

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 AND
MUTUAL RELEASE WITH PNEUMO ABEX LLC AND PEPSI-COLA
METROPOLITAN BOTTLING COMPANY**

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 Pneumo Abex LLC (formerly known as Pneumo Abex Corporation) and Pepsi-Cola Metropolitan Bottling Company (formerly known as PepsiAmericas, Inc.) (collectively, "Claimants") and the Liquidator.¹ As reasons therefore, the Liquidator states as follows:

1. Home issued nine insurance policies under which Claimants assert entitlement to insurance coverage for various policy periods between August 1, 1962 and August 1, 1970. Upon Home's placement in liquidation, the Claimants filed six proofs of claim in the Home liquidation regarding claims under the Policies, including but not limited to claims for coverage for alleged asbestos-related bodily injury. Settlement Agreement, third Whereas clause. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Settlement Agreement with Pneumo Abex LLC and Pepsi-Cola Metropolitan Bottling Company ("Bengelsdorf Aff.") ¶ 3.

¹ Capitalized terms not otherwise defined in this motion have the meaning described in the Settlement Agreement.

2. The Liquidator and the Claimants have negotiated a Settlement Agreement reflecting a resolution of the Proofs of Claim. A copy of the Settlement Agreement is attached as Exhibit A hereto. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.

3. The Settlement Agreement provides that the Liquidator will recommend allowance of the Proofs of Claim in the aggregate amount of \$41,750,000 as a Class II priority claim of the Claimants under RSA 402-C:44. Settlement Agreement ¶ 2(A).² Allowance of this recommended amount as a Class II claim will fully and finally resolve the proofs of claim. 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). All distributions to Claimants, until notification to the Liquidator otherwise in writing by each of the Claimants, will be made into an escrow account on behalf of the Claimants and the escrow information shall be provided to the Liquidator. Id. ¶ 2(D). Bengelsdorf Aff. ¶ 5.

4. The Settlement Agreement is intended to resolve the proofs of claim. See Settlement Agreement ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and the Claimants arising from or related to the Proofs of Claim. Id. ¶¶ 5, 6. The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the Proofs of Claim against other insurers of the Claimants that agree not to pursue such claims against Home. Id. ¶ 7. The Claimants release claims against Home by insurers with whom they have previously settled and agree to release or prohibit the assertion of claims by insurers with whom they settle in the future. Id. Bengelsdorf Aff. ¶ 6.

²The parties agree that the recommended amount is a compromise of matters in dispute and does not reflect the view of any party as to the value of Claimants' claims should the matter be adjudicated. Settlement Agreement ¶ 4.

5. The Claimants are pursuing claims against Zurich-American Insurance Company and other companies in PepsiAmericas, Inc. et al. v. Zurich-American Insurance Co., et al., CGC 05-4421140 (San Francisco Superior Ct.), which is coordinated with other cases in the same court (the “Zurich Litigation”). Settlement Agreement fifth Whereas clause. The Liquidator acknowledges that he is aware of the Claimants’ pending claims in the Zurich Litigation and takes no position as to the claims and defenses in the Zurich Litigation. The Settlement Agreement is not intended to affect those claims. Id. ¶ 3. Bengelsdorf Aff. ¶ 7.

6. The Liquidator is not aware of any third party claimants who have asserted claims under the Policies. However, in resolving all matters relating to the Proofs of Claim, the Settlement Agreement contemplates denial of any third party claimants’ claims under the Policies in the Home liquidation without prejudice to their claims against the Claimants. Accordingly, the Claimants agree to address, at their sole cost, the claims of claimants asserting claims against the Claimants as if the Claimants had no insurance coverage from Home under the Policies. Settlement Agreement ¶ 8(A). The Claimants agree to indemnify the Liquidator and Home against claims arising from the Policies up to the amounts ultimately distributed or distributable to the Claimants. Id. ¶ 8(B). Bengelsdorf Aff. ¶ 8.

7. The denial of any third party claimants’ proofs of claim without prejudice to their claims against the Claimants will not harm the third party claimants, who will continue to have their full claims against the Claimants. As noted above, the Claimants have agreed to address these claims as if they had no insurance coverage from Home under the Policies. Settlement Agreement ¶ 8(A). Third party claimants’ proofs of claim against the insolvent Home, if not denied with this agreement, would release the Claimants from those claims up to the limits of the Policies but only entitle the third party claimants (assuming their claims were 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, the Claimants will continue to be responsible for any third party claimants’ claims against Claimants. Settlement Agreement ¶ 8(A). Bengelsdorf Aff. ¶ 9.

