

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

ON MARINE SERVICES COMPANY LLC,

Debtor.

Chapter 11

Case No. 20-20007-CMB

Document No. ____

ON MARINE SERVICES COMPANY LLC,

Movant,

v.

FEDERAL INSURANCE COMPANY,

Respondent.

**DEBTOR’S MOTION FOR AN ORDER (I) APPROVING THE ASSUMPTION OF
THE SETTLEMENT AGREEMENT AND RELEASE BETWEEN THE DEBTOR
AND FEDERAL INSURANCE COMPANY, (II) APPROVING THE SALE OF
CERTAIN INSURANCE POLICIES, AND (III) ISSUING AN INJUNCTION
PURSUANT TO THE SALE OF CERTAIN INSURANCE POLICIES**

ON Marine Services Company LLC (the “Debtor”), as debtor and debtor-in-possession in the above-captioned case (this “Chapter 11 Case”), through its undersigned counsel, hereby moves (the “Motion”) this Court, pursuant to sections 105, 363, and 365 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), and Rules 6004, 6006, and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an order: (i) approving the assumption of the Settlement Agreement and Release (the “Federal Settlement Agreement”), dated December 31, 2019, between the Debtor and Federal Insurance Company (“Federal”), a copy of which is attached hereto as **Exhibit A**; (ii) approving the sale of certain insurance policies issued by Federal; and (iii) approving certain other relief to be provided to Federal, including an injunction, in relation to the sale of the insurance policies to

Federal. In support of this Motion, the Debtor relies on the *Declaration of Kevin J. Whyte in Support of Chapter 11 Petition of ON Marine Services Company LLC* (the “First Day Declaration”), filed contemporaneously herewith, and respectfully represents as follows:¹

PRELIMINARY STATEMENT

1. This Chapter 11 Case was filed to provide for the resolution of all current asbestos-related claims against the Debtor. Through confirmation of a chapter 11 plan of liquidation, the Debtor intends to establish a liquidating trust into which the proceeds from the Federal Settlement Agreement (less certain fees and expenses) and other assets will be transferred. The liquidating trust will assume liability for, and use its assets to resolve, the asbestos-related liabilities. By resolving the parties’ respective rights and obligations under the Federal insurance policies, obtaining the settlement payment from Federal, and establishing procedures to govern distributions from the liquidating trust, the trust will be able to resolve, value, and, if eligible, pay current asbestos-related claims that are submitted to the liquidating trust before an applicable bar date in a fair and efficient manner. Together, approval of the Federal Settlement Agreement and any other insurance settlement agreements and confirmation of a plan of liquidation will ensure a fair and equitable distribution among current asbestos claimants. Accordingly, approval of the Federal Settlement Agreement is integral to the successful conclusion of this Chapter 11 Case.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ Capitalized terms used but not defined in this Motion have the meanings given in the Federal Settlement Agreement.

3. The statutory predicates for the relief requested herein are sections 105, 363, and 365 of the Bankruptcy Code. Such relief is warranted under Bankruptcy Rules 6004, 6006, and 9019.

BACKGROUND

4. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Pennsylvania (the “Court”).

5. The Debtor continues in the management of its business and properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or creditors’ committee has been appointed in this Chapter 11 Case.

6. Information regarding the Debtor and this Chapter 11 Case, including the Debtor’s business, corporate structure, financial condition, and the reasons for and objectives of this Chapter 11 Case, is set forth in the First Day Declaration and fully incorporated herein by reference.

A. Ferro Engineering and Its Asbestos Products

7. The Ferro Engineering Company was incorporated as an Ohio corporation on October 9, 1929. In 1932, The Ferro Engineering Company merged into Columbia Transportation Company, a Delaware corporation. On October 17, 1957, Columbia Transportation Company was renamed Oglebay Norton Company, a Delaware corporation, and Ferro Engineering became a division (the “Ferro Division”) of Oglebay Norton Company.

8. The Ferro Division operated as an unincorporated division of Oglebay Norton Company from 1957 until 1998, when the Ferro Division ceased operations. At various

times during its existence, the Ferro Division manufactured and sold refractory products for use exclusively in steelmaking.

9. More specifically, the Ferro Division's refractory products insulated "hot tops"—the tops of ingot molds into which molten steel was poured. The only place these products were used was in the open hearth departments of integrated steel mills. These "hot top" products, which included both board-type material as well as castable material, were single-use products, meaning that they could be used for only one pour of molten steel. The products were consumed by heat during the steelmaking process.

10. By the mid-1940s, certain of the Ferro Division's "hot top" products contained asbestos as an intentionally included ingredient. The Ferro Division ceased production of all but one of these asbestos-containing "hot top" products in 1974. No asbestos-containing "hot top" products were manufactured or sold by the Ferro Division after 1978.

B. Debtor's Corporate History

11. The Debtor is the continuation of the entity formerly known as Oglebay Norton Company, as part of which the Ferro Division operated as an unincorporated division. In 1999, Oglebay Norton Company changed its name to ON Marine Services Company and became a wholly owned subsidiary of a newly formed company known as Oglebay Norton Company, an Ohio corporation. ON Marine Services Company ceased all active business operations in 2010. At the end of 2011, ON Marine Services Company was converted to a Delaware limited liability company—ON Marine Services Company LLC—the Debtor in this Chapter 11 Case. Currently, the Debtor's sole business is defending and, when appropriate, settling asbestos-related liabilities, funded primarily through the use of insurance recoveries.

C. Asbestos Related Claims and Insurance

12. For decades, the Debtor has been named as a defendant in thousands of asbestos-related personal injury lawsuits, in which claimants seek money damages for personal injury and wrongful death alleged as a result of exposure to asbestos-containing products manufactured and sold by the Ferro Division and/or the Debtor (the “Asbestos Tort Claims”). Since 1983, over 182,000 Asbestos Tort Claims have been asserted against the Debtor in the tort system.

13. Over the same period, the Debtor has been named as a defendant in a far smaller number of asbestos-related cases arising under the Merchant Marine Act of 1920, 46 U.S.C. § 30104 (commonly referred to as the “Jones Act”), in which claimants seek money damages for personal injury arising from claimants’ exposure to asbestos aboard lake vessels owned and operated by the Debtor and/or its predecessor entities (the “Jones Act Claims” and, together with the Asbestos Tort Claims, the “Asbestos Claims”).

14. As of the Petition Date, the Debtor estimates that approximately 6,000 Asbestos Tort Claims and one Jones Act Claim remain pending.

15. The Debtor has funded its defense and resolution of Asbestos Tort Claims by drawing upon its historic liability insurance program. This insurance program consisted of various primary and excess-layer policies issued by various insurers prior to 1984.

16. The Debtor’s historic liability insurance profile has been eroded significantly due to the payment of defense and indemnity costs relating to Asbestos Tort Claims. Moreover, certain of the excess insurance that remains available (*i.e.*, not exhausted, not settled, and not insolvent) provides no coverage for defense costs.

17. As of the Petition Date, what remains available and directly accessible from the Debtor's coverage profile for Asbestos Tort Claims are excess insurance policies issued by Federal and by Fireman's Fund Insurance Company and Fireman's Fund Insurance Company of Ohio. Federal has not made any payments under its policies prior to the Petition Date, as it disputes (among other things) whether coverage obligations under any of its policies have attached.

18. The Debtor separately has funded liabilities arising from Jones Act Claims through recoveries against certain historic maritime liability insurance arrangements it secured through "protection and indemnity" clubs. The coverage that is available to the Debtor through these clubs is on a reimbursement basis only; that is, the Debtor cannot obtain coverage until it first pays a covered liability out of its own funds.

19. After decades of relying on insurer contributions and insurance recoveries to fund the defense and indemnity costs arising from the Asbestos Tort Claims, the Debtor finds itself facing two significant problems. *First*, its reserve of funds available to pay its share of defense and indemnity costs is dwindling, and soon will be exhausted; and because it has had no revenue-producing operations for many years, it has no means of generating additional funds for this purpose. *Second*, even if the Debtor succeeds in accessing coverage that remains available in its historic insurance profile, it likely still would have to fund insolvency gaps and some portion of defense costs on its own, and it lacks the means to do so. Additionally, the Debtor faces an inability to fund Jones Act Claims so as to facilitate the reimbursement coverage that remains available for those claims. Simply stated, the Debtor has reached the point at which its traditional method of dealing with Asbestos Claims is no longer economically feasible.

20. This situation creates difficulties for asbestos claimants as well. If the Debtor is unable to fund the defense and resolution of the Asbestos Claims, it is likely that asbestos claimants will begin a “race to the courthouse” to recover whatever remains available. If this happens, it is likely that many claimants who have legitimate claims, but who lose that race, will be unable to recover anything from the Debtor. As a result, in consultation with its counsel, the Debtor determined that it is in its best interests, as well as the best interests of its asbestos-related creditors, for the Debtor to monetize its remaining insurance and commence this Chapter 11 Case to effect a fair and efficient distribution to those creditors.

C. Federal Insurance

21. Prior to the Petition Date, the Debtor conducted extensive, good faith negotiations with Federal for the purpose of resolving the Debtor’s remaining, unexhausted policies issued by Federal that, subject to their respective terms, conditions, and exclusions cover or allegedly cover asbestos-related liabilities (the “Policies”). The Federal Settlement Agreement is the product of those negotiations and, among other things, results in a settlement payment to the Debtor in the aggregate amount of \$9,600,000.00 (the “Settlement Payment”).

22. Through the Federal Settlement Agreement, the Debtor has resolved various issues regarding the scope and accessibility of coverage that remains available under the Policies. For instance, the Federal Settlement Agreement resolves issues involving the attachment of Federal’s excess policies and disputes over the proper exhaustion of underlying policies. Without this resolution, the Debtor could have expected these disputes to be subject to insurance coverage litigation, which the Debtor has no other means of funding.

23. The Federal Settlement Agreement is premised on the Debtor’s desire and intent to commence this Chapter 11 Case and to establish a liquidating trust to resolve all current

Asbestos Claims that are submitted to a liquidating trust before an applicable bar date. There is no indication that the Federal Settlement Agreement would have been achievable outside those parameters. Without the Federal Settlement Agreement and absent the filing of this Chapter 11 Case, the Debtor would have been unable to pay the costs of Asbestos Claims or the costs of pursuing additional insurance coverage under its remaining coverage profile.

SUMMARY OF THE FEDERAL SETTLEMENT AGREEMENT

24. The Federal Settlement Agreement resolves all claims of the Debtor against Federal in respect of each of the insurance policies issued to the Debtor by Federal as identified on **Exhibit B** attached hereto (the “Policies”). The material terms can be summarized as follows:²

- a. Federal agrees to pay a total of \$9,600,000.00 within twenty (20) days of the date on which this Court’s order approving the Federal Settlement Agreement becomes final and non-appealable.
- b. The Debtor shall use the proceeds of the Federal Settlement Agreement solely to make payments to or for the benefit of holders of Asbestos Claims and for other costs and expenses associated with this Chapter 11 Case.
- c. Immediately upon Federal’s payment of the full amount under the Federal Settlement Agreement (the “Payment Date”), all Policies shall be deemed to have been sold back to Federal pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, and the sale shall operate as if Federal had never issued the Policies.
- d. Upon the occurrence of the Payment Date, (a) Federal and its predecessors, successors, subsidiaries, affiliates, directors, officers, and representatives, including, without limitation, Pacific Employers Insurance Company, shall be irrevocably released from (i) all claims by the Debtor under, arising out of, related to, and/or in connection with the Policies, and (ii) all extra contractual claims arising out of, related to and/or in connection with the Policies, and (b) all rights and obligations between the

² This is a summary only. Reference should be made to the complete Federal Settlement Agreement attached hereto as Exhibit A. The terms of the Federal Settlement Agreement shall supersede the terms of this summary in all instances.

Debtor and Federal in respect of the Policies shall be fully and finally extinguished. The Debtor's releases of Federal and sale of the Policies back to Federal shall leave Federal completely released as if it had never issued the Policies.

- e. To prevent claims that directly or indirectly arise from, are based upon, are attributable to, or derive from the Policies being purchased by Federal, the Federal Settlement Agreement is conditioned upon the Court entering an order pursuant to section 105(a) of the Bankruptcy Code permanently staying, retraining, and enjoining all persons who hold or assert, or may in the future hold or assert, any claim against the Debtor arising out of or in connection with the activities covered by the Policies, or in connection with the Debtor's activities giving rise to claims made or to be made under the Policies, or any other person who may claim to be an insured, additional insured, or otherwise entitled to any benefit under the Policies, from asserting any claim or right to entitlement, or taking any other action against Federal and its predecessors, successors, subsidiaries, affiliates, directors, officers, and representatives, including, without limitation, Pacific Employers Insurance Company, for the purpose of obtaining any recovery or other relief from such protected entities or under or in connection with the Policies (the "Insurance Policy Injunction").

25. The Debtor believes that the Federal Settlement Agreement is fair and equitable and in the best interests of its estate. The Settlement Payment will enable the Debtor to arrange for an orderly distribution of those monies (other than that portion needed to fund the administration of this Chapter 11 Case) to claimants who are asserting Asbestos Claims against the Debtor, while avoiding the costs of litigating or otherwise resolving the parties' dispute over the availability of any coverage for Asbestos Claims under the Policies.

