

Presentment Date: January 18, 2022 12:00 p.m.

Objection Date: January 17, 2022 4:00 p.m.

Mark T. Power, Esq.  
John P. Amato, Esq.  
**THOMPSON COBURN HAHN & HESSEN LLP**  
488 Madison Avenue, Suite 1400  
New York, New York 10022  
Telephone: (212) 478-7200  
E-mail: mpower@hahnhausen.com  
jamato@hahnhausen.com

*Counsel to the Plaintiff*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

----- X  
In re: : Chapter 11  
Orion HealthCorp, Inc., *et al.*, :  
Debtors. : Case No. 18-71748-67 (AST)  
: Case No. 18-71789 (AST)  
: Case No. 18-74545 (AST)  
: (Jointly Administered)  
:

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Howard M. Ehrenberg in his capacity as Liquidating :  
Trustee of Orion Healthcorp, Inc., *et al.*, :  
Plaintiff, : Adv. Pro. No. 18-08048 (AST)  
v. :  
:

Richard Ian Griffiths, Sally Griffiths, Blake Holdings :  
Limited, VT Garraway Investment Fund Series IV :  
(f/k/a City Financial Investment Fund Series IV), :  
Legal & General Assurance Society Limited, Legal & :  
General UK Alpha Trust, The Bankers Investment :  
Trust PLC, Marlborough Fund Managers Limited, :  
Marlborough UK Micro-Cap Growth Fund, Jarvis :  
Investment Management Limited, JIM Nominees :  
Limited, Kestrel Partners LLP, Stuart Rollason, :  
Shard Capital Partners LLP, Herald Investment Trust :  
PLC, Milkwood Capital Limited, The Milkwood :  
Fund, Sir Rodney Malcolm Aldridge, Killik & Co. :  
LLP, Platform Securities Nominees Limited, Edale :  
Capital LLP, Edale Europe Absolute Fund LP, Edale :  
Europe Absolute Master Fund Limited, Maven :  
Investment Partners Ltd, Miton UK MicroCap Trust :  
PLC, Miton Trust Managers Limited (a/k/a Miton :  
Trust Managers PLC), Islandbridge Capital Limited, :

Islandbridge Opportunities Fund, Merrill Lynch :  
International, JPMorgan Smaller Companies :  
Investment Trust PLC, Skandinaviska Enskilda :  
Banken AB (Publ), Ari Charles Zaphiriou-Zarifi, :  
Denton & Co. Trustees Limited, Rupert Faure :  
Walker, JPMorgan Life Limited, ABN AMRO :  
Clearing Bank N.V., London Branch, THESIS Unit :  
Trust Management Limited, Thesis Headway A Sub- :  
Fund, Tilney Asset Management Services Limited :  
(f/k/a Towry Asset Management Limited), Freedom :  
Global Funds PCC Limited, Interactive Investor :  
Services Limited, Interactive Investor Services :  
Nominees Limited, Matthew Max Edward Royde, :  
Megan Amelia Elizabeth Royde, Montlake UCITS :  
Platform ICAV, Elite Webb Capital Fund, Nortrust :  
Nominees Limited, Credo Capital Limited, Moulton :  
Goodies Limited, Moshe Menachem Feuer (a/k/a :  
Mark Feuer), UBS Private Banking Nominees :  
Limited, Rupert Dyson, Linear Investments Limited, :  
Credit Suisse (Channel Islands) Limited, Walker :  
Crips Investment Management Limited (f/k/a :  
Walker Crips Stockbrokers Limited), W.B. Nominees :  
Limited, Gabelli Investor Funds, Inc. (a/k/a The :  
Gabelli ABC Fund), Dr. Shawn Zimberg, Oliver :  
Rupert Andrew Scott, finnCap Ltd, John Joseph :  
Johnston, Johnston Asset Management Ltd., :  
Interactive Investor Limited, CFS Management Ltd :  
(f/k/a CFS Portfolio Management Ltd), David :  
Andrew Clark, Karin Johnston, and The United :  
States of America, Department of Treasury, Internal :  
Revenue Service, :

