

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 SWAN**

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 Swan Transportation Company ("Company") and the Swan Asbestos and Silica Settlement Trust ("Trust") (collectively, "Swan") 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 Swan ("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 two insurance policies to Tyler Corporation under which Swan Transportation Company is a named insured for policy periods between January 1, 1994 and February 1, 1995. Settlement Agreement, first Whereas clause. Upon Home's placement in liquidation, Swan filed two proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for silica and mixed dust claims. See Settlement Agreement, third Whereas clause. Bengelsdorf Aff. ¶ 3.

3. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$20,000,000 as a Class II priority claim of Swan 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 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. All distributions to Swan will be made to the Swan Asbestos and Silica Settlement Trust. Id. ¶ 2(C). Bengelsdorf Aff. ¶ 5.

4. The Settlement Agreement is intended to resolve the proofs of claim. See Settlement Agreement, fifth Whereas clause, ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Swan arising from or related to the proofs of claim. Id. ¶¶ 4, 5. The Liquidator also agrees not to pursue claims against Swan's other insurers that agree not to pursue such claims against Home. Id. ¶ 7. Swan agrees to use reasonable efforts to obtain such agreements in connection with settlements with other insurers and to reduce any judgment it obtains against other insurers to extinguish any liability of Home for a contribution claim by that insurer. Id. ¶¶ 7, 8. Bengelsdorf Aff. ¶ 6.

5. 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 in the Home liquidation without prejudice to their claims against Swan. Accordingly, Swan agrees to address, at its sole cost, the claims of claimants against Swan as if Swan had no insurance coverage from Home under the policies. Swan also agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to the policies, including asserted rights of third party claimants, up to the amounts actually received by Swan under the Settlement Agreement. Settlement Agreement ¶ 6. Bengelsdorf Aff. ¶ 7.

6. The denial of any third party claimants' proofs of claim without prejudice to their claims against Swan will not harm the third party claimants, who will continue to have their claims against Swan, although those claims can only be paid in accordance with the provisions of the Trust documents and the Company's bankruptcy plan.¹ As noted above, Swan has agreed to address these claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 6. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Swan 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 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, Swan will continue to be responsible for any third party claimants' claims against it in accordance with the terms of the Trust and the provisions of the Company's bankruptcy plan. See Settlement Agreement ¶ 6. Bengelsdorf Aff. ¶ 8.

7. The Settlement Agreement differs from most other settlement agreements previously approved by the Court, although it is similar to the settlement agreement with Fuller-Austin approved by the Court on December 20, 2012. While Swan and the Liquidator release each other from any claims arising from or related to the proofs of claim, the Settlement

¹ Swan Transportation Company made a bankruptcy filing in 2001 (In re Swan Transportation Company, Chapter 11 Case No. 01-11690 (JKF) (Bankr. D. Del.), and it is the subject of a plan of reorganization that established the Trust. See Settlement Agreement ¶ 9. Under the plan, asbestos, silica and mixed dust claims against the Company were assumed by the Trust, which is to resolve and pay such claims. The plan includes an injunction which channels tort claims to the Trust. The plan also includes a channeling injunction specifically protecting Settling Insurers. The bankruptcy case is now closed. In the event that the bankruptcy case is reopened, the Trust will seek to designate the Liquidator and Home as protected parties under that injunction. Settlement Agreement ¶ 9.

Agreement does not resolve all matters arising from or related to the Home insurance policies. Similar to Fuller-Austin, Swan is pursuing claims against Zurich-American Insurance Company and others in Fuller-Austin Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al. in San Francisco Superior Court, which is coordinated with other cases in the same court (the “Zurich Litigation”). Settlement Agreement, fourth Whereas clause. The Liquidator acknowledges that he is aware of Swan’s 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 have any effect on the Zurich Litigation. Id. ¶ 3. Since the Settlement Agreement does not resolve all matters under the Home policies, it specifically addresses claims against insurance guaranty associations. Id., fifth Whereas clause, ¶ 4. 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 bodily injury claims under Home’s insurance policies. The agreed recommended settlement amount is based on careful evaluation and negotiation of coverage obligations under Home’s policies respecting the underlying liabilities of Swan. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$20,000,000 recommended amount as a Class II claim of Swan 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 Order Approving Settlement Agreement with Fuller-Austin (December 20, 2012); see also, 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 Swan.

