

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(Eastern Division)**

In re:	§	
	§	
Bank of New England Corporation	§	Case No. 91-10126 (WCH)
	§	(Chapter 7)
Debtor	§	

**MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH RESPECT
TO SENIOR TRUSTEE CLAIM**

THIS MOTION IS SET FOR HEARING AT 9:30 A.M. ON WEDNESDAY, JUNE 13, 2012, BEFORE THE HONORABLE WILLIAM C. HILLMAN, UNITED STATES BANKRUPTCY JUDGE FOR THE DISTRICT OF MASSACHUSETTS IN COURTROOM 2 ON THE 12TH FLOOR, JOHN W. MCCORMACK POST OFFICE AND COURTHOUSE, 5 POST OFFICE SQUARE, BOSTON, MASSACHUSETTS 02109-3945. ANY OBJECTIONS MUST BE FILED WITH THE COURT ON OR BEFORE 5:00 P.M. ON TUESDAY, MAY 29, 2012, AND SERVED ON THE PARTIES ON THE ATTACHED SERVICE LIST.

Dr. Ben. S. Branch as Trustee (the “Chapter 7 Trustee”) of the Chapter 7 estate of Bank of New England Corporation (“BNEC”), by and through his undersigned counsel and pursuant to 11 U.S.C. § 726 and FED. R. BANKR. P. 3009 and 9019, hereby moves for entry of an order pursuant to FED. R. BANKR. P. 9019 approving a settlement agreement among the Chapter 7 Trustee, Senior Trustee and Junior Trustees with respect to the Senior Trustee’s Fee Claim (as those various terms are defined below) and in support thereof respectfully submits the following:

Preliminary Statement

1. By this Motion, the Chapter 7 Trustee seeks court approval of a settlement and authorization to distribute \$3.2 million from BNEC estate funds to the Senior Trustee (as defined below), in full and final satisfaction of the Senior Trustee’s Fee Claim (as defined below), including the payment thereof.

2. This Court has jurisdiction over the subject matter of this motion pursuant to 28 U.S.C. §§ 157(b)(2)(A)(B) and 1334. This is a core proceeding.

Background

3. BNEC was a bank holding company organized under the laws of Massachusetts, with its principal office in Boston.

4. This case was commenced on January 7, 1991 upon the filing of a voluntary petition for relief under Chapter 7 of the Bankruptcy Code by the Debtor, BNEC (the "Bankruptcy Case").

5. Dr. Ben S. Branch serves as the duly elected and qualified Chapter 7 Trustee of the BNEC estate, having been elected by a vote of creditors on March 23, 1991, pursuant to 11 U.S.C. §§ 702 and 703.

6. HSBC, as successor in interest, serves as Indenture Trustee (the "Senior Trustee") for (a) 7 5/8% Debentures, in the original principal amount of \$25 million, issued pursuant to an Indenture, dated January 15, 1973, between CBT Corporation and First National City Bank, as Indenture Trustee; (b) 8.85% Debentures, in the original principal amount of \$20 million, issued pursuant to an Indenture, dated March 1, 1974, between New England Merchants Company, Inc. and Manufacturers Hanover Trust Company, as Indenture Trustee; and (c) 9 1/2% Senior Notes, in the original principal amount of \$150 million, issued pursuant to an Indenture, dated February 1, 1986, between BNEC and Manufacturers Hanover Trust Company, as Indenture Trustee (collectively, the "Senior Notes").

7. U.S. Bank National Association ("U.S. Bank"), as successor in interest, serves as Indenture Trustee for (a) Floating Rate Subordinated Notes, in the original principal amount of \$75 million, issued pursuant to an Indenture, dated July 1, 1984, between BNEC and Morgan Guaranty Trust Company of New York, as Indenture Trustee; and (b) 8 3/4% Subordinated

Capital Notes, in the original principal amount of \$200 million, issued pursuant to an Indenture, dated April 1, 1987, between BNEC and Morgan Guaranty Trust Company of New York.

8. The Bank of New York Mellon Trust Company, National Association (“BNY Mellon Trust”), as successor in interest, serves as Indenture Trustee (collectively, with U.S. Bank, the “Junior Trustees”) for 9 7/8% Subordinated Notes, in the original principal amount of \$250 million, issued pursuant to an Indenture, dated September 1, 1989, between BNEC and Chemical Bank Delaware, as Indenture Trustee (collectively, with the Floating Rate Subordinated Notes and the 8 3/4% Subordinated Capital Notes, the “Junior Notes”).

9. On May 23, 2001, the Chapter 7 Trustee filed a Motion for an Order Authorizing a Fourth Interim Distribution (the “Distribution Motion”) with the Bankruptcy Court, by which the Chapter 7 Trustee sought authority to make distributions to the Junior Trustees on behalf of holders of Junior Notes.

