

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

IN THE MATTER OF THE LIQUIDATION OF
LUMBERMENS MUTUAL CASUALTY
COMPANY

NO. 12 CH 24227

FILED
2016 OCT -6 AM 8:17

CLERK
DOROTHY BROWN

NOTICE OF MOTION

To: See Attached Service List

On OCT 17 2016, at 9:30 a.m. or as soon thereafter as counsel
may be heard, I shall appear before the Honorable Kathleen M. Pantle or any Judge sitting in that
Judge's stead, in the courtroom usually occupied by him/her, located in room 2410 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>Daniel A. Guberman</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
I certify that the statements set forth herein are true and correct.

Date _____

Signature/Certification

PROOF OF SERVICE BY MAIL

I, Richard C. Abron, the non attorney* certify that I served this notice by mailing
(*strike one)
a copy to each party listed at their respective addresses
(address on envelope)
and depositing the same in the U.S. Mail at Merchandise Mart Plaza, Suite 960, Chicago, Illinois 60654
(place of mailing)
at, or before, 4:30 p.m. on the 6th day of October, 2016, with proper postage prepaid.

Date October 6, 2016
[Signature]
Signature/Certification

PROOF ELECTRONIC OF SERVICE (WHERE PERMISSIBLE)

I, _____ the attorney/non attorney* certify that on the _____ day of _____
_____, I served this notice electronically _____ via the Clerk's Office E-Filing system, 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 _____

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

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

SERVICE LIST

LUMBERMENS MUTUAL CASUALTY COMPANY
(Case No. 12 CH 24227)

Rowe W. Snider
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COURTESY COPY TO:

Barbara F. Cox
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***bcox@ncigf.org (Served by email only)**

The Honorable Judge Kathleen M. Pantle
Room 2410
The Richard J. Daley Center
50 West Washington Street
Chicago, Illinois 60602

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

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IN THE MATTER OF THE LIQUIDATION OF)
LUMBERMENS MUTUAL CASUALTY)
COMPANY)

No.: 12 CH 24227

**PETITION FOR APPROVAL
OF SETTLEMENT AGREEMENT**

NOW COMES Anne Melissa Dowling, Acting Director of Insurance for the State of Illinois (the "Director"), in her capacity as statutory and court-affirmed liquidator (the "Liquidator") of Lumbermens Mutual Casualty Company ("Lumbermens" or the "Estate"), by and through her attorneys, on her Petition For Approval Of Settlement, and in support thereof states as follows:

1. Section 193(2), 215 ILCS 5/193(2) of the Illinois Insurance Code, 215 ILCS 5/1 *et seq.*, (the "Code") provides that,

(2) The Director may, subject to the approval of the court, ... compromise all debts or claims owing to the company, except that whenever the ... amount of any debt owing to the company... does not exceed \$25,000, the Director may... compromise... the same upon such terms as the Director deems in the best interest of the company without obtaining approval of the court.

2. Acting pursuant to this statutory authority, and subject to the approval of this Court, the Liquidator has settled a dispute with Ames Department Stores, Inc. ("Ames") regarding the respective rights of Lumbermens and Ames to the corpus of a Trust Account at Bank of New York containing in excess of \$8,960,000 (the "Trust Account").

3. Travelers Indemnity Company (“Travelers”) served as Ames Department Stores, Inc.’s (“Ames”) workers’ compensation and liability insurer, both before and during its chapter 11 case. Ames’ obligations to Travelers for deductibles and claims handling expenses were secured in part by a \$14.35 million surety bond (the “Bond”) issued by Lumbermens, as surety, in favor of Travelers, as obligee, and in part by letters of credit.

4. Following the commencement of Ames’ chapter 11 case in August 2001, Ames obtained two letters of credit (the “LOCs”) totaling \$27 million as security for Travelers—one to replace a pre-existing, pre-petition letter of credit, and one to support an additional post-petition policy year of the Travelers insurance program. The LOCs eventually became fully cash collateralized, meaning if Travelers drew on the LOCs, the bank issuers could recover from Ames’ cash collateral and would not be out of pocket.

