

IN THE MATTER OF THE LIQUIDATION OF
AFFIRMATIVE INSURANCE COMPANY

NO. 15 CH 13718

NOTICE OF MOTION

To: See Attached Service List

RECEIVED
MAY 13 2018

On MAY 01, 2018, at 10:00 a.m. or as soon thereafter as counsel

may be heard, I shall appear before the Honorable Anna H. Demacopoulos or any Judge sitting in that
Judge's stead, in the courtroom usually occupied by him/her, located in room 2502 of the Richard J. Daley Center,
50 W. Washington Street, Chicago, Illinois, and present
the attached petition at which time you may appear.

Name	<u>Dale A. Coonrod</u>	Atty. No.	<u>16819</u>
Address	<u>222 Merchandise Mart Plaza, Suite 960</u>	Attorney for	<u>Plaintiff/Liquidator</u>
Telephone	<u>312-836-9500</u>	City/Zip	<u>Chicago, IL 60654</u>

PROOF OF SERVICE BY DELIVERY

I, _____, the attorney/non attorney* certify that on the _____ day of _____
(*strike one)

_____, I served this notice by delivering a copy personally to each person to whom it is directed.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109

Date _____

I certify that the statements set forth herein are true and correct.

Signature/Certification _____

PROOF OF SERVICE BY MAIL

I, _____, the attorney/non attorney* certify that I served this notice by mailing
(*strike one)

a copy to _____ at _____
(address on envelope)

and depositing the same in the U.S. Mail at M
(place of mailing)

at, or before, _____ on the _____ day of _____, with proper postage prepaid.

Date _____

Signature/Certification _____

PROOF ELECTRONIC OF SERVICE (WHERE PERMISSIBLE)

I, RICHARD C. ABRON the non attorney* certify that on the 13TH day of APRIL, 2018

_____, I served this notice electronically X via the Judge's E-Mail, or _____ by telefax transmission

(_____ pages) with consent of the recipient where permissible under Ill. Sup Ct. R.11, at fax no. _____, at _____ am/pm from 312-836-1944

Date April 13, 2018

[Signature]
Signature/Certification

NOTE: If more than one person served by mail, additional proof of service may be on the reverse side.

SERVICE LIST

AFFIRMATIVE INSURANCE COMPANY

(Case No. 15 CH 13718)

COURTESY COPY TO:

SERVE BY EMAIL ONLY

The Honorable Judge Anna Helen Demacopoulos

Room 2502

The Richard J. Daley Center

50 West Washington Street

Chicago, Illinois 60602

CHANCERY.CALENDAR13@COOKCOUNTYIL.GOV

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE LIQUIDATION OF)
AFFIRMATIVE INSURANCE COMPANY) NO. 15 CH 13718

**MOTION TO APPROVE
SETTLEMENT OF CERTAIN CLAIMS**

NOW COMES Jennifer Hammer, Director of Insurance of the State of Illinois, as Liquidator (the "Director" or "Liquidator") of Affirmative Insurance Company ("Affirmative"), by and through one of her attorneys, and moves this Honorable Court for entry of an Order approving the settlement of certain claims which the Liquidator has asserted against former directors and officers of Affirmative in accordance with 215 ILCS 5/193, and in support thereof states as follows:

BACKGROUND

1. On March 24, 2016, this Court entered an Order of Liquidation with Finding of Insolvency (the "Liquidation Order") as to and against Affirmative pursuant to Section 188 of the Illinois Insurance Code (the "Code"), 215 ILCS 5/188. The Liquidation Order affirmed the then Director of Insurance and her successors in office, as Liquidator of Affirmative and authorized her to take such action as the nature of the cause and the interests of Affirmative, its policyholders and creditors, or the public, may require.¹

¹ Affirmative was originally placed into receivership by way of an Agreed Order of Rehabilitation entered by the Court on September 16, 2015.

2. Pursuant to the Court's Order of Liquidation, and Section 191 of the Code, 215 ILCS 5/191, the Liquidator is vested, by operation of law, with title to all property, contracts and rights of action of Affirmative. Further, pursuant to the Order of Liquidation and Section 193(1) of the Code, 215 ILCS 5/193(1), the Liquidator is authorized to deal with the property, business and affairs of Affirmative in her name as Director or in the name of the company. The Director may bring any action, claim, suit, or proceeding against any director or officer of the company or against any other person with respect to that person's dealings with the company including, but not limited to, prosecuting any action, claim, suit, or proceeding on behalf of the creditors, members, policyholders, or shareholders of the company. 215 ILCS 193(3).

**THE LIQUIDATOR'S CLAIMS AGAINST
AFFIRMATIVE DIRECTORS AND OFFICERS**

3. As part of the administration of the liquidation proceedings, the Liquidator has looked into the prior business practices of Affirmative and its former management. In order to effectively analyze certain insurance and reinsurance transactions and certain business decisions, some of which are very complicated, the Liquidator, in accordance with 215 ILCS 5/202(a), found it necessary to retain the services of a forensic accounting consultant, an expert in the field of reinsurance and an expert in corporate governance and insurance company regulatory oversight. These consultants have worked closely with the Liquidator's outside counsel who have been retained to perform the aforementioned investigation and analysis into the prior business practices of Affirmative.

