

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 ARIZONA FUND**

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 claimant Arizona Property and Casualty Insurance Guaranty Fund ("Arizona Fund" or "Fund") 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. 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. Affidavit of Peter A. Bengelsdorf in Support of Motion for Approval of Settlement Agreement with Arizona Fund ("Bengelsdorf Aff.") ¶ 2.

2. The Settlement Agreement concerns the claims submitted in the Home liquidation by the Arizona Fund under proofs of claim numbers GOVT 18901-11 and GOVT 18901-12. These were the proofs of claim at issue in disputed claim proceedings 2011-HICIL-50 and 2011-HICIL-51. Settlement Agreement, Second Whereas Clause. Those claims concerned administrative expenses that the Fund allocated to the Home liquidation, including certain

amounts for dues paid by the Fund to the National Conference of Insurance Guaranty Funds (“NCIGF”). Id., Third Whereas Clause. Bengelsdorf Aff. ¶ 3.

3. The Liquidator disallowed a portion of the administrative expenses that the Arizona Fund had allocated to the Home liquidation, and he assigned NCIGF dues to Class V priority under RSA 402-C:44. Settlement Agreement, Third and Fourth Whereas Clauses. The Fund objected, and the disputed claim proceedings were heard by the Referee. On December 20, 2012, the Referee issued an Order (“Referee’s Order”) upholding the Liquidator’s disallowance of amounts sought for administrative expenses and the assignment of the NCIGF dues to Class V. Id., Fifth and Sixth Whereas Clauses. The Fund filed a Motion to Recommit the Referee’s Order, and on October 31, 2013, the Court issued an Order (“Superior Court Order”) denying the Motion to Recommit. Id., Seventh Whereas Clause. The Fund filed a Rule 7 Notice of Mandatory Appeal from the Superior Court Order with the New Hampshire Supreme Court. Id., Eighth Whereas Clause. The Fund has moved the Supreme Court to stay that appeal pending this Court’s ruling on this motion. Bengelsdorf Aff. ¶ 4.

4. The Settlement Agreement provides that the Liquidator will recommend that, of the administrative expenses that are the subject of the proofs of claim, the total amount of \$150,694.92 be allowed as a Class I priority claim under RSA 402-C:44. Settlement Agreement ¶ 2(A). It further provides that, of the NCIGF dues that are the subject of the proofs of claim and the NCIGF dues that are the subject of the Arizona Fund’s pending requests for review concerning NCIGF dues for 2003-2005, the total amount of \$38,779.13 be allowed as a Class V priority claim under RSA 402-C:44. Id. ¶ 2(B). These amounts are the same as the amounts and priorities allowed by the Liquidator in the notices of determination upheld in the Referee’s Order and the Superior Court Order. The Liquidator had allowed administrative expenses for the 2006-2010 years in the amount of \$150,694.92 at Class I and NCIGF dues for the 2006-2010 years in

the amount of \$27,674.53 at Class V. See Liquidator's Objection to Claimant Arizona Fund' Motion to Recommit (February 4, 2013) at 6, 7. The additional \$11,104.60 in NCIGF dues included in the settlement is the amount that the Liquidator had allowed for NCIGF dues at Class V for the years 2003-2005; the Fund had filed pending requests for review of the priority of those dues. See id. at 7 n. 6. Bengelsdorf Aff. ¶ 5.

5. The Settlement Agreement also provides that the priority of the \$38,779.13 of NCIGF dues for 2003 through 2010 to be allowed at Class V under the settlement shall be adjusted in accordance with any subsequent settlement agreement between the Liquidator and the guaranty funds or associations generally that provides that a portion of allowed NCIGF dues be treated as a Class I priority claim. Settlement Agreement ¶ 2(B). In the event that the Liquidator enters such a settlement, the Liquidator shall recommend that the percentage of allowed NCIGF dues to be treated as Class I under that general agreement shall also apply to \$38,779.13 amount. Id. Other guaranty associations have pending requests for review of the priority of NCIGF dues, and this provision will permit the Arizona Fund to be treated equally in the event a subsequent general settlement is reached concerning the priority issue. Any such settlement would be subject to approval by the Court. Bengelsdorf Aff. ¶ 6.

