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11 Brick Company, and WFB Liquidating Corporation, f/k/a  
Wellsville Firebrick Company*  
12

13 **IN THE UNITED STATES BANKRUPTCY COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
15 **OAKLAND DIVISION**

16 **In re**

17 **CFB LIQUIDATING CORPORATION,**  
18 **f/k/a CHICAGO FIRE BRICK CO., an**  
**Illinois Corporation, et al.,**

19 **Debtors.**

Case No. 01-45483 RLE

Chapter 11

Jointly Administered

Hon. Roger L. Efremsky

20  
21 **DECLARATION OF BRADLEY**  
22 **D. SHARP IN SUPPORT OF**  
23 **PLAN CONFIRMATION**  
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1 I, Bradley D. Sharp, declare as follows:

2 1. The following facts are within my personal knowledge unless otherwise stated. If  
3 called to testify as a witness with regard to the statements set forth below, I could and would  
4 competently testify thereto.

5 2. At all relevant times herein, I have been employed by Development Specialists, Inc. I  
6 am currently a Senior Vice President.

7 3. On September 18, 2002, the United States Bankruptcy Court for the Northern District  
8 of California (the "Bankruptcy Court") approved my appointment as the Responsible Individual for  
9 the chapter 11 estates of National Refractories and Minerals Corporation ("NRMC"), CFB  
10 Liquidating Corporation, f/k/a Chicago Fire Brick Company ("CFB"), WFB Liquidating Corporation,  
11 f/k/a Wellsville Fire Brick Company ("WFB") and two other affiliates of those companies  
12 (collectively, the "National Refractories Debtors").

13 4. As the Responsible Individual for the National Refractories Debtors, I sought to  
14 maximize the value of the tangible assets of their estates through a series of asset sales. After  
15 marketing these assets, I completed these sales in late 2002 and early 2003.

16 5. Following the sale of the Debtors' operating assets, the National Refractories Debtors  
17 possessed few remaining assets. These assets consisted primarily of the proceeds from sale of the  
18 operating assets, and certain insurance policies that provide coverage for asbestos-related personal  
19 injury claims that have been asserted against CFB ("Asbestos Claims").

20 6. In 2006, I decided to seek the structured dismissal of the National Refractories  
21 Debtors' bankruptcies, the approval of *pro rata* distributions to holders of Administrative Claims, and  
22 designation of a service agent for complaints asserting Asbestos Claims against CFB that could be  
23 forwarded to CFB's insurers.

24 7. On December 15, 2006, the National Refractories Debtors filed the Motion for Order  
25 Authorizing (I) Pro-Rata Distribution on Account of Allowed Chapter 11 Expenses of Administration, (II)  
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1 Dismissing Chapter 11 Cases Pursuant to 11 U.S.C. §§ 105(a), 349(b) and 1112(b); and (III) Directing  
2 Post-Dismissal Service of Notice of Insurance-Related Claims (the “Distribution Motion”). In the  
3 Distribution Motion, the debtors sought authority to wind down their estates by making *pro rata*  
4 distributions from available assets to administrative expense claimants, to be followed by entry of orders  
5 dismissing the debtors’ bankruptcy cases.

6  
7 8. On January 4, 2007, the Bankruptcy Court entered the Order Granting Debtors’ Motion  
8 for Order Authorizing (I) Pro-Rata Distribution on Account of Allowed Chapter 11 Expenses of  
9 Administration, (II) Dismissing Chapter 11 Cases Pursuant to 11 U.S.C. §§ 105(a), 349(b) and 1112(b);  
10 and (III) Directing Post-Dismissal Service of Notice of Insurance-Related Claims (the “Distribution  
11 Order”), pursuant to which, the Court authorized the debtors to make a pro-rata distribution to holders of  
12 allowed administrative claims and permitted the debtors to submit an *ex-parte* motion for entry of an  
13 order dismissing the debtors’ cases following the completion of those distributions.

14  
15 9. During this same time period, I engaged in settlement discussions with several of  
16 CFB’s insurance carriers, exploring whether a settlement structure that would resolve their liabilities  
17 regarding the Asbestos Claims against CFB was possible in bankruptcy. Following these  
18 discussions, I decided to keep open the chapter 11 bankruptcy estates of CFB and WFB (the “Active  
19 Debtors”), in order to pursue settlements with CFB’s insurers and, thereafter, confirm a chapter 11  
20 plan that would provide a mechanism to evaluate and pay Asbestos Claims.

