

**THE STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS.**

**SUPERIOR COURT**

**Docket No. 217-2003-EQ-00106**

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

**LIQUIDATOR'S MOTION FOR APPROVAL OF  
SETTLEMENT AGREEMENT WITH FEDERAL CLAIMANTS  
AND RELEASE AGREEMENT WITH UNITED STATES**

John R. Elias, Insurance Commissioner of 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 (1) a Settlement Agreement ("Settlement Agreement") between the United States of America on behalf of the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of the Navy ("Navy"), U.S. Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration of the United States Department of Commerce ("NOAA") (collectively, the "Federal Claimants") and the Liquidator, and (2) a Release Agreement ("Release Agreement") between the United States of America ("United States") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. The Settlement Agreement and the Release Agreement were negotiated under the supervision of the Special Deputy Liquidator. A copy of the Settlement Agreement dated October 2, 2018 is attached as Exhibit A, and a copy of the Release Agreement dated November 21, 2018 is attached as Exhibit B. Both the Settlement Agreement and the Release Agreement are subject to the approval of the Court. Settlement Agreement ¶¶ 1, 6; Release Agreement ¶ III.1. The Liquidator previously gave notice of these agreements by the Liquidator's Notice of Settlement Agreement, Subject to Conditions, with the United States of America on behalf of Federal Claimants filed on November 22, 2018. Affidavit of Peter A.

Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Settlement Agreement with Federal Claimants and Release Agreement with United States (“Bengelsdorf Aff.”) ¶ 2.

2. The Settlement Agreement. The Federal Claimants filed five proofs of claim in the Home liquidation asserting claims under policies of insurance issued by Home or its predecessors to certain policyholders that the Federal Claimants claimed are liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 to 9675 (the “Proofs of Claim”). Settlement Agreement, second whereas clause. Bengelsdorf Aff. ¶ 3.

3. Four of the Proofs of Claim were resolved prior to the Settlement Agreement. Settlement Agreement, fifth whereas clause. In particular, the EPA’s claim concerning Paul Sauget, Industrial Salvage and Disposal, and Sauget & Company (“Sauget Claim”) was resolved through a \$4,125,000 Class II allowance under a Settlement Agreement and Mutual Release dated March 31, 2010, and approved by the Court on June 3, 2010. The Sauget Claim resolution is not affected by the Settlement Agreement. Settlement Agreement ¶ 2(d).<sup>1</sup> Bengelsdorf Aff. ¶ 4.

4. The United States Department of Justice (“US DOJ”) also filed a protective proof of claim on behalf of EPA, DOI, NOAA, the U.S. Department of Defense and other agencies relating to any claims held by these agencies not currently known or not currently known to be

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<sup>1</sup> The United States Department of Labor filed a separate proof of claim in the Home liquidation for \$2,672,527 in special fund assessments pursuant to the Longshore and Harbor Workers’ Act, 33 U.S.C. §§ 901-50. That claim was allowed and, after litigation, assigned to priority Class III (the “DOL Claim”). See Solis v. Home Ins. Co., 848 F.Supp.2d 91 (D.N.H. 2012); In Matter of Liquidation of Home Ins. Co., 2014 WL 7636148, No. 03-E-106 (N.H. Super. Ct., Merrimack Cty., Sept. 9, 2014). The DOL Claim resolution is not affected by the Settlement Agreement. Settlement Agreement ¶ 2(d).

related to Home (the “Protective Proof of Claim”). Settlement Agreement, third whereas clause. Bengelsdorf Aff. ¶ 5.

5. The US DOJ, on behalf of EPA, subsequently informed the Liquidator that it was prepared to file additional proofs of claim alleging that certain Home policies potentially provide coverage for EPA claims under CERCLA against six other Home insureds (the “Additional Proofs of Claim”). Settlement Agreement, sixth whereas clause. Bengelsdorf Aff. ¶ 6.

6. As reported in the Liquidator’s regular status reports, the Liquidator and the US DOJ and EPA have engaged in lengthy discussions and exchanges of information in an effort to resolve these matters. Ultimately, the Liquidator and the United States negotiated the Settlement Agreement reflecting a resolution of all matters concerning the Proofs of Claim and the Additional Proofs of Claim. See Settlement Agreement, eighth whereas clause. The Settlement Agreement represents a compromise of disputed positions. *Id.*, ninth and eleventh whereas clauses, ¶ 9. Bengelsdorf Aff. ¶ 7.

7. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1; see *id.* ¶ 6(a). It is also subject to the condition that the United States and the Liquidator enter a mutually acceptable release under 31 U.S.C. § 3713. *Id.* ¶ 1; see *id.* ¶ 6(b). Further, the Settlement Agreement is subject to at least a 30-day period of public comment following publication of notice in the Federal Register. *Id.* ¶ 6(c). The United States reserved the right to withdraw from the Settlement Agreement if comments disclosed facts which indicated that the agreement was not in the public interest, and it agreed to promptly notify the Liquidator following the public comment period whether or not it would go forward with the agreement. *Id.* Bengelsdorf Aff. ¶ 8.