4. The Liquidator's investigation led the Liquidator to conclude that certain of Affirmative's corporate officers and certain outside directors of Affirmative Insurance Holdings, Inc. ("Affirmative Holdings"), Affirmative's parent company, had negligently caused Affirmative to incur substantial damages and that such directors and officers (hereafter the "D&Os") thereby breached their fiduciary duties to Affirmative. The Liquidator has alleged that the D&Os, when faced with mounting debt obligations at the parent company [Affirmative Holdings] level, adopted a business strategy that required Affirmative to sell more insurance than its surplus could support in order to generate the necessary cash flow to service that parent company debt, without regard to the interests of Affirmative and its policyholders. The Liquidator contends that the D&Os implemented this strategy by: (i) repeatedly under-reserving Affirmative's insurance business and (ii) entering into illusory quota share reinsurance treaties that drained Affirmative of its surplus. The Liquidator alleges that these practices resulted in Affirmative selling millions of dollars of unprofitable insurance it did not have the surplus to support, causing damages to Affirmative and its policyholders of tens of millions of dollars. The Liquidator alleges that the actions of the D&Os constitute gross negligence, negligence and breach of fiduciary duty.

The D&Os, of course, disagree with the Liquidator's conclusions. The D&Os claim that all their actions were reasonable and performed with due care and, therefore, fall under the "business judgment rule" providing complete protection against the Liquidator's breach of fiduciary duty and negligence claims. The D&Os emphasize that they diligently enlisted the judgment of experienced, independent actuaries and auditors prior to setting reserves and prior to entering into the subject reinsurance agreements. Further, the D&Os allege that their actions were closely scrutinized by the Illinois Department of Insurance, the governmental unit designated by

statute to oversee and regulate the activities, operations, financial condition and affairs of insurance companies in the State of Illinois. The D&Os point out that the Illinois Department of Insurance regularly conducted financial examinations of the company and, until the very end, allegedly found Affirmative to be “compliant”. These alleged findings of compliance included the company’s reserving practices and the entry into the aforementioned reinsurance agreements.

The Liquidator not only takes issue with the factual assertions supporting the D&Os defenses, but also relies on established law holding that the shield of the business judgment rule is unavailable to directors who fail to exercise due care in their management of the corporation and that the business judgment rule does not protect those who act under a conflict of interest. As to the D&Os regulatory defenses, it is well-settled under Illinois law that regulatory filings, even if they arise to explicit regulatory sanction of management’s actions, which was not the case here, would not insulate the directors from liability for violation of their fiduciary duties. In other words, there is neither factual nor legal support for the assertion that the D&Os regulatory filings and examinations serve as a defense to the D&Os own breaches of duty.

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THE MEDIATION

5. The Liquidator's claims have not yet been filed in court. Prior to the Liquidator commencing a lawsuit against the D&Os, the Liquidator and the D&Os agreed to mediate the claims, and thereafter entered tolling agreements. By agreement, the mediation was presided over by JAMS. After the exchange of briefs and expert reports, the mediation was held on February 27 and 28, 2018.²

6. Section 193(2) of the Code, 215 ILCS 5/193(2), provides in pertinent part, as follows:

Sec. 193. Duties of Director as liquidator; sales; reinsurance....

* * *

(2) The Director may, subject to the approval of the court, sell or otherwise dispose of the real and personal property, or any part thereof, and sell or compromise all debts or claims owing to the company....

215 ILCS 5/193(2).

7. After two full days of negotiation, the Liquidator, the U.S. Bankruptcy Trustee for the bankruptcy estate(s) of Affirmative Holdings, *et al.*, Confie Seguros, the D&Os and the D&Os' insurance carriers reached a global settlement in resolution off all pending claims asserted by and/or against all participating parties.

² Also participating in the mediation were two other parties who have asserted claims against the Affirmative and Affirmative Holdings D&Os. One of those parties is the U.S. Bankruptcy Trustee of Affirmative Holdings and certain affiliates and subsidiaries which are subject to bankruptcy proceedings in the State of Delaware. The other party is an entity which has filed a lawsuit against certain D&Os (and others, including Affirmative Holdings) in the United States District Court for the Northern District of Illinois [*Confie Seguros Holding II Co. v. J.C. Flowers & Co. LLC et al.*]. Also in attendance at the mediation were representatives of Affirmative's errors and omissions insurance carriers. The Liquidator, the Trustee and Confie Seguros have competing claims and competing interests in the assets of the D&Os, including any available insurance coverages.

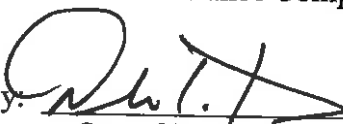
8. The terms and conditions of the agreement between and among the aforementioned parties are set forth in a certain Settlement Agreement (“Settlement Agreement”), a copy of which is attached hereto as Exhibit A. Pursuant to the Settlement Agreement, the insurance carriers collectively, on behalf of the D&Os, will pay the Liquidator [Affirmative] Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000) in exchange for a full release of the Liquidator’s claims.

9. In accordance with the provisions of Article XIII of the Code, 215 ILCS 5/187 *et seq.*, the Liquidator has determined that it is prudent, economically and otherwise, and in the best interests of the Affirmative estate to enter into the agreed upon Settlement Agreement, thereby marshaling assets on behalf of, and to the benefit of, the Affirmative estate, and Affirmative’s policyholders and creditors. The Liquidator’s in-house and outside counsel, who participated in the mediation, have opined that entering into the Settlement Agreement is both an acceptable and successful resolution of the dispute. Among other concerns, the uncertainty of outcome and inherent legal costs and expenses associated with what would surely be protracted litigation are factors which were considered by the Liquidator in reaching her decision. Any attempt to collect the amounts claimed by Affirmative by means other than a compromised settlement may not be financially advisable. Accordingly, the Liquidator represents that it is in the best interests of the Affirmative estate to enter into the subject Settlement Agreement as the full and final settlement of those matters between Affirmative and the D&Os.

