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

Peter C. Hildreth, Banking 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 November 6, 2008 (the "Phoenix Agreement"). In support of his motion, the Liquidator states as follows:

1. Noble Trust is a non-depository banking corporation organized and chartered under the laws of the State of New Hampshire. Colin P. Lindsey ("Lindsey") is 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.

2. Lindsey is also president of the 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 acts as trustee. Phoenix paid Balcarres and/or Lindsey commissions on the majority of these policies.[1]

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. As a part of the scheme, Lindsey procured a number of life insurance policies with face values generally between $3 million and $10 million. Upon information and belief, Lindsey intended to sell many of these policies (or the beneficial interests therein) to third parties, and to use the cash proceeds of these sales to cover up the losses suffered by Noble Trust's clients in the Sierra investment. There is also evidence that Lindsey intended to enrich himself through the collection of commissions on the sales of the insurance policies.

5. To accomplish this, Lindsey caused Noble Trust, acting as trustee under various trusts or sub-trusts established for Noble Trust's clients, to submit applications through Balcarres for high face value insurance policies to a number of different

[1] 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.

insurance carriers, including Phoenix. When these policies were ultimately placed in force, Lindsey and/or Balcarres 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.

6. A number of these applications were for life insurance policies insuring the lives of certain individuals who were referred to Noble Trust by Gerald Marino ("Marino"), a real estate broker residing in the State of Florida. These applications represented that the applicants were each high net worth individuals seeking high face value life insurance policies to be owned by life insurance trusts as part of their individual estate planning. In reality, as set forth more fully below, Marino's referrals were middle to lower-middle income individuals whose participation in the insurance application process was induced in part through cash payments, with no expectation that either they or any other person with an insurable interest in their lives would benefit from any of the policies applied for. The procurement and issuance of policies on the individuals referred to Noble Trust by Marino (the "Marino Policies") has led to, among other things, one or more criminal investigations concerning Lindsey and Marino by the Federal Bureau of Investigation, the United States Attorney for the District of New Hampshire, and the New Hampshire Attorney General. Those investigations are ongoing.

7. Phoenix's records show that Phoenix issued nine policies to Noble Trust life insurance trusts, insuring the lives of individuals referred to Noble Trust by Marino (the "Phoenix Marino Policies"):

Name of Trust	Policy No.	Policy Date	Face Amount
The 2007 Aubrey Baker Jr. Irrevocable Trust	97521740	05/16/07	$3,000,000.00
The 2007 Walter Gorham ILIT	97520807	05/01/07	$10,000,000.00
The 2007 Jean P Lavoie Irrevocable Life Insurance Trust	97524167	10/05/07	$10,000,000.00
The 2007 Clifton Marshall Irrevocable Life Insurance Trust	97520809	03/30/07	$10,000,000.00
The Lupe Ruiz Irrevocable Trust	97519990	03/26/07	$10,000,000.00
The Anthony Sica ILIT	97521456	06/04/07	$10,000,000.00
The 2007 Richard Truesdale Irrevocable Trust	97521964	06/13/07	$10,000,000.00
2007 Thomas Trasente Irrevocable Life Insurance Trust	97523067	09/20/07	$10,000,000.00
The 2007 Ruby Vera-Cruz Irrevocable Trust	97521740	05/16/07	$3,000,000.00

8. According to Phoenix's records, as of February 11, 2008, Noble Trust paid or caused to be paid to Phoenix a total of $3,007,371.70 in premiums on the Phoenix Marino 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 Marino 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 the financing transactions involving the Phoenix Marino Policies were either misrepresented to Phoenix or, in the case of the premium refinance transactions, not disclosed to Phoenix at all. As of February 11, 2008, Phoenix

