

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
JOHNS-MANVILLE CORPORATION,	:	
<u>et al.</u> ,	:	Case Nos. 82 B 11656,
	:	82 B 11657, 82 B 11660,
	:	82 B 11661, 82 B 11665 through
Debtors.	:	82 B 11673 inclusive,
	:	82 B 11675, 82 B 11676 (BRL)
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**SCHEDULING ORDER (A) ESTABLISHING (I) HEARING ON MOTION TO APPROVE SETTLEMENT OF HAWAII DIRECT ACTION CLAIMS, AND (II) CERTAIN RELATED PROCEDURES, AND (B) APPROVING FORM AND MANNER OF THE RELATED NOTICES**

WHEREAS, The Travelers Indemnity Company, Travelers Casualty and Surety Company (formerly The Aetna Casualty and Surety Company) and Travelers Property Casualty Corp., on their behalf and on behalf of their present and former affiliates (collectively, “Travelers”) and counsel for the Hawaii direct action plaintiffs (“Hawaii Direct Action Settlement Counsel”) negotiated a definitive settlement and executed a Settlement Agreement on May 22, 2004.

WHEREAS, Travelers and the Hawaii Direct Action Settlement Counsel will be filing a motion pursuant to Section 105(a) of Title 11, United States Code the (the “Bankruptcy Code”) to approve the Hawaii Direct Action Settlement and for entry of an order clarifying the scope of the Insurance Settlement Order and Confirmation Order (the “Clarifying Order”) and approval of a related settlement (collectively, the “Hawaii Settlement Motion”).

WHEREAS, the Hawaii Settlement Motion relates to the rights of persons or entities to assert claims under the statutes, laws or regulations of the state of Hawaii arising from or related to alleged acts or omissions of Travelers in the handling, defense, trial, appeal or settlement of

asbestos-related personal injury or wrongful death claims as described more fully in the Hawaii Settlement Motion (“Affected Claimants”), which claims Travelers contends have been permanently enjoined by this Court’s Confirmation Order including the Insurance Settlement Order and Channeling Injunction contained therein.

WHEREAS, the Court intends to hold a hearing (“Hearing”) on the Hawaii Settlement Motion, which hearing is scheduled to be held before the Honorable Burton R. Lifland, United States Bankruptcy Judge, in Courtroom 623 in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408, on July 6, 2004 at 10:00 a.m.

WHEREAS, the parties propose to provide notice of the Hawaii Settlement Motion, the Hearing and related deadlines and procedures for filing objections thereto to all counsel for persons who have or had one or more asbestos personal injury or wrongful death claim(s) pending in Hawaii prior to May 22, 2004, and such person Resolved (as that claim is defined in the Hawaii Settlement Agreement) one or more asbestos personal injury / wrongful death claim(s) against Combustion Engineering (“CE”) prior to February 17, 2003 according to information contained in (a) the records on file with Connecticut Valley Claim Services Company (“CVCSC”), (b) the dockets of the state and federal courts in Hawaii, and (c) the records on file with the Claims Resolution Management Corporation (“CRMC”), in the form attached hereto as Exhibit A (“Claimants’ Counsel Notice”).

WHEREAS, the parties propose to publish the notice attached hereto as Exhibit B (“General Notice”) in the publications listed on Exhibit C (“Publications”) and mail the General Notice to any Affected Claimants on whose behalf a certification, as described in paragraphs 12 through 14, has not been filed by Affected Claimants’ counsel.

NOW THEREFORE, upon the request of the parties, pursuant to ¶ 28 of this Court's Confirmation Order, Sections 105, 1141(a) and 1142(a) of the Bankruptcy Code, for an order (the "Scheduling Order") (i) establishing a hearing on the Hawaii Settlement Motion, (ii) establishing procedures and deadlines concerning the foregoing hearing, and (iii) approving the form and manner of notices relating thereto; and the Court, having obtained recommendations from the Mediator; and upon the record of these cases; and after due deliberation thereon; and good and sufficient cause appearing therefore; IT IS HEREBY:

FOUND THAT:

A. As set forth in the declaration of John Dickhoff dated May 26, 2004, and attached hereto as Exhibit F, the CVCSC data may be used to determine individuals who resolved one or more asbestos personal injury / wrongful death claim(s) against Combustion Engineering in Hawaii prior to February 17, 2003. The CVCSC database as supplemented with data maintained by the Hawaii court dockets and CRMC data provides the best and most comprehensive means of identifying all Affected Claimants. Notice to the Affected Claimants as identified by the CVCSC database, the Hawaii court dockets, the CRMC database and the publication notices described herein, constitute good and sufficient notice of the hearing of the Hawaii Settlement Motion subject to paragraphs 11 through 19 below.