21  
22 10. On November 17, 2008, after making *pro rata* distributions to administrative  
23 creditors, I dismissed the chapter 11 cases of NMRC, and its affiliates, NAT Liquidation  
24 Corporation, f/k/a National Affiliated Technologies, Inc., and National Refractories and Minerals,  
25 Inc. At that time, the Active Debtors possessed less than \$10,000 in cash.

The Primary Insurance Settlements

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2 11. During 2007 and 2008, I, along with my special counsel, FrankGecker LLP, continued  
3 to negotiate with several of the Active Debtors' insurers. As a result of these negotiations, I reached  
4 a settlement in principle with Hartford Accident & Indemnity Company ("Hartford"), the Active  
5 Debtors' primary insurance carrier with the most remaining coverage. Pursuant to the terms of that  
6 settlement, Hartford would pay an amount in excess of its remaining policy limits in order to  
7 repurchase its policies from the Active Debtors, resolve all claims relating to those policies, and  
8 obtain certain injunctive protections that would prevent third parties from asserting claims against  
9 Hartford relating to those policies.  
10

11 12. I subsequently reached settlements in principle with Bituminous Casualty Corporation  
12 ("Bituminous") and ACE Insurance Company ("ACE"). Each of these settlements required payment  
13 in excess of policy limits and otherwise followed form with the settlement with Hartford.  
14

15 13. On October 15, 2008, my counsel filed the Motion for Approval of Settlement By and  
16 Between Chicago Fire Brick and Hartford Accident and Indemnity Company, Including the Sale of  
17 Insurance Policies (the "Hartford Settlement Motion"), seeking approval by the Bankruptcy Court of  
18 the proposed settlement with Hartford.

19 14. The Bankruptcy Court denied the Hartford Settlement Motion and stated that the  
20 proposed settlement could only be accomplished as part of a chapter 11 plan.

21 15. Following the denial of the Hartford Settlement Motion, I and my counsel engaged in  
22 additional lengthy negotiations with Hartford in an effort to reach a modified settlement that did not  
23 include certain injunctive protections that the Bankruptcy Court would not approve.  
24

25 16. After several months, I reached modified settlements with Hartford, Bituminous and  
26 ACE. Pursuant to these settlements, each insurer has agreed to pay above remaining policy limits to  
27 settle their liability and repurchase their policies from the Active Debtors. Specifically, Hartford has  
28

1 agreed to pay \$9,191,305.20, Bituminous has agreed to pay \$1,585,394.63 and ACE has agreed to  
2 pay \$797,296.54. These settlements were incorporated into the chapter 11 plan filed by CFB on July  
3 16, 2009 (the “2009 Plan”) and have also been incorporated into the current Joint Chapter 11 Plan of  
4 CFB Liquidating Corporation f/k/a Chicago Fire Brick Company, and WFB Liquidating Corporation  
5 f/k/a Wellsville Fire Brick Company, as Modified (the “Plan”), filed on June 1, 2012.

6 Additional Primary Insurance Coverage

7  
8 17. Over the last five years, I and my counsel have attempted to resolve the liability of a  
9 fourth primary insurance carrier, Continental Casualty Company (“Continental”). On information  
10 and belief, Continental’s remaining limits on its policies total approximately \$2.56 million. After  
11 CFB proposed the 2009 Plan, Continental objected, asserting that the 2009 Plan impaired its rights  
12 with respect to the litigation of Asbestos Claims. Although as of the date of this Declaration, I have  
13 not been able to reach a settlement with Continental that resolves its liability, we have agreed upon a  
14 mechanism for the resolution of its potential liability with respect to individual Asbestos Claims, as  
15 set forth in section 8.3 of the Plan. In addition, subject to court approval, I have provided Continental  
16 a cash settlement option (the “Continental Settlement Option”) that allows Continental to settle its  
17 liability and repurchase its policies in exchange for a payment of 100 percent of its remaining policy  
18 limits.  
19

20 18. The Active Debtors’ fifth primary insurance carrier is Home Insurance Company  
21 (“Home”). Home is currently insolvent and in the process of liquidating its assets. On information  
22 and belief, at the time it became insolvent, the Active Debtors had Home policies with remaining  
23 policy limits of approximately \$2.4 million. I and my counsel are pursuing a claim against Home,  
24 but the timing and amount of distributions on account of that claim remain unknown.  
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The Safety National Insurance Settlement

