

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 R. LAVIN & SONS INC.**

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 R. Lavin & Sons Inc. ("Lavin") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. Home issued seven insurance policies to Lavin for certain policy periods between December 31, 1963 and October 1, 1994. Upon Home's placement in liquidation, Lavin filed six proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for environmental clean up costs and damages. Lavin had previously commenced coverage litigation against Home regarding its claims. Affidavit of Peter A. Bengelsdorf in Support of Motion for Approval of Settlement Agreement with Lavin ("Bengelsdorf Aff.") ¶ 3.

2. Lavin is in a liquidating reorganization under the bankruptcy laws in a bankruptcy proceeding before the United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Action"). Pursuant to a Liquidation Plan approved by the Bankruptcy Court, Lavin's affairs are controlled by the Post Confirmation Creditors' Committee ("Committee") and

the Disbursing Agent for the Committee. One of the assets within the control of the Committee is the claim asserted in the proofs of claim. Bengelsdorf Aff. ¶ 4.

3. The United States has asserted a claim against Lavin in the Bankruptcy Action for alleged damages by Lavin to the property of the United States which form part of the basis for the Lavin proofs of claim in the Home liquidation. The United States has also filed a proof of claim in the Home liquidation for the same alleged damages. Under orders of the Bankruptcy Court, the United States is to receive a portion of any amount paid by Home to Lavin from Lavin. Bengelsdorf Aff. ¶ 5.

4. The Liquidator and Lavin 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 Disbursing Agent for the Committee executed the Settlement Agreement for Lavin. Settlement Agreement at 15. The Settlement Agreement is subject to approval by this Court. Id. ¶ 1. The Settlement Agreement is also conditioned upon (a) approval by the Bankruptcy Court in the Bankruptcy Action and (b) withdrawal of the United States' proof of claim in the Home liquidation. Id. As discussed in paragraph 10 below, these conditions have been satisfied. Bengelsdorf Aff. ¶ 6.

5. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$2,346,774 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 all the proofs of claim and all claims Lavin 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. ¶ 7.

6. The Settlement Agreement is intended to resolve the 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 Lavin arising from or related to the proofs of claim or the policies. *Id.* ¶¶ 3, 4. It also provides for withdrawal of the United States' proof of claim. *Id.* ¶ 1. The Liquidator also agrees not to pursue certain claims respecting Lavin against other insurers that agree not to pursue such claims against Home. *Id.* ¶ 6. *Bengelsdorf Aff.* ¶ 8.

7. The Liquidator is not aware of any third party claimants asserting claims under the policies other than the United States (under the proof of claim which it has withdrawn as discussed below). 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 under the policies in the Home liquidation without prejudice to their claims against Lavin. Accordingly, Lavin acknowledges in the Settlement Agreement that it is intended to resolve all matters between Lavin and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Lavin agrees to address, at its sole cost, the claims of claimants asserting claims against Lavin as if Lavin had no insurance coverage from Home under the policies. *Id.* Lavin agrees to indemnify the Liquidator and Home against claims arising from the policies up to the amounts actually distributed to Lavin. *Id.* *Bengelsdorf Aff.* ¶ 9.

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Lavin will not harm the third party claimants, who will continue to have their claims against Lavin subject to the Lavin liquidating plan of reorganization. As noted above, Lavin 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 Lavin 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, Lavin will continue to be responsible for any third party claimants’ claims against it (subject to the liquidating plan of reorganization). See Settlement Agreement ¶ 5. Bengelsdorf Aff. ¶ 10.

9. The Settlement Agreement reflects a compromise of the claims asserted in the 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 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 Lavin. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$2,346,774 settlement amount as a Class II claim in accordance with RSA 402-C:45 and RSA 402-C:44. Bengelsdorf Aff. ¶ 11.

10. The conditions to the Settlement Agreement other than this Court’s approval have been satisfied. The Bankruptcy Court in the Bankruptcy Action approved the Settlement Agreement in an Order Approving Insurance Litigation Settlement issued November 13, 2008. The United States withdrew its proof claim in the Home liquidation and agreed to the corresponding allowance of \$0 on that proof of claim on December 17, 2008. Bengelsdorf Aff. ¶ 12.

11. The Court has previously approved similar settlement agreements. See, e.g., Order Approving Settlement Agreement with Montrose (October 31, 2008); Order Approving Settlement Agreement with Georgia-Pacific (April 3, 2008); 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.

12. 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 Lavin.

13. 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. ¶ 13.

