

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Liquidation of
The Home Insurance Company**

**LIQUIDATOR'S MOTION FOR APPROVAL OF SETTLEMENT
AGREEMENT WITH CLAIMANT THE DELACO COMPANY**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves that the Court enter an order approving the Settlement Agreement and Mutual Release among The Delaco Company ("Delaco"), the Florida Insurance Guaranty Association ("FIGA"), and Home. As reasons therefor, the Liquidator states as follows:

1. A Home insured, Thompson Medical Company, Inc. ("Thompson"), was merged into Delaco during December 2000. Thompson was insured by Home under three primary surplus lines general liability policies and two standard lines excess policies during the period August 1992 through December 1994. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Settlement Agreement with Claimant The Delaco Company ("Bengelsdorf Aff.") ¶ 3.

2. Delaco has filed proofs of claim in the Home liquidation (Proof of Claim Nos. INSU700205, INSU59531, INSU64749, INSU90530, and INSU41872) asserting claims under those policies. Delaco's proofs of claim concern present and future claims against Delaco and/or its predecessor Thompson arising from Thompson's manufacture and sale of a diet product, Dexatrim, that contained phenylpropanolamine ("PPA") between the 1970's and 1998. Since 2001, hundreds of suits have been filed against Delaco alleging adverse effects, such as stroke,

due to use of PPA-containing products. Delaco's proofs of claim refer to 55 PPA-related claims which allegedly arose during the periods of Home coverage. These claims create the potential for exposure under both the primary and excess policies issued by Home to Thompson. In addition, twelve third party claimants asserting PPA-related claims against Delaco have filed proofs of claim in the Home liquidation. Delaco also sought recovery from FIGA with respect to certain PPA-related claims arising under the standard lines policies. Bengelsdorf Aff. ¶ 4.

3. In light of the lawsuits against it, Delaco filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York on February 12, 2004. In re: The Delaco Company, Case No. 04-10899 (PCB). Since that time, Delaco has acted as a debtor in possession. The Bankruptcy Court established a bar date of May 29, 2004 for creditors to file nongovernmental proofs of claim. The Bankruptcy Court's order bars any holder of a nongovernmental claim that does not file a proof of a claim from asserting any such claim against the debtor (Delaco), the reorganized debtor or any successors. Bengelsdorf Aff. ¶ 5.

4. Delaco has proposed a plan of reorganization under Chapter 11 ("Delaco Plan"). The Delaco Plan incorporates a complete and global settlement of Dexatrim-related litigation against Delaco and provides for the establishment of a trust to fund the global settlement ("Trust"). The Trust is to be funded by settlements with insurers of Delaco that are approved by the Bankruptcy Court. The Delaco Plan presently reflects settlements with eight insurers, including the settlement with Home that is the subject of this motion. The Delaco Plan contemplates entry of a confirmation order that contains a channeling injunction pursuant to Bankruptcy Code §105(a) that (a) channels all PPA-related claims against Delaco and the settling

insurers to the Trust, and (b) enjoins the prosecution of such claims against Delaco and the settling insurers. Bengelsdorf Aff. ¶ 6.

5. Delaco, the Liquidator, and FIGA have reached an agreement to resolve all matters with respect to PPA-related claims. The agreement is embodied in the Settlement Agreement and Mutual Release (“Settlement Agreement”) attached as Exhibit A to this motion. The Settlement Agreement is subject to approval by this Court and by the Bankruptcy Court. Settlement Agreement §§ XX, XXI. Bengelsdorf Aff. ¶ 7.

6. The Settlement Agreement provides that Home and FIGA will pay “up to” \$5,450,000 into the Trust. Settlement Agreement § II(A). FIGA will pay \$450,000. Id. § II(B)(2). The remaining \$5 million will be treated as an allowance of Delaco’s proofs of claim. Distributions based on that allowance will be made to the Trust at the same times and at the same percentages as distributions to all other Class II creditors of Home. Id. § II(B)(1). Under the Settlement Agreement, this Court has exclusive jurisdiction over matters concerning the distributions to the Trust from the Home estate, and the Bankruptcy Court has jurisdiction over other matters arising under the Settlement Agreement. Id. § XVII. Bengelsdorf Aff. ¶ 8.

7. The payments of any of these amounts is conditioned upon confirmation of the Delaco Plan, including the global settlement and establishment of the Trust, by the Bankruptcy Court. Settlement Agreement § II(A)(3)-(5). (Home and FIGA may terminate the Settlement Agreement if the Delaco Plan is not confirmed by August 31, 2006. Id. § XV.) It is also conditioned upon the Delaco Plan and the confirmation order containing a channeling injunction channeling PPA-related claims against Delaco, Home, and FIGA to the Trust and permanently enjoining the assertion of such claims against Home and/or FIGA. Id. § II(A)((6). The Settlement Agreement also provides for Delaco to seek a protective order from the Bankruptcy

Court in the event any third party seeks to pursue Dexatrim claims against Home or FIGA under Home policies. Id. §II(A)(1). In addition, the Trust agrees to indemnify Home and FIGA, to the extent of payments made by them, against losses, liabilities or costs (including reasonable legal expenses) in the event that liability is asserted under the Home policies with respect to PPA-related claims after FIGA makes its payment. Id. § IV(A). Bengelsdorf Aff. ¶ 9.

8. The Settlement Agreement is intended to resolve all matters relating to PPA-related claims under Home policies and bring finality to the Home/Delaco relationship. To that end, it also provides for mutual releases, exhaustion of all parties' obligations under and the buyback of the Home policies. Settlement Agreement § III. Bengelsdorf Aff. ¶ 10.

9. The Liquidator has negotiated the Settlement Agreement in compromise of Delaco's claims asserted on its proofs of claim and now recommends approval of the Settlement Agreement and allowance of the \$5 million settlement amount as a Class II claim as provided in the Settlement Agreement in accordance with RSA 402-C:45. The Liquidator has reviewed Delaco's claims and submits that the amount recommended is fair and reasonable and that the priority class recommended is proper under RSA 402-C:44. Bengelsdorf Aff. ¶ 11.