BASIS FOR RELIEF

A. The Court Should Authorize The Assumption Of The Federal Settlement Agreement Under Section 365 Of The Bankruptcy Code.

26. Section 365(a) of the Bankruptcy Code provides, in relevant part, that a debtor "may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Courts routinely approve motions to assume, assume and assign, or reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such

action will benefit the debtor's estate and is an exercise of sound business judgment. See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (stating that section 365 is traditionally subject to the "business judgment" standard).

27. Once a debtor articulates a valid business justification for the assumption of its agreements, "then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate; the burden of rebutting that presumption falls to parties opposing the transaction." In re Filene's Basement, LLC, No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014); In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("a presumption of reasonableness attaches to a Debtor's management decisions.").

28. The approval of the Federal Settlement Agreement is an important element of the Debtor's efforts in this Chapter 11 Case. As indicated above, the settlement provides significant proceeds to the estate, without requiring the Debtor to incur expense to litigate any disputes with Federal. Moreover, the Federal Settlement Agreement allows the Debtor to effect a fair and efficient distribution of the settlement proceeds to its asbestos creditors. Thus, the Debtor believes that the assumption of the Federal Settlement Agreement is an exercise of its sound business judgment.

B. The Court Should Approve the Federal Settlement Agreement Under Bankruptcy Rule 9019.

29. Bankruptcy Rule 9019 provides that "[o]n motion by the trustee [or debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Compromises are a normal part of the bankruptcy process. Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968). As a matter of policy, compromises and settlements are favored in order

to minimize litigation and expedite administration of the estate. In re Martin, 91 F.3d 389, 393 (3d Cir. 1996); In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986); accord In re Heissinger Resources Ltd., 67 B.R. 378, 383 (C.D. Ill. 1986) (“the bankruptcy court is to consider that the law favors compromise.”).

30. The decision to approve a settlement is within a bankruptcy court’s discretion. See In re Summit Metals, Inc., 477 F. App’x 18, 21 (3d Cir. 2012) (applying the abuse of discretion standard to affirm the bankruptcy court’s approval of a settlement). A settlement should be approved where the court determines it is fair and equitable and in the best interests of the bankruptcy estate. See In re Capmark Financial Group Inc., No. 09-13684, 2011 WL 6013698 (Bankr. D. Del. Apr. 15, 2011).

31. In determining whether a proposed settlement is fair and equitable, neither an evidentiary hearing nor a rigid mathematical analysis is required. Tri-State Fin., LLC v. Lovald, 525 F.3d 649, 655 (8th Cir. 2008), cert. denied, 555 U.S. 1046 (2008); In re Am. Reserve Corp., 841 F.2d 159, 163 (7th Cir. 1987) (minitrial not required). Rather, the court must determine whether the proposed compromise falls within the reasonable range of litigation possibilities. Tri-State Fin., LLC v. Lovald, 525 F.3d at 654 (the court is required only to “determine that the settlement does not fall below the lowest point in the range of reasonableness.”).

32. The Court should consider the following relevant factors: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. In re Martin, 91 F.3d at 393. The Court also may apply weight to a debtor’s business judgment that the proposed settlement should be approved. See In

re Wheeling-Pittsburgh Steel Corp., 72 B.R. 845, 849 (Bankr. W.D. Pa. 1987) (concluding that the court should not interfere with or second guess the debtor's sound business judgment).

33. In resolving its coverage disputes with Federal, the Debtor reviewed, among other things, the Policies and applicable law and determined that \$9,600,000 was an equitable settlement payment given potential litigation outcomes. Among the considerations that led to this conclusion were the following:

- a. Federal disputed that it had any present obligations to provide coverage for Asbestos Claims under any of the Policies, due to the Debtor's failure to properly exhaust the applicable underlying insurance. Although the Debtor believes there is significant support under applicable policy language in both the Policies and the underlying insurance that at least one of the Policies has immediate payment obligations, it is aware of no case precedent under Ohio law that is directly on point. Federal has made no contribution toward covering the Debtor's asbestos-related defense and indemnity costs to this date, and if Federal was to prevail on its position, it is conceivable that none of the Policies could attach for some time (if at all). The Federal Settlement Agreement eliminates these risks by providing for liquidation of the Policies and making the settlement proceeds available shortly after this Court approves this Motion.
- b. Federal also raised issues about the proper share of any allocation of coverage responsibilities to any of the Policies, particularly in view of settlements that the Debtor reached over 15 years ago which involved significant discounts off the settled policies' coverage limits. Federal asserted that its rights to contribution against those insurers—which, as a result of indemnification agreements between those insurers and the Debtor, would fall on the Debtor itself—compelled an allocation much smaller than the Debtor would otherwise seek from Federal. Ohio law, which likely would govern a dispute on this issue, is not settled, and litigation over a dispute on this issue would promise to be complex and expensive, with no predictability of whether the Debtor's position would prevail.
- c. None of the Policies defines covered "Loss" to include defense costs. Absent this Chapter 11 Case—which was a critical underpinning of the Federal Settlement Agreement—even if Federal began making some contribution toward coverage of asbestos-related indemnity costs, the Debtor would have had to bear all defense costs that otherwise could have been allocated to a Federal policy. As set forth elsewhere in this Motion, the Debtor lacks the financial wherewithal to do so. The Chapter 11 Case

and the Federal Settlement Agreement together act to eliminate this as an issue for the Debtor.

34. Given the significant risks inherent in litigating any dispute with Federal in relation to the Policies, the recovery provided for in the Federal Settlement Agreement must be viewed as significant and propitious for the Debtor and its creditors. Considering the range of reasonable outcomes of those disputes—which at the very least would include the possibility of no recovery at all on the higher-level excess policies—the resolution afforded by the Federal Settlement Agreement certainly exceeds the lowest point in the range of reasonableness.

35. The Federal Settlement Agreement is in the paramount interests of creditors because it (i) resolves and thereby eliminates the dispute between the Debtor and Federal over the accessibility of additional coverage for Asbestos Claims under the Policies, (ii) makes the settlement proceeds more immediately accessible than had the Debtor litigated with Federal or awaited the normal delays attendant to the tort system, and (iii) facilitates the fair and efficient distribution of proceeds to the Debtor’s asbestos creditors.

36. For the foregoing reasons, the Federal Settlement Agreement satisfies the requirements of Bankruptcy Rule 9019 and the Martin factors.

C. The Court Should Approve The Sale Of The Policies To Federal Under Section 363 Of The Bankruptcy Code.

37. Section 363(b)(1) of the Bankruptcy Code provides that a debtor-in-possession may sell property of the estate “other than in the ordinary course of business” after notice and a hearing. 11 U.S.C. § 363(b)(1). Courts have recognized that insurance policies are property of a debtor’s estate, which may be sold with court approval under section 363 of the Bankruptcy Code. See, e.g., MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 92-93 (2d Cir. 1988) (because numerous courts have determined that a debtor’s insurance policies are property of the estate, court authorized a settlement of the

debtor's insurance coverage claims pursuant to the court's authority to approve the sale of the debtor's property); Estate of Lellock v. Prudential Ins. Co., 811 F.2d 186, 189 (3d Cir. 1987) (same).

38. A debtor's sale of property outside the normal course should be authorized pursuant to section 363 of the Bankruptcy Code as long as a sound business purpose exists for doing so. See, e.g., In re Schipper, 933 F. 2d 513, 515 (7th Cir. 1991); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1989); In re Lionel Corp., 722 F.2d 1063, 1070-71 (2d Cir. 1983). The Debtor's sale of the Policies to Federal is an integral component of the Federal Settlement Agreement in exchange for which the Debtor and its asbestos creditors will receive the benefit of the Federal's settlement payment of \$9,600,000.00. And, as indicated above, payment of the settlement proceeds under the Federal Settlement Agreement is integral to the success of this Chapter 11 Case and the fair and efficient administration of Asbestos Claims by the liquidating trust. Accordingly, a sound business purpose exists for the sale of the Policies.

39. Section 363(f) of the Bankruptcy Code provides that the debtor-in-possession may sell property "free and clear of any interest in such property of an entity other than the estate" if at least one of the following conditions is satisfied: (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f)(1)-(5). Section 363(f) authorizes a sale free and clear of "interests," not merely liens, and thus permits a sale of property free and clear of all

claims and interests of any entity that “are derivative of the debtor’s rights in that property.” In re Dow Corning Corp., 198 B.R. 214, 244 (Bankr. E.D. Mich. 1996).

40. The Policies may be sold free and clear of all liens, encumbrances, and other interests of any entity pursuant to sections 363(f)(2), (f)(4) or (f)(5) of the Bankruptcy Code.

41. *First*, entities that receive notice of the Federal Settlement Agreement and fail to object should be deemed to have consented to the Federal Settlement Agreement for purposes of section 363(f)(2) of the Bankruptcy Code. See, e.g., In re Dura Auto. Sys., Inc., No. 06-11202 KJC, 2007 WL 7728109, at *6 (Bankr. D. Del. Aug. 15, 2007) (concluding that creditors who do not object to the asset sale are “deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.”); In re James, 203 B.R. 449, 453 (Bankr. W.D. Mo. 1997) (section 363(f)(2) satisfied where secured creditor had notice and failed to object to proposed sale and thus “implicitly conveyed its consent to the sale”); In re Elliot, 94 B.R. 343, 345-46 (E.D. Pa. 1988) (implied consent sufficient to authorize section 363(f)(2) sale; consent implied from non-debtor that “received notice of the proposed sale and also admits that it did not file any timely objection”). Non-objectors should be deemed to have consented to the sale for purposes of section 363(f)(2) of the Bankruptcy Code.

42. *Second*, to the extent any objections are filed, the Policies may be sold free and clear of all claims and interests pursuant to either section 363(f)(4) of the Bankruptcy Code. A sale free and clear is appropriate under section 363(f)(4) because the interests of the holders of such claims plainly are “in *bona fide* dispute” here. See In re Johns-Manville Corp., 837 F.2d at 93 (holding that vendor’s alleged rights under certain endorsements for indemnity for asbestos claims was in *bona fide* dispute because a dispute existed as to whether “the product

liability limits on the policies to which the vendor endorsements attach have been exhausted”). In particular, to the extent an objector is asserting the right as an insured under the Policies, the Debtor disputes the interest of such entity as an insured under such policies. To the extent an objector is an asbestos plaintiff asserting a right to recover directly from Federal under the Policies, the Debtor has not conceded that any particular asbestos claim is valid at all or in the amounts sought by the claimant and expects that it or the liquidating trust will challenge or deny certain claims due to lack of proof. Accordingly, the interest of any objector in the Policies is in dispute. In short, there are a number of actual unresolved “disputes” with respect to the claims and interests that makes section 363(f)(4) of the Bankruptcy Code applicable to a sale of the Policies.

43. *Third*, under section 363(f)(5) of the Bankruptcy Code, holders of any Asbestos Claims that object to the sale could be compelled to accept a money satisfaction for their interests. Indeed, the potential right to a money satisfaction is likely the *only* interest such claim or interest holders could have in the Policies. For this reason, courts have approved the sale of insurance policies free and clear of asbestos claims pursuant to section 363(f)(5) of the Bankruptcy Code. See, e.g., In re Thorpe Insulation Co., No. 07-19271 (BB), Doc. Nos. 1676 and 1677 (Bankr. C.D. Cal. Nov. 25, 2008); In re Burns and Roe Enters., Inc., Case No. 00-41610 (RG), Doc. No. 1200 (Bankr. D.N.J. Feb. 17, 2005).

D. The Court Should Approve The Insurance Policy Injunction Under Section 105(a) Of The Bankruptcy Code.

44. To effectuate and supplement the “free and clear” nature of the sale of the Policies to Federal pursuant to section 363(f) of the Bankruptcy Code, Federal has conditioned consummation of the Federal Settlement Agreement upon the issuance of an order containing the Insurance Policy Injunction.

45. Consistent with the policy buyback contemplated in the Federal Settlement Agreement, the Insurance Policy Injunction would operate to prevent all persons who hold or assert, or may in the future hold or assert, any claim against the Debtor arising out of or in connection with the activities covered by the Policies, or in connection with the Debtor's activities giving rise to claims made or to be made under the Policies, or any other person who may claim to be an insured, additional insured, or otherwise entitled to any benefit under the Policies, from asserting any claim or right to entitlement, or taking any other action against Federal, for the purpose of obtaining any recovery or other relief from Federal or under or in connection with the Policies.

46. The Court has authority to issue the Insurance Policy Injunction pursuant to section 105(a) of the Bankruptcy Code, which provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105. Issuance of an order containing the Insurance Policy Injunction is necessary and appropriate to carry out and enforce the "free and clear" nature of the sale of the Policies to Federal under the Federal Settlement Agreement pursuant to section 363(f) of the Bankruptcy Code.