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 Swan's claim as a Class II claim in the aggregate amount of \$20,000,000; and
- C. Grant such other and further relief as justice may require.

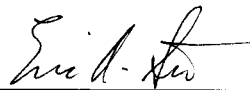
Respectfully submitted,

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

By his attorneys,

JOSEPH A. FOSTER
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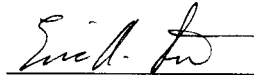


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October 1, 2013

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Swan, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 1st day of October, 2013, 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

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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 25th day of September 2013, by and between Swan Transportation Company and the Swan Asbestos and Silica Settlement Trust (collectively, “Claimants”), 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 Claimants and the Liquidator are hereinafter referred to collectively as the “Parties”).

WHEREAS, Home issued insurance policies to Tyler Corporation under which Swan Transportation Company is a named insured:

<u>Policy Number</u>	<u>Policy Period</u>
HXLF866107	1/1/94-1/1/95
HXLC11716	1/1/95-1/1/96 (Cancelled 2/1/95)

which together with all other insurance policies Home may have issued to Claimants or Tyler Corporation are defined collectively 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, Claimants have submitted claims in the Home liquidation that have been assigned the following proof of claim numbers:

INSU701572
INSU701573

which together with any other proofs of claim hereinbefore or hereinafter filed by Claimants in the Home liquidation are defined collectively as the “Proofs of Claim”;

WHEREAS, 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 *Fuller-Austin Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al.*, Case No. CGC 04-431719 (San Francisco Superior Ct.), which is coordinated for all current purposes with *Western Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al.*, Case No. CGC-04-436181 (San Francisco Superior Ct.), *PepsiAmericas, Inc. et al. v. Zurich-American Insurance Co., et al.*, Case No. 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, including any claims that could be asserted solely with respect to Home against any insurance guaranty association or fund established by law to provide for payment of certain covered claims in case of the insolvency of an insurer (“Insurance Guaranty Associations”); 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 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 for approval of this Settlement Agreement promptly following execution by the 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 N.H. RSA 402-C:45 that the Proofs of Claim be allowed in the amount of \$20,000,000 (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 Proofs of Claim. 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

If 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. All distributions to Claimants shall be made to the Swan Asbestos and Silica Settlement Trust.

3. Acknowledgment 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. 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 their respective officers, directors, trustees, 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 respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, and any and all Insurance Guaranty Associations 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, in law, admiralty, or equity, which Claimants, or their 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, or any Insurance Guaranty Association 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. Such release (i) does not extend to the Zurich Defendants and (ii) extends to Insurance Guaranty Associations only with respect to any claim under the Policies.

5. 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, trustees, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns, irrevocably and unconditionally releases and discharges Claimants and their respective 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, 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 Claimants 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 Proofs of Claim.

6. Resolution of Matters and Indemnification. 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 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 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 and such indemnification shall be capped at the total amount actually received by Claimants in relation to the Recommended Amount as allowed by the Liquidation Court. The obligations of Claimants under this paragraph shall extend to and include (by way of example and not limitation) any claims arising out of or relating to the Policies (including claims for defense, indemnity, contribution, reimbursement, set-off, subrogation, attorney's fees or costs) against the Liquidator or Home by vendors, or by other insurers of Claimants, or by any individuals or entities asserting "direct action" claims. The Liquidator shall promptly notify Claimants of any such claim, and shall afford Claimants the opportunity to reasonably participate in the defense of such claims. The Liquidator shall assert all defenses to such claims reasonably available to the Liquidator, including defenses under the Order of Liquidation or the New Hampshire Insurers Rehabilitation and Liquidation Act. Claimants shall cooperate with and support the Liquidator (including but not limited to the provision of affidavits or testimony) to defend against and resolve such claims.