10. The Senior Trustee filed an objection thereto, arguing that under the subordination provisions in the Indentures governing the Junior Notes, the holders of Senior Notes were entitled to payment of post-petition interest before distributions could be made to holders of Junior Notes (the “Post-Petition Interest Dispute”).

11. On November 1, 2001, the Bankruptcy Court issued its Memorandum Decision on Trustee’s Motion for Order Authorizing Fourth Interim Distribution, granting the Distribution Motion, which order was affirmed by the United States District Court for the District of Massachusetts (the “District Court”) on February 3, 2003.

12. On appeal to the United States Court of Appeals for the First Circuit, the Court of Appeals issued a decision vacating the District Court’s ruling and remanding the matter with instructions that the Bankruptcy Court conduct a fact-finding hearing to determine whether the

parties to the Indentures governing the Junior Notes intended to subordinate distributions to holders of the Junior Notes to the post-petition interest claims of holders of Senior Notes (the “Evidentiary Hearing”).

13. The Bankruptcy Court conducted the Evidentiary Hearing, following which it issued a Memorandum Decision and Order (the “Decision”) in which the Court held that the holders of Senior Notes were not entitled to receive post-petition interest before final distributions could be made to holders of the Junior Notes, which Decision was affirmed by the District Court and the Court of Appeals.

14. Following the conclusion of litigation over the Post-Petition Interest Dispute, the Senior Trustee requested that the Chapter 7 Trustee make a distribution to the Senior Trustee in the amount of \$4,902,554.77 (the “Fee Claim”) in payment of the Senior Trustee’s fees and expenses incurred in connection with the Post-Petition Interest Dispute, asserting that it was entitled to full payment of such fees and expenses under the terms of the Indentures governing the Senior Notes and the Junior Notes.

15. The Junior Trustees disputed the Senior Trustee’s claim that it was entitled to full payment of its fees and expenses from distributions otherwise allocable to holders of Junior Notes.

16. The Senior Trustee, the Chapter 7 Trustee and the Junior Trustees (collectively, the “Parties”), in the exercise of their respective fiduciary duties, thereafter engaged in arms-length and good faith settlement negotiations in an effort to avoid the costs and delays associated with litigation over the disputed Fee Claim (the “Fee Dispute”).

17. The Senior Trustee provided detailed copies of all of its invoices, on a confidential basis, to the Chapter 7 Trustee and the Junior Trustees.

18. The Parties have reached a compromise pursuant to which, subject to approval of this Court and as otherwise provided in the Settlement (as defined below), the Chapter 7 Trustee shall allow and pay \$3.2 million from the bankruptcy estate to the Senior Trustee in full and final payment of the Senior Trustee's Fee Claim. The proposed settlement is attached hereto as Exhibit A (the "Settlement").

19. The Parties believe that settlement of the Fee Dispute, pursuant to the terms and conditions of the Settlement, will mitigate the risks and avoid the expenses inherent in litigating the Fee Dispute before the Bankruptcy Court and through subsequent appeals and will avoid delaying final distributions to creditors and closure of the Chapter 7 Case that would otherwise result if litigation ensues and, therefore, is in the best interests of the BNEC estate and its creditors, including the holders of Senior Notes and Junior Notes.

20. The Chapter 7 Trustee believes that the proposed Settlement, including the payment in the amount of \$3.2 million to the Senior Trustee in full and final payment of the Senior Trustee's Fee Claim, is appropriate and is in the best interest of creditors. In this regard, Fed. R. Bank. P. 3009 provides in pertinent part: "In a Chapter 7 case, dividends to creditors shall be paid as promptly as practicable." Fed. R. Bank. P. 3009 contemplates the declaration and payment of multiple dividends in a Chapter 7 case, with the timing and amount left to the discretion of the Court.

**The Proposed Settlement is Authorized by the
Bankruptcy Rules and is Reasonable**

21. Fed. R. Bankr. P. 9019(a) provides: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct." The standards for approval are well-established

and require the Court to inquire into the reasonableness of the proposed settlement. See *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc.*, 390 U.S. 414, 424 (1968); *Casoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599 (2d Cir. 1983), cert. denied, 464 U.S. 822 (1983). The inquiry need only determine whether the proposed settlement “fall[s] below the lowest point in the range of reasonableness.” *W.T. Grant*, 699 F.2d at 608; see also *In re Healthco Int’l, Inc.*, 136 F.3d 45, 51 (1st Cir. 1998).

