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Bruce T Beesley

Honorable Bruce T. Beesley
United States Bankruptcy Judge



Entered on Docket
February 22, 2019



ANDERSEN LAW FIRM, LTD.
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*Special Litigation Counsel for Shelley
Krohn, Chapter 7 Trustee*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

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

Debtor.

Case No. 16-16655-BTB
Chapter 7

**ORDER APPROVING SETTLEMENT
AGREEMENT**

Hearing Date: February 12, 2019
Hearing Time: 1:30 p.m. Pacific time

The Court, having considered the *Motion for Approval of Settlement Agreement* (“Motion”) filed by Shelley D. Krohn, the duly appointed Chapter 7 Trustee in the above-captioned bankruptcy case (the “Trustee”), by and through her counsel of record, Andersen Law Firm, Ltd., and as the duly qualified representative of Defendant Robert C. Graham, Ltd. (“Lawyers West” or “Debtor”); having



1 considered the papers and pleadings filed support of the Motion; having conducted a hearing with
 2 respect to the Motion on February 12, 2019 at 1:30 p.m. Pacific time, with Ryan A. Andersen of
 3 Andersen Law Firm, Ltd. appearing on behalf of the Trustee and with other appearances as noted on
 4 the record of such hearing; having found that adequate and proper notice and service of the Motion and
 5 of such hearing was provided to parties in interest; having found the evidence supporting approval of
 6 the Motion sufficient; having reviewed the settlement agreement (“MIC Settlement”) between Lawyers
 7 West, on the one hand, and Markell Insurance Company (“MIC”), on the other hand (each a “Party”
 8 and, collectively, the “Parties”); having found the settlement between the Parties as detailed in the MIC
 9 Settlement to be in the best interest of the creditors in the above-captioned bankruptcy case; having
 10 found that the Court has jurisdiction over this core matter; and having stated its findings of facts and
 11 conclusions of law on the record at the conclusion of such hearing, pursuant to Fed. R. Bankr. P. 7052,
 12 made applicable hereto by Fed. R. Bank. P. 9014;

13 **NOW THEREFORE**, good cause appearing, the Court **ORDERS** as follows:

14 **IT IS ORDERED** that the Motion is **GRANTED** in its entirety;

15 **IT IS FURTHER ORDERED** that the MIC Settlement, attached hereto as **Exhibit A**, and
 16 incorporated herein by this reference, is **APPROVED**; and shall be binding on the Parties according
 17 to its terms;

18 **IT IS FURTHER ORDERED** that the Parties are authorized to take any act required to
 19 effectuate the terms of the MIC Settlement;

20 **IT IS FURTHER ORDERED** that this Order shall become immediately effective and
 21 enforceable upon its entry, and any stay that that would otherwise apply to this Order under the
 22 Bankruptcy Rules or otherwise is hereby waived; and

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1 **IT IS FURTHER ORDERED** that this Court retains continuing and exclusive jurisdiction to
2 the maximum possible extent to interpret, implement, and enforce the MIC Settlement, including any
3 Party's rights or obligations under the MIC Settlement.

4 Respectfully submitted by:

5 **ANDERSEN LAW FIRM, LTD.**

6 By: /s/ Ryan A. Andersen
7 Ryan A. Andersen, Esq.
8 Nevada Bar No. 12321
9 Ani Biesiada, Esq.
10 Nevada Bar No. 14347
11 101 Convention Center Drive
12 Suite 600
13 Las Vegas, Nevada 89109

14 *Special Litigation Counsel for Shelley*
15 *Krohn, Chapter 7 Trustee*



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LR 9021 CERTIFICATION

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In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that:

- The court has waived the requirement set forth in LR 9021(b)(1).
- 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 each has approved or disapproved the order, or failed to respond, as indicated below:

Counsel appearing: Nicholas M. Wieczorek, Esq., **APPROVED**
Debtor appearing:

- 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 the order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of February, 2019.