10. The amount recommended is an agreed aggregate amount based on evaluation and negotiation of coverage issues under the policies and assessment of underlying claims against Delaco. The Settlement Agreement resolves coverage issues and addresses all PPA-related claims against Delaco, which will be channeled to the Trust by the Delaco Plan and the confirmation order. Payments to the Trust under the Settlement Agreement will serve to provide equality of treatment of similarly situated third party claimants against Delaco. The global settlement incorporated in the Delaco Plan includes a settlement matrix providing for various settlement amounts for Dexatrim-related claims against Delaco, depending upon the nature of the

third party's claim and alleged injuries. Using the settlement matrix that is part of the Trust (and was agreed between Delaco and counsel for claimants) to value the underlying claims that arguably may fall within the Home policies, the value of the claims exceeds the recommended allowance for Delaco. Under the Delaco Plan, Dexatrim claimants may choose to litigate rather than accept payment under the settlement matrix, but they can litigate only against the Trust, not Delaco or the settling insurers. Bengelsdorf Aff. ¶ 12.

11. The Delaco Plan is subject to approval by vote of the class of persons asserting Dexatrim-related claims against Delaco in accordance with the Bankruptcy Code. If it is approved by the class and by the Bankruptcy Court, then under the Bankruptcy Code it will be binding on all such claimants, including the third party claimants who have filed claims in the Home liquidation. Bengelsdorf Aff. ¶ 13.

12. The Liquidator's negotiation and the Court's approval of the Settlement Agreement are authorized by the broad authority of the Liquidator to "compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court," RSA 402-C:45, I, and the authority of the Court to "approve, disapprove or modify any report on claims by the liquidator." RSA 402-C:45, II. It is also an appropriate exercise of the Liquidator's authority ("[s]ubject to the court's control") to "do such other acts . . . as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation." RSA 402-C:25, XXII. The resolution of Delaco's claims and all matters under Delaco's insurance policies issued by Home at one time for one amount as provided by the Settlement Agreement will further the legislative purpose of having an expeditious, efficient and economical liquidation. See RSA 402-C:1, IV(d); RSA 402-C:29, II; RSA 402-C:46, I. It will also serve the goal of treating similarly situated third party claimants equally. See RSA 402-C:40, IV.

13. The New Hampshire Act has a section concerning insureds' and third party claimants' claims. RSA 402-C:40. That section provides that distributions on allowed amounts on insureds' claims are to be withheld pending resolution of the underlying lawsuits against the insureds, and that the filing of third party claimants' proofs of claim conditionally releases the insured up to the applicable policy limits. *Id.*, I, III. However, the Delaco bankruptcy makes it unnecessary to address issues raised by RSA 402-C:40. The Bankruptcy Court is addressing claims against Delaco, including Dexatrim related claims, to provide for resolution of all claims against Delaco in accordance with the Bankruptcy Code.

14. If the Bankruptcy Court approves the Delaco Plan after ratification by the Dexatrim claimants, all those claims against Delaco will be resolved through the Trust. The channeling injunction will direct all such claims to the Trust, and it will enjoin the prosecution of all such claims against Delaco and the settling insurers, including Home. In these circumstances, there will be no third party claims for the Liquidator to address, as those claims will have been channeled to the Trust. As the Delaco Plan will have the effect of discharging Delaco from liability for the claims, the purpose of providing the insured with some of the protection it would have received if Home had not become insolvent will have been served. *Bengelsdorf Aff.* ¶ 14.

15. The Settlement Agreement resolves the proofs of claim submitted by Delaco, and any other matters that might arise under the policies issued by Home to Delaco's predecessor Thompson, in an efficient and comprehensive way. The channeling injunction to be issued by the Bankruptcy Court will direct third party claims against the policies presented in the Home liquidation to the Trust. As the settlement amount reflects negotiation and compromise, it does not appear that addressing individual underlying claims and delaying distributions would result in any savings to the estate. *Bengelsdorf Aff.* ¶ 15.

16. The Liquidator accordingly submits that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home. See Bengelsdorf Aff. ¶ 16.

WHEREFORE, the Liquidator respectfully requests that this Court:

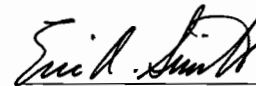
- A. Grant this Motion for Approval of Settlement Agreement with Claimant The Delaco Company;
- B. Enter an Order in the form submitted herewith approving the Settlement Agreement, approving the Liquidator's claim recommendation, and allowing Delaco's claim as a Class II claim in the amount of \$5 million; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER
OF INSURANCE OF THE STATE OF
NEW HAMPSHIRE SOLELY AS
LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

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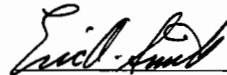


J. David Leslie
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Dated: December 22, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Claimant The Delaco Company, the Proposed Order Approving Settlement Agreement with The Delaco Company, and the accompanying Affidavit were sent, this 22d day of December, 2005, by first class mail, postage prepaid to all persons on the attached service list.


Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release is made this 11th day of ^{October} ~~May~~, 2005, by and between Delaco (as defined below), Home (as defined below) and FIGA (as defined below):

RECITALS

WHEREAS, Delaco has filed Proofs of Claims (as defined below) with The Home Insurance Company in Liquidation (as defined below); and

WHEREAS, Delaco seeks from The Home Insurance Company in Liquidation and FIGA, *inter alia*, coverage for its claims asserted under the Home Policies (as defined below), and damages from Home arising from certain product liability claims and lawsuits; and

WHEREAS, Home and FIGA have disputed certain of their obligations to Delaco; and

WHEREAS, on February 12, 2004, Delaco filed a petition commencing a case under Chapter 11 of the Bankruptcy Code now pending before the Hon. Prudence Carter Beatty, captioned In re: The Delaco Company, Case No. 04-10899 (PCB) (the "Chapter 11 Case"); and

WHEREAS, The Home Insurance Company was placed into liquidation effective June 13, 2003, by Order of the Superior Court for Merrimack County, New Hampshire in In the Matter of the Rehabilitation of The Home Insurance Company, No. 03-E-0106 June 13, 2003 ("Home Liquidation Proceeding"); and

WHEREAS, FIGA has been charged with the handling and settlement of any claims arising under the 1993 and 1994 Home Excess Policies (as defined below); and

WHEREAS, Delaco, Home and FIGA now desire to resolve amicably their dispute with respect to the PPA Litigation (as defined below) and the Home Liquidation (as defined below), and their obligations with respect thereto;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is expressly acknowledged, Delaco, Home and FIGA agree as follows:

I. DEFINITIONS

Throughout this Settlement Agreement and Release, including the preceding recitals, the following definitions shall apply:

A. "Additional Named Insureds" means Thompson Medical Company, Inc., Stella Pharmaceuticals Company, Thompson Medical Company Ltd. and Thompson Medical-Company GMBH.

