

1 ALAN PEDLAR (Cal. Bar No. 72216),  
2 STUTMAN, TREISTER & GLATT  
3 PROFESSIONAL CORPORATION  
4 1901 Avenue of the Stars, 12<sup>th</sup> Floor  
5 Los Angeles, California 90067  
Telephone: (310) 228-5600  
Facsimile: (310) 228-5788  
Reorganization Counsel for DEBTORS AND  
DEBTORS IN POSSESSION

JAMES PENROD, Cal. Bar No. 43030  
MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Street Tower  
San Francisco, CA 94105  
Telephone: (415) 442-1000  
Facsimile: (415) 442-1010  
Special Counsel for DEBTORS AND  
DEBTORS IN POSSESSION

6 FREDERICK D. HOLDEN, JR. (Cal. Bar No. 61526),  
7 ORRICK, HERRINGTON & SUTCLIFFE LLP  
8 Old Federal Reserve Bank Building  
9 400 Sansome Street  
10 San Francisco, CA 94111  
11 Telephone: (415) 392-1122  
Facsimile: (415) 773-5759  
Special Counsel for  
DEBTORS AND DEBTORS IN POSSESSION  
WESTERN MACARTHUR CO. AND MAC  
ARTHUR CO.

GARY S. FERGUS (Cal. Bar No.  
095318),  
FERGUS, a law firm  
595 Market Street, Suite 2430  
San Francisco, California 94115  
Telephone: (415) 537-9032  
Facsimile: (415) 537-9038  
Counsel to the FUTURES  
REPRESENTATIVE

12 MICHAEL H. AHRENS (Cal. Bar No. 44766),  
13 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
14 A Limited Liability Partnership  
15 Including Professional Corporations  
16 Four Embarcadero Center, 17th Floor  
17 San Francisco, California 94111  
18 Telephone: (415) 434-9100  
19 Facsimile: (415) 434-3947  
20 Counsel for the OFFICIAL UNSECURED  
21 CREDITORS' COMMITTEE

PETER VAN N. LOCKWOOD  
(D.C. BAR NO. 086447),  
(Admitted Pro Hac Vice)  
CAPLIN & DRYSDALE, CHARTERED  
One Thomas Circle, N.W.  
Washington, D.C. 20005  
Telephone: (202) 862-5000  
Facsimile: (202) 429-3301  
Counsel for the OFFICIAL UNSECURED  
CREDITORS' COMMITTEE

22 UNITED STATES BANKRUPTCY COURT

23 NORTHERN DISTRICT OF CALIFORNIA

24 Oakland Division

25 In re:

26 WESTERN ASBESTOS COMPANY,  
27 WESTERN Mac ARTHUR CO. and  
28 Mac ARTHUR CO.,

Debtors.

) Case No. 02-46284 T to 02-46286 T

) Jointly Administered Under Case No. 02-46284T

) CHAPTER 11

) NOTICE OF ENTRY OF:

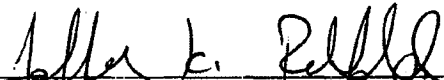
) ORDER UNDER FED.R.BANKR.P. 9019  
) APPROVING COMPROMISES WITH  
) SETTLING INSURERS

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**PLEASE TAKE NOTICE** that on April 14, 2004, the Bankruptcy Court entered on its docket that certain *Order Under Fed.R.Bankr.P. 9019 Approving Compromises With Settling Insurers*, a copy of which order is attached hereto as Exhibit A.

Dated: April 14, 2004

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: 

Michael H. Atkins (Calif. Bar No. 44766)  
Jeffrey K. Rehfeld (Calif. Bar No. 188128)  
Four Embarcadero Center, 17th Floor  
San Francisco, California 94111  
Telephone: (415) 434-9100  
Facsimile: (415) 434-3947

Counsel for the Official Unsecured Creditors'  
Committee

# **EXHIBIT A**

1 ALAN PEDLAR, Cal. Bar No. 72216  
2 STUTMAN, TREISTER & GLATT, P.C.  
3 1901 Avenue of the Stars, 12<sup>th</sup> Floor  
4 Los Angeles, CA 90067  
5 Telephone: (310) 228-5600  
6 Facsimile: (310) 228-5788  
7 Reorganization Counsel for  
8 DEBTORS AND DEBTORS IN POSSESSION

9 FREDERICK D. HOLDEN, JR., Cal Bar No. 61526  
10 ORRICK, HERRINGTON & SUTCLIFFE LLP  
11 Old Federal Reserve Bank Building  
12 400 Sansome Street  
13 San Francisco, CA 94111  
14 Telephone: (415) 392-1122  
15 Facsimile: (415) 773-5759  
16 Special Counsel for Debtors WESTERN  
17 MACARTHUR CO. AND MAC ARTHUR CO.

