

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**LIQUIDATOR'S MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
WITH (AND STIPULATED JUDGMENT AGAINST) COLIN P. LINDSEY**

Peter C. Hildreth, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator and "Noble Trust," respectively), by his attorneys, the Office of the Attorney General and Sheehan Phinney Bass + Green, Professional Association, moves for the entry of an order approving the Settlement Agreement, attached hereto as Exhibit A, by and between the Liquidator and Colin P. Lindsey ("Lindsey" and the "Settlement Agreement," respectively), and a Stipulated Judgment, attached hereto as Exhibit B, against Lindsey. In support of his motion, the Liquidator states as follows:

1. The Liquidator has commenced an action in this Court captioned Hildreth v. Lindsey et al., Docket No. 09-E-0184 (the "Directors and Officers Proceeding"). As detailed in the Liquidator's Petition in that matter, the Liquidator believes that Lindsey, and other officers, directors, and/or employees of Noble Trust are liable to the Liquidator under a variety of theories of recovery for losses sustained by Noble Trust, Aegean Scotia, and Noble Trust's customers and clients.

2. Those losses include, but are not limited to, approximately \$15 million from Noble Trust's customers and clients that Noble Trust invested in a Colorado entity

named Sierra Factoring, LLC ("Sierra"). As detailed in the Directors and Officers Proceeding, Sierra was or became a so-called Ponzi scheme, and due to Lindsey's tortious actions in conjunction with the acts and omissions of others, at least the \$15 million investment was, essentially, lost.

3. In addition, as part of an effort to conceal the Sierra loss from Noble Trust's clients and other parties in interest (including the New Hampshire Banking Department), Lindsey (and others) involved Noble and Noble clients in a life insurance investment scheme. As detailed in other pleadings, including the Petition in the Directors and Officers Proceeding, Lindsey and the other defendants had Noble or other entities or trusts under his control procure a number of life insurance policies with face values generally between \$3 million and \$10 million. Lindsey intended to sell many of these policies to third parties and to use the cash proceeds to cover up the losses suffered by Noble Trust's clients in the Sierra investment.

4. However, many of the procured policies are potentially compromised, if not worthless, because of numerous misrepresentations made during the process of applying for the policies, including failures to disclose the existence of financing for the policies' premiums, overstatement of certain insureds' net worth, and failures to disclose a present intent to sell the policies on the secondary market.

5. Overall, the Liquidator believes the total loss in this matter attributable to the Liquidator's claims against Lindsey and others to be in excess of \$20 million.

6. In the Settlement Agreement, which the Liquidator has executed subject to this Court's approval, Lindsey agreed to stipulate to a judgment against him in the amount of \$15,781,000 (the "Judgment Amount"), an amount approximating almost the

entire Sierra loss. The Judgment Amount will be reduced by such amounts as are actually distributed by the Liquidator to holders of allowed claims in this proceeding (exclusive of administration and costs and expenses).¹

7. The Liquidator believes the settlement is in the best interests of Noble Trust, its creditors, and all parties in interest for a variety of reasons. First, settlement will avoid ongoing litigation with Lindsey, thus conserving the resources of the liquidation estate for later distribution to claimants. Second, Lindsey has agreed in Sections 3 and 4 of the Settlement Agreement that he will stipulate to any further actions on the stipulated judgment and that the stipulated judgment will not be dischargeable in any bankruptcy or insolvency. These provisions ensure that Lindsey's judgment obligations will remain in effect for a long period of time, which is critical because Lindsey has recently been sentenced by the United States District Court to 51 months in prison based upon criminal charges relating to the Liquidator's allegations in the Director and Officer Proceeding. Thus, the Settlement Agreement will give the Liquidator the opportunity to enforce Lindsey's obligations after he gets out of prison and as he returns to the workforce. Further, the Settlement Agreement is without prejudice to the claims the Liquidator's claims against all other parties in interest, including his claims pending against the other defendants in the Directors and Officers Proceeding, as well as the other parties in the Liquidation Proceeding.

8. Consistent with the notice procedures approved by this Court in connection with the Liquidator's Motion for Approval of Settlement and Release Agreement with PHL Variable Insurance Company, the Liquidator has proposed by

¹ Also, the judgment against Mr. Lindsey will not be reduced by the proceeds of the assets or property of Balcarres Group LLC (a Lindsey-controlled entity) that the Liquidator receives or distributes to the holders of allowed claims.

separate motion that notice of the hearing on approval of this motion be provided to (i) all counsel of record in the Liquidation Proceeding and the Directors and Officers Proceeding, and (ii) all persons and entities who have filed a proof of claim in the Liquidation Proceeding. The Liquidator further proposes that objections (if any) be filed and served within one week prior to the hearing to be scheduled by the Court.

