

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 AND RELEASE AGREEMENT  
WITH PHL VARIABLE INSURANCE COMPANY**

Ronald A. Wilbur, 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 a Settlement and Release agreement by and between the Liquidator and PHL Variable Insurance Company ("Phoenix"), dated as of June 24, 2010 (the "Phoenix Agreement"). In support of his motion, the Liquidator states as follows:

1. In 2003, Noble Trust was organized and chartered under the laws of the State of New Hampshire as a non-depository banking corporation. At all times relevant herein, Colin P. Lindsey ("Lindsey") was the president of Noble Trust and chairman of its board of directors. During the course of its business, Noble Trust solicited and received funds from both new and existing clients. In most, if not all, cases, Noble Trust's clients' funds were initially deposited into trusts established for the benefit of those clients.

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2. Lindsey also served as president or managing member of Balcarres Group, LLC ("Balcarres"), a Nevada limited liability company. Both Lindsey and Balcarres were licensed by the New Hampshire Insurance Department and acted as insurance brokers in procuring insurance policies for the benefit of Noble Trust's clients. Lindsey and/or Balcarres were paid commissions by insurance carriers for placing these life insurance policies. Between August 29, 2006 and January 24, 2008, Phoenix issued a number of insurance policies to or for the benefit of trusts for which Noble Trust served as trustee or trust protector. Phoenix paid Balcarres and/or Lindsey commissions on the majority of these policies.<sup>1</sup>

3. Between June 2004 and September 2007, Noble Trust (acting individually or as a trustee under its clients' trusts) invested approximately \$15 million in an entity known as Sierra Factoring, LLC ("Sierra"). Based upon information available to the Liquidator, the \$15 million investment in Sierra became substantially or entirely worthless, a fact that Lindsey did not disclose to Noble Trust's clients.

4. Instead, Lindsey attempted to conceal the loss from Noble Trust's clients and other parties in interest (including the New Hampshire Banking Department) through a fraudulent and illegal scheme involving the procurement of a number of life insurance policies with face values generally between \$3 million and \$10 million.

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<sup>1</sup> In some instances, NTC placed policies through insurance brokers/agents other than Balcarres/Lindsey, in which case Balcarres/Lindsey were not paid commissions by Phoenix.

5. To accomplish this, Lindsey caused Noble Trust, acting as trustee or trust protector under various trusts or sub-trusts established for Noble Trust's clients, to submit applications (usually through Balcarres) for high face value insurance policies to a number of different insurance carriers, including Phoenix. When these policies were ultimately placed in force, Lindsey, Balcarres and others were paid commissions by the respective insurance carriers. Some of the proceeds of these commissions were in turn used to fund payments of premiums on insurance policies previously issued for the benefit of some of Noble Trust's other clients. Other proceeds were used (or intended to be used) to attempt to cover up the Sierra losses by making payments to Noble clients whose funds were invested in Sierra, to generate the appearance that the Sierra investments were still performing according to their terms. Upon information and belief, Lindsey also intended to sell some of these policies (or the beneficial interests therein) to third parties, and use the sale proceeds to cover up the Sierra losses.<sup>2</sup>

6. While the procurement of the insurance policies and the generation of commissions in and of itself constituted a fraudulent scheme, aspects of fraud and misrepresentation pervaded the process by which many of the individual policies themselves were issued. A number of the applications misrepresented the applicants' net worth and/or income, and misrepresented that the high face value life insurance policies would be utilized for their individual estate planning. In reality, many of the individuals were induced in part through promises of profits through the sale of the

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<sup>2</sup> Nine of these policies are the subject of an earlier settlement agreement, dated as of November 6, 2008, between the Liquidator and Phoenix, which was approved by this Court's order, dated July 7, 2009.

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policies, with no expectation that either they or any other person with an insurable interest in their lives would benefit from any of the applied for policies.

7. In addition to the nine policies that were the subject of the first Phoenix settlement, Phoenix's records show that Phoenix issued forty five other policies to Noble Trust related life insurance trusts (the "Phoenix Policies"), which are identified on the attached Exhibit A.

8. According to Phoenix's records, as of February 11, 2008, Noble Trust paid or caused to be paid to Phoenix a total of \$11,372,846.61 in premiums on the Phoenix Policies. At Lindsey's direction, some of the premiums were paid from funds that Noble Trust held for the benefit of trusts that were not beneficiaries of the Phoenix Policies, through premium finance loans from one trust to another. Subsequently, Lindsey arranged for some of these inter-trust loans to be repaid by virtue of refinancing transactions that Lindsey arranged with outside premium finance lenders. Upon information and belief, the terms of many of the financing transactions involving the Phoenix Policies were either misrepresented to Phoenix or, in the case of the post-issuance premium refinance transactions, not disclosed to Phoenix at all. As of February 11, 2008, Phoenix paid a total of \$14,143,340.45 in commissions to Lindsey, Balcarres and others in connection with its issuance of the Phoenix Policies. Thus, Phoenix paid substantially more in commissions than it received in premiums on the Policies.

9. Phoenix asserts that the financial condition of a proposed insured is a material factor relied upon by insurance carriers in determining whether an insured is qualified for the coverage applied for, and, consequently, whether or not the insurance

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carrier is willing to issue a policy. Phoenix also asserts that the insured's purpose in seeking coverage and the intended use of the policy is also material to determine whether a policy should be issued. To the extent that a proposed insured intends to borrow or otherwise finance the policy premiums, the accurate disclosure of the terms of such financing are material to both the insured's financial qualifications and the intended use of the policy. Any material misrepresentation during the application process can render a policy void, if the trier of fact determines that the statement materially affected the acceptance of the risk. *See* RSA 415:9; *Taylor v. Met. Life Ins. Co.*, 106 N.H. 455, 458 (1965).

10. Additionally, New Hampshire law requires the owner of an insurance policy to have an insurable interest in the insured at the time of issuance. *See Hayford v. Century Ins. Co.*, 106 N.H. 242, 245 (1965) ("Since neither the plaintiff nor his mother's estate had an insurable interest in that property, the contract would be void and the defendant entitled to rescission."). A policy of insurance lacking an insurable interest is void, *ab initio*, as violating the public policy against wagering on human life. *See Mechanicks Nat. Bank v. Comins*, 72 N.H. 12, 15 (1903) ("It is indeed firmly established that insurance procured by one person upon the life of another, the former having no insurable interest in the latter, is void as a wager contract, against public policy, which condemns gambling speculations upon human life.").

11. Pervasive fraud, either in the overall scheme to procure insurance policies, or in the process of their individual procurement, can destroy the requisite insurable interest and render the policies void *ab initio*. Phoenix has asserted that the

fraudulent procurement of the Phoenix Policies and the lack of an insurable interest renders them void, unenforceable, and subject to rescission or an order declaring them void pursuant to New Hampshire law. Virtually all of the applications for the Phoenix Policies contained fraudulent statements and material misrepresentations, including false representations concerning the income and net worth of these proposed insureds; the existence or terms of premium financing; and the purpose for the insurance policy and the intent to transfer the policies to a third-party. Moreover, certain of the policies were procured with the intent to transfer the acquired policy to third-parties as part of an ongoing fraud perpetrated by Lindsey.<sup>3</sup>

12. The Liquidator does not contest either that the Phoenix Policies were generally procured by fraud and lack an insurable interest, or that Phoenix would be entitled to commence an action to rescind and/or declare void each of these policies but for the provisions of this Court's Order Appointing Liquidator, entered March 31, 2008 (the "Liquidation Order") which, among other things, enjoins all insurance carriers from taking any actions to "terminate, cancel, revoke, void or otherwise alter" the Phoenix Policies. (Liquidation Order, paragraph (j)(3)). The protections of the Liquidation Order (as clarified in this Court's Order Clarifying Order Appointing Liquidator, dated June 11, 2008) have preserved and continue to preserve the status quo with respect to all insurance policies in which Noble Trust or its clients hold any interest, subject to further Order of this Court.

