

**SETTLEMENT AGREEMENT BY AND AMONG
THE "SWAN PARTIES" (AS DEFINED)
AND
THE HOME INSURANCE COMPANY**

This Settlement Agreement dated as of the Signature Date (as defined below) is a final settlement agreement (subject to certain contingencies set forth herein) made by and among (i) the Swan Parties (as defined below), and (ii) The Home Insurance Company.

DEFINITIONS

As used in this Agreement, the following defined terms have the following meanings. The definitions contained herein shall apply only to this Agreement and shall not apply to any other agreement, including, without limitation, any policy of insurance or other settlement agreement, nor shall they be used as evidence, except with respect to this Agreement, of the meaning of any term. Where the context so indicates or requires, each defined term stated in the singular includes the plural, and each defined term stated in the plural includes the singular.

- A. "Agreement" means this Settlement Agreement.
- B. "Bankruptcy Case" means the case to be filed in a United States Bankruptcy Court of competent jurisdiction for the reorganization or liquidation of Swan Transportation, and any substantively consolidated bankruptcy case.
- C. "Bankruptcy Code" means the laws of the United States relating to bankruptcy or reorganization, including without limitation Title 11 of the U.S. Code, 11 U.S.C. §§ 101 *et seq.*, as amended.
- D. "Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware, or such other court as is administering the Bankruptcy Case.
- E. "Channeling Injunction (Settling Insurers)" means a permanent injunction entered by Final Order of the Bankruptcy Court pursuant to Section 105 and/or Section 524(g) of the Bankruptcy Code, that is substantively the same as and in a form that is substantially similar to Exhibit A, which is attached hereto and incorporated by reference herein.
- F. "Channeling Injunction (Swan Parties)" means a permanent injunction entered by Final Order of the Bankruptcy Court pursuant to Section 105 and/or Section 524(g) of the Bankruptcy Code that is substantively the same as and in a form that is substantially similar to Exhibit B, which is attached hereto and incorporated by reference herein.
- G. "Confirmation Order" means a Final Order entered by the Bankruptcy Court confirming the Plan of Reorganization.
- H. "Coverage Litigation" means the litigation captioned Tyler Technologies, Inc. (f/k/a/ Tyler Corporation), et al. v. Aetna Casualty & Surety Co. (n/k/a Travelers Casualty & Surety Co.), et al., Cause No. 1999-60085, District Court of Harris County, Texas, 61st Judicial District.

- I. "Final Order" means an appealable order or judgment that has not been stayed or reversed, or materially modified or amended, and (1) as to which the time to seek review, reargument or rehearing has expired, and as to which no appeal or motion or petition for certiorari, review or rehearing is pending, or (2) if a stay, appeal, review, reargument or rehearing has been sought, the order or judgment has been affirmed, or the request for stay, review, reargument, rehearing or certiorari has been denied and the time to seek further stay, appeal, review, reargument, rehearing or certiorari has expired, as a result of which such order or judgment has become final and nonappealable in accordance with applicable law.
- J. "Foundry-Related Claim" means any and all past, pending, and future claims or lawsuits, known or unknown, that are asserted against any Swan Party by any Person seeking monetary, legal, equitable, or other relief for bodily injury, property damage, personal injury, mental injury or anguish, emotional distress, shock, sickness, disease, death, or any other illness, condition, or damage allegedly caused in whole or in part by the actual or threatened exposure to, release of, dispersal of, discharge of, or the presence of or effects of asbestos, asbestos-containing products or materials, silica, silica-containing products or materials, mixed dust, mixed dust-containing products or materials, and any other claims against any of the Swan Parties, each of which is based upon, relates to, arises out of, emanates from, or is in any way connected with either
- (1) Swan Transportation, or
 - (2) the Tyler Pipe Foundry.
- "Foundry-Related Claim" includes claims by family members or dependents of the Persons described above.
- K. "Home" means The Home Insurance Company for itself and all predecessors, including The Home Indemnity Company and City Insurance Company, successors, and affiliates.
- L. "Home Policies" means the following liability insurance policies issued prior to the Signature Date by Home:
- | <u>Policy Number</u> | <u>Policy Period</u> |
|----------------------|----------------------|
| HXL-F866107 | 1/1/94-1/1/95 |
| HXL-C111716 | 1/1/95-1/1/96 |
- M. "Insurance Litigation" means any action regarding insurance coverage for Foundry-Related Claims or the Underlying Lawsuits other than the Coverage Litigation.
- N. "Interim Period" means the period between the Signature Date and the earlier of (a) the date Home provides notice of its payment of the Settlement Amount pursuant to Section 6 or (b) the Termination Date.
- O. "Parties" means the parties to this Agreement, *i.e.*, the Swan Parties and Home.
- P. "Persons" means natural or legal persons, entities, and organizations of any kind.

- Q. "Plan of Reorganization" means a plan of reorganization of Swan Transportation that is approved by a Confirmation Order, which plan contains or provides for or contemplates the Channeling Injunction (Settling Insurers) and the Channeling Injunction (Swan Parties), among other things.
- R. "Settlement Amount" means the \$500,000 payable by Home to the Trust pursuant to Section 2 of this Agreement.
- S. "Signature Date" means the date the last signature of the Parties is placed hereon.
- T. "Swan Parties" means Swan Transportation Company, Tyler Technologies, Inc., a Delaware corporation (f/k/a Tyler Corporation), TPI of Texas, Inc., a Delaware corporation (f/k/a Tyler Pipe Industries of Texas, Inc.), Tyler Sand Company, formerly a Texas corporation, and their respective predecessors and successors, if any, and each of their respective officers and directors.
- U. "Swan Transportation" means Swan Transportation Company, a Delaware corporation (f/k/a Tyler Pipe Industries, Inc.), and its predecessors, successors, and assigns.
- V. "Termination Date" means the date, if any, that this Agreement becomes null, void and without effect pursuant to the terms of Section 1(c) or Section 1(d) or Section 11(g).
- W. "Tort Claimants" means collectively Persons with Foundry-Related Claims.
- X. "Trust" means that certain settlement trust established pursuant to the terms and conditions of that certain trust agreement, as described by, incorporated into, and established pursuant to the Plan of Reorganization.
- Y. "Trustee" means the Persons appointed pursuant to the Plan of Reorganization for the purpose of acting as trustees of the Trust in accordance with the terms and conditions contained in the various trust agreements incorporated into the Plan of Reorganization.
- Z. "Tyler Pipe Foundry" means that certain cast iron pipe and fittings foundry operating in Smith County, Texas, as owned, directly or indirectly, operated, or used by various Swan Parties from August 1968 through December 1995.
- AA. "Underlying Lawsuits" means lawsuits filed by the Tort Claimants against the various Swan Parties alleging Foundry-Related Claims.

RECITALS

WHEREAS, Home issued or allegedly issued the Home Policies;

WHEREAS, certain of the Swan Parties are and have been defendants in the Underlying Lawsuits;

WHEREAS, each of the Swan Parties has been and/or might in the future be subject to Foundry-Related Claims in addition to or other than those involved in the Underlying Lawsuits;

WHEREAS, Swan Transportation intends to file a voluntary petition for relief under Chapter 11 of the Bankruptcy Code;

WHEREAS, the Swan Parties and Home disagree with respect to certain issues regarding the insurance coverage, if any, for claims asserted by the Swan Parties under, through, or by virtue of the Home Policies arising from or related to the Underlying Lawsuits;

WHEREAS, certain of the Swan Parties initiated the Coverage Litigation in which Home is a defendant;

WHEREAS, the Swan Parties and Home wish now to resolve fully and finally any and all disputed issues between them regarding all past, present, and future insurance claims under the Home Policies for the Underlying Lawsuits and all Foundry-Related Claims on the conditions set forth in this Agreement;

WHEREAS, the Swan Parties and Home intend that all Foundry-Related Claims actually or allegedly covered by the Home Policies will channel, transfer, and attach, as applicable, to the Trust pursuant to the Plan of Reorganization;

WHEREAS, the Swan Parties and Home agree that the injunctive relief set forth in the Channeling Injunction (Settling Insurers) and Channeling Injunction (Swan Parties) contemplated by this Agreement and to be incorporated in the Plan of Reorganization is reasonable, appropriate, and material to the Parties entering into this Agreement;

WHEREAS, the distribution of the Settlement Amount by Home to the Trust pursuant to this Agreement, and the effectiveness of the releases provided in this Agreement, are contingent upon satisfaction of certain conditions subsequent specified herein:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound hereby, the Swan Parties and Home agree as follows:

AGREEMENT

Section 1 Conditions Subsequent/Termination.

(a) The payment provisions (Section 2), releases (Sections 3(a) and (b) and 4(a), (b), and (d)), and dismissal provisions (Section 6) shall be effective only after satisfaction of all of the following three conditions subsequent:

- (i) The issuance of the Channeling Injunction (Settling Insurers);
- (ii) The issuance of the Channeling Injunction (Swan Parties); and
- (iii) The issuance of the Confirmation Order by the Bankruptcy Court.

Notwithstanding anything in this Agreement to the contrary, the requirement that the Confirmation Order be a Final Order may be waived in a writing executed by both Home and the Swan Parties, and if requested by one of the Parties hereto, the other Party shall not unreasonably withhold such waiver and, in any event, shall grant such waiver if an appeal by a third party of the order of the Bankruptcy Court confirming the plan of reorganization does not materially affect the rights of the Parties under this Agreement.

(b) The Swan Parties agree to use commercially reasonable efforts to ensure that the conditions subsequent specified above are satisfied. Home agrees that it will not take any affirmative action to prevent the conditions subsequent specified above from being satisfied.

(c) In the event that all of the three conditions subsequent set forth in Section 1(a) (i) cannot be satisfied through no fault of the Party seeking to invoke this Section 1(c), (ii) are not satisfied prior to January 1, 2007, or (iii) are not waived or amended in writing by Home and each of the Swan Parties pursuant to Section 11(d), then, upon ten (10) days written notice from either Home or Tyler Technologies, Inc. this Agreement shall become null, void, and without effect, provided, however, that Section 3(c) (relating to bad faith release), Section 4(c) (relating to bad faith release), Section 7 (relating to Interim Period provisions), Section 8 (relating to no admissions), Section 9 (relating to admissibility limitations), Section 10 (relating to confidentiality), Section 11 (miscellaneous provisions, including advice of counsel, interpretation, and amendment), Section 12 (relating to costs and attorneys' fees), Section 15 (relating to authority and counterparts), and Section 16 (relating to governing law/venue) shall remain valid, effective and enforceable and further provided, however, that all causes of action arising from breach of this Agreement by any Party prior to the Termination Date, including, without limitation, any breach of Section 1(b), shall be maintained and shall remain actionable in a court of competent jurisdiction pursuant to Section 16.

(d) If after the Bankruptcy Case is filed, a court allows any Foundry-Related Claim or Underlying Lawsuit to proceed against any of the Swan Parties during the Interim Period, Tyler Technologies, Inc. may, at its sole discretion, terminate this Agreement on behalf of all the Swan Parties upon ten (10) days written notice to the Home, and this Agreement shall become null, void, and without effect, provided, however, that Section 3(c) (relating to bad faith release), Section 4(c) (relating to bad faith release), Section 7 (relating to Interim Period provisions), Section 8 (relating to no admissions), Section 9 (relating to admissibility limitations), Section 10 (relating to confidentiality), Section 11 (miscellaneous provisions, including advice of counsel, interpretation, and amendment), Section 12 (relating to costs and attorneys' fees), Section 15 (relating to authority and counterparts), and Section 16 (relating to governing law/venue) shall remain valid, effective and enforceable and further, provided, however, that all causes of action arising from breach of this Agreement by any Party prior to the Termination Date, including, without limitation, any breach of Section 1(b), shall be maintained and shall remain actionable in a court of competent jurisdiction pursuant to Section 16.

Section 2. Payment of The Settlement Amount by Home.

(a) Expressly subject to the provisions of Section 1(a) hereof, Home shall pay to the Trust the Settlement Amount. Payment shall be delivered within ten (10) business days of the date upon which Home is notified in writing by Swan Transportation or the Trustee, as appropriate, that all of the conditions subsequent specified in Section 1(a) have been satisfied. Such notice shall also include, and shall not be effective until Home receives, a copy of the Confirmation Order. Such notice shall also include delivery instructions for payment of the Settlement Amount.

(b) Home shall have no liability or responsibility for any allocation of the Settlement Amount among any of the Tort Claimants or their respective attorneys.

(c) The Settlement Amount shall not be subject to any deductions or charge-backs of any kind, including, without limitation, claims of recoupment or deductibles, self-insured-retentions, or retrospective or reinstatement premiums, if applicable, under the Home Policies.

Section 3. Releases By The Swan Parties.

(a) Subject to the satisfaction of all of the conditions subsequent set forth in Section 1(a) and subject to Section 3(d), each of the Swan Parties hereby fully, finally, and forever releases and discharges Home from any and all claims for insurance coverage, known or unknown, of any nature whatsoever under, through, or by virtue of the Home Policies that arise out of the Foundry-Related Claims and/or the Underlying Lawsuits, which releases and discharges shall become effective upon the delivery of the Settlement Amount to the Trust pursuant to Section 2. Subject to the satisfaction of all of the conditions subsequent set forth in Section 1(a) and subject to Section 3(d), each of the Swan Parties understands and agrees that as of the date of the payment by Home of the Settlement Amount:

- (i) the Home Policies shall be null, void, and without effect with respect to any and all insurance coverage claims by the Swan Parties arising out of the Foundry-Related Claims and/or the Underlying Lawsuits;
- (ii) all of Home's obligations to indemnify, defend, or pay for the defense of the Swan Parties in connection with insurance claims arising out of the Foundry-Related Claims and/or the Underlying Lawsuits are forever extinguished and terminated; and
- (iii) none of the Swan Parties can or will make any demands or claims in the future against Home for indemnity, defense, or payment of defense costs under the Home Policies in connection with or arising out of the Foundry-Related Claims and/or the Underlying Lawsuits.

(b) Subject to the satisfaction of all of the conditions subsequent set forth in Section 1(a) and subject to Section 3(d), each of the Swan Parties hereby fully and completely releases and discharges Home (and/or its agents, representatives, attorneys, or employees) from any and all claims or causes of action existing as of the Signature Date for bad faith, breach of contract, breach of duty, unfair claims practice or other acts or omissions (including delay), or tortious conduct and dealings, malicious prosecution, sanctions, statutory or regulatory violations, or punitive, exemplary or extra-contractual damages of any type arising from, connected with, or in any way relating to the investigation, handling, adjustment or settlement of the Foundry-Related Claims, the Underlying Lawsuits, and/or the Coverage Litigation, including without limitation those that were or could have been asserted in the Coverage Litigation, which releases and discharges shall become effective upon the delivery of the Settlement Amount to the Trust pursuant to Section 2.

(c) Notwithstanding anything to the contrary in this Agreement, each of the Swan Parties hereby fully and completely releases and discharges Home (and/or its agents, representatives, attorneys, or employees) from any and all claims or causes of action existing as of the Signature Date for bad faith or unfair claims practices (including delay), whether by common law or by statute, arising from the drafting, negotiation, and execution of this Agreement.

(d) Notwithstanding anything in this Section 3 to the contrary, the releases in Section 3(a) and 3(b) do not release Home for any claim or action that is not barred by the Channeling Injunction (Swan Parties). Home acknowledges and agrees that the releases in Section 3(a) and 3(b) shall not release Home from any claims or causes of action that arise out

of Foundry-Related Claims and/or the Underlying Lawsuits to the extent that the Channeling Injunction (Swan Parties) is judicially determined to be inapplicable or ineffective to bar such claims or causes of action against any of the Swan Parties.

(e) Nothing in this Agreement shall affect any rights the Swan Parties may have with respect to insurers other than Home. Additionally, the releases by the Swan Parties shall not be deemed to result in a release of any of the Swan Parties' claims against any other insurer, including, without limitation, any other insurer that is, at any time after the Signature Date, merged into Home; or in which Home, any time after the Signature Date, acquires a controlling interest.

(f) The Swan Parties' releases contained herein are not intended to, and shall not, extend to or otherwise release or discharge any duties or obligations of Home arising under this Agreement.

Section 4. Releases by Home.

(a) Subject to the satisfaction of all of the conditions subsequent set forth in Section 1(a) and subject to Section 4(e), Home hereby fully, finally and completely releases and discharges each of the Swan Parties (and/or their agents, representatives, attorneys, and employees) from any and all obligations under or relating to the Home Policies, known and unknown, anticipated and unanticipated, past, present and future arising out of, or related in any way to, the Foundry-Related Claims and/or the Underlying Lawsuits, including, without limitation, claims of recoupment or deductibles, self-insured retentions, or retrospective or reinstatement premiums, which releases and discharges shall become effective upon the delivery of the Settlement Amount to the Trust pursuant to Section 2.

(b) Subject to the satisfaction of all of the conditions subsequent set forth in Section 1(a) and subject to Section 4(e), Home hereby fully, finally, and completely releases and discharges each of the Swan Parties (and/or their agents, representatives, attorneys, and employees) from any and all claims or causes of action existing as of the Signature Date for bad faith, breach of contract, breach of duty, unfair claims practice, or other acts or omissions, or tortious conduct and dealings, malicious prosecution, sanctions, statutory or regulatory violations, or other punitive, exemplary, or extra-contractual damages of any type arising from, connected with, or in any way related to the Foundry-Related Claims, the Underlying Lawsuits, and/or the Coverage Litigation, including, without limitation, those that were or could have been asserted in the Coverage Litigation, which releases and discharges shall become effective upon the delivery of the Settlement Amount to the Trust pursuant to Section 2.

(c) Notwithstanding anything to the contrary in this Agreement, Home hereby fully and completely releases and discharges each of the Swan Parties (and/or their agents, representatives, attorneys, and employees) from any and all claims or causes of action existing as of the Signature Date for bad faith, whether by common law or by statute, arising from the drafting, negotiation, and execution of this Agreement.

(d) Subject to the satisfaction of all of the conditions subsequent set forth in Section 1(a), Home waives and shall not seek, file any actions, or make any claims for contribution, indemnity, subrogation, allocation, apportionment, recoupment, or reimbursement, in whole or part, of amounts paid under this Agreement or other settlement payments or costs associated with the Coverage Litigation, Insurance Litigation, or the Underlying Lawsuits, including, without limitation, rights under "other insurance" provisions in the Home Policies, from or against any Person, including, without limitation, the Swan Parties, judgment creditors of the Swan Parties, or any insurer or broker of the Swan Parties. Home further represents and

warrants that it has not sold, assigned or otherwise transferred any such rights to seek contribution, indemnity, subrogation, allocation, apportionment, recoupment, or reimbursement to any other person or entity, nor shall it hereafter do so. Nothing in this Agreement, however, shall affect any rights Home may have with respect to its reinsurers.

(e) Notwithstanding anything in this Section 4 to the contrary, the releases in Section 4(a) and (b) do not release the Swan Parties for any claim or action that is not barred by the Channeling Injunction (Settling Insurers).

(f) Home's releases contained herein are not intended to, and shall not, extend to or otherwise release or discharge any duties or obligations of the Swan Parties arising under this Agreement.

Section 5. Scope of Releases.

(a) The releases, discharges, and indemnities provided herein by the Swan Parties and Home shall extend to and bind all of their respective past, present, and future officers, directors, shareholders, trustees, agents, attorneys, and employees.

(b) The releases, discharges, and indemnities provided to Home in this Agreement shall encompass and fully run to each of Home and Risk Enterprise Management, Limited ("REM")(which manages the business of Home) to the same extent as if each was specifically named throughout, and to every subsidiary, corporate affiliate, or other related entity of each of Home and REM, and all of their respective past, present, and future officers, directors, shareholders, trustees, agents, attorneys, and employees.

Section 6. Dismissal of the Coverage Litigation.

Home will provide the Swan Parties with written notice of Home's payment of the Settlement Amount within five (5) business days of Home's payment of the Settlement Amount. Unless previously dismissed pursuant to Section 7(e), within ten (10) business days of receipt of such notice, (a) the Swan Parties will dismiss with prejudice any claims against Home in the Coverage Litigation, and (b) Home will dismiss with prejudice all pending counterclaims and cross-claims asserted by Home in the Coverage Litigation and withdraw all pending motions, discovery requests, and other pleadings, except to the extent that any pending motion, discovery request, or other pleading is for the defense of cross-claims brought against Home by other non-settling insurers of the Swan Parties.

Section 7. Interim Period Provisions.

a. No Obligations or Liability for Certain Claims During Interim Period. During the Interim Period, Home shall have no obligation to or liability for responding to, handling, defending, settling, or paying defense costs, settlements, or judgments in any Foundry-Related Claims or the Underlying Lawsuits; provided however, that if this Agreement terminates pursuant to Section 1(c) or Section 1(d), then as of the Termination Date Home shall retain the same rights, obligations, and defenses under the Home Policies as existed prior to the Signature Date, including, but not limited to, any right to contest coverage for or any obligation to pay for any covered defense costs, reasonable settlements, or judgments for Foundry-Related Claims or Underlying Lawsuits that were incurred during the Interim Period under the terms of the Home Policies.

b. No Duties Under Policies for Certain Claims During Interim Period. During the Interim Period, the Swan Parties shall have no duties or obligations under the Home Policies, including, but not limited to, any obligation to obtain Home's consent to any settlement, any notice obligations, or any other obligation imposed by the conditions of the Home Policies, with respect to any Foundry-Related Claims or the Underlying Lawsuits. Notwithstanding the foregoing, during the Interim Period each of the Swan Parties will act as a reasonably prudent uninsured with respect to the defense of any Foundry-Related Claim or Underlying Lawsuit brought against it. Also, notwithstanding the foregoing, and to the extent reasonably practicable, during the Interim Period the Swan Parties will timely provide Home the date of any trial settings for the Underlying Lawsuits, the date of mediation for any Underlying Lawsuit, and/or written or oral settlement demands received from any plaintiff in the Underlying Lawsuits. During the Interim Period, Home may, but is not obligated to, consult with any of the Swan Parties with respect to the information provided to it by the Swan Parties. Home shall not be precluded from contesting the reasonableness of any settlement of Foundry-Related Claims or Underlying Lawsuits entered into during the Interim Period. If this Agreement terminates pursuant to Section 1(c) or Section 1(d), then as of the Termination Date the Swan Parties shall retain the same rights, obligations, and defenses under the Home Policies as existed prior to the Signature Date, including, but not limited to, the Swan Parties' right to seek reimbursement from Home for any covered defense costs, reasonable settlements, or judgments for Foundry-Related Claims or Underlying Lawsuits that were incurred during the Interim Period under the terms of the Home Policies.

c. Statute of Limitations Tolloed. All applicable statutes of limitations with respect to any present or future insurance related claims that could otherwise be asserted by the Parties against each other but for Section 7(d), including, contractual, extra-contractual, common-law and statutory claims, related to or connected in any way with Foundry-Related Claims and/or the Underlying Lawsuits shall be tolled from the Signature Date until the thirtieth (30th) day following the date the Interim Period ends.

d. Standstill. During the Interim Period:

- (1) the Swan Parties shall not file or pursue claims or defenses against Home in the Coverage Litigation or Insurance Litigation by summary judgment or otherwise or serve discovery on Home in the Coverage Litigation or Insurance Litigation; provided however, that this will not prevent any of the Swan Parties from pursuing claims or asserting defenses against any non-settling insurer even if the Home Policies contains the same or similar language as any policy issued by a non-settling insurer or even if Home asserts that it is indirectly affected by the Swan Parties' claims or defenses against a non-settling insurer;
- (2) Home shall not file any actions, or make any claims or motions for a judicial determination of coverage relating to the Foundry-Related Claims, the Coverage Litigation, the Insurance Litigation, or the Underlying Lawsuits or for contribution, indemnity, subrogation, allocation, apportionment, recoupment, or reimbursement, in whole or part, of amounts to be paid under this Agreement or other settlement payments or costs associated with the Coverage Litigation, Insurance

Litigation, Foundry-Related Claims, or the Underlying Lawsuits from or against any Person, including, without limitation, the Swan Parties, judgment creditors, or any insurer or broker of the Swan Parties. Notwithstanding the foregoing, nothing in this Section 7(d)(2) shall prevent Home from asserting any defense to a claim against it by a non-settling insurer nor shall the foregoing prevent Home from seeking recovery of its attorneys' fees and expenses in defending against any claim by non-settling insurers; and

- (3) Home shall not serve discovery on any of the Swan Parties, judgment creditor, or any settling insurer in the Coverage Litigation or Insurance Litigation and shall not file any motions, documents, briefs or other papers of any kind in opposition to any motions for summary judgment filed by any of the Swan Parties or any judgment creditor against any non-settling insurer in the Coverage Litigation or Insurance Litigation or file any motions, documents, briefs or other papers of any kind in support of any motions for summary judgment filed against any of the Swan Parties or any judgment creditor by any non-settling insurer in the Coverage Litigation or Insurance Litigation. In the event that during the Interim Period the court in the Coverage Litigation or the Insurance Litigation in which Home is a party enters an order on a motion for summary judgment to which Home is not a respondent, the Swan Parties will not assert and hereby waive collateral estoppel, res judicata, or law of the case against Home based on that order. In the event a non-settling insurer or judgment creditor files a motion for summary judgment during the Interim Period in the Coverage Litigation or the Insurance Litigation and Home is a party to that action, then the Parties shall request the Court to postpone ruling on the motion for summary judgment pending the outcome of the Bankruptcy Case. Further, if and when review of any such order is sought in a higher court during the Interim Period, Home is not prohibited from taking any steps it deems necessary to be able to join in the appeals process. Notwithstanding anything to the contrary herein, in the event Home participates as a party in the appeals process; the Swan Parties may assert and do not waive collateral estoppel, res judicata, or law of the case against Home based on the judgment of the appellate court.

e. Swan Parties' Option to Dismiss Coverage Litigation Without Prejudice.

