

## Ferrostaal/IPIC D&O settlement

### Settlement

between

1. Allianz Global Corporate & Specialty AG, Fritz-Schäffer-Straße 9, 81737 Munich, Germany, acting on its own behalf and on behalf and by authority of the companies listed in nos. 3 through 6,
2. The German branch of Zurich Insurance plc (formerly Zurich Versicherung AG (Deutschland)), Platz der Einheit 2, 60327 Frankfurt, Germany, acting on its own behalf and on behalf and by authority of the companies listed in nos. 3 through 6,
3. AIG Europe Ltd., German headquarters (formerly AIG Europe S.A. and Chartis Europe S.A.), Mainzer Straße 46-50, 60311 Frankfurt, Germany,
4. HDI Global SE (formerly HDI-Gerling Industrie Versicherung AG), HDI-Platz 1, 30659 Hanover, Germany,
5. CNA Insurance Company Limited, Z. 1., Researchpark 110, B-1731 Zellik, Belgium,
6. Chubb European Group Limited, German headquarters (formerly Chubb Insurance Company of Europe S.E.), Lurgiallee 12, 60439 Frankfurt am Main, Germany,

- nos. 1 through 6 hereinafter collectively referred to as the “Insurers” -

and

7. MAN SE, Dachauer Straße 641, 80995 Munich, Germany, acting on its own behalf and on behalf and by authority of all companies and persons insured under the D&O insurance surplus treaty IHV 70/0493/7999069/509 concluded on May 18, 2009, and the D&O insurance surplus treaty no. 802.380.091.568 concluded on June 5, 2009.

- nos. 1 through 7 hereinafter collectively referred to as the “Parties” -

#### 1 Preface

- 1.1 MAN SE, which was trading under the name MAN Aktiengesellschaft at the time (hereinafter also referred to as “MAN”), managed an insurance program via a D&O insurance policy for the insurance period from midday (12:00) on December 31, 2008, until midday (12:00) on December 31, 2009. The insurance program consists of an underlying policy in the amount of €25 million and two surplus treaties in the amount of €35 million and €90 million, respectively:

- D&O insurance policy concluded between Allianz Global Corporate & Specialty AG (hereinafter also referred to as “**AGCS**”) and MAN (trading under the name MAN Aktiengesellschaft at the time of the conclusion of the policy) on May 15, 2009, with policy number IHV 70/0493/7999020/509,

- D&O insurance surplus treaty concluded between AGCS as the leading insurer and MAN (trading under the name MAN Aktiengesellschaft at the time of the conclusion of the policy) on May 18, 2009, with policy no. IHV 70/0493/7999069/509 (“**First Surplus Treaty**”), and
- D&O insurance surplus treaty concluded between the German branch of Zurich Insurance plc. (hereinafter also referred to as “Zurich”), formerly Zurich Versicherung Aktiengesellschaft (Deutschland), as the leading insurer and MAN (trading under the name MAN Aktiengesellschaft at the time of the conclusion of the policy) on June 5, 2009, with policy no. 802.380.091.568 (“**Second Surplus Treaty**”).

1.2 In 2009 the Munich public prosecution authorities (*Staatsanwaltschaft München I*) initiated a preliminary investigation against employees and the governing bodies of MAN’s subsidiaries and investees on suspicion of bribes being paid within the MAN Group. A fine of €75.3 million each was imposed on MAN Nutzfahrzeuge AG and what was then known as MAN Turbo AG (now MAN Diesel & Turbo SE) on December 10, 2009. In the view of MAN, the Company incurred financial losses as a result of the payment of these fines, among other factors. MAN believes that further financial losses arose as a result of, for instance, tax arrears payments, the costs of internal investigations, and as a result of the bribes themselves being paid. In light of the circumstances above, claims for damages estimated at approximately €237 million were asserted against various governing bodies and employees of the MAN Group (for instance, in the letter dated July 26, 2010, in addition to the memorandum dated July 21, 2010, among others).

In accordance with the regulations in the key issue paper as set out in the e-mail correspondence between MAN and AGCS on February 9, 2012, in which AGCS acted on its own behalf as the insurer of the underlying policy and as the leading insurer of the First Surplus Treaty, the case outlined above was referred to as the “ISAR compliance case.”

