

**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 AEROMOTIVE**

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 Aeromotive Company and Aeromotive Manufacturing Company ("Aeromotive") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. Home issued four insurance policies under which Aeromotive is a named insured for policy periods between July 1, 1978 and July 1, 1982. Upon Home's placement in liquidation, Aeromotive filed two proofs of claim in the Home liquidation regarding these policies. The proofs of claim seek coverage under the policies for liabilities Aeromotive has incurred for environmental clean up costs and damages. Settlement Agreement at first and third Whereas clauses. Affidavit of Peter A. Bengelsdorf in Support of Approval of Settlement Agreement with Aeromotive ("Bengelsdorf Aff.") ¶ 2.

2. The Liquidator and Aeromotive 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 Whereas clause and ¶ 1. Bengelsdorf Aff. ¶ 3.

3. The Settlement Agreement provides that the Liquidator will recommend allowance of Aeromotive's proofs of claim in the aggregate amount of \$202,206 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 Aeromotive'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 Aeromotive's proofs of claim and all matters relating to the policies. See Settlement Agreement at fourth Whereas clause, ¶¶ 2(B), 5. To that end, the Settlement Agreement provides for mutual releases of all claims between Home and Aeromotive arising from or related to proofs of claim or the policies. Id. ¶¶ 3, 4. Bengelsdorf Aff. ¶ 5.

5. The Liquidator is not aware of any third party claimants asserting claims under the policies regarding Aeromotive. 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 Aeromotive. Accordingly, Aeromotive acknowledges in the Settlement Agreement that it is intended to resolve all matters between Aeromotive and the Liquidator/Home relating to the policies and proofs of claim, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Aeromotive agrees to address, at its sole cost, the claims of claimants against Aeromotive as if Aeromotive had no insurance coverage from Home under the policies. Id. Aeromotive agrees to indemnify the Liquidator and Home against claims arising from the policies up to the distribution it receives on the allowed amount. Id. Bengelsdorf Aff. ¶ 6.

6. The denial of any third party claimants' proofs of claim without prejudice to their claims against Aeromotive will not harm any third party claimants, who will continue to have their full claims against Aeromotive. As noted above, Aeromotive 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 Aeromotive 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, Aeromotive 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 the Aeromotive'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 clean up 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 Aeromotive. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$202,206 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 Aeromotive.

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 Aeromotive's claim as a Class II claim in the amount of \$202,206; 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

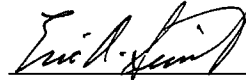
J. Christopher Marshall  
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New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397  
(603) 271-3650

  
\_\_\_\_\_  
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 Aeromotive, 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 cursive script, 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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Baltimore, Maryland 21093

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is made this 15<sup>th</sup> day of February 2007, by and between, Aeromotive Company and Aeromotive Manufacturing Company (collectively "Aeromotive") 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 (Aeromotive and the Liquidator are hereinafter referred to collectively as the "Parties").

**WHEREAS**, Home issued the following insurance policies to Daniel Woodhead Company under which Aeromotive is a named insured:

<b><u>Policy Number</u></b>	<b><u>Policy Period</u></b>
GA996524	7/1/78-7/1/79
GA9894093	7/1/79-7/1/80
GL1000870	7/1/80-7/1/81
GL1148871	7/1/81-7/1/82

which together with all other insurance policies that Home may have issued to Aeromotive 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**, Aeromotive seeks payment from Home for liabilities it has incurred for environmental clean up costs and damages and Aeromotive Manufacturing Company has submitted proofs of claim in the Home liquidation estate, which have been assigned the following proof of claim numbers:

INSU389544  
INSU389602

and which together with any other proof of claim hereinbefore or hereinafter filed by Aeromotive 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 (the "Effective Date"), upon approval by the Liquidation Court.