During the Interim Period, some or all of the Swan Parties, at their sole discretion, may dismiss their claims against Home in the Coverage Litigation without prejudice to the right to refile same. In the event any or all of the Swan Parties exercise the option to dismiss without prejudice, then within ten (10) business days of the service of the Notice of Non-Suit Without Prejudice or other appropriate motion for dismissal, Home shall dismiss its claims in the Coverage Litigation without prejudice against the Swan Parties that filed the Notice of Non-Suit Without Prejudice or other appropriate motion for dismissal.

f. Jurisdiction/Venue/Removal. In the event any of the Swan Parties exercise the option to dismiss without prejudice their claims against Home in the Coverage Litigation pursuant to Section 7(e) above and subsequently refiles suit against Home in Harris County state court or re-adds Home to the Coverage Litigation then Home shall not in any way: claim

that the Harris County state court does not have personal jurisdiction over Home; claim that venue in Harris County is improper; file or join in any way a motion to transfer venue; or remove the lawsuit to Federal Court. Home agrees that it will not initiate a lawsuit or other proceeding against the Swan Parties concerning or related to the Foundry-Related Claims and/or the Underlying Lawsuits for thirty (30) days following the end of the Interim Period.

g. Costs. The Parties shall use commercially reasonable efforts to avoid causing the other to incur costs in the Coverage Litigation or Insurance Litigation during the Interim Period; provided however, that this Section 7(g) shall not require any of the Swan Parties to exercise the dismissal option referred to in Section 7(e). Additionally, this Section 7(g) does not apply to any costs incurred by either Party, directly or indirectly, as a result of any motions, depositions, discovery, or other requests filed or served in the Coverage Litigation or Insurance Litigation by any judgment creditor or non-settling insurer, and the Parties expressly recognize and agree that they have no control over the actions of any judgment creditor or non-settling insurer.

Section 8. Non-Admission of Liability.

The Agreement is entered into solely to avoid the costs, efforts, and delays of litigation, and is intended as a good faith compromise of disputed claims. Execution of, and performance of obligations under, this Agreement shall not be construed as an admission by Home or the Swan Parties that any coverage exists or does not exist under the Home Policies for defense or indemnity with respect to Foundry-Related Claims or the claims at issue in the Underlying Lawsuits, nor does this Agreement or the fact, amount, or payment of the Settlement Amount evidence that any Party embraces or rejects any theory of liability or coverage under the Home Policies. This Agreement is entered into without prejudice to the Parties' positions and interpretations of the terms and conditions of the Home Policies, all of which shall be and remain fully preserved.

Section 9. Agreement Not Admissible.

(a) Any evidence of the existence, terms, or negotiation of this Agreement will be inadmissible in any litigation other than (i) an action seeking to enforce the terms of the Agreement, (ii) litigation involving a reinsurer of Home, (iii) litigation in which contribution or indemnity claims are asserted against Home, or (iv) the Bankruptcy Case.

(b) This Agreement has been entered into, in part, in reliance upon the provisions of Rule 408 of the Federal Rules of Evidence and Texas Rule of Evidence 408, each of which preclude the introduction of evidence regarding settlement negotiations or agreements.

Section 10. Confidentiality.

Notwithstanding anything in Section 9 to the contrary, neither this Agreement, nor any of its terms, shall be disclosed to any Person, except this Agreement and its terms may be disclosed: (a) to the Bankruptcy Court, with a request that it be placed under seal, and to the Trustee and representatives of the Tort Claimants; (b) as is required to be disclosed under the Bankruptcy Code or other applicable law as part of the Plan of Reorganization or as ordered by the Bankruptcy Court; (c) as is required by law or court order outside of the Bankruptcy Case, including, without limitation, in the Coverage Litigation; (d) to any reinsurer of Home in connection with reinsurance obligations; (e) to counsel, accountants, auditors, and bankruptcy

consultants of any of the Parties; (f) to mediators in the Underlying Lawsuits, the Coverage Litigation, or otherwise related to the Foundry-Related Claims and/or the Bankruptcy Case; (g) in any action or proceeding between the Parties to enforce the terms of this Agreement; (h) to any governmental authority, such as tax and regulatory authorities; or (i) by written agreement of the Parties. Notwithstanding anything to the contrary in this Section 10, the Parties may disclose the existence of this Agreement and the Settlement Amount to the other insurers of the Swan Parties.

Section 11. Miscellaneous.

(a) This Agreement was reviewed by independent legal counsel for the Swan Parties and Home prior to its being signed. The Swan Parties and Home each (i) entered into this Agreement on the advice of their counsel, and (ii) have a full understanding of the contents and consequences of this Agreement.

(b) The Swan Parties and Home each acknowledge that no Party, nor any corporate affiliate of any of them, has been unduly pressured to accept this settlement. No promise or inducement which is not herein expressed has been made to any Party or any corporate affiliate of any of them.

(c) In executing this Agreement, each of the Swan Parties and Home acknowledge that they are not relying, nor have they relied upon, any statement or representation made by or on behalf of the other party, or by any agent, attorney, or employee of the other party, concerning the Home Policies, the disputes surrounding the coverage (if any) provided by the Home Policies, the Coverage Litigation, the Insurance Litigation, the Bankruptcy Case, the Underlying Lawsuits, the Foundry-Related Claims, or this Agreement.

(d) This Agreement constitutes the entire agreement between the Swan Parties and Home concerning the Underlying Lawsuits, the Foundry-Related Claims, the Coverage Litigation and the Insurance Litigation. Except as specifically set forth in this Agreement, there are no representations, warranties or inducements, whether oral, written, expressed or implied, that in any way affect or condition the validity of this Agreement or alter its terms. This Agreement may be amended, and provisions herein may be waived, only by a written instrument executed by Home and each of the Swan Parties. Any attempted amendment or waiver not duly executed by the Home and Tyler Technologies, Inc. is void.

(e) This Agreement is the product of arms-length negotiation, the Parties agree that this Agreement shall be construed according to the rules of construction generally applicable to negotiated contracts and not according to any special rules of construction applicable to contracts of adhesion and/or insurance contracts. The language in all parts of this Agreement shall be construed as a whole according to its meaning, and not strictly for or against any Party.

(f) Section headings and captions used in this Agreement are for convenience of reference only, and shall have no legal effect or meaning in the construction or enforcement of this Agreement.

(g) The invalidity or unenforceability of any particular provision in this Agreement shall not affect the validity or enforceability of any other provision in this Agreement. Notwithstanding anything to the contrary herein, it is expressly agreed that should any of the conditions subsequent set forth in Section 1(a) not occur because it is judicially determined to be invalid or unenforceable prior to the date of the Confirmation Order and such condition is not waived or amended pursuant to Section 11(d) within fifteen (15) days after such finding of

invalidity or unenforceability, then this Agreement shall be null and void in its entirety, except as otherwise contemplated in Section 1(c).

Section 12. Costs and Attorneys' Fees.

Each Party expressly agrees that it shall bear its own costs and attorneys' fees, if any, with respect to the drafting and negotiation of this Agreement. In the event of suit between the Parties to enforce the terms of this Agreement, then each Party shall be entitled to recover its attorneys' fees to the extent provided under Texas law.

Section 13. No Assignment of Claims.

By executing this Agreement, the Swan Parties expressly represent, warrant, and affirm that they have not made, and will not in the future make, any assignment or transfer of any claim against Home released hereby to any individual, firm, corporation, or other entity and the Swan Parties agree to indemnify and hold harmless Home from any and all claims, suits, proceedings (whether at law or in equity), or arbitrations based on any such assignment or transfer, subject to the exception noted herein. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that all rights and obligations of Swan Transportation under this Agreement, including the rights to enforce the provisions of this Agreement, will be assigned to the Trust pursuant to the Plan of Reorganization.

Section 14. Notice Provisions.

All notices that are required or may be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by telecopy or by registered or certified mail, postage prepaid, to the parties at the following addresses (or to the attention of such other person or such other address as any party may provide to the other parties by notice in accordance with this Section 14):

If to the Swan Parties:

Tyler Technologies, Inc.
5949 Sherry Lane, Suite 1400
Dallas, Texas 75225
Attention: General Counsel
Telecopy: (214) 547-4041

If to the Home:

Risk Enterprise Management Ltd.
59 Maiden Lane
New York, New York 10038
Attention: Hannah O'Driscoll
Claim Number: 087-519475
Telecopy: (212)530-4143

Notices shall be deemed received by the receiving party upon actual delivery at the address listed above by such facsimile, overnight service, or courier, and if mailed, three days after the date of mailing.

Section 15. Authority; Counterparts.

(a) Each person executing this Agreement represents and warrants that he or she has the authority and power to execute this Agreement from the Party on whose behalf he or she is executing it.

(b) This Agreement may be executed in multiple counterparts and each counterpart shall be deemed to be an original, all of which together constitute the same Agreement. All counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all signers had simultaneously signed a single signature page.

Section 16. Governing Law/Venue.

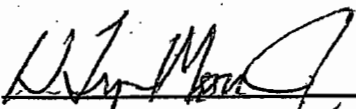
This Agreement will be governed by, and construed in accordance with, the substantive laws of the State of Texas, without giving effect to any conflicts-of-law, rule, or principle that might require the application of the laws of another jurisdiction. Any action brought to enforce the provisions of this Agreement shall be commenced, prosecuted, and defended exclusively in the state or federal courts of the State of Texas, unless otherwise ordered by the Bankruptcy Court in the Bankruptcy Case.

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THE PARTIES DECLARE THAT THE TERMS OF THIS SETTLEMENT AGREEMENT AND RELEASE HAVE BEEN FULLY UNDERSTOOD, AND ARE VOLUNTARILY ACCEPTED FOR THE PURPOSE OF MAKING A FULL AND FINAL COMPROMISE AND SETTLEMENT OF ALL CLAIMS RELEASED HEREBY.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and Release as of the dates shown on their respective signature blocks.

ON BEHALF OF THE SWAN PARTIES (as defined herein):

By: 
Name: H. Lynn Moore, Jr.
Title: Vice President & General Counsel
Date: 11/27/01

The Home Insurance Company by
ON BEHALF OF THE HOME (as defined herein):
Risk Enterprise Management, Ltd.

By: 
Name: H. O'Driscoll
Title: Gen. Counsel
Date: Dec 30th 2001

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
SWAN TRANSPORTATION COMPANY,) Case No. 01-11690 (JKF)
)
Debtor.)

DISCLOSURE STATEMENT WITH RESPECT TO
PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE
UNITED STATES BANKRUPTCY CODE FOR
SWAN TRANSPORTATION COMPANY

REED SMITH LLP
Tobey M. Daluz
1201 Market Street
Suite 1600
Wilmington, DE 19801

Counsel for the Debtor

BRACEWELL & PATTERSON, L.L.P.
Samuel M. Stricklin
500 North Akard Street, Suite 4000
Dallas, TX 75201

Counsel for the Debtor

DATED: September 17, 2002

THE VOTING DEADLINE TO ACCEPT OR REJECT THIS PLAN OF
REORGANIZATION IS 4:00 PM EASTERN STANDARD TIME ON
NOVEMBER 15, 2002

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(d) The 1995 Sale of Swan and the Tyler Pipe Foundry

On December 1, 1995, the stock of Swan and the assets of Tyler Pipe, including the Tyler Pipe Foundry, were sold. The stock was subsequently repurchased by TC; therefore, Swan continues to exist as a wholly owned subsidiary of TC. However, since December 1995, Swan has not conducted any ongoing operations or owned any tangible or intangible assets, other than various insurance policies issued to Swan and other related entities.

(e) Tyler Sand

Tyler Sand was formed as a Texas corporation in May 1981 as a wholly owned subsidiary of Tyler Pipe. Tyler Sand sold sand to Tyler Pipe for use by the Tyler Pipe Foundry in the making of molds for pipe fittings and cores for the molds, among other things. Tyler Sand dissolved in July 1995.

1.2 Factors Leading to the Need for Bankruptcy Relief

(a) Tort Claims

Beginning in 1997, various present and former employees of the Tyler Pipe Foundry (and, in some cases, their spouses and other family members) filed a number of lawsuits against Swan and others, alleging injuries and occupational illnesses arising from exposure during the Exposure Period to asbestos, silica, and other mixed dusts contained in products used at the Tyler Pipe Foundry in the creation of cast iron pipe and fittings and in other related activities (the "Tort Litigation"). In addition to Swan, the Tort Claimants have filed claims against many other co-defendants, including manufacturers and suppliers of asbestos and silica containing products and manufacturers and suppliers of employee protective and safety devices (e.g., protective masks). All of the lawsuits have been filed in the state courts of Texas, principally in Smith County (Tyler), Dallas County (Dallas), and Harris County (Houston). Swan's sole business activity since 1997 has been its defense against such claims.

Typically, the Tort Claimants have filed claims against Swan (rather than their employer, Tyler Pipe) for their alleged injuries under the "Good Samaritan" theory of liability. The Good Samaritan theory of liability is a theory of negligence based on Sections 323 and 324A of the Restatement (Second) of Torts. Under this theory of liability, if one undertakes the performance of a duty owed by another to provide services to a third person, and the third person is injured after relying on that undertaking or if the performance of such undertaking increased the risk of harm to the third person, then the person undertaking the performance of such services (i.e., the "Good Samaritan") may be held liable for the resulting injury. With respect to Swan, the Tort Claimants essentially allege that Swan, acting as a "Good Samaritan," undertook the responsibility of providing a safe workplace for the employees of the Tyler Pipe Foundry – a duty generally owed by Tyler Pipe – and that Swan failed to provide, or negligently provided, such a safe workplace, which resulted in the alleged injuries or illnesses to some of the employees of

the Tyler Pipe Foundry. Swan has vigorously disputed this allegation in the Tort Litigation.

The illnesses alleged by the Tort Claimants generally involve various respiratory ailments resulting from prolonged exposure to asbestos and silica containing products, including pneumoconiosis, asbestosis, silicosis, and "mixed dust disease." Pneumoconiosis is a disease of the lungs caused by the inhalation of mineral or metallic particles. Asbestosis and silicosis are forms of pneumoconiosis, each of which causes interstitial fibrosis, or scarring of the lungs. "Mixed dust disease" is an allegation by some of the Tort Claimants of both asbestosis and silicosis. To date, the Tort Claimants have alleged a wide range of these respiratory diseases, from very mild forms to more severe. Each of these lung ailments has the potential to progress into other diseases, including lung cancer. A small number of known Tort Claimants have alleged lung cancer and other cancers, including colon cancer and esophageal cancer, allegedly as a result of prolonged exposure to asbestos containing products. A small number of known Tort Claimants have alleged other immune disorders, including scleroderma, rheumatoid arthritis, and kidney disease, allegedly as a result of prolonged exposure to silica containing products. In addition, one Tort Claimant has alleged injuries resulting from alleged exposure to benzene while employed at the Tyler Pipe Foundry.

Beginning in February 2000, trials began to be set against Swan in the various Texas counties on a monthly basis, with some set as often as weekly and many overlapping. As of April 2001, fifteen Tort Claimants had litigated their claims, resulting in verdicts against Swan in the aggregate amount of approximately \$29.3 million plus post-judgment interest, and Mrs. Regina Beard received a default judgment against Swan in the aggregate amount of approximately \$17.3 million plus post-judgment interest. In addition, 278 plaintiffs had settled their respective claims against Swan for combined total payments of approximately \$51.7 million by Swan and/or its insurers. See Article I.3(e), Factors Leading to the Need for Bankruptcy Relief, Verdicts and Settlements *infra*.

In addition to Swan, the Tort Claimants have filed claims against many other co-defendants, including manufacturers and suppliers of asbestos and silica containing products and manufacturers and suppliers of employee protective and safety devices (e.g., protective masks) (collectively, the "Co-defendants"). All of the lawsuits have been filed in the state courts of Texas, principally in Smith County (Tyler), Dallas County (Dallas), and Harris County (Houston) (collectively, the "Tort Litigation").

As of April 2001, Swan had received notice from the various law firms representing the then known Tort Claimants that approximately 900 Tort Claimants had received medical diagnoses allegedly supporting a claim against Swan. In addition, Swan was advised by the same law firms that an additional 500 or more potential Tort Claimants had been retained by such law firms to investigate allegations of potential claims against Swan for similar respiratory ailments and diseases.

As a result of the Letter of Intent, the Ad Hoc Committee and its members agreed to exercise its reasonable best efforts as may be necessary to abate all legal

proceedings against the Swan Parties until the earlier of October 1, 2001 or the Petition Date. The Ad Hoc Committee subsequently extended the deadline as a result of the substantial progress made by the Swan Parties with its insurers in formalizing settlement agreements and the related progress in the development of the Plan Documents, as more particularly described herein.

(b) Insurance Coverage

Swan has procured and maintained various primary and excess liability insurance policies since its inception. Under each of these policies, Swan was typically a named insured with other related entities, including Tyler Pipe, Tyler Sand, and, at times, TC. Swan's general liability insurance coverage can be divided into five different types – primary coverage with currently solvent insurers, primary coverage with insolvent insurers (in receivership), excess coverage with currently solvent insurers, excess coverage with insolvent insurers (in receivership), and primary / excess coverage with insurers in rehabilitation or under some other form of state supervision short of receivership – in three distinct time periods: the Pre-June 1981 Coverage Period; the June 1981 to June 1986 Coverage Period; and the Post-June 1986 Coverage Period.

Primary insurers are required to pay for Swan's defense costs over and above the policy limits described herein, until those limits are exhausted. Excess insurers are generally not required to pay defense costs, except within the dollar limits of their policies, i.e., to the extent an excess insurer pays defense costs, such payments may serve to reduce the amount of available coverage to pay for claims.

The following summary of Swan's insurance coverage is qualified by the fact that each of the insurers has asserted various coverage defenses based on certain contractual provisions in their respective policies. For example, the application of certain "non-cumulation" or "anti-stacking" clauses, the determination of the number of "occurrences" at issue in the Tort Litigation, and the interpretation of certain exclusions to coverage could each serve to significantly affect, reduce, or eliminate the amount of potentially available coverage described below (see Article I.3(c), Factors Leading to the Need for Bankruptcy Relief, The Coverage Litigation, *infra*).

Insurance coverage for the Pre-June 1981 Coverage Period consists of approximately: (i) \$4.5 million of solvent primary coverage; (ii) \$65.0 million of solvent excess coverage; and (iii) \$40.0 million of insolvent excess coverage. The insured entities under the solvent primary and excess coverage during the Pre-June 1981 Coverage Period include Swan and Tyler Pipe, but not TC. Collectively, the solvent primary and excess insurers during this period have contributed approximately \$47.0 million to the settlements described herein (including the First State Excess Policy Settlement, see Article I.3(g), Factors Leading to the Need for Bankruptcy Relief, Financial Condition of Swan, *infra*) plus additional monies for defense costs paid outside primary limits, and each of those insurers has asserted that their policy limits are exhausted (or, with respect to the policies subject to the First State Excess Policy Settlement, extinguished) based on such payments.

Insurance coverage for the June 1981 to June 1986 Coverage Period consists of approximately: (i) \$1.0 million of solvent primary coverage; (ii) \$6.5 million of insolvent primary coverage; (iii) \$156.25 million of solvent excess coverage; (iv) \$2.0 million of insolvent excess coverage, and (v) \$28.75 million of excess coverage with insurers in rehabilitation or some other form of supervision. The insured entities under the primary coverage during these policies years include Swan, Tyler Pipe, and Tyler Sand, but not TC. The insured entities under the excess coverage during these policies years include these same entities and TC. The solvent primary insurer during this period has contributed to the defense of Swan and the settlements described herein and has asserted that its policy limits are exhausted based on such payments. Two of the excess insurers have contributed approximately \$10.4 million to the settlements described herein, and each of those insurers has asserted that its policy limits have been impaired to the extent of such payments. Other than the two contributing excess insurers, the other excess insurers for this period have failed or refused to contribute to Swan's defense costs or the settlements described. In addition, the insurers for this period contend that the insurance available to potential Tort Claimants is significantly less than that stated above due to certain coverage defenses in the relevant policies. Despite the prior payments made by the two excess insurers, those insurers notified Swan that they would no longer participate in the defense or settlement of claims against the Swan Parties in the Tort Litigation; instead, they intended to pursue their respective coverage defenses in the Coverage Litigation.

Insurance coverage for the Post-June 1986 Coverage Period consists of approximately: (i) \$3.0 million of solvent primary coverage; (ii) \$6.0 million of insolvent primary coverage; (iii) \$153.0 million of solvent excess coverage; and (iv) \$1.0 million of insolvent excess coverage. The insured entities under the primary coverage during this period generally include Swan, Tyler Pipe, and Tyler Sand, but (with a few exceptions) do not include TC. However, the insured entities under the excess coverage during this period include these same entities and TC. The policies of the solvent insurers during this period contain some form of asbestos exclusion and pollution exclusion, among other defenses to coverage. In addition, certain of the solvent insurers for this period contend that the amount of insurance available to potential Tort Claimants is significantly less than that stated above due to certain "non-cumulation" or "anti-stacking" provisions in the relevant policies. To date, each of the solvent insurers has either denied coverage for all claims asserted against the Swan Parties in the Tort Litigation, or has otherwise failed or refused to contribute to the defense of such claims or to any of the prior settlements described herein.

The Post-June 1986 Coverage Period also consists of various "claims made" excess policies purchased from X.L. Insurance Company, Ltd. from June 1987 through January 1991. Because these excess policies were "claims made" policies and because the Tort Litigation did not commence until 1997, none of these policies are triggered by any of the claims raised by the Tort Claimants.

(c) The Coverage Litigation

When lawsuits were initially filed against Swan in 1997, Swan tendered the lawsuits to its primary and excess general liability insurers and demanded a defense and/or indemnity. Initially, none of Swan's insurers accepted the tender for defense and indemnity under available coverage. Some of the insurers reserved their rights to deny coverage, while others declined coverage altogether based on various coverage defenses in their respective policies. Consequently, Swan initially undertook the defense of the Tort Litigation with the financial assistance of TC, but without the financial assistance of any of its insurers.

By the summer of 1999, the first lawsuits began to be set for trial. In August 1999, Swan's representatives again solicited the assistance of its insurers in the defense and indemnity of the claims. Swan scheduled a conference call with the insurers' representatives during which Swan provided more information about the claims and related trial schedules and made additional defense and indemnity demands. Swan's efforts with its insurers remained unsuccessful, and Swan continued to defend the lawsuits. By the fall of 1999, Swan (with the financial assistance of TC) had spent more than \$2.6 million in defense costs and had entered into settlement agreements with the first six plaintiffs set for trial paying a total amount \$1.266 million. Moreover, in the fall of 1999, there were in excess of an additional 325 plaintiffs who had lawsuits pending against Swan.

In September 1999, Swan engaged Cook, Roach & Lawless, L.L.P. as coverage counsel to assist Swan in evaluating the amount of insurance coverage potentially available to Swan for the pending Tort Litigation and to take necessary steps to persuade its insurers to accept their respective defense and indemnity obligations under the applicable policies. In December 1999, Swan and TC were forced to initiate the Coverage Litigation against the Swan Parties' known solvent primary liability insurers and selected excess liability insurers, seeking a declaratory judgment that the insurers had a duty to defend and/or indemnify the Swan Parties in the Tort Litigation and seeking damages against such insurers for their breach of contract. The Coverage Litigation has been abated pursuant to an order of the court relating to the recent insolvency of Reliance and has been stayed due to Swan's bankruptcy filing.

The Hartford, Swan's primary insurer from September 1973 through June 1982, now claims that settlement payments it has made have exhausted the limits of all of the primary policies it issued during this time period. Swan's excess insurers from September 1973 through June 1981 also assert that they have exhausted their respective limits through the settlement payments to Tort Claimants described herein, the payment of defense costs, and the First State Excess Policy Settlement. Although some of the remaining insurers have made limited settlement payments, all have asserted and continue to assert numerous defenses to their obligation to provide defense and indemnity payments for the claims raised by the Tort Claimants, including: (i) the solvent primary and excess insurers in the Post-June 1986 Coverage Period assert that certain asbestos exclusion clauses in their policies bar all coverage for the Asbestos Claims and Mixed

Dust Claims; (ii) some primary and excess insurers contend that certain policy exclusions, including pollution exclusions, preclude coverage for Asbestos Claims, Silica Claims, and Mixed Dust Claims; (iii) the excess insurers generally assert that Swan's coverage must be exhausted horizontally by layers of primary insurance; (iv) the excess insurers generally contend that Swan is responsible for liabilities falling within periods during which there are "gaps" in coverage created by insolvent insurers, Swan's failure to purchase sufficient coverage, or policies that exclude coverage for Asbestos Claims, Silica Claims, or Mixed Dust Claims, and that until such "gaps" are paid by Swan, the excess insurers have no duty to "drop down" and fulfill any payment obligation; (v) some primary insurers assert that they owe no duty to provide payment until Swan fully satisfies its contractual self-insured retention and/or indemnity obligations to such insurers; (vi) some primary and excess insurers contend that the limits potentially available for the claims are eliminated or substantially reduced by the application of certain "non-cumulation" or "anti-stacking" clauses alleged to exist in certain policies; (vii) some primary and excess insurers contend that they have no payment obligation unless Swan can document the precise dates of actual exposure to asbestos and/or silica containing products, even though the Tort Claimants may not have that knowledge or information themselves; and (viii) some excess insurers dispute exhaustion by the primary insurers. The Swan Parties have vigorously disputed each of these coverage positions the insurers have asserted in the Coverage Litigation.