8. The United States and the Liquidator subsequently negotiated the Release Agreement (discussed below), which was signed November 21, 2018. Bengelsdorf Aff. ¶ 9.

9. The US DOJ then published notice of the Settlement Agreement and a 30-day comment period in the Federal Register on December 6, 2018. 83 Fed. Reg. 62907 (Dec. 6, 2018). Following the conclusion of the public comment period on January 7, 2019, on March 5, 2019, the United States notified the Liquidator that it had concluded that the proposed settlement should proceed. Bengelsdorf Aff. ¶ 10.

10. The Settlement Agreement provides that the Liquidator will recommend allowance of one of the Proofs of Claim and the six Additional Proofs of Claim in the aggregate amount of \$27,044,146 (the “Recommended Amount”) as a Class II priority claim under RSA 402-C:44. Settlement Agreement ¶ 2(a). The Recommended Amount is allocated among the seven claims as set forth in ¶ 3(a). Allowance of the Recommended Amount as a Class II claim will fully and finally resolve the Proofs of Claim and the Additional Proofs of Claim. *Id.* ¶ 2(b). (As noted above, the prior Sauget Claim and the DOL Claim resolutions are not affected.) 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. *Id.* ¶ 2(c). Bengelsdorf Aff. ¶ 11.

11. The Settlement Agreement is intended to resolve the Proofs of Claim and the Additional Proofs of Claim. See Settlement Agreement, eighth whereas clause, ¶ 2(b). To that end, the Settlement Agreement provides a covenant by the United States on behalf of the Federal Claimants not to sue the Liquidator or Home for obligations arising under CERCLA under policies issued by Home to the insureds named in the Proofs of Claim and the Additional Proofs of Claim. *Id.* ¶ 4. It also includes a covenant by the Liquidator not to sue the United States for obligations to the Federal Claimants arising under those Home insurance policies. *Id.* ¶ 5. Bengelsdorf Aff. ¶ 12.

12. The Settlement Agreement provides that, when it becomes effective, the Proofs of Claim and the Additional Proofs of Claim shall be fully resolved and terminated, with prejudice. Settlement Agreement ¶ 7. Further, by the Settlement Agreement, the United States withdraws the Protective Proof of Claim without prejudice. *Id.*, fourth whereas clause. Finally, in the Settlement Agreement, the Federal Claimants advise that they do not intend to file proofs of claim in the Home liquidation beyond the Additional Proofs of Claim. *Id.*, tenth whereas clause. The Settlement Agreement thus resolves all asserted claims of the Federal Claimants, withdraws the proof of claim concerning unknown claims of the Federal Claimants, and provides confirmation – albeit in a non-binding way – that the Federal Claimants do not intend to file additional claims. *Bengelsdorf Aff.* ¶ 13.

13. The Release Agreement. As described in the Liquidator’s reports and motions for approval of the first, second and third interim distributions, the US DOJ has asserted that the claim filing deadline does not apply to claims by the Federal Government in light of the Federal Priority Statute, 31 U.S.C. § 3713, so that it can at any time file claims entitled to payment by the Liquidator on pain of potential personal liability under 31 U.S.C. § 3713(b). *See Ruthardt v. United States*, 303 F.3d 375, 384-386 (1st Cir. 2002), *cert. denied*, 538 U.S. 1031 (2003). In light of this potential exposure of the Liquidator to the United States for making distributions that reduce the claim-paying ability of the estate, each of the interim distributions has been subject to receipt of a waiver of claims under the Federal Priority Statute by the United States in a form acceptable to the Liquidator. The Liquidator obtained acceptable releases for the first and second interim distributions.<sup>2</sup> *Bengelsdorf Aff.* ¶ 14.

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<sup>2</sup> The release agreement providing the waiver for the second interim distribution was only obtained after the Liquidator commenced litigation regarding the Protective Proof of Claim and application of the Federal Priority Statute. *See Sevigny v. United States*, 2014 WL 3573566 (D.N.H. July 21, 2014). *See* Liquidator’s Report Regarding Release Agreement with United States (Nov. 6, 2014).

14. While the Federal Claimants sought to resolve all their claims in the estate, the Liquidator sought a more encompassing waiver from the United States that would allow future distributions to proceed without the necessity of obtaining a waiver for each one. In consequence, when the parties agreed upon the Settlement Agreement, it was conditioned upon a mutually acceptable release under 31 U.S.C. § 3713. Settlement Agreement ¶¶ 1, 6(b). When the Liquidator and the United States later agreed upon the Release Agreement, it in turn was conditioned upon approval of the Settlement Agreement and allowance of the \$27,044,146 of EPA Claims at Class II. See Release Agreement ¶¶ II.2, II.5. Bengelsdorf Aff. ¶ 15.