Defendants. :

x

**NOTICE OF PRESENTMENT OF MOTION PURSUANT TO RULE 9019 OF  
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND SECTION 105  
OF THE BANKRUPTCY CODE FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT AGREEMENT WITH THE LEGAL AND GENERAL ENTITIES**

PLEASE TAKE NOTICE that upon the annexed motion (the “Motion”) of Plaintiff,  
Howard M. Ehrenberg, in his capacity as Liquidating Trustee of Orion Healthcorp, Inc., *et*  
*al.*, in the above-captioned adversary proceeding (the “Liquidating Trustee”), by his counsel  
Thompson Coburn Hahn & Hessen LLP, the proposed order (the “Order”), substantially in

the form annexed to the Motion, will be presented before the Honorable Alan S. Trust, United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of New York, located at Alfonse M. D'Amato Federal Courthouse, 290 Federal Plaza, Central Islip, New York 11722, on **January 18, 2022 at 12:00 p.m.** authorizing the Liquidating Trustee to enter into the proposed Settlement Agreement by and among the Liquidating Trustee and Legal and General Assurance Society Limited and Legal & General UK Alpha Trust.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the relief requested in the Application or the Order must be filed and served by **January 17, 2022 at 4:00 p.m.**

**Please be advised that if an objection is timely filed to the relief requested, or if the Court determines that a hearing is appropriate, a hearing on the Motion will be held on a date to be determined.**

Dated: New York, New York  
December 23, 2021

**THOMPSON COBURN HAHN & HESSEN  
LLP**

By: /s/ *John P. Amato*  
John P. Amato  
Mark T. Power  
Joseph Orbach

488 Madison Avenue  
New York, New York 10022  
Telephone: (212) 478-7200  
jamato@hahnessen.com  
mpower@hahnessen.com  
jorbach@hahnessen.com

*Counsel to Liquidating Trustee*

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**UNITED STATES BANKRUPTCY COURT  
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Richard Ian Griffiths, Sally Griffiths, Blake Holdings :  
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(f/k/a City Financial Investment Fund Series IV), :  
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General UK Alpha Trust, The Bankers Investment :  
Trust PLC, Marlborough Fund Managers Limited, :  
Marlborough UK Micro-Cap Growth Fund, Jarvis :  
Investment Management Limited, JIM Nominees :  
Limited, Kestrel Partners LLP, Stuart Rollason, :  
Shard Capital Partners LLP, Herald Investment Trust :  
PLC, Milkwood Capital Limited, The Milkwood :  
Fund, Sir Rodney Malcolm Aldridge, Killik & Co. :  
LLP, Platform Securities Nominees Limited, Edale :  
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Walker, JPMorgan Life Limited, ABN AMRO :  
Clearing Bank N.V., London Branch, THESIS Unit :  
Trust Management Limited, Thesis Headway A Sub- :  
Fund, Tilney Asset Management Services Limited :  
(f/k/a Towry Asset Management Limited), Freedom :  
Global Funds PCC Limited, Interactive Investor :  
Services Limited, Interactive Investor Services :  
Nominees Limited, Matthew Max Edward Royde, :  
Megan Amelia Elizabeth Royde, Montlake UCITS :  
Platform ICAV, Elite Webb Capital Fund, Nortrust :  
Nominees Limited, Credo Capital Limited, Moulton :  
Goodies Limited, Moshe Menachem Feuer (a/k/a :  
Mark Feuer), UBS Private Banking Nominees :  
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Gabelli ABC Fund), Dr. Shawn Zimberg, Oliver :  
Rupert Andrew Scott, finnCap Ltd, John Joseph :  
Johnston, Johnston Asset Management Ltd., :  
Interactive Investor Limited, CFS Management Ltd :  
(f/k/a CFS Portfolio Management Ltd), David :  
Andrew Clark, Karin Johnston, and The United :  
States of America, Department of Treasury, Internal :  
Revenue Service, :

