

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 MONTROSE**

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 Montrose Chemical Corporation of California ("Montrose") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. Home issued 17 insurance policies to Stauffer Chemical Company ("Stauffer") for certain policy periods between 1967 and 1980, under which Montrose asserts rights as an insured or as an additional insured. After Home was placed in liquidation, Montrose filed proofs of claim. The proofs of claim seek coverage under the policies for environmental clean up costs and damages. Affidavit of Peter A. Bengelsdorf in Support of Motion for Approval of Settlement Agreement with Montrose ("Bengelsdorf Aff.") ¶ 3.

2. The Liquidator and Montrose have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim 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 Montrose's proofs of claim in the aggregate amount of \$15,000,000 (the

“Settlement Amount”) 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 Montrose’s proofs of claim insofar as they relate to environmental claims (as defined in the fourth Whereas clause of the Settlement Agreement). *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 Montrose’s proofs of claim insofar as they relate to environmental claims under the policies, including claims asserted in Montrose Chemical Corporation of California v. Canadian Universal Insurance Company, Case No. BC 055158 (Los Angeles Superior Court). Settlement Agreement ¶¶ 2(B) and 3(A). To that end, the Settlement Agreement provides for mutual releases of all claims under the policies or proofs of claim between Home and Montrose as respects environmental claims and dismissal of the claims against Home in the action. *Id.* ¶¶ 3 and 4. The Liquidator agrees not to pursue any claims respecting the Settlement Amount against other insurers, and Montrose agrees to use reasonable commercial efforts to obtain a comparable agreement as part of any settlement with other insurers involving environmental claims to which the proofs of claim relate. *Id.* ¶ 5. Bengelsdorf Aff. ¶ 6.

5. Two Montrose affiliates, Stauffer and Stauffer Management Company (“SMC”), have also asserted environmental claims under the policies by filing proofs of claim, which remain pending. (Relying on available information, the Liquidator does not expect the asserted Stauffer and SMC claims to overlap with the damages supporting the allowance given Montrose.) The Liquidator is not aware of any other claimant or third-party claimant asserting environmental claims under the policies, although two non-specific proofs of claim might permit

such claims. Settlement Agreement ¶ 5. In resolving the environmental claims relating to the proof of claim and the policies, the Settlement Agreement acknowledges that third parties could pursue claims under the policies relating to the same environmental claims. Montrose agrees that any amounts allowed in the liquidation arising from such claims (except Stauffer and SMC) will ratably reduce the Settlement Amount as respects amounts not yet distributed to Montrose. Id. Montrose further agrees to cooperate with the Liquidator in defending any such claims (including any claims of Stauffer and SMC in the event they overlap with the damage items claimed by Montrose), and the Liquidator agrees to reimburse Montrose for reasonable third party costs it incurs in cooperating with the Liquidator. Id. Bengelsdorf Aff. ¶ 7.

6. The Settlement Agreement reflects a compromise of the claims asserted in Montrose's proofs of claim. It is the result of negotiations involving Home's Claims Department, under supervision of the Special Deputy Liquidator, which has extensive experience in assessing the exposure presented by environmental 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 Montrose. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$15,000,000 settlement amount as a Class II claim in accordance with RSA 402-C:45 and RSA 402-C:44. Bengelsdorf Aff. ¶ 8.

7. The Liquidator's negotiation and the Court's approval of this agreement is 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.

8. 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 Montrose's claim as a Class II claim in the amount of \$15,000,000; 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
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September 15, 2008

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Montrose, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 15th day of September, 2008, 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

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 31st day of August 2008, by and between Montrose Chemical Corporation of California, hereinafter referred to as "Claimant") 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 (the Claimant and the Liquidator are hereinafter referred to collectively as the "Parties").

WHEREAS, Home issued the following insurance policies to Stauffer Chemical Company ("Stauffer") as the named insured, under which Claimant asserts rights as an insured or as an additional insured,

Policy Number

HEC 9557580
HEC 9558246
HEC 9919714
HEC 9793559
HEC 4344506
HEC 4166013
HEC 4429438
HEC 4356829
HEC 4357074
HEC 4357117
HEC 9007125
HEC 9007126
HEC 9007127
HEC 9329023
HEC 9329036
HEC 9631620
HEC 9690307

which together with all other insurance policies that Home may have issued to Stauffer or Claimant are defined as the "Policies";

WHEREAS, Home is being liquidated pursuant to the June 13, 2003 Order of the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home;