8. The Settlement Agreement reflects a compromise of the claims asserted in the Proofs of Claim. It is the result of negotiations involving the Claims Department, under the supervision of the Special Deputy Liquidator, which has extensive experience in assessing the exposure presented by asbestos-related bodily injury claims under Home’s insurance policies. The agreed recommended amount is based on careful evaluation and negotiation of coverage obligations under Home’s policies respecting the underlying liabilities of the Claimants. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$41,750,000 recommended amount as a Class II claim of the Claimants in accordance with RSA 402-C:45 and RSA 402-C:44. Bengelsdorf Aff. ¶ 10.

9. The Court has previously approved similar settlement agreements. See, e.g., Order Approving Settlement Agreement with Wisconsin Energy (March 18, 2010); Order Approving Settlement Agreement with Straits Steel (May 3, 2009); Order Approving Settlement Agreement with Georgia-Pacific (April 3, 2008); 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.

10. 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 policy coverage compromises and settlements in an insurer liquidation context. That analysis also applies to the proposed Settlement Agreement with the Claimants.

11. 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. ¶ 11.

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 the Claimants’ claim as a Class II claim in the aggregate amount of \$41,750,000; 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
J. Christopher Marshall
NH Bar ID No. 1619
christopher.marshall@doj.nh.gov
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650




J. David Leslie
NH Bar ID No. 16859
dleslie@rackemann.com
Eric A. Smith
NH Bar ID No. 16952
esmith@rackemann.com
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110
(617) 542-2300

August 16, 2011

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement and Mutual Release with Pneumo Abex LLC and Pepsi-Cola Metropolitan Bottling Company, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 16th day of August, 2011, by first class mail, postage prepaid to all persons on the attached service list.



J. David Leslie
NH Bar ID No. 16859

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

SERVICE LIST

Lisa Snow Wade, Esq.
Orr & Reno
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Gary S. Lee, Esq.
James J. DeCristofaro, Esq.
Kathleen E. Schaaf, Esq.
Morrison & Foerster
1290 Avenue of the Americas
New York, New York 10104-0050

Pieter Van Tol, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, New York 10022

Peter G. Callaghan, Esq.
Preti, Flaherty, Beliveau, Pachos
& Haley, PLLP
57 North Main Street
P.O. Box 1318
Concord, New Hampshire 03302-1318

George T. Campbell, III, Esq.
Robert A. Stein, Esq.
Robert A. Stein & Associates, PLLC
One Barberry Lane
P.O. Box 2159
Concord, New Hampshire 03302-2159

David M. Spector, Esq.
Dennis G. LaGory, Esq.
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606

Michael Cohen, Esq.
Cohen & Buckley, LLP
1301 York Road
Baltimore, Maryland 21093

David H. Simmons, Esq.
Mary Ann Etzler, Esq.
Daniel J. O'Malley, Esq.
deBeaubien, Knight, Simmons,
Mantzaris & Neal, LLP
332 North Magnolia Avenue
P.O. Box 87
Orlando, Florida 32801

Martin P. Honigberg, Esq.
Suloway & Hollis, P.L.L.C.
9 Capitol Street
P.O. Box 1256
Concord, New Hampshire 03302-1256

Richard Mancino, Esq.
Willkie Farr & Gallagher, LLP
787 Seventh Avenue
New York, New York 10019

Joseph G. Davis, Esq.
Willkie Farr & Gallagher, LLP
1875 K Street, N.W.
Washington, DC 20006

Albert P. Bedecarre, Esq.
Quinn Emanuel Urquhart Oliver & Hedges, LLP
50 California Street, 22nd Floor
San Francisco, California 94111

Jeffrey W. Moss, Esq.
Morgan Lewis & Bockius, LLP
225 Franklin Street
16th Floor
Boston, Massachusetts 02110

Gerald J. Petros, Esq.
Hinckley, Allen & Snyder LLP
50 Kennedy Plaza, Suite 1500
Providence, Rhode Island 02903

Christopher H.M. Carter, Esq.
Hinckley, Allen & Snyder LLP
11 South Main Street, Suite 400
Concord, New Hampshire 03301

Robert M. Horkoviceh
Robert Y. Chung
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020

Andrew B. Livernois
Ransmeier & Spellman, P.C.
One Capitol Street
P.O. Box 600
Concord, New Hampshire 03302-0600

John A. Hubbard
615 7th Avenue South
Great Falls, Montana 59405

Adebowale O. Osijo
2015 East Pontiac Way, Suite 209
Fresno, California 93726

Jim Darnell, Esq.
Jim Darnell, P.C.
310 N. Mesa Street, Suite 212
El Paso, Texas 79901