B. "Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as amended, and as codified in Title 11 of the United States Code.

C. "Channeling Injunction" has the meaning ascribed thereto in Section II.A.6.

D. "Class II Creditor" means any creditor who asserts a policy related claim against an insurer in rehabilitation or liquidation, as defined by New Hampshire Revised Statute, Title XXXVII, Section 402-C:44, Order of Distribution.

E. "Coverage Action" means the lawsuit filed by Delaco in the Superior Court of New Jersey, Law Division, Middlesex County, captioned The Delaco Company, Inc. v. Century Indemnity Company, et al., Docket No. MID-L-8852-03 (MT).

F. "Delaco" means The Delaco Company.

G. "Delaco Bankruptcy Court" means the Bankruptcy Court for the Southern District of New York, or other court of competent jurisdiction exercising jurisdiction in the Chapter 11 Case.

H. "Delaco Confirmation Order" has the meaning ascribed thereto in Section II.A.4.

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I. "Delaco Plan" has the meaning ascribed thereto in Section II.A.3.

J. "Dexatrim Claims" means claims arising from or relating to Dexatrim Products that Thompson distributed (i.e., prior to December 21, 1998).

K. "Dexatrim Products" means all appetite-suppressant products marketed, distributed, formulated and/or manufactured by or on behalf of Delaco and/or Thompson (as defined below) that contained phenylpropanolamine, including, but not limited to, products with the brand names "Dexatrim®", "Control®", "Appedrine®", "Prolamine®", "Anorexin®", "Coffee, Tea and a New Me®", "Grapefruit Plus®", and "Vita Slim®."

L. "FIGA" means the Florida Insurance Guaranty Association.

M. "Final Order" means an order or judgment, the operation or effect of which has not been stayed or reversed and as to which order or judgment the time to appeal has expired and as to which no appeal was filed or, if filed, remains pending.

N. "Global Settlement" has the meaning ascribed thereto in Section II.A.3.

O. "Home" means The Home Insurance Company (including its former subsidiary The Home Insurance Company of Illinois now merged into The Home Insurance Company), which is in liquidation pursuant to Order of Liquidation entered on June 13, 2003 by the Superior Court for Merrimack County, New Hampshire, in In the Matter of the Rehabilitation of The Home Insurance Company, No. 03-E-106.

P. "Home Estate" means the assets of Home to be distributed by the Home Liquidation Court.

Q. "Home Liquidation Court" means the Superior Court for Merrimack County, New Hampshire charged with overseeing The Home Insurance Company in Liquidation in the Home Liquidation Proceeding.

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R. "Home Liquidation Proceeding" means the action in the Superior Court for Merrimack County, New Hampshire captioned In the Matter of the Rehabilitation of The Home Insurance Company, No. 03-E-0106.

S. "Home Order" means the order entered by the Home Liquidation Court approving this Settlement Agreement.

T. "1992 Home Policy" means policy no. SLM9261162 issued by Home to Thompson Medical Company, Inc., for the period August 24, 1992 to October 1, 1993.

U. "1993 Home Policy" means policy no. SLMC148550 issued by Home to Thompson Medical Company, Inc., for the period October 1, 1993 to October 1, 1994.

V. "1994 Home Policy" means policy no. HCOC180494 issued by Home to Thompson Medical Company, Inc., for the period October 1, 1994 to December 24, 1994.

W. "1993 Home Excess Policy" means policy no. HXLF272835 issued by Home to Thompson Medical Company, Inc., for the period October 1, 1993 to October 1, 1994.

X. "1994 Home Excess Policy" means policy no. HXLC113836 issued by Home to Thompson Medical Company, Inc., for the period October 1, 1994 to December 24, 1994.

Y. "Party or "Parties" means Home, FIGA and/or Delaco, as appropriate.

Z. "Person" or "Persons" means any individual, corporation, partnership, unincorporated association, organization, governmental unit, sole proprietorship, trust or any other entity (or estate, guardian or beneficiary thereof).

AA. "Policies" means the 1992 Home Policy, the 1993 Home Policy, the 1994 Home Policy, the 1993 Home Excess Policy, and the 1994 Home Excess Policy.

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BB. "PPA Litigation" means the claims and lawsuits filed in various jurisdictions against Delaco and/or Thompson, involving allegations as to the effects of phenylpropanolamine, also known as PPA.

CC. "Proofs of Claims" means the following proofs of claims (including any and all amendments thereto) filed by Delaco with The Home Insurance Company in Liquidation: a) Proof of Claim number INSU700205 for Home policy number SLM9261162 (8/24/92-10/1/93); b) Proof of Claim number INSU59531 for Home policy number SLMC148550 (10/1/93-10/1/94); c) Proof of Claim number INSU64749 for Home policy number HCOC180494 (10/1/94-12/24/94); d) Proof of Claim number INSU90530 for Home policy number HXL272835 (10/1/93-10/1/94); and e) Proof of Claim number INSU41872 for Home policy number HXLC113836 (10/1/94-12/24/94).

DD. "Protective Order" has the meaning ascribed thereto in Section II.A.1.

EE. "Settlement Agreement" means this Settlement Agreement and Mutual Release.

FF. "Settlement Funds" has the meaning ascribed thereto in Section II.A.

GG. "Thompson" means Thompson Medical Company, Inc.

HH. "Trust" means the settlement trust to be created in the Chapter 11 Case in accordance with the terms of a confirmed plan of reorganization of Delaco.

II. "Zurich" means Steadfast Insurance Company and Zurich American Insurance Company as successor-in-interest to Zurich Insurance Company, U.S. Branch, by operation of law, collectively.

