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Honorable Gary Spraker  
United States Bankruptcy Judge



Entered on Docket  
December 17, 2018

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Attorneys for the Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT DISTRICT OF NEVADA**

In re: ) Bankruptcy Case No.: 15-10110-GS  
)  
AMERI-DREAM REALTY, LLC, ) Chapter 7  
)  
Debtor. ) Hearing Date: December 13, 2018  
) Hearing Time: 10:30 a.m.

**ORDER GRANTING MOTION TO APPROVE COMPROMISE  
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

This matter came before the Court on the Motion to Approve Compromise Pursuant to Federal Rule of Bankruptcy Procedure 9019 (the“**Motion**”) filed by Shelley D. Krohn, the successor Chapter 7 Trustee appointed in the above-captioned case (the “**Trustee**”), by and through her counsel of record, Brownstein Hyatt Farber Schreck, LLP. The Motion sought an order approving a settlement agreement (the “**Settlement Agreement**”) entered into between the Trustee and XL America, Inc., XL Insurance American, Inc., XL Select Professional, Pearl Insurance Group, LLC, and Greenwich Insurance Group (collectively referred to herein as the

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1 “**Defendants**”) that resolves all disputes in the litigation pending amongst the parties. The basis  
2 for the relief requested in the Motion was Federal Rule of Bankruptcy Procedure 9019.<sup>1</sup>

3 The Court reviewed the Motion, the Declaration of Samuel A. Schwartz In Support of  
4 Motion to Approve Compromise Pursuant to Federal Rule of Bankruptcy Procedure 9019, the  
5 Notice of Hearing On Motion to Approve Compromise Pursuant to Federal Rule of Bankruptcy  
6 Procedure 9019, the Certificate of Service of Motion to Approve Compromise Pursuant to  
7 Federal Rule of Bankruptcy Procedure 9019, the exhibits attached thereto, and all the pleadings  
8 on file herein.

9 It appearing to the Court that it is in the best interests of the Estate and its creditors to  
10 approve the Settlement Agreement and upon consideration of the pleadings and arguments of  
11 counsel, and based upon the findings of fact and conclusions of law placed on the record at the  
12 hearing and incorporated herein pursuant to Federal Rule of Civil Procedure 52, incorporated by  
13 reference by Federal Rules of Bankruptcy Procedure 7052 and good cause appearing, it is hereby:

14 **ORDERED** that the Motion is **GRANTED**; and it is further  
15 **ORDERED** that the Settlement Agreement, a copy of which is attached hereto and

16 marked as **Exhibit “1”** is approved pursuant to Federal Rule of Bankruptcy Procedure 9019 and  
17 the provisions thereof are made an order of the Court.

18 Submitted by:

19  
20 Brownstein Hyatt Farber Schreck, LLP

21 By /s/ Samuel Schwartz  
22 Samuel A. Schwartz, Esq., Nevada Bar No. 10985  
23 Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614

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25  
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27 \_\_\_\_\_  
28 <sup>1</sup> All defined terms in this Order shall have the same meaning ascribed to them in the Motion unless otherwise provided herein.

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**SUBMISSION TO COUNSEL FOR APPROVAL PURSUANT TO LR 9021**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court’s ruling and that (check one):

\_\_\_\_\_ The court has waived the requirement set forth in LR 9021(b)(1).

  **X**   No party appeared at the hearing or filed an objection to the motion.

\_\_\_\_\_ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

\_\_\_\_\_ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of this order.