The Howland Plaintiffs, the Blackburn Plaintiffs, and Mrs. Beard each intervened in the Coverage Litigation as judgment creditors of Swan to pursue the unsatisfied amounts of their judgments (see Article 1.3(e), Factors Leading to the Need for Bankruptcy Relief, Verdicts and Settlements, *infra*). The Howland Plaintiffs and Blackburn Plaintiffs have subsequently withdrawn their respective intervention and have re-filed their claims in Smith County (Tyler), Texas.

(d) The Standstill Agreement

After filing the Coverage Litigation, Swan continued to try to negotiate with its insurers for assistance in the defense and indemnity of the pending Tort Litigation. In December 1999, Swan hosted two separate meetings in Dallas, Texas for all of its insurers during which it provided then current information about the pending claims, delivered information regarding upcoming trial schedules, conducted presentations with the assistance of defense counsel regarding the pending claims and potential defenses thereto, and hosted presentations by selected law firms representing the then known Tort Claimants regarding the nature of the claims. Despite these presentations, no insurer agreed to assume the defense of the pending lawsuits.

Beginning in February 2000, trials against the Swan Parties had been set in various Texas counties on a monthly basis, with some set as often as weekly and many overlapping. Without the financial assistance of its insurers, Swan did not have the resources to settle the upcoming cases prior to trial, defend the upcoming trials, or satisfy any adverse judgments that may arise from such trials. Faced with these exigent circumstances, Swan scheduled a mediation process in Dallas, Texas between the Swan

Parties, their insurers, and the various law firms representing the then known Tort Claimants with the goal of settling all known claims prior to the upcoming trials. In consideration for the prospect of settling all claims, the Tort Claimants who had trial settings set in February 2000 agreed to postpone such trial settings for a short period of time. After two days of mediation with the Swan Parties' insurers, no insurer agreed to participate in the settlement of any of the existing claims, and no insurer agreed to undertake the defense of the claims in the upcoming trials or otherwise.

As a result of the insurers' continued refusal to participate in the defense and/or indemnity of the Swan Parties, the Swan Parties negotiated and executed the Standstill Agreement with the eleven law firms that represented all of the then known Tort Claimants and with the existing known Tort Claimants themselves. As of the date of the Standstill Agreement, there were approximately 680 existing and prospective Tort Claimants represented by the eleven law firms, approximately one-half of which had lawsuits pending. Under the terms of the Standstill Agreement, each of the known Tort Claimants agreed to the following terms:

- (i) to dismiss all pending claims against TC;
- (ii) to not sue TC until the earlier of (A) two years from the entry of a final judgment by a trial court against Swan and in favor of any Tort Claimant after the execution of the Standstill Agreement, (B) the date on which Swan files a voluntary petition in bankruptcy, (C) the expiration of 120 days after a creditor not a party to, or not represented by a party to, the Standstill Agreement files an involuntary petition against Swan that Swan is unable to get dismissed, or (D) the date on which a court finds that insufficient insurance coverage exists to satisfy an adjudicated claim due to an act or omission of Swan after January 1997; and
- (iii) to release each of Swan, TC, Tyler Pipe, Tyler Sand, or any one or more of their respective subsidiaries, predecessors, successors, and assigns in the event that such claimant settles or receives a judgment, and such judgment is fully paid or compromised, or otherwise voluntarily accepts consideration for settlement of claims with or against any such entity.

Moreover, each of the law firms representing the then known Tort Claimants agreed to recommend the terms of the Standstill Agreement to all future clients with similar type claims.

In consideration for the covenants made by the Tort Claimants and their respective legal counsel, Swan and TC agreed to the following terms:

- (i) subject to the appropriate court approval, each of Swan, TC, Tyler Pipe, and Tyler Sand would instruct its defense counsel to withdraw as counsel of record in all pending lawsuits;

(ii) Swan agreed to notify its insurers of the terms of the Standstill Agreement and to renew its demand for each of the insurers to assume the defense of Swan in light of such withdrawals;

(iii) Swan agreed to use its best reasonable efforts to obtain coverage from its insurers with respect to the pending lawsuits;

(iv) Swan agreed to use its best reasonable efforts to prosecute the Coverage Litigation, providing, among other things, a forum for any Tort Claimant who received a judgment against Swan to intervene and pursue such judgment directly against its insurers;

(v) Swan and TC agreed that Swan would not file a voluntary petition in bankruptcy for a period of two years from the date of the Standstill Agreement; and

(vi) TC agreed to toll the statute of limitations for one year following the date the covenant not to sue TC expired.

In March 2000, Swan sent a copy of the Standstill Agreement to each of its liability insurers and re-tendered the pending lawsuits demanding a defense and/or indemnity. Simultaneously, Swan instructed its defense counsel to withdraw as counsel of record in all pending cases, and as a result, all pending trials were continued and reset for trial beginning in July 2000. In March 2000, The Hartford (Swan's primary insurer from September 1973 through June 1982) notified Swan that it would assume the defense of certain of the Asbestos, Silica, and Mixed Dust Claims, subject to a reservation of rights, including the right to deny coverage based on certain policy defenses.

(e) Verdicts and Settlements

During 1999 and prior to the execution of the Standstill Agreement, Swan settled cases with six different plaintiffs for a total amount of \$1.266 million, which Swan funded with the assistance of TC.

Following the execution of the Standstill Agreement, the first trial against Swan commenced in July 2000 in Smith County (Tyler), Texas, styled Virdell Howland, Sr., et al. v. Owens Corning, et al., Cause No. 40,551. The trial consisted of eight plaintiffs (the "Howland Plaintiffs") who were long-term employees of the Tyler Pipe Foundry and claimed various injuries resulting from prolonged exposure to asbestos and asbestos containing products during their employment in the Exposure Period. Swan was represented by independent defense counsel, the fees and expenses of which were paid by certain of its insurers. The Howland Plaintiffs were represented by the law firms of Baron & Budd, P.C., Dallas, Texas, and Negem, Bickham & Clark, Tyler, Texas. Prior to the conclusion of trial, all of the defendants other than Swan had either settled or had been dismissed. After an approximately two-week trial, a jury rendered a verdict in favor of the Howland Plaintiffs and against Swan in the aggregate amount of \$9,916,689.01,

plus post-judgment interest and court costs. The verdict is currently under appeal, which will be dismissed if the Plan is approved.

While the Howland case was being tried in Smith County, Texas, a second case was called to trial in August 2000 in Dallas County, Texas, styled James E. Blackburn, et al. v. Dresser Industries, Inc., et al., Cause No. DV98-03696. The trial consisted of seven plaintiffs (the "Blackburn Plaintiffs") who were long-term employees of the Tyler Pipe Foundry and claimed various injuries resulting from prolonged exposure to asbestos and asbestos containing products during their employment in the Exposure Period. Swan was represented by independent defense counsel, the fees and expenses of which were paid by certain of its insurers. The Blackburn Plaintiffs were represented by the law firms of Baron & Budd, P.C., Dallas, Texas, and Negem, Bickham & Clark, Tyler, Texas. Prior to trial, all of the defendants other than Swan had either settled or had been dismissed. After an approximately two-week trial, a jury rendered a verdict in favor of the Blackburn Plaintiffs and against Swan in the aggregate amount of \$19,404,526.51. The verdict is currently under appeal, which will be dismissed if the Plan is approved.

Following the verdicts in Howland and Blackburn, two more cases involving fourteen Tort Claimants were set for trial in September 2000 in Dallas County, Texas and Smith County, Texas. The Tort Claimants in these trials were represented by Baron & Budd, P.C., Dallas, Texas, and Negem, Bickham & Clark, Tyler, Texas. During the course of these trials, certain of Swan's primary and excess insurers entered into a partial settlement agreement with Baron & Budd, P.C. with regard to all claims against the Swan Parties asserted by all of the Tort Claimants represented in whole or in part by Baron & Budd, P.C. as of September 1, 2000, including the Howland Plaintiffs and the Blackburn Plaintiffs (the "Baron & Budd Settlement"). Pursuant to the terms of the Baron & Budd Settlement, the insurers participating in the settlement agreed to pay a combined total of \$30 million to 180 Tort Claimants, which was allocated as follows:

- (i) \$9.0 million to the fifteen Howland Plaintiffs and Blackburn Plaintiffs;
- (ii) \$2.625 million to the fourteen plaintiffs in the trials that had commenced, but were halted due to the Baron & Budd Settlement; and
- (iii) \$18.375 million to the remaining 151 Tort Claimants represented by Baron & Budd, P.C.

Of the remaining Tort Claimants, the Swan Parties and Baron & Budd, P.C. agreed to pay on a per claim basis the following amounts:

Nonmalignant asbestosis and pleural disease	\$105,000 per claimant
Cancer, other than mesothelioma or lung cancer	\$210,000 per claimant
Lung cancer	\$315,000 per claimant

provided, however, that each such Tort Claimant produced appropriate documentary evidence that such Tort Claimant was an employee of the Tyler Pipe Foundry during the Exposure Period along with appropriate medical evidence demonstrating an asbestos related disease or injury, and each such Tort Claimant executed a release in favor of all of the Swan Parties consistent with the terms of the Standstill Agreement. The insurers participating in the Baron & Budd Settlement consisted of ACE, Allstate, Appalachian, Old Republic, and The Hartford, each of which issued primary and/or excess insurance policies prior to 1985. The Howland Plaintiffs and Blackburn Plaintiffs released those settling insurers, but did not release Swan to the extent they could continue to pursue the full extent of their verdicts as judgment creditors of Swan. If the Plan is approved, the Howland Plaintiffs and Blackburn Plaintiffs will release all of the Settling Insurers to the extent not so already released.

Following the Baron & Budd Settlement, the Swan Parties and certain of their insurers entered into various other settlement agreements with 92 Tort Claimants for combined payments of approximately \$20.459 million. These settlement agreements were executed with individual or small groups of Tort Claimants and are summarized as follows: (i) 22 Tort Claimants alleging various forms of asbestosis and/or pleural disease settled their respective claims for combined total payments of \$3,575,833, or an average settlement of \$162,538; (ii) 28 Tort Claimants alleging various forms of silicosis settled their respective claims for combined total payments of \$5,553,333, or an average settlement of \$198,333; (iii) 39 Tort Claimants alleging various forms of mixed dust disease settled their respective claims for combined total payments of \$6,710,000, or an average settlement of \$172,051; (iv) 2 Tort Claimants alleging lung cancer settled their respective claims for combined total payments of \$1,065,000, or an average settlement of \$532,500; and (v) 1 Tort Claimant alleging mesothelioma settled her claim for \$3,555,000. Each such settling Tort Claimant has executed a release in favor of all of the Swan Parties as required by the Standstill Agreement.

In November 2000, another case was set for trial in Harris County (Houston), Texas styled, Regina L. Beard and Gary Beard v. Swan Transportation Company, et al., Cause No. 1999-06535, 295th Judicial District, Harris County, Texas. Mrs. Beard alleged certain injuries resulting from exposure to silica and silica containing products while she was employed by the Tyler Pipe Foundry, which employment commenced after 1986. Swan's primary and excess insurers prior to 1986 refused to defend Swan and otherwise denied coverage for the Beard case because Mrs. Beard was allegedly first exposed to silica after their respective policies expired. Swan re-tendered the Beard case to its primary and excess insurers in the Post-June 1986 Coverage Period and demanded a defense and/or indemnity. Prior to the November 2000 tender, the

insurers in the Post-June 1986 Coverage Period had declined to participate in the defense, indemnity, or settlement of any Tort Litigation case, and the primary insurers in the Post-June 1986 Coverage Period again refused to pay for the defense of Swan in the Beard case or participate in the settlement of Beard. Because Swan no longer had the resources to pay for a defense of these claims, Swan withdrew its defense counsel from the lawsuit and a default judgment was subsequently entered against Swan in the aggregate amount of \$17,537,921.01, plus post-judgment interest.

In sum, prior to the Petition Date, two jury verdicts were rendered against Swan in the aggregate amount of approximately \$29.3 million, plus post-judgment interest. Swan and certain of its insurers have entered into various settlement agreements with 278 Tort Claimants, including the plaintiffs who received verdicts, for approximately \$51.7 million. Despite this settlement, the verdict plaintiffs' judgments remain unsatisfied in the aggregate amount of \$20.3 million. Moreover, a default judgment remains outstanding against Swan in the aggregate amount of approximately \$17.5 million, plus post-judgment interest.

(f) Alleged Exhaustion of Insurance Limits from Certain Insurers

Swan's solvent primary insurer and certain excess insurers that issued policies during the Pre-June 1981 Coverage Period contend that their respective policy limits have been exhausted by the payment of defense costs and the settlement payments described herein (including the First State Excess Policy Settlement) and, thus, that they are not contractually liable to continue to defend claims or participate in any further settlements of claims.

Swan's primary insurers that issued policies during the June 1981 to June 1986 Coverage Period are insolvent or have also asserted exhaustion due to payments of the settlements described above. The Hartford and Old Republic, two of the Swan Parties' excess insurers that issued policies during the June 1981 to June 1986 Coverage Period, have contributed to some of the settlements described herein, but have not exhausted their policies. However, these insurers notified Swan that they would no longer participate in the defense or settlement of any claims relying instead on the coverage defenses they asserted in the Coverage Litigation. All other excess insurers that issued policies during the June 1981 to June 1986 Coverage Period have failed or refused to contribute to Swan's defense costs or the settlements described herein, or are insolvent or under some other form of state supervision.

All of the primary and excess insurers that issued policies during the Post-June 1986 Coverage Period continue to deny coverage or otherwise refuse to participate in Swan's defense or indemnity or are insolvent.

(g) Financial Condition of Swan

Swan ceased all operations in December 1995 and has been insolvent for some period of time. For several years prior to the Standstill Agreement, Swan was forced to borrow money from TC and related entities for the purpose of funding the defense and settlement of the Tort Claims. In April 2001, Swan entered into a settlement agreement with First State Insurance Company, an affiliate of The Hartford, regarding three \$5 million second layer excess policies issued to Swan and other entities from June 1976 through June 1979. Among other defenses to coverage, First State contended that each of the policies contained a "non-cumulation" clause that reduced the combined limits available for certain Tort Claims from \$15 million to \$5 million. Swan asserted that such clauses did not reduce the combined limits, thereby leaving \$15 million potentially available under the policies for such claims.

Under this agreement, Swan and the other named insureds under the policies agreed to "sell back" the policies to First State for a total amount of \$7.5 million (the "First State Excess Policy Settlement"). The proceeds of the First State Excess Policy Settlement have been used by Swan for the following purposes: (i) contributions to some of the settlements described above; (ii) payment of past due fees and expenses incurred by defense counsel and third party experts retained for the defense of Swan; (iii) payment of some of the fees and expenses incurred during the global mediation process and execution of the Letter of Intent; and (iv) payment of fees and expenses of various third parties assisting in the preparation and filing of the Reorganization Case.

As of the Petition Date, Swan's only assets consist of the remaining proceeds from the First State Excess Policy Settlement and an interest in certain insurance policies, including the settlement agreements as described herein. A default judgment in the approximate amount of \$17.5 million, plus post-judgment interest, and unsatisfied jury verdicts in the approximate amount of \$20.3 million, plus post-judgment interest, remain outstanding against Swan. Moreover, Swan has received information regarding approximately 1,400 actual and prospective Tort Claimants.

1.3 Preliminary Negotiations with Tort Claimants and Insurance Companies

In the Spring of 2001, Swan became increasingly concerned about the alleged exhaustion of certain of its primary and excess policies, the outstanding and unsatisfied verdicts against Swan, the increasing number of Tort Claimants filing lawsuits against Swan, and the lack of resources available to Swan to address these concerns. Moreover, all remaining "non-exhausted" solvent primary and excess insurers had either expressly informed Swan that they would not participate in the future defense or indemnity of the Swan Parties, or had previously failed or refused to participate in such defense or indemnity. As a result, Swan consulted with bankruptcy counsel regarding ways to protect Swan's assets and to maximize the amount of assets available to distribute to creditors, including the Tort Claimants and Unknown Tort Claimants. After considering various alternatives, Swan decided that a bankruptcy filing involving a pre-

negotiated plan of reorganization was the most attractive option for many reasons, including:

(a) the ability to receive the benefit of the Injunctions may create sufficient leverage with

(i) the Swan Parties' primary and excess insurers in order to persuade such insurers to contribute monies to a trust created for the benefit of the Tort Claimants and Unknown Tort Claimants, and

(ii) the Swan Parties, including TC, in order to persuade such entities to contribute monies to a trust created for the benefit of the Tort Claimants and Unknown Tort Claimants and to persuade such entities to join in settlement agreements with certain of the insurers for the purpose of creating additional monies to be contributed to the trust than would otherwise be available through settlements solely with Swan;

(b) the Standstill Agreement prohibited any voluntary filing by Swan until February 2002; therefore, an agreement with the parties to the Standstill Agreement would be necessary prior to filing a bankruptcy petition; and

(c) the best way to maximize the amount of assets available to both the Tort Claimants and Unknown Tort Claimants is through the establishment of a claim resolution process under the Bankruptcy Code whereby all claimants would share in a pro rata distribution of Swan's available assets, rather than an inequitable distribution of assets on a "first come, first served" basis.

In March 2001, representatives of Swan approached The Hartford to explore its interest in pursuing a pre-negotiated plan of bankruptcy that would include the funding of a trust by Swan's insurers and other entities. Swan approached The Hartford because it had issued a substantial amount of the remaining unexhausted insurance during the June 1981 to June 1986 Coverage Period. Representatives of Swan and The Hartford met in Dallas, Texas in March 2001. During this meeting, The Hartford expressed a preliminary interest in pursuing this course of action, but only if the resulting plan of reorganization created a trust, established a mutually acceptable claims resolution procedure for all Tort Claimants and Unknown Tort Claimants to assert all of their respective claims against such trust, and only if The Hartford, as a participating funding source to the trust, would receive the benefit of the Injunctions.

Following the March 2001 meeting with The Hartford, representatives of Swan approached certain of the law firms known by Swan to represent a substantial majority of the then existing Tort Claimants to explore their interest in a pre-negotiated plan of reorganization that would include, among other things, the funding of a trust by Swan's insurers and other entities for the benefit of the Tort Claimants and Unknown Tort Claimants and the issuance of the Injunctions. Each of the law firms also expressed a preliminary interest in exploring such a global settlement.

After these meetings and discussions, representatives of Swan conducted a telephonic conference with all of the Swan Parties' primary and excess insurers to report on the results of its recent meetings and to explore the interest of such insurers as a group in pursuing the stated course of action. Each of these insurers expressed some level of interest in pursuing a global settlement, provided that any such settlement involve the issuance of the Injunctions for the benefit of all insurers contributing to the trust.

Based on the results of these preliminary negotiations, representatives of Swan initiated a global mediation process whereby Swan, the insurers, and representatives of the Tort Claimants would meet, mediate, and negotiate a global settlement of all claims against the Swan Parties through a pre-negotiated plan of reorganization incorporating three material terms: (i) the creation of the Trust; (ii) the establishment of a claims resolution process for all Tort Claimants and Unknown Tort Claimants to assert all of their respective claims against the Trust; and (iii) the issuance of the Injunctions to those parties that participate in the funding of the Trust. See Articles I.4 & I.5, The Global Mediation and the Letter of Intent, *infra*.

1.4 The Global Mediation Process

(a) The Global Mediation Process

Swan established a global mediation process to begin in April 2001, which was to incorporate a series of two-day formal mediations in Dallas, Texas to occur approximately every two weeks coupled with informal telephonic negotiations in the interim. Participating in each of the formal mediations were representatives of Swan, including Swan's defense counsel, coverage counsel, and bankruptcy counsel, representatives of each of the Swan Parties' primary and excess insurers, including their respective counsel, and representatives for most of the law firms known by Swan to represent the Tort Claimants. With the approval of its insurers and the representatives of the then known Tort Claimants, Swan engaged two mediators, Messrs. James W. Knowles of Tyler, Texas, and Michael W. Huddleston of Dallas, Texas, to assist in the process. Mr. Knowles has extensive experience as a mediator and had previously served as a mediator in some of the Tort Litigation. Mr. Huddleston has extensive insurance coverage litigation experience in Texas and had also served as a mediator in the past.

(b) The Initial Mediation Sessions

The parties conducted three two-day mediation sessions in Dallas, Texas in April and May 2001. During these sessions, representatives of the Tort Claimants provided extensive information regarding all of the Tort Claimants known to date, including information on Tort Claimants who had filed lawsuits, Tort Claimants who had received medical diagnoses but had yet to file lawsuits, and prospective Tort Claimants who had retained the law firms but from whom no further information was available. In addition, representatives of Swan provided information regarding the amount of insurance coverage potentially available to the Tort Claimants, including a report on the

various coverage positions taken by each of Swan's insurers. Representatives of the Swan Parties' also conducted a series of individual negotiations with each of their respective primary and excess insurers in order to negotiate offers from such insurers to present to the representatives of the Tort Claimants as part of a global settlement, see Article I.8, Settlements with Settling Insurers *infra*. At the conclusion of each two-day session, representatives of Swan presented to the representatives of the Tort Claimants the offers made by the Settling Insurers that it had been able to negotiate to date. Following such presentation, the representatives of the Tort Claimants met and responded to such offers based on their collective evaluation of the potential available insurance coverage taking into account the numerous coverage defenses previously asserted by each of the insurers participating in the offer at that time.

At the conclusion of the third two-day mediation on May 10, 2001, the Swan Parties and their insurers agreed to reconvene on May 30, 2001 and to subsequently meet with the representatives of the Tort Claimants on May 31, 2001, with the expressed purpose of trying to reach a final agreement among the parties, if possible.

(c) Formation of the Ad Hoc Committee

Between the third formal mediation on May 10, 2001 and the final formal mediation on May 31, 2001, representatives of the Tort Claimants met informally on several occasions to exchange information regarding the Tort Claimants, exchange views regarding the settlement offers to date, explore the possibility of establishing a committee to conduct final negotiations with Swan and its insurers, and preliminarily address various issues related to the Tort Claimants should the global mediation result in a settlement incorporating a pre-negotiated plan of reorganization. Those issues included the requisite proof required to establish a claim and the treatment of the different Tort Claimants in a settlement matrix (e.g., treatment of Silica Claimants vs. Asbestos Claimants, treatment of asbestosis vs. lung cancer, treatment of the Howland Plaintiffs, Blackburn Plaintiffs, and Mrs. Beard vs. other Tort Claimants, etc.).

On May 30, 2001, lawyers representing the vast majority of known Tort Claimants met in Dallas, Texas to discuss and negotiate the topics set forth above. In addition, the lawyers agreed to form an ad hoc negotiating committee of Tort Claimants for the purpose of, among other things, negotiating the final terms of a potential global settlement with the Swan Parties and their insurers. That committee consisted of the following members:

Negem, Bickham & Clark
Jimmy Negem
440 South Vine
Tyler, Texas 75702
(then representing approximately 606 claimants)

Baron & Budd, P.C.
Russell Budd
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219
(then representing approximately 321 claimants)

Shelton Smith & Associates
Shelton Smith
809 Fannin Street
Houston, Texas 77010
(then representing approximately 252 claimants)

Hoeffner, Bilek & Eidman, LLP
Todd Hoeffner
440 Louisiana Street, Suite 720
Houston, Texas 77002
(jointly representing some of the claimants
represented by Negem, Bickham & Clark)

Williams & Bailey Law Firm, LLP
John Fabry
8441 Gulf Freeway, Suite 600
Houston, Texas 77017
(then representing approximately 31 claimants)

Bruegger, Quillin & McCullough
Joe Bruegger
5477 Glen Lakes, LB12
Dallas, Texas 75231
(then representing approximately 130 claimants)

(d) The Final Mediation

The final mediation session occurred on May 30 and 31, 2001. During the first day, representatives of the Swan Parties met individually with representatives of their respective insurers to negotiate final settlements for each of the policies at issue. Factors affecting the individual negotiations included the face amount of the policy, whether the policy was a first, second, third, fourth, or fifth layer excess policy, various defenses to coverage asserted by the insurer, the scope of release requested by the insurer,

and the willingness of the Swan Parties, including TC, to "sell back" the policy to the insurer.

During the second day of mediation, Swan's representatives reported to the Ad Hoc Committee the status of negotiations with the insurers, including which insurers were continuing to participate in a proposed settlement and the amount of the offers of such insurers to such settlement. Based on input received by the Ad Hoc Committee, the Swan Parties continued to negotiate with the insurers in an effort to maximize the size of the proffered settlement by each individual insurer.

