

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**

**MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT WITH CHRPP**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), hereby moves that the Court enter an order in the form submitted herewith approving a Confidential Settlement Agreement and Release (“Settlement Agreement”) between the Liquidator and the Chicago Hospital Risk Pooling Program (“CHRPP”). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Settlement Agreement between the Liquidator and CHRPP. A redacted copy of the Settlement Agreement (with economic terms removed) is attached as Exhibit A. A complete copy of the Settlement Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Settlement Agreement with CHRPP (“Bengelsdorf Confidential Affidavit”) submitted herewith.

2. The Settlement Agreement was negotiated under the supervision of the Special Deputy Liquidator. It is subject to approval by the Court. Settlement Agreement ¶¶ 2, 5. Bengelsdorf Confidential Affidavit ¶ 2.

3. In 2007, the Liquidator filed suit against CHRPP to recover an amount Home paid in early 2003 to resolve a medical malpractice claim brought against a member hospital of CHRPP. See RSA 402-C:25, XII. CHRPP, a risk pooling trust comprised of Chicago area not-for-profit hospitals, provided the first layer of insurance and claims administration for the member hospital. The Liquidator alleged that CHRPP had not appropriately handled the malpractice claim so that a settlement within the layer was not achieved. Bengelsdorf Confidential Affidavit ¶ 3.

4. CHRPP filed multiple motions seeking dismissal of the Liquidator's claim, but following lengthy proceedings, including appellate proceedings, they were denied. After discovery was completed and a trial date set for May 14, 2014, CHRPP filed another summary judgment motion seeking to dismiss the Liquidator's claims. Bengelsdorf Confidential Affidavit ¶¶ 4, 6.

5. The parties agreed to mediate the matter before a senior Chicago trial attorney with eighteen years' experience as a mediator. A day-long mediation session was held on April 17, 2014 in Chicago. Senior members of Home's Claims Department attended the mediation, and the Special Deputy Liquidator was available by telephone. Bengelsdorf Confidential Affidavit ¶ 7.

6. After a day-long mediation, a settlement was reached under which CHRPP agreed to pay Home a sum certain to resolve the lawsuit. The Settlement Agreement requires payment of that sum to the Liquidator and his trial counsel within 14 days of the approval by this Court. Settlement Agreement ¶ 3. It also contains mutual releases. *Id.* ¶ 4. Bengelsdorf Confidential Affidavit ¶ 8.

7. At a scheduled status conference before the trial court hearing the lawsuit on May 5, 2014, the parties reported that the matter had settled subject to approval of this Court. The Liquidator's counsel requested that the matter be continued pending the Liquidation Court's ruling. The trial court denied that request and dismissed the case without prejudice. It directed the parties to return with a with prejudice dismissal by the trial date (May 14, 2014) or it would proceed to dismiss the case with prejudice. Bengelsdorf Confidential Affidavit ¶ 9.

8. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Settlement Agreement. Bengelsdorf Confidential Affidavit ¶¶ 5-11.

9. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and other creditors of Home. The Agreement resolves a disputed lawsuit and converts the Liquidator's claim into immediate cash. See Bengelsdorf Confidential Aff. ¶ 11.

10. The Liquidator accordingly recommends approval of the Settlement Agreement. Bengelsdorf Confidential Affidavit ¶ 12.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Settlement Agreement with CHRPP;
- B. Enter an Order in the form submitted herewith approving the Settlement Agreement; 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, AS LIQUIDATOR
OF THE HOME INSURANCE
COMPANY,

By his attorneys,

JOSEPH A. FOSTER
ATTORNEY GENERAL

J. Christopher Marshall
NH Bar ID No. 1619
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
Eric A. Smith
NH Bar ID No. 16952
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110
(617) 542-2300

May 8, 2014

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Settlement Agreement with CHRPP and the Proposed Order Approving Settlement Agreement with CHRPP were sent, this 8th day of May, 2014, by first class mail, postage prepaid to all persons on the attached service list. The Confidential Affidavit being filed under seal was not so served.