WHEREFORE, Jennifer Hammer, Director of Insurance of the State of Illinois, as Liquidator of Affirmative Insurance Company, requests that this Honorable Court enter an order, in accordance with 215 ILCS 5/193, approving the Settlement Agreement by and between the Liquidator, the U.S. Bankruptcy Trustee, Confie Seguros, the D&Os and their insurance carriers.

Respectfully submitted,

Jennifer Hammer
Director of Insurance of the
State of Illinois, as Liquidator of
Affirmative Insurance Company

By: 
One of her Attorneys

J. Kevin Baldwin
Daniel A. Guberman
Dale A. Coonrod
dcoonrod@osdchi.com
Counsel to the Receiver
222 Merchandise Mart Plaza, Suite 960
Chicago, Illinois 60654
(312) 836-9500
Attorney Code #16819

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of the latest date indicated on the signature pages hereof, by and between the following persons and entities:

- A. The following persons and entities collectively referred to as the "Claimants:"
1. Jennifer Hammer ("Hammer") Director of Insurance of the State of Illinois, in her capacity as statutory and court-affirmed liquidator ("Liquidator") of Affirmative Insurance Company ("AIC").
 2. Don A. Beskrone ("Trustee"), Chapter 7 Trustee for the estates of the following entities, each a "Debtor" and collectively the "Debtors:"
 - (a) Affirmative Insurance Holdings, Inc. ("AIH")
 - (b) Affirmative Management Services, Inc.
 - (c) Affirmative Services, Inc.
 - (d) Affirmative Underwriting Services, Inc.
 - (e) Affirmative Insurance Services, Inc.
 - (f) Affirmative General Agency, Inc.
 - (g) Affirmative Insurance Group, Inc.
 - (h) Affirmative, L.L.C.
 3. Confie Seguros Holding II Co. ("Confie").
- B. The following persons collectively referred to as the "D&Os:"
1. Thomas C. Davis ("Davis")
 2. Joseph G. Fisher
 3. Earl R. Fonville
 4. Nimrod T. Frazer
 5. Mory Katz
 6. John P. Killacky
 7. Scott M. Klabacha
 8. Gary Y. Kusumi
 9. Michael J. McClure ("McClure")
 10. Eric Rahe ("Rahe")
 11. David I. Schamis
 12. Daniel D. Schlemmer
 13. Robert T. Williams, Jr.
 14. Paul J. Zucconi
- C. The following entities collectively referred to as the "Carriers."
1. XL Specialty Insurance Company
 2. Catlin Specialty Insurance Company

3. RSUI Indemnity Company

The Liquidator, the Trustee, Confie, and the D&Os are each sometimes referred to as a "Party" and collectively as the "Parties."

Recitals

- A. D&Os: Each of the D&Os served as a director and/or officer of AIH and/or AIC.
- B. Liquidator: On September 16, 2015, an agreed order of rehabilitation was entered against AIC in the Circuit Court of Cook County, Illinois, No. 15 CH 13718 ("AIC Liquidation Case").
- C. On March 24, 2016, an order of liquidation was entered in the AIC Liquidation Case and Hammer's predecessor-in-office was appointed Liquidator of AIC.
- D. The Trustee filed a Proof of Claim and Confie filed a Proof of Claim in the AIC Liquidation Case.
- E. On September 22, 2016, the Liquidator sent letters to certain D&Os alleging she had claims against them and demanding the payment of damages by them ("Liquidator Demand Letters").
- F. The D&Os deny that the Liquidator has any valid claims against them.
- G. On January 17, 2017, Hammer was appointed Director of Insurance of the State of Illinois and by operation of law succeeded her predecessor-in-office as Liquidator of AIC.
- H. In September and October 2017, the Liquidator obtained Tolling Agreements from certain of the D&Os.
- I. Trustee: On October 14, 2015, the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code ("Code") in the United States Bankruptcy Court for the District of Delaware, No. 15-12136-CSS (collectively, the "AIH Bankruptcy Case").
- J. On March 10, 2016, an order was entered converting the AIH Bankruptcy Case to a case under Chapter 7 of the Code and the Trustee was appointed trustee of the Debtors' Chapter 7 estates.
- K. On February 26, 2016, the Liquidator filed Proofs of Claim ("POC") with the estates of six Debtors in the AIH Bankruptcy Case asserting various claims against those Debtors' estates. Paragraphs 28-31 of the Liquidator's attachment to each POC refer to the Liquidator's claim to the funds in a trust account (No. '8387) with a balance of \$20,518.44 ("Trust Account Claim"). Paragraphs 5-14 of the Liquidator's attachment to

each POC relate to the Liquidator's claim to the funds in a deposit account under a deposit account control agreement that is the subject of a pending adversary proceeding in the AIH Bankruptcy Case ("DACA Account Claim").

