

Surety Company, Travelers Property Casualty Corp., Citigroup Inc., The Travelers Insurance Company, Travelers Life and Annuity Company, and each of their respective direct or indirect, parents, subsidiaries and sister companies (collectively, “Travelers”), for their motion (the “Motion”) for the entry of an order pursuant to Section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving the Hawaii Settlement Agreement (as defined below) between Travelers and the Plaintiffs, respectfully state as follows:

Introduction

1. By this Motion, Plaintiffs seek approval of a settlement agreement (the “Hawaii Settlement Agreement”), to settle certain claims against Travelers arising from or relating in any way to asbestos, exposure to asbestos, knowledge about asbestos or the handling, defense, trial, appeal or settlement of asbestos-related claims asserted against Travelers involving, in any way, asbestos-related personal injury or wrongful-death claims against Combustion Engineering, Inc. (“CE”) in Hawaii.² The Hawaii Settlement Agreement provides for the establishment of a settlement fund (the “Settlement Fund”) of \$15 million dollars for Qualified Claimants as provided for in the Hawaii Direct Action Fund Distribution Procedures.³

Background

2. In 2001 and 2002, certain Statutory Direct Actions were filed against Travelers asserting claims against Travelers arising from or relating to any alleged acts or

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Hawaii; and, *Theodore K. Hopkins, et al. v. Combustion Engineering, Inc., et al.*, Case No. 03-00401, United States District Court for the District of Hawaii.

² A copy of the Hawaii Settlement Agreement is attached hereto as Exhibit A.

³ Capitalized terms herein shall have the same meaning ascribed to them in the Hawaii Settlement Agreement unless otherwise noted.

omissions of Travelers in the handling, defense, trial, appeal or settlement of any asbestos-related personal injury or wrongful death claims under the laws or regulations of eleven states.⁴ On June 19, 2002, Travelers filed a Motion for Temporary Restraining Order and Preliminary Injunction (the “PI Motion”), to enjoin the Statutory Direct Actions. On the same day, this Court granted a temporary restraining order (the “TRO”) prohibiting further prosecution of the Statutory Direct Actions as against Travelers. This Court held a hearing on the PI Motion on August 1, 2002, and by Order dated August 1, 2002 [Docket # 3446] (the “TRO Order”), the Court referred the matter to mediation and appointed the Honorable Mario M. Cuomo as mediator.

3. On December 10, 2002, three lawsuits (the “Lawsuits”) were brought against CE and Travelers under the laws of the state of Hawaii. Among other things, the Lawsuits assert claims against Travelers arising from and/or relating to Travelers’ alleged acts, omissions or involvement in the handling, defense, trial, appeal or settlement of claims against CE in Hawaii. Travelers denied the claims alleged in the Lawsuits. The Lawsuits were not covered by the TRO, but upon filing these cases, Plaintiffs’ counsel agreed to participate in the mediation being conducted pursuant to the TRO Order.

4. In the months that followed, Plaintiffs’ counsel and Travelers engaged in long and detailed negotiations under the auspices of the mediator. On November 19, 2003, at a status conference held before this Court, Travelers and Plaintiffs’ counsel announced that they had reached an agreement in principle concerning both the Statutory Direct Actions and the Lawsuits. Travelers and Plaintiffs’ counsel negotiated and drafted the definitive Hawaii

⁴ Those “Direct Action Jurisdictions” are Florida, Hawaii, Kentucky, Louisiana, Massachusetts, Montana, New Mexico, North Carolina, North Dakota, South Carolina and West Virginia.

Settlement Agreement under the auspices of the Mediator. The definitive Hawaii Settlement Agreement was executed by Plaintiffs' counsel and Travelers on May 22, 2004. Plaintiffs are now seeking approval of the Hawaii Settlement Agreement.

The Hawaii Settlement Agreement

5. Pursuant to the terms of the Hawaii Settlement Agreement, Travelers has agreed to pay \$15 million dollars to establish the Hawaii Direct Action Settlement Fund for the benefit of Qualified Claimants. Qualified Claimants are those Eligible Claimants who submit a claim form prior to the claim filing deadline together with a fully executed release and who are entitled to payment from the Hawaii Direct Action Settlement Fund. Eligible Claimants are those individuals who have or had one or more asbestos personal injury or wrongful death claim(s) pending in Hawaii prior to May 22, 2004, and have resolved one or more asbestos personal injury/wrongful death claim(s) against CE prior to February 17, 2003.⁵

6. The amounts provided in the Settlement Fund will be shared amongst all Qualified Claimants in varying amounts based upon the most severe of the Qualified Claimant's specific injuries as of February 17, 2003. The Hawaii Direct Action Settlement Fund will *not* be a part of or dilute the Manville Trust and will be administered by the Claims Resolutions Management Corporation.

