

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	Chapter 11
Medley LLC, ¹	Case No. 21-10526 (KBO)
Debtor.	Hearing Date: September 27, 2024 at 9:30 a.m. (ET) Objection Deadline: August 19, 2024 at 4:00 p.m. (ET)

**MEDLEY LLC LIQUIDATING TRUST’S MOTION PURSUANT TO 11 U.S.C. § 105(a)
AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 TO APPROVE
SETTLEMENT WITH CERTAIN INSURANCE COMPANIES**

The Medley LLC Liquidating Trust (the “Liquidating Trust”), established by the confirmed plan (the “Plan”)² in this case of the above-captioned debtor (the “Debtor”), by and through its undersigned counsel, hereby moves (the “Motion”) for the entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to section 105 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a proposed settlement of the Liquidating Trust’s claims against certain insurance companies. In support of the Motion, the Liquidating Trust respectfully states as follows:

PRELIMINARY STATEMENT

1. The Liquidating Trust requests approval of the Settlement Agreement and Release of Claims attached to the Proposed Order as **Exhibit 1** (the “Settlement Agreement”). The counterparties to the Settlement Agreement are Certain Underwriters at Lloyds of London, RenaissanceRe Syndicate 1458 and Associated Industries Insurance Company, Inc. Subscribing

¹ The Debtor’s current mailing address is c/o Medley LLC Liquidating Trust, c/o Saccullo Business Consulting, LLC, 27 Crimson King Drive, Bear, DE 19701.

² Docket No. 445-1.



to Policy No. EFI1203059-00 (collectively, “Underwriters,” and together with the Liquidating Trust, the “Settling Parties”). Underwriters is among the respondents in a pending arbitration proceeding brought by the Liquidating Trust arising from the denial of insurance coverage for the Liquidating Trust’s claims against certain of the Debtor’s former insiders (the “Arbitration”).³

2. The Settlement Agreement is the culmination of extensive, arm’s-length negotiations that have lasted five months between the Settling Parties while they were simultaneously litigating the Arbitration. It represents a satisfactory result for the Liquidating Trust and its beneficiaries for several reasons. First, the Settlement Agreement allows the Liquidating Trust to recover \$400,000, which represents a fair and satisfactory recovery against Underwriters, based on Underwriters’ exposure. Second, it streamlines the Arbitration and enables the Liquidating Trust to focus exclusively on its more valuable, remaining claims against Underwriters’ co-respondent in the Arbitration, Allianz Global Risks US Insurance Company (“Allianz”). Third, it leaves intact certain of Underwriters’ discovery obligations in the Arbitration.

3. In sum, the Liquidating Trust, in its business judgment, believes that the Settlement Agreement should be approved under Bankruptcy Rule 9019 as being fair, equitable, and in the best interests of the bankruptcy estate, and its creditors.

4. The Liquidating Trust brings this Motion because it relates to a settlement that the Court approved in a previous order. Specifically, the Court’s Order granting the *Liquidating Trust’s Motion Pursuant to 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 9019 to Approve Settlement with Certain Former Insiders of the Debtor* (the “D&O Settlement Order”)⁴

³ The Arbitration is styled *Medley LLC Liquidating Trust v. Allianz Global Risks US Insurance Company et. al*, AAA Case No. 01-23-0004-1962.

⁴ Docket No. 635.

permitted the Liquidating Trust to settle certain claims in exchange for an assignment of rights against certain insurance companies, including Underwriters. The settlement proposed in this Motion resolves certain of those assigned rights. Additionally, the Settlement Agreement would arguably alter some of the terms in the D&O Settlement Order and is thus, itself, subject to this Court's review.

JURISDICTION AND VENUE

5. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157(a) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for this Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. Also, in the D&O Settlement Order, the Court retained “jurisdiction to hear and determine all matters arising from or related to implementation, interpretation and/or enforcement of” that order.⁵ This Motion is such a matter.

7. The legal predicates for the relief requested in the Motion are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Liquidating Trust consents to entry of a final order by this Court in connection with the Motion, if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

⁵ Docket No. 635 at ¶2.

BACKGROUND

A. The Bankruptcy Case

8. On March 7, 2021, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing this bankruptcy case.

9. On October 14, 2021, the Debtor filed its Plan, which provided for the establishment of the Liquidating Trust and the retention by the Liquidating Trust of causes of action held by the Debtor, including causes of action against the Debtor's former insiders.⁶

10. On October 18, 2021, the Court entered an amended order⁷ confirming the Plan, which went effective that same day.⁸

B. The Prior Settlement

11. On February 22, 2023, the Liquidating Trust filed the *Medley LLC Liquidating Trust's Motion Pursuant to 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 9019 to Approve Settlement with Certain Former Insiders of the Debtor* (the "D&O 9019").⁹ In the D&O 9019, the Liquidating Trust sought Court approval of two proposed settlement agreements between the Liquidating Trust, on the one hand, and certain former insiders of the Debtor (the "D&Os"), on the other hand.¹⁰

12. One of the proposed settlement agreements sought to resolve the Liquidating Trust's claims against the D&Os for conduct that occurred on or after April 30, 2019, defined in the D&O 9019 as the "Post-April 30 Claims."¹¹ That proposed settlement agreement, which

⁶ Docket No. 431.

⁷ Docket No. 445.

⁸ Docket No. 449.

⁹ Docket No. 622.

¹⁰ *See id.* at 1.

¹¹ *See id.*

required the D&Os “to collectively cause to be paid” \$6.4 million to the Liquidating Trust to settle and release the Post-April 30 Claims, was attached as Exhibit C to the D&O 9019 (the “Post-April 30 Settlement”).¹²

13. The Post-April 30 Settlement contained an assignment provision.¹³ As explained in the D&O 9019, the Post-April 30 Claims consisted of breach-of-fiduciary-duty claims against the D&Os for which insurance coverage should have been available under what the D&O 9019 termed the “Allianz Tower.”¹⁴ However, the insurance companies that collectively issued the Allianz Tower (the “Insurers”), including Allianz and Underwriters, had denied coverage of the Post-April 30 Claims, creating, *inter alia*, a collection risk with respect to those claims.¹⁵ The assignment provision helped the Liquidating Trust mitigate that risk.¹⁶

14. Specifically, the Post-April 30 Settlement provided that if the Insurers continued to deny coverage of the Post-April 30 Claims, the D&Os would assign to the Liquidating Trust certain of their claims against the Insurers arising from or related to that denial of coverage.¹⁷ In exchange for that assignment, the Liquidating Trust would provide to the D&Os a covenant not to, among other things, sue them for the Post-April 30 Claims. A form of this assignment and covenant not to sue (the “Assignment”) was attached as Exhibit B to the Post-April 30 Settlement and submitted for Court approval as part of the D&O 9019.¹⁸

¹² See Docket No. 622-4.

¹³ See *id.* § 5.2.

¹⁴ See Docket No. 622 at 5-7.

¹⁵ See *id.* at 9.

¹⁶ See *id.* at 23-24.

¹⁷ See *id.* at 13-14; Docket No. 622-4 § 5.2.

¹⁸ See Docket No. 622-4 at 17.

15. This Court entered the D&O Settlement Order granting the D&O 9019 on March 23, 2023.¹⁹ In the D&O Settlement Order, this Court expressly (1) incorporated the Post-April 30 Settlement, including the Assignment, by reference and made it a part of the D&O Settlement Order “as if fully set forth [t]herein;” and (2) “retain[ed] jurisdiction to hear and determine all matters arising from or related to implementation, interpretation and/or enforcement of” the D&O Settlement Order.²⁰

C. The Assignment

16. After this Court entered the D&O Settlement Order, the Liquidating Trust and the D&Os sought to implement its terms, including the Post-April 30 Settlement. Specifically, the D&Os made demand on the Insurers to pay the \$6.4 million owed to the Liquidating Trust under the Post-April 30 Settlement. The Insurers, however, continued to deny coverage for the Post-April 30 Claims and refused to fund the Post-April 30 Settlement. Accordingly, the D&Os triggered the assignment provisions in the Post-April 30 Settlement, and the Liquidating Trust and the D&Os executed the Assignment on April 24, 2023.²¹ A true and correct copy of the executed Assignment is attached hereto as **Exhibit B**.

17. Under the Assignment, the D&Os “convey[ed] and assign[ed] to the Liquidating Trust . . . all of their right, title, and interest, in and to any claims, causes of action, and contract rights, benefits, and privileges they have under the [Allianz Tower] to seek and recover payment of [\$6.4 million] from [the Insurers], as well as attorneys’ fees and expenses and costs related to enforcing their right to payment of the [\$6.4 million] under the [Allianz Tower] and prejudgment

¹⁹ See Docket No. 635.

²⁰ *Id.* at 2.

²¹ See Docket No. 622 at 13-14.

and postjudgment interest on the preceding amounts against the [Insurers].”²² Accordingly, certain of the D&Os’ first-party claims against the Insurers became Liquidating Trust Assets, and the Liquidating Trust obtained standing to pursue those claims against the Insurers, including Underwriters.

18. The Allianz Tower is split into three layers of coverage totaling \$10 million, with each Insurer providing coverage for a different layer. Allianz provides the primary layer of coverage in the amount of \$5 million. Underwriters provides the next layer of coverage (*i.e.*, Side-A excess coverage) in the amount of \$2.5 million. Old Republic Insurance Company provides the last layer of Side-A coverage in the amount of \$2.5 million.

D. The Arbitration

19. On September 22, 2023, the Liquidating Trust initiated the Arbitration against the Insurers with the American Arbitration Association to pursue the rights assigned to the Liquidating Trust under the Assignment. In the Arbitration, the Liquidating Trust asserts causes of action against the Insurers for breach of contract, declaratory relief, and breach of the implied covenant of good faith and fair dealing, related to their refusal to pay the \$6.4 million owed under the Court-approved Post-April 30 Settlement.

20. Thus far in the Arbitration, the Liquidating Trust and the Insurers have empaneled a tribunal, filed their initial pleadings, made their initial disclosures, exchanged written discovery requests and responses, and begun producing discovery materials.²³

²² See Ex. B § 4.1.

²³ The Liquidating Trust has dismissed Old Republic without prejudice from the Arbitration. Insurers Allianz and Underwriters remain respondents.

E. The Proposed Settlement with Underwriters

21. The Liquidating Trust and Underwriters began to explore settlement in February 2024. A number of considerations informed their discussions. For example, Underwriters is liable for only \$2.5 million in policy limits under the Allianz Tower. Additionally, there is an argument that Underwriters' maximum liability to the Liquidating Trust is limited to \$1.4 million.

