennium”) and the County of Alameda, City of Los Angeles, County of Los Angeles, County of Monterey, City of Oakland, City of San Diego, City and County of San Francisco, County of San Mateo, County of Santa Clara and County of Solano (together, the “California Public Entities”). Millennium and the California Public Entities are collectively referred to herein as the “Parties,” and each, a “Party.”

**WHEREAS**, Millennium, Lyondell Chemical Company and LyondellBassell AF GP S.a.r.l.and certain of its affiliates (collectively, the “Post-Confirmation Debtors” or, during the chapter 11 cases, the “Debtors”) each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, commencing chapter 11 cases jointly administered under case number 09-10023 in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on January 6, 2009 (the “Petition Date”), April 24, 2009 or May 8, 2009;

**WHEREAS**, on June 30, 2009, the law firm of Motley Rice LLC filed (i) proof of claim number 11838; (ii) proof of claim number 11839; (iii) proof of claim number 11840; (iv) proof of claim number 11841; (v) proof of claim number 11842; (vi) proof of claim number 11843; (vii) proof of claim number 11844; (viii) proof of claim number 11845; (ix) proof of claim number 11846; and (x) proof of claim number 11847 (collectively, the “Lead Claims”) in the Debtors’ chapter 11 cases, asserting Lead Claims by the California Public Entities against Millennium, as described more fully therein;

**WHEREAS**, prior to the Petition Date, the California Public Entities commenced the case styled County of Santa Clara, et al., v. Atl. Richfield Co., et al., Case No. 1-00-CV-788657 (Cal. Super. Ct.) (the “Santa Clara Lawsuit”) in the California Superior Court asserting claims for public nuisance in connection with alleged lead contamination, which forms the basis for the Lead Claims;

**WHEREAS**, the as yet unfiled Fourth Amended Complaint in the Santa Clara Lawsuit names Millennium as a defendant;<sup>1</sup>

**WHEREAS**, on April 23, 2010, the Bankruptcy Court entered an order [Docket No. 4418] confirming the Debtors’ plan of reorganization (the “Plan”) in these chapter 11 cases, which became effective by its terms on April 30, 2010 (the “Effective Date”);

**WHEREAS**, on September 25, 2010, Millennium filed a Motion for Disallowance, and in the Alternative, Estimation of the Lead Claims Filed by Motley Rice on Behalf of the California Public Entities (the “Claims Objection”) [Docket No. 5183];

**WHEREAS**, pursuant to section 8.2 of the Plan, Millennium is authorized to enter into this Agreement to resolve the Lead Claims;

**WHEREAS**, the Parties have each determined that it is in their respective best interests to enter into this Agreement to effectuate the resolution of the Lead Claims and the dismissal and release of the Post-Confirmation Debtors, the Debtors, Inorganics, potentially other parties as set forth below, and any direct or indirect parent, subsidiary and affiliate of each from the Santa Clara Lawsuit on the terms set forth herein.

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<sup>1</sup> The currently operative complaint in the Santa Clara Lawsuit is the Third Amended Complaint, which did not name Millennium as a defendant, but rather named as a defendant Millennium Inorganic Chemicals Inc. (“Inorganics”), a former affiliate of Millennium. The California Public Entities have been granted leave to file the Fourth Amended Complaint by the California Superior Court, which complaint, among other things, would dismiss Inorganics from the Santa Clara Lawsuit.

**NOW, THEREFORE,** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the covenants and conditions contained herein, the Parties hereby agree as follows:

1. The recitals set forth above form an integral part of this Agreement and are incorporated here by reference.

2. In full and final satisfaction of any and all claims held by the California Public Entities against any of the Debtors or the Post-Confirmation Debtors or any of their successors or predecessors, whether or not evidenced by one or more proofs of claim, including without limitation the Lead Claims, within 10 business days of the order of the Bankruptcy Court approving this Agreement becoming a Final Order,<sup>2</sup> a single payment of Eight Million Seven Hundred Thousand Dollars (\$8,700,000.00) (the “Settlement Consideration”) shall be made from the bankruptcy estate of Millennium for the benefit of the California Public Entities. The Settlement Consideration shall be paid in care of Cotchett, Pitre & McCarthy (the “Disbursing Agent”), who shall be responsible for allocating the Settlement Consideration among the individual California Public Entities in the manner to be determined in the discretion of the California Public Entities. None of the Released Parties (as defined herein) shall have any

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<sup>2</sup> As used herein, “Final Order” means an order of the Bankruptcy Court or the United States District Court for the Southern District of New York (the “District Court”) as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or motion for reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, or move to reargue or rehear shall have been waived in writing in form and substance satisfactory to the Debtors or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order of the Bankruptcy Court or District Court shall have been upheld by the highest court to which such order was appealed, or from which certiorari, reargument or rehearing was sought and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; *provided, however,* the possibility that a timely motion under Bankruptcy Rule 9024 or any applicable analogous rule may be filed with respect to such order shall not prevent such order from being a Final Order.

obligation or responsibility with respect to the distribution of all or any portion of the Settlement Consideration to any of the California Public Entities.