II. SETTLEMENT CONSIDERATION

Home and FIGA shall provide the following consideration to Delaco, which is expressly acknowledged by the Parties to be reasonable and fair consideration in connection with the mutual covenants and promises contained in this Settlement Agreement:

A. Home and FIGA shall pay up to Five Million, Four Hundred and Fifty Thousand Dollars (\$5,450,000) (the "Settlement Funds") into the Trust subject to the distributions authorized by the Home Liquidation Court in the manner described in Section II(B), provided that:

(1) On or within ten (10) days after receipt by Delaco of written notice from Home and/or FIGA that any third party has commenced litigation or otherwise has asserted or pursued a formal claim for damages or other monetary sums or relief against Home and/or FIGA based upon the Dexatrim Claims, regarding, relating to or arising out of the Policies, Delaco shall file a motion or complaint in the Delaco Bankruptcy Court in form and substance reasonably acceptable to Home and/or FIGA (which acceptance shall not be unreasonably withheld), seeking entry of an order (which may be a stipulated order entered on consent) (the "Protective Order") that (i) enforces the automatic stay imposed by Section 362 of the Bankruptcy Code to stay, bar or prohibit such action against Home and/or FIGA, (ii) provides that such person taking action against Home and/or FIGA agrees to stand still and voluntarily stay its prosecution, commencement or continuation of litigation, or assertion of any claim, against Home and/or FIGA, to the extent based on Dexatrim Claims, regarding, relating to or arising out of the Policies, and/or (iii) restrains and/or enjoins such person from taking any such action pursuant to Section 105(a) of the Bankruptcy Code;

(2) the Protective Order (if any is required) is entered;

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- (3) the Delaco Bankruptcy Court confirms a plan of reorganization (the "Delaco Plan"), incorporating a complete and global settlement of the PPA Litigation against Delaco and Thompson and the Dexatrim Claims (the "Global Settlement");
- (4) the Delaco Bankruptcy Court enters an order confirming the Delaco Plan ("Delaco Confirmation Order");
- (5) the Delaco Plan and Delaco Confirmation Order provide for the establishment of the Trust to fund the Global Settlement;
- (6) the Delaco Plan and Delaco Confirmation Order contain a so-called "Channeling Injunction," in form and substance reasonably acceptable to Home and FIGA (which acceptance shall not be unreasonably withheld), channeling the PPA Litigation and any other Dexatrim Claims against Delaco, Thompson, the Additional Named Insureds, Home and FIGA into the Trust, and permanently enjoining the prosecution, continuation, or commencement of: (i) the PPA Litigation against Delaco and Thompson; (ii) any further Dexatrim Claims against Delaco and Thompson; and (iii) the prosecution, commencement or continuation of litigation, or assertion of any claim (including any claim by a vendor of Thompson's and Delaco's Dexatrim Products) against Home and/or FIGA regarding, relating to or arising out of the Policies;
- (7) the Delaco Plan and Delaco Confirmation Order provide for a mutual general release of claims between and among Home and FIGA on the one hand, and Delaco and its estate, on the other, effective upon the payment by Home (to the extent authorized in the Home Liquidation Court) and FIGA of the Settlement Funds set forth in Section II(B), except for any claims resulting from breach of the Parties' respective obligations under this Settlement Agreement and Release;

(8) the entry of orders by the Delaco Bankruptcy Court (which may be the Delaco Confirmation Order) and the Home Liquidation Court approving this Settlement Agreement, including the mutual releases and payments of the Settlement Funds provided for herein; and

(9) the Delaco Confirmation Order and Home Order become Final Orders.

B. The payment of the Settlement Funds shall be made in the following manner:

(1) the sum of Five Million Dollars (\$5,000,000) shall be treated as an allowance of the Proofs of Claim in the Home Estate, subject to distribution if, when and in the manner authorized by the Home Liquidation Court for Class II Claims generally. If and when authorized the Trust would become a Class II Creditor in the Home Estate, and the Trust shall receive payments at the same intervals and at the same percentages of the total \$5,000,000 claim as would all other Class II Creditors; provided, however, that in the event the Trust has not yet been established when the Home Estate is authorized by the Home Liquidation Court to distribute such funds, the Home Estate shall distribute to the Trust all such authorized distribution payments within ten (10) days of the Home Estate's receipt of written notice from Delaco that the Delaco Confirmation Order has become a Final Order and that the Trust has been established; and

(2) FIGA shall pay the sum of Four Hundred and Fifty Thousand Dollars (\$450,000) into the Trust within ten (10) days of the Delaco Confirmation Order becoming a Final Order in the Chapter 11 Case and all conditions to the effectiveness of the Delaco Plan have been satisfied prior to, or will be satisfied concurrently with, the payment by the Home Estate of such Settlement Funds. Such written notice shall be provided by Delaco to Home and FIGA in accordance with Section XVI herein.

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C. In the event that all of the conditions set forth in Section II.A, other than the entry of any required Protective Order as set forth in subsection II.A(1), have been satisfied, Home (to the extent authorized by the Home Liquidation Court) and FIGA shall remain obligated hereunder to pay the Settlement Funds into the Trust; provided however, that subject to the Parties' right to terminate this Agreement pursuant to Section XV and subject to any of Home's and/or FIGA's rights to indemnity pursuant to Section IV (upon Home's and FIGA's payments of the Settlement Funds and the Delaco Confirmation Order becoming a Final Order), Delaco shall defend Home and/or FIGA in any litigation and in any formal claim for damages or for other monetary sums or relief, commenced by a third party against Home and/or FIGA based on Dexatrim Claims, regarding, relating to or arising out of the Policies.

D. At Delaco's request, Home and FIGA shall provide a letter in the form attached hereto acknowledging that, after diligent inquiry, Home and FIGA agree that the Global Settlement is a fair and reasonable compromise and settlement of the Dexatrim Claims and the PPA Litigation against Delaco and Thompson.

III. MUTUAL RELEASES

A. Effective upon the payment by Home (to the extent authorized by the Home Liquidation Court) and FIGA of the Settlement Funds set forth in Section II(B), and in consideration of the mutual promises contained in this Settlement Agreement, the Parties, on their own behalf, and on behalf of their respective past, present and future officers, directors, stockholders, principals, parents, subsidiaries, predecessors, successors, attorneys, agents, employees and staff (permanent and temporary) and assigns, in their capacity as such, and any and all Persons acting under their direction or control or on their behalf, agree as follows:

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(1) the Parties mutually and forever release, discharge and forego all of their past, present and/or future claims, causes of actions, liabilities, obligations and rights against each other (and each others' respective past, present and future officers, directors, stockholders, principals, parents, subsidiaries, predecessors, successors, attorneys, agents, employees and staff (permanent and temporary) and assigns, in their capacity as such, and any and all Persons acting under their direction or control or on their behalf) arising out of, connected to or relating to the Home Liquidation Proceeding, Dexatrim Claims, the Coverage Action, the Policies and/or the PPA Litigation, including without limitation any and all such claims for: declaratory relief; injunctive relief; bad faith; interest; attorneys fees; rescission; defense costs; indemnity costs; compensatory damages; punitive damages; subrogation; losses; claims for sums of money; premium adjustments; retrospective billing adjustments; audits; any dispute between Home, FIGA and/or Zurich regarding or relating to Delaco, this Agreement and/or the Policies; or other causes of action, known or unknown, suspected or unsuspected, fixed or contingent in law or equity (including, without limitation, any rights of subrogation, contribution or indemnification), arising out of, connected to or relating to the Coverage Action, the Home Liquidation, the Policies, the Dexatrim Claims, and/or the PPA Litigation;

