

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

**LIQUIDATOR'S MOTION FOR APPROVAL
OF SETTLEMENT AGREEMENT WITH WESTPORT**

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 Settlement Agreement and Mutual Release ("Settlement Agreement") between the Liquidator and Westport Insurance Corporation, as successor in interest to Employers Reinsurance Corporation ("Westport"). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Settlement Agreement between the Liquidator and Westport. 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 Westport ("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 ¶ 1. Bengelsdorf Confidential Affidavit ¶ 2.

3. The Settlement Agreement resolves a claim by the Liquidator against Westport for reinsurance of an underlying settlement of a claim by Swan Transportation Company and the Swan Asbestos and Silica Trust (collectively, "Swan") in the Home estate seeking recovery under policies issued by Home to Swan Transportation Company. After preliminary proceedings before the Referee and the Court, Swan and the Liquidator settled Swan's claim in 2013, and the Court approved that settlement by order dated October 24, 2013. The Liquidator allocated the allowed amount among the reinsurers whose reinsurance agreements covered part of the Swan Transportation Company policies and billed reinsurers. Westport disputed the billing. The Liquidator commenced an arbitration against Westport under the reinsurance contracts. After proceeding through an arbitration hearing, Westport and the Liquidator settled the reinsurance claim, subject to Court approval. See Settlement Agreement ¶¶ 1, 3. Bengelsdorf Confidential Aff. ¶ 3.

4. The Bengelsdorf Confidential Affidavit summarizes the complex history of the matter and the reasons that support the determination to enter the Settlement Agreement. Bengelsdorf Confidential Affidavit ¶¶ 4-18.

5. 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 reinsurance billing and arbitration proceeding and converts the Liquidator's claim into immediate cash. See Bengelsdorf Confidential Aff. ¶¶ 15-18.

6. The Liquidator accordingly recommends approval of the Settlement Agreement. Bengelsdorf Confidential Affidavit ¶ 17.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Settlement Agreement with Westport;
- 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, SOLELY 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

November 9, 2015

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Settlement Agreement with Westport and the Proposed Order Approving Settlement Agreement with Westport were sent, this 9th day of November, 2015, 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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Docket No. 217-2003-EQ-00106

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 Urquhart Oliver & Hedges LLP
50 California Street, 22nd Floor
San Francisco, California 94111

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

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

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

Robert M. 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.
Timothy E. Curley, 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.
Michael S. Lewis, Esq.
Rath Young Pignatelli
One Capital Plaza
Concord, New Hampshire 03302-1500

Robert E. Murphy, Esq.
Michael J. Tierney, Esq.
Wadleigh, Starr & Peters, PLLC
95 Market Street
Manchester, New Hampshire 03101

Steven E. Sigalow, Esq.
Mark J. Andreini, Esq.
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is made this 21st day of October 2015, by and between Westport Insurance Corporation, as successor in interest to Employers Reinsurance Corporation ("Westport") and Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire (the "Liquidator"), solely in his capacity as Liquidator of The Home Insurance Company in Liquidation ("Home"). Westport, Home and the Liquidator are hereinafter collectively referred to as the "Parties."

WHEREAS, on March 25, 2014, Home initiated arbitration (the "Arbitration") against Westport seeking recovery for reinsurance billings Home submitted to Westport under Home's Excess Liability Umbrella Surplus Reinsurance Contract effective as of October 1, 1991 and Home's Excess Casualty Variable Quota Share Reinsurance Agreement effective as of October 1, 1994 (the "Reinsurance Agreements") on the Tyler Corporation/Swan Transportation Company claim in the total amount of [REDACTED] (the "Swan Reinsurance Claim");

WHEREAS, the Parties wish to settle and fully and finally resolve their disputes with respect to the Swan Reinsurance Claim including fully and finally resolving the arbitration Home initiated against Westport;

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. This Settlement Agreement is conditioned and shall only become effective (the "Effective Date") upon approval by the Superior Court of the State of New Hampshire (the "Liquidation Court"). In the event that the Liquidation Court does not approve this Settlement Agreement it shall be null and void and of no force and effect.

2. By entering into this Settlement Agreement, the Parties resolve the Swan Reinsurance Claim fully and finally, solely by way of compromise and as a commercial accommodation. This Settlement Agreement does not constitute any admission concerning the merits of the Swan Reinsurance Claim or the defenses or positions of the Parties under the Reinsurance Agreements pursuant to which indemnification for the Swan Reinsurance Claim is sought.

3. Westport shall, within ten (10) days after the Effective Date (the "Payment Date"), pay Home the sum of [REDACTED] in full and final settlement of any and all liabilities and obligations that Westport has incurred or will ever incur concerning or in any way relating to the Swan Reinsurance Claim (the "Settlement Sum"). Westport agrees and acknowledges that time is of the essence in effecting payment of the Settlement Sum and agrees to effect payment when due by wire transfer as follows:

Citizens Bank, Manchester, NH, US
ABA No. [REDACTED]
For the Account of The Home Insurance Company in Liquidation
Account No. [REDACTED]
Attn: Jamie Archibald

The Settlement Sum shall be transferred free and clear of and without any deduction for or on account of any set-off or counterclaim.