1.3 Investigations were also initiated against employees and the governing bodies of MAN Ferrostaal AG (which subsequently changed its name to Ferrostaal AG, is now Ferrostaal GmbH, and is hereinafter also referred to as “Ferrostaal”), a former subsidiary of MAN, and its subsidiary, MAN Ferrostaal Beteiligungs GmbH, on suspicion of bribes being paid. In connection herewith, the company that is now known as Ferrostaal GmbH asserted claims against former Executive Board members of MAN

1.3.1 in their capacity as former Supervisory Board members of Ferrostaal in accordance with sections 116 and 93 (2) sentence 1 of the Aktiengesetz (AktG — German Stock Corporation Act) (“claims against the governing bodies of Ferrostaal in accordance with section 116 of the AktG”) and

1.3.2 as Executive Board members of MAN in accordance with section 309 (2) sentence 1 of the AktG. During conciliation proceedings in Stuttgart, including the correspondence dated December 30, 2010, Ferrostaal accused these individuals of “exercising insufficient care to ensure that the Ferrostaal Group conducts its business in compliance with legal requirements following MAN

taking over a compliance and audit function as a controlling company.” The latter (item 1.3.2) was referred to as “claims asserted by Ferrostaal against MAN governing bodies in accordance with section 309 of the AktG.”

- 1.4 With the conclusion of a settlement agreement dated September 26 / October 4, 2013 (so-called “ISAR settlement”), AGCS (acting on its own behalf and on behalf of the Insurers outlined under nos. 3 to 6 as insurers of the First Surplus Treaty) and MAN (acting on its own behalf and on behalf of all insured companies) settled the aforementioned “ISAR compliance case” (item 1.2) and the issue of the “claims asserted by Ferrostaal against MAN governing bodies in accordance with section 309 of the AktG” (item 1.3.2) once and for all. Pursuant to item 2 of the “ISAR settlement,” the Insurers undertook to pay €42.5 million in total to MAN, of which €25 million relates to the underlying policy and another €17.5 million to the First Surplus Treaty. The aforementioned incidents (item 1.2: “ISAR compliance case” and item 1.3.2: “claims asserted by Ferrostaal against MAN governing bodies in accordance with section 309 of the AktG”) were assigned to the insurance period from midday on December 31, 2008, until midday on December 31, 2009. Following this, the remaining insurance sum of the insurance program for the period from December 31, 2008, until December 31, 2009, amounted to €107.5 million.
- 1.5 As outlined in item 2.7 of the “ISAR settlement” on the “ISAR compliance case,” the compensation agreed on in item 2.2 of the agreement explicitly did not apply to any breaches of duty of the insured persons and any consequent loss or damage to the insured companies of any kind as a result of or in connection with the setup and supervision of the Compliance organization at Ferrostaal or any influence exercised over the former and cases of suspected bribery or bribery at Ferrostaal or its subsidiaries and investees that this organization did not prevent, and/or any pecuniary losses incurred or still being incurred by MAN and/or MAN Ferrostaal Beteiligungs GmbH due to any other breaches of duty of any kind as a result of or in connection with (or as a consequence of any breaches of duty mentioned above) the contractual negotiations and the conclusion of the contract between MAN, MAN Ferrostaal Beteiligungs GmbH, and IPIC Ferrostaal Holdings GmbH & Co. KG, as well as said contract being rescinded (“Ferrostaal/IPIC issue”).

On October 24, 2014, MAN asserted claims in the amount of €577,313,260.26 against the Chief Executive Officer in office until 2009 on the grounds of an alleged breach of the duty of care incumbent upon him under section 93 (1) of the AktG in connection with the “Ferrostaal/IPIC issue.” The claims were rejected collectively: by the former Chief Executive Officer affected in November 2014 and by the Insurers, most recently in the letter from the Friedrich Graf von Westphalen law firm in June 2016. On July 20, 2017, MAN submitted a draft statement of claim alleging, among others, that the Company had sustained a loss of at least €465,759,634.64 as a result of the breach of organizational duties and requesting for the amount to be reimbursed by means of the coverage amount remaining after the “ISAR settlement” of €107.5 million. MAN also alleged breaches of duty on the part of other insured persons; said persons have submitted waivers of the limitation of action and extended them several times.

- 1.6 The Parties intend — without prejudice to or acknowledgment of any legal obligations and maintaining their respective viewpoints — to settle the overall issue outlined above once and for all.

Now therefore the Parties agree as follows:

## 2 Settlement

- 2.1 The Insurers shall pay an amount of €19,493,750.00 (in words: nineteen million four hundred and ninety-three thousand seven hundred and fifty euros) in total to MAN within one month of this Settlement entering into force — as single debtors and not as jointly and severally liable parties —, of which:

### 2.1.1 payable under the First Surplus Treaty by

the insurer in 1. (AGCS)	€3,429,000.00,
the insurer in 3. (AIG)	€2,285,000.00,
the insurer in 4. (HDI)	€3,142,000.00,
the insurer in 5. (CNA)	€1,249,500.00,
the insurer in 6. (Chubb)	€430,000.00.