22. The District Court has held that when considering proposed settlements involving the bankruptcy estate, bankruptcy courts should consider “(i) the probability of success in the litigation being compromised; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and, (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premise,” and noted that bankruptcy courts may also consider “the experience and competence of the trustee and public policy considerations.” *Crawford v. Riley (In re Wolverine, Proctor & Schwartz, LLC)*, 436 B.R. 253, 265-66 (D. Mass. 2010) (quoting *In re High Voltage Eng’g Corp.*, 403 B.R. 163, 167 (D. Mass. 2009)).

23. The applicable factors¹ weigh strongly in favor of approval of the Settlement. First, the Senior Trustee, as an unsecured creditor, is entitled under the terms of the Senior Indentures to a pro rata recovery of its reasonable fees and expenses. The Senior Trustee has filed timely proofs of claim, which it is entitled to amend. Absent the Settlement, the Senior Trustee would amend its proofs of claim to include the amount of its Fee Claim and, if allowed, would be entitled to receive a pro rata distribution as an unsecured creditor. Notably, if the Fee

¹ Factor 2 (the difficulties, if any, to be encountered in the matter of collection) is not applicable here because the settlement does not involve a claim held by the estate.

Claim is allowed (and excluding any additional fees the Senior Trustee may seek to recover in further litigation), the Senior Trustee would be entitled to a distribution of approximately \$1.9 million.²

24. Second, the Senior Trustee contends that it is entitled to full recovery of its fees and expenses under the terms of the Senior Indentures and the Junior Indentures. While the Junior Trustees dispute this, any ensuing litigation would likely involve complex issues of contract interpretation and intent of the Parties, the outcome of which is uncertain. Third, litigation over the Fee Claim at the very least would require proceedings before this Court and likely appellate review, all of which would be expensive. This expense ultimately would be borne by unsecured creditors, including holders of Junior Notes.

25. Finally, the fourth factor, “the paramount interest of the creditors and a proper deference to their reasonable views in the premise,” also weighs strongly in favor of approval of the Settlement. *Wolverine*, 436 B.R. at 266. After years of costly litigation, delay, and uncertainty, the Parties believe that they have finally reached a reasonable resolution of the remaining issues with the Senior Trustee in the Bankruptcy Case. The Junior Trustees have weighed the cost and delays (in making a final distribution to creditors) that would be occasioned by litigation against the settlement terms and believe that the Settlement is in the best interests of the holders of the Junior Notes. Likewise, the Senior Trustee supports this Settlement as being in the best interests of the holders of the Senior Notes. Moreover, the Settlement will, after more than twenty years, bring the Chapter 7 Case closer to completion.

26. The Settlement is subject to certain conditions to effectiveness: a) the Bankruptcy Court entering a final, non-appealable Order in form and substance reasonably acceptable to the

² This assumes a 38-39% recovery for unsecured creditors.

Parties (the "Settlement Order") approving the Settlement and, at a minimum, containing the findings set forth in paragraph 4 of the Settlement; b) the Settlement Order not being appealed or, in the event that any appeal of the Settlement Order is filed, such appeal being dismissed or denied with no further appeal possible (the "Effective Date"); and c) the Junior Trustees not receiving written direction from the requisite majority of holders of Junior Notes, directing the Junior Trustees not to enter into the Settlement, accompanied by appropriate indemnification in accordance with and pursuant to the terms of the applicable Indenture(s), ten (10) or more business days prior to the hearing before the Bankruptcy Court to consider approval of the Settlement.

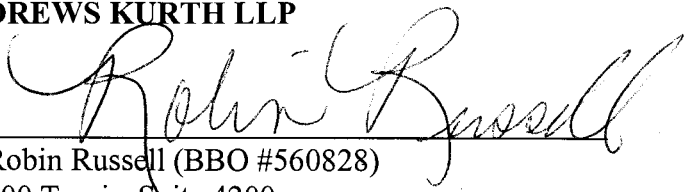
27. The Chapter 7 Trustee, the Junior Trustees, and the Senior Trustee believe that consideration of the relevant factors demonstrates that the proposed Settlement falls well within the required range of reasonableness and is in the best interests of the estate and its creditors. Accordingly, the Chapter 7 Trustee submits that the proposed Settlement of the Senior Trustee's Fee Claim is in the best interests of the estate and its creditors.

Notice of This Motion was Appropriate and Legally Sufficient

28. Due and appropriate notice of this Motion, the Settlement Agreement and the proposed Settlement Order was provided to all persons or entities entitled to such notice and, in particular, to the registered holders of Junior Notes and to the holders of Senior Notes at least thirty (30) days prior to the deadline to file objections to the Settlement Motion. The Settlement and this Motion have been served on all creditors and interested parties, including the United States Trustee and the indenture trustees, in accordance with Fed. R. Bankr. P. 2002 and 9019 as well as any applicable local rules. Such notice is adequate under the circumstances and no further or other notice is necessary or required.