WHEREAS, Claimant seeks payment from Home for Environmental Claims (hereinafter defined) with respect to which Claimant has submitted proofs of claim in the Home liquidation estate that have been assigned the following proof of claim numbers:

<u>Policy Number</u>	<u>Proof of Claim Number</u>
HEC 9557580	INSU701141
HEC 9558246	INSU701627
HEC 9919714	INSU701628
HEC 9793559	INSU701629
HEC 4344506	INSU701630
HEC 4166013	INSU701631
HEC 4429438	INSU701632
HEC 4356829	INSU701633
HEC 4357074	INSU701634
HEC 4357117	INSU701635
HEC 9007125	INSU701636
HEC 9007126	INSU701637
HEC 9007127	INSU701638
HEC 9329023	INSU701639
HEC 9329036	INSU701640
HEC 9631620	INSU701641
HEC 9690307	INSU701642

which together with any other proof of claim hereinbefore or hereinafter filed by Claimant in the Home liquidation estate for Environmental Claims are defined as the "Proofs of Claim";

WHEREAS, "Environmental Claims" means any and all past, present or future claims, demands, actions, suits or proceedings arising from, or related in any way to, the alleged, threatened or actual presence, discharge, dispersal, release, migration, seepage, movement, escape, of or exposure to, any harmful or injurious substance or material of any kind, nature or form whatsoever, including but not limited to smoke, vapors, soot, fumes, acids, alkalis, chemicals, metals, oil, liquids, gases, waste, irritants, contaminants, pollutants or thermal, electric, magnetic or electromagnetic emissions, or the effects thereof. By way of added specificity only, and without limiting the foregoing, "Environmental Claims" includes but is not limited to requests and demands by state and federal agencies for investigation and clean-up of pollution or contamination and for damages to natural resources.

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 in relation thereto; 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. Effectiveness. This Settlement Agreement is conditioned and shall only become effective (the "Effective Date"), upon approval by the Liquidation Court. The Liquidator shall move for approval of this Settlement Agreement promptly following execution by both of the Parties.

2. Recommendation, Allowance and Classification of Claims.

A. Subject to all the terms of this Settlement Agreement, and with the agreement of Claimant, which by Claimant'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 \$15,000,000 (the Recommended Amount"), as a Class II priority claim under RSA 402-C:44. The Liquidator shall seek allowance of the Recommended Amount as a Class II claim by the Liquidation Court in 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 insofar as they relate to Environmental Claims of whatever nature that Claimant 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, Claimant will become a Class II creditor in the Home liquidation estate pursuant to N.H. RSA 402-C:44, and Claimant shall, subject to this Settlement Agreement, receive distributions on the allowed amount at the same intervals and at the same percentages as other Class II creditors of Home.

3. Release and dismissal by Claimant.

A. Claimant agrees that within five (5) days after approval of the Settlement Agreement by the Liquidation Court, Claimant shall dismiss with prejudice all claims filed against Home in *Montrose Chemical Corporation of California v. Canadian Universal Insurance Company, Inc., et al.*, Los Angeles Superior Court, Case No. BC 005158.

B. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II claim, Claimant, for itself and on behalf of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates (excluding Stauffer and SMC,) 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 or the Policies as respects Environmental Claims, in law, admiralty or equity, which Claimant, its subsidiaries, affiliates (excluding Stauffer and SMC,) predecessors, successors and assigns, ever had, now have 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 or the Policies as respects Environmental Claims.

4. Release by Liquidator. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II claim, 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 their assigns (including any liquidator or statutory successor), irrevocably and unconditionally releases and discharges Claimant and its officers, directors, employees, agents, attorneys, subsidiaries, affiliates (excluding Stauffer and SMC,) 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 as respects Environmental Claims, in law, admiralty or equity, which the Liquidator, Home, or their subsidiaries, affiliates, predecessors, successors and assigns, ever had, now have or hereafter may have against Claimant and its officers, directors, employees, agents, attorneys, subsidiaries, affiliates(excluding Stauffer and SMC,) 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, as respects Environmental Claims.

5. Subrogation and Contribution. The Liquidator agrees not to pursue any claim, including indemnity, subrogation, reimbursement, contribution, apportionment, allocation or recoupment with respect to the Recommended Amount from any individual, corporation, association, governmental entity, or other natural or legal entity, and Claimant agrees to use reasonable commercial efforts to cause any settlement agreement with any other insurance company involving Environmental Claims to which the Proofs of Claim relate to include a waiver by that other insurance company of any claim, including indemnity, subrogation, reimbursement,

contribution, apportionment, allocation or recoupment, against Home and/or the Liquidator with respect thereto.

