

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 THE LINCOLN NATIONAL LIFE INSURANCE COMPANY
(ROBINSON POLICY)**

Glenn A. Perlow, 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, Sheehan Phinney Bass + Green, Professional Association and Drummond Woodsum, moves this Court for an entry of an order approving the Settlement Agreement Regarding Lincoln National Policy (Robinson Policy) dated as of March 26, 2013 (the "Settlement Agreement")¹ by and between the Liquidator and The Lincoln National Life Insurance Company ("Lincoln National").² The facts and circumstances supporting this motion are as set forth herein and as set forth in the Liquidator's Memorandum in Support of Settlement Motions filed concurrently herewith. In support of his motion, the Liquidator states as follows:

¹ A true and correct copy of the executed Settlement Agreement is attached hereto and made a part hereof as Exhibit A. As set forth in the Liquidator's Assented-To Motion to Approve Notice and Objection Procedures for Hearings on Motions for Approval of Settlement and Release Agreements, and in accordance with the Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012, a Confidential Affidavit has been submitted in support of this Motion. Parties wishing to review the Confidential Affidavit may obtain a copy of such document by contacting the Office of the Liquidator and following the Court approved procedures, including the execution of a confidentiality agreement. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed in the Settlement Agreement.

² As explained in further detail below, the Liquidator and Lincoln National have entered into two separate settlement agreements. Because approval of the Liquidator's settlement agreements with Lincoln National are not conditioned upon or subject to approval of the other, the Liquidator has moved separately for the approval of each of the settlement agreements. Accordingly, the Liquidator has concurrently filed herewith the Liquidator's Motion for Approval of Settlement Agreement with The Lincoln National Life Insurance Company (Non-Financed Policies).

Background

1. In 2003, Noble Trust was organized and chartered under the laws of the State of New Hampshire as a non-depository banking corporation, and subject to regulation by the New Hampshire Banking Department (the "Banking Department").

2. As a result of irregularities discovered by the Banking Department's 2008 examination of Noble Trust, on February 11, 2008, Commissioner Peter Hildreth commenced a liquidation proceeding by filing a Verified Petition for Liquidation (the "Liquidation Petition") in this Court, seeking the appointment of a liquidator for Noble Trust pursuant to RSA 395:1, as well as related injunctive relief against Noble Trust pending the Court's ruling on the Liquidation Petition (the "Liquidation Proceeding").

3. On March 27, 2008, this Court entered an order (the "Liquidation Order") appointing Commissioner Hildreth as liquidator of both Noble Trust and its parent company, Aegean Scotia. The Liquidator is the duly appointed successor liquidator of Noble Trust and Aegean Scotia by order of this Court dated February 1, 2013.

4. Prior to the commencement of the Liquidation Proceeding, the Ronald Robinson insurance policy, Policy Number JJ-7013496 (the "Robinson Policy"), was issued of record by Lincoln National to The Ronald Robinson CS Trust (the "Robinson CS Trust"), on behalf of which Wells Fargo Bank, National Association ("Wells Fargo") serves as Trustee (the "Trustee") and Noble Trust is named as Trust Protector. The premiums for the Robinson Policy were provided by Credit Suisse Lending Trust (USA) 3 ("Credit Suisse") under a premium financing arrangement disclosed to Lincoln National prior to the effective date of the Robinson Policy. In connection with the premium financing arrangement, Credit Suisse received as collateral an

assignment of all claims, options, privileges, rights, title and interest in, to and under the Robinson Policy.

5. The Liquidator has contended that the Robinson Policy is part of the liquidation estate being administered by the Liquidator pursuant to the Liquidation Order. Lincoln National has asserted that the Robinson Policy is not properly included within the liquidation estate, and that the Liquidator has no valid interest in the Robinson Policy.

6. In conjunction with his negotiations with Lincoln National, the Liquidator also engaged in extensive, parallel negotiations with Credit Suisse and Wells Fargo to resolve their involvement in the Liquidation Proceeding and any and all claims that the Liquidator and Credit Suisse/Wells Fargo may have against each other, whether related to the Robinson Policy or any of the other policies that Credit Suisse financed. Those negotiations have culminated in a number of separate settlement agreements with Credit Suisse and Wells Fargo which, when viewed as a whole, provide a comprehensive resolution of Credit Suisse's and Wells Fargo's involvement in the Liquidation Proceeding.

