

**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 CROWN CENTRAL**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), moves that the Court enter an order in the form submitted herewith approving a Settlement Agreement and Mutual Release ("Settlement Agreement") between Crown Central LLC, successor by merger to Crown Central Petroleum Corporation (collectively "Crown Central") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. Home issued seven insurance policies to Crown Central for policy periods between January 1, 1982 and January 1, 1986. Upon Home's placement in liquidation, Crown Central filed four proofs of claim in the Home liquidation. The proofs of claim seek coverage under the policies for claims, including but not limited to claims for environmental clean up costs and damages asserted against Crown Central. Settlement Agreement at first and third Whereas clauses. Affidavit of Peter A. Bengelsdorf in Support of Approval of Settlement Agreement with Crown Central ("Bengelsdorf Aff.") ¶ 2.

2. The Liquidator and Crown Central have reached an agreement to resolve the proofs of claim and all matters under the policies, which is reflected in the Settlement Agreement attached as Exhibit A. It is subject to approval by the Court. Settlement Agreement at fourth and fifth Whereas clauses and ¶ 1. Bengelsdorf Aff. ¶ 3.

3. The Settlement Agreement provides that the Liquidator will recommend allowance of Crown Central's proofs of claim in the aggregate amount of \$7,000,000 as a Class II claim under RSA 402-C:44. Settlement Agreement ¶ 2(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve Crown Central's proofs of claim and all claims under the policies. Id. ¶ 2(B). Distributions based on that allowance will be made at the same intervals and at the same percentages as distributions to other Class II creditors of Home. Id. ¶ 2(C). Bengelsdorf Aff. ¶ 4.

4. The Settlement Agreement is intended to resolve Crown Central's proofs of claim, and all claims under the policies. See Settlement Agreement ¶¶ 2(B), 5. To that end, the Settlement Agreement provides for mutual releases of all claims between Home and Crown Central arising from or related to proofs of claim or the policies. Id. ¶¶ 3, 4. See also ¶ 6. Bengelsdorf Aff. ¶ 5.

5. The Liquidator is not aware of any third party claimants asserting claims under the Crown Central policies. However, in resolving all matters relating to the proofs of claim and the policies, the Settlement Agreement contemplates denial of any third party claimants' claims in the Home liquidation without prejudice to their claims against Crown Central. Accordingly, Crown Central acknowledges in the Settlement Agreement that it is intended to resolve all matters between Crown Central and the Liquidator/Home relating to the policies and proofs of claim, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Crown Central agrees to address, at its sole cost, the claims of claimants asserting claims against Crown Central as if Crown Central had no insurance coverage from Home under the policies. Id. Crown Central agrees to indemnify the Liquidator and Home against claims arising from the policies up to the allowed amount. Id. Bengelsdorf Aff. ¶ 6.

6. The denial of any third party claimants' proofs of claim without prejudice to their claims against Crown Central will not harm the third party claimants, who will continue to have their full claims against Crown Central. As noted above, Crown Central has agreed to address these claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 5. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Crown Central from those claims up to the limits of the policies but only entitle the third party claimants (assuming their claims are allowed) to a presently undetermined percentage distribution at the future date when a distribution is made. See RSA 402-C:40, I; Gonya v. Commissioner, New Hampshire Insurance Dept., 899 A.2d 278, 282, 289 (N.H. 2006) (noting "the inherent uncertainty of any creditor's recovery in a liquidation"). It is not expected that the allowed claims of any third party claimants (or other Class II creditors) will be paid in full. Under the Settlement Agreement, Crown Central will continue to be fully responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 5. See Bengelsdorf Aff. ¶ 7.

7. The Settlement Agreement reflects a compromise of the claims asserted in Crown Central's proofs of claim. It is the result of negotiations involving Home's Claims Department, under the supervision of the Special Deputy Liquidator, which has extensive experience in assessing the exposure presented by environmental pollution claims under Home's insurance policies. The agreed settlement amount is based on careful evaluation and negotiation of coverage obligations under Home's policies respecting the underlying claims against Crown Central. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$7,000,000 settlement amount as a Class II claim in accordance with RSA 402-C:45 and RSA 402-C:44. Bengelsdorf Aff. ¶ 8.