At the conclusion of the May 31, 2001 mediation session, the Swan Parties presented to the Ad Hoc Committee a global settlement offer based on the settlements in principle it had reached with certain of its insurers. The offer was broken down on an insurer by insurer basis, including those insurers that had refused to make any settlement offer. The Ad Hoc Committee stated that it would meet several times over the next few weeks to evaluate the insurers' settlement offers and respond to each such offer based on its independent determination of the potential coverage available from such insurer taking into account all asserted coverage defenses.

1.5 The Letter of Intent

The Ad Hoc Committee met several times following the final mediation on May 31, 2001 to discuss the then current offers of settlement by the Swan Parties' insurers and by TC. Through the mediators, the Ad Hoc Committee responded to Swan that it would agree to accept some of the individual offers presented at the final mediation, but would reject others as insufficient based on the Ad Hoc Committee's independent evaluation of the various issues related to the relevant policies. Throughout June 2001, representatives of Swan and TC continued to negotiate with the insurers whose offers the Ad Hoc Committee rejected. Also during June 2001, the Ad Hoc Committee negotiated extensively with representatives of TC to assess and evaluate TC's contribution to the global settlement, see Article I.9, Settlement with TC, *infra*. Simultaneous with these efforts, Swan began to negotiate with the Ad Hoc Committee the terms of a letter of intent, which, pending an agreement on the global settlement, was to serve as a non-binding expression of the parties' overall agreement and a framework for developing the Plan Documents.

On June 28, 2001, Swan and the Ad Hoc Committee executed the Letter of Intent, which was expressly non-binding and terminable by either party on 30 days' written notice. As reflected in the Letter of Intent, Swan and the Ad Hoc Committee agreed to the following terms, among others: (a) as soon as practically possible, Swan, with the advice and consultation of the Ad Hoc Committee and the Legal Representative, would prepare and file the Plan Documents; (b) the Plan would provide for the creation of the Trust in the amount of not less than \$84,400,000, which would be funded by the Swan Parties and the Settling Insurers in the previously agreed individual amounts and as set forth below (in December 2001, the Swan Parties entered into a settlement agreement with U.S. Fire which provides for an additional \$6,400,000 to be funded to the Trust

upon confirmation of the Plan); (c) the Plan would provide for the Injunctions, which will, among other things, enjoin any claimant (including, without limitation, any Tort Claimant, Unknown Tort Claimant, or Non-Participating Insurer) from pursuing claims against the Swan Parties or the Participating Insurers outside of the claim resolution process established by the Plan; (d) TC would agree to contribute 100% of the capital stock of Swan and any and all other assets owned by Swan to the Trust, inter alia, to provide a vehicle pursuant to which the Trust may directly pursue claims on behalf of the Tort Claimants and Swan against all Non-Participating Insurers and to directly pursue claims against any other third party on behalf of Swan as may be deemed appropriate; and (e) each member of the Ad Hoc Committee would consent to the terms of the Plan and, consistent with the other terms of the Letter of Intent and other applicable agreements, would recommend that each of their clients vote in favor of the Plan, use their reasonable best efforts to obtain and file responsive votes from such clients in favor of the Plan, and support the prompt confirmation of the Plan and all steps incident thereto.

The Letter of Intent was based on certain agreements in principle that Swan reached with each Settling Insurer during the global mediation process, which agreements were formalized in the weeks following the execution of the Letter of Intent. As of the date of the Letter of Intent, the Ad Hoc Committee had agreed to the following contributions from each Settling Insurer (see Article I.8, Settlements with Settling Insurers, *infra*):

<u>Name of Insurer</u>	<u>Contribution Amount</u>
The Hartford	\$57,100,000
National Surety	7,050,000
Republic	6,800,000
U.S. Fire*	6,400,000
Old Republic	4,000,000
Travelers	3,000,000
ACE	2,000,000
Allstate	750,000
Appalachian	500,000
CGU	500,000
The Home	500,000
Kemper	500,000
Atlantic Mutual	50,000
Bellefonte	50,000
Zurich	50,000
H.S. Weavers Assignment	50,000
 TOTAL	 \$89,300,000

* The agreement with U.S. Fire was reached in December 2001.

In addition, the Ad Hoc Committee agreed to a cash contribution from TC in the aggregate amount of \$1,500,000, among other forms of consideration. See Article I.9, Settlement with TC, *infra*.

All of these settlements are subject to Court approval at the Confirmation Hearing. To the extent assignable, all of the coverage litigation against Non-Participating Insurance Companies will be assigned to the Trust. Even if not assignable, the Trust will own all the stock in Reorganized Swan, and thus will have the benefit of all of the non-settled coverage litigation, post-Effective Date.

As of the date of the Letter of Intent, the Non-Participating Insurers consisted of the following: AIG, Federal, Highlands, Centaur (which is in rehabilitation), Reliance (which is in receivership), U.S. Fire, and H.S. Weavers. After full consideration, the Ad Hoc Committee included these insurers as Non-Participating Insurers because such insurers either failed to offer any money towards the global settlement or offered an insufficient amount of money as determined by the Ad Hoc Committee based on its independent evaluation of such insurers' potential exposure after consideration of the coverage defenses asserted by such insurer. U.S. Fire became a Settling Insurer in December 2001.

1.6 Selection of the Legal Representative

During the initial formal mediation on April 11, 2001, Swan's representatives met with the lawyers representing the Tort Claimants and discussed the need to promptly identify potential candidates to serve as the legal representative for the Unknown Tort Claimants, and sought their input in selecting such an individual. The parties discussed the importance of selecting a disinterested candidate with excellent credentials, including experience in mass tort bankruptcy, and with complete independence. In May 2001, the Ad Hoc Committee identified and reviewed the resumes from many highly qualified persons. During the May 2001 mediation, representatives of Swan met with the Ad Hoc Committee and jointly selected Richard B. Schiro to serve as the Legal Representative.

Richard B. Schiro is an attorney in private practice in Dallas, Texas who specializes in business bankruptcy law, state and federal litigation, and other related areas. Mr. Schiro formerly served as an active member of the panel of trustees for the United States Bankruptcy Court, Northern District of Texas. Mr. Schiro graduated from the University of Chicago School of Law in 1968 and has served as a Law Professor at the Southern Methodist University School of Law and as a Faculty Member in the Law Department, Wharton School, University of Pennsylvania.

Mr. Schiro has never represented a current plaintiff, defendant, or insurer in the litigation against any of the Swan Parties, and has never had a relationship with, or connection to, any of the Swan Parties.

1.7 Settlements with Settling Insurers

Following the execution of the Letter of Intent, Swan undertook the process of negotiating and formalizing the settlement agreements reached in principle during the global mediation process with the Settling Insurers. Throughout the process, each of the Settling Insurers strictly conditioned its settlement offer on the following terms: (a) each such offer was contingent upon the execution of a settlement agreement containing mutually acceptable terms; (b) the funding of any settlement expressed in such agreement be strictly conditioned upon a final Confirmation Order approving a Plan that provides that each such Settling Insurer (and those Swan Parties that it insured) would receive the benefit of the Injunctions; and (c) each such Settling Insurer be dismissed from the Coverage Litigation.

The Settling Insurers are comprised of three groups: (1) the Shared Settling Insurers; (2) the Swan Only Settling Insurers; and (3) the TC Only Settling Insurers.

(a) Settlements with the Shared Settling Insurers

With the exception of The Home, the Shared Settling Insurers consist of excess insurers during the June 1981 to June 1986 Coverage Period. Those insurers (excluding The Home) issued excess per occurrence liability policies in the combined face amount of approximately \$136.25 million, of which approximately \$10.4 million had been paid by two of those insurers in prior settlements. The settlement agreements with these insurers provide for total combined payments of \$84.35 million. The Home issued one \$15 million excess policy for 1994 and one \$15 million excess policy for 1995 that was canceled in February 1995. In addition to the general terms outlined above, each of the Shared Settling Insurers negotiated individual terms of settlement that may or may not have been agreed to by Swan or the Swan Parties with other insurers.

(b) Settlements with the Swan Only Settling Insurers

The Swan Only Settling Insurers consist of excess insurers for the Pre-June 1981 Coverage Period. These insurers had contributed a combined total of approximately \$40 million towards prior settlements of claims, and each of these insurers contend that their respective policies have been exhausted because of such payments. Despite this assertion, the Swan Only Settling Insurers agreed to contribute an additional combined amount of \$3.25 million to the Trust in exchange for receiving the benefit of the Injunctions, among other things. In addition to these terms, each of the Swan Only Settling Insurers negotiated additional individual terms of settlement that may or may not have been agreed to by Swan or the Swan Parties with other insurers.

(c) Settlements with the TC Only Settling Insurers

The TC Only Settling Insurers consist of certain primary insurers that issued policies to TC from 1986 through 1995 and certain excess insurers that issued policies from 1968 through 1972, 1976 through 1981, and for 1986–87. These insurers issued policies with combined total limits of approximately \$14 million. These insurers contend that their policies are not currently triggered for a variety of reasons, including certain coverage defenses and the effects of the Standstill Agreement. Despite these assertions, the TC Only Settling Insurers agreed to contribute a combined amount of \$1.15 million to the Trust in exchange for receiving the benefit of the Injunctions, among other things. In addition to these terms, each of the TC Only Settling Insurers negotiated additional individual terms of settlement that may or may not have been agreed to by Swan or the Swan Parties with other insurers.

1.8 Settlement with TC.

The prepetition negotiations among the Swan Parties, the Ad Hoc Committee, and the Settling Insurers also involved a negotiation with TC regarding its contribution to the Trust, the relinquishment of its ownership of Swan, its consent to allow the Trust to enjoy an exclusive right to the proceeds of the settlements with the Settling Insurers, and the release of TC and certain of its affiliates from all liabilities for Claims raised by the Tort Claimants and Unknown Tort Claimants.

As part of these negotiations, the Ad Hoc Committee conducted a thorough investigation of TC, including, but not limited to, its past and present business activities, its financial condition, and its past and present relationship with Swan. The Ad Hoc Committee analyzed whether, and to what extent, any theories of liability existed pursuant to which TC could be held liable for Tort Claims, whether now or in the future. The Ad Hoc Committee reviewed the public documents and financial statements that TC filed with the Securities Exchange Commission and discussed these documents with an officer of TC. The Ad Hoc Committee also reviewed the Standstill Agreement, which served to dismiss TC from the then pending claims of the Tort Claimants and to release TC and certain of its affiliates upon the receipt of any monies through a settlement between the Tort Claimants and the Swan Parties or their respective insurers.

With the foregoing background, the Ad Hoc Committee entered into preliminary negotiations with TC during the global mediation process in April and May 2001. Those negotiations intensified during June 2001 and led to the execution of the Letter of Intent. Reaching a settlement with TC was an essential element of the global settlement for two primary reasons, among others. First, an overwhelming majority of the policies issued by the Settling Insurers insured TC as well as Swan, Tyler Pipe, Tyler Sand, and other related entities, of which TC is the only remaining operating entity. To maximize the amount of money that the Settling Insurers would contribute to the Trust under the various settlement agreements, these entities, including TC, agreed to “sell back” to many of the Settling Insurers the policies issued during the relevant time periods or otherwise release the Settling Insurers from all present or future liabilities related to the Tyler Pipe

Foundry, conditioned upon the issuance of the Injunctions. The Settling Insurers with whom TC agreed to "sell back" potential insurance coverage include Old Republic, National Surety, Republic, The Hartford, Travelers, and U.S. Fire. These six insurers issued excess general liability policies during the June 1981 to June 1986 Coverage Period in the face amount of \$151.25 million, of which approximately \$10.4 million had already been spent in prior settlements of claims. These "sell back" settlements yielded contributions by these five insurers to the Trust in the aggregate amount of \$84.35 million, constituting a substantial majority of the Trust Assets. Second, TC's consent was a condition for the transfer of Swan's capital stock to the Trust, which will enable the Trust to pursue claims on behalf of the Tort Claimants and Unknown Tort Claimants against the Non-Participating Insurers and other third parties.

While negotiating with the Ad Hoc Committee, TC expressed that its participation in the global mediation process and final settlement was strictly conditioned upon the Plan's providing that TC receive the benefit of the Injunctions, and upon the Plan's being approved by the Tort Claimants and the Bankruptcy Court with respect to the Injunctions. If the Plan is not confirmed with TC receiving the benefit of the Injunctions, TC will not participate in the various settlements with the Settling Insurers, which, in turn, will cause the collapses of such settlements. Such a result would likely mean that Tort Claimants and Unknown Tort Claimants would be forced to litigate both their claims and the insurance coverage claims, which would result in years of delay of any payments upon such claims, to the extent that they were ever paid at all.

In June 2001, TC and the Ad Hoc Committee reached an agreement in principle as reflected, in part, in the Letter of Intent. Under that agreement, TC agreed to (a) participate in the settlement agreements that included a "sell back" of a substantial amount of the coverage issued by the Shared Settling Insurers conditioned on the issuance of the Injunctions; (b) contribute 100% of the capital stock of Swan and any and all other assets of Swan to the Trust to enable the Trustee to directly pursue claims on behalf of the Tort Claimants, Unknown Tort Claimants, and Swan against all Non-Participating Insurers and to directly pursue claims against any other third party on behalf of Swan as may be deemed appropriate; (c) cancel any inter-company indebtedness owed by Swan to TC, including debt Swan incurred for some of the past defense and settlement of Tort Litigation claims; (d) contribute \$1,500,000 cash to the Trust, which is to be paid \$750,000 within 10 days after the date the Confirmation Order becomes a Final Order, \$500,000 on the first anniversary of such date, and \$250,000 on the second anniversary of such date; and (e) on the Initial Plan Voting Date, contribute to Swan the amount, if any, by which Swan's cash and cash equivalents are less than \$1.0 million.

1.9 Plan Negotiations

In the months following the execution of the Letter of Intent, Swan, the Ad Hoc Committee, the Committee, the Legal Representative, and TC began serious negotiations regarding the terms of the Plan Documents and the CRP. During the course of numerous face-to-face and telephonic meetings, counsel for Swan, counsel for the Committee, the Legal Representative, and counsel for TC reviewed every provision of the draft

documents and engaged in extensive negotiations regarding many of the operative provisions of those documents. The goal of all parties to these negotiations, in addition to achieving the maximum benefit for their respective clients, was to insure that the resulting Plan Documents and the CRP would satisfy the requirements of the Bankruptcy Code in general and Sections 524(g) and 105 of the Bankruptcy Code in particular.

ARTICLE 2 EVENTS DURING REORGANIZATION CASE

2.1 Commencement of the Reorganization Case.

Swan filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on December 20, 2001. Prior to commencing its case, Swan conducted several meetings with representatives of the Tort Claimants. Since the Petition Date, Swan has continued to operate its business and manage its properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2.2 Administration of the Reorganization Case.

(a) Retention of Professionals. On the Petition Date, Swan requested approval from the Bankruptcy Court to retain Neligan, Tarpley, Stricklin, Andrews & Foley, L.L.P. ("Neligan Stricklin"), as its primary counsel in this Bankruptcy Case. The Bankruptcy Court entered an order authorizing the retention of Neligan Stricklin on January 17, 2002. On January 10, 2002, Swan requested approval from the Bankruptcy Court to retain Reed Smith LLP ("Reed Smith") as its local counsel in this Bankruptcy Case. The Bankruptcy Court entered an order authorizing the retention of Reed Smith, on February 11, 2002. Swan anticipates filing an application with the Bankruptcy Court to retain Bracewell & Patterson, L.L.P. ("Bracewell Patterson"), as its primary counsel in this case and after approval of such application Bracewell Patterson will formally file a notice of substitution for Neligan Stricklin.

(b) Retention of Claims, Noticing and Balloting Agent. On December 27, 2001, Swan requested approval of the Bankruptcy Court to retain Lain, Faulkner & Co. P.C. ("Lain Faulkner"), as Claims, Noticing and Balloting Agent in this Bankruptcy Case. The Bankruptcy Court entered an order authorizing the retention of Lain Faulkner on January 17, 2002.

(c) Retention of Special Counsel. On April 17, 2002, Swan requested approval of the Bankruptcy Court to retain Nickens, Lawless & Flack, L.L.P. ("NLF") as special counsel to the Debtor involved with representing Swan in the insurance coverage litigation and related settlement negotiations. The Bankruptcy Court entered an order authorizing the retention of NLF on May 15, 2002. On April 22, 2002, Swan requested approval of the Bankruptcy Court to retain Jackson Walker L.L.P. ("Jackson Walker") as special counsel involved with verifying and valuing asbestos and silica related personal injury claims against the Swan estate. The Bankruptcy Court entered an order authorizing the retention of Jackson Walker on May 23, 2002.

(d) Retention of Other Professionals. On April 22, 2002, Swan requested the approval of the Bankruptcy Court to retain National Economic Research Associates, Inc. ("NERA"), to assist Swan in developing computer models to be used in estimating the number and value of future asbestos and silica related personal injury claims likely to be brought against the estate. The Bankruptcy Court entered an order authorizing the retention of NERA on July 8, 2002. On April 22, 2002, Swan requested the approval of the Bankruptcy Court to retain Kinsella Communications, LTD. ("Kinsella"), as notice consultant to the Debtor involved with formulating and executing the bar date notice established by the Court. The Bankruptcy Court entered an order authorizing the retention of Kinsella on May 23, 2002.

(e) Payment of NERA. On June 25, 2002, Swan requested approval of the Bankruptcy Court to pay the pre-petition claim of NERA pursuant to 11 U.S.C. § 503(b)(3)(D). This application was withdrawn.

2.3 Creditors' Committee.

(a) Appointment. Pursuant to section 1102 of the Bankruptcy Code, the United States Trustee appointed an official Unsecured Creditors' Committee (the "Committee") on January 31, 2002.

(b) Retention of Professionals. On February 1, 2002, the Committee filed an application with the Bankruptcy Court to retain Walsh Monzack and Monaco and Stutzman & Bromberg as its counsel. The Bankruptcy Court entered an order authorizing the retention of Walsh Monzack and Monaco and Stutzman & Bromberg on February 21, 2002. On May 31, 2002, the Committee filed an application with the Bankruptcy Court to retain Anderson Kill & Olick, P.C. ("AKO"), as special counsel to the Committee involved with advising the Committee in the insurance coverage litigation and related settlement negotiations. The Bankruptcy Court entered an order authorizing the retention of AKO on June 20, 2002.

2.4 Bankruptcy Court Approval of Selection of Legal Representative.

On February 8, 2002, the Committee filed an application to retain Richard B. Schiro as the Legal Representative. Mr. Schiro's qualifications to serve as Legal Representative, and the process by which he was selected, are set forth in Section 1.5 herein. The Bankruptcy Court entered an order authorizing the retention of Mr. Schiro on March 15, 2002.

2.5 Unsecured Claims Bar Date.

In accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules, Swan requested that the Bankruptcy Court enter an order establishing a deadline for filing Proofs of Claims (the "Bar Date"). The Bar Date has been set by the Court for December 18, 2002. Swan anticipates that a notice of the Bar Date will be published in

newspapers of general circulation in locations where Swan had substantial business operations, and that a Proof of Claim form and instructions for its completion will be mailed to all known holders of Claims subject to the Bar Date, at least twenty (20) days before such bar date. You must submit a proof of claim form prior to the Bar Date or be forever barred from collecting on your claim. Proofs of Claims should be mailed to: Lain, Faulkner & Co., 400 N. St. Paul Street, Suite 600, Dallas, Texas 75201.

ARTICLE 3 **CLAIMS HISTORY**

Before 1997, the Debtor had only been sued one time under the Good Samaritan theory by a current or former employee of the Tyler Pipe Foundry. The plaintiff in that case alleged an occupational injury arising out of an accident. In 1997, two lawsuits were filed against the Debtor alleging for the first time that Swan was liable for the damages resulting from the occupational illnesses of employees of the foundry: Cause No. 40,2960A, Jurline Warren v. Tyler, et al., County Court at Law, Smith County, Texas, asbestos related injuries alleged; and Cause No. DV98-05538, Lucian Greenhouse v. Owens Corning, et al., 193rd Judicial District, Dallas County, Texas, silica related injuries alleged.

Subsequent to the filing of these two lawsuits, various present and former employees of the Tyler Pipe Foundry (and, in some cases, their spouses and other family members) filed a number of lawsuits against Swan and others, alleging injuries and occupational illnesses arising from exposure during the Exposure Period to asbestos, silica, and other mixed dusts contained in products used at the Tyler Pipe Foundry in the creation of cast iron pipe and fittings and in other related activities. In addition to Swan, the Tort Claimants have filed claims against many other co-defendants, including manufacturers and suppliers of asbestos and silica containing products and manufacturers and suppliers of employee protective and safety devices (e.g., protective masks). All of the lawsuits have been filed in the state courts of Texas, principally in Smith County (Tyler), Dallas County (Dallas), and Harris County (Houston). Swan's sole business activity since 1997 has been its defense against such claims.

Typically, the Tort Claimants have filed claims against Swan (rather than their employer, Tyler Pipe) for their alleged injuries under the "Good Samaritan" theory of liability. The Good Samaritan theory of liability is a theory of negligence based on Sections 323 and 324A of the Restatement (Second) of Torts. Under this theory of liability, if one undertakes the performance of a duty owed by another to provide services to a third person, and the third person is injured after relying on that undertaking or if the performance of such undertaking increased the risk of harm to the third person, then the person undertaking the performance of such services (i.e., the "Good Samaritan") may be held liable for the resulting injury. With respect to Swan, the Tort Claimants essentially allege that Swan, acting as a "Good Samaritan," undertook the responsibility of providing a safe workplace for the employees of the Tyler Pipe Foundry – a duty generally owed by Tyler Pipe – and that Swan failed to provide, or negligently provided, such a safe workplace, which resulted in the alleged injuries or illnesses to some of the employees of

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5-23-03

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:

SWAN TRANSPORTATION COMPANY,

Debtor.

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CASE NO. 01-11690 (JKF)

Chapter 11

**ORDER CONFIRMING THE PLAN OF REORGANIZATION
FOR SWAN TRANSPORTATION COMPANY**

Swan Transportation Company, debtor and debtor in possession (the "Debtor"), filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on December 20, 2001 (the "Petition Date"). The Debtor filed its Plan on September 17, 2002.¹ The Plan was transmitted to all holders of impaired Claims and Interests on or about September 30-October 1, 2002. The Confirmation Hearing to consider confirmation of the Plan was held on December 9, 2002. On December 5, 2002 and December 9, 2002,² the Debtor filed Technical Modifications to the Plan.³ The Court has considered (i) all of the testimony presented and evidence admitted at the Confirmation Hearing; (ii) the papers and pleadings on file in the Reorganization Case; (iii) the arguments of counsel; and (iv) the law applicable to the case. Following the Confirmation Hearing and in conjunction with this Order, the court entered its Findings of Fact and Conclusions of Law Regarding the Plan of

¹ Capitalized terms used in this Order shall have the meanings ascribed to them in the Glossary of Terms for the Plan Documents Pursuant to the Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code for Swan Transportation Company (the "Glossary"), unless otherwise indicated or defined in the accompanying Findings of Fact and Conclusions of Law Regarding The Plan of Reorganization Under Chapter 11 Of The United States Bankruptcy Code For Swan Transportation Company (the "Findings and Conclusions") or herein. Any capitalized term used in this Order that is not defined herein, in the Findings and Conclusions or in the Glossary, but that is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to such term in the Bankruptcy Code or the Bankruptcy Rules. Such meanings shall be equally applicable to both the singular and the plural forms of such terms.

² The December 9, 2002 modifications were submitted as Exhibit 56 in support of confirmation.

³ The term "Plan," as used in the remainder of this Order, shall refer to the Debtor's Plan as modified by the Technical Modifications to the Plan filed on December 5, 2002 and December 9, 2002.

Reorganization Under Chapter 11 of the United States Bankruptcy Code for Swan Transportation Company (the "Findings and Conclusions").

Based upon the Findings and Conclusions, along with all oral findings and rulings by this Court made in connection with the Disclosure Statement and the Confirmation Hearing, which are incorporated herein, it is hereby ORDERED:

A. General Decrees and Implementation

1. Due notice of the Confirmation Hearing has been given to all parties in interest.
2. Due notice of the hearing on the approval of the settlements entered into by the Debtor, including without limitation, the TC Contribution Agreement, has been given to all parties in interest.
3. The Debtor's solicitation of acceptances or rejections of the Plan was in compliance with all applicable non-bankruptcy laws, rules, or regulations governing the adequacy of disclosure in connection with the solicitation as well as with all applicable requirements of Section 1126(b)(1) and (2) of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018.
4. Due notice of the deadline for filing objections to confirmation of the Plan has been given to all parties in interest.
5. The period prescribed for creditors and equity security holders to accept or reject the Plan was not unreasonably short.
6. The Plan is hereby confirmed in its entirety, and each and every provision contained therein is hereby approved in its entirety.

7. All objections to Confirmation of the Plan, other than those withdrawn in writing prior to, or on the record at, the Confirmation Hearing, other than those in respect of which the Court made rulings during the Confirmation Hearing, and, other than those resolved either by the Modifications to the Plan and/or this Order, are overruled.