7. In addition to the Robinson Policy, Credit Suisse also provided premium financing with respect to twelve (12) other life insurance policies on the lives of individual Noble Trust clients, which policies were issued by AXA Equitable Life Insurance Company ("AXA"), PHL Variable Insurance Company ("Phoenix"), and American National Insurance Company ("American National"). The Liquidator has also conducted extensive and intensive settlement discussions with each of those insurers, some of whom (*i.e.* Phoenix and AXA), like Lincoln National, also issued other policies to Noble Trust clients that were not financed by Credit Suisse. The result of those negotiations is a series of settlement agreements between: (i) the Liquidator and each of those insurers; (ii) the Liquidator and Credit Suisse/Wells Fargo,

relating to their overall claims against each other; and (iii) Credit Suisse/Wells Fargo and the respective insurers, relating specifically to the Credit Suisse-financed policies issued by those insurers—including the Robinson Policy that is the subject of the Settlement Agreement.

8. The Liquidator has reached two separate agreements with Lincoln National: (i) the Settlement Agreement that is the subject of this Motion, and (ii) another, independent settlement agreement that concerns nine other policies issued by Lincoln National that were not financed by Credit Suisse. Pursuant to the second settlement agreement, the Liquidator is to receive a substantial payment from Lincoln National. The settlement agreements constitute a final, comprehensive resolution of the disputes between the Liquidator and Lincoln National.

9. By this Motion, the Liquidator is seeking approval of the Settlement Agreement and, separately, approval of his settlement agreement with Credit Suisse and Wells Fargo relating to Lincoln National and the Robinson Policy (the "Liquidator-Credit Suisse Agreement"). Because the Settlement Agreement and the Liquidator-Credit Suisse Agreement both concern the Robinson Policy, the two agreements are necessarily interrelated; the effectiveness of each is contingent upon the effectiveness of the other.

10. A full recitation of the background and additional arguments supporting this motion and the other contemporaneous motions to approve the separate settlement and release agreements by and between the Liquidator, American National, AXA, Credit Suisse, Phoenix, and Wells Fargo are set forth in the Liquidator's Memorandum in Support of Settlement Motions (the "Memorandum") that has been filed concurrently herewith. The Liquidator incorporates by reference the Memorandum.

Summary of Settlement Agreement³

11. Under the Settlement Agreement, the Liquidator agrees to release and relinquish any claims that the Robinson Policy is part of the liquidation estate.⁴

12. In order to implement the Settlement Agreement, the Liquidator and Lincoln National agree that the Liquidator shall cause Noble Trust to: (i) effect Noble Trust's resignation as the trust protector of the Robinson Trust and (ii) appoint Ryan K. Crayne, of Winthrop & Weinstine, 225 South Sixth Street – Suite 3500, Minneapolis, Minnesota 55402 as the replacement trust protector in accordance with the terms of the trust agreement.

13. Prior to resigning as protector of the Robinson Trust, which holds the Robinson Policy, the Liquidator, acting on behalf of Noble Trust, shall (i) create a new trust (in the form, or substantially the same form, as attached as Exhibit B to the Liquidator-Credit Suisse Agreement) to be the beneficiary of the Robinson Trust (the "New Beneficiary Trust"); (ii) designate the "New Beneficiary Trust" as the beneficiary of the Robinson Trust pursuant to the provisions of the trust agreement for the Robinson Trust; and (iii) name Ryan K. Crayne, of Winthrop & Weinstine, 225 South Sixth Street – Suite 3500, Minneapolis, Minnesota 55402 as the new trustee for the New Beneficiary Trust.⁵ Lincoln National consents to such actions and

³ Notwithstanding the recitation in this Motion of the material terms of the Settlement Agreement, this is a summary only and all parties in interest are urged to read the Settlement Agreement in its entirety. In the event of any conflicts or inconsistencies between the summary contained in the Motion and the Settlement Agreement, then the terms of the Settlement Agreement shall control.

⁴ The Robinson Policy will remain in effect and, as set forth in the agreement between Credit Suisse and Lincoln National, Credit Suisse will pay the premium that is in arrears with respect to the Robinson Policy to Lincoln National.

