

**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 GEORGIA-PACIFIC**

Roger A. Sevigny, Insurance Commissioner 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 Georgia-Pacific LLC, as legal successor to Georgia-Pacific Corporation, ("Georgia-Pacific") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. Home issued five insurance policies to Georgia-Pacific for certain policy periods between October 9, 1977 and April 1, 1986. Upon Home's placement in liquidation, Georgia-Pacific filed proofs of claim in the Home liquidation. The proofs of claim seek coverage under the policies for third-party liability claims and environmental clean up costs and damages.

Affidavit of Peter A. Bengelsdorf in Support of Motion for Approval of Settlement Agreement with Georgia-Pacific ("Bengelsdorf Aff.") ¶ 3.

2. The Liquidator and Georgia-Pacific have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters under the policies. A copy of the Settlement Agreement is attached hereto as Exhibit A. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1. Bengelsdorf Aff. ¶ 4.

3. The Settlement Agreement provides that the Liquidator will recommend allowance of Georgia-Pacific's proof of claim in the aggregate amount of \$7,000,000 as a Class II priority 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 Georgia-Pacific's proofs of claim and all claims it has 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. ¶ 5.

4. The Settlement Agreement is intended to resolve Georgia-Pacific's proof of claim, and all claims concerning it 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 Georgia-Pacific arising from or related to the policies (including the proof of claim). *Id.* ¶¶ 3, 4. The Liquidator also agrees not to pursue certain claims respecting Georgia-Pacific against other insurers that agree not to pursue such claims against Home. *Id.* ¶ 6. Bengelsdorf Aff. ¶ 6.

5. The Liquidator is not aware of any third party claimants asserting claims under the policies with respect to Georgia-Pacific. However, in resolving all matters relating to the proof of claim and the policies, the Settlement Agreement contemplates denial of any third party claimants' claims regarding Georgia-Pacific in the Home liquidation without prejudice to their claims against Georgia-Pacific. Accordingly, Georgia-Pacific acknowledges in the Settlement Agreement that it is intended to resolve all matters between Georgia-Pacific and the Liquidator/Home relating to the policies and proof of claim, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Georgia-Pacific agrees to address, at its sole cost, the claims of claimants asserting claims against Georgia-Pacific as if the Georgia-Pacific had no insurance coverage from Home under the policies. *Id.* Georgia-Pacific agrees to indemnify the

Liquidator and Home against claims arising from the policies up to the allowance actually received by Georgia-Pacific. Id. Bengelsdorf Aff. ¶ 7.

6. The denial of any third party claimants' proofs of claim without prejudice to their claims against Georgia-Pacific will not harm the third party claimants, who will continue to have their full claims against Georgia-Pacific. As noted above, Georgia-Pacific has agreed to address these claims as if it had no insurance coverage from Home under the policies. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Georgia-Pacific 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., 153 N.H. 521, 535 (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, Georgia-Pacific will continue to be fully responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 5.

7. The Settlement Agreement reflects a compromise of the claims asserted in Georgia-Pacific's proof 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 liabilities of Georgia-Pacific. 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. ¶ 9.

8. The Court has previously approved similar settlement agreements. See, *e.g.*, Order Approving Settlement Agreement with Tampa Electric (October 15, 2007); 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 Georgia-Pacific.

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. ¶ 10.

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 Georgia-Pacific'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, INSURANCE  
COMMISSIONER 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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New Hampshire Department of Justice  
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Concord, NH 03301-6397  
(603) 271-3650



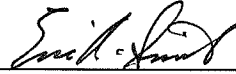
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J. David Leslie  
Eric A. Smith  
Rackemann, Sawyer & Brewster  
160 Federal Street  
Boston, MA 02110  
(617) 542-2300

March 18, 2008

**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Georgia-Pacific, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 18th day of March, 2008, by first class mail, postage prepaid to all persons on the attached service list.



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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 (the "Settlement Agreement") is made this 6th day of March, 2008 by and between, Georgia-Pacific LLC 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 (Georgia-Pacific LLC and the Liquidator are hereinafter referred to collectively as the "Parties").

**WHEREAS,** The Parties agree that "Georgia-Pacific LLC" shall mean Georgia-Pacific LLC, as legal successor to Georgia-Pacific Corporation and all of their parents, subsidiaries, divisions, holding companies, merged companies, acquired companies, affiliates, directors, members, officers, principals, partners, shareholders, agents, employees, predecessors in interest, successors in interest, and assigns, past, present & future.

