

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**

**APPENDIX OF EXHIBITS TO
LIQUIDATOR'S OPPOSITION TO WESTERN TRUST'S OBJECTION**

**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 (No. 1619)
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650**

**J. David Leslie (No. 16859)
Eric A. Smith (No. 16952)
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110
(617) 542-2300**

March 10, 2016

Exhibits to Liquidator's Opposition to Western Trust's Objection

- A. Settlement Agreement and Mutual Release between Claimants (Western Asbestos Settlement Trust) and the Liquidator (February 18, 2011)
- B. Liquidator's Motion for Approval of Settlement Agreement with Western Asbestos Settlement Trust (March 7, 2011)
 - without exhibit – Settlement Agreement is Exhibit A above
 - with Liquidator's Supplemental Filing re Motion for Approval of Settlement Agreement with Western Asbestos Settlement Trust (April 7, 2011) (clarifying paragraph 7)
- C. Order Approving Settlement Agreement with Western Asbestos Settlement Trust (May 2, 2011)
- D. Complaint for Declaratory Relief, Stephen M. Snyder, Jack L. Luikart, and Sandra R. Hernandez, solely in their Capacities as Trustees of the Western Asbestos Settlement Trust v. California Insurance Guarantee Association, No. RG13666656 (Cal. Super. Ct., Alameda County, February 7, 2013)
- E. Snyder v. California Ins. Guar. Ass'n, 229 Cal.App.4th 1196 (2014)
- F. Joint Case Management Conference Statement, Snyder v. California Ins. Guar. Ass'n, No. RG13666656 (Cal. Super. Ct., Alameda County, January 29, 2016)
 - without exhibits
- G. Order Approving Interim Distribution to Claimants with Allowed Class II Claims (March 13, 2012)
 - with order amending paragraph 3 (July 2, 2012)
- H. Liquidator's Motion for Approval of Escrow Agreement pursuant To Settlement Agreement with Western Asbestos Settlement Trust (May 28, 2015)
 - with exhibit – the Escrow Agreement
- I. Order Approving Escrow Agreement with Western Asbestos Settlement Trust (June 22, 2015)

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is made this 18th day of February 2011, by and between the Western Asbestos Settlement Trust ("Trust"), P.O. Box 3413, Reno, Nevada, in its capacity as the sole owner of Western Asbestos Company, and pursuant to the authority granted in the Order Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief, dated January 27, 2004 (the "Confirmation Order") as the successor to MacArthur Co. and Western MacArthur Co. to "initiate, prosecute, defend and resolve" all Asbestos Insurance Actions in the name of MacArthur Co., Western MacArthur Co. and/or Western Asbestos Company (the "MacArthur Companies") (collectively, "Claimants"), on the one hand, and Roger A. Sevigny, Commissioner of Insurance 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 the following insurance policies under which Claimants are named insureds:

<u>Policy Number</u>	<u>Policy Period</u>
GA-9 25 26 30	1/1/76-1/1/77
GA-9 37 68 91	1/1/77-1/1/78
GA-9 55 96 85	1/1/78-1/1/79
GA-9 71 09 95	1/1/79-1/1/80
GA-9 98 75 81	1/1/80-1/1/81
GA-9 99 33 35	1/1/81-1/1/82
GL-1 24 58 16	1/1/82-1/1/83,

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

WHEREAS, Home was placed into liquidation effective June 11, 2003, by Order of the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court");

WHEREAS, Claimants seek payment from Home respecting claims against them, including but not limited to claims for alleged asbestos-related bodily injury ("Asbestos Claims"), and Claimants have submitted proofs of claim in the Home liquidation that have been assigned the following proof of claim numbers:

<u>Policy Number</u>	<u>Claim Number</u>
GA-9 25 26 30	INSU274428
GA-9 37 68 91	INSU274338
GA-9 55 96 85	INSU274454
GA-9 71 09 95	INSU274475
GA-9 98 75 81	INSU274533

GA-9 99 33 35
GL-1 24 58 16

INSU274535
INSU274653,

which together with any other proof of claim hereinbefore or hereinafter filed by Claimants in the Home liquidation are defined as the "Proofs of Claim";

WHEREAS, Claimants have reached settlements regarding insurance coverage for Asbestos Claims with certain of their other insurers; and Claimants may in the future reach settlements regarding insurance coverage for Asbestos Claims with certain of their other insurers (all such past and future insurers are defined as the "Settling Insurers");

WHEREAS, the 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 *Western Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al.*, case no. CGC-04-436181 (San Francisco Superior Ct.), which is coordinated for all current purposes with *Fuller-Austin Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al.*, Case Nos. CGC 04-431719 (San Francisco Superior Ct.), *PepsiAmericas, Inc. et al. v. Zurich-American Insurance Co., et al.*, 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; and

WHEREAS, Claimants have asserted claims against the California Insurance Guarantee Association which are pending as part of the Zurich Litigation and have, or may, assert claims against other insurance guaranty associations established by law to provide for payment of certain covered claims in case of the insolvency of an insurer ("Insurance Guaranty Associations");

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 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 approval by the Liquidation Court. The Liquidator shall move for approval of this Settlement Agreement promptly following execution of this Settlement Agreement by all Parties.

2. Bankruptcy Court Approval. Promptly following execution of this Settlement Agreement by all Parties, Claimant shall move for an order from the United States Bankruptcy Court for the Northern District of California, which entered the Confirmation Order in the Mac Arthur bankruptcy proceedings in Case Nos. 02-46284 T through 02-02-46286 T, approving entry into this Settlement Agreement. Claimants shall use their best efforts to secure a final order from the Bankruptcy Court approving the Trust's entry into this Settlement Agreement. The Parties shall cooperate in seeking such court approval. Failure to obtain approval of the Bankruptcy Court shall not affect the Parties' obligations hereunder.

3. 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 RSA § 402-C:45 that the Proofs of Claim be allowed in the aggregate amount of \$242,500,000 (the "Recommended Amount"), as a Class II priority claim under RSA § 402-C:44. The Liquidator shall seek allowance of the Recommended Amount as a Class II 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 against Home and the Liquidator. 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 were ever reached, with this Settlement Agreement then being inadmissible for any purpose in any dispute between the Parties.

C. When the Liquidation Court allows the Recommended Amount as a Class II claim (the "Class II Allowed 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 paid to the Trust.

4. Acknowledgement 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 other than the claim asserted by Claimants in the Zurich Litigation against the California Insurance Guarantee Association.

5. Agreement as to Recommendation and Allowance. As part of this Settlement Agreement, the Liquidator and the Claimants acknowledge and agree that the Recommended

Amount is a compromise of matters in dispute and does not reflect the view of any Party as to the value of Claimants' claims should the matter be adjudicated.

6. 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 each of their officers, directors, 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 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 Claimants, their subsidiaries, affiliates, predecessors, successors and assigns, ever had, now have or hereafter may have against the Liquidator or Home or their 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. Further, Claimants expressly waive and relinquish all rights and benefits they may have under Section 1542 of the Civil Code of the State of California, which reads as follows: "Section 1542. [Certain claims not affected by general release.] A General release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor," or any similar law. Such release does not extend to the Zurich Defendants or Insurance Guaranty Associations (subject to the provisions of paragraph 4, above and paragraph 9, below).

7. 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 officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns (including any liquidator or statutory successor), irrevocably and unconditionally releases and discharges Claimants and each of their 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, their subsidiaries, affiliates, predecessors, successors and assigns, ever had, now has or hereafter may have against Claimants or their 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. Further, the Liquidator expressly waives and relinquishes all rights and benefits he may have under Section 1542 of the Civil Code of the State of California, which reads as follows: "Section 1542. [Certain claims not affected by general release.] A General release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at

the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor," or any similar law.

8. Additional Release. The Liquidator, in his capacity as such and on behalf of Home, releases any and all Settling Insurers with which Claimants reach settlements, from any alleged or potential claims or actions for contribution, subrogation, indemnity, reimbursement or recoupment of any kind that the Liquidator or Home has made or may or could make against any Settling Insurer with regard to insurance of Claimants provided that such Settling Insurers similarly release their claims against Home and the Liquidator with regard to insurance of Claimants. Claimants have in paragraph 6 above released claims against Home or the Liquidator for contribution, subrogation, indemnity, reimbursement or recoupment of any kind by Settling Insurers with which Claimants have reached settlements with respect to insurance of Claimants. In the event that, notwithstanding these releases, a Settling Insurer asserts a claim against Home or the Liquidator for contribution, subrogation, indemnity, reimbursement or recoupment of any kind with respect to insurance of Claimants from Home, Claimants' obligations are governed by paragraph 9 below. Claimants shall obtain the right to release or prohibit the assertion of claims for contribution, subrogation, indemnity, reimbursement or recoupment as against Home or the Liquidator with respect to insurance for Claimants in any future settlements with Settling Insurers. Claimants shall release or prohibit the assertion of claims against Home or the Liquidator for contribution, subrogation, indemnity, reimbursement or recoupment of any kind by future Settling Insurers with respect to insurance of Claimants.

9. Resolution of Matters and Indemnification.

A. (1) 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 Asbestos Claims or other 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 Home and the Liquidator harmless from and against any and all claims, losses, liabilities, debts, damages, costs or expenses arising from or related to the Policies other than Insurance Guaranty Association claims, which are addressed in subparagraph B below. The obligations of Claimants under this subparagraph A shall extend to and include (by way of example and not limitation) any claims made arising out of or relating to the Policies (including claims for defense, indemnity, contribution, reimbursement, set-off, indemnity, subrogation, attorney's fees or costs) against Home or the Liquidator by insurers of Claimants or by any individuals or entities asserting "direct action" claims.

(2) The Liquidator shall assert all defenses reasonably available to the Liquidator to such claims against the Liquidator or Home, including defenses under the Order of Liquidation and the New Hampshire Insurers Rehabilitation and Liquidation Act. The Liquidator shall promptly notify Claimants of any such claim, shall keep Claimants informed of material developments regarding such claims, and shall afford Claimants the opportunity to reasonably participate in the defense of such claims. Claimants shall cooperate with and support the Liquidator (including but not limited to the provision of affidavits or testimony) to eliminate claims against Home or the Liquidator by any insurer, individual or entity arising out of or relating to the Policies.

B. (1) Claimants acknowledge that, in the event they pursue any claim under the Policies against any Insurance Guaranty Association, the Insurance Guaranty Association's expenses of addressing the claim and any recovery may become a claim by the Insurance Guaranty Association in the Home liquidation. Claimants agree that any judgments, settlements, or other recoveries by claimants from any Insurance Guaranty Association with respect to the Policies ("Recovery" or "Recoveries") and the Insurance Guaranty Association's Policies-related expenses incurred after the Effective Date of this Agreement ("Expenses") shall be deducted from the Recommended Amount. In the event of such Expenses or Recovery, the amount allowed as a Class II claim in the Home liquidation shall be the Recommended Amount minus both (i) the Expenses, and (ii) any Recoveries.

(2) In the event that Recoveries plus Expenses exceed the Recommended Amount, Claimants shall not recover anything from the Home liquidation. With respect to the amount of such Recoveries plus Expenses that is in excess of the Recommended Amount (the "Excess Recovery"), Claimants may attempt to obtain an agreement from the Insurance Guaranty Associations releasing any claim for the Excess Recovery against Home and the Liquidator. But in the event the Insurance Guaranty Associations assert a claim for the Excess Recovery in the Home liquidation which is allowed by the Liquidation Court, Claimants agree to indemnify and hold Home and the Liquidator harmless and Claimants shall be obligated to indemnify Home and the Liquidator by paying an amount that shall negate the effect of the Excess Recovery on any interim distributions and the final distribution to Class II claimants in the Home liquidation. The indemnity amount shall be calculated by the Liquidator at the time of the Excess Recovery, if a distribution has been previously made, and at the time of each distribution thereafter by calculating the distribution percentage in two ways: (i) using the Recommended Amount in the liability total and (ii) using the Recommended Amount plus the Excess Recovery in the liability total. The indemnity amount shall be the additional amount necessary to provide for a distribution at the distribution percentage resulting from calculation (i) to the liabilities used in calculation (ii). The obligation of Claimants pursuant to this provision shall be continuing, such that each increase in the Class II distribution percentage shall increase the amount payable to the Liquidator as a result of an Excess Recovery. Furthermore, to secure this obligation, Claimants shall deposit 75 percent of the Excess Recovery into escrow with a mutually acceptable third-party escrow agent (the "Escrow Agent") pending the distributions in the Home liquidation. This escrow shall be maintained by the Escrow Agent until the final distribution in the Home liquidation is made. The Liquidator shall determine the indemnity amount regarding each distribution in accordance with this subparagraph B(2) and advise the Claimants and the Escrow Agent. The Escrow Agent shall then distribute the indemnity amount for that distribution to the Liquidator. Any interest accruing on the funds while held in escrow shall be transferred to the Claimants, and the remainder after the indemnity payment regarding the final distribution shall be released to Claimants. The escrow shall be established and administered pursuant to a mutually acceptable written escrow agreement and shall be jointly administered with respect to investment of the escrowed funds. The purpose of this provision is to ensure that no Class II claimant receives less in any distribution as a result of an Excess Recovery than it otherwise would receive if Claimants had only recovered the Recommended Amount.

(3) If, at the time that the Liquidator is to make a distribution to Claimants based upon the Recommended Amount, (i) the Recoveries plus Expenses are less than the Recommended Amount, (ii) Claimants have waived all rights to any further recovery from Insurance Guaranty Associations with respect to the Policies, and (iii) the Insurance Guaranty

Associations' claims in the Home liquidation regarding the Recoveries have been resolved, the Liquidator shall make distributions to Claimants as provided for in this Agreement. If, however, at that time, (i) Claimants are pursuing a claim against any Insurance Guaranty Association with respect to the Policies, (ii) Claimants do not waive the right to pursue claims against any Insurance Guaranty Association with respect to the Policies, or (iii) an Insurance Guaranty Association against whom the Claimants have obtained a Recovery is asserting or could still assert a claim in the Home liquidation regarding the Recovery, the distribution amount shall be placed in escrow with a mutually acceptable third-party escrow agent (the "Escrow Agent") pending (i) resolution of the Claimants' claim against the Insurance Guaranty Association or Associations, (ii) receipt from the Claimant of a waiver of all claims against Insurance Guaranty Associations, and (iii) resolution of the Insurance Guaranty Association's or Associations' claims in the Home liquidation. This escrow shall be maintained by the Escrow Agent until the Claimants' claim against the Insurance Guaranty Association or Associations is finally resolved, Claimants provide a waiver of all claims against Insurance Guaranty Associations, and all such Insurance Guaranty Association claims have been finally resolved in the Home liquidation. The Liquidator shall promptly determine the allocation of the distribution amount under this subparagraph B and advise the Claimants and the Escrow Agent. The Escrow Agent shall then distribute all funds held in escrow (including principal and interest) to Claimants and the Liquidator in accordance with that allocation. In the event that Recoveries plus Expenses exceed the Recommended Amount, all funds shall be distributed to the Liquidator. Any interest accruing on the funds while held in escrow shall be transferred to the recipients of the funds, along with principal, in accordance with the allocation. The escrow shall be established and administered pursuant to a mutually acceptable written escrow agreement and shall be jointly administered with respect to investment of the escrowed funds.

C. Notwithstanding any other provision of this Settlement Agreement, the amount that Claimants will pay for defense and indemnity obligations under this paragraph 9 shall be limited as follows: For indemnifiable claims brought against Home or the Liquidator under subparagraph A above, Claimants' indemnity obligations, in the aggregate, shall not exceed the amount of cash ultimately distributed or distributable to Claimants pursuant to this Settlement Agreement plus the amount of any cash received by Claimants from Insurance Guaranty Associations on account of the Policies. For indemnifiable claims brought against Home or the Liquidator under subparagraph B above, Claimants' indemnity obligations shall not be so limited.

10. Dismissals. Within ten days of the Effective Date, Claimants shall (a) dismiss or discontinue, with prejudice, any pending (active or stayed) proceedings, if any, against Home and the Liquidator, and (b) dismiss or discontinue, without prejudice, their claims against the California Insurance Guarantee Association in the Zurich Litigation.

11. No Assignment. Claimants warrant and agree that they have 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 the Policies, or any proceeds thereof, or to the claims, losses and expenses released herein, to any person or entity. Claimants agree that they shall not assign, convey, or otherwise transfer any claims, demands, causes of action, rights, or obligations related in any way to the Proofs of Claim or the Policies, or any proceeds thereof, or to the claims, losses and expenses released herein, to any person or entity. Claimants shall not assign, convey or otherwise transfer this Settlement Agreement or any rights and obligations thereunder without the written consent of the Liquidator, which consent shall not be unreasonably withheld.

12. 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.

13. 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 or this Settlement Agreement shall be the Liquidation Court. Nothing in this paragraph shall be construed as an admission, by either Party, as to the law governing the construction, interpretation or application of the Policies.

14. 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.

15. 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.

16. Counterparts. This Settlement Agreement may be executed in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail shall have the same force and effect as an original signature.

17. 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.

18. 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, affiliates, attorneys, liquidator's, receivers, administrators, agents, representatives, successors and assigns.

19. 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.

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

21. 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.

22. 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.

23. 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:

Ms. Sara Beth Brown, Executive Director Western Asbestos Settlement Trust, 100 West Liberty Street, Reno, Nevada 89501-1962 Fax: 775.325.6200 and Paul A. Zevnik, Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, N.W., Washington, D.C. 20004 Fax: 202.739.4755

If to the Liquidator, to:

Thomas W. Kober, Chief Claims Officer The Home Insurance Company in Liquidation, 61 Broadway, New York, New York 10006-2504 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, J. David Leslie, Rackemann, Sawyer & Brewster, P.C. 160 Federal Street, Boston, Massachusetts 02110 Fax: 617-542-7437, and Roger E. Warin, Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036 Fax 202-429-3902.

WHEREFORE, the Parties have caused this Settlement Agreement to be executed on their respective behalves as of the date below the signatures of their duly authorized representatives.

CLAIMANTS (AS DEFINED HEREIN)

By:  _____

Name: Sara Beth Brown

Title: Executive Director

Date: 2-18-11

LIQUIDATOR (AS DEFINED HEREIN)

By: Thomas W. Kober

Name: Thomas W. Kober

Title: Chief Claims Officer

Date: February 18, 2011

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
WESTERN ASBESTOS SETTLEMENT TRUST

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 the Western Asbestos Settlement Trust ("Trust"), in its capacity as the sole owner of Western Asbestos Company, and pursuant to the authority granted in the Order Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief ("Confirmation Order") as the successor to MacArthur Co. and Western MacArthur Co. to "initiate, prosecute, defend and resolve" all Asbestos Insurance Actions in the name of MacArthur Co., Western MacArthur Co. and/or Western Asbestos Company (the "MacArthur Companies") (collectively, "Claimants")¹ and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. Home issued seven insurance policies under which the Claimants are named insureds for various policy periods between January 1, 1976 and January 1, 1983. Upon Home's placement in liquidation, the Claimants filed seven proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for alleged

¹ The Trust was created in accordance with the provisions of the Second Amended Joint Plan of Reorganization approved by the Confirmation Order in the bankruptcy proceedings for the MacArthur Companies, In re Western Asbestos Company, Western MacArthur Co., and Mac Arthur Co., Jointly Administered under No. 02-46284 T (Bkrcty. N.D. Cal. January 27, 2004).

asbestos-related bodily injury. Settlement Agreement, first Whereas clause, third Whereas clause. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Settlement Agreement with Western Asbestos Settlement Trust (“Bengelsdorf Aff.”) ¶ 3.

2. The Liquidator and the Claimants have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim. A copy of the Settlement Agreement is attached as Exhibit A hereto. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.² Following approval, the pending disputed claim proceeding (2011-HICIL-48) will be dismissed. See id. ¶ 10. Bengelsdorf Aff. ¶ 4.

3. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$242,500,000 as a Class II priority claim of the Claimants under RSA 402-C:44. Settlement Agreement ¶ 3(A).³ Allowance of this recommended amount as a Class II claim will fully and finally resolve the proofs of claim. Id. ¶ 3(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 Claimants will be made to the Trust. Id. ¶ 3(C). Bengelsdorf Aff. ¶ 5.

4. The Settlement Agreement is intended to resolve the proofs of claim. See Settlement Agreement ¶ 3(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and the Claimants arising from or related to the proofs of claim. Id. ¶¶ 6, 7. The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the proofs of claim against other insurers of the Claimants that

² Claimants are also to seek approval of the Settlement Agreement from the bankruptcy court that entered the Confirmation Order in the MacArthur Companies bankruptcy proceeding. Settlement Agreement ¶ 2. However, as the bankruptcy proceeding has concluded, it is not clear that the bankruptcy court will hear the matter, and that approval is accordingly not required. Id.

³ The parties agree that the recommended amount is a compromise of matters in dispute and does not reflect the view of any party as to the value of Claimants’ claims should the matter be adjudicated. Settlement Agreement ¶ 5.

agree not to pursue such claims against Home. Id. ¶ 8. The Claimants release claims against Home by insurers with whom they have previously settled and agree to release or prohibit the assertion of claims by insurers with whom they settle in the future. Id. 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 under the policies in the Home liquidation without prejudice to their claims against the Claimants. Accordingly, the Claimants agree to address, at their sole cost, the claims of claimants asserting claims against the Claimants as if the Claimants had no insurance coverage from Home under the policies. Settlement Agreement ¶ 9(A). The Claimants agree to indemnify the Liquidator and Home against claims arising from the policies (other than Guaranty Association claims, which are addressed below) up to the amounts ultimately distributed or distributable to the Claimants. Id. ¶ 9(A), (C). Id. Bengelsdorf Aff. ¶ 7.

6. The denial of any third party claimants' proofs of claim without prejudice to their claims against the Claimants will not harm the third party claimants, who will continue to have their full claims against the Claimants, although those claims can only be paid in accordance with the provisions of the Trust and the MacArthur Companies' bankruptcy plan.⁴ As noted above, the Claimants have agreed to address these claims as if they had no insurance coverage from Home under the policies. Settlement Agreement ¶ 9(A). Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release the Claimants from those claims up to the limits of the policies but only entitle the third party claimants

⁴ As part of the Confirmation Order, all Asbestos Related Claims (including claims for personal injury from asbestos against any of the MacArthur Companies) were channeled to, and are to be paid solely from, the Trust. Confirmation Order ¶ 32. Further, all entities that hold any Asbestos Related Claim against an Asbestos Insurance Company (which includes Home) are enjoined from taking any action without the express permission of the trustees of the Trust to collect on that claim. Id. ¶ 34.

(assuming their claims were allowed) to a presently undetermined percentage distribution at the future date when a distribution is made. See RSA 402-C:40, I; Gonya v. Commissioner, New Hampshire Insurance Dept., 153 N.H. 521, 535 (2006) (noting the “inherent uncertainty of any creditor’s recovery in a liquidation”). It is not expected that the allowed claims of any third party claimants (or other Class II creditors) will be paid in full. Under the Settlement Agreement, the Trust will continue to be responsible for any third party claimants’ claims against Claimants in accordance with its terms and the provisions of the MacArthur Companies’ bankruptcy plan. See Settlement Agreement ¶ 9(A). Bengelsdorf Aff. ¶ 8.

7. The Settlement Agreement is different from other settlement agreements previously approved by the Court because it does not resolve all matters under the Home insurance policies. The Claimants are pursuing claims against Zurich-American Insurance Company and other companies in Western Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al., Case No. CGC-04-436181 (San Francisco Superior Ct.), which is coordinated with other cases in the same court (the “Zurich Litigation”). Settlement Agreement fifth Whereas clause. As part of the Zurich Litigation, the Claimants have asserted claims against the California Insurance Guarantee Association under the Home policies, and they have, or may, assert such claims against other insurance guaranty associations. Id., seventh Whereas clause. The Liquidator acknowledges that he is aware of the Claimants’ pending claims in the Zurich Litigation and takes no position as to those claims. The Settlement Agreement is not intended to affect those claims other than the claim asserted by the Claimants against the California Insurance Guarantee Association. Id. ¶ 4. Bengelsdorf Aff. ¶ 9.

8. When an insurance guaranty association such as the California Insurance Guarantee Association responds to a claim under an insolvent insurer’s policy, the association generally has a corresponding claim in the insurer’s liquidation both for its expenses and any

payment to the claimant. See, e.g., RSA 402-C:44; RSA 404-B:11. The Settlement Agreement provides for this in paragraphs 9 and 10. As described below, these provisions are designed to maintain the position of the Home estate and its Class II creditors under the Settlement Agreement regardless of the outcome of Claimants' claim against the California Insurance Guarantee Association or any other insurance guaranty association under the Home policies. Bengelsdorf Aff. ¶ 10.

9. The insurance guaranty association issues are addressed in the Settlement Agreement as follows. The Claimants agree to dismiss, without prejudice, their claims against the California Insurance Guarantee Association in the Zurich Litigation. Settlement Agreement ¶ 10. If the Claimants subsequently pursue claims under the Home policies against any insurance guaranty association, they acknowledge that the association's expenses of addressing the claim and any recovery from the association may become a claim in the Home liquidation. Id. ¶ 9(B)(1). The Home and its Class II creditors are protected against the impact of such a claim because any such expenses or recovery will be deducted from the recommended amount allowed to Claimants as a Class II claim in the Home liquidation. Id. If the expenses and recovery exceed the recommended amount, Claimants will not recover anything from the Home liquidation. Id. ¶ 9(B)(2). Furthermore, unless the insurance guaranty association agrees not to assert a claim in the Home liquidation for the excess amounts, Claimants agree to indemnify Home and the Liquidator by paying an amount that will negate the effect of the amount of the recoveries and expenses in excess of the recommended amount on any distributions to Class II claimants in the Home liquidation. Id. This indemnity obligation is not capped by amounts distributed to Claimants, id. ¶ 9(C), and the Claimants' obligation under this provision will be secured by the Claimants placing 75% of any such excess recovery into escrow. Id. ¶ 9(B)(2). Finally, in the event that Claimants' claims against insurance guaranty associations and the

associations' claims in the Home liquidation have not been resolved at the time the Liquidator is to make a distribution, the distribution is to be placed in escrow until (i) the Claimants' claim against the insurance guaranty association or associations is resolved, (ii) the Claimants waive all claims against the associations, and (iii) the association or associations' claims in the Home liquidation are resolved. Id. ¶ 9(B)(3). Bengelsdorf Aff. ¶ 11.

10. 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 asbestos-related bodily injury claims under Home's insurance policies. The agreed recommended amount is based on careful evaluation and negotiation of coverage obligations under Home's policies respecting the underlying liabilities of the Claimants. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$242,500,000 recommended amount as a Class II claim of the Claimants in accordance with RSA 402-C:45 and RSA 402-C:44. Bengelsdorf Aff. ¶12.

11. The Court has previously approved similar settlement agreements, although without the insurance guaranty association aspects noted in paragraphs 7-9 above. See, 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.

12. 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 the Claimants.

13. 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. ¶ 13.

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 the Claimants' claim as a Class II claim in the aggregate amount of \$242,500,000; 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,
MICHAEL A. DELANEY
ATTORNEY GENERAL

J. Christopher Marshall
NH Bar ID No. 1619
christopher.marshall@doj.nh.gov
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
dleslie@rackemann.com
Eric A. Smith
NH Bar ID No. 16952
esmith@rackemann.com
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110
(617) 542-2300

March 7, 2011

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Western Asbestos Settlement Trust, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 7th day of March, 2011, 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

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

Pieter Van Tol, Esq.
Lovells
590 Madison Avenue
New York, New York 10022

Peter G. Callaghan, Esq.
Preti, Flaherty, Beliveau, Pachos
& Haley, PLLP
57 North Main Street
P.O. Box 1318
Concord, New Hampshire 03302-1318

George T. Campbell, III, Esq.
Robert A. Stein, Esq.
Robert A. Stein & Associates, 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. Horkoviceh
Robert Y. Chung
Anderson Kill & Olick, P.C.
1251 Avenue of the Americans
New York, New York 10020

Andrew B. Livernois
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

Adebowale O. Osijo
2015 East Pontiac Way, Suite 209
Fresno, California 93726

Jim Darnell, Esq.
Jim Darnell, P.C.
310 N. Mesa Street, Suite 212
El Paso, Texas 79901

Edmond J. Ford, Esq.
Ford & Weaver, P.A.
10 Pleasant Street, Suite 400
Portsmouth, New Hampshire 03801

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

Michael S. Olsan, Esq.
Christine G. Russell, Esq.
Brendan D. McQuiggan, 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

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 SUPPLEMENTAL FILING RE MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT WITH WESTERN ASBESTOS SETTLEMENT TRUST**

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), makes this supplemental filing concerning his Motion for Approval of Settlement Agreement with Western Asbestos Settlement Trust ("Motion").

The Liquidator filed the Motion on March 8, 2011. Since that time, some questions have been raised concerning paragraph 7 of the Motion. The Liquidator accordingly clarifies paragraph 7, without changing his original intent, as follows:

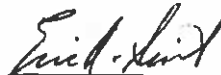
The Settlement Agreement is different from other settlement agreements previously approved by the Court. In the Settlement Agreement, the Claimants and Liquidator release each other from any claim arising from or related to the proofs of claim. However, unlike other settlement agreements, the Settlement Agreement does not resolve all matters arising from or related to the Home insurance policies. The Claimants are pursuing claims against Zurich-American Insurance Company and other companies in Western Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al., Case No. CGC-04-436181 (San Francisco Superior Ct.), which is coordinated with other cases in the same court (the "Zurich Litigation"). Settlement Agreement fifth Whereas clause. As part of the Zurich Litigation, the Claimants have asserted claims against the California Insurance Guarantee Association under the Home policies, and they have, or may, assert such claims against other insurance guaranty associations. Id., seventh Whereas clause. The Liquidator acknowledges that he is aware of the Claimants' 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, other than on the claim asserted by the Claimants against the California Insurance Guarantee Association. Id. ¶ 4.

Respectfully submitted,

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

By his attorney,
MICHAEL A. DELANEY
ATTORNEY GENERAL

J. Christopher Marshall
NH Bar ID No. 1619
christopher.marshall@doj.nh.gov
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
dleslie@rackemann.com
Eric A. Smith
NH Bar ID No. 16952
esmith@rackemann.com
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110
(617) 542-2300

April 7, 2011

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Supplemental Filing Re: Motion for Approval of Settlement Agreement with Western Asbestos Settlement Trust was sent this 7th day of April, 2011, 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

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

Pieter Van Tol, Esq.
Lovells
590 Madison Avenue
New York, New York 10022

Peter G. Callaghan, Esq.
Preti, Flaherty, Beliveau, Pachos
& Haley, PLLP
57 North Main Street
P.O. Box 1318
Concord, New Hampshire 03302-1318

George T. Campbell, III, Esq.
Robert A. Stein, Esq.
Robert A. Stein & Associates, 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. Horkoviceh
Robert Y. Chung
Anderson Kill & Olick, P.C.
1251 Avenue of the Americans
New York, New York 10020

Andrew B. Livernois
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

Adebowale O. Osijo
2015 East Pontiac Way, Suite 209
Fresno, California 93726

Jim Darnell, Esq.
Jim Darnell, P.C.
310 N. Mesa Street, Suite 212
El Paso, Texas 79901

Edmond J. Ford, Esq.
Ford & Weaver, P.A.
10 Pleasant Street, Suite 400
Portsmouth, New Hampshire 03801

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

Michael S. Olsan, Esq.
Christine G. Russell, Esq.
Brendan D. McQuiggan, 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

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

[PROPOSED]

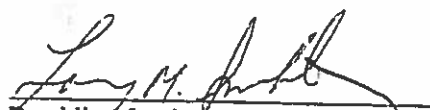
ORDER APPROVING SETTLEMENT AGREEMENT
WITH WESTERN ASBESTOS SETTLEMENT TRUST

On consideration of the motion of Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), for an order approving a Settlement Agreement and Mutual Release ("Settlement Agreement") between the Western Asbestos Settlement Trust ("Trust"), in its capacity as the sole owner of Western Asbestos Company, and pursuant to the authority granted in the Order Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief as the successor to MacArthur Co. and Western MacArthur Co. to "initiate, prosecute, defend and resolve" all Asbestos Insurance Actions in the name of MacArthur Co., Western MacArthur Co. and/or Western Asbestos Company (collectively, "Claimants") and the Liquidator, and the supporting Affidavit of Peter A. Bengelsdorf, it is hereby found and ORDERED as follows:

1. The Settlement Agreement is reasonable, prudent, and in the best interests of the liquidation of Home;
2. The Liquidator's Motion for Approval of Settlement Agreement with Western Asbestos Settlement Trust is granted, and the Settlement Agreement is approved; and
3. The Liquidator's recommendation concerning the allowance of Western Asbestos Settlement Trust's proofs of claim is approved, and the Claimants' claims are allowed as a Class II claim in the aggregate amount of \$242,500,000. All distributions will be made to the Trust.

APPROVED
So Ordered.

Dated: 5/2/11


Presiding Justice

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT: CALIFORNIA INSURANCE GUARANTEE
(AVISO AL DEMANDADO): ASSOCIATION, a California unincorporated
association**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**EMBOBADO
FILED
ALAMEDA COUNTY**

FEB 07 2013

**CLERK OF THE SUPERIOR COURT
By Angela Yamsuan**

**YOU ARE BEING SUED BY PLAINTIFF: STEVEN M. SNYDER, JACK L.
(LO ESTÁ DEMANDANDO EL DEMANDANTE): LUIKART, AND
SANDRA R. HERNANDEZ, SOLELY IN THEIR CAPACITIES AS
TRUSTEES OF THE WESTERN ASBESTOS SETTLEMENT TRUST**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
**ALAMEDA COUNTY SUPERIOR COURT
1225 Fallon Street**

CASE NUMBER
(Número del Caso):
RC13635556

Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

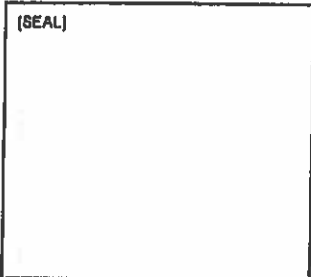
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
JEFFREY S. RASKIN, State Bar No. 169096 415.442.1000 415.442.1001
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1126

DATE: **FEB 07 2013** **FAT S. SWEETEN** Clerk, by **Angela Yamsuan**, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
CALIFORNIA INSURANCE GUARANTEE ASSOCIATION, a
- 3. on behalf of (specify): **California unincorporated association**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- 4. by personal delivery on (date):



FOR COURT USE ONLY

ENDORSED
FILED
ALAMEDA COUNTY

FEB 07 2013

CLERK OF THE SUPERIOR COURT
By Angela Yamsuan

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

PAUL A. ZEVNIK, State Bar No. 75343
JEFFREY S. RASKIN, State Bar No. 169096
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1126
TELEPHONE NO: 415.442.1000 FAX NO: 415.442.1001

ATTORNEY FOR (Name): Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

STREET ADDRESS: 1225 Fallon Street

MAILING ADDRESS:

CITY AND ZIP CODE: Oakland, CA 94612

BRANCH NAME:

CASE NAME: Steven M. Snyder, et al. v. California Insurance Guaratee Association

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 13005656

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort: Auto (22), Uninsured motorist (46), Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort, Asbestos (04), Product liability (24), Medical malpractice (45), Other P/PI/D/W/D (23). Non-P/PI/D/W/D (Other) Tort: Business tort/unfair business practice (07), Civil rights (08), Defamation (13), Fraud (16), Intellectual property (19), Professional negligence (25), Other non-P/PI/D/W/D tort (35). Employment: Wrongful termination (36), Other employment (15). Contract: Breach of contract/warranty (06), Rule 3.740 collections (09), Other collections (09), Insurance coverage (18), Other contract (37). Real Property: Eminent domain/inverse condemnation (14), Wrongful eviction (33), Other real property (26). Unlawful Detainer: Commercial (31), Residential (32), Drugs (38). Judicial Review: Asset forfeiture (05), Petition re: arbitration award (11), Writ of mandate (02), Other judicial review (39). Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403): Antitrust/Trade regulation (03), Construction defect (10), Mass tort (40), Securities litigation (28), Environmental/Toxic tort (30), Insurance coverage claims arising from the above listed provisionally complex case types (41). Enforcement of Judgment: Enforcement of judgment (20). Miscellaneous Civil Complaint: RICO (27), Other complaint (not specified above) (42). Miscellaneous Civil Petition: Partnership and corporate governance (21), Other petition (not specified above) (43).

- 2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management: a. Large number of separately represented parties d. Large number of witnesses b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision
- 3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
- 4. Number of causes of action (specify): 1
- 5. This case is is not a class action suit.
- 6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 6, 2013

JEFFREY S. RASKIN, State Bar No. 169096 (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

1 MORGAN, LEWIS & BOCKIUS LLP
2 Paul A. Zevnik, State Bar No. 75343
3 Jeffrey S. Raskin, State Bar No. 169096
4 One Market, Spear Street Tower
5 San Francisco, California 94105-1126
6 Tel: 415.442.1000
7 Fax: 415.442.1001

ENDORSED
FILED
ALAMEDA COUNTY

FFR 07 2013

5 MORGAN, LEWIS & BOCKIUS LLP
6 Michel Y. Horton, State Bar No. 114243
7 Richard W. Esterkin, State Bar No. 70769
8 Jason B. Komorsky, State Bar No. 155677
9 300 South Grand Avenue, Twenty-Second Floor
10 Los Angeles, CA 90071
11 Tel: 213.612.2500
12 Fax: 213.612.2501

CLERK OF THE SUPERIOR COURT
By Angela Yamsuan

13 Attorneys for Plaintiffs

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA

16 STEPHEN M. SNYDER, JACK L.
17 LUIKART, AND SANDRA R.
18 HERNANDEZ, SOLELY IN THEIR
19 CAPACITIES AS TRUSTEES OF THE
20 WESTERN ASBESTOS SETTLEMENT
21 TRUST,

RG13666656
Civil Case No. _____

COMPLAINT FOR DECLARATORY
RELIEF (C.C.P. § 1060)

Plaintiffs

v.

22 CALIFORNIA INSURANCE GUARANTEE
23 ASSOCIATION, a California unincorporated
24 association,

Defendant.

1 Stephen M. Snyder, Jack L. Luikart and Sandra R. Hernandez, solely in their capacity as
2 Trustees of the Western Asbestos Settlement Trust (the "Trustees"), allege as follows:

3 **NATURE OF THE ACTION**

4 1. This complaint seeks a declaration that the Western Asbestos Settlement Trust (the
5 "Western Trust") is entitled to obtain payments from the California Insurance Guarantee
6 Association ("CIGA") for asbestos bodily injury liabilities (including defense costs) that are
7 covered under insurance policies issued by Home Insurance Company, in Liquidation ("Home").
8 The Western Trust was created as a result of the bankruptcy reorganization of Western Asbestos
9 Company, Western MacArthur Company and MacArthur Company (the "Western Companies").
10 As a result of the reorganization, the Western Trust is responsible for the asbestos bodily injury
11 liabilities of the Western Companies. The Western Trust also is the holder of all rights to
12 insurance policies covering the Western Companies for asbestos bodily injury liabilities,
13 including policies issued by Home. CIGA was created to provide payments to policyholders of
14 insolvent insurance companies in the State of California. Cal. Ins. Code § 1063 *et seq.* Home is
15 insolvent and unable to pay the Western Trust's claims in full. Accordingly, CIGA is required by
16 law to compensate the Western Trust in full for asbestos bodily injury liabilities (including
17 defense costs) that otherwise would have been payable by Home under its policies issued to the
18 Western Companies.