WHEREFORE, the Chapter 7 Trustee respectfully requests that the Court enter an order in the form of Exhibit B hereto (i) approving this Motion and the Settlement in all respects and overruling any objections to this Motion or the Settlement, (ii) authorizing the Chapter 7 Trustee to distribute \$3.2 million from BNEC estate funds to the Senior Trustee, after the Effective Date (as defined in the Settlement), in full and final satisfaction of the Fee Claim and providing that no additional or further fees and expenses of the Senior Trustee shall be allowed in this case, and (iii) granting the Chapter 7 Trustee such other and further relief as may appear equitable, lawful and just.

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-and-

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the parties on the attached Service List by U.S. mail, postage prepaid on the 17th day of April, 2012. Service will be completed on the registered holders of Junior Notes and holders of Senior Notes (defined herein) on or before Friday, April 27, which is a date not less than thirty days prior to the objection deadline for this Motion and will be evidenced by a separate Certificate of Service.


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Exhibit A - Settlement

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT, dated as of the 2nd day of APRIL, 2012 (the "**Settlement Agreement**"), is entered into by and among: (1) Dr. Ben S. Branch, as Chapter 7 Trustee for the Bank of New England Corporation; (2) HSBC Bank USA, National Association, as Indenture Trustee ("**HSBC**" or the "**Senior Trustee**"); and (3)(a) U.S. Bank National Association ("**U.S. Bank**"), as Indenture Trustee, and (b) The Bank of New York Mellon Trust Company, National Association, as Indenture Trustee ("**BNY Mellon Trust**" and together with U.S. Bank, the "**Junior Trustees**").¹

RECITALS

WHEREAS, the Bank of New England Corporation ("**BNEC**") is a debtor in a chapter 7 case pending in the United States Bankruptcy Court for the District of Massachusetts (the "**Bankruptcy Court**"), which is titled *In re Bank of New England Corp.*, Case No. 91-10126 (WCH) (the "**Chapter 7 Case**"); and

WHEREAS, Dr. Ben S. Branch (the "**Chapter 7 Trustee**") is the chapter 7 trustee in the Chapter 7 Case; and

WHEREAS, HSBC, as successor in interest, serves as Indenture Trustee for (a) 7 5/8% Debentures, in the original principal amount of \$25 million, issued pursuant to an Indenture, dated January 15, 1973, between CBT Corporation and First National City Bank, as Indenture Trustee; (b) 8.85% Debentures, in the original principal amount of \$20 million, issued pursuant to an Indenture, dated March 1, 1974, between New England Merchants Company, Inc. and Manufacturers Hanover Trust Company, as Indenture Trustee; and (c) 9 1/2% Senior Notes,

¹ The Chapter 7 Trustee, the Senior Trustee and the Junior Trustees are referred to herein collectively as the "Parties" and individually as a "Party."

in the original principal amount of \$150 million, issued pursuant to an Indenture, dated February 1, 1986, between BNEC and Manufacturers Hanover Trust Company, as Indenture Trustee (collectively, the “**Senior Notes**”); and

WHEREAS, U.S. Bank, as successor in interest, serves as Indenture Trustee for (a) Floating Rate Subordinated Notes, in the original principal amount of \$75 million, issued pursuant to an Indenture, dated July 1, 1984, between BNEC and Morgan Guaranty Trust Company of New York, as Indenture Trustee; and (b) 8 3/4% Subordinated Capital Notes, in the original principal amount of \$200 million, issued pursuant to an Indenture, dated April 1, 1987, between BNEC and Morgan Guaranty Trust Company of New York; and

WHEREAS, BNY Mellon Trust, as successor in interest, serves as Indenture Trustee for 9 7/8% Subordinated Notes, in the original principal amount of \$250 million, issued pursuant to an Indenture, dated September 1, 1989, between BNEC and Chemical Bank Delaware, as Indenture Trustee (collectively, with the Floating Rate Subordinated Notes and the 8 3/4% Subordinated Capital Notes, the “**Junior Notes**”); and

WHEREAS, on May 23, 2001, the Chapter 7 Trustee filed a Motion for an Order Authorizing a Fourth Interim Distribution (the “**Distribution Motion**”) with the Bankruptcy Court, by which the Chapter 7 Trustee sought authority to make distributions to the Junior Trustees on behalf of holders of Junior Notes; and

WHEREAS, the Senior Trustee filed an objection thereto, arguing that under the subordination provisions in the Indentures governing the Junior Notes, the holders of Senior Notes were entitled to payment of post-petition interest before distributions could be made to holders of Junior Notes (the “**Post-Petition Interest Dispute**”); and