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2 19. In addition to their primary insurance policies, the Active Debtors were insured by  
3 certain excess insurance policies issued by Safety National Casualty Corporation (“Safety National”)  
4 providing additional limits of up to \$20 million. Safety National also objected to the 2009 Plan. It  
5 argued that the settlements with Hartford, Bituminous and ACE, which are incorporated into the Plan,  
6 failed to properly exhaust the settling insurers’ respective coverage obligations and ignored their  
7 defense obligations. Safety National argued that, in the event that Asbestos Claims against the Active  
8 Debtors were to be litigated in the tort system, these defense obligations would have been significant  
9 and that those obligations should not be transferred to Safety National through the approval of the  
10 settlements in the 2009 Plan. I and my counsel engaged in extensive settlement discussions with  
11 Safety National over the last couple of years regarding both their plan objections and their coverage  
12 obligations to the Active Debtors. However, Safety National asserted that its policies had not been  
13 triggered because the Active Debtors’ primary insurance policies have not been exhausted, and would  
14 not be triggered by the insurance settlements in the 2009 Plan. Safety National also argued that  
15 because Home is insolvent, its failure to pay out 100 percent of the coverage limits on its policies  
16 could prevent Safety National’s excess policies from attaching. Safety National has also raised  
17 additional coverage defenses and has argued that the number and value of claims that could trigger its  
18 coverage obligations would be insufficient to exhaust its policy limits or even a substantial portion  
19 thereof. While the Active Debtors disagree with Safety National’s arguments, resolving these and  
20 other insurance issues could take years at significant expense to the Active Debtors and with no  
21 certainty that the Active Debtors would prevail on all issues.  
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25 20. After the parties exchanged written discovery and engaged in several rounds of  
26 settlement discussions, I and my counsel reached a settlement with Safety National regarding both its  
27 coverage obligations and its objections to the Plan. That settlement has been incorporated into the  
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1 Plan and, subject to court approval, requires Safety National to pay \$4.9 million to repurchase its  
2 policies and resolve any and all obligations or claims under its policies.

3 21. Unlike the Active Debtors' other settlements, the Safety National settlement does not  
4 contemplate a payment at, or in excess of, remaining limits. However, I believe that the \$4.9 million  
5 settlement amount appropriately accounts for: (a) the unique defenses asserted by Safety National as  
6 an excess carrier, including the asserted lack of exhaustion of the underlying policies, the "trigger" of  
7 coverage, and their impact on the probability of success in litigation; (b) the expense and delay that  
8 the Active Debtors would face in litigation with Safety National in the absence of settlement; and (c)  
9 the additional expense the Active Debtors would incur in attempting to confirm their Plan over the  
10 objection of Safety National, which has argued that the Plan and the settlements with Hartford,  
11 Bituminous, and ACE impaired its insurance rights.

12 22. In total, the settlements with Hartford, Bituminous, ACE and Safety National  
13 (collectively, the "Insurance Settlements") will yield recoveries of \$16,473,996.37 for the benefit of  
14 the Active Debtors and their creditors. In addition, if Continental elects to exercise the Continental  
15 Settlement Option, these recoveries will eclipse \$19 million.

16 23. In my business judgment, each of the proposed settlements is consistent with the best  
17 interests of the Active Debtors and their creditors, and the objectives and purposes of the United  
18 States Bankruptcy Code (11 U.S.C. §§ 101 *et seq.*, hereafter, the "Bankruptcy Code"), and provides  
19 fair and reasonable consideration, for reasons that include, but are not limited to, the following:

- 20 (a) The settlements with Hartford, Bituminous and ACE will each yield amounts in excess of  
21 what could be obtained in litigation with these insurers due to the Active Debtors' ability  
22 to provide the finality available to a good faith purchaser of assets pursuant to sections  
23 363(b), (f) and (m) of the Bankruptcy Code;  
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- (b) The Continental Settlement Option, if exercised, will yield an amount equal to the greatest amount that could be obtained in litigation with Continental and will save the Active Debtors and/or the Liquidating Trust from the delay and the costs that would otherwise be incurred in implementing the Continental claims submission process contemplated by section 8.3 of the Plan;
- (c) Litigation with the Active Debtors' primary insurers in the absence of these proposed settlements will expose the Active Debtors to litigation risk that could reduce or eliminate recoveries under the policies issued by those insurers;
- (d) Even if the Active Debtors are successful in obtaining policy limits in litigation with the settling insurers, litigation would impose substantial expenses and delay, including expenses and delay that may result from any appeals;
- (e) Absent the proposed Insurance Settlements, the Active Debtors may not be able to obtain payment from Safety National until all litigation with the Active Debtors' primary insurers has been resolved and millions of dollars of claims have been paid, a process that could take a number of years to complete.
- (f) Absent the proposed settlement Agreements, the Active Debtors may be exposed to litigation risk with respect to their claim against Safety National that could reduce or eliminate recoveries under the Safety National policies;
- (g) The Insurance Settlements will provide funding with which the Liquidating Trust can pay the Active Debtors' administrative expenses and implement the claims valuation process discussed below;
- (h) The Active Debtors do not currently have available funds from which to engage in lengthy litigation with their insurers and would have little choice but to enter into a contingent fee