22. As noted above, Underwriters is the first Side-A excess insurance carrier in the Allianz Tower. As an excess carrier, its liability is triggered only after exhaustion of Allianz's primary policy and only for nonindemnifiable loss. If the Liquidating Trust were to prevail in its arbitration proceeding, Allianz would owe the Liquidating Trust the first \$5 million of the Post-April 30 Settlement, and Underwriters would owe the Liquidating Trust the next \$1.4 million.²⁴

23. Taking these facts and others into account, counsel for the Liquidating Trust and Underwriters have engaged in extensive settlement negotiations over the past five months that resulted in an agreement in principle to settle the claims between them for \$400,000, to be paid by Underwriters to the Liquidating Trust in exchange for a release of Underwriters and a dismissal of Underwriters from the Arbitration.

24. Underwriters, however, conditioned settlement on its receiving protection from those who might use the Liquidating Trust's past threats of litigation as a basis to seek indemnity from Underwriters. The Liquidating Trust agreed to this express precondition because it is not aware of anyone who would be prejudiced by it.

25. The Allianz Tower consists of claims-made insurance policies, and the deadline to make a claim for indemnity under the Allianz Tower was April 30, 2022. The only timely made

²⁴ These allocations apply only to the \$6.4 million sought as payment for the Post-April 30 Settlement. In the Arbitration, the Liquidating Trust also seeks consequential damages, attorneys' fees, and pre- and post-judgment interest.

claims for indemnity under the Allianz Tower all concern the Liquidating Trust's Post-April 30 Claims, and the Liquidating Trust (pursuant to the Assignment) is the only party pursuing such claims. Indeed, no other claims for indemnity have been threatened, let alone made, against the Allianz Tower. Thus, any demand for indemnity from Underwriters unrelated to the Liquidating Trust's claims is untimely.

26. What's more, there is no basis for anyone insured by the Allianz Tower to seek indemnity related to the Liquidating Trust's claims. The Liquidating Trust has released or covenanted not to sue all persons who might have indemnity rights under the Allianz Tower.²⁵ The statute of limitations to bring such claims has expired.²⁶ And the defense costs of the Settling Insiders that previously justified the indemnity-related carveouts in footnote 8 and section 4.2 of the Assignment (collectively, the "Carveback Rights") are no longer outstanding because they have been paid or forgiven.²⁷

27. Nevertheless, because Underwriters' precondition to settlement arguably alters rights previously blessed by the Court in the D&O Settlement Order, the Liquidating Trust and Underwriters agreed to petition this Court for a bar order to implement Underwriters' demand. The form of that order and the other terms of the parties' proposed settlement are set forth in the Settlement Agreement, a copy of which is attached to the Proposed Order as **Exhibit 1**.

28. The Settlement Agreement includes the following terms:²⁸

- a. **Bankruptcy Court Approval**. The Settling Parties acknowledge and agree that the Settlement Agreement is expressly conditioned upon, and shall not

²⁵ See Ex. B §§ 6.1, 10.

²⁶ The Post-April 30 Claims allege breaches of fiduciary duty. Such claims carry a three-year limitations period, and the tolling provided by section 108(a) of the Bankruptcy Code expired in March 2023.

²⁷ See *id.* at 3-4.

²⁸ These descriptions of the Settlement Agreement's concepts are high-level summaries only. Nothing in this Motion modifies the Settlement Agreement, and to the extent that anything in this Motion or its descriptions of the Settlement

be deemed effective without, the Court's approval. The Liquidating Trust shall use its best efforts to obtain an order of the Court approving the Settlement Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019 (the "Approval Order").

- b. Bar Order.²⁹ The Settling Parties further acknowledge and agree that their contemplated settlement will not go effective unless the Approval Order contains the following injunction (the "Bar Order"), which Underwriters has stipulated is an express precondition to its acceptance of and participation in the Settlement Agreement:
- i. All persons other than the Liquidating Trust are permanently enjoined from invoking, relying on, or otherwise claiming any of the benefits based upon the Notice and Correspondence,³⁰ with respect to the Policy, including but not limited to seeking any recovery from Underwriters pursuant to the Carveback Rights; and
 - ii. All persons who have previously notified Underwriters of their receipt of a written demand from the Liquidating Trust for monetary, non-monetary, or injunctive relief (a "Trust Demand") are permanently enjoined from (a) commencing or continuing in any manner any action or other proceeding of any kind against Underwriters based upon, on account of, or in connection with, or with respect to a Trust Demand; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against Underwriters based upon, on account of, or in connection with, or with respect to a Trust Demand; (c) creating, perfecting, or enforcing any encumbrance of any kind against Underwriters based upon on account of, or in connection with, or with respect to a Trust Demand; and (d) asserting any

Agreement is in any way inconsistent with actual terms of the Settlement Agreement, the Settlement Agreement controls. *See* Ex. 1 to the Proposed Order.

²⁹ The Plan provides Liquidating Trust the exclusive right to pursue or settle Debtor's Causes of Action (including those arising in contract or otherwise against any party) from and after the Effective Date, subject only to the consent of the Oversight Committee in respect of a Major Issue. *See* Plan, Article VII.C. & VII.F [Docket No. 455-1], Liquidating Trust Agreement and Declaration of Trust [Docket No. 371-1]. Thus, no party is prejudiced by approval of the Settlement Agreement, and the Liquidating Trust is squarely within the bounds of Bankruptcy Rule 7001(7) in proceeding by a 9019 motion.

³⁰ Capitalized terms in this paragraph 28 not otherwise defined have the meanings ascribed to them in Exhibit 1 to the Proposed Order.

right of setoff, subrogation, or recoupment of any kind against any obligation due from Underwriters or against the Policy based upon, on account of, or in connection with, or with respect to a Trust Demand.

- c. Rescission. If the Court denies the Liquidating Trust's motion seeking entry of the Approval Order, or if the Approval Order is reversed on appeal, then: (a) the Settlement Agreement shall be deemed void ab initio and shall have no legal effect whatsoever; (b) the Settling Parties shall revert, without prejudice to or waiver of any right, to their respective positions immediately prior to the execution of the Settlement Agreement; and (c) neither the Settlement Agreement nor evidence of its terms shall be admissible for any purpose in any action or proceeding.

RELIEF REQUESTED

29. By this Motion, pursuant to section 105(a) of the Bankruptcy Code³¹ and Bankruptcy Rule 9019,³² the Liquidating Trust requests entry of an order (a) approving the Settlement Agreement; and (b) authorizing the parties to take any and all actions necessary to effectuate the Settlement Agreement.

BASIS FOR RELIEF REQUESTED

30. The Court has the authority to “approve a compromise or settlement” pursuant to Bankruptcy Rule 9019(a). To exercise this authority, the Court must determine that the proposed settlement is “fair and equitable.” *Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)). The Court need not decide the numerous issues of law and fact raised in the subject litigation, but rather should canvas the issues to see whether the settlement “falls within the lowest point in the range of reasonableness.” *In re Capmark Fin. Group, Inc.*, 438 B.R. 417, 475-76 (Bankr. D. Del. 2010).

³¹ Section 105(a) provides, in relevant part, that “[t]he court may issue any order . . . that is necessary or appropriate to carry out the provisions of [Title 11].” 11 U.S.C. § 105(a).

³² Bankruptcy Rule 9019 provides, in relevant part, that “[o]n motion . . . and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a).

A. The Settlement Agreement’s Terms Are Fair and Equitable.

31. In evaluating the fairness and equity of a proposed settlement, the Court must “assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996). Specifically, the Court must consider the following factors: (a) the probability of success in litigation; (b) the likely difficulties in collection; (c) the complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending to it; and (d) the paramount interest of creditors. *Id.* The Court also may consider “the extent that the settlement is truly the product of arms-length bargaining, and not fraud or collusion.” *In re Tribune Co.*, 464 B.R. 126, 155 (Bankr. D. Del. 2011).

32. As set forth below, these factors support approval of the Settlement Agreement.

i. Probability of Success in Litigation Against Underwriters

33. The Arbitration concerns Underwriters’ breach of its duty to indemnify the D&Os under the Allianz Tower. Vested with standing pursuant to the Assignment, the Liquidating Trust brought claims for breach of contract, declaratory judgment, and breach of the implied covenant of good faith and fair dealing against Underwriters and the other Insurers for their denial of coverage of the Post-April 30 Claims and refusal to fund the Post-April 30 Settlement. To carry its burden, the Liquidating Trust will need to demonstrate that the Post-April 30 Claims, if proved to be true, would trigger coverage under the Allianz Tower and that the D&Os’ agreeing to pay \$6.4 million to settle the Post-April 30 Claims was “reasonable in view of the size of the possible recovery and degree of probability of [the Liquidating Trust’s] success against” them. *Luria Bros. & Co. v. Alliance Assurance Co.*, 780 F.2d 1082, 1091 (2d Cir. 1986).

34. Demonstrating that the Post-April 30 Claims, if proved to be true, trigger coverage under the Allianz Tower would be straightforward. It is undisputed that, according to the definitions in the Allianz Tower, the D&Os qualified as “Insured Persons,” the Liquidating Trust made a “Claim” against the D&Os during the “Policy Period” in the form of the Post-April 30 Claims, and the breach-of-fiduciary duty allegations comprising the Post-April 30 Claims alleged “Wrongful Acts.” Further, the \$6.4 million settlement obligation owed by the D&Os to the Liquidating Trust pursuant to the Court-approved Post-April 30 Settlement constitutes “Loss” of the D&Os under the Allianz Tower. In short, the Post-April 30 Claims and Post-April 30 Settlement fall well within the Allianz Tower’s scope of coverage.