WHEREAS, on November 1, 2001, the Bankruptcy Court issued its Memorandum Decision on Trustee's Motion for Order Authorizing Fourth Interim Distribution, granting the Distribution Motion, which order was affirmed by the United States District Court for the District of Massachusetts (the "**District Court**") on February 3, 2003; and

WHEREAS, on appeal to the United States Court of Appeals for the First Circuit, the Court of Appeals issued a decision vacating the District Court's ruling and remanding the matter with instructions that the Bankruptcy Court conduct a fact-finding hearing to determine whether the parties to the Indentures governing the Junior Notes intended to subordinate distributions to holders of the Junior Notes to the post-petition interest claims of holders of Senior Notes (the "**Evidentiary Hearing**"); and

WHEREAS, the Bankruptcy Court conducted the Evidentiary Hearing, following which it issued a Memorandum Decision and Order (the "**Decision**") in which the Court held that the holders of Senior Notes were not entitled to receive post-petition interest before final distributions could be made to holders of the Junior Notes, which Decision was affirmed by the District Court and the Court of Appeals; and

WHEREAS, following the conclusion of litigation over the Post-Petition Interest Dispute, the Senior Trustee requested that the Chapter 7 Trustee make a distribution to the Senior Trustee in the amount of \$4,902,554.77 (the "**Fee Claim**") in payment of the Senior Trustee's fees and expenses incurred in connection with the Post-Petition Interest Dispute, asserting that it was entitled to full payment of such fees and expenses under the terms of the Indentures governing the Senior Notes and the Junior Notes; and

WHEREAS, the Junior Trustees disputed the Senior Trustee's claim that it was entitled to full payment of its fees and expenses from distributions otherwise allocable to holders of Junior Notes; and

WHEREAS, the Senior Trustee provided detailed copies of all of its invoices, on a confidential basis, to the Chapter 7 Trustee and the Junior Trustees; and

WHEREAS, in the exercise of their respective fiduciary duties, the Parties thereafter engaged in arms-length and good faith settlement negotiations in an effort to avoid the costs and delays associated with litigation over the disputed Fee Claim (the "**Fee Dispute**"); and

WHEREAS, the Parties believe that settlement of the Fee Dispute, pursuant to the terms and conditions of this Settlement Agreement, will mitigate the risks and avoid the expenses inherent in litigating the Fee Dispute before the Bankruptcy Court and through subsequent appeals and will avoid delaying final distributions to creditors and closure of the Chapter 7 Case that would otherwise result if litigation ensues and, therefore, is in the best interests of the BNEC estate and its creditors, including the holders of Senior Notes and Junior Notes.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration provided, the sufficiency of which are hereby acknowledged, the Chapter 7 Trustee, the Senior Trustee and the Junior Trustees hereby agree as follows:

1. Fee Claim. The Parties agree that this Settlement Agreement shall serve as an amendment of and supplement to the Senior Trustee's Proofs of Claim (Nos. 23, 24 and 25) to include the Fee Claim.

2. Settlement Payment. As soon as practicable after the Effective Date (as defined below), the Chapter 7 Trustee shall distribute to the Senior Trustee \$3,200,000 in full and final payment of its Fee Claim. No additional or further fees and expenses of the Senior Trustee shall be allowed in the Chapter 7 Case.

3. Conditions to Effectiveness. This Settlement Agreement, the Parties respective obligations hereunder, and the settlement and compromise contemplated hereby, are conditioned upon the following:

(a) the Bankruptcy Court entering a final, non-appealable Order in form and substance reasonably acceptable to the Parties (the “**Settlement Order**”) approving this Settlement Agreement and, at a minimum, containing the findings set forth in Paragraph 4 below. Accordingly, this Settlement Agreement shall become effective only upon entry by the Bankruptcy Court of the Settlement Order and only (i) in the event that no appeal of the Settlement Order is filed or (ii) in the event that any appeal of the Settlement Order is filed, at the time that, and if and only if, such appeal is dismissed or denied and no further appeal is possible (the “**Effective Date**”).

(b) neither Junior Trustee receiving written direction from the requisite majority of its respective holders of Junior Notes, directing such Junior Trustee not to enter into this Settlement Agreement, accompanied by appropriate indemnification (as determined in the sole discretion of the Junior Trustee(s)) in accordance with and pursuant to the terms of the applicable Indenture(s) (“**Written Direction**”), ten (10) or more business days prior to the hearing before the Bankruptcy Court to consider approval of this Settlement Agreement.

In the event that either of the Junior Trustees receive a Written Direction in accordance with paragraph 3(b) above, or the Bankruptcy Court declines to enter the Settlement Order in accordance with paragraphs 3(a) above and 4 below or, if entered, the Settlement Order is modified, reversed or vacated (either by the Bankruptcy Court or on appeal), this Settlement Agreement shall be terminated, and the Parties shall be restored to the *status quo ante* existing prior to the execution of this Settlement Agreement.