Edmond J. Ford, Esq.
Ford & Weaver, P.A.
10 Pleasant Street, Suite 400
Portsmouth, New Hampshire 03801

Paul W. Kalish, Esq.
Ellen M. Farrell, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

Harry L. Bowles
306 Big Hollow Lane
Houston, Texas 77042

Michael S. Olsan, Esq.
Christine G. Russell, Esq.
Brendan D. McQuiggan, Esq.
White and Williams, LLP
One Liberty Place, Suite 1800
Philadelphia, Pennsylvania 19103-7395

Kyle A. Forsyth, Esq.
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Washington, D.C. 20044-0875

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is made this 11 th day of August 2011, by and between Pneumo Abex LLC (formerly known as Pneumo Abex Corporation ("Pneumo Abex")) and Pepsi-Cola Metropolitan Bottling Company (formerly known as PepsiAmericas, Inc. ("PAS")) (collectively, the "Claimants"), 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 Claimants and the Liquidator are hereinafter referred to collectively as the "Parties").

WHEREAS, Home issued the following insurance policies under which Pneumo Abex is a named insured:

<u>Policy Number</u>	<u>Policy Period</u>
HEC 9543154	8/1/62-8/1/63
HEC 9543154	8/1/63-8/1/64
HEC 9543154	8/1/64-8/1/65
HEC 9544409	8/1/65-8/1/66
HEC 9544409	8/1/66-8/1/67
HEC 9544409	8/1/67-8/1/68
HEC 9646167	8/1/68-8/1/69
HEC 9646167	8/1/69-8/1/70
HEC 9646167	8/1/70-3/1/71

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

WHEREAS, Home was placed into liquidation effective June 11, 2003, by Order of the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court");

WHEREAS, Claimants seek payment from Home respecting claims against them, including but not limited to claims for alleged asbestos-related bodily injury ("Asbestos Claims"), and Claimants have submitted proofs of claim in the Home liquidation that have been assigned the following proof of claim numbers:

<u>Policy Number</u>	<u>Claim Number</u>
HEC 9543154	INSU702476
HEC 9544409	INSU702477
HEC 9646167	INSU702478
HEC 9543154	INSU703924
HEC 9646167	INSU703925
HEC 9544409	INSU703926

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

WHEREAS, Claimants have reached settlements regarding insurance coverage for Asbestos Claims with certain of their other insurers; and Claimants may in the future reach settlements regarding insurance coverage for Asbestos Claims with certain of their other insurers (all such past and future insurers are defined as the "Settling Insurers");

WHEREAS, the Claimants are currently pursuing claims against Zurich-American Insurance Company, individually and as successor to Zurich Insurance Company; Zurich American Insurance Company of Illinois, Steadfast Insurance Company, Zurich Insurance Company (Switzerland), Individually and as a Successor in Interest, Parent, and Alter Ego of Zurich Home Investments Limited formerly known as ZCI Investments Limited, Centre Reinsurance Limited (Barbados), Centre Reinsurance Limited (Bermuda), and Centre Reinsurance Holdings, Ltd., American Guarantee and Liability Insurance Co., American Zurich Insurance Company, and Orange Stone Reinsurance (Ireland), formerly known as Centre Reinsurance (Dublin), successor to Centre Reinsurance International (hereinafter the "Zurich Defendants") in the matter styled *Western Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al.*, case no. CGC-04-436181 (San Francisco Superior Ct.), which is coordinated for all current purposes with *Fuller-Austin Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al.*, Case Nos. CGC 04-431719 (San Francisco Superior Ct.), *PepsiAmericas, Inc. et al. v. Zurich-American Insurance Co., et al.*, CGC 05-442140 (San Francisco Superior Ct.), and *Pneumo Abex, LLC v. Zurich-American Insurance Co., et al.*, Case No. CGC 05-442745 (San Francisco Superior Ct.) (collectively, the "Zurich Litigation");

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) in the Home liquidation 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 upon 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 of this Settlement Agreement by all Parties.

2. Recommendation, Allowance and Classification of Claims.

A. Subject to all the terms of this Settlement Agreement, and with the agreement of Claimants, which by Claimants' 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 \$41,750,000 (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 and any and all claims of whatever nature Claimants have 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 were ever reached, with this Settlement Agreement then being inadmissible for any purpose in any dispute between the Parties.

C. When the Liquidation Court allows the Recommended Amount as a Class II claim (the "Class II Allowed Claim"), Claimants will become Class II creditors in the Home liquidation pursuant to N.H. RSA § 402-C:44, and Claimants 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.