paid a total of $4,142,071.12 in commissions to Lindsey and Balcarres in connection with its issuance of the Phoenix Marino Policies. Thus, Phoenix paid $1,134,699.42 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 carrier is willing to issue a policy. A material misrepresentation as to an insured's income or net worth 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. The applications for the Marino Policies contained numerous fraudulent statements and material misrepresentations, including false representations concerning the income and net worth of these proposed insureds. Each of the nine applications represented that the proposed insured had a net worth in excess of $20 million. This net worth was based on an alleged interest held by the insured in certain real estate investments, for which Marino was trustee. Phoenix was provided statements by Marino and various certified public accountants attesting to the insureds' alleged interests in the real estate. Contrary to the representations within these applications, none of the applicants had a net worth even remotely approximating $20 million. For example, the application for a policy insuring the life of Lupe Ruiz, dated December 4, 2006, represents that Ms. Ruiz had an annual earned income of $150,000 and a net worth of $21 million. Undisclosed to Phoenix, Ms. Ruiz had commenced a Chapter 13 bankruptcy case in the United States Bankruptcy Court for the Eastern District of Michigan on July

31, 2006. Ms. Ruiz, a hairdresser, stated in her bankruptcy schedules that she had an average monthly income of $3,073.93, and claimed a net worth of less than $17,000.

11. Phoenix has asserted that the fraudulent procurement of the Phoenix Marino Policies renders them void, unenforceable, and subject to rescission pursuant to New Hampshire law. The Liquidator does not contest either that the Marino Policies were procured by fraud, or that Phoenix would be entitled to commence an action to rescind 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 Marino 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.

12. As set forth more fully below, Phoenix and the Liquidator have negotiated the terms of an agreed surrender of the Phoenix Marino Policies and have memorialized this agreement in the Phoenix Agreement. Other than the Phoenix Marino Policies, none of the policies issued by Phoenix or other insurers for the benefit of Noble Trust's clients are affected by the Phoenix Agreement. As described more fully in the Phoenix Agreement, Phoenix and the Liquidator have each reserved their respective rights with respect to the non-Marino policies, and the Liquidator is continuing to investigate and evaluate those policies.

13. Phoenix sought the Liquidator's consent to rescind, surrender or otherwise cancel the Phoenix Marino Policies. The Liquidator and Phoenix conducted a series of negotiations concerning Phoenix's request. The Liquidator demanded that Phoenix return the approximately $3 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 $4 million in commissions that Phoenix paid to Balcarres and Lindsey in connection with the Policies. Phoenix asserted this argument based on several legal theories including fraud, conspiracy, and abuse of the corporate form. Phoenix also asserted that in any litigation to rescind the Phoenix Marino 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.")

14. The Liquidator disputed the merits of Phoenix's legal theories and further asserted that Phoenix could not equitably set off the $3 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. 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. 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 effective

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

16. Under the Settlement Agreement, Phoenix shall pay $1.5 million to the Liquidator in satisfaction of the Liquidator's claims for return of premium paid under the Phoenix Marino Policies, in exchange for the Liquidator's surrender of those policies to Phoenix. Once approved by the Court, the surrender of the Phoenix Marino Policies shall be deemed effective as of November 6, 2008 (the date that the Phoenix Agreement was signed), but the Settlement Agreement itself shall not become effective unless and until it receives "Court Approval" as defined in the Settlement Agreement, i.e. approved by this Court in an Order that becomes both final and no longer subject to appeal. Phoenix has deposited the $1.5 million settlement amount with the Liquidator, which he is holding pending such approval.

17. 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 Marino Policies. Under the Settlement Agreement, the Liquidator agrees to treat Phoenix's claim as allowed in the total amount of $2,634,699.42, consisting of $1,134,699.42 (the amount by which the commissions that Phoenix paid exceeded the premiums that it received), , and the additional $1,500,000.00 Settlement Amount that will be released to the Liquidator upon Court Approval (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 Marino Policies.

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

19. 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 or any other party in interest may assert as to the priority to which it may be entitled, whether pursuant to principles of equitable subordination or otherwise.

20. The surrender of the Phoenix Marino Policies to Phoenix shall be free and clear of all liens, claims and interests in the Phoenix Marino Policies asserted or claimed by parties in interest, provided, however, that all such liens, claims, and interests shall attach to the Settlement Amount with the same validity and to the same extent and priority as they existed on February 11, 2008 (if any), the date that this proceeding commenced. Thus, to the extent that any party claims any interest in the Phoenix Marino Policies, all such parties are entitled to assert their interest in the proceeds thereof, the determination of which shall be subject to further proceeding before this Court.