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 Lavin's claim as a Class II claim in the amount of \$2,346,774; 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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(603) 271-3650



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Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110
(617) 542-2300

January 8, 2009

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with R. Lavin & Sons Inc., the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 8th day of January, 2009, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith
NH Bar ID No. 16952

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 30th day of September 2008, by and between R. Lavin & Sons Inc. (R. Lavin & Sons Inc. is hereafter 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 liability insurance policies under which Claimant is a named insured:

<u>Policy Number</u>	<u>Policy Period</u>
HEC9543534	12/31/63-12/31/68
HEC9664409	12/31/68-12/31/71
GA9894170	10/1/79-10/1/80
GA1148109	10/1/80-10/1/81
GA1149411	10/1/81-10/1/82
HUL1720069	10/1/92-10/1/93
HXLF866433	10/1/93-10/1/94

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

WHEREAS, Home and Claimant represent that they know of no other policies issued by Home to Claimant other than the policies listed above.

WHEREAS, Claimant is in a liquidating reorganization under the federal bankruptcy laws in the case titled In Re R. Lavin & Sons, Inc, Case No. 01- B-06301 (the "Bankruptcy Action") subject to the jurisdiction of the United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court");

WHEREAS, Claimant commenced a declaratory judgment action in the Circuit Court of Cook County, the State of Illinois, seeking, *inter alia*, coverage under the Policies for claims for third party liability claims and for environmental clean up costs and damages, against it, (the "Coverage Action");

WHEREAS, on September 13, 2001, the Bankruptcy Court approved the Creditors' Committee's Amended Liquidating Plan of Reorganization (the "Liquidation Plan") which placed control over Claimant's affairs in the Post Confirmation Creditor's Committee (the "Committee") and the Disbursing Agent for the Committee (the "Disbursing Agent");

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 respecting claims, including but not limited to third- party liability claims and for environmental clean up costs and damages, against it, and 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>	<u>Named Insured</u>
HEC9543534	INSU222517	R. Lavin & Sons Inc.
HEC9664409	INSU702381	R. Lavin & Sons Inc.
GA9894170	INSU702382	R. Lavin & Sons Inc.
GL1148109	INSU702383	R. Lavin & Sons Inc.
GL1149411	INSU702384	R. Lavin & Sons Inc.
HXLF866433	INSU159883	R. Lavin & Sons Inc.

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

WHEREAS, one of the assets within the control of the Committee is the claim asserted by Claimant against Home in the Proofs of Claim;

WHEREAS, the United States has asserted a claim against Claimant in the Bankruptcy Action for alleged damage by Claimant to property of the United States (the "United States Lavin Claim") which forms part of the basis for the Proofs of Claim;

WHEREAS, the United States also has asserted a proof of claim against Home for the same alleged damages sought from Claimant in the United States Lavin Claim which was assigned Proof of Claim Number CLMN705063 and later changed to Proof of Claim Number GOVT709582 (the "United States Home Proof of Claim");

WHEREAS, pursuant to the orders entered by the Bankruptcy Court in the Lavin Bankruptcy Action, the United States will receive a portion of any amount paid by Home to Claimant as a result of the approval by the Liquidation Court of this Settlement Agreement and allowance of the Recommended Amount as defined in paragraph 2. A. below;

WHEREAS, on July 22, 2004, Home was dismissed from the Coverage Action based upon orders entered by the Liquidation Court;

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 the Coverage Action and all rights and obligations with respect to the Policies;

WHEREAS, the Parties agree that this Settlement Agreement is subject to and conditioned upon the Bankruptcy Court approving the Settlement Agreement, and in the

event that the Bankruptcy Court does not approve this Settlement Agreement, this Settlement Agreement shall be null and void and without any force or effect;

WHEREAS, the Parties agree that this Settlement Agreement is also 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 its approval 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;

WHEREAS, the Parties agree that this Settlement Agreement is also subject to and conditioned upon withdrawal of the United States Home Proof of Claim, and in the event that the United States Home Proof of Claim is not withdrawn, 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 the latest to occur of (a) approval of this Settlement Agreement by the Bankruptcy Court, (b) approval of this Settlement Agreement and allowance of the Recommended Amount (as defined below) as a Class II claim by the Liquidation Court, and (c) the withdrawal of the United States Home Proof of Claim ((a)-(c) are collectively hereinafter referred to as the "Conditions"). The Claimant shall move for

approval of this Settlement Agreement by the Bankruptcy Court promptly following execution by both of the Parties. Claimant shall include in its motion for approval, and the Bankruptcy Court shall include in the order it enters approving this Settlement Agreement, a requirement that the United States promptly withdraw the United States Home Proof of Claim and a provision that the Settlement Agreement is binding upon Lavin, the Estate (as defined in the Liquidation Plan), all creditors and equity holders of Lavin, the Committee and its members, the Disbursing Agent (as defined in the Liquidation Plan) and all of their respective successors and assigns including without limitation any successor trustee that may be appointed in the pending or any subsequent bankruptcy proceeding against Lavin. The Liquidator also shall move for approval of this Settlement Agreement by the Liquidation Court 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 \$2,346,774 (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 and any and all 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 or approve this Settlement Agreement, or the Bankruptcy Court does not approve this Settlement Agreement, 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 by Claimant.