15. The Release Agreement is also conditioned upon payment by the Liquidator of the presently approved (through the third interim distribution) Class II distribution percentage of 30% on the newly allowed EPA claims (\$8,113,243.80) as well as payment of the 5% third interim distribution percentage on the Sauget Claim (\$206,250) to the Sauget Executor (25% has been paid on that claim in connection with the first and second interim distributions) within 90 days after the Release Agreement is approved by the Court. See Release Agreement ¶¶ II.2, II.3, III.1. This condition confirms that the Federal Claimants' claims will receive the presently existing percentage distributions along with other Class II creditors of Home. Bengelsdorf Aff. ¶ 16.

16. The Release Agreement also provides for payment of the Class III DOL Claim to the extent, and only to the extent, that funds are available to pay Class III claims. Release Agreement ¶ III.2. This is consistent with the results of the litigation over the priority of the DOL Claim (see note 1 above). The Liquidator does not expect that there will be sufficient funds to make any payment on Class III claims. Bengelsdorf Aff. ¶ 17.

17. Most significantly from the Liquidator's perspective, the Release Agreement provides that, subject to the conditions noted above and the exclusions noted below, the United

States releases the Liquidator “from any and all liability and obligations under 31 U.S.C. § 3713 in connection with Home’s liquidation.” Release Agreement ¶ III.4 (emphasis added). Once effective, this release will, absent some unanticipated development, allow the Liquidator to make future distributions without the need to request further releases of Federal Priority Statute claims from the United States. This facilitates the ultimate closure of the Home liquidation process. Bengelsdorf Aff. ¶ 18.

18. The Release Agreement excludes several categories of claims that the Liquidator does not anticipate being an issue: criminal law claims; federal tax claims; False Claims Act, Program Frauds Civil Remedies Act, Civil Monetary Penalties Act, Employee Retirement Income Security Program and Medicare Secondary Payer claims; and pension benefit, fraudulent conveyance or any other fraud claim. Release Agreement ¶ III.5(a)-(d). It also excludes claims for any obligation created by the Release Agreement, the Settlement Agreement or the Sauget Settlement Agreement. *Id.* ¶ III.5(e). Bengelsdorf Aff. ¶ 19.

19. Recommendation for Approval. The Settlement Agreement and the Release Agreement together represent an integrated resolution of outstanding issues with the United States. See Settlement Agreement ¶ 13. The Settlement Agreement was entered after extensive efforts by the EPA to identify claims against Home and significant exchanges of information respecting sites, claims and Home policies. The Settlement Agreement resolves the known claims of the Federal Claimants asserted in the Proofs of Claim and the Additional Proofs of Claim, and it removes the cloud of the potential claims reflected in the Protective Proof of Claim by withdrawal of that proof of claim and through the related Release Agreement. If any claims for coverage under Home policies are filed by the Federal Claimants in the future, they will not present Federal Priority Statute issues. Bengelsdorf Aff. ¶ 20.

20. The Settlement Agreement reflects a compromise of the claims asserted in the Proofs of Claim and the Additional 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 claims under Home's insurance policies. The agreed settlement amount is based on careful evaluation and negotiation of the Federal Claimants' claims and the coverage obligations under Home policies. It also was a necessary step toward obtaining a release of Federal Priority Statute claims to facilitate future distributions on allowed Class II claims in the Home liquidation. Bengelsdorf Aff. ¶ 21.

21. The Release Agreement was entered after a lengthy process, including litigation (see note 2 above) and the eventual resolution of claims in the Settlement Agreement. The Release Agreement resolves complex issues affecting the distribution of assets to all Class II creditors of the Home estate. The Liquidator has long sought to obtain a more general release of liability under 31 U.S.C. § 3713 so that it will not be necessary obtain a release for each distribution. The release of all liability and obligations under that statute "in connection with Home's liquidation," Release Agreement ¶ III.4, achieves that objective. The exclusions from the release are consistent with exclusions found in the release agreements for the first and second interim distributions in the Home liquidation and in release agreements in other insurer liquidations. Bengelsdorf Aff. ¶ 22.

22. The Liquidator accordingly recommends approval of the Settlement Agreement, allowance of the \$27,044,146 Recommended Amount as a Class II claim of the Federal Claimants in accordance with RSA 402-C:45 and RSA 402-C:44, and approval of the Release Agreement. Bengelsdorf Aff. ¶ 23.

23. The Liquidator's negotiation and the Court's approval of the Settlement Agreement and the Release Agreement 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; the authority of the Court to “approve, disapprove or modify any report on claims by the liquidator,” RSA 402-C:45, II; and 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.

24. The Liquidator submits that the Settlement Agreement and the Release Agreement are fair and reasonable and in the best interests of the policyholders and creditors of Home. See Bengelsdorf Aff. ¶ 24.

WHEREFORE, the Liquidator respectfully requests that the Court:


- A. Grant this Motion;
- B. Enter an Order in the form submitted herewith approving the Settlement Agreement, approving the Liquidator's claim recommendation, allowing the Federal Claimants' claim as a Class II claim in accordance with RSA 402-C:45 and RSA 402-C:44 in the aggregate amount of \$27,044,146, and approving the Release Agreement; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

JOHN R. ELIAS, INSURANCE  
COMMISSIONER OF THE STATE OF  
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OF THE HOME INSURANCE  
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March 7, 2019

**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Federal Claimants and Release Agreement with United States, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 7th day of March, 2019, by first class mail, postage prepaid to all persons on the attached service list.