5. In 2003, Travelers demanded the full amount of the Bond from Lumbermens. Lumbermens questioned Travelers’ satisfaction of the Bond’s conditions to payment, whereupon Travelers sued Lumbermens in Connecticut federal court to compel payment. That action between Travelers and Lumbermens (to which Ames was not a party) was subsequently settled (without prior Bankruptcy Court approval) on terms whereby, in pertinent part, Lumbermens agreed to deposit \$8 million (the “Trust Monies”) in a trust account at The Bank of New York, now known as The Bank of New York Mellon (“BNY”), and Travelers agreed to draw the LOCs *before* looking to the Trust Monies for purposes of satisfying Ames’ policy obligations and to return any surplus Trust Monies to Lumbermens.

6. In November 2006, Ames commenced an adversary proceeding against Lumbermens and Travelers. The basic theory of Ames' case as against Lumbermens was that policy obligations incurred by Ames should have been paid first from the Bond, and would have been paid from the Bond absent Lumbermens' actions. Ames' complaint asserted a variety of claims, and Lumbermens responded by denying the allegations of the adversary complaint and asserting counterclaims for subrogation, setoff, and contribution. Lumbermens also filed both administrative and unsecured claims against the Ames estate.

7. In July 2012, the Illinois Director of Insurance commenced rehabilitation proceedings against Lumbermens, whereupon Ames moved to confirm that the Bankruptcy Court had exclusive jurisdiction over its claims against Lumbermens asserted in the adversary proceeding. In response, Lumbermens cross-moved to dismiss and also moved to withdraw the reference of the adversary proceeding on the grounds that its resolution would require substantial consideration of the McCarran-Ferguson Act, which provides that no federal law shall be construed to invalidate state insurance law unless the federal law relates to the business of insurance.

8. In July 2014, United States District Judge Andrew Carter withdrew the reference of the adversary proceeding from the bankruptcy court, but directed Bankruptcy Judge E. Robert Gerber to issue a report and recommendation concerning the then-pending cross-motions of Ames and Lumbermens regarding jurisdiction over the adversary proceeding.

9. Judge Gerber issued his report and recommendation in December 2015, in which he opined that the Bankruptcy Court had exclusive jurisdiction under 28 U.S.C. §

1334(e) over certain claims (violation of the automatic stay, equitable subordination, and marshalling), and non-exclusive jurisdiction over others (breach of contract and other declaratory judgment claims). Judge Gerber's report and recommendation also concluded Ames' claims were not reverse preempted by the McCarran-Ferguson Act.

10. Lumbermens filed objections to Judge Gerber's report and recommendation, and Ames filed a response. Prior to the District Court holding a hearing or issuing a decision regarding the report and recommendation or Lumbermens' objections thereto, the parties consented to the referral of the withdrawn proceeding to Magistrate Judge Debra Freeman for a settlement conference and/or mediation.

11. Subject to the approval of both this Court and the United States Bankruptcy Court for the Southern District of New York, the proposed settlement is the product of the resulting mediation, and provides for Ames to be paid \$4 million from the Trust Monies, Lumbermens to receive the remainder of the Trust Monies, the exchange of mutual releases, and the expungement of the record of Lumbermens' claims against the Ames' estate and of Ames' claims against the Lumbermens liquidation estate.

12. The terms and conditions of the settlement entered into by and between Ames and Lumbermens (the "Settlement") are as follows:

TERMS AND CONDITIONS

- A. This Stipulation shall be of no force and effect until the occurrence of both of the following conditions precedent: (i) the Bankruptcy Court shall have "so ordered" this Stipulation or entered an order approving the entirety of this Stipulation; and (ii) the Lumbermens Liquidation Court shall have

entered an order approving the terms of this Stipulation and the Liquidator's execution of this Stipulation ("Effective Date").