Subject to the terms of this Settlement Agreement and upon the satisfaction of the Conditions, Claimant for itself, the Committee and the Disbursing Agent (but only to the extent based on their official status under the Liquidation Plan with respect to the management of Claimant) and on behalf of Claimant's officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns (including any trustee or other statutory successor), irrevocably and unconditionally release and discharge 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, the Policies or the Coverage Action, in law, admiralty or equity, which Claimant, its subsidiaries, affiliates, 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, the Policies or the Coverage Action.

4. Release by Liquidator.

Subject to the terms of this Settlement Agreement and upon the satisfaction of the Conditions, 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, 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, the Policies or the Coverage Action, 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, 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, the Policies or the Coverage Action.

5. Resolution of Matters and Indemnification.

Claimant 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 Claimant under the Policies, and Claimant agrees to handle and address, at its sole cost and expense, any such claims of claimants against Claimant as if there had been no liquidation proceeding for Home and as if Claimant had no insurance coverage from Home by virtue of the Policies. In consideration of the Recommended Amount being allowed by the Liquidation Court as a Class II claim, Claimant 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 up to the amount actually paid by Home to Claimant pursuant to a distribution based on the Recommended Amount. The future obligations of Claimant 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 Claimant (including claims for defense and indemnity), by other insurers of Claimant, and by any individuals or entities asserting "direct action" claims arising out of or related to the Policies. The Liquidator shall promptly notify Claimant of any such claim, and

shall afford Claimant the opportunity to reasonably participate in the defense of such claims and the authority to settle such claims asserted outside the Home liquidation proceeding at its own expense, subject to the Liquidator's written consent which consent shall not be unreasonably withheld. Claimant shall cooperate with the Liquidator (including but not limited to the provision of affidavits or testimony) to eliminate claims against the Liquidator or Home by any individual or entity arising out of or relating to the Policies.

6. Mutual Release of Settling Carriers.

Claimant agrees to use reasonable commercial efforts to cause any future 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 on behalf of Home agree 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 of Claimant unless that insurance company asserts a claim against Home related to the Policies.

7. 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 or the Coverage Action, or any proceeds thereof, or to the claims, losses and expenses released herein, to any person or entity other than as already

approved by the Bankruptcy Court. Claimant shall not further 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.

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, other than the Bankruptcy Court approval order, shall be the Liquidation Court.

10. 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.

11. 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. The Parties expressly acknowledge that Lavin does not intend through this Settlement Agreement to confer any benefits on, create any rights for, or release any of its claims against any of Lavin's other insurers including Utica Mutual Insurance Company. The Liquidator represents and this Settlement Agreement is conditioned upon, that Home as defined above does not include any other insurance carrier including Utica Mutual Insurance Company which was or is a defendant in the Coverage Action and the Policies as defined above do not include insurance policies issued by any other insurance carrier which was or is a defendant in the Coverage Action including Utica Mutual Insurance Company.

12. 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.

13. Power and Authority to Execute.

Subject to the approval of the Bankruptcy Court and Liquidation Court as 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 other than the right to distributions under paragraph 2 (C) already approved by the Bankruptcy Court.

Said right to distributions referenced in the preceding sentence exists solely between Claimant and any assignee, as already approved by the Bankruptcy Court, and no obligation, liability or responsibility is conferred, or intended to be conferred, on the Liquidator as a consequence of Claimant's past agreement(s) to assign its right to distributions to any third party. The parties further agree that any and all distributions that become due and payable to Claimant under paragraph 2 (C) will be paid directly to Claimant who will, independently, satisfy any assignment-related obligation it has, or may have, to any assignee or other third party except for any assignment approved by the Liquidator pursuant to paragraph 7.

14. 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.

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 agreement 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 satisfaction of the Conditions, 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 claimant, to:

Raymond T. Reott
Reott Law Offices LLC
35 East Wacker Drive
Suite 650
Chicago, Illinois 60601
Fax: 312-782-4519

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

20. 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.

21. Commercial Accommodation.

The Parties agree and acknowledge that this Settlement Agreement is being entered into solely as a commercial accommodation, without regard to the respective positions of the Parties. As such, the Parties agree that this Settlement Agreement shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any Party other than with respect to the terms and conditions herein contained.

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.

R. LAVIN & SONS INC.

By: D. Abrams

David Abrams in his capacity as Disbursing Agent for the Post- Confirmation Creditors Committee in In Re: R. Lavin & Sons, Inc.

Date: September 19, 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: September 30, 2008