35. Demonstrating that the Post-April 30 Settlement and its \$6.4 million payment obligation were reasonable in light of the Liquidating Trust’s probability of success and resulting award on the Post-April 30 Claims would likewise have been straightforward. To begin, the Liquidating Trust’s probability of success on the Post-April 30 Claims is high. The Post-April 30 Claims alleged that the D&Os’ breached their fiduciary duties to the Debtor in two ways: by assisting the self-dealing of the Debtor’s former managing member, Medley Management, Inc. (“MDLY”), with respect to millions of dollars in transactions and by keeping the Debtor alive long after it became insolvent to benefit MDLY and certain other insiders to the detriment of the Debtor.³³

36. The D&Os served as officers of both MDLY and the Debtor simultaneously and thus owed fiduciary duties to each. *See Weinberger v. UOP, Inc.*, 457 A.2d 701, 710 (Del. 1983) (recognizing that an individual who owes fiduciary duties to two companies must exercise that duty “in light of what is best for both companies” and that “[t]here is no ‘safe harbor’ for such

³³ See Docket No. 622 ¶¶ 46 – 50.

divided loyalty in Delaware”). In implementing MDLY’s self-dealing and procurement of nonratable benefits, the D&Os chose to benefit one entity to whom they owed fiduciary duties (MDLY) to the detriment of another (the Debtor). Given the conflicted nature of those transactions and the self-interested motive for keeping the Debtor alive for 10 months after it was insolvent, Delaware’s entire fairness standard of review would have applied to the Post-April 30 Claims, which would have shifted the burden of proof and persuasion to the D&Os to vindicate every challenged transaction. *See In re Tesla Motors, Inc. S’holder Litig.*, 798 A.3d 667, 700 (Del. 2023) (noting that, “where one stands on both sides of a transaction, he has the burden of establishing its entire fairness” (quoting *Weinberger*, 457 A.2d at 710)). To satisfy this “most onerous standard of review,” the D&Os would have to prove that each challenged transaction “was the product of both fair dealing and fair price.” *In re Trados Inc. S’holder Litig.*, 73 A.3d 17, 44 (Del. Ch. 2013) (quoting *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1163 (Del.1995)). Because there was no process involved in the challenged transactions, let alone a fair one, the D&Os could not have carried their heavy burden. *See id.* (“Not even an honest belief that the transaction was entirely fair will be sufficient to establish entire fairness.”).

37. The \$6.4 million payment obligation owing under the Post-April 30 Settlement was also reasonable in light of the Liquidating Trust’s potential recovery against the D&Os. The Post-April 30 Claims challenged approximately \$19 million in transactions. And as noted above, the D&Os had no evidence of fair process to rebut those challenges, thus exposing them to liability for the entirety of the Liquidating Trust’s damage model. Further, the \$6.4 million settlement amount was suggested by Hon. Gerald A. Rosen (Ret.) as his mediator’s proposal to resolve the Post-April 30 Claims after the Liquidating Trust and D&Os had reached a stalemate in their

negotiations.³⁴ Judge Rosen believed that \$6.4 million was a “fair proposal” that “represent[ed] a fair resolution of the case and fair value, when balancing all of the factors, risks and valuations of the claims and defenses.”³⁵

38. The Liquidating Trust’s probability of success against Underwriters does not rest solely on its ability to carry its burden of proof in the Arbitration, however. Upon the Liquidating Trust’s making its prima facie case, the burden would shift to Underwriters to prove that one or more exclusions in the insurance policies comprising the Allianz Tower excluded coverage for the Post-April 30 Settlement. Underwriters denies any wrongdoing, and it has pointed to several exclusions in the Allianz Tower that it argues obviate coverage, including an exclusion unique to Underwriters’ policy. That particular exclusion purports to alter Underwriters’ coverage obligations with respect to the D&Os’ indemnifiable losses. Underwriters has argued that the Post-April 30 Settlement constituted an indemnifiable loss and, therefore, fell within that exclusion from coverage. If Underwriters is correct, Underwriters bears no liability to the Liquidating Trust, notwithstanding the reasonableness of the Post-April 30 Settlement.

39. To be clear, the Liquidating Trust believes that it would succeed on its claims against the Insurers and obtain an award of at least \$6.4 million, which would trigger Underwriters’ liability. Nonetheless, the Liquidating Trust recognizes that the probability of its success against Underwriters is subject to risk and uncertainty. Moreover, the Liquidating Trust recognizes that its ability to appeal an adverse arbitration award is very limited. These risks are difficult to quantify but impossible to ignore. A risk-based discount for the Liquidating Trust’s claims against Underwriters is therefore appropriate, especially at this early stage—namely, settling a \$1.4

³⁴ See Docket No. 622 at 10-11.

³⁵ Docket No. 622-5 at 2.

million claim against Underwriters for \$400,000. This settlement amount is certainly within the reasonable range of litigation possibilities in the Arbitration. *See In re Washington Mut., Inc.*, 442 B.R. 314, 328 (Bankr. D. Del. 2011) (“The court does not have to be convinced that the settlement is the best possible compromise, but only that the settlement falls within the range of litigation possibilities.”).

ii. Complexity, Expense, and Delay of Litigation

40. The Liquidating Trust would face a complex and expensive process in litigating claims against Underwriters. As noted above, Underwriters has its own, unique defenses to coverage in addition to those raised by Allianz, its co-respondent in the Arbitration. Those defenses purport to require costly expert analysis and testimony regarding the financial condition of both the Debtor and MDLY. Investigating and litigating these additional defenses will also likely complicate discovery, dispositive motion practice, and the final hearing.

iii. Paramount Interest of Creditors

41. The Liquidating Trust believes that the paramount interest of creditors would be served by the Settlement Agreement. The proposed settlement would avoid substantial costs, delays, and risks of litigating against Underwrites and also allow the Liquidating Trust to liquidate its claims against Underwriters for a substantial portion of the amount in controversy. The Settlement Agreement would bring \$400,000 into the Liquidating Trust in the near term and streamline the Liquidating Trust’s remaining claims against Allianz in the Arbitration, thereby increasing the Liquidating Trust’s chances of success.

iv. Arm's-Length and Good-Faith Settlement Negotiations

42. The Settlement Agreement is the product of arm's-length and good-faith negotiations. Indeed, counsel for the Liquidating Trust and Underwriters have spent months negotiating and drafting the Settlement Agreement's various terms.

43. The Liquidating Trust and the Underwriters began negotiating settlement of the Liquidating Trust's claims in February 2024, and negotiations lasted five months. The result is the fair, reasonable, and hard-fought outcome memorialized in the Settlement Agreement.

44. In sum, nearly all criteria support approval of the Settlement Agreement.³⁶ The Liquidating Trust, therefore, submits that the Settlement Agreement should be approved under Rule 9019 as being fair, equitable, and in the best interests of the Debtor's estate and its creditors.

B. The Court Should Enter the Proposed Order with the Bar Order.

45. The Liquidating Trust seeks entry of the Proposed Order, which contains the Bar Order.³⁷

46. This Court has the authority to enter the Proposed Order with the Bar Order pursuant to 11 U.S.C. § 105(a). *See In re Tribune Co.*, 464 B.R. 126, 176 (Bankr. D. Del. 2011) (“Bankruptcy courts have authority to enter settlement bar orders.”).

47. The Bar Order would enjoin individuals and entities insured under the Allianz Tower from seeking indemnity from Underwriters for demands previously made on them by the Liquidating Trust. Bar orders protecting settling parties from indemnity claims are a mainstay of settlement agreements and frequently approved by federal courts. *See, e.g., Eichenholtz v.*

³⁶ The Liquidating Trust has no concerns regarding collection risk against Underwriters. Nonetheless, the absence of this one factor does not affect the remaining “balance [of] the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” *In re Martin*, 91, F.3d at 393.

³⁷ *See* Ex. A at 2. Although the language of the Bar Order in Exhibit A differs somewhat from the proposed language in the Settlement Agreement, Underwriters has approved Exhibit A as consistent with the Settling Parties' intent.

Brennan, 52 F.3d 478, 486 (3d Cir. 995) (approving entry of bar order because, among other reasons, “[m]any states have enacted settlement bar statutes, which allow a bar to the right of contribution if the settlement is made in good faith”); *Whyte v. Kivisto (In re Semcrude LP)*, No. 08-11525 (BLS), 2010 WL 4814377, at *5-6 & n.6 (Bankr. D. Del. Nov. 19, 2010) (approving settlement bar order and recognizing that such orders may extend to indemnity claims).

48. Such bar orders facilitate settlement because “[d]efendants buy little peace through settlement unless they are assured that they will be protected against [others’] efforts to shift their losses . . . for indemnity, contribution, and other causes related to the underlying litigation” onto the settling party. *Munford v. Munford, Inc. (In re Munford, Inc.)*, 97 F.3d 449, 455 (11th Cir. 1996). These bar orders are granted regardless of whether the non-settling parties are before the court imposing the bar order. *See Semcrude*, 2010 WL 4814377, at *6-7 (approving bar order sought by litigation trustee to preclude contribution and indemnity claims against settling defendants, despite opposition of non-settling party that was subject to litigation in another court).

49. No party is prejudiced by the Bar Order because, as a result of the Assignment, the Liquidating Trust is the sole owner of the indemnity rights encompassed by the Bar Order. First, the Liquidating Trust is obligated by the Assignment not to sue anyone insured by Underwriters under the Allianz Tower.³⁸ Second, even ignoring the Liquidating Trust’s covenant to not sue, the Liquidating Trust has no pending actions against such insureds, and the statute of limitations to bring such an action has passed.³⁹ Third, the Arbitration is the only coverage action pending against Underwriters, and no others have even been threatened. Fourth, the D&Os’ defense costs

³⁸ *See* Ex. B § 6.1.

³⁹ The Post-April 30 Claims accrued, at their latest, upon the Debtor’s filing this bankruptcy in March 2021. Delaware’s statute of limitations for the breach-of-fiduciary-duty claims that comprise the Post-April 30 Claims is three years. *See* 10 Del. C. § 8106(a). Accordingly, such claims expired, at the latest, in March 2024.

that prompted the Assignment's Carveback Rights have been paid by other insurance carriers or forgiven. Thus, the Bar Order merely cuts off indemnity that is not due, owing, or likely to be incurred.

50. Obtaining entry of the Bar Order is a material component of the Settlement Agreement. Indeed, Underwriters required the Settlement Agreement to include the Bar Order as an express precondition to settlement.

NOTICE

51. The Liquidating Trust has provided notice of this Motion to the following: (a) the United States Trustee for the District of Delaware; (b) counsel to the D&Os; (c) counsel to the Insurers under the Policies; and (d) all parties entitled to notice under Bankruptcy Rule 2002. In light of the relief requested in this Motion, the Liquidating Trust submits that no other or further notice is necessary.

NO PRIOR REQUESTS

52. No prior request for the relief requested in the Motion has been made to this Court.

CONCLUSION

WHEREFORE, the Liquidating Trust respectfully requests entry of the proposed order, substantially in the form attached hereto as **Exhibit A**, (a) approving the Settlement Agreement; (b) authorizing the parties to take any and all actions necessary to effectuate the Settlement Agreements; and (c) granting such other and further relief as the Court deems just and proper.

[Remainder of Page Intentionally Left Blank]

Dated: August 5, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Sameen Rizvi

Christopher M. Samis (No. 4909)

Sameen Rizvi (No. 6902)

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-and-

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Counsel for the Medley LLC Liquidating Trust

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Hearing Date: September 27, 2024 at 9:30 a.m. (ET)

Objection Deadline: August 19, 2024 at 4:00 p.m. (ET)

**NOTICE OF MEDLEY LLC LIQUIDATING TRUST'S MOTION PURSUANT TO
11 U.S.C. § 105(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019
TO APPROVE SETTLEMENT WITH CERTAIN INSURANCE COMPANIES**

PLEASE TAKE NOTICE that the Medley LLC Liquidating Trust (the "Liquidating Trust") established in the above-captioned case filed the *Medley LLC Liquidating Trust's Motion Pursuant to 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 9019 to Approve Settlement with Certain Insurance Companies* (the "Motion").

