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13 UNITED STATES BANKRUPTCY COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 In re
17 PLANT INSULATION COMPANY, a
18 California corporation,
19 Debtor.
20 Tax ID: 94-0292481

Case No. 09-31347
Chapter 11

**NOTICE OF ENTRY OF ORDER AND
RECONSIDERATION PROCEDURES
REGARDING:**

**ORDER (A) APPROVING SETTLEMENT
AGREEMENT WITH UNITED STATES
FIDELITY AND GUARANTY COMPANY,
(B) DESIGNATING UNITED STATES
FIDELITY AND GUARANTY COMPANY
AS A SETTLING ASBESTOS INSURER
UNDER THE PLAN, (C) APPROVING
THE SALE OF INSURANCE POLICIES
FREE AND CLEAR OF LIENS, CLAIMS,
AND INTERESTS, AND (D) APPROVING
RECONSIDERATION PROCEDURES**

1 **PLEASE TAKE NOTICE THAT** on August 27, 2014, *Plan Proponents' Motion*
2 *For Order (A) Approving Settlement Agreement With United States Fidelity And Guaranty*
3 *Company, (B) Designating United States Fidelity And Guaranty Company As A Settling Asbestos*
4 *Insurer Under The Plan, (C) Approving The Sale Of Insurance Policies Free And Clear Of Liens,*
5 *Claims, And Interests, And (D) Approving Reconsideration Procedures* (the "Motion") was filed
6 by Bayside Insulation & Construction, Inc., formerly known as Plant Insulation Company (the
7 "Debtor"), the Official Committee of Unsecured Creditors (the "Committee"), and the Court-
8 appointed representative of holders of future asbestos claims (the "Futures Representative," and
9 collectively with the Debtor and Committee, the "Plan Proponents") as Docket No. 2819 in the
10 above-captioned bankruptcy case.

11 **PLEASE TAKE FURTHER NOTICE THAT** a hearing was held on the Motion
12 on shortened time on August 29, 2014 at 9:00 a.m. in the courtroom of the Honorable Thomas E.
13 Carlson, United States Bankruptcy Judge for the Northern District of California, 235 Pine Street,
14 San Francisco, CA, 94104, Courtroom 23 (the "Bankruptcy Court").

15 **PLEASE TAKE FURTHER NOTICE THAT** on August 29, 2014, the
16 Bankruptcy Court issued and entered an Order granting the Motion subject to certain
17 reconsideration procedures set forth in paragraph 17 of said Order. A copy of this Order is
18 attached hereto as Exhibit A.

19 **PLEASE TAKE FURTHER NOTICE THAT** pursuant to the reconsideration
20 procedures set forth in paragraph 17 of the attached Order, any party in interest may seek
21 reconsideration of the Order by filing with the Bankruptcy Court and serving on the Plan
22 Proponents a motion for reconsideration and a supporting declaration as specified in
23 paragraph 17(c) of the Order, or a written joinder in such a motion filed by another party, by no
24 later than **September 19, 2014**.

25 **PLEASE TAKE FURTHER NOTICE THAT** if any such request for
26 reconsideration is timely made, a schedule for further briefing and a further hearing will be either
27 be agreed to by the parties or set by the Bankruptcy Court, as described in paragraph 17 of the
28 attached Order.

EXHIBIT A



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Signed and Filed: August 29, 2014

THOMAS E. CARLSON U.S. Bankruptcy Judge

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17 UNITED STATES BANKRUPTCY COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

19 In re
20 PLANT INSULATION COMPANY, a
21 California corporation,

22 Debtor.

23 Tax ID: 94-0292481

Case No. 09-31347
Chapter 11

**ORDER (A) APPROVING
SETTLEMENT AGREEMENT WITH
UNITED STATES FIDELITY AND
GUARANTY COMPANY,
(B) DESIGNATING UNITED STATES
FIDELITY AND GUARANTY
COMPANY AS A SETTLING
ASBESTOS INSURER UNDER THE
PLAN, AND (C) APPROVING THE
SALE OF INSURANCE POLICIES
FREE AND CLEAR OF LIENS,
CLAIMS, AND INTERESTS; AND
(D) APPROVING
RECONSIDERATION PROCEDURES**