⁵ The New Beneficiary Trust shall provide that at any time within one hundred eighty days after the trust instrument is executed, the majority in number of descendants who are living and competent may remove Mr. Crayne as the Trustee by a written notice delivered to Mr. Crayne; provided, however, that no such removal shall become effective until a successor Trustee has accepted such office.

agrees that they do not impact its obligations to the Robinson CS Trust under the Robinson Policy or under the Settlement Agreement.⁶

14. By its terms, the Settlement Agreement does not become effective unless and until the entry of final orders by the Court in the Liquidation Proceeding approving the Settlement Agreement and the Liquidator-Credit Suisse Agreement ("Court Approval"), and the execution of a separate agreement between Credit Suisse and Lincoln National relating to the Robinson Policy, which separate agreement will not be submitted for approval but has been fully executed and is attached as Exhibit A to the Liquidator-Credit Suisse Agreement. The Court Approval shall be deemed to occur on the date that such orders shall have become non-appealable or, in the event of an appeal(s), have been affirmed after all appeals therefrom have been exhausted. If the Settlement Agreement is not approved by the Court in the Liquidation Proceedings, it may be voided thereafter by Lincoln National or the Liquidator, at either of their options.

15. The Liquidator and Lincoln National believe the Settlement Agreement is fair, reasonable and adequate, and is the result of arms-length negotiations between the parties and their counsel. The Settlement Agreement maximizes the value of the liquidation of Noble Trust because it is part of an overall settlement with Lincoln National pursuant to which the Liquidator will receive a substantial payment from Lincoln National for the benefit of the Liquidation estate. The Settlement Agreement also relieves the estate of the continuing costs associated with the dispute with Lincoln National and eliminates the risks of potential litigation. In addition, the Settlement Agreement provides the basis for the comprehensive resolution that the Liquidator, Credit Suisse and Wells Fargo have negotiated concerning all policies financed by Credit Suisse,

⁶ These provisions are also part of the Liquidator-Credit Suisse Agreement.

of which the Settlement Agreement and the Liquidator-Credit Suisse Agreement is an independent but integral part.

16. The Liquidator therefore believes that entering into the Settlement Agreement and the Liquidator-Credit Suisse Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and that the settlements resolve the pending disputes between the Liquidator, Lincoln National and Credit Suisse/Wells Fargo concerning the Robinson Policy on terms that are advantageous to the liquidation of Noble Trust and Noble Trust creditors.

17. Accordingly, the Liquidator believes that approval of the Settlement Agreement is in the best interests of Noble Trust, its creditors, and all parties in interest. See In re Liquidation of The Home Ins. Co., 154 N.H. 472, 489-90 (2006).

Filing and Service of Objections

18. Objections to this motion, if any, must be in writing and filed with the Clerk of the Court (Office of the Clerk, Merrimack County Superior Court, 163 North Main Street, Concord, New Hampshire, 03302), and served upon the following parties so as to be actually received on or before the objection deadline imposed by the Court; *i.e.* any objections filed with the Court must also be either hand delivered to counsel or, if served by mail, then also transmitted electronically to counsel that same day:

- (a) attorneys for the Liquidator: (i) Office of the Attorney General, 33 Capitol Street, Concord, New Hampshire 03301-6397, Attn.: Peter C.L. Roth, Esq., fax: (603) 223-6269, email: peter.roth@doj.nh.gov, (ii) Sheehan Phinney Bass + Green Professional Association, 1000 Elm Street, P.O. Box 3701, Manchester, New Hampshire, 03105-3701, Attn.: Christopher M. Candon, Esq., fax: (603) 627-8121, email: ccandon@sheehan.com, and (iii) Drummond Woodsum, 84 Marginal Way, Suite 600, Portland, Maine 04101-2480, Attn: Benjamin E. Marcus, Esq., fax: (207) 772-3627, email: bmarcus@dwmlaw.com;
- (b) attorneys for Lincoln National: Lincoln Financial Group, 100 N. Greene Street, Greensboro, North Carolina, 27401, Attn.:

Benjamin R. Edwards, Esq., fax: (336) 691-3258, email:
ben.edwards@lfg.com; and

- (c) counsel of record in this proceeding (whose names and addresses may be obtained from the Clerk's Office).

WHEREFORE, the Liquidator requests that the Court enter an order granting this Motion and approving the Settlement Agreement, in substantially the same form submitted herewith as Exhibit B, and grant the Liquidator such other and further relief as is just.

Respectfully submitted,

Dated: June 6, 2013

GLENN A. PERLOW, BANK COMMISSIONER
OF THE STATE OF NEW HAMPSHIRE,
AS LIQUIDATOR OF NOBLE TRUST COMPANY

By his attorneys,

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-and-

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-and-

DRUMMOND WOODSUM

Benjamin E. Marcus

/ame

Benjamin E. Marcus (*pro hac vice*)

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Portland, ME 04101-2480

(207) 772-1941

EXHIBIT A

Settlement Agreement Regarding Lincoln National Policy

The following Settlement Agreement Regarding Lincoln National Policy No. JJ - 7013496 (the "Agreement" and the "Robinson Policy," respectively) is made and entered into as of March 26, 2013, by and among Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, in his capacity as the duly appointed Liquidator of Noble Trust Company (the "Liquidator" and "Noble," respectively), and The Lincoln National Life Insurance Company ("Lincoln National"), which was issued of record to The Ronald Robinson CS Trust (the "Robinson CS Trust"), on behalf of which Wells Fargo Bank, National Association ("Wells Fargo") serves as Trustee (the "Trustee") and Noble is named as Trust Protector. The Liquidator and Lincoln National are collectively referred to herein as the "Parties," and each of them individually as a "Party."