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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. 217-2003-EQ-00106

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**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Settlement Agreement") is made between the United States of America ("U.S.") on behalf of the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of the Navy ("Navy"), U.S. Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration of the United States Department of Commerce ("NOAA") (collectively referred to as the "Federal Claimants"), acting by and through the United States Department of Justice ("DOJ"), on the one hand, and John R. Elias, Insurance Commissioner of the State of New Hampshire, in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), on the other hand, (the Federal Claimants and the Liquidator are each a "Party" and collectively the "Parties").

**WHEREAS**, Home is being liquidated pursuant to the June 13, 2003 Order of the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home;

**WHEREAS**, the Federal Claimants filed the following five Proofs of Claim in the Home liquidation asserting claims under policies of insurance issued by Home or its predecessors to the following entities or persons that the Federal Claimants claim are liable under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C.A. §§ 9601 to 9675 ("Proofs of Claim").

1. POC No. GOVT709578 (formerly CLMN705062):  
Alleging that Lilian Wiesner, John Massei and Executeam Corp. are liable under Section 107(a) of CERCLA for costs incurred by EPA at the Stanton Cleaners Area Groundwater Contamination Superfund Site in Great Neck, NY;
2. POC No. GOVT709580 (formerly CLMN705064):  
Alleging that Paul Sauget, Industrial Salvage and Disposal and Sauget & Company are liable under Section 107 of CERCLA for costs incurred by EPA at the Sauget Area 1 Superfund Site in the Village of Sauget and the Village of Cahokia, IL;
3. POC No. GOVT709581 (formerly CLMN705061):  
Alleging that Ace Manzo Inc., &/or Dominick and Carmella Manzo &/or D. Manzo & Sons, Inc. &/or Dominick & Carmella Manzo &/or D&C Leasing & Realty Company are liable under Section 107 of CERCLA for costs incurred by EPA at the Burnt Fly Bog Superfund Site in Monmouth County, NJ;
4. POC No. GOVT709582 (formerly CLMN705063):  
Alleging that R. Lavin & Sons, Inc. is liable for costs EPA has incurred under CERCLA and for costs the Navy, DOI and NOAA have incurred for natural resource damages at Naval Station Great Lakes located in northeastern Illinois;
5. POC No. CLMN710659:  
Alleging that Azusa Pipe and Tube Bending Corp. is liable under Section 107 of CERCLA for costs incurred by EPA at the Baldwin Park Operable Unit in the San Gabriel

Valley in Los Angeles, CA.

**WHEREAS**, the DOJ also filed a protective proof of claim on behalf of EPA, DOI, NOAA, the U.S. Department of Defense and other agencies relating to any claims held by these agencies that are not currently known or are not currently known to relate to the Home Insurance Company. POC No. GOVT709579 (formerly CLMN705065) (“Protective Proof of Claim”).

**WHEREAS**, by this Settlement Agreement the United States withdraws the Protective Proof of Claim without prejudice.

**WHEREAS**, POC Nos. GOVT709578, GOVT709580, GOVT709581 and GOVT709582 have previously been resolved.

**WHEREAS**, DOJ, on behalf of EPA, has informed Home that it is prepared to file additional Proofs of Claim alleging that the Home insurance policies listed below potentially provide coverage in whole or in part for EPA’s claims against the following entities or persons insured by Home (“Additional Proofs of Claim”):

1. Alleging that Sharon Steel Corporation (“Sharon Steel”) is liable under Section 107 of CERCLA for costs incurred and to be incurred by EPA at the Sharon Steel Corporation (Farrell Works Disposal Area) Superfund Site located in the city of Farrell and the city of Hermitage, Pennsylvania.

Policies:

- HEC9555865 effective 11/18/1967 – 11/18/1970
- HEC9793659 effective from 11/18/1970 – 2/4/1971
- HXL269008 12/28/1990 – 12/28/1991
- HXL1642477 12/28/1991 – 12/28/1992
- HXL0272601 2/15/1992 – 2/15/1993
- GLRF990674 10/1/1990 – 10/1/1991;

2. Alleging that Manson Construction and Engineering Company (“Manson Construction”) is liable under Section 107 of CERCLA for costs incurred and to be incurred by EPA at the Lower Duwamish Waterway Superfund Site located in Seattle, Washington.

Policies:

- GA4704165 for the period 3/15/1974 – 6/30/1976
- GA9252764 for the period 6/30/1976 – 6/30/1977
- GA9709886 for the period 6/30/1979 – 6/30/1980
- GA9985236 for the period 6/30/1980 – 4/1/1981
- MH518465 for the period 6/30/1975 – 6/30/1976

3. Alleging that Duwamish Shipyard, Inc. is liable under Section 107 of CERCLA for costs incurred and to be incurred by EPA at the Lower Duwamish Waterway Site located in Seattle, Washington.