(2) the Policies, and any and all rights and obligations thereunder, shall be deemed exhausted by and pursuant to this Settlement Agreement;

(3) the Policies shall be deemed to be purchased back by Home by and pursuant to this Settlement Agreement, and any and all rights and obligations under the Policies therefore shall be deemed terminated;

(4) once payments are made by Home and FIGA pursuant to this Settlement Agreement, the Policies are rendered null and void and/or void *ab initio*;

(5) there are no applicable unpaid deductibles or self-insured retentions contained in any of the Policies;

(6) Delaco has no further obligations for payment of any deductibles, self-insured retentions, or premiums (retrospective or otherwise) under the Policies; and

(7) any and all such obligations of Delaco have been fully satisfied under the Policies.

B. The releases set forth in this Section III of this Agreement are not intended to and shall not extend to or otherwise release any of the Parties' rights and obligations under this Agreement. All of the Parties' rights and obligations under this Agreement shall expressly survive any release pursuant to this Section III.

IV. INDEMNIFICATION

Subject to and effective upon (i) payment by Home (to the extent authorized by the Home Liquidation Court) and FIGA of the Settlement Funds set forth in Section II(B)(2), and (ii) the Delaco Confirmation Order and Home Order becoming Final Orders:

A. The Trust shall provide Home and FIGA with the following rights of indemnity against the Trust: the Trust shall indemnify and hold Home and FIGA harmless at the Trust's sole expense against any and all losses, liabilities or costs as hereinafter set forth incurred by, or as a result of, or in connection with, any claim for which Home and FIGA are liable or responsible to any person or entity under, in connection with, or as a result of the Policies, with respect to any claims arising out of the Dexatrim Products, the PPA Litigation, the Coverage Action, or the action captioned United States Fidelity and Guaranty Company v. The Delaco Company, Inc., et al., No. 03 CV 10017 (RO) in the United States District Court for the Southern District of New York. The future obligations of the Trust under this paragraph shall extend to

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and include, without limitation and by way of example only, any claims made under the Policies against Home and FIGA by vendors of Delaco's or Thompson's Dexatrim Products (including but not limited to claims for defense and indemnity), other insurers of Delaco or Thompson, and by any individuals or entities asserting "direct action" claims for injuries arising out of or related to the PPA Litigation or the Dexatrim Products. Delaco, Home and FIGA shall promptly notify each other of any such claim and shall cooperate reasonably in the defense or settlement of such claim. Neither Delaco, Home nor FIGA shall act in any way that would prejudice the outcome of such claim. Notwithstanding the foregoing:

(1) Any indemnification of Home and FIGA's legal fees and litigation expenses that fall within this Section IV(A) shall be limited to Home and FIGA's reasonable legal fees and litigation expenses in defending the aforesaid claims, and only to the extent such reasonable legal fees and litigation expenses are incurred on or after dates on which FIGA actually pays into the Trust the Settlement Funds, as provided in Section II(B)(2) herein;

(2) The Trust's total obligation under this Section IV(A) to indemnify Home and/or FIGA shall be further limited to the amount of the Settlement Funds that actually has been paid by Home and/or FIGA into the Trust, not to exceed Five Million, Four Hundred and Fifty Thousand Dollars (\$5,450,000). Any sums actually received by, or paid for the benefit of, Home and FIGA shall serve to reduce the Trust's obligations pursuant to this Section IV(A).

B. Delaco and the Trust shall cooperate reasonably with Home and FIGA to eliminate claims against Home and FIGA by any other Person arising out of or related to the Policies. In furtherance of this agreement: (1) Delaco and/or the Trust shall attempt in good faith to obtain from each party to the Coverage Action who enters into a settlement agreement with Delaco, a covenant not to assert against Home and FIGA any claim for indemnity, contribution

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or any other form of reimbursement in respect of any amount paid to Delaco and/or the Trust, including any amounts paid pursuant to such settlement agreements; and (2) Home and FIGA shall not assert any claim or lawsuit or otherwise seek reimbursement of any amounts paid to Delaco or the Trust under this Settlement Agreement (or any amounts otherwise relating to the Dexatrim Claims, the PPA Litigation or the Policies), from any other party to the Coverage Action, from any other party to the PPA Litigation, or from any other insurer or third party (other than Home and FIGA's reinsurers), if such other entity similarly agrees to forego a claim for reimbursement against Home and FIGA.

V. TOLLING

In consideration of the Parties' mutual promises in this Settlement Agreement, the Parties agree:

A. Any and all obligations, duties, and responsibilities of Home, FIGA and/or Delaco under or relating to the Policies, Proofs of Claims or the Home Litigation Proceeding are hereby tolled and suspended during the time period from the date of this Settlement Agreement until twenty days after such time as this Settlement Agreement is either (i) terminated in accordance with Section XV herein, or (ii) satisfied by the payment by Home and FIGA of all Settlement Funds set forth in Section II herein.

B. Any claims or causes of action that have been or could be brought by either Party against the other under the Policies or at law as of the date of this Settlement Agreement shall be tolled for purposes of any statutes of limitations and any other time-based defenses during the time period from the date of the execution of this Settlement Agreement until twenty days after either (i) termination of this Settlement Agreement in accordance with Section XV herein; or (ii)

both (a) payment by Home and FIGA of all Settlement Funds set forth in Section II herein, and (b) the Delaco Confirmation Order becoming a Final Order.

C. The tolling and suspension provided for in Sections V.A and B above, during the respective time periods set forth therein, shall expressly survive termination of this Settlement Agreement and shall be fully effective for all purposes notwithstanding termination of this Settlement Agreement, the failure of the Delaco Bankruptcy Court to approve this Settlement Agreement, the failure of the Home Liquidation Court to approve this Settlement Agreement, or any of the termination provisions in this Section V.

VI. NO ADMISSIONS; RESERVATION OF RIGHTS

A. Nothing contained in this Settlement Agreement or in any document exchanged by the Parties in the negotiation or furtherance of this Settlement Agreement shall be construed as an admission or concession by any Party with regard to any claims and defenses that they have or may have in the Home Liquidation or the Coverage Action, and/or that any Party has any liability to any other Party.