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<sup>3</sup> The Liquidator does not allege that all individuals and entities who claim an interest in the Phoenix Policies committed or participated in fraudulent conduct in connection with the Phoenix Policies, and no such conclusion should be drawn.

13. Moreover, the Liquidator has asserted numerous claims against Phoenix with respect to the issuance of the Phoenix Policies, and the disposition of the premiums paid to Phoenix in connection therewith.

14. In the course of their negotiations concerning their various claims, rights and interests in the Phoenix Policies, Phoenix sought the Liquidator's consent to surrender, cancel or otherwise terminate the Phoenix Policies. The Liquidator and Phoenix conducted a series of negotiations concerning Phoenix's request. The Liquidator demanded that Phoenix return the approximately \$11 million in premiums that it received under the Policies. Phoenix countered that it was not required to return any of the premiums to the Liquidator due to the approximately \$14 million in commissions that Phoenix paid to Balcarres, Lindsey and others in connection with the Phoenix Policies. Phoenix asserted this argument based on several legal theories including fraud, conspiracy, and abuse of the corporate form. Phoenix asserted that numerous courts have permitted insurers to void policies procured through fraud or that lack insurable interest without requiring the insurer to refund premiums.<sup>4</sup>

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<sup>4</sup> See, e.g., *PHL Variable Ins. Co. v. Lucille E. Morello 2007 Irrevocable Trust ex rel. BNC Nat. Bank*, 645 F.3d 965, 970 (8th Cir. 2011) (affirming the district court's determination that an insurance trust was not entitled to a return of premiums where the insured and other defrauding parties collaborated to falsify the insured's finances to deceive the insurance company into issuing an insurance policy for which the insured was not financially qualified); *Wuliger v. Mfrs. Life Ins. Co.*, 567 F.3d 787, 796-97 (6th Cir. 2009) ("[A rule that] an insured who commits fraud may announce the fraud and receive a refund on any premiums paid to date — would have the perverse effect of reducing the defrauder's risk relative to the honest policyholders; any defrauder could commit to paying premiums knowing that if the premiums ever became unaffordable, he could simply declare his fraud and receive all of the previously paid premiums back. The Court cannot sanction such an outcome . . ."); *Hartford Life & Annuity Ins. Co. v. Doris Barnes Family 2008 Irrevocable Trust et al.*, No. CV 10-7560 PSG (DTBx), 2011 WL 759554, at \*4-5 (C.D. Cal. Feb. 22, 2011) (denying motion to dismiss after concluding that court could afford aggrieved insurer complete relief by permitting retention of premiums despite rescission claim); Order Denying Motion to Strike at 5-6, *PHL Variable Ins. Co. v. The Edwin Fuld Life Ins. Trust November 2007*, No. 09-cv-01222-MMH-JRK [Doc. 33] (M.D. Fla. Aug. 10, 2010) (concluding that there were circumstances in which an insurer could appropriately seek an equitable offset against premiums when cases involved fraud and stating that to not allow the offset would allow STOLI schemes to be conducted risk free and "would be inconsistent with

Phoenix asserted that in any litigation to rescind the Phoenix Policies, it would be entitled to an equitable offset of its claims. See RSA 395:30 (“If there are mutual debts or demands between the plaintiff and defendant at the time of the commencement of the plaintiff’s action, one debt or demand may be set off against the other.”). Phoenix also asserted various charges, expenses and other costs provided for under the Policies that would reduce the amount of premiums that it would be required to return in any event, even without respect to its claim of setoff.

15. The Liquidator disputed the merits of Phoenix’s legal theories and further asserted that Phoenix could not legally or equitably set off the \$11 million in premiums against the commissions paid due to a lack of the requisite mutuality of obligations as between Phoenix and Noble Trust on the one hand, and Phoenix and Balcarres/Lindsey on the other.

16. In order to avoid the time, expense and resources that litigation of these and other issues relating to the Policies would undoubtedly consume, and the attendant uncertainty of outcome associated with such litigation, the Liquidator and Phoenix negotiated the Settlement Agreement, which by its terms does not become

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the public policy underlying the prohibition against STOLI schemes in the first place.”); *PHL Variable Ins. Co. v. Clifton Wright Family Ins. Trust*, No. 09-CV-2344 BTM (POR), 2010 WL 1445186, at \*2 (S.D. Cal. Apr. 12, 2010) (finding that the general rule that a insurer must return everything of value it received under a rescinded policy does not prohibit the court from adjusting the equities between the parties by awarding monetary relief to the insurer to compensate it for the damages it suffered from issuing the rescinded policy); Order on Motion for Summary Judgment at 26-27, *Pruco Life Insurance Co. v. Brasner*, No. 10-80804-CIV-COHN/SELTZER [Doc. 246] (S.D. Fla. Nov. 14, 2011) (indicating that if a policy is void *ab initio* then the court will leave the parties as it found them and decline to award premiums to the party seeking return of premiums); *TTSI Irrevocable Trust v. ReliaStar Life Ins. Co.*, 60 So.3d 1148, 1150 (Fla. 5th Dist. Ct. App. 2011) (holding that where a party wrongfully procures a life insurance policy on an individual in whom it has no insurable interest, the party is not entitled to a return of premiums paid for the void policy); *PHL Variable Ins. Co. v. Abrams*, 10-CV-521-BTM-NLS, 2012 WL 10686, at \*6 (S.D. Cal. Jan. 3, 2012) (denying motion to dismiss after concluding it was permissible in a rescission action for an insurer to seek to retain all or part of the premiums paid for an insurance policy to offset the consequential damages the insurer incurred as a result of the policy).

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effective unless and until this Court approves it and authorizes the Liquidator to enter in to and consummate it.

17. Under the Settlement Agreement, a copy of which is attached hereto as Exhibit B, Phoenix shall pay \$4.6 million to the Liquidator in exchange for the Policies being deemed surrendered, cancelled or otherwise terminated. Once approved by the Court, the surrender, cancellation or other termination of the Phoenix Policies shall be deemed effective as of June 24, 2010 (the effective date of the Phoenix Agreement), but the Settlement Agreement itself shall not become effective unless and until "Court Approval" as defined in the Settlement Agreement, occurs, i.e. approval by this Court in an Order that becomes both final and no longer subject to appeal. Phoenix has deposited the \$4.6 million settlement amount with the Liquidator, which he is holding pending such approval.<sup>5</sup>

18. Although Phoenix did not file a proof of claim in this proceeding until after the August 10, 2008 bar date set by the Liquidator, it did ultimately file such a claim in the gross amount of the commissions that it paid in connection with the Phoenix Policies. Under the Settlement Agreement, the Liquidator agrees to treat Phoenix's claim as allowed in the total amount of \$8,878,749.10 (the "Allowed Phoenix Claim"). The amount of the Allowed Phoenix Claim shall be reduced, dollar for dollar, by any funds that Phoenix receives in restitution payments that may result from any criminal proceedings relating to the Phoenix Policies.

19. Both Phoenix and the Liquidator shall release each other from all claims under the Phoenix Policies upon Court Approval, which release shall also be

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<sup>5</sup> The \$4.6 million is in addition to the \$1.5 million paid under the previous Phoenix settlement.

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binding upon third parties. However, the rights of the Liquidator and other parties in interest are preserved in all material respects, and are subject to further determination by this Court after appropriate notice and hearing.

20. Although the Phoenix Allowed Claim will be entitled to participate in any distributions or dividends in this estate in the same manner as other similarly situated allowed claims against Noble Trust, it is expressly subject to any and all claims that the Liquidator may assert as to the priority to which it may be entitled, whether pursuant to principles of equitable subordination or otherwise.

21. The surrender, cancellation and/or other termination of the Phoenix Policies to Phoenix shall be free and clear of all liens, claims and interests in the Phoenix Policies asserted or claimed by parties in interest. All such liens, claims, and interests shall be subject to allowance or disallowance as part of the claims adjudication process in the Liquidation Proceeding, including any Plan of Liquidation which the Court may subsequently approve.

