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

16 In re

17 PLANT INSULATION COMPANY, a
California corporation,

18 Debtor.

19 Tax ID: 94-0292481

Case No. 09-31347
Chapter 11

**DECLARATION OF STEPHEN M.
SNYDER IN SUPPORT OF PLAN
PROponents' MOTION FOR 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**

25 Date: August 29, 2014
26 Time: 9:00 a.m.
27 Judge: Hon. Thomas E. Carlson
28 Place: Courtroom 23
235 Pine Street
San Francisco, CA

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I, Stephen M. Snyder, declare as follows:

1. I am the Managing Trustee of the Plant Insulation Company Asbestos Settlement Trust (the “Trust”) and am familiar with the matters set forth in this declaration. Except as otherwise stated herein, all facts set forth in this Declaration are based on my experience and knowledge of Plant Insulation Company, a California Corporation (“Debtor”), my personal knowledge, and upon information that I have acquired. If I were called to testify thereto, I could and would competently do so.

2. I submit this Declaration in support of the *Plan Proponents’ Motion For 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* (the “Motion”) filed on August 27, 2014. All capitalized terms not defined herein have the meanings given to them in the Motion.

3. I currently serve as the managing trustee of five asbestos trusts: the Western Asbestos Settlement Trust, the J.T. Thorpe Settlement Trust, the Thorpe Insulation Settlement Trust, the G-1 Holdings, Inc. Asbestos Personal Injury Settlement Trust, and the Plant Insulation Settlement Trust. Prior to my appointment as a trustee to the Western and Thorpe Insulation Trusts, I served as special counsel to each of those trusts in connection with pending coverage litigation. I also served as a special counsel to Plant in connection with coverage litigation.

4. Except for two years (1975-1977) of service on the faculty of Northwestern University School of Law, I practiced law at the firm of Brobeck, Phleger & Harrison, LLP (“Brobeck”) from 1972 for approximately 30 years and was a partner at that firm from 1979-2002. While a partner at Brobeck, I held various leadership positions, including Litigation Group Leader (1991-1994), Head of Products Liability, Environmental and Insurance Coverage Litigation Groups (1994-1996), and Chair of the Firm (1996-1998). Throughout my entire career at Brobeck, my practice always included defense of injury or death claims brought against Brobeck clients. By the early 1980s, that practice included, among other things, defense of asbestos claims on behalf of Fibreboard Corporation (“Fibreboard”) (formerly a building products corporation,

1 located and employing thousands in the Bay Area, which manufactured and distributed throughout
2 the West and Southwest lines of high-temperature shipboard and industrial insulation products
3 that, in the period between the late 1930s and early 1970s, contained asbestos). Brobeck's
4 representation of Fibreboard dated from the formation of that company in the early 20th century,
5 included work performed in connection with some of the earliest reported cases in the asbestos
6 litigation, and continued well into the 1990s.

7 5. By the early 1980s, my practice at Brobeck focused mainly on asbestos litigation
8 defense work. I have represented numerous asbestos defendants of varying size that used or
9 manufactured a broad spectrum of asbestos-containing products. I have represented the following
10 defendants in asbestos-related litigation: ACandS, Inc., Armstrong World Industries, Carey
11 Canada Inc., Celotex Corporation, CertainTeed Corporation, Dana Corporation, Eagle-Picher
12 Industries, Inc., Fibreboard Corporation, Flexitallic Gasket Company, Inc., Flintkote Company,
13 GAF, Hopeman Brothers, Keene Corporation, Maremont Corporation, National Gypsum
14 Company, Nation Service Industries, Inc., Nosroc Corporation, Nuclear & Environmental
15 Protection, Inc., Nuturn Corporation, Owens Corning Fiberglas Corporation, Owens-Illinois,
16 Pfizer, Inc., Pittsburgh Corning Corporation, Plant Insulation Company, H. K. Porter Company,
17 Inc., Quigley Inc., Rock Wool Manufacturing, Shook & Fletcher Insulation Company, Thorpe
18 Insulation Company, C. E. Thurston & Sons, Turner & Newall, Unijax, Inc., Union Carbide
19 Corporation, Union Carbide Agricultural Products Co., Inc., United States Gypsum Company,
20 Westinghouse Corporation, and Mac Arthur Co.