- L. Confie filed Proofs of Claim and McClure also filed Proofs of Claim in the AIH Bankruptcy Case, with each asserting that they had various claims against the Debtors' estates.
- M. On or about October 4, 2016, the Trustee sent letters to certain D&Os alleging that he, on behalf of the Debtors and their estates, had claims against them and demanding the payment of damages by them ("Trustee Demand Letters").
- N. The D&Os deny that the Trustee has any valid claims against them.
- O. Between September 25, 2017 and October 7, 2017, the Trustee obtained Tolling Agreements from certain of the D&Os, the Liquidator and Confie.
- P. Confie: On or about October 2016, Confie sent written notice with respect to certain D&Os alleging it had claims against them and demanding the payment of damages by them ("Confie Demand Letters") (the Liquidator Demand Letters, Trustee Demand Letters, and Confie Demand Letters are collectively referred to herein as the "Demand Letters").
- Q. Between July 2017 and November 2017, Confie obtained Tolling Agreements from certain D&Os.
- R. On July 12, 2017, Confie filed suit in the United States District Court for the Northern District of Illinois against Rahe, Davis and others, in a case styled *Confie Seguros Holding II Co. v. J. C. Flowers & Co., LLC, et al.*, No. 1:17-cv-05166, seeking damages from Rahe, Davis and others ("Confie Case").
- S. Confie voluntarily dismissed Rahe from the Confie Case without prejudice on November 3, 2017.
- T. The D&Os deny that Confie has any valid claims against them.
- U. D&O Insurance Coverage: At the relevant time there were in force certain policies of insurance provided by the Carriers that the D&Os and the Claimants contend provide coverage for the D&Os' defense of the Claimants' claims against the D&Os (the "Policies").
- V. Mediation: In September 2017 the Parties agreed to mediate all claims between and among them and thereafter retained Jed Melnick of JAMS as neutral. The matter was assigned JAMS No. 1425024984 ("Mediation").

- W. On or about December 15, 2017, Claimants each filed a mediation statement and exhibits alleging certain claims against the D&Os. The Liquidator's exhibits included a Confidential Draft Mediation Complaint ("Draft Complaint") and three expert reports ("Initial Expert Reports"). Confie's exhibits included, among other things, e-mail copies of written correspondence by and between certain D&Os, an institutional shareholder, and certain insurance regulators.
- X. The Trustee's mediation statement also alleged certain avoidance claims against the Liquidator and Confie.
- Y. On January 31, 2018, the D&Os filed a mediation statement and exhibits, including two expert reports, setting forth certain defenses to the Claimants' claims against them.
- Z. On or about February 16, 2018, Claimants each filed rebuttal mediation statements and exhibits further alleging certain claims against the D&Os. The Liquidator's rebuttal mediation statement included a fourth initial expert report and three rebuttal expert reports (collectively, "Rebuttal Expert Reports") (the Initial Expert Reports and the Rebuttal Expert Reports are collectively referred to as the "Expert Reports").
- AA. The claims involving the Parties alleged in or which could have been alleged in (1) the Demand Letters, (2) the Confie Case, (3) the Mediation, including in the Claimants' mediation statements, the Claimants' rebuttal mediation statements, and the Liquidator's Draft Complaint and Expert Reports, (4) the AIC Liquidation Case, and (5) the AIH Bankruptcy Case, are collectively referred to as the "Claims."
- BB. On February 27 and 28, 2018, in Chicago Illinois, a mediation was conducted at which all of the Parties and the Carriers, and/or their representatives, were in attendance, and a settlement in principle was reached with respect to all of the Claims between and among all of the Parties (except as indicated in Paragraph 5(b) below), culminating in a term sheet circulated by email to each of the Parties dated February 28, 2018, and confirmed by each of the Parties thereafter.
- CC. And whereas the Parties desire to resolve all of the Claims between and among them (except as indicated in Paragraph 5(b) below) in accordance with the terms set forth below, and in consideration of the promises and mutual covenants contained herein, and intending to be legally bound, IT IS HEREBY AGREED as follows:

Agreement

1. Settlement Payments: Within twenty (20) days after the Effective Date as defined in Paragraph 10 below, the Carriers, on behalf of the D&Os, shall pay the following amounts (each a "Settlement Amount" and collectively the "Settlement Amounts") in accordance with the instructions set forth in Exhibit A hereto:

- (a) \$4,750,000 to the Liquidator;
- (b) \$2,375,000 to the Trustee; and

(c) \$2,375,000 to Confie.

The indefeasible payment of the Settlement Amounts shall be a condition precedent to the effectiveness of this Agreement and the releases provided herein.

2. No Admission of Liability: By paying the Settlement Amounts, the D&Os expressly deny and do not admit the truth or validity of any claims made against them, including the Claims made in the Demand Letters, the Mediation, the Confie Case, the AIC Liquidation Case, or the AIH Bankruptcy Case. The undersigned Parties each acknowledge and agree that this Agreement constitutes a settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability by any of them regarding any claim or defense, and that this Agreement shall not be offered or received in evidence by or against any Party except to obtain necessary court approvals or to enforce its terms.

3. Release of D&Os by Claimants:

(a) Effective upon the indefeasible payment of the Settlement Amounts set forth in Paragraph 1 above, and except for any obligations imposed under this Agreement and as indicated in subparagraph (b) below, the Claimants and their past and present parents, subsidiaries, affiliates, shareholders, officers, directors, managers, employees, attorneys, predecessors, successors, heirs, executors, administrators, representatives and assigns, do fully, finally and forever release and discharge the D&Os, and each of their respective heirs, executors, administrators, representatives, successors, assigns, insurers (including the Carriers), and attorneys and any other individual or entity entitled to coverage under any of the Policies (collectively "D&O Releasees"), from any and all claims, demands, causes of action, suits, proceedings, judgments, sums of money, contracts, controversies, costs, attorneys' fees, expenses, damages, or other monetary or non-monetary relief whatsoever, in law or equity, claimed or unclaimed, liquidated or unliquidated, fixed or contingent, known or unknown, matured or unmatured, previously existing, existing as of the date of this Agreement, or arising hereafter, whether contractual, extra-contractual, or in tort, that are in any way related to, directly or indirectly, or that in any way involve, the Claims, AIC, or the Debtors, or that were or could have been asserted in the Demand Letters, the Mediation, the Confie Case, the AIC Liquidation Case, or the AIH Bankruptcy Case.