7. This Court has jurisdiction over this Application pursuant to 28 U.S.C. § 1334(b) as a matter related to a case under title 11. The predicate for the relief requested in the Motion is Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019.

⁵ The Hawaii Settlement Agreement provides that persons who make a claim against the Travelers Asbestos Direct Action Settlement Fund shall not be considered an Eligible Claimant. In addition, persons represented by Galiher DeRobertis Nakamura Ono & Takitani who resolved one or more asbestos personal injury/wrongful death claim(s) against CE between January 1, 2001 and February 17, 2003 shall also not qualify as Eligible Claimants.

Relief Requested

8. The Plaintiffs seek approval of the Hawaii Settlement Agreement.

Applicable Authority

9. Section 105(a) of the Bankruptcy Code provides, in relevant part, as

follows:

- (a) The court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.

11 U.S.C. § 105(a).

10. Bankruptcy Rule 9019(a) provides, in relevant part, as follows:

- (a) Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

11. Settlements are to be encouraged, and courts should not in any way discourage settlements. See In re Smith, 210 B.R. 689, 692 (Bankr. D. Md. 1997). The legal standard for determining the propriety of a bankruptcy settlement is whether the settlement is in the “best interests of the estate.” In re Purofied Down Prods. Corp., 150 B.R. 519, 523 (S.D.N.Y. 1993).

12. The United States Supreme Court established the measure for determining whether a settlement is in the best interests of the estate in Protective Committee for Independent Stockholders of TMT Trailer Ferry v. Anderson, 390 U.S. 414 (1968). The Supreme Court held that approval of a settlement requires a finding that the settlement is “fair and equitable.” Id. at 424. According to the Supreme Court, such a finding is to be based on:

[an] educated estimate of the complexity, expense, and likely duration of ... litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

Id. See also Purofied Down Prods., 150 B.R. at 523; In re International Distribution Centers, Inc., 103 B.R. 420, 422 (S.D.N.Y. 1989) (a determination as to whether a proposed compromise is fair and equitable requires the exercise of informed, independent judgment by the court).

13. Equitable considerations are of paramount importance in deciding to approve a settlement. See In re Interstate Cigar Co., 240 B.R. 816, 822 (Bankr. E.D.N.Y. 1999). The court must analyze the relevant issues and determine whether the settlement “falls below the lowest point in the range of reasonableness.” In re Integrated Health Services, Inc., 2001 WL 1820426 (Bankr. D. Del. 2001) (quoting Cosoff v. Rodman, 699 F.2d 599, 608 (2d Cir. 1983). A court may approve a settlement over objections unless the settlement is below the range of reasonableness. See In re Bowman, 181 B.R. 836, 846 (Bankr. D. Md. 1995).

14. In managing bankruptcy proceedings, it is economical and prudent to settle claims to which there are significant and reasonable doubts. See Protective Committee for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968). The court must become apprised of the necessary facts to determine the “probabilities of ultimate success should the claim be litigated.” Id. The court should estimate the “complexity, expense, and likely duration of such litigation” and balance these factors against the likely rewards of such litigation. Id. Basic to evaluating a potential compromise is comparing the terms of the proposed compromise with the potential rewards of litigation. Id. at 425.

15. It is not necessary for the court to conduct a “mini trial” of the facts or the merits underlying the dispute. Purofied Down Prods., 150 B.R. at 522; International Distribution Centers, 103 B.R. at 423; In re A&C Properties, 784 F.2d 1377, 1384 (9th Cir.), cert denied, 479 U.S. 854 (1986). Rather, the court only need be apprised of those facts that are necessary to enable it to evaluate the settlement and to make a considered and independent judgment about the settlement. See Purofied Down Prods., 150 B.R. at 523; In re Energy Co-op., Inc., 886 F.2d 921, 924-25 (7th Cir. 1989). In doing so, the court is permitted to rely upon “opinions of the trustee, the parties, and their attorneys.” International Distribution Centers, 103 B.R. at 423.