8. The ballots, in the form transmitted with the Disclosure Statement, are approved in all respects.

9. Consistent with the Plan, the following agreements and documents, and all amendments, modifications and supplements thereto, including, without limitation, all annexes, exhibits, and schedules thereto, and all terms and conditions thereof, are hereby determined to be fair and reasonable and are hereby approved:

Name of Document

Glossary of Terms for the Plan Documents

Settlement Trust Agreement

Executory Contracts and Unexpired Leases
Assumed by the Debtor

Restated Certificate of Incorporation of
Swan Transportation Company

Bylaws of Swan Transportation Company

TC Contribution Agreement

Claims Resolution Procedures

10. The Debtor, Reorganized Swan Transportation Company, TC, the Trust and their respective officers, directors, Trustees, agents, representatives, and attorneys, and each other Entity having duties or responsibilities under the Plan or this Order (collectively, the "Implementing Parties") are hereby authorized and empowered to carry out all of the provisions of the Plan and this Order. The Implementing Parties are authorized and empowered to, among

other things: issue, execute, deliver, file, or record, as appropriate, the Plan Documents; take any action contemplated by the Plan Documents or this Order; and issue, execute, deliver, file, or record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents, and perform such other acts, as they deem consistent with and necessary or appropriate to implement, effectuate, and consummate the Plan and this Order and the transactions contemplated thereby and hereby, including, but not limited to, the Plan Transactions, all without further application to, or order of, the Court or further action by their respective directors, stockholders, Trustees, or beneficiaries, and with like effect as if such actions had been taken by unanimous action of the respective directors, stockholders, Trustees, or beneficiaries of such Entities. The Secretary or any Assistant Secretary of the Debtor or Reorganized Swan Transportation Company is authorized to certify or attest to any of the foregoing actions.

11. The Implementing Parties are further hereby authorized and empowered to (a) cause to be filed with the Secretary of State or other applicable officials of any applicable Governmental Units any and all certificates, agreements, or plans of merger, dissolution, liquidation, or amendment consistent with and necessary or appropriate to implement the Plan Transactions, the Plan Documents, and this Order, and (b) amend and restate certificates or articles of incorporation, by-laws, or certificates or articles of amendment and take all such other actions, filings, or cause recordings to be made, as may be required under appropriate provisions of the applicable laws of all applicable Governmental Units. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such Implementing Party to so act. This Order constitutes all authority, if any, required by the General Corporation law of the State of Delaware, as applicable, and all other

applicable business corporation, trust, and other laws of the applicable Governmental Units with respect to the implementation and consummation of the Plan.

12. The Implementing Parties are hereby authorized and empowered to execute and deliver, and the initial Trustees are hereby authorized and empowered to execute and receive, the Trust Agreement and the Trust Documents.

13. All matters provided for under the Plan involving the corporate structure of the Debtor or Reorganized Swan Transportation Company, or any corporate action to be taken by, or required of the Debtor or Reorganized Swan Transportation Company, shall be deemed to have occurred and be effective as provided in the Plan, and shall be authorized and approved in all respects without any requirement for further action by the stockholders or directors of any of such entities. Upon the Confirmation Date, and until the Trust as shareholder shall have elected members of the board of directors of Reorganized Swan Transportation Company, the board of directors of Swan Transportation Company shall be composed of three (3) directors. These three (3) directors of Reorganized Swan Transportation Company, upon the Confirmation Date, shall be James Huoggenard, W.D. Hilton, Jr., and Randall Grooms (the "Directors"). The Directors shall serve until replaced by order of the Court, shareholder action, or the election of a board of directors by the Trust as shareholder, whichever is first. The corporate charter and bylaws of Swan Transportation Company may be amended to permit the board of directors to be composed of a sole director following the Confirmation Date.

14. Except as otherwise expressly provided in the Plan Documents, effective on the Effective Date, Reorganized Swan Transportation Company shall be vested with all of the assets and property of its former Estate, free and clear of all Claims, Liens, charges and other interests

of holders of Claims or Interests and may operate its business free of any restrictions imposed by the Bankruptcy Code or by the Court.

15. Except for those actions which may be compromised and settled or transferred to the Trust pursuant to the Plan and this Order, all actions by the Debtor shall be preserved and retained by the Debtor for enforcement subsequent to the Confirmation of the Plan, and on the Effective Date, such actions shall be assigned to, and vested in, the Reorganized Debtor, which shall be deemed to be a "representative" of the Estate of Swan Transportation Company, without any further action by the Debtor, Swan Transportation Company, the Trust, or the Court.

16. Pursuant to Section 1146(c) of the Bankruptcy Code: (a) the issuance, distribution, transfer, or exchange of Reorganized Swan Transportation Company Common Stock; and (b) the creation, modification, assignment, consolidation, filing or recording of any mortgage, deed of trust, security agreement, or similar instrument; (c) the securing of additional indebtedness by such means or by other means or the additional securing of existing indebtedness by such means or by other means (whether in connection with the execution and delivery of the Trust Agreement or otherwise, in furtherance of, or in connection with, the Plan); (d) the creation, modification, assignment, delivery, filing, or recording of any lease or sublease; or (e) the creation, modification, assignment, delivery, filing, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan Documents, any other agreements or certificates of merger, consolidation, dissolution, or liquidation, deeds, bills of sale, assignments or other instruments of transfer executed in connection with the Plan Documents or this Order, or any transactions arising out of, contemplated by, or in any way related to the foregoing, whether occurring on or after the Effective Date, shall not be subject to any document recording tax, stamp tax, or stamp act, conveyance fee, intangibles or similar tax,

mortgage tax, real estate transfer tax, mortgage recording tax, or any other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall be, and hereby are, directed to forego the collection of any such taxes or governmental assessments and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such taxes of governmental assessments.

B. The Trust

17. On the Confirmation Date, the Trust shall be established in accordance with the Trust Documents. On the Effective Date, all Trust Assets shall be transferred to, vested in, and assumed by the Trust; provided, however, that to the extent that certain Trust Assets, because of their nature or because they will accrue subsequent to the Effective Date, cannot be transferred to, vested in, and assumed by the Trust on the Effective Date, such Trust Assets shall be transferred to, vested in and assumed by the Trust as soon as practicable after the Effective Date. The Trust and the Trustees are hereby authorized and empowered to receive the Trust Assets.

18. The Trust shall assume responsibility and liability for all Tort Claims and Demands against the Debtor, Reorganized Swan Transportation Company, TC, the Estate and their Affiliates and subsidiaries, and such Claims shall be liabilities of the Trust and shall be paid by the Trust pursuant to and in accordance with the CRP.

19. No Entity shall be permitted to execute against or receive distributions from the Trust except in accordance with the terms of the Trust Documents and the Plan.

20. Except as otherwise expressly provided in the Plan Documents and this Order, the transfer to, vesting in, and assumption by the Trust of the Trust Assets as contemplated by the Plan shall, among other things, (1) discharge the Debtor and Reorganized Swan from and in respect of all Claims and Demands, including Tort Claims, and Tort Demands; (2) discharge,

release; and extinguish all obligations and liabilities of the Released Parties from and in respect of all Claims and Demands, including Tort Claims or Tort Demands. The Trust shall assume responsibility and liability for all Claims and Demands, including Tort Claims and Tort Demands, and the Trust shall be responsible and liable for all obligations owed by the Trust.

21. The appointment of the initial Trustees, the Trust Advisory Committee, and the Legal Representative, shall be, and hereby is, approved. Each Trustee, the Trust Advisory Committee Member and the Legal Representative shall be, and hereby is deemed to be, a "party in interest" on and after the Effective Date within the meaning of Section 1109(b) of the *Bankruptcy Code*.

22. After the Effective Date, the rights, duties, and responsibilities of the Legal Representative shall be as set forth in the Plan Documents.

23. After the Effective Date, the rights, duties, and responsibilities of the Trust Advisory Committee shall be as set forth in the Plan Documents.

24. The Trust shall pay all Trust Expenses. The Debtor, Reorganized Swan Transportation Company, any Trust Advisory Committee Member, the Legal Representative, and TC shall have no obligation to pay any Trust Expenses.

25. The terms of the CRP are fair, reasonable and equitable, and they duly preserve the rights of holders of Asbestos Claims, Silica Claims, and Mixed Dust Claims under 28 U.S.C. § 157(e), the *Bankruptcy Code*, and the *Bankruptcy Rules*.

26. As of the Effective Date, the Trust shall be, and hereby is, empowered to initiate, prosecute, defend, and resolve all legal actions and other proceedings related to any asset, liability, or responsibility of the Trust. The Trust shall be, and hereby is, empowered to initiate,

prosecute, defend, and resolve all such actions in the name of Reorganized Swan if deemed necessary or appropriate by the Trustees. The Trust shall be, and hereby is, responsible for the payment of all damages, awards, judgments, settlements, expenses, costs, fees, and other charges incurred subsequent to Confirmation arising from or associated with any legal action or other proceeding which is the subject of the Plan and shall pay or reimburse all deductibles, retrospective premium adjustments, or other charges which may arise from the receipt of insurance proceeds by the Trust. Without in anyway limiting the foregoing, Reorganized Swan and the Trust shall be, and hereby is, empowered to initiate, prosecute, defend, settle, and resolve all Insurance Actions and to maintain, administer, preserve, or pursue the In-Place Insurance Coverage, the Insurance Action Recoveries, and the Insurance Policies.

27. The Debtor's discharge, and the discharge and release of the Released Parties, from all Claims as provided herein shall neither diminish nor impair the enforceability of any of the Insurance Policies. The Trust is, and shall be deemed to be, for all purposes, including but not limited to for purposes of insurance and indemnity, the successor to Swan in respect of Claims and Demands. An Allowed Tort Claim shall be, and be deemed to be, a judgment against the Trust (as successor for all purposes to the liabilities of Swan in respect of Tort Claims) in the Allowed Amount of Such Allowed Tort Claim.

C. Discharge, Releases and Injunctions

1. The Discharge

28. The Debtor, including as reconstituted as the Reorganized Debtor, is hereby DISCHARGED as provided in paragraph 9.1 of the Plan, as modified by the Modifications.

29. All persons and parties are hereby enjoined and prohibited from the commencement or continuation of any action, the employment of process, or any act to collect, recover from, or offset (a) any Claim or Demand, or Interest in the Debtor, Reorganized Swan, or the Trust by any Entity, (b) any Claim, Released Claim, Demand or cause of action, whether known or unknown, against the Settling Insurers, and any Claim, Released Claim, Demand or cause of action, whether known or unknown, against the Settling Insurers, and TC, (c) any Tort Claims, and Tort Demands and any and all Claims arising or in any way relating to Tort Claims or Tort Demands against the Released Parties, and (d) any Claim or Demand for which insurance coverage or defense could have been asserted in good faith by a Released Party against the Settling Insurers, but for the Plan and the related settlement agreements. The Blackburn Plaintiffs, the Howland Plaintiffs and Beard Plaintiffs and the Debtor shall immediately upon the Effective Date dismiss all appeals of cases currently pending with respect to the disputes among them.

30. The Debtor is hereby fully and finally discharged of any liability or obligation on a disallowed Claim or a disallowed Interest, and any order creating a disallowed Claim or a disallowed Interest which is not a Final Order as of the Effective Date solely because of an Entity's right to move for reconsideration of such order pursuant to Section 502 of the Bankruptcy Code or Bankruptcy Rule 3008 is hereby deemed to be a Final Order on the Effective Date. Further, (a) all Claims and Interests not allowable under any provision of section 502 of the Bankruptcy Code, including but not limited to, time-barred Claims and Interests, and Claims for unmatured interests, are hereby disallowed, and (b) all Claims, or portion of Claims for penalties or Non-Compensatory Damages are hereby disallowed and/or subordinated in payment to general unsecured claims.

2. Channeling Injunction (Swan Parties)

31. In order to preserve and promote the settlements contemplated by and provided for in the Plan (including paragraph 9.3(b)) and any agreements previously approved by the Court, and pursuant to the exercise of the equitable jurisdiction and power of the Court under Sections 524(g) and 105(a) of the Bankruptcy Code, all Entities that have held or asserted, which hold or assert, or may in the future hold or assert any Claim or Demand against Swan, TPI of Texas, Inc., Tyler Sand Company, and/or TC, and each of their respective predecessors and purchasers, all past or future purchasers of the stock or substantially all of the assets of Swan TPI of Texas, Inc., and/or Tyler Sand, and these entities, if any, and each of their officers and directors⁴ (collectively the "Swan Parties"), which Claim or Demand is based upon, relating to, arising out of, or in any way connected with (i) Swan, (ii) the Tyler Pipe Foundry, regardless of whether such Claim arises or is related to, in whole or part, during, prior to, or after the time period when Swan's subsidiary owned and/or operated such Tyler Pipe Foundry, or (iii) TPI of Texas, Inc., Tyler Sand Company, or TC's involvement with, or ownership, supervision, or control of the Tyler Pipe Foundry are hereby permanently stayed, restrained, and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering, or receiving payments satisfaction, or recovery with respect to any such Claim, Demand, or cause of action, including, but not limited to:

(a) commencing or continuing, in any manner, any action or other proceeding of any kind with respect to any such Claim, Demand, or cause of action against the Swan Parties, or against the property of the Swan Parties, with respect to any such Claim or Demand;

⁴ Neither the Plan nor this Order discharge or release officers and directors of the Swan Parties from non-Tort Claims or non-Tort Demands.

(b) enforcing, attaching, collecting, or recovering by any manner or means, any judgment, award, decree or order against the Swan Parties or against the property of the Swan Parties with respect to any such Claim or Demand;

(c) creating, perfecting, or enforcing any lien of any kind against the Swan Parties, or the property of the Swan Parties with respect to any such Claim or Demand;

(d) asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, or recoupment of any kind against any obligation due the Swan Parties or against the property of the Swan Parties with respect to any such Claim or Demand; and

(e) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with the provisions of the confirmed Plan and the documents executed incident thereto, relating to such Claim of Demand.

Notwithstanding anything to the contrary in this Order, the Channeling Injunction (Swan Parties) shall not enjoin, release or discharge:

(a) the rights of entities to the treatment accorded them under the Plan, specifically the rights of entities with a Claim or Demand to assert such Claim or Demand against the trust established pursuant to the Plan;

(b) the rights of entities to assert any Claim or Demand for payment of Trust Expenses against the trust established by the Plan;

(c) the rights of the Trust and any Reorganized Swan to prosecute any insurance action against a Non-Settling Insurance Company;

(d) the rights of the Trust and Reorganized Swan to assert any Claim, Demand, debt, obligation, or liability for payment against a Non-Settling Insurance Company;

(e) the rights of TC, and/or its affiliates to assert any Claim, Demand, debt, obligation, or liability for payment against the Settling Insurance Companies and any other insurance company with respect to any Claim, Demand, obligation, or liability which is asserted against TC, and/or its affiliates, but only to the extent that the Channeling Injunction (Swan Parties) is inapplicable or ineffective to bear such Claim, Demand, debt, obligation, or liability against TC, and its affiliates;

(f) the rights of any Settling Insurance Companies to assert any Claim, Demand, debt, obligation, or liability against Reorganized Swan and/or TC or its affiliates for breaches of the Settlement Agreements by and among the Swan Parties and the Settling Insurance Companies or the rights of the Settling Insurance Companies to enforce that agreement against Reorganized Swan and/or TC or its affiliates.

32. The Channeling Injunction (Swan Parties) may be revoked by the Bankruptcy Court, after notice and opportunity for hearing, as to TC if TC fails to pay the cash consideration required under the TC Contribution Agreement, after the Confirmation Order becomes a Final Order.

3. Channeling Injunction (Settling Insurers)

(a) In order to preserve and promote the property of the estate, as well as the settlements contemplated and provided for in the Plan (including paragraph 9.3(a)), and to supplement, where necessary, the injunctive effect of the discharge and releases detailed herein, and pursuant to the exercise of the equitable jurisdiction and power of the court under Section 105(a) of the Bankruptcy Code, notwithstanding any other provision of this Order or of the Plan, all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert any Claim or Demand against the Settling Insurance Companies based upon, relating to, arising out of, or in any way connected with (i) Swan, (ii) the Tyler Pipe Foundry, regardless of whether such Claim arises, in whole or part, during, prior to, or after the period when Swan's subsidiary owned and/or operated the Tyler Pipe Foundry, (iii) TPI of Texas, Inc., Tyler Sand Company, or TC's involvement with, or ownership, supervision or control of the Tyler Pipe Foundry, or (iv) any insurance coverage that may apply to (i), (ii), or (iii) whenever and wherever arisen or asserted, are hereby permanently stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfactions, or recovery with respect to any such Claim, Demand, or cause of action, against the Settling Insurance Companies, including but not limited to:

(a) commencing or continuing, in any manner, any action or other proceeding of any kind with respect to any such Claim, Demand, or cause of action against the Settling Insurance Companies, or against the property of any of the Settling

Insurance Companies, with respect to any such Claim, Demand, or cause of Action;

(b) enforcing, attaching, collecting, or recovering, by any manner or means, any judgment, award, decree, or order against the Settling Insurance Companies or against the property of the Settling Insurance Companies with respect to any such Claim, Demand or cause of action;

(c) creating perfecting or enforcing any lien of any kind against the Settling Insurance Companies or the property of the Settling Insurance Companies with respect to any such Claim, Demand, or cause of action;

(d) asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, or recoupment of any kind against any obligation due the Settling Insurance Companies with respect to any such Claim, Demand, or cause of action; and

(e) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with the provisions of the confirmed Plan, and the documents executed incident thereto, relating to such Claim, Demand, or cause of action.

Notwithstanding anything to contrary contained herein, the Channeling Injunction (Settling Insurers) shall not enjoin, release or discharge:

(a) the rights of entities to the treatment accorded to them under the Plan, specifically the rights of entities with Claims to assert such Claims against the Trust in accordance with the Plan;

(b) the rights of entities to assert any Claim, debt, obligation or liability for payment of Trust expenses against the Trust;

(c) the rights of the Trust and Reorganized Swan to prosecute any insurance action against any Non-Settling Insurance Company;

(d) the rights of the Trust and Reorganized Swan to assert any Claim, debt, obligation, or liability for payment against, a Non-Settling Insurance Company;

(e) the rights of TC and/or its affiliates to assert any Claim, debt, obligation, or liability for payment against the Settling Insurance Companies and any other insurance company with respect to any Claim, debt, obligation, or liability which is asserted against TC and/or its affiliates, but only to the extent that the Channeling Injunction (Swan Parties) is inapplicable or ineffective to bar such Claim, debt, obligation, or liability against TC and its affiliates;

(f) the rights of Reorganized Swan and/or TC, or its affiliates to assert any debt, obligation, or liability against the Settling Insurance Companies for breaches of

one or more of the Settlement Agreements by and among Swan and/or TC and the Settling Insurance Companies or the rights of Reorganized Swan and/or TC, or its affiliates to enforce that agreement against the Settling Insurance Companies.

The Channeling Injunction (Settling Insurers) may be revoked by the Bankruptcy Court, after notice and opportunity for a hearing, as to any Settling Insurance Company that fails to pay the cash consideration required under such respective Settling Insurer's settlement agreement after the Confirmation Order becomes a Final Order.

4. Continuation of Prior Stays and Injunctions

33. All of the injunctions and/or automatic stays provided for in or in connection with the Reorganized Case pursuant to Bankruptcy Code section 362 or other applicable law, in existence immediately prior to Confirmation are hereby decreed to remain in full force and effect until the Injunctions become effective, and thereafter if so provided by the Plan, this Order or by their own terms.

34. The Discharge Injunction, the Channeling Injunction (Swan Parties) and the Channeling Injunction (Settling Insurers) shall become effective on the Effective Date and shall continue in effect at all times thereafter.

35. Notwithstanding anything to the contrary contained in the Plan, all actions in the nature of those to be enjoined by the Discharge Injunction, the Channeling Injunction (Swan Parties) and the Channeling Injunction (Settling Insurers) are hereby enjoined during the period between the Confirmation Date and the Effective Date.

5. Exoneration

36. The Protected Parties shall not be liable, other than for willful misconduct or gross negligence, to any holder of a Claim or Interest or any other Entity with respect to any

action, omission, forbearance from action, decision, or exercise of discretion taken in connection with: (a) the management or operation of the Debtor, Reorganized Swan, or the discharge of their duties under the Bankruptcy Code, from the Petition Date through and including the Effective Date, (b) the implementation of any of the transactions provided for, or contemplated in, the Plan and related documents, (c) any action taken in connection with either the enforcement of the Debtor's rights against any Entities or the defense of Claims asserted against the Debtor with regard to the Reorganization Case, (d) any action taken in the negotiation, formulation, development, proposal, disclosure, confirmation, or implementation of the (i) Plan or any related documents filed in this Reorganization Case, (ii) the settlement, estimation, or determination of Claims or Demands, or the manner in which such Claims or Demands shall be paid or (e) the administration of the Plan or the Trust or the assets and property to be distributed pursuant to the Plan. The Protected Parties may reasonably rely upon the opinions of their respective counsel, accountants, and other experts or professionals and such reliance, if reasonable, shall conclusively establish good faith and the absence of willful misconduct.

37. The Debtor, the Committee, the Legal Representative, and each of their respective employees, agents, and professionals, and all other Entities that participated in the formulation, negotiation, solicitation, approval, and confirmation of the Plan shall be and hereby are entitled to the rights, benefits and protections of Section 1125(e) of the Bankruptcy Code.

38. The Debtor shall not be liable, on account of any solicitation of acceptances of the Plan, or participation in good faith and in compliance with the applicable provisions of the Bankruptcy Code, in the offer, issuance, sale, or purchase of a security, offered or sold under the Plan, for violation of any applicable law, rule, or regulation governing solicitation of acceptance

or rejection of a plan or the offer, issuance, sale, or purchase of securities pursuant to the express terms of Section 1125(e) of the Bankruptcy Code.

39. On the Effective Date, the Committee shall be dissolved and the release and discharge of the Committee and its members as provided in paragraph 12.5 of the Plan is hereby approved and confirmed.

6. General Provisions

40. The satisfaction, release, and discharge, as well as the injunctions (including, but not limited to, the Injunctions) set forth herein shall not serve to satisfy, discharge, release, or enjoin claims by the Trust, Reorganized Swan, TC, or any other Entity, as the case may be, against (a) the Trust for payment of Asbestos Claims, Silica Claims, or Mixed Dust Claims in accordance with the CRP, (b) the Trust for the payment of Trust Expenses or (c) Reorganized Swan, the Trust, or any other Entity, pursuant to the terms of the TC Contribution Agreement.

41. The Debtor, Reorganized Swan, TC, the Committee, the Trust Advisory Committee and/or its members, and the Legal Representative do not, pursuant to the Plan or otherwise, assume, agree to perform, pay, or indemnify creditors or otherwise have any responsibilities for any liabilities or obligations of the Debtor relating to or arising out of the operations of or assets of the Debtor, whether arising prior to, on, or after the Confirmation Date. Neither the Debtor, Reorganized Swan, TC, nor the Trust is, or shall be, a successor to the Debtor by reason of any theory of law or equity, and none shall have any successor liability to the Debtor by reason of any theory of law or equity, and none shall have any successor or transferee liability of any kind or character, except that Reorganized Swan and the Trust shall assume the obligations specified in the Plan and this Order.

D. Tax Claims

42. Any Claim of a taxing authority against the Debtor or Reorganized Swan for taxes, penalties, interest, additions to tax or other charges arising out of the failure, if any, of the Debtor, TC or any other Entity to have paid tax or to have filed any tax return (including, but not limited to, any income tax return or franchise tax return) in or for any prior year or arising out of an audit of any return for a period before the Petition Date for which a proof of claim was not filed prior to the bar date is hereby disallowed.

E. Executory Contracts

43. The Court approves and confirms the rejections of executory contracts and unexpired leases as provided in the Plan.

44. The Court shall determine the dollar amount, if any, of the Claim of any Entity seeking damages by reason of the rejection of any executory contract or unexpired lease; provided, however, that such Entity must file a Proof of Claim with the Court before thirty calendar days following the Effective Date. To the extent any such Claim is Allowed by the Court by Final Order, such Claim shall become, and shall be treated for all purposes under the Plan, as a Class 4 Claim, or if the Claim is an Asbestos Claim, Silica Claim, or Mixed Dust Claim, a Class 3 Claim, and the holder thereof shall receive distributions as a holder of an Allowed Claim in such Class pursuant to the Plan. The Debtor shall notify those Entities that may assert a claim for damages from the rejection of an executory contract or unexpired lease of this bar date for filing a Proof of Claim in connection therewith.

45. The Court hereby approves and confirms the Debtor's assumption of those executory contracts and unexpired leases listed on Exhibit 4 to the Plan. Additionally, the Court

hereby approves and confirms all insurance policies under which the Debtor is an insured party shall be deemed assumed as of the Effective Date.

46. In addition to the foregoing executory contracts, the Indemnity Agreements between National Union Fire Insurance Company of Pittsburgh, PA and any of the Swan Parties relating to policies under which the Debtor is an insured party shall be deemed assumed as of the Effective Date.

F. Administrative Claims Bar Date

47. The Administrative Claims Bar Date shall be, and hereby is made, the first Business Day after thirty days after the Effective Date or such other date as the Court may order. Claimants holding Administrative Claims against the Debtor not paid on the Effective Date may submit a Request for Payment of Administrative Expense on or before such bar date. The notice of Confirmation to be delivered pursuant to Bankruptcy Rules 2002 and 3020(c) shall set forth such date and constitute notice of the Administrative Claims Bar Date. The Debtor and any other party in interest shall have thirty days after the Administrative Claims Bar Date to review and object to such Claims before a hearing for determination of such Administrative Claim is held by the Court, provided that such thirty day period of review may be extended by the Court upon the request of the Debtor or other parties-in-interest.

