

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 HOPEMAN**

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 Hopeman Brothers, Inc. ("Hopeman") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. The Settlement Agreement was negotiated under the supervision of the Special Deputy Liquidator. Affidavit of Peter A. Bengelsdorf in Support of Motion for Approval of Settlement Agreement with Hopeman Brothers ("Bengelsdorf Aff.") ¶ 2. A copy of the Settlement Agreement is attached hereto as Exhibit A. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1. Bengelsdorf Aff. ¶ 4.

2. Home issued seven insurance policies to Hopeman for policy periods between March 14, 1971 and January 1, 1985. Settlement Agreement, first Whereas clause. After Home's placement in liquidation, Hopeman filed a proof of claim in the Home liquidation regarding asbestos bodily injury claims under the policies. Settlement Agreement, third Whereas clause. Bengelsdorf Aff. ¶ 3.

3. The Settlement Agreement provides that the Liquidator will recommend allowance of the proof of claim with respect to the settled claims in the aggregate amount of

\$15,000,000 as a Class II priority claim of Hopeman under RSA 402-C:44. Settlement Agreement ¶ 2(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve the proof of claim and all claims Hopeman 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, except that Hopeman will not receive the initial distribution. Id. ¶ 2(C). This is because Hopeman's proof of claim is an unexcused late filing under RSA 402-C:37, III. Bengelsdorf Aff. ¶ 5.

4. The Settlement Agreement is intended to resolve the proof 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 among the Liquidator, Home and Hopeman arising from or related to the proof of claim or the policies. Id. ¶¶ 3, 4. The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the proof of claim against other insurers of Hopeman 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 who have asserted claims under the policies.¹ However, in resolving all matters relating to the proof 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 Hopeman. Accordingly, Hopeman acknowledges in the Settlement Agreement that it is intended to resolve all matters between Hopeman and the Liquidator/Home relating to the proof of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Hopeman agrees to address, at its sole cost, the claims of claimants asserting claims against Hopeman as if

¹ Certain of Hopeman's insurers have submitted contribution claims in respect of the policies. Unlike third party claimants' claims, a contribution claim is independent of the insured's claims (although derived from the same underlying circumstances), and it will be determined under applicable law in the liquidation proceeding.

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

6. The denial of any third party claimants' proofs of claim without prejudice to their claims against Hopeman will not harm the third party claimants, who will continue to have their claims against Hopeman. As noted above, Hopeman 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 Hopeman 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 (inclusive of the pending 15% interim distribution) in the future 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, Hopeman will continue to be 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 the Claims Department, under the supervision of the Special Deputy Liquidator, which has extensive experience in assessing the exposure presented by claimants asserting asbestos bodily injury 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 Hopeman. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of

the \$15,000,000 settlement amount as an unexcused late-filed Class II claim of Hopeman in accordance with RSA 402-C:45, RSA 402-C:44, and RSA 402-C:37, III. Bengelsdorf Aff. ¶ 10.

8. The Court has previously approved similar settlement agreements. See Order Approving Settlement Agreement with Washington Gas (July 15, 2013) (involving unexcused late-filed claims); Order Approving Settlement Agreement with Wisconsin Energy (March 18, 2010); Order Approving Settlement Agreement with Straits Steel (May 3, 2009); 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 policy coverage compromises and settlements in an insurer liquidation context. That analysis also applies to the proposed Settlement Agreement with Hopeman.

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. ¶ 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 Hopeman's claim as an unexcused late-filed Class II claim in accordance with RSA 402-C:37, III, in the aggregate amount of \$15,000,000; and
- C. Grant such other and further relief as justice may require.

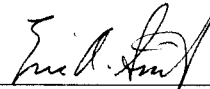
Respectfully submitted,

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

By his attorneys,

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160 Federal Street
Boston, MA 02110
(617) 542-2300

October 29, 2013

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Hopeman Brothers, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 29th day of October, 2013, by first class mail, postage prepaid to all persons on the attached service list.

A handwritten signature in black ink, appearing to read "Eric A. Smith", is written over a horizontal line.

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 ("Settlement Agreement") is made as of this 23rd day of October 2013 by and between Hopeman Brothers, Inc. ("Claimant"), on the one hand, and Roger A. Sevigny, Insurance Commissioner 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 insurance policies to Claimant under which Claimant is the Named Insured:

<u>Policy Number</u>	<u>Policy Period</u>
HEC9793669	3/14/71-3/14/74
HEC4495647	3/28/74-3/14/77
HEC9006897	10/30/75-3/14/77
HEC9530969	3/14/77-1/1/78
HEC9530970	3/14/77-1/1/78
HEC9903629	1/1/83-1/1/84
HXL1574411	1/1/84-1/1/85

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

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

WHEREAS, Claimant has submitted claims in the Home liquidation estate regarding claims against it, including but not limited to claims for damages for asbestos bodily injury, that have been assigned the following proof of claim number