9. The Liquidator thus requests that the Court grant this motion and approve the Settlement Agreement, and upon such approval request that the Stipulation to Judgment (Exhibit B) be approved in the Directors and Officers Proceeding, with judgment to enter in the form of the proposed order and judgment attached to the Stipulation.

WHEREFORE, the Liquidator requests that the Court approve the Settlement Agreement, and grant the Liquidator such other and further relief as is just.

Respectfully submitted,

Dated: November 24, 2009

PETER C. HILDRETH, BANK COMMISSIONER
OF THE STATE OF NEW HAMPSHIRE, AS
LIQUIDATOR OF NOBLE TRUST COMPANY

By his attorneys,

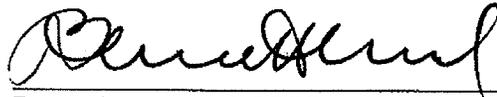
MICHAEL A. DELANEY,
ATTORNEY GENERAL



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Senior Assistant Attorney General
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-and-

SHEEHAN PHINNEY BASS + GREEN
PROFESSIONAL ASSOCIATION



Bruce A. Harwood (NH Bar 4821)
1000 Elm Street, P.O. Box 3701
Manchester, NH 03105-3701
(603) 627-8139

CERTIFICATE OF SERVICE

I, Bruce A. Harwood, hereby certify that on November 24, 2009, I caused a true copy of the foregoing Motion to be served upon the parties listed below via first class mail, postage prepaid.

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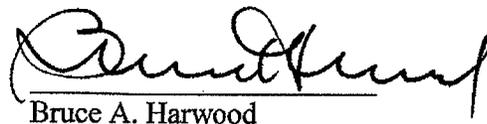
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Dated: November 24, 2009



Bruce A. Harwood

EXHIBIT A

SETTLEMENT AGREEMENT

Colin P. Lindsey and Peter C. Hildreth, Bank Commissioner for the State of New Hampshire, as the duly appointed Liquidator for Noble Trust Company and Aegean Scotia Holdings, LLC (the "Liquidator") hereby enter into this Settlement Agreement effective as of October 23, 2009. The Liquidator and Mr. Lindsey are collectively referred to in this Settlement Agreement as the "Parties."

1. **Stipulation to Judgment.** Mr. Lindsey agrees to stipulate to a \$15,781,000 judgment against him and in favor of the Liquidator in the matter of Hildreth v. Lindsey, No. 09-E-0184 (Merrimack County Superior Court), in the form attached to and incorporated into this Settlement Agreement.

2. **No Appeal.** Mr. Lindsey hereby waives all of his rights of appeal following the Court's entry of judgment against him in Hildreth v. Lindsey.

3. **Actions on the Judgment.** Mr. Lindsey hereby stipulates to judgment in any action the Liquidator may hereafter file on the judgment entered against him in Hildreth v. Lindsey in any forum or venue. Mr. Lindsey agrees to make the necessary filings as expeditiously as is possible to effectuate entry of judgment in any such action on the judgment.

4. **Attorneys Fees.** The Parties acknowledge and agree that in any suit between any of the Parties to interpret or to enforce the provisions of this Settlement Agreement, the Liquidator will be entitled to his attorneys' fees if he prevails in any fashion.

5. **Not Dischargeable.** The Parties agree that the judgment entered pursuant to this agreement and Mr. Lindsey's obligations and indebtedness thereunder will not be dischargeable in any case or proceeding commenced by or against Mr. Lindsey under the United States Bankruptcy Code or any other insolvency laws.

6. **General Terms.**

A. **Joint Effort.** The parties acknowledge that they have participated through their legal counsel in the negotiations leading to this Settlement Agreement, and that they have had the benefit of consultation and advice of legal counsel regarding the terms and effect of this Settlement Agreement. This Settlement Agreement is the result of the joint efforts of the parties. Each provision hereof has been subject to the mutual consultation, negotiation and agreement of the parties. There shall be no construction against any party based on any presumption of the party's involvement in the drafting thereof.

B. **Integrated Agreement.** This Settlement Agreement constitutes the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations and agreements, written and oral. No promises, agreements, inducements, statements or representations not explicitly set forth herein shall survive the execution of this Settlement Agreement, which shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

C. Counterparts. This Settlement Agreement may be executed in counterparts, each of which will be an original, which taken together shall constitute the Settlement Agreement.