Policies:

- GA9265644 for the period 8/15/1976 – 8/15/1977
- GA9393898 for the period 8/15/1977 – 8/15/1978
- GA9563192 for the period 8/15/1978 – 8/15/1979
- GA9897882 for the period 8/15/1979 – 8/15/1980
- GA9985275 for the period 8/15/1980 – 8/15/1981
- GL1258879 for the period 8/15/1981 – 8/15/1982



- MH527648 for the period 8/15/1977 – 8/15/1978
  - MH533485 for the period 7/31/1980 – 3/1/1981
4. Alleging that Explorer Pipeline Company is liable under Section 107 of CERCLA for costs incurred by EPA at the U.S. Oil Recovery Superfund Site located in Pasadena, Texas.
- Policies:
- GA4841604 for the period 2/1/1975 – 2/1/1976
  - GA9250881 for the period 2/1/1976 – 2/1/1977
  - GA9380513 for the period 2/1/1977 – 2/1/1978
  - GA9262999 for the period 2/1/1978 – 2/1/1979
  - GA9888411 for the period 2/1/1979 – 2/1/1980
  - GA9987186 for the period 2/1/1980 – 2/1/1981
  - GA9989679 for the period 2/1/1981 – 2/1/1982
  - GA9994394 for the period 2/1/1982 – 2/1/1983
  - GA9994494 for the period 2/1/1983 – 2/1/1984
  - GA9994573 for the period 2/1/1984 – 2/1/1985
  - GA1450509 for the period 2/1/1985 – 2/1/1986
  - GL994553 for the period 2/1/1986 – 2/1/1987
5. Alleging that Louisville Varnish Company, Inc. is liable under Section 107 of CERCLA for costs incurred by EPA at the Lee's Lane Landfill Superfund Site located in Louisville, Kentucky.
- Policies:
- GA 9892190 for the period 2/1/1979 – 2/1/1980
  - GA 9988561 for the period 2/1/1980 – 2/1/1981
  - GL 1255212 for the period 2/1/1981 – 2/1/1982
  - GL 1262313 for the period 2/1/1982 – 2/1/1983
6. Alleging that Shaw Trucking is liable under Section 107 of CERCLA for costs incurred by EPA at the Petroleum Products Superfund Site located in Pembroke Park, Florida.
- Policies:
- IDRP178523

This Settlement Agreement shall be deemed to satisfy any requirement that the Federal Claimants file additional proofs of claim relating to these claims.

**WHEREAS**, "Home Insureds" shall mean the entities and persons insured by Home listed in the above Whereas clauses.

**WHEREAS**, the Parties seek to resolve all claims that were asserted, or could have been or could be asserted under or concerning the Proofs of Claim and Additional Proofs of Claim.

**WHEREAS**, the Liquidator disputes the claims in whole or in part, and EPA asserts that the claims for coverage are meritorious;

**WHEREAS**, the Federal Claimants do not intend to file Proofs of Claim in the Home liquidation beyond the Additional Proofs of Claim.

**WHEREAS**, the Parties have agreed to reach a compromise of disputed positions to avoid the time and expense of litigation and facilitate the timely closing of the Home liquidation, without admission of liability and without admission of the ultimate validity or invalidity of any of the Parties' positions or arguments;

**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 will be effective only (the "Effective Date") upon approval of the Settlement Agreement by the Liquidation Court and allowance by the Liquidation Court of the Recommended Amount as a Class II claim. This Settlement Agreement is also subject to the condition that the United States and the Liquidator shall enter into a release under 31 U.S.C. § 3713 on terms mutually acceptable to both sides ("Release Agreement"). The Liquidator shall report to the Liquidation Court concerning this Settlement Agreement promptly following execution by all Parties. The Liquidator shall move for approval of this Settlement Agreement, the allowance of the Recommended Amount as a Class II claim, and the Release Agreement after the United States notifies the Liquidator following the completion of the public comment period as provided in paragraph 6.c. below.

2. Recommendation, Allowance, and Classification of Claims.

a. Subject to all the terms of this Settlement Agreement, and with the agreement of the Federal Claimants, which by the Federal Claimants' execution hereof is hereby granted, the Liquidator shall recommend pursuant to N.H. RSA 402-C:45 that CLMN710659 and the Additional Proofs of Claim be allowed in the amount of \$27,044,146 (the "Recommended Amount") as a Class II priority claim under N.H. RSA 402-C:44. The Liquidator shall seek allowance of the Recommended Amount as a Class II priority claim by the Liquidation Court in the Liquidator's motion for approval of this Settlement Agreement.

b. Allowance of the Recommended Amount as a Class II claim by the Liquidation Court shall fully and finally resolve the Proofs of Claim and the Additional Proofs of Claim. In the event that the Liquidation Court does not allow the Recommended Amount as a Class II claim, this Settlement Agreement shall be null and void and shall have no force and effect and the Parties will be returned to *status quo ante*, as if no such agreement was ever reached, with this Settlement Agreement thereafter being inadmissible for any purpose in any dispute between the Parties.

c. If and when the Liquidation Court allows the Recommended Amount as a Class II claim, Federal Claimants shall become a Class II creditor in the Home liquidation pursuant to N.H. RSA 402-C:44, and the Federal 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. Distributions shall be made as set forth in paragraph 3(b) below.

d. Notwithstanding any other provision of this Settlement Agreement, this Settlement Agreement shall not affect the rights of the parties as to the allowance to the

Department of Labor Longshore Special Fund under proof of claim GOVT700090 and its priority as previously determined in litigation or the rights of the parties including the EPA under the Settlement Agreement and Mutual Release regarding proofs of claim including GOVT709580 that was approved by the Liquidation Court on June 3, 2010.