D. Claimants shall establish an escrow account on behalf of the Claimants and the escrow information shall be provided to the Liquidator. Until such time as Claimants inform the Liquidator otherwise in a writing signed by each of the Claimants, any and all distributions on the allowed amount shall be made into this escrow account. Nothing in the allowance of the Recommended Amount and/or payment into the mutually agreed upon escrow shall be a determination of the Claimants rights as against each other or an acceptance by any Claimant that any other Claimant has any rights to the proceeds paid by the Liquidator.

3. Acknowledgement of Other Claims. The Liquidator acknowledges that he is aware of the Claimants' pending claims in the Zurich Litigation and takes no position as to those claims. This Settlement Agreement is not intended to affect those claims.

4. Agreement as to Recommendation and Allowance. As part of this Settlement Agreement, the Liquidator and the Claimants acknowledge and agree that the Recommended Amount is a compromise of matters in dispute and does not reflect the view of any Party as to the value of Claimants' claims should the matter be adjudicated.

5. Release by Claimants. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II claim, Claimants for themselves and on behalf of each of their 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 or the Policies, in law, admiralty or equity, which Claimants, their 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 or the Policies. Further, Claimants expressly waive and relinquish all rights and benefits they may have under Section 1542 of the Civil Code of the State of California, which reads as follows: "Section 1542. [Certain claims not affected by general release.] A General release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor," or any similar law. Such release does not extend to the Zurich Defendants.

6. 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 Claimants 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 the Liquidator, Home, their subsidiaries, affiliates, predecessors, successors and assigns, ever had, now has or hereafter may have against Claimants 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. Further, the Liquidator expressly waives and relinquishes all rights and benefits he may have under Section 1542 of the Civil Code of the State of California, which reads as follows: "Section 1542. [Certain claims not affected by general release.] A General release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor," or any similar law.

7. Additional Release. The Liquidator, in his capacity as such and on behalf of Home, releases any and all Settling Insurers with which Claimants have reached or in the future may reach settlements, from any alleged or potential claims or actions for contribution, subrogation, indemnity, reimbursement or recoupment of any kind that the Liquidator or Home has made or may or could make against any Settling Insurer with regard to insurance of Claimants provided that such Settling Insurers similarly release their claims against Home and the Liquidator with regard to insurance of Claimants. Claimants have in paragraph 5 above released claims against Home or the

Liquidator for contribution, subrogation, indemnity, reimbursement or recoupment of any kind by Settling Insurers with which Claimants have reached settlements with respect to insurance of Claimants. In the event that, notwithstanding these releases, a Settling Insurer asserts a claim against Home or the Liquidator for contribution, subrogation, indemnity, reimbursement or recoupment of any kind with respect to insurance of Claimants from Home, Claimants' obligations are governed by paragraph 8 below. Claimants shall obtain the right to release or prohibit the assertion of claims for contribution, subrogation, indemnity, reimbursement or recoupment as against Home or the Liquidator with respect to insurance for Claimants in any future settlements with Settling Insurers. Claimants shall release or prohibit the assertion of claims against Home or the Liquidator for contribution, subrogation, indemnity, reimbursement or recoupment of any kind by future Settling Insurers with respect to insurance of Claimants.

8. Resolution of Matters and Indemnification.

A. (1) In consideration of the Recommended Amount being allowed by the Liquidation Court as a Class II claim, Claimants agree to address, at their sole cost and expense, any Asbestos Claims or other claims against Claimants as if there had been no liquidation proceeding for Home and as if Claimants had no insurance coverage from Home by virtue of the Policies. Claimants further agree to indemnify and hold Home and the Liquidator harmless from and against any and all claims, losses, liabilities, debts, damages, costs or expenses arising from or related to the Policies. The obligations of Claimants under this subparagraph A shall extend to and include (by way of example and not limitation) any claims made arising out of or relating to the Policies (including claims for defense, indemnity, contribution, reimbursement, set-off, indemnity, subrogation, attorney's fees or costs) against Home or the Liquidator by insurers of Claimants or by any individuals or entities asserting "direct action" claims.

(2) The Liquidator shall assert all defenses reasonably available to the Liquidator to such claims against the Liquidator or Home, including defenses under the Order of Liquidation and the New Hampshire Insurers Rehabilitation and Liquidation Act. The Liquidator shall promptly notify Claimants of any such claim, shall keep Claimants informed of material developments regarding such claims, and shall afford Claimants the opportunity to reasonably participate in the defense of such claims. Claimants shall cooperate with and support the Liquidator (including but not limited to the provision of affidavits or testimony) to eliminate claims against Home or the Liquidator by any insurer, individual or entity arising out of or relating to the Policies.

