

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

KENNETH S. REYNOLDS,

Plaintiff,

v.

Civil Action No. 01-C-538
(Judge Bloom)

A&I COMPANY, GRANITE STATE
INSURANCE COMPANY, NEW
HAMPSHIRE INSURANCE COMPANY,
TRAVELERS INSURANCE COMPANY,
AMERICAN MOTORISTS INSURANCE
COMPANY, OHIO FARMERS
INSURANCE COMPANY, and
SCOTTSDALE INSURANCE COMPANY,

Defendants.

STIPULATION OF SETTLEMENT

This Stipulation of Settlement is dated as of March ____, 2005 (the "Stipulation"). Subject to the approval of the Court, it is made and entered into by and among the following parties: (i) the Representative Plaintiff (on behalf of himself and each of the Settlement Class Members); (ii) Phoenix Insurance Company ("Travelers" as defined herein), and (iii) Granite State Insurance Company and New Hampshire Insurance Company (collectively, the "AIG Companies" as defined herein). Travelers and the AIG Companies are collectively referred to herein as "the Settling Insurers." The Settling Insurers and the Representative Plaintiff (on behalf of themselves and each of the Settlement Class Members) are collectively referred to herein as "the Settling Parties." This Stipulation is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle all Asbestos Bodily Injury Claims (as defined herein) asserted by the Representative Plaintiff and the Settlement Class Members against the Settling Insurers.

WITNESSETH THAT:

WHEREAS, the Settling Insurers issued or are alleged to have issued various insurance policies to A&I (as defined herein), a West Virginia corporation that filed articles of dissolution on November 5, 1999;

WHEREAS, the Representative Plaintiffs, on behalf of himself and each of the Settlement Class Members, allege that he was exposed to asbestos and/or asbestos containing products;

WHEREAS, a dispute exists between the Representative Plaintiff and the Settling Insurers as to the effect of W. Va. Code §31-1-48 upon the Claims (as defined herein) that might be asserted by the Representative Plaintiff and/or any member of the Settlement Class against the Settling Insurers; and

WHEREAS, the Settling Parties wish to settle their dispute without further litigation;

NOW THEREFORE, intending to be legally bound, and in consideration of the mutual promises and other good and valuable consideration as set forth herein, the Settling Parties agree as follows:

1. Purpose and Scope

The purpose of this Stipulation is to provide for the funding of a Trust (as defined herein) to pay Asbestos Bodily Injury Claims, and to resolve all Claims (as defined herein), against the Settling Insurers arising out of or related to Asbestos Bodily Injury Claims.

2. Definitions

As used in this Stipulation the following terms have the meanings specified below. The definitions contained in this Stipulation shall not apply to any other agreement, including, without limitation, any policy of insurance or other settlement agreement, nor shall they be used

as evidence, except with respect to this Stipulation, of the meaning of any term. Furthermore, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

2.1 "A&I" means A&I Corporation (f/k/a Asbestos and Insulating Company), including any parents, affiliates, divisions, subsidiaries, predecessors, successors, and assigns, and any and all directors, officers, principals, owners, shareholders, agents, servants, representatives, employees, administrators(ixes), executors(ixes), conservators, heirs, beneficiaries, trustees, and any other legal representatives thereof, and any and all Persons named as insureds or otherwise insured or covered under the Settled Policies, and any Person who claims, has claimed, or may in the future claim any right, title, benefit, or interest as a named insured, or additional insured in or under the Settled Policies.

2.2 "AIG Companies" means Granite State Insurance Company and New Hampshire Insurance Company, individually and collectively, and also their past, present, and future parents, affiliates, divisions, subsidiaries, predecessors, successors, and assigns, and any and all directors, officers, principals, owners, shareholders, agents, servants, representatives, employees, and any other legal representatives thereof.

2.3 "Asbestos Bodily Injury Claims" means any Claim asserted by a member of the Settlement Class against A&I (or Travelers or the AIG Companies as insurers of A&I) alleging bodily injury or other loss or damages (including, without limitation, claims for wrongful death, survival benefits, loss of consortium, fear of contracting asbestos-related disease, and medical monitoring or costs and expenses related to bodily injury) related to or in any way arising out of, in whole or in part, exposure to asbestos or asbestos-containing products.

2.4 "Authorized Claimant" means any Settlement Class Member who, in accordance with the terms of this Stipulation and the specific criteria established by the Trust is entitled to a payment from the Trust pursuant to any Trust Distribution Procedures or any order of the Court.