3. Allocation of and Distributions on the Recommended Amount.

a. The Parties agree that the Recommended Amount is based upon claims asserted against Home Insureds with respect to their alleged liability at specified Superfund sites, as set forth above, and that the Recommended Amount shall be allocated as follows:

- (i) Sharon Steel Corporation: \$16,000,000 for the Sharon Steel Corporation (Farrell Works Disposal Area) Superfund Site;
- (ii) Manson Construction and Engineering Company: \$6,298,630 for the Lower Duwamish Waterway Site;
- (iii) Duwamish Shipyard, Inc.: \$2,200,000 for the Lower Duwamish Waterway Site;
- (iv) Azusa Pipe & Tube Bending Corp.: \$2,224,999 for the San Gabriel Valley Area 2 Site;
- (v) Explorer Pipeline Company: \$300,000 for the U.S. Oil Recovery Site;
- (vi) Louisville Varnish Company, Inc.: \$19,609 for Lee's Lane Landfill; and
- (vii) Shaw Trucking: \$908 for the Petroleum Products Site.

b. At the time of each Class II distribution from the Home estate, the Liquidator shall pay the distribution amount on the allocated portions of the Recommended Amount set forth in paragraph 3(a) in accordance with instructions provided by the United States as follows:

- (i) For the Sharon Steel Corporation (Farrell Works Disposal Area) Superfund Site:  
Site ID/Spill ID Number: 03DX

The total amount received by EPA pursuant to Paragraph 3(a)(i) above shall be deposited in the Sharon Steel Corporation (Farrell Works Disposal Area) Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

- (ii) For the Lower Duwamish Waterway Site:  
Site ID/Spill ID Number: 10NQ

The total amount received by EPA pursuant to Paragraph 3(a)(ii) and (iii) above shall be deposited in the Lower Duwamish Waterway Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

- (iii) For the San Gabriel Valley Area 2 Site:  
Site ID/Spill ID Number: 09M5

The total amount received by EPA pursuant to Paragraph 3(a)(iv) above shall be deposited in the San Gabriel Valley Area 2 Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

- (iv) For the U.S. Oil Recovery Superfund Site:  
Site ID/Spill ID Number: A6X7

The total amount received by EPA pursuant to Paragraph 3(a)(v) above shall be deposited in the U.S. Oil Recovery Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

- (v) For the Lee's Lane Landfill Superfund Site:  
Site ID/Spill ID Number: 0443

The total amount received by EPA pursuant to Paragraph 3(a)(vi) above shall be deposited in the Lee's Lane Landfill Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

- (vi) For the Petroleum Products Superfund Site:  
Site ID/Spill ID Number: 04H5

The total amount received by EPA pursuant to Paragraph 3(a)(vii) above shall be deposited in the Petroleum Products Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

At the time of any cash distribution pursuant to this Settlement Agreement, Home shall transmit written confirmation of such distribution to DOJ and EPA at the addresses specified below, and email confirmation of such distribution to the EPA Cincinnati Financial Office at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) with reference to the DOJ Case Number 90-11-3-08308 and the above Site/Spill ID Number for each of the sites:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-08308

Robert A. Roberts  
Attorney-Advisor  
United States Environmental Protection Agency  
Office of Site Remediation Enforcement  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Mailcode: 2272A

4. Federal Claimants' Covenant Not to Sue.

a. In consideration of the execution of the Settlement Agreement and the approval by the Liquidation Court, the United States, on behalf of the Federal Claimants, covenants not to file a civil action (including a proof of claim) against the Liquidator or Home with respect to any and all liabilities and obligations to the Federal Claimants arising under CERCLA under policies issued by Home to the Home Insureds named in the Proofs of Claim and the Additional Proofs of Claim, whether such liabilities and obligations are known or unknown, reported or unreported, vested or contingent, and whether currently existing or arising in the future. As used in this paragraph, the term Liquidator shall include the New Hampshire Insurance Department ("NHID") and the Special Deputy Liquidator, and the terms Liquidator and Home shall include their respective subsidiaries, affiliates, predecessors, successors, and assigns and their respective officers, directors, employees, attorneys, and agents in their capacity as such.

b. With respect to the policies issued by Home to the Home Insureds named in the Proofs of Claim and the Additional Proofs of Claim, the Federal Claimants waive the benefits of California Civil Code Section 1542, which provides: "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.", and any similar statute.

c. The United States specifically reserves, and this Settlement Agreement, including the provisions of Paragraph 4.a, is without prejudice to (i) any action seeking to impose criminal liability, (ii) any action based on the failure to meet a requirement of this Settlement Agreement, (iii) any claim against Home by the Federal Claimants based on the liability of the Home Insureds under any statute other than CERCLA, and (iv) any claim of any federal agency or department, other than EPA, DOI, NOAA and Navy.

d. The covenant set forth in Paragraph 4.a extends only to the persons set forth in paragraph 4.a and does not extend to any other person. The United States expressly reserves all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or in equity, which it may have against all other persons, firms, corporations, or entities for any matter arising at or relating in any manner to the sites or claims addressed herein. Further, nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), to enter into any settlement that gives

rise to contribution protection for any person not a party to this Settlement Agreement.