22. Absent Court Approval, it is likely that Phoenix would seek to modify the Liquidation Order to permit it unilaterally to cancel, rescind, revoke or void the Phoenix Policies. Since the Phoenix Policies were fraudulently procured, lack an insurable interest, or both, the continued payment of premiums on these policies and the continued requirement that Phoenix carry fraudulent policies on its in-force ledger is a violation of public policy. *See Mechanics*, 72 N.H. at 15.

23. The Phoenix Policies were procured with the apparent intent to generate commission revenue and policy sale proceeds that would be used to cover up the loss incurred through Noble Trust's Sierra investment. In short, there is no dispute

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that the Phoenix Policies need to be either rescinded, surrendered or declared void. The Settlement Agreement spares the estate and its creditors from the time, expense and resources that litigation of the issues relating to the Phoenix Policies would require, and protects the rights and interests of all parties claiming an interest therein.

24. Therefore, the Liquidator believes that the Settlement Agreement is fair and reasonable and its approval is in the best interests of Noble Trust, its creditors, and all parties in interest. *E.g. In re Liquidation of The Home Ins. Co.*, 154 N.H. 472, 489-90 (2006).

WHEREFORE, the Liquidator requests that the Court approve the Settlement Agreement, after a hearing and upon such notice to all parties in interest as the Court deems appropriate, and granting the Liquidator such other and further relief as is just.

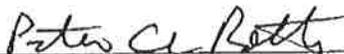
Dated: April 17, 2012

Respectfully submitted,

RONALD A. WILBUR, BANK  
COMMISSIONER OF THE STATE OF NEW  
HAMPSHIRE, AS LIQUIDATOR OF NOBLE  
TRUST COMPANY

By his attorneys,

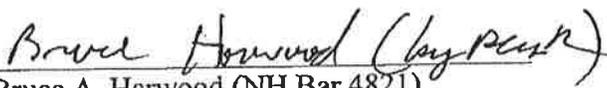
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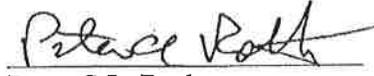
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**CERTIFICATE OF SERVICE**

I, Peter C.L. Roth, hereby certify that on April 17, 2012, I caused a true copy of the foregoing to be served upon all counsel of record in the above-captioned proceeding, as listed on the attached service list, via first class mail, postage prepaid.

  
Peter C.L. Roth

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## EXHIBIT A

Name of Trust	Policy No.	Issue Date	Face Amount
The Alan Dickson Irrevocable Trust	97519799	12/10/06	\$10,000,000.00
The Angelo Gineris Irrevocable Trust	97520285	03/05/07	\$8,000,000.00
[REDACTED]	97518218	08/29/06	\$10,000,000.00
The Betty S. Hollingsworth Irrevocable Trust	97523136	01/24/08	\$10,000,000.00
[REDACTED]	97520410	02/12/07	\$5,000,000.00
The C. Robert Daubert Trust	97520034	01/31/07	\$10,000,000.00
The Charles J. Reeder Irrevocable Trust	97522980	08/13/07	\$7,000,000.00
The Charles Winston Irrevocable Trust	97519385	10/31/06	\$15,000,000.00
The Dan Beaton Irrevocable Trust	97518208	08/31/06	\$2,200,000.00
The Donald J. Brady Irrevocable Trust	97524879	10/18/07	\$10,000,000.00
The Elizabeth Burton Irrevocable Trust	97520003	12/20/06	\$3,000,000.00
The Florence Winston Irrevocable Trust	97519391	11/01/06	\$15,000,000.00
The Furman Tinon Irrevocable Trust	97523040	01/17/08	\$5,000,000.00
The George Bolton Irrevocable Trust	97522742	09/25/07	\$4,500,000.00
The Grace Daubert Trust	97520085	01/30/07	\$10,000,000.00
The Harry Jaeger Irrevocable Trust	97520128	03/08/07	\$1,500,000.00
The Harry N. Nicklaus Irrevocable Trust	97522837	09/12/07	\$5,000,000.00
The Jack Parker Irrevocable Trust	97518628	10/16/06	\$10,000,000.00
[REDACTED]	97526537	12/27/07	\$5,000,000.00
The James Coull Irrevocable Trust	97522825	07/30/07	\$4,000,000.00
The James Panter Irrevocable Trust	97520086	01/25/07	\$4,000,000.00
The John H. Hoelzel Irrevocable Trust	97519928	01/17/07	\$2,000,000.00
The Joyce Dowdy Irrevocable Trust	97525291	09/14/07	\$2,000,000.00
The Kaissar S. Ibrahim Irrevocable Trust	97520256	02/08/07	\$8,000,000.00
The Lawrence P.O'Reilly Irrevocable Trust	97522983	12/12/07	\$10,000,000.00
The Louise W. Talley Irrevocable Trust	97523446	09/06/07	\$6,000,000.00
The Lucille Kraft Irrevocable Trust	97519178	02/18/07	\$10,000,000.00
The Marilyn J. Prange Irrevocable Trust	97523921	01/10/08	\$10,000,000.00
The Milton A. Barber Irrevocable Trust	97526254	01/23/08	\$5,000,000.00
The Patricia Codiroli Family Trust	97520084	02/02/07	\$6,000,000.00
The Ralph L. Pendleton Irrevocable Trust	97521364	11/11/07	\$2,000,000.00
The Richard Gardner Irrevocable Trust	97519274	11/02/06	\$5,000,000.00
The Ronald P. Kauffman Irrevocable Trust	97521867	09/06/07	\$1,500,000.00
The Ronald Robinson Irrevocable Trust	97522556	09/06/07	\$6,000,000.00
The Roxine Stone Irrevocable Trust	97520082	01/15/07	\$7,000,000.00
[REDACTED]	97522639	07/19/07	\$6,000,000.00
The Sara P. Detweiler Irrevocable Trust	97523642	01/24/08	\$10,000,000.00
[REDACTED]	97519132	10/16/06	\$5,000,000.00
[REDACTED]	97519173	10/16/06	\$10,000,000.00
The Shirley A. Reznik Irrevocable Trust	97522173	11/12/07	\$2,000,000.00
The Sussman Life Insurance Trust	97522051	01/29/07	\$3,500,000.00
The Sussman Life Insurance Trust	97522070	01/29/07	\$3,500,000.00
The Terrence M. Clarke Irrevocable Trust	97522982	08/17/07	\$5,000,000.00
The Thomas F. Keller Irrevocable Trust	97520169	01/09/07	\$9,500,000.00
The William J. Allen Jr. Irrevocable Trust	97523401	08/16/07	\$5,000,000.00

EXHIBIT B

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 08-E-0053  
In the Matter of the Liquidation of  
Noble Trust Company

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into as of the 24th Day of June, 2010 (the "Effective Date") by and between PHL Variable Insurance Company ("Phoenix"), and Robert A. Fleury, Deputy Bank Commissioner of the State of New Hampshire, as Proposed Successor Liquidator of Noble Trust Company ("NTC") (the "Liquidator") (Phoenix and the Liquidator being collectively referred to herein as the "Parties");

RECITALS

WHEREAS, prior to the commencement of the above-captioned liquidation proceeding (the "Liquidation Proceeding"), NTC was appointed and served as Trustee (or, with respect to three trusts in which Wells Fargo Bank, N.A. ("WF") acted as Trustee, as Trust Protector) under certain trust agreements formed by or at the direction of NTC, including the trusts defined in Schedule "A," all of which are collectively referred to hereinafter as the "Trusts."

WHEREAS, prior to the commencement of the Liquidation Proceeding, each Trust, through its trustee, applied in writing to Phoenix for the issuance of life insurance policies insuring the lives of certain individuals, and Phoenix issued the policies defined in Schedule "B," all of which are collectively referred to hereinafter as the "Policies."

WHEREAS, on February 11, 2008, the Commissioner filed with the Superior Court for Merrimack County, New Hampshire (the "Liquidation Court") his Verified Petition for

Liquidation of NTC, and appointed Robert A. Fleury, Deputy Bank Commissioner of the State of New Hampshire, as Conservator for NTC.

