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10 **UNITED STATES BANKRUPTCY COURT**
 11 **DISTRICT OF NEVADA**

12
13 In re:

Case No. 16-16655-BTB
Chapter 7

14 ROBERT C. GRAHAM, LTD. fdba ROBERT
15 GRAHAM & ASSOCIATES; fdba LAWYERS
WEST,

**MOTION FOR APPROVAL OF
SETTLEMENT**

16 Debtor.

Hearing Date: February 12, 2019
Hearing Time: 1:300 p.m. Pacific time

17
 18 Shelley D. Krohn, the duly appointed Chapter 7 Trustee in the above-captioned bankruptcy case
 19 (the "Trustee"), by and through Trustee's counsel of record, Andersen Law Firm, Ltd., and as the duly
 20 qualified representative of Defendant Robert C. Graham, Ltd. ("Lawyers West" or "Debtor"), hereby
 21 submits this *Motion for Approval of Settlement Agreement* ("Motion") under FRBP 9019, by which
 22 Trustee seeks approval of a settlement ("MIC Settlement") between Lawyers West and Markell
 23 Insurance Company ("MIC"), among others, (each a "Party" and collectively, referred to as
 24 the "Parties"), to resolve the action pending before the United States District Court, District of Nevada,
 25 Captioned, *Markel Insurance Company, Plaintiff vs. Robert C. Graham, Ltd. dba Lawyers West dba*
 26 *Robert Graham & Associates; Robert C. Graham, an individual; Delwyn Webber, an individual;*
 27



1 *Michele Chambers, an individual; William Ellison, an individual; Audrey Galloway, an individual;*
 2 *Olesya Sidorkina, an individual, Defendants, Case No. 2:17-cv-00975-RFB-GWF (“Proceeding”).*¹

3 This Motion is supported by the following Memorandum of Points and Authorities, the
 4 Declaration of Shelley Krohn (“Krohn Declaration”), submitted contemporaneously herewith; all
 5 papers and pleadings filed in the above-captioned bankruptcy case and the Proceeding, judicial notice
 6 of which is requested pursuant to Rule 201 of the Federal Rules of Evidence; and any arguments of
 7 counsel offered in support of the Motion during any hearing held on this matter.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. Jurisdiction and Venue**

10 The Court has jurisdiction over the Proceeding and the subject matter of this Motion under
 11 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding under 28 U.S.C. § 157(b)(2). Under LR
 12 9014.2, if the Court determines that absent consent of the parties the Court cannot enter final orders or
 13 judgment regarding the Motion consistent with Article III of the United States Constitution, Trustee
 14 consents to entry of final orders and judgment by this Court.

15 Venue before this Court is appropriate under 28 U.S.C. § 1409(a). The statutory predicates for
 16 the relief requested in the Motion herein are Section 105(d) and FRBP 9019.

17 **II. Statement of Facts**

18 *A. Brief Overview of Bankruptcy Case*

19 On December 15, 2016, the Estate of Michael B. Macknin, the Sharona Dagoni Trust, and the
 20 Margueritte Owens Revocable Trust (collectively, the “Petitioning Creditors”) filed an Involuntary
 21 Bankruptcy Petition (the “Involuntary Petition”) against the Debtor. ECF No. 1. On December 16,
 22 2016, the Petitioning Creditors filed a *Motion to Appoint Interim Trustee in Involuntary Case* (the
 23

24
 25 ¹ When used herein, all references to “ECF No.” are to the numbers assigned to the documents
 26 filed in the case, as they appear on the docket in the above-captioned case. All references to “Adv. ECF
 27 No.” are to the above-captioned adversary proceeding as specified herein. All references to “Section”
 are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All References to “FRBP” are
 to the Federal Rules of Bankruptcy Procedure. All references to “LR” are to the Local Rules of
 Bankruptcy Practice for the United States District Court for the District of Nevada.

1 “Interim Trustee Motion”), which sought authority to appoint an interim trustee to take possession of
2 property and to manage the business operations and assets of the Debtor. ECF No. 3.