47. The basis and appropriateness of the Insurance Policy Injunction in connection with a policy buyback under section 363(f) of the Bankruptcy Code is well-established. As the Court in In re Dow Corning Corp. observed:

Courts have long recognized that inherent within the authority to sell estate property free and clear of liens is the power to enjoin creditors from pursuing the purchaser of such property. Nevertheless, more explicit protection is often needed to effectuate this important aspect of a § 363 sale. In other words, an actual injunction barring creditors from suing a purchaser of estate assets is sometimes necessary and appropriate to give the 'free and clear' aspect of § 363(f) meaning. When this is the case, a court has the

power to ‘issue an [] order . . . necessary or appropriate to carry out [§363(f), one of] the provisions of the [Bankruptcy Code].’ 11 U.S.C. §105(a).

In re Dow Corning Corp., 198 B.R. 214, 245 (Bankr. E.D. Mich. 1996) (certain internal citations omitted).

48. Courts within this District have issued insurance policy injunctions in connection with the following asbestos cases: In re Geo. V. Hamilton, Inc., No. 15-23704 (GLT), Doc. No. 1831 (Bankr. W.D. Pa. Feb. 27, 2018); In re Global Indus. Technologies, Inc., et al., No. 02-21626 (JKF), Doc. No. 9444 (Bankr. W.D. Pa. Sept. 24, 2007); In re Pittsburgh Corning Corp., No. 00-22876 (JKF), Doc. No. 7711 (Bankr. W.D. Pa. May 15, 2013). Insurance policy injunctions have been issued in other districts as well. See, e.g., In re Oakfabco., No. 15-27062 (JBS), Doc. No. 764 (Bankr. N.D. Ill. Dec. 18, 2018); In re Metex Mfg. Corp., No. 12-14554 (CGM), Doc. Nos. 554 and 555 (Bankr. S.D.N.Y. June 23, 2014).

NOTICE OF MOTION AND SETTLEMENT AGREEMENT

49. The notice program relating to the Motion and the Federal Settlement Agreement is set forth in the *Debtor’s Motion for Entry of an Order (I) Scheduling a Hearing to Consider Motions to Approve Insurance Settlement Agreements, (II) Approving Form and Manner of Notice Thereof, and (III) Granting Related Relief* (the “Procedures Motion”), filed contemporaneously herewith. The Procedures Motion contemplates that notice of this Motion and the hearing thereon will be mailed to the persons and entities, and published in such manner, as approved by the Court.

NO PRIOR REQUEST

50. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit C**: (i) approving the assumption of the Federal Settlement Agreement pursuant to section 365(a) of the Bankruptcy Code; (ii) approving the Federal Settlement Agreement pursuant to Bankruptcy Rule 9019; (iii) approving the sale, transfer, and conveyance by the Debtor of its interest in the Policies to Federal, free and clear of any and all liens, claims, encumbrances, and interests of any kind or nature pursuant to sections 363(b), (f), and (m) of the Bankruptcy Code; (iv) issuing the Insurance Policy Injunction pursuant to section 105(a) of the Bankruptcy Code; (v) approving the completion of performance of the other terms and conditions of the Federal Settlement Agreement; and (vi) granting such other and further relief as may be just and proper.

Dated: January 2, 2020

Respectfully submitted,

REED SMITH LLP

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Proposed Counsel to Debtor and Debtor-in-Possession

EXHIBIT A

Federal Settlement Agreement

(Attached)

SETTLEMENT AGREEMENT AND RELEASE

This Agreement (the “Agreement”) is made as of the Execution Date by Federal Insurance Company (“Federal,” as defined below) on the one hand, and ON Marine Services Company LLC, (“ON Marine,” as defined below) on the other hand. Each of the foregoing is a “Party,” and both collectively are the “Parties.”

RECITALS

WHEREAS, claims have been made against ON Marine and ON Marine has been named as a defendant or as a cross-defendant in numerous lawsuits wherein the plaintiffs seek money damages from ON Marine for bodily injuries alleged as the result of exposure to asbestos-containing products allegedly manufactured or sold by ON Marine (“Asbestos Claims” as defined below).

WHEREAS, Federal (as defined below) issued the Policies (as defined below) to ON Marine or its predecessor;

WHEREAS, ON Marine asserts that Federal has or will have coverage obligations in respect of the Asbestos Claims under one or more of the Policies;

WHEREAS, Federal disputes that its coverage is now or will ever be triggered, and ON Marine disputes Federal’s contention;

WHEREAS, ON Marine’s available insurance coverage for Asbestos Claims has been steadily eroding over the years due to the payment of costs required to resolve those claims, and a significant portion of the coverage that remains is subject to various complications (such as the insolvency of underlying policies) that could require substantial expenditures by ON Marine to overcome;

WHEREAS, ON Marine ceased any active income-generating business operations almost a decade ago, and has existed since that time only to coordinate the resolution of Asbestos Claims asserted against it in the tort system;

WHEREAS, ON Marine has determined that it would be prudent to commence a bankruptcy proceeding under chapter 11 of the Bankruptcy Code, to provide for an orderly distribution of its remaining assets (including, in particular, proceeds from its remaining insurance coverage for Asbestos Claims) and to provide for the orderly resolution and payment of the Asbestos Claims;

WHEREAS, Federal has reached an agreement with ON Marine to liquidate its remaining insurance coverage and to resolve any potential disputes regarding the Policies and coverage relating to ON Marine, subject to the terms and conditions of this Agreement, by buying back all of the Policies for fair and reasonable value to provide funding for the resolution of Asbestos Claims in a manner that is satisfactory to ON Marine and its creditors; and

WHEREAS, the Parties agree and understand that this Agreement will be an executory contract in ON Marine's bankruptcy case, and that creditors and parties-in-interest therein will have the opportunity to appear and be heard in the Bankruptcy Court on the question of whether the assumption of this Agreement is in the best interest of the ON Marine bankruptcy estate;

NOW, THEREFORE, intending to be legally bound, the foregoing recitals constituting a part of the substance of this Agreement, the Parties agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms have the meanings set forth below.

1. "Approval Date" means the date on which the Approval Order becomes a Final Order.

2. “Approval Order” means an order, in substantially the form attached hereto as Exhibit 1, with only such modifications as are acceptable to the Parties, entered by the Bankruptcy Court pursuant to Bankruptcy Code Sections 105, 363(b) and (f), and 365, and Bankruptcy Rules 6004, 6006, and 9019, as well as any other provision of the Bankruptcy Code or Bankruptcy Rules as may be appropriate, which Order shall: (a) approve ON Marine’s assumption of this Agreement under Section 365 of the Bankruptcy Code; (b) authorize ON Marine to undertake the remaining transactions contemplated by this Agreement, (c) authorize the sale of the Policies to Federal free and clear of any and all Interests under Section 363(f) of the Bankruptcy Code; (d) find that Federal is a good faith purchaser of the Policies and, as such, is entitled to all protections provided to a good faith purchaser under Bankruptcy Code Section 363(m); (e) provide for the Injunction (as defined below); (f) find that the releases in the Agreement and the policy buyback therein comply with the Bankruptcy Code and applicable non-Bankruptcy law; (g) approve the Agreement and find that the consideration exchanged constitutes a fair and reasonable settlement of the Parties’ respective rights and obligations and constitutes reasonably equivalent value; (h) rule that upon the Approval Date the Policies shall be terminated and of no force and effect and be exhausted in respect of all coverages thereunder; and (i) find that the Agreement is binding on any chapter 11 trustee for ON Marine and on any liquidating or other trust or distribution vehicle established under a chapter 11 plan for ON Marine, and on any chapter 7 trustee in the event the case is converted to a chapter 7 proceeding. ON Marine shall use its best efforts to obtain an order in the form attached hereto as Exhibit 1 and, if not, pursuant to Section 3.6 below, agrees to work cooperatively with Federal to the extent modifications to the Order are necessary.

3. “Asbestos Claim” means any Claim, including any Direct Action Claim (as defined below), that relates to, arises out of, or is caused in whole or in part by, in any manner or fashion, asbestos, asbestos-containing products, or material, in whole or part, including mixed dust, irrespective of whether such Claims fall within or outside the scope of the definitions of “products liability,” “products hazard,” and/or “completed operations hazard,” or their equivalents, contained in the Policies. “Asbestos Claim” includes Claims for contribution, indemnity, reimbursement or otherwise arising from the foregoing.

4. “Bankruptcy Case” means the case to be commenced by ON Marine under chapter 11 of the Bankruptcy Code in the Bankruptcy Court within twenty (20) business days of the Execution Date.

5. “Bankruptcy Code” means Title 11 and the applicable provisions of Titles 18 and 28 of the United States Code, as amended from time to time.

6. “Bankruptcy Court” means the United States Bankruptcy Court for the Western District of Pennsylvania.

7. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

8. “Claims” means any and all past, present, or future, known or unknown, foreseen or unforeseen, direct or indirect, fixed or contingent, matured or unmatured, liquidated or unliquidated, claims (including “claim” as defined in Section 101(5) of the Bankruptcy Code), proofs of claim, causes of actions, cross-claims, liabilities, rights, demands (including letter demands, notices, or inquiries from any person or government agency), penalties, assessments, damages, requests, suits, lawsuits, costs (including attorneys' fees and expenses), interest of any kind, actions, administrative proceedings, criminal proceedings, or orders, of whatever nature, character, type, or description, whenever and however occurring, whether at law or in equity, and

whether sounding in tort or contract, or any statutory, regulatory or common law claim or remedy of any type including, without limitation: (a) any Asbestos Claim; (b) any claim seeking any type of relief, including compensatory, consequential, exemplary or punitive damages, rescission, or declaratory or injunctive relief; (c) any claim for billing or premium adjustments; (d) any claim on account of alleged bad faith, failure to act in good faith, violation of any duty of good faith and fair dealing, violation of any unfair claims practices act or similar statute, regulation or code, any unfair claims handling or settlement practices, fraud, conspiracy, concerted action, or other type of alleged misconduct; or (e) any claim for any other act or omission of an Federal of any type for which a claimant might seek relief.

9. “Direct Action Claim” means any Claim by any Person other than ON Marine directly against Federal under any Policy that arises from the activities or products of ON Marine, or any insurance contract or Policy that is, or may in the future be, asserted to provide coverage for any of the aforementioned Claims, whether arising by contract, in tort or under the laws of any jurisdiction, including any statute that gives a third party a direct cause of action against an Federal.

10. “Estate” means the bankruptcy estate created under Section 541 of the Bankruptcy Code for ON Marine as a result of the filing of the Bankruptcy Case.

11. “Execution Date” means the first day upon which all Parties have executed this Agreement.

12. “Federal” means Federal Insurance Company and its predecessors, successors, subsidiaries, affiliates, directors, officers, and representatives, including, without limitation, Pacific Employers Insurance Company.

13. “Final Order” means an order or judgment (including any modification or amendment thereof) that remains in effect and has not been reversed, vacated, or stayed, and as to which the time to appeal or seek review, rehearing, or writ of certiorari has expired and as to which no appeal or petition for review, reconsideration, rehearing, or certiorari has been taken or, if taken, has been resolved and no longer remains pending.

14. “Including” means including without limitation.

15. “Injunction” means a permanent injunction pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code to become effective upon the Approval Date permanently enjoining the prosecution, continuation, or commencement of any Interest that any Person holds or asserts or may in the future hold or assert against ON Marine or Federal, and the assertion of any Claim or right to entitlement or taking any other action against Federal for the purpose of obtaining any recover or other relief from Federal or under or in connection with the Policies, arising out of or in connection with of the activities covered by the Policies, or in connection with ON Marine’s activities giving rise to claims made or to be made under the Policies, or any other person who may claim to be an insured, additional insured, or otherwise entitled to any benefit under the Policies. The Injunction shall enjoin all Claims released under Section 4.1(a) of this Agreement.

16. “Insurance Coverage Claim” means any Claim seeking defense or indemnity or any other benefit, including any claim for contribution or indemnity by Other Insurers, under or relating to the Policies, including as to alleged existence and exhaustion of applicable limits of each and every Policy. “Insurance Coverage Claim” does not include a dispute arising under or with respect to this Agreement.

17. “Interests” means all liens, Claims (including Asbestos Claims and Direct Claims), encumbrances, interests, demands and other rights of any nature, whether at law or in equity.

18. “Motion” means the motion, and any exhibits attached thereto, to be filed by ON Marine with the Bankruptcy Court for approval of ON Marine’s assumption of this Agreement and the sale of the Policies and entry of the Approval Order, which Motion shall be in form and substance acceptable to Federal.

19. “Notice of Motion” means the notice of the Motion, which notice shall be in form and substance acceptable to Federal, and which notice ON Marine shall serve at the time it files the Motion with the Bankruptcy Court on the Persons, and in accordance with the terms, set forth in Section 3.3 of this Agreement.

20. “Other Insurer” means any Person, other than Federal, that provided, or is claimed to have provided, any insurance coverage to ON Marine.

21. “ON Marine” means ON Marine Services Company LLC, a Delaware limited liability company, formerly known as Oglebay Norton Company, a Delaware corporation, including its Ferro Engineering Division.

22. “Payment Date” means the date on which all portions of the Settlement Amount have been paid by Federal according to the provisions of Section 2.2 of this Agreement.

23. “Person” means and includes a natural person or persons; a group of natural persons acting as individuals; a group of natural individuals acting in collegial capacity (e.g., as a committee, board of directors, etc.); a corporation, partnership, limited liability company or limited partnership; a proprietorship, joint venture, trust, legal representative, or any other unincorporated association, business organization or enterprise; any government entity; and any

successor in interest, heir, executor, administrator, trustee, trustee in bankruptcy, or receiver of any person or entity.