Defendants. :

x

**LIQUIDATING TRUSTEE’S OMNIBUS MOTION PURSUANT TO RULE 9019 OF  
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND SECTION 105  
OF THE BANKRUPTCY CODE FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT AGREEMENT WITH THE LEGAL AND GENERAL ENTITIES**

This motion (the “Motion”) is filed by Howard Ehrenberg in his capacity as the Liquidating Trustee of the Orion Liquidating Trust (the “Liquidating Trustee” or “Plaintiff”), by and through the undersigned attorneys, seeking entry of an order pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and section 105 of

title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) authorizing the Liquidating Trustee to enter into the proposed *Settlement Agreement* (the “Settlement Agreement”) by and among the Liquidating Trustee and Defendants Legal and General Assurance Society Limited (“LGAS”) and Legal & General UK Alpha Trust (“Alpha Trust”, and with LGAS, the “Legal and General Entities”, and together with the Liquidating Trustee, the “Parties”). A copy of the Settlement Agreement is attached as Exhibit A to the proposed form of order (the “Proposed Order”) annexed hereto as Exhibit 1. In support of this Motion, the Liquidating Trustee respectfully states as follows:

### **JURISDICTION**

1. This court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Rule 9019(a) and Bankruptcy Code section 105.

### **BACKGROUND**

2. On March 16, 2018 (the “Petition Date”), each Debtor other than New York Network Management, L.L.C. (the “Debtors”) commenced a case (collectively, the “Initial Chapter 11 Cases”) by filing voluntary petitions for relief under Chapter 11 of Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”).

3. On March 29, 2018, the Debtors commenced the instant adversary proceeding (the “Adversary Proceeding”) by the filing of a complaint (the “Complaint”).

4. On or about January 6, 2019, the Debtors filed their Third Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (as confirmed, the “Plan”).

5. On February 26, 2019, the Court entered an Order (the “Confirmation Order”) confirming the Plan.

6. On March 1, 2019, the effective date of the Plan occurred (the “Effective Date”), and pursuant to the Plan and the Confirmation Order, the Liquidating Trustee was appointed as successor to the Debtors and is empowered to prosecute and settle, with Court approval, the claims asserted in this Adversary Proceeding against the Defendants, including the Legal and General Entities.

7. On March 12, 2020, the Liquidating Trustee filed the second amended complaint (the “Amended Complaint”) asserting claims for, *inter alia*, constructive trust, unjust enrichment, fraud, and fraudulent conveyance arising from each of the Legal and General Entities’ receipt of the Merger Proceeds.

8. In the Amended Complaint, the Liquidating Trustee sought to recover from LGAS \$6,434,707.37 that the Liquidating Trustee alleges LGAS received at or around the time of the consummation of the Merger described in the Amended Complaint, along with \$628,268.50 which was withheld at the time of the Merger and remitted to the United States Internal Revenue Service (collectively, such funds the “LGAS Merger Consideration”).

9. In the Amended Complaint, the Liquidating Trustee sought to recover from Alpha Trust \$6,434,707.37 that the Liquidating Trustee alleges Alpha Trust received at or around the time of the consummation of the Merger described in the Amended Complaint, along with \$628,268.50 which was withheld at the time of the Merger and remitted to the United States Internal Revenue Service (collectively, such funds the “Alpha Trust Merger”).



Consideration”, and together with the LGAS Merger Consideration, the “Merger Consideration”).

10. On June 15, 2020 the Legal and General Entities filed their motion to dismiss the Amended Complaint, and on June 30, 2020 the Legal and General Entities filed their memorandum of law in support of their motion to dismiss.