WHEREAS, on March 31, 2008, this Court entered its Order Appointing Liquidator (the "Liquidation Order"), pursuant to which the Liquidator was vested with certain rights and powers concerning NTC (and all sub-trusts and protected trusts in which it holds an interest, either directly or indirectly), including "exclusive possession, custody and control of all of the property, contracts and rights of action and all of the books and records of NTC, . . . wherever located and by whomever possessed." The Liquidation Order further provided the Liquidator with "all of the powers of the officers and managers of NTC."

WHEREAS, the Liquidator is aware that one or more entities claim a security interest or other interest in the Policies, including by virtue of having claimed to have made premium finance loans to trusts or sub-trusts formed by or at the direction of NTC, and that NTC may not have disclosed some or any of such transactions to Phoenix.

WHEREAS, Colin P. Lindsey ("Lindsey") was a principal of NTC and, individually or through his affiliated entity Balcarres Group LLC ("Balcarres"), acted as a broker or producer in connection with certain of the Policies.

WHEREAS, the Liquidator has asserted claims and obtained civil judgments against Lindsey and Balcarres arising, in part, from their acts and conduct in connection with one or more of the Policies.

WHEREAS, in connection with the issuance of the Policies, Phoenix paid commissions to Lindsey and others totaling \$14,143,340.45.

WHEREAS, the Parties each have claims arising against each other arising from and relating to the Policies, and desire to settle and compromise their claims against each other in the

manner set forth herein, in order to avoid the considerable time, expense, resources and uncertainties that protracted litigation of such claims would entail.

#### AGREEMENT

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. The Parties agree that this Agreement is subject to the entry of a final order by the Liquidation Court in the Liquidation Proceeding approving this Agreement (the "Court Approval"). The Court Approval shall be deemed to occur on the date that such order shall have become non-appealable or, in the event of an appeal, has been affirmed after all appeals therefrom have been exhausted.

2. The Court Approval shall bar any and all third parties (including, but not limited to, all insureds, all settlors and beneficiaries of the Trusts, and any and all lenders or other persons or entities claiming an interest in the Policies (collectively "Third Parties")) from pursuing claims against Phoenix or the Liquidator related in any way to the Policies, the Trusts, this Agreement, or the Liquidation Proceeding. The Court Approval shall further bar Third Parties from pursuing claims against Phoenix or the Liquidator asserted by, through, or under the Trusts. All liens, claims, encumbrances and interests in the Policies asserted by any and all Third Parties shall be administered and adjudicated in the Liquidation Proceeding in conjunction with the Liquidator's Plan of Liquidation and pursuant to further order(s) of the Liquidation Court.

3. The Liquidator agrees to file all necessary pleadings to obtain entry of the Court Approval as soon as possible and the Parties acknowledge that time is of the essence.

4. The Liquidator and Phoenix agree that the Policies shall be deemed to be hereby surrendered (pursuant to the voluntary surrender provisions of the Policies), canceled or otherwise terminated, all as of the Effective Date of this Agreement. Phoenix agrees, as part of the consideration for this Agreement and as part or all of the Settlement Amount defined below, to waive a portion of the surrender charges on the Policies. The Liquidator and Phoenix agree that the Policies have terminated as of the Effective Date of this Agreement; that no further rights of recovery exist under the Policies, at law or in equity; that any and all rights under the Policies, aside from those expressly stated in this Settlement Agreement, shall be deemed released; and that both the Liquidator and Phoenix are deemed released from any and all claims or obligations under the Policies, to the extent that any such claims or obligations exist. The Liquidator and Phoenix further agree that in the event of the death of any insured under any Policy prior to Court Approval, no claim shall be submitted to Phoenix and no death benefits shall be payable under such Policy.

5. The Parties agree that the time by which Phoenix must assert any and all claims contesting any Policy under the Policy's terms and conditions (including a Policy's contestability provision) and/or NH RSA 408:10 shall be tolled until sixty (60) days after the later of (a) Court Approval, (b) the denial of Court Approval; (c) or the date on which any appeal of the denial of Court Approval is exhausted. Regardless of approval or denial, in part or in whole, of this Agreement, the Parties agree to continue to work in good faith to toll contestability dates of any and all Policies for as long as the Policies are subject to the Liquidation Proceeding. Nothing within this section or this Agreement is intended to waive or compromise any legal argument that the contestability period of any Policy extends beyond the time period set forth in this paragraph.

6. Phoenix agrees to pay to the Liquidator the aggregate sum of Four Million Six Hundred Thousand and 00/100 dollars (\$4,600,000.00) (the "Settlement Amount"). Phoenix shall deliver to the Liquidator the full amount of the Settlement Amount upon execution of this Agreement, which the Liquidator shall deposit in a separate, segregated account (the "Settlement Account") and hold for the benefit of Phoenix pending Court Approval; provided that if Court Approval does not become effective, the Liquidator shall thereupon return the Settlement Amount to Phoenix, without setoff or deduction on account of any claim that the Liquidator or any Third Party may otherwise have against Phoenix or any other claim that is made in the Liquidation Proceeding. Upon Court Approval, the Settlement Amount shall be released from the Settlement Account and accepted by the Liquidator.

7. The Liquidator agrees and acknowledges that Phoenix has asserted a claim against NTC in accordance with RSA 395:13 in the amount of Eight Million Eight Hundred Seventy Eight Thousand Seven Hundred Forty Nine and 10/100 Dollars (\$8,878,749.10) (the "Non-Marino Phoenix Claim"). Phoenix's claim is attached as Exhibit "1." The Liquidator will accept and allow Phoenix's claim for all purposes in the Liquidation Proceeding in the following amount and in the following manner: the Non-Marino Phoenix Claim, the Allowed Phoenix Claim as defined in that certain settlement agreement between Phoenix and the Liquidator effective November 6, 2008, along with any other claim submitted by Phoenix within the Liquidation Proceeding, will be placed in the same class, and treated in the same manner, as the allowed claims of any other insurance company that issued life insurance policies to trusts for which NTC served as a trustee, trust administrator, or trust protector (the "Insurer Class"). Phoenix agrees that the Liquidator can subordinate, in distribution priority, the claims of the

Insurer Class to the allowed claims of any other classes of NTC investors and creditors as described in RSA 390:30 (I) through (VI).

8. Upon Court Approval, Phoenix agrees to dismiss its claims asserted against Global Financial Investors and Insurance Brokerage Inc. ("GFI") and Kerry T. Piandes ("Piandes") in *PHL Variable Insurance Company v. Global Financial Investors and Insurance Brokerage Inc. et al.*; No. 1:10-cv-24; in the United States District Court for the District of New Hampshire (the "GFI Lawsuit"), provided all parties to the GFI Lawsuit agree to the dismissal of the lawsuit in its entirety, including any claims asserted against Phoenix.

9. The Liquidator, in his capacity as Liquidator and on behalf of NTC (for itself and in any and all capacities in which it is named or has acted under any of the Trusts or in connection with any of the Policies), its representatives, parent organization, and their respective successors and assigns, hereby releases, acquits and discharges Phoenix, together with its directors, officers, employees, attorneys, agents, insurers, representatives, heirs, assigns, affiliates, predecessors, successors, related entities, and subsidiary and parent organizations from and against any and all claims, demands, obligations, liabilities, and causes of action, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown, relating in any way to the Policies. The Parties acknowledge that this release does not constitute a release of any claims against any other person or entity, including Lindsey, Balcarres, GFI, Piandes, or any Third Party.

10. Phoenix, and its representatives, successors, and assigns hereby release, acquit and discharge the Liquidator and the Trusts, together with their directors, officers, employees, attorneys, agents, insurers, representatives, heirs, assigns, affiliates, predecessors, successors, related entities, and subsidiary and parent organizations from and against any and all claims,

demands, obligations, liabilities, and causes of action, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown, relating to the Policies except as set forth in this Agreement. The Parties acknowledge that this release does not constitute a release of any claims against any other person or entity, individually or acting in any capacity, including but not limited to Lindsey, Balcarres, GFI, Piandes, or any Third Party.

