

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

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

**AFFIDAVIT OF ROBERT A. FLEURY IN
SUPPORT OF LIQUIDATOR'S MOTION FOR
APPROVAL OF SETTLEMENT WITH JAMES M. COULL**

I, Robert A. Fleury, hereby depose and say:

1. I am the former Deputy Bank Commissioner for the State of New Hampshire and former liquidator of Noble Trust Company ("Noble Trust"). I have been retained as Special Deputy Liquidator by Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as liquidator (the "Liquidator") of Noble Trust. I am involved in and have oversight of the liquidation of Noble Trust. I have familiarity with the books and records of Noble Trust and have participated in numerous meetings associated with the matters set forth herein.

2. I submit this affidavit in support of the Liquidator's Motion for Approval of Settlement with James M. Coull (the "Motion"). As set forth more fully in the Motion, the Liquidator has entered into a Settlement Agreement and Mutual Release by and between James M. Coull ("Coull") and the Liquidator (the "Settlement Agreement").

3. Prior to the commencement of the Liquidation Proceeding,¹ Colin P. Lindsey ("Lindsey") was the president of Noble Trust and chairman of its board of directors. 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

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

Insurance Department and acted as insurance brokers in procuring insurance policies for the benefit of Noble Trust's clients. By judgment dated November 13, 2009, in the proceeding entitled Hildreth v. Balcarres Group, LLC (Docket No. 09-E-0439), the assets of Balcarres were declared to be property of the Liquidation Proceeding and the Liquidator obtained all rights to claims held by Balcarres

4. Between June 2004 and September 2007, Noble Trust (acting 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. Instead, Lindsey attempted to conceal the loss from Noble Trust's clients and other parties in interest (including the Banking Department) through a fraudulent and illegal Ponzi scheme.

5. The Liquidator is in the process of marshaling the assets of Noble Trust in order to maximize the value of the liquidation of Noble Trust for the benefit of creditors. Among his other powers, the Liquidator is authorized to assert any claims that may be brought by or on behalf of Noble Trust, Aegean Scotia or Balcarres.

6. In furtherance of maximizing the liquidation estate, the Liquidator commenced litigation against Coull in certain courts to collect on apparent loan agreements between Coull and Balcarres, which actions are captioned: (i) Hildreth v. Coull, Docket No. 217-2010-CV-00185 (the "New Hampshire Action"), and (ii) Fleury v. Coull et al., Docket No. 10-2951 in the Superior Court Department of the Trial Court Civil Action of the Commonwealth of Massachusetts (the "Massachusetts Action") (collectively, the "Actions").

7. In the Actions the Liquidator alleges, among other things, that the Liquidator is entitled to collect and enforce the terms of certain loan agreements made by Balcarres to Coull (the “Balcarres Loan”) which are secured by, among other things, the pledge of property (the “Coull Trust Property Pledge”) of the James M. Coull Irrevocable Trust dated August 15, 2007 (the “Coull Trust”). The Liquidator believes that the outstanding balance of Coull’s debt on the Balcarres Loan is \$235,000.00. The Liquidator also asserts that the Coull Trust Property Pledge covers the Coull Trust’s ownership and/or beneficiary interest in a certain insurance policy on the life of Coull issued on or about July 30, 2007 by PHL Variable Insurance Company in the face amount of \$4,000,000.00 (the “Policy”). Coull has maintained that the intention throughout was that the Balcarres Loan should be satisfied out of the Policy and any other assets owned by the Coull Trust. By order dated October 17, 2013, the Policy was terminated pursuant to the Liquidator’s settlement with PHL Variable Insurance Company.

8. In the Massachusetts Action, the Liquidator obtained an attachment on Coull’s real estate in Middlesex County, Massachusetts which included Coull’s interest in his residence located at 9 Oak Ridge Road, Littleton, Massachusetts subject to then perfected rights therein and encumbrances thereon, including Coull’s homestead rights therein, which attachment was recorded on or about August 30, 2010 in the Middlesex South Registry of Deeds in Book 55265, Page 97 (the “Real Estate Attachment”). The Liquidator does not believe that there is sufficient equity in Coull’s real estate such that he could recover the balance of the Balcarres Loan debt from a forced sale of the real estate.

9. Coull has provided the Liquidator a verified and sworn financial affidavit. The Liquidator does not believe that based on the financial affidavit that Coull has sufficient liquidity to satisfy a judgment against him for the Balcarres Loan.

10. The Liquidator has reached a settlement with Coull. Under the Settlement Agreement, Coull has agreed to pay a confidential sum to the Liquidator (the "Settlement Sum"), on or before March 3, 2014. Coull's counsel has agreed to hold in an escrow account the Settlement Sum pending approval of the Settlement Agreement by this Court. Upon entry of the Approval Order (defined below), the Settlement Sum held in escrow will become part of the liquidation estate to be distributed or used by the Liquidator as appropriate. Until payment in full of the Settlement Sum and the Approval Order having been obtained, the Real Estate Attachment shall remain in place and shall secure the payment of the Settlement Sum by Coull to the Liquidator.