Eric A. Smith
NH Bar ID No. 16952

THE STATE OF NEW HAMPSHIRE

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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

Robert A. Stein, Esq.
The Stein Law Firm, 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.
Sulloway & 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 Urguhart 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. Horkovich, Esq.
Robert Y. Chung, Esq.
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020

Andrew B. Livernois, Esq.
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

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

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

Gregory T. LoCasale, 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

W. Daniel Deane, Esq.
Nixon Peabody LLP
900 Elm Street, 14th Floor
Manchester, New Hampshire 03861

Joseph C. Tanski, Esq.
John S. Stadler, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110

Steven J. Lauwers, Esq.
Rath Young Pignatelli
One Capital Plaza
Concord, New Hampshire 03302-1500

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (the "Agreement") is entered into as of April 17, 2014 by Chicago Hospital Risk Pooling Program ("CHRPP"), 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. CHRPP and Liquidator are each hereinafter referred to as "Party" and collectively as "the Parties."

RECITALS

1. CHRPP and Liquidator are parties to an action entitled *The Home Insurance Company by and through Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, solely in his capacity as Liquidator of The Home Insurance Company v. Chicago Hospital Risk Pooling Program*, Case No. 07 L 04628, currently pending in the Circuit Court of Cook County, consolidated with Case No. 13 L 7274 (formerly 04 L 12616) (collectively, the "Litigation").

2. In the Litigation, Liquidator seeks to recover from CHRPP on account of CHRPP's alleged failure to timely settle within its layer of coverage the claims asserted against Palos Community Hospital in the case entitled *Laura Donohue, et al. v. Palos Community Hospital*, Case No. 99 L 9278 (the "Donohue Action"). CHRPP has denied and continues to deny all liability to Liquidator.

3. On May 20, 2003, Holy Cross Hospital, LaRabida Children's Hospital, Northwest Community Hospital, Oak Park Hospital, Sherman Hospital, Swedish Covenant Hospital, and Thorek Memorial Hospital (collectively the "Intervenor Hospitals") were granted leave to intervene in the Litigation as defendants.

4. Without admissions of any kind, and solely to avoid the expense, burden, and hazards of continued litigation, the Parties desire to fully and completely settle and compromise all disputes, claims, and controversies that either Party may have against the other concerning, relating to, or arising out of the Litigation and the Donohue Action, as more fully set forth below.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. Recitals. The foregoing recitals are incorporated into and made part of this Agreement as if fully set forth herein.
2. Effective Date. Subject to Paragraph 5 below, this Agreement shall become effective upon delivery to each Party of an original counterpart of this Agreement fully executed by the other Party.
3. Settlement Amount. In consideration of the terms of this Agreement and the release contained herein, CHRPP shall pay [REDACTED] (the "Settlement Amount") to Liquidator. The Settlement Amount shall be paid by check made payable jointly to Liquidator and his attorneys, Grasso Bass, PC, and shall be delivered to Gary Grasso as attorney and agent of Liquidator, within fourteen (14) business days of Final Approval of this Agreement as defined in Paragraph 5 below. Liquidator acknowledges and agrees that payment of the Settlement Amount pursuant to the terms of this Paragraph 3 shall constitute full and complete satisfaction of all claims and demands of the Liquidator against CHRPP in the Litigation.

4. Mutual Release. Upon receipt of the Settlement Amount, Liquidator, in his capacity as such and on behalf of The Home Insurance Company and each of their respective subsidiaries, affiliates, successors, and assigns, hereby forever releases and discharges Chicago Hospital Risk Pooling Program, including its trustees, officers, employees, participating hospitals (including the Intervenor Hospitals), affiliates (including Metropolitan Chicago Healthcare Council), successors, and assigns, from any and all claims, causes of action, damages, demands, and liabilities, of any nature or description, whether based on contract, tort, or any other legal theory, including claims under state or federal statutes, and claims for attorneys fees, costs, expenses, punitive damages, and sanctions, whether known or unknown, matured or contingent, liquidated or unliquidated, that (a) were asserted, or could have been asserted, in the Litigation; (b) relate to or arise out of the rendition, failure to render, or quality of claims services provided or not provided by CHRPP in connection with the Donohue Action; or (c) relate to or arise out of any transaction, agreement, relationship, occurrence, or event transpiring or existing between the Parties prior to or as of the Effective Date of this Agreement that relates to the Donohue Action; *provided, however*, that nothing in this Paragraph 4 shall be construed to release or discharge the Parties from their obligations under this Agreement.