7. Mutual Release of Settling Carriers. Claimants agree to use reasonable commercial efforts to cause any settlement agreement concerning insurance coverage that it enters into with any other insurance company after the Effective Date to include a waiver or release by that other insurance company of any claim, whether for contribution, apportionment, indemnification, reimbursement, subrogation, equitable subrogation, allocation, recoupment, or otherwise ("Contribution Claim"), that such other insurance company may have against Home regarding Home's coverage obligations involving Claimants. Any such insurer that enters into a settlement agreement with Claimants that contains such a waiver or release is referred to hereinafter as an "Other Settling Insurer." The Liquidator, on his own behalf and on behalf of

Home, hereby waives, relinquishes and releases any Contribution Claim that the Liquidator may have against an Other Settling Insurer's coverage obligations involving Claimants.

8. Judgment Reduction. In the event that Claimants obtain a judgment against any insurer, Claimants shall reduce or return the amount of any judgment, including any associated interest or costs, to which Claimants would be entitled in connection with any cause of action against any such insurer to the extent necessary to extinguish any liability of the Liquidator and Home for any judgment for a Contribution Claim by such insurer against the Liquidator and Home.

9. Bankruptcy Court Injunction. In the event that, at any point in the future, the Trust reopens the Swan bankruptcy case (*In Re: Swan Transportation Company, Debtor*, Case No. 01-11690 (JFK) for any reason, the Trust will seek, at that time, to designate the Liquidator and Home as protected parties under the channeling injunction pursuant to the Plan (the "Channeling Injunction"). The Trust will incur the expenses associated with filing papers with the bankruptcy court and/or district court seeking such a designation for Home and the Liquidator. Upon any such reopening of the Swan bankruptcy case, however, the parties agree to meet and confer to discuss the motion and to agree on an equitable allocation between the Trust and the Liquidator and Home regarding other expenses associated with seeking protection of the Channeling Injunction for Home and the Liquidator, such as the cost of any court-ordered notice and any trustee fees that would not be incurred in the absence of the Trust's efforts to designate Home and the Liquidator as protected parties. Failure to obtain such protection shall not affect the Parties' obligations hereunder.

10. No Assignments. Claimants warrant and represent that they have 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 Proofs of Claim, or the claims,

losses and expenses released herein, to any person or entity. Claimants 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.

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. If Claimants become legally obligated under the Medicare Secondary Payer Act and the Medicare, Medicaid and SCHIP Extension Act of 2007 (the "Acts"), Claimants agree to provide claims data, if and when required or requested, to the Centers for Medicare and Medicaid Services. Claimants also agree to provide claims data to the Liquidator, if and when requested, in the event that the Liquidator becomes legally obligated under the Acts in connection with any funds distributed pursuant to this Agreement. The Parties acknowledge that Claimants do not believe they have a reporting obligation in connection with any funds distributed pursuant to this Agreement and that the Liquidator does not believe that he has such a reporting obligation.

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.

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 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.

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, agents, attorneys, liquidators, receivers, administrators, 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:

W. D. Hilton, Jr.
Swan Asbestos and Silica Settlement Trust
2716 Lee Street, Suite 500
Greenville, Texas 75401
Fax: 903-453-2169

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23. 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.

SWAN TRANSPORTATION COMPANY

By: W.D. Hilton, Jr.

Name: W.D. Hilton, Jr.

Title: President

Date: September 24, 2013

**SWAN ASBESTOS AND SILICA
SETTLEMENT TRUST**

By: W.D. Hilton, Jr.

Name: W.D. Hilton, Jr.

Title: Managing Trustee

Date: September 24, 2013

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

By: _____

Name: _____

Title: _____

Date: September __, 2013

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

SWAN TRANSPORTATION COMPANY

By: _____

Name: W.D. Hilton, Jr.

Title: President

Date: September , 2013 _____

**SWAN ASBESTOS AND SILICA
SETTLEMENT TRUST**

By: _____

Name: W.D. Hilton, Jr.

Title: Managing Trustee

Date: September , 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: September 25, 2013