4. Settlement Order Findings. Unless otherwise agreed in writing by all of the Parties, the Settlement Order shall contain, at a minimum, findings that:

(a) due and appropriate notice of the Motion for Order Approving Settlement Agreement With Respect to Senior Trustee Claim (the “**Settlement Motion**”), the Settlement Agreement and the proposed Settlement Order was provided to all persons or entities entitled to such notice and, in particular, to the holders of Junior Notes and the holders of Senior Notes at least thirty (30) days prior to the deadline to file objections to the Settlement Motion, and such notice is adequate under the circumstances and no further or other notice is necessary or required;

(b) the compromise and settlement set forth in the Settlement Agreement is fair and reasonable to the holders of unsecured claims, including, in particular, the holders of Senior Notes and Junior Notes;

(c) in entering into the Settlement Agreement, the Senior Trustee and the Junior Trustees exercised the rights and powers vested in them under their respective Indentures and used the same degree of care and skill in exercising

those rights and powers as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs;

(d) by entering into the Settlement Agreement, the Senior Trustee and the Junior Trustees have acted properly and appropriately, consistent with their fiduciary or other duties, obligations and responsibilities under, and the entry of the Settlement Order does not violate, the terms of their respective Indentures and/or applicable law.

The Settlement Order shall also state that the Order is and shall be binding on the Chapter 7 Trustee, the Senior Trustee and the Junior Trustees and all BNEC creditors, including, without limitation, all current, former, and future holders of Senior Notes and Junior Notes, and all predecessors or successors thereto on the Effective Date.

5. Further Assurances. The Parties agree to execute promptly any and all documents of any nature or kind, which the other Parties may reasonably require in order to implement the provisions and objectives of this Settlement Agreement.

6. Reservation of Rights. This Settlement Agreement is intended to be and shall operate as a commercial accommodation among the Parties hereto and shall not be deemed or construed as an admission of the merit or lack of merit of any of the claims or defenses arising out of or related to the Fee Dispute. The Parties agree that this Settlement Agreement, its terms and the negotiations surrounding the Settlement Agreement shall be governed by Rule 408 of the Federal Rules of Evidence and shall not be admissible or offered or received into evidence in any suit, action or other proceeding except upon the written agreement of the Parties hereto or as shall be necessary to give effect to, declare or enforce the rights of the Parties with respect to the

Settlement Agreement. The Parties expressly reserve all of their claims and defenses arising out of or related to the Fee Dispute.

7. Mutual Construction. This Settlement Agreement is the product of informed negotiations and involves compromises of disputes among the Parties as set forth herein. Each of the Parties has been represented and received the advice and assistance of counsel before entering into this Settlement Agreement. The Settlement Agreement shall not be construed either in favor of or against any Party, nor shall any Party be deemed to be the sole drafter hereof. Moreover, all Parties represent and warrant that they have carefully read and fully understand all of the provisions of this Settlement Agreement and that they have voluntarily and knowingly signed this Settlement Agreement.

8. Merger. This Settlement Agreement constitutes the entire agreement between the Parties and any and all previous agreements, undertakings, representations and communications are merged into and superseded by this Settlement Agreement. No representations or warranties have been made to induce any Party to enter into this Settlement Agreement, other than as expressly set forth herein, and no Party is relying on any representation or promise not expressly set forth herein. Accordingly, none of the Parties hereto shall be entitled to rely on any pre-contractual statements, representations or promises, whether oral or in writing, and whether made or given innocently, negligently or fraudulently.

9. Amendments. This Settlement Agreement may not be modified or amended, nor any of its provisions waived, except by a writing signed by all affected Parties.

10. No Implied Waiver. The failure of any Party to enforce at any time any of the provisions of this Settlement Agreement, or to require at any time performance by any other Party of any of the provisions hereof, or to resort to any remedy or to exercise one or more

remedies, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Settlement Agreement or any part hereof, or the right of such Party to enforce each and every such provision.

11. Binding Effect. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns and all BNEC creditors, including all current, former and future holders of Senior Notes and Junior Notes.

12. Retention of Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction over any disputes concerning, relating to or arising under this Settlement Agreement and the Fee Claim (including the payment thereof).

13. Counterparts. This Settlement Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument and agreement.

14. Due Authorization. Each person who executes this Settlement Agreement on behalf of the Senior Trustee and the Junior Trustees represents that he or she is duly authorized to execute this Settlement Agreement on behalf of such Party and that such Party has full knowledge, and has consented to the terms and provisions, hereof. The Chapter 7 Trustee executes this Settlement Agreement subject to the authorization of his execution of and approval of this Settlement Agreement by the Bankruptcy Court from which he shall seek authorization and approval within five (5) days following execution of this Settlement Agreement by all Parties.