B. Except as otherwise stated herein, neither the terms of this Settlement Agreement nor its negotiation, its execution or any action in performance of this Settlement Agreement shall be construed or asserted by any Person as giving rise to or creating any waiver by any Party of any of the terms, provisions, conditions or exclusions of the Policies, or as constituting or evidencing any interpretation by any Party of any terms, provisions, conditions, or exclusions of the Policies.

VII. NO RIGHTS OF THIRD PARTIES

Except as otherwise set forth herein, this Settlement Agreement is entered into solely for the benefit of Home, FIGA, Delaco and, (upon effectiveness of the Delaco Plan and

establishment of the Trust), the Trust, and is not intended to, and does not, give or create any rights to or in any Person other than Home, FIGA, Delaco and, (upon effectiveness of the Delaco Plan and establishment of the Trust), the Trust; provided, however, the Parties agree that Delaco and/or (upon effectiveness of the Delaco Plan and establishment of the Trust) the Trust may assign their rights to any Settlement Funds under this Settlement Agreement to third parties, and Home and FIGA agree to be bound by such assignment. The Parties expressly agree and acknowledge that Delaco does not intend through this Settlement Agreement to confer any benefits on, create any rights for, or release any of its claims against any of Delaco's or Thompson's other insurers.

VIII. CHOICE OF LAW

This Agreement shall be construed in accordance with the substantive laws of New Hampshire, without regard to the principles of conflict of laws.

IX. DELACO'S REPRESENTATIONS AND WARRANTIES

A. Delaco represents and warrants that, subject to the requirement that this Settlement Agreement be approved by the Delaco Bankruptcy Court in the Chapter 11 Case, it is fully authorized to enter this Settlement Agreement.

B. Delaco represents and warrants that:

(1) It is a corporation duly organized and validly existing under the laws of one of the states of the United States.

(2) Subject to the requirement that this Settlement Agreement be approved by the Delaco Bankruptcy Court in the Chapter 11 Case, it has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Settlement Agreement and that no further corporate or other internal approval is necessary;

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(3) It has not sold, assigned, conveyed or otherwise transferred any right it is now releasing prior to the date of this Settlement Agreement;

(4) Subject to the requirement that this Settlement Agreement be approved by the Delaco Bankruptcy Court in the Chapter 11 Case, the making and performance of this Settlement Agreement will not violate any provision of law, or of its articles of incorporation, charter or by-laws;

(5) Subject to the requirement that this Settlement Agreement be approved by the Delaco Bankruptcy Court in the Chapter 11 Case, the person executing this Settlement Agreement on its behalf is duly and fully authorized to do so;

(6) It has read this entire Settlement Agreement, and (a) knows and understands the contents thereof, (b) knows that the terms are contractual and not merely recitals, (c) has signed this Settlement Agreement of its own free will, and (d) has obtained and relied on the advice of legal counsel;

(7) It has performed its own investigation with respect to the subject matter of this Settlement Agreement and that, in entering into this Settlement Agreement, it is not relying upon any representation or statement by any Person that is not expressly set forth in this Settlement Agreement;

(8) Delaco has authority to act on behalf of Thompson and is the lawful successor-by-merger to Thompson; and

(9) It shall use its best efforts to satisfy the conditions of this Settlement Agreement and to implement its terms and provisions, including, without limitation, promptly seeking entry of the Protective Order (if any is required pursuant to Section II.A above) and

Delaco Confirmation Order as provided for herein, notwithstanding the objection thereto by any Persons not a Party to this Settlement Agreement.

X. HOME AND FIGA'S REPRESENTATIONS AND WARRANTIES

A. Home and FIGA represent and warrant that, subject to the requirement that this Settlement Agreement be approved by the Home Liquidation Court, they are fully authorized to enter this Settlement Agreement.

B. Home and FIGA represent and warrant that:

(1) Home is a corporation duly organized and validly existing under the laws of one of the states of the United States of America;

(2) Subject to the requirement that this Settlement Agreement be approved by the Home Liquidation Court, they have taken all necessary corporate and internal legal actions to duly approve the making and performance of this Settlement Agreement and that no further corporate or other internal approval is necessary;

(3) The making and performance of this Settlement Agreement will not violate any provision of law, or of their articles of incorporation, charter or by-laws;

(4) Subject to the requirement that this Settlement Agreement be approved by the Home Liquidation Court, the persons executing this Settlement Agreement on Home and FIGA's behalf are duly and fully authorized to do so;

(5) They have read this entire Settlement Agreement, and (a) know and understand the contents thereof, (b) know that the terms are contractual and not merely recitals, (c) have signed this Settlement Agreement of their own free will, and (d) have obtained and relied on the advice of legal counsel;

(6) They have performed their own investigation with respect to the subject matter of this Settlement Agreement and that, in entering into this Settlement Agreement, they are not relying upon any representation or statement by any Person that is not expressly set forth in this Settlement Agreement;

(7) They have not sold, assigned, conveyed or otherwise transferred any right they are now releasing prior to the date of this Settlement Agreement; and

(8) They shall use their best efforts to satisfy the conditions of this Settlement Agreement and to implement its terms and provisions, including, without limitation, assisting Delaco in promptly seeking entry of the Protective Order (if any is required pursuant to Section II.A above), and Delaco Confirmation Order as provided for herein, notwithstanding the objection thereto by any Persons not a Party to this Settlement Agreement.

XI. NO ASSIGNMENT

Subject to the requirement that this Settlement Agreement be approved by the Delaco Bankruptcy Court in the Chapter 11 Case, Delaco represents and warrants that it is the sole owner of all claims, rights, causes of action and demands relating to the Policies, and that it has not assigned interest in any such claims, rights, causes of action or demands; and Delaco further represents and warrants that it shall not assign any interest in any such claims, rights, causes of action or demands under the Policies that might otherwise exist, except pursuant to the Delaco Plan, as expressly permitted under this Settlement Agreement, or as otherwise ordered by the Delaco Bankruptcy Court or another court of competent jurisdiction.

XII. ARM'S LENGTH, GOOD FAITH AGREEMENT

The Parties acknowledge and agree that this Settlement Agreement was negotiated at arm's length, was mutually drafted and entered into freely by the Parties with the advice of

counsel. In the event any ambiguity is found to exist in any provision of this Settlement Agreement, such ambiguity is not to be construed against the drafter of the document or against any other Party. The Parties further agree to cooperate in demonstrating to a court, should the issue arise, that this Settlement Agreement is reasonable and was negotiated and implemented in good faith.