By: /s/ Ryan A. Andersen
Ryan A. Andersen, Esq.
Nevada Bar No. 12321
Ani Biesiada, Esq.
Nevada Bar No. 14347
ANDERSEN LAW FIRM, LTD.
101 Convention Center Drive
Suite 600
Las Vegas, Nevada 89109

*Special Litigation Counsel for Shelley
Krohn, Chapter 7 Trustee*

#



EXHIBIT A

EXHIBIT A

EXHIBIT A

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into by and between Markel Insurance Company (“MIC”), on the one hand, and the Chapter 7 Estate of Robert C. Graham, Ltd. dba Lawyers West dba Robert Graham & Associates (“Lawyers West”), by and through its Chapter 7 bankruptcy trustee (the “Trustee”), Delwyn Webber and Olesya Sidorkina on the other. Each of the foregoing are also referred to in this Agreement as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, on or about December 10, 2015, Robert C. Graham, as the Managing Partner of Lawyers West, completed, signed and submitted MIC’s Lawyer’s Errors and Omissions Liability Insurance Application for a MIC Lawyers Professional Liability Insurance Policy on behalf of Lawyers West. Thereafter, in reliance on said Application, MIC issued to Lawyers West policy no. LA-303630, which was effective January 1, 2016 to January 1, 2017 (the “Policy”).

WHEREAS, beginning in December 2016, disciplinary proceedings were instituted against Robert C. Graham that involved allegations of attorney misconduct, including the misappropriation of several million dollars from Lawyers West client-trust accounts over several years. The proceedings included: (1) a disciplinary matter before the State Bar of Nevada, Southern Nevada Disciplinary Board, *State Bar of Nevada v. Robert C. Graham, Esq.*, Nevada Bar No. 4618, Case No. OBC16-1504.; (2) a disciplinary proceeding in The Supreme Court of the State of Nevada, *In the Matter of Discipline of Robert C. Graham*, Bar No. 4618, Case No. 71849; and, (3) a disciplinary proceeding in the United States District Court, District of Nevada, *In Re: Robert C. Graham, Attorney at Law*, Bar No. 4618, Case No. 2:16-ms-102 (collectively, the “Disciplinary Actions”). Further, on January 5, 2017, Mr. Graham was indicted in a criminal proceeding in the District Court of Clark County, Nevada, *The State of Nevada v. Robert Graham*, Case No. C-17-320381-1 on charges of stealing millions of dollars from clients of Lawyers West over several years.

WHEREAS, in late December 2016 and in January 2017 MIC received correspondence from, and/or on behalf of, some 400 potential claimants/former clients of Lawyers West indicating, generally, that Lawyers West and/or Mr. Graham may have misappropriated their funds that were held in Lawyers West client-trust accounts.

WHEREAS, Lawyers West is the subject of Chapter 7 proceedings, *In Re Robert C. Graham, Ltd. fdba Robert Graham & Associates FDBA Lawyers West*, Case No. BK-S-16-16655-BTB, Chapter 7, in which numerous claimants/former clients of Lawyers West have presented claims alleging that Lawyers West misappropriated their funds that were held in Lawyers West client-trust accounts.

WHEREAS, MIC filed the instant lawsuit (*Markel Insurance Company v. Robert C. Graham, Ltd., dba Lawyers West dba Robert Graham and Associates, et al* , U.S.D.C. Case No. 2:17-cv-00975-RFB-GWF (the “Action”)), alleging that Lawyers West misrepresented material facts in its Application for the Policy, that MIC is therefore entitled to rescission of the Policy and that as such MIC has no duty to defend or indemnify any claimed Insured under the Policy or provide any other benefits under the Policy. In particular, the Action alleges that at the time Lawyers West completed its Application for the Policy, Lawyers West was aware of circumstances, situations, acts, errors or omissions that could result in a professional liability claim or suit against Lawyers West or any of its current or former members, to wit, Mr. Graham’s theft of client funds from Lawyers-West client-trust funds; however, Lawyers West falsely represented on the Application that Lawyers West

was not aware of any such circumstances, situations, acts, errors or omissions that could result in a professional liability claim or suit against Lawyers West or its current or former members. The Estate, Ms. Webber and Ms. Sidorkina filed Answers in the Action which disputed MIC's allegations.