### 2.1.2 payable under the Second Surplus Treaty by

the insurer in 1. (AGCS)	€388,000.00,
the insurer in 2. (Zurich)	€3,889,000.00,
the insurer in 3. (AIG)	€1,667,000.00,
the insurer in 4. (HDI)	€1,555,000.00,
the insurer in 5. (CNA)	€347,250.00,
the insurer in 6. (Chubb)	€1,112,000.00.

In total, the following amounts are payable by

the insurer in 1. (AGCS)	€3,817,000.00,
the insurer in 2. (Zurich)	€3,889,000.00,
the insurer in 3. (AIG)	€3,952,000.00,
the insurer in 4. (HDI)	€4,697,000.00,
the insurer in 5. (CNA)	€1,596,750.00,
the insurer in 6. (Chubb)	€1,542,000.00.

- 2.2 Upon receipt of the payment outlined under item 2.1 in full,

2.2.1 all claims of MAN and the insured companies against the insured persons

2.2.2 and all claims of MAN, the insured companies, and the insured persons against the Insurers

as a result of and in connection with the compliance case presented under items 1.2 through 1.5, in particular the “Ferrostaal/IPIC issue,” and any loss or damage in connection with the latter, regardless of whether it is known or unknown, are deemed compensated for and settled.

Should further claims of insured persons and/or insured companies and/or other third parties arising as a result of or in connection with the circumstances presented under items 1.2 through 1.5 be asserted against the Insurer(s) after the conclusion of this Settlement, MAN shall indemnify the Insurer(s) against these claims and any costs and expenses incurred as a result of said claims upon first request. This obligation to indemnify does not apply to claims in connection with the reimbursement of defense expenses (including as part of the cover for pending claims) that are asserted by insured persons due to the circumstances outlined under items 1.2–1.5 and relate to the defense measures that were initiated prior to this Settlement being signed; claims with a legal basis other than the insurance program in item 1.1 are also excluded from the obligation to indemnify.

2.3 The circumstances outlined under items 1.2ff. are assigned to the insurance period from midday on December 31, 2008, until midday on December 31, 2009.

The remaining insurance sums under both surplus treaties listed under item 1.1, namely policy no. IHV 70/0493/7999069/509 concluded on May 18, 2009, and policy no. 802.380.091.568 concluded on June 5, 2009, relating to the period from December 31, 2008, until December 31, 2009, are deemed drawn down upon the enforcement of the Settlement within the meaning of item 2.2. The Parties agree that no further coverage claims exist against the Insurers for the insurance period from midday on December 31, 2008, until midday on December 31, 2009, over and above the payments outlined under item 2.1.

2.4 This Settlement shall take effect once the Parties to the Settlement (MAN, plus AGCS and Zurich as leading insurers) have received an original copy of the Settlement that has been signed by all Parties and the conditions precedent stipulated below have been met.

This Settlement is subject to the condition precedent that it is approved by the Supervisory Board of MAN. This condition precedent is deemed fulfilled as soon as the Chairmen of the Supervisory Boards of MAN, of AGCS, and of Zurich have confirmed, either in writing or in text form as defined by section 126b of the Bürgerliches Gesetzbuch (BGB — German Civil Code), that the Supervisory Board of MAN has approved this Settlement.

This Settlement is also subject to the condition precedent that it is approved by the Annual General Meeting of MAN and that the minutes record no verbal objection on the part of a minority whose shares make up ten percent of the share capital in question in total. This condition precedent is deemed fulfilled as soon as the

Chairmen of the Supervisory Boards of MAN, of AGCS, and of Zurich have confirmed, either in writing or in text form, that this condition has been met.

- 2.5 In the event that a provision of this Settlement is or becomes ineffective or unenforceable, either in full or in part, or an omission becomes apparent as a result of the enforcement of this Settlement, this shall not affect the effectiveness of the remaining provisions. The ineffective, unenforceable, or missing provision shall be replaced by an appropriate and legally valid provision that approximates the economic purpose that the Parties intended or would have intended had they taken into account the ineffective, unenforceable, or missing provision as closely as possible.
- 2.6 The Parties undertake to treat this Settlement as confidential unless they are legally obliged to disclose its contents or disclosing the Settlement's contents is conducive to its implementation. Any statements to the press shall only be made in agreement between AGCS, Zurich, and MAN.

Munich, 09.11.2018

*MAN SE*

Frankfurt, 06.09.2018

*Zurich Insurance plc Niederlassung für  
Deutschland*

27.08.2018

*Allianz Global Corporate & Specialty AG*