1 This Court having considered *Plan Proponents' Motion For Order (A) Approving*
2 *Settlement Agreement With United States Fidelity and Guaranty Company, (B) Designating*
3 *United States Fidelity and Guaranty Company As A Settling Asbestos Insurer Under The Plan,*
4 *(C) Approving The Sale Of Insurance Policies Free And Clear Of Liens, Claims, And Interests,*
5 *and (D) Approving Reconsideration Procedures* (the "Motion"), filed by the Plan Proponents¹ on
6 August 27, 2014 at Docket No. 2819, all declarations and evidence submitted with respect to the
7 Motion, the terms of the Settlement Agreement filed in connection with the Motion (the
8 "Settlement Agreement") and the arguments of counsel at the hearing held on the Motion on
9 August 29, 2014, and good cause appearing therefor,

10 **THE COURT FINDS THAT:**

11 A. Given the specific procedures for subsequent objection set forth in this
12 Order (including, without limitation, paragraph 17 hereof), the Plan Proponents have properly
13 served notice of the Motion and the Motion in accordance with the order limiting notice and
14 applicable law. Due and adequate notice of the Reconsideration Procedures shall constitute due
15 and adequate notice of the Motion. Due and adequate notice of the Reconsideration Procedures
16 shall be deemed given following entry of this Settlement Approval Order as follows: (a) the Plan
17 Proponents shall serve a Notice of Entry of the Settlement Approval Order and of the
18 reconsideration procedures contained in this order by first-class mail or email on all parties
19 entitled to notice under the Order Limiting Notice (Docket No. 238), on the persons previously
20 served with the Settlement Motion, including each attorney who represents a member of the
21 Committee and on all asbestos claimants' Counsel that have filed a notice of appearance in the
22 Bankruptcy Case, and on persons that filed proofs of claim asserting Asbestos Related Claims, or
23 who submitted Plan ballots in connection with Asbestos Related Claims, either through counsel or
24 directly to unrepresented claimants; and, (b) USF&G (as defined in the Settlement Agreement)

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26 ¹ "Plan Proponents" shall mean, collectively, Bayside Insulation & Construction, Inc., formerly
27 known as Plant Insulation Company (the "Debtor"), the Official Committee of Unsecured
28 Creditors (the "Committee"), and the Court-appointed representative of holders of future asbestos
claims (the "Futures Representative").

1 (“USF&G”) may, at its election and expense, serve by email or by first-class mail the Notice of
2 Entry of the Settlement Approval Order and of the Reconsideration Procedures contained in this
3 Order on the Debtor’s co-defendants, through the counsel for such co-defendants as reasonably
4 ascertainable, in any cases pending in the tort system and/or publish notice of the Settlement
5 Approval Order and the Reconsideration Procedures.

6 B. Based on service of notice as provided in Finding A immediately above,
7 and on the establishment of procedures for reconsideration of this Order as provided in paragraph
8 17 below (the “Reconsideration Procedures”), and the Reconsideration Procedures set forth in this
9 Order, notice of the Motion is adequate, effective, and reasonable in light of all of the
10 circumstances, and provides all interested parties with an opportunity for hearing that is
11 appropriate under the circumstances.

12 C. The Settlement Agreement as described in the Motion was negotiated
13 extensively by the parties at arm’s length and in good faith. USF&G is a good faith purchaser of
14 the interests in its Policies (as defined in the Settlement Agreement) described in the Motion (the
15 “Policies”), and is entitled to the protections of Section 363(m) of the Bankruptcy Code.

16 D. In light of (a) the uncertainty of outcome in the pending litigation between
17 the Debtor and USF&G, (b) the complexity, expense, inconvenience, and delay of the litigation,
18 and (c) the paramount interests of creditors, with proper deference to their views, the Court finds
19 that the terms and conditions of the Settlement Agreement, and the consideration to be paid
20 thereunder, are fair, reasonable, and equitable, and each Plan Proponent’s execution of the
21 Settlement Agreement represents a sound exercise of their respective reasonable business
22 judgment.

23 E. The Court further finds, pursuant to, *inter alia*, Sections 1.105 and 10.3 of
24 the Plan,² that the contributions of USF&G to the Trust justify the designation of USF&G as a

25 ² The term Plan as used in this Order shall refer to that certain Amended and Restated Second
26 Amended Plan of Reorganization of Plant Insulation Company, filed on April 2, 2012 as Docket
27 No. 2069, as modified by modifications filed on November 20, 2013 as Docket No. 2636.
28 Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan and the
Motion.