19 2. CIGA disputes its obligations to the Western Trust with respect to the Home
20 policy obligations. Accordingly, the Western Trust seeks a declaration that CIGA is required to
21 compensate the Western Trust for amounts paid by the Western Trust on account of asbestos
22 bodily injury claims, to the extent such claims are covered under the Home policies and would
23 have been paid in full by Home, but for Home's insolvency.

24 **THE PARTIES**

25 3. The Trustees are the duly appointed and acting trustees of the Western Trust and
26 are appearing in this proceeding solely in that capacity. All of the Trustees are residents of
27 California. The Western Trust is a Nevada trust, created under the Western Companies'
28 bankruptcy plan of reorganization (the "Plan"), and is charged with responsibility for marshalling

1 the Western Companies' insurance assets, and the proceeds of those assets, and making
2 distributions to the holders of asbestos bodily injury claims against the Western Companies.

3 4. CIGA is an unincorporated California association established by statute, Cal. Ins.
4 Code §1063, organized and existing under the laws of the state of California, with its principal
5 place of business in Los Angeles, California.

6 JURISDICTION AND VENUE

7 5. The Court has personal jurisdiction over Defendant CIGA pursuant to Section
8 410.10 of the California Code of Civil Procedure insofar as it is a California unincorporated
9 association doing business in California.

10 6. Venue is proper pursuant to *Black Diamonds Asphalt, Inc. v. Superior Court*, 109
11 Cal. App. 4th 166 (2003), and Section 395.5 of the California Code of Civil Procedure insofar as
12 the Western Trust has incurred substantial liabilities as a result of claims and suits brought in
13 Alameda County, and some of the asbestos injury claimants to whom the Western Trust is liable
14 under the Plan have alleged that their injuries arose in Alameda County.

15 GENERAL FACTUAL ALLEGATIONS

16 7. The Western Companies filed for bankruptcy protection on November 22, 2002
17 (the "Petition Date") to address their legacy asbestos bodily injury liabilities, *In re Western*
18 *Asbestos Company, et al.*, United States Bankruptcy Court for the Northern District of California,
19 Case No. 02-46284. The bankruptcy court confirmed the Plan by order entered January 27, 2004
20 (the "Confirmation Order"). *In re Western Asbestos Co.*, 313 B.R. 456 (Bankr. Court, N.D. Cal.
21 2004). Among other things, the Plan contained provisions adopting the remedial provisions of
22 Bankruptcy Code section 524(g) in relation to the Western Companies' legacy asbestos claims.

23 8. Section 524(g) provides a unique mechanism for resolving a debtor's asbestos
24 liabilities. Among other things, Section 524(g) contemplates the creation of a trust, funded in part
25 with the proceeds of the debtor's insurance policies, to pay the debtor's asbestos creditors. In
26 order to encourage the debtor's insurers to contribute funds to the Section 524(g) trust, Section
27 524(g) authorizes the issuance of an injunction protecting the debtor's settling insurers from the
28 assertion of any asbestos related claims resulting from the issuance of their policies to the debtor

1 including, without limitation, claims by the debtor's asbestos creditors and claims for equitable
2 contribution by the debtor's other insurers. Thus, the proper operation of Section 524(g) often is
3 dependent upon the debtor's ability to resolve its coverage disputes with its insurers in order to
4 provide funds to its Section 524(g) trust for payment to its asbestos creditors.

5 9. As of the Petition Date, the Western Companies had an insurance program in place
6 that provided coverage for their asbestos liabilities. One of the insurers that issued primary layer
7 insurance policies was Home, which issued the following policies covering the Western
8 Companies (collectively, the "Policies"):

9	<u>Policy Number</u>	<u>Policy Period</u>
10	GA 9252630	1/1/76 to 1/1/77
11	GA 9376891	1/1/77 to 1/1/78
12	GA 9559685	1/1/78 to 1/1/79
13	GA 9710995	1/1/79 to 1/1/80
14	GA 9987581	1/1/80 to 1/1/81
15	GA 9993335	1/1/81 to 1/1/82
16	GA 1245816	1/1/82 to 1/1/83

17 True and correct copies of the Policies are attached as Exhibit 1 through 7, respectively.

18 10. In June 2003, Home was declared to be insolvent by the Insurance Commissioner
19 for the State of New Hampshire (the "Insurance Commissioner") and proceedings to liquidate
20 Home were commenced by the Insurance Commissioner. The Western Companies timely filed a
21 claim in Home's liquidation proceedings seeking in excess of \$1 billion of insurance proceeds for
22 asbestos bodily injury liabilities.

23 11. The Western Trust's claim in Home's liquidation proceedings was settled for an
24 allowed amount of \$242.5 million, an amount far less than Home's actual liability to the Western
25 Companies if Home had remained solvent. At the present time, Home has announced an initial
26 distribution payable to Home's policyholders of 15% of the amount of their allowed claims. It is
27 anticipated that Home will be unable to pay its policyholders claims in full and, ultimately, will

1 pay less than 50% of the allowed amount owed to the Western Trust, let alone the full value of
2 the Western Companies' asbestos bodily injury liabilities that are covered by the Policies.

3 12. Currently, there is no other undisputed insurance to cover the Western Companies'
4 asbestos bodily injury liabilities that were assumed by the Western Trust and are the subject of
5 this action.

6 13. Section 524(g) requires that the Western Trust reserve funds received from the
7 Western Companies' other insurers to compensate future claimants in a manner that is
8 substantially similar to the manner in which current claimants have been paid. Specifically,
9 Section 524(g)(2)(B) provides in pertinent part, as follows:

10 "[P]ursuant to court orders or otherwise, the trust will operate
11 through mechanisms such as structured, periodic, or supplemental
12 payments, pro rata distributions, matrices, or periodic review of
13 estimates of the numbers and values of present claims and future
14 demands, or other comparable mechanisms, that provide reasonable
assurance that the trust will value, and be in a financial position to
pay, present claims and future demands that involve similar claims
in substantially the same manner."

15 14. Because the Western Trust does not have sufficient assets at this time to pay both
16 present and projected future claimants in full for their allowed claims, the Western Trust pays
17 present claimants a portion of their allowed claim amounts, reserving funds to pay future
18 claimants in substantially the same amount that present claimants are paid. After taking into
19 account the monies received by the Western Trust as a result of the settlements with the Western
20 Companies' insurers, together with the Western Trust's anticipated receipt of funds as a result of
21 its claim in the Home liquidation proceedings, the Western Trust currently has substantial
22 unfunded liability for asbestos claims that were, are, or will be, covered by the Policies (the
23 "Unfunded Claims"). The Western Trust contends that CIGA is obligated to provide coverage for
24 the Unfunded Claims, including reimbursement of amounts that would have been paid on allowed
25 claims to date had the Trust had access to Home's insurance coverage, subject only to the
26 limitation on the amount of "covered claims" provided in Section 1063.1(c)(7) of the California
27 Insurance Code (\$500,000 per claim).

Snyder v. California Insurance Guarantee Association, 229 Cal.App.4th 1196 (2014)

177 Cal.Rptr.3d 853, 14 Cal. Daily Op. Serv. 11,019, 2014 Daily Journal D.A.R. 12,920

KeyCite Yellow Flag - Negative Treatment
Distinguished by City of Fernley v. State, Dep't of Tax, Nev.,
January 14, 2016

229 Cal.App.4th 1196
Court of Appeal,
First District, Division 3, California.

Stephen M. SNYDER et al., as Trustees, etc.,
Plaintiffs and Appellants,

v.

CALIFORNIA INSURANCE GUARANTEE
ASSOCIATION, Defendant and Respondent.

A139263

Filed September 17, 2014

As Modified on Denial of Rehearing October 7,
2014

Synopsis

Background: Trustees of asbestos settlement trust brought declaratory judgment action against California Insurance Guarantee Association (CIGA) to determine CIGA's obligation to pay the insolvent insurer's policy obligations. The Superior Court, Alameda County, No. RG13666656, Steven Brick, J., dismissed under statute of limitations. Trustees appealed.

Holdings: The Court of Appeal, Pollak, Acting P.J., held that:

^[1] fact issue existed as to whether CIGA denied any particular claim triggering the statute of limitations, and

^[2] a defendant's answer in a declaratory relief action is not a denial sufficient to trigger the statute of limitations.

Reversed and remanded with directions.

****855** Superior Court of the County of Alameda, RG13666656, Hon. Steven Brick, Judge.

Attorneys and Law Firms

Counsel for Plaintiffs and Appellants: Morgan, Lewis & Bockius LLP, Michel Y. Horton, Jason B. Komorsky, Los Angeles, Thomas M. Peterson, Jeffrey S. Raskin, San

Francisco.

Counsel for Defendant and Respondent: Locke Lord LLP, Los Angeles, C. Guerry Collins, Conrad V. Sison.

Opinion

Pollak, Acting P.J.

***1201** This appeal presents the difficult question of when a claim against the California Insurance Guarantee Association (CIGA) arises, triggering the three-year statute of limitations for breach of CIGA's statutory obligations. (Code Civ. Proc., § 338.) Trustees of the Western Asbestos Settlement Trust (Western Trust), charged with paying bodily injury claims against companies that distributed asbestos-containing building materials, sought coverage under the companies' insurance policies and, in 2004, after the insurer was declared insolvent, brought a declaratory relief action against CIGA to determine CIGA's obligation to pay the insolvent insurer's policy obligations. After CIGA filed an answer denying such an obligation, the proceedings against CIGA remained dormant for almost six years. In May 2011, the Western Trust dismissed its complaint against CIGA without prejudice. The present declaratory relief action by the Western Trust against CIGA was filed in February 2013. CIGA demurred on the ground, among others, that the complaint is barred by the statute of limitations. On this ground the trial court sustained the demurrer without leave to amend and dismissed the action.

CIGA contends that its answer in the prior declaratory relief action asserting that the trust's claims were not covered ****856** claims for which it is statutorily responsible triggered the running of the three-year statute of limitations to bring an action challenging that determination. Western Trust argues that the limitations period does not begin to run until CIGA denies a specific claim for payment and that even at this time no such claim has been submitted, much less denied. We conclude that a cause of action against CIGA for breach of statutory duties does not accrue until all of the events necessary to create a covered claim have occurred, giving rise to the insured's right to demand payment from CIGA. The trust's complaint here alleges no facts indicating that all those events occurred more than three years before the complaint was filed, if they have even occurred at this time. Thus, the trial court erred in concluding that the present action is barred by the statute of limitations. We shall therefore reverse the judgment dismissing the action.

successor to the Western Companies' claim.

*1202 FACTUAL AND PROCEDURAL BACKGROUND

A. The bankruptcy court creates the Western Trust to manage asbestos claims.

Western Asbestos Company, Western MacArthur Co. and MacArthur Co. (collectively, the Western Companies) distributed asbestos-containing building materials. In 2002, the Western Companies filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code for the purpose of establishing an asbestos claimants' trust. (*In re Western Asbestos Co.* (N.D.Cal.2009) 416 B.R. 670, 676.) Such a trust is authorized by the Bankruptcy Code to manage personal injury claims arising from exposure to asbestos-containing products. (11 U.S.C. § 524(g).) "The procedure under [section] 524(g) involves the establishment of a trust to pay the future claims, coupled with an injunction, referred to as a 'channeling injunction,' which prevents future claimants from suing the debtor." (*In re Western Asbestos Co.*, *supra*, at p. 676.)

The Western Trust, the trustees of which are plaintiffs here, was created in 2004 by an order of the bankruptcy court. (*In re Western Asbestos Co.* (Bankr.N.D.Cal.2004) 313 B.R. 456.) Funded with settlement proceeds from several insurers, Western Trust assumed all liabilities of the Western Companies relating to asbestos claims, estimated at \$6 billion. Western Trust was granted authority to initiate legal actions, in its own name or the name of the debtors, to recover additional insurance proceeds relating to those claims. (*Id.* at pp. 460–462.) As Western Trust avers in this case, it "is charged with responsibility for marshalling the Western Companies' insurance assets, and the proceeds of those assets, and making distributions to the holders of asbestos bodily injury claims against the Western Companies."

B. Western Trust seeks proceeds from Home Insurance Company, which is insolvent.

The Western Companies held seven liability insurance policies issued by Home Insurance Company (Home) from 1976 through 1983. In June 2003, Home was declared insolvent and proceedings to liquidate it were commenced by the insurance commissioner in New Hampshire, where the insurer had its principal office.¹ The Western Companies timely filed a claim in Home's liquidation proceedings and gave CIGA notice that such a claim *857 had been filed. Western Trust became the

****1203 C. Western Trust files an action against several insurers and CIGA.***

In November 2004, the Western Trust and Western Companies (Western plaintiffs) filed an action in San Francisco Superior Court against multiple defendants, including Zurich–American Insurance Company and related entities (collectively, Zurich). The Western plaintiffs alleged that Zurich controlled Home and was responsible for wrongly denying the Western Companies' asbestos claims under the Home policies. The Western plaintiffs further alleged that Zurich "siphoned off Home's profitable business," driving it into insolvency. Several remedial causes of action were stated against Zurich, including fraudulent transfer of property. The Western plaintiffs also pled a cause of action for declaratory relief, seeking a declaration that Zurich was liable under the Home policies as Home's successor or alter ego. The Western plaintiffs joined other insurance companies in the litigation, seeking a declaration of those insurers' obligations under policies issued to the Western Companies.

The 2004 complaint also pled a declaratory relief cause of action against CIGA, which by statute becomes responsible to satisfy certain claims of insolvent insurers.² (Ins.Code, § 1063 et seq.) The Western plaintiffs sought "to determine the existence and scope of CIGA's obligations" to them "[i]n light of Home's liquidation." Plaintiffs alleged they "submitted a claim to CIGA on account of Home's insolvency, but CIGA has failed to accept Plaintiffs' claim." The Western plaintiffs sought a declaration "(i) that the Asbestos–Related Claims are covered under the Home policies at issue, (ii) that CIGA is obligated to pay all sums, up to CIGA's statutory limits, with respect to all Asbestos–Related Claims that trigger one or more of Home's policies, and (iii) that CIGA is obligated to satisfy Home's liabilities for breach of contract, up to CIGA's statutory limit."

CIGA demurred to the complaint on grounds that do not appear in this record. The demurrer was overruled and CIGA filed an answer to the complaint in August 2005. CIGA interposed a general denial of the complaint's allegations, and also alleged that the Western plaintiffs' claims "are not within the statutory definition of 'covered claims' for which CIGA is responsible or [are] otherwise excluded from CIGA coverage." CIGA's *1204 answer also pled 24 affirmative defenses. Among those defenses were allegations that Western Trust's complaint was both premature and untimely—that it had been filed too early and too late.³ CIGA asserted that the declaratory relief

action was premature **858 because plaintiffs were pursuing other insurance and had not exhausted their remedies in the Home liquidation proceeding. The action against CIGA remained pending but dormant as the Western Trust sought recovery in the Home liquidation proceedings.

D. The Western Trust settles its claim in the Home liquidation proceedings and dismisses CIGA from the Zurich litigation.

In February 2011, the Western Trust reached a settlement agreement with New Hampshire's Insurance Commissioner, as Home's liquidator. The settlement received court approval in May 2011. The Insurance Commissioner allowed a claim of \$242.5 million against Home's future liquidation, permitting "distributions on the allowed amount at the same intervals and at the same percentages" as other similarly situated creditors. The settlement agreement acknowledged Western Trust's pending lawsuit against CIGA and pending or potential claims against other insurance guaranty associations and included provisions to address those claims and their potential impact on the liquidation.

As the New Hampshire Insurance Commissioner explained when seeking court approval of the settlement: "When an insurance guaranty association such as the California Insurance Guarantee Association responds to a claim under an insolvent insurer's policy, the association generally has a corresponding claim in the insurer's liquidation both for its expenses and any *1205 payment to the claimant." The settlement agreement included provisions "designed to maintain the position of the Home estate" and its creditors "regardless of the outcome of claimants' claim against the California Insurance Guarantee Association or any other insurance guaranty association under the Home policies." Western Trust agreed to dismiss without prejudice its pending complaint against CIGA and agreed that any subsequent recovery against CIGA or other insurance guaranty associations would be deducted from the amount due from the liquidation estate.

Within days of the New Hampshire court order approving the settlement, Western Trust filed a request for dismissal without prejudice of its declaratory relief cause of action against CIGA in the Zurich litigation. CIGA was dismissed from the case in May 2011.

E. Western Trust files a second declaratory relief action against CIGA.

In February 2013, Western Trust filed the complaint for declaratory relief against **859 CIGA that is the subject of this appeal. The complaint alleges, in relevant part: Western Trust is the holder of rights under Home insurance policies, Home is insolvent, Western Trust filed a timely claim in Home's liquidation proceedings seeking in excess of \$1 billion of insurance proceeds, the liquidation claim was settled for \$242.5 million, Home policyholders are unlikely to receive full payment of their claims, there is no other undisputed insurance to cover the Western Companies' asbestos bodily injury liabilities, and CIGA "disputes its statutory obligation" to pay the Western Trust for asbestos claims arising under the Home policies. The dispute rests on a number of legal grounds, including CIGA's assertions that the Western Trust lacks standing to bring a CIGA claim and that coverage from other, solvent insurers is available and yet to be exhausted. Western Trust seeks "a declaration that CIGA is required to compensate the Western Trust for amounts paid by the Western Trust on account of asbestos bodily injury claims, to the extent such claims are covered under the Home policies and would have been paid in full by Home, but for its insolvency."

CIGA responded with a demurrer and motion to strike portions of the complaint. The demurrer was based on several grounds, including the statute of limitations. CIGA maintained that any breach of its statutory obligation to pay a covered claim occurred in August 2005, when it filed its answer to the earlier declaratory relief cause of action in the Zurich litigation. CIGA argued that its allegation that Western Trust's claims were not covered claims "amounted to a denial of a claim for statutory benefits, thus triggering the accrual of the cause of action against CIGA premised on an alleged breach of its statutory duties." Once triggered, CIGA argued, the three-year limitations period applicable to statutory claims (Code Civ. Proc., § 338, subd. (a)) began *1206 to run. CIGA argued that Western Trust's voluntary dismissal of the prior complaint "restored the pertinent statute of limitation ... as if no lawsuit was brought" thus making the 2013 action untimely.

Western Trust opposed the demurrer, arguing that both the prior and the current complaints request a judicial declaration of CIGA's obligations in advance of any breach of those obligations and that "[t]he statute of limitations on the Western Trust's claim has not even started to run." Western Trust contends that both complaints allege an actual controversy concerning coverage warranting declaratory relief but do not allege that a viable claim has yet matured, that the trust has submitted a specific claim for payment, or that CIGA has denied any specific claims. Thus, in the trust's view, the

statute of limitations for breach of a statutory duty, even now, has not begun to run.

The trial court found the complaint barred by the statute of limitations and sustained the demurrer without leave to amend. The court deemed Western Trust's 2004 complaint for declaratory relief a demand for payment and CIGA's 2005 answer interposing a general denial a rejection of the demand. The court explained that it "cannot in good faith construe Western's demand for a judicial determination that CIGA is liable for 'covered claims' as anything other than a demand for coverage. The Zurich complaint was served on CIGA, notified CIGA of Western's proof of claim in the insolvency proceedings, provided information about the policies at issue, and sought an order that CIGA would be liable for any shortfall in payment covered under the statute.... Thus, it substantially satisfies the requirements of the 'claim presentation' requirement for accrual of a claim, including the requirements **860 of CIGA's website. Further, in 2004, plaintiffs alleged in the Zurich case that they had submitted a claim to CIGA." The court found that CIGA's denial of liability triggered accrual of the three-year statute of limitations and that the prior action, which was voluntarily dismissed, did not toll the statute of limitations. Thus, the present action commenced in 2013 was held to be time-barred.

The court ordered the case dismissed and Western Trust filed a timely notice of appeal.

DISCUSSION

1. Standards governing review of demurrers.

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled." (*1207 *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966, 9 Cal.Rptr.2d 92, 831 P.2d 317.) " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we

reverse; if not, there has been no abuse of discretion and we affirm." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 703 P.2d 58.)