21 6. I have substantial experience with Plant Insulation's asbestos litigation profile and
22 conduct of its defense in the asbestos litigation, as follows: Plant Insulation Company was the
23 principal distributor and installer of Fibreboard high-temperature pipe and boiler insulation
24 products, among others, in the greater Northern California area during the time – at least through
25 the late 1960s – that those products contained asbestos. Until about 1985, Fireman's Fund
26 Insurance Company, which insured both Plant and Fibreboard, managed the defense of both of
27 these companies in the asbestos litigation. Fireman's Fund, at least through that period, included
28 Plant on settlement releases received by Fibreboard. Therefore, to the extent I was defending

1 Fibreboard in this region I also, *de facto*, had to defend and account for Plant’s liabilities. After
2 the Asbestos Claims Facility (“ACF”) was established and Fireman’s Fund declared that
3 Fibreboard’s coverage limits were exhausted, Fibreboard joined the ACF and eventually
4 discontinued – over Plant’s objection – including Plant on releases given by settling claimants.
5 Thereafter, at least through the end of the 1990s, Plant routinely challenged Fibreboard settlements
6 in this region that did not also release Plant, pursued Fibreboard for indemnity and made claims
7 against Fibreboard’s other insurers that Plant was entitled to “other insured” status on Fibreboard’s
8 insurance policies. As a result, both as Fibreboard’s principal lawyer during this period and
9 generally as a defense lawyer in asbestos cases in Northern California, through dealings with Plant
10 and its various counsel, dealings with the plaintiffs’ lawyers – including the same ones who have
11 been active in this bankruptcy proceeding – and dealings with other defense counsel, I have been
12 familiar with Plant’s place in the litigation and the manner in which it has conducted its defense
13 over the years.

14 **History of the Debtor**

15 7. In the course of dealing with Plant-related litigation issues, I came to be informed
16 that:

17 a. Plant was incorporated in California on March 23, 1937 and engaged in the
18 business of selling, installing and repairing asbestos, brick, cement, concrete, stone and
19 other types of fire proofing and insulating materials. Plant was an insulation contractor
20 that regularly installed and removed asbestos products over a wide range of years. From
21 January 1948 through the 1990s, Plant was the exclusive Northern California distributor
22 and contract applicator of Fibreboard Corp.’s “Pabco” and “CalTemp” brand high-
23 temperature pipe and block insulation.

24 b. At all times through about September 1971, the Fibreboard high-
25 temperature insulation products contained asbestos. Plant’s installation of asbestos-
26 containing Fibreboard products likely ended sometime in 1972. As it had before 1972,
27 Plant thereafter continued to repair, maintain, remove and displace asbestos-containing
28

1 materials at various job sites where it performed insulation work. It also, but to a lesser
2 extent than in earlier years, continued for a time to install non-Fibreboard asbestos-
3 containing products.

4 **Asbestos Related Claims**

5 8. Plant has been embroiled in asbestos-related litigation for many years. From at
6 least 1978 and continuing through the Petition Date, Plant cumulatively had been subjected to
7 thousands of asbestos bodily injury, wrongful death and loss of consortium claims and lawsuits for
8 damages allegedly caused in whole or in part by exposure to asbestos-containing materials
9 handled or supplied by Plant dating back to the 1930s (collectively, the “Asbestos Cases”).

10 9. As of the Petition Date, many Asbestos Cases were pending against Plant in
11 California, primarily in state courts in Alameda and San Francisco counties. Plant’s potential
12 liability for present and future asbestos related claims against Plant far exceeded the value of
13 Plant’s assets. Plant’s historical comprehensive general liability insurance policies provide
14 coverage for many of the present and future liabilities although, as described below, Plant’s
15 insurers dispute their coverage obligations and responsibilities for the Asbestos Cases.

16 **Insurance Coverage and the Declaratory Relief Action**

17 10. Plant maintained comprehensive general and/or excess liability insurance provided
18 by various insurers throughout the years during which its involvement with asbestos materials
19 gave rise to the Asbestos Cases. I am informed and believe that United States Fidelity and
20 Guaranty Company (“USF&G”) issued to the Debtor insurance policies for various policy periods,
21 including the following (collectively, the “Policies”):

22 United States Fidelity and Guaranty Company ICC D 14385, January 1, 1980 –
23 January 1, 1981

24 United States Fidelity and Guaranty Company ICC D 83425, January 1, 1981 –
25 January 1, 1982

26 11. Beginning in about 1988, certain of Plant’s insurers defended Plant against the
27 Asbestos Cases, and the following year they began to pay settlements or other indemnity amounts.

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1 Plant's insurers handled the Asbestos Cases through their appointed counsel and controlled the
2 defense and settlement of the Asbestos Cases. Beginning in 1991, Plant's insurers began advising
3 it that their policies had been "exhausted" and that they would no longer defend or indemnify
4 Plant. USF&G was among those insurers that advised Plant that its Policies were exhausted.
5 Eventually, each insurer of Plant professed "exhaustion" of its policies until, by 2001, all of
6 Plant's insurers had stated that they would no longer defend or indemnify Plant against the
7 Asbestos Cases.