APPROVED:

DISAPPROVED:

FAILED TO RESPOND:

Submitted by:

Brownstein Hyatt Farber Schreck, LLP

By /s/ Samuel Schwartz

Samuel A. Schwartz, Esq., Nevada Bar No. 10985

Connor H. Shea, Esq., Nevada Bar No. 14616

100 North City Parkway Suite 1600

Attorneys for the Chapter 7 Trustee

###

# **EXHIBIT 1**

# **EXHIBIT 1**

## SETTLEMENT AGREEMENT AND RELEASE

### I. PARTIES

This Settlement Agreement and Release (hereinafter the "Agreement") is made and entered into as of the date this document has been executed in its entirety, by and among the following parties:

1. Plaintiff Shelley Krohn, in her capacity as the Chapter 7 Trustee of Ameri-Dream Realty, LLC, filed in the United States Bankruptcy Court for the District of Nevada, case no. 15-10110-LED, ("Plaintiff"); and

2. XL America, Inc., XL Insurance American, Inc., XL Select Professional, Pearl Insurance Group, LLC, and Greenwich Insurance Group ("Defendants"), as well as all past, present and future claims and underwriting service managers, agents, adjusters and independent adjusters, surveyors, assigns, insurers, reinsurers, and retrocessionaries, all of their parent companies, subsidiary companies, affiliated companies, and joint venturers, and all of their officers, directors, managing agents, agents, representatives, shareholders, partners, employees, attorneys, subrogees, indemnitees, members, managers, predecessors, successors and assigns (collectively the "Releasees").

3. Plaintiff and the Releasees are hereinafter sometimes referred to collectively as the "Parties."

### II. RECITALS

4. On or about December 22, 2016, previously named plaintiff, Victoria Nelson, in her capacity as the Chapter 7 Trustee of Ameri-Dream Realty, LLC, filed suit against Defendants in the United States District Court for the District of Nevada, case no. 2:16-cv-00060-JAD-GWF, seeking relief for various causes of action including: (1) breach of contract; (2) breach of implied covenant of good faith and fair dealing; (3) breach of fiduciary duty; (4) violations of NRS 686A.310; and (5) declaratory relief (hereinafter the "Lawsuit").

5. On or about September 21, 2017, the court granted Defendant Greenwich Insurance Group's motion to dismiss without prejudice as to the first, second, third, and fifth causes of action and the coverage-related portion of her fourth cause of action. The court further dismissed without prejudice Defendant Pearl Insurance Group, LLC and XL America, Inc., XL Insurance American, Inc., and XL Select Professional as to all causes of action granting leave to amend.

6. On or about October 12, 2017, previously named plaintiff, Victoria Nelson, in her capacity as the Chapter 7 Trustee of Ameri-Dream Realty, LLC, filed her first amended complaint against Defendants seeking relief for causes of action including: (1) violations of NRS 686A.310; (2) breach of fiduciary duty to Ameri-Dream Realty, LLC; and (3) breach of fiduciary duty to tenants and customers of Ameri-Dream Realty, LLC.

7. On or about January 19, 2018, Plaintiff Shelley Krohn was appointed as the Successor Chapter 7 Trustee of Ameri-Dream Realty, LLC, in the place and stead of Victoria Nelson.

Settlement Agreement  
Krohn v. XL America, et al.  
Case no. 16-cv-00060-JAD-GWF

8. In consideration of the recitals and mutual covenants and agreements set forth herein, the adequacy of which is hereby acknowledged, the Parties hereby agree to resolve fully and finally as between them all claims and disputes that now exist or in the future may arise with respect to the Lawsuit.

9. It is understood that the settlement memorialized in this Agreement is a compromise of disputed claims, and nothing herein shall be construed as an admission of liability on the part of any Party to this Agreement. The Parties deny liability, but acknowledge the uncertainties and substantial cost of continued litigation.

Now, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### III. SETTLEMENT TERMS

10. Defendants agree to pay Plaintiff Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to resolve Plaintiff's claims (hereinafter the "Settlement Payment"). Defendants agree to make payment within thirty (30) days of the Bankruptcy Court's entry of an Order approving the settlement.

11. Within five (5) days of payment as set forth above, the Parties shall execute and file a stipulation and order for dismissal, with prejudice, of the Lawsuit.

