

1 Anna Shiran (State Bar No. 260911)
DENTONS US LLP
2 525 Market Street, 26th Floor
San Francisco, CA 94105-2708
3 Telephone: (415) 882-5000
Facsimile: (415) 882-0300
4 anna.shiran@dentons.com

Philip A. O'Connell Jr. (State Bar No. 152486)
DENTONS US LLP
101 Federal Street, Suite 2750
Boston, MA 02110
Telephone: (617) 235-6802
Facsimile: (617) 235-6884
philip.oconnelljr@dentons.com

5 Robert B. Millner (*Pro Hac Vice*)
DENTONS US LLP
6 233 S. Wacker Drive, Suite 7800
Chicago, IL 60606-6404
7 Telephone: (312) 876-8000
Facsimile: (312) 876-7934
8 robert.millner@dentons.com

9 Attorneys for ONEBEACON INSURANCE
COMPANY

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

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15 In re
16
17 PLANT INSULATION CO.,
18 Debtor.
19 ONEBEACON INSURANCE CO., *et al.*,
20 Appellants,
21 v.
22 PLANT INSULATION CO., *et al.*,
23 Appellees.

No. 3:14-cv-01200-RS
Bankr. Case No. 3:09-BK-31347 TEC
Chapter 11
Judge Seeborg
ORDER
**JOINT STIPULATION REGARDING
WAIVER OF EQUITABLE MOOTNESS AS
TO APPEAL AND REVIEW OF MODIFIED
CONFIRMATION ORDER**

1 The insurers identified in the signature block below (collectively, the "Insurers"), the Official
2 Committee of Unsecured Creditors, (the "Committee"), debtor and debtor-in-possession Plant
3 Insulation Company ("Plant") and the court-appointed representative of future asbestos claimants (the
4 "Futures Representative") (collectively, the Committee, Plant, and the Futures Representative being
5 referred to as the "Plan Proponents") (all of the above collectively referred to below as the "Parties"),
6 by and through their respective undersigned counsel, hereby stipulate to the following:

7 1. The Insurers have advised the Plan Proponents that they would seek a stay of the
8 implementation of this Court's August 18, 2014 rulings in this case (the Order Affirming
9 Confirmation of Revised Plan of Reorganization (Dkt. No. 77) and Order Denying Appeal From
10 Confirmation of Revised Plan of Reorganization (Dkt. No. 76)) and the Bankruptcy Court rulings that
11 were the subject of those August 18, 2014 rulings (the "Confirmation Order") pending an appeal of
12 the Confirmation Order by the Insurers (the "Appeal") based on the Insurers' concern that if they do
13 not seek and obtain a stay the appeal may be dismissed as moot, including on the doctrine commonly
14 known as equitable mootness. The Plan Proponents have responded that they would oppose such a
15 stay. As an alternative to proceeding with a motion for a stay, and in lieu of such motion, the parties
16 have reached the stipulation set forth herein.

17 2. The Plan Proponents are willing to stipulate that they will not file a motion to dismiss
18 the Appeal based on mootness of any kind, as long as the Insurers agree to join in requesting that the
19 Ninth Circuit expedite the hearing of the Appeal and in seeking a briefing schedule in the Ninth
20 Circuit that is concluded as quickly as the schedule set for the Insurers' prior appeal to the Ninth
21 Circuit. The parties are willing to so stipulate.

22 3. The Plan Proponents agree that they will not seek to dismiss the Appeal or raise
23 equitable mootness as a ground for disposition of the Appeal. Mootness, including the doctrine of
24 equitable mootness, is waived as an issue in the Appeal. The Insurers agree that they will not seek to
25 stay implementation of the Plan or delay the occurrence of the Modified Effective Date. The Insurers
26 and the Plan Proponents shall request that the Ninth Circuit Court of Appeals expedite the Appeal

1 and the briefing schedule.


2 4. The Plan Proponents shall not contend that the failure to seek or obtain a stay of the
3 Confirmation Order is a basis for any finding adverse to the Insurers.

4 IT IS SO STIPULATED.

5 Bayside Insulation and Construction, Inc., 6 formerly Plant Insulation Company, Debtor	Hon. Charles B. Renfrew (Ret.), Futures Representative
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8 <u>/s/ George H. Kalikman</u> George H. Kalikman, Esq. 9 Schnader Harrison Segal & Lewis LLP	<u>/s/ Gary S. Fergus</u> Gary S. Fergus, Esq. Fergus, A Law Office
10 Official Committee Of Unsecured Creditors	OneBeacon Insurance Company
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13 <u>/s/ Michael H. Ahrens</u> Michael H. Ahrens, Esq. 14 Sheppard, Mullin, Richter & Hampton LLP	<u>/s/ Philip A. O'Connell, Jr.</u> Philip A. O'Connell, Jr. DENTONS US LLP
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16	And, for purposes of this stipulation only, on 17 behalf of the following parties in interest and 18 their counsel: American Home Assurance Company; Granite State Insurance Company, and Insurance Company of the State of 19 Pennsylvania; Transport Indemnity Company; and United States Fidelity and Guaranty Company.
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21 IT IS SO ORDERED.

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24 Dated: August 20, 2014

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HON. RICHARD SEEBOR
UNITED STATES DISTRICT JUDGE