11. No Party to this Agreement makes any acknowledgment or admission of any liability to any other Party to this Agreement.

12. The Parties acknowledge that neither they, nor anyone acting or purporting to act on their behalf, have made any representations nor warranties to the other as to any tax issues relating to the Policies or this Agreement.

13. This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire applicable to agreements made and to be wholly performed within that state, without regard to its conflicts of law provisions or the conflict of law provisions of any jurisdiction that would cause the application of any law other than that of the state of New Hampshire.

14. Each Party represents that it has carefully read and fully understands all of the provisions of this Agreement, that it has been given the opportunity to fully discuss the contents of this Agreement with independent counsel of its choice and has done so, and that by executing the agreement, each Party relies entirely on its own judgment and the advice of its respective counsel and not upon any representation, statement or promise, not otherwise set forth in this Agreement, of any of the other Parties, their attorneys or other individual or entity, and that it is voluntarily and without duress entering into this Agreement.

15. This Agreement may be signed in counterparts that are provided to the other party by facsimile or by electronic mail transmission of a copy of the executed document (in .pdf or .tiff format), each of which shall be deemed an original, and all counterparts so executed shall constitute one Agreement binding on all of the Parties, notwithstanding that all of the Parties are not signatory to the same counterpart.

16. The language of all parts of the Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly construed for or against any Party. The Parties agree that this Agreement shall be deemed to have been jointly drafted for purposes of applying any rules of construction.

17. Each of the Parties represents to the other that its signature on this Agreement has been duly authorized, subject only to Court Approval.

18. Each party shall be responsible for its own attorneys' fees, actual costs of court and all other costs in connection with this Agreement.

19. This Agreement reflects the entire agreement between the Parties. The execution and delivery of this written Agreement supersedes any and all prior representations, negotiations or agreements pertaining to the subject matter herein. The Agreement may not be modified in any way except by written consent of authorized representatives of the Parties.

20. This Agreement and the covenants, obligations, undertakings, rights or benefits hereof shall be binding upon and shall inure to the benefit of the Parties hereto and their respective representatives, successors and assigns, including but not limited to, any successor liquidators of NTC and any successor trustees of the Trusts.

21. If, after Court Approval of this Agreement has been obtained, any part, term or provision of this Agreement is subsequently declared or determined by any Court or body of

competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term or provision shall not be deemed to be a part of this Agreement.

**SIGNATURE PAGE TO FOLLOW**

PHL VARIABLE INSURANCE COMPANY

S.T

By: David R. Pellerin  
Name: DAVID R. PELLERIN  
Title: SENIOR VICE PRESIDENT  
Date: 24 JUNE, 2010

**ROBERT A. FLEURY,**  
Deputy Bank Commissioner of the State of New Hampshire,  
As Proposed Successor Liquidator of Noble Trust Company

By: \_\_\_\_\_  
Name: Robert A. Fleury  
Title: Deputy Bank Commissioner, New Hampshire Banking Department  
Date: \_\_\_\_\_, 2010

**PHL VARIABLE INSURANCE COMPANY**

By: \_\_\_\_\_  
Name:  
Title:  
Date: June \_\_, 2010

**ROBERT A. FLEURY,**  
**Deputy Bank Commissioner of the State of New Hampshire,**  
**As Proposed Successor Liquidator of Noble Trust Company**

By:  \_\_\_\_\_  
Name: Robert A. Fleury  
Title: Deputy Bank Commissioner  
Date: June 24, 2010

SCHEDULE A

The following are collectively defined as the "Trusts:"

- 1) The 2007 William J. Allen Irrevocable Trust dated 08/02/07 (the "Allen Trust");
- 2) Milton A. Barber Irrevocable Trust dated 01/16/2008 (the "Barber Trust");
- 3) The Beaton ILIT dated 06/26/2006 (the "Beaton Trust");
- 4) The 2007 George R. Bolton Irrevocable Trust dated 8/3/2007 (the "Bolton Trust");
- 5) The 2007 Donald J. Brady Irrevocable Trust dated October 10, 2007 (the "Brady Trust");
- 6) The Elizabeth Burton Irrevocable Life Insurance Trust dated 09/14/2006 (the "Burton Trust");
- 7) The 2007 Terence Clarke Irrevocable Life Insurance Trust dated 8/17/2007 (the "Clarke Trust");
- 8) Patricia Codioli Family Trust 1 dated 08/15/2006 (the "Codioli Trust");
- 9) The 2007 James Coull Irrevocable Trust dated 8/16/2007 (the "Coull Trust");
- 10) The C. Robert Daubert Trust dated 10/26/2006 (the "C. Daubert Trust");
- 11) The Grace Daubert Trust dated 10/20/2006 (the "G. Daubert Trust");
- 12) The Sara P. Detweiler Irrevocable Trust dated 01/18/2008 (the "Detweiler Trust");
- 13) The Alan T. Dickson Irrevocable Trust dated 11/22/2006 (the "Dickson Trust");
- 14) The 2007 Joyce Dowdy Irrevocable Trust dated 10/11/07 (the "Dowdy Trust");
- 15) The Richard Gardner ILIT dated 10/18/06 (the "Gardner Trust");
- 16) The 2006 Angelo J. Gineris ILIT dated December 11, 2006 (the "Gineris Trust");
- 17) [REDACTED]
- 18) The John Hoelzel Irrevocable Life Insurance Trust dated 09/14/2006 (the "Hoelzel Trust");
- 19) The Betty S. Hollingsworth Irrevocable Trust dated 12/04/2007 (the "Hollingsworth Trust");
- 20) [REDACTED]
- 21) The Kaissar S. Ibrahim Irrevocable Trust dated 10/25/07 (the "Ibrahim Trust");
- 22) The 2006 Harry R. Jaeger ILIT dated December 11, 2006 (the "Jaeger Trust");

SCHEDULE A

- 23) The 2006 Thomas F. Keller Irrevocable Trust dated 12/19/06 (the "Keller Trust");
- 24) The Lucille Kraft ILIT dated 09/07/2006 (the "Kraft Trust");
- 25) The 2007 Lawrence P. O'Reilly Irrevocable Trust dated 10/18/2007 (the "O'Reilly Trust");
- 26) The James Panter Irrevocable Life Insurance Trust dated 12/13/2006 (the "Panter Trust");
- 27) The John Parker ILIT dated 08/28/2006 (the "Parker Trust");
- 28) 2007 Ralph L. Pendleton Irrevocable Trust dated 11/07/2007 (the "Pendleton Trust");
- 29) 2008 Marilyn J. Prange Irrevocable Trust dated 1/07/2008 (the "Prange Trust");
- 30) The Charles Reeder Irrevocable Trust dated 08/12/2007 (the "Reeder Trust");
- 31) The 2007 Shirley A. Reznik Irrevocable Trust dated 04/26/2007 (the "Reznik Trust");
- 32) The 2007 Ronald Robinson Irrevocable Trust dated 07/12/2007 (the "Robinson Trust");
- 33) [REDACTED]
- 34) [REDACTED]
- 35) The Roxine Stone Irrevocable Life Insurance Trust 3 dated 05/01/2006 (the "Stone Trust");
- 36) The Zelda Sussman Life Insurance Trust (the "Sussman Trust");
- 37) The 2007 Louise W. Talley Irrevocable Trust dated 08/02/2007 (the "Talley Trust");
- 38) The Furman Tinon Irrevocable Trust dated 10/31/2007 (the "Tinon Trust");
- 39) 2006 Charles M. Winston Irrevocable Trust dated 10/26/06 (the "C. Winston Trust");
- 40) 2006 Florence B. Winston Irrevocable Trust dated 10/26/06 (the "F. Winston Trust");
- 41) The Ronald P. Kauffman CS Trust dated 8/16/2007 (the "Kauffman Trust");
- 42) The Harry N. Nicklaus CS Trust dated 12/04/2007 (the "Nicklaus Trust"); and
- 43) [REDACTED]