24. “Petition Date” means the date on which ON Marine files the Bankruptcy Case.

25. “Policies” means: (a) the insurance policies listed on Exhibit 2 attached hereto; (b) any other known or unknown primary, umbrella, excess, or other liability insurance policies, contracts, or coverages of any nature, type or kind, issued or allegedly issued by Federal that provides coverage for Asbestos Claims and under which ON Marine is, allegedly may be, or claims to be an insured, named insured, additional insured, additional named insured, or otherwise entitled to any insurance coverage or benefits; and (c) any binders, cover notes, and endorsements to any policies referenced in (a) or (b) above. With respect to Policies issued to or covering Persons other than ON Marine under which ON Marine has or claims to have, the right to insurance coverage, the term “Policies” means only that insurance coverage offered by such Policies to ON Marine.

26. “Settlement Amount” means the amount to be paid by the Federal pursuant to Section 2.2 of this Agreement.

References to this Agreement and other documents shall be deemed to include all subsequent amendments and other modification thereto.

II. SALE OF POLICIES AND PAYMENT OF SETTLEMENT AMOUNT

2.1 Subject to all of the terms and conditions of this Agreement, including without limitation the approval of the Bankruptcy Court, in full and final settlement of all responsibilities under and arising out of the Policies, and in consideration of the conveyance of the Policies to Federal, Federal shall purchase from ON Marine, and ON Marine shall sell, convey, transfer, and

deliver to Federal, upon the Approval Date, each of the Policies, and any and all rights under the Policies, free and clear of any and all Interests of any and all Persons.

2.2 Subject to all of the terms of this Agreement, in full and final settlement of all responsibilities under and arising out of the Policies, and in consideration of the sale of the Policies to Federal free and clear of any and all Interests of any and all Persons, Federal shall pay \$9,600,000 in U.S. currency within twenty (20) days of the Approval Date. The Settlement Amount shall be used and disbursed for the resolution of Asbestos Claims asserted against ON Marine, for administrative costs or creditor distribution in the Bankruptcy Case, or as authorized by the Bankruptcy Code and Bankruptcy Rules or by Bankruptcy Court order.

2.3 The Parties agree that: (a) the Settlement Amount is the total amount Federal is obligated to pay on account of any and all Claims of any kind made under or related to the Policies or the fact that the Federal issued any of the Policies; (b) under no circumstance will Federal ever be obligated to make any additional payments to ON Marine, the Estate, or any other Person in connection with the Policies or directly or indirectly related to or arising out of Federal having insured ON Marine; (c) all limits of liability of the Policies, including all per occurrence and aggregate limits, shall be deemed fully and properly exhausted; (d) the Settlement Amount is the full purchase price of the Policies, and upon the Approval Date, Federal shall be deemed to own the Policies free and clear of any and all Interests of any Person; (e) subject to the terms of this Agreement and the occurrence of the Approval Date, Federal shall have no further obligation to ON Marine, the Estate, or any other Person under the Policies for any Claim; and (f) the Settlement Amount is at least equal to the fair value of the Policies, in view of ON Marine's intended Chapter 11 filing and the ultimate termination of its existence as part of its Bankruptcy Case.

2.4 Effective immediately upon the Payment Date, and without any further action by any of the Parties, all Policies shall be deemed to have been sold back to Federal pursuant to Sections 363(b) and 363(f) of the Bankruptcy Code, and that sale shall operate as though Federal had never issued the Policies.

III. BANKRUPTCY-RELATED OBLIGATIONS

3.1 ON Marine shall commence the Bankruptcy Case within twenty (20) business days after the Execution Date.

3.2 Within fifteen (15) business days after the Petition Date, ON Marine shall file the Motion pursuant to Bankruptcy Code Sections 105, 363, 365, and Bankruptcy Rules 6004, 6006, and 9019. ON Marine shall seek a hearing date that will allow creditors and parties-in-interest a reasonable opportunity to review and respond to the motion. ON Marine covenants and agrees that it will use its best efforts to obtain entry of the Approval Order as a Final Order, including (but not limited to) using best efforts to resolve or defeat any objections that may be raised by any holder of Asbestos Claims or their counsel, or by any other insurer of ON Marine.

3.3 ON Marine shall, promptly upon filing the Motion, serve a notice of the Motion on: (a) each Person known to ON Marine to have a Claim against it or the Estate through participating in the Bankruptcy Case, the filing of a lawsuit, or the filing of a proof of claim or other assertion of a Claim, or otherwise (or, with the authorization of the Bankruptcy Court, to such Person's counsel of record, if known to ON Marine); (b) any and all Persons known to ON Marine entitled or allegedly entitled to insurance coverage under the Policies, including additional insureds and those Persons falling within a policy definition of "named insured"; (c) all other Persons who have filed timely proofs of claim in the Bankruptcy Case; (d) all Persons known to have provided general liability insurance to ON Marine prior to June 4, 1984, and all

Persons reasonably identifiable to ON Marine who provided general liability insurance to ON Marine from June 4, 1984 up to and including February 15, 1998; (e) all Persons on any master service list maintained in the Bankruptcy Case; and (g) all other parties in interest pursuant to Bankruptcy Rules 2002 and 6004 and any other applicable local rules, including any Person who or that filed a notice of appearance and demand for service of papers in the Bankruptcy Case. In addition, to ensure the broadest notice possible, ON Marine shall seek entry of an order of the Bankruptcy Court, in a form agreed by Federal, authorizing publication notice of the hearing on the Motion in such publications as Federal may reasonably request. Federal shall reimburse ON Marine or the Estate, as applicable, for the costs of publishing notice of the hearing on the Motion, which reimbursement shall be in addition to the Settlement Amount. As soon as reasonably practical after filing the Motion and completion of the publication notice, ON Marine shall file in the Bankruptcy Case a certificate of the service provided by mail and by publication.

3.4 If the Approval Order or any other order of the Bankruptcy Court relating to this Agreement is appealed by any Person other than ON Marine or the Federal (or a petition for certiorari or motion for rehearing or re-argument is filed by any Person other than ON Marine or the Federal with respect thereto), ON Marine agrees to take all steps as may be reasonable and appropriate to defend against such appeal, petition, or motion at its sole expense; provided however, that nothing herein shall preclude the Parties from consummating the transactions contemplated herein if the Approval Order shall have been entered and has not been stayed and Federal, in its sole discretion, waives in writing the requirement that the Approval Order be a Final Order.

3.5 Each of the Parties further agrees not to take any appeal from, or to seek to reopen, reargue, obtain reconsideration of, or otherwise contest or challenge in any way, directly

or indirectly, the Approval Order or any other order provided for by, or executed or entered pursuant to, or in implementation of, this Agreement, except to the extent that any such order shall be inconsistent with the terms hereof.

3.6 ON Marine agrees to reasonably cooperate with Federal and its representatives in connection with the Approval Order and the Bankruptcy Case. Such reasonable cooperation shall include consulting with Federal at its request (so long as such request is not unreasonable) concerning the status of the Bankruptcy Case, including the status of the Motion or any objections to the Motion, and providing Federal as soon as reasonably practicable with copies of non-privileged documents that are not otherwise filed as of public record relating to the Bankruptcy Case, the Motion, or the service of the Motion.

3.7 In the event that, at any time between the Petition Date and the Approval Date, any Person asserts a Claim against Federal arising out of, in connection with, or related to the Policies, ON Marine shall immediately seek an order from the Bankruptcy Court enjoining such Claim.

3.8 ON Marine shall make best efforts to ensure that the Approval Order and any chapter 11 plan as to ON Marine provide that as a condition to the receipt of any payment from the trustee or other payor of Asbestos Claims, each holder of an Asbestos Claim shall execute a release that, as to Federal, is materially the same in scope and substance as the relevant Claimant Release attached hereto as Exhibit 3. At no time shall the scope or contents of the form of any Claimant Release provided for in this Section as it applies to Federal be modified without Federal's written consent. Neither the Estate nor any trust or entity paying Claims against ON Marine or its estate shall allow, liquidate, compromise, or resolve any Asbestos Claim unless it first obtains from the Claimant an executed release which, as to Federal, is materially the same in

scope and substance as the relevant Claimant Release attached here to as Exhibit 3.

Notwithstanding the foregoing, nothing in this Section shall prevent the Estate or entity paying Claims against ON Marine or its Estate from: (a) reviewing any Asbestos Claim or making any offer to any Claimant to allow, liquidate, compromise, or resolve an Asbestos Claim; provided, however, that should a Claimant accept such offer, the Claimant shall execute and provide a release to the extent provided hereinabove; (b) paying pursuant to any judgment or order as required by applicable law (whether or not a release is obtained as provided herein); or (c) disallowing or liquidating a claim at a zero value (whether or not a release is obtained as provided hereinabove).

3.9 ON Marine shall make best efforts to ensure that any order confirming a chapter 11 plan proposed by ON Marine includes a third party injunction (in addition to the injunction referenced in Sections I.2 and I.15 above) that bars assertion against Federal of Asbestos Claims and/or of any Claim released hereunder.

3.10 ON Marine shall make reasonable efforts to ensure that any chapter 11 plan for ON Marine or order confirming such plan shall provide that the trustee or other payor of Asbestos Claims will indemnify and hold harmless Federal and ON Marine for any costs, liability, damages, or Claims arising from, attributable to or resulting from any Asbestos Claim or (as to Federal) any other Claims released under this Agreement.

3.11 (a) Any obligation of Federal or ON Marine with respect to reporting obligations in respect of the Settlement Amount, or in respect of any payments, settlements, resolutions, awards, or other Claim liquidations by any trust established pursuant to any chapter 11 plan for ON Marine (the "Trust") under the provisions of 42 U.S.C. § 1395y *et seq.*, or any other similar statute or regulation, and any related rules, regulations, or guidance issued in

connection therewith or amendments thereto (“MSP”), including Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173), or any other similar statute or regulation, and any related rules, regulations, or guidance issued or amendments or amendatory statutes enacted in connection therewith (“MMSEA”) shall be handled according to provisions to be adopted in ON Marine’s chapter 11 plan and any trust agreement adopted in connection with that chapter 11 plan to govern the Trust. ON Marine agrees that it shall use its best efforts to ensure that provisions substantially similar to those set forth in Exhibit 4 to this Agreement adopted as part of any such chapter 11 plan and trust agreement.

(b) In the event that no chapter 11 plan that provides for the creation of a Trust becomes effective, ON Marine agrees that it shall take all reasonable steps necessary to ensure that any other payor of Asbestos Claims is bound to the obligations that are set forth in this Agreement, to further ensure that the payor of Asbestos Claims shall act in accordance with the terms of the provisions set forth in Exhibit 4 to this Agreement (understanding that the payor shall act in the role of the Trust under the terms of those provisions), and to cooperate with Federal in good faith to ensure compliance with any additional requirements that are imposed under Medicaid statutes or regulations in the future. Federal agrees that it shall consider any and all reasonable requests by the trustee or other payor of Asbestos Claims for accommodations to the procedure established by this Agreement for the resolution and payment of the Asbestos Claims.

(c) The Parties agree that nothing in this Section 3.11 shall constitute or be construed as an admission, that Federal is in fact an “applicable plan” for MMSEA reporting purposes, or that it has any legal obligation to report any actions undertaken by the trustee or other payor of Asbestos Claims under MMSEA or any other statute or regulation.

IV. RELEASES

4.1 Subject to the occurrence of the Payment Date and no exercise by any Party of its termination rights under Section 7.1 of this Agreement, effective upon payment of the Settlement Amount, and without any further action of the Parties:

(a) ON Marine, on behalf of itself and the Estate, hereby fully, finally, and completely remises, releases, acquits, and forever discharges Federal from any and all Claims, whether actual or alleged, known or unknown, accrued or unaccrued, existing or potential, suspected or unsuspected with respect to, relating to, or in any way arising out of the Policies, Federal having issued the Policies or having insured ON Marine, including bad faith, unfair or improper claims handling or settlement practices, conspiracy, fraud, violation of any covenant of good faith and fair dealing, violation of any law, regulation, code, or statute, or other any other conduct whether based in contract, tort, or otherwise. The release of Federal under this Section 4.1 of the Agreement shall include, but shall not be limited to, any and all Claims for coverage with respect to, relating to, or in any way arising out of the Policies for property damage, bodily injury, personal injury, advertising injury, or any other form of loss potentially covered under the Policies. In addition, ON Marine, on behalf of itself, and the Estate, hereby withdraws any and all requests, demands, or tenders for defense or indemnity previously submitted to Federal under the Policies and further surrenders, relinquishes, and releases any further right to tender or present any Claims whatsoever to Federal under the Policies. Furthermore, by virtue of the foregoing releases, Federal shall have no duty to defend or indemnify ON Marine or the Estate, with respect to any past, present, or future Claim, nor shall Federal have any other duty or obligation whatsoever to any other Person with respect to any and all Claims arising out of, in

connection with, and relating to the Policies, Federal having issued the Policies or having insured ON Marine.