(b) When effective, this Release of D&Os by Claimants is intended to release only the D&Os and the D&O Releasees, and shall not be construed to release, nor shall it release or have any other effect on any other claims, rights or causes of action against any other persons or entities, and all such claims, rights and causes of action are expressly reserved. Further, nothing contained herein shall impair or otherwise effect the Trustee's right to object to the fees and expenses of any professional retained by the Debtors or the Official Committee of Unsecured Creditors in the AIH Bankruptcy Case.

4. Release of Claimants by D&Os: Effective upon the indefeasible payment of the Settlement Amounts set forth in Paragraph 1, and except for any obligations imposed under this Agreement, the D&Os, and each of their respective heirs, executors, administrators, representatives, successors, assigns, and attorneys, do fully, finally and forever release and discharge the Claimants and their past and present parents, subsidiaries, affiliates, shareholders, officers, directors, managers, employees, attorneys, predecessors, successors, heirs, executors, administrators, representatives and assigns, from any and all claims, demands, causes of action, suits, proceedings, judgments, sums of money, contracts, controversies, costs, attorneys' fees, expenses, damages, or other monetary or non-monetary relief whatsoever, in law or equity, claimed or unclaimed, liquidated or unliquidated, fixed or contingent, known or unknown, matured or unmatured, previously existing, existing as of the date of this Agreement, or arising hereafter, whether contractual, extra-contractual, or in tort, that are in any way related to, directly or indirectly, or that in any way involve, the Claims, AIC, or the Debtors, or that were or could have been asserted in the Demand Letters, the Mediation, the Confie Case, the AIC Liquidation Case, or the AIH Bankruptcy Case. For the avoidance of doubt, the releases granted in this Paragraph 4 shall not be construed as releasing or having any other effect on claims belonging to James Christopher Flowers, J.C. Flowers & Co. LLC, JCF AFFM Debt Holdings, L.P., or J.C. Flowers I LP with respect to any Party to this Agreement.

5. Mutual Release by and Among Claimants:

(a) Effective upon the indefeasible payment of the Settlement Amounts set forth in Paragraph 1, and except for any obligations imposed under this Agreement and as indicated in subparagraph (b) below, each Claimant and its past and present parents, subsidiaries, affiliates, shareholders, officers, directors, managers, employees, attorneys, predecessors, successors, heirs, executors, administrators, representatives and assigns, does fully, finally and forever release and discharge the other Claimants and their past and present parents, subsidiaries, affiliates, shareholders, officers, directors, managers, employees, attorneys, predecessors, successors, heirs, executors, administrators, representatives and assigns (collectively "Claimant Releasees"), from any and all claims, demands, causes of action, suits, proceedings, judgments, sums of money, contracts, controversies, costs, attorneys' fees, expenses, damages, or other monetary or non-monetary relief whatsoever, in law or equity, claimed or unclaimed, liquidated or unliquidated, fixed or contingent, known or unknown, matured or unmatured, previously existing, existing as of the date of this Agreement, or arising hereafter, whether contractual, extra-contractual, or in tort, that are in any way related to, directly or indirectly, or that in any way involve, the Claims, AIC, or the Debtors, or that were or could have been asserted in the Demand Letters, the Mediation, the Confie Case, the AIC Liquidation Case, or the AIH Bankruptcy Case.

(b) The foregoing release shall exclude and does not apply to the Liquidator's Trust Account Claim and DACA Account Claim asserted against the Debtors in the AIH Bankruptcy Case, or any ongoing contractual, fee-per-service, or similar arrangements between the Liquidator and Confie. All rights, claims and defenses

with respect to the Liquidator's Trust Account Claim and DACA Account Claim are hereby reserved, and such claims shall be adjudicated in the normal course of proceedings in the AIH Bankruptcy Case.

(c) When effective, this Mutual Release by and Among Claimants is intended to release only the Claimants and the Claimant Releasees, and shall not be construed to release, nor shall it release or have any other effect on any other claims, rights or causes of action against any other persons or entities, and all such claims, rights and causes of action are expressly reserved.

6. Release of Unknown Claims: With respect to any and all released claims, the Parties stipulate and agree that, upon the Effective Date, they shall expressly waive the provisions, rights, and benefits of California Civil Code § 1542, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Parties shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable or equivalent in effect to California Civil Code § 1542. The Parties may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the released claims, but each Party shall expressly have fully, finally, and forever settled and released any and all released claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Each Party acknowledges that the foregoing waivers were separately bargained for and a key element of this Agreement. For the avoidance of doubt, this Paragraph shall only apply to those specific releases granted in paragraphs 3, 4, and 5 above, and it shall not be construed to convert any release given in this Agreement into a general release.

7. Denial of Claims in AIC Liquidation Case and AIH Bankruptcy Case: Each of the Parties acknowledges and agrees that, as a result of this Agreement and the releases set forth herein, (a) all claims of the D&Os, Confie and the Trustee in the AIC Liquidation Case, and (b) all Claims of the D&Os, Confie and the Liquidator (including any claims to any property or funds in the Trustee's possession, custody or control, except the claims of the Liquidator excluded under Paragraph 5(b) above) in the AIH Bankruptcy Case, will be deemed withdrawn with prejudice. Except for the Liquidator's claims excluded under Paragraph 5(b) above, the Parties agree that no objection will be filed to any denials or objections that the Liquidator or Trustee may decide to lodge or file to memorialize the denial, withdrawal or disallowance of the Claims.