D. Governing Law, Jurisdiction and Forum. The Parties agree that New Hampshire law (regardless of its choice of law rules) shall govern the formation, interpretation, and enforcement of this Settlement Agreement.

E. Court Approval. This Settlement Agreement shall not be effective unless and until approved by the entry of an Order of the Merrimack County Superior Court, which Order shall either have become non-appealable or, in the event of an appeal, shall have been affirmed after all appeals therefrom have been exhausted.

AGREED TO:



PETER C. HILDRETH, Bank Commissioner for the State of New Hampshire, as Liquidator of Noble Trust Company and Aegean Scotia Holdings, LLC

AND

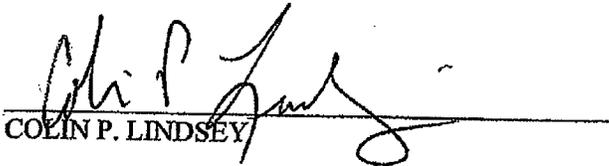

COLIN P. LINDSEY

EXHIBIT B
STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

09-E-0184

Peter C. Hildreth, Bank Commissioner for the State of New Hampshire,
as Liquidator for Noble Trust Company,

v.

Colin P. Lindsey, Eve Lindsey, Lisa Elliott (f/k/a Lisa Ordway), Medray Carpenter, George Owens, Chris Norwood, Thomas R. Anderson, AGTAX, Inc., Kerry Piandes, Ken Bojarski, Spencer Johnson, Anastasia Coravos, Global Financial Investors & Insurance Brokerage, Inc. (f/k/a Global Financial, Inc.), and Balcarres Group LLC

STIPULATION TO JUDGMENT

Respondent Colin P. Lindsey stipulates that judgment may be entered against him in the form of the Proposed Order and Judgment attached as Exhibit A.

COLIN P. LINDSEY

By His Attorneys,

HINCKLEY, ALLEN & SNYDER, LLC

By:


Michael J. Connolly, Esquire
James P. Ball, Esquire
11 South Main Street, Suite 400
Concord, NH 03301-4846
(617) 345-9000

EXHIBIT A

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

09-E-0184

Peter C. Hildreth, Bank Commissioner for the State of New Hampshire,
as Liquidator for Noble Trust Company,

v.

Colin P. Lindsey, Eve Lindsey, Lisa Elliott (f/k/a Lisa Ordway), Medray Carpenter, George Owens, Chris Norwood, Thomas R. Anderson, AGTAX, Inc., Kerry Piandes, Ken Bojarski, Spencer Johnson, Anastasia Coravos, Global Financial Investors & Insurance Brokerage, Inc. (f/k/a Global Financial, Inc.), and Balcarres Group LLC

(Proposed) Order and Judgment

Judgment is hereby ordered in favor of the Petitioner Peter C. Hildreth, Bank Commissioner for the State of New Hampshire, as the duly appointed Liquidator for Noble Trust Company and Aegean Scotia Holdings, LLC (the "Liquidator") and against Colin P. Lindsey ("Lindsey") in the amount of Fifteen Million Seven Hundred Eighty-One Thousand Dollars (\$15,781,000.00); provided, however, that the judgment amount shall be reduced by the total amount actually distributed by the Liquidator to the holders of allowed claims (excluding administration costs and expenses paid in accordance with RSA 395:30 (I)) in the liquidation

proceeding entitled In the Matter of the Liquidation of Noble Trust Company, Docket No. 08-E-0053 (Merrimack Country Superior Court)(the "Liquidation Proceeding")(the "Setoff Amount"), as approved and ordered by this Court in the Liquidation Proceeding; but provided further that the Setoff Amount shall not include the amount of any proceeds of the assets or property of Balcarres Group, LLC received by the Liquidator or distributed to the holders of the aforementioned allowed claims.

It is further ordered that the indebtedness and obligations of Lindsey under this Order and Judgment shall not be dischargeable in any case or proceeding commenced by or against Lindsey under the United States Bankruptcy Code or any other insolvency laws.

It is further ordered that this Order and Judgment shall be effective immediately upon entry, there being no just reason to delay enforcement of this Order and Judgment. To the extent necessary or convenient, and at the Liquidator's request, Writs of Execution shall be issued in aid of this Order and Judgment forthwith.

SO ORDERED, this _____ day of _____, 2009.

Presiding Judge