5. The Liquidator's Covenant Not to Sue.

a. In consideration of the execution of this Settlement Agreement and the approval of the Liquidation Court, the Liquidator, in his capacity as such and on behalf of Home, covenants not to file a civil action against the United States or any department or agency thereof, with respect to any and all liabilities and obligations to the Federal Claimants arising under insurance policies issued by Home to the Home Insureds named in the Proofs of Claim and the Additional Proofs of Claim, whether such liabilities and obligations are known or unknown, reported or unreported, vested or contingent, and whether currently existing or arising in the future, including but not limited to (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507, (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, (iii) any claim arising out of response activities at any of the sites identified in the Proofs of Claim and the Additional Proofs of Claim, and (iv) any claim to recover all or any part of the Recommended Amount set forth in paragraph 2 of this Settlement Agreement. The Liquidator does not waive the right, if any, to sue any other insurer of the insured parties for indemnity or contribution. As used in this paragraph, the term Liquidator shall include the NHID and the Special Deputy Liquidator, and the terms Liquidator and Home shall include their respective subsidiaries, affiliates, predecessors, successors, and assigns and their respective officers, directors, employees, attorneys, and agents in their capacity as such.

b. With respect the policies issued by Home to the Home Insureds named in the Proofs of Claim and the Additional Proofs of Claim, the Liquidator and Home waive the benefits of California Civil Code Section 1542, which provides: "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.", and any similar statute.

c. Notwithstanding any other provision of this Settlement Agreement, the Liquidator specifically reserves, and this Settlement Agreement is without prejudice to, any claim based on any obligation under this Settlement Agreement.

6. Court Approval and Public Comment.

a. The Liquidator shall recommend this Settlement Agreement for approval to the Liquidation Court. The Liquidator advises EPA that this Settlement Agreement will be submitted to the Liquidation Court, and the Parties agree that approval of the Liquidation Court is a condition precedent to the effectiveness of this Settlement Agreement, including the covenants set forth in Paragraphs 4 and 5, and to the payment of any distribution amounts to EPA. If the Liquidation Court approves the Liquidator's recommendation and enters a final order thereon, the Liquidator shall pay EPA at the time of each Class II distribution from the Home estate, the distribution amount on the allocated portions of the Recommended Amount set forth in paragraph 3.a above.

b. The Parties agree that this Settlement Agreement is conditioned upon the execution and approval of a mutually-agreed Release Agreement, and that the execution and approval of this Settlement Agreement shall be a condition precedent to the effectiveness of the Release Agreement.

c. This Settlement Agreement shall be subject to at least a 30-day period of public comment following publication of notice of this Settlement Agreement in the Federal Register. The Federal Claimants shall publish notice of this Settlement Agreement in the Federal Register promptly following execution of this Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Settlement Agreement disclose facts which indicate that the Agreement is not in the public interest. After the conclusion of the public comment period, the United States will promptly notify the Liquidator as to whether or not it is going forward with the Agreement.

d. If for any reason (a) this Settlement Agreement is withdrawn or consent is withheld by the United States as provided in Paragraph 6.c, or (b) the Settlement Agreement or Release Agreement is not approved by the Liquidation Court: (i) this Settlement Agreement shall be null and void, and the Parties hereto shall not be bound under this Settlement Agreement or under any documents executed in connection herewith; (ii) the Parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (iii) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

7. Resolution of Matters. On the Effective Date, the Federal Claimants' Proofs of Claim and Additional Proofs of Claim shall be fully resolved and terminated, with prejudice, with each Party bearing its own costs and fees in connection with the Proofs of Claim and Additional Proofs of Claim and the negotiation and performance of this Settlement Agreement.

8. Governing Law and Venue. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire, except to the extent that federal law applies, without regard to the conflicts of laws provisions thereof. The Parties agree that the exclusive venue for any dispute between the Parties arising out of this Settlement Agreement shall be the Liquidation Court or, if removed, the United States District Court for the District of New Hampshire. The Parties reserve their respective rights regarding removal.

9. Agreement as Compromise. The Parties acknowledge and agree that this Settlement Agreement is a compromise in settlement of disputed liabilities, obligations, and positions, made to avoid the time and expense of litigation and to facilitate the timely closing of the Home liquidation, without admission of liability and without admission of the ultimate validity or invalidity of any of the Parties' positions or arguments.