8. Approval in the AIC Liquidation Case:

(a) Within 14 days after execution of this Agreement by all Parties, the Liquidator shall file a motion to approve this Agreement in the AIC Liquidation Case.

(b) This Agreement is contingent upon the Liquidator obtaining final approval of this Agreement in the AIC Liquidation Case. Approval shall be considered "final" at the later date of: (i) entry of an order of approval in the AIC Liquidation Case that is final and appealable under Illinois Supreme Court Rule 304(b)(2), and (ii) expiration of 30 days from entry of the order without a motion for reconsideration or an appeal having been filed, and (iii) if an appeal is filed, entry of an order affirming the order appealed from and the expiration of any applicable period for the reconsideration, rehearing or further appeal of such affirmance without any motion for reconsideration or rehearing or further appeal having been filed. If this Agreement does not receive such final approval within six months of the Liquidator filing the motion described in Paragraph 8(a) above, this Agreement shall be null and void, except as provided in Paragraph 13.

9. Approval in the AIH Bankruptcy Case:

(a) Within 14 days after execution of this Agreement by all Parties, the Trustee shall file a motion to approve this Agreement in the AIH Bankruptcy Case. The motion shall also request termination of the monthly fee reporting requirements set forth in the Agreed Order Granting in Part the Motion Concerning Advancement of Certain Defense Costs (AIH Bankruptcy Case, ECF No. 539).

(b) This Agreement is contingent upon the Trustee obtaining final approval of this Agreement in the AIH Bankruptcy Case. Approval shall be considered "final" at the later date of: (i) entry of an order of approval in the AIH Bankruptcy Case, and (ii) expiration of fourteen (14) days from entry of the order without a motion for reconsideration or an appeal having been filed, and (iii) if an appeal is filed, entry of an order affirming the order appealed from and the expiration of any applicable period for the reconsideration, rehearing or further appeal of such affirmance without any motion for reconsideration or rehearing or further appeal having been filed. If this Agreement does not receive such final approval within six months of the Trustee filing the motion described in Paragraph 9(a) above, this Agreement shall be null and void, except as provided in Paragraph 13.

10. Effective Date: The "Effective Date" of this Agreement shall be the date on which the D&Os and Carriers receive notice in accordance with Paragraph 23 below substantiating that final approval of this Agreement has been obtained in both the AIC Liquidation Case and the AIH Bankruptcy Case.

11. **Dismissal of Confie Case:** Within seven days after Confie receives payment of the Settlement Amount in Paragraph 1(c) above, Confie shall file a motion in the Confie Case under Federal Rule of Civil Procedure 41(a)(2) to voluntarily dismiss all claims against Davis, with prejudice and without costs.

12. **Return or Destruction of Confidential Documents:** Within 30 days after the final conclusion of the Confie Case, all Parties that were provided documents in connection with the Mediation pursuant to confidentiality agreements (“Confidentiality Agreements”) shall certify in writing to the producing party in accordance with the notice provisions of Paragraph 23 below that all such documents, including those provided to counsel, experts, or any other persons or entities (except XL Specialty Insurance Company and Catlin Specialty Insurance Company or their successors), have been destroyed or returned to the producing party in accordance with the terms of the Confidentiality Agreements. This provision shall not apply to any documents which the receiving party could have otherwise legally obtained, any documents which the receiving party can otherwise legally obtain as of the Effective Date, or any attorney or expert work product. Unless otherwise agreed by the producing party, the restrictions on use set forth in the Confidentiality Agreements shall remain in full force and effect.

13. **Extension of Tolling Agreements:** The Parties agree that each “Tolling Period” (or its equivalent) as defined in each of the Tolling Agreements involving any of the Parties applicable to or in any way relating to or involving any of the Claims, are extended through and including July 10, 2018. This provision shall become effective and enforceable against each Party upon execution of this Agreement by such Party and shall survive and remain in full force and effect and be binding on the Parties even if this Agreement is not approved in the AIC Liquidation Case or the AIH Bankruptcy Case.

14. **Attorneys’ Fees and Costs:**

(a) Each of the Parties shall bear his, her, or its own attorneys’ fees and costs in connection with the Mediation, the Confie Case, the AIC Liquidation Case, the AIH Bankruptcy Case, and the drafting, performance, and enforcement of this Agreement. The Carriers shall continue to fund all reasonable attorneys’ fees and costs of the D&Os up to the applicable limits of liability.

(b) The D&Os, the Liquidator, and Confie agree not to oppose an application by the Trustee to compensate special counsel (Cozen O’Connor) in the AIH Bankruptcy Case, or otherwise participate in the AIH Bankruptcy Case, except that the Liquidator may participate in the AIH Bankruptcy case with respect to the Trust Account Claim and the DACA Account Claim and related adversary proceedings.

15. **Authorized Signatories:** All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the

undersigned Parties and their respective heirs, executors, administrators, representatives, successors and assigns.

16. Advice of Counsel: Each Party acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to the Party by such counsel.

17. Execution in Counterparts: This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one documents had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement. Execution by facsimile or email in pdf format shall be acceptable and fully and legally binding on all Parties.

18. Entire Agreement and Amendments: This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in a writing signed by the Parties, or by their respective authorized attorneys or other representatives.

19. Best Efforts and Cooperation: The Parties shall cooperate and exercise their best efforts to implement the terms of the Agreement, to obtain approval of this Agreement, and to reasonably avoid the occurrence of events that would lead to termination of the Agreement.

20. Nonreliance: Each Party expressly assumes any and all risk that the facts and law may be or become different from the facts and law as known to, or believed to be, by the Parties as of the date of this Agreement, and no Party has relied upon any information supplied by the other or its counsel, or upon any obligation or alleged obligation of the other Party or its counsel to disclose information relevant to this Agreement.

