

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

In re:	*	
	*	
CITY HOMES III LLC	*	CASE NO: 13-25370-MMH
	*	
Debtors	*	
* * * * * * *	*	* * * * *

**MOTION TO ALLOW
(A) FILING AND WITHDRAWAL OF CONDITIONAL CLAIMS
AND (B) INTERIM DISTRIBUTION
RE: VOLUNTARY LEAD-PAINT COMPENSATION FUND**

Zvi Guttman, the Plan Trustee under the confirmed Third Amended Chapter 11 Plan Jointly Proposed by the Debtors and the Official Committee of Unsecured Creditors (the "Plan"), for the above-captioned debtors and affiliates (collectively, "City Homes"), through undersigned counsel, files this Motion, and in support thereof, states as follows:

I. BACKGROUND

This bankruptcy case and the cases of 11 affiliates were filed on September 10, 2013. [Dkt. No. 1]. On April 13, 2017, the Court confirmed the Plan [Dkt. No. 849]. Final Decrees were entered but certain cases were reopened on October 30, 2019, to allow the Trustee to seek enforcement of the Plan Injunction. After the injunction was granted [Dkt. No.: 1088] the other Debtors' cases were re-closed. The Injunction Order was appealed but the appeal is stayed as a consequence of the Chapter 15 filed by CX Reinsurance Company Limited ("CXRe") in the United States Bankruptcy Court for the Southern District of New York.

II. THE VOLUNTARY LEAD PAINT CLAIM COMPENSATION FUND¹

Section 4.5 of the Plan provides:

Upon the Effective Date, the Reorganized Debtors shall establish the Voluntary Lead-Paint Claim Compensation Fund

¹ Pre-confirmation, the Debtor believed that it had liability insurance that had at least some coverage for bodily injury for lead paint exposure from at least the following insurers and periods: Penn National

[the "VLPC Fund"] for the payment of Lead-Paint Claims whose Holders elect to participate in receiving distributions from the Voluntary Lead-Paint Claim Compensation Fund, which election shall be in the sole discretion of each such individual Holder. The Voluntary Lead-Paint Claim Compensation Fund shall be funded after the Effective Date, from a portion of the Net Sale Proceeds of the Properties, with the sum of Four Hundred Thousand Dollars (\$400,000). To participate in the Voluntary Lead-Paint Claim Compensation Fund, each Lead-Paint Claimant shall provide the Reorganized Debtors with an executed Voluntary Lead-Paint Claim Compensation Fund claim form (a "Lead-Paint Claim Form") within one (1) year after the Effective Date in the same or substantially similar format to that attached hereto as Exhibit C ... As soon as reasonably practicable after the resolution and determination of all timely filed Lead-Paint Claim Forms following the expiration of the one year period for filing such Claims, the Reorganized Debtors shall pay each such Holder of an Allowed Lead-Paint Claim Forms such Claimant's equal pro rata share of the Voluntary Lead-Paint Claim Compensation Fund, calculated by dividing the amount of the Voluntary Lead-Paint Claim Compensation Fund by the number of timely filed Allowed Lead-Paint Claim Forms. Holders of Lead-Paint Claims participating in the Voluntary Lead-Paint Claim Compensation Fund shall receive no further payment under this Plan, and such Holders shall be permanently enjoined from commencing or continuing the prosecution of the Holder's Lead-Paint Claims against the Debtors and Reorganized Debtors in any court. ...

The amount in the VLPC Fund and the time in which to file a claim to participate in it were modified by the Confirmation Order [Dkt. 849].

The deadline for filing a Lead-Paint Claim Form for the Voluntary Lead-Paint Compensation Fund shall be expanded to three years after the Effective Date [May 30, 2017], with publication notice by the Reorganized Debtors to be provided every six months in the print publications listed in the Media Plan previously approved by the Court.

The law firms representing the Plan Proponents have agreed to and will contribute a total of Fifty Thousand Dollars (\$50,000) in fees to the Voluntary Lead-Paint Claim

(through August 1, 1997); CXRe (August 1, 1997 - August 1, 1999) [the "CXRe Covered Period"]; and Liberty (August 1, 1999 - June 1, 2001) the "Liberty Covered Period"].