11. The Legal and General Entities deny liability and asserted various defenses to the claims asserted in the Adversary Proceeding including that the Court was not the proper forum for determining the claims asserted in the Amended Complaint.

12. On August 14, 2020, the Liquidating Trustee filed *Plaintiff's Omnibus Memorandum of Law in Opposition to the Three Motions to Dismiss the Plaintiff's Second Amended Adversary Proceeding Complaint Filed by (I) Legal and General, (II) Gabelli, and (III) the Directors and Related Defendants*.

13. On September 14, 2020 the Legal and General Entities filed their Reply in further support of their motion to dismiss.

14. Commencing in March 2021, the Parties participated in a voluntary mediation with Hon. Gerald Rosen (ret.) and thereafter continued their settlement discussions through the assistance of the mediator resulting in the negotiation and execution of the Settlement Agreement.

### **THE SETTLEMENT AGREEMENT**

15. The material terms of the Settlement Agreement is set forth below:<sup>1</sup>

- (a) Settlement Terms. Subject to the terms and conditions of the Settlement Agreement, in full satisfaction of the claims asserted in the Adversary Proceeding against the Legal and General Entities, the Legal and General Entities shall pay to the

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<sup>1</sup> This summary is qualified in its entirety by the terms and provisions of the Settlement Agreement. To the extent that there are any inconsistencies between this summary and the terms and provisions of the Settlement Agreement, the Settlement Agreement shall control.

Liquidating Trustee five million two hundred thousand dollars (\$5,200,000).

- (b) Mutual Releases. The Settlement Agreement provides for the exchange of mutual releases and the dismissal of the Adversary Proceeding with prejudice as to the Legal and General Entities.<sup>2</sup>

**RELIEF REQUESTED**

16. By this Motion, the Liquidating Trustee respectfully requests entry of the Proposed Order, pursuant to Bankruptcy Rule 9019(a) and Bankruptcy Code section 105, authorizing the Liquidating Trustee to enter into and approving the Settlement Agreement. The Liquidating Trustee has weighed the costs, risks, and disruption that would arise from litigating the Adversary Proceeding with respect to the Legal and General Entities against the compromises contained within the Settlement Agreement. In the Liquidating Trustee's reasonable business judgment, the terms and conditions of the Settlement Agreement is fair and equitable and serve the best interests of the Liquidating Trust, the Debtors' estates and their creditors. Accordingly, the Liquidating Trustee respectfully requests that the Bankruptcy Court grant the relief requested in this Motion and approve the Settlement Agreement.

17. Specifically, while the Liquidating Trustee believes that he will be successful in prosecuting this Adversary Proceeding, the Settlement Agreement provides the estates with a sum certain without additional significant litigation costs and eliminates any litigation risk to the Liquidating Trustee on various defenses which have been raised by the Legal and General Entities in their motion to dismiss as well as other defenses the Legal and General Entities have asserted.

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<sup>2</sup> The Liquidating Trustee is expressly releasing Reassure Limited as successor to LGAS.

### **BASIS FOR RELIEF REQUESTED**

18. Bankruptcy Rule 9019(a) provides that “on motion by the trustee and after a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019(a). The Bankruptcy Code further provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions [of the Bankruptcy Code].” 11 U.S.C. § 105(a).

19. Bankruptcy courts “may approve a compromise or settlement pursuant to Rule 9019 when the settlement is ‘fair, equitable, and in the best interests of the estate.’” *Geltzer v. Original Soupman Inc. (In re Soup Kitchen Int’l, Inc.)*, 506 B.R. 29, 36-37 (Bankr. E.D.N.Y. 2014) (quoting *In re Residential Capital, LLC*, 497 B.R. 720, 729 (Bankr. S.D.N.Y. 2013)). The settlement of time-consuming and burdensome litigation is encouraged and generally favored in bankruptcy. *See, e.g. Original Soupman*, 506 B.R. at 37; *see also In re Penn Cent. Transp. Co.*, 596 F.2d 1102 (3d Cir. 1979) (“‘administering reorganization proceedings in an economical and practical manner, it will often be wise to arrange the settlement of claims . . . .’”) (quoting *In re Protective Comm. for Indep. Stockholders of TMT Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