- A. WHEREAS, the Robinson Policy was issued by Lincoln National to the Robinson CS Trust;
- B. WHEREAS, Wells Fargo serves as Trustee of the Robinson CS Trust;
- C. WHEREAS, Noble is named as Trust Protector of the Robinson CS Trust;
- D. WHEREAS, the Ronald Robinson Irrevocable Trust dated July 12, 2007 (the "Robinson Trust") is the beneficiary of the Robinson CS Trust;
- E. WHEREAS, Noble serves as the trustee of the Robinson Trust;
- F. WHEREAS, the premiums for the Robinson Policy were provided by Credit Suisse Lending Trust (USA) 3 ("Credit Suisse") under a premium financing arrangement disclosed to Lincoln National prior to the effective date of the Robinson Policy;

G. WHEREAS, as part of the premium financing arrangement, Credit Suisse received as collateral an assignment of all claims, options, privileges, rights, title and interest in, to and under the Robinson Policy;

H. WHEREAS, the Liquidator has contended that the Robinson Policy is part of the liquidation estate (the "Liquidation Estate") being administered by the Liquidator pursuant to a March 30, 2008 Order Appointing Liquidator and a June 11, 2008 Order Clarifying Order Appointing Liquidator issued in *In re Liquidation of Noble Trust Company*, Docket No. 08-E-0053 by the Superior Court of Merrimack County, New Hampshire (the "Liquidation Proceedings");

I. WHEREAS, Credit Suisse and the Liquidator have reached a settlement agreement resolving all disputes between Credit Suisse and the Liquidator as to the Robinson Policy and the Liquidator has agreed that the Robinson Policy shall be released from the Liquidation Estate and shall not constitute assets of the Liquidation Estate (the "Liquidator-Credit Suisse Agreement");

J. WHEREAS, the effectiveness of the Liquidator-Credit Suisse Agreement is contingent upon, among other things, the Liquidator and Lincoln National entering into this Agreement; and

K. WHEREAS, the Liquidator and Lincoln National have also entered into a separate settlement agreement contemporaneously with this Agreement concerning a number of life insurance policies issued by Lincoln National, where Credit Suisse did not provide premium financing, which agreement is not the subject of or conditioned in any way upon the effectiveness of this Agreement or the Liquidator-Credit Suisse Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals, and the mutual covenants, terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Liquidator and Lincoln National agree as follows:

1. The Liquidator agrees to release and relinquish any claims that the Robinson Policy is part of the Liquidation Estate.

2. This Agreement is expressly conditioned upon the entry of final orders by the Court in the Liquidation Proceedings approving this Agreement and approving the Liquidator-Credit Suisse Agreement, as more fully set forth in that agreement (the "Court Approval"), and the execution of a separate agreement between Credit Suisse and Lincoln National relating to the Robinson Policy. The Court Approval shall be deemed to occur on the date that such orders shall have become non-appealable or, in the event of an appeal(s), have been affirmed after all appeals therefrom have been exhausted. If this Agreement is not approved by the Court in the Liquidation Proceedings, this Agreement may be voided thereafter by Lincoln National or the Liquidator, at either of their options.

3. The Liquidator and Lincoln National understand and agree that, with respect to the Robinson Policy, the Liquidator will cause Noble to resign as the trust protector of the Robinson CS Trust, and as trustee of the beneficiary of the Robinson CS Trust, pursuant to the Liquidator-Credit Suisse Agreement, and that a replacement protector and trustee, respectively, will be named. Lincoln National consents to such actions and agrees that they do not impact its obligations to the Robinson CS Trust under the Robinson Policy or under this Agreement.

4. Subject to Court Approval as to the Liquidator, the Parties each represent and warrant that (a) this Agreement constitutes such Party's legal, valid and binding obligation,

enforceable against such Party in accordance with its terms; and (b) the person executing the Agreement on its behalf is fully authorized to act on such Party's behalf. The Parties further acknowledge that they have had the opportunity to consult counsel in connection with this Agreement.