18 MICHAEL H. AHRENS, Cal. Bar No. 44766  
19 SHEPPARD, MULLIN, RICHTER & HAMPTON  
20 LLP  
21 A Limited Liability Partnership  
22 Including Professional Corporations  
23 Four Embarcadero Center, 17<sup>th</sup> Floor  
24 San Francisco, CA 94111  
25 Telephone: (415) 434-9100  
26 Facsimile: (415) 434-3947  
27 Counsel for the OFFICIAL UNSECURED  
28 CREDITORS' COMMITTEE

JAMES PENROD, Cal. Bar No. 43030  
MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Street Tower  
San Francisco, CA 94105  
Telephone: (415) 442-1000  
Facsimile: (415) 442-1010  
Special Counsel for DEBTORS AND  
DEBTORS IN POSSESSION

GARY S. FERGUS,  
Cal. Bar No. 095318  
FERGUS, a law firm  
595 Market Street, Suite 2430  
San Francisco, CA 94115  
Telephone: (415) 537-9032  
Facsimile: (415) 537-9038  
Counsel to the FUTURES  
REPRESENTATIVE

PETER VAN N. LOCKWOOD,  
D.C. BAR NO. 086447  
Admitted Pro Hac Vice  
CAPLIN & DRYSDALE  
One Thomas Circle, NW  
Washington, DC 20005  
Telephone: (202) 862-5000  
Facsimile: (202) 429-3301  
Counsel for the OFFICIAL  
UNSECURED CREDITORS'  
COMMITTEE

**ORIGINAL FILED**

**APR 14 2004**

U.S. BANKRUPTCY COURT  
OAKLAND, CALIFORNIA

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

20 In re  
21 WESTERN ASBESTOS COMPANY,  
22 WESTERN MACARTHUR CO., and  
23 MAC ARTHUR CO.,

24 Debtor.

Case Nos. 02-46284 T to 02-46286 T  
Jointly Administered Under No. 02-46284 T  
CHAPTER 11

**ORDER UNDER FED.R.BANKR.P. 9019  
APPROVING COMPROMISES WITH  
SETTLING INSURERS**

Date: April 14, 2004  
Time: 9:00 a.m.  
Judge: Honorable Leslie Tchaikovsky  
Place: Courtroom 201

EXHIBIT A

1            On April 14, 2004, a hearing was held in the above-captioned case before the  
2 undersigned United States Bankruptcy Judge upon the "Plan Proponents' Notice of Motion and  
3 Motion to Approve Settlement Agreements with Objecting Insurers pursuant to Federal Rule of  
4 Bankruptcy Procedure 9019(b) and to Approve Certain Related Relief" (the "Settlement Motion").  
5 The Settlement Motion was filed by Western Asbestos Company, Western MacArthur Co., and  
6 MacArthur Co., the debtors and debtors in possession in the above-captioned Chapter 11 cases  
7 (collectively the "Debtors"), the Official Unsecured Creditors' Committee appointed in the above-  
8 captioned cases (the "Committee"), and the Honorable Charles B. Renfrew, appointed by the  
9 Bankruptcy Court to represent the interests of future asbestos claimants in the above-captioned  
10 cases (the "Futures Representative"). The Debtors, the Committee and the Futures Representative  
11 are collectively referred to as the "Proponents." The Settlement Motion sought approval of  
12 comprehensive settlements (the "Insurer Settlements") on the terms and conditions set forth in the  
13 Settlement Motion with U.S. Fire Insurance Company ("U.S. Fire"); General Accident Insurance  
14 Company of America, now known as OneBeacon Insurance Company ("General Accident" or  
15 "GA"); Interstate Fire & Casualty Co. ("Interstate Fire"); Argonaut Insurance Co. ("Argonaut");  
16 and Allianz Insurance Company ("Allianz") (collectively, the "Settling Insurers") pursuant to Rule  
17 9019 of the Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule"), together with a  
18 determination that, upon consummation of each Settling Insurer's respective Insurer Settlement,  
19 such Settling Insurer shall be deemed a "Settling Asbestos Insurance Companies" under the Plan,<sup>1</sup>  
20 and that the granting of the injunctions under Bankruptcy Code section 524(g) in favor of Settling  
21 Asbestos Insurance Companies as provided for in the Confirmation Order for each such Settling  
22 Insurer is fair and equitable.