20. The decision to approve a settlement is ultimately within the sound discretion of the bankruptcy court. *See Original Soupman*, 509 B.R. at 37. The court should not, however, substitute its judgment for that of the debtors, or in this case, the Liquidating Trustee and the other Parties. *See In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986). The court is not to decide the numerous questions of law or fact raised by litigation, but rather should “canvas the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *See Cosoff v. Rodman (In re W.T. Grant and Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 22 (1983); *see also O’Connell v. Packles (In re Hilsen)*,

404 B.R. 58, 70 (Bankr. E.D.N.Y. 2009) (“It is not the court’s task to determine whether the settlement proposed by the parties is the best possible, or fairest, or most appropriate resolution of the dispute.”); *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2000) (stating that “the court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.”) (internal citations and quotations omitted).

21. In deciding whether a particular settlement is above the lowest point in the range of reasonableness, bankruptcy courts in the Second Circuit consider the following factors: (1) the balance between the litigation’s possibility of success and the settlement’s future benefits; (2) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment; (3) the paramount interest of the creditors, including each affected class’ relative benefits, and the degree to which creditors do not object to or affirmatively support the proposed settlement; (4) whether other parties in interest support the settlement; (5) the competence and experience of counsel supporting the settlement; and (6) the extent to which the settlement is the product of arm’s length bargaining. *See In re Stone Barn Manhattan LLC*, 405 B.R. 68, 75 (Bankr. S.D.N.Y. 2009) (citing *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007)). Courts also consider, where applicable, the “nature and breadth of releases to be obtained by officers and directors.” *See Iridium*, 478 F.3d at 462.

22. The Liquidating Trustee submits that the terms of the proposed settlements lie well above the lowest point in the range of reasonableness, and the applicable factors all weigh in favor of approval.

**A. *The Probability of Success in Litigation and Settlement’s Future Benefits***

23. Litigation to resolve the Adversary Proceeding with respect to the Legal and General Entities would be uncertain, time-consuming, and expensive, to the detriment of the Liquidating Trust and its creditor-beneficiaries. While the Liquidating Trustee believes that he has a strong position and would ultimately prevail in the litigation, any litigation has inherent risk and uncertainty. Specifically, with respect to the Legal and General Entities, such Defendants have taken the position that this Court is not the appropriate forum for litigating the claims asserted in the Amended Complaint, and the safe harbor provision of Bankruptcy Code §546(e) protects against many of the claims asserted in the Amended Complaint. In weighing these defenses, the Liquidating Trustee has analyzed the risk associated with each presented defense. The Settlement Agreement provides for the immediate resolution of all of the Parties' claims without the need for further litigation or the expenditure of further time and expense. As such, this factor weighs in favor of approval.

***B. The Complexity of the Litigation Involved and the Expense, Inconvenience and Attendant Delay***

24. In determining whether to enter into the Settlement Agreement, the Liquidating Trustee, in consultation with his professionals, analyzed the nature and likely cost of litigating the Adversary Proceeding with respect to the Legal and General Entities. These costs would likely include, among other things, preparing for trial or a contested hearing on the merits.

25. In light of the litigation risks and costs, and factoring in the total amount demanded from the Legal and General Entities in this Adversary Proceeding, the Liquidating Trustee believes that the resolution of these matters under the terms of the Settlement Agreement, without the need for protracted and complex litigation against the Legal and General Entities, represents a favorable outcome that is both cost effective and efficient for all

parties-in-interest. The proposed settlement will save the Liquidating Trustee considerable time and effort and spare the Liquidating Trustee from incurring additional expenses attendant to such litigation. As such, this factor also weighs in favor of approval.