¹¹ ¹² "Questions concerning whether an action is barred by the applicable statute of limitations are typically questions of fact." (*Sahadi v. Scheaffer* (2007) 155 Cal.App.4th 704, 713, 66 Cal.Rptr.3d 517.) " 'A demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. [Citation.] In order for the bar of the statute of limitations to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred.' " (*Guardian North Bay, Inc. v. Superior Court* (2001) 94 Cal.App.4th 963, 971-972, 114 Cal.Rptr.2d 748.)

2. The nature of declaratory relief actions.

Declaratory relief actions are well-recognized in California law. "Any person ... who desires a declaration of his or her rights or duties with respect to another ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action ... in the superior court for a declaration of his or her rights and duties.... He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time.... The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought." (Code Civ. Proc., § 1060.)

¹³ ¹⁴ "The purpose of a judicial declaration of rights in advance of an actual tortious incident is to enable the parties to shape their conduct so as to avoid a breach." (*Babb v. Superior Court* (1971) 3 Cal.3d 841, 848, 92 Cal.Rptr. 179, 479 P.2d 379.) Declaratory relief " 'operates prospectively, **861 and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them.' " (*Ibid.*)

*1208 3. The applicable statute of limitations for breach of a statutory duty is three years.

¹⁵ All civil actions, including actions for declaratory relief, are subject to statutes of limitations. (*Maguire v. Hibernia Savings & Loan Society* (1944) 23 Cal.2d 719, 733-734, 146 P.2d 673.) "[T]he statute of limitations exists to

promote the diligent assertion of claims, ensure defendants the opportunity to collect evidence while still fresh, and provide repose and protection from dilatory suits once excess time has passed. [Citations.] The duration of the limitations period marks the legislatively selected point at which, for a given claim, these considerations surmount the otherwise compelling interest in adjudicating on their merits valid claims.” (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191, 151 Cal.Rptr.3d 827, 292 P.3d 871.) The parties agree that the complaint concerns CIGA’s statutory obligations and that the three-year statute of limitations applies. (Code Civ. Proc., § 338.)

¹⁶¹ ¹⁷¹“The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues. [Citations.] Traditionally at common law, a ‘cause of action accrues “when [it] is complete with all of its elements”—those elements being wrongdoing, harm, and causation.’ [Citations.] This is the ‘last element’ accrual rule: ordinarily, the statute of limitations runs from ‘the occurrence of the last element essential to the cause of action.’ ” (*Aryeh v. Canon Business Solutions, Inc.*, *supra*, 55 Cal.4th at p. 1191, 151 Cal.Rptr.3d 827, 292 P.3d 871.)

¹⁸¹ ¹⁹¹ ¹⁰⁰“The duration of the limitations period applicable to a declaratory relief action is determined by the nature of the underlying obligation sought to be adjudicated. (*Maguire v. Hibernia Savings & Loan Society*, *supra*, 23 Cal.2d at p. 734, 146 P.2d 673.) “Thus, a declaratory judgment action ... to enforce a statutory liability must be brought within the same three-year period after accrual of the cause of action ... as an action for damages or injunction on the same liability.” (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 821, 107 Cal.Rptr.2d 369, 23 P.3d 601.) An action for declaratory relief may be brought before a cause of action on the underlying obligation is breached, but in no event later than the applicable time period following the breach. (*Maguire*, *supra*, at p. 734, 146 P.2d 673.)

***1209 4. A cause of action accrues against CIGA when all of the events necessary to create a covered claim have occurred.**

¹¹¹“CIGA has a statutory duty to pay “covered claims.” (Ins.Code, § 1063.2, subd. (a).) Covered claims are defined as “the ****862** obligations of an insolvent insurer” which, among other things, are within the coverage of the insolvent insurer’s policy and remain unpaid despite presentation of a timely claim in the insurer’s liquidation proceeding. (Ins.Code, § 1063.1, subd. (c)(1).) There are numerous additional exclusions and limitations, among

them the provision that “ ‘Covered claims’ does not include ... a claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured.” (Ins.Code, § 1063.1, subd. (c)(9)(A).)

¹¹²“If an insured timely submits a claim for coverage to CIGA, the point at which a cause of action accrues ordinarily is reasonably clear. The statute of limitations begins to run when CIGA rejects the claim. “ ‘[I]f CIGA improperly denies coverage or refuses to defend an insured on a “covered claim” arising under an insolvent insurer’s policy, it breaches its statutory duties under the Guarantee Act.’ ” (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1000, 27 Cal.Rptr.3d 583, quoting *Isaacson v. California Ins. Guarantee Assn.* (1988) 44 Cal.3d 775, 792, 244 Cal.Rptr. 655, 750 P.2d 297.) It follows that in such a case a cause of action accrues against CIGA when CIGA denies coverage on a submitted claim.

A more difficult question is when the limitations period begins to run for submitting a claim for coverage. Neither the statute nor any regulation specifies the point at which a claim must be submitted to CIGA. California differs from other states in this regard. All states have “statutes that establish mechanisms for paying claims against insolvent insurers in the form of ‘guaranty associations’ or ‘guaranty funds,’ which derive their income from taxes or assessments against insurers doing business within the state.” (***1210** *Cole v. California Ins. Guarantee Assn.* (2004) 122 Cal.App.4th 552, 557, 18 Cal.Rptr.3d 801.) These statutes vary state to state but most set a deadline for filing claims with the association. (*Benson v. New Hampshire Ins. Guaranty Assn.* (2004) 151 N.H. 590, 864 A.2d 359, 364.) “For example, Connecticut law states that the guaranty association will not be ‘obligated for any claim filed with [it] after the expiration of two years from the date of the declaration on insolvency....’ ” (*Ibid.*) The California statute does not contain a comparable provision.

¹¹³ ¹¹⁴“To the contrary, the California statute provides no specification of the procedures for presenting or processing claims against CIGA. As the trial court observed, the statute itself does not “describe what must occur for a plaintiff to ****863** present a claim for payment to CIGA, or what constitutes rejection of the claim by CIGA.” The only express statutory requirement is that the insured present “a claim to the liquidator in the state of domicile of the insolvent insurer or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings.” (Ins.Code, § 1063.1, subd. (c)(1)(C).) “The filing of a timely claim in the

insolvency proceeding is a prerequisite to obtaining relief from CIGA.” (*Middleton v. Imperial Ins. Co.* (1983) 34 Cal.3d 134, 136. fn. 2, 193 Cal.Rptr. 144, 666 P.2d 1.) Filing such a claim is a condition precedent to the accrual of a cause of action but the deadline for filing the insolvency claim is not necessarily the date at which the cause of action against CIGA accrues and does not determine the date by which such an action must be filed. (See *Kortmeyer v. California Ins. Guarantee Assn.* (1992) 9 Cal.App.4th 1285, 1291–1292, 12 Cal.Rptr.2d 71.)

¹¹⁵ ¹¹⁶Applying the basic principle that a statute of limitations does not begin to run until “the cause of action is complete with all of its elements” (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397, 87 Cal.Rptr.2d 453, 981 P.2d 79), no cause of action accrues against CIGA until an insured has acquired a “covered claim” within the meaning of the statute. “It is the general rule that a cause of action accrues when a suit may be maintained thereon, and the statute of limitations then begins to run.” (*Maguire v. Hibernia Savings & Loan Society, supra*, 23 Cal.2d at p. 733, 146 P.2d 673.) A statute of limitations does not run on a claim for benefits until the claimant is entitled to receive those benefits. (*California Teacher’s Assn. v. Governing Board* (1985) 169 Cal.App.3d 35, 46, 214 Cal.Rptr. 777.) In *Unisys Corp. v. Senn* (2000) 99 Wash.App. 391, 994 P.2d 244, 247–248, a Washington court interpreting its insurance guaranty statute held that a claim accrued against the insurance guarantee association when the association’s payment obligation matured. Under similar reasoning, a claim accrues against CIGA when its payment obligation matures.

*1211 An insured’s right to recover from CIGA does not arise and cannot be determined until it is known what recovery the insured will obtain in the insolvency proceedings. A literal reading of section 1063.1, subdivision (c)(1) does not require the insured to have collected its distribution from the insolvency proceedings, or to have at least determined the portion of its claim that it will collect, before the claim becomes a “covered claim.” Nonetheless, because the claim is not ripe for determination until the actual recovery in the insolvency proceedings is known (see *Berger v. California Ins. Guarantee Assn., supra*, 128 Cal.App.4th at p. 1006, 27 Cal.Rptr.3d 583), a fair argument can be made that the cause of action against CIGA does not accrue until that uncertainty has been resolved. We need not determine whether that uncertainty alone is sufficient to preclude accrual of the cause of action because under the explicit language of subdivision (c)(9)(A) of section 1063.1, the insured does not have a “covered claim” until the insured has exhausted all claims for coverage against other insurers. (*Stonelight Tile, Inc. v. California Ins.*

Guarantee Assn. (2007) 150 Cal.App.4th 19, 37, 58 Cal.Rptr.3d 74.) The present complaint does not allege that all such claims against other insurers were exhausted more than three years before the action was filed. Indeed, it cannot be determined from the face of the pleading when, if ever, the trust acquired a “covered claim” and a cause of action against CIGA.

5. The record fails to establish that Western Trust submitted or that CIGA denied a claim for coverage.

¹¹⁷Although Western Trust pleaded that it submitted a “claim” to CIGA, there **864 is nothing in the complaint indicating this was a claim that CIGA was then obligated to pay any amount to the trust. The record does not contain a copy of the claim the Western Companies filed in the Home liquidation proceedings or a copy of the notice of this claim sent to CIGA. The 2004 complaint alleged only that “[p]laintiffs submitted a claim to CIGA on account of Home’s insolvency,” without further specificity, and the current complaint adds only that the claim sought “in excess of \$1 billion of insurance proceeds for asbestos bodily injury liabilities.” There is no specification in either complaint of any amount that Western Trust alleged to be a covered claim, much less of any particular asbestos claim giving rise to a liability of the trust covered by a Home policy for which the trust demanded payment from CIGA. Neither the 2004 nor the 2013 complaint alleged, explicitly or implicitly, that any amount was payable by CIGA as of the time the complaint was filed. CIGA’s assertion that Western Trust submitted a claim for payment does not “clearly and affirmatively appear on the face of the complaint” or matters subject to judicial notice. (*Guardian North Bay, Inc. v. Superior Court, supra*, 94 Cal.App.4th at pp. 971–972, 114 Cal.Rptr.2d 748.) Since it does not appear from matters properly considered upon demurrer either that a cause of action for payment upon a covered claim had accrued or that a claim *1212 for any such payment had been submitted more than three years before the present complaint was filed, the action was not shown to have been barred by the statute of limitations.

¹¹⁸Even if Western Trust were deemed to have submitted a claim to CIGA, there is no showing that CIGA denied the claim. “CIGA’s first duty is to determine whether a claim placed before it is a ‘covered claim.’ ” (*Saylin v. California Ins. Guarantee Assn.* (1986) 179 Cal.App.3d 256, 262, 224 Cal.Rptr. 493.) The record does not contain any correspondence from CIGA to Western Trust or other documents to indicate that CIGA evaluated a claim, determined it did not constitute a covered claim, and denied coverage. While Western Trust sought in the 2004 declaratory relief action to obtain an advance

determination that CIGA will be responsible for any amount for which the trust is held liable covered by a Home policy beyond the trust's recovery in the liquidation or other proceedings, CIGA's answer can be understood to assert no more than that the trust had not then submitted a "covered claim" within the meaning of the statute. With no specific claim before it, and with proceedings ongoing that unquestionably precluded any claim against CIGA from being a "covered claim," CIGA could hardly have alleged otherwise. Moreover, while CIGA's answer to the 2004 complaint obviously sought to preserve all possible defenses, having alleged that the complaint was premature because the trust was pursuing other insurance and had not exhausted its remedies in the Home liquidation proceedings,⁶ CIGA can hardly assert at this time that the prior action was, in fact, a timely demand for payment barring a claim when the former uncertainties have been eliminated.

¹¹⁹⁾CIGA's argument that the 2004 complaint for declaratory relief constituted a claim for payment and CIGA's answer a denial of coverage misconstrues the nature of a declaratory relief action. As indicated above, such an action may be maintained ****865** before a wrongful act occurs or liability arises. As one commentator has noted, "[t]he cause of action for declaratory relief may accrue, in the sense that an action may be maintained, before a breach occurs. This is the very purpose of the remedy." (3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 685, p. 905.) Such actions operate prospectively "to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs." (*Babb v. Superior Court*, *supra*, 3 Cal.3d at p. 848, 92 Cal.Rptr. 179, 479 P.2d 379.) It has long been understood that "a party may have a right to sue for declaratory relief without setting in motion the statute of limitations." (*Maguire v. Hibernia Savings & Loan Society*, *supra*, 23 Cal.2d at p. 734, 146 P.2d 673.) It would be a perversion of the process to hold that the ***1213** assertion of a dispute in a declaratory relief action, and a defendant's answer acknowledging the controversy, constitutes either a claim that the defendant has already breached its obligations or an actionable repudiation of the alleged obligations.

An insurance coverage case is instructive. In *United Pacific-Reliance Ins. Co. v. DiDomenico* (1985) 173 Cal.App.3d 673, 675, 219 Cal.Rptr. 119, plaintiff insurer assumed defense of a tort action against defendant arising out of an incident in 1977. The insurer's defense was pursuant to a reservation of rights, and in February 1979, it filed a complaint for declaratory relief seeking an adjudication of no coverage under the policy. (*Ibid.*) In 1983, the declaratory relief action was dismissed without

prejudice and a second complaint for declaratory relief was filed two days later. (*Id.* at pp. 675-676, 219 Cal.Rptr. 119.) A demurrer based on the statute of limitations was sustained by the trial court. (*Id.* at p. 676, 219 Cal.Rptr. 119.) The court of appeal reversed: "In the instant case, the underlying cause of action for coercive relief would have accrued upon the breach of the contract of insurance. Such a breach would have occurred, for instance, had appellant refused to defend the tort action. In such a situation, the statute of limitations for a cause of action based on a written contract would be four years.... However, because appellant assumed defense of the civil action and has continued to discharge its obligations under the policy, no breach of contract exists. In the absence of any breach, no cause of action for coercive remedy has accrued and no statute of limitations has been set in motion." (*Id.* at p. 677, 219 Cal.Rptr. 119.) The court did not find that the insurer's prior declaratory relief action, in which it disputed coverage, was itself a breach of contract triggering the statute of limitations.

To preserve a claim for coverage by CIGA, an insured must give CIGA notice of its potential claim by the deadline for filing a claim in the insolvent insurer's liquidation proceedings. This notice permits CIGA to take such steps as it deems appropriate to ascertain the facts and protect its interests in responding to an eventual demand for payment. The time within which the insured must submit its claim for payment, however, does not commence until the insured possesses a "covered claim" within the meaning of the statute.⁷ CIGA must be presented with a timely claim for payment and affirmatively deny coverage before a breach of its duty can occur. An insured's complaint seeking a declaration of duty, and the defendant's answer disputing its duty, does not constitute the submission and denial of a claim sufficient to trigger the statute of limitations.

***1214 DISPOSITION**

The judgment is reversed. The matter is remanded with directions to overrule the ****866** demurrer insofar as it is based on the statute of limitations, without prejudice to considering such other defenses and issues as may be appropriate. Western Trust shall recover costs incurred on appeal upon timely application in the trial court. (Cal. Rules of Court, rule 8.278.)

We concur:

Siggins, J.

229 Cal.App.4th 1196, 177 Cal.Rptr.3d 853, 14 Cal. Daily Op. Serv. 11,019, 2014 Daily Journal D.A.R.

Jenkins, J.

12,920

All Citations

Footnotes

- 1 Insurers are precluded from seeking relief in bankruptcy. (11 U.S.C. § 109(b)(2).) “[S]tate insolvency laws govern the procedures for rehabilitating and liquidating insolvent insurers.” (1 Couch on Insurance (3d ed.1997) § 5:34.)
- 2 Most states, including California, have established insurance guarantee associations to protect policyholders in the event of an insurer’s insolvency. (1 Couch on Insurance, *supra*, § 6:27.) Subject to statutory standards, CIGA pays insurance claims of insolvent insurance companies from assessments against other insurance companies. Those insurance companies recoup the assessment through higher policy premiums. “In this way the insolvency of one insurer does not impact a small segment of insurance consumers, but is spread throughout the insurance consuming public, which in effect subsidizes CIGA’s continued operation.” (*R.J. Reynolds Co. v. California Ins. Guarantee Assn.* (1991) 235 Cal.App.3d 595, 600, 1 Cal.Rptr.2d 405.)
- 3 CIGA’s second defense alleged that the complaint “is barred by the applicable statute(s) of limitations including, but not limited to, California Code of Civil Procedure sections 337, 338, 242, and the California case law applicable herein.” The fifth defense alleged that the complaint “fails to allege facts sufficient to entitle plaintiffs to payment of past and future statutory amounts owed under the Guarantee Act.” The 12th defense alleged that the complaint “is or may be barred or limited to the extent that Plaintiffs’ claims are covered by other insurance available to the claimant or insured(s) under California Insurance Code § 1063.1(c)(9)(i).” The 14th defense alleged that the complaint “is or may be barred or limited by Insurance Code section 1063.1(c)(9)(ii), which only obligates CIGA to pay as ‘covered claims’ only those claims which remain ‘unpaid by the insolvent insurer.’ To the extent that any other entity is found to be legally responsible for The Home Insurance Company’s (‘Home’) obligations under the Home policies and pays such obligations, such payments would be the result of the Home’s contractual obligations and liabilities and would constitute payment by the Home. There would be no ‘covered claim’ for which CIGA would be obligated to pay under such circumstances.” The 15th defense alleged that the complaint “is or may be barred or limited by Insurance Code section 1063.2(e), which requires that any person ‘having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim, shall be required to first exhaust his or her right under the program’ prior to seeking any recovery from CIGA. Any amount payable by CIGA on a covered claim shall be reduced by the amount of any recovery under the program.”
- 4 There are a number of exceptions to the usual rules governing limitations periods, including the doctrine of equitable tolling, which “may suspend or extend the statute of limitations when a plaintiff has reasonably and in good faith chosen to pursue one among several remedies and the statute of limitations’ notice function has been served.” (*Aryeh v. Canon Business Solutions, Inc.*, *supra*, 55 Cal.4th at p. 1192, 151 Cal.Rptr.3d 827, 292 P.3d 871.) The parties do not suggest the possible applicability of any of these exceptions.
- 5 Insurance Code section 1063.1, subdivision (c)(1) defines a covered claim as “the obligations of an insolvent insurer ... (A) Imposed by law and within the coverage of an insurance policy of the insolvent insurer. (B) Which were unpaid by the insolvent insurer. (C) Which are presented as a claim to the liquidator in the state of domicile of the insolvent insurer or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings. (D) Which were incurred prior to the date coverage under the policy terminated and prior to, on, or within 30 days after the date the liquidator was appointed. (E) For which the assets of the insolvent insurer are insufficient to discharge in full.... (G) In the case of other classes of insurance [other than workers compensation insurance] if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.” Several additional subparagraphs within subdivision (c) set forth additional exclusions and inclusions. The statute also provides that CIGA is not required to pay “that portion of a claim” under a liability policy in excess of \$500,000. (Ins.Code, § 1063.1, subd. (c)(7).)
- 6 Although the settlement agreement between Western Trust and the liquidator establishes the trust’s claim against the liquidation estate to be \$242.5 million, apparently only a portion of this amount is likely to be available for payment by the estate.
- 7 Contrary to statements made in CIGA’s petition for rehearing, we do not hold that a claimant may not submit to CIGA a

specific claim for coverage before exhausting its claims in the insolvency or other proceedings, or that CIGA is precluded from honoring such claims. Our opinion is limited to the time within which the claim *must* be submitted.