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 and served upon and received by the undersigned counsel on or before **August 19, 2024 at 4:00 p.m. (ET)** (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that, if any objections or responses are received, a hearing with respect to the Motion will be held on **September 27, 2024 at 9:30 a.m. (ET)** before The Honorable Karen B. Owens, United States Bankruptcy Judge, at the Court, 824 Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

¹ The Debtor's current mailing address is c/o Medley LLC Liquidating Trust, c/o Saccullo Business Consulting, LLC, 27 Crimson King Drive, Bear, DE 19701.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: August 5, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Sameen Rizvi

Christopher M. Samis (No. 4909)
Sameen Rizvi (No. 6902)
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-and-

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Counsel for the Medley LLC Liquidating Trust

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Re: Docket No. ____

**ORDER GRANTING MEDLEY LLC LIQUIDATING TRUST'S MOTION PURSUANT
TO 11 U.S.C. § 105(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019
TO APPROVE SETTLEMENT WITH CERTAIN INSURANCE COMPANIES**

Upon consideration of the Medley LLC Liquidating Trust's motion (the "Motion");² and this Court's having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties identified in the Certificate of Service filed with the Motion, and it appearing that no other or further notice need be provided; and the Court having considered the objections, if any, filed in opposition to the Motion; the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its creditors, the estate, the Liquidating Trust, and all parties in interest; and the Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceeding had before the Court and after due deliberation and sufficient cause appearing therefore, **IT IS HEREBY ORDERED THAT:**

¹ The Debtor's current mailing address is c/o Medley LLC Liquidating Trust, c/o Saccullo Business Consulting, LLC, 27 Crimson King Drive, Bear, DE 19701.

² Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion.

1. Pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, the Motion is GRANTED.

2. The Settlement Agreement attached as **Exhibit 1** hereto is incorporated by reference and made part of this Order as if fully set forth herein.

3. All persons other than the Liquidating Trust are permanently enjoined from invoking, relying on, or otherwise claiming any of the benefits based upon the Notice and Correspondence, with respect to the Policy, including but not limited to seeking any recovery from Underwriters pursuant to the Carveback Rights (defined in Exhibit 1), regardless of the capacity in which they seek those benefits.

4. All persons who have previously notified Underwriters of their receipt of a written demand from the Liquidating Trust for monetary, non-monetary, or injunctive relief (a "Trust Demand") are permanently enjoined from (a) commencing or continuing in any manner any action or other proceeding of any kind against Underwriters based upon, on account of, or in connection with, or with respect to a Trust Demand; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against Underwriters based upon, on account of, or in connection with, or with respect to a Trust Demand; (c) creating, perfecting, or enforcing any encumbrance of any kind against Underwriters based upon, on account of, in connection with, or with respect to a Trust Demand; and (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from Underwriters or against the Policy based upon, on account of, in connection with, or with respect to a Trust Demand.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to implementation, interpretation and/or enforcement of this Order.

EXHIBIT 1

Settlement Agreement

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SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (the "Agreement") is made and entered into by (i) the Medley LLC Liquidating Trust (the "Liquidating Trust"), by and through Saccullo Business Consulting, LLC, as Liquidating Trustee (the "Liquidating Trustee"); and (ii) Certain Underwriters at Lloyds of London, RenaissanceRe Syndicate 1458 and Associated Industries Insurance Company, Inc. Subscribing to Policy No. EFI1203059-00 (together, "Underwriters").¹

I. RECITALS

A. WHEREAS, Medley LLC (the "Debtor") filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), Case No. 21-10526, on March 7, 2021;

B. WHEREAS, the following excess insurance policies were issued to the Debtor's former managing member, Medley Management, Inc. ("MMI"), through Euclid:

- i) Excess Insurance Policy no.: EFI0701412 00 for the policy period of April 30, 2019 to April 30, 2020 (the "'19 Policy");
- ii) Side-A Excess Policy no.: EFI0701412 01 for the policy period of April 30, 2020 to April 30, 2021 (the "'20 Policy"); and
- iii) Side-A Excess Policy no.: EFI1203059-00 for the policy period of April 30, 2021 to April 30, 2022 (the "Policy", collectively with the '19 Policy and the '20 Policy, "Underwriters' Policies").

C. WHEREAS, on October 18, 2021, (i) the Bankruptcy Court entered the *Amended Findings Of Fact, Conclusions Of Law, And Order (I) Approving The Adequacy Of Disclosures On A Final Basis And (II) Confirming The Modified Third Amended Combined Disclosure Statement And Chapter 11 Plan Of Medley LLC* (Docket No. 445) (the "Confirmation Order"), approving the *Modified Third Amended Combined Disclosure Statement and Chapter 11 Plan of Medley LLC* (Docket No. 445-1) (the "Plan") and (ii) the Plan became effective;

D. WHEREAS, on October 18, 2021, the Debtor's assets, including its Causes of Action (as defined in the Plan), automatically vested in the Liquidating Trust, and the Liquidating Trustee was authorized to: (i) marshal and liquidate the Liquidating Trust's assets for distribution under the Plan, (ii) pursue such Causes of Action on behalf of the Liquidating Trust; and (iii) settle such Causes of Action subject to the terms of that certain Liquidating Trust Agreement and Declaration of Trust executed in connection with the Plan and Confirmation Order;

E. WHEREAS, by letter dated January 26, 2022, the Liquidating Trustee (through its counsel Reid Collins ("RC")) provided to Underwriters a notice of circumstances which may

¹ Euclid Financial Institutions Underwriters, LLC ("Euclid") is correspondent for the insurers Certain Underwriters at Lloyds of London, RenaissanceRe Syndicate 1458 and Associated Industries Insurance Company, Inc. subscribing to Policy No. EFI1203059-00 and is included in the term "Underwriters".

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reasonably be expected to give rise to claims against certain officers of the Debtor relating to transactions that occurred on or after April 30, 2019 (the "January Notice");

F. WHEREAS, by letter dated March 25, 2022, the Liquidating Trustee made a demand against certain directors and/or officers of MMI and officers of the Debtor (including Brook Taube, Seth Taube, and Richard Allorto), the terms of which were clarified in correspondence to Douglas Koff, Esq. of Schulte Roth & Zabel, LLP ("SRZ") dated April 4, 2022 (the "Demand");

G. WHEREAS, further information regarding the Demand was set forth by an email dated April 22, 2022 from RC (the "April Email");

H. WHEREAS, by letter dated May 9, 2022, Underwriters generally reserved all rights regarding coverage for this matter under the Policy;

I. WHEREAS, Underwriters participated in a mediation before Jed Melnick on May 25, 2022, with a continued session on June 8, 2022 (the "Mediation") regarding the Demand;

J. WHEREAS, the parties did not resolve the matter at the Mediation;

K. WHEREAS, by letter dated July 26, 2022, Underwriters continued to generally reserve all rights regarding coverage for this matter under the Policy;

L. WHEREAS, letters from RC to SRZ dated July 25, 2022 and August 5, 2022 described the Liquidating Trustee's Causes of Action against the Debtor's former officers based on conduct that occurred on or after April 30, 2019 (the "Post-April 30 Claims"), and the Post-April 30 Claims were set forth in detail in an enclosed draft complaint styled *Medley LLC Liquidating Trust v. Brook Taube, et al.* to be filed in the Court of Chancery of the State of Delaware (the "July & August Letters and Draft Complaint");

M. WHEREAS, the Liquidating Trustee and certain of the officers of the Debtor participated in a mediation before the Hon. Gerald A. Rosen (Ret.) on August 30, 2022 and subsequently agreed to a mediator's proposal to settle the Post-April 30 Claims for \$6.4 million (the "Underlying Settlement"), as set forth in the Settlement Agreement and Release of Post-April 30 Claims entered into on or about February 14, 2023 the ("Post-April 30 Claims Settlement Agreement");

N. WHEREAS, the Bankruptcy Court approved the Post-April 30 Claims Settlement Agreement in a hearing conducted on March 23, 2023;

O. WHEREAS, after the Insureds' request to fund the Underlying Settlement was declined, the Liquidating Trust received certain rights under the Policy pursuant to that certain Assignment and Covenant Not to Sue dated March 23, 2023, between the Liquidating Trust and certain Insureds (the "Assignment")², namely, Brook Taube, Seth Taube and Richard Allorto (the

² The Assignment is annexed as Exhibit M to the Liquidating Trust's Demand for Arbitration and Statement of Claim filed in the Arbitration (defined in Recital Q).

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“Medley D&Os”), pursuant to which the Medley D&Os “convey[ed] and assigned to the Liquidating Trust and its successors and assigns”:

all of their [the Medley D&Os’] right, title, and interest, in and to any claims, causes of action, and contract rights, benefits and privileges they have under those Policies listed under “Tower 2 (D&O)” in Schedule II (the “Tower 2 Policies”) [i.e., including the Policy] to seek and recover payment of the Settlement Payment [i.e., the Underlying Settlement] from the Tower 2 Policies, as well as attorneys’ fees and expenses and costs related to enforcing their right to payment of the Settlement Payment [i.e., the Underlying Settlement] under the Tower 2 Policies and prejudgment and postjudgment interest on the preceding amounts against the insurance companies who issued the Tower 2 Policies (the “Tower 2 Insurers”). The total of the Settlement Payment [i.e., the Underlying Settlement], attorneys’ fees and expenses and costs incurred to obtain the Settlement Payment [i.e., the Underlying Settlement] from the Tower 2 Insurers, and any prejudgment and postjudgment interest awarded on those amounts are collectively referred to herein as the “Denial Damages.”

P. WHEREAS, pursuant to Section 4.2 and footnote 8 of the Assignment, the Medley D&Os retained rights under the Policy to: (i) seek payment or reimbursement of up to \$3.6 million for Loss (as defined in the Policy) unrelated to pursuing the Denial Damages; and (ii) to the extent that the Trustee releases the Tower 2 Insurers for less than \$6,400,000, the Loss equal to whatever aggregate Limits of Liability remain after the Trustee releases the Tower 2 Insurers (collectively, (i) and (ii) shall be referred to as the “Carveback Rights”);

Q. WHEREAS, on September 22, 2023, the Liquidating Trust filed a Demand for Arbitration and Statement of Claim with the American Arbitration Association (AAA Case No. 01-23-0004-1962) (the “Arbitration”), alleging certain causes of action against Underwriters and other insurance companies;

R. WHEREAS, on October 24, 2023, Underwriters filed an Answer in the Arbitration, generally denying liability to the Liquidating Trust and asserting seventeen affirmative defenses to the Liquidating Trust’s claims; and

S. WHEREAS, the Liquidating Trust and Underwriters (together, the “Settling Parties”) wish to avoid the uncertainty, expense, and delay of litigating the causes of action alleged against Underwriters in the Arbitration.

II. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the covenants, promises, and releases set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby

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acknowledged, the Settling Parties hereby agree, on behalf of themselves and any other parties or persons claiming by, through, or under any of the Settling Parties hereto, as follows:

1. **Definitions.**

a. Terms defined in the Policy are used herein with the same meaning unless otherwise defined herein.

b. “Based upon” means “based upon”, “relating to”, “attributable to”, “arising out of”, “in connection with” or “pertaining to”, those terms having ascribed to them their fullest meanings under the law.

c. “Notice and Correspondence” means, the January Notice and any correspondence, draft complaint or filing based upon the January Notice, including but not limited to the following: the Demand, the April Email, the July & August Letters and Draft Complaint, the Settlement Agreement and the Assignment.

2. **Bankruptcy Court Approval.** The Settling Parties acknowledge and agree that this Agreement is expressly conditioned upon, and shall not be deemed effective without, the Bankruptcy Court’s approval.

a. **Approval Order.** The Liquidating Trustee shall use its best efforts to obtain an order of the Bankruptcy Court approving this Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019 (the “Approval Order”). The Liquidating Trustee shall file a motion seeking entry of the Approval Order in the Bankruptcy Court no later than ten (10) business days after the execution of this Agreement.

b. **Bar Order.** The Settling Parties further acknowledge and agree that the Effective Date (defined below) will not occur unless the Approval Order contains the following injunction (the “Bar Order”), which Underwriters have stipulated is an express precondition to their acceptance of and participation in this Agreement:

i. All persons other than the Liquidating Trust are permanently enjoined from invoking, relying on, or otherwise claiming any of the benefits based upon the Notice and Correspondence, with respect to the Policy, including but not limited to seeking any recovery from Underwriters pursuant to the Carveback Rights or similar rights; and

ii. All persons who have previously notified Underwriters of their receipt of a written demand from the Liquidating Trust for monetary, non-monetary, or injunctive relief (a “Trust Demand”) are permanently enjoined from (a) commencing or continuing in any manner any action or other proceeding of any kind against Underwriters based

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upon, on account of, or in connection with, or with respect to a Trust Demand; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against Underwriters based upon, on account of, or in connection with, or with respect to a Trust Demand; (c) creating, perfecting, or enforcing any encumbrance of any kind against Underwriters based upon on account of, or in connection with, or with respect to a Trust Demand; and (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from Underwriters or against the Policy based upon, on account of, or in connection with, or with respect to a Trust Demand.

3. **Effective Date:** This Agreement shall not become effective until the date (the "**Effective Date**") on which all of the following preconditions to settlement have been satisfied:

(a) the Bankruptcy Court has entered the Approval Order containing the Bar Order;

(b) the Approval Order has become a final order because either:

(1) no objection was timely filed to the Liquidating Trustee's motion seeking entry of the Approval Order; or

(2) an objection to entry of the Approval Order was filed and:

(i) no motion for reconsideration regarding the Approval Order has been timely filed within fourteen (14) calendar days after the date of the entry of the Approval Order, as required by Federal Rule of Bankruptcy Procedure 9023;

(ii) no notice of appeal regarding the Approval Order has been timely filed within fourteen (14) calendar days after the date of the entry of the Approval Order, as required by Federal Rule of Bankruptcy Procedure 8002(a); and

(iii) if a notice of appeal or motion for reconsideration of the Approval Order has been timely filed, as required by Federal Rule of Bankruptcy Procedure 9023 or Federal Rule of Bankruptcy Procedure 8002(a), then such appeal or motion has been denied with prejudice and the Approval Order is not subject to further timely appellate review.

And

(c) the Liquidating Trust has provided all payment information reasonably required to facilitate payment of the Settlement Sum (as defined in Section 5 below), including wiring

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instructions³, an executed W9 and any other necessary tax information, and verbal confirmation of the wire instructions by the Liquidating Trustee or his counsel.

4. **Rescission.** If the Bankruptcy Court denies the Liquidating Trustee's motion seeking entry of an Approval Order, or if the Approval Order is reversed on appeal, then: (a) this Agreement shall be deemed void *ab initio* and shall have no legal effect whatsoever; (b) the Settling Parties shall revert, without prejudice to or waiver of any right, to their respective positions immediately prior to the execution of this Agreement; and (c) neither this Agreement nor evidence of its terms shall be admissible for any purpose in any action or proceeding.

5. **Settlement Sum and Payment.** Provided that the Effective Date has occurred, Underwriters agree to pay FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) (the "**Settlement Sum**") in full and final settlement of all of the Liquidating Trust's claims against them. The Settlement Sum shall be remitted by wire transfer to counsel for the Liquidating Trust within twenty-five (25) calendar days of the Effective Date.

6. **Releases.** The releases set forth in this Section 6 will immediately, automatically, and irrevocably become effective and full and final on the date that counsel for the Liquidating Trust receives payment in full of the Settlement Sum from Underwriters (the "**Release Effective Date**"). For the avoidance of doubt, nothing in this Section 6 or elsewhere in this Agreement releases any Settling Party from the obligations contained in this Agreement.

a. **Liquidating Trust Releases.** Upon the Release Effective Date, the Liquidating Trust, on behalf of itself and any person or entity claiming from, through, or under the Liquidating Trust, hereby releases and forever discharges Underwriters, and each of their parents, subsidiaries, affiliates, divisions, holding companies, merged companies, and their predecessors-in-interest, and successors-in-interest, reinsurers, present or former employees, directors, partners, principals, officers, shareholders, agents, representatives, trustees, attorneys, assigns, insurers, and the respective spouses, heirs, predecessors-in-interest, and successors-in-interest of the foregoing (the "**Underwriters Released Parties**")⁴ in such capacity, from any and all past, present, or future claims, causes of action, losses, and liabilities of every nature and description, whether known or unknown, suspected or unsuspected, accrued or not accrued, matured or unmatured, fixed or contingent, direct or indirect, arising in contract, tort, law, equity, common law, under statute, or otherwise, that now exists or has ever existed, that is based upon, in connection with, pertaining to, arising out of, or relating in any way, and/or involving: (i) the Debtor; (ii) the Notice and Correspondence; (iii) the Underlying Settlement; (iv) the Post-April 30 Claims Settlement Agreement; (v) the Assignment; (vi) the Arbitration; (vii) any acts, failures to act, omissions, misrepresentations, statements, misstatements, facts, events, transactions, occurrences or other subject matter set forth, based upon, alleged, embraced, encompassed, or otherwise referred to in the Notice and Correspondence and/or Arbitration and/or which

³ The wiring instructions must include the bank name, street address, city, state and zip code.

⁴ For the avoidance of doubt, Underwriters Released Parties does not include Allianz Global Risks US Insurance Company, Old Republic Professional Liability, Inc., Freedom Specialty Insurance Company, or Endurance American Insurance Company, regardless of whether any of them otherwise meet the definition of "Underwriters Released Parties."

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could have been alleged in therein; and (viii) solely as to the Liquidating Trustee and the Liquidating Trust, Underwriters' Policies (collectively, (i) through (viii) shall be referred to as the "Released Matters"). The foregoing release and discharge shall include without limitation any claim for breach of contract, bad faith, unfair claims handling, violation of a statute or regulation, contribution, subrogation, indemnification and/or any other breach of the Policy with respect to the Released Matters and Underwriters' response to or conduct in connection with any Insured's request or demand for coverage.

b. Underwriters Released Parties Releases. Upon the Release Effective Date, the Underwriters Released Parties hereby release and forever discharge the Liquidating Trustee, the Liquidating Trust, the Debtor, and their subsidiaries, affiliates, divisions, holding companies, merged companies, and their predecessors-in-interest, and successors-in-interest, and present or former employees, directors, partners, principals, officers, shareholders, agents, representatives, trustees, attorneys, assigns, insurers, and the respective spouses, heirs, predecessors-in-interest, and successors-in-interest of the foregoing from any and all past, present, or future claims, causes of action, losses, and liabilities of every nature and description, whether known or unknown, suspected or unsuspected, accrued or not accrued, matured or unmatured, fixed or contingent, direct or indirect, arising in contract, tort, law, equity, common law, under statute, or otherwise, that now exists or has ever existed, that is based upon, in connection with, pertaining to, arising out of, or relating in any way to, and/or involving, the Released Matters or any Insured's communications or conduct in connection with any Insured's request or demand for coverage .

7. Dismissal. Within five (5) business days after the Release Effective Date, the Liquidating Trust will file a Notice of Dismissal in the Arbitration substantially in the form of the enclosed Exhibit A.

8. Notices. Any notices required by this Agreement shall be provided in writing via overnight mail and via email to each of the Settling Parties and in the following manner:

To the Liquidating Trustee:

Eric D. Madden, Esq.
Reid Collins & Tsai LLP
1601 Elm Street, Suite 4200
Dallas, Texas 75201
emadden@reidcollins.com

- and -

James S. Carr, Esq.
Kelley Drye & Warren LLP
3 World Trade Center
175 Greenwich Street
New York, New York 10007
jcarr@kelleydrye.com

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To Underwriters

Ivan Dolowich
Kaufman Dolowich LLP
135 Crossways Park Drive, Suite 201
Woodbury, NY 11797
(516) 681-1100
idolowich@kdvlaw.com

9. Mutual Warranties and Representations. Each Settling Party represents and warrants that: (i) before executing this Agreement, it had the opportunity to consult with its legal counsel and became fully informed of the terms, contents, conditions, and effect of this Agreement; (ii) it entered into this Agreement freely, by its own choice and judgment based on its own determination of the facts and circumstances, and without duress or other influence; (iii) it has not relied on any representation or statement made by any other Settling Party in reaching the settlement set forth in this Agreement; and (iv) no promise of any kind has been made except as is expressly stated in this Agreement.