8 12. On January 18, 2006, Plant tendered approximately 3,800 asbestos suits to its
9 primary insurers. It also notified its excess insurers of the existence of those suits.
10 Notwithstanding their assertion that the policies were exhausted, the primary insurers accepted the
11 tender and continued to process, defend and/or settle numerous asbestos claims, pursuant to their
12 policies, under a full reservation of rights. It is my understanding that USF&G participated, under
13 a reservation of rights, in the defense and settlement of asbestos suits against Plant. Declaratory
14 relief litigation regarding disputes with Plant's primary and excess insurers (in which USF&G is a
15 defendant) is currently pending before the California Superior Court for the City and County of
16 San Francisco (the "Superior Court") in an action captioned *Plant Insulation Company v.*
17 *Fireman's Fund Insurance Company, et al.* (No. CGC-06-448618) (the "Declaratory Relief
18 Action"). USF&G has denied, and continues to deny, all substantive allegations and claims
19 asserted against them in the Declaratory Relief Action and contends that it has no further
20 responsibility under the Policies.

21 13. In the Declaratory Relief Action, "Phase I" of the trial was conducted as a bench
22 trial from May to August of 2008, and concerned the existence, terms, and enforceability of
23 allegedly missing insurance policies. A final statement of decision on Phase I was issued by the
24 Superior Court on January 9, 2009 that was generally adverse to Plant with respect to the allegedly
25 missing insurance policies.

26 14. After receiving relief from stay from this Court, "Phase II" of the trial, which was
27 tried as a bench trial without a jury, commenced in June 2009 and concluded in December 2009.
28 The Phase II trial involved three affirmative defenses asserted by Plant's insurers: (1) judicial

1 estoppel; (2) unclean hands; and (3) waiver. A final statement of decision that was favorable to
2 Plant was issued by the Superior Court on May 5, 2010 rejecting the three defenses asserted by the
3 insurers.

4 15. In July 2010, relief from stay was granted by this Court to permit the Declaratory
5 Relief Action to proceed to “Phase III.” Trial of Phase III commenced on May 16, 2012 and the
6 presentation of evidence concluded in July. A decision was rendered on the issues litigated in the
7 Phase III trial on or about January 31, 2013. No final judgment has been entered with respect to
8 the litigation, as additional matters remain for trial before the Declaratory Relief Action is
9 concluded.

10 Previous Settlements

11 16. This Court has previously approved the Debtor’s assumption of two pre-petition
12 settlements: with Sampo Japan Insurance Company of America, formerly known as Yasuda Fire
13 & Marine Insurance Company (“Sampo”), for \$12 million in total payments, and with United
14 National Insurance Company (“UNIC), for \$15.5 million in total payments. The Sampo
15 settlement was entered into on September 7, 2007, and was approved by the Bankruptcy Court in
16 an order entered August 16, 2010. The UNIC settlement was entered into on January 15, 2009,
17 and was approved by the Bankruptcy Court in an order entered August 16, 2010. The Court also
18 approved six postpetition settlements: (i) a settlement with Arrowood Indemnity Company f/k/a
19 Royal Indemnity Company (“Arrowood”) for \$30 million in total payments, approved by the
20 Bankruptcy Court in an order entered March 31, 2011; (ii) a settlement with Mt. McKinley
21 Insurance Company (“MMIC”) for \$4.125 million in total payments, approved by the Bankruptcy
22 Court in an order entered February 24, 2012; (iii) a settlement with Fireman’s Fund Insurance
23 Company, American Automobile Insurance Company, and National Surety Corporation
24 (collectively, the “Allianz Companies”) for \$69 million in total payments, approved by the
25 Bankruptcy Court in an order entered July 5, 2012; (iv) a settlement with ACE Companies for
26 \$53 million in total payments, approved by the Bankruptcy Court in an order entered October 24,
27 2012; (v) a settlement with United States Fire Insurance Company for \$61,750,000 in total
28 payments in an order entered June 30, 2014; and (vi) settlements with Insurance Company of the

1 West and with Safety National Insurance Company for \$2,950,000 each, approved by the
2 Bankruptcy Court by an order entered on August 4, 2014.

3 17. In addition, currently pending before this Court is a motion by the Plan Proponents
4 filed on August 25, 2014 to approve a settlement between the Plan Proponents and the Resolute-
5 Related Parties in the amount of \$110 million.