WHEREAS, after conducting discovery, the parties understand that neither Ms. Webber and Ms. Sidorkina had any knowledge of, or participation in, the alleged wrongdoing asserted by MIC in the Action. The Estate, Ms. Webber and Ms. Sidorkina no longer contest MIC's allegations that it is entitled to rescission and the parties wish to completely resolve the Action with each party to bear its own attorneys' fees and costs.

NOW, THEREFORE, for and in consideration of their mutual promises as stated herein, and intending to be legally bound, the Parties agree as follows:

1. Stipulation for Rescission of the Policy.

The Parties hereby stipulate that the Policy is rescinded, and that such rescission is a material element of consideration for this Agreement. Such rescission means that the Policy is void ab initio and that MIC shall have no past, present or future obligations of any kind under the Policy. As a result of this rescission it shall be as if no Policy was ever issued by MIC, and no contractual or other obligations of any kind exist between the Parties other than the terms of this Agreement.

2. Return of Premium; Waiver of Fees and Costs.

MIC shall return the Policy premium, the total sum of Eleven Thousand Five Hundred Eighty-Three and 00/100 Dollars (\$11,583.00), to the Chapter 7 Trustee on behalf of the Estate of Lawyers West, by way of check made payable to Shelley D. Krohn, Chapter 7 Trustee, within sixty (60) days of all of the following: (1) the date of entry of an order of the Bankruptcy Court approving the terms of this settlement per paragraph 4 below; (2) the date of entry of an order of the Court in the Action dismissing the Action per paragraph 5 below; and (3) the date of all parties' execution of this Agreement. The premium return payment shall be delivered to Jacob L. Houmand, Esq., Kyle J. Ortiz, Esq., Houmand Law Firm, Ltd., 9205 West Russell Road, Building 3, Suite 240, Las Vegas, Nevada 89148. MIC waives any and all claims against the Estate, Ms. Webber and Ms. Sidorkina for attorney's fees and costs incurred by MIC through the effective date of this Agreement and thereafter with respect to the Action. Likewise, the Estate, Ms. Webber and Ms. Sidorkina waive any and all claims against MIC for attorney's fees and costs they have incurred through the effective date of this Agreement and thereafter with respect to the Action.

3. Releases.

3.1. In consideration of the mutual promises contained in this Agreement, the Estate, by and through the Trustee acting in such capacity, and on behalf of Lawyers West, and Delwyn Webber and Olesya Sidorkina, on behalf of themselves and all other related persons, their predecessors and successors, parents, affiliates, officers, directors, owners, shareholders, subsidiaries, divisions, related corporations or entities, alter egos, agents, attorneys, servants, employees, representatives, and assigns, hereby irrevocably and unconditionally release and forever discharge MIC, and its predecessors and successors, parents, affiliates, officers, directors, owners, shareholders, subsidiaries, divisions, related corporations or entities, agents, attorneys, servants, employees, reinsurers, claim service managers and underwriters, representatives, and assigns, of and from any and all claims, suits, causes of action, claims, suits, debts, liens, demands, costs and damages of any nature whatsoever, whether based on contract, tort or another theory of recovery, whether known or

unknown, suspected or unsuspected, foreseen or unforeseen, liquidated or unliquidated, whether matured or unmatured, whether at law or in equity arising out of or in any way involving any alleged obligations under the Policy, past, present or future, or any prior insurance policy issued by MIC to Lawyers West. This includes, but is not limited to, any claims for insurance coverage, proceeds or benefits, attorneys' fees, expert fees, consequential damages of any nature whatsoever, emotional distress, punitive damages of any kind or for any reason, "bad faith", unfair practices and malicious, oppressive or fraudulent conduct.