23  
24  
25  
26  
27 <sup>1</sup> Capitalized terms utilized but not defined herein shall have the meanings ascribed to them  
28 in the "Second Amended Joint Plan Of Reorganization" filed November 18, 2003 (the  
"Plan")

1           Upon review and consideration of the Settlement Motion, the declarations and  
2 other pleadings filed in support thereof, any testimony offered at the hearing, and having  
3 considered the arguments of counsel at the hearing, and good cause appearing therefor,  
4

5           IT IS HEREBY FOUND, CONCLUDED AND DECLARED THAT:  
6

7           A.     Due and proper notice of the Settlement Motion has been given; and there is good  
8 and sufficient cause for the relief sought in the Settlement Motion.  
9

10          B.     The Debtors and other Proponents have exercised sound business judgment in  
11 deciding to enter into the Insurer Settlements.  
12

13          C.     The Parties to the Insurer Settlements negotiated at arm's length, in good faith, and  
14 without collusion, and the terms of the Insurer Settlements are fair, just and reasonable. Each of  
15 the Settling Insurers is in "good faith" as such term is utilized under Bankruptcy Code section  
16 363(m).  
17

18          D.     In evaluating the Insurer Settlements, the Court has applied the standards set forth  
19 in Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S.  
20 414, 88 S.Ct. 1157 (1968), and considered "(a) the probability of success in the litigation; (b) the  
21 difficulties, if any, to be encountered in the matter of collection; (c) the complexity the litigation  
22 involves, and the expense, inconvenience and delay necessarily attending it; [and] (d) the  
23 paramount interest of creditors and a proper deference to any reasonable views in the premises."  
24 Fireman's Fund Ins. Co. v. Woodson (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).  
25

26          E.     The Insurer Settlements were negotiated in good faith and are reasonable, fair, and  
27 equitable, and in the best interests of the Debtors' estates, and the Proponents should be authorized  
28 to enter into the Insurer Settlements. Specifically, the Court finds that:

1 (1) There exist disputes between the Proponents and the Settling Insurers<sup>2</sup>  
2 regarding the extent and nature of the coverage obligations of the Settling Insurers to the Debtors  
3 and holders of Asbestos Related Claims (the "Coverage Disputes").  
4

5 (2) Settling Insurers assert a vast array of legal and factual defenses in  
6 connection with the Coverage Disputes, several of which present threshold issues of law, which, if  
7 resolved adversely to the Debtors, could result in no recovery from the Settling Insurers.  
8

9 (3) Settling Insurers dispute numerous factual issues in connection with the  
10 Coverage Disputes, many of which, if resolved adversely to the Debtors, would result in no  
11 recovery from a Settling Insurer or significantly reduce the amount of any such recovery.  
12

13 (4) The parties entered into the Insurer Settlements during the appeal of the  
14 "Order Confirming Second Amended Joint Plan Of Reorganization and Granting Related Relief,"  
15 entered January 28, 2004 (the "Confirmation Order"), and the approval of the Insurer Settlements  
16 will result in the withdrawal of all appeals by the Settling Insurers, thereby allowing the  
17 Confirmation Order to be affirmed by the District Court, which, in turn, will advance the earliest  
18 date that the Effective Date of the Plan can occur.  
19

20 (5) The Insurer Settlements fairly take into account the probability of success in  
21 the Coverage Disputes, the pending appeals, and these bankruptcy cases.  
22

23 (6) The Debtors were represented in connection with the Coverage Disputes by  
24 counsel with vast experience in the legal issues presented by the Coverage Disputes. Certain  
25 holders of Asbestos Related Claims were also represented by counsel with vast experience in the  
26

27 <sup>2</sup> The Debtors do not assert coverage obligations against General Accident; however,  
28 coverage obligations are asserted against General Accident by the holders of Asbestos  
Related Claims and the Futures Representative.