B. The General Notice is approved pursuant to Bankruptcy Rule 2002(l) regarding the hearing on the Hawaii Settlement Motion and related deadlines and procedures for filing objections thereto; and it therefore:

ORDERED THAT:

1. This Scheduling Order shall govern the following notice and scheduling procedures relating to the Hearing.

### **HEARING SCHEDULE**

#### **A. Pretrial Conference**

2. A pretrial conference addressing the Hearing, to the extent necessary, will be held on June 30, 2004 at 10:00 a.m.

#### **B. Hearing on the Hawaii Settlement Motion**

3. Subject to paragraph 15 below, the Hearing on the Hawaii Settlement Motion and related matters will take place on July 6, 2004 commencing at 10:00 a.m., in Courtroom 623 at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408. The Hearing is scheduled for one day.

4. At the parties' request, the Court will endeavor to rule on the Hawaii Settlement Motion within 45 days of the close of all evidence and argument or submission of objections, whichever is later, concerning that Motion.

### **BRIEFING AND HEARING PROCEDURES**

#### **A. Form and Manner of Service**

5. All briefs and written submissions in connection with the Hawaii Settlement Motion shall be filed with the Court electronically, with a hard-copy delivered directly to Chambers *by hand*, in accordance with General Order M-242 (General Order M-242 and the User's Manual for the Electronic Case Filing System, which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), the official website for the United States Bankruptcy Court for the Southern District of New York), by registered users of the Court's case filing system and, by all

other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), Wordperfect or any other Windows-based word processing format.

6. In addition to filing all briefs and written submissions in connection with the Hawaii Settlement Motion with the Court, such submissions shall be served in accordance with General Order M-242 upon: (i) Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, Attention: Andrew T. Frankel, Esq. (Facsimile: 212-455-2502), Attorneys for Travelers, (ii) Caplin & Drysdale, Chartered, 399 Park Avenue, 27th Floor, New York, New York 10022-4614, Attention: Elihu Inselbuch, Esq. (Facsimile: 212-644-6755), 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. (Facsimile: 703-205-6249); (iv) Davis, Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017. Attention L. Gordon Harriss, Esq. (Facsimile 212-450-3172) (v) Motley, Rice LLC, 28 Bridgeside Blvd., P.O. Box 1792, Mt. Pleasant, S.C. 29465, Attention: Joseph F. Rice, Esq. (Facsimile 843-216-9450), 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, 16<sup>th</sup> 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) Fried Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004, Attention: Matthew Gluck, Esq.; (xiii) Crowell & Moring LLP, 1001 Pennsylvania Avenue NW, Washington, DC 20004, Attention: Andrew H. Marks, Esq. (Facsimile 202-628-5116); (xiv) Steptoe & Johnson LLP, 1330 Connecticut Avenue N.W., Washington, DC 20036, Attention: Harry Lee, Esq. (Facsimile 202-429-3902); (xv) Galiher DeRobertis Nakamura Ono Takitani, 610 Ward Avenue, Suite 200, Honolulu, HI 96814, Attention: Gary O. Galiher, Esq. (Facsimile 808-591-2608) and (xvi) Office of the United States Trustee, 33 Whitehall Street, 21<sup>st</sup> Floor, New York, New York 10004.

7. The following schedule of dates and deadlines is hereby established for the above-captioned Chapter 11 cases. Only those objections that are timely filed, served and received will be considered by the Court at the Hearing and no person shall be heard who has not filed a timely appearance in accordance with the following schedule.