6 18. To date, and prior to the effectiveness of the settlement with the Resolute-Related
7 Parties and the instant settlement with USF&G, the total settlement consideration paid or to be
8 paid to the Debtor or the Trust upon meeting certain conditions is approximately \$251,275,000,
9 with approximately \$183,250,000 yet to be paid.

10 19. The Bankruptcy Court confirmed a plan of reorganization proposed by the Plan
11 Proponents (the "Original Plan") following hearings held in December 2011 and January 2012
12 pursuant to an order dated April 4, 2012 (the "Original Confirmation Order"). After it was
13 affirmed by the District Court, the Original Plan was implemented and became effective on
14 November 16, 2012. Pursuant to the terms of the Original Plan, the Policies were retained by the
15 Reorganized Debtor, subject to a security interest granted to the Trust. But, under the Original
16 Plan, all Asbestos Insurance Settlement Rights were transferred to the Trust. Also, on the
17 Effective Date of the Original Plan and under such Plan, the Trust became responsible for
18 pursuing and settling the Declaratory Relief Action.

19 20. On October 28, 2013, the Ninth Circuit Court of Appeals issued its opinion
20 vacating the Original Confirmation Order and the case was remanded to the Bankruptcy Court.
21 The Plan Proponents proposed modifications to the Original Plan to cure the defect identified by
22 the Ninth Circuit. (The Original Plan as modified by such modifications is called the "Plan.") On
23 March 3, 2014, after a further confirmation trial, the Bankruptcy Court entered its "*Order*
24 *Confirming Amended and Restated Second Amended Plan of Reorganization of Plan Insulation, as*
25 *Modified,*" Docket No. 2722 (the "New Confirmation Order").

26 21. The New Confirmation Order provided that the Plan would not become effective
27 until the Modified Effective Date, which is defined as a date that cannot take place until after the
28 15th day following entry of the order of the United States District Court issuing or affirming the

1 New Confirmation Order, provided such order has not been stayed by a court of competent
2 jurisdiction.

3 22. Notwithstanding the reversal of the Original Confirmation Order, the Bankruptcy
4 Court entered a “Status Quo” order that allowed the Trust to continue to function in certain matters
5 as the consideration of the Plan was presented to the Bankruptcy Court and the District Court.
6 The Trust has in fact continued to function.

7 23. After the entry of the New Confirmation Order, the non-settled insurers of the
8 Debtor appealed to the District Court. On August 18, 2014, the District Court affirmed the New
9 Confirmation Order. The Modified Effective Date of the Plan has not yet taken place.

10 **Settlement With USF&G**

11 24. The terms of the settlement with USF&G as I presently understand them are as
12 follows: (i) once the settlement becomes effective, the Policies will be sold to USF&G pursuant to
13 a bill of sale, the mutual releases among the parties will become effective, USF&G will withdraw
14 its proof of claim, the parties will dismiss each other without prejudice from the Declaratory Relief
15 Action, and the Debtor shall withdraw its tender of claims to USF&G; (ii) within 15 days after
16 both the New Confirmation Order and an order approving this settlement become final, USF&G
17 will pay \$21,000,000 to the Trust; (iii) on or before December 31, 2016, USF&G will pay an
18 additional \$1,000,000 to the Trust, if the New Confirmation Order and the order approving this
19 settlement have become final, and if said conditions have not been met by December 31, 2016,
20 then USF&G shall make such payment with 15 days of said orders become final; (iv) in the
21 alternative, if the New Confirmation Order does not become a Final Order, USF&G can choose to
22 waive the requirement of finality and affirm the deal which is called the “Reaffirmation
23 Alternative”; (v) when the New Confirmation Order becomes a Final Order, or upon the
24 occurrence of the Reaffirmation Alternative, the withdrawal of the claim of USF&G shall become
25 final, and dismissals with prejudice shall be filed in the Declaratory Relief Action; (vi) in the event
26 that the New Confirmation Order does not become final, and it appears that another order
27 confirming a plan that contains the Settling Asbestos Insurer Injunction and Channeling Injunction
28 in favor of USF&G will not be entered, then the parties have the right to terminate further rights

1 under the Settlement, and this is called the “Termination Alternative”; and (vii) on the occurrence
2 of the Termination Alternative, USF&G shall be deemed to have executed a bill of sale to the
3 Debtor of the Policies, and USF&G shall have no further interests in the Policies, and the Claims
4 of USF&G shall be deemed refiled, the Coverage Litigation can continue, and the releases are
5 voided *ab initio*.

6 **Probability of Success in Litigation**

7 25. I have participated in many aspects of the Declaratory Relief Action, and I attended
8 portions of the trials in the Declaratory Relief Action. In addition, I have substantial experience
9 with insurance coverage issues involving asbestos-related liabilities, and in managing litigation
10 involving such issues. Based upon the above, while I believe that Plant’s claims in the
11 Declaratory Relief Action are meritorious, there is substantial uncertainty regarding the outcome
12 of that action. This factor, in my view, weighs in favor of approval of the Settlement here.