1 Settling Asbestos Insurer (as defined in the Plan) and the issuance of the Settling Asbestos Insurer
2 Injunction (as defined in the Plan) in favor of USF&G, upon satisfaction of the conditions set forth
3 in the Settlement Agreement. USF&G is entitled to the benefit of the Settling Asbestos Insurer
4 Injunction under the terms of the Bankruptcy Code, including Bankruptcy Code Section 524(g)
5 based on having provided insurance to the Debtor and/or as an affiliate of such an insurer.

6 F. The Settlement with USF&G is in the best interests of the Debtor, the
7 Debtor's estate and the creditors.

8 G. The Motion was supported and joined by both the Committee and the
9 Futures Representative.

10 Based on the foregoing and the findings and conclusions stated orally in the record,
11 and good cause appearing therefor,

12 **IT IS HEREBY ORDERED, DECREED, AND ADJUDGED THAT:**

13 1. Notice of the Motion and of the hearing scheduled thereon is approved as proper
14 and adequate under the circumstances.

15 2. The Court has jurisdiction to consider the Motion and to grant the relief requested
16 therein pursuant to 28 U.S.C. Section 1334.

17 3. The requirements of Sections 363(b) and (f) of the Bankruptcy Code have been
18 satisfied with respect to the sale of the Policies to USF&G free and clear of all liens, Claims,
19 encumbrances and/or interests of any kind or nature whatsoever.

20 4. The Motion is granted pursuant to Sections 363(b), (f), and (m) of the Bankruptcy
21 Code and Rules 9019 and 6004 of the Federal Rules of Bankruptcy Procedure, and all objections
22 to the Motion are overruled.

23 5. The Debtor, the Committee, the Trust and the Futures Representative are
24 authorized to enter into the Settlement Agreement with USF&G, and the Settlement Agreement is
25 hereby approved as a fair, reasonable, and equitable compromise of controversy.

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1 6. The Settlement Agreement is binding upon the Debtor, the Committee, the Futures
2 Representative, the Debtor's estate, any trustee that might be appointed in the Debtor's bankruptcy
3 case, the Reorganized Debtor (as defined in the Plan), and the Trust.

4 7. Debtor is authorized to sell, convey, assign, transfer, and deliver the Policies to
5 USF&G, and USF&G is purchasing those Policies, free and clear of all Claims, liens,
6 encumbrances, and/or interests of any kind or nature whatsoever pursuant to Sections 363(b) and
7 (f) of the Bankruptcy Code.

8 8. The Court's determination that the amount of the settlement is acceptable for
9 purposes of Rule 9019 and Section 363(b) is not a determination that USF&G has exhausted its
10 payment obligations under its Policies for purposes of determining whether, or the extent to
11 which, any other insurer of the Debtor is obligated to defend or indemnify the Debtor against
12 asbestos suits, or a determination that the amount of the settlement consideration is sufficient or
13 adequate for purposes of any contribution, reimbursement, and/or indemnification claims that any
14 and all non-settling insurers of Debtor have, or may have, against USF&G (collectively, the
15 "Contribution Claims"), and may not be cited or relied upon as such. Subject to Paragraph 13 of
16 this Order, the right of the Debtor's non-settling insurers to assert that USF&G has not paid its fair
17 share of total past and unknown future defense and indemnity costs relative to the costs incurred
18 by Debtor's other insurers is reserved and not waived; *provided, however*, that in any action to
19 enforce any Contribution Claim against USF&G, USF&G (or any other person entitled under the
20 Plan to assert USF&G's defenses to Contribution Claims) may assert that USF&G has paid all, or
21 some portion, of the damages for which USF&G is sought to be held liable by reason of any
22 payments it has made under the Policies and the performance of its obligations under the
23 Settlement Agreement.

24 9. Pursuant to Section 363(f) of the Bankruptcy Code, effective upon the Settlement
25 Effective Date (as defined in the Settlement Agreement), but subject to the provisions of Section
26 VII of the Settlement Agreement, the sale of the Policies to USF&G will vest in USF&G, as
27 applicable, all right, title, and interest of the Debtor and Reorganized Debtor and the bankruptcy
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1 estate in such property, free and clear of all liens, Claims, encumbrances and/or interests against
2 the Debtor or Reorganized Debtor.