Claimant represents and warrants that it has not and will not enforce any judgment against Home and/or the Liquidator with respect to Environmental Claims to which the Proofs of Claim relate. Claimant further represents and warrants that no other individual, corporation, association, governmental entity, or other natural or legal entity contributed to any of the payments submitted as proof of Claimant's damages in connection with the Proofs of Claim.

The Liquidator represents and warrants that as of the date of this agreement no person or entity (other than Claimant and Stauffer per Stauffer Management Company ["SMC"]) has filed a claim seeking to establish entitlement under the Policies specifically for Environmental Claims to which the Proofs of Claim relate, although Claimant acknowledges the Liquidator's representation that two, non-specific, omnibus proofs of claim have been filed that may ultimately reference Environmental Claims to which the Proofs of Claim relate.

In the event that any individual, corporation, association, governmental entity, or other natural or legal entity (other than Stauffer or SMC), subsequently establishes in the liquidation a right to coverage under the Policies for Environmental Claims to which the Proofs of Claim relate, or in the event that any such party prevails in the liquidation in establishing rights of contribution with respect thereto, then Claimant agrees that any amounts allowed in the liquidation in consequence thereof will be proportionately applied against the Recommended Amount, thereby ratably reducing Claimant's distribution entitlements from the liquidation estate but only with respect to any amounts not yet distributed to Claimant.

The Liquidator shall give written notice to Claimant of the pendency of such a coverage claim within a reasonable time after any such claim is filed and, if requested by the Liquidator, Claimant agrees to cooperate with the Liquidator in his defense of such claim (including claims asserted by Stauffer or SMC against the Liquidator or the Home estate for indemnification of payments submitted as proof of Claimant's damages in connection with the Proofs of Claim), with any reasonable third party costs and expenses so incurred by Claimant to be reimbursed by the Liquidator.

6. No Assignments. Claimant 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, as respects Environmental Claims, or any proceeds thereof, or to the claims, losses and expenses released herein, to any person or entity. Claimant shall not assign or otherwise transfer this Settlement Agreement or any rights or obligations thereunder without the written consent of the Liquidator, which consent shall not be unreasonably withheld.

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 the Policies, as respects Environmental Claims, or this Settlement Agreement shall be the Liquidation Court.

9. Due Diligence. The Parties acknowledge and agree that, in negotiating and executing this Settlement Agreement they have relied upon their own judgment and upon the recommendations of their own legal counsel, 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, Home and Claimant 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 multiple counterparts, each of which, when so delivered, shall be an original, but such counterparts shall together

constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail to the other Party shall have the same force and effect as an original signature.

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 all requisite and necessary approvals have been obtained to consummate the transactions contemplated by this Settlement Agreement, that there are no other agreements or transactions to which it is a party that would render this Settlement Agreement or any part thereof, void, voidable or unenforceable; 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 officers, directors, employees, affiliates, attorneys, liquidators, receivers, administrators, agents, representatives, 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 agreement 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 Claimant, Montrose Chemical Corporation of California, to:

Mr. Joseph Kelly
President
Montrose Chemical Corporation of California
600 Erickson Avenue NE, Suite 380
Bainbridge Island, WA 98110
Fax: 206-780-2109

and

David L. Mulliken, Esq.
Brook B. Roberts, Esq.
Latham & Watkins, LLP
600 West Broadway, Suite 1800
San Diego, CA 92101-3375
Fax: 619-696-7419

If to the Liquidator, to:

Thomas W. Kober, Chief Claims Officer
The Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 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

and

J. David Leslie, Esq.
Rackemann, Sawyer & Brewster, P.C.
160 Federal Street
Boston, MA 02110-1700
Fax: 617-542-7437

19. Severability. If any provision of this Settlement Agreement is invalid, unenforceable or illegal under the law of any applicable jurisdiction, the validity and enforceability of such provision

in any other jurisdiction shall not be affected thereby and, upon the agreement of the Parties, the remaining provisions of this Settlement Agreement shall remain valid and enforceable. However, in the event of such invalidity, unenforceability or illegality, the Parties shall negotiate in good faith to amend this Settlement Agreement through the insertion of additional provisions which are valid, enforceable and legal and which reflect, to the extent possible, the purposes contained in the invalid, unenforceable or illegal provision.

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.

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA

By: Joseph C. Kelly
Name: Joseph C. Kelly
Title: President
Date: Aug 28, 2008

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: August 31, 2008