15. Governing Law. This Settlement Agreement shall be interpreted under, and construed in accordance with, the laws of the State of New York, without giving effect to any conflicts of laws principles that require application of the laws of another jurisdiction.

16. Section Headings. The section headings of the various provisions of this Settlement Agreement are inserted for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

17. Notices. All notices, requests and other communications which are required or may be given under this Settlement Agreement shall be in writing and may be given by (a) personal delivery, (b) electronic transmission or by telecopy, or (c) by recognized overnight delivery service. In each case, notice shall be:

If to the Chapter 7 Trustee, addressed to:

Dr. Ben S. Branch, Chapter 7 Trustee of
Bank of New England Corporation
One State Street, Suite 415
Boston, Massachusetts 02109
Telecopy: (617) 367-8883
branchb@isenberg.umass.edu

with copies to counsel to the Chapter 7 Trustee,
addressed to:

Andrews Kurth LLP
600 Travis, Suite 4200
Houston, Texas 77002
Attn: Robin Russell, Esq.
Telecopy: (713) 220-4285
rrussell@andrewskurth.com

If to HSBC Bank USA, National
Association, addressed to:

HSBC Bank USA, National Association
Corporate Trust & Loan Agency
10 East 40th Street, 14th Floor
New York, NY 10016
Attn: Sandra E. Horwitz
Telecopy No.: (212) 525-1300
sandra.e.horwitz@us.hsbc.com

with copies to counsel to the HSBC Bank USA,
addressed to:

Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attn: Sarah L. Reid, Esq.
David E. Retter, Esq.
Alison L. MacGregor, Esq.
Telecopy No.: (212) 808-7897
sreid@kelleydrye.com
dretter@kelleydrye.com
amacgregor@kelleydrye.com

and

Goulston & Storrs P.C.
400 Atlantic Avenue
Boston, MA 02110
Attn: Douglas B. Rosner, Esq.
Telecopy No.: (617) 574-7627
drosner@goulstonstorrs.com

If to U.S. Bank National Association,
addressed to:

U.S. Bank National Association
100 Wall Street, Suite 1600
New York, NY 10005
Attn: James E. Murphy
Telecopy No.: (212) 514-6841
james.murphy3@usbank.com

with a copy to counsel to U.S. Bank
National Association, addressed to:

Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
Attn: Katherine A. Constantine, Esq.
Patrick McLaughlin, Esq.
Telecopy No.: (612) 340-2643
constantine.katherine@dorsey.com
mclaughlin.patrick@dorsey.com
darda.erin@dorsey.com

If to The Bank of New York Mellon Trust
Company, National Association,
addressed to:

The Bank of New York Mellon Trust
Company, N.A.
525 William Penn Place, 38th Floor
Pittsburgh, PA 15259
Attn: Bridget M. Schessler
Telecopy No.: (412) 236-9271
bridget.schessler@bnymellon.com

and

The Bank of New York Mellon
One Wall Street, 11th Floor
New York, New York 10286
Attn: Jason E. Friedman, Esq.
Telecopy No.: (212) 635-6664
jason.friedman@bnymellon.com

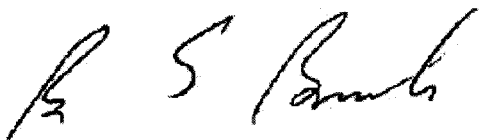
with a copy to counsel to The Bank of New York
Mellon Trust Company, National Association,
addressed to:

Covington & Burling LLP
1301 Avenue of the Americas
New York, New York 10019-6092
Attn: Dianne F. Coffino, Esq.
Telecopy No.: (212) 841-1010
dcoffino@cov.com
rhemm@cov.com

or to such other place and with such other copies as any Party may designate as to itself by
written notice to the others.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement
Agreement by their duly authorized representatives as of the date set forth above.

Dr. BEN S. BRANCH, As Chapter 7 Trustee
for Bank of New England Corporation



By: _____
Name: Ben Branch
Title: Chapter 7 Trustee

HSBC BANK USA, National Association,
as Indenture Trustee

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION,
as Indenture Trustee

By: _____
Name:
Title:

THE BANK OF NEW YORK MELLON TRUST COMPANY,
NATIONAL ASSOCIATION, as Indenture Trustee

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement

Agreement by their duly authorized representatives as of the date set forth above.