Compensation Fund from the fees otherwise paid or payable to them, with such contributions to be delivered to the Plan Trustee promptly after the Plan Trustee has established a bank account for the Voluntary Lead-Paint Claim Compensation Fund. The Voluntary Lead-Paint Claim Compensation Fund will thus be funded with the sum of Four Hundred and Fifty Thousand Dollars (\$450,000).

Plan at ¶¶ 5 and 7.

The time in which to file a claim against the VLPCC Fund has been incrementally extended by prior Orders. [Dkts.: 976, 1086, 1106, 1111, and 1124]. The current deadline for filing a Lead-Paint Claim against the VLPCC Fund is July 31, 2022. (the "Claims' Bar Date").

III. THE RESCISSION ACTION

On the Effective Date, CXRe filed a two-count complaint in federal district court against City Homes, seeking money damages and rescission of four commercial general liability insurance policies (the "Policies") that were issued to City Homes (the "Rescission Action").² These policies provide coverage for personal injuries caused by lead paint exposure at properties previously owned by City Homes during the period August, 1997 through June, 2001. If successful, the Rescission Action would have (a) left more than 80 Holders of Lead Paint Claims without access to the Debtor's insurance worth millions of dollars, (b) limited their recovery to a small share of the VLPCC Fund, and (c) diluted the *pro rata* distribution of other participants in the VLPCC Fund. In light of the catastrophic effect the Rescission Action would have on creditors, the Plan Trustee appeared in and opposed the relief sought in the Rescission Action.

Once it filed the Rescission Action CXRe refused to provide coverage for any of the pending or thereafter filed Lead Paint lawsuits implicated by the Rescission Action. This left the Debtors with no defense counsel in litigation pending before and filed after the Effective Date. To reduce costs while the Trustee addressed the Rescission Action,

² The Complaint was filed by CXRe on its own behalf and on behalf of Merchants & Business Men's Mutual Insurance Company. M&B was subsequently acquired by Liberty Mutual Mid-Atlantic Insurance Co. ("Liberty").

the Plan Trustee and those Lead Paint Plaintiffs entered into consent orders staying the underlying lead paint litigation pending a resolution of the Rescission Action.

IV. THE INJUNCTION ORDER

On November 17, 2020, this Court entered an Order Enforcing Third Amended Plan Injunction (the "Injunction Order"). The Injunction Order determined that the Rescission Action was filed in violation of the injunction effected by confirmation of the Plan terminating the effort to rescind the Policies. CXRe filed an appeal of the Injunction Order and immediately asserted that the appeal was stayed as a consequence of its pending Chapter 15. The Appeal has been administratively closed without prejudice.

Five years post-confirmation, CXRe's actions still leave many Holders of Lead-Paint Claims affected by the Rescission Action in an uncertain position. While any Holder of a Lead-Paint Claim for the CXRe Covered Period or the Liberty Covered Period could file a claim against Fund, under the Plan, the filing of such a claim would preclude that Holder from pursuing suit against the Debtor and thereby the CXRe or Liberty coverage if the Injunction survives the appeal.³ The impending approach of the Claims' Bar Date without resolution of the appeal, leaves the Lead-Paint Claimants in a catch-22 situation.

V. RELIEF SOUGHT

By the passage of time and intervening events, most – but not all – Holders of Lead Paint Claims are (or soon will be) in a position to make an informed choice whether to pursue litigation or file a Claim against the VLPCC Fund. This leads the Plan Trustee to seek the following relief:

One, there should be no further blanket extension of the Claims' Bar Date.

Rather, any and all Holders of Lead-Paint Claims must file their claims by the

³ The Plan Trustee and Liberty have recently negotiated a settlement agreement that will provide a separate source of recovery for the Holders of Lead-Paint Claims injured during the Liberty Coverage Period. Depending on the exact timing of the approval of that agreement this will resolve the need for those Claimants to file claims against the VLPCC Fund or allow for them to expeditiously withdraw them. Although there has been little progress with CXRe's UK Administrators, the Plan Trustee remains optimistic that a resolution will be reached.

current deadline of July 31, 2022, or be forever barred from doing so. However, Holders of Lead-Paint Claims due to an injury sustained during either the CXRe Covered Period (i.e., August 1, 1997 - August 1, 1999) or the Liberty Covered Period (August 1, 1999 - June 1, 2001) may file a "Conditional Claim" (as defined herein and in the attached proposed Order). A timely filed Conditional Claim will serve as a place-marker until such time as the issue of CXRe's/Liberty liability is finally resolved.⁴ The Plan Trustee will notify each Holder of a Conditional Claim (or their counsel) of a final resolution of the liability/coverage affecting their claim following which the Holder will have 90 days to elect to either retain or withdraw its Conditional Claim.