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

JAN 29 2016

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MORGAN, LEWIS & BOCKIUS LLP
Paul A. Zevnik, State Bar No. 75343
pzevnik@morganlewis.com
Jeffrey S. Raskin, State Bar No. 169096
jraskin@morganlewis.com
One Market, Spear Street Tower
San Francisco, California 94105-1126
Tel: 415.442.1000
Fax: 415.442.1001

MORGAN, LEWIS & BOCKIUS LLP
Michel Y. Horton, State Bar No. 114243
mhorton@morganlewis.com
300 South Grand Avenue, Twenty-Second Floor
Los Angeles, CA 90071
Tel: 213.612.2500
Fax: 213.612.2501

Attorneys for Plaintiffs
Additional Attorneys Listed on Next Page

C. Guerry Collins (SBN: 19719)
cguerry@lockelord.com
By Conrad V. Sison (SBN: 217197)
csison@lockelord.com
LOCKE LORD LLP
300 South Grand Avenue, Suite 2600
Los Angeles, California 90071
Telephone: 213.485.1500
Facsimile: 213.485.120

Ray L. Wong (SBN: 84193)
rlwong@duanemorris.com
DUANE MORRIS LLP
One Market, Spear Tower
San Francisco, California 94105-1126
Telephone: 415.957.3000
Facsimile: 415.957.3001

Attorneys for Defendant
CALIFORNIA INSURANCE
GUARANTEE ASSOCIATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

STEPHEN M. SNYDER, JACK L.
LUIKART, AND SANDRA R.
HERNANDEZ, SOLELY IN THEIR
CAPACITIES AS TRUSTEES OF THE
WESTERN ASBESTOS SETTLEMENT
TRUST,

Plaintiffs,

v.

CALIFORNIA INSURANCE GUARANTEE
ASSOCIATION, a California unincorporated
association,

Defendant.

Civil Case No. RG13666656

ASSIGNED FOR ALL PURPOSES TO
JUDGE WINIFRED SMITH
DEPARTMENT 21

JOINT CASE MANAGEMENT
CONFERENCE STATEMENT

Date: February 5, 2016
Time: 10:00 a.m.
Dept.: 21

1 **I. INTRODUCTION**

2 Pursuant to Local Rule 3.260(f) and the Court’s Order dated December 21, 2015,
3 plaintiffs Stephen M. Snyder, Jack L. Luikart, and Sandra R. Hernandez, Solely In Their
4 Capacities As Trustees Of The Western Asbestos Settlement Trust (“The Western Trust” or
5 “Plaintiffs”), and defendant California Insurance Guarantee Association (“CIGA” or
6 “Defendant”) hereby submit jointly this Case Management Statement (“Joint Statement”) in
7 anticipation of the Case Management Conference, scheduled for February 5, 2016 at 10:00 a.m.
8 Prior to submitting this Joint Statement, the parties met and conferred in accordance with
9 Rule 3.724 of the California Rules of Court.

10 **A. Factual Summary and Statement of the Issues Presented.**

11 On February 7, 2013, the Western Trust filed a complaint in Alameda County Superior
12 Court, captioned *Snyder et al. v. CIGA*, Case No. RG13666656. The Western Trust alleges that it
13 is entitled to obtain payments from CIGA up to the statutory maximum amount for asbestos
14 bodily injury liabilities (including defense costs) that were covered under insurance policies
15 issued by Home Insurance Company, now in liquidation (“Home”). CIGA has filed its answer,
16 and denies that it has any obligations to plaintiffs, and CIGA maintains that plaintiffs are not
17 entitled to any payments for any statutory amounts under the Guarantee Act (Insurance Code
18 §1063 *et seq.*).

19 The parties stipulated that the case should be treated as complex, and on March 11, 2013,
20 the Court issued an order deeming the case complex.

21 CIGA filed a demurrer to the complaint and a Motion to Strike certain portions of the
22 complaint. Judge Stephen Brick sustained the demurrer without leave to amend, on statute of
23 limitations grounds, on June 28, 2013, and declared the Motion to Strike moot.

24 The Trust appealed the order sustaining CIGA’s demurrer without leave to amend. The
25 court of appeal reversed the order in a published opinion dated September 17, 2014, and
26 remanded the case to this Court. The Court of Appeal denied CIGA’s request for rehearing, and
27 modified its opinion slightly on October 7, 2014. The Supreme Court denied CIGA’s petition for
28 review on December 10, 2014. The Court of Appeal issued its remittitur on December 11, 2014.

1 CIGA answered the complaint on June 29, 2015.

2 The parties have agreed to adjudicate this action in phases. Plaintiff contemplates that the
3 first phase will be a court trial. CIGA is uncertain whether there will be any factual issues, and
4 reserves its rights either to a bench or jury trial in Phase 1. The proposed trial phases are
5 discussed in detail, below.

6 1. Plaintiffs' Position:

7 The Western Trust was created by the bankruptcy reorganization of Western Asbestos
8 Company, Western MacArthur Company and MacArthur Company (the "Western Companies")
9 under Section 524(g) of the Bankruptcy Code to resolve the Western Companies' legacy asbestos
10 liabilities.

11 The purpose of § 524(g) is to consolidate a debtor's asbestos-
12 related assets and liabilities into a single trust for the benefit of
asbestos claimants.

13 *Continental Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011 (9th
14 Cir. 2012). Consistent with the purpose of Section 524(g), as a result of the Western Companies'
15 reorganization, the Western Trust is responsible for the asbestos bodily injury liabilities of the
16 Western Companies. The Western Trust also is the holder of all rights to insurance policies
17 covering the Western Companies for asbestos bodily injury liabilities, including policies issued
18 by Home, without regard to any restrictions on the assignability of those rights outside of the
19 Section 524(g) bankruptcy context. *See, In re Thorpe Insulation Co.*, 677 F.3d 869 (2012) ("we
20 hold that the anti-assignment provisions contained in the contracts between [the debtor's insurers]
21 and [the debtor] stand as an obstacle to completion of a successful § 524(g) plan, and therefore
22 are preempted by federal bankruptcy law"). Under the terms of the Western Companies' plan of
23 reorganization, the Western Trust may assert those rights in either its own name or that of the
24 Western Companies with equal effect.

25 Home Insurance Company issued at least seven (7) primary policies to Western
26 MacArthur Company and MacArthur Company for the periods January 1, 1976 through
27 January 1, 1983. Home was placed into liquidation by order dated June 13, 2003. The Western
28 Companies recently settled with Home through Home's liquidation process for an allowed

1 Class II claim of \$242,500,000. The settlement was approved by the Superior Court of
2 New Hampshire, Merrimack County. The settlement amount, however, is insufficient to cover
3 the entirety of the Western Companies' ongoing asbestos liabilities that would have been Home's
4 responsibility, if it were still solvent.

5 As a result, the Western Companies seek payments in excess of the amounts actually paid
6 by Home. The Home coverage responds to essentially all of the asbestos bodily injury suits
7 asserted, or assertable, against the Western Companies.

8 The parties agreed to conduct this lawsuit in phases. The first phase concerns two entirely
9 legal issues of state and federal statutory interpretation in relationship to certain defenses that
10 CIGA has asserted:

- 11 • Whether recoveries held by the Western Trust (which were obtained via
12 settlements with the insurers of Western MacArthur) constitute "other" available
13 insurance under Insurance Code § 1063.1(c)(9)(A). If the answer to this question
14 is "yes," is the enforcement of this statutory provision under the circumstances of
15 this case preempted by the bankruptcy code?
- 16 • Whether the Western Trust's settlements with its solvent insurers have "properly"
17 exhausted those insurers' coverage within the meaning of section 1063.1(c)(9)(A).
18 If the answer to this question is "no," is the enforcement of this statutory provision
19 under the circumstances of this case preempted by the bankruptcy code?

17 Under Judge Carvill's direction, the parties have been attempting to arrive at a fact
18 stipulation to obviate the need for discovery into what are essentially legal issues. Extensive
19 discovery, as CIGA initiated recently, is not necessary. The purpose of the fact stipulation is set
20 forth in the introductory paragraphs of the drafts the parties have exchanged:

21 The inclusion of a particular fact in this stipulation shall not be deemed to be an
22 admission by any party that the particular fact is material to the issues to be tried in
23 Phase I, or that any particular fact need or should be considered by the Court in
24 deciding the Phase I issues. Instead, without regard to their relevance or
25 materiality the facts contained in this stipulation are deemed "established," such
26 that the parties do not need to submit documentary or testimonial evidence to
27 prove any of the facts contained in this stipulation. The parties are free, however,
28 to seek the admission into evidence at trial of the documents supporting the facts
in this stipulation, or any other facts that may be relevant to the Phase I trial.

The parties reserve all objections as to the relevancy at trial of the facts contained
in this stipulation and the right to seek to exclude the admission into evidence of
any of the facts set forth in this stipulation.

1 The Trust believes that a “fact stipulation” is just that – a stipulation of the existence of
2 *facts* that are not subject to dispute. Whether any of those facts are relevant to the resolution of
3 this case is for the Court to determine. The history of the Western Companies’ litigation with
4 their insurers, the positions taken by the Western Companies during more than a decade of
5 insurance coverage litigation, and the resolution of their claims under numerous insurance
6 policies dating to the 1940s, were aired publicly in the bankruptcy case that resulted in the
7 creation of the Trust. Legal and factual positions were discussed extensively in publicly-filed
8 documents. Settlement agreements were placed into the public record. Settlement agreements
9 were approved by the bankruptcy court. A plan of reorganization was confirmed by the
10 bankruptcy court after an extended public hearing. The bankruptcy court’s confirmation order
11 was affirmed by the District Court. Operative facts arising from the bankruptcy cases are not
12 subject to dispute. The Trust has produced the bankruptcy documents, along with the Western
13 Companies’ insurance policies, their settlement agreements, and other insurance-related
14 documentation from their historical litigation activities.

15 The Trust, however, questions whether CIGA has any desire to move this case
16 expeditiously toward resolution. The case already has been on file for nearly three years, yet the
17 adjudication of two of *CIGA’s defenses*, as opposed to the Trust’s affirmative positions, still
18 seems a long way off. CIGA has repeatedly stricken facts from the proposed stipulation on
19 “relevancy” grounds, or because it supposedly needs to “confirm” operative facts contained in
20 documents filed with the bankruptcy court. CIGA also has repeatedly proposed that the Trust
21 agree to conclusions consistent with its positions in this case. For example, CIGA wants the
22 Trust to agree that bankruptcy court orders are not “binding” on CIGA. This is not a fact. It is a
23 legal conclusion for the Court either to accept or reject.

24 The Trust exists for the sole purpose of compensating asbestos victims injured by the
25 business operations of the Western Companies. Every dollar the Trust pays in expenses *reduces*
26 the amount of money available to pay victims. CIGA knows this to be the case. In fact, CIGA is
27 submitting for reimbursement all of the legal fees it is incurring in this case to the liquidator for
28 the Home Insurance Company. The liquidator is paying CIGA’s fees and is, in turn, *reducing* the

1 Trust's allowed claim dollar-for-dollar by the amount it pays CIGA. The Trust therefore is
2 *paying the legal fees of its litigation opponent in this case.* Even worse, the Trust is paying those
3 fees *twice*, because CIGA has employed *two law firms* to litigate this case. Consequently, the
4 Trust is paying *three sets of lawyers* – its own lawyers, and the two law firms that CIGA has
5 employed.

6 This incentivizes CIGA to engage in unnecessary litigation delay, and to escalate
7 expenses. Given the lack of reciprocity in the payment of attorneys' fees, CIGA's generation of
8 excessive costs in this case is a single-edged tactical sword pointed at the asbestos victims for
9 whose benefit the Trust exists. It also frustrates the intent of Congress to bring closure to
10 America's largest mass tort challenge. Consequently, the Trust has filed a motion in
11 New Hampshire state court, where the Home liquidation is being administered, seeking to curtail
12 this practice.

13 CIGA's claim that it has served "limited" discovery rings hollow. It served document
14 demands on the Trust seeking, among other things, "All Documents Relating To *any and all*
15 *claims* made by the Western Trust and/or Western Companies to any Liability Insurer to cover
16 asbestos bodily injury claims." (emphasis added). Contrary to CIGA's assertions, the Trust has
17 never agreed that this type of request is appropriate in this case. It has raised objections to it for
18 more than six months, The Trust agreed that a document demand could be served. It did not agree
19 that any of the requests made in the demand were appropriate.

20 Indeed, the Western Companies' asbestos liabilities were estimated to exceed \$5 billion.
21 They were involved in litigation with many insurers *for more than a decade.* An enormous
22 amount of paper was generated in the coverage cases, which were active in several jurisdictions.
23 A request that the Trust produce "All Documents Relating To" any claims for insurance coverage
24 that those companies made over such a long period of time is a make-work exercise, particularly
25 given the purely legal issues involved in Phase I. The time and expense involved in locating and
26 reviewing potentially millions of pages of documents is excessive. A handful of litigation
27 positions asserted historically by the Western Companies are relevant to CIGA's defenses in
28 Phase I. Those positions are described in detail in the "fact stipulation" the Trust prepared. There

1 is no need, outside of needlessly increasing costs, for *any* request to be made for “All Documents
2 Relating To” to events that began in the 1980s.

3 The Trust therefore seeks the assistance of the Court to move Phase I to adjudication in
4 the near future. Phase I is designed to adjudicate *CIGA’s defenses*, and not the Trust’s affirmative
5 positions. *CIGA’s* delay, and its apparent desire to escalate expenses, is untenable.

6 2. Defendant’s Position:¹

7 CIGA regrets that Plaintiffs chose to make this case management statement
8 argumentative. Given Plaintiffs’ decision to burden the Court with argument, CIGA is compelled
9 to respond. CIGA was created by the legislature under the Guarantee Act (California Insurance
10 Code §§ 1063 *et seq*) as part of the insurance insolvency safety net to provide a means for paying
11 limited policy benefits to insureds or to claimants when insurers become insolvent, are liquidated,
12 and put out of business by state regulators. *See Isaacson v. California Ins. Guarantee Assn.*
13 (1988) 44 Cal.3d 775, 786 (“(CIGA) is a statutory entity that depends on the Guarantee Act for its
14 existence and for a definition of its powers, duties and protections”). CIGA was not created to act
15 like a typical insurer. (*Id.* at p. 786). It issues no policies, collects no premiums, makes no
16 profits, and assumes no contractual obligations to the insureds. (*Id.* at p. 787). CIGA’s duties are
17 not coextensive with the duties owed by the insolvent insurer under its policies. (*R.J. Reynolds*
18 *Co. v. California Ins. Guarantee Assn.* (1991) 235 Cal.App.3d 595, 601). As a creature of statute,
19 CIGA is only authorized to “pay and discharge covered claims.” *See* Insurance Code §1063.2,
20 subd. (a).

21 CIGA, by statute, is ultimately funded by its premium charges for “insolvency insurance”
22 on its members, which are comprised of insurers admitted to transact insurance in California. *See*
23 Insurance Code § 1063.5. These premium charges are eventually collected by the member
24 insurers from the insurance buying public. *See* § Ins. Code 1063.14. It is therefore, ultimately,
25 the California insurance buying public who fund CIGA and all costs and claims imposed upon it.
26 *See Isaacson, supra*, at 784. The scope of what the Legislature has mandated that CIGA will or

27
28 ¹Attached hereto as Exhibit “B” is a brief history of the significant procedural and factual history underlying the
issues in this matter. This history may be beneficial to the Court in assessing the contentions set forth by each party.

1 will not pay is governed by statute, principally Sections 1063.1 and 1063.2 of the Insurance Code,
2 by defining what is or is not a “covered claim” and by specifying certain limitations, reductions,
3 or offsets against CIGA benefits. Recognizing that CIGA’s payment of “covered claims” is
4 underwritten by the California insurance buying public, the Legislature has determined that CIGA
5 will cover some of the insolvent insurer’s liabilities, but not others. “Covered claims” are not
6 coextensive with the insolvent insurer’s obligations under its policies.

7 Analyzing CIGA’s obligations to an insured or claimant is a two-part process. First, it
8 must be determined whether the claims at issue are an obligation of the insolvent insurer arising
9 under its policies. Second, the various offsets, credits, and limitations set by the Guarantee Act
10 must be applied to the claims to determine the amount (if any) of CIGA’s ultimate obligations.
11 The various provisions describing the circumstances where CIGA shall not pay—in cases, for
12 example, where there is other solvent insurance available to cover the claim under
13 §1063.1(c)(9)—are all predicated on a policy and purpose that CIGA “. . . is an insurer of last
14 resort.” *California Ins. Guarantee Assn. v. Workers’ Comp. App. Bd. (Mangum)* (2003) 112
15 Cal.App.4th 358, 364-365.

16 Plaintiffs assert that the settlement, approved by the Superior Court of New Hampshire,
17 Merrimack County, was allegedly insufficient to cover the entirety of the Western Companies’
18 ongoing asbestos liabilities that would have been Home’s responsibility, if it were still solvent.
19 That assertion is very much contested, especially when Home paid all of its products/completed
20 operations aggregate limits before it became insolvent and Plaintiffs also recovered more than a
21 billion dollars in settlements from its other insurers.

22 The parties have agreed that the first trial phase will involve issues as to (a) whether the
23 Plaintiffs’ recoveries from its other insurers constitute “other” available insurance under
24 Insurance Code section 1063.1(c)(9)(A) and (b) whether the Western Trust’s settlements with its
25 solvent insurers have “properly” exhausted those insurers’ coverage within the meaning of
26 section 1063.1(c)(9)(A). These issues involve matters of law and fact.

27 The parties have been working on a fact stipulation, a concept that CIGA first raised (not
28 Plaintiffs), to determine what facts are undisputed. As a result of this process, CIGA has

1 identified facts that need to be established or confirmed through discovery. The parties' extensive
2 meet and confer efforts have resulted in almost thirty pages of stipulated facts. The parties,
3 however, cannot stipulate to every fact at this stage, especially given Plaintiffs' decades of prior
4 coverage litigation, settlements and extensive bankruptcy proceeding to which CIGA was not
5 involved. *See* History of Case (Exhibit B, hereto). For that reason, the parties stipulated to, and
6 the Court agreed, that CIGA could serve third party subpoenas on the other insurers that paid the
7 hundreds of millions of dollars to Plaintiffs, as well as a document request, consisting of eighteen
8 (18) document requests on Plaintiffs. *See* Stipulation Regarding Phase 1 Trial Discovery Date
9 and Amendment of August 26, 2015 Case Management Order (hereinafter referred to as
10 "Discovery Order," and attached to this statement as Exhibit "A").

11 Plaintiffs call CIGA's discovery "extensive" and "not necessary." Indeed, Plaintiffs need
12 to be reminded that a draft of the documents requests were sent to Plaintiffs in advance, and they
13 stipulated that the document requests could be served on a specific date. On June 22, 2015, this
14 Court (Judge Wynne Carvill) issued an Order, which provided, *inter alia*, that CIGA would send
15 to Plaintiffs draft document requests by June 29, 2015, which CIGA ultimately sent to Plaintiffs
16 on June 24, 2015. Plaintiff have had the draft document requests since June 24, 2015, and CIGA
17 then was allowed to finalize and serve the requests on October 30, 2015. Furthermore, Plaintiffs
18 received an extension to respond to these requests until February 18, 2016.

19 While Plaintiffs voluntarily have produced certain documents, without any verification of
20 completeness, CIGA is entitled to ask for all the documents that it believes are relevant and
21 receive a verification that the production is complete. CIGA should not have to depend on what
22 Plaintiffs selectively wish to produce, hoping that Plaintiffs will produce the "right" documents
23 and information. The parties are in litigation, where Plaintiffs seek an enormous amount of
24 money from CIGA. Plaintiffs appear to argue that the rules of discovery can be suspended in this
25 case because Plaintiffs have offered to produce some documents—of their choosing—to CIGA.
26 The rules of civil procedure exist to protect the due process rights of the parties. Such rules
27 include CIGA's right to conduct its own, independent discovery.
28

1 Plaintiffs also “question whether CIGA has any desire to move this case expeditiously
2 toward resolution.” That suggestion has no merit whatsoever and, frankly, is offensive. In light
3 of the extensive procedural history of the litigation, which has included appellate proceedings, the
4 parties have been extremely diligent in pursuing discovery. The parties have been operating
5 under a jointly-approved schedule to which they stipulated, and, as referenced above, have made
6 substantial progress on a fact stipulation. Merely because CIGA will not agree to every “fact”
7 proposed by Plaintiffs does not mean CIGA is somehow stalling discovery. Like CIGA,
8 Plaintiffs have not agreed to every fact, proposed by CIGA.