2.5 "Claim" means the assertion of any right including but not limited to all past, present, or future claims, actions, counts, rights, obligations, liabilities, demands, requests, lawsuits, administrative proceedings, statutory or regulatory obligations, orders or directives, causes of action and any other assertion of liability of any kind, whether legal or equitable, and whether currently known or unknown, direct or consequential, foreseen or unforeseen and whether sounding in tort, contract, equity, admiralty, nuisance, trespass, negligence, conspiracy, strict liability or any other statutory, regulatory, administrative or common law cause of action of any sort, nature, character or kind.

2.6 "Court" means the Circuit Court of Kanawha County, West Virginia.

2.7 "Defendants" means each and all of the defendants that have been or may be named in any of the complaints in the Reynolds Action.

2.8 "Effective Date" means the first day on which (a) all Settling Parties have executed this Agreement, and (b) all conditions to settlement set forth in paragraph 6 of this Stipulation have been satisfied.

2.9 "Final Order" means, with respect to any order of court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes a "Final Order" when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any

further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an "appeal" includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal pertaining to any order issued in respect of an application of attorneys' fees and expenses pursuant to ¶¶ 8.1 and 8.2, below, shall not in any way delay or preclude the Judgment from becoming Final.

2.10 "Judgment" means an order of judgment and dismissal approving the settlement to be rendered by the Court substantially in the form attached hereto as Exhibit A.

2.11 "Non-Settling Insurers" means any insurer other than Travelers and the AIG Companies.

2.12 "Person(s)" shall mean an individual, a group of individuals, a corporation, a partnership, an association, a trust or any other entity or organization.

2.13 "Plaintiff's Settlement Counsel" means A. Andrew MacQueen.

2.14 "Representative Plaintiff" shall mean Kenneth S. Reynolds.

2.15 "Reynolds Action" means the action in the Circuit Court of Kanawha County, West Virginia, entitled Kenneth S. Reynolds, et al. v. A&I Company, et al., Civil Action No. 01-C-538.

2.16 "Settled Policies" means any and all insurance policies, whether currently known or unknown, issued or alleged to have been issued at any time by the Settling Insurers under which A&I or any other Person asserts that A&I is entitled (as an insured, named insured, additional insured, or otherwise) to any rights, insurance or other benefits, including but not limited to, the acknowledged liability policies identified in Exhibit B, attached hereto. "Settled

Policies" does not include statutorily required portions of workers' compensation coverage or surety bonds, and does not include any policy of insurance issued by an entity that was not, on or before the Effective Date, a Settling Insurer such as (without limitation) any entity that becomes a subsidiary or affiliate of any of the Settling Insurers by virtue of a merger, acquisition, consolidation, or otherwise after the Effective Date.

2.17 "Settlement Class" means all persons who have been exposed to asbestos for which A&I Corporation is alleged to be liable, except those who either (i) have a pending unsettled lawsuit filed on or before November 5, 2001, or (ii) have settled, released or had adjudicated a claim for mesothelioma against A & I or its insurers in connection with such exposure..

2.18 "Settlement Class Member" means a Person who falls within the definition of the Settlement Class.

2.19 "Settling Insurers" means Travelers and the AIG Companies.

2.20 "Settling Parties" means, collectively, Travelers, the AIG Companies and the Representative Plaintiff (on behalf of himself and each of the Settlement Class Members).

2.21 "Travelers" means Phoenix Insurance Company, The St. Paul Travelers Companies, Inc., The Travelers Indemnity Company, The Travelers Insurance Company, and Travelers Casualty and Surety Company, (f/k/a The Aetna Casualty and Surety Company) and also each of their past, present, and future parents, affiliates, divisions, subsidiaries, predecessors, successors, and assigns, and any and all directors, officers, principals, owners, shareholders, agents, servants, representatives, employees, and any other legal representatives thereof.

2.22 "Trust" means the trust created pursuant to the trust instrument attached as Exhibit C to this Stipulation.

2.23 "Trust Distribution Procedures" means those trust distribution procedures attached as Exhibit D to this Stipulation.

2.24 "Trustee" means that person named in Section 4.1 of the Order Creating A&I Corporation Asbestos Bodily Injury Trust..

3. Payments

3.1 Travelers Indemnity Company shall pay \$3,000,000.00 on the later of April 1, 2005, or ten days after the Effective Date, and \$3,000,000.00 on the first anniversary of the first payment.

