

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 FANSTEEL**

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 Fansteel Inc., for itself and its wholly-owned subsidiary Wellman Dynamics Corporation (collectively, "Fansteel") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. Home issued nine insurance policies to Fansteel Inc. or Wellman Dynamics Corporation for certain policy periods between January 27, 1965 and May 1, 1981. Upon Home's placement in liquidation, Fansteel filed nine proofs of claim in the Home liquidation regarding claims under the policies, including claims for coverage for environmental clean up costs and damages. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Settlement Agreement with Fansteel ("Bengelsdorf Aff.") ¶ 3.

2. The Liquidator and Fansteel have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters between them under the policies. (The Settlement Agreement does not address claims under any workers' compensation policies issued by Home to Fansteel. See Settlement Agreement, third Whereas clause.) The Settlement

Agreement is subject to approval by the Court. Settlement Agreement ¶ 1. Bengelsdorf Aff. ¶ 4.
A copy of the Settlement Agreement is attached hereto as Exhibit A.

3. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$7,500,000 in the name of Fansteel, Inc. 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 Fansteel 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 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 Fansteel arising from or related to the proofs of claim or the policies. Id. ¶¶ 3, 4. The Liquidator also agrees not to pursue certain claims respecting the underlying matters covered by the proofs of claim against other insurers of Fansteel 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. 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 Fansteel. Accordingly, Fansteel acknowledges in the Settlement Agreement that it is intended to resolve all matters between Fansteel and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Fansteel agrees to address, at its sole cost, the claims of claimants asserting claims against Fansteel as if Fansteel

had no insurance coverage from Home under the policies. Id. Fansteel agrees to indemnify the Liquidator and Home against claims arising from the policies up to the amounts actually distributed to Fansteel. Id. Bengelsdorf Aff. ¶ 7.

6. The denial of any third party claimants' proofs of claim without prejudice to their claims against Fansteel will not harm the third party claimants, who will continue to have their full claims against Fansteel. As noted above, Fansteel 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 Fansteel 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, Fansteel will continue to be fully responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 5. Bengelsdorf Aff. ¶ 8.

7. 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 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 liabilities of Fansteel. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$7,500,000

settlement amount in the name of Fansteel, Inc. 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 Straits Steel (May 3, 2009); Order Approving Settlement Agreement with R. Lavin & Sons Inc. (February 23, 2009); Order Approving Settlement Agreement with MidAmerican (August 19, 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.

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 Fansteel.

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 Fansteel's claim as a Class II claim in the amount of \$7,500,000; 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,
MICHAEL A. DELANEY
ATTORNEY GENERAL

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Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650



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NH Bar ID No. 16859
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Rackemann, Sawyer & Brewster
160 Federal Street
Boston, MA 02110
(617) 542-2300

March 1, 2010

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Fansteel, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 1st day of March, 2010, 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 19th day of February, 2010, by and between Fansteel Inc. for itself and its wholly-owned subsidiary Wellman Dynamics Corporation (hereinafter referred to collectively 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 Fansteel Inc. under which Fansteel Inc. is a named insured:

<u>Policy Number</u>	<u>Policy Period</u>
IDR8828853	04/01/68- 04/01/71
IDR8829798	04/01/71- 04/01/74
IDR8835195	04/01/74- 04/01/77
IDR857561	04/01/77- 04/01/80
IDR8765710	04/01/80- 05/01/81

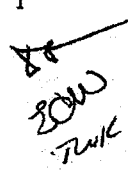
and Home issued the following policies to Wellman Dynamics Corporation under which Wellman Dynamics Corporation is a named insured:

<u>Policy Number</u>	<u>Policy Period</u>
HEC9543965	01/27/65- 01/27/68
HEC9558272	01/27/68- 01/27/71
HEC9919698	01/27/71 -01/27/74
HEC4495576	01/27/74 -01/27/77

which together 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 respecting claims for environmental clean up costs and damages, and Claimant has submitted proofs of claim in the Home liquidation estate (and none of the proofs of claim reference or otherwise include claims under any worker's compensation policies issued by Home to Claimant) that have been assigned the following proof of claim numbers:

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INSU133627
INSU151780
INSU272689
INSU275726
INSU473831
INSU272633
INSU272690
INSU40982
INSU45368

which together with any other proof of claim hereinbefore or hereinafter filed by Claimant in the Home liquidation estate with respect to the Policies 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. 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

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pursuant to RSA 402-C:45 that the Proofs of Claim be allowed in the aggregate amount of \$7,500,000 (the "Recommended Amount") in the name of Fansteel Inc., 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, 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. All such distributions to Claimant under this Settlement Agreement shall be made by distribution to Fansteel Inc.

3. Release by Claimant. 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, predecessors, and their 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, 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,

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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.

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 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 or the Policies, 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 or the Policies.

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 third party claimants against Claimant under the Policies, and Claimant agrees to address, at its sole cost and expense, any such claims of third-party 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;

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provided, however, that the obligation of Claimant to pay for defense (including costs, fees, attorneys' fees, and disbursements), indemnify and hold harmless the Liquidator and Home under this Section 5: (a) shall exclude all salaries of all the employees of the Liquidator and Home and all internal costs incurred by the Liquidator or Home; and (b) shall not exceed the aggregate amount actually distributed to Claimant hereunder. 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 claim that he contends might fall within the scope of this paragraph 5, and Claimant shall have no duty to pay for defense, indemnify or hold harmless prior to receipt of notice. The Liquidator shall have the right to choose counsel to defend any such claim. Claimant shall have the right to participate in the defense of any indemnifiable claim (at its own cost), and 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. The Liquidator represents that he has reviewed the proofs of claim submitted in the Home liquidation and that as of the date this Settlement Agreement is signed on his behalf, he is aware of no other unresolved proofs of claim that have been submitted specifically referencing the Policies other than the Proofs of Claim filed by Claimant.

6. Mutual Release of Settling Carriers. Claimant 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 with Claimant that includes a provision that is materially the same as this paragraph.

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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 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 hereunder 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 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.

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

Handwritten signature and initials:
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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 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.

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, agents, affiliates, attorneys, liquidators, receivers, administrators, 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 hereof. 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 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.

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.

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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:

Mark J. Steger, Partner
Holland & Knight LLP
131 South Dearborn Street
30th Floor
Chicago, Illinois 60603
Fax: 312-578-6666

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
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.

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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.

FANSTEEL INC.

By: [Signature]
Name: Earl F. White, CFO
Title: Chief Financial Officer
Date: February 19, 2010

WELLMAN DYNAMICS CORPORATION

By: [Signature]
Name: David A. Heitman
Title: President
Date: February 19, 2010

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

By: [Signature]
Name: Thomas W. Keenan
Title: Chief Claims Officer
Date: February 19, 2010

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[Signature]
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