3. Upon payment of the Settlement Consideration to the Disbursing Agent, the Claims Objection, each of the Lead Claims, and any and all claims held by any of the California Public Entities, whether or not evidenced by one or more proofs of claim, against any of the Debtors or the Debtors' bankruptcy estates will be, and shall be deemed, withdrawn, released and (if previously filed or scheduled) expunged in their entirety without need for further action by any Party or further Bankruptcy Court approval.

4. Upon payment of the Settlement Consideration to the Disbursing Agent, each of the California Public Entities, on behalf of themselves and each of their agents, attorneys, and other persons or entities through whom or on behalf of whom they have acted in asserting the Lead Claims, shall and shall be deemed to unconditionally and forever release, waive, and discharge (i) each Debtor, each Post-Confirmation Debtor, and the Millennium Custodial Trust and (ii) each (A) present or former officer, trustee, director, employee, agent, financial advisor, attorney, representative (and their respective affiliates), (B) affiliate, predecessor or successor in interest of each Debtor, each Post-Confirmation Debtor, and the Millennium Custodial Trust, including, for the avoidance of doubt, Inorganics, and, to the extent that Millennium has advised the California Public Entities through their counsel verbally before the conclusion of the hearing to approve this Agreement before the Bankruptcy Court (the "Approval Hearing") and have made a similar notification on the record of the Approval Hearing, Akzo Nobel LLC and The Glidden Company, and (C) insurer listed on the attached Exhibit A (each a "Participating Insurer"), provided that Exhibit A may be amended by Millennium up to the start of the Approval Hearing, or any present or former affiliate or predecessor of any Participating Insurer

(collectively, the “Insurers”), solely with respect to their obligations pursuant to, arising under or derived from any policy or contract of insurance issued to any of the Released Parties (as defined herein) ((i) and (ii) collectively, the “Released Parties”), from any and all causes of action, claims or liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Post-Confirmation Debtors, any of their predecessors or successors in interest, or the Insurers. For the avoidance of doubt: (a) other than the Released Parties identified in this Agreement, no defendant now named or to be named in any complaint filed by the California Public Entities (a “Non-Released Party”) is released hereby; (b) an Insurer is released by this Agreement only with respect to its obligations pursuant to, arising under or derived from any policy or contract of insurance it may have with a Released Party; and (c) this Agreement shall not serve as a release of an Insurer with respect to its obligations pursuant to, arising under or derived from any policy or contract of insurance it may have with a Non-Released Party.

5. Each of the California Public Entities agrees, upon payment of the Settlement Consideration, promptly to (i) take any and all actions necessary to dismiss, with prejudice, Inorganics as a defendant in the Santa Clara Lawsuit, (ii) remove Millennium and any of its affiliates, predecessors or successors from the Fourth Amended Complaint and any further amended complaints filed in connection with the Santa Clara Lawsuit or any proceeding arising in law, equity, or otherwise, and (iii) desist from naming any of the Released Parties in any proceeding arising in law, equity, or otherwise in connection with any act, omission, transaction, event, or other occurrence taking place, in whole or in part, on or prior to the Effective Date in

any way relating to the Lead Claims, the Debtors, the Post-Confirmation Debtors, any of their predecessors or successors in interest, or the Insurers. Millennium consents to the stays and injunctions in effect under the Plan being modified to the extent necessary to permit or enable the California Public Entities to perform the actions identified in this paragraph, and solely for that purpose and to that extent.

6. The California Public Entities each acknowledge that they are familiar with Section 1542 of the California Civil Code, which reads as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” Each California Public Entity acknowledges and agrees that it is releasing unknown claims, and waives all rights that it may have under Section 1542 of the California Civil Code or under any other statute or common law principle of similar effect.

7. Neither this Agreement, nor the settlement provided for herein, nor any statement made, action or position taken, or document prepared or executed in connection with the negotiation, execution or implementation of this Agreement and the resolution of claims provided for herein shall be deemed to be, or construed as, an admission by any Party of any liability, wrongdoing, act or matter, or that any claim or defense has or lacks merit.

8. This Agreement contains the entire agreement by and between the Parties with respect to the subject matter hereof and shall not be modified, altered, amended, or vacated without the prior written consent of all the Parties. This Agreement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements between the Parties. This Agreement merges and supersedes all prior discussions, oral or written agreements and

understandings of every kind and nature among and between the Parties regarding the subject matter contained herein.