3.2 The AIG Companies shall pay \$2,500,000.00 on the later of April 1, 2008 or ten days after the Effective Date; \$2,500,000.00 on the later of April 1, 2009 or the first anniversary of its first payment; and \$2,135,000.00 on the later of April 1, 2010 or the second anniversary of its first payment.

3.3 The obligations of Travelers Indemnity Company, on one hand, and the AIG Companies, on the other, to make payments into the Trust are separate, not joint. No Settling Insurer is responsible for a payment default by any other Settling Insurer.

3.4 In the event that either Travelers Indemnity Company, on one hand, or the AIG Companies, on the other, defaults on its obligations under the Stipulation, this Stipulation shall remain in full force and effect as between the Representative Plaintiffs (on behalf of himself and each of the Settlement Class Members) and the non-defaulting Settling Insurer.

4. Preliminary Approval Order, Notice Order, and Settlement Hearing

4.1 After agreement on the terms of this Stipulation the Representative Plaintiff shall submit this Stipulation together with its Exhibits to the Court and shall apply for entry of an order (the "Preliminary Approval Order") substantially in the form and content of Exhibit E attached hereto, requesting, *inter alia*, the preliminary approval of the proposed Settlement set forth in this Stipulation, and approval of the form of notice set forth on Exhibit F.

4.2 The Representative Plaintiff shall request that, after the notice required by ¶ 4.1 above is provided, the Court shall hold a hearing (the "Settlement Hearing") and finally approve the proposed settlement.

4.3 The Settling Insurers shall not object to certification of the Settlement Class, pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, solely for purposes of this Stipulation and the settlement set forth herein. The certification of the Settlement Class shall be binding only with respect to the settlement of the Reynolds Action and only if the Judgment contemplated by this Stipulation becomes a Final Order and the Effective Date occurs.

4.4 The Preliminary Approval Order shall provide that, if, for any reason, this Stipulation is terminated, or if the Effective Date for any reason does not occur, the certification of the Settlement Class shall automatically be vacated, *nunc pro tunc*. The Preliminary Approval Order shall further provide that, in such case, neither this Stipulation nor any order of this Court certifying the Settlement Class will be binding on any of the Settling Parties, the Reynolds Action shall proceed as though the Settlement Class had never been certified, and Travelers and the AIG Companies may oppose and assert all objections to certification of any class or subclass sought by any party to the Reynolds Action.

4.5 Upon entry of The Preliminary Approval Order, the Settling Parties shall provide notice to the Class as set forth in the affidavit of Cameron Azari attached as Exhibit G. The Settling Insurers shall bear the cost of such notice until the Effective Date. Ten days after the Effective Date, the Trust shall reimburse Travelers and the AIG Companies such sums, up to a maximum of \$75,000.00, as will result in the Trust, Travelers, and the AIG Companies each paying one third of the cost of the notice program. The Trust's reimbursement obligation under this paragraph 4.5 shall not exceed \$75,000.00.

5. Release

5.1 Upon the Effective Date, in consideration of the promises contained in this Stipulation, the Representative Plaintiff and each Settlement Class Member, on behalf of themselves, their successors and assigns, and any other Person claiming now or in the future through or on behalf of them, and regardless of whether any such Representative Plaintiff or Settlement Class Member ever seeks or obtains by any means any distribution from the Trust, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged the Settling Insurers from any and all Claims arising out of or related to in any fashion Asbestos Bodily Injury Claims, and shall have covenanted not to sue the Settling Insurers with respect to all such Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Claim against the Settling Insurers.

5.2 Without limiting the forgoing, the Representative Plaintiff and each Settlement Class member further releases, acquits, and forever discharges the Settling Insurers from any and all Claims, under the Settled Policies or under the statutory, equitable, or common law of any jurisdiction, based upon (i) any act or omission of the Settling Insurers and the handling or

disposition of any request for insurance coverage tendered to the Settling Insurers by A&I or any other entity or individual by or on A&I's behalf, which request for insurance coverage in any manner or fashion involves, relates to, or arises out of any Asbestos Bodily Injury Claim; (ii) any liability arising out of any allegedly negligent or otherwise improper handling by a Settling Insurer of any Asbestos Bodily Injury Claim. This release, acquittal and discharge shall include, but shall not be limited to, any and all claims that in any matter, involve, relate to, or arise out of any Asbestos Bodily Injury Claim, whether sounding in breach of contract, breach of any duty of good faith and fair dealing, breach of statutory duties, unfair or deceptive acts or trade practices, unfair insurance acts or practices, actual or constructive fraud, actual or constructive breach of fiduciary duty, or alleging any bad faith or other insurer misconduct, malicious prosecution, any kind of negligence or misrepresentation or violation of any statute or regulation.