G. Unsecured Claims Bar Date

48. The Unsecured Claims Bar Date established by Order of this Court dated September 20, 2002, was December 18, 2002.

H. Corporate Governance

49. This Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state or any other governmental authority with respect to the implementation or consummation of the Plan and any other documents, instruments, or agreements, and any amendments or modifications thereto, any other acts referred to in or contemplated by the Plan Documents and any other acts that may be necessary or appropriate for the implementation or consummation of the Plan.

I. Approval of Certain Settlements

50. Swan and The Hartford have entered into the settlement agreement listed on Exhibit 4 to the Plan ("The Hartford Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against The Hartford, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that The Hartford Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

51. Swan and National Surety have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "National Surety Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against National Surety, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the National Surety Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its

creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

52. Swan and Republic Insurance Company have entered into the settlement agreements listed on Exhibit 4 to the Plan (the "Republic Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against Republic, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the Republic Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

53. Swan and U.S. Fire have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "U.S. Fire Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against U.S. Fire, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the U.S. Fire Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

54. Swan and Old Republic have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "Old Republic Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against Old Republic, the complexity

of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the Old Republic Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

55. Swan and Travelers have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "Travelers Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against Travelers, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the Travelers Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

56. Swan and ACE have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "ACE Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against ACE, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the ACE Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is,

assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

57. Swan and Allstate have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "Allstate Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against Allstate, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the Allstate Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

58. Swan and CGU have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "CGU Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against CGU, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the CGU Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

59. Swan and The Home have entered into the settlement agreement listed on Exhibit 4 to the Plan ("The Home Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against The Home, the complexity of the litigation, expense,

inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that The Home Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

60. Swan and Kemper have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "Kemper Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against Kemper, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the Kemper Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

61. Swan and Atlantic Mutual have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "Atlantic Mutual Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against Atlantic Mutual, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the Atlantic Mutual Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its

creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

62. Swan and Bellefonte have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "Bellefonte Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against Bellefonte, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the Bellefonte Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

63. Swan and Zurich have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "Zurich Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against Zurich, the complexity of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was as product of arm's length negotiations and was entered into in good faith, the Court has concluded that the Zurich Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

64. Swan and Appalachian have entered into the settlement agreement listed on Exhibit 4 to the Plan (the "Appalachian Settlement Agreement"). After considering the probability of success of the claims that Swan has brought against Appalachian, the complexity

of the litigation, expense, inconvenience, and delay attending to the litigation; the interests of creditors; and whether the settlement was a product of arm's length negotiations and was entered into in good faith, the Court has concluded that the Appalachian Settlement Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107 and Bankruptcy Rule 9019.

65. Swan and TC have entered into that Contribution Agreement listed on Exhibit 4 to the Plan (the "TC Contribution Agreement"). After full consideration of the claims and potential claims between TC and Swan, the complexity of litigation, and the expense, inconvenience, and delay attending to litigation; the interests of creditors; and whether the Contribution Agreement was a product of arm's length negotiations and was entered into in good faith, the Court has concluded that the TC Contribution Agreement is fair, equitable, and reasonable, is in the best interests of Swan's estate and its creditors, and should therefore be, and hereby is, assumed and in all respects approved pursuant to 11 U.S.C. §§ 105, 363, 365, 541, and 1107.

J. Jurisdiction

66. Until the Reorganization Case is closed, the Court shall and hereby does retain the fullest and most extensive jurisdiction permissible, including that necessary to ensure that the purposes and intent of the Plan are carried out. Except as otherwise expressly provided in the Plan, the Court shall and hereby does retain jurisdiction to hear and determine all Claims against and Interests in the Debtor, and to adjudicate and enforce all other causes of action which may exist on behalf of the Debtor. Nothing contained herein shall prevent the Debtor, Reorganized Swan, or the Trust from taking such action as may be necessary in the enforcement of any cause

of action which the Debtor has or may have and which may not have been enforced or prosecuted by the Debtor, which cause of action shall survive Confirmation of Plan and shall not be affected thereby except as specifically provided herein or in the Plan.

67. Following Confirmation of the Plan, the administration of the Reorganization Case will continue at least until the completion of the transfers contemplated to be accomplished on the Effective Date. Moreover, the Trust shall be subject to the continuing jurisdiction of the Court in accordance with the requirements of Section 468B of the IRC and the regulations issued pursuant thereto. The Court shall and hereby does also retain jurisdiction for the purpose of classification of any Claim and the re-examination of Claims which have been Allowed for purposes of voting, and the determination of such objections as may be filed with the Court with respect to any Claim. The failure by the Debtor to object to, or examine, any Claim for the purposes of voting, shall not be deemed a waiver of the right of the Debtor, Reorganized Swan, or the Trust, as the case may be, to object to or re-examine such Claim in whole or part.

68. In addition to the foregoing, the Court shall and hereby does retain jurisdiction for the following specific purposes after Confirmation of the Plan;

(a) to modify the Plan after Confirmation, pursuant to the provisions of the Bankruptcy Code and the Bankruptcy Rules;

(b) to correct any defect, cure any omission, reconcile any inconsistency, or make any other necessary changes or modifications in or to the Plan, the Trust Documents, or this Order as may be necessary to carry out the purposes and intent of the Plan, including the adjustment of the date(s) of performance under the Plan Documents in the event the Effective Date does not occur as provided herein so that the intended effect of the Plan may be substantially realized thereby;

(c) to assure the performance by the Disbursing Agent and the Trust of their respective obligations to make distributions under the Plan;

(d) to enforce and interpret the terms and conditions of the Plan documents;

(e) to enter such orders or judgments, including, but not limited to, injunctions (i) as are necessary to enforce the title, rights, and powers of the Debtor, Reorganized Swan, and the Trust, and (ii) as are necessary to enable holders of Claims to pursue their rights against any Entity that may be liable therefore pursuant to applicable laws or otherwise, including, but not limited to, orders of the Court;

(f) to hear and determine any motions or contested matters involving taxes, tax refunds, tax attributes, tax benefits, and similar or related matters with respect to the Debtor, Reorganized Swan, or the Trust arising on or prior to the Effective Date, arising on account of transactions contemplated by the Plan Documents, or relating to the period of administration of the Reorganization Case;

(g) to hear and determine all applications for compensation of professionals and reimbursement of expenses under Sections 330, 331 or 503(b) of the Bankruptcy Code;

(h) to hear and determine any causes of action arising during the period from the Petition Date through the Effective Date;

(i) to hear and determine any cause of action in any way related to the Plan Documents or the transactions contemplated thereby, against the Debtor, Reorganized Swan, TC, the Committee, the TA, the Trust, the Trustees, or the Legal Representative and their

respective officers, directors, stockholders, employees, members, attorneys, accountants, financial advisors, representatives, and agents;

(j) to hear and determine any and all motions pending as of Confirmation for the rejection, assumption, or assignment of executory contracts or unexpired leases and the allowance of any Claim resulting therefrom;

(k) to hear and determine such other matters and for such other purposes as may be provided herein;

(l) to consider and act on the compromise and settlement of any Claim against or Interest in the Debtor or its Estate, including, without limitation, any disputes relating to the Administrative Claims Bar Date and the Unsecured Claims Bar Date;

(m) to hear and determine all questions and disputes regarding title to the assets of the Debtor, its Estate, or the Trust;

(n) to hear and determine any other matters related hereto, including the implementation and enforcement of all orders entered by the Court in this Reorganization Case;

(o) to retain continuing jurisdiction with regard to the Trust sufficient to satisfy the requirements of Treas. Reg. Section 1.468B-1(c)(1);

(p) to hear and determine any and all applications brought by the Trustees to amend, modify, alter, or respect any provision of the Trust Agreement or the CRP, pursuant to Section 7.3 of the Trust Agreement or Section 7.1 of the Claims Resolution procedures, respectively, and;

(q) to enter such orders as are necessary to implement and enforce the Injunctions and the other injunctions described herein, including, without limitation, orders extending the protections afforded by Section 524(g) to Settling Insurance Companies and the Swan Parties.

K. Miscellaneous

69. In addition to any other conditions to effectiveness of this Plan, the Effective Date shall not occur prior to the Debtor obtaining a private letter ruling from the Internal Revenue Service that the Trust is a "qualified settlement fund" within the meaning of section 468B of the Internal Revenue Code; provided, however, that this condition to effectiveness may be waived by the Debtor with the written consent of TC, the Committee and the Legal Representative.

70. The Court hereby approves and fixes the Initial Payment Percentage Sum at twenty-one percent (21%).

71. The two stipulations and orders, dated December 2, 2002, among National Union Fire Insurance of Pittsburgh, PA, the Debtor, the Official Unsecured Creditors' Committee, the Trust, and the Legal Representative are hereby approved and incorporated by reference and made part of this Order. In the event anything in this Order conflicts with the terms of those certain stipulations by and between the Debtor and National Union Fire Insurance Company of Pittsburgh, PA, approved by order of this Court entered on March 7, 2003, the terms of the stipulation shall control.

72. The Modifications to the Plan filed by the Debtor on December 5, 2002 and December 9, 2002 are hereby approved and made a part of the Plan.

73. Except as otherwise expressly provided in the Plan or otherwise Allowed by Final Order of the Court, no interest, penalty, or late charge arising after the Petition Date shall be Allowed on any Claim or Interest.

74. Any portion of an Allowed Asbestos Claim, Allowed Silica Claim, or Allowed Mixed Dust Claim which constitutes Non-Compensatory Damages shall be and hereby is subordinated to payment in full of other Allowed Asbestos Claims, Allowed Silica Claim, or Allowed Mixed Dust Claim in accordance with the terms of the CRP.

75. No attorneys' fees, Non-Compensatory Damages, penalties, or interest shall be paid with respect to any Claim or Interest except as Allowed by a Final Order of the Court or in accordance with the terms of the CRP.


76. Subject to the limitations provided in Section 553 of the Bankruptcy Code, the Debtor or the Trust, as applicable, may, but shall not be required to, setoff against any Claim and the payments or other distributions to be made pursuant to the Plan in respect of such Claims, claims of any nature whatsoever the Debtor may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor of any such claim that the Debtor may have against such holder.

L. Notice

77. Counsel for the Debtor shall serve forthwith notice of entry of this Order on the parties who were served with notice of the Debtor's Plan and Disclosure Statement no later than twenty (20) days after entry of this order and file a Certificate of Compliance with the Clerk of the Court.

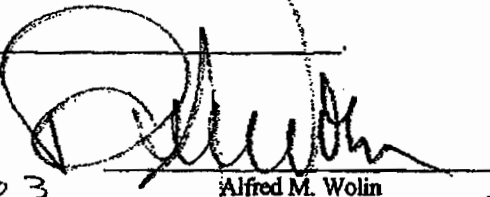
78. The Debtor shall serve any notice of the entry of any Order by the Court related to this Order upon all holders of Claims or Interests and on such other parties in interest who were served with notice by mail of the Confirmation Hearing no later than twenty (20) days after entry of this order, which shall constitute notice to such Entities of all matters and deadlines set forth herein, including notice of the last day for filing Administrative Claims, claims arising from the rejection of executory contracts, and applications for allowances of compensation and/or reimbursement of expenses, pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c).

ORDERED in Wilmington, Delaware on _____


Judith K. Fitzgerald
Chief United States Bankruptcy Judge
In the Western District of Pennsylvania

5/30/03

Sitting in the United States Bankruptcy Court
for the District of Delaware
By Special Designation and Order
Of the United States Court of Appeals
For the Third Circuit



Alfred M. Wolin
United States District Judge
In the District of New Jersey

7-21-03

Sitting in the United States District Court
for the District of Delaware
By Special Designation and Order
Of the United States Court of Appeals
For the Third Circuit

(Signed by Bankruptcy Judge and Original Transmitted to Judge Wolin)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

Bench Filed
on 11/17/03

In re: : Chapter 11
: :
SWAN TRANSPORTATION COMPANY, : Case No. 01-11690-JKF
: :
Debtor. : :

**ORDER GRANTING MOTION TO CORRECT SCRIVENER'S ERROR IN THE
ORDER CONFIRMING THE PLAN OF REORGANIZATION FOR SWAN
TRANSPORTION COMPANY AND TO MAKE NON-MATERIAL MODIFICATIONS
TO THE PLAN**

CAME ON FOR CONSIDERATION the Motion to Correct Scrivener's Error in the Order Confirming the Plan of Reorganization for Swan Transportation Company and to Make Non-material Modifications to the Plan (the "Motion"), and having considered the Motion and finding that no objections were filed to the Motion, the Court finds as follows:

This Court has retained jurisdiction to, inter alia, correct any defect, cure any omission, reconcile any differences, or make any other necessary changes or make any other additions or modifications in or to the Confirmation Order and the Plan that are necessary to carry out the purposes of the Plan and to make any modifications to the Plan necessary to meet Internal Revenue Service requirements for the Trust to be ruled a "qualified settlement fund" within the meaning of § 468B of the Internal Revenue Code;

The proposed non-material amendments to the Confirmation Order will correct inadvertent scrivener's error in the Confirmation Order and reconcile differences between provisions of the Confirmation Order ;

The proposed non-material amendments to the Plan will satisfy concerns of the Internal Revenue Service over the status of the Trust as a qualified settlement fund and will enable the purposes and intent of the Plan to be carried out;

The amendments to the Confirmation Order and the Plan are necessary to carry out the purposes of the Plan;

accordingly, it is

ORDERED that the Motion is GRANTED and the Confirmation Order is amended to replace second subparagraph (e) of the Channeling Injunction (Swan Parties) (Confirmation Order at 12, ¶31) with the following language:

(e) the rights of TC and/or its affiliates to assert any Claim, Demand, debt, obligation or liability for payment against the Settling Insurance Companies and any other insurance company with respect to any Claim, Demand, obligation, or liability which is asserted against TC, and/or its affiliates, but only to the extent that the Channeling Injunction (Swan Parties) is judicially determined to be inapplicable or ineffective to bear such Claim, Demand, debt obligation or liability against TC, and its affiliates; however, this section (e) does not apply to the following Settling Insurers: National Surety, Old Republic, The Hartford, Republic, Travelers U.S. Fire, or to any other insurance company that becomes a Settling Insurer and that is similarly exempted by Bankruptcy Court Order from the application of this section (e);

It is further ORDERED that the court amend the Confirmation Order to insert the following footnote after the phrase "The Hartford" in the above paragraph:

For the purposes of the Channeling Injunction (Swan Parties) the term "The Hartford" shall have the definition afforded to the term under the settlement agreement between Swan and The Hartford approved by the Court in this Confirmation Order.

It is Further ORDERED that the Court replace second subparagraph (c) of the Channeling Injunction (Settling Insurers) (Confirmation Order at 14, ¶32) with the following language:

(e) the rights of TC and/or its affiliates to assert any Claim, Demand, debt, obligation or liability for payment against the Settling Insurance Companies and any other insurance company with respect to any Claim, Demand, obligation, or liability which is asserted against TC, and/or its affiliates, but only to the extent that the Channeling Injunction (Swan Parties) is judicially determined to be inapplicable or ineffective to bear such Claim, Demand, debt obligation or liability against TC, and its affiliates; however, this section (e) does not apply to the following Settling Insurers: National Surety, Old Republic, The Hartford, Republic, Travelers U.S. Fire, or to any other insurance company that becomes a Settling Insurer and that is similarly exempted by Bankruptcy Court Order from the application of this section (e);

It is further ORDERED that the court amend the Confirmation Order to insert the following footnote after the phrase "Settling Insurance Companies" in the first paragraph of § C.3(a) (Confirmation Order at 13, ¶ 32):

For the purposes of the Channeling Injunction (Settling Insurers) the term "Settling Insurance Companies" includes The Hartford, which term shall have the definition afforded to it under the settlement agreement between Swan and The Hartford approved by the Court in this Confirmation Order.

It is further ORDERED that the current language in § 3.2(d) of the Plan be replaced with the following language:

All Unsecured Claims other than Tort Claims against Swan shall receive, on the Effective Date, from the sum of \$125,000 retained by Swan in a segregated account, their pro rata share of \$125,000 or such lesser amount as needed for payment in full without interest. Any portion of this sum remaining after all such claims have been paid in full without interest shall be transferred to the Trust. The Debtor believes that this Class is unimpaired; however, the Class may be impaired depending on the dollar amount of claims ultimately allowed in this Class.

It is further ORDERED that, in § 4.1 of the Plan, the term "Unsecured Claims (including Tort Claims)" be replaced with the term "Tort Claims."

It is further ORDERED that, in § 4.1 of the Plan, the term "Allowed Unsecured Claims" be replaced with the term "Tort Claims."

It is further ORDERED that, in § 4.1 of the Plan, the term "Unsecured Claims" be replaced with the term "Tort Claims."

It is further ORDERED that, in § 4.3 of the Plan, the phrase "(other than Class 4 Claims)" be inserted after the words "responsibility and liability for all Claims and Demands" in the final sentence.

It is further ORDERED that, in § 8.1 of the Plan, the term "Unsecured Claims including Tort Claims" be replaced with the term "Tort Claims."


It is further ORDERED that, in § 8.1 of the Plan, the term "Swan's Unsecured Claims" be replaced with the term "Swan's Tort Claims."

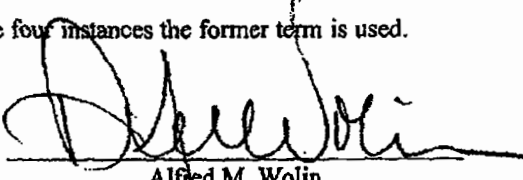
It is further ORDERED that, in § 9.4 of the Plan, the phrase "or (b) the Trust for the payment of Trust Expenses" be replaced with the phrase "(b) the Trust for the payment of Trust Expenses or (c) Reorganized Swan for payment of Class 4 Claims."

It is further ORDERED that, in § 11.1(a) of the Plan, the term "Unsecured Claims" be replaced with the term "Tort Claims."

It is further ORDERED that, in § 11.1(b) of the Plan, the term "Unsecured Claims" be replaced with the term "Tort Claims" in each of the four instances the former term is used.

ORDERED in Wilmington, Delaware.


Judith K. Fitzgerald
Chief United States Bankruptcy Judge in the
Western District of Pennsylvania


Alfred M. Wolin
United States District Judge in the District of
New Jersey

Sitting in the United States Bankruptcy Court
for the District of Delaware by Special
Designation and Order of the United States
Court of Appeals for the Third Circuit

Sitting in the United States District Court for
the District of Delaware by Special
Designation and Order of the United States
Court of Appeals for the Third Circuit

11/17/03
Date

NOVEMBER 20, 2003
Date

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: §
SWAN TRANSPORTATION COMPANY, §
Debtor. §
CASE NO. 01-11690 (JKF)
Chapter 11

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE FOR SWAN TRANSPORTATION COMPANY

Swan Transportation Company ("Swan" or the "Debtor") having proposed and filed, on September 17, 2002, with the approval and consent of the Legal Representative for Unknown Asbestos Claimants (the "Legal Representative"), the Official Committee of Unsecured Creditors (the "Committee"), and Tyler Technologies, Inc. ("TC"), the Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code for Swan Transportation Company dated September 17, 2002 (the "Plan")¹; the Court having presided over the proceedings regarding the confirmation of the Plan in Case No. 01-11690 (JKF); the Court having reviewed the Plan, the Disclosure Statement, all pleadings filed in connection with the confirmation of the Plan and all objections to confirmation of the Plan and the stipulation and other agreements resolving those objections; the Court having considered the statements and arguments of counsel in support of the confirmation of the Plan presented at a hearing before the Court held on December 9, 2002

¹ Capitalized terms used in these Findings and Conclusions shall have the meanings ascribed to them in the Glossary of Terms for the Plan Documents Pursuant to the Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code for Swan Transportation Company (the "Glossary"), unless otherwise indicated or defined in the Order Approving the Disclosure Statement and Confirming the Plan of Reorganization for Swan Transportation Company (the "Confirmation Order") or herein. Any capitalized term used in these Findings and Conclusions that is not defined herein nor defined in the Plan, but that is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to such term in the Bankruptcy Code or the Bankruptcy Rules. Such meanings shall be equally applicable to both the singular and the plural forms of such terms. The term "Plan" shall hereinafter refer to the Plan as modified by the Technical Modifications to the Plan filed by Debtor on December 5, 2002 and December 9, 2002.

(the "Hearing"); the Court having considered all testimony presented and evidence admitted at the Hearing; and the Court finding that (a) notice of the Confirmation Hearing and the opportunity of any party in interest to object to or to otherwise be heard with respect to Confirmation of the Plan was reasonable, adequate and sufficient, in accordance with applicable law including, but not limited to, Sections 105 and 524(g) of the Bankruptcy Code and Bankruptcy Rules 2002(b) and 9006, as to all parties to be affected by the Plan and the transactions contemplated thereby, and (b) the legal and factual bases presented at the Hearing establish sufficient cause for the relief granted in the Confirmation Order, the Court hereby makes the following Findings of Fact and Conclusions of Law.²

A. Findings Of Fact

1. Background

1. On December 20, 2001 (the "Petition Date"), Swan filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

2. No trustee or examiner has been appointed in the Reorganization Case. The Debtor has continued to operate its business and manage its property as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. The Debtor, a Delaware Corporation, was originally formed under the name Tyler Pipe Industries, Inc. From the date of its incorporation until 1973, the Debtor was a wholly owned subsidiary of Tyler Pipe, which itself was a wholly owned subsidiary of TC. In 1973, TC consummated an internal corporate reorganization under which Tyler Pipe transferred certain of its assets to the Debtor, Tyler Pipe transferred the stock of the Debtor to TC, and then

² These Findings and Conclusions constitute the Court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rules 7052 and 9014. Any finding of fact shall constitute a finding of fact even if it is stated as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is stated as a finding of fact.

TC transferred the stock of Tyler Pipe to the Debtor. Following this reorganization, Tyler Pipe was a wholly owned subsidiary of the Debtor and the Debtor was a wholly owned subsidiary of TC. In 1981, Tyler Sand was formed as a wholly owned subsidiary of Tyler Pipe. Tyler Sand sold sand to Tyler Pipe. In December 1992, TC consummated a second internal corporate reorganization, which resulted in the Debtor transferring the assets of Tyler Pipe to a new corporation, New TPI, Inc., and subsequently effecting a spin off of the new entity by giving the shares of the new entity, which thereafter changed its name to Tyler Pipe Industries, Inc., to TC. In 1995, TC sold all of the Debtor's stock and all of the assets of Tyler Pipe Industries, Inc. to an unrelated third party and Tyler Sand was dissolved. Subsequent to the sale, TC agreed to repurchase the shares of the Debtor from the buyer and therefore Swan remains a wholly owned subsidiary of TC. Since December 1995, however, the Debtor has not conducted any operations or owned any assets, other than various insurance policies issued to Swan and other related entities.

2. Development of the Plan and The Disclosure Statement

4. The Plan Documents, including without limitation, the CRP, are the product of the negotiations between the Swan Parties, the Ad Hoc Committee, the Committee, the Legal Representative, TC, and the Settling Insurers and as such they represent a non-collusive settlement among the parties.

3. Development of the TC Settlement

5. The Court finds that the Released Claims that could be brought against the Swan Parties, including TC or TC's affiliate or subsidiary corporations, and the Settling Insurance Companies are appropriate for compromise and settlement and appropriately enjoined as provided in the Confirmation Order.

6. The Court finds that the TC Contribution Agreement is the product of arm's length bargaining by and between TC, Swan, the Ad Hoc Committee, and the Legal Representative, and was entered into in good faith by all such parties and is non-collusive.

7. The Court finds that Swan and TC are receiving the consideration that they are to receive under the Plan and the TC Contribution Agreement in good faith.

4. Notice of Certain Matters Relating to the Reorganization Case

8. By order dated January 17, 2002, the Court authorized the retention of Lain, Faulkner & Co., P.C. ("Lain Faulkner") as Claims, Noticing and Balloting Agent in this bankruptcy case.

9. On January 31, 2002, Merrill Corporation, under the supervision of Lain Faulkner, served the Notice of Commencement of Case, Meeting of Creditors, and Fixing of Certain Dates on all creditors listed on the creditors' matrix filed in this case. Lain Faulkner properly and timely fulfilled all of its duties in accordance with applicable orders of the Court.

10. Notice of the Hearing on the Approval of the Disclosure Statement and the Deadline to File Objections thereto was provided by Lain Faulkner to all parties entitled to receive such notice.

11. Notice of the Confirmation Hearing and the Deadline to File Objections and/or Votes on the Plan was provided by Lain Faulkner, by mail, to all known Claimants, all former employees of the Tyler Pipe Foundry, the Legal Representative, all of Swan's Interest Holders, and all parties requesting notice. The Court finds that such notice satisfies the requirements of the Federal and Local Rules of Bankruptcy Procedure.

12. Lain Faulkner sent Notice of an Erratum correcting a clerical error in an Exhibit to the Plan to all parties in interest, other than the Settling Insurance Companies, on November 6-7, 2002. The Debtor's attorney sent Notice of the Erratum to the Settling Insurance Companies and other parties requesting Notice on November 11, 2002. The Court finds that no substantial rights of any party in interest were affected by the clerical error contained in Exhibit 2 to the Plan and corrected by the Notice of Erratum.