10. Liquidating Trust Representations and Warranties. The Liquidating Trustee further represents and warrants that (i) this Agreement has been duly and validly authorized, executed and delivered on behalf of the Liquidating Trust, shall constitute the legal, valid and binding obligations of the Liquidating Trust, and shall be enforceable against the Liquidating Trust; (ii) the Liquidating Trustee has complied with all provisions of the Liquidating Trust Agreement and the Plan necessary to validly enter into this Agreement; (iii) the Liquidating Trust has not assigned or otherwise transferred and will not assign or otherwise transfer any claims to be released hereunder at any time; (iv) the Liquidating Trust has not assigned or otherwise transferred and will not assign or otherwise transfer any rights under the Policy or right, title, and interest with respect to the Policy or Underwriters, whether received pursuant to the Assignment or otherwise; (v) the Liquidating Trust has not requested, and will not request, any additional assignment of any rights under Underwriters' Policies from any Insureds thereunder and, except for the Assignment, has not obtained any such assignment; (vi) the Liquidating Trust acknowledges, and will abide by, the Releases and Covenants set forth in Section 6 of the Assignment at all times; and (vii) after the Release Effective Date, the Liquidating Trustee agrees to withdraw any discovery demands, or notices of depositions of any representatives of Underwriters, served prior to the Effective Date.

11. No Admission of Liability. This Agreement is entered into as a good-faith compromise among the Settling Parties for the complete and final settlement of any and all claims, disputes, and causes of action among them. By entering into this Agreement, no Settling Party admits liability to any other Settling Party in any respect (other than the obligations set forth in this Agreement) or makes any admission as to factual or legal contentions relating to the matters settled herein.

12. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the Settling Parties, their respective agents, attorneys, executors, guardians, companies, partners,

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members, beneficiaries, managers, directors, officers, employees, heirs, successors and assigns and any individual or entity claiming from, through, or under any of them.

13. **Construction of Agreement.** This Agreement shall be treated as jointly drafted by the Settling Parties and will not be presumptively construed either in favor of or against any Settling Party.

14. **Governing Law and Forum.** In the event any Settling Party seeks to enforce this Agreement, including through a declaratory or similar action or to assert a claim for its breach, each of the Settling Parties hereby expressly consents to the exclusive jurisdiction of the Bankruptcy Court. The Settling Parties agree that the Agreement shall be governed and construed in accordance with the laws of the State of New York.

15. **Fees and Costs.** Each Settling Party shall bear its own fees and costs, including attorneys' fees, with respect to any duties required of such party under this Agreement, as well as any matter involving, referring, or relating to the interpretation and enforcement of this Agreement and the releases herein.

16. **Modification and Counterpart Copies.** This Agreement may be modified only by a written instrument executed by all the Settling Parties. So long as each Settling Party executes this Agreement, a copy of this Agreement, whether signed by one Settling Party or multiple Settling Parties, shall have the same force, effect, and validity as an original Agreement executed by all Settling Parties.

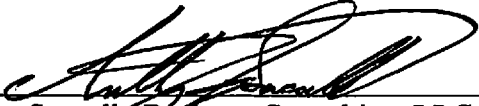
17. **Third-Party Beneficiaries.** This Agreement provides no rights to any third party except to the extent expressly set forth herein.

[Signature page follows]

Execution Copy

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the dates reflected below.

MEDLEY LLC LIQUIDATING TRUST


By: Saccullo Business Consulting, LLC, as Liquidating Trustee
Name: *Anthony M. Saccullo*
Title: *Liquidating Trustee*
Date: *7/16/24*

**CERTAIN UNDERWRITERS AT LLOYDS OF LONDON, RENAISSANCERE SYNDICATE
1458 AND ASSOCIATED INDUSTRIES INSURANCE COMPANY, INC. SUBSCRIBING
TO POLICY NO. EFI1203059-00**

Catherine L. Casavant/s

By:
Name: Catherine L. Casavant
Title: Counsel for Certain Underwriters at Lloyds of London, RenaissanceRe Syndicate 1458
And Associated Industries Insurance Company, Inc. Subscribing to Policy No.
EFI1203059-00
Date: 7/12/24

Execution Copy

EXHIBIT A

AMERICAN ARBITRATION ASSOCIATION

MEDLEY LLC LIQUIDATING TRUST,)	
)	
Claimant,)	
v.)	AAA Case No. 01-23-0004-1962
)	
ALLIANZ GLOBAL RISKS US)	
INSURANCE COMPANY,)	
CERTAIN UNDERWRITERS AT LLOYDS)	
SUBSCRIBING TO POLICY NO.)	
EFI120305059-00, and)	
ASSOCIATED INDUSTRIES INSURANCE)	
COMPANY, INC.,)	
)	
Respondents.)	

**NOTICE OF DISMISSAL OF RESPONDENT
CERTAIN UNDERWRITERS AT LLOYDS OF LONDON,
RENAISSANCERE SYNDICATE 1458 AND ASSOCIATED INDUSTRIES INSURANCE
COMPANY, INC. SUBSCRIBING TO POLICY NO. EFI120305059-00**

Claimant Medley LLC Liquidating Trust ("Claimant") and Respondent Certain Underwriters at Lloyds of London, RenaissanceRe Syndicate 1458 and Associated Industries Insurance Company, Inc. Subscribing to Policy No. EFI1203059-00 (together, "Underwriters"), by and through their respective counsel, hereby stipulate and agree that Claimant dismisses Underwriters from this arbitration with prejudice, each party to bear their own respective costs and fees. Notwithstanding said dismissal, this arbitration shall proceed as to remaining Respondent, Allianz Global Risks US Insurance Company.

Execution Copy

Dated: _____, 2024

Respectfully submitted,

REID COLLINS & TSAI LLP

draft

Eric D. Madden (TX Bar No. 24013079)
Brandon V. Lewis (TX Bar No. 24060165)
1601 Elm Street, Suite 4200
Dallas, Texas 75201
T: (214) 420-8900
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emadden@reidcollins.com
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-and-

KELLEY DRYE & WARREN LLP

James S. Carr (NY Bar No. 2179794)
3 World Trade Center
175 Greenwich Street
New York, NY 10007
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F: (212) 808-7897
jcarr@kelleydrye.com

*Counsel for Claimant
Medley LLC Liquidating Trust*

KAUFMAN DOLOWICH, LLP

draft

Catherine Casavant
25 Main Street, Suite 500
Hackensack, NJ 07601
T: (212) 485-9600
ccasavant@kaufmandolowich.com

Counsel for Respondent Underwriters

EXHIBIT B

Assignment

EXHIBIT B

FORM OF ASSIGNMENT AND COVENANT NOT TO SUE

This ASSIGNMENT AND COVENANT NOT TO SUE (the “Assignment”) is made and entered into on March 23, 2023 by (i) the Medley D&Os¹ and (ii) the Medley LLC Liquidating Trust (the “Liquidating Trust”) through Saccullo Business Consulting, LLC, as Liquidating Trustee (the “Liquidating Trustee”). Collectively, the Liquidating Trust and the Medley Executives are referred to herein as the “Settling Parties.”

I. RECITALS

A. WHEREAS, Medley LLC (the “Debtor”) is a privately-held company that, on March 7, 2021, filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 21-10526;

B. WHEREAS, on October 18, 2021, (i) the Bankruptcy Court entered the *Amended Findings Of Fact, Conclusions Of Law, And Order (I) Approving The Adequacy Of Disclosures On A Final Basis And (II) Confirming The Modified Third Amended Combined Disclosure Statement And Chapter 11 Plan Of Medley LLC* (Docket No. 445) (the “Confirmation Order”), approving the *Modified Third Amended Combined Disclosure Statement and Chapter 11 Plan of Medley LLC* (Docket No. 445-1) (the “Plan”) and (ii) the Plan became effective;

C. WHEREAS, on October 18, 2021, the Debtor’s assets, including its Causes of Action, automatically vested in the Liquidating Trust, and the Liquidating Trustee was authorized to: (i) marshal and liquidate the Liquidating Trust’s assets for distribution under the Plan, (ii) pursue all such Causes of Action on behalf of the Liquidating Trust; and (iii) settle such Causes of Action subject to the terms of that certain Liquidating Trust Agreement and Declaration of Trust executed in connection with the Plan and Confirmation Order (the “Liquidating Trust Agreement”),²

D. WHEREAS, the Liquidating Trustee is the only party that may commence, litigate and settle any Causes of Action that are Liquidating Trust Assets (as defined in the Plan);

E. WHEREAS, on October 18, 2021, the Liquidating Trust Assets included all of the Debtor’s Causes of Action against the D&O Parties³ (the “Insider Claims”);⁴

¹ “Medley D&Os” is defined on Schedule I annexed hereto.

² “Causes of Action” is defined in Schedule I annexed hereto.

³ “D&O Parties” is defined in Section 6.1.1 below.

⁴ For the avoidance of doubt, Insider Claims also include those Causes of Action against the D&O Parties that became Liquidating Trust Assets after October 18, 2021

F. WHEREAS, the Insider Claims consist, or consisted, only of: (1) purported Causes of Action for damages against one or more of the D&O Parties for Wrongful Acts which allegedly caused Loss for which the Liquidating Trustee contends one or more of the insurance policies listed in Schedule II annexed hereto (the “Policies”), subject to their terms and conditions, provide, or have provided, coverage pursuant to the terms of the Policies (the “Covered Claims”); and (2) those Causes of Action that the Liquidating Trust finally and conclusively settled and released in the March 2022 Settlement Agreement (the “March 2022 Released Claims”);⁵

G. WHEREAS, the March 2022 Settlement Agreement did not settle or release any Covered Claims;

H. WHEREAS, the Covered Claims consist of (1) Covered Claims that involved wrongdoing alleged to have occurred before April 30, 2019 (the “Pre-April 30 Claims”) and (2) Covered Claims that involved wrongdoing alleged to have occurred on or after April 30, 2019 (the “Post-April 30 Claims”);⁶

I. WHEREAS, the Settling Parties negotiated a settlement of the Post-April 30 Claims in the manner set forth in that Settlement Agreement and Release of Post-April 30 Claims dated as of February 13, 2023 (the “Post-April 30 Claims Settlement Agreement”);

J. WHEREAS, the Post-April 30 Claims Settlement Agreement contemplated the settlement and release of the Post-April 30 Claims in exchange for the Medley D&Os’ causing SIX MILLION FOUR HUNDRED THOUSAND DOLLARS (\$6,400,000) (the “Settlement Payment”) to be paid to the Liquidating Trust;

K. WHEREAS, the Liquidating Trust has not received the Settlement Payment;

L. WHEREAS, as a result of the Liquidating Trust’s not receiving the Settlement Payment, (a) the Medley D&Os remain personally liable for the Settlement Payment on a joint-and-several basis; and (b) the Liquidating Trust has not released the Post-April 30 Claims; and

M. WHEREAS, to avoid the uncertainty, expense, burden, and delay of litigation, the Settling Parties desire to finally and conclusively settle and compromise the Post-April 30 Claims on the terms and conditions set forth below.