5.3 The Settlement is conditioned upon the Court entering the Judgment which shall, *inter alia*, provide that each and every Person (including, but not limited to all present or future Defendants in the Reynolds Action) is permanently enjoined, barred and restrained from asserting any claim or commencing any action for indemnity, contribution, damages or otherwise against any Settling Insurer, arising out of or related to the claims, acts, facts, transactions, occurrences, statements or omissions that were or could have been alleged in the Reynolds Action (whether arising under federal, state or foreign law and regardless of where asserted). Any person so enjoined and barred shall be entitled to an appropriate judgment reduction to be determined by the Court. If the Court does not enter this bar order or if such provision is reversed on appeal, any Settling Insurer may terminate this Stipulation as to itself.

6. Conditions to Settlement

6.1 This Stipulation shall not be effective until all of conditions set forth in paragraphs 6.2, 6.3, and 6.4 are satisfied.

6.2 The Circuit Court of Kanawha County enters an order that becomes a Final Order, in a form acceptable to the Settling Insurers, certifying the Settlement Class.

6.3 The Circuit Court of Kanawha County enters an order that becomes a Final Order, in a form acceptable to the Settling Insurers, protecting the Settling Insurers from Claims by any Person relating to or arising from the Settled Policies.

6.4 The Circuit Court of Kanawha County enters an order that becomes a Final Order, in a form acceptable to the Settling Insurers, approving this Settlement Agreement, the Trust Agreement, and the Trust Distribution Procedures including the form of release attached to the Trust Distribution Procedures as Exhibit A.

7. Trust Administration, Final Awards and Supervision and Distribution of The Settlement Fund

7.1 Upon the Effective Date and thereafter and upon further notice to the Settlement Class and appropriate orders of the Court, the Trustee, subject to such supervision and direction of the Court and/or Plaintiffs' Settlement Counsel as may be necessary or as circumstances may require, shall administer the claims submitted by Settlement Class Members and shall oversee distribution of the Settlement Fund to Authorized Claimants pursuant to the Trust Distribution Procedures.

7.2 Neither the Settling Insurers nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Settlement Fund, the Trust Distribution Procedures, the determination, administration, or calculation of

claims, the payment or withholding of taxes or any losses incurred in connection with any such matters, and the Trustee shall indemnify and hold harmless the Settling Insurers and their counsel for any losses or liabilities arising in connection with such matters.

7.3 No Person shall have any claim against the Settling Insurers or their counsel arising from or relating to the management of, distributions from, or the disposition of the Settlement Fund, and the Representative Plaintiffs and each Settlement Class Member hereby fully, finally and forever release, relinquish and discharge the Settling Insurers and their counsel from any and all such liability.

7.4 It is understood and agreed by the Settling Parties that the Trust Distribution Procedures and any decision by the Trustee regarding any adjustments to any Authorized Claimant's claim, are not a part of this Stipulation and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in this Stipulation. No order or proceeding relating to the Trust Distribution Procedures shall operate to terminate or cancel this Stipulation or affect the finality of the Court's Judgment approving this Stipulation and the Settlement set forth herein, or any other orders entered pursuant to this Stipulation.

8. Settlement Counsel's Attorneys' Fees and Reimbursement of Expenses

8.1 Plaintiff's Settlement Counsel may, upon such further notice to the Settlement Class as may be required, submit an application or applications (the "Fee and Expense Application") for distributions to it from the Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with prosecuting the Reynolds Action.

8.2 The procedure for, and the allowance or disallowance by the Court of, the Fee and Expense Application are not part of the settlement set forth in this Stipulation, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in this Stipulation. No order or proceeding relating to the Fee and Expense Application, or any appeal from any Fee and Expense Award or any other order relating thereto or reversal or modification thereof, shall operate to terminate or cancel this Stipulation, or affect or delay the finality of the Judgment and the settlement of the Reynolds Action as set forth herein.

8.3 The Settling Insurers shall have no responsibility for, and no liability whatsoever with respect to, any payments to Plaintiffs' Settlement Counsel pursuant to ¶¶ 8.1 and 8.2 above, and/or any other Person who may assert some claim thereto, or any Fee and Expense Award that the Court may make in the Reynolds Action.

8.4 No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Award shall constitute grounds for cancellation or termination of this Stipulation.