21. Binding Effect: Benefit: This Agreement shall inure to the benefit of and be binding upon the Parties, and their respective successors, administrators, trustees, executors, and assigns. Except as specifically set forth herein, nothing in this Agreement, express or implied, is intended to confer upon any other person any rights, remedies, obligations, or liabilities.

22. Rules of Construction: The Parties and their respective counsel have reviewed this Agreement and acknowledge and agree that any rule of construction that would require an ambiguity, if any, in this Agreement to be construed against the drafter shall not be employed in the interpretation of this Agreement.

23. Notices: All notices, requests and other communications pursuant to this Agreement shall be in writing and shall be deemed to have been duly given, if delivered in person or by overnight courier, or by facsimile or email transmission, or by registered or certified mail, postage prepaid, addressed as indicated in Exhibit B hereto.

ACCEPTED and AGREED as of the latest date indicated below:



JOSEPH G. FISHER

Date: 9/9/18

EARL R. FONVILLE

Date: _____

NIMROD T. FRAZER

Date: _____

MORY KATZ

Date: _____

JOHN P. KILLACKY

Date: _____

SCOTT M. KLABACHA

Date: _____

GARY Y. KUSUMI

Date: _____

MICHAEL J. MCCLURE

Date: _____

ERIC RAHE

Date: _____

DAVID I. SCHAMIS

Date: _____


DANIEL D. SCHLEMMER

Date: _____

ACCEPTED and AGREED as of the latest date indicated below:

JOSEPH G. FISHER

Date: _____



EARL R. FONVILLE

Date: 4.9.18

NIMROD T. FRAZER

Date: _____

MORY KATZ

Date: _____

JOHN P. KILLACKY

Date: _____

SCOTT M. KLABACHA

Date: _____

GARY Y. KUSUMI

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Date: _____

DAVID I. SCHAMIS

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DANIEL D. SCHLEMMER

Date: _____

ACCEPTED and AGREED as of the latest date indicated below:

JOSEPH G. FISHER

Date: _____

EARL R. FONVILLE

Date: _____

Nimrod T. Frazer

NIMROD T. FRAZER

Date: *Apr. 6, 2018*

MORY KATZ

Date: _____

JOHN P. KILLACKY

Date: _____

SCOTT M. KLABACHA

Date: _____

GARY Y. KUSUMI

Date: _____

MICHAEL J. MCCLURE

Date: _____

ERIC RAHE

Date: _____

DAVID I. SCHAMIS

Date: _____

DANIEL D. SCHLEMMER

Date: _____

ACCEPTED and AGREED as of the latest date indicated below;

JOSEPH G. FISHER

Date: _____

EARL R. FONVILLE

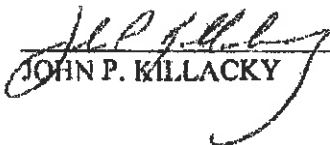
Date: _____

NIMROD T. FRAZER

Date: _____

MORY KATZ

Date: _____


JOHN P. KILLACKY

Date: 4-5-2018

SCOTT M. KLABACHA

Date: _____

GARY Y. KUSUMI

Date: _____

MICHAEL J. MCCLURE

Date: _____

ERIC RAHE

Date: _____

DAVID I. SCHAMIS

Date: _____

DANIEL D. SCHLEMMER

Date: _____

ARTICLE 10 and SCHEDULE 10 of the Local Government Act 1992

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

 _____ Date 1 APR 97

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

ACCEPTED and AGREED as of the latest date indicated below:

JOSEPH G. FISHER

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Date: _____

SCOTT M. KLABACHA

Date: _____



GARY J. KUSUMI

Date: 4/6/18

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MICHAEL J. MCCLURE Date: 4/5/18

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Date: _____

GARY Y. KUSUMI

Date: _____

MICHAEL J. MCCLURE

Date: _____

ERIC RAHE

Date: _____

DocuSigned by:

B2E8FF706B8748F...

4/5/2018

DAVID I. SCHAMIS

Date: _____

DANIEL D. SCHLEMMER

Date: _____

ACCEPTED and AGREED as of the latest date indicated below:

JOSEPH G. FISHER

Date: _____

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Date: _____

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Date: _____

GARY Y. KUSUMI

Date: _____

MICHAEL J. MCCLURE

Date: _____

ERIC RAHE

Date: _____

DAVID I. SCHAMIS

Date: _____



DANIEL D. SCHLEMMER

Date: APRIL 5 2018

Paul J. Zucconi
PAUL J. ZUCCONI

Date: 7/10/2018

THOMAS C. DAVIS

By: _____
Whitney Davis, Power of Attorney

Date: _____

ROBERT T. WILLIAMS, JR.

By: _____
Lee D. Williams, Executor of the
Estate of Robert T. Williams, Jr.

Date: _____

JENNIFER HAMMER, Director of Insurance of
the State of Illinois, in her capacity as statutory
and court-affirmed liquidator of Affirmative
Insurance Company

By: _____
James Stephens, her Special Deputy
and Attorney-in-Fact

Date: _____

DON A. BESKRONE, Chapter 7 Trustee for the
estates of Affirmative Insurance Holdings, Inc.,
Affirmative Management Services, Inc., Affirmative
Services, Inc., Affirmative Underwriting Services,
Inc., Affirmative Insurance Services, Inc.,
Affirmative General Agency, Inc., Affirmative
Insurance Group, Inc., Affirmative, L.L.C.