9. Subject only to such Bankruptcy Court approval as may be required for Millennium, each of the Parties specifically warrants and represents to the other Parties that it has full authority to enter into this Agreement, which Agreement constitutes a legal, valid and binding obligation of such Party. The California Public Entities specifically warrant and represent that they (i) are the owners and holders of the Lead Claims; and (ii) have not sold, assigned or otherwise transferred the Lead Claims or any portion thereof or rights relating thereto to any third party. Each of the Parties specifically warrants and represents that it has been fully informed of the terms, contents, conditions, and effects of this Agreement, that it has had a full and complete opportunity to discuss this Agreement, including the settlement and the release, with its attorney or attorneys, that it is not relying in any respect on any statement or representation made by any other Party except as expressly contained in this Agreement, and that no promise or representation of any kind has been made to such Party separate and apart from what is expressly contained in this Agreement. Each individual who signs this Agreement represents and warrants that he/she has full authority to sign this Agreement on behalf of the party he/she is identified to represent.

10. Should any additional instruments be necessary or desirable to accomplish the purposes of this Agreement, such additional instruments shall be promptly executed and delivered upon the request of the other Parties.

11. The representations set forth herein shall survive the completion of all actions contemplated herein. Other provisions hereof which require action after execution hereof shall survive the execution hereof.

12. This Agreement shall be construed and interpreted in accordance with the laws of the State of New York, without regard to the choice of law principles of the State of New York. For purposes of construing this Agreement, neither of the Parties shall be deemed to have been the drafter of the Agreement.

13. The Bankruptcy Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Agreement.

14. Facsimile or other electronic copies of signatures on this Agreement are acceptable, and a facsimile or other electronic copy of a signature on this Agreement is deemed an original.

15. Each Party shall be solely responsible for the attorney's fees, costs and expenses, if any, incurred by that Party in connection with the Lead Claims or the Santa Clara Lawsuit or this Agreement, as applicable.

16. This Agreement shall be binding upon all successors and assigns of each of the Parties to the Agreement.

17. This Agreement may be executed in counterparts, each of which is deemed an original, but when taken together constitute one and the same document.

18. This Agreement, and the obligations of the Parties hereunder, shall take full force and effect upon execution by the Parties.

**IN WITNESS WHEREOF** and in agreement herewith, by and through their counsel, the Parties have executed and delivered this Agreement as of February 2, 2011.

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SIGNATURES ON FOLLOWING PAGES

MILLENNIUM HOLDINGS LLC  
by its sole Member,  
Millennium America, Inc.

By:   
Meade Monger  
CEO, Duly-Authorized

COUNTY OF SANTA CLARA

By: \_\_\_\_\_  
Miguel Marquez  
County Counsel, Duly-Authorized

CITY AND COUNTY OF SAN  
FRANCISCO

By: \_\_\_\_\_  
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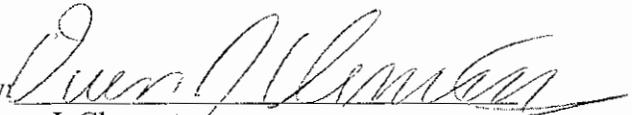
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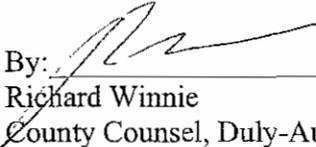
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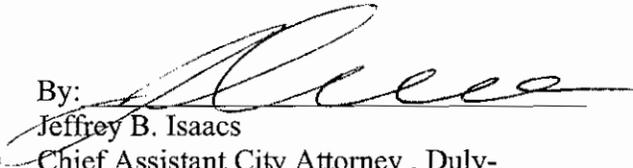
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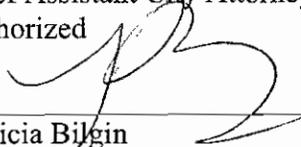
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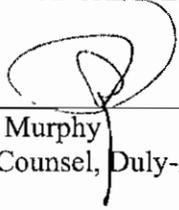
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Michael Murphy  
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Dennis Bunting  
County Counsel, Duly-Authorized

The Disbursing Agent

**Cotchett, Pitre & McCarthy**

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Nancy Fineman, Duly-Authorized

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Michael Murphy  
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Nancy Fineman, Duly-Authorized

## EXHIBIT A

**Subject to Paragraph 4 of the “Agreement Among Millennium Holdings LLC and the California Public Entities Resolving the Lead Claims Filed by Motley Rice LLC on behalf of the California Public Entities,” the following list of “Participating Insurers” is current as of February 9, 2011:**

Gerling-Konzern General Insurance Company

Continental Casualty Company

Agrippina Versicherungs Aktiengesellschaft

Nationwide Mutual Insurance Company

Excess Insurance Company, Limited

Hartford Accident and Indemnity Company

First State Insurance Company

New England Insurance Company

Twin City Fire Insurance Company