B. Notwithstanding any other provision of this Settlement Agreement, the amount that Claimants will pay for defense and indemnity obligations under this paragraph 8 shall be limited as follows: For indemnifiable claims brought against Home or the Liquidator under subparagraph A above, Claimants' indemnity obligations, in the aggregate, shall not exceed the amount of cash ultimately distributed or distributable to Claimants pursuant to this Settlement Agreement.

9. Dismissals. Within ten days of the Effective Date, Claimants shall (a) dismiss or discontinue, with prejudice, any pending (active or stayed) proceedings, if any, against Home and the Liquidator.

10. No Assignment. Claimants warrant and agree that they have not assigned, conveyed, or otherwise transferred any claims, demands, causes of action, rights, or obligations related in any way to the Proofs of Claim or the Policies, or any proceeds thereof, or to the claims, losses and expenses released herein, to any person or entity. Claimants agree that they shall not assign, convey, or otherwise transfer any claims, demands, causes of action, rights, or obligations related in any way to the Proofs of Claim or the Policies, or any proceeds thereof, or to the claims, losses and expenses released herein, to any person or entity. Claimants shall not assign, convey or otherwise transfer this Settlement Agreement or any rights and obligations thereunder without the written consent of the Liquidator, which consent shall not be unreasonably withheld.

11. 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.

12. 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. Nothing in this paragraph shall be construed as an admission, by either Party, as to the law governing the construction, interpretation or application of the Policies.

13. 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.

14. No Third Party Rights. This Settlement Agreement is entered into solely for the benefit of the Liquidator, Home and Claimants and is not intended to, and does not give or create any rights to or in any person or entity other than the Parties.

15. Counterparts. This Settlement Agreement may be executed in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail shall have the same force and effect as an original signature.

16. 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.

17. 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, liquidator's, receivers, administrators, agents, representatives, successors and assigns.

18. Entire Agreement. This Settlement Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter thereof. This Settlement Agreement supersedes all prior agreements and understandings, whether written or oral, concerning such matters.

19. Survival of Warranties and Representations. The warranties and representations made herein shall survive the execution of this Settlement Agreement.

20. 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.

21. 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.

22. 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 Claimants, to:

Pneumo Abex LLC:

President, Pneumo Abex LLC, 604 Spring Hill Drive, Suite 110, Spring, Texas 77386; and Keith H. Odenweller, Integra Management Company, LLC, P.O. Box 1539, Spring, Texas 77383, Telephone (281) 298-3191; kodenweller@integrangmt.com

Pepsi-Cola Metropolitan Bottling Co., Inc.

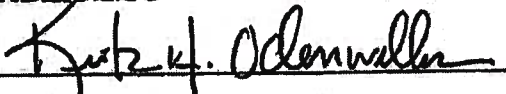
Pepsi-Cola Metropolitan Bottling Co., Inc., c/o PepsiCo, Inc., Legal Department
Attn: General Counsel, 700 Anderson Hill Road, Purchase, New York 10577; and Daniel E. Chefitz, Morgan Lewis & Bockius LLP, 1111 Pennsylvania Avenue, NW, Washington, DC 20004, Fax No.202 739-3001

If to the Liquidator, to:

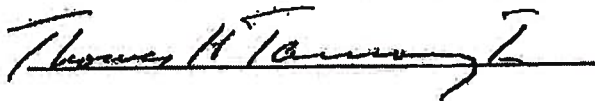
Thomas W. Kober, Chief Claims Officer The Home Insurance Company in Liquidation, 61 Broadway, New York, New York 10006-2504 Fax: 212-299-3824 and J. Christopher Marshall, Civil Bureau New Hampshire Department of Justice, 33 Capitol Street Concord, New Hampshire 03301-6397 Fax: 603-271-2110 and J. David Leslie, Rackemann, Sawyer & Brewster P.C. 160 Federal Street, Boston, MA 02110-1700 Fax No.: 617-542-7437.

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.

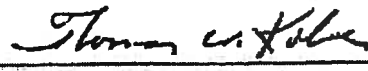
PNEUMO ABEX LLC

By: 
Name: Keith H. Odenweller
Title: Agent for Pneumo Abex LLC
Date: August 11, 2011

PEPSI-COLA METROPOLITAN BOTTLING COMPANY, INC.

By: 
Name: Thomas H. Tamoney, Jr.
Title: Vice President
Date: June 16, 2011

LIQUIDATOR (AS DEFINED HEREIN)

By: 
Name: Thomas W. Kober
Title: Chief Claims Officer
Date: June 22, 2011