8. The Court has previously approved similar settlement agreements with Cleaver-Brooks, Lucent Technologies, Inc., and AK Steel Corporation. See Order Approving Settlement Agreement with Cleaver-Brooks and Coca-Cola (April 23, 2007); Order Approving Settlement Agreement with Lucent Technologies, Inc. (August 23, 2006); Order Approving Commutation Agreement with Northwestern National Insurance Company and Settlement Agreement and Assignment of Distribution with AK Steel Corporation (March 10, 2006). The Liquidator's negotiation and the Court's approval of such agreements 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.

9. In his Motion for Approval of Commutation with Northwestern National Insurance Company and Settlement Agreement and Assignment of Distribution with AK Steel Corporation ¶¶ 19-23 (February 16, 2006), the Liquidator provided his analysis of New Hampshire law, including RSA 402-C:40 III, as it applies to this type of comprehensive policy coverage compromise and settlement in an insurer liquidation context. That analysis also applies to the proposed Settlement Agreement with Crown Central.

10. The Liquidator submits that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home. See Bengelsdorf Aff. ¶ 9.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion;
- B. Enter an Order in the form submitted herewith approving the Settlement Agreement, approving the Liquidator's claim recommendation, and allowing Crown Central's claim as a Class II claim in the amount of \$7,000,000; 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,

By his attorneys,  
KELLY A. AYOTTE  
ATTORNEY GENERAL

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Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
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(603) 271-3650




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J. David Leslie  
Eric A. Smith  
Rackemann, Sawyer & Brewster  
One Financial Center  
Boston, MA 02111  
(617) 542-2300

May 25, 2007

**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Crown Central, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 25th day of May, 2007, by first class mail, postage prepaid to all persons on the attached service list.

A handwritten signature in black ink, appearing to read "Eric A. Smith", is written over a horizontal line.

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

In the Matter of the Liquidation of  
US International Reinsurance Company  
Docket No. 03-E-0112

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**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is made this 14<sup>th</sup> day of May 2007, by and between, Crown Central LLC, successor by merger to Crown Central Petroleum Corporation (collectively "Crown Central") on the one hand, and Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, solely in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), on the other hand (Crown Central and the Liquidator are hereinafter referred to collectively as the "Parties").

**WHEREAS**, Home issued the following insurance policies to Crown Central under which Crown Central is a named insured:

<b><u>Policy Number</u></b>	<b><u>Policy Period</u></b>
GA1172433	1/1/82-1/1/83
GA1371325	1/1/83-1/1/84
GA1386026	1/1/84-1/1/85
GL 988599	1/1/85-1/1/86
HEC 1199710	1/1/83-1/1/84
HXL 1637776	1/1/84-1/1/85
HXL 1637808	1/1/85-1/1/86

which together with all other insurance policies that Home may have issued to Crown Central as an insured are defined as the "Policies."

**WHEREAS**, Home was placed into liquidation effective June 11, 2003, by Order of the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court");

**WHEREAS**, Crown Central seeks payment from Home for claims, including but not limited to third-party liability claims and environmental clean up costs and damages, in relation to which Crown Central has submitted proofs of claim in the Home liquidation estate, which have been assigned the following proof of claim numbers:

INSU274571

INSU274338  
INSU274351  
INSU274354

and which together with any other proof of claim hereinbefore or hereinafter filed by Crown Central in the Home liquidation estate are defined as the "Proofs of Claim."

**WHEREAS**, the Parties are desirous of resolving all claims that were asserted, or could have been or could be asserted, between them and resolving all matters concerning the Proofs of Claim and all rights and obligations with respect to the Policies; and

**WHEREAS**, the Parties agree that this Settlement Agreement is subject to and conditioned upon its approval by the Liquidation Court and allowance of the Recommended Amount (as defined below) into the Home liquidation estate and in the event the Liquidation Court does not approve the Settlement Agreement and allow the Recommended Amount, this Settlement Agreement shall be null and void and without any force or effect.

**NOW, THEREFORE**, in consideration of all the respective transactions contemplated by this Settlement Agreement, and the mutual covenants and representations herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Effective Upon Approval. This Settlement Agreement is conditioned and shall only become effective upon approval by the Liquidation Court (the "Effective Date").

2. Recommendation, Allowance and Classification of Claim.

A. Subject to all the terms of this Settlement Agreement, and with the agreement of Crown Central, which, by Crown Central's execution hereof is hereby granted, the Liquidator shall recommend pursuant to NH RSA § 402-C:45 that the Proofs of Claim be allowed in the aggregate amount of \$7,000,000 (the "Recommended Amount"), as a Class II priority claim under NH RSA § 402-C:44. The Liquidator shall seek allowance of the Recommended Amount

as a Class II claim by the Liquidation Court as part of the Liquidator's motion for approval of this Settlement Agreement.