The Hawaii Settlement Agreement is Fair and Equitable

16. The Hawaii Settlement Agreement represents a significant recovery of \$15 million dollars for Qualified Claimants. The Hawaii Settlement Agreement has been negotiated by Plaintiffs' counsel, who have vast experience with asbestos-related litigation. Plaintiffs' counsel have completed an extensive investigation into the claims asserted in the Lawsuits. They have concluded that there is no guarantee that the Lawsuits would be successful as against Travelers. First, there is a risk that the Plaintiffs could litigate the Lawsuits and lose on the merits, receiving no recovery both because of the facts of the various cases and challenges to the legal theories underlying the cases that are presently pending. At the least, any litigation of these claims will be long, risky and very expensive. Absent a settlement there is a risk that the Plaintiffs would be prohibited from proceeding on the merits of the Lawsuits by an order of this Court prohibiting suits against Travelers arising out of the Debtors' bankruptcy, and would thus recover nothing. As a result, based upon the number of claims asserted in the Lawsuits, the risks inherent in a litigation of this type, and in light of the large amount of the Hawaii Direct Action Settlement Fund, Plaintiffs' counsel believes that the Hawaii Settlement Agreement is fair and equitable.

17. The Debtors will also benefit from the Hawaii Settlement Agreement. All claims asserted in the Lawsuits against Travelers will be satisfied from the Hawaii Direct Action Settlement Fund rather than from funds held by the Manville Trust. In addition, as noted above, Qualified Claimants will receive additional funds related to their asbestos-related personal injuries and/or wrongful-death claims over and above what they would receive from the Manville Trust proceeds alone.

Notice

18. The notice of this Motion has been provided to: (i) Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, Attention: Andrew T. Frankel, Esq., Attorneys for Travelers, (ii) Caplin & Drysdale, Chartered, 399 Park Avenue, 27th

Floor, New York, New York 10022-4614, Attention: Elihu Inselbuch, Esq., Attorneys for the Beneficiaries of the Manville Personal Injury Settlement Trust; (iii) Manville Personal Injury Settlement Trust, 3110 Fairview Park Drive, Suite 200, P.O. Box 12003, Falls Church, Virginia 22042-0683, Attention: David T. Austern, Esq.; (iv) Davis, Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attention L. Gordon Harriss, Esq.; (v) Motley, Rice LLC, 28 Bridgeside Blvd., P.O. Box 1792, Mt. Pleasant, S.C. 29465, Attention: Joseph F. Rice, Esq., Coordinating Counsel for Certain Statutory Direct Action Claimants; (vi) Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064, Attention: Leslie Fagen, Esq.; (vii) Johns-Manville Corporation, P.O. Box 5108, Denver, Colorado 80202, Attention: Dion Persson, Esq.; (viii) Shea & Gardner, 1800 Massachusetts Avenue, N.W., Suite 1800, Washington, DC 20036, Attention: John Aldcock, Esq.; (ix) Becker, Glynn, Melamed & Muffly LLP, 299 Park Avenue, 16th Floor, New York, New York 10171, Attention: Lani Adler, Esq.; (x) Legal Analysis Systems, 970 Calle Arroyo, Thousand Oaks, California 91360, Attention: Mark A. Peterson, Esq.; (xi) Pepper Hamilton LLP, 3300 Two Logan Square, Eighteenth & Arch Streets, Philadelphia, Pennsylvania 19103, Attention: Francis J. Lawall, Esq.; (xii) Crowell & Moring LLP, 1001 Pennsylvania Avenue NW, Washington, DC 20004, Attention: Andrew H. Marks, Esq.; (xiii) Steptoe & Johnson LLP, 1330 Connecticut Avenue N.W., Washington, DC 20036 Attention: Harry Lee, Esq.; (xiv) Galiher, DeRobertis, Nakamura, Ono, Takitani, 610 Ward Avenue, Suite 200, Honolulu, HI 96814-3308, Attn: Gary O. Galiher, Esq.; and (xv) Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004.

No Filing of Brief

19. Plaintiffs' counsel will file a separate memorandum of law on or before June 7, 2004.

No Prior Request

20. No prior request for the relief sought in this Application has been made to this or any other court.

WHEREFORE, the Plaintiffs request entry of an Order approving the Hawaii Settlement Agreement, and granting such other and further relief as is just and proper.

Dated: New York, New York
May 28, 2004

FRIED, FRANK, HARRIS, SHRIVER
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