INSU714537

which, together with any other proofs of claim hereinbefore or hereinafter filed by Claimants in the Home liquidation estate, are hereinafter defined collectively as the "Proof 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 Proof of Claim and all rights and obligations with respect to the Policies;

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 and in the event that 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 at his expense for approval of this Settlement Agreement promptly following execution by both 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 N.H. RSA 402-C:45 that the Proofs of Claim be allowed in the amount of \$15,000,000 (the "Recommended Amount") as a Class II priority claim under N.H. RSA 402-C:44. The Liquidator shall

seek allowance of the Recommended Amount as a Class II priority 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 Proof 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 thereafter 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, Claimants 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 save for the initial distribution of 15%, which will be withheld by the Liquidator as the Proof of Claim was an unexcused late filed claim pursuant to N.H. RSA 402-C:37, III.

3. 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, Claimant for itself and on behalf of each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, irrevocably and unconditionally releases and discharges the Liquidator and Home and each of their respective officers, directors, employees,

agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns (including any trustee or other statutory successor), 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 Proof of Claim or the Policies, in law, admiralty, or equity, which Claimant, or its subsidiaries, affiliates, predecessors, successors, and assigns, ever had, now have, or hereafter may have against the Liquidator or Home or their respective 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 Proof 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 respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, irrevocably and unconditionally releases and discharges Claimant and each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns (including any trustee or other statutory successor), 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 Proof 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 or 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 Proof 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 Claimant ever had, now has or hereafter may have in the Policies and the Proof 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, Claimants agree 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; provided, however, that the obligation of Claimant to pay for the defense (including costs, fees, attorney fees, and disbursements) of, indemnify and hold harmless the Liquidator and Home under this paragraph 5: (a) shall exclude all salaries of all of the Liquidator and Home's employees and all internal costs incurred by the Liquidator or Home, and (b) shall not exceed the aggregate amount ultimately distributed or distributable 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), or by other insurers of Claimant, or 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 he contends

might fall within the scope of this paragraph 5, and Claimant shall have no duty to pay defense costs (including costs, fees, attorney's fees, and disbursements), indemnify or hold harmless prior to receipt of notice from the Liquidator. 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 fully in the defense of any such claim. Claimant and the Liquidator shall cooperate with each other (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 proofs of claim that have been submitted specifically referencing the Policies.

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 Proof 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 the underlying matters covered by the Proofs of Claim. The Liquidator agrees to waive, relinquish and release any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation, or recoupment, as to the underlying matters covered by the Proof 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.

7. No Assignments. Claimant warrants and represents 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 the Proof of Claim, or the claims,

losses and expenses released herein, to any person or entity. Claimant shall not assign or otherwise transfer this Settlement Agreement or any rights or obligations thereunder without the written consent of the Liquidator, which consent shall not be unreasonably withheld.

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. Claimant acknowledges it is aware of the requirements of the Medicare Secondary Payer Act and the Medicare, Medicaid and SCHIP Extension Act of 2007, including provisions concerning Medicare set-asides and/or reporting to the Centers for Medicare and Medicaid Services ("CMS") regarding certain Medicare-eligible, or potentially eligible, claimants who enter into settlement agreements that may allow for recovery of Medicare covered case-related services. Claimant acknowledges that it may be obligated, and otherwise agrees, to provide data, if and when required or requested, for CMS or the Liquidator regarding claimants who will share in distributions from Claimant's assets that include a portion of the Recommended Amount.

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 Proof 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 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, 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 thereof. 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.

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:

Ron Van Epps
The Claro Group
321 N. Clark Street
Suite 1200
Chicago, IL 60654
Fax: 312-554-8085

and

David M. Lascell, Esq.
Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, NY 14604-2711

and

Jeffrey M. Johnson
Dickstein Shapiro LLP
1825 Eye Street, NW
Washington, DC 20006-5403
Fax: 202-420-2201

If to the Liquidator, to:

Thomas W. Kober, Chief Claims Officer
The Home Insurance Company in Liquidation
61 Broadway 6th Floor
New York, New York 10006
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 the remaining provisions of this Settlement Agreement shall remain valid and enforceable.

However, in the event of such invalidity, unenforceability, or illegality, the Parties shall negotiate in good faith to amend this Settlement Agreement through the insertion of additional provisions which are valid, enforceable, and legal and which reflect, to the extent possible, the purposes contained in the invalid, unenforceable, or illegal provision.

WHEREFORE, the Parties have caused this Settlement Agreement to be executed on their respective behalves by their duly authorized representatives.

HOPEMAN BROTHERS, INC.

By: David M. Lasell
Name: DAVID M. LASSELL
Title: CHAIRMAN
Date: October 23, 2013

**ROGER A. SEVIGNY, INSURANCE
COMMISSIONER 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: October 23, 2013