

PPPC

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of  
The Home Insurance Company

MOTION FOR APPROVAL  
OF FIRST AMENDMENT TO SETTLEMENT AGREEMENT AND MUTUAL  
RELEASE BETWEEN LIQUIDATOR AND CLEAVERBROOKS, INC.  
AND THE COCA-COLA COMPANY

CleaverBrooks, Inc., formerly known as Aqua-Chem, Inc. ("CleaverBrooks") and The Coca-Cola Company ("Coca-Cola") (collectively "Claimants"), by their attorneys, Ransmeier & Spellman, P.C., move that the Court enter an order in the form submitted herewith approving the First Amendment to Settlement Agreement and Mutual Release ("Amendment") between CleaverBrooks, Coca-Cola and the Liquidator. In support of the motion, Claimants state as follows:

1. On April 23, 2007, the Court granted the motion of the Liquidator to approve a Settlement Agreement and Mutual Release with CleaverBrooks and Coca-Cola. Copies of the Order approving the Settlement Agreement, the Settlement Agreement, and the related Escrow Agreement are attached as Exhibit A.

2. Under the terms of the Settlement Agreement as approved by the Court, Claimants' proofs of claim were allowed in the aggregate amount of \$74,000,000.00 as a Class II claim under RSA 402-C:44. (Settlement Agreement ¶ 2 (A).) Distributions based on the allowance are to be made at the same intervals and at the same percentages as distributions to other Class II creditors of The Home Insurance Company ("Home"). (*Id.* ¶

2(C).) The distributions are to be made to an escrow account and disbursed by the escrow agent solely for the payment of defense and indemnity costs incurred in connection with asbestos claims against CleaverBrooks. (*Id.* ¶ 2(D).)

3. The Settlement Agreement fully resolved the Claimants' proofs of claim under and all matters relating to the Policies (as defined in the Settlement Agreement). (Settlement Agreement ¶ 2(B).) Under the terms of the Settlement Agreement, as approved by the Court, all third-party claimants' claims in the Home liquidation, which were filed by seven law firms on behalf of numerous persons asserting third-party asbestos claims against the Policies, were denied without prejudice to their claims against CleaverBrooks. The denial of the third-party claimants' proofs of claim without prejudice to their claims against CleaverBrooks did not harm the third-party claimants. Claimants agreed to address these claims as if Claimants had no insurance coverage under the Policies. Claimants also agreed 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. Even if they had not been denied, the third-party claimants' proofs of claim would release CleaverBrooks from those claims up to the limits of Home's policies, but only entitle the third-party claimants (assuming their claims would have been 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 Depart.*, 899 A. 2d 278, 282, 289 (N.H. 2006) (noting "the inherent uncertainty of any creditor's recovery in a liquidation").

4. Like any claimant with an approved Class II claim, Claimants face an inherent uncertainty with respect to the amount and timing of distributions on their Class II

claim in the Home liquidation. (See RSA 402-C:40, I; *Gonya v. Commissioner, New Hampshire Insurance Depart.*, 899 A. 2d 278, 282, 289 (N.H. 2006) (noting “the inherent uncertainty of any creditor’s recovery in a liquidation”). In order to alleviate that uncertainty, to generate immediate funds to be used solely for the payment of defense costs and indemnity costs incurred in asbestos claims against CleaverBrooks, and to facilitate settlement with other insurers of CleaverBrooks regarding payment of defense costs and indemnity costs for asbestos claims against CleaverBrooks, Claimants have assigned all claims and rights to receive any payments or distributions made on their Class II claim under the terms of the Settlement Agreement as approved by the Court, as more fully set forth in an Assignment Agreement dated August 12, 2010, as amended September 7, 2010, between and among Claimants and Assignee (“Assignment”). Copies of the Assignment and of the First Amendment to the Home Assignment Agreement (with confidential information redacted) are attached as Exhibit B. The Assignment allows Claimants to liquidate their Class II claim for current funds to be used to as set forth above.

5. In connection with the Assignment, the Liquidator and the Claimants have reached an agreement to amend the Settlement Agreement to provide that Assignee shall be entitled to directly receive and retain any all amounts due and payable as distributions pursuant to Paragraph 2 of the Settlement Agreement, subject to any setoff the Liquidator may have against Claimants (the “Amendment”). The Amendment further provides that the entire consideration to be paid by Assignee to Claimants under the terms of the Assignment shall be payable to and deposited into the escrow account established pursuant to the Escrow Agreement dated July 2007 (which was part of the original Settlement

Agreement), as amended September 21, 2010 and incorporated into the Amendment, copies of which are attached hereto as Exhibit C.

6. As was the case with the original Settlement Agreement, under the terms of the Amendment, Claimants will continue to be fully responsible for third-party claimants' claims against CleaverBrooks, and all consideration received by Claimants for the Assignment will be used solely for the payment of defense and indemnity costs of such claims. (Amendment ¶ 3). By spending the consideration received for the Assignment now on defense and indemnity costs for asbestos claims against CleaverBrooks, Claimants will be able to eliminate gaps in CleaverBrooks' insurance coverage created by Home's insolvency that otherwise would persist for an indefinite amount of time, and thereafter will be able to access additional excess insurance coverage from other solvent insurance companies, which will then be available to respond to asbestos claims.

7. As stated in the Amendment, the Liquidator wishes to cooperate with Claimants but takes no position regarding the merits of the Assignment. (Amendment, p. 2.)

8. Claimants believe the Amendment is fair and reasonable and in the best interests of Claimants, as policyholders of Home, as well as third-party claimants and the Liquidator.

WHEREFORE, Claimants respectfully request that this Court:

- A. Grant this motion;
- B. Enter an order in the form submitted herewith approving the Amendment and allowing distributions to be paid as directed in the Amendment; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

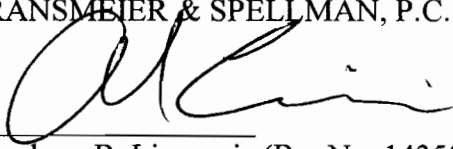
CleaverBrooks, Inc. and The Coca-Cola  
Company

By and through their Counsel

RANSMEIER & SPELLMAN, P.C.

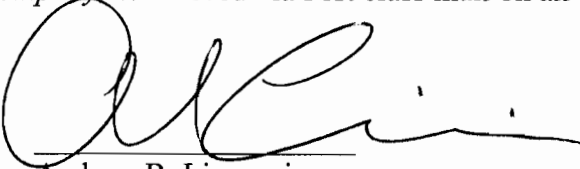
Dated September 30, 2010

By:

  
Andrew B. Livernois (Bar No. 14350)  
One Capitol Street  
P.O. Box 600  
Concord, NH 03302-0600  
603-228-0477

**Certificate of Service**

I hereby certify that a copy of the foregoing *Motion for Approval of First Amendment to Settlement Agreement and Mutual Release Between Liquidator and CleaverBrooks, Inc. and the Coca-Cola Company* was served via first class mail on all persons on the attached service lists.

  
Andrew B. Livernois