## SCHEDULE B

The following are collectively defined as the "Policies:"

- 1) The Allen Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of William J. Allen. In response to this application, Phoenix issued policy number 97523401, with a policy date of August 16, 2007, to the Allen Trust (the "Allen Policy"). Phoenix's records reflect that the Allen Trust is the owner of the Allen Policy and that NTC is the trustee of the Allen Trust.
- 2) The Barber Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Milton A. Barber. In response to this application, Phoenix issued policy number 97526254, with a policy date of November 16, 2007, to the Barber Trust (the "Barber Policy"). Phoenix's records reflect that the Barber Trust is the owner of the Barber Policy and that NTC is the trustee of the Barber Trust.
- 3) The Beaton Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Daniel R. Beaton. In response to this application, Phoenix issued policy number 97518208, with a policy date of August 31, 2006, to the Beaton Trust (the "Beaton Policy"). Phoenix's records reflect that the Beaton Trust is the owner of the Beaton Policy and that NTC is the trustee of the Beaton Trust.
- 4) The Bolton Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of George R. Bolton. In response to this application, Phoenix issued policy number 97522742, with a policy date of September 25, 2007, to the Bolton Trust (the "Bolton Policy"). Phoenix's records reflect that the Bolton Trust is the owner of the Bolton Policy and that NTC is the trustee of the Bolton Trust.
- 5) The Brady Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Donald J. Brady. In response to this application, Phoenix issued policy number 97524879, with a policy date of October 18, 2007, to the Brady Trust (the "Brady Policy"). Phoenix's records reflect that the Brady Trust is the owner of the Brady Policy and that NTC is the trustee of the Brady Trust.
- 6) The Burton Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Elizabeth Burton. In response to this application, Phoenix issued policy number 97520003, with a policy date of December 20, 2006, to the Burton Trust (the "Burton Policy"). Phoenix's records reflect that the Burton Trust is the owner of the Burton Policy and that NTC is the trustee of the Burton Trust.
- 7) The Clarke Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Terrence Clarke. In response to this application, Phoenix issued policy number 97522982, with a policy date of August 17, 2007, to the Clarke Trust (the "Clarke Policy"). Phoenix's records reflect that the Clarke Trust is the owner of the Clarke Policy and that NTC is the trustee of the Clarke Trust.

## SCHEDULE B

- 8) The Codioli Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Patricia Codioli. In response to this application, Phoenix issued policy number 97520084, with a policy date of February 2, 2007, to the Codioli Trust (the "Codioli Policy"). Phoenix's records reflect that the Codioli Trust is the owner of the Codioli Policy and that NTC is the trustee of the Codioli Trust.
- 9) The Coull Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of James Coull. In response to this application, Phoenix issued policy number 97522825, with a policy date of July 30, 2007, to the Coull Trust (the "Coull Policy"). Phoenix's records reflect that the Coull Trust is the owner of the Coull Policy and that NTC is the trustee of the Coull Trust.
- 10) The C. Daubert Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of C. Robert Daubert. In response to this application, Phoenix issued policy number 97520034, with a policy date of January 30, 2007, to the C. Daubert Trust (the "C. Daubert Policy"). Phoenix's records reflect that the C. Daubert Trust is the owner of the C. Daubert Policy and that NTC is the trustee of the C. Daubert Trust.
- 11) The G. Daubert Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Grace Daubert. In response to this application, Phoenix issued policy number 97520085, with a policy date of January 31, 2007, to the Grace Daubert Trust (the "G. Daubert Policy"). Phoenix's records reflect that the G. Daubert Trust is the owner of the G. Daubert Policy and that NTC is the trustee of the G. Daubert Trust.
- 12) The Detweiler Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Sara P. Detweiler. In response to this application, Phoenix issued policy number 97523642, with a policy date of January 24, 2008, to the Detweiler Trust (the "Detweiler Policy"). Phoenix's records reflect that the Detweiler Trust is the owner of the Detweiler Policy and that NTC is the trustee of the Detweiler Trust.
- 13) The Dickson Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Alan T. Dickson. In response to this application, Phoenix issued policy number 97519799, with a policy date of December 10, 2006, to the Dickson Trust (the "Dickson Policy"). Phoenix's records reflect that the Dickson Trust is the owner of the Dickson Policy and that NTC is the trustee of the Dickson Trust.
- 14) The Dowdy Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Joyce C. Dowdy. In response to this application, Phoenix issued policy number 97525291, with a policy date of September 14, 2007, to the Dowdy Trust (the "Dowdy Policy"). Phoenix's records reflect that the Dowdy Trust is the owner of the Dowdy Policy and that NTC is the trustee of the Dowdy Trust.

## SCHEDULE B

- 15) The Gardner Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Richard C. Gardner. In response to this application, Phoenix issued policy number 97519274, with a policy date of November 2, 2006, to the Gardner Trust (the "Gardner Policy"). Phoenix's records reflect that the Gardner Trust is the owner of the Gardner Policy and that NTC is the trustee of the Gardner Trust.
- 16) The Gineris Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Angelo J. Gineris. In response to this application, Phoenix issued policy number 97520285, with a policy date of March 5, 2007, to the Gineris Trust (the "Gineris Policy"). Phoenix's records reflect that the Gineris Trust is the owner of the Gineris Policy and that NTC is the trustee of the Gineris Trust.
- 17) [REDACTED], through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of [REDACTED]. In response to this application, Phoenix issued policy number 97526537, with a policy date of December 27, 2007, to [REDACTED] (the "[REDACTED] Policy"). Phoenix's records reflect that [REDACTED] is the owner of [REDACTED] and that NTC is the trustee of [REDACTED].
- 18) The Hoelzel Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of John Hoelzel. In response to this application, Phoenix issued policy number 97519928, with a policy date of January 17, 2007, to the Hoelzel Trust (the "Hoelzel Policy"). Phoenix's records reflect that the Hoelzel Trust is the owner of the Hoelzel Policy and that NTC is the trustee of the Hoelzel Trust.
- 19) The Hollingsworth Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Betty S. Hollingsworth. In response to this application, Phoenix issued policy number 97523136, with a policy date of January 24, 2008, to the Hollingsworth Trust (the "Hollingsworth Policy"). Phoenix's records reflect that the Hollingsworth Trust is the owner of the Hollingsworth Policy and that NTC is the trustee of the Hollingsworth Trust.
- 20) [REDACTED] through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of [REDACTED]. In response to this application, Phoenix issued policy number 97520410, with a policy date of February 12, 2007, to [REDACTED] (the "[REDACTED] Policy"). Phoenix's records reflect that [REDACTED] is the owner of [REDACTED] and that NTC is the trustee of [REDACTED].
- 21) The Ibrahim Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Kaissar Ibrahim. In response to this application, Phoenix issued policy number 97520256, with a policy date of February 8, 2007, to the Ibrahim Trust (the "Ibrahim Policy"). Phoenix's records reflect that the Ibrahim Trust is the owner of the Ibrahim Policy and that NTC is the trustee of the Ibrahim Trust.