(b) Federal hereby fully, finally, and completely remises, releases, acquits and forever discharges ON Marine, its directors, officers, shareholders, and/or representatives (in their respective capacities as such), and the Estate from any and all Claims whether actual or alleged, known or unknown, accrued or unaccrued, existing or potential, suspected or unsuspected with respect to, relating to, or in any way arising out of the Policies.

4.2 The releases set forth in Section 4.1 of this Agreement are not intended to, and shall not, extend to or otherwise release or discharge any rights, privileges, benefits, duties, or obligations of any of the Parties by reason of, or otherwise arising under, this Agreement.

4.3 The Parties acknowledge that there may be changes in the law with respect to interpretation of coverage under the Policies or otherwise, or the Parties may hereafter discover facts different from, or in addition to, those which they now believe to be true with respect to any and all of the claims herein released. Nevertheless, the Parties hereby agree that the releases set forth above shall be and remain effective in all respects, notwithstanding any changes in the law or the discovery of such additional or different facts. Moreover, ON Marine understands that Claims that have been or may be asserted against ON Marine may increase or decrease in amount or in severity over time, that Claims that have been or may be asserted against ON Marine may include progressive, cumulative, unknown, and/or unforeseen elements, and that there may be hidden, unknown, and unknowable damages, defense expenses, or other costs related to such Claims. Nevertheless, the Parties irrevocably and knowingly agree that the releases contained in Section 4.1 of this Agreement include a full and complete and irrevocable

release and discharge from all known and unknown rights or Claims or Interest arising out of, in connection with, or relating to the Policies.

4.4 In furtherance of their express intent to fully, finally, and irrevocably release and discharge each other for all Claims, known and unknown, from the beginning of time until the end of time to the extent set forth in this Section 4 of the Agreement, each of the Parties expressly waives any and all rights it may have under any contract, statute, code, regulation, ordinance, or the common law, which may limit or restrict the effect of a general release as to Claims, arising out of, in connection with, or relating to the Policies.

4.5 The releases set forth in this Section 4 of the Agreement shall not apply to or have any effect on Federal's right to any claim for reinsurance in connection with the Policies.

4.6 Subject to the other provisions of this Agreement, to the extent that the releases set forth in this Section 4 of the Agreement run to the favor of any Persons who are not signatories hereto, this Agreement is hereby declared to be made in and for their respective benefits and uses.

4.7 ON Marine, on behalf of itself and the Estate, warrants and represents that none of the Claims herein released has been, or will be, assigned or transferred, in whole or in part, to any Person. ON Marine, on behalf of itself and the Estate, agrees to fully defend, indemnify, protect, save, and hold harmless Federal from and against any such Claims (including, but not limited to, the payment of attorneys' fees and costs actually incurred, whether or not litigation is commenced) based on, in connection with, or arising out of such assignment or transfer, or purported or claimed assignment or transfer.

4.8 ON Marine, on behalf of itself and the Estate, represents, warrants, and agrees that it will not in any way assist any Person in the establishment of any Claim against Federal

that arises out of, results from, or in any way relates to, Federal's investigation, handling, defense, or settlement by Federal of Claims, including those released under this Agreement.

V. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

5.1 Each of the Parties separately represents and warrants as follows:

(a) Subject to the entry of the Approval Order, it has the requisite power and authority to enter into this Agreement and to perform the obligations imposed on it by this Agreement;

(b) Subject to the Approval Date, the execution and delivery of, and the performance of the obligations contemplated by this Agreement have been approved by duly authorized representatives of the Party, and by all other necessary actions of the Party;

(c) Each Party has expressly authorized its undersigned representative to execute this Agreement on the Party's behalf as its duly authorized agent;

(d) This Agreement has been thoroughly negotiated and analyzed by its counsel and has been executed and delivered in good faith, pursuant to arm's length negotiations, and for value and valuable consideration; and

(e) Each Party will use its best efforts to seek entry of the Approval Order as attached in Exhibit 1.

5.2 Federal represents and warrants that it has made a reasonable investigation and that, based on that reasonable investigation, it is aware of no policies other than the insurance policies that are identified on Exhibit 2 to this Agreement that provide coverage for asbestos liabilities.

VI. JUDGMENT REDUCTION

6.1 ON Marine (for itself and the Estate) hereby agrees as follows with respect to any Claim, case, controversy, arbitration, lawsuit, or other proceeding of any kind involving ON Marine or the Estate:

(a) ON Marine will not seek to obtain payment from any Person or Other Insurer of any amount that may be attributable or allocable to Federal; and

(b) Without limiting the effect of the Injunction and the releases set forth in Section 4 of this Agreement, in the event that any Person or Other Insurer obtains a judicial determination, settlement or binding arbitration award that it is entitled to obtain a sum certain from Federal as a result of a Claim for contribution, subrogation, indemnification, reimbursement or other similar Claim against Federal for Federal's alleged share or equitable share, or to enforce subrogation rights, if any, of the defense or indemnity obligations of Federal for any Claims released pursuant to this Agreement, ON Marine shall voluntarily reduce its judgment or Claim against, or settlement with, such Person or Other Insurer(s) to the extent necessary to eliminate such contribution, subrogation, indemnification, reimbursement or similar Claims against Federal. To ensure that such a reduction is accomplished, Federal shall be entitled to assert this Section VI as a defense to any action for any such portion of the judgment, settlement, or binding arbitration award, and shall be entitled to have the court or appropriate tribunal issue such orders as are necessary to effectuate the reduction to protect Federal from any liability for the judgment, settlement, or binding arbitration award.

(c) Federal shall not seek reimbursement for any payments it is obligated to make under this Agreement, whether by way of a Claim for contribution, subrogation, indemnification, reimbursement, or otherwise from any Other Insurer or Person (not including a

reinsurer), to the extent such Person or Other Insurer agrees also to waive any such Claims against Federal-for contribution, subrogation, indemnification, reimbursement or otherwise for reimbursement, from anyone other than the Federal's reinsurers in their capacity as reinsurers of Federal. Notwithstanding the foregoing, if a third party pursues a contribution, subrogation, or indemnification Claim against Federal relating to any of the Policies, then Federal shall be free to assert such a Claim against such third party. ON Marine shall use its reasonable best efforts to obtain agreements similar to those contained in this Section 6.1(c) from all Other Insurers with which ON Marine executes a settlement after the Execution Date.

VII. MISCELLANEOUS PROVISIONS

7.1 Termination Rights. If, after 12 months have elapsed since the filing of the Motion, ON Marine and Federal mutually agree after good faith discussions with each other that the Approval Order will not be entered or will not become or is unlikely to become a Final Order, ON Marine and Federal shall have the option to terminate the Agreement. Termination shall not be effective unless it is memorialized in a writing signed on behalf of both ON Marine and Federal.

7.2 Amendments. Neither this Agreement nor any term set forth herein may be changed, waived, discharged, or terminated except by a writing signed by the Parties (or their successors or assigns).

7.3 No Precedential Value. The settlement reflected in this Agreement shall be without precedential value, and it is not intended to be, nor shall it be construed as, an interpretation of any insurance policies. It shall not be used as evidence, or in any other manner, in any court or other dispute resolution proceeding, to create, prove, or interpret the obligations of Federal under any insurance policies issued to ON Marine or to any other Person, provided,

however, notwithstanding the provisions of Section 7.14 of this Agreement, this Agreement may be used as evidence in any defense of Federal of any obligation arising under the Policies.

7.4 Agreement Voluntarily Entered Into By Each Of The Parties. This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand each of the provisions of this Agreement and have relied on the advice and representations of competent legal counsel of their own choosing.

7.5 Interpretation. This Agreement has been negotiated at arm's length and between and among Persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, this Agreement was drafted by experienced and knowledgeable legal counsel for each of the Parties. Accordingly, no Party shall be entitled to have any provisions of the Agreement construed against the other Party in accordance with any rule of law, legal decision or doctrine.

7.6 No Admission of Liability. The Parties agree that this Agreement is the result of a compromise of disputed issues, and that the execution and delivery of this Agreement by any of the Parties shall not constitute or be construed as an admission of any liability, a course of performance, or wrongdoing on the part of any of them. The Parties acknowledge that this Agreement is not, and cannot be construed as, any admission by Federal that any defense, indemnity, or other coverage obligation exists under the Policies, or that Federal has any other obligation of any nature whatsoever with respect to the Policies. By entering into this Agreement, neither ON Marine (on behalf of itself and the Estate) nor Federal has waived nor will be deemed to have waived any right, obligation, privilege, defense, or position it may have asserted or might assert in connection with any claim, matter, Person, or insurance policy outside

the scope of this Agreement. Except as set forth in Section 4, no Person other than the Parties hereto shall have any legally enforceable rights or benefits under this Agreement.

7.7 Entire and Integrated Agreement. This Agreement is intended by the Parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties with respect to the subject matters contained herein. This Agreement supersedes any and all prior promises, representations, warranties, agreements, understandings, and undertakings between or among the Parties with respect to such subject matters, and there are no promises, representations, warranties, agreements, understandings, or undertakings with respect to such subject matters other than those set forth or referred to herein.

7.8 No Third Party Beneficiaries. Except as set forth in Section 4, nothing in this Agreement is intended or shall be construed to give any Person, other than Federal and ON Marine (on behalf of itself and the Estate) and their respective successors, and permitted assigns, any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein; this Agreement and any conditions and provisions hereof being and intended to be for the sole and exclusive benefit of Federal and ON Marine (on behalf of itself and the Estate) as well as each of their successors and permitted assigns, and for the benefit of no other Person. Notwithstanding the foregoing, this Agreement shall be binding on any chapter 7 or chapter 11 trustee appointed to administer the ON Marine estate and any liquidating trustee. Neither this Agreement nor the rights and obligations set forth herein shall be assigned without the prior written consent of the other Party, except that this Section shall not prohibit any assignment by Federal (a) made by merger, consolidation, or operation of law or (b) to a Person who succeeds to all or substantially all of such Party's assets.

7.9 Reinsurance Recoveries and Allocation of Settlement Amount. Federal will be free to pursue reinsurance claims against reinsurers or retrocessionaires regarding any consideration paid by it in connection with this Agreement. Federal is free to allocate the consideration paid by it in connection with this Agreement among the Policies, at its sole discretion.

7.10 Severability. If any provisions of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and application of such provisions to other circumstances, shall remain in effect and be interpreted so as best to reasonably effect the intent of the Parties. Notwithstanding the foregoing, if the releases (Section 4) or the Injunction provided for in the Approval Order are found to be unenforceable or invalid by a court of competent jurisdiction, then such invalidity or unenforceability shall entitle, but not require, Federal to rescind the entire Agreement by providing written notice to ON Marine. In such case, the Settlement Amount shall be returned to Federal, less any amounts that have been or will be used to pay any reasonable and necessary administrative costs (as approved by the Bankruptcy Court where required under the Bankruptcy Code or the Bankruptcy Rules) incurred as of the time of rescission or that are required by the Bankruptcy Code or order of the Bankruptcy Court to effect an orderly winding-down of the bankruptcy estate and the closing of the Bankruptcy Case after the rescission. Any portions of the Settlement Amount not returned to Federal pursuant to the foregoing subsections shall be set off, dollar for dollar, to reduce the limits available under the Policies, as allocated at Federal's sole discretion.

7.11 Notice. Any notice or request required or desired to be given pursuant to this Agreement shall be sufficient if made in writing and sent by first class mail, postage prepaid, or

facsimile, with (in either case) a copy by electronic mail, to the Parties at the addresses set forth below or to such other Persons as any of them may designate in writing from time to time:

(a) As to Federal:

Geraldine Cedrone
Director, Claims
Brandywine Group of Insurance and Reinsurance Companies
510 Walnut Street
WB11E
Philadelphia, PA 19106
geraldine.cedrone@brandywineholdings.com

John J. Dwyer, Esq.
General Counsel
Brandywine Group of Insurance and Reinsurance Companies
510 Walnut Street
WB11E
Philadelphia, PA 19106
john.dwyer@brandywineholdings.com

Jacob C. Cohn, Esq.
Gordon Rees Scully Mansukhani LLP
Three Logan Square, Suite 610
1717 Arch Street
Philadelphia, PA 19103
jcohn@grsm.com

(b) As to ON MARINE:

Kevin J. Whyte, Esq.
ON Marine Services Company LLC
11 Stanwix Street, 21st Floor
Pittsburgh, PA 15222
412.995.5520
kevin.whyte@carmeusena.com

Andrew J. Muha, Esq.
Reed Smith LLP
Reed Smith Centre
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
412.288.7132
amuha@reedsmith.com

7.12 Headings. The section titles, captions, and headings contained in this Agreement are inserted as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the effect of any of its provisions.

7.13 Recitals. The recitals set forth at the beginning of this Agreement shall not be admissible to prove the truth of the matters asserted in any action or proceeding involving any of the Parties (other than an action or proceeding brought to enforce the terms of this Agreement), nor do any of the Parties intend such recitals to constitute admissions of fact by any of them.