B. Allowance of the Recommended Amount as a Class II claim by the Liquidation Court shall fully and finally resolve the Proofs of Claim and any and all claims of whatever nature that Crown Central has under the Policies. In the event that the Liquidation Court does not allow the Recommended Amount as a Class II claim, this Settlement Agreement shall be null and void and shall have no force and effect and the Parties will be returned to *status quo ante*, as if no such agreement was ever reached, with this Settlement Agreement then being inadmissible for any purpose in any dispute between the Parties.

C. If and when the Liquidation Court allows the Recommended Amount as a Class II claim, Crown Central will become a Class II creditor in the Home liquidation estate pursuant to N.H. RSA § 402-C:44, and Crown Central shall receive distributions on the allowed amount at the same intervals and at the same percentages as other Class II creditors of Home.

3. Release by Crown Central. Subject to the terms of this Settlement Agreement (including but not limited to, the right to receive distributions as set forth in section 2.C. above), and the Liquidation Court's approval of the Recommended Amount, Crown Central for itself and on behalf of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and its successors and assigns (including any trustee or other statutory successor), irrevocably and unconditionally releases and discharges the Liquidator and Home and each of their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and/or demands arising

from or related to the Proofs of Claim and/or the Policies, in law, admiralty or equity, which Crown Central, its subsidiaries, affiliates, predecessors, successors and assigns, ever had, now has or hereafter may have against the Liquidator or Home or their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proofs of Claim and/or the Policies. Crown Central's ultimate parent, Rosemore, Inc., and other subsidiaries of Rosemore, Inc. that are not subsidiaries of Crown Central ("Rosemore Parties") are included as releasing parties in this Agreement. to the extent that they would have had any coverage under the Policies and/or experienced any losses described in the Proofs of Claim. This Agreement does not apply to any insurance policies that may have been issued directly to the Rosemore Parties or any claims that may have been or will be made under those policies by the Rosemore Parties.

4. Release by Liquidator. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount, the Liquidator, in his capacity as such, and on behalf of Home and each of their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns (including any liquidator or statutory successor), irrevocably and unconditionally releases and discharges Crown Central and its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and/or demands arising from or related to the Proofs of Claim and/or the Policies, in law, admiralty or equity, which the Liquidator, Home, or their subsidiaries, affiliates, predecessors, successors and assigns, ever had,

now has or hereafter may have against Crown Central or its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proofs of Claim and/or the Policies.

5. Resolution of Matters and Indemnification. Crown Central acknowledges that this Settlement Agreement is intended to resolve all matters arising out of or relating to any rights it ever had, now has or hereafter may have in the Policies and the Proofs of Claim, including any asserted rights of claimants against Crown Central under the Policies. Crown Central agrees to handle and address, at its sole cost and expense, any said claims of claimants against Crown Central as if there had been no liquidation proceeding for Home, and as if Crown Central had no insurance coverage from Home by virtue of the Policies. In consideration of the Recommended Amount being allowed by the Liquidation Court, Crown Central agrees to indemnify and hold the Liquidator and Home harmless from and against any and all claims, losses, liabilities, debts, damages, costs or expenses arising from or related to the Policies and such indemnification shall be capped at the Recommended Amount as allowed by the Liquidation Court. The future obligations of Crown Central under this paragraph shall extend to and include (by way of example and not limitation) any claims made under the Policies against the Liquidator or Home, by vendors of or respecting Crown Central (including claims for defense and indemnity), by other insurers of Crown Central, and by any individuals or entities asserting "direct action" claims arising out of or related to the Policies (hereinafter "Indemnified Claims"). The Liquidator shall promptly notify Crown Central of any Indemnified Claims, shall keep Crown Central informed of material developments regarding such claims, and shall afford Crown Central the opportunity to reasonably participate in the defense of such claims. The Liquidator shall assert all defenses reasonably available to the Liquidator to such claims

against the Liquidator or Home, including defenses under the Order of Liquidation or the New Hampshire Insurers Rehabilitation and Liquidation Act. Crown Central shall cooperate with and support the Liquidator (including but not limited to the provision of affidavits or testimony) to eliminate claims against the Liquidator or Home by any insurer, individual or entity arising out of or relating to the Policies.