1 engagement that could substantially reduce the portion of recoveries available to claimants  
2 in Classes 3 and 4;

3 (i) The settlements have been obtained after extensive negotiations and represent the amounts  
4 that I believe are the greatest amounts that could be achieved through a negotiated  
5 settlement in these cases;

6 (j) The settling insurance carriers are not insiders of the Active Debtors within the meaning  
7 of section 101(31) of the Bankruptcy Code, and are not controlled by, or acting on behalf  
8 of, any insider of the Active Debtors; and

9  
10 (k) The recoveries from these proposed settlements will enable the Liquidating Trust to make  
11 substantial distributions on account of allowed Class 3 and Class 4 Claims under the Plan  
12 and to implement the Plan in full.

13 24. Each of the settlements referenced above is the result of substantial efforts by myself  
14 and counsel and extensive arm's length negotiations.

15 The Formation of the Liquidating Trust

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17 25. After confirmation, the Plan contemplates that the Active Debtors' assets will be  
18 transferred to a liquidating trust (the "Liquidating Trust"). I have selected Barry A. Chatz, of the law  
19 firm of Arnstein & Lehr LLP, to serve as the initial trustee of the Liquidating Trust to be formed  
20 under the Plan. Mr. Chatz is a panel chapter 7 trustee for Cook County in the Northern District of  
21 Illinois and is known to me personally as a competent, diligent and intelligent attorney with  
22 experience and expertise that renders him well suited to serve as the initial trustee of the Liquidating  
23 Trust. In addition, in the event that Mr. Chatz is unwilling or unable to serve as trustee through the  
24 completion of the Liquidating Trust's operation, the Trust Distribution Procedures provide a  
25 comprehensive framework for the selection of a replacement trustee. On this basis, I believe that the  
26 selection of Mr. Chatz and the implementation of procedures for the selection of replacement  
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1 trustee(s) is consistent with the interests of creditors and interest holders of the Active Debtors and  
2 with public policy in accordance with section 1123(a)(7) of the Bankruptcy Code.

3 The Liquidating Trust's Procedures to Value and Pay Asbestos Claims

4 26. The Plan also includes extensive procedures (the "Trust Distribution Procedures") by  
5 which the Liquidating Trust will value and pay Asbestos Claims. The Trust Distribution Procedures,  
6 which are similar to, but more streamlined than, those employed by asbestos trusts formed pursuant  
7 to section 524(g) of the Bankruptcy Code, will resolve these claims in a uniform, centralized and  
8 efficient manner and will ensure equality of distribution among claimants with similar illnesses.  
9

10 27. In the absence of the Trust Distribution Procedures proposed in the Plan, individual  
11 Asbestos Claimants would be forced to liquidate their claims in the tort system, imposing significant  
12 costs of litigation. This would result in claims being pursued by claimants in different jurisdictions in  
13 several states and a resulting "race to the courthouse" among claimants.

14 28. In addition, on information and belief, litigation of similar asbestos-related claims in  
15 different jurisdictions can provide different time periods for case resolution and divergent results  
16 once those cases are resolved. As a result, I believe that the Trust Distribution Procedures will yield  
17 faster resolution for and greater equality of treatment among holders of Class 3 Claims and among  
18 holders of Class 4 Claims than litigation in the tort system.

19 29. As set forth above, the Insurance Settlements incorporated into the Plan will provide  
20 the Debtors and/or the Liquidating Trust with over \$16 million to (i) address present administrative  
21 expense claims and U.S. Trustee fees, (ii) cover the anticipated cost of administering the Liquidating  
22 Trust, and (iii) make substantial, *pro rata* distributions to holders of Trust Claims that are determined  
23 to be valid through the Trust Distribution Procedures. On information and belief, each of the  
24 insurance carriers with whom the Debtors have reached a settlement remains solvent. Accordingly, I  
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1 believe that the Active Debtors possess, and the Plan provides, adequate means for the Plan's full and  
2 complete implementation.