9. No Admission

The Parties each acknowledge that the Settling Insurers dispute coverage under their respective Settled Policies. Nothing in this Stipulation is intended to create any right in any Person under the Settled Policies. The Settlement Class recognizes that payments made by the Settling Insurers under this Stipulation will be made in compromise of disputed Claims and are not, and cannot be construed as, or asserted by the Named Plaintiffs, Settlement Class or any other Person to be, an admission by the Settling Insurers that any defense, indemnity, or any other obligation exists under their respective Settled Policies. By this settlement, the Settling

Insurers are making no admission of any kind, including, without limitation, any liability on the part of A&I. The Parties agree that none of the terms of this Stipulation, nor any aspect of this negotiation or performance, shall be used in any manner by any Person in any future action or proceeding as evidence of the rights, duties, or obligations of the Parties under the Settled Policies or of the course of dealing of the Parties, including, without limitation, any liability on the part of A&I. This Stipulation shall not be admissible to show waiver or estoppel in any dispute, except as necessary solely to enforce this Stipulation.

10. Representations

10.1 Each Settling Party represents that it has the requisite authority to enter into this Stipulation.

10.2 All Persons signing this Stipulation represent and warrant that they are duly authorized to execute this Stipulation on behalf of the Settling Party for whom they are signing.

10.3 The Settling Insurers represent, each for itself, that upon making the payments set forth in paragraphs 3.1 and 3.2 above, it will have paid for Asbestos Bodily Injury Claims sums exceeding the greater of the per occurrence or aggregate limits of its acknowledged Settled Policies listed on Exhibit B. The total amount of insurance that may be available under Settled Policies is disputed. The payments set forth in paragraphs 3.1 and 3.2 represent a compromise of this and all other disputes presented by the Reynolds Action.

10.4 Each Settling Insurer represents that it has searched with due diligence for liability insurance policies issued by it to A&I and that all such policies discovered by such search are listed as "Acknowledged Policies" on Exhibit B.

11. Other Provisions

11.1 This Stipulation was negotiated at arms-length with each Settling Party receiving advice from independent legal counsel, and it is an integrated document containing all of the terms and conditions agreed upon by the Settling Parties relating to its subject matter. This Stipulation supersedes any and all prior or contemporaneous agreements, negotiations, correspondence, understandings, and communications among the Settling Parties, whether oral or written, respecting the matters concluded herein. This Stipulation was reviewed and approved by attorneys for all of the Settling Parties, and it is the intent of the Parties that there shall not be a presumption or construction against any Person. More specifically, this Stipulation is not a contract of insurance, and the Settling Parties agree that it shall not be interpreted according to the rules of construction applicable to insurance contracts. In particular, with respect to interpretation of this Stipulation, the Settling Parties waive any benefits from the principles of *contra proferentum* or other principles that would result in the interpretation of any ambiguities against any Settling Party. No Settling Party shall be deemed to be the drafter of this Stipulation or of any particular provision(s) thereof, and no part of this Stipulation shall be construed against a Settling Party on the basis of the Settling Party's identity as an insurance company or as the drafter of any part of this Stipulation. This Stipulation may not be amended or modified other than by written agreement agreed to and signed by all Parties.

11.2 This Stipulation may be executed in duplicate counterparts, each of which shall constitute an original, and all of which together shall be deemed a single document.

11.3 The Settling Parties agree to execute and deliver all instruments and to do such further acts and things another Settling Party or Parties may reasonably request when they are necessary to effectuate the purpose of this Stipulation. Should any Person challenge the validity

of this Stipulation, or any term thereof, the Settling Parties shall provide to each other such cooperation and assistance as the other Settling Party may reasonably request in order to resist such a challenge.

11.4 The headings contained in this Stipulation are designed merely to facilitate ready reference to subject matter and shall be disregarded when resolving any dispute concerning the meaning or interpretation of any language contained in this Stipulation.

11.5 This Stipulation shall be interpreted under the laws of the State of West Virginia.

IN WITNESS WHEREOF, the undersigned Parties have executed this Stipulation as of the Effective Date.

TRAVELERS (as defined herein)

By: _____

Name: _____

Title: _____

Date: _____

AIG DOMESTIC CLAIMS, INC. ON BEHALF OF
THE AIG COMPANIES (as defined herein)

By: _____

Name: _____

Title: _____

Date: _____

KENNETH S. REYNOLDS (On his own behalf and on behalf of the proposed Settlement Class)

By: _____

Date: _____