3 10. The Debtor and its officers, employees, and agents and the Trust are authorized to
4 execute the Settlement Agreement and any agreements, releases, consents, assignments, or other
5 related documents that are reasonably necessary or appropriate to effectuate the Settlement
6 Agreement and the sale of the Policies to USF&G, and to undertake such other actions as may be
7 reasonably necessary or appropriate to effectuate and consummate the Settlement Agreement and
8 the sale.

9 11. USF&G is approved as a buyer in good faith in accordance with Section 363(m) of
10 the Bankruptcy Code, and USF&G shall be entitled to all protections of Section 363(m) of the
11 Bankruptcy Code.

12 12. USF&G is hereby designated for all purposes as a Settling Asbestos Insurer (as
13 defined in the Plan) and shall be entitled to the benefits and protections of the Settling Asbestos
14 Insurer Injunction (as defined in the Plan) under the terms of the Bankruptcy Code, including
15 Sections 524(g) and 105(a) of the Bankruptcy Code, **provided, however**, that such designation
16 shall be subject to any relief that may be granted pursuant to a request for reconsideration brought
17 pursuant to the Reconsideration Procedures.

18 13. Nothing in this Order or the Settlement Agreement shall be deemed to limit or
19 affect the Plan or the Confirmation Order, except by designating USF&G as a Settling Asbestos
20 Insurer. Subject to the terms of the Plan and the Confirmation Order, no rights or defenses that
21 any Non-Settling Asbestos Insurer has or may have against USF&G under any theory of
22 contribution, reimbursement, subrogation and/or indemnification, including but not limited to
23 Contribution Claims, are or shall be deemed "interests" subject to sale, release or impairment for
24 purposes of this Order and Section 363 of the Bankruptcy Code. Notwithstanding anything in this
25 Order to the contrary, nothing in this Order and the Settlement Agreement itself (as contrasted
26 with the Plan and the Confirmation Order) will in any way, directly or indirectly, terminate,
27 enjoin, impair, alter, modify, release or limit any past, present or future potential or actual
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1 Contribution Claim that any insurer of the Debtor may have against USF&G, notwithstanding the
2 release of Claims against USF&G sought by the Motion.

3 14. This Order shall not affect any rights Debtor's insurers may have to contend, in
4 connection with a Contribution Claim, an objection to confirmation of any plan of reorganization,
5 any litigation regarding Plant's alleged insurance coverage, or otherwise, that use of any portion of
6 the Settlement Consideration for any purpose other than payment of Asbestos Related Claims is or
7 was improper, and all of the insurers' objections, claims, arguments or defenses based on such
8 contentions are preserved notwithstanding any other provision of this Order and the lack of any
9 objection by the insurers to the entry of this Order.

10 15. Notwithstanding anything else in this Order or the Settlement Agreement, to the
11 extent that the Policies include any site-specific policies (including, without limitation, any so-
12 called "wrap up" or "project" policy), then the relief granted hereunder with respect to such
13 policies shall pertain only to rights and interests of Debtor (as defined in the Settlement
14 Agreement) and persons asserting claims or demands against Debtor. Thus, the rights or interests
15 of any person other than Debtor and persons asserting claims or demands against Debtor with
16 respect to such policies shall not be affected. Nothing in the Settlement Agreement or this Order
17 shall affect the rights of Non-Settling Insurers to disclaim coverage for, or assert any other
18 defenses to, claims arising from a site or project that was covered by a site-specific policy
19 released, in whole or in part, by the Settlement Agreement. Nor shall anything in this Order or the
20 Settlement Agreement serve as a basis to assert that any term, condition, exclusion, limitation, or
21 defense in a Non-Settling Insurer's policy is ineffective, and any terms, conditions, exclusions or
22 defenses in a Non-Settling Insurer's policy shall apply as if the site-specific policies were still in
23 full force and effect.

24 16. All parties to the Settlement Agreement shall perform all acts and meet all
25 obligations required of them by the terms of the Settlement Agreement. This Court retains
26 jurisdiction to enforce and implement the terms and provisions of this Order and the Settlement
27 Agreement, all amendments thereto, any agreements, waivers and consents thereunder, and each
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1 of the documents executed in connection therewith in all respects, including retaining jurisdiction
2 to (a) compel delivery of the Policies to USF&G, (b) resolve any disputes arising under or related
3 to the Motion or the Settlement Agreement, and (c) resolve any disputes regarding the claims or
4 interests that are the subject of this Order.