3 On December 21, 2016, the Bankruptcy Court entered an *Order on Trustee Motion and Order*
4 *for Relief Under Chapter 7* (the “Order for Relief”). ECF No. 21. The Order for Relief provided that
5 the Debtor had consented to the filing of a bankruptcy petition and that the filing of the bankruptcy
6 case was effective as of December 15, 2016 (the “Petition Date”). The Order for Relief further required
7 that the Office of the United States Trustee (the “U.S. Trustee”) appoint an Interim Chapter 7 Trustee
8 under Section 701. On December 22, 2016, Victoria L. Nelson (the “Former Trustee”) was appointed
9 as the Chapter 7 Trustee in the Debtor’s bankruptcy case. ECF No. 22.

10 On May 25, 2017, the Former Trustee hired Andersen Law Firm, Ltd. as special litigation
11 counsel for purposes of the Proceeding. ECF No. 251.

12 On January 19, 2018, after the death of the Former Trustee, the Trustee was appointed as the
13 successor Trustee in the Debtor’s bankruptcy case, and the Trustee determined to continue to utilize
14 the services of Andersen Law Firm, Ltd. for purposes of the Proceeding.

15 *B. Settling the Proceeding*

16 On April 5, 2017, MIC filed its complaint (“Complaint”) against Lawyers West, initiating the
17 Proceeding, currently pending before the United States District Court, District of Nevada. Among other
18 allegations, MIC’s Complaint, MIC asserted that the Lawyers Professional Liability Insurance Policy
19 (“Policy”) it issued to Lawyers West should be rescinded. Specifically, MIC alleged that Lawyers West
20 falsely represented material facts in its Application for the Policy.

21 After conducting discovery, the Trustee determined it would be in the best in interest of the
22 Estate to resolve the Proceeding in its entirety through the MIC Settlement. *See* Krohn Declaration.
23 The Trustee and MIC negotiated the MIC Settlement in good faith. *Id.* The MIC Settlement provides
24 that MIC will rescind the Policy and refund the Policy’s premium of \$11,583.00 (“Refund”) to the
25 Estate. *See* Settlement Agreement, attached to the Proposed Order as **Exhibit A**. Moreover, MIC and
26 the Trustee have mutually agreed to waive any and all claims against one another for attorney’s fees
27 and costs incurred by either Party. *Id.* Resolving the Proceeding means that no additional costs



1 associated with litigation will accrue to deplete what value currently exists in the Estate. Rather, settling
 2 this matter promises immediate certainty and finality. The Trustee now files this Motion to obtain this
 3 Court's approval of the MIC Settlement under FRBP 9019. *See* Krohn Declaration.

4 **III. Argument**

5 *A. Standard for Approval*

6 After notice and a hearing, "the court may approve a compromise or settlement." Fed. R. Bankr.
 7 P. 9019(a). Court approval of a settlement is within the court's discretion and requires only a sufficient
 8 factual record upon which the court may make an informed and independent judgment regarding the
 9 relative merits of the settlement. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc.*
 10 *v. Anderson*, 390 U.S. 414 (1968). The approval of a settlement is within the sound discretion of the
 11 court, and the standard is simply whether the settlement is fair and equitable. *In re Woodson*, 839 F.2d
 12 610, 620 (9th Cir. 1988).

13 So long as the settlement is fair and equitable, it should be approved; the court need not
 14 determine the actual merits of the claims to be compromised, only whether the settlement entered into
 15 is reasonable, given the facts and circumstances of the particular case. *Neiman v. Stein*, 464 F.2d 689,
 16 693 (2nd Cir. 1972). However, to guide the court in this exercise, the following factors are to be
 17 considered: (a) the probability of success in litigation; (b) the complexity of the litigation involved, and
 18 the expense, inconvenience, and delay necessarily attending the same; (c) the difficulty, if any, to be
 19 encountered when collecting any judgment obtained; and (d) the paramount interest of the creditors
 20 and a proper deference to their reasonable views. *In re A&C Properties*, 784 F.2d 1377, 1381 (9th Cir.
 21 1986). Each factor need not be met, as long as the factors as a whole favor approving the settlement.
 22 *See In re Pac. Gas & Elect. Co.*, 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004).