21. Absent Court Approval, it is likely that Phoenix would seek to modify the Liquidation Order to permit it unilaterally to cancel, rescind or revoke the Phoenix Marino Policies. Additionally, as the two-year contestability deadlines[2] on the Phoenix Marino Policies approach, it becomes more likely that without a consensual rescission or

[2] RSA 408:10 establishes a two-year period (measured from the date that an insurance policy becomes in force) within which claims contesting the policy must be brought. For the Phoenix Marino Policies, the two-year anniversary dates range from March 30, 2009 to October 5, 2009.

surrender of these fraudulently issued policies, Phoenix will seek to modify the Liquidation Order.

22. Since the Marino Policies were all fraudulently procured, the continued payment of premiums on these policies and the continued requirement that Phoenix carry these fraudulent policies on its in-force ledger is a violation of public policy. *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.").

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

24. Therefore, the Liquidator believes that approval of the Settlement Agreement is in the best interests of Noble Trust, its creditors, and all parties in interest.

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.

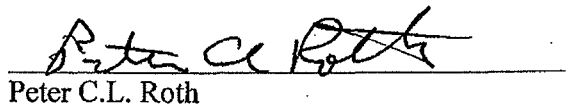
Respectfully submitted,

Dated: December 17, 2008

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

By his attorneys,

KELLY A. AYOTTE, ATTORNEY GENERAL



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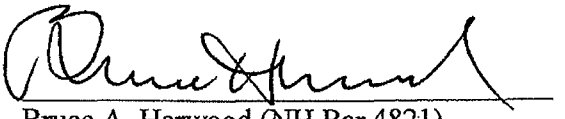

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CERTIFICATE OF SERVICE

I, Bruce A. Harwood, do hereby certify that on December 17, 2008, I caused a true copy of the foregoing to be served upon the parties listed below electronically and via first class mail, postage prepaid.

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Dated: December 17, 2008

Bruce A. Harwood

EXHIBIT A

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 6 th Day of November, 2008 (the "Effective Date") by and between PHL Variable Insurance Company ("Phoenix"), and Peter C. Hildreth, Banking Commissioner of the State of New Hampshire (the "Commissioner"), as 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 under a number of trust agreements formed by or at the direction of NTC for the benefit of its clients, including the following: The 2007 Aubrey Baker Jr. Irrevocable Trust dated 5/15/2007 ("Baker Trust"); The 2007 Walter Gorham ILIT dated 1/25/2007 ("Gorham Trust"); The 2007 Jean P Lavoie Irrevocable Life Insurance Trust dated 10/3/2007 ("Lavoie Trust"); The 2007 Clifton Marshall Irrevocable Life Insurance Trust dated 1/23/2007 ("Marshall Trust"); The Lupe Ruiz Irrevocable Trust dated November 28, 2006 ("Ruiz Trust"); The Anthony Sica ILIT dated 9/8/2006 ("Sica Trust"); The 2007 Richard Truesdale Irrevocable Trust dated 6/11/2007 ("Truesdale Trust"); The 2007 Thomas Trasente Irrevocable Life Insurance Trust dated May 14, 2007 ("Trasente Trust"); and The 2007 Ruby Vera-Cruz Irrevocable Trust dated 9/17/2007 ("Vera-Cruz Trust") (the

Baker Trust, Gorham Trust, Lavoie Trust, Marshall Trust, Ruiz Trust, Sica Trust, Trasente Trust, Truesdale Trust, and Vera-Cruz Trust are hereinafter collectively referred to as the "Trusts").

WHEREAS, The Baker Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Aubrey Baker. In response to this application, Phoenix issued policy number 97521740, with a policy date of May 16, 2007, to the Baker Trust (the "Baker Policy"). Phoenix's records reflect that the Baker Trust is the owner of the Baker Policy and that NTC is the trustee of the Baker Trust.