7.14 Agreement Inadmissible. Any evidence of the terms or negotiations or discussions associated with this Agreement shall be inadmissible in any action or proceeding for purposes of establishing any rights, duties, or obligations of the Parties, except in: (a) an action or proceeding to enforce the terms of this Agreement; (b) proceedings before the Bankruptcy Court to secure the Approval Order; or (c) any possible action or proceeding between Federal and any of its reinsurers with respect to the Policies. Except as set forth herein, this Agreement shall not be used as evidence or in any other manner, in any court or dispute resolution proceeding, to create, prove, or interpret the Parties' rights or obligations to each other or to any other Person.

7.15 Additional Necessary Documents. The Parties, and each of them, agree to execute such additional documents as may be reasonably required in order to carry out the purpose and intent of this Agreement, or to evidence anything contained herein.

7.16 Execution in Counterparts. This Agreement may be signed in multiple counterparts and the separate signature pages executed by Parties may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument. Facsimile signatures shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth opposite the respective signatures below.

Dated: 12/31/2019

ON Marine Services Company LLC.

By: [Signature]

Name: NOB SCHAEFER

Title: President

Dated: 12/31/2019

ON Marine Services Company LLC.

By: [Signature]

Name: Kevin J. White

Title: Sr. VP Legal

[ON MARINE-FEDERAL SETTLEMENT AGREEMENT SIGNATURE PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth opposite the respective signatures below.

Dated: 12/31/2019

Federal Insurance Company

By: John J. Dwyer

Name: John J. Dwyer

Title: Attorney in Fact - Senior VP,

[ON MARINE-FEDERAL SETTLEMENT AGREEMENT SIGNATURE PAGE]

EXHIBIT 1

(Proposed Order)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<p>IN RE:</p> <p>ON MARINE SERVICES COMPANY LLC,</p> <p style="text-align: center;">Debtor.</p>	<p>Chapter 11</p> <p>Case No. 19- • </p> <p>Document No. _____</p>
<hr/> <p>ON MARINE SERVICES COMPANY LLC,</p> <p style="text-align: center;">Movant,</p> <p style="text-align: center;">v.</p> <p>FEDERAL INSURANCE COMPANY,</p> <p style="text-align: center;">Respondent.</p>	<p>Related to Document No. _____</p>

**ORDER (I) APPROVING THE ASSUMPTION OF THE SETTLEMENT
AGREEMENT AND RELEASE BETWEEN THE DEBTOR AND
FEDERAL INSURANCE COMPANY, (II) APPROVING THE SALE OF
CERTAIN INSURANCE POLICIES, AND (III) ISSUING AN INJUNCTION
IN PURSUANT TO THE SALE OF CERTAIN INSURANCE POLICIES**

Upon the *Debtor's Motion for an Order (I) Approving the Assumption of the Settlement Agreement and Release between the Debtor and Federal Insurance Company, (II) Approving the Sale of Certain Insurance Policies, and (III) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies* (the "Motion")¹ and the Court having reviewed the Motion, the First Day Declaration, and the Federal Settlement Agreement; and having heard the statements of counsel at the hearing on the Motion; and the Court finding that: (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) notice of the Motion and

¹ As used in this order, "Federal" means Federal Insurance Company and its predecessors, successors, subsidiaries, affiliates, directors, officers, and representatives, including, without limitation, Pacific Employers Insurance Company. Other capitalized terms used but not defined in this order have the meanings given in the Motion.

the hearing thereon was sufficient under the circumstances; and (iii) the legal and factual bases set forth in the Motion, the First Day Declaration, and the Federal Settlement Agreement establish just cause for the relief granted herein;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. Any and all objections to the Motion and to the relief requested therein and/or granted in this Order that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits.
3. Pursuant to section 365 of the Bankruptcy Code, the Debtor shall be, and hereby is, authorized and empowered to assume the Federal Settlement Agreement. The Federal Settlement Agreement shall be deemed assumed upon entry of this Order
4. Pursuant to Bankruptcy Rule 9019, the Federal Settlement Agreement and each of its terms and conditions, including the releases contained therein, shall be, and hereby are, approved in their entirety.
5. The Debtor shall be, and hereby is, authorized to undertake any transactions contemplated by the Federal Settlement Agreement that remain uncompleted as of the date of this Order.
6. Upon the occurrence of the Payment Date, (a) Federal shall be irrevocably released from (i) all claims by the Debtor under, arising out of, related to, and/or in connection with the Policies, and (ii) all extra-contractual claims arising out of, related to, and/or in connection with the Policies, and (b) all rights and obligations between the Debtor and Federal in respect of the Policies shall be fully and finally extinguished. As a result, the Policies shall be terminated and of no force and effect and be exhausted in respect of all coverages thereunder.

7. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized and empowered to sell, transfer, and convey the Policies to Federal subject only to the terms and conditions in the Federal Settlement Agreement. The Policies shall be deemed so conveyed to Federal immediately upon payment in full of the Settlement Payment pursuant to the terms of the Federal Settlement Agreement.

8. Pursuant to section 363(f) of the Bankruptcy Code, the Debtor's sale of the Policies to Federal shall constitute a valid, legal, and effective transfer, which shall vest Federal with all right, title, and interest in and to the Policies free and clear of all liens, claims, encumbrances, and other interests of any person, including, but not limited to, all rights and interests of the Debtor, any other person claiming by, through, or on behalf of the Debtor, any other insurer, any holder of any Asbestos Claim against the Debtor, whether arising prior to or subsequent to the Petition Date, and whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, interests in the Policies that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the interest of the estate or Federal, as the case may be, in the Policies).

9. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, all persons who hold or assert, or may in the future hold or assert, any claim against the Debtor arising out of or in connection with the activities covered by the Policies, or in connection with the Debtor's activities giving rise to claims made or to be made under the Policies, or any other person who may claim to be an insured, additional insured, or otherwise entitled to any benefit under the Policies, shall be and hereby are permanently stayed, restrained, and enjoined from asserting any claim or right to entitlement, or taking any other action against Federal, for the purpose of obtaining any recovery or other relief from Federal or under or in connection with the Policies.

10. The releases in the Federal Settlement Agreement and the policy buyback therein comply with the Bankruptcy Code and applicable non-bankruptcy law.

11. Federal is a good-faith purchaser of the Policies and is entitled to, and hereby is granted, all of the protections provided to good faith purchasers under section 363(m) of the Bankruptcy Code.

12. The transactions contemplated by the Federal Settlement Agreement shall not be subject to avoidance under section 363(n) of the Bankruptcy Code. All persons shall be and hereby are enjoined from commencing or continuing an action seeking relief under section 363(n) of the Bankruptcy Code with respect to the Federal Settlement Agreement and the transactions contemplated thereby.

13. The sale of the Policies to Federal under the Federal Settlement Agreement will constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and the laws of the Commonwealth of Pennsylvania.

14. The Debtor shall use the Settlement Payment solely to make payments to or for the benefit of holders of Asbestos Claims and for other costs and expenses associated with this Chapter 11 Case.

15. This Order shall be binding upon the Debtor, Federal, all holders of claims (including Asbestos Claims) against the Debtor, all insurers who received notice of the Motion, all other persons and entities receiving notice as set forth in the Motion, the respective successors and assigns of each person referred to in this paragraph, and any chapter 11 trustee, liquidating trustee, or other trust or distribution vehicle established under a chapter 11 plan of the Debtor, and on any chapter 7 trustee if this Chapter 11 Case is converted to a chapter 7 proceeding.

16. Each of the Parties hereby is authorized to take all actions and execute all documents and instruments that it deems necessary or appropriate to implement and effectuate the transactions contemplated by the Federal Settlement Agreement.

17. Federal is not, and shall not be deemed to be, a successor to the Debtor by reason of any theory of law or equity or as a result of the consummation of the transactions contemplated in the Federal Settlement Agreement.

18. This Court shall retain jurisdiction to interpret and enforce the provisions of the Federal Settlement Agreement and this Order in all respects and further to hear and determine any and all disputes relating to the Federal Settlement Agreement between the Parties or between a Party and any other person; provided, however, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Federal Settlement Agreement or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. In the event this Chapter 11 Case has been closed, there shall be cause to have this Chapter 11 Case reopened upon motion or application for such purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

19. Counsel for the Debtor shall serve a copy of this order on the Master Service List and file a certificate of service within three business days of entry of this order. Notice of the order by ECF or email shall constitute good and sufficient notice of the order.

Dated: _____

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 2

(Schedule of Federal Policies)

**SCHEDULE OF FEDERAL POLICIES
SUBJECT TO SETTLEMENT AGREEMENT AND RELEASE**

Policy No.	Effective Dates	Limits (including attachment point)
7935 71 73	06/04/1981 – 06/04/1982	\$10M XS \$40M XS \$1M primary
(83)7935 71 73	06/04/1982 – 06/04/1983	\$10M XS \$40M XS \$1M primary
7936 53 01	06/04/1983 – 06/04/1984	\$10M p/o \$25M XS \$50M XS \$1M primary

EXHIBIT 3

(Form of Claimant Release)

**ON MARINE ASBESTOS PERSONAL INJURY LIQUIDATING TRUST
RELEASE AND INDEMNITY AGREEMENT**

NOTICE: THIS IS A BINDING DOCUMENT THAT AFFECTS YOUR LEGAL RIGHTS. PLEASE CONSULT YOUR ATTORNEY IN CONNECTION WITH EXECUTING THIS DOCUMENT. IF YOU DO NOT PRESENTLY HAVE AN ATTORNEY, YOU MAY WISH TO CONSIDER CONSULTING ONE.

All capitalized terms not defined herein shall have the respective meanings ascribed to them in either (i) the Plan of Liquidation of ON Marine Services Company LLC **[INSERT OFFICIAL TITLE OF PLAN]** (the “Plan”) filed in Bankruptcy Case No. **[REDACTED]** before the United States Bankruptcy Court for the [Western District of Pennsylvania] or (ii) the Trust Distribution Procedures of the ON Marine Asbestos Personal Injury Liquidating Trust (the “TDP”) attached as Exhibit B to the Plan.

WHEREAS, the undersigned, who is either the “Injured Party” or the/an “Official Representative”² (either being referred to herein as the “Claimant”), has filed a claim (the “Claim”) with the ON Marine Asbestos Personal Injury Liquidating Trust (the “Liquidating Trust”) pursuant to the TDP filed as part of the Plan, and such Claim asserts an Asbestos PI Claim arising out of exposure to asbestos-containing products or conduct that occurred solely before December 5, 1980 for which ON Marine Services Company LLC (the “Debtor”) is alleged to have legal responsibility; and

WHEREAS, the Claimant has agreed to settle and compromise the Injured Party’s Claim for and in consideration of the allowance of the Claim by the Liquidating Trust and its payment pursuant to the TDP, in accordance with the terms set forth therein and herein.

NOW, THEREFORE, the Claimant hereby agrees as follows:

1. On behalf of the Injured Party, the Injured Party’s estate, the Injured Party’s heirs, and/or anyone else claiming rights through the Injured Party, now and in the future, the Claimant hereby fully and finally RELEASES, ACQUITS, and FOREVER DISCHARGES the Liquidating Trust, the Trust Advisory Committee, the Debtor, the Debtor’s Estate, the Reorganized Debtor, any Settling Asbestos Insurance Company, and their respective settlors, trustors, trustees, directors, officers, agents, consultants, financial advisors, servants, employees, attorneys, heirs, executors, and any Asbestos Protected Party (collectively the “Releasees”) from any and all Asbestos PI Claims and any claims related thereto (collectively the “Released Claims”), except as expressly provided herein.

2. The Claimant expressly covenants and agrees forever to refrain from bringing any suit or proceeding at law or in equity against the Releasees with respect to any Released Claim.

3. The Claimant intends this Release and Indemnity Agreement to be as broad and comprehensive as possible so that the Releasees shall never be liable, directly or indirectly, to the Injured Party or the Injured Party’s heirs, legal representatives, successors or assigns, or any other person or entity claiming by, through, under, or on behalf of the Injured Party, for or on account of any Released Claim, except as expressly provided herein, whether the same is now known or unknown or may now be latent or may in the future appear to develop, including all spousal claims for the Injured Party’s claims. If the Claimant is an Official Representative, the Claimant represents and warrants that the Claimant has

² The “Official Representative” is the/a person who under applicable state law or legal documentation has the authority to represent the Injured Party, the Injured Party’s estate, or the Injured Party’s heirs.

all requisite legal authority to act for, bind and accept payment on behalf of the Injured Party and all heirs of the Injured Party on account of any Released Claim and hereby agrees to indemnify and hold harmless, to the extent of payment hereunder, excluding attorney's fees and costs, the Releasees from any loss, cost, damage, or expense arising out of or in connection with the rightful claim of any other Entity to payments with respect to the Injured Party's Released Claim.

4. This Release and Indemnity Agreement is not intended to bar any cause of action, right, lien, or claim that the Claimant may have against any alleged tortfeasor, or any other person or entity, not specifically named or described herein. The Claimant hereby expressly reserves all his or her rights against such persons or entities. This Release and Indemnity Agreement is not intended to release or discharge any Asbestos PI Claim or potential Asbestos PI Claim that the Injured Party's heirs (if any), spouse (if any), the Official Representative (if any) or the Official Representative's heirs (if any) (other than the Injured Party) may have as a result of their own exposure to asbestos or asbestos-containing products.