1 legal issues presented by the Coverage Disputes. It was in the interests of the Proponents to  
2 maximize recovery from the Settling Insurers. The Settling Insurers were also represented by  
3 knowledgeable counsel, and each of the Settling Insurers had an interest in minimizing the amount  
4 it paid in settlement. As a result, the Insurer Settlements represent arms-length compromises of  
5 the type favored by bankruptcy law.

6  
7 (7) The Coverage Disputes are enormously complex and certain aspects of  
8 these disputes have been the subject of expert testimony during the hearing on confirmation of the  
9 Plan.

10  
11 (8) The Insurer Settlements provide that if certain conditions precedent are  
12 satisfied, including Court approval of the Insurer Settlements, the Settling Insurers will contribute  
13 approximately \$75 million to resolve Asbestos Related Claims. This settlement will increase the  
14 initial distribution to creditors to an amount in excess of 30 percent.

15  
16 (9) The Insurer Settlements fairly take into account the complexity of the  
17 Coverage Disputes, and the expense, inconvenience, and delay necessarily attending litigating  
18 them.

19  
20 (10) In contrast to accepting the Insurer Settlements, an attempt to pursue the  
21 Coverage Disputes, even without regard to the risk of loss, would delay the final resolution of this  
22 matter for many years by the requirements of trial, appeals and possible retrials. Settling Insurers'  
23 continued efforts to appeal the Confirmation Order could also delay the Plan's Effective Date to  
24 the detriment of creditors.

25  
26 (11) The Insurer Settlements fairly take into account the difficulties that could be  
27 encountered in the matter of collection.

28



1           (12) The paramount interest of creditors, as evidenced by the support of the  
2 Insurer Settlements by the Committee and the Futures Representative, supports approval of the  
3 Insurers' Settlements.

4  
5           F. A reasonable opportunity to object or be heard with respect to the Settlement  
6 Motion and relief requested therein has been afforded. Actual notice of the Settlement Motion  
7 was provided to the Committee, the Futures Representative, the Settling Insurers and other  
8 insurers, and all parties who have filed a notice of appearance or request for service of papers in  
9 these bankruptcy cases. The revised "Term Sheet" presented to the Court at the time of the  
10 hearing on the Settlement Motion with respect to the settlement with General Accident, Interstate,  
11 U.S. Fire and Allianz does not differ materially from the term sheet annexed to the Motion;  
12 accordingly, no further notice of the terms of the proposed Insurer Settlements is required, and all  
13 references herein to the Insurer Settlement shall include references to the Term Sheet, as revised.

14  
15           G. The relief requested in the Settlement Motion is in the best interests of the Debtors,  
16 their estates, their creditors, and the rest of the Proponents.

17  
18           H. Good cause exists to waive any automatic stay period, including, without  
19 limitation, the 10-day stay period provided for under Fed.R.Bankr.P. 6004(g), in that the Insurer  
20 Settlements resolve all objections to Plan confirmation by those with pending appeals of the  
21 Confirmation Order and the parties will seek to obtain prompt dismissals of the appeals in the  
22 District Court and a District Court Order affirming this Court's Confirmation Order, thereby  
23 potentially allowing the Insurer Settlements to close before the possible vote on potential  
24 legislation which will alter the status quo.

25  
26           It is therefore ORDERED, ADJUDGED AND DECREED THAT:  
27  
28

1           1.     The Settlement Motion is GRANTED. The Proponents are hereby authorized to  
2 enter into the Insurer Settlements, and take all necessary action to effectuate such agreements;  
3 provided, however, that nothing provided for hereby shall require the Proponents to execute the  
4 Insurer Settlements, or binding term sheets in respect thereto, until they are satisfied with all terms  
5 and conditions thereof, as documented.

6  
7           2.     The Trust to be formed under the Plan, and its Trustees, shall be bound by all terms  
8 of the Insurer Settlements, when executed, and by the provisions of this Order and the  
9 Confirmation Order.

10  
11          3.     The Debtors, the Committee, the Futures Representative and, with respect to  
12 Debtors, their respective officers, employees and agents, are hereby authorized to execute such  
13 documents and do such acts as are necessary or desirable to carry out the transactions  
14 contemplated by the Insurer Settlements. Without in any way limiting the foregoing, the condition  
15 in the settlement among Proponents, on the one hand, and U.S. Fire, General Accident, Interstate  
16 and Allianz, on the other hand, that USF&G and Hartford agree that they shall each fund the Trust  
17 by April 19, 2004 is waiveable by the written agreement of all Proponents to waive such  
18 condition.