Two, the VLPCC Fund distribution provision of the Plan provides:

As soon as reasonably practicable after the resolution and determination of all timely filed Lead-Paint Claim Forms following the expiration of the one year period for filing such Claims, the Reorganized Debtors shall pay each such Holder of an Allowed Lead-Paint Claim Forms such Claimant's equal pro rata share of the Voluntary Lead-Paint Claim Compensation Fund, calculated by dividing the amount of the Voluntary Lead-Paint Claim Compensation Fund by the number of timely filed Allowed Lead-Paint Claim Forms.

Plan at Section 4.5.

Facial simplicity notwithstanding, the Plan Trustee's ability to calculate the pro rata distribution and make a distribution immediately after passage of the Claims Bar Date is problematic.⁵ In particular, although the VLPCC Fund's minimum funding of \$450,000 was escrowed in 2018, additional sums will flow into the VLPCC Fund once this case is ready to wrap up. That is likely to be at least another year.

Accordingly, the Plan Trustee seeks to make an interim distribution based upon the \$450,000 on hand followed by subsequent distribution(s) as additional funds flow

⁴ The final resolution of CXRe's liability could come about in any number of different ways, e.g., a determination by any number of trial, appellate or bankruptcy courts, or a settlement. As earlier mentioned, resolution of the Liberty liability is pending.

⁵ Conditional Claims will be handled as is typical for claims that are disputed or not yet allowed. Namely, they will be included in the calculation of the pro rata share allocation but the Plan Trustee will continue to hold the VLPCC Funds allocated on account of those Conditional Claims until the uncertainty is resolved. Funds not distributed on account of Conditional Claims will be re-allocated and distributed to the remaining Holders of Lead-Paint Claims.

into the VLPCF Fund. The calculation, methodology, and timing of these distributions is set forth in the proposed Order attached hereto.

VI. NOTICE

Copies of this Motion and the proposed Order hereon are being provided to the CM/ECF service list and counsel for the lead paint plaintiffs.

VII. LOCAL RULE 9013-2 STATEMENT

Pursuant to Local Rule 9013-2, Movant will not be filing a separate memorandum with respect to this Motion, but will rely solely upon the grounds and authorities set forth in this Motion.

WHEREFORE, the Plan Trustee respectfully requests that the Court enter an Order substantially in the form attached hereto:

- (a) allowing the Holders of Lead-Paint Claims with an injury sustained during the CXRe or Liberty Covered Period to file and if appropriate withdraw a Conditional Claim;
- (b) allowing the Plan Trustee to make an interim distribution from the VLPCF Fund; and
- (c) granting the Plan Trustee such other and further relief deemed just and proper.

/s/ Zvi Guttman
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Counsel to the Plan Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this June 17, 2022, copies of the foregoing *Motion to Allow (A) Filing and Withdrawal of Conditional Claims and (B) Interim Distribution Re: Voluntary Lead-Paint Compensation Fund* were served as follows:

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/s/ Zvi Guttman

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

In re: *
*
CITY HOMES III LLC * CASE NO: 13-25370-MMH
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Debtors *
* * * * *

**ORDER GRANTING MOTION TO ALLOW
(A) FILING AND WITHDRAWAL OF CONDITIONAL CLAIMS
AND (B) INTERIM DISTRIBUTION
RE: VOLUNTARY LEAD-PAINT COMPENSATION FUND**

UPON CONSIDERATION of the *Motion to Allow (A) Filing and Withdrawal of Conditional Claims and (B) Interim Distribution Re: Voluntary Lead-Paint Compensation Fund* (the "Motion") filed by Zvi Guttman, the Plan Trustee under the confirmed Third Amended Chapter 11 Plan Jointly Proposed by the Debtors and the Official Committee of Unsecured Creditors (the "Plan"),¹ for the above-captioned Debtor and affiliates, upon notice and for good cause shown,

IT IS by the United States Bankruptcy Court for the District of Maryland:
ORDERED, that the Motion be, and it hereby is, GRANTED; and it is
FURTHER ORDERED, that:

¹ Unless otherwise stated, defined/capitalized terms herein shall have the meanings ascribed to them in the Motion and the Plan.