**WHEREAS,** Home issued the following insurance policies to Georgia-Pacific Corporation under which Georgia-Pacific Corporation is a named insured and under which Georgia-Pacific LLC has made claim in the Home Insurance Company liquidation estate:

<b><u>Policy Number</u></b>	<b><u>Policy Period</u></b>
HEC9530957	10/9/77-4/1/78
HEC9531863	4/01/78-1/1/79
HEC9531869	1/01/79-4/1/80
HXL1574482	4/01/84-4/1/85
HXL1638967	4/01/85-4/1/86

which together with all other insurance policies that Home may have issued to Georgia Pacific Corporation 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,** Georgia-Pacific LLC 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 Georgia-Pacific LLC has submitted proofs of claim in the Home liquidation estate, which have been assigned the following proof of claim numbers:

INSU711256  
INSU392079  
INSU711253  
INSU711254  
INSU711255

and which together with any other proof of claim hereinbefore or hereinafter filed by Georgia-Pacific LLC 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 Georgia-Pacific LLC, which, by Georgia-Pacific LLC'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 Georgia-Pacific LLC 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, Georgia-Pacific LLC will become a Class II creditor in the Home liquidation estate pursuant to N.H. RSA § 402-C:44, and Georgia-Pacific LLC 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 Georgia-Pacific LLC. 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, Georgia-Pacific LLC 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 Georgia-Pacific LLC, 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. The parties specifically acknowledge and agree that Georgia Pacific LLC's ultimate corporate parent, Koch Industries, Inc., and all subsidiaries of Koch Industries, Inc. are included within the scope of this Release to the extent of their interests in and to the Proofs of Claim and/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, subsidiaries, affiliates, predecessors, and their successors and assigns (including any liquidator or statutory successor), irrevocably and unconditionally releases and discharges Georgia-Pacific LLC 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 Georgia-Pacific LLC 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. Georgia-Pacific LLC 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 Georgia-Pacific LLC under the Policies. Georgia-Pacific LLC agrees to handle and address, at its sole cost and expense, any said claims of claimants against Georgia-Pacific LLC as if there had been no liquidation proceeding for Home, and as if Georgia-Pacific LLC had no insurance coverage from Home by virtue of the Policies. In consideration of the Recommended Amount being allowed by the Liquidation Court, Georgia-Pacific LLC 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 amount actually distributed of the Recommended Amount as allowed by the Liquidation Court. The future obligations of Georgia-Pacific LLC under this paragraph shall extend to and include (by way of example and not limitation) any claims, including claims for defense and indemnity, made under the Policies against the Liquidator or Home by vendors of or respecting Georgia-Pacific LLC, by other insurers of Georgia-Pacific LLC, 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 Georgia-Pacific LLC of any Indemnified Claims, shall keep Georgia-Pacific LLC informed of material developments regarding such claims, and shall afford Georgia-Pacific LLC the opportunity to reasonably participate in the defense of such claims. The Liquidator shall assert all defenses to such claims reasonably available to the Liquidator, including defenses under the Order of Liquidation or the New Hampshire Insurers Rehabilitation

and Liquidation Act. Georgia-Pacific LLC shall cooperate with and support the Liquidator (including but not limited to the provision of affidavits or testimony) to defend against and resolve such claims.

6. Mutual Release of Settling Carriers. Georgia-Pacific LLC 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 Georgia-Pacific LLC that includes a provision that is materially the same as this paragraph.

7. No Assignments. Georgia-Pacific LLC 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. Georgia-Pacific LLC 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, the Policies, 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 Georgia-Pacific LLC 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 Georgia-Pacific LLC, to:

Tye G. Darland, Vice President & General Counsel  
Georgia-Pacific LLC  
133 Peachtree Street, NE  
Atlanta, GA 30303  
Fax: 404-584-1461



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

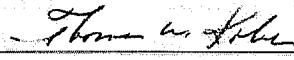
J. Christopher Marshall  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
Fax: 603-271-2110

**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.

**GEORGIA-PACIFIC LLC**

By:  <sup>SAC</sup>  
Name: James B. Hannan  
Title: CEO and President  
Date: 3/10/08

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

By:   
Name: Thomas W. Kober  
Title: Chief Claims Officer  
Date: 3/13/08