3.2. In consideration of the mutual promises contained in this Agreement, MIC, on behalf of itself, its predecessors and successors, parents, affiliates, officers, directors, owners, shareholders, subsidiaries, divisions, related corporations or entities, agents, attorneys, servants, employees, reinsurers, claim service managers and underwriters, including Markel Service Incorporated, representatives, and assigns, hereby irrevocably and unconditionally releases and forever discharges the Estate, by and through the Trustee acting in such capacity, and on behalf of Lawyers West, the Trustee, Delwyn Webber, and Olesya Sidorkina and each of their respective predecessors and successors, parents, affiliates, officers, directors, owners, shareholders, subsidiaries, divisions, related corporations or entities, agents, attorneys, servants, employees, representatives, and assigns, of and from any and all claims, suits, causes of action, liens, demands, costs and damages of any nature whatsoever, whether based on contract, tort or another theory of recovery, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, liquidated or unliquidated, existing now or in the future under the Policy. This includes, but is not limited to, any claims for attorneys' fees, expert fees, consequential damages of any nature whatsoever, personal injuries, emotional distress, punitive damages of any kind or for any reason, "bad faith," unfair practices and malicious, oppressive or fraudulent conduct.

3.3. Each Party acknowledges and represents that he/she/it received independent legal advice from his/her/its counsel with respect to the advisability of making the settlement provided for herein, with respect to the advisability of executing this Agreement, and with respect to any other facts, representations, statements or other circumstances whatsoever which actually or could have influenced his/her/its decision to enter this Agreement.

3.4. Each Party is aware that he, she, it or his/her/its respective counsel of record or any attorney he/she/it may subsequently retain may hereafter discover claims or facts in addition to or different from those they individually now know or believe to be true with respect to the matters released herein. Nevertheless, it is the intention of all Parties hereto to fully, finally and forever settle and release all such matters and all such claims, demands, causes of action or other liability relevant thereto, which they hold or may hold as against the persons or entities released herein, and in any other action identified above. In furtherance of such intention, all Parties acknowledge that the Releases given herein shall be and remain in effect as a full and complete release of all such matters, notwithstanding the discovery or existence of any additional or different claims, demands, causes of action or other liability or facts relative thereto which would have been adjudicated in this Action.

3.5. The Parties expressly consent and agree that this Release shall be given full force and effect according to each and all of its expressed terms and provisions including those relating to unknown and unsuspected claims, demands, causes of action or other liability, if any, as well as those relating to any other claims, demands, causes of action or other liability specified herein.

4. Subject to Bankruptcy Court Approval; Trustee's Motion to Approve Terms.
The Parties agree that this settlement, including the stipulated rescission and return premium payment are subject to approval by the Bankruptcy Court overseeing the Lawyers West Bankruptcy Case, USBC Case No. BK-S-16655-BTB. The Trustee agrees to promptly and diligently file and

prosecute a motion for approval of this Settlement with the Bankruptcy Court. In the event the Bankruptcy Court denies the Motion to Approve this settlement, this Agreement shall be null and void and of no effect.

5. **Subject to District Court Approval; Joint Motion to Dismiss Action.** The Parties further agree that, after the Bankruptcy Court approves the settlement as discussed in paragraph 4 above, the Parties shall file a Joint Motion to Dismiss the Action, and said Motion shall recite the fact that the settlement includes rescission of the Policy and return of the premium as an element of valuable consideration. If the United States District Court does not dismiss the Action based on the parties' Joint Motion with respect to the rescission of the Policy and return of the premium, this Agreement shall be null and void and of no effect.

6. **Cooperation.** The parties agree that they will cooperate with and support MIC in the event any third party claims or suits are filed asserting entitlement to benefits under the policy. In this regard, the parties will assist MIC in factually asserting the defense of rescission to any third party claims, including provision of declarations or testimony.

7. **Covenant not to Sue.** Each of the Parties covenant and agree not to sue, file any grievance, complaint, charge, complaint, or arbitration, or commence any administrative or judicial proceeding against the other in any court of law or equity or administrative agency, or report to any reporting authority, organization, quasi-criminal or criminal agency any matter whatsoever that is within the scope of the release as set forth in this Agreement or to encourage them to file such an action.