WHEREAS, The Gorham Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Walter Gorham. In response to this application, Phoenix issued policy number 97520807, with a policy date of May 1, 2007, to the Gorham Trust (the "Gorham Policy"). Phoenix's records reflect that the Gorham Trust is the owner of the Gorham Policy and that NTC is the trustee of the Gorham Trust.

WHEREAS, The Lavoie Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Jean Paul Lavoie. In response to this application, Phoenix issued policy number 97524167, with a policy date of October 5, 2007, to the Lavoie Trust (the "Lavoie Policy"). Phoenix's records reflect that the Lavoie Trust is the owner of the Lavoie Policy and that NTC is the trustee of the Lavoie Trust.

WHEREAS, The Marshall Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Clifton Marshall. In response to this application, Phoenix issued policy number 97520809, with a policy date of March 30, 2007, to the Marshall Trust (the "Marshall Policy"). Phoenix's records reflect that the Marshall Trust is the owner of the Marshall Policy and that NTC is the trustee of the Marshall Trust.

WHEREAS, The Ruiz Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Lupe Ruiz. In response to this application, Phoenix issued policy number 97519990, with a policy date of March 26, 2007, to the Ruiz Trust (the "Ruiz Policy"). Phoenix's records reflect that the Ruiz Trust is the owner of the Ruiz Policy and that NTC is the trustee of the Ruiz Trust.

WHEREAS, The Sica Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Anthony Sica. In response to this application, Phoenix issued policy number 97519217, with a policy date of November 8, 2006, to the Sica Trust (the "Sica Policy"). Phoenix's records reflect that the Sica Trust is the owner of the Sica Policy and that NTC is the trustee of the Sica Trust.

WHEREAS, The Trasente Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Thomas Trasente. In response to this application, Phoenix issued policy number 97521456, with a policy date of May 14, 2007, to the Trasente Trust (the "Trasente Policy").. Phoenix's records reflect that the Trasente Trust is the owner of the Trasente Policy and that NTC is the trustee of the Trasente Trust.

WHEREAS, The Truesdale Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Richard Truesdale. In response to this application, Phoenix issued policy number 97521964, with a policy date of June 11, 2007, to the Truesdale Trust (the "Truesdale Policy"). Phoenix's records reflect that the Truesdale Trust is the owner of the Trusedale Policy and that NTC is the trustee of the Truesdale Trust.

WHEREAS, The Vera-Cruz Trust, through its trustee NTC, applied in writing to Phoenix for the issuance of a life insurance policy insuring the life of Ruby Vera-Cruz. In response to this application, Phoenix issued policy number 97523067, with a policy date of July 23, 2007, to

the Vera-Cruz Trust (the "Vera-Cruz Policy"). Phoenix's records reflect that the Vera-Cruz Trust is the owner of the Vera-Cruz Policy and that NTC is the trustee of the Vera-Cruz Trust. (The Baker Policy, Gorham Policy, Lavoie Policy, Marshall Policy, Ruiz Policy, Sica Policy, Trasente Policy, Truesdale Policy and Vera-Cruz Policy are hereinafter collectively referred to 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 and other state and federal entities are continuing to investigate NTC and its business and financial affairs.

WHEREAS as a result of these investigations, the Liquidator determined, and the Parties acknowledge, that it appears that each of the Policies was procured through a fraudulent scheme, perpetrated by Colin P. Lindsey ("Lindsey"), and that the Policies should not be enforceable or enforced. The Liquidator has not asserted that Phoenix was a participant in the fraudulent scheme.

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 for the benefit of NTC's clients, and that NTC may not have disclosed some or any of such transactions to Phoenix.

WHEREAS each Policy provides, in "Section 12: Policy Termination," as follows:

> This Policy will terminate automatically on . . . the date the policy is surrendered for its Net Surrender Value.

WHEREAS, in connection with the issuance of the Policies, Phoenix paid commissions to Balcarres Group, LLC ("Balcarres") and Lindsey totaling $4,142,071.12, and received premiums totaling $3,007,371.70 as of the commencement of the Liquidation Proceeding.