5. This Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Faxed or email PDF signatures shall be sufficient to bind the signing Party, but each Party shall promptly furnish to the other Parties an original signature page.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

Dated: March 26, 2013

The Lincoln National Life Insurance Company

By: 
Name: Michael L. Parker
Title: Vice President - Life Product Mgmt

Dated: _____, 2013

Glenn A. Perlow, Bank Commissioner of the State of New Hampshire as the Liquidator of Noble Trust Company

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

Dated: _____, 2013 The Lincoln National Life Insurance Company

By: _____
Name: _____
Title: _____

Dated: 3/26, 2013 Glenn A. Perlow, Bank Commissioner of the State of New Hampshire as the Liquidator of Noble Trust Company

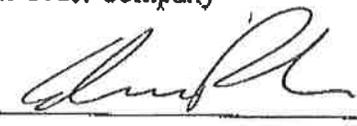
By: 
Name: _____
Title: _____

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**

**ORDER APPROVING SETTLEMENT AGREEMENT
WITH THE LINCOLN NATIONAL LIFE INSURANCE COMPANY
(ROBINSON POLICY)**

Upon consideration of the Liquidator's Motion for Approval of Settlement Agreement With Lincoln National Life Insurance Company (Robinson Policy) dated June 6, 2013 (the "Motion") and the Liquidator's Memorandum in Support of Settlement Motions dated June 6, 2013, pursuant to which Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively), seeks approval of a Settlement Agreement With The Lincoln National Life Insurance Company (Robinson Policy) dated as of March 26, 2013 (the "Settlement Agreement") by and between the Liquidator and The Lincoln National Life Insurance Company ("Lincoln National"); due written notice of the Motion, the hearing on the Motion and the deadline for filing objections thereto having been given and served upon all creditors and other interested persons entitled thereto, including by publication in the manner specified by this Court's Order Approving Notice and Objection Procedures for Hearings on Motions for Approval of Settlement and Release Agreements dated _____, 2013 (the "Procedures Order"); the Court having reviewed the Motion and the Settlement Agreement and having reviewed the Confidential Affidavit in Support of the Motion filed under seal in accordance with this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012 and the

Procedures Order; the Court also having reviewed any objections to the Motion; having heard the arguments and statements of counsel, and being otherwise fully advised in the premises; and having found that approval of the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and is in the best interests of this estate and its creditors; and, after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted, and the Settlement Agreement is approved. The Liquidator, Lincoln National and all other parties are authorized to take all steps and execute all documents necessary or convenient to consummate or otherwise enter into the Settlement Agreement. Neither the Liquidator, nor Lincoln National shall have or incur any liability to any person or entity with respect to any of the actions required or permitted to implement the Settlement Agreement or for having entered into the Settlement Agreement.

2. In compliance with the Procedures Order, the Liquidator has provided adequate notice to creditors and other interested persons, including anyone who did not otherwise receive notice by mail, of the hearing on the Motion, the issues to be decided at the hearing, and the deadline for filing objections.

3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, including all reservations of rights included therein which are not otherwise provided for by this Order, are overruled on the merits.

4. The Settlement Agreement shall not become effective unless and until (i) the entry of this order becomes final and (ii) the entry of a final order by this Court approving the Liquidator-Credit Suisse Agreement ("Court Approval"), and the execution of a separate

agreement between Credit Suisse and Lincoln National relating to the Robinson Policy.¹ The Court Approval shall be deemed to occur on the date that such orders shall have become non-appealable or, in the event of an appeal(s), have been affirmed after all appeals therefrom have been exhausted.

5. Upon Court Approval, the Liquidator shall release and relinquish any claims that the Robinson Policy is part of the liquidation estate. The Robinson Policy, as well as all agreements related to or in connection with the Robinson Policy, including but not limited to loan agreements and collateral assignments, shall be released from the Liquidation Proceeding, and no longer subject to the Liquidation Order.

6. Upon Court Approval, the Liquidator shall cause Noble Trust to resign as the trust protector of the Robinson CS Trust, and as trustee of the beneficiary of the Robinson CS Trust, pursuant to the Liquidator-Credit Suisse Agreement, and cause a replacement protector and trustee, respectively, to be named. Lincoln National consents to such actions and agrees that they do not impact its obligations to the Robinson CS Trust under the Robinson Policy or under the Settlement Agreement.

So Ordered.

Dated: _____, 2013

Hon. Larry M. Smukler

¹ Capitalized terms used in this Order and not otherwise defined herein are intended to have the same meaning as ascribed to them in the Settlement Agreement.