11. Pursuant to the Settlement Agreement, the Liquidator and Coull shall mutually release each other from any and all claims, including those that arise out of or relate in any way to the Actions, the claims in the Writ of Summons filed in the New Hampshire Action, or related transactions. Coull's release shall be effective upon entry of the Approval Order, while the Liquidator's release shall be effective upon the 120th day following the full payment of the Settlement Sum and no bankruptcy case having been filed by or against Coull without such case having been dismissed prior to that date. Without limiting the generality of the release, Coull specifically assigns to the Liquidator without recourse any and all claims that he or the Coull Trust may have against Noble Trust, the Liquidator or the Liquidation Estate, including any and all claims concerning the Policy and any and all claims evidenced by proofs of claim filed in the Liquidation Proceeding. Upon entry of the Approval Order, the parties will cooperate to dismiss the Actions.

12. By its terms, the Settlement Agreement does not become effective unless and until the entry of a final order (the "Approval Order") by the Court in the Liquidation Proceeding

approving the Settlement Agreement. The Approval Order shall become final on the date that it shall have become non-appealable or, in the event of an appeal(s), on the date that it has been affirmed after all appeals therefrom have been exhausted.

13. The Approval Order shall bar any and all third parties, including persons or entities claiming an interest in the Policy from pursuing claims against Coull, the Coull Trust, the Liquidator or Noble Trust related in any way to the Policy, the Settlement Agreement, or the Liquidation Proceeding.

14. The Liquidator believes the Settlement Agreement is fair, reasonable and adequate, and is the result of arms-length negotiations. In order to avoid the additional time, expense, and resources that continued litigation of the Actions and any subsequent collection proceedings against Coull would undoubtedly consume, and the attendant uncertainty of outcome associated with such litigation, the Liquidator negotiated the Settlement Agreement, which by its terms does not become effective unless and until it is approved by this Court.

15. The Settlement Agreement maximizes the value of the liquidation of Noble Trust by relieving further costs and potential risk of continued litigation with Coull, and provides for, among other things, (i) immediate payment of the Settlement Sum, eliminating any collection risk of the settlement if the Liquidator were compelled to engage in further litigation to enforce any judgments against Coull, and (ii) release of any and all of the claims in the Liquidation Proceeding that Coull filed or could have filed.

16. The Liquidator therefore believes that entering into the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and that the settlement resolves the pending disputes with Coull in the Actions on terms that are advantageous to the liquidation of Noble Trust and Noble Trust creditors.

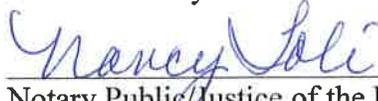
Signed under the pains and penalties of perjury this 21st day of February, 2014.



Robert A. Fleury

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

Signed before me on February 21, 2014 by Robert A. Fleury.



Notary Public Justice of the Peace
My Commission Expires:



CERTIFICATE OF SERVICE

I, Christopher M. Candon, hereby certify that on February 27, 2014, a copy of the foregoing was served by first class mail, postage prepaid on the parties listed below.¹

Stephen A. Serfass, Esq.
Drinker Biddle & Reath LLP
One Logan Square, Ste. 2000
Philadelphia, PA 19103

J. Christopher Marshall, Asst. Attorney
General
NH Office of Attorney General
33 Capitol Street
Concord, NH 03301

David D. Cowan, CPA
920 Laguardia Dr., NE
Albuquerque, NM 87108

Steven A. Solomon, Esquire
D'Amante Couser Pellerin & Associates PA
Nine Triangle Park Drive
Concord, NH 03301

Thomas F.A. Hetherington, Esquire
Edison McDowell & Hetherington, LLP
Phoenix Tower
3200 Southwest Freeway, Suite 2920
Houston, TX 77027

Russell F. Hilliard, Esquire
Upton & Hatfield, LLP
159 Middle Street
Portsmouth, NH 03801

John M. Sullivan, Esquire
Preti Flaherty Beliveau & Pachios LLP
PO Box 1318
Concord, NH 03302-1318

William S. Gannon, Esquire
William S. Gannon, PLLC
889 Elm St., 4th Floor
Manchester, NH 03101

Bertrand A. Zalinsky, Esquire
Cronin & Bisson, P.C.
722 Chestnut Street
Manchester, NH 03104

Steven J. Lauwers, Esquire
Michael S. Lewis, Esquire
Rath Young and Pignatelli, P.C.
One Capital Plaza
Concord, NH 03302-1500

Nathan R. Lander, Esquire
Proskauer Rose LLP
Eleven Times Square
(Eighth Avenue & 41st Street)
New York, NY 10036-8299

Julie Connolly, Esquire
Julie Connolly Law PLLC
P.O. Box 665
Concord, NH 03302-0665



Christopher M. Candon

¹ Simultaneously herewith, the Liquidator has filed a Certificate of Service that evidences a broader service on claimants and other parties in interest.