***C. The Paramount Interest of Creditors and Support of the Settlement Agreement by Other Parties***

26. Entry into Settlement Agreement also serves the paramount interest of the Debtors' creditors and has support of the Debtors' largest creditor constituency. The Trust Oversight Committee, which is comprised of seven of the Debtors' largest creditors, have approved the terms of the Settlement Agreement. As such, these factors also weigh in favor of approval.

***D. Competence and Experience of Counsel***

27. The Liquidating Trustee is represented by the undersigned counsel, who previously served as special litigation counsel to the Debtors for this Adversary Proceeding. The undersigned has extensive experience in complex litigations, including prosecuting and defending numerous adversary proceedings in bankruptcy courts around the country, and prosecuting and defending claim objections. As such, this factor also weighs in favor of approval.

***E. Arm's Length Negotiation***

28. The Settlement Agreement is the product of protracted, good faith and arm's-length negotiations between the Parties which was assisted by an experienced mediator. After extensive negotiations, the Parties are eminently aware of each other Party's legal and factual position with respect to the myriad of issues in dispute, as well as the relative strengths and weaknesses of such arguments and positions. As such, this factor also weighs in favor of approval.

**F. *Summary***

29. In sum, the resolution of the matters embodied in the Settlement Agreement represents a settlement that rest well above the lowest point in the reasonable range of potential litigation outcomes, obviates the uncertainty, expense, delay, and inconvenience attendant to further litigation, and advances the paramount interests of the Debtors' creditors, which will allow for a recovery for the estates. Accordingly, the Settlement Agreement satisfies the requirements of Bankruptcy Rule 9019 and Bankruptcy Court should authorize the Liquidating Trustee to enter into and approve the Settlement Agreement.

**NOTICE**

30. Bankruptcy Rule 2002(a)(3) requires that notice of this Motion be given on 21 days' notice. In accordance therewith, notice of this Motion has been provided to (i) the Office of the United States Trustee for the Eastern District of New York; (ii) counsel to the Parties, (iii) counsel to the other Defendants in this Adversary Proceeding, and (iv) all parties who have filed a notice of appearance in these Chapter 11 Cases.

**NO PRIOR REQUEST**

31. No previous application for the relief sought herein has been made to this or any other Court.

**CONCLUSION**

**WHEREFORE**, the Liquidating Trustee respectfully requests that this Court (i) enter the Proposed Order authorizing the Liquidating Trustee to enter into and approving the Settlement Agreement and (ii) grant such other and further relief as is just and proper.

Dated: New York, New York  
December 23, 2021

**THOMPSON COBURN HAHN & HESSEN  
LLP**

*Counsel for the Liquidating Trustee*

By:     /s/ John P. Amato      
Mark T. Power  
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 LLP, Platform Securities Nominees Limited, Edale :  
 Capital LLP, Edale Europe Absolute Fund LP, Edale :  
 Europe Absolute Master Fund Limited, Maven :  
 Investment Partners Ltd, Miton UK MicroCap Trust :  
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 Banken AB (Publ), Ari Charles Zaphiriou-Zarifi, :  
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 Walker, JPMorgan Life Limited, ABN AMRO :  
 Clearing Bank N.V., London Branch, THESIS Unit :  
 Trust Management Limited, Thesis Headway A Sub- :  
 Fund, Tilney Asset Management Services Limited :  
 (f/k/a Towry Asset Management Limited), Freedom :

Global Funds PCC Limited, Interactive Investor :  
Services Limited, Interactive Investor Services :  
Nominees Limited, Matthew Max Edward Royde, :  
Megan Amelia Elizabeth Royde, Montlake UCITS :  
Platform ICAV, Elite Webb Capital Fund, Nortrust :  
Nominees Limited, Credo Capital Limited, Moulton :  
Goodies Limited, Moshe Menachem Feuer (a/k/a :  
Mark Feuer), UBS Private Banking Nominees :  
Limited, Rupert Dyson, Linear Investments Limited, :  
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Rupert Andrew Scott, finnCap Ltd, John Joseph :  
Johnston, Johnston Asset Management Ltd., :  
Interactive Investor Limited, CFS Management Ltd :  
(f/k/a CFS Portfolio Management Ltd), David :  
Andrew Clark, Karin Johnston, and The United :  
States of America, Department of Treasury, Internal :  
Revenue Service, :