XIII. ENTIRE AGREEMENT

The entire integrated agreement of the Parties relating to the subject matter of this Settlement Agreement is contained herein. This Settlement Agreement supersedes any prior oral or written agreements, understandings, discussions, negotiations, or statements concerning the subject matter hereof.

XIV. AMENDMENTS/WAIVERS

No amendment or waiver of any provision of this Settlement Agreement shall be effective unless the same shall be in writing and signed by duly authorized representatives of Home, FIGA and Delaco, and any such written and signed amendment or waiver shall be effective only in the specific instance and for the specific purpose set forth in the text of the amendment or waiver. The failure of a Party to seek redress for violation of, or to insist upon strict performance of, any provision of this Settlement Agreement shall not be deemed a waiver of that provision or estop that Party from asserting fully all its rights under this Settlement Agreement.

XV. TERMINATION

In the event that the Confirmation Order is not entered by August 31, 2006, Home and FIGA shall have the right to terminate this Settlement Agreement upon ten (10) days' written notice. In the event that the Confirmation Order is not entered by August 31, 2006, or Home (to

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the extent authorized by the Home Liquidation Court) and FIGA fail to pay the Settlement Funds within the time specified in Section II, Delaco shall have the right to terminate this Settlement Agreement upon ten (10) days' written notice. Upon any such termination, the Parties shall be restored, to the extent practicable, to the condition they were as of the date of this Settlement Agreement and the tolling provisions of Section V shall survive any such termination, notwithstanding any other provisions in this Agreement to the contrary. Such restoration shall include, but not be limited to the restoration of all rights, claims and obligations of the Parties under the Policies, Proofs of Claims and at law *nunc pro tunc* to the date of this Settlement Agreement.

XVI. NOTICE

All notices or other communications which any party desires or is required to give shall be in writing and shall be deemed to have been given if hand-delivered, sent by facsimile with a confirmation of receipt, or mailed by depositing in the United States mail, postage prepaid to the address noted below or such other address as a party may designate in writing from time to time:

If to Delaco, to: The Delaco Company
122 East 42nd Street, Suite 1510
New York, NY 10168
Attn.: James M. Lukenda, Chief Restructuring Officer
Facsimile: 508-445-0256

With copies to: McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102-4056
Attn.: Andrew T. Berry, Esquire
Gregory Horowitz, Esquire
Facsimile: (973) 624-7070

and

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036

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Attn: D.J. Baker, Esquire
Facsimile: (212) 735-2000

and

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
P.O. Box 636
Wilmington, DE 19899-0636
Attn: Mark Chehi, Esquire
Facsimile: (302) 651-3001

If to Home, to: Home Insurance Company In Liquidation
Surplus Lines Claims
5105 Oak Plantation Walk
Lilburn, GA 30047
Attn: Robert J. Payne
Facsimile: (770) 381-0913

With a copy to: Florida Insurance Guaranty Association, Inc.
P.O. Box 10366
Jacksonville, FL 32247-0366
Attn: Joseph G. Levy, Esq., Sr. Claims Examiner
Facsimile: (904) 398-1975

XVII. VENUE

The Parties hereto agree that the exclusive venue for any dispute between the Parties arising from or under this Settlement Agreement shall be the Delaco Bankruptcy Court; provided, however, that the exclusive venue for any dispute between the Parties concerning distributions from the Home Estate under Section II.B.1 shall be the Home Liquidation Court and that the foregoing shall not prevent the Parties from bringing such a dispute to any court of competent jurisdiction (including the Home Liquidation Court) in the event that the Delaco Bankruptcy Court declines to exercise jurisdiction.

XVIII. SECTION HEADINGS

Section headings in this Agreement are provided solely for the convenience of the Parties and shall not be construed as affecting the rights of the obligations of the Parties under this Settlement Agreement.

XIX. COUNTERPARTS

This Settlement Agreement may be executed in any number of counterparts, and by each Party hereto in separate counterparts and delivered via facsimile, each of which when so executed and delivered shall be deemed to be an original, and all of which taken together shall constitute but one and the same instrument.

XX. BANKRUPTCY COURT APPROVAL

Delaco's obligations, representations and warranties under this Settlement Agreement are made expressly subject to the requirement that this Settlement Agreement be approved by the Delaco Bankruptcy Court in the Chapter 11 Case on notice to: (i) all parties and counsel on the master service list maintained by the Debtor in its Chapter 11 Case, (ii) all parties timely filing proofs of claim in the Chapter 11 Case identifying personal injury/wrongful death as the basis of their claims, and (iii) all parties timely filing proofs of claim in the Chapter 11 Case identifying contribution/indemnity as the basis of their claims.

XXI. HOME LIQUIDATION COURT APPROVAL

Home and FIGA's obligations, representations and warranties under this Settlement Agreement are made expressly subject to the requirement that this Settlement Agreement be approved by the Home Liquidation Court.

XXII. MISCELLANEOUS

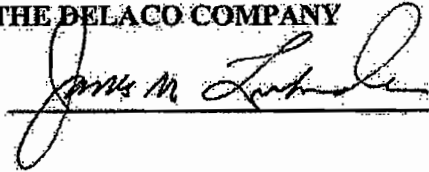
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If any non-material provision of this Settlement Agreement, or any non-material portion of any provision of this Settlement Agreement, is declared null and void or unenforceable by the Delaco Bankruptcy Court, the Home Liquidation Court or any other court of competent jurisdiction, then such provision or such portion of a provision shall be considered separate and apart from the remainder of this Settlement Agreement which shall remain in full force and effect. Furthermore, if any such non-material provision or portion of this Settlement Agreement is in fact declared null and void or unenforceable, then the Parties shall use their best efforts to re-draft, correct and/or remedy the alleged deficiency, defect, problem or issue in that provision or portion. If this Settlement Agreement is not approved by the Delaco Bankruptcy Court or the Home Liquidation Court, or the Delaco Bankruptcy Court or Home Liquidation Court deny approval of this Settlement Agreement, the tolling provisions of Section V shall nonetheless remain enforceable between the Parties, notwithstanding any other provisions in this Agreement to the contrary.

WHEREFORE THE PARTIES have caused this Settlement Agreement to be executed on their respective behalf as of the dates below the signatures of the duly authorized representatives.