2. Recommendation, Allowance and Classification of Claim.

A. Subject to all the terms of this Settlement Agreement, and with the agreement of Aeromotive, which, by Aeromotive's execution hereof is hereby granted, the Liquidator shall recommend pursuant to RSA § 402-C:45 that the Proofs of Claim be allowed in the aggregate amount of \$202,206 (the "Recommended Amount"), as a Class II priority claim under RSA § 402-C:44. The Liquidator shall contemporaneously seek allowance of the Recommended Amount as a Class II claim by the Liquidation Court in connection with 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 Aeromotive 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, Aeromotive will become a Class II creditor in the Home liquidation estate pursuant to N.H. RSA § 402-C:44, and Aeromotive 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 Aeromotive. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount, Aeromotive for itself and on behalf of its officers, directors, employees, agents, attorneys, predecessors, and its successors and assigns (including any trustee or other statutory successor), hereby irrevocably and unconditionally releases and discharges the Liquidator and Home and each of their officers, directors, employees, agents, attorneys, 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 or the Policies, in law, admiralty or equity, which Aeromotive, its predecessors, successors and assigns, ever had, now has or hereafter may have against the Liquidator or Home or their officers, directors, employees, agents, attorneys, 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 or the Policies.

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, affiliates, predecessors, and their successors and assigns (including any liquidator or statutory successor), hereby irrevocably and unconditionally releases and discharges Aeromotive and its officers, directors, employees, agents, attorneys, 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 or the Policies, in law, admiralty or equity, which the Liquidator, Home, or their affiliates, predecessors, successors and assigns, ever had, now has or hereafter may have against Aeromotive or its officers, directors, employees, agents, attorneys, 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 or the Policies.

5. Resolution of Matters and Indemnification. Aeromotive 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 Aeromotive under the Policies and Aeromotive agrees to address, at its sole cost and expense, any said claims of claimants against Aeromotive as if there had been no liquidation proceeding for Home and as if Aeromotive had no insurance coverage from Home directly or by virtue of the Policies or any other policy issued by Home to

Aeromotive or any other entity. In consideration of the Recommended Amount being allowed by the Liquidation Court, Aeromotive 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 any rights Aeromotive may have had in the Policies shall be capped at the total distributions received pursuant to the Recommended Amount as allowed by the Liquidation Court.. The future obligations of Aeromotive 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 Aeromotive (including claims for defense and indemnity), by other insurers of Aeromotive, and by any individuals or entities asserting "direct action" claims arising out of or related to the Policies. The Liquidator shall promptly notify Aeromotive of any such claim and take no action that would prejudice the outcome of any such claim. Aeromotive shall cooperate with the Liquidator to eliminate claims against the Liquidator or Home by any individual or entity arising out of or relating to Aeromotive's rights in the Policies.

6. No Assignments. Aeromotive 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.

7. 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.

8. 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.

9. 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.

10. No Third Party Rights. This Settlement Agreement is entered into solely for the benefit of the Liquidator and Aeromotive and is not intended to, and does not give or create any rights to or in any person or entity other than the Parties.

11. 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.

12. Power and Authority to Execute. Subject to the approval of the Liquidation Court required by paragraph 1, 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 assigned, sold, or otherwise transferred to any other entity.

13. 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.

14. 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.

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

16. Validity of Settlement Agreement. Subject to approval of this Settlement Agreement by the Liquidation Court as required by paragraph 1, each Party represents and warrants that this Settlement Agreement is a legal, valid and binding obligation, enforceable in accordance with its terms.

17. 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.



18. 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 Aeromotive, to:

Charles M. Denton, Esq.  
Varnum, Riddering, Schmidt & Howlett LLP  
P.O. Box 352  
Grand Rapids, MI 49501

If to the Liquidator, to:

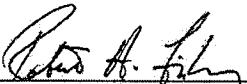
Thomas W. Kober, Chief Claims Officer  
The Home Insurance Company in Liquidation  
59 Maiden Lane, New York, NY 10038  
Fax: 212-299-3824

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.

**AEROMOTIVE MANUFACTURING COMPANY**

By: 

Name: Robert H. Fisher

Title: Vice President

Date: February 2, 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: February 15, 2007