9 Moreover, CIGA has offered to meet and confer with Plaintiffs on any of the 18 document
10 requests, to address any issue that Plaintiffs may have to a particular request. CIGA, pursuant to
11 common professional courtesy, further agreed to extend the time for Plaintiffs to respond to the
12 document requests until February 18, 2016. CIGA’s consistent effort to work with Plaintiffs in
13 producing documents further undermines any conception that CIGA is somehow dragging out
14 discovery.

15 Plaintiffs seem to suggest that because of the settlement that they voluntarily entered into
16 with the Home liquidator, CIGA must forfeit its rights to defend itself against claims for hundreds
17 of millions of dollars. If Plaintiffs choose to pursue its claim against CIGA, even though it has
18 recovered more than a billion dollars from its other insurers, CIGA has the right to defend itself,
19 and Plaintiffs cannot dictate how CIGA should defend itself. CIGA cannot be blamed that the
20 relevant facts to CIGA’s defense involve a complicated history of coverage litigation. Anything
21 less would be a denial of CIGA’s due process rights and would ultimately be at the expense of the
22 California insurance buying public.

23 The parties stipulated that this litigation was complex, which it is. But that phasing is not
24 a means to abrogate CIGA’s due process rights. To suggest that CIGA has delayed or wasted any
25 resources is offensive, especially when CIGA has abided by the schedule to which the parties
26 stipulated and approved by the Court. (See Discovery Order)

27 Given the stipulated complexity of this case, phasing the litigation is a meaningful way to
28 address the complex issues in the case. The Western Trust’s claims raise at least the following

1 issues (this list is not exhaustive, nor is it intended to limit CIGA's right to raise other statutory
2 and policy issues as they are developed during discovery in this matter):

3 (a) The impact on CIGA's statutory obligations under the Guarantee Act and New
4 Hampshire liquidation law of the Western Trust's settlement with and release of the Home
5 liquidator as part of the allowance of the Western Trust's claim against the Home estate;

6 (b) The impact of Insurance Code § 1063.1(c)(5) which bars obligations to solvent
7 insurers on the Western Trust's claim, which in part, consists of various contribution and
8 indemnification claims assigned to the Western Trust by the solvent insurers which have settled
9 with the Western Trust;

10 (c) The impact of Insurance Code § 1063.1(c)(7) which states "covered claims" do not
11 include any amounts in excess of \$500,000 on CIGA's statutory obligations to the Western Trust

12 (d) The impact of Insurance Code § 1063.1(c)(8) which states "covered claims" do not
13 include any amount awarded as punitive damages on CIGA's statutory obligations to the Western
14 Trust;

15 (e) The impact of Insurance Code § 1063.1(c)(9)(A) which states "covered claims" do
16 not include any claim which is covered by other solvent insurance on CIGA's statutory
17 obligations to the Western Trust. To date the Western Trust continues to hold hundreds of
18 millions of dollars of settlement funds received from its solvent insurers for the benefit of current
19 and future claimants which constitute "other insurance" available to the Western Trust.

20 (f) Whether the Western Trust's settlements with its solvent insurers has properly
21 exhausted those solvent insurers' coverage within the meaning of section 1063.1(c)(9)(A) and the
22 case law interpreting it;

23 (g) The impact of Insurance Code § 1063.1(c)(9)(B) which bars claims made by other
24 than the original insured or claimant (or personal representative) under the insolvent insurer's
25 insurance policies and which, also, bars claims by assignees and subrogees on CIGA's statutory
26 obligations to the Western Trust;

27
28

1 (h) The impact of Insurance Code § 1063.2(g) which states that default judgments and
2 stipulated judgments are not binding on CIGA on CIGA's statutory obligations to the Western
3 Trust;

4 (i) The impact of Insurance Code § 1063.2(h) which states that legal fees, adjusting
5 fees, costs, and expenses incurred prior to the appointment of the liquidator of the insolvent
6 company are not "covered claims" on CIGA's statutory obligations to the Western Trust;

7 (j) What impact the federal bankruptcy code's provisions creating the Western Trust
8 have on CIGA's statutory obligations to the Western Trust;

9 (k) Do the Western Trust's claims allowance and payment procedures result in legal
10 damages which are covered under the terms and conditions of the Home's policies; and

11 (l) Whether the Home's prior payments of its policies' products liability and
12 completed operations limits exhausted the Home's obligations for the asbestos claims against the
13 Western Trust?

14 The above issues which affect the viability of the Western Trust's claims against CIGA
15 involve the complex interplay of: (1) the interpretation of the coverage terms, conditions, and
16 provisions of the Home insurance policies; (2) the interpretation and interplay between of the
17 California state statutory guaranty fund laws governing CIGA's obligations and the
18 New Hampshire state statutory liquidation law; and (3) the federal bankruptcy laws.

19 While CIGA also wants to resolve this matter in a cost-effective and economical manner,
20 as made clear by the issues described above, there are significant federal and state statutory and
21 insurance policy issues implicated by the Western Trust's claims against CIGA. CIGA is entitled
22 to conduct reasonable discovery, pursuant to the rules of civil procedure, so that the relevant facts
23 can be presented to the Court or the trier of fact in an appropriate manner.

24 **B. Number of Parties and Posture.**

25 At this point in the litigation, there are effectively two parties –Plaintiff trustees, acting on
26 behalf of the Trust, and Defendant CIGA.

27
28

1 **C. Joinder of Parties and Amended Pleadings.**

2 At this point, the parties do not anticipate joining other parties. Defendant CIGA has
3 answered the complaint.

4 **D. Class Discovery and Class Certification.**

5 Not applicable.

6 **E. Proposed Litigation Schedule.**

7 The parties agree that two issues be adjudicated at a bench or jury trial in Phase I. The
8 Trust believes this should happen in the near future. CIGA believes some reasonable discovery
9 should be completed for Phase I and then the Court can set a schedule for the Phase I trial.

10 **F. Procedural Posture of the Case.**

11 The parties have spent considerable time and effort in working toward agreement upon
12 certain facts as being undisputed for purposes of trying the Phase I issues. Thus far, the parties
13 have agreed on approximately 30 pages of undisputed facts and continue to meet and confer to
14 determine if they can agree on additional facts. Despite this cooperative approach, CIGA
15 believed that it needed some limited discovery to provide the basis to confirm that certain facts
16 are undisputed. Pursuant to a Stipulation and Order of the parties in Court, the parties have been
17 allowed to engage in some limited discovery, while they simultaneously continue to meet and
18 confer on a set of undisputed facts. CIGA has served subpoenas upon third party insurers, where
19 the return date is February 1, 2016. Not surprisingly, some of the insurers have asked for
20 extensions of time to respond to subpoenas or wish to meet and confer to discuss ways to produce
21 documents and information on a reasonable basis and schedule. CIGA has cooperated with the
22 subpoenaed parties to try determine the most reasonable way to proceed to obtain the documents
23 and information it needs.

24 Plaintiffs also have produced documents to CIGA voluntarily to facilitate the discussions
25 regarding a statement of undisputed facts. Additionally, notwithstanding this voluntary
26 production of documents, CIGA has served a Request for Production of Documents on Plaintiffs
27 on December 18, 2015 pursuant to a Stipulation and Order of Phase 1 Trial Discovery, filed on
28

1 October 29, 2015. CIGA agreed that Plaintiffs' response to the document requests would be
2 extended to February 19, 2016.

3 As stated above, despite the Plaintiffs good faith voluntary production of certain
4 documents, CIGA maintains that it must engage in the above formal discovery, primarily the
5 collection of relevant documents, so that it can determine what facts can be agreed upon and
6 which facts need to be presented by way of evidence.

7 1. Unserved Parties and Reasons for Failure to Serve

8 None.

9 2. Unserved or Unfiled Cross Complaints

10 None.

11 3. Related Actions and Potential for Coordination or Consolidation

12 None.

13 4. Jurisdictional or Venue Issues

14 None.

15 5. Discovery

16 See Section F. above.

17 6. Unresolved Law and Motion Matters

18 See Section G below.

19 7. ADR Proceedings

20 The parties have not engaged in ADR. The Western Trust is amenable to the use of
21 private mediation utilizing the services of a mutually agreed upon mediator. CIGA would be
22 amenable to participating in good faith in ADR at the appropriate time as the various factual and
23 legal issues affecting the Western Trust's claims against CIGA become crystallized.

24 8. Severance of Issues for Trial

25 The parties have agree to adjudicate this action in phases.

26 9. Calendar Conflict for Trial Setting

27 None.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

G. Streamlining Litigation.

The parties agreed to the following future trial phases:

PHASE I: LEGAL ISSUE PHASE

Whether insurance recoveries held by the Trust (which were obtained via settlements with the insurers of the Western Companies) constitute “other” available insurance under Insurance Code § 1063.1(c)(9)(A). If “yes,” is the enforcement of this statutory provision preempted by the Bankruptcy Code?

Whether the Trust’s settlements with its solvent insurers have exhausted those insurers’ coverage within the meaning of §1063.1(c)(9)(A). If the answer to this question is “no,” is the enforcement of this statutory provision preempted by the Bankruptcy Code?

PHASE II: CONTRACTUAL COVERAGE PHASE

In the next phase of the litigation, the parties will address certain foundational insurance coverage issues based on interpretation of the Home policies:

The interpretation of the “products hazard,” “completed operations hazard” and any other alleged coverage provisions in the Home policies;

Whether the Trust, as a party seeking statutory benefits, bears the burden to prove that each individual asbestos claim is not subject to the aggregate provisions of the products hazard and completed operations hazard provisions of the policies;

Whether the Trust’s claims allowance and payment procedures result in “damages” covered under Home policies, which only obligate it to indemnify the insured for damages the insured is legally obligated to pay by way of adjudication or settlement with the agreement of its insurer. What is the impact, if any, of the Home’s pre-petition coverage denials on CIGA’s obligations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PHASE III: INDIVIDUAL CLAIM ASSESSMENT PHASE

This phase will focus on determining the specific amount, if any, that CIGA owes the Trust. This would entail the parties engaging in a case-by-case study of the amount of each asbestos claim, which we view as best resolved at the end of the case once the contours of CIGA’s “covered claim” liability, if any, are resolved.

Whether the Western Trust has a present “covered claim” which CIGA is obligated to pay in light of the Court of Appeal’s finding that “because the claim is not ripe for determination until the actual recovery in the insolvency proceedings is known...the cause of action against CIGA does not accrue until that uncertainty has been resolved.”

Whether each claim meets the criteria established in the earlier phases for coverage under the terms of the Insurance Code §§1063 et seq.

Whether each asbestos claimant must exhaust all solvent “other insurance”, including, without limitation, workers’ compensation benefits, joint tortfeasor’s liability insurance, and other Asbestos Settlement Trusts’ payments available to the claimant.

Whether the Trust’s settlement with the Home Liquidator and the Liquidation Court’s allowance of the Trust’s claim in the amount of \$242,500,000 caps the limits of the Trust’s claims against CIGA in this action².

² This issue was originally designated for resolution at the Phase I trial. The parties have since agreed that the issue is more consistent with the themes of Phase II, and have agreed (subject to court approval) to move the issue from Phase I to Phase II.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The parties continue to believe that litigation or trial phases remain the best way to streamline the litigation.

Dated: January 29, 2016

MORGAN, LEWIS & BOCKIUS LLP

By: Jeffrey Raskin / RLW
Jeffrey S. Raskin

Attorneys for Plaintiffs

Dated: January 29, 2016

LOCKE LORD LLP

By: Conrad Sison / RLW
Conrad V. Sison

Attorneys for Defendant,
California Insurance Guarantee Association

Dated: January 29, 2016

Duane Morris LLP

By: Ray L. Wong
Ray L. Wong
Kathryn Schultz

Attorneys for Defendant,
California Insurance Guarantee Association

1 **PROOF OF SERVICE**

2 *Snyder, et al. v. California Insurance Guarantee Association*
3 Alameda County Superior Court No. RG13666656

4 I am a citizen of the United States, over the age of 18 years, and not a party to interested in
5 the cause. I am an employee of Duane Morris LLP and my business address is One Market Plaza,
6 Spear Tower, Suite 2200, San Francisco, California 94105. I am readily familiar with this firm's
7 practices for collecting and processing correspondence for mailing with the United States Postal
8 Service and for transmitting documents by FedEx, fax, email, messenger and other modes. On the
9 date stated below, I served the following documents:

10 **JOINT CASE MANAGEMENT CONFERENCE STATEMENT**

11 X **BY U.S. MAIL:** I enclosed the documents in a sealed envelope or package
12 addressed to the person(s) set forth below, and placed the envelope for collection and
13 mailing following our ordinary business practices, which are that on the same day
14 correspondence is placed for collection and mailing, it is deposited in the ordinary
15 course of business with the United States Postal Service in San Francisco, California,
16 in a sealed envelope with postage fully prepaid. OR
17 I enclosed the documents in a sealed envelope or package addressed to the
18 person(s) set forth below, and deposited the sealed envelope with the United States
19 Postal Service, with the postage fully prepaid.

20 X **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties
21 to accept service by e-mail or electronic transmission, I caused the documents to be
22 sent to the person(s) at the e-mail addresses listed below. I did not receive, within a
23 reasonable time after the transmission, any electronic message or other indication that
24 the transmission was unsuccessful.

25 1. Paul A. Zevnik, Esq.
26 Jeffrey S. Raskin, Esq.
27 **MORGAN, LEWIS & BOCKIUS LLP**
28 One Market, Spear Street Tower
San Francisco, California 94105-1126

Attorneys for Attorneys for Plaintiffs:
STEPHEN M. SNYDER, JACK L.
LUIKART, and SANDRA R. HERNANDEZ,
SOLELY IN THEIR CAPACITIES AS
TRUSTEES OF THE WESTERN
ASBESTOS SETTLEMENT TRUST

TEL: 415.442.1000 / FAX: 415.442.1001
EMAIL: pzevnik@morganlewis.com;
jraskin@morganlewis.com

1. Michel Y. Horton, Esq.
Richard W. Esterkin, Esq.
Jason B. Komorsky, Esq.
MORGAN, LEWIS & BOCKIUS LLP
300 South Grand Avenue, Twenty-
Second Floor
Los Angeles, California 90071

Attorneys for Attorneys for Plaintiffs:
STEPHEN M. SNYDER, JACK L.
LUIKART, and SANDRA R. HERNANDEZ,
SOLELY IN THEIR CAPACITIES AS
TRUSTEES OF THE WESTERN
ASBESTOS SETTLEMENT TRUST

TEL: 213.612.2500 / FAX: 213.612.2501
EMAIL: mhorton@morganlewis.com;
jkomorsky@morganlewis.com;

PROOF OF SERVICE

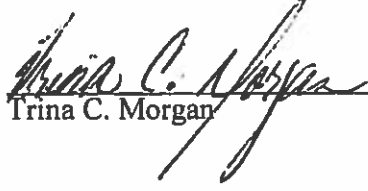
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. C. Guerry Collins, Esq.
Conrad V. Sison, Esq.
Locke Lord LLP
300 South Grand Avenue, Suite 2600
Los Angeles, California 90071

Attorneys for Defendant:
CALIFORNIA INSURANCE GUARANTEE
ASSOCIATION
TEL: 213-485-1500 / FAX: 213-485-1200
EMAIL: gcollins@lockelord.com;
csison@lockelord.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: January 29, 2016



Trina C. Morgan

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

[PROPOSED]

ORDER APPROVING INTERIM DISTRIBUTION
TO CLAIMANTS WITH ALLOWED CLASS II CLAIMS

On consideration of the motion of Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), for approval of an interim distribution to claimants with allowed Class II claims pursuant to RSA 402-C:46, I, and of the supporting Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, it is hereby ORDERED as follows:

1. The interim distribution is reasonable, prudent and in accordance with RSA 402-C:46, I.
2. The Liquidator's Motion for Approval of Interim Distribution to Claimants with Allowed Class II Claims is GRANTED, and the proposed interim distribution of fifteen (15) percent is APPROVED.
3. The interim distribution shall be made to claimants, or their assignees, with Class II priority claims under RSA 402-C:44 allowed by the Court through December 31, 2011. The interim distribution shall be made to claimants with subsequently approved Class II claims annually after the end of each calendar year with respect to claims allowed during that year.
4. The portion of guaranty association early access distributions previously made that is equal to the interim distribution shall no longer be subject to recovery by the Liquidator pursuant to the Early Access Distribution Agreement.
5. In accordance with RSA 402-C:44, the first \$50 of the allowed amount on each claim shall be deducted from the claim (except for claims of insurance guaranty associations).
6. The Liquidator shall not issue checks for interim distribution amounts of less than \$10 per claimant.

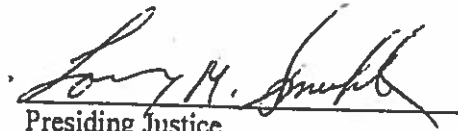
7. The interim distribution to a claimant shall be subject to any setoff the Liquidator has against the claimant.

8. The interim distribution is subject to receipt of a waiver of federal priority claims under 31 U.S.C. § 3713 from the United States in a form acceptable to the Liquidator.

Approved
So Ordered.

Dated:

3/13/12


Presiding Justice

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

[PROPOSED]

ORDER AMENDING ORDER APPROVING INTERIM
DISTRIBUTION TO CLAIMANTS WITH ALLOWED CLASS II CLAIMS

On consideration of the motion of Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), to amend the Order Approving Interim Distribution to Claimants with Allowed Class II Claims dated March 13, 2012 (the "Interim Distribution Order"), it is hereby ORDERED as follows:

1. The Liquidator's Motion to Amend Order Approving Interim Distribution to Claimants with Allowed Class II Claims is granted.

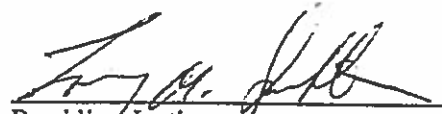
2. Paragraph 3 of the Interim Distribution Order is deleted and the following paragraph is inserted in its place:

"3. The interim distribution shall be made to claimants, or their assignees, with Class II priority claims under RSA 402-C:44 allowed by the Court through the end of the month in which the waiver of federal priority claims provided for in paragraph 8 below is received. The interim distribution shall be made to claimants with subsequently approved Class II claims following each subsequent June 30 and December 31 with respect to claims allowed during the six month period preceding that date."

3. The Interim Distribution Order otherwise continues in effect.

Approved
So Ordered.

Dated: 7/2/12


Presiding Justice

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 ESCROW
AGREEMENT PURSUANT TO SETTLEMENT AGREEMENT WITH
WESTERN ASBESTOS SETTLEMENT TRUST**

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 an Escrow Agreement ("Escrow Agreement") among the Western Asbestos Settlement Trust ("Trust"), Home (by the Liquidator), and Wells Fargo Bank, N.A. ("Wells Fargo"), as escrow agent ("Escrow Agent"), and establishing the escrow account ("Western Home Escrow") subject to the Court's continuing jurisdiction. As reasons therefor, the Liquidator states:

Background

1. The Trust and the Liquidator propose to enter the Escrow Agreement with Wells Fargo in accordance with the Settlement Agreement and Mutual Release ("Settlement Agreement") dated February 18, 2011 between the Liquidator and the Trust, in its capacity as the sole owner of Western Asbestos Company, and pursuant to the authority granted in the Order Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief as the successor to MacArthur Co. and Western MacArthur Co. to "initiate, prosecute, defend and resolve" all Asbestos Insurance Actions in the name of MacArthur Co., Western MacArthur Co. and/or Western Asbestos Company (the "MacArthur Companies") (collectively, "Claimants"). The Settlement Agreement resolved the Claimants' proofs of claim in the Home liquidation. The

Court approved the Settlement Agreement on May 2, 2011. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Escrow Agreement Pursuant to Settlement Agreement with Western Asbestos Settlement Trust (“Bengelsdorf Aff.”) ¶ 2.