### IV. RELEASES

12. Release of the Releasees: In consideration of the payment set forth above, the mutual covenants and agreements contained in this Agreement, and other sufficient and valuable consideration, Plaintiff does hereby fully release, acquit and forever discharge the Releasees from all manner of obligations, contracts, actions, causes of action, suits, debts, dues, sums of monies, accounts, fees, bonds, bills, damages, expenses, claims or demands, known or unknown existing on or before or after the effective date of this Agreement or otherwise that Plaintiff has or hereafter may have arising out of and/or related to the Lawsuit, including, but not limited to, any and all claims, whether presently known or unknown, arising out of the policy, claims handling, for all claims of breach of fiduciary duty, and/or for claims made under NRS 686A.310.

Release of Plaintiff: In consideration of the payments set forth above, the mutual covenants and agreements contained in this Agreement, and other sufficient and valuable consideration, the Releasees hereby fully release, acquit, and forever discharge Plaintiff, Plaintiff's agents, Victoria Nelson, Victoria Nelson's counsel, and Plaintiff's counsel from all manner of obligations, contracts, actions, causes of action, suits, debts, dues, sums of monies, accounts, fees, bonds, bills, damages, expenses, claims or demands, known or unknown existing on or before or after the effective date of this Agreement or otherwise that the Releasees have or hereafter may have arising out of and/or related to the Lawsuit. The release provided under this section shall include the right to file a proof of claim in the Debtor's bankruptcy case based upon the payment of the Settlement Payment pursuant to 11 U.S.C. § 501 or Bankruptcy Rule 3001.

Settlement Agreement  
Krohn v. XL America, et al.  
Case no. 16-cv-00060-JAD-GWF

13. Mutual Release between Plaintiff and the Releasees: Plaintiff, in her capacity as the Chapter 7 Trustee of Ameri-Dream Realty, LLC, and the Releasees hereby release and forever discharge each other from all manner of obligations, contracts, actions, causes of action, claims, suits, debts, dues, sums of monies, accounts, fees, bonds, bills, damages, expenses, claims or demands, known or unknown, including but not limited to any and all claims, whether presently known or unknown, arising out of the Lawsuit.

14. All Parties to this Agreement acknowledge that this Agreement and all releases and waivers contained herein are intended to and do apply to all known or unknown, expected or unexpected risks, losses, damages, and/or injuries. The Parties agree that this waiver is a bargained-for provision of this Agreement and is supported by separate valuable consideration. Without this provision, the Parties would not enter into this Agreement. For this reason, the discovery by any Party, subsequent to the execution of this Agreement, of any facts not heretofore known to that Party, or that the facts or law upon which it relied in executing this Agreement were not as it believed them to be, shall not constitute grounds for declaring this Agreement void, voidable or otherwise unenforceable. The Parties further agree that all releases herein shall be effective upon payment as set forth above.

#### V. REPRESENTATIONS AND WARRANTIES

The Parties to this Agreement represent and warrant and agree with each other as follows:

15. The Parties have received independent legal advice from counsel of their own choice throughout all of the negotiations that preceded the execution of this Agreement, and they have executed this Agreement with the consent and advice of such independent legal counsel. Accordingly, this Agreement shall not be construed for or against any particular party.

16. The Parties executing this Agreement further represent and declare that they have carefully read this Agreement, know the contents thereof and are executing this Agreement voluntarily. The contents of this Agreement have been explained to the Parties by their attorneys.

17. This Agreement is the entire, complete, sole and only understanding and agreement of, by and between the undersigned pertaining to the subject matter expressed herein, and there are no independent, collateral, different, additional or other understandings or agreements, oral or written, or obligations to be performed, things to be done, or payments to be made, not described herein; and further, no promise, inducement or consideration not described herein has been made by any Party to this Agreement.

18. The Parties signing this Agreement, and each of them, acknowledge that they are over the age of 21 and are legally competent and authorized to sign this Agreement, which is intended to be a legally binding contract dealing with the release and conveyance of certain valuable important rights.