1. The Voluntary Lead-Paint Compensation Fund Claims Bar Date established by prior Order [Dkt. 1124] remains July 31, 2022 (the "VLPC Fund Bar Date").

2. Only Holders of Lead-Paint Claims that timely submit to the Plan Trustee a properly completed Lead-Paint Claim Form as required by the Plan and Confirmation Order shall share in the pro rata distribution of the Voluntary Lead-Paint Claim Compensation Fund established pursuant to § 4.5 of the Plan (the "VLPC Fund").

3. Holders of Lead-Paint Claims due to an injury sustained during the CXRe Covered Period (i.e., August 1, 1997 - August 1, 1999) or the Liberty Covered Period (August 1, 1999 - June 1, 2001) may submit to the Plan Trustee a "Conditional Claim" by the VLPC Fund Bar Date using the previously disseminated Lead Paint Claim Form, in addition noting thereon that it is for an injury sustained during either the CXRe Covered Period or the Liberty Covered Period.

4. A Conditional Claim may be withdrawn by the Withdrawal Deadline, hereinafter defined, pertinent to that Conditional Claim. If withdrawn, the Holder of a Conditional Claim will be treated as a Holder of a Class 5A-L Claim that has not elected to participate in receiving distributions from the VLPC Fund and such Holder may enforce its rights under Plan § 4.5 or participate in any other fund or arrangement instituted to resolve the CXRe and/or Liberty Covered Periods. If not withdrawn, the Holder of a Conditional Claim will be treated as a Holder of a Class 5A-L Claim that has elected to participate in receiving distributions from the VLPC Fund. Per Plan § 4.5, among other consequences, the election to participate in a distribution from the VLPC Fund precludes further payment under the Plan.

5. The Withdrawal Deadline shall be 90 days after the Plan Trustee gives notice to the Holders of Conditional Claims or their counsel that: coverage issues with CXRe or Liberty, as the case may be, have been resolved, and the general nature of that resolution, or there is or is not insurance for the CXRe and/or Liberty Coverage Periods.

6. As soon as reasonably practicable after passage of the VLPC Fund Bar Date, the Plan Trustee shall calculate the pro rata share of each Holder of an Allowed timely filed Lead-Paint Claim that has elected to participate in the VLPC Fund under §

4.5 of the Plan based upon a \$450,000 distribution. This shall be the "Initial Pro Rata Calculation." Subject to ¶ 7, the Plan Trustee shall make an interim distribution by disbursing up to \$450,000 of the VLPCC Fund to the Holders of Allowed timely filed Lead-Paint Claims payable, if applicable, to their respective counsel.

7. For purposes of calculating the Initial Pro Rata Distribution, the Plan Trustee shall include all Allowed timely filed Lead-Paint Claims including Conditional Claims. However, the Holders of Conditional Claims shall not be paid their pro rata share of the VLPCC Fund unless the applicable Withdrawal Deadline has passed and such Claim has not been withdrawn.

8. The Plan Trustee shall continue to hold funds allocated to the Holders of Conditional Claims in escrow (the "Reserve") until the applicable Withdrawal Deadline has passed. Following the passage of the relevant Withdrawal Deadline, the Plan Trustee shall recalculate the equal pro rata shares of the VLPCC Fund under § 4.5 of the Plan as adjusted for any withdrawn Conditional Claims (the "Subsequent Pro Rata Calculation"). Funds previously allocated to withdrawn Conditional Claims and held in the Reserve shall be re-allocated in accordance with the Subsequent Pro Rata Calculation and distributed to the remaining Holders of timely filed Allowed Lead-Paint Claims on a pro rata basis in a subsequent distribution.

9. The Plan Trustee is hereby authorized to take any and all actions and execute any and all documents necessary and appropriate to effectuate and consummate the terms of this Order. Claimants and their counsel shall supply such information and execute such documents as are required by the Plan Trustee.

10. The Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Order.

Suggested Distribution List:

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END OF ORDER