5. The Claimant represents and warrants that all Valid Liens³ subrogation, conditional payment, and reimbursement claims relating to benefits paid to or on account of the Injured Party in connection with, or relating to, the Claim have been resolved or will be resolved from the net proceeds of the settlement payment to the Claimant under this Release and Indemnity Agreement or from other funds or proceeds to the extent permitted under applicable lien settlement agreements or under applicable law. It is further agreed and understood that no Releasee shall have any liability to the Claimant or any other person or entity in connection with such liens or conditional payment or reimbursement claims and that the Claimant will indemnify and hold the Releasees harmless from any and all such alleged liability as provided in the following sentence. The Claimant will indemnify and hold the Releasees harmless, to the extent of the amount of payment hereunder, excluding attorney's fees and costs, from any and all liability arising from subrogation, conditional payment, indemnity, or contribution claims related to the Released Claim and from any and all compensation or medical payments due, or claimed to be due, under any applicable law, regulation, or contract related to the Released Claim.

6. It is further agreed and understood that if the Claimant has filed a civil action against the Liquidating Trust, the Claimant shall dismiss such civil action and obtain the entry of an Order of Dismissal with Prejudice with respect to any Released Claim no later than 30 days after the date hereof.

7. The Claimant understands that the Released Claim is being resolved by the Liquidating Trust, and a liquidated value (\$_____) has been established for such Claim. The Claimant acknowledges that, pursuant to the TDP, after the liquidated value of the Claim is determined pursuant to the procedures set forth in the TDP, the Claimant ultimately shall receive a pro rata share of that value based on the Trust Assets available for the payment of Claims. The Claimant further acknowledges that the Claimant may receive payment in one or more distributions, subject to determination by the Trustee, as provided in the TDP.

8. In the event of a verdict against others, any judgment entered on the verdict that takes into account the status of the Liquidating Trust as a joint tortfeasor legally responsible for the Injured Party's injuries shall be reduced by not more than the total and actual amount paid as consideration for this Release and Indemnity Agreement or such lesser amount as allowed by law.

³ A "Valid Lien" is a lien that is permitted by applicable law and with respect to which the lien holder has taken all steps necessary under the terms of the documents creating the lien and under applicable law to perfect the lien.

9. The Claimant understands, represents, and warrants that this Release and Indemnity Agreement is a compromise of a disputed claim and not an admission of liability by, or on the part of, the Releasees. Neither this Release and Indemnity Agreement, the compromise and settlement evidenced hereby, nor any evidence relating thereto, will ever be admissible as evidence against the Liquidating Trust in any suit, claim, or proceeding of any nature except to enforce this Release and Indemnity Agreement. However, this Release and Indemnity Agreement is and may be asserted by the Releasees as an absolute and final bar to any claim or proceeding now pending or hereafter brought by or on behalf of the Injured Party with respect to the Asbestos PI Claim released herein, except as expressly provided in this Release and Indemnity Agreement.

10. The Claimant (a) represents that no judgment debtor has satisfied in full the Liquidating Trust's liability with respect to the Injured Party's Asbestos PI Claim as the result of a judgment entered in the tort system, and (b) upon information and belief, represents that the Claimant has not entered into a release (other than this Release and Indemnity Agreement) that discharges or releases the Liquidating Trust's liability to the Claimant with respect to the Injured Party's Asbestos PI Claim.

11. THE CLAIMANT REPRESENTS AND WARRANTS THAT ALL EXPOSURE TO ASBESTOS-CONTAINING PRODUCTS OR CONDUCT FOR WHICH THE CLAIMANT IS ALLEGING THE DEBTOR HAS LEGAL RESPONSIBILITY OCCURRED PRIOR TO DECEMBER 5, 1980 AND MAKES NO CLAIM FOR EXPOSURE AFTER THIS DATE. THE CLAIMANT UNDERSTANDS THAT THE LIQUIDATING TRUST HAS RELIED ON THESE STATEMENTS TO CONCLUDE THAT NO REPORTING OR REIMBURSEMENT OBLIGATIONS EXIST UNDER THE MEANING OF THE MEDICARE SECONDARY PAYOR ACT.

12. The Claimant represents that he or she understands that this Release and Indemnity Agreement constitutes a final and complete release of the Releasees with respect to the Injured Party's Released Claim, except as expressly provided herein. The Claimant has relied solely on his or her own knowledge and information, and the advice of his or her attorneys (if any), as to the nature, extent, and duration of the Injured Party's injuries, damages, and legal rights, as well as the alleged liability of the Liquidating Trust and the legal consequences of this Release and Indemnity Agreement, and not on any statement or representation made by or on behalf of the Trust.

13. This Release and Indemnity Agreement contains the entire agreement between the parties and supersedes all prior or contemporaneous oral or written agreements or understandings relating to the subject matter hereof between or among any of the parties hereto, including, without limitation, any prior agreements or understandings with respect to the liquidation of the Claim or other Releasee.

14. This Release and Indemnity Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania, without giving effect to the principles of conflicts of law thereof, and shall be binding on the Injured Party and his or her heirs, legal representatives, successors and assigns.

15. TO THE EXTENT APPLICABLE, THE CLAIMANT HEREBY WAIVES ALL RIGHTS UNDER SECTION 1542 OF THE CALIFORNIA CIVIL CODE, AND ANY SIMILAR LAWS OF ANY OTHER STATE. CALIFORNIA CIVIL CODE SECTION 1542 STATES:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

THE CLAIMANT UNDERSTANDS AND ACKNOWLEDGES THAT BECAUSE OF THE CLAIMANT'S WAIVER OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, EVEN IF THE INJURED PARTY SHOULD EVENTUALLY SUFFER ADDITIONAL DAMAGES, THE INJURED PARTY WILL NOT BE ABLE TO MAKE ANY CLAIM AGAINST THE RELEASEES FOR THOSE DAMAGES, EXCEPT AS EXPRESSLY PROVIDED HEREIN. THE CLAIMANT ACKNOWLEDGES THAT HE OR SHE INTENDS THESE CONSEQUENCES.

16. The Claimant authorizes payment pursuant to Paragraph 8 to the Claimant or the Claimant's counsel, as agent for the Claimant.

17. The Claimant acknowledges that the Liquidating Trust's obligation to pay the Claimant is not triggered until the Liquidating Trust receives the executed Release and Indemnity Agreement from the Claimant.

18. The Claimant hereby represents and certifies to the Liquidating Trust and Settling Asbestos Insurance Companies that, in respect of the Claim, the Claimant has paid or will provide for the payment and/or resolution of any obligations owing or potentially owing under 42 U.S.C. § 1395y(b) and/or 42 U.S.C. § 1396a(a)(25), or any related statutes, rules, regulations, or guidance, in connection with, or relating to, the Claim, including all Medicare and/or Medicaid Secondary Payer-related obligations.

CERTIFICATION

I state that I have carefully read the foregoing Release and Indemnity Agreement and know the contents thereof, and I sign the same as my own free act. I additionally certify, under penalty of perjury, that the information that has been provided to support the Claim is true according to my knowledge, information, and belief, and further that I have the authority as the Claimant to sign this Release and Indemnity Agreement.

I am: _____ the Injured Party
_____ the Official Representative of the Injured Party, the Injured Party's Estate, or the Injured Party's Heirs.

EXECUTED this _____ day of _____, 20_____.

Signature of the Claimant

Name of the Claimant: _____ SSN: _____

Name of the Injured Party if different from the Claimant: _____

SSN of the Injured Party if different from the Claimant: _____

EXHIBIT 4

(Form of MMSEA Reporting Language)

For inclusion in any chapter 11 plan by ON Marine Services Company LLC:

Section X Trust Compliance with Documentation Requirements

(a) The TDP shall specifically provide for a form of release (“Claimant Release” attached as Schedule 1 to the TDP, to be executed in favor of Settling Insurance Companies, by each Holder of an Asbestos PI Claim as a condition of, and prior to, payment to such Holder. As a condition to making any payment to a Holder of an Asbestos PI Claim, the Trust shall obtain a release of all such Holder’s Claims against (i) the Debtor, (ii) the Trust, and (iii) any Settling Insurer, that relate in any way to the Debtor or the Asbestos Insurance Policies addressed under the Approved Asbestos Insurance Settlement Agreement(s), as well as certification of compliance with certain Medicare/Medicaid obligations. The Trust will promptly provide copies of the executed Claimant Releases to a Settling Insurer upon request by the Settling Insurer, and the requesting Settling Insurer shall keep the Claimant Releases and all information contained therein confidential and use such information for no purpose other than meeting obligations under MMSEA (as defined below) or to defend against a released Claim and to assert rights set forth in the Claimant Release.

(b) With respect to any payment made for an Asbestos PI Claim, the Trust Agreement shall provide that the Trust will perform any actions and make any filings that may be required by the Debtor for timely compliance with all requirements of the Medicare Secondary Payer Act, 42 U.S.C. § 1395y *et seq.*, or any other similar statute or regulation, any related rules, regulations, or guidance issued in connection therewith or amendments thereto (“MSP”), including Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173), or another similar statute or regulation and any related rules, regulations, or guidance issued or amendments or amendatory statutes passed in connection therewith (“MMSEA”).

Such performance by the Trust shall continue regardless of dissolution or other termination of the existence of the Debtor.

(c) The Trust's obligations to Settling Insurer with respect to the statutes referenced in the foregoing paragraph, including as to reporting, indemnity, provision of documents and information, and certification by Holders of Asbestos PI Claims as to payment resolution of obligations under such statutes, will be set forth in the Trust Agreement and TDP.

(d) The Trust Agreement may provide for retention of a qualified third-party service provider to perform any actions required for timely compliance with MSP and/or MMSEA.

For inclusion in any trust agreement included with any chapter 11 plan by ON Marine Services Company LLC:

ARTICLE Y – CLAIMS REPORTING

Y.1 Reporting Agent. It is the position of the Debtor and the Settling Insurers that neither will have any reporting obligations in respect of their contributions to the Trust, or in respect of any payments, settlements, resolutions, awards, or any other claim liquidations by the Trust, under the reporting provisions of 42 U.S.C. § 1395y *et seq.*, or any other similar statute or regulation relating to Medicare or Medicaid obligations, any related rules, regulations, or guidance issued in connection therewith or amendments thereto ("MSP"), including Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173), or another similar statute or regulation and any related rules, regulations, or guidance issued or amendments or amendatory statutes passed in connection therewith ("MMSEA"). Unless and until there is definitive regulatory, legislative, or judicial authority (as embodied in a final, non-appealable decision from the United States Court of Appeals for the Third Circuit or the United States

Supreme Court) or a letter from the United States Secretary of Health and Human Services confirming that the Debtor and the Settling Insurers have no reporting obligations under MMSEA with respect to any settlements, payments, or other awards made by the Trust or with respect to contributions the Debtor and the Settling Insurers have made or will make to the Trust, the Trust shall, at its sole expense, in connection with the implementation of the Plan, act as a reporting agent for the Debtor and Settling Insurers, and shall timely submit all reports that would be required to be made by any of the Debtor and Settling Insurers under MMSEA on account of any claims settled, resolved, paid, or otherwise liquidated by the Trust or with respect to contributions to the Trust including, but not limited to, reports that would be required if the Settling Insurers were determined to be “applicable plans” for purposes of MMSEA, or any of the Debtor and Settling Insurers were otherwise found to have MMSEA reporting requirements. The Trust, in its role as reporting agent for the Debtor and the Settling Insurers, shall follow all applicable guidance published by the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services, and/or any other agent or successor Entity charged with responsibility for monitoring, assessing, or receiving reports made under MMSEA (collectively, “CMS”) to determine whether or not (and, if so, how) to report to CMS pursuant to MMSEA. The Trust’s obligation to act as reporting agent for the Debtor, as set forth above, shall continue regardless of dissolution or other termination of the Debtor’s existence.

Y.2 Termination and Other Matters.

(a) As long as the Trust is required to act as a reporting agent for any of the Debtor and the Settling Insurers pursuant to the provisions of Section Y.1 above, the Trust shall provide a written certification to the Debtor and to each of the Settling Insurers with ten (10) days following the end of each calendar quarter confirming that all reports to CMS required by

Section Y.1 have been submitted in a timely fashion, and identifying (i) any reports that were rejected or otherwise identified as noncompliant by CMS, along with the basis for such rejection or noncompliance, and (ii) any payments to Medicare benefits recipients or Medicare-eligible beneficiaries that the Trust did not report CMS.

(b) With respect to any reports rejected or otherwise identified as noncompliant by CMS, the Trust shall, upon request by any of the Debtor or Settling Insurers, promptly provide copies of the original reports submitted to CMS, as well as any response received from CMS with respect to such reports; provided, however, that the Trust may redact from such copies the names, Social Security numbers other than the last four digits, health insurance claim numbers, taxpayer identification numbers, employer identification numbers, mailing addresses, telephone numbers, and dates of birth of the injured parties, claimants, guardians, conservators and/or other personal representatives, as applicable. With respect to any such reports, the Trust shall reasonably and diligently undertake to remedy any issues of noncompliance identified by CMS and resubmit such reports to CMS, and upon request by any of the Debtor or Settling Insurers, provide the Debtor and the Settling Insurers copies of such resubmissions; provided, however, that the Trust may redact from such copies the names, Social Security numbers other than the last four digits, health insurance claim numbers, taxpayer identification numbers, employer identification numbers, mailing addresses, telephone numbers, and dates of birth of the injured parties, claimants, guardians, conservators and/or other personal representatives, as applicable. In the event the Trust is unable to remedy any issue of non-compliance, the provisions of Section Y.2(g) below shall apply.