6. Mutual Release of Settling Carriers. Crown Central agrees to use reasonable commercial efforts to cause any settlement agreement relating to the underlying matters covered by the Proofs of Claim with any other insurance company to include a waiver by that other insurance company of any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation or recoupment, against Home regarding these matters. The Liquidator agrees to waive, relinquish and release any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation or recoupment, as to the matters covered by the Proofs of Claim against any other insurance company which executes a settlement agreement with Crown Central that includes a provision that is materially the same as this paragraph.

7. No Assignments. Crown Central warrants and agrees that it has not assigned, conveyed, or otherwise transferred any claims, demands, causes of action, rights, or obligations related in any way to the Policies, or any proceeds thereof, or to the claims, losses and expenses released herein, to any person or entity. Crown Central shall not assign any of the rights or obligations under this Settlement Agreement without consent of the Liquidator, which consent shall not be unreasonably withheld. .

8. Further Assurances. The Parties shall take all further actions as may be necessary to carry out the intent and purpose of this Settlement Agreement and to consummate the transactions contemplated herein.

9. Governing Law and Venue. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the conflicts of law provisions thereof. The Parties agree that the exclusive venue for any dispute between the Parties arising out of the Proofs of Claim or this Settlement Agreement shall be the Liquidation Court.

10. Due Diligence. The Parties acknowledge and agree that, in executing this Settlement Agreement, they have relied upon their own judgment and upon the recommendations of their legal counsel, if any, that they have read this Settlement Agreement and have had the opportunity to consider its terms and effects and that they have executed this Settlement Agreement voluntarily and with full understanding of its terms and effects. This Settlement Agreement is the product of negotiations between the Parties. No Party shall be charged with having promulgated this Settlement Agreement, and the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement.

11. No Third Party Rights. Except as provided in paragraph 6, this Settlement Agreement is entered into solely for the benefit of the Liquidator and Crown Central and is not intended to, and does not give or create any rights to or in any person or entity other than the Parties.

12. Counterparts. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. Power and Authority to Execute. Subject to the approval of the Liquidation Court, each Party hereto represents and warrants that it has the full power and authority to execute, deliver and perform this Settlement Agreement, that each individual signing on behalf of a Party has been duly authorized by that Party to execute this Settlement Agreement on its



behalf, and that no claims being released under the terms of this Settlement Agreement have been, as of the Effective Date, assigned, sold, or otherwise transferred to any other entity.

14. Successor-in-Interest Bound. This Settlement Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective successors and assigns.

15. Entire Agreement. This Settlement Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter thereof. This Settlement Agreement supersedes all prior agreements and understandings, whether written or oral, concerning such matters.

16. Survival of Warranties and Representations. The warranties and representations made herein shall survive the execution of this Settlement Agreement.

17. Validity of Settlement Agreement. Subject to approval of this Settlement Agreement by the Liquidation Court and allowance by the Liquidation Court of the Recommended Allowance, each Party represents and warrants that this Settlement Agreement is a legal, valid and binding obligation, enforceable in accordance with its terms.

18. No Waiver. No waiver of any right under this Settlement Agreement shall be deemed effective unless contained in a writing signed by the Party or an authorized representative of the Party charged with such waiver, and no waiver of any breach or failure to perform shall be deemed to be a waiver of any future breach or failure to perform or of any other provision of this Settlement Agreement. This Settlement Agreement may not be amended except in a document signed by the Party or an officer or other authorized official of the Party to be charged.

19. Notice. All notices to be given under this Settlement Agreement shall be given by facsimile and first class U.S. mail directed to:

If to Crown Central, to:

Andrew Lapayowker, General Counsel  
Crown Central LLC  
One North Charles Street, Suite 2100  
Baltimore, MD 21201  
Fax: 410-659-4763

and

Mr. Philip S. Schnering  
Director of Risk Management and Safety  
Crown Central LLC  
One North Charles Street, Suite 2200  
Baltimore, MD 21201  
Fax: 410-347-7081

If to the Liquidator, to:

Thomas W. Kober, Chief Claims Officer  
The Home Insurance Company in Liquidation  
59 Maiden Lane, New York, NY 10038  
Fax: 212-299-3824

and

J. Christopher Marshall  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
Fax: 603-271-2110

**WHEREFORE**, the Parties have caused this Settlement Agreement to be executed on their respective behalves as of the date below the signatures of their duly authorized representatives.

**CROWN CENTRAL LLC**

By: 

Name: ANDREW LAPAYOWKER

Title: GENERAL COUNSEL & SEC.

Date: 11 MAY 2007

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

By: Thomas W. Kober

Name: Thomas W. Kober

Title: Chief Claims Officer

Date: 5-14-2007