23 *B. The Settlement Should Be Approved*

24 The MIC Settlement is fair and reasonable, and it is in the best interest of the Estate and
 25 creditors for at least the following reasons, as supported by the Krohn Declaration.

26 1. Probability of Success in Potential Litigation

27



1 The Trustee believes there is a high probability that defending the Proceeding would be
2 unsuccessful. In MIC's Complaint, MIC sought to rescind the Policy, because MIC alleged that
3 Lawyers West misrepresented material facts in its Application for the Policy. In particular, MIC alleged
4 that when Lawyers West completed its Application for the Policy, Lawyers West was aware of, but
5 falsely represented, circumstances, situations, acts, errors, or omissions that could result in a
6 professional liability claim or suit against Lawyers West.

7 After conducting discovery, the Trustee no longer wishes to dispute MIC's allegations that it is
8 entitled to rescission. The Trustee determined that continued litigation with MIC would not generate
9 additional value for the Estate. Instead, continued litigation with MIC could result in the Estate having
10 to pay MIC's attorney's fees and costs as the prevailing party. The Trustee seeks to eliminate this risk
11 by entering the MIC Settlement. As noted, under the MIC Settlement, the Parties have agreed to waive
12 claims against one another for attorney's fees and costs incurred in the Proceeding. Thus, the MIC
13 Settlement is in the best interest of the Estate.

14 2. Potential Litigation Is Expensive and Inconvenient

15 Settling this matter will resolve the Proceeding in its entirety. Disposing of this Proceeding will
16 enable the Estate to bypass the inherent pitfalls of litigation, including significant litigation costs,
17 delays, and an uncertain resolution. Further, the MIC Settlement will infuse \$11,583.00 into the Estate.
18 Moreover, the MIC Settlement curtails the risk of exposing the Estate to having to pay for MIC's
19 attorney's fees and costs.

20 In contrast, protracted litigation will delay the Trustee's ability to pay administrative fees and
21 costs. Litigation, and the delay and expenses attendant therewith, is simply not in the best interest of
22 the Estate.

23 3. Significant Difficulty and Risk Associated with Collection.

24 This factor is neutral. MIC is an insurance company, so the difficulty and risk associated with
25 collections is virtually nonexistent. However, as discussed, because the Trustee believes that she is not
26 likely to succeed in litigation against MIC, the risk and difficulty associated with collections is a moot
27 concern. Thus, this factor is inapplicable.



1 4. The Paramount Interest of the Creditors.

2 The MIC Settlement is in the best interest of creditors because it disposes of the Proceeding in
3 its entirety. In addition, the MIC Settlement will infuse the Estate with cash value of \$11,583.00. The
4 MIC Settlement will also eliminate the risk of incurring the obligation MIC’s attorney’s fees and costs.
5 The conclusion of the Proceeding eliminates costs associated with litigation and provides all interested
6 parties a certain result.

7 Alternatively, some portion of the Estate would be used to fund the litigation costs instead of
8 satisfying allowed administrative claims. Likewise, delay and uncertainty will persist. The MIC
9 Settlement will conclude the needless accrual of litigation costs, eliminate the risk of additional
10 exposure and provide immediate certainty. On balance, all applicable factors show that the MIC
11 Settlement is in the best interest of creditors and the Estate.

12 **IV. Conclusion**

13 Based on the forgoing, the Trustee respectfully requests that the Court enter an order,
14 substantially in the form of the Proposed Order attached hereto as **Exhibit 1**: (i) granting this Motion
15 by approving the MIC Settlement and (ii) granting the Trustee such further relief as the Court deems
16 appropriate under the circumstances.

17 Dated this 9th day of January, 2019.

18 Respectfully submitted by:

19 **ANDERSEN LAW FIRM, LTD.**

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