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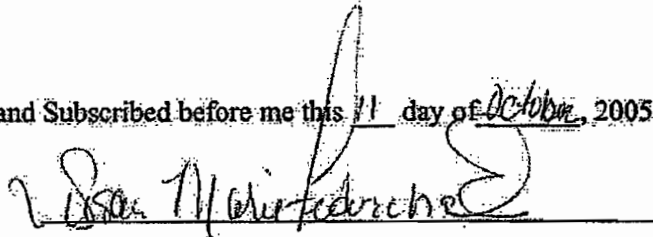
FOR THE DELACO COMPANY

By: 

Name: James M. Lukenda

Title: Chief Restructuring Officer

Sworn and Subscribed before me this 11 day of October, 2005



Notary Public

Commission expires: August 1, 2009

SUSAN MARIE FEDORCHAK
NOTARY PUBLIC, STATE OF NEW YORK
No. 01FE6131470
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES AUG. 1, 2009

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FOR THE HOME INSURANCE COMPANY

By: Robert J. Payne

Name: Robert J. Payne

Title: Assistant Vice President

Date: October 10, 2005

Sworn and Subscribed before me this 10 day of Oct, 2005

Wayne B Hunt

Notary Public

Commission expires: 10/09/2007

FOR THE FLORIDA INSURANCE GUARANTY ASSOCIATION:

By: Breanne Brennan

Name: BREANNE BRENNAN
Title: DIRECTOR OF OPERATIONS

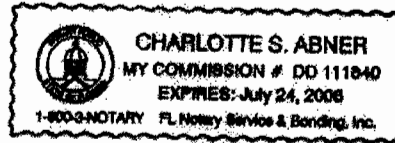
Date: 10/17/05

Sworn and Subscribed before me this 17th day of October, 2005

Charlotte S. Abner

Notary Public

Commission expires: July 24, 2006



ATTACHMENT
FORM OF HOME/FIGA LETTER
REFERENCED IN SECTION II(C)

On behalf of The Home Insurance Company in Liquidation ("Home") and the Florida Insurance Guaranty Association ("FIGA"), we hereby confirm that Home and FIGA agree that the global settlement in principle of the litigation (the "PPA Litigation") brought by claimants alleging personal injury and wrongful death claims related to the ingestion of products containing the active ingredient phenylpropanolamine ("PPA") marketed by Thompson Medical Company, Inc. ("Thompson"), predecessor to The Delaco Company ("Delaco"), is a fair and reasonable compromise of the PPA Litigation against Delaco and/or Thompson.

In that regard, Home and FIGA understand that in January 2002, Judge Barbara Jacobs Rothstein, the District Court Judge before which the Judicial Panel on Multidistrict Litigation had centralized for pre-trial purposes all federal cases alleging PPA-related injuries ("MDL 1407"), appointed a committee of plaintiff representatives in MDL 1407, which then designated certain members to attempt to negotiate a settlement of all pending PPA Litigation with Delaco and certain other defendants (the "PPA Subcommittee"). Home and FIGA recognize the value -- and good faith, arms-length nature -- of those "global" settlement discussions. Home and FIGA also appreciate and agree with Delaco's substantial efforts in negotiating the "Memorandum of Understanding" in the PPA Litigation and the resulting matrix and scoring system that was ultimately filed in the bankruptcy court in June 2004.

We look forward to working with you on a proposed plan of reorganization that will finalize and implement the global settlement described above.

With copies to:

McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102-4056
Attn.: Andrew T. Berry, Esquire
Gregory Horowitz, Esquire
Facsimile: (973) 624-7070

and

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Attn: D.J. Baker, Esquire
Facsimile: (212) 735-2000

and

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
P.O. Box 636
Wilmington, DE 19899-0636
Attn: Mark Chehi, Esquire
Facsimile: (302) 651-3001

If to Home, to:

Home Insurance Company In Liquidation
Surplus Lines Claims
5105 Oak Plantation Walk
Lilburn, GA 30047
Attn: Robert J. Payne
Facsimile: (770) 381-0913

and

The Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 10038
Attn: Thomas W. Kober, Chief Claims Officer
Facsimile: 212-299-3824 (fax)

With a copy to:

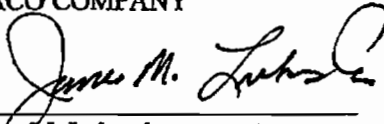
Florida Insurance Guaranty Association, Inc.
P.O. Box 10366
Jacksonville, FL 32247-0366
Attn: Joseph G. Levy, Esq., Sr. Claims Examiner
Facsimile: (904) 398-1975

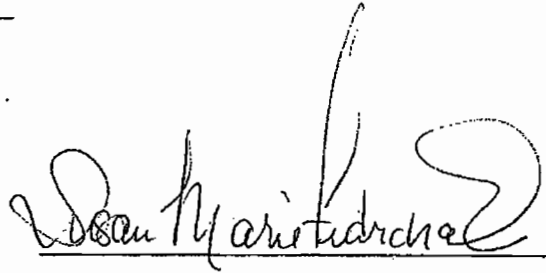
2. Except as specifically amended hereby, the terms and provisions of the Agreement shall continue and remain in full force and effect and continue to be valid and binding obligations of Home, FIGA and Delaco in accordance with its terms. All references in the Agreement to the "Agreement" shall be deemed for all purposes to refer to the Agreement, as amended by this Amendment.

3. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of Home, FIGA and Delaco hereby agrees to be bound by this Amendment.

THE DELACO COMPANY

By: 
Name: James M. Lukenda
Title: Chief Restructuring Officer



SUSAN MARIE FEDORCHAK
NOTARY PUBLIC, STATE OF NEW YORK
No. 01FE6131470
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES AUG. 1, 2009

FOR THE HOME INSURANCE COMPANY

By: Thomas W. Kober

Name: Thomas W. Kober

Title: Chief Claims Officer

Date: 11-1-2005

Sworn and Subscribed before me this 1st day of November
2005

Mary E Actor
Notary Public

Commission expires:

MARY E. ACTOR
Notary Public - State of New York
No. 02AC8101148
Qualified in New York County
My Commission Expires November 3, 2007

FOR THE FLORIDA INSURANCE GUARANTY ASSOCIATION:

By: Breanne Brennan

Name: BREANNE BRENNAN
Title: Director of Operations

Date: 11/9/05

Sworn and Subscribed before me this 15th day of November
2005

Charlotte S. Abner

Notary Public

Commission expires:

July 24, 2006

