

Porter Hayden, AIG Insurers Ink \$15M Asbestos Coverage Deal

By **Caroline Simson**

Law360, New York (November 20, 2014, 8:17 PM ET) -- Defunct Porter Hayden Co. sought approval Thursday for a \$15 million settlement of its asbestos injury coverage dispute with two American International Group Inc. insurers, telling a Maryland federal judge the deal will shield the insurers from future litigation over the asbestos claims and immediately benefit claimants.

The settlement will end nearly 14 years of litigation between the parties and free National Union Fire Insurance Co. of Pittsburgh, Pa. and American Home Assurance Co. from any liability arising from claims by consumers and former employees exposed to asbestos in Porter Hayden's insulation. The deal nixes an upcoming, January trial and stipulates the defunct insulation seller will sell the policies in question back to the insurers.

The \$15 million will go into the Porter Hayden Bodily Injury Trust, created when a Maryland bankruptcy court approved Porter Hayden's reorganization plan in July 2006, according to the motion.

Porter Hayden — which received a favorable ruling in the suit in late March when a Maryland federal judge largely denied the insurers' summary judgment motion — noted that it believed the probability of recovering only some of the money it sought was "remote." Nevertheless, the company said that the litigation's outcome was still debatable.

"Accordingly, Porter Hayden believes, in light of the uncertainty and complexity involved, that the settlement amount reasonably reflects its probability of success in the coverage litigation and that the settlement amount is well within the reasonable range of potential litigation outcomes," the company said.

The motion also noted that even if the company was successful in the litigation, it wouldn't necessarily have seen immediate payment from the insurers. This settlement ensures that Porter Hayden will receive its money promptly, the company said.

A Porter Hayden attorney said Thursday that the company was pleased to put the litigation in its wake.

"The dispute involved significant questions regarding whether Congress's decision to create asbestos bankruptcy trusts had any impact on the availability of liability insurance coverage," said Donald R. McMinn of Hollingsworth LLP. "The district court's repeated holdings that Porter Hayden's bankruptcy did not reduce the coverage available under the policies was critical in allowing the parties to reach a settlement."

Porter Hayden filed for Chapter 11 bankruptcy in March 2002, under the weight of about 58,000 personal injury claims arising from the company's installation of asbestos-containing insulation in industrial sites throughout the U.S.' Mid-Atlantic region. The instant suit was removed from bankruptcy court in June 2004.

In January, a Maryland federal judge ruled that Porter Hayden could tap excess policies issued by National Union and American Home Assurance Co. for indemnification of underlying asbestos injury suits even if its primary policies had not been completely exhausted.

Porter Hayden Co. is represented by Robert E. Johnston and Donald R. McMinn of Hollingsworth LLP.

The insurers are represented by Timothy R. Dingilian of Jackson & Campbell PC.

The case is National Union Fire Insurance Co. of Pittsburgh Pa. et al. v. Porter Hayden Co., case number 1:03-cv-03408, in the U.S. District Court for the District of Maryland.

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