⁵ “March 2022 Settlement Agreement” is defined in Schedule I annexed hereto. For the avoidance of doubt, the Settling Parties acknowledge and agree that the definitions and use of the terms Insider Claims, Covered Claims, and March 2022 Released Claims in this Agreement: (1) are not meant to, and do not in any way, impact, alter, or modify the scope of the releases granted in the March 2022 Settlement Agreement; and (2) shall not be used as a basis to alter or modify the meaning or effectiveness of the terms “Preserved Claims” and “Released Claims” as such terms are used in the March 2022 Settlement Agreement.

⁶ For the avoidance of doubt, Pre-April 30 Claims and Post-April 30 Claims are mutually exclusive, and nothing in this Agreement releases Pre-April 30 Claims or Post-April 30 Claims.

II. AGREEMENT

For good and valuable consideration, receipt of which is mutually acknowledged, the Settling Parties, intending to be legally bound by this Assignment, agree as follows:

1. **Adoption of Recitals.** The recitals set forth above are adopted as part of the Assignment, and the facts set forth therein are acknowledged and agreed to be true and correct.

2. **Effective Date.** This Assignment shall become effective on the date (the “Effective Date”) all of the following conditions have been satisfied: (a) all of the Settling Parties have executed this Assignment; and (b) either (i) at least \$7.5 million in insurance proceeds have been paid out from those Policies listed under “Tower 3 (E&O)” in Schedule II or (ii) the Medley D&Os have executed a release of the insurance companies that issued the Policies listed under “Tower 3 (E&O)” in Schedule II in connection with those insurance companies’ funding some or all of a settlement of the Pre-April 30 Claims.

3. **Expiration Date.** If the Effective Date does not occur prior to July 1, 2023, this Assignment becomes null and void, and neither this Assignment nor evidence of its terms shall be admissible for any purpose in any action or proceeding.⁷

4. **Claims Assignment.**

4.1. On the Effective Date and without need of further documentation, the Medley D&Os hereby convey and assign to the Liquidating Trust and its successors and assigns all of their right, title, and interest, in and to any claims, causes of action, and contract rights, benefits, and privileges they have under those Policies listed under “Tower 2 (D&O)” in Schedule II (the “Tower 2 Policies”) to seek and recover payment of the Settlement Payment from the Tower 2 Policies, as well as attorneys’ fees and expenses and costs related to enforcing their right to payment of the Settlement Payment under the Tower 2 Policies and prejudgment and postjudgment interest on the preceding amounts against the insurance companies who issued the Tower 2 Policies (the “Tower 2 Insurers”). The total of the Settlement Payment, attorneys’ fees and expenses and costs incurred to obtain the Settlement Payment from the Tower 2 Insurers, and any prejudgment and postjudgment interest awarded on those amounts are collectively referred to herein as the “Denial Damages.”

4.2. The Medley D&Os do not convey and assign to the Liquidating Trust and its successors and assigns—and thus reserve for themselves—any of their rights, title, and interest in and to the Tower 2 Policies, except as provided in Section 4.1 above, to seek payment or reimbursement up to \$3.6 million under the Tower 2 Policies for Loss (as defined in the Tower 2 Policies) unrelated to pursuing the Denial Damages; provided

⁷ If, within 20 business days of the Expiration Date, either (a) the Bankruptcy Court has not yet ruled on the motion seeking entry of the Approval Order (as defined in Post-April 30 Claims Settlement Agreement) or (b) the Approval Order has been entered but has not become a final order, then upon the request of any Settling Party, the Expiration Date shall be extended from time to time by the written consent of the Settling Parties pursuant to Section 10 of this Assignment (which consent shall not be unreasonably withheld).

however, that if the Liquidating Trust releases the Tower 2 Insurers for less than the Settlement Payment, then the Medley D&Os may seek payment or reimbursement under the Tower 2 Policies for Loss equal to whatever aggregate Limits of Liability (as defined in the Tower 2 Policies) remain after the Liquidating Trust releases the Tower 2 Insurers.⁸

4.3. The Liquidating Trust agrees that it (a) will not seek or accept, from or as against the Tower 2 Insurers, any payment, settlement, or judgment in excess of the Denial Damages; and (b) lacks the authority to release the Tower 2 Policies from any claim, demand, or cause of action thereunder unrelated to the Denial Damages.

4.4. If the assignment recited in this Section 4 is not effective or is unenforceable in whole or in part, or, even if it is effective and enforceable, it is a breach of any of the Tower 2 Policies, the assignment described herein shall be deemed rescinded and the Medley D&Os agree and consent to counsel for the Liquidating Trust's prosecution of a coverage action against the Tower 2 Insurers in the name of the Medley D&Os and on their behalf, with any resulting judgment or award, up to and including the Denial Damages, automatically becoming a Liquidating Trust Asset and due and owing to the Liquidating Trust.

4.5. For the avoidance of doubt, Medley D&Os confirm that they have not, do not, and will not convey or assign to the Liquidating Trust and its successors and assigns any of their right, title, and interest, in and to any claims, causes of action, and contract rights, benefits, and privileges they have under those Policies listed under "Tower 3 (E&O)" in Schedule II (the "Tower 3 Policies") including, without limitation, their right to seek payment or reimbursement of the Settlement Payment from the Tower 3 Policies and their right to recover attorneys' fees and expenses under the Tower 3 Policies against the insurance companies who issued the Tower 3 Policies (the "Tower 3 Insurers").

5. Further Cooperation. The Settling Parties agree to execute such additional documents and take such additional actions as may be necessary or appropriate to carry out the transactions contemplated hereunder or to fulfill the purposes and intent of this Assignment. As a material condition of covenants set forth in Section 6 below, each Medley D&O and his counsel individually agrees to cooperate in any coverage action and in any other suit, action, or arbitration concerning the availability of coverage for the Post-April 2019 Claims under the Tower 2 Policies by accepting service of process, voluntarily responding to reasonable request for documents and other information, appearing on reasonable notice for depositions and pre-deposition meetings (without need of subpoena or other process), and appearing and providing testimony on reasonable notice at trial, at a hearing, or in arbitration proceedings to the extent requested in any suit, action, or arbitration in connection with any of the claims, causes of action, or rights assigned in this Assignment, or any other reasonable request the Liquidating Trustee may make of them, in their capacity as a witness or nominal party, in furtherance of litigation between the Liquidating Trust and any of the Tower 2 Insurers. No Medley D&O shall be considered to be in violation or breach of any obligation under this Section 5 unless the Liquidating Trustee first gives said Medley D&O

⁸ For the avoidance of doubt, the Settling Parties agree that this Assignment does not assign or convey—and the Medley D&Os reserve—rights under the Tower 2 Policies to be paid or reimbursed up to \$3.6 million for Defense Costs (as that term is defined in the Tower 2 Policies) incurred prior to the Effective Date.

notice and five (5) business days to cure the violation or breach and the Medley D&O fails to do so.

6. Releases and Covenants. On the Effective Date, the Settling Parties will make the following respective covenants and releases.⁹ For the avoidance of doubt, nothing in this Section 6 or elsewhere in this Assignment releases any Settling Party from the obligations contained in this Assignment.¹⁰

6.1. Liquidating Trust's Covenant Not to Sue. On the Effective Date, and as consideration and in exchange for the assignments and cooperation contemplated in, respectively, Sections 4 and 5 above, the Liquidating Trust, the Liquidating Trustee, and the Debtor (the "Liquidating Trust Parties"), on behalf of themselves and their successors and assigns, each hereby agrees and covenants as follows:

6.1.1. To not initiate, prosecute, assert, assign, or otherwise seek to enforce or execute on any Post-April 30 Claims that are Liquidating Trust Assets, whether considered claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief) against (i) any of the Medley D&Os, Samuel Anderson, James G. Eaton, John Fredericks, Jeffrey T. Leeds, Guy Rounsaville, Jr., Christopher Taube, and Jeffrey Tonkel, as well as Medley's other officers and the directors of MDLY, and all of their respective affiliates, subsidiaries, family members, former spouses, trusts, former trusts (including, but not limited to, any trust that has been revoked or terminated),¹¹ successors, heirs and assigns, and other entities owned or controlled by them and their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing (collectively, the "D&O Parties") and (ii) each of Tower 3 Insurers and all of their respective successors, heirs, and assigns, and other entities owned or controlled by them and their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing (the "Insurer Parties"), for debts, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses,

⁹ Notwithstanding anything to the contrary, nothing in this Section 6 or elsewhere in this Agreement shall be intended to hamper or restrict the Settling Parties' ability to seek discovery from any other Settling Party.

¹⁰ Notwithstanding anything to the contrary, nothing in this Section 6 or elsewhere in this Assignment, the Post-April 30 Claims Settlement Agreement, or the March 2022 Settlement Agreement shall constitute a release, waiver, or covenant not to sue regarding any claims or causes of action held by a Settling Party, the Debtor, or MDLY (as defined in Schedule I annexed hereto) against any attorney or law firm, other than John Fredericks with respect to Post-April 30 Claims, that may have represented such Settling Party, the Debtor, or MDLY.

¹¹ Including, without limitation, B. Taube 2014 Associates LLC, the Seth and Angie Taube Trust, A. Taube 2014 Associates, LLC, S. Taube 2014 Associates, LLC, and Canyon Capital Holdings LLC.

offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, that arises from conduct of any nature whatsoever occurring on or after April 30, 2019. For the avoidance of doubt, the covenant in this Section 6.1.1 applies whether a claim is a Liquidating Trust Asset on the Effective Date or becomes a Liquidating Trust Asset after the Effective Date.

6.1.2. To not initiate, prosecute, assert, or otherwise seek to enforce or execute on any claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief) for debts, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses, offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, that any Medley Subsidiary¹² may have or claim to have against any of the D&O Parties or the Insurer Parties for conduct occurring on or after April 30, 2019.¹³

6.2. D&O Parties' Releases. On the Effective Date, and in exchange for the covenants above, the D&O Parties hereby automatically release, waive, relinquish, disavow and forever discharge the Liquidating Trust Parties and all of their respective successors, heirs, and assigns, and other entities owned or controlled by them and their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing from any and all claims, actions, or causes of action (including, without limitation, any claims for contract or tort damages, punitive damages, misrepresentation, violation of any duty, law, statute, or administrative regulation, contribution, apportionment, equitable indemnity, express and/or contractual indemnity, unasserted claims, third-party actions, counterclaims, or cross claims, and any other damages or loss or other form of relief, any avoidance action and any cause of action) for debts, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interest, damages, lawsuits, liabilities, claims for reimbursement for costs or expenses, offsets, counterclaims, and defenses to collection or enforcement, benefits and causes of action of whatever kind, nature or character, known or unknown, suspected, fixed or contingent, past or present or hereinafter acquired, in law or in equity, arising from conduct of any nature whatsoever that occurred on or after April 30, 2019; provided that nothing herein: (1) is meant to, or shall, impact or release any of the Medley D&Os' ability

¹² "Medley Subsidiary" is defined in Schedule I annexed hereto.