Upon payment of the Settlement Amount by CHRPP, CHRPP, including its trustees, officers, employees, participating hospitals (including the Intervenor Hospitals), affiliates (including Metropolitan Chicago Healthcare Council), successors, and assigns hereby forever releases and discharges Liquidator and Home, and each of their respective subsidiaries, affiliates, successors, and assigns, from any and all claims, causes of action, damages, demands, and liabilities, of any nature or description, whether based on contract, tort, or any other legal theory, including claims under state or federal statutes, and claims for attorneys' fees, costs, expenses, punitive damages, and sanctions, whether known or unknown, matured or contingent, liquidated

or unliquidated, that (a) were asserted, or could have been asserted, in the Litigation; (b) relate to or arise out of the rendition, failure to render, or quality of claims services provided or not provided by CHRPP in connection with the Donohue Action; or (c) relate to or arise out of any transaction, agreement, relationship, occurrence, or event transpiring or existing between the Parties prior to or as of the Effective Date of this Agreement that relates to the Donohue Action; *provided, however*, that nothing in this Paragraph 4 shall be construed to release or discharge the Parties from their obligations under this Agreement.

5. Condition Subsequent: The effectiveness of this Agreement and the settlement it contemplates is subject to receipt of Final Approval thereof by the Merrimack County Superior Court, New Hampshire, which has jurisdiction of the liquidation of Home under Docket Number 03 E 0106. Final Approval means entry of an order approving Liquidator's entry into this Agreement as to which the time for appeal has expired with no appeal being taken; or, if an appeal is taken, affirmance of the order with no further appeal or trial court proceedings remaining available to any party. Liquidator shall move for approval of this Agreement promptly following execution by the Parties. If the court denies Liquidator's request for approval of this Agreement, or an order is entered approving this Agreement but such order is reversed, vacated, or otherwise voided on appeal or by further proceedings in the trial court, this Agreement shall become null and void and the Parties shall be remitted to their legal positions immediately prior to the Effective Date of this Agreement.

6. Confidentiality. Each Party agrees that they shall not disclose the existence or terms of this Agreement to any person or entity without the prior written consent of the other Party, except that the Parties may disclose this Agreement, including its existence and terms, pursuant to lawful process and to their legal advisors, auditors, insurers, reinsurers, regulators, and supervisory courts, including the motion for approval required by Paragraph 5 above. In

addition, this Agreement, including its existence and terms, may be disclosed by either Party in any action or proceeding to enforce the terms of this Agreement, provided that a protective order or confidentiality agreement is sought in advance to prevent any further dissemination and disclosure of this Agreement and its terms. Subject to the foregoing, the Parties shall take all reasonable steps to cooperate with each other to protect the confidentiality of this Agreement and its terms. Except as provided herein, if any application is made to any court, or any court order or subpoena or discovery request or demand of any kind for disclosure of this Agreement or its terms is received by either Party, that Party shall give the other Party prompt written notice of receipt of such application, order, request or demand and no disclosure shall be made before the final date to comply so that the Party shall have an opportunity to challenge such disclosure. Either Party seeking to preserve the confidentiality of this Agreement and its terms through litigation of any kind shall do so at its own expense and shall reimburse the other Party for any expense reasonably incurred by such other Party at the request of the Party seeking to maintain confidentiality.

7. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective affiliates, successors, and assigns.

8. Joint Drafting. This Agreement has been jointly drafted by both Parties, represented by counsel, and the Parties agree that, in the event of a dispute, this Agreement shall not be construed against one of the Parties solely on the ground that such Party should be deemed to be the drafter of this Agreement.

9. Amendment. No modification, amendment, waiver, or termination of any of the provisions of this Agreement shall be effective unless made in writing and signed by each of the Parties to this Agreement.

10. No-Reliance. Each Party represents and warrants to the other that it is not relying on any statement or representation of the other Party not expressly stated in this Agreement.

11. Integration. This Agreement constitutes the entire understanding between the Parties and supersedes any prior understandings, promises, or agreements, written or oral, that in any way relate to the subject matter hereof.

12. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois, without regard to any choice of law rules that may direct the application of the law of another jurisdiction.


13. Authority. Each signatory to this Agreement represents and warrants that he is authorized by the person for whom he is signing to enter into this Agreement and to obligate that person to the terms hereof.


14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

CHICAGO HOSPITAL RISK POOLING PROGRAM

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

By: 
Title: Just Administrator
Date: 4/30/14

By: 
Title: Chief Claims Officer
Date: 5-2-2014