Dr. BEN S. BRANCH, As Chapter 7 Trustee
for Bank of New England Corporation

By: _____
Name:
Title:

HSBC BANK USA, National Association,
as Indenture Trustee

By: Sandra E. Horwitz
Name: Sandra E. Horwitz
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,
as Indenture Trustee

By: _____
Name:
Title:

THE BANK OF NEW YORK MELLON TRUST COMPANY,
NATIONAL ASSOCIATION, as Indenture Trustee

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement
Agreement by their duly authorized representatives as of the date set forth above.

Dr. BEN S. BRANCH, As Chapter 7 Trustee
for Bank of New England Corporation

By: _____
Name:
Title:

HSBC BANK USA, National Association,
as Indenture Trustee

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION,
as Indenture Trustee

By:  _____
Name: James E. Murphy
Title: Vice President

THE BANK OF NEW YORK MELLON TRUST COMPANY,
NATIONAL ASSOCIATION, as Indenture Trustee

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement
Agreement by their duly authorized representatives as of the date set forth above.

Dr. BEN S. BRANCH, As Chapter 7 Trustee
for Bank of New England Corporation

By: _____
Name:
Title:

HSBC BANK USA, National Association,
as Indenture Trustee

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION,
as Indenture Trustee

By: _____
Name:
Title:

THE BANK OF NEW YORK MELLON TRUST COMPANY,
NATIONAL ASSOCIATION, as Indenture Trustee

By: *B. Schessler*
Name: Bridget Schessler
Title: Vice President

Exhibit B - Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re:	§	
	§	
Bank of New England Corporation,	§	Case No. 91-10126 (WCH)
	§	(Chapter 7)
Debtor	§	

**ORDER APPROVING SETTLEMENT AGREEMENT AMONG
CHAPTER 7 TRUSTEE, SENIOR TRUSTEE AND JUNIOR TRUSTEES
WITH RESPECT TO SENIOR TRUSTEE CLAIM**

Upon the Motion for Order Approving Settlement Agreement With Respect to Senior Trustee Claim (the “**Settlement Motion**”), pursuant to the terms and conditions of the Settlement Agreement, which is attached hereto as Exhibit A (the “**Settlement Agreement**”) and made a part hereof; and it appearing that proper and adequate notice of the Settlement Motion has been given and that no other or further notice is necessary; and it appearing that all interested parties have been afforded an opportunity to be heard with respect to the Settlement Motion, the Settlement Agreement and all the relief related thereto; and the Court having reviewed and considered the Settlement Motion and the objections thereto, if any, and the Settlement Agreement; and after due deliberation thereon, it is hereby

FOUND, ADJUDGED AND DECREED, that

A. Due and appropriate notice of the Settlement Motion, the Settlement Agreement and this Settlement Order was provided to all persons or entities entitled to such notice and, in particular, to the holders of Junior Notes¹ and the holders of Senior Notes at least thirty (30) days prior to the deadline to file objections, if any, to the Settlement Motion. Such

¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Settlement Agreement.

notice is adequate under the circumstances and no further or other notice is necessary or required.

B. The compromise and settlement set forth in the Settlement Agreement is fair and reasonable to the holders of unsecured claims against Bank of New England Corporation (“BNEC”), including, in particular, the holders of Junior Notes and Senior Notes.

C. In entering into the Settlement Agreement, the Senior Trustee and the Junior Trustees exercised the rights and powers vested in them under their respective Indentures and used the same degree of care and skill in exercising those rights and powers as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

D. By entering into the Settlement Agreement, the Senior Trustee and the Junior Trustees have acted properly and appropriately, consistent with their fiduciary or other duties, obligations and responsibilities under, and the entry of the Settlement Order does not violate, the terms of their respective Indentures and/or applicable law.

NOW, THEREFORE, it is HEREBY ORDERED:

1. The settlement as memorialized in the Settlement Agreement is in the best interest of the BNEC estate. The Settlement Motion is granted, and the Settlement Agreement and the Chapter 7 Trustee's execution thereof are approved in all respects. Any objections to the Settlement Motion or the Settlement Agreement are expressly overruled.

2. The Chapter 7 Trustee is authorized to distribute \$3.2 million from BNEC estate funds to the Senior Trustee, after the Effective Date, in full and final satisfaction of the Fee Claim. No additional or further fees and expenses of the Senior Trustee shall be allowed in the Chapter 7 Case.

3. This Court shall retain exclusive jurisdiction over any disputes concerning, relating to or arising under the Settlement Agreement and the Fee Claim (including the payment thereof).

4. This Settlement Order is and shall be binding on the Parties to the Settlement Agreement and all BNEC creditors, including, without limitation, all current, former, and future holders of the Senior Notes and Junior Notes and all predecessors or successors thereto.

Dated: June __, 2012

Honorable William C. Hillman
Chief Bankruptcy Judge
United States Bankruptcy Court, District of Massachusetts