Defendants. :

----- X

**ORDER AUTHORIZING THE LIQUIDATING TRUSTEE  
TO ENTER INTO AND APPROVING THE SETTLEMENT  
AGREEMENT BY AND AMONG THE LIQUIDATING TRUSTEE,  
AND THE LEGAL AND GENERAL ENTITIES**

**WHEREAS**, on March 16, 2018 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of New York (the “Court”);

**WHEREAS**, on March 29, 2018, the Debtors commenced the instant adversary proceeding (the “Adversary Proceeding”) by the filing of a complaint (the “Complaint”);

**WHEREAS**, on or about January 6, 2019, the Debtors filed their Third Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (as confirmed, the “Plan”);

**WHEREAS**, on February 26, 2019, the Court entered an Order (the “Confirmation Order”) confirming the Plan;

**WHEREAS**, on March 1, 2019, the effective date of the Plan occurred (the “Effective Date”), and pursuant to the Plan and the Confirmation Order, the Liquidating Trustee was appointed as successor to the Debtors and is empowered to prosecute and settle, with Court approval, the claims asserted in this Adversary Proceeding against the Defendants, including the Legal and General Entities;

**WHEREAS**, on March 12, 2020, the Liquidating Trustee filed the second amended complaint (the “Amended Complaint”) asserting claims for, *inter alia*, constructive trust, unjust enrichment, fraud, and fraudulent conveyance arising from each of the Defendants’ receipt of the Merger Proceeds;

**WHEREAS**, in the Amended Complaint, the Liquidating Trustee sought to recover from Legal and General Assurance Society Limited (“LGAS”) \$6,434,707.37 that the Liquidating Trustee alleges LGAS received at or around the time of the consummation of the Merger described in the Amended Complaint, along with \$628,268.50 which was withheld at the time of the Merger and remitted to the United States Internal Revenue Service (collectively, such funds the “LGAS Merger Consideration”);

**WHEREAS**, in the Amended Complaint, the Liquidating Trustee sought to recover from Legal & General UK Alpha Trust (“Alpha Trust”, and with LGAS, the “Legal and General Entities”) \$6,434,707.37 that the Liquidating Trustee alleges Alpha Trust received at

or around the time of the consummation of the Merger described in the Amended Complaint, along with \$628,268.50 which was withheld at the time of the Merger and remitted to the United States Internal Revenue Service (collectively, such funds the “Alpha Trust Merger Consideration”, and together with the LGAS Merger Consideration, the “Merger Consideration”);

**WHEREAS**, the Liquidating Trustee and the Legal and General Entities desire to enter into the Settlement Agreement dated December 23, 2021, a copy of which is annexed hereto as Exhibit “A” (the “Settlement Agreement”) and the Liquidating Trustee seeks this Court’s authorization to enter into and approve the Settlement Agreement;

**NOW THEREFORE, IT IS HEREBY:**

**ORDERED**, that all unresolved objections to the Motion, if any, are hereby overruled; and it is further

**ORDERED**, that the Settlement Agreement is approved in its entirety and the Liquidating Trustee is authorized to execute and consummate the Settlement Agreement; and it is further

**ORDERED**, that the Parties may take any further actions necessary to implement the terms of the Settlement Agreement; and it is further

**ORDERED**, that the Bankruptcy Court shall retain jurisdiction with respect to any issues arising from the implementation of this Order and the Settlement Agreement.

# **EXHIBIT A – SETTLEMENT AGREEMENT**