6. The Settlement Agreement further provides that promptly after Court approval (the "Effective Date"), the Arizona Fund will withdraw and dismiss its appeal to the New Hampshire Supreme Court with prejudice. Settlement Agreement ¶ 5. It also provides for mutual releases between the Fund and the Liquidator of all claims arising from the proofs of claim and the requests for review concerning the NCIGF dues. Id. ¶¶ 3, 4. Bengelsdorf Aff. ¶ 7.

7. The Settlement Agreement is the result of negotiations under the supervision of the Special Deputy Liquidator. The Settlement Agreement reflects a compromise to avoid an appeal to the New Hampshire Supreme Court. It allows the amounts of administrative expenses

and NCIGF dues upheld in the Superior Court Order and applies Class V priority to NCIGF dues in accordance with the Superior Court Order. It contains an additional provision that permits the Arizona Fund to be treated similarly to other guaranty associations in the event of a general settlement concerning priority of NCIGF dues. Such a provision is a reasonable resolution to avoid the appeal given the amounts involved. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of \$150,694.92 as a Class I priority claim and \$38,779.13 as a Class V priority claim in accordance with RSA 402-C:45 and RSA 402-C:44. Bengelsdorf Aff. ¶ 8.

8. The Liquidator's negotiation and the Court's approval of the Settlement Agreement is 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. 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. ¶ 9.

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 administrative expenses of \$150,694.92 as a Class I priority claim and NCIGF dues of \$38,779.13 as a Class V priority claim under RSA 402-C:44; 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,

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January 27, 2014

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Arizona Fund, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 27th day of January, 2014, 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

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 14th day of January 2014 by and between Arizona Property and Casualty Insurance Guaranty Fund (“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 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 that have been assigned the following proof of claim numbers, GOVT 18901-11 (In Re Liquidator No. 2011-HICIL-50) and GOVT 18901-12 (In Re Liquidator No. 2011-HICIL-51), which are hereinafter defined collectively as the “Proofs of Claims”;

WHEREAS, the Liquidator disallowed a portion of the amounts sought in the Proofs of Claims for administrative expenses that Claimant incurred and allocated to the Home insolvency, including certain amounts sought for dues incurred and paid by Claimant to the National Conference of Insurance Guaranty Funds (“NCIGF”);

WHEREAS, the Liquidator classified the NCIGF dues incurred and paid by Claimant as a Class V “residual” claim, rather than a first-priority Class I claim for “administrative expenses” pursuant to New Hampshire Revised Statutes Annotated §§ 402-C:44 and 404-B:11,

WHEREAS, Claimant objected to and requested reversal of the Liquidator’s disallowance of amounts sought in the Proofs of Claims for administrative expenses and the Liquidator’s classification of the NCIGF dues paid by Claimant as a Class V claim;

WHEREAS, a Referee, by Order dated December 20, 2012 (the “Referee’s Order”), affirmed the Liquidator’s disallowance of amounts sought for administrative expenses in the Proofs of Claims and the Liquidator’s classification of the NCIGF dues paid by Claimant as a Class V claim;

WHEREAS, Claimant filed a Motion to Recommit with respect to the Referee’s Order, which motion was denied by Order of the Merrimack County Superior Court dated October 31, 2013 (the “Superior Court Order”);

WHEREAS, Claimant has filed a Rule 7 Notice of Mandatory Appeal with respect to the Superior Court Order (the “Appeal”);

WHEREAS, the Parties are desirous of resolving all claims that were asserted, or could have been or could be asserted, between them concerning the Proofs of Claim and the Appeal;

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 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 upon and shall only become effective (the “Effective Date”) upon the entry of a final non appealable order by the Liquidation Court approving this Settlement Agreement and allowing the Recommended

Amount (the "Final Order"). The Liquidator shall move at his expense for approval of this Settlement Agreement promptly following execution by both Parties. Claimant shall move at its expense to stay the Appeal pending the Liquidation Court's action on the Liquidator's motion for approval of the Settlement Agreement.