¹³ For the avoidance of doubt, nothing in this Section 6.1.2 or elsewhere in this Assignment releases or otherwise impairs any rights of any Medley Subsidiary.

to raise defenses regarding the Liquidating Trust Parties in any litigation brought against any of the Medley D&Os by any Medley Subsidiary; and (2) releases the Liquidating Trust from any obligations under the March 2022 Settlement Agreement.

7. No Admission of Liability. This Assignment is intended as a compromise and is not intended and shall not be construed as an admission of liability by any Settling Party.

8. Mutual Representations and Warranties. The Settling Parties, and each of them, represent, warrant, and agree with each other as of the Effective Date as follows:

8.1. Each Settling Party has received or has had the opportunity to receive independent legal advice from attorneys of his or her choice with respect to the advisability of making the settlement and release provided herein, and with respect to the advisability of executing and being bound by this Assignment.

8.2. Except as expressly stated in this Assignment, no Settling Party has made any statement or representation to any other Settling Party regarding any fact that may be relied upon by any other Settling Party in entering into this Assignment, and each Settling Party specifically does not rely upon any statement, representation, or promise of any other Settling Party in executing this Assignment, or in making the settlement provided for herein, except as expressly stated in this Assignment.

8.3. Each Settling Party has made such investigation of the facts pertaining to this settlement and this Assignment, and all the matters pertaining thereto, as each Settling Party deems necessary.

8.4. The terms of this Assignment are contractual, not a mere recital, and are the result of negotiation among all the Settling Parties.

8.5. This Assignment has been carefully read by, the contents hereof are known and understood by, and it is signed freely by, each Settling Party.

8.6. This Assignment has been drafted by the Settling Parties' respective counsel and is to be construed neutrally and not for or against any Settling Party.

9. Liquidating Trust Representations and Warranties. The Liquidating Trustee further represents and warrants that (i) this Assignment has been duly and validly authorized, executed and delivered on behalf of the Liquidating Trust, shall constitute the legal, valid and binding obligations of the Liquidating Trust, and shall be enforceable against the Liquidating Trust; (ii) it has complied with all provisions of the Liquidating Trust Agreement and the Plan necessary to validly enter into this Assignment, including Section 3.2.13 of the Liquidating Trust Agreement; and (iii) it has not assigned or otherwise transferred and will not assign or otherwise transfer any Post-April 30 Claims.

10. Modification and Counterpart Copies. This Assignment may only be modified by a written instrument executed by all the Settling Parties. No covenants, agreements,

representations, or warranties of any kind whatsoever have been made by any Settling Party, except as specifically set forth in this Assignment. All prior discussion and negotiations have been and are merged and integrated into, and are superseded by, this Assignment. So long as each Settling Party executes this Assignment, a copy of this Assignment, whether signed by one Settling Party or multiple Settling Parties, shall have the same force, effect, and validity as an original Assignment executed by all Settling Parties.

11. **Attorneys' Fees.** Each Settling Party shall bear his or its own attorney's fees and costs related to this Assignment. Notwithstanding the foregoing, in the event suit is brought or an attorney is retained by any Settling Party to enforce the Assignment's terms, or to collect any damages due for breach hereof, each Settling Party shall be solely and exclusively responsible for his or its own attorneys' fees, court costs, costs of investigation, and other related expenses incurred in connection therewith. Except as expressly provided herein, nothing in this Assignment is construed as a waiver by any Settling Party of any rights under any insurance policy.

12. **Caption and Titles.** The captions and titles contained in this Assignment are inserted herein only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Assignment or the intent of any provision hereof.

13. **Construction of Assignment.** Each of the Settling Parties has read and agreed to the terms of the Assignment after consulting with counsel, and the language of this Assignment shall, therefore, not be presumptively construed either in favor of or against any Settling Party.

14. **Governing Law and Forum.** In the event any Settling Party seeks to enforce this Assignment including through a declaratory or similar action or to assert a claim for its breach, each of the Settling Parties hereby expressly consents to the exclusive jurisdiction of the Bankruptcy Court. The Settling Parties agree that the Assignment shall be governed and construed in accordance with the laws of the State of New York.

15. **Parties Bound.** This Assignment shall be binding upon and inure to the benefit of the Settling Parties, their respective agents, attorneys, executors, guardians, companies, partners, members, beneficiaries, managers, officers, employees, heirs, successors and assigns, and the Medley D&Os' affiliates.

16. **Relationship of Parties.** Nothing in this Assignment shall be deemed or construed to constitute or create any agency, partnership, or affiliation agreement among or between any of the Settling Parties; no Settling Party shall have any power to obligate or bind another Settling Party in any manner whatsoever.

17. **Waiver.** No waiver by any Settling Party of a breach or a default hereunder shall be deemed a waiver of a subsequent breach or default of a like or similar nature.

18. **Severability.** If any provision is held invalid by the Bankruptcy Court or any other court of competent jurisdiction, such provision shall not invalidate the entire Assignment, but the Assignment shall be construed as not containing the particular provision held to be invalid, and the rights and obligations of the Settling Parties shall be construed accordingly.

19. **Notices.** Any notice required by this Assignment shall be provided in writing via overnight mail and via email to each of the Settling Parties and in the following manner:

To the Liquidating Trustee:

Eric D. Madden, Esq.
Reid Collins & Tsai LLP
1601 Elm Street, Suite 4200
Dallas, Texas 75201
emadden@reidcollins.com

-and-

James S. Carr, Esq.
Kelley Drye & Warren LLP
3 World Trade Center
175 Greenwich Street
New York, New York 10007
jcarr@kelleydrye.com

To Richard Allorto

Gregory S. Bruch, Esq.
Bruch Law Group
1099 New York Ave., NW, Suite 500
Washington, D.C. 20001
gbruch@bruchlawgroup.com

-and-

Jay B. Spievack, Esq.
Cohen Tauber Spievack & Wagner PC
420 Lexington Ave., Suite 2400
New York, New York 10170-2499
jspievack@ctwslaw.com

To Brook Taube and Seth Taube

Douglas Koff, Esq.
Schulte Roth & Zabel LLP
919 3rd Ave.
New York, New York 10022
douglas.koff@srz.com

-and-

Jay B. Spievack, Esq.
Cohen Tauber Spievack & Wagner PC
420 Lexington Ave., Suite 2400
New York, New York 10170-2499
jspievack@ctwslaw.com

20. Third-Party Beneficiaries. Samuel Anderson, James G. Eaton, John Fredericks, Jeffrey T. Leeds, Guy Rounsaville, Jr., Christopher Taube and Jeffrey Tonkel are third-party beneficiaries of this Assignment, but only with respect to the ability to enforce the covenants contained in Section 6 above.

[Signature page to follow]

IN WITNESS WHEREOF, the undersigned have duly executed this Assignment as of the dates reflected below.

MEDLEY LLC LIQUIDATING TRUST

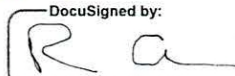


By: Saccullo Business Consulting, LLC, as Liquidating Trustee

Name: *Anthony M. Saccullo*

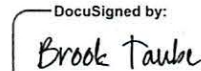
Title: *Liquidating Trustee*

Date: *4/24/23*

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Richard Allorto

Date:

DocuSigned by:

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Brook Taube

Date:

DocuSigned by:

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Seth Taube

Date:

SCHEDULE I – DEFINED TERMS

As used in this Assignment, the following terms have the meanings set forth below.

“Cause of Action” or “Causes of Action” means any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise against any party, including current and former directors, officers, and employees of the Debtor and its affiliates. Causes of Action also include, but are not limited to: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest claims or interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

“Defense Expenses” means the necessary costs, charges, expenses, and fees, including attorney’s, expert’s, mediator’s, and arbitrator’s fees, incurred in defending a Cause of Action, and the premium for appeal, attachment, or similar bond.

“Loss” means (a) Defense Expenses; and (b) damages, judgments, settlements, and prejudgment and postjudgment interest that an Insured Person is legally obligated to pay as a result of a Cause of Action or written demand for monetary damages.

“Insured Person” means a natural person who was a director, officer, or employee, or the functional equivalent of the foregoing, of MDLY or the Debtor.

“Management Services” means acts by an Insured Person solely in his or her capacity as a director, officer, or employee of MDLY or the Debtor.

“March 2022 Settlement Agreement” refers to that certain Settlement Agreement and Release entered into by the Liquidating Trust, MDLY, Brook Taube Trust, Brook Taube, and Seth Taube on or about March 23, 2022.

“MDLY” refers to Medley Management, Inc.

“Medley D&Os” refers collectively to Richard Allorto, Brook Taube, and Seth Taube.

“Medley Subsidiary” means any entity that is or was a direct or indirect subsidiary of the Debtor.

“Wrongful Acts” means (a) an error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed or attempted by an Insured Person performing, or failing to perform, Management Services; or (b) a matter claimed against an Insured Person solely by reason of his or her service in such capacity.

SCHEDULE II – THE POLICIES*

Tower 1 (D&O)		
Insurer	Policy Number	Policy Limits**
Berkshire Hathaway Specialty Insurance Company	47-EPF-301833-03	\$5MM (primary)
Starr Indemnity & Liability Company	1000059851171	\$5MM (first excess)
Allied World Insurance Company (Side A)	0310-3481	\$5MM (second excess)

Tower 2 (D&O)		
Insurer	Policy Number	Policy Limits**
Allianz Global Risks US Insurance Company	USF00298219	\$5MM (primary)
Euclid Financial Institution Underwriters, LLC (Certain Underwriters at Lloyd’s of London; Associated Industries Insurance Company)	EFI1203059-00	\$2.5MM (first excess)
Old Republic Professional Liability, Inc.	ORPRO 44299	\$2.5MM (second excess)

Tower 3 (E&O)		
Insurer	Policy Number	Policy Limits**
Travelers Casualty and Surety Co. of America	106601622	\$5MM (primary)
Nationwide Mutual Insurance Company	XMF1702465	\$5MM (first excess)

(Freedom Specialty Insurance Company)		
Sompo International (Endurance American Insurance Company)	FIX10007675802	\$5MM (second excess)
Allianz Global Risks US Insurance Company	DOX2010224	\$3MM (third excess)

*Based on information and belief.

**Amounts do not reflect remaining amounts, ability to access or coverage.