13 26. USF&G has continuously denied all allegations made by the Debtor against it in
14 the Declaratory Relief Action. Although the Trust is confident of its position in the Declaratory
15 Relief Action, litigation is uncertain by nature, and the Trust cannot guarantee that it will prevail.
16 Indeed, the Declaratory Relief Action is complex litigation that involves the interpretation of
17 complex insurance agreements, litigation of hotly disputed legal theories and defenses, and well-
18 represented litigation adversaries—the non-settled insurers— who have the resources and
19 motivation to complicate or delay that litigation. The Declaratory Relief Action is not a simple up
20 or down action; it bears with it the possibility of an array of mixed results that would affect the
21 ability of claimants to recover from the insurers. Thus, there is the possibility that if USF&G were
22 to prevail on certain arguments, the ability of claimants to recover from them, if any, could be
23 substantially reduced.

24 27. Further, even assuming the Trust prevailed in all respects in the Declaratory Relief
25 Action, the outcome of the litigation *vis à vis* USF&G would be uncertain because it is unclear
26 how many asbestos-related claims against Plant exist, given that such claims include future
27 demands that have not yet manifested themselves. Further, the value of the claims, were they to
28 be litigated in the tort system, is difficult to assess. Further, even successful litigation of claims in

1 the tort system would not assure recovery against any given insurer in light of the need to prove
2 that the claim is covered by that insurer's policy.

3 **Likely Difficulties in Collection**

4 28. First of all, insurance companies are not immune to financial difficulties. For
5 example, MMIC, Arrowood, and certain of the Resolute-Related Parties were experiencing
6 financial difficulties or were in run-off. But moreover, settling with USF&G will mean that all of
7 the parties that appealed the New Confirmation Order to the District Court will have settled, such
8 that they will not be seeking further appeals of that Order to the Ninth Circuit. This will in turn
9 allow the New Confirmation Order to become final, and provide for the satisfaction of a condition
10 precedent to the payment of over \$180 million in payments made to already-approved insurance
11 settlements. Absent settlement with USF&G, it is expected that USF&G would appeal the New
12 Confirmation Order to the Ninth Circuit. That would not only delay collection under the previous
13 settlements by up to two years, but expose the Trust's beneficiaries to the risk that one or more of
14 the previously settled insurers may experience financial difficulty that could hinder their ability to
15 pay during that two year period.

16 **Complexity and Expense of Litigation, and Inconvenience and Delay in Collection**

17 29. The Declaratory Relief Action involves the interpretation of complex insurance
18 agreements and the litigation of complicated legal issues, as described above. Plant and the Trust
19 have devoted substantial time and resources to the Declaratory Relief Action and anticipate that,
20 absent approval of the Settlement, the dispute with USF&G would likely continue for several
21 additional years, requiring numerous trial phases and extensive appellate proceedings following
22 the entry of any final judgment by the trial court in that action. I understand that the litigation will
23 continue to be difficult, time-consuming and expensive. The operative complaint does not even
24 seek the recovery of money against USF&G, or any other insurer. Settlement with USF&G thus
25 monetizes the claims at issue in the Declaratory Relief Action in a manner that the lawsuit itself
26 would not otherwise achieve. Further, USF&G is well-represented in this bankruptcy case and in
27 the Declaratory Relief Action. Therefore, in the absence of these settlements, it is my business
28 judgment that there will be a substantial delay in collecting any amounts from USF&G.

1 will also pave the way for the commencement of the over \$180 million in already-approved
2 settlement payments that conditioned upon the finality of the New Confirmation Order. It is
3 therefore my opinion as trustee of the Trust that the sale of the USF&G Policies pursuant to the
4 terms of the Settlement Agreement is reasonable and should be approved.

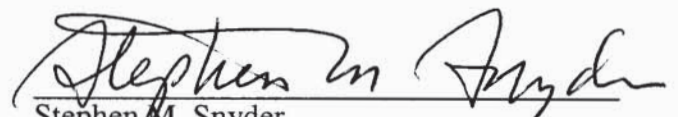
5 **The Sale of the Insurance Rights Was Negotiated in Good Faith and at Arm's Length**

6 35. I monitored the negotiations, including the active participation of another trustee of
7 the Trust and counsel to the Trust, that led to this settlement. I believe that the Settlement was
8 negotiated in good faith and at arm's length.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 28, 2014.


Stephen M. Snyder