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 that, of the administrative expenses that are the subject of the Proofs of Claim, the total amount of \$150,694.92 be allowed (the "Recommended Amount") as a Class I priority claim under N.H. RSA 402-C:44. The Recommended Amount includes a total of \$62,000 for administrative expenses for the years 2008 and 2009. The Liquidator shall seek allowance of the Recommended Amount as a Class I priority claim by the Liquidation Court in the Liquidator's motion for approval of this Settlement Agreement.
- B. 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 that of the NCIGF dues that are the subject of the Proofs of Claim and the NCIGF dues that are the subject of pending Requests for Review concerning such dues for 2003-2005 (the "Requests for Review of Dues"), the total amount of \$38,779.13 shall be allowed (the "Approved Amount") as a Class V priority claim under N.H. RSA 402-C:44. The Liquidator agrees that the priority of this Approved Amount of NCIGF dues paid by Claimant in the period from 2003 through 2010 shall be adjusted in accordance with any subsequent

agreement between the Liquidator and the guaranty funds or associations generally that provides that a portion of allowed NCIGF dues be treated as a Class I priority claim. The Liquidator shall recommend in seeking approval of any such agreement that the percentage of allowed NCIGF dues to be treated as Class I under the agreement shall also apply to this Approved Amount. The Liquidator shall seek allowance of the Approved Amount as a Class V priority claim by the Liquidation Court in the Liquidator's motion for approval of this Settlement Agreement.

- C. In the event that a Final Order does not enter, 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.

3. Release by Claimant. Subject to the terms of this Settlement Agreement and the entry of a Final Order, 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 Proofs of

Claim and the Requests for Review of Dues, 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, including any claims for reimbursement of costs and attorneys' fees arising from or related to the Proofs of Claim and the Requests for Review of Dues, the proceedings before the Referee, the proceedings in the Merrimack Superior Court, and the Appeal, except for the Agreements of the Liquidator set forth in this Settlement Agreement.

4. Release by Liquidator. Subject to the terms of this Settlement Agreement and the entry of a Final Order, 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 Proofs of Claim and the Requests for Review of Dues, 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, including any claims for reimbursement of costs and attorneys' fees arising from or related to the Proofs of Claim and the Requests for Review of Dues, the proceedings before the Referee, the proceedings in the Merrimack Superior Court, and the Appeal, except for the agreements of the Claimant set forth in this Settlement Agreement.

5. Resolution of Matters. In consideration of the Liquidator's agreements herein, promptly after the Effective Date Claimant agrees to withdraw and dismiss the Appeal with prejudice.

6. 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 Proofs of Claim or Requests for Review of Dues, 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.

7. 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. Each of the Parties shall be responsible for their own attorneys' fees and costs.

8. 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 Requests for Review of Dues or this Settlement Agreement shall be the Liquidation Court.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

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

16. 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.

17. 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.

18. 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:

Michael E. Surguine
Executive Director
Arizona Property and Casualty Insurance Guaranty Fund
1110 West Washington Street, #270
Phoenix, AZ 85007

and

Joseph C. Tanski, Esq.
John Stadler, Esq.
Nixon Peabody, LLP
100 Summer Street
Boston MA 02110-2131

and

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

19. 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.

**ARIZONA PROPERTY AND CASUALTY
INSURANCE GUARANTY FUND**

By: Michael E. Surguine

Name: Michael E. Surguine

Title: Executive Director

Date: January 15, 2014

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

By: Peter A. Bengelsdorf

Name: Peter A. Bengelsdorf

Title: Special Deputy Liquidator

Date: 1-14-14