**B. Briefing on the Hawaii Settlement Motion**

8. Travelers and Hawaii Settlement Counsel shall file Motions to approve the Hawaii Settlement with the Court on or before June 7, 2004. Memoranda in support, if any, and any witness and exhibit lists shall be filed and served by June 7, 2004.

9. Except as may be extended by paragraph 15, any person wishing to appear, oppose or otherwise object to the Hawaii Settlement Motion or the relief sought therein shall file an appearance or appearances and set forth such opposition or objection in a writing describing the basis therefor, which shall be filed on or before June 28, 2004. Objecting parties who intend to offer testimony or present evidence at the Hearing shall identify in their objections any fact or expert witnesses they intend to call, and any exhibits they intend to offer.

10. Reply briefs, if any, shall be filed and served by July 2, 2004.

**APPROVAL OF FORM AND MANNER OF NOTICES AND NOTICE DEADLINES**

11. CVCSC, along with CRMC, shall provide from its databases to Hawaii Direct Action Settlement Counsel and their representatives, for a reasonable agreed upon fee and as soon as practicable, a listing of all Affected Claimants, together with the names of such Affected Claimants' counsel, as well as any other information in the possession, custody or control of CVCSC and CRMC that would facilitate identification of Affected Claimants.

12. Hawaii Direct Action Settlement Counsel are directed to cause the Claimants' Counsel Notice, together with a copy of this Order, to be sent, by overnight delivery, on or before June 7, 2004 to all Affected Claimants counsel. Hawaii Direct Action Settlement Counsel shall provide counsel for Travelers with a list of the Affected Claimants counsel to whom they have caused the Claimants' Counsel Notice to be sent. Affected Claimants counsel shall also be provided with a list of the names, prepared by CVCSC of each Affected Claimant that that firm represented in connection with a claim filed against CE. Such counsel shall also be provided with a certification, substantially in the form attached hereto as Exhibit D, by which counsel will verify that such counsel currently represents each Affected Claimant or is authorized to accept notice on each such Affected Claimant's behalf.

13. The certification shall request that by June 10, 2004, Affected Claimants' counsel receiving such notices return to CVCSC executed certifications described above. CVCSC shall provide copies of the executed certifications received to counsel for Travelers and Hawaii Direct Action Settlement Counsel.

14. CVCSC shall provide to Hawaii Direct Action Settlement Counsel the last known mailing address of each person on whose behalf a certification has not been received by June 10, 2004. Hawaii Direct Action Settlement Counsel shall cause to be mailed the General Notice via

First Class Mail to each such last known address, along with a cover letter substantially in the form attached as Exhibit E, no later than June 14, 2004.

15. At the June 30, 2004 pretrial conference or such other time as the Court may direct, the Court will determine the extent to which the record will be maintained open after the July 6, 2004 hearing date, whether to adjourn the hearing date or schedule an additional hearing date, depending upon the law firm certification responses and the extent to which the Affected Claimants have been afforded an adequate opportunity to be heard.

16. The General Notice shall also be published on or before June 13, 2004 in each of the Publications.

17. Travelers and Hawaii Direct Action Settlement Counsel and their representatives are permitted to take such other and further steps deemed appropriate to notify Affected Claimants of the Hawaii Settlement Motion and related deadlines and procedures for filing objections thereto.

18. Hawaii Direct Action Settlement Counsel and their representatives are permitted to communicate the details of the Settlement with any individual who contacts them to inquire about the Settlement.

19. The notices described herein, including the Claimants' Counsel Notice and General Notice, and notice procedures provided for herein as respects the Hawaii Settlement Motion are hereby conditionally approved as good, sufficient and effective notice. Such notices shall be deemed to satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the Southern District of New York with respect thereto.

**MISCELLANEOUS**

20. Nothing herein shall be deemed to be a determination with respect to the Enforcement Motion or the Clarifying Order and Hawaii Settlement Motion.

21. No party in interest shall be precluded from making any application to the Court to supplement the terms of this Scheduling Order or to seek any ancillary or related relief.

22. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall take effect immediately upon its entry.

Dated: New York, New York

June 3, 2004

/s/ Burton R. Lifland  
Hon. Burton R. Lifland  
UNITED STATES BANKRUPTCY JUDGE