_____ Date: _____

PAUL J. ZUCCONI

Date: _____

THOMAS C. DAVIS

By: 
Whitney Davis, Power of Attorney

Date: 4/5/18

ROBERT T. WILLIAMS, JR.

By: _____
Lee D. Williams, Executor of the
Estate of Robert T. Williams, Jr.

Date: _____

JENNIFER HAMMER, Director of Insurance of
the State of Illinois, in her capacity as statutory
and court-affirmed liquidator of Affirmative
Insurance Company

By: _____
James Stephens, her Special Deputy
and Attorney-in-Fact

Date: _____

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Insurance Group, Inc., Affirmative, L.L.C.

Date: _____

PAUL J. ZUCCONI

Date: _____

THOMAS C. DAVIS

By: _____
Whitney Davis, Power of Attorney

Date: _____

ROBERT T. WILLIAMS, JR.

By: 
Lee D. Williams, Executor of the
Estate of Robert T. Williams, Jr.

Date: 4/9/18

JENNIFER HAMMER, Director of Insurance of
the State of Illinois, in her capacity as statutory
and court-affirmed liquidator of Affirmative
Insurance Company

By: _____
James Stephens, her Special Deputy
and Attorney-in-Fact

Date: _____

DON A. BESKRONE, Chapter 7 Trustee for the
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Inc., Affirmative Insurance Services, Inc.,
Affirmative General Agency, Inc., Affirmative
Insurance Group, Inc., Affirmative, L.L.C.

Date: _____

PAUL J. ZUCCONI

Date: _____

THOMAS C. DAVIS

By: _____
Whitney Davis, Power of Attorney

Date: _____

ROBERT T. WILLIAMS, JR.

By: _____
Lee D. Williams, Executor of the
Estate of Robert T. Williams, Jr.

Date: _____

JENNIFER HAMMER, Director of Insurance of
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Insurance Company

By: 
James Stephens, her Special Deputy
and Attorney-in-Fact

Date: 4-6-18

DON A. BESKRONE, Chapter 7 Trustee for the
estates of Affirmative Insurance Holdings, Inc.,
Affirmative Management Services, Inc., Affirmative
Services, Inc., Affirmative Underwriting Services,
Inc., Affirmative Insurance Services, Inc.,
Affirmative General Agency, Inc., Affirmative
Insurance Group, Inc., Affirmative, L.L.C.

Date: _____

PAUL J. ZUCCONI

Date: _____

THOMAS C. DAVIS

By: _____
Whitney Davis, Power of Attorney

Date: _____

ROBERT T. WILLIAMS, JR.

By: _____
Lee D. Williams, Executor of the
Estate of Robert T. Williams, Jr.

Date: _____

JENNIFER HAMMER, Director of Insurance of
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Date: _____

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Affirmative General Agency, Inc., Affirmative
Insurance Group, Inc., Affirmative, L.L.C.

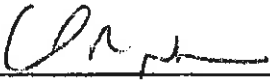
D.A. Beskrone, Trustee

Date: 4/6/18

DON A. BESKRONE, Chapter 7 Trustee for the estates of Affirmative Insurance Holdings, Inc., Affirmative Management Services, Inc., Affirmative Services, Inc., Affirmative Underwriting Services, Inc., Affirmative Insurance Services, Inc., Affirmative General Agency, Inc., Affirmative Insurance Group, Inc., Affirmative, L.L.C.

_____ Date: _____

CONFIE SEGUROS HOLDING II CO.

By: 
Carol Newman, General Counsel

Date: April 6, 2018

EXHIBIT A
PAYMENT INSTRUCTIONS
[TO COME]

EXHIBIT B

NOTIFICATION INFORMATION

1. Liquidator
Alan F. Curley
ROBINSON CURLEY, P.C.
300 South Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 663-3100
acurley@robinsoncurley.com
2. Trustee
Mark E. Felger
COZEN O'CONNOR
1201 North Market Street, Suite 1001
Wilmington, Delaware 19801
(302) 295-2087
mfelger@cozen.com
3. Confie
Michael Kasdin
FOLEY & LARDNER LLP
321 North Clark Street, Suite 2800
Chicago, IL 60654-5313
(312) 832-4563
mkasdin@foley.com
4. Thomas C. Davis
Thomas Giblin
LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022-4834
(212) 906-1232
thomas.giblin@lw.com
5. Earl R. Fonville
John P. Killacky
Scott M. Klabacha
Gary Y. Kusumi
Michael J. McClure
Daniel D. Schlemmer
Michael J. Lohnes
KATTEN MUCHIN ROSENMAN LLP
525 West Monroe Street
Chicago, Illinois 60601
(312) 902-5200
michael.lohnes@kattenlaw.com
6. Joseph G. Fisher
Matthew R. Carter
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600
mcarter@winston.com

7. Nimrod T. Frazer
Mory Katz
Robert T. Williams, Jr.
Paul J. Zucconi

Jule Rousseau
ARENT FOX LLP
1675 Broadway
New York, New York 10019
(212) 484-3948
jule.rousseau@arentfox.com
8. Eric Rahe
David I. Schamis

Joseph S. Allerhand
WEIL, GOTSHAL & MANGES, LLP
767 Fifth Avenue
New York, New York, 10153
(212) 310-8000
joseph.allerhand@weil.com
9. XL Catlin

David H. Topol
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000
dtopol@wileyrein.com
10. RSUI Group, Inc.

Kevin G. Mikulaninec
WALKER WILCOX MATOUSEK LLP
One North Franklin Street
Suite 3200
Chicago, Illinois 60606
(312) 244-6700
kmikulaninec@wwmlawyers.com