## SCHEDULE B

- 22) The Jaeger Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Harry R. Jaeger. In response to this application, Phoenix issued policy number 97520128, with a policy date of March 8, 2007, to the Jaeger Trust (the "Jaeger Policy"). Phoenix's records reflect that the Jaeger Trust is the owner of the Jaeger Policy and that NTC is the trustee of the Jaeger Trust.
- 23) The Keller Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Thomas F. Keller. In response to this application, Phoenix issued policy number 97520169, with a policy date of January 9, 2007, to the Keller Trust (the "Keller Policy"). Phoenix's records reflect that the Keller Trust is the owner of the Keller Policy and that NTC is the trustee of the Keller Trust.
- 24) The Kraft Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Lucille Kraft. In response to this application, Phoenix issued policy number 97520410, with a policy date of February 18, 2007, to the Kraft Trust (the "Kraft Policy"). Phoenix's records reflect that the Kraft Trust is the owner of the Kraft Policy and that NTC is the trustee of the Kraft Trust.
- 25) The O'Reilly Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Lawrence P. O'Reilly. In response to this application, Phoenix issued policy number 97522983, with a policy date of December 12, 2007, to the O'Reilly Trust (the "O'Reilly Policy"). Phoenix's records reflect that the O'Reilly Trust is the owner of the O'Reilly Policy and that NTC is the trustee of the O'Reilly Trust.
- 26) The Panter Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of James Panter. In response to this application, Phoenix issued policy number 97520086, with a policy date of January 25, 2007, to the Panter Trust (the "Panter Policy"). Phoenix's records reflect that the Panter Trust is the owner of the Panter Policy and that NTC is the trustee of the Panter Trust.
- 27) The Parker Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of John Parker. In response to this application, Phoenix issued policy number 97518628, with a policy date of October 16, 2006, to the Parker Trust (the "Parker Policy"). Phoenix's records reflect that the Parker Trust is the owner of the Parker Policy and that NTC is the trustee of the Parker Trust.
- 28) The Pendleton Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Ralph L. Pendleton. In response to this application, Phoenix issued policy number 97521364, with a policy date of November 11, 2007, to the Pendleton Trust (the "Pendleton Policy"). Phoenix's records reflect that the Pendleton Trust is the owner of the Pendleton Policy and that NTC is the trustee of the Pendleton Trust.

SCHEDULE B

- 29) The Prange Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Marilyn J. Prange. In response to this application, Phoenix issued policy number 97523921, with a policy date of November 7, 2007, to the Prange Trust (the "Prange Policy"). Phoenix's records reflect that the Prange Trust is the owner of the Prange Policy and that NTC is the trustee of the Prange Trust.
- 30) The Reeder Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Charles Reeder. In response to this application, Phoenix issued policy number 97522980, with a policy date of August 13, 2007, to the Reeder Trust (the "Reeder Policy"). Phoenix's records reflect that the Reeder Trust is the owner of the Reeder Policy and that NTC is the trustee of the Reeder Trust.
- 31) The Reznik Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Shirley A. Reznik. In response to this application, Phoenix issued policy number 97522173, with a policy date of November 12, 2007, to the Reznik Trust (the "Reznik Policy"). Phoenix's records reflect that the Reznik Trust is the owner of the Reznik Policy and that NTC is the trustee of the Reznik Trust.
- 32) The Robinson Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Ronald J. Robinson. In response to this application, Phoenix issued policy number 97522556, with a policy date of September 6, 2007, to the Robinson Trust (the "Robinson Policy"). Phoenix's records reflect that the Robinson Trust is the owner of the Robinson Policy and that NTC is the trustee of the Robinson Trust.
- 33) [REDACTED], through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of [REDACTED]. In response to this application, Phoenix issued policy number 97518218, with a policy date of August 29, 2006, to the [REDACTED] (the [REDACTED]). Phoenix's records reflect that [REDACTED] is the owner of [REDACTED] and that NTC is the trustee of the [REDACTED].
- 34) [REDACTED], through its trustee NTC, applied in writing to Phoenix for the issuance of life insurance policies insuring the life of [REDACTED]. In response to this application, Phoenix issued policy numbers 97519132 and 97519173, each with a policy date of October 16, 2006, to the [REDACTED] (the [REDACTED]). Phoenix's records reflect that the [REDACTED] is the owner of the [REDACTED] Policies and that NTC is the trustee of the [REDACTED].
- 35) The Stone Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Roxine Stone. In response to this application, Phoenix issued policy number 97520082, with a policy date of January 15, 2007, to the Stone Trust (the "Stone Policy"). Phoenix's records reflect that the Stone Trust is the owner of the Stone Policy and that NTC is the trustee of the Stone Trust.

## SCHEDULE B

- 36) The Sussman Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of life insurance policies insuring the life of Zelda Sussman. In response to this application, Phoenix issued policy numbers 97522051 and 97522070, each with a policy date of January 29, 2007, to the Sussman Trust (the "Sussman Policies"). Phoenix's records reflect that the Sussman Trust is the owner of the Sussman Policies and that NTC is the trustee of the Sussman Trust.
- 37) The Talley Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Louise W. Talley. In response to this application, Phoenix issued policy number 97523446, with a policy date of September 6, 2007, to the Talley Trust (the "Talley Policy"). Phoenix's records reflect that the Talley Trust is the owner of the Talley Policy and that NTC is the trustee of the Talley Trust.
- 38) The Tinon Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Furman Tinon. In response to this application, Phoenix issued policy number 97523040, with a policy date of January 17, 2008, to the Tinon Trust (the "Tinon Policy"). Phoenix's records reflect that the Tinon Trust is the owner of the Tinon Policy and that NTC is the trustee of the Tinon Trust.
- 39) The C. Winston Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Charles M. Winston. In response to this application, Phoenix issued policy number 97519385, with a policy date of October 31, 2006, to the C. Winston Trust (the "C. Winston Policy"). Phoenix's records reflect that the C. Winston Trust is the owner of the C. Winston Policy and that NTC is the trustee of the C. Winston Trust.
- 40) The F. Winston Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Florence B. Winston. In response to this application, Phoenix issued policy number 97519391, with a policy date of November 1, 2006, to the F. Winston Trust (the "F. Winston Policy"). Phoenix's records reflect that the F. Winston Trust is the owner of the F. Winston Policy and that NTC is the trustee of the F. Winston Trust.
- 41) The Kauffman Trust, through its trustee WF, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Ronald P. Kauffman. In response to this application, Phoenix issued policy number 97521867, with a policy date of September 6, 2007, to the Kauffman Trust (the "Kauffman Policy"). Phoenix's records reflect that the Kauffman Trust is the owner of the Kauffman Policy and that WF is the trustee of the Kauffman Trust. Phoenix's records reflect that Credit Suisse Lending Trust (USA) 3, a Delaware statutory trust, has taken a collateral assignment of the Kauffman Policy.
- 42) The Nicklaus Trust, through its trustee WF, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Harry N. Nicklaus. In response to this application, Phoenix issued policy number 97522837, with a policy date of September 12, 2007, to the Nicklaus Trust (the "Nicklaus Policy"). Phoenix's records reflect that the Nicklaus Trust is the owner of the Nicklaus Policy and that WF is the trustee of the

SCHEDULE B

Nicklaus Trust. Phoenix's records reflect that Credit Suisse Lending Trust (USA) 3, a Delaware statutory trust, has taken a collateral assignment of the Nicklaus Policy.

- 43) [REDACTED] through its trustee WF, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of [REDACTED]. In response to this application, Phoenix issued policy number 97522639, with a policy date of July 19, 2007, to the [REDACTED] (the [REDACTED]). Phoenix's records reflect that the [REDACTED] is the owner of the [REDACTED] and that WF is the trustee of the [REDACTED]. Phoenix's records reflect that Credit Suisse Lending Trust (USA) 2, a Delaware statutory trust, has taken a collateral assignment of the [REDACTED].

# EXHIBIT 1

**PROOF OF CLAIM**

**In re: Noble Trust Company & Aegean Scotia Holdings, LLC**

Merrimack County Superior Court, State of New Hampshire (08-E-0053)

Read Carefully Before Completing This Form.

Please print or type; attach additional sheets as necessary.

*FOR LIQUIDATOR'S USE ONLY*

Date proof of claim received \_\_\_\_\_

Claim number \_\_\_\_\_

This claim is filed against (please check one):

Noble Trust Company

Aegean Scotia Holdings, LLC

The Deadline for Filing this Form is **August 10, 2008**.

You should file this Proof of Claim form if you have an actual or potential claim against Noble Trust Company and/or Aegean Scotia Holdings, LLC even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be completed, signed, notarized, and sent to the address below so that it is received no later than **August 10, 2008**. Failure to timely return this completed form will likely result in the **DENIAL OF YOUR CLAIM**. You are advised to retain a copy of this completed form for your records. Further information is available through the New Hampshire Banking Department's website at: [www.nh.gov/banking](http://www.nh.gov/banking).