B. Within five (5) business days after the Effective Date, Travelers shall furnish to the Bank of New York Mellon, as successor to the Bank of New York, as Trustee of the Trust Account, such instructions as are required by the Trust Agreement in order to terminate the Trust Account and to distribute the entire corpus of the Trust Monies immediately as follows:

- i. First, to the Bank of New York Mellon for any fees payable and due to that bank for its services as Trustee of the Trust Account;
- ii. Second, to Ames in the sum of \$4 million; and
- iii. The entire remaining balance of the Trust Monies to Lumbermens Mutual Casualty Company, In Liquidation

C. (collectively, the "Settlement Distribution").

D. Upon the fulfillment of the acts required of Travelers in paragraph "2" above, Travelers shall be fully and finally released of any and all further obligations arising under the terms of the Trust Agreement and December 2008 Order.

E. To the fullest extent permitted by law, Ames and Lumbermens hereby forever release and discharge each other together with all of their respective subsidiaries, affiliates, officers, directors, agents, representatives and attorneys from all actions, claims, causes of action, suits, debts, dues, sums of money, accounts, proofs of claim, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, admiralty or equity that Ames

ever had, now has or hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever, including but not limited to all claims asserted as part of, or that could have been asserted as part of or in connection with: (a) the Ames Bankruptcy Case; (b) the Lumbermens Liquidation Proceedings; (c) the Lumbermens Proofs of Claim; (d) the Adversary Proceeding; (e) the Turnover Motion; (f) the Lumbermens Counterclaims; (g) the Trust Agreement; and/or (h) the December 2008 Order; provided only, however, that Ames and Lumbermens reserve their right to enforce this Stipulation to compel the Settlement Distribution.

- F. Pursuant to paragraph "D" above, and for the sake of clarity, it is hereby confirmed that Lumbermens and Ames hereby mutually withdraw, and consent to the expungement of record of, all claims asserted by either of them against the estate of the other.
- G. The Settlement Distribution shall be paid to Ames and Lumbermens, as applicable, in accordance with wire transfer instructions provided by each of them to Travelers in writing within three (3) business days after the Effective Date.
- H. Each party hereto shall bear its own fees, expenses, and costs.
- I. This Stipulation may be executed in any number of counterparts and any party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute one and the same instrument.

Copies of signature pages (including, but not limited to those transmitted electronically) bearing original signatures shall be deemed to be originals for all purposes. It shall not be necessary in making proof of this Stipulation or any counterpart hereof to produce or account for any of the other counterparts.

J. This Stipulation constitutes the sole and complete agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations and understandings, written or oral, with respect to the subject matter hereof.

K. This Stipulation shall be binding upon any successor Chapter 11 trustee, successor Chapter 7 trustee, post-confirmation trustee, statutory liquidator, or other similar fiduciary or assignee of Ames or of Lumbermens, and upon any successor of Travelers.

L. The recitals set forth above are incorporated in full into the terms of this Stipulation.

13. The Liquidator represents that Settlement is in the best interests of the Estate and its creditors and should be approved by this Court. Continued litigation would be expensive and protracted, and divert substantial estate resources. In addition, the Settlement is expected to result in the recovery of approximately \$4.9 million of the Trust Monies. Further, the parties are represented by experienced professionals who understand the risks involved in litigating the proceeding to a conclusion, as well as the potential consequences to the estate of not consummating the Settlement, and have concluded, following arm's length negotiation, that approval of the Settlement is in the

Estate's best interests. Finally, the mutual releases granted under the Settlement are reasonable in scope and necessary to realize the Settlement's purpose.

WHEREFORE, the Liquidator, requests that this Court enter an order approving the Settlement described herein.

Respectfully submitted,

Anne Melissa Dowling,
Acting Director of Insurance of the State of Illinois,
acting solely in her capacity as statutory and court-
affirmed Liquidator of Lumbermens Mutual
Casualty Company

By: 
One of her Attorneys

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