(c) As long as the Trust is required to act as a reporting agent for the Debtor or any of the Settling Insurers pursuant to the provisions of Section Y.1 above, with respect to each claim

of a Medicare benefits recipient or Medicare-eligible beneficiary that was paid by the Trust and not disclosed to CMS, the Trust shall, upon request by any of the Debtor or Settling Insurer, promptly provide the last four digits of the claimant's Social Security number, the year of the claimant's birth, the claimant's asbestos-related disease, and any other information that may be necessary in the reasonable judgment of the Debtor or any of the Settling Insurers to satisfy their obligations, if any, under MMSEA, as well as the basis for the Trust's failure to report the payment. In the event any of the Debtor or Settling Insurers inform the Trust that it disagrees with the Trust's decision not to report a claim paid by the Trust, the Trust shall promptly report the payment to CMS. All documentation relied upon by the Trust in making a determination that a payment did not have to be reported to CMS shall be maintained for a minimum of ten (10) years following such determination.

(d) As long as the Trust is required to act as a reporting agent for the Debtor or any of the Settling Insurers pursuant to the provisions of Section Y.1 above, the Trust shall make the reports and provide the certifications required by Sections Y.1 and Y.2 until such time as the Debtor and each of the Settling Insurers all determine, in their reasonable judgment, that they have no further legal obligation under MMSEA or otherwise to report any settlements, resolutions, payments, or liquidation determinations made by the Trust or contributions to the Trust. Furthermore, following any permitted cessation of reporting, or if reporting has not previously commenced due to the satisfaction of one or more of the conditions set forth in Section Y.1 above, and if any of the Debtor or Settling Insurers reasonably determine, based on subsequent legislative, administrative, regulatory, or judicial developments, that reporting is required, then the Trust shall promptly perform its obligations under Section Y.1 and Y.2.

(e) Section Y.1 above is intended to be purely prophylactic in nature, and does not imply, and shall not constitute an admission, that the Debtor or any of the Settling Insurers are in fact “applicable plans” within the meaning MMSEA, or that they have any legal obligation to report any actions undertaken by the Trust or contributions to the Trust under MMSEA or any other statute or regulation.

(f) In the event that CMS concludes that reporting done by the Trust in accordance with Section Y.1 above is or may deficient in any way, and has not been corrected to the satisfaction of CMS in a timely manner, or if CMS communicates to the Trust or any of the Debtor or Settling Insurers a concern with respect to the sufficiency or timeliness of such reporting, or there appears to any of the Debtor or Settling Insurers a reasonable basis for a concern with respect to the sufficiency or timeliness of such reporting or non-reporting based upon the information received pursuant to Sections Y.1 or Y.2 or other credible information, then each of the Debtor or Settling Insurers shall have the right to submit its own reports to CMS under MMSEA, and the Trust shall timely provide to any party that elects to file its own reports such information as the electing party may require in order to comply with MMSEA, including, without limitation, the full reports filed by the Trust pursuant to Section Y.1 without any redactions. The Debtor and Settling Insurers shall keep any information they receive from the Trust pursuant to this Section Y.2(f) confidential and shall not use such information for any purpose other than meeting obligations under MMSEA.

(g) Notwithstanding any other provisions hereof, if the Trust is required to act as a reporting agent for the Debtor or any of the Settling Insurers, then such entities shall take all steps necessary and appropriate as required by CMS to permit any reports contemplated by this section to be filed. Furthermore, until the Debtor or any of the Settling Insurers provide the

Trust with any necessary information that may be provided by CMS's Coordination of Benefits Contractor (the "COBC") to effectuate reporting, the Trust shall have no obligation to report under Section Y.1 with respect to any such entity that has not provided such information, but only so long as such entity has not provided such information; and the Trust shall have no indemnification obligations under Section Y.4 to any Settling Insurer for any penalty, interest or sanction that may arise solely on account of such Debtor or Settling Insurer's failure to timely provide such information to the Trust in response to a timely request by the Trust for such information.

(h) Compliance with the provisions of Sections Y.1 and Y.2 shall be a material obligation of the Trust in favor of the Debtor and Settling Insurers under any settlement agreement between any of those insurers and the Debtor which authorizes funding to the Trust.

Y.3 Payment of MSP Obligations.

(a) In connection with the implementation of the Plan, the Trustee shall obtain prior to remittance of funds to claimants' counsel or the claimants, if *pro se*, in respect of any Asbestos PI Claim a certification from the claimant to be paid that said claimant has or will provide for the payment and/or resolution of any obligations owing or potentially owing under MSP in connection with, or relating to, such Asbestos PI Claim. The Trust shall provide a quarterly certification of its compliance with this section to each of the Debtor and Settling Insurers, and permit reasonable audits by such entities, and promptly provide copies of the executed certifications and the Claimant Releases that contain the certifications upon request no more often than quarterly, to confirm the Trust's compliance solely with this section. The Trust shall be obligated to comply with this Section Y.3(a) regardless of whether it is acting as reporting agent under Section Y.1 hereof.

(b) Compliance with the provisions of this Section Y.3 shall be a material obligation of the Trust in favor of the Debtor and Settling Insurers under the settlement agreements between any of those insurers and the Debtor which authorize funding to the Trust.

Y.4 Indemnification for Medicare Claims Reporting and Payment Obligations.

The Trust shall defend, indemnify, and hold harmless the Debtor and any Settling Insurer from any claims in respect of Medicare or Medicaid claims reporting and payment obligations in connection with Asbestos PI Claims, including any obligations owing or potentially owing under MMSEA or MSP, and any claims arising from or related to the Trust's obligations under Sections Y.1 and Y.2 of this Trust Agreement. However, this indemnification obligation shall terminate upon distribution by the Trust of the entirety of the Trust Assets, and the Debtor and Settling Insurers shall have no right to seek to delay or prevent any distribution by the Trust of Trust Assets.

EXHIBIT B

Policies

<u>Policy No.</u>	<u>Effective Dates</u>	<u>Limits (including attachment point)</u>
7935 71 73	06/04/1981 – 06/04/1982	\$10M XS \$40M XS \$1M primary
(83)7935 71 73	06/04/1982 – 06/04/1983	\$10M XS \$40M XS \$1M primary
7936 53 01	06/04/1983 – 06/04/1984	\$10M p/o \$25M XS \$50M XS \$1M primary

EXHIBIT C

Proposed Order

(Attached)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

ON MARINE SERVICES COMPANY LLC,

Debtor.

Chapter 11

Case No. 20-20007-CMB

Document No. ____

ON MARINE SERVICES COMPANY LLC,

Movant,

Related to Document No. ____

v.

FEDERAL INSURANCE COMPANY,

Respondent.

**ORDER (I) APPROVING THE ASSUMPTION OF THE SETTLEMENT
AGREEMENT AND RELEASE BETWEEN THE DEBTOR AND
FEDERAL INSURANCE COMPANY, (II) APPROVING THE SALE OF
CERTAIN INSURANCE POLICIES, AND (III) ISSUING AN INJUNCTION
IN PURSUANT TO THE SALE OF CERTAIN INSURANCE POLICIES**

Upon the *Debtor's Motion for an Order (I) Approving the Assumption of the Settlement Agreement and Release between the Debtor and Federal Insurance Company, (II) Approving the Sale of Certain Insurance Policies, and (III) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies* (the "Motion")¹ and the Court having reviewed the Motion, the First Day Declaration, and the Federal Settlement Agreement; and having heard the statements of counsel at the hearing on the Motion; and the Court finding that: (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) notice of the Motion and

¹ As used in this Order, "Federal" means Federal Insurance Company and its predecessors, successors, subsidiaries, affiliates, directors, officers, and representatives, including, without limitation, Pacific Employers Insurance Company. Other capitalized terms used but not defined in this Order have the meanings given in the Motion.

the hearing thereon was sufficient under the circumstances; and (iii) the legal and factual bases set forth in the Motion, the First Day Declaration, and the Federal Settlement Agreement establish just cause for the relief granted herein;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. Any and all objections to the Motion and to the relief requested therein and/or granted in this Order that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits.
3. Pursuant to section 365 of the Bankruptcy Code, the Debtor shall be, and hereby is, authorized and empowered to assume the Federal Settlement Agreement. The Federal Settlement Agreement shall be deemed assumed upon entry of this Order
4. Pursuant to Bankruptcy Rule 9019, the Federal Settlement Agreement and each of its terms and conditions, including the releases contained therein, shall be, and hereby are, approved in their entirety.
5. The Debtor shall be, and hereby is, authorized to undertake any transactions contemplated by the Federal Settlement Agreement that remain uncompleted as of the date of this Order.
6. Upon the occurrence of the Payment Date, (a) Federal shall be irrevocably released from (i) all claims by the Debtor under, arising out of, related to, and/or in connection with the Policies, and (ii) all extra-contractual claims arising out of, related to, and/or in connection with the Policies, and (b) all rights and obligations between the Debtor and Federal in respect of the Policies shall be fully and finally extinguished. As a result, the Policies shall be terminated and of no force and effect and be exhausted in respect of all coverages thereunder.

7. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized and empowered to sell, transfer, and convey the Policies to Federal subject only to the terms and conditions in the Federal Settlement Agreement. The Policies shall be deemed so conveyed to Federal immediately upon payment in full of the Settlement Payment pursuant to the terms of the Federal Settlement Agreement.

8. Pursuant to section 363(f) of the Bankruptcy Code, the Debtor's sale of the Policies to Federal shall constitute a valid, legal, and effective transfer, which shall vest Federal with all right, title, and interest in and to the Policies free and clear of all liens, claims, encumbrances, and other interests of any person, including, but not limited to, all rights and interests of the Debtor, any other person claiming by, through, or on behalf of the Debtor, any other insurer, any holder of any Asbestos Claim against the Debtor, whether arising prior to or subsequent to the Petition Date, and whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, interests in the Policies that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the interest of the estate or Federal, as the case may be, in the Policies).

9. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, all persons who hold or assert, or may in the future hold or assert, any claim against the Debtor arising out of or in connection with the activities covered by the Policies, or in connection with the Debtor's activities giving rise to claims made or to be made under the Policies, or any other person who may claim to be an insured, additional insured, or otherwise entitled to any benefit under the Policies, shall be and hereby are permanently stayed, restrained, and enjoined from asserting any claim or right to entitlement, or taking any other action against Federal, for the purpose of obtaining any recovery or other relief from Federal or under or in connection with the Policies.

10. The releases in the Federal Settlement Agreement and the policy buyback therein comply with the Bankruptcy Code and applicable non-bankruptcy law.

11. Federal is a good-faith purchaser of the Policies and is entitled to, and hereby is granted, all of the protections provided to good faith purchasers under section 363(m) of the Bankruptcy Code.

12. The transactions contemplated by the Federal Settlement Agreement shall not be subject to avoidance under section 363(n) of the Bankruptcy Code. All persons shall be and hereby are enjoined from commencing or continuing an action seeking relief under section 363(n) of the Bankruptcy Code with respect to the Federal Settlement Agreement and the transactions contemplated thereby.

13. The sale of the Policies to Federal under the Federal Settlement Agreement will constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and the laws of the Commonwealth of Pennsylvania.

14. The Debtor shall use the Settlement Payment solely to make payments to or for the benefit of holders of Asbestos Claims and for other costs and expenses associated with this Chapter 11 Case.

15. This Order shall be binding upon the Debtor, Federal, all holders of claims (including Asbestos Claims) against the Debtor, all insurers who received notice of the Motion, all other persons and entities receiving notice as set forth in the Motion, the respective successors and assigns of each person referred to in this paragraph, and any chapter 11 trustee, liquidating trustee, or other trust or distribution vehicle established under a chapter 11 plan of the Debtor, and on any chapter 7 trustee if this Chapter 11 Case is converted to a chapter 7 proceeding.

16. Each of the Parties hereby is authorized to take all actions and execute all documents and instruments that it deems necessary or appropriate to implement and effectuate the transactions contemplated by the Federal Settlement Agreement.

17. Federal is not, and shall not be deemed to be, a successor to the Debtor by reason of any theory of law or equity or as a result of the consummation of the transactions contemplated in the Federal Settlement Agreement.

18. This Court shall retain jurisdiction to interpret and enforce the provisions of the Federal Settlement Agreement and this Order in all respects and further to hear and determine any and all disputes relating to the Federal Settlement Agreement between the Parties or between a Party and any other person; provided, however, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Federal Settlement Agreement or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. In the event this Chapter 11 Case has been closed, there shall be cause to have this Chapter 11 Case reopened upon motion or application for such purposes.

19. Counsel for the Debtor shall serve a copy of this Order on the Master Service List and file a certificate of service within three business days of entry of this Order. Notice of the Order by ECF or email shall constitute good and sufficient notice of the Order.

Dated: _____

UNITED STATES BANKRUPTCY JUDGE