1. Claimant's Name: PHL Variable Insurance Company
2. Claimant's Address: Attn: Law Department, One American Row 11th Floor, P.O. Box 5056, Hartford, Connecticut 06102-5056
3. Claimant's contact information:  
Home Phone number: ( ) \_\_\_\_\_  
Work Phone Number: ( ) \_\_\_\_\_  
Cell Phone Number: ( ) \_\_\_\_\_  
Fax Number: ( ) \_\_\_\_\_  
Email address: \_\_\_\_\_
4. Claimant's Social Security Number (last four digits only), Tax ID Number or Employer ID Number: \_\_\_\_\_
5. Claim is submitted by (check one):
  - a)  Employee or former employee
  - b)  Client investor
  - c)  Non-client investor
  - d)  Vendor
  - e)  Other; describe: Life Insurance Company that issued policies subject to the Order Appointing Liquidator

Describe in detail the nature of your claim. You may attach a separate page if desired. Attach relevant documentation in support of your claim, such as copies of outstanding invoices, contracts, trust agreements, promissory notes, and other supporting documentation. Send copies - Do not send originals. The Liquidator may request additional information and/or documentation. Failure and/or refusal to supply any relevant information/documentation will likely result in the **DENIAL OF YOUR CLAIM**.

See attached

6. Indicate the total dollar amount of your claim as of March 31, 2008. If the amount of your claim is unknown, write the word "unknown", BUT be sure to attach sufficient documentation to allow determination of the claim amount.

\$See attached (if amount is unknown, write the word "unknown"), consisting of \$ \_\_\_\_\_ in principal; \$ \_\_\_\_\_ in interest, and \$ \_\_\_\_\_ in other amounts (submit detail).

7. If you have any security or collateral for your claim, describe such security or collateral, and attach all relevant documentation.
8. If Noble Trust Company, and/or Aegean Scotia Holdings LLC has made any payments towards the amount of the claim, describe the amount of such payments and the dates paid:
9. Is there any setoff, counterclaim, or other defense, which should be deducted by Noble Trust Company and/or Aegean Scotia Holdings LLC from your claim? If so, describe in detail.
10. If you assert a priority status for your claim, state the basis (e.g. statute) you rely upon and the amount(s) entitled to priority:

11. Print the name, address and telephone number of the person who has completed this form, if other than the signator.  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone Number: ( ) \_\_\_\_\_  
 Email address: \_\_\_\_\_

12. If represented by legal counsel, please supply the following information:  
 Name of attorney: Thomas F. A. Hetherington  
 Name of law firm: Edison, McDowell & Hetherington LLP  
 Address of law firm: 3200 Southwest Freeway, Ste. 2920, Houston, Texas 77027  
 Attorney's telephone: (713) 337-5583  
 Attorney's fax number: (713) 337-8843  
 Attorney's email address: Tom.Hetherington@emhllp.com

13. If using a judgment or arbitration award as the basis for this claim, please supply the following information:  
 Amount of judgment: \_\_\_\_\_  
 Date of judgment: \_\_\_\_\_  
 Name of case: \_\_\_\_\_  
 Name and location of court: \_\_\_\_\_  
 Court docket or index number (if any): \_\_\_\_\_

14. All claimants must complete the following:

I, DAVID R. PELLERIN (insert individual claimant's name or name of person completing this form for a legal entity) subscribe and affirm as true, under the penalty of perjury as follows: that I have read the foregoing proof of claim and know the contents thereof, that this claim in the amount of (See attached) dollars (\$ ) against Noble Trust Company, and/or Aegean Scotia Holdings LLC, as set forth herein, is justly owed, except as stated in item 9 above, and that the matters set forth in this Proof of Claim are true to the best of my knowledge and belief. I also certify that no part of this claim has been sold or assigned to a third party. Should any monies from any other source be received against this claim, I will contact the Liquidator at the address below within seven (7) calendar days of receipt and report such amount(s).

David R. Pellerin  
 Claimant's signature  
 [If claimant is an individual]:

24 JUNE 2010  
 Date

*Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.*

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_ [name(s) of person(s)].

\_\_\_\_\_  
Notary Public/ Justice of the Peace

(Seal, if any)

My Commission Expires: \_\_\_\_\_

[If claimant is not an individual]:

STATE OF CONNECTICUT  
COUNTY OF HARTFORD

This instrument was acknowledged before me on this 24<sup>th</sup> day of June \_\_\_\_\_, 2010  
by David R. PELLERIN [name(s) of person(s)] as OFFICER  
[type of authority, e.g., officer, trustee, etc.] of PHL Variable Insurance Company [name of party on behalf of  
whom instrument was executed].

John Marc Hoffman  
\_\_\_\_\_  
Notary Public/ Justice of the Peace

(Seal, if any)

My Commission Expires: 7-30-2011

16. Send this completed Proof of Claim Form postmarked not later than **August 10, 2008**; to:

New Hampshire Banking Department  
Attn: Peter C. Hildreth (Commissioner/Liquidator)  
P.O. Box 2765  
Concord, NH 03302-2765

**You should complete and return this form if you believe you have any actual or potential claim against Noble Trust Company and/or Aegean Scotia Holdings LLC even if the amount of the claim is presently uncertain.**

**PHL VARIABLE INSURANCE COMPANY'S**  
**CLAIM AGAINST NOBLE TRUST COMPANY, COLIN LINDSEY,**  
**BALCARRES GROUP, LLC, and AEGEAN SCOTIA HOLDINGS, LLC**

PHL Variable Insurance Company ("Phoenix") has realized, contingent and potential claims against Aegean Scotia Holdings, LLC, Noble Trust Company ("Noble"), Balcarres Group, LLC ("Balcarres"), Collin Lindsey ("Lindsey"), and trusts for which Noble is or was trustee or protector or which were formed at the direction of Lindsey or Noble ("NTC Trusts"). These claims arise out of life insurance policies issued to NTC Trusts and/or policies issued through Balcarres or Lindsey.

Phoenix has a liquidated claim in the amount of \$8,878,749.10 for commissions paid to Balcarres and/or Lindsey on the following policies which were issued to NTC Trusts:

1) 97523401	16) 97520285	31) 97522173
2) 97526254	17) 97526537	32) 97522556
3) 97518208	18) 97519928	33) 97518218
4) 97522742	19) 97523136	34) 97519132
5) 97524879	20) 97520410	35) 97519173
6) 97520003	21) 97520256	36) 97520082
7) 97522982	22) 97520128	37) 97522051
8) 97520084	23) 97520169	38) 97522070
9) 97522825	24) 97520410	39) 97523446
10) 97520034	25) 97522983	40) 97523040
11) 97520085	26) 97520086	41) 97519385
12) 97523642	27) 97518628	42) 97519391
13) 97519799	28) 97521364	43) 97521867
14) 97525291	29) 97523921	44) 97522837
15) 97519274	30) 97522980	45) 97522639

Phoenix also has realized and potential claims in an unknown amount for investigative costs, administrative costs, attorney's fees and other damages Phoenix has incurred as a result of the negligence, fraud, breaches of fiduciary duty, and/or breaches of contract by Balcarres, Colin Lindsey, Noble and/or NTC Trusts.

Phoenix asserts all of the above claims against Aegean Scotia Holdings, LLC, Noble Trust Company, Balcarres Group, LLC, Collin Lindsey, and the NTC Trusts and considers each to be jointly & severally liable for these claims. The assertion of these claims is not intended to operate as a waiver of any claims and is not intended to waive any other rights Phoenix may have. Phoenix reserves all rights to assert these and any other claims, whether at law or in equity, against Aegean Scotia Holdings, LLC, Noble Trust Company, Balcarres Group, LLC, Collin Lindsey, and the NTC Trusts and reserves all rights to assert vicarious liability and alter-ego theories and/or to pierce the corporate veil.