3 Compliance with the Requirements of the Bankruptcy Code

4 30. In addition to those claims that, pursuant to section 1123(a)(1) of the Bankruptcy  
5 Code, must remain unclassified, the Plan classifies creditors in five separate classes. The five classes  
6 of claims are Other Priority Claims, Secured Claims, Bar Date Asbestos Personal Injury Claims,  
7 Supplemental Bar Date Asbestos Personal Injury Claims and General Unsecured Claims, each as  
8 defined in the Plan. Holders of equity interests in the Active Debtors are classified in Class 6.  
9

10 31. The Plan contemplates that the proceeds from the settlements contemplated therein  
11 and the Active Debtors' additional rights and claims with respect to Continental and Home will be  
12 used to satisfy unclassified claims, and Claims in Classes 1 and 2 if any, with the majority of  
13 available funds to be used to pay claims in Classes 3 and 4. Classes 3 and 4 are classified separately  
14 from all General Unsecured Claims based on the fact that holders of claims in Classes 3 and 4 may  
15 assert interests in the Active Debtors' insurance policies, while holders of other General Unsecured  
16 Claims cannot. The further distinction between Classes 3 and 4 has been drawn because claims in  
17 Class 3 were timely asserted prior to the February 19, 2002 bar date established in the Active Debtors  
18 cases. Claims in Class 4 were not asserted prior to that bar date, but may be allowed if the failure to  
19 file a claim was due to a lack of knowledge on or before February 19, 2002 of the condition(s) giving  
20 rise to the claimant's Asbestos Claim.  
21

22 32. In the event that the Plan (as modified to the extent necessary) is not confirmed and  
23 the Active Debtors' cases are dismissed or converted, I do not believe that the settlements I and my  
24 counsel have negotiated with the Active Debtors' insurers will be available. Nevertheless, even  
25 assuming that these settlements are available, I do not believe that creditors in Classes 3, 4 or 5, or  
26 interest holders in Class 6 would fare better in a hypothetical chapter 7 liquidation.  
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1           33.     Without the ability to employ the Trust Distribution Procedures, the cost of liquidating  
2 asbestos-related personal injury claims would likely be greater and would yield inconsistency in both  
3 timing and amount of damage awards in different jurisdictions across the country. In addition, a  
4 chapter 7 trustee would be entitled to statutory fees on account of disbursements made, which might  
5 yield over \$500,000 in statutory fees to the Trustee in addition to the amounts to be paid to his or her  
6 professionals. Finally, even in a chapter 7 liquidation, Asbestos Claimants would be expected to  
7 assert an interest in the Active Debtors' insurance policies and/or proceeds and, without any other  
8 assets, holders of General Unsecured Claims would not obtain any payment in a chapter 7 liquidation.

9  
10           34.     I have reviewed the Liquidation Analysis attached as Exhibit F to the Disclosure  
11 Statement and, based upon my knowledge of the Active Debtors' assets and liabilities, believe the  
12 liquidation analysis to be accurate.

13           Solicitation in Good Faith and in Compliance with the Bankruptcy Code

14           35.     On June 4, 2012, the Bankruptcy Court entered its Order: (I) Approving the Debtors'  
15 Disclosure Statement with Respect to the Joint Chapter 11 Plan of CFB Liquidating Corp., f/k/a  
16 Chicago Fire Brick Company, and WFB Liquidating Corp., f/k/a Wellsville Fire Brick Company, as  
17 Modified, (II) Setting Hearing on Confirmation of the Debtors' Proposed Plan and (III) Setting  
18 Deadlines and Approving Procedures and Forms of Notice and Ballots Relating Thereto (the  
19 "Disclosure Statement Approval Order"). The Disclosure Statement Approval Order officially  
20 approved the adequacy of the Active Debtors' Disclosure Statement and authorized the Active  
21 Debtors to solicit votes to accept or reject the Plan, pursuant to certain approved solicitation  
22 procedures. I and my counsel have implemented those procedures and have solicited votes from  
23 creditors in Classes 3 and 4 consistent with those procedures and the requirements of the Disclosure  
24 Statement Approval Order. As a result, I believe that the Active Debtors have complied with their  
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