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 a condition precedent to this Agreement is the entry of a final order by the Liquidation Court in the Liquidation Proceeding approving this Agreement in its entirety (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. The Court Approval shall bar any and all third parties (including, but not limited to, 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, this Agreement, or the Liquidation Proceeding, and shall further bar such Third Parties from pursuing claims against Phoenix or the Liquidator asserted by, through, or under the Trusts; provided that all liens, claims, encumbrances and interests in the Policies asserted by any and all Third Parties shall be deemed to attach to the Settlement Amount (defined below) with the same validity and to the same extent and priority as they existed in the Policies as of the commencement of the Liquidation Proceeding, pending further administration in the Liquidation Proceeding and further order of the Liquidation Court. 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. For purposes of this Agreement, the term "Third Parties" shall not include any state or federal agencies or authorities (including, without limitation, the New Hampshire Insurance Department) acting under their respective police or regulatory powers.

2. Upon Court Approval, the Liquidator shall voluntarily surrender each Policy pursuant to the surrender provision of the Policies, which surrender shall be effective as of the Effective Date of this Agreement. Upon such surrender, the Parties agree that the Policies shall 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 shall be deemed released from any and all claims or obligations under the Policies, to the extent that any such claims or obligations exist.

3. Phoenix agrees to waive a portion of the surrender charges on the Policies and pay to the Liquidator the aggregate Net Surrender Value of One Million Five Hundred Thousand and

00/100 dollars ($1,500,000.00)(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. Upon Court Approval, the Settlement Amount shall be released from the Settlement Account and accepted by the Liquidator in full and final settlement and satisfaction of any and all claims that the Liquidator, NTC, the Trusts and any and all Third Parties could have asserted against Phoenix, and any and all obligations, claims, or potential claims that could have been filed by NTC or the Trusts in relation to the Policies at any time up to and including the Effective Date of the Agreement.

4. The Parties agree that this Agreement applies only to the Policies; does not constitute a waiver of any defenses or claims other than as specifically set forth herein; and does not relate to, and shall have no effect on, any other life insurance policies issued to trusts for the benefit of NTC's clients, or in which NTC serves or served in any capacity, or which were issued through Balcarres, LLC ("Balcarres") or through Lindsey.

5. The Liquidator agrees and acknowledges that Phoenix has asserted a claim against NTC in accordance with RSA 395:13 in the amount of Four Million One Hundred Forty Four Thousand Two Hundred Ninety One and 23/100 Dollars ($4,142,071.12). Phoenix's claim is attached as Exhibit "A." The Liquidator will accept and allow the Phoenix claim for all purposes in the Liquidation Proceeding in the following amount and in the following manner.

6. Phoenix shall have an allowed claim in the Liquidation Proceeding (the "Allowed Phoenix Claim") in the amount of One Million One Hundred Thirty Four Thousand, Six Hundred Ninety Nine and 42/100 Dollars ($1,134,699.42), representing the difference between the gross amount of premiums and the gross amount of commissions received and paid, respectively, on the Policies. Upon Court Approval and the release of the Settlement Amount from the Settlement Account, the Allowed Phoenix Claim shall be increased by an additional One Million Five Hundred Thousand Dollars ($1,500,000.00), representing the proceeds of the Settlement Amount. The amount of the Allowed Phoenix Claim shall be reduced, dollar for dollar, by any distributions or payments that Phoenix receives in the nature of restitution ordered by the United States District Court for the District of New Hampshire in that certain criminal proceeding commenced or to be commenced by the United States Attorney for the District of New Hampshire relating to the Policies.

7. The Allowed Phoenix Claim will be entitled to participate in distributions in the Liquidation Proceeding in the same manner as other similarly situated claims against NTC, subject to any and all claims that the Liquidator or any other party in interest may assert as to the priority to which the Allowed Phoenix Claim may be entitled, which claims are expressly reserved, including but not limited to the subordination of the Allowed Phoenix Claim to any other claims allowed in the Liquidation Proceeding. The Liquidator and Phoenix each reserve all of their respective claims and defenses against each other with respect to the priority of the Allowed Phoenix Claim and all other matters relating to NTC, Balcarres, Lindsey, or any other persons or entities, and Phoenix further agrees that this Agreement shall not in any way limit the Liquidator's ability to raise matters relating to the Policies in connection with any other claims he

may have against Phoenix, or with respect to any claims that Phoenix may assert in the Liquidation Proceeding, or that otherwise relate directly or indirectly to NTC.