8. **Authority.** Each of the Parties represent and warrant that they have the authority to enter into this agreement, and that they have not assigned or otherwise transferred any interest in any claim which is the subject of this Agreement.

9. **No Recitals.** Each of the Parties agree and understand that all of the terms of this Agreement are contractual and not merely recitals.

10. **No Evidence.** Neither this Agreement, nor any of its terms, nor any of the negotiations in connection with this Agreement, shall be offered by any person or received in any forum as evidence for any purpose other than for purposes of settlement, its effectuation, and/or the enforcement of this Agreement.

11. **No Duress.** Each of the Parties acknowledge that they have carefully read and fully understand the provisions of this Agreement, that they have been given a reasonable period of time to consider the terms of this Agreement, and that they enter into this Agreement knowingly and voluntarily and not as a result of any pressure, coercion, or duress.

12. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

13. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, without regard to its principles of conflicts of law. Any dispute arising from, relating to, or otherwise concerning this Agreement shall be brought only in the State of Nevada.

14. **Ambiguous Language.** This Agreement has been negotiated jointly by and between the Parties and their respective counsel. The principle of contract interpretation that ambiguous language is construed against the drafter shall not apply to the interpretation of this Agreement.

15. **No Waiver.** No waiver of any provision of this Agreement shall be effective unless made in writing and executed by the Party charged with making the waiver. No waiver of any of this Agreement's provisions shall be deemed to constitute a waiver of any other provisions, regardless of any similarity between provisions, nor shall any such waiver constitute a continuing waiver, unless expressly designated as such in a writing signed by the Party charged with making the waiver.

16. **Entire, Final and Binding Agreement.** Each of the Parties acknowledge and agree that this Agreement is the final and binding Agreement between them concerning the Action and any matters released. This writing contains the entire Agreement of the Parties and, in entering into this Agreement, each of the Parties acknowledge that they have not relied on any promise, agreement, representation or statement, whether oral or written, that is not expressly set forth in this Agreement.

17. **Non-Disparagement.** Each of the Parties on behalf of themselves and all other related persons, executors, administrators, heirs-at-law, limited liability companies, partnerships, corporations, representatives, principals, agents, directors, officers, executors, administrators, employees, attorneys and shareholders agrees that in the future they will make no defamatory remarks or communications whatsoever to any third-party which shall include any individual or individuals, organization, entity, private or governmental agency, administrative body or organization, or any regulatory or enforcement body, agency or department, bureau or service of any kind or any nature whatsoever regarding one another.

18. **Multiple Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single agreement and shall be binding upon delivery to all Parties. Facsimile signatures and/or electronically submitted signatures shall be deemed originals.

19. **Date of Execution.** The date of execution of this Agreement shall be the date upon which the **last of the Parties signs this Agreement.**

20. **No Modifications.** This Agreement may not be amended or modified except in a writing signed by all Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, expressly intending to be legally bound, the Parties through their duly authorized agents, have executed this Agreement as of the dates set forth below:

Dated: 1-3-19

MARKEL INSURANCE COMPANY

By: Markel Service, Incorporated.
Its Claim Service Manager

Dated: 12/30/18

ROBERT C. GRAHAM, LTD. dba Lawyers West
dba Robert Graham and Associates

By:
Its: Chapter 7 Trustee

Dated: 01/07/19

DELWYN WEBBER

By:
Its:

Dated: _____

OLESYA SIDORKINA

By:
Its:

IN WITNESS WHEREOF, expressly intending to be legally bound, the Parties through their duly authorized agents, have executed this Agreement as of the dates set forth below:

Dated: _____

MARKEL INSURANCE COMPANY

By: Markel Service, Incorporated,
Its Claim Service Manager

Dated: _____

**ROBERT C. GRAHAM, LTD. dba Lawyers West
dba Robert Graham and Associates**

By:
Its:

Dated: _____

DELWYN WEBBER

By:
Its:

Dated: 1/8/2019

OLESYA SIDORKINA



By:
Its: