

## IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA

IN RE ASBESTOS LITIGATION,  <i>Consolidated Cases</i>	Cause No. AC 17-0694  MOTION FOR APPROVAL OF SETTLEMENT (Robinson Receivership)
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Come now, Receiver Nancy Gibson, and Allan McGarvey (with approval of Mark Kovacich), on behalf of certain Libby Plaintiffs and move the Court for an order (a) approving a “Settlement Agreement and Mutual Release” which settles rights and obligations arising under liability insurance policies of Home Insurance Company (in liquidation) covering claims against Robinson Insulation Company and Grogan Robinson Lumber Company, and (b) enjoining claims with respect thereto.

Introduction

This Court has created a Receivership for Robinson Insulation Company (“Robinson”) for the purposes of accepting service of actions against the company, tendering defense to insurers, litigating coverage issues, and settling resulting litigation upon specific Court approval. Pursuant to motions seeking approval of a parallel and contemporaneous settlement of other Robinson insurance, this Court

has been moved to enter an order expanding the receivership to include Robinson's co-insured Grogan Robinson Lumber Company.

The Home Insurance Company is being liquidated pursuant to the June 13, 2003 Order of the Superior Court of the State of New Hampshire, Merrimack County. The Receiver has presented in the Liquidation proceeding a claim for indemnification of the asbestos injury claims filed in courts in Montana against Robinson, which indemnification claim arises under policy number BOP-8808854 covering occurrences during the policy period February 11, 1980 to February 11, 1983 with total aggregate limit coverage of \$1.5 million.

Subject to the approval of the New Hampshire Court, the Liquidator has accepted the Robinson claim to the full amount of such coverage limits reduced to present value in correlation to the timing of payment of the claims by the insured for a total accepted claim amount of \$1,412,291. Upon approval by this Court and the New Hampshire Court, the Liquidator will make the required distribution payments in the Liquidation proceeding at the same intervals and the same percentages as other Class II creditors of The Home Insurance Company consisting of (a) a payment of the accepted claim amount of \$1,412,291 multiplied by an initial "payment percentage" of 30%, and (b) additional payments should the resolution of the Liquidation proceeding result in adjustments to the interim distribution payment percentage and/or a residual distribution amount.

In exchange for the acceptance of the claim, the agreement, if approved, would release all claims arising under the Home Insurance Company policies and secure a court order enjoining the filing of any new claims.

A copy of the proposed Settlement Agreement is attached hereto as Exhibit A. Also attached, as Exhibit B, are the orders of the Superior Court of the State of New Hampshire, Merrimack County, establishing the procedures and priorities of claims in the Home Insurance Company liquidation proceeding.

#### Settlement of Insurance Assets

The settlement structure recognizes that the Receivership Court has plenary power to order a final resolution of claims arising under Robinson's insurance policies, consistent with the Receivership's purpose to manage the insurance assets which are the sole assets of the Receivership. Similarly, the proposed Settlement Agreement is conditioned upon approval by the New Hampshire liquidation court.

The proposed settlement has been negotiated following a similar resolution of coverages of other insurers described in Case 19-CV- 00181 in the U.S. District Court for Montana, for which Settlement the Receiver has also sought the approval of this Court. The settlement structure contemplates that the proceeds of the Home Insurance settlement would be paid into the same Qualified Settlement Fund Trust that would be established for that earlier settlement, as the period of insurance coverage in the two settlements overlap. The Receiver's rights and obligations with

respect to such settlement proceeds would be assigned to and assumed by such trust.

Following court approval of the settlement of the Receivership's insurance rights, the Receiver and counsel for Libby Claimants will propose to the Court to approve a Trust Distribution Procedure ("TDP") mechanism for distribution of trust funds secured under this settlement with Home as well as the proceeds of the settlement with other insurers. The result will be payment to claimants meeting criteria including (a) an occurrence within the coverage period of the settled insurance, and (b) exposure and disease criteria with corresponding recovery levels reflecting claim values in the tort system. The TDP will be fashioned on typical asbestos trust TDP's created in bankruptcies, including the Asbestos Personal Injury TDP approved by the Bankruptcy Court in the W.R. Grace bankruptcy, will set forth the elements of a proof of claim, and will be designed to reflect claim values in the tort system.

After all due process considerations have been fully addressed, the Receiver and counsel for Libby asbestos claimants will move the Court to approve the TDP. Claims may then be presented to the Trust and resolved subject to a payment percentage designed to assure that accepted claims are paid in proportion to the total trust fund asset.

In support of the Motions for approval of the Settlement Agreement and creation of the Qualified Settlement Fund Trust, the following documentation is supplied:

1. Exhibit A - a copy of the proposed Settlement Agreement and Mutual Release” between the Receiver and Home Insurance Company’s liquidator.
2. Exhibit B - a copy of orders of the Superior Court of the State of New Hampshire, Merrimack County establishing the procedures and priorities of claims in the Home Insurance Company liquidation proceeding: (1) the 6/13/03 Order of Liquidation (par. (w) directs the Liquidator to administer and make payment on claims in accordance with RSA 402-C:44), and (2) the 1/19/05 Claims Procedures Order (which establishes the procedures for claims).

Grogan Robinson Lumber Company

Upon the Receiver’s motion this Court has been asked to expand the Receivership to include dissolved corporation Grogan Robinson Lumber Company, a co-insured with Robinson Insulation Company under the settled Home Insurance Company policies

Because the liquidator requires a release of all insureds’ claims under the subject coverage, the Receiver for Robinson Insulation Company cannot

effectively manage its insurance assets without coordinating the resolution of parallel claims against its co-insured Grogan Robinson Insurance Company. For this reason the same grounds for management of the common insurance asset apply to each dissolved company.

Submitted with this motion is a proposed Order approving the proposed Settlement Agreement.

Respectfully submitted this 22d day of July, 2020.

By: /s/ Allan M. McGarvey  
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McGARVEY, HEBERLING, SULLIVAN  
& LACEY, P.C.

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/s/ Nancy Gibson  
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Receiver for Robinson  
Insulation Company

## **CERTIFICATE OF SERVICE**

I, Allan M. McGarvey, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 07-22-2020:

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