19  
20          4.     This Court shall retain jurisdiction to enforce this Order and to decide any disputes  
21 arising between or among the Debtors, the Settling Insurers, the Committee, the Futures  
22 Representative and the Asbestos Plaintiffs' Firms arising out of or related to this Order, the Insurer  
23 Settlements, and the transactions contemplated by the Insurer Settlements.

24  
25          5.     The Court authorizes and approves the establishment of the escrow fund pursuant  
26 to the terms of the Insurer Settlements as a "qualified settlement fund" pursuant to Section 468B of  
27 the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated  
28 thereunder and retains continuing jurisdiction over such escrow fund.

1           6.       The Settling Insurers are "Asbestos Insurance Companies" under the Plan. The  
2 Insurer Settlements are Asbestos Insurance Settlement Agreements within the meaning of the  
3 Plan. Upon consummation of their respective settlements, each Settling Insurers shall be a  
4 "Settling Asbestos Insurance Company" under the Plan and entitled to the benefits of the  
5 Channeling Injunction and the Supplemental Injunction contained in the Confirmation Order.

6  
7           7.       As a result of the approval of the Insurer Settlements, and the fact the Trust and its  
8 Trustees are bound thereby, following consummation of each Insurer Settlement, (a) the Trust has  
9 the authority to grant releases under Paragraph 3.2(d) of the Plan and Paragraphs 32-35 of the  
10 Confirmation Order, and upon the Effective Date of the Plan shall be deemed to have granted such  
11 releases to the same extent as the Debtors under the Insurer Settlements, (b) neither the Trust nor  
12 the Trustees shall grant their permission to, or permit, any Entity to take any action against a  
13 Settling Insurer for the purpose of enforcing, collecting, or otherwise recovering on any Asbestos  
14 Related Claims under the provisions of Paragraph 34 of the Confirmation Order; (c) neither the  
15 Trust nor the Trustees shall assign any claim against a Settling Insurer under Paragraph 3.2(d) of  
16 the Plan, unless such assignment furthers the purpose of releasing the Insurers from all liability for  
17 Asbestos Related Claims; (d) neither the Trust nor the Trustees shall give their approval for the  
18 filing of any action against a Settling Insurer under the provisions of Paragraph 35(c); (e) the Trust  
19 and the Trustee shall be deemed to have released all direct action claims against the Settling  
20 Insurer as authorized by Paragraph 35(f) of the Confirmation Order and Paragraph 3.2(d) of the  
21 Plan, which Plan provision authorized the Trust and its Trustees to control and resolve any and all  
22 direct action claims against Asbestos Insurance Companies with respect to Asbestos Related  
23 Claims, whether or not assigned to the Trust; (f) neither the Trust nor the Trustees shall assign,  
24 pursuant to Paragraph 35(g) of the Confirmation Order, any direct action claims against a Settling  
25 Insurer; and (g) Paragraphs 35(c), (e), (f) and (g) shall not be used to permit any Entity to take any  
26 action against a Settling Insurer for the purpose of enforcing, collecting or otherwise recovering on  
27 any Asbestos Related Claim.

28

1           8.     The revised settlement establishing the Initial Payment Percentage at 31.5% is  
2 approved in all respects.

3  
4           9.     Any automatic stay period, including, without limitation, the 10-day stay period  
5 provided for under Fed.R.Bankr.P. 6004(g), is hereby waived.

6  
7 Dated: APR 14 2004  
8           April \_\_, 2004

LESLIE TCHAIKOVSKY

9  
10  
11 LESLIE J. TCHAIKOVSKY  
12 UNITED STATES BANKRUPTCY JUDGE

13 SUBMITTED BY:

14 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
15 Michael H. Ahrens (Calif. Bar No. 44766)  
16 Jeffrey K. Rehfeld (Calif. Bar No. 188128)  
17 Four Embarcadero Center, 17<sup>th</sup> Floor  
18 San Francisco, CA 94111  
19 Telephone: (415) 434-9100  
20 Facsimile: (415) 434-3947.  
21  
22 Counsel for the Official Unsecured Creditors' Committee  
23 and on behalf of Western Asbestos Company, Western  
24 Mac Arthur Co. and Mac Arthur Co. and the Futures  
25 Representative  
26  
27  
28