2. The Settlement Agreement provides that, in the event that the Claimants pursue any claim under the Policies against any Insurance Guaranty Association, the amount allowed as a Class II claim in the Home liquidation shall be the Recommended Amount set forth in the Settlement Agreement minus certain amounts. Settlement Agreement ¶ 9(B)(1). Bengelsdorf Aff. ¶ 3.

3. The Settlement Agreement further provides that if, at the time the Liquidator is to make a distribution, (i) the Claimants are pursuing a claim against any Insurance Guaranty Association with respect to the Policies, (ii) Claimants do not waive the right to pursue claims against any Insurance Guaranty Association with respect to the Policies, or (iii) an Insurance Guaranty Association against whom Claimants have obtained a Recovery could still assert a claim in the Home liquidation regarding the Recovery, then the distribution amount shall be placed in escrow with a mutually acceptable third-party escrow agent pending certain developments. Settlement Agreement ¶ 9(B)(3). The Western Home Escrow is to be established and administered pursuant to a mutually acceptable written escrow agreement and shall be jointly administered with respect to investment of the escrowed funds. Id. Bengelsdorf Aff. ¶ 4.

4. The Court approved a 15% interim distribution to claimants with allowed Class II claims by order dated March 13, 2012 (as amended July 2, 2012), subject to receipt of a waiver of Federal Priority Act claims from the United States. As described in the Liquidator’s Report Regarding Release Agreement with the United States (November 6, 2014), the Liquidator received such a waiver on November 5, 2014. Bengelsdorf Aff. ¶ 5.

5. The Trust is pursuing claims under the Policies against the California Insurance Guarantee Association (“CIGA”) in Snyder, et al. v. California Insurance Guarantee Association, No. RG-13-666656 (Superior Court of California, County of Alameda). Accordingly, the distribution amount, as determined in accordance with the Settlement Agreement, must be placed in the Western Home Escrow pursuant to the Settlement Agreement. Bengelsdorf Aff. ¶ 6.

The Escrow Agreement

6. In these circumstances, the Liquidator and the Trust have sought to provide for the Western Home Escrow to hold and invest distributions from the Home estate pursuant to the Settlement Agreement and to provide for disbursement of escrowed amounts in accordance with the provisions of the Settlement Agreement. The Trust, Home, and Wells Fargo have now agreed on the form of Escrow Agreement attached hereto as Exhibit A. The Escrow Agreement is subject to the approval of the Court. Escrow Agreement § 1.1. The Escrow Agreement contemplates that the Western Home Escrow will be a qualified settlement fund under Treasury Regulation § 1.468B, which requires that it be established by court approval and subject to the continuing jurisdiction of the Court. Id. § 1.5(a). Bengelsdorf Aff. ¶ 7.

7. The Escrow Agreement provides that, upon approval by the Court, the Liquidator will deliver \$36,328,251 to the Escrow Agent. Escrow Agreement § 1.1. That sum represents the 15% interim distribution on the Recommended Amount less certain deducted amounts.¹ Additional amounts may be delivered to the Escrow Agent by the Liquidator in the event that additional Class II distributions are made from the Home estate. Id. The Escrow Agent will hold and invest the amounts deposited in accordance with joint written instructions by the parties. Id. §1.2. The Escrow Agent will disburse the Western Home Escrow amounts in accordance with the joint written instructions of the parties. Id. §1.3. Bengelsdorf Aff. ¶ 8.

¹ The parties have reserved their rights as to the deduction of certain amounts under the Settlement Agreement. See Escrow Agreement § 1.1.

8. In the Escrow Agreement, the Trust and the Liquidator acknowledge that all matters between them, including the determination of joint instructions to the Escrow Agent for the disbursement of escrowed amounts, are governed by the Settlement Agreement. Escrow Agreement § 4.5. The Settlement Agreement provides that the exclusive venue for any dispute arising out of the Settlement Agreement is this Court. Settlement Agreement ¶ 13. The Escrow Agreement provides that if any dispute arises or if the Escrow Agent is in doubt as to any action to be taken under the Escrow Agreement, the Escrow Agent may retain the Western Home Escrow amounts pending a determination by this Court as to delivery of the funds or may file an interpleader action with this Court. Escrow Agreement §3.5. Bengelsdorf Aff. ¶ 9.

9. The Escrow Agreement provides for the compensation of the Escrow Agent by the Trust to be paid from the escrowed funds. Escrow Agreement § 3.4 and Ex. C thereto. It also provides for indemnities of the Escrow Agent by the Trust and limits the Escrow Agent's liability. *Id.* §§ 1.5(d), 3.1, 3.2. Bengelsdorf Aff. ¶ 10.

10. The Liquidator and Trust seek to provide clarity for taxation regarding amounts deposited in the Western Home Escrow. The Escrow Agreement accordingly provides for the Western Home Escrow to be classified as a qualified settlement fund under Treasury Regulation § 1.468B-1. Escrow Agreement § 1.5(a). Bengelsdorf Aff. ¶ 11. The establishment of the Western Home Escrow is intended to satisfy the requirements of a Qualified Settlement Fund pursuant to Treasury Regulation § 1.468B-1(c), which requires that:

- (1) It is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority;
- (2) It is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from

an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability—

- (i) Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereinafter referred to as CERCLA), as amended, 42 U.S.C. 9601 et seq.; or
 - (ii) Arising out of a tort, breach of contract, or violation of law; or
 - (iii) Designated by the Commissioner [of Internal Revenue] in a revenue ruling or revenue procedure; and
- (3) The fund, account, or trust is a trust under applicable state law, or its assets are otherwise segregated from other assets of the transferor (and related persons).

Treasury Regulation Section 1.468B-1(c).

11. In this case, under the Escrow Agreement and the present motion, the three requirements of §1.468B-1(c) are met insofar as: (a) the Western Home Escrow will be established pursuant to this Court's order and approval and subject to its continuing jurisdiction; (b) the Western Home Escrow will be established in accordance with the Settlement Agreement to further the resolution of contested claims of liability for alleged breach of contract (insurance policies) asserted by Claimants against Home by proof of claim in the Home liquidation; and (c) the Western Home Escrow will be segregated from the assets of Home as it will be held by the Escrow Agent.

12. Subject to the terms of the Escrow Agreement, Wells Fargo Bank, N.A., 333 South Grand Ave, Los Angeles, California will serve as the escrow agent to administer the Western Home Escrow subject to the continuing jurisdiction of the Court. See Escrow Agreement § 1.5(a). The Liquidator will report to the Court regarding the status of the Western Home Escrow in the Liquidator's reports. Bengelsdorf Aff. ¶ 12.

13. The Court's approval and order establishing the Western Home Escrow will serve the interests of the Trust and of the Home estate because it will facilitate distributions with

respect to the settlement of Claimants' claims in the Home liquidation. It will also allow the parties to derive the tax benefits associated with qualified settlement funds. Bengelsdorf Aff. ¶ 13.

14. The Liquidator's negotiation of the Escrow Agreement in furtherance of the Settlement Agreement and the Court's approval of the Escrow Agreement are proper in light 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.

15. The Liquidator submits that the Escrow Agreement is fair and reasonable, appropriately serves to implement the Settlement Agreement, and is in the best interests of the policyholders and creditors of Home. See Bengelsdorf Aff. ¶ 14.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion;
- B. Enter an Order in the form submitted herewith approving the Escrow Agreement and taking continuing jurisdiction over the Western Home Escrow; and
- C. Grant such other and further relief as justice may require.

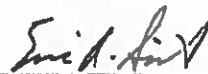
Respectfully submitted,

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
christopher.marshall@doj.nh.gov
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
dleslic@rackemann.com
Eric A. Smith
NH Bar ID No. 16952
esmith@rackemann.com
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110
(617) 542-2300

May 28, 2015

Exhibit A – Escrow Agreement

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Escrow Agreement Pursuant to Settlement Agreement with Western Asbestos Settlement Trust, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 28th day of May, 2015, by first class mail, postage prepaid to all persons on the attached service list.

A copy of these papers is also being provided to counsel for the Trust and to representatives of Wells Fargo.



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

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.
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
Rath Young Pignatelli
One Capital Plaza
Concord, New Hampshire 03302-1500

With copies to:

Jason Komorsky, Esq.
Morgan, Lewis & Bockius, LLP
300 South Grand Ave, 22nd Floor
Los Angeles, CA 90071-3132

Gloria A. Gutierrez
Wells Fargo Bank, N.A.
Corporate Municipal & Escrow Solutions
333 South Grand Ave, Fifth Floor
Los Angeles, CA 90071
MAC: E2064-05A

ESCROW AGREEMENT

This Escrow Agreement, dated this ___ day of _____ (the "Escrow Agreement"), is entered into by and among the Western Asbestos Settlement Trust ("Trust") and The Home Insurance Company ("Home"), by Roger A. Sevigny, Commissioner of Insurance the State of New Hampshire, solely in his capacity as Liquidator ("Liquidator") of Home (the Trust and Home together are the "Parties," and individually, a "Party"), and Wells Fargo Bank, National Association, a national banking association, as escrow agent ("Escrow Agent").

RECITALS

A. The Trust is the sole owner of Western Asbestos Company and pursuant to authority granted in the Order Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief, dated January 27, 2004, is authorized as the successor to MacArthur Co. and Western MacArthur Co. to "initiate, prosecute, defend and resolve" all Asbestos Insurance Actions in the name of MacArthur Co., Western MacArthur Co. and/or Western Asbestos Company (the "MacArthur Companies"), In re: Western Asbestos Co. et. al., Bankr. N.D. Cal., Case Nos. 02-46284 T through 02-02-46286 T.

B. Home was declared insolvent and ordered liquidated and the Insurance Commissioner of the State of New Hampshire and her successors in office was appointed as its liquidator by the Order of Liquidation entered by the Superior Court for Merrimack County, New Hampshire (the "Liquidation Court") on June 13, 2003. Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, is the present Liquidator.

C. The Trust and the MacArthur Companies (collectively "Claimants") and the Liquidator entered into a Settlement Agreement and Mutual Release dated February 18, 2011 (the "Settlement Agreement"). The Settlement Agreement was approved by the Liquidation Court by order issued May 2, 2011.

D. The Settlement Agreement provides that, in the event that Claimants pursue any claim under the Policies against any Insurance Guaranty Association, the amount allowed as a Class II claim in the Home liquidation shall be the Recommended Amount minus certain amounts. Settlement Agreement ¶ 9(B)(1).

E. The Settlement Agreement provides that if, at the time the Liquidator is to make a distribution, (i) the Claimants are pursuing a claim against any Insurance Guaranty Association with respect to the Policies, (ii) Claimants do not waive the right to pursue claims against any Insurance Guaranty Association with respect to the Policies, or (iii) an Insurance Guaranty Association against whom Claimants have obtained a Recovery could still assert a claim in the Home liquidation regarding the Recovery, then the distribution amount shall be placed in escrow with a mutually acceptable third-party escrow agent pending certain developments. Settlement Agreement ¶ 9(B)(3). The Settlement Agreement provides that the escrow shall be established and administered pursuant to a mutually acceptable written escrow agreement and shall be jointly administered with respect to investment of the escrowed funds. Id.

F. The Liquidation Court approved a 15% interim distribution to claimants with allowed Class II claims by order dated March 13, 2012 (as amended July 2, 2012), subject to receipt of a waiver of Federal Priority Act claims from the United States. The Liquidator received such a waiver on November 5, 2014.

G. The Trust is pursuing claims under the Policies against the California Insurance Guarantee Association ("CIGA") in Snyder, et al. v. California Insurance Guarantee Association, No. RG-13-666656 (Superior Court of California, County of Alameda).

H. The Liquidator and the Trust accordingly seek to establish an escrow account and enter this Escrow Agreement to hold and invest amounts to be distributed to Claimants and to provide for disbursement of amounts in the escrow account to the Trust or to the Liquidator pursuant to joint instructions in accordance with the provisions of the Settlement Agreement.

I. The Parties acknowledge that the Escrow Agent is not a party to, is not bound by, and has no duties or obligations under, the Settlement Agreement, that all references in this Escrow Agreement to the Settlement Agreement are for convenience, and that the Escrow Agent shall have no implied duties beyond the express duties set forth in this Escrow Agreement.

In consideration of the promises and agreements of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties and the Escrow Agent agree as follows:

ARTICLE I ESCROW DEPOSIT

Section 1.1. Receipt of Escrow Property. Upon approval of this Escrow Agreement by the Liquidation Court, the Liquidator will deliver to the Escrow Agent the amount of \$36,328,251 (the "Escrow Property") in immediately available funds designated for deposit in accordance with this Escrow Agreement, which amount consists of the 15% initial distribution on the \$242,500,000 Recommended Amount minus \$311,660, which amount is currently disputed between the Trust and the Liquidator. By placing the above undisputed amount of \$36,328,251 into escrow, neither party waives their respective positions as to the disputed amount or any further fees submitted by CIGA to the Liquidator. The Liquidator may deliver additional amounts in the event that additional Class II distributions are made from the Home estate.

Section 1.2. Investments.

(a) The Escrow Agent is authorized and directed to deposit, transfer, hold and invest the Escrow Property and any investment income thereon as set forth in Exhibit A hereto, or as otherwise set forth in any subsequent written instruction signed by both Parties. Any investment earnings and income on the Escrow Property shall become part of the Escrow Property, and shall be disbursed in accordance with Section 1.3 or Section 1.6 of this Escrow Agreement.

(b) The Liquidator and the Trust shall provide joint written instructions signed by both Parties to sell or redeem investments to make any payments or distributions required under

this Escrow Agreement. The Escrow Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Escrow Agreement. In the event of such loss, neither the Liquidator nor the Trust shall have any obligation to contribute additional funds to reinstate the Escrow Property. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by the joint instructions of the Liquidator and the Trust, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Escrow Agent or for any third person or dealing as principal for its own account, provided such dealing is based on commercially reasonable terms. The Parties acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice.

Section 1.3. Disbursements. The Escrow Agent shall disburse the Escrow Property in accordance with the joint written instructions of the Parties.

Section 1.4. Security Procedure For Funds Transfers. The Escrow Agent shall confirm each funds transfer instruction received in the name of a Party by means of the security procedure selected by such Party and communicated to the Escrow Agent through a signed certificate in the form of Exhibit B-1 or Exhibit B-2 attached hereto, which upon receipt by the Escrow Agent shall become a part of this Escrow Agreement. Once delivered to the Escrow Agent, Exhibit B-1 or Exhibit B-2 may be revised or rescinded only by a writing signed by an authorized representative of the Party. Such revisions or rescissions shall be effective only after actual receipt and following such period of time as may be necessary to afford the Escrow Agent a reasonable opportunity to act on it. If a revised Exhibit B-1 or B-2 or a rescission of an existing Exhibit B-1 or B-2 is delivered to the Escrow Agent by an entity that is a successor-in-interest to such Party, such document shall be accompanied by additional documentation satisfactory to the Escrow Agent showing that such entity has succeeded to the rights and responsibilities of the Party under this Escrow Agreement.

The Parties understand that the Escrow Agent's inability to receive or confirm funds transfer instructions pursuant to the security procedure selected by such Party may result in a delay in accomplishing such funds transfer, and agree that the Escrow Agent shall not be liable for any loss caused by any such delay.

Section 1.5. Income Tax Allocation and Reporting.

(a) The parties understand and agree that, following approval of this Escrow Agreement by the Liquidation Court, the Escrow Account shall be classified as a qualified settlement fund under Treasury Regulation section 1.468B-1. The Liquidator will move for such approval upon agreement by the Parties and Escrow Agent to the form of this Escrow Agreement. On approval, the Escrow Account shall be subject to the continuing jurisdiction of the Liquidation Court. The Escrow Account will therefore be subject to federal income tax on its modified gross income annually. The Escrow Account must file an income tax return on Form 1120-SF with respect to each taxable year that the Escrow Account is in existence, whether or not the Escrow Account has gross income for that taxable year under Treasury Regulation Section 1.468B-2(k)(1). The Escrow Account may also be required to file quarterly returns of estimated tax. The Trust shall obtain for the Escrow Account a Taxpayer Identification Number

and provide the Taxpayer Identification Number to the Escrow Agent and the Liquidator. The Trust shall also timely prepare, without charge, all quarterly and annual income tax returns for the Escrow Account and submit them, with a copy to the Liquidator, to the Escrow Agent for signature and filing by the Escrow Agent. The Escrow Agent shall deposit income tax shown on such returns (including any payments of estimated tax) with an authorized government depository in accordance with Treasury Regulations section 1.6302-1 at the time of filing those returns using solely income earned by the Escrow Account, without regard to the joint-written-instructions requirement of Section 1.3 *supra*. The Escrow Agent shall comply with the information reporting requirement of Treasury Regulation section 1.468B-2(l) with respect to payments and distributions from the Escrow Account.

(b) For certain payments made pursuant to this Agreement, the Escrow Agent may be required to make a “reportable payment” or “withholdable payment” and in such cases the Escrow Agent shall have the duty to act as a payor or withholding agent, respectively, that is responsible for any tax withholding and reporting required under Chapters 3, 4, and 61 of the United States Internal Revenue Code of 1986, as amended (the “Code”). The Escrow Agent shall have the sole right to make the determination as to which payments are “reportable payments” or “withholdable payments.” All parties to this Agreement shall provide an executed IRS Form W-9 or appropriate IRS Form W-8 (or, in each case, any successor form) to the Escrow Agent prior to closing, and shall promptly update any such form to the extent such form becomes obsolete or inaccurate in any respect. The Escrow Agent shall have the right to request from any party to this Agreement, or any other Person entitled to payment hereunder, any additional forms, documentation or other information as may be reasonably necessary for the Escrow Agent to satisfy its reporting and withholding obligations under the Code. To the extent any such forms to be delivered under this Section 1.5(b) are not provided prior to or by the time the related payment is required to be made or are determined by the Escrow Agent to be incomplete and/or inaccurate in any respect, the Escrow Agent shall be entitled to withhold on any such payments hereunder to the extent withholding is required under Chapters 3, 4, or 61 of the Code, and shall have no obligation to gross up any such payment.

(c) The Liquidator shall provide to the Escrow Agent no later than February 15 of the year following each calendar year in which the Liquidator makes a transfer to the Escrow Account the statement required by Treasury Regulation section 1.468B-3(e)(2) and shall attach a copy of the statement to (and as part of) Home’s timely filed income tax return (including extensions) for the taxable year of Home in which the transfer is made.

(d) To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of the Escrow Property, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Property. The Trust shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Property and the investment thereof unless such tax, late payment, interest, penalty or other expense was directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this Section 1.5(d) shall be satisfied to the extent possible from the Escrow Property. The indemnification provided by this Section 1.5(d) is in addition to the indemnification provided in Section 3.1 and shall survive the resignation or

removal of the Escrow Agent and the termination of this Escrow Agreement. Upon such termination, the Trust shall prepare for filing by the Escrow Agent the final income tax return for the Escrow Account and the request for Prompt Assessment set forth in Treasury Regulation § 1.468B-2(m). The Trust shall provide the Liquidator with a copy of the proposed filings when they are provided to the Escrow Agent.

Section 1.6. Statements. The Escrow Agent shall provide the Parties with monthly and annual statements regarding the Escrow Account reflecting all interest and investment earnings and all charges and disbursements during each statement period.

Section 1.7. Termination. This Escrow Agreement shall terminate upon the disbursement of all of the Escrow Property as provided for in ¶ 9(B)(3) of the Settlement Agreement, including any interest and investment earnings thereon, except that the provisions of Sections 1.5(d), 3.1 and 3.2 hereof shall survive termination and the Escrow Agent is authorized and directed to disburse the Escrow Property in accordance with Section 1.3 of this Escrow Agreement.

