

1 ALAN PEDLAR (Cal. Bar No. 72216),
2 STUTMAN, TREISTER & GLATT
3 PROFESSIONAL CORPORATION
4 1901 Avenue of the Stars, 12th 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:

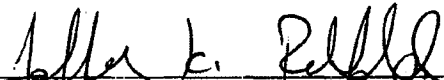
) ORDER UNDER FED.R.BANKR.P. 9019
) APPROVING COMPROMISES WITH
) SETTLING INSURERS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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, 12th 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, 17th 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.,

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,¹
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 ¹ 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 Insurers²
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 ² 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 LESLIE J. TCHAIKOVSKY
11 UNITED STATES BANKRUPTCY JUDGE

12 SUBMITTED BY:

13 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
14 Michael H. Ahrens (Calif. Bar No. 44766)
15 Jeffrey K. Rehfeld (Calif. Bar No. 188128)
16 Four Embarcadero Center, 17th Floor
San Francisco, CA 94111
Telephone: (415) 434-9100
Facsimile: (415) 434-3947.
Counsel for the Official Unsecured Creditors' Committee
and on behalf of Western Asbestos Company, Western
Mac Arthur Co. and Mac Arthur Co. and the Futures
Representative

19
20
21
22
23
24
25
26
27
28