#### VI. MISCELLANEOUS PROVISIONS



Settlement Agreement  
Krohn v. XL America, et al.  
Case no. 16-cv-00060-JAD-GWF

19. Plaintiff hereby warrants, represents, and covenants that any outstanding liens and/or other reimbursable amounts for legal services paid or rendered on behalf of Plaintiff and/or any other liens allegedly arising out of or in any way relate to the Lawsuit will be satisfied out of the Payment. Plaintiff further agrees to indemnify and hold harmless Releasees from any and all claims, actions and suits for damages, arising out of the failure to pay such liens or charges.

20. The Parties hereby agree that the terms and conditions within this Agreement are not mere recitals and that they each enter into this Agreement in good faith and after having had an opportunity to consult with counsel of their own choosing.

21. The Parties hereto participated jointly in the negotiation and preparation of this Agreement and each Party has had the opportunity to obtain the advice of legal counsel and to review, comment upon, and redraft this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any Party or in favor of any Party. This Agreement shall be construed as if the Parties jointly prepared this Agreement and any uncertainty or ambiguity shall not be interpreted against any one Party and in favor of the other.

22. Plaintiff acknowledges full responsibility for paying or satisfying any and all income taxes or other taxes that are or may be due as a result of the sums paid pursuant to this Agreement. Plaintiff agrees to indemnify, defend and hold the Releasees harmless if any government authority seeks payment of liens, taxes, costs, assessments, penalties, damages, fees, interest, withholdings, or other losses due in connection with the sums paid hereunder, and further agree not to seek or make any claim against Releasees for compensation, recompense, damages, costs, interest, fees, assessments, withholdings, penalties or other losses due if a claim or determination is made by any government authority or any third party that appropriate money or taxes were not paid and/or appropriate withholdings were not made from all or part of the Settlement Payment paid hereunder.

23. All Parties to this Agreement shall execute and deliver any document which is reasonably necessary to achieve the goals and purposes of this Agreement.

24. Time is expressly declared to be of the essence as to this Agreement and every provision hereof in which time is an element.

25. This Agreement has been negotiated and entered into in the State of Nevada, and shall be governed by, construed and enforced in accordance with the laws of the State of Nevada, as applied to contracts made in Nevada and to be wholly performed in Nevada.

26. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or other provisions hereof. This Agreement may be amended only by written agreement executed by the parties-in-interest at the time of the amendment. If any written amendment is entered into, it shall modify only the provisions of this Agreement specifically addressed, and shall be deemed to incorporate by reference, unchanged, all remaining provisions of this Agreement.



Settlement Agreement  
Krohn v. XL America, et al.  
Case no. 16-cv-00060-JAD-GWF

27. If any provision or any part of any provision of this Agreement shall for any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect, except that if the releases given in Section IV are found to be void or unenforceable, this entire Agreement shall be void.

28. The Parties to this Agreement acknowledge and agree that, except as provided herein, each of them shall bear their own costs, expenses, and attorney's fees arising out of the Lawsuit as well as the negotiation, drafting and execution of this Agreement.

29. This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which when taken together shall be deemed to be one instrument. Photocopies, facsimile copies or PDF files of original signature pages shall be deemed to have the same force and effect as the original.

DATED: 11/20/18

CHAPTER 7 TRUSTEE OF AMERI-DREAM REALTY, LLC

Signature: 

Printed Name: Shelley Krohn

DATED: 11/5/18

XL AMERICA, INC., XL INSURANCE AMERICA, INC., AND XL SELECT PROFES



SIONAL

By: \_\_\_\_\_

Printed name: Lee M. Santos

Title: Sr.Acct.Mgr./Senior Director Account Mgt.

DATED: \_\_\_\_\_

PEARL INSURANCE GROUP, LLC

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Settlement Agreement  
Krohn v. XL America, et al.  
Case no. 16-cv-00060-JAD-GWF


DATED: 11/5/18

Title: \_\_\_\_\_

GREENWICH INSURANCE COMPANY

By: \_\_\_\_\_

Reviewed and approved by:



Printed name: Lee M. Santos

Title: Sr.Acct.Mgr./Senior Director Account Mgt.

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP

BROWNSTEIN HYATT FARBER SCHRECK

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In Her Capacity As The Chapter 7 Trustee Of  
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