4. This Settlement Agreement shall not be interpreted in any way as modifying or waiving the Parties' rights or obligations under the Reinsurance Agreements, except as

set forth in this Settlement Agreement. The Parties agree that this Settlement Agreement sets forth a compromise and shall never at any time or for any purpose be considered an admission of liability or non-liability on the part of any party with respect to the scope of coverage afforded under the Reinsurance Agreements.

5. Within 10 days following Westport's payment of the Settlement Sum, the Parties shall jointly dismiss the Arbitration with prejudice. Each Party shall pay its own costs and fees associated with the Arbitration.

6. In consideration for and upon receipt of the Settlement Sum, the Liquidator, on behalf of Home and its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors or assigns (including a statutory successor) irrevocably and unconditionally releases and discharges Westport, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors and assigns from all adjustments, obligations, offsets, actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, claims and demands whatsoever, all whether known or unknown, which the Liquidator or Home ever had or now has or hereafter may have by reason of any matter whatsoever concerning the Swan Reinsurance Claim or the Arbitration.

7. Upon the effectiveness of the Release set forth in paragraph 6 above, Westport, on behalf of itself, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors or assigns (including a statutory successor) irrevocably and unconditionally

releases and discharges the Liquidator and Home, and their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors and assigns from all adjustments, obligations, offsets, actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, claims and demands whatsoever, all whether known or unknown, which Westport ever had, now has, or hereafter may have by reason of any matter whatsoever concerning the Swan Reinsurance Claim or the Arbitration.

8. This Agreement constitutes and embodies the final, complete and entire agreement between the Parties with respect to the subject matter herein contained. This Agreement supersedes all prior negotiations, discussions, representations, statements and agreements, all of which shall be null, void, and of no force or effect.

9. If any provision of this Settlement Agreement, other than Paragraphs 1, 3, 5, 6 or 7, is invalid, unenforceable or illegal under the law of any jurisdiction, such provision shall be deemed severable from the balance of this Settlement Agreement, and the validity and enforceability of the remaining provisions of this Settlement Agreement, and the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby. In the event that any court of competent jurisdiction or governmental agency renders an order, ruling, or other determination declaring that Paragraph 1, 3, 5, 6 or 7 of this Settlement Agreement is unenforceable or null and void, it is mutually agreed by the parties that each shall be restored to the position it was in just prior to entering into this Settlement Agreement.

10. The Parties acknowledge that they have entered into this Settlement Agreement in reliance on their own independent investigation and analysis of their rights and obligations under the Reinsurance Agreements and not on the basis of any representation by the other party hereto. No other representations, understandings or agreements have been made or relied upon in the making of this Settlement Agreement other than those specifically set forth or referred to herein.

11. This Settlement Agreement shall inure to the benefit of and bind the Parties and their respective predecessors, parents, affiliates, subsidiaries, successors and assigns (including their rehabilitators, liquidators or other statutory successors). Except as otherwise provided herein, this Agreement is solely for the benefit of the Parties and shall not inure to the benefit of any third party.

12. No supplement, amendment, variation, modification, waiver or termination of this Settlement Agreement shall be effective unless in writing and signed by the Parties or their successors or assigns.

13. (a) Westport represents and warrants that it is a legally constituted entity in good standing; that it is not insolvent; that it is duly authorized to enter into this Settlement Agreement and the transactions contemplated herein; that the representative signing this Agreement is fully authorized to execute this Settlement Agreement on its behalf; that all requisite and necessary approvals have been obtained to consummate the transactions contemplated by this Settlement Agreement and that no additional authorization is needed from any regulatory authority in this regard; that no other agreement, undertaking, contract or matter is known to exist that might render this Settlement Agreement void, voidable or unenforceable; and that it has read this

Settlement Agreement, that it understands its contents and that it is executing it freely and voluntarily with an intent to be bound by its terms; and (b) the Liquidator represents and warrants that he is duly authorized to enter into this Settlement Agreement and the transactions contemplated herein; that the person signing this Settlement Agreement on his behalf is fully authorized to execute this Settlement Agreement on their behalf; that, subject to approval by the Liquidation Court, all requisite and necessary approvals have been obtained to consummate the transactions contemplated by this Settlement Agreement and that no additional authorization is need from any regulatory authority in this regard; that no other agreement, undertaking, contract or matter is known to exist that might render this Settlement Agreement void, voidable or unenforceable; and that this Settlement Agreement is being executed freely and voluntarily with an intent to be bound by its terms.

14. 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. This Agreement shall be of no force and effect until executed by the Parties.

**FOR AND ON BEHALF OF ROGER A. SEVIGNY,
COMMISSIONER OF INSURANCE OF THE STATE
OF NEW HAMPSHIRE, AS LIQUIDATOR OF THE
HOME INSURANCE COMPANY**

By: *Peter Brubaker*
Name: Peter Brubaker
Title: Special Deputy Liquidator
Date: 10-21-15

**FOR AND ON BEHALF OF WESTPORT INSURANCE
CORPORATION AS SUCCESSOR IN INTEREST TO
EMPLOYERS REINSURANCE CORPORATION**

By:	<u><i>Frederic Gindera</i></u>	<u><i>Kevin M. Coleman</i></u>
Name:	<u>Frederic Gindera</u>	<u>Kevin M. Coleman</u>
Title:	<u>Senior Vice President</u>	<u>Vice President</u>
Date:	<u>10-26-15</u>	<u>10/26/15</u>