13. Timely Notice of the Proof of Claim Bar Date was provided by Lain Faulkner by mail to all Tort Claimants, the Legal Representative and all former employees of the Swan Parties and/or TC. The Debtor's attorney provided timely Notice of the Claims Bar Date to the Insurance Providers.

14. The Debtor undertook an extensive notice program approved by the Court. As detailed more specifically in the Affidavits of Kathy Kinsella and Nancy Jamieson, the Debtor gave notice of, among other things, the Confirmation Hearing, the Deadline to Object to and/or Vote on the Plan, and the Proof of Claim Bar Date to all known claimants by direct mail. The Debtor also provided notice to potential and/or unknown claimants via radio and television commercials and publication in numerous periodicals.

15. All notices have been given as required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Orders of this Court.

5. Solicitation With Respect to the Plan

16. On September 20, 2002, the Court approved Lain Faulkner's directions and endeavors to mail solicitation packages, consisting of, among other things, the Plan, the Disclosure Statement, and the official ballot, to all appropriate entities.

17. All solicitation packages were properly and timely distributed to all appropriate entities by Lain Faulkner and/or the Debtor's attorney.

6. Balloting Results With Respect to the Plan

18. Lain Faulkner processed and tabulated all ballots filed with respect to the Plan in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and this Court's order of September 20, 2002. The balloting procedures utilized by the Debtor and the resulting voting with respect to the Plan were fair and properly conducted. The results of the ballot tabulation process are set forth in the affidavit of Marla Reynolds certifying the methodology for the tabulation of and results of voting with respect to the Debtor's Plan prepared by Lain Faulkner submitted as evidence at the Confirmation Hearing.

19. Classes 1 and 2 are unimpaired and are deemed to have accepted the Plan pursuant to § 1126(f) of the Bankruptcy Code.

20. Classes 3, 4, 5, and 6 are impaired. Class 3 voted overwhelmingly to accept the Plan. None of the Class 4 creditors cast ballots. Classes 5 and 6 receive nothing under the Plan on account of their claims and/or interests, and therefore are deemed to have rejected the Plan.

21. Two-thousand eight-hundred and sixty-two (2,862) ballots were returned and properly cast by Class 3 Claims. Two-thousand seven-hundred and seventeen (2,717) ballots representing \$2,717.00 in amount of Class 3 Claims were counted as having been cast in favor of the Plan and ninety-two (92) ballots representing \$92.00 in amount of Class 3 Claims were counted as having been cast against the Plan. More than 94.93% in dollar amount and more than 94.93% in number of the holders of Class 3 Claims voting on the Plan voted to accept

the Plan. Accordingly, holders of Class 3 Claims accepted the Plan by a vote of at least two-thirds in dollar amount and more than one-half in number of those voting. Further, over 75% of those voting on the Plan have accepted the Plan, satisfying the requirements of Section 524(g) of the Bankruptcy Code.

22. The Legal Representative, as spokesperson for the Unknown Tort Claimants, supports and accepts the Plan.

7. Compliance with the Requirements of the Bankruptcy Code

23. The Plan is dated and identifies the name of the submitting entity, in accordance with Bankruptcy Rule 3016(b).

24. The Claims or Interest in each class are substantially similar to the other Claims or Interests in such class. A reasonable basis exists for the choices made in the Plan's classification schemes and the classification of Claims and Interests is fair, reasonable, and necessary.

25. Article 2 of the Plan designates classes of Claims, other than Claims of a kind specified in Section 507(a)(1), 507(a)(2) or 507(a)(8) of the Bankruptcy Code and classes of Interests.

26. Article 3 of the Plan specifies those classes of Claims and Interests that are not impaired under the Plan.

27. Article 3 of the Plan specifies the treatment of each class of Claims or Interests that is impaired under the Plan.

28. Article 3 of the Plan provides the same treatment for each Claim or Interest of a particular class, unless the holder of a particular Claim or interest agree to a less favorable treatment of such particular Claim or Interest.

29. The Plan provides for adequate means for implementation of the Plan. Articles 3, 4 and 8 of the Plan provide for, among other things: (a) the distribution of Cash, in satisfaction of Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Claims in Classes 1 and 2; and (b) reasonable and appropriate mechanisms for the establishment and funding of the Trust, which Trust shall, among other things, address and direct the liquidation and resolution of all Tort Claims and preserve, hold, manage, and maximize the Trust Assets for use in paying and satisfying Allowed Tort Claims. The Plan provides for the Trust to be funded by, among other things, the Trust Assets and 100% of Reorganized Swan Common Stock.

30. Pursuant to section 1123(b)(2) of the Bankruptcy Code, the Plan constitutes a motion by the Debtor to reject any unexpired lease or executory contract that has not been expressly assumed by the Debtor with the Court's approval on or prior to the Confirmation Date, except those executory contracts and unexpired leases listed on Exhibit 4 to the Plan (as such list may be amended or supplemented up to and including the Confirmation Date), and the Debtor shall likewise assume any unexpired lease or executory contract the Debtor entered into after the Petition Date to the extent such contract or lease is executory or unexpired, respectively, under section 365 of the Bankruptcy Code. Additionally, all insurance policies under which the Debtor is an insured party shall be deemed assumed as of the Effective Date.

31. The decisions of the Debtor regarding the rejection of executory contracts or unexpired leases, as reflected in the Plan, are based on and are well within the reasonable and sound business judgment of the Debtor and are in the best interests of the Debtor and its Estate. Further, the assumption of the executory contracts and unexpired leases as set forth in the Plan is a reasonable exercise of the Debtor's business judgment and is in the best interests of the Debtor and its Estate, and the Debtor will promptly cure any defaults and provide adequate assurance of future performance. The Indemnity Agreements between National Union Fire Insurance of Pittsburgh, PA, and any of the Swan Parties relating to policies under which the Debtor is an insured party shall be deemed assumed as of the Effective Date.

32. The Debtor complied with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules. Moreover, the Debtor, its respective agents, directors, officers, employees, and professionals, and any other Entities that solicited acceptances of the Plan including, but not limited to, the Committee and the Legal Representative, have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and are entitled to the protections afforded thereby.

33. The totality of the circumstances surrounding the formulation and proposal of the plan, including, but not limited to, the evidence presented at the Confirmation Hearing that the Plan is the result of extensive arms' length negotiations between and among the Debtor, the Committee, the Legal Representative, TC and others and that the Plan is designed and intended, among other things, to: (i) provide a simple, economical procedure for obtaining and encouraging the prompt, efficient and equitable resolution of all Tort Claims, (ii) provide fair and equitable compensation to holders of non-Tort Claims (non are known), and (iii) resolve

disputed issues in a complete and fair manner, demonstrate that the Plan was proposed in good faith and not by any means forbidden by law.

34. The Plan was proposed with the legitimate and honest purpose of maximizing the returns to creditors of the Debtor.

35. The primary purpose of the Plan is not the avoidance of taxes or the avoidance of the requirements of section 5 of the Securities Act of 1933, 15 U.S.C. §77a. *et seq.* (the "Securities Act").

36. All post-petition payments made or to be made by the Debtor, or by any Entity issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Debtor's Bankruptcy Case, or in connection with the Plan and incident to the Reorganization Case, have been approved by, are approved pursuant to this Confirmation Order, or are subject to the further approval of, the Court, as reasonable and necessary.

37. The Debtor disclosed the identity and affiliations of the initial directors and officers of Reorganized Swan, the initial Trustees of the Trust, the initial Trust Advisory Committee and the initial post-confirmation Legal Representative. Based on, among other things, the experience, education, and/or particular skills of each, the manner of selection of each and any successors thereto, the appointment or continuance of the proposed directors, officers, trustees, advisors, members, representatives and administrators is consistent with the interests of the holders of Claims and Interests and with public policy.

38. At the Confirmation Hearing, the Debtor disclosed the identity of the initial directors of Reorganized Swan and the initial Trustees of the Trust as James Hueggenard,

W.D. Hilton, Jr., and Randall Grooms. The Debtor also disclosed the nature of the compensation to be paid to such individuals.

39. The Plan and Trust provide for the selection of successor Trustees.

40. The Debtor has disclosed the initial post-confirmation Legal Representative as Richard B. Schiro. The Debtor has also disclosed the nature of the compensation to be paid to the post-confirmation Legal Representative.

41. The Plan and Trust provide for the selection of a successor Legal Representative.

42. It is fair, reasonable and necessary under the circumstances and will help ensure the successful operation of the Trust for the TAC members to receive reimbursement for their expenses incurred in performing their duties.

43. The Plan and Trust provide for the selection of a successor member to the TAC.

44. The Debtor's current business does not involve the establishment of rates over which any regulatory commission has or will have jurisdiction after confirmation of the Plan.

45. The Plan provides that holders of Allowed Claims in Class 3 will receive a distribution equal to the Payment Percentage multiplied by the Allowed Amount of their Claim, in cash on, on the Distribution Date.

46. The proposed distribution under the Plan to holders of Allowed Claims in Class 3 is fair, reasonable, has an adequate factual basis and is appropriate.

47. In a liquidation under Chapter 7 of the Bankruptcy Code, holders of claims and interests would receive less than what the Plan provides.

48. Liquidation of the Debtors' assets under Chapter 7 would result in a loss to the Debtor's Estate of valuable assets such as (a) a substantial portion of the value to be paid under the settlement agreements with the Settling Insurers, and (b) the monies and other benefits realized from the Debtor's settlement with TC and its affiliates.

49. A liquidation under Chapter 7 would result in a smaller distributions being made to creditors than those provided for in the Plan because, among other things, in a chapter 7 case, (a) a section 105 and section 524(g) injunction cannot be provided to the Insurance Companies and TC, which would result in less favorable settlement or no settlements at all; and (b) there would be no funded Trust available to pursue Insurance Actions against Non-Participating Insurers.

50. The Plan provides that each holder of an Allowed Administrative Claim, except to the extent that the holder of such Claim has agreed to a different treatment, shall receive the Allowed Amount of such holders' Claim, in Cash, on the Distribution Date, except those Administrative Claims representing post-petition liabilities incurred in the ordinary course of business of the Debtor and post-petition liabilities arising under loans or advances to the Debtor, which Claims shall be paid by Reorganized Swan as applicable in accordance with the terms and conditions of the particular transactions relating to such liabilities and any agreements relating thereto.

51. Confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization, of Reorganized Swan or the Trust.

52. As demonstrated by, among other things, the financial information contained in the Disclosure Statement, and the evidence adduced at the Confirmation Hearing, with respect to the Trust's financial condition, the Trust will be able to meet its financial obligations under the Plan.

53. The Debtor or Reorganized Swan will possess Cash necessary to satisfy Allowed Administrative Claims on the Distribution Date, or as otherwise required by Article 1 of the Plan.

54. The Debtor or Reorganized Swan will possess Cash necessary to satisfy Allowed Claims in Class 1 on the Distribution Date.

55. The Debtor will possess Cash necessary to cure any defaults relating to all executory contracts and unexpired leases assumed pursuant to the terms of the Plan.

56. The Plan consists of and incorporates a series of agreements negotiated among the Debtor and other entities, including but not limited to, the TC Contribution Agreement and the Insurance Settlement Agreements, to ensure the success and feasibility of the Plan.

57. The terms and conditions of the and the agreements contemplated by the Plan are fair, equitable, reasonable and non-collusive, and in the best interest of the Debtor's creditors and its Estate.

58. The terms and conditions of the Plan and the settlements and compromises contained in the Plan are fair, reasonable, equitable, and in the best interests of the Debtor's creditors and its Estate.

59. On the Effective Date or as soon thereafter as is practicable, the following assets, among others will be transferred to, vested in and assumed by the Trust, subject to any notification requirements contained in the Plan:

- (a) 100% of the Reorganized Swan Common Stock;
- (b) Excess Cash;
- (c) by operation of law and otherwise by reason of the transfer of 100% of the common stock of Swan, all of the Insurance Policies and all rights pursuant thereto;
- (d) the proceeds of the Insurance Settlement Agreements;
- (e) the proceeds of the Insurance Coverage;
- (f) the proceeds of any recovery from the Coverage Litigation;
- (g) the proceeds of the TC Contribution Agreement.

60. The Trust will also derive benefits from certain agreements with TC, among others, including the TC Contribution Agreement and the Insurance Settlement Agreements.

61. Reorganized Swan will operate free of liability for Tort Claims after Confirmation of the Plan other than as set forth in Article 4.3 of the Plan.

62. A principal purpose of the Trust is to preserve, manage, and maximize Trust Assets for use in paying and satisfying Allowed Tort Claims.

63. The value of the Trust Assets is uncertain.

64. All fees payable under 28 U.S.C. §1930, if any, have been paid or will be paid on the Effective Date. The Debtor or Reorganized Swan will possess Cash necessary to pay any fees payable under 28 U.S.C. § 1930, that come due post-confirmation and until closing of the case.

65. The Debtor has no obligation to pay retiree benefits, as that term is defined in Section 1114 of the Bankruptcy Code.

66. There are no classes of Interests in Swan that are junior to the Interests classified in Class 6.

8. Additional Findings Related to Section 524(g) and 105(a)

67. The Channeling Injunctions are to be implemented in connection with the Trust.

68. The Channeling Injunctions are reasonable, appropriate and necessary and are critical to the viability of Reorganized Swan and to the successful implementation of the Plan.

69. As of the Petition Date, the Debtor had been named as a defendant in personal injury actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos containing products, silica or silica containing products, and various other industrial dusts.

70. As of the Petition Date, Swan had been named as a defendant in lawsuits by approximately 1,648 holders of Asbestos Claims, Silica Claims, and Mixed Dust Claims.

71. The Trust shall assume the liabilities of Swan with respect to the Asbestos Claims, the Silica Claims, and the Mixed Dust Claims.

72. The Trust is to be funded in whole or in part by the securities of the Debtor and by the obligations of the Debtor to make future payments, including dividends.

73. The Trust is to own a majority of the voting shares of Reorganized Swan.

74. The Trust is to use its assets and income to pay Allowed Asbestos Claims, Allowed Silica Claims, and Allowed Mixed Dust Claims.

75. The Debtor is likely to be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the Asbestos Claims, Silica Claims and Mixed Dust Claims, which are addressed by the Channeling Injunctions.

76. The actual amounts, numbers and timing of future Demands cannot be determined with certainty by the Debtor.

77. Pursuit of Demands outside the procedures prescribed by the Plan is likely to threaten the Plan's purpose to deal equitably with Claims and future Demands.

78. The terms of the Channeling Injunctions, including provisions barring actions against third parties, are set out in the Plan and in the Disclosure Statement.

79. The Plan establishes, in Class 3, a separate class of claimants whose Claims are to be addressed by the Trust.

80. The class of claimants whose Claims are to be addressed by the Trust, has voted, by more than seventy-five percent (75%), in favor of the Plan.

81. Pursuant to court orders or other authority, the Trust shall operate through mechanisms such as structured, periodic or supplemental payments, pro rata distributions, matrices or periodic review of estimates of the numbers and values of Asbestos Claims, Silica Claims and Mixed Dust Claims, or other comparable mechanisms, that provide reasonable assurance that the Trust shall value, and be in a financial position to pay, Tort Claims and Unknown Tort Claims that involve similar claims in substantially the same manner.

82. The Legal Representative was appointed by the Bankruptcy Court as part of the proceedings leading to issuance of the Channeling Injunctions for the purpose among other things, protecting the rights of the Unknown Tort Claimants who might assert claims of the kind addressed in the Channeling Injunctions and the transferred to and assumed by the Trust.

83. The Released Parties are appropriate third parties, as that term is defined in Section 524(g)(4)(A)(ii) of the Bankruptcy Code, and consist of the following entities:

(a) the Debtor, Reorganized Swan and TC, any of their respective successors or assigns and each of their present and former directors, officers agents, attorneys, accountants, financial advisors, investment bankers and employees;

(b) the Released Swan Parties;

(c) the Released TC Parties; and

(d) the Settling Insurance Companies.

84. Identifying, in the Confirmation Order and in these Findings and Conclusions, each Debtor or beneficiary of the Channeling Injunctions, in such Injunctions with respect to Demands, is fair and equitable with respect to such persons that might subsequently assert Asbestos Claims, Silica Claims or Mixed Dust Claims or Demands against each such Debtor or beneficiary in light of the benefits provided, or to be provided, to the Trust on behalf of such Debtor or such beneficiary.

85. Each beneficiary of the Channeling Injunctions is, has been, or may in the future be, by name or as part of an identifiable group, alleged to be directly or indirectly liable for Asbestos Claims, Silica Claims or Mixed Dust Claims against the Debtor by reason of the beneficiary's :

(a) ownership of a financial interest in the Debtor, past or present affiliate of the Debtor or a predecessor in interest of the Debtor;

(b) involvement in the management of the Debtor or a predecessor in interest of the Debtor, or service as an officer, director or employee of the Debtor or a related party;

(c) provision of insurance to the Debtor or a related party; or

(d) involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition of the Debtor or a related party, including but not limited to involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or acquiring or selling a financial interest in an entity as part of such transaction.

86. Each beneficiary of the Channeling Injunctions comes within the scope of and is covered, protected and benefited by the Channeling Injunctions.

87. The following Entities are Settling Insurers: (a) The Hartford; (b) National Surety; (c) Republic; (d) U.S. Fire; (e) Old Republic; (f) Travelers; (g) ACE, (h) Allstate; (i) Appalachian; (j) CGU; (k) The Home; (l) Kemper; (m) Atlantic Mutual; (n) Bellefonte; and (o) Zurich.

88. The Legal Representative supports the Plan, has consented to the jurisdiction of the Court over him and his constituents for all purposes of all matters relating to or affected by the Plan, and approves of the treatment provided to holders, both present and future, of Asbestos Claims, Silica Claims and Mixed Dust Claims, including but not limited to, the issuance of the Channeling Injunctions.

89. There is an identity of interest between the Debtor, TC, its affiliates and subsidiaries, all past purchasers of the stock or substantially all the assets of Swan, TPI of Texas, Inc., and/or Tyler Sand, and the Settling Insurance Companies such that a suit against TC, its affiliates and subsidiaries, all past purchasers of the stock or substantially all of the assets of Swan, TPI of Texas, Inc., and/or Tyler Sand, or the Settling Insurance Companies is, in essence a suit against the Debtor or will deplete assets of the estate.

90. TC, its affiliates and subsidiaries, and the Settling Insurance Companies have contributed substantial assets to the reorganization.

91. The reorganization of the Debtor requires the Debtor to be free from indirect lawsuits against it arising from indemnification or contribution claims which could be asserted by TC, its affiliates and subsidiaries, or the Settling Insurance Companies as a result of Tort Claims asserted against TC, its affiliates and subsidiaries, or the Settling Insurance Companies. Therefore an injunction to protect TC, its affiliates and subsidiaries, and the Settling Insurance Companies is essential.

92. The Tort Claimants have voted overwhelmingly to accept the Plan.

93. The Plan provides a mechanism to pay the classes affected by the injunction.

94. The Plan and the CRP provide a method by which Tort Claimants who do not choose to settle to pursue their claims within the confines of the Plan and the CRP.

9. Findings Concerning Certain Settlements

95. In June 2001, Swan reached an agreement in principle with attorneys representing the Blackburn Plaintiffs, the Howland Plaintiffs and Beard Plaintiffs (the "Judgment

Plaintiffs' Settlement"). The Judgment Plaintiffs' Settlement resolves all pending disputes regarding the judgment that were entered in favor of these claimants. In connection with such Settlement, the Parties have agreed that any pending appeals will be dismissed, and that the paperwork needed to close the cases, including releases, will be executed and exchanged.

10. Pre-Confirmation Modifications

96. On December 5, 2002, the Debtor filed and served proposed modifications to the Plan. On December 9, 2002, the Debtor submitted further technical modifications to the Plan as Exhibit 56 in support of confirmation of the Plan. The modifications were made by the Debtor to resolve all outstanding objections to the Plan. The proposed modifications did not adversely change the treatment of the claim of any creditor or interest of any equity security holder who has not accepted, in writing, the modifications.

11. General

97. The declarations and affidavits presented by the Debtor at the Confirmation Hearing provided adequate foundation for the factual findings contained herein and contained credible testimony.

98. Each of the conditions precedent to the entry of the Confirmation Order, as set forth in Article 7.1 of the Plan, has been satisfied.

B. Conclusions of Law

1. Jurisdiction and Venue

99. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334.

100. Venue is proper in this district pursuant to 28 U.S.C. §1408.

101. The Confirmation Hearing was conducted in accordance with this Court's September 20, 2002 Order Scheduling Confirmation Hearing.

102. This matter is a core proceeding pursuant to 28 U.S.C. §157(b).

103. The Chapter 11 case has not been substantively consolidated and the Plan is not based on a substantive consolidation of the Chapter 11 case.

104. The Debtor was and is qualified to be a debtor under Section 109(a) of the Bankruptcy Code.

105. The Court has original and exclusive jurisdiction over all property of the Debtor's Estate and all property of the Debtor as of the commencement of the Case. Property of the Debtor's Estate includes, but is not limited to, the items set forth in the definition of Trust Assets in the Glossary appearing as Exhibit 1 to the Plan.

2. Exemptions From Securities Laws

106. Pursuant to Section 1125(e) of the Bankruptcy Code, the Debtor's transmittal of Plan solicitation packages, its solicitation of acceptances of the Plan and the issuance and distribution of Reorganized Swan Common Stock and any other securities pursuant to the Plan, and Reorganized Swan's participation in such activities, are not and will not be governed by or subject to any otherwise applicable law, rule or regulation governing the solicitation of acceptance or rejection of a plan of reorganization or the offer, issuance, sale or purchase of securities.

107. Pursuant to section 1145(a)(1) of the Bankruptcy Code, the offering, issuance and distribution pursuant to the Plan of Reorganized Swan Common Stock and any other distributions that may be deemed to be securities shall be exempt from Section 5 of the

Securities Act and from any state or local law requiring registration, notification, qualification or exemption prior to the offering issuance, distribution or sale of securities.

108. Pursuant to and to the fullest extent permitted by sections 105 and 1145 of the Bankruptcy Code, the resale of any Reorganized Swan Common Stock and any other Plan distributions that may be deemed to be securities shall be exempt from Section 5 of the Securities Act and any state or local law requiring registration prior to offering, issuance, distribution, or sale of securities.

3. Allowed Tort Claims

109. Prior to the commencement of these proceedings, the Debtor, TC, the Ad Hoc Committee, and the Legal Representative engaged in arm's length negotiation regarding the terms of the TC Contribution Agreement. Important components of those negotiations included the treatment of Tort Claims under the Plan and the determination of the amount of Tort Claims. Pursuant to the TC Contribution Agreement and the Plan, the Debtor has sought to assume the TC Contribution Agreement.

110. Pursuant to the Plan, all holders of Tort Claims (i) are forfeiting their rights to pursue such claims against Reorganized Swan, against any Released Party and against any Protected Party, and (ii) are consenting to the Trust Agreement and the CRP, all in exchange, in part, for the treatment afforded such claims under the Plan. TC, pursuant to the TC Contribution Agreement, is contributing valuable property to the Trust, in exchange, in part, for the benefits TC receives under the TC Contribution Agreement and the Plan.

4. The TC Contribution Agreement

111. The Court has authority to approve the TC Contribution Agreement pursuant to Section 365(b) of the Bankruptcy Code. The TC Contribution Agreement is an executory contract that is property of the Swan bankruptcy Estate and therefore subject to assumption.

112. The Committee and the Legal Representative have conducted extensive due diligence and other analysis of the TC Contribution Agreement, and have approved assumption by the Debtor.

113. In determining whether to approve the assumption of an executory contract, the Court must find that: (1) to the extent the Debtor has defaulted under the terms of the contract, the Debtor cures, or provides adequate assurance of that the Debtor will promptly cure such default; (2) the Debtor will compensate, or provides adequate assurance that it will promptly compensate, a party other than the Debtor to such contract, for any actual pecuniary loss to such party resulting from such default; and (3) that the Debtor has provided adequate assurance of future performance under the contract. This Court concludes that the Debtor has met the requirements of assumption of the TC Contribution Agreement, and therefore the assumption of the TC Contribution Agreement is approved.

5. Approval of the Discharges, Releases and Channeling Injunctions Provided Under the Plan

114. Pursuant to Sections 105, 524 and 1123(b)(3) of the Bankruptcy Code, the releases, discharges and injunctions, including but not limited to, the Channeling Injunctions set forth in the Plan and implemented by the Confirmation Order, are an integral part of the Plan and are fair, equitable, reasonable, and in the best interest of the Debtor and its Estate, Reorganized

Swan, the Trust, and holders of Claims and Interests. The discharges, releases and injunctions including the Channeling Injunctions are necessary to facilitate the Debtor's reorganization.

115. All releases, discharges, and injunctions, including but not limited to the Channeling Injunctions, with respect to claims and causes of action against non-Debtor entities set forth in the Plan are inextricably intertwined, are approved pursuant to the Confirmation Order as an integral part of the Plan, are fair, equitable, reasonable, and in the best interests of the Debtor and its Estate, Reorganized Swan, the Trust and holders of claims, interests and demands and, except to the extent provided in the Stipulation by and between the Debtor and National Union, are effective and binding on all Entities who may have had standing to assert such Claims or causes of action. No Entity may assert any Enjoined Claim in a manner inconsistent with the Plan.