8. Subject to Court Approval, 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, or any Third Party.

9. 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, including Lindsey, Balcarres, or any Third Party.

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

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

12. 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 laws provisions or the conflict of laws provisions of any jurisdiction that would cause the application of any law other than that of the state of New Hampshire.

13. 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.

14. 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.

15. 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.

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

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

18. 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.

19. 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.

20. 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

By: Philip K Polkinghorn
Name: Philip K Polkinghorn
Title: President
Date: November 7, 2008

J.T.

PETER C. HILDRETH,
Banking Commissioner of the State of New Hampshire,
As Liquidator of Noble Trust Company

By:_____
Name: Robert A. Fleury
Title: Deputy Bank Commissioner, New Hampshire Banking Department
Date: November __, 2008

PHL VARIABLE INSURANCE COMPANY

By:_____
Name:
Title:
Date: November __, 2008

PETER C. HILDRETH,
Banking Commissioner of the State of New Hampshire,
As Liquidator of Noble Trust Company

By:_____
Name: Robert A. Fleury
Title: Deputy Bank Commissioner, New Hampshire Banking Department
Date: November 6, 2008

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.

1. Claimant's Name: PHL Variable Insurance Company

2. Claimant's Address: Attn: Joseph Tedone, One American Row 11th Floor, P.O. Box 5056, Hartford, Connecticut 06102-5056

3. Claimant's contact information:
   - Home Phone number: (860) 403-5422
   - Work Phone Number: ( )
   - Cell Phone Number: ( )
   - Fax Number: (860) 403-5182
   - Email address: joseph.tedone@phoenixwm.com

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: Bracewell & Giuliani LLP
Address of law firm: 711 Louisiana Street, Ste. 2300, Houston, Texas 77002
Attorney's telephone: (713) 221-1513
Attorney's fax number: (713) 221-1212
Attorney's email address: Tom.Hetherington@bgllp.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, _____ (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).

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

Philip K Pa
Claimant's signature
[If claimant is an individual]:

November 7, 2008
Date

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 7th day of November, 2008
by Philip K Polkinghorn [name(s) of person(s)] as President
[type of authority, e.g., officer, trustee, etc.] of PHL Variable Insurance Company [name of party on behalf of whom instrument was executed].

Laura E Santino
Notary Public/ ~~Justice of the Peace~~

(Seal, if any)

My Commission Expires: February 28, 2013

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 ("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 $4,142,071.12 for commissions paid to Balcarres and/or Lindsey on policy numbers 97521740, 97520807, 97524167, 97520809, 97519990, 97519217, 97521456, 97521964, and 97523067 (the "Marino Policies"), which were procured through fraud. Phoenix has an additional liquidated claim in the amount of $1,500,000.00 representing surrender charges on the Marino Policies that Phoenix agreed to waive in connection with, and subject to, that certain Settlement and Release Agreement dated November 6, 2008. Phoenix has received $1,134,699.42 less in premiums than it has paid in commissions on the Marino Policies.

Phoenix also has contingent and/or potential claims in an unknown amount related to policies issued to NTC Trusts other than the Marino Policies. Specifically, in the event that policies placed through Balcarres and/or Lindsey lapse for non-payment of premium or are surrendered, rescinded or otherwise terminated, Phoenix has rights to recover commissions it has paid to Balcarres and/or Lindsey. Currently, on policies issued through Balcarres and/or Lindsey (excluding the Marino Policies), Phoenix has received $2,521,000.48 less in premiums than it has paid in commissions.

Phoenix has additional potential claims in an unknown amount related to policies other than the Marino Policies. Specifically, if any of these policies were procured by fraud or in violation of insurable interest laws, Phoenix is entitled to offset commissions paid to its agents against any obligation to return premiums paid by or on behalf of Noble or NTC Trusts.

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.