5 17. Procedures for Reconsideration.

6 (a) USF&G and each of the Plan Proponents have confirmed on the record that each of
7 them (i) agrees to the Reconsideration Procedures set forth in this paragraph 17, (ii) irrevocably
8 waives any objection to such procedures or to the form, sufficiency or timeliness of submissions
9 that are made in accordance with such procedures, and (iii) consents to extensions of time and
10 modification of deadlines and procedures established under Rules 9023 and 9024 of Federal Rules
11 of Bankruptcy Procedure, or under Bankruptcy Local Rule 9013-1(b), as to any motion brought
12 pursuant to this paragraph 17 and in accordance with the deadlines and procedures provided
13 herein.

14 (b) Any party in interest may seek reconsideration of this Order under Bankruptcy Rules
15 9023 or 9024 by filing, within 21 days following the date of entry of this Order, either a motion
16 that conforms to the requirements specified in subparagraph (c) immediately below, or a written
17 joinder in such a motion timely filed by another party.

18 (c) A motion shall be sufficient for purposes of this paragraph 17 if it includes (i) a writing
19 entitled "Motion for Reconsideration" that identifies the moving party or parties and states that the
20 moving party or parties intend or may wish to seek reconsideration of this Order, and (ii) a
21 declaration of one of the moving parties, which may be signed by party's counsel, stating that the
22 party intends or may wish to seek reconsideration. A joinder shall be sufficient for purposes of
23 this paragraph 17 if it is made in writing, states the party's intention to join in a motion, and
24 identifies the party or parties on whose behalf it is filed and the motion to which it relates (either
25 by docket number or the identity of the party filing the motion); a timely-filed joinder shall entitle
26 the joining party to participate fully in all further proceedings conducted pursuant to this paragraph
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1 17. No other papers need be filed within the 21-day deadline for a motion or joinder to be
2 considered timely filed.

3 (d) If one or more motions for reconsideration are timely filed, counsel for the moving
4 parties and for any parties that have timely filed joinders in one or more of those motions shall
5 meet and confer with counsel for the Plan Proponents and for USF&G to seek to establish a
6 mutually agreeable schedule for the filing of further papers (which may include substantive
7 declarations or other evidence by or on behalf of any of the moving parties or joining parties) and
8 hearing on the motions for reconsideration. If the parties are not able to agree on a schedule, the
9 Court shall, after hearing from the parties, set a schedule that permits a reasonable time for the
10 moving and joining parties to supplement the papers filed initially as permitted under
11 subparagraph (c) above, and that is consistent with the principles stated in subparagraph (e) below.

12 (e) In any motion for reconsideration brought under these Reconsideration Procedures, the
13 Court shall consider the Motion and the appropriateness of the Settlement with USF&G *de novo*;
14 the burden on the parties seeking reconsideration shall be the same as if they had filed a timely
15 objection prior to the issuance of this Order, and the burden on the Plan Proponents and on
16 USF&G shall be the same as they initially had on the Motion in responding to any timely and
17 procedurally appropriate objection to such motion. A party seeking reconsideration of this Order
18 under the Reconsideration Procedures need not establish separate grounds for reconsideration.

19 (f) A timely motion for reconsideration in accordance with the procedures in this
20 paragraph 17 shall operate to stay, until the expiration of 14 days after entry of an order resolving
21 such motion, the implementation or performance of any provision of the Settlement Agreement.

22 (g) Notwithstanding any disposition of the appeal of the Confirmation Order, this Court
23 retains jurisdiction pursuant to Section 9(e), (f), and (g) of the Plan and paragraph 46 of the Order
24 Confirming Amended and Restated Second Amended Plan of Reorganization to resolve any
25 motions for reconsideration pursuant to this paragraph 17. Each of the Plan Proponents and
26 USF&G have confirmed on the record that they will not challenge the Court's jurisdiction to
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1 decide any such motions for reconsideration under theories of mootness, equitable mootness or
2 otherwise, nor will they encourage or act in concert with others to do so.

3 18. The sale and settlement authorized by this Order shall be stayed until the expiration
4 of the period for seeking reconsideration contained in Paragraph 17 of the Order.

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6 ****END OF ORDER****
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