116. Except as provided in that certain Order approving the stipulation by and between the Debtor and National Union Fire Insurance Company of Pittsburgh, PA, the discharges in the Plan and Confirmation Order shall have the fullest preclusive effect permitted by law, operate as an injunction against, among other things, the assertion of any Claim or the commencement of any legal actions or process against the Debtor, against the property of the Debtor, against the Trust or against property of the Trust; however, such injunction shall not impair the right, if any, of Entities with Tort Claims to assert such Tort Claims solely against the Trust in accordance with the CRP.

117. Except as specifically provided in the Plan to the contrary, the satisfaction, release, and discharge set forth in Article 9 of the Plan shall also operate as an injunction prohibiting and enjoining the commencement or continuation of any action, the employment of process or any act to collect, recover from or offset (a) any Claim against or Interest in the

Debtor, Reorganized Swan or the Trust by any Entity and (b) any cause of action, whether known or unknown, against the Released Parties based on the same subject matter as any Claim or Interest described in Article 9.3 of the Plan.

118. Any satisfaction, release, and discharge along with any injunction, including the Channeling Injunctions approved in the Confirmation Order, are critical to the Plan's feasibility.

6. Authorization of Corporate Action

119. Notwithstanding any contrary provisions in the business corporation or trust laws of any applicable Governmental Unit, no action of the respective directors, stockholders, Trustee, or beneficiaries of the Debtor, Reorganized Swan, or the Trust, as the case may be, shall be required to authorize the Debtor, Reorganized Swan, or the Trust to (a) enter into, execute, deliver, file, adopt, amend or effectuate, as the case may be, the Plan and the Plan Documents, and following the Effective Date, each of the Plan Documents shall be a legal, valid, and binding obligation of Reorganized Swan and/or the Trust or other party thereto, enforceable against Reorganized Swan and/or the Trust or other party thereto, in accordance with and subject to their respective terms and conditions and (b) engage in any of the transactions or other actions contemplated by the Plan, and Plan Documents, or the Confirmation Order (the "Plan Transactions") or in furtherance thereof, and the Plan Transactions are hereby deemed to have occurred and be effective as provided in the Plan and such activities are hereby authorized and approved in all respects.

7. Adequacy of Notice

120. Notice of the Unsecured Claims Bar Date, and the Confirmation Hearing was reasonable, adequate and sufficient under the circumstances and provided creditors of the Debtor and parties in interest adequate notice of the relevant proceedings held herein and an opportunity to appear and be heard, as required by the Bankruptcy Code, the Bankruptcy Rules, and applicable law. The appointment of the Legal Representative and his participation in this Case is sufficient to bind the holders of Unknown Tort Claims under the Plan and affords such holders due process.

8. Compliance with The Requirements of the Bankruptcy Code

121. The classification of Claims and Interests contained in Article 2 of the Plan complies with section 1122(a) of the Bankruptcy Code. The classification of Claims and Interests in Classes 1 through 6 is proper because each such class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within such class. There is a reasonable basis for the classification scheme established by the Plan.

122. The designation of classes of Claims and Interests contained in Article 2 of the Plan is reasonable and necessary and complies with section 1123(a)(1) of the Bankruptcy Code.

123. The contents of the Plan clearly established the Plan complies with section 1123(a)(2) through 1123(a)(7) of the Bankruptcy Code.

124. The Court finds the evidence and testimony at the confirmation hearing clearly establishes the Plan meets the requirements of Section 1129(a)(1) through 1129(a)(6) of the Bankruptcy Code.

125. The evidence and testimony at the Confirmation Hearing established that the Plan complies with Section 1129(a)(7) of the Bankruptcy Code. Classes 1 and 2 are unimpaired and are deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Class 3 is impaired and Class 3 has voted to accept the Plan in accordance with Section 1126(c) of the Bankruptcy Code. There are no known members of Class 4, however, to the extent Class 4 claimants exist, the Plan satisfies the requirements of Section 1129(b) with respect to Class 4. Classes 5 and 6 receive nothing under the Plan and therefore are deemed to have rejected the Plan.

126. Based the evidence presented at the Confirmation Hearing, each holder of a Claim or Interest in each impaired class of Claims or Interests will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date. Section 1111(b)(2) of the Bankruptcy Code does not apply to the Claims in any class, and no election pursuant to section 1111(b)(2) has been made in the Case.

127. The evidence and the testimony at the Confirmation Hearing establish that the Plan complies with Section 1129(a)(9) of the Bankruptcy Code in that the holder of a particular claim will receive treatment consistent with this Code Section.

128. Compliance with Section 1129(a)(10) of the Bankruptcy Code also has been established by the evidence. As indicated in the Ballot Tabulation Report submitted by Lain Faulkner and the record of the Confirmation Hearing, Classes 3 is impaired under the Plan and Class 3 has accepted the Plan, determined without including any acceptance by the Plan of an insider.

129. The evidence and testimony at the Confirmation Hearing establishes that the Plan complies with Sections 1129(a)(11) through 1129(a)(13) of the Bankruptcy Code.

130. The evidence and testimony at the Confirmation Hearing establishes that the Plan complies with Section 1129(b)(1) of the Bankruptcy Code.

131. The modifications to the Plan proposed by the Debtor on December 5, 2002 and December 9, 2002, meet the requirements of sections 1122 and 1123 of the Bankruptcy Code.

132. The evidence and testimony at the Confirmation Hearing establishes that any and all other applicable sections of 1123 and 1129 are met in the Plan.

133. The Debtor has met its burden to introduce evidence which supports its confirmation of the Plan. There remains no issue of law or fact, nor any objection which would preclude confirmation of the Plan.

134. The evidence and testimony at the Confirmation Hearing established that the Plan complies with Section 524(g) of the Bankruptcy Code.

135. The Court has jurisdiction, power and authority, pursuant to, *inter alia*, Sections 105(a), 524 and 1141 of the Bankruptcy Code, to approve and enter the Injunctions, including but not limited to the Channeling Injunctions, provided for in the Plan. All of the legal requirements for granting such injunctions, including, but not limited to, the requirements set forth in section 524(g) of the Bankruptcy Code and applicable law, have been met.

9. Implementation of the Plan

136. The settlements provided for in the Plan are fair and equitable and in the best interest of the holders of Claims and Interests.

137. Except as provided in the Plan, the Debtor is discharged from liability on all Claims, including, but not limited to, all Tort Claims. Except as provided in the Plan, the property of the Estate is free from all such Claims.

138. The CRP is fair and reasonable and provides mechanisms for substantially similar treatment of the holders of Tort Claims.

139. Except as provided in that certain order approving a stipulation by and between the Debtor and National Union Fire Insurance Company of Pittsburgh, PA, the provisions of the Plan and the Confirmation Order shall be binding upon the Debtor and Reorganized Swan, all holders of Tort Claims, all Unknown Tort Claimants, all holders of other Claims or Interests, any other Entity making an appearance either formally or otherwise, including attending the Confirmation Hearing in person or by counsel, in the Reorganization Case (whether in person, by counsel or by Legal Representative), any Entity having notice of the Case, whether or not such Entity made an appearance in the Reorganization Case, and any other Entity issuing securities, acquiring property under the Plan, as well as their respective heirs, successors, assigns, trustees, subsidiaries, affiliates, officers, directors, agents, employees, representatives, attorneys, beneficiaries, guardians, and similar officers or any Entity claiming through or in the right of any such Entity.

140. The Plan and the Plan Transactions do not provide for, and, when consummated, will not constitute the liquidation of all or substantially all of the property of the Swan Estate within the meaning of Section 1141(d)(3) of the Bankruptcy Code.

10. Matter Relating to Tax

141. After May 1997 and prior to the Effective Date, there has not been and there will not be an ownership change of Swan as defined in IRC §382.

142. The issuance of Reorganized Swan Common Stock to the Trust will result in an ownership change as defined in IRC §382. Holders of Tort Claims, as beneficiaries of the Trust, will, for purposes of Section 382(l)(5), be deemed to directly receive and own the Reorganized Swan Common Stock, will be qualified creditors as defined in IRC §382(l)(5)(E) and the regulations thereunder and will be deemed to receive fifty percent or more of the Reorganized Swan Common Stock as a result of being creditors of Swan. IRC §382(l)(5) will therefore apply to the ownership change of Swan and the limitations of IRC §382(a) will not apply to the pre-change losses and other tax attributes of Swan.

143. The receipt of Insurance Action Recoveries by Swan or TC and the transfer by Swan or TC of the Insurance Action Recoveries to the Trust will not result in recognition of income by and will not generate a deduction for Swan or TC. If Swan or TC were required to recognize income, it would be entitled to a corresponding offsetting deduction.

11. Miscellaneous

144. The assignment of the Insurance Action, along with the rights and obligations of the Debtor and Reorganized Swan with respect to insurance for Tort Claims, to the Trust, shall give the Trust no greater, nor no lesser, rights under the Insurance Policies than the Debtor or Reorganized Swan may have, and the assignment of the Insurance Action to the Trust shall not impair, compromise, or otherwise affect any rights or defenses that any of the Insurance Companies may have under the Insurance Policies or applicable law.

145. In the event anything in these Findings and Conclusions conflict with the terms of that certain stipulation by and between the Debtor and National Union Fire Insurance Company of Pittsburgh, PA, approved by order of this Court on March 6, 2003, the terms of the stipulation shall control.

146. Unless otherwise ordered by the Court, the Confirmation Order shall operate to set a bar date for Administrative Claims (the "Administrative Claims Bar Date"), which bar date shall be the first Business Day that is at least forty-five days after the Effective Date. Claimants holding Administrative Claims against the Debtor not paid on the Effective Date may submit a Request for Payment of Administrative Expense on or before such bar date. The notice of Confirmation to be delivered pursuant to Bankruptcy Rules 2002 and 3020(c) will set forth such date and constitute notice of the Administrative Claims Bar Date. The Debtor and any other party in interest will have thirty (30) days after the Administrative Claims Bar Date to review and object to such Claims before a hearing for determination of such Administrative Claims is held by the Court, provided that such thirty (30) day period of review may be extended by the Court upon request of the Debtor.

147. The Court retains jurisdiction over the matters set forth in Article 12 of the Plan and the Confirmation Order.

148. Except to the extent provided herein, the Confirmation Order shall be a binding judgment as to the Debtor, Reorganized Swan, and the Trust, with respect to all proceedings in other courts, state and federal. Notwithstanding these findings of fact and conclusions of law, the Court with jurisdiction over the insurance disputes between the Debtor, Reorganized Swan, and the Trust, on the one hand, and National Union on the other, is free to

make whatever findings of fact and conclusions of law with respect to such insurance issues as it deems appropriate.

Dated: _____

Judith K. Fitzgerald 5/30/03

Judith K. Fitzgerald
Chief United States Bankruptcy Judge
In the Western District of Pennsylvania

Sitting in the United States Bankruptcy Court
for the District of Delaware
By Special Designation and Order
Of the United States Court of Appeals
For the Third Circuit

Alfred M. Wolin

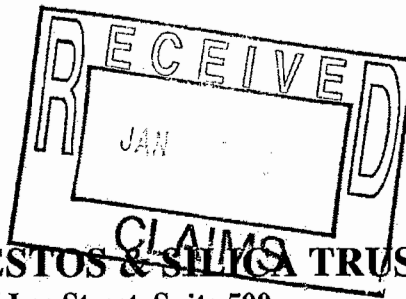
Alfred M. Wolin
United States District Judge
In the District of New Jersey

7-21-03

Sitting in the United States District Court
for the District of Delaware
By Special Designation and Order
Of the United States Court of Appeals
For the Third Circuit

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MAS TORT



SWAN ASBESTOS & SILICA TRUST

2716 Lee Street, Suite 500
Greenville, TX 75401-4107

OFFICE—(903) 453-2160
FAX—(903) 453-2169

W. D. Hilton, Jr.
Managing Trustee
Direct Dial # (903) 453-2161

Mailing Address:
P.O. Box 1299
Greenville, TX 75403-1299

IND. TYLER
January 13, 2004 *Corp.*

VIA FEDERAL EXPRESS

Hannah O'Driscoll
Risk Enterprise Management Ltd.
59 Maiden Lane
New York, New York 10038

Vic H. Henry
Henry, Oddo, Austin & Fletcher, P.C.
1717 Main Street, Suite 3850
Dallas, Texas 75201

of Tyler Corp

Re: *In re Swan Transportation Company*, Case No. 01-11690-JKF, in the United States
Bankruptcy Court for the District of Delaware – Claim Number 087-519475

Dear Ms. O'Driscoll and Mr. Henry:

Pursuant to the Settlement Agreement by and among the Swan Entities and The Home Insurance Company (the "Settlement Agreement"), the purpose of this letter is to provide written notice to The Home Insurance Company that the provisions of Section 1(a) of the Settlement Agreement have been satisfied.¹ Accordingly, pursuant to Section 2(a) of the Settlement Agreement, The Home Insurance Company must pay the Settlement Amount of \$500,000.00 to the Swan Asbestos and Silica Settlement Trust (the "Trust") within ten (10) business days of receipt of this notice.

Enclosed for your records are copies of the Order Confirming the Plan of Reorganization for Swan Transportation Company and the Order Granting Motion to Correct Scrivener's Error in Order Confirming the Plan of Reorganization for Swan Transportation Company and to Make Non-Material Modifications for the Plan. Both are Final Orders within the meaning of the Settlement Agreement.

The Trust's tax id number is: 86-1077072. Wiring instructions for the Trust are as follows:

CITIBANK
ABA #021-00-0089
Brown Brothers Harriman A/C #09250276
Further Credit to A/C # Swan Asbestos and Silica Settlement Trust, Account # 6223226

¹ Capitalized terms that are not defined herein are defined in the Settlement Agreement.

The Trust will accept checks. Checks should be sent to the Trust at the address below so that they are received at least a day before the deadline to enable the checks to be delivered to the Trust's account on or before the deadline. Checks should be made payable to and sent via overnight delivery to:

Swan Asbestos and Silica Settlement Trust
Attention: Mike Ward
2716 Lee Street
Suite 500
Greenville, Texas 75401

Sincerely yours,

A handwritten signature in black ink, appearing to read "W.D. Hilton, Jr.", written in a cursive style.

W. D. Hilton, Jr.
Managing Trustee
Swan Asbestos and Silica Settlement Trust

Enclosures

HENRY ODDO AUSTIN & FLETCHER
A PROFESSIONAL CORPORATION

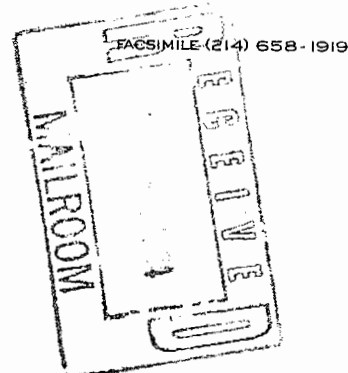
ATTORNEYS AND COUNSELORS AT LAW

1700 PACIFIC AVENUE

SUITE 2700

DALLAS, TEXAS 75201

TELEPHONE (214) 658-1900



January 19, 2004

W.D. Hilton, Jr.
Managing Trustee
Swan Asbestos & Silica Trust
2716 Lee Street, Suite 500
Greenville, Texas 75401-4107

RE: In Re: Swan Transportation Company, Debtor; Case No. 01-11690-JKF (Chapter 11)

Dear Mr. Hilton:

This letter responds to your correspondence of January 13, 2004, with regard to the settlement of the above-referenced litigation.

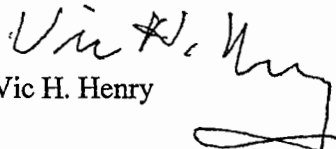
Please be advised that on or about June 13, 2003, the Superior Court for the State of New Hampshire entered an order declaring The Home Insurance Company insolvent and appointing a liquidator over The Home Insurance Company's assets. A copy of this order is enclosed.

Please be further advised that on June 26, 2003, the Commissioner of Insurance of the State of Texas declared Home to be an impaired insurer as that term is defined in the Texas Insurance Code. A copy of said order is enclosed.

Pursuant to the orders of the Court in New Hampshire, neither Home Insurance Company nor the undersigned can comply with the requests contained in your January 13, 2004 correspondence. Please direct your communications to the New Hampshire liquidation proceeding. I am enclosing a copy of the Order Establishing Procedures in that proceeding.

Yours very truly,

HENRY ODDO AUSTIN & FLETCHER
A Professional Corporation

By 
Vic H. Henry

VHH/dla
Enclosures

W.D. Hilton, Jr.
January 19, 2004
Page 2

bcc: Alberta Brennan, Esq. ✓

CF075

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720
Manchester, New Hampshire 03105-1720
Tel: (800) 347-0014

Date: 1/4/2008

Class: II

Swan Transportation Co.
C/O Anderson Kill & Olick P. C.
Att'n.: Robert Y. Chung
1251 Avenue of the Americas
New York, NY 10020-1182

RE: NOTICE OF DETERMINATION
Proof of Claim No.: INSU701572-01 INSU701573

Determination Summary

Gross Amount of Claim	: \$ 30,000,000.00
Amount Allowed by Liquidation	: \$ 500,000.00

Explanation: The Home Insurance Company (Home) issued excess liability policies HXL866107 and HXL111716 to Tyler Corporation, including its subsidiary Swan Transportation Co. (Swan), pursuant to which Swan sought coverage for liabilities allegedly incurred as a result of silica related exposures on its premises. Swan filed for Chapter 11 bankruptcy protection in 2001, following which Home and Swan entered into a Settlement Agreement that resolved Swan's coverage claims in the amount of \$500,000, contingent upon confirmation of Swan's reorganization plan (the Plan). The Plan, including the settlement with Home, was confirmed on July 21, 2003, rendering the settlement effective as of that date. By reason of Home having entered liquidation in the intervening period, Home was precluded from funding the settlement at that time, resulting in the agreed consideration under the Settlement Agreement becoming a Class II obligation of the Home estate, subject to approval by Home's liquidation court. As a result, a Class II allowance in the amount of \$500,000 has been determined by Home's Liquidator in full and final disposition of the referenced Proofs of Claim.

Dear Claimant :

The purpose of this letter is to provide you with a determination set forth above of claims you have presented to The Home Insurance Company in Liquidation ("The Home"), under the Proof(s) of Claim specified above. The Home expects to present notice of this determination to the Superior Court for Merrimack County, New Hampshire (the "Court")

for approval in accordance with New Hampshire Revised Statute, RSA 402-C:45. Read this Notice of Determination carefully as it sets forth your rights and obligations in detail.

The Home has now made a Determination on the claims as set forth above in accordance with The Home Claim Procedures (the "Procedures")* approved by the Court. If the claim has been allowed, in whole or in part, it has been assigned a Class II priority as a "policy related claim" pursuant to the Order of Distribution set forth in RSA 402-C:44 and will be placed in line for payment as directed by the Court from the assets of The Home. The first \$50 of the amount allowed on each claim in this class shall be deducted from the amount distributed as specified in RSA 402-C:44.

You may have other claims against The Home for which you may receive other Notices of Determination. You will have a separate right to dispute each Notice of Determination. If your claim has been allowed in whole or in part, this Notice of Determination does not mean that your claim will immediately be paid, or that it will be paid in full or at all. Pursuant to order of the Court, The Home may make distributions of its assets as a percentage of all allowed claims in a particular priority class in The Home estate as approved by the Court. The amount of the final payment for allowed claims will be determined by the final ratio of assets to liabilities and the applicable priority. Please be advised that the final percentage of payment you receive from The Home, at the time The Home estate is finally closed, is the total payment amount that you will be entitled to for this claim.

The Liquidator does not expect there to be assets sufficient to make a distribution to creditors in classes below Class II.

Any and all distributions of assets may be affected and/or reduced by any payments you have received on this claim from any other sources not listed on the Notice of Distribution. Any such distributions by The Home are based on The Home's knowledge and/or understanding of the amounts you have received in settlement and/or reimbursement of this claim from all other sources at the time of the allowance or thereafter. Should The Home subsequently become aware of prior recoveries from other sources The Home has the right to reduce its future distribution payments to you to the extent of such other recoveries or to seek and obtain repayment from you with respect to any previous distributions that were made to you.

Further, if you seek or receive any future payment from any other source on this claim after you receive a distribution payment from The Home you must notify The Home at the address below and The Home has the right to recover from you the distribution payments in whole or in part, to the extent of any such other future recoveries.

As a condition to receipt of any distributions, The Home shall be entitled to any rights to subrogation you may have against any third party and you shall be deemed to have

*A copy of the January 19, 2005 Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation may be obtained from the website of the Office of the Liquidation Clerk for The Home Insurance Company in Liquidation and US International Reinsurance Company in Liquidation, www.hicilclerk.org

assigned to The Home such rights upon receipt of any distributions. You shall also be obliged to reimburse The Home for any legal fees or other costs associated with The Home recovering from you any distribution payments to which you are not entitled.

The following instructions apply to this Notice of Determination:

Claim Allowed

1. If this claim has been allowed in whole or in part and you agree with the determination, sign and date the enclosed Acknowledgment of Receipt of the Notice of Determination and mail the completed Acknowledgment to The Home.

Claim Disallowed

2. A. If all or part of your claim has been disallowed or you wish to dispute the determination or creditor classification for any reason, you may file a Request for Review with the Liquidator. The Request for Review is the first of two steps in the process of disputing a claim determination. The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination.

REQUEST FOR REVIEW FILING REQUIREMENTS:

- (a) Sign and return the attached Acknowledgment of Receipt form.
- (b) On a separate page, state specifically the reasons(s) you believe that the determination is in error and how it should be modified. Please note the Proof of Claim number on that page and sign the page.
- (c) Mail the Request for Review to:
The Home Insurance Company in Liquidation
P.O. Box 1720
Manchester, NH 03105-1720

You should keep a copy of this Notice of Determination, Acknowledgment of Receipt and Request for Review, then mail the Original Request for Review to us by U.S. Certified Mail.

- (d) The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination. The Request for Review must be in writing.
- (e) The Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination.

IF A REQUEST FOR REVIEW IS NOT FILED WITH THE HOME WITHIN THE THIRTY (30) DAY PERIOD, YOU MAY NONETHELESS DIRECTLY FILE AN OBJECTION WITH THE COURT WITHIN SIXTY (60) DAYS FROM THE

MAILING OF THIS NOTICE. You do not have to file the Request for Review as a prerequisite to dispute the Notice of Determination. Please see Section 2B (below) for the Objections to Denial of Claims.

B. If your claim is disallowed in whole or in part, you may file an Objection with the Court at

Office of the Clerk, Merrimack County Superior Court
163 N. Main Street, P.O. Box 2880
Concord, New Hampshire 03301-2880
Attention: The Home Docket No. 03-E-0106

within sixty (60) days from the mailing of the Notice of Determination and bypass the Request for Review procedures as noted in Section 2A (above). If the Request for Review is timely filed, as outlined in Section 2A, the Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination. If the redetermination is to disallow the claim, you may still file an Objection with the Court. You have sixty (60) days from the mailing of the Notice of Redetermination to file your Objection. Please also sign and return the Acknowledgment of Receipt form and mail a copy of the Objection to the Liquidator.

IF YOU DO NOT FILE AN OBJECTION WITH THE COURT WITHIN EITHER SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE OF DETERMINATION OR SIXTY (60) DAYS FROM THE MAILING OF ANY NOTICE OF REDETERMINATION, YOU MAY NOT FURTHER OBJECT TO THE DETERMINATION.

A timely filed Objection will be treated as a Disputed Claim and will be referred to the Liquidation Clerk's Office for adjudication by a Referee in accordance with the Procedures.

3. You must notify The Home of any changes in your mailing address. This will ensure your participation in future distributions, as applicable. For purposes of keeping The Home informed of your current address, please notify us at the address given on the letterhead above.

Sincerely yours,

Peter Bengelsdorf, Special Deputy Liquidator
For Roger A. Sevigny, Liquidator
of The Home Insurance Company in Liquidation

If you wish to speak to someone regarding this Notice of Determination, please contact:

Ron Barta
Senior Manager
Home Insurance Company in Liquidation
Phone : 212-530-4054

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720

Manchester, New Hampshire 03105-1720

Tel: (800) 347-0014

POC #: INSU701572-01 INSU701573

Amount Allowed: \$ 500,000.00

Swan Transportation Co.
C/O Anderson Kill & Olick P. C.
Att'n.: Robert Y. Chung
1251 Avenue of the Americas
New York, NY 10020-1182

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge receipt of the Notice of Determination as a Class II Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Determination of my Claim against The Home Insurance Company in Liquidation and in that regard advise as follows:

(Check off all applicable items.)

I agree to the determination.

I reject the determination and want to file a Request for Review (specific reasons must be included along with return of the signed Acknowledgment).

I reject the determination and intend to file a separate Objection with the Court, without filing a Request for Review.

I have not assigned any part of this claim.

I have not made any other recoveries with respect to this claim.

I have not sought and do not intend to seek any other recoveries with respect to this claim.

I have made recovery from others with respect to this claim (full details must be included with this Acknowledgment).

I have sought or intend to seek recovery from others with respect to this claim (full details must be included with this Acknowledgment).

CF013

I request that The Home mail further correspondence to:

_____ Same name as above.

New name _____

_____ Same address as above

New address _____

This Acknowledgment of Receipt must be completed, signed and returned to The Home in order to be eligible for distributions from The Home estate as directed by the Court.

Signature: _____

Printed Name: _____

Title: _____

Date: _____