ARTICLE 2 DUTIES OF THE ESCROW AGENT

Section 2.1. Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstance will the Escrow Agent be deemed to be a fiduciary to any Party or any other person under this Escrow Agreement. The Escrow Agent will not be responsible or liable for the failure of any Party to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the Parties, and the Escrow Agent has no duties or obligations with respect thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement.

Section 2.2. Attorneys and Agents. The Escrow Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by the Escrow Agent. The Escrow Agent shall be reimbursed as set forth in Section 3.1 for any and all compensation (fees, expenses and other costs) paid and/or reimbursed to such counsel and/or professionals. The Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians, and/or nominees.

Section 2.3. Reliance. The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the direction or consent of the Parties or their respective agents,

representatives, successors, or assigns. The Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or persons' authority. Concurrent with the execution of this Escrow Agreement, the Parties shall deliver to the Escrow Agent Exhibit B-1 and Exhibit B-2, which contain authorized signer designations in Part I thereof.

Section 2.4. Right Not Duty Undertaken. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

Section 2.5. No Financial Obligation. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement.

ARTICLE 3 PROVISIONS CONCERNING THE ESCROW AGENT

Section 3.1. Indemnification. The Trust shall indemnify, defend and hold harmless the Escrow Agent from and against any and all loss, liability, cost, damage and expense, including, without limitation, reasonable attorneys' fees and expenses or other reasonable professional fees and expenses which the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought against the Escrow Agent, arising out of or relating in any way to this Escrow Agreement or any transaction to which this Escrow Agreement relates, unless such loss, liability, cost, damage or expense shall have been finally adjudicated to have been directly caused by the willful misconduct or gross negligence of the Escrow Agent. The provisions of this Section 3.1 shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

Section 3.2. Limitation of Liability. THE ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

Section 3.3. Resignation or Removal. The Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and expenses to which the Escrow Agent is entitled through the date of removal. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole

responsibility thereafter shall be to safely keep the Escrow Property and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, the Escrow Agent may petition the Liquidation Court for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

Section 3.4. Compensation. The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit C, which compensation shall be paid by the Trust from the Escrow Account. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement or the subject matter hereof, then the Escrow Agent shall be compensated for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorneys' fees and expenses, occasioned by any such delay, controversy, litigation or event. If any amount due to the Escrow Agent hereunder is not paid within thirty (30) days of the date due, the Escrow Agent in its sole discretion may charge interest on such amount up to the highest rate permitted by applicable law. The Escrow Agent shall have, and is hereby granted, a prior lien upon the Escrow Property with respect to its unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights, superior to the interests of any other persons or entities and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from the Escrow Property.

Section 3.5. Disagreements. If any conflict, disagreement or dispute arises between, among, or involving any of the Parties or the Escrow Agent concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent may, at its option, retain the Escrow Property until the Escrow Agent (i) receives a final non-appealable order of the Liquidation Court directing delivery of the Escrow Property, (ii) receives a written agreement executed by each of the Parties involved in such disagreement or dispute directing delivery of the Escrow Property, in which event the Escrow Agent shall be authorized to disburse the Escrow Property in accordance with such final court order or agreement, or (iii) files an interpleader action in the Liquidation Court, and upon the filing thereof, the Escrow Agent shall be relieved of all liability as to the Escrow Property and shall be entitled to recover reasonable attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. The Escrow Agent shall be entitled to act on any such agreement or court order without further question, inquiry, or consent.

Section 3.6. Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or

substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act. The successor Escrow Agent shall provide notice to the Parties of such succession, including the new information for Section 4.3 hereof, as soon as reasonably possible after the effective date of such succession.

Section 3.7. Attachment of Escrow Property; Compliance with Legal Orders. In the event that any Escrow Property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Property, the Escrow Agent shall immediately notify the Parties. The Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction; provided, however, that the Escrow Agent agrees to confer with the Parties in advance of any response. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

Section 3.8 Force Majeure. The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

ARTICLE 4 MISCELLANEOUS

Section 4.1. Successors and Assigns. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Parties shall be binding unless and until written notice of such assignment shall be delivered to the other Party and the Escrow Agent and shall require the prior written consent of the other Party and the Escrow Agent (such consent not to be unreasonably withheld).

Section 4.2. Escheat. The Parties are aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. The Escrow Agent shall have no liability to the Parties, their respective heirs, legal representatives,

successors and assigns, or any other party, should any or all of the Escrow Property escheat by operation of law.

Section 4.3. Notices. All notices, requests, demands, and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by facsimile transmission with written confirmation of receipt, (iii) on the day of transmission if sent by electronic mail ("e-mail") to the e-mail address given below, and written confirmation of receipt is obtained promptly after completion of transmission, (iv) by overnight delivery with a reputable national overnight delivery service, or (v) by mail or by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given five business days after the date such notice is deposited in the United States mail. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes. In the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by the Escrow Agent.

If to the Trust:

Sara Beth Brown, Executive Director
Western Asbestos Settlement Trust
300 East 2nd Street
Suite 1410
Reno, NV 89501
Telephone: 775-324-5511
Fax: 775-325-6200
E-mail: sbbrown@524gtrust.com

and

Paul A. Zevnik
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: 202-739-3000
Fax: 202-739-4755
E-mail: pzevnik@morganlewis.com

If to Home:

Thomas W. Kober, Chief Claims Officer
The Home Insurance Company in Liquidation
61 Broadway
New York, New York 10006-2504
Telephone:

Fax: 212-299-3824
E-mail: tom.kober@homeinsco.com

and

J. Christopher Marshall
Civil Bureau, New Hampshire Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397
Telephone: 603-271-3650
Fax: 603-271-2110
E-mail: christopher.marshall@doj.nh.gov

and

J. David Leslie
Rackemann, Sawyer & Brewster, P.C.
160 Federal Street
Boston, Massachusetts 02110
Telephone: 617-951-1131
Fax: 617-542-7437
E-mail: dleslie@rackemann.com

and

Roger E. Warin
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone: 1 202 429 6280
Fax: 202-429-3902
E-mail: rwarin@steptoe.com

If to the Escrow Agent:

Kheang "TK" Tan
Assistant Vice President
Wells Fargo Bank, N.A.
333 South Grand Ave
Suite 5A
MAC E2064-05A
Los Angeles, CA 90071
Telephone (213) 253-7505
E-mail: Kheang.B.Tan@wellsfargo.com

Section 4.4. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

Section 4.5. Entire Agreement. This Escrow Agreement and the exhibits hereto set forth the entire agreement and understanding of the Parties and the Escrow Agent related to the Escrow Property. The Parties acknowledge that matters between them, including the determination of joint instructions to the Escrow Agent for the disbursement of Escrow Property, are governed by the Settlement Agreement.

Section 4.6. Amendment. This Escrow Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Parties and the Escrow Agent.

Section 4.7. Waivers. The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Escrow Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

Section 4.8. Headings. Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement.

Section 4.9. Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

Section 4.10 Publication; disclosure. The Parties and Escrow Agent acknowledge that this Escrow Agreement and its attachments will be disclosed as an exhibit to public filings with the Liquidation Court. In any public filing with the Liquidation Court, and to the extent that it is necessary to disclose this Escrow Agreement and/or its attachments to individuals or entities not a party or acting for a party to this Escrow Agreement, the Parties and Escrow Agent agree to redact the manual signatures of the signatories to this Escrow Agreement, taxpayer identification numbers, and account numbers (unless disclosure is otherwise required by law).

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

WESTERN ASBESTOS SETTLEMENT TRUST

By: _____
Sara Beth Brown, Executive Director

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

By: _____
Thomas W. Kober, Chief Claims Officer

**WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Escrow Agent**

By: _____

Name: _____

Title: _____

EXHIBIT A

**Agency and Custody Account Direction
For Cash Balances
Wells Fargo Money Market Deposit Accounts**

Direction to use the following Wells Fargo Money Market Deposit Accounts for Cash Balances for the escrow account (the "Account") established under the Escrow Agreement to which this Exhibit A is attached.

You are hereby directed to deposit, as indicated below, or as we both shall direct further in writing from time to time, all cash in the Account in the following money market deposit account of Wells Fargo Bank, National Association:

[Wells Fargo Money Market Deposit Account (MMDA)]

We understand that amounts on deposit in the MMDA are insured, subject to the applicable rules and regulations of the Federal Deposit Insurance Corporation (FDIC), in the basic FDIC insurance amount of \$250,000 per depositor, per insured bank. This includes principal and accrued interest up to a total of \$250,000.

We acknowledge that we have full power to direct investments of the Account.

We understand that we may change this direction at any time and that it shall continue in effect until revoked or modified by us by written notice to you.

Western Asbestos Settlement Trust

By: _____
Sara Beth Brown, Executive Director

The Home Insurance Company, by Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, solely in his capacity as Liquidator of Home

By: _____
Thomas W. Kober, Chief Claims Officer

EXHIBIT B-1

The Liquidator certifies that the names, titles, telephone numbers, e-mail addresses and specimen signatures set forth in Parts I and II of this Exhibit B-1 identify the persons authorized to provide direction and initiate or confirm transactions, including funds transfer instructions, on behalf of Liquidator, and that the option checked in Part III of this Exhibit B-1 is the security procedure selected by the Liquidator for use in verifying that a funds transfer instruction received by the Escrow Agent is that of Liquidator.

The Liquidator has reviewed each of the security procedures and has determined that the option checked in Part III of this Exhibit B-1 best meets its requirements; given the size, type and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part III of this Exhibit B-1, the Liquidator acknowledges that it has elected to not use the other security procedures described and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by the Liquidator.

NOTICE: The security procedure selected by the Liquidator will not be used to detect errors in the funds transfer instructions given by the Liquidator. If a funds transfer instruction describes the beneficiary of the payment inconsistently by name and account number, payment may be made on the basis of the account number even if it identifies a person different from the named beneficiary. If a funds transfer instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. Therefore, it is important that the Liquidator take such steps as it deems prudent to ensure that there are no such inconsistencies in the funds transfer instructions it sends to the Escrow Agent.

Part I

Name, Title, Telephone Number, Electronic Mail ("e-mail") Address and Specimen Signature for person(s) designated to provide direction, including but not limited to funds transfer instructions, and to otherwise act on behalf of the Liquidator

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>	<u>Specimen Signature</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Part II

Name, Title, Telephone Number and E-mail Address for person(s) designated to confirm funds transfer instructions

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Part III

Means for delivery of instructions and/or confirmations

The security procedure to be used with respect to funds transfer instructions is checked below:

- Option 1. Confirmation by telephone call-back. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part II above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-1.
- CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail, as described in Option 2.
- Option 2. Confirmation by e-mail. The Escrow Agent shall confirm funds transfer instructions by e-mail to a person at the e-mail address specified for such person in Part II of this Exhibit B-1. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-1. [“_____”] understands the risks associated with communicating sensitive matters, including time sensitive matters, by e-mail. [“_____”] further acknowledges that instructions and data sent by e-mail may be less confidential or secure than instructions or data transmitted by other methods. The Escrow Agent shall not be liable for any loss of the confidentiality of instructions and data prior to receipt by the Escrow Agent.
- CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by e-mail, the Escrow Agent may, at its discretion, confirm by telephone call-back, as described in Option 1.
- Option 3. Delivery of funds transfer instructions by password protected file transfer system only - no confirmation. The Escrow Agent offers the option to deliver funds transfer instructions through a password protected file transfer system. If [“_____”] wishes to use the password protected file transfer system, further instructions will be provided by the Escrow Agent. If [“_____”] chooses this Option 3, it agrees that no further confirmation of funds transfer instructions will be performed by the Escrow Agent.
- Option 4. Delivery of funds transfer instructions by password protected file transfer system with confirmation. Same as Option 3 above, but the Escrow Agent shall confirm funds transfer instructions by telephone call-back or e-mail (must check at least one, may check both) to a person at the telephone number or e-mail address designated on Part II above. By checking a box in the prior sentence, the party shall be deemed to have agreed to the terms of such confirmation option as more fully described in Option 1 and Option 2 above.

Dated this ____ day of May, 2015.

By _____
Name:
Title:

EXHIBIT B-2

The Trust certifies that the names, titles, telephone numbers, e-mail addresses and specimen signatures set forth in Parts I and II of this Exhibit B-2 identify the persons authorized to provide direction and initiate or confirm transactions, including funds transfer instructions, on behalf of the Trust, and that the option checked in Part III of this Exhibit B-2 is the security procedure selected by the Trust for use in verifying that a funds transfer instruction received by the Escrow Agent is that of the Trust.

The Trust has reviewed each of the security procedures and has determined that the option checked in Part III of this Exhibit B-2 best meets its requirements; given the size, type and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part III of this Exhibit B-2, the Trust acknowledges that it has elected to not use the other security procedures described and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by the Trust.

NOTICE: The security procedure selected by the Trust will not be used to detect errors in the funds transfer instructions given by the Trust. If a funds transfer instruction describes the beneficiary of the payment inconsistently by name and account number, payment may be made on the basis of the account number even if it identifies a person different from the named beneficiary. If a funds transfer instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. Therefore, it is important that the Trust take such steps as it deems prudent to ensure that there are no such inconsistencies in the funds transfer instructions it sends to the Escrow Agent.

Part I

Name, Title, Telephone Number, Electronic Mail ("e-mail") Address and Specimen Signature for person(s) designated to provide direction, including but not limited to funds transfer instructions, and to otherwise act on behalf of the Trust

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>	<u>Specimen Signature</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Part II

Name, Title, Telephone Number and E-mail Address for person(s) designated to confirm funds transfer instructions

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Part III

Means for delivery of instructions and/or confirmations

The security procedure to be used with respect to funds transfer instructions is checked below:

- Option 1. Confirmation by telephone call-back. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part II above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-2.
- CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail, as described in Option 2.
- Option 2. Confirmation by e-mail. The Escrow Agent shall confirm funds transfer instructions by e-mail to a person at the e-mail address specified for such person in Part II of this Exhibit B-2. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-2. [“_____”] understands the risks associated with communicating sensitive matters, including time sensitive matters, by e-mail. [“_____”] further acknowledges that instructions and data sent by e-mail may be less confidential or secure than instructions or data transmitted by other methods. The Escrow Agent shall not be liable for any loss of the confidentiality of instructions and data prior to receipt by the Escrow Agent.
- CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by e-mail, the Escrow Agent may, at its discretion, confirm by telephone call-back, as described in Option 1.
- Option 3. Delivery of funds transfer instructions by password protected file transfer system only - no confirmation. The Escrow Agent offers the option to deliver funds transfer instructions through a password protected file transfer system. If [“_____”] wishes to use the password protected file transfer system, further instructions will be provided by the Escrow Agent. If [“_____”] chooses this Option 3, it agrees that no further confirmation of funds transfer instructions will be performed by the Escrow Agent.
- Option 4. Delivery of funds transfer instructions by password protected file transfer system with confirmation. Same as Option 3 above, but the Escrow Agent shall confirm funds transfer instructions by telephone call-back or e-mail (must check at least one, may check both) to a person at the telephone number or e-mail address designated on Part II above. By checking a box in the prior sentence, the party shall be deemed to have agreed to the terms of such confirmation option as more fully described in Option 1 and Option 2 above.

Dated this _ day of May, 2015.

By _____
Name:
Title:

EXHIBIT C
FEEES OF ESCROW AGENT

Corporate Trust Services
Schedule of fees to provide escrow agent services

WELLS
FARGO

Western Asbestos Settlement Trust – Escrow Account
Approximate size: \$36,000,000.00

Acceptance fee	Waived
A one-time fee for our initial review of governing documents, account set-up and customary duties and responsibilities related to the closing. This fee is payable at closing.	
Annual administration fee	\$5,000.00
A fee for customary administrative services provided by the escrow agent, including daily routine account management; investment transactions, cash transactions processing (including wire and check processing), disbursement of funds in accordance with the agreement, tax reporting for one entity, and providing account statements to the parties. The administration fee is payable annually in advance per escrow account established. The first installment of the administrative fee is payable at closing.	
Out-of-pocket expenses	At cost
Out-of-pocket expenses will be billed as incurred at cost at the sole discretion of Wells Fargo.	
Extraordinary services	Standard rate
The charges for performing services not contemplated at the time of execution of the governing documents or not specifically covered elsewhere in this schedule will be at Wells Fargo's rates for such services in effect at the time the expense is incurred.	

Assumptions

This proposal is based upon the following assumptions with respect to the role of escrow agent:

- Number of escrow accounts to be established: One (1)
- Amount of escrow: \$36,000,000.00
- Term of escrow: up to Two (2) years
- Number of tax reporting parties: One (1)
- Number of parties to the transaction: Three (3)
- Fees quoted assumes balances invested under the escrow agreement will be held in: MMDA

Terms and conditions

- The recipient acknowledges and agrees that this proposal does not commit or bind Wells Fargo to enter into a contract or any other business arrangement, and that acceptance of the appointment described in this proposal is expressly conditioned on (1) compliance with the requirements of the USA Patriot Act of 2001, described below, (2) satisfactory completion of Wells Fargo's internal account acceptance procedures, (3) Wells Fargo's review of all applicable governing documents and its confirmation that all terms and conditions pertaining to its role are satisfactory to it and (4) execution of the governing documents by all applicable parties.
- Should this transaction fail to close or if Wells Fargo determines not to participate in the transaction, any acceptance fee and any legal fees and expenses may be due and payable.
- Legal counsel fees and expenses, any acceptance fee and any administrative fee are payable at closing.
- Should any of the assumptions, duties or responsibilities of Wells Fargo change, Wells Fargo reserves the right to affirm, modify or rescind this proposal.
- The fees described in this proposal subject to periodic review and adjustment by Wells Fargo.
- Invoices outstanding for over 30 days are subject to a 1.5% per month late payment penalty.
- This fee proposal is good for 90 days.

Together we'll go far



Corporate Trust Services
Schedule of fees to provide escrow agent services

Western Asbestos Settlement Trust – Escrow Account
Approximate size: \$36,000,000.00

Important information about identifying our customers

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person (individual, corporation, partnership, trust, estate or other entity recognized as a legal person) for whom we open an account.

What this means for you: Before we open an account, we will ask for your name, address, date of birth (for individuals), TIN/EIN or other information that will allow us to identify you or your company. For individuals, this could mean identifying documents such as a driver's license. For a corporation, partnership, trust, estate or other entity recognized as a legal person, this could mean identifying documents such as a Certificate of Formation from the issuing state agency.

Date: January 30, 2015 (Revised 2/11/15)

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

[PROPOSED]

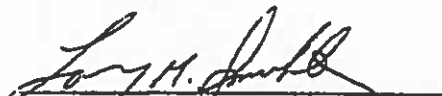
ORDER APPROVING ESCROW AGREEMENT
PURSUANT TO SETTLEMENT AGREEMENT WITH WESTERN
ASBESTOS SETTLEMENT TRUST

On consideration of the motion of Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), for an order approving an Escrow Agreement ("Escrow Agreement") among the Western Asbestos Settlement Trust ("Trust"), Home (by the Liquidator), and Wells Fargo Bank, N.A., as escrow agent, and establishing the Western Home Escrow under the court's jurisdiction, and the supporting Affidavit of Peter A. Bengelsdorf, it is hereby found and ORDERED as follows:

1. The Liquidator's Motion for Approval of Escrow Agreement Pursuant to Settlement Agreement with Western Asbestos Settlement Trust is granted, and the Escrow Agreement is approved;
2. The Court approves the establishment of the Western Home Escrow as a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1; and
3. The Western Home Escrow shall be governed by the terms of the Escrow Agreement, and the Court shall retain continuing jurisdiction over the Western Home Escrow established under the Escrow Agreement pursuant to Treasury Regulation § 1.468B-1(c)(1).

Approved
So Ordered.

Dated: 6/22/15


Presiding Justice