10. 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 advice of their own legal counsel, and that they have executed this Settlement Agreement without reliance on any statements, warranties, or representations by the other Party other than representations and warranties contained herein. 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.

11. Counterparts. This Settlement Agreement may be executed and delivered in multiple counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one Settlement Agreement.

12. Successor-in-Interest Bound. This Settlement Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective successors and assigns.

13. Entire Agreement. This Settlement Agreement and the Release Agreement together constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof. The terms of this Settlement Agreement, including any attached exhibits, may be modified only by a subsequent written agreement by all the Parties. Where the modification constitutes a material change to this Settlement Agreement, it shall be effective only upon approval of the Liquidation Court.

14. 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.

15. Notice. All notices to be given under this Settlement Agreement shall be given in writing by first class U.S. mail or overnight delivery and by email directed to the individuals noted below or to such other individual(s) as a Party may designate in writing from time to time.

If to the Federal Claimants, to:

Myles E. Flint, II  
Senior Counsel  
U.S. Department of Justice  
Environmental Enforcement Section  
ENRD Mail Room, Room 2121  
601 D Street, NW  
Washington, D.C. 20004  
Email: Myles.Flint@usdoj.gov

and

Sharon C. Williams  
Trial Attorney  
U.S. Department of Justice  
Commercial Litigation Branch, Civil Division  
1100 L Street, NW  
Room 7004  
Washington, D.C. 20005  
Email: Sharon.William@usdoj.gov

and

Robert A. Roberts  
Attorney-Advisor  
U.S. Environmental Protection Agency  
Office of Site Remediation Enforcement  
1200 Pennsylvania Avenue, NW  
Mail Code 2272A  
Washington, D.C. 20460



Email: [Roberts.robert@epa.gov](mailto:Roberts.robert@epa.gov)

If to the Liquidator, to:

Thomas W. Kober  
Chief Claims Officer  
The Home Insurance Company in Liquidation  
61 Broadway, 6<sup>th</sup> Floor  
New York, New York 10006  
Email: [tom.kober@homeinsco.com](mailto:tom.kober@homeinsco.com)

and

J. Christopher Marshall  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
Email: [christopher.marshall@doj.nh.gov](mailto:christopher.marshall@doj.nh.gov)

and

J. David Leslie, Esq.  
Rackemann, Sawyer & Brewster PC  
160 Federal Street  
Boston, Massachusetts 02110-1700  
Email: [dleslie@rackemann.com](mailto:dleslie@rackemann.com).

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

**For the Federal Claimants: United States of America on behalf of the United States Environmental Protection Agency, the United States Department of the Navy, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration of the United States Department of Commerce.**

**FOR THE UNITED STATES OF AMERICA**

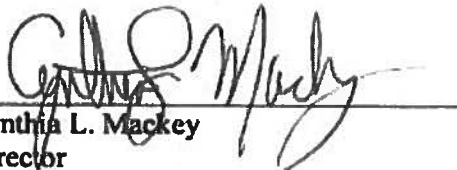
By: Jeffrey H. Wood  
Jeffrey H. Wood  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: 9/24/18

By: Myles E. Flint, II  
Myles E. Flint, II  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 307-1859  
Email: Myles.Flint@usdoj.gov

Date: 10/2/18

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

By: 

Cynthia L. Mackey  
Director  
Office of Site Remediation Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Date: 8/30/18

By: 

Robert A. Roberts  
Attorney-Advisor  
Office of Site Remediation Enforcement  
Office of Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Date: 8/30/18

**FOR JOHN R. ELIAS, INSURANCE COMMISSIONER OF THE STATE OF NEW HAMPSHIRE, AS LIQUIDATOR OF THE HOME INSURANCE COMPANY.**

By: *Peter A. Bengelsdorf*  
Peter A. Bengelsdorf  
Special Deputy Liquidator

Date: 8-16-18

**RELEASE AGREEMENT**

This Release Agreement is being entered into by the United States of America (“United States”) and John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”).

**I. PARTIES**

The parties to this Release Agreement are the United States and the Liquidator (collectively, the “Parties”). The Liquidator also makes this agreement on behalf of the New Hampshire Insurance Department (“Insurance Department”).

**II. RECITALS**

1. The United States Department of Justice (“DOJ”) acting on behalf of the United States Environmental Protection Agency (“EPA”) asserted claims pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607, against the following parties insured by Home (collectively, the “EPA Claims”):

Sharon Steel Corporation for the Farrell Works Disposal Area Superfund Site;

Manson Construction and Engineering Company for the Lower Duwamish Waterway Superfund Site;

Duwamish Shipyard, Inc. for the Lower Duwamish Waterway Superfund Site;

Azusa Pipe and Tube Bending Corp. for the Baldwin Park Operable Unit in the San Gabriel Valley;

Explorer Pipeline Company for the U.S. Oil Recovery Superfund Site;

Louisville Varnish Company, Inc. for Lee’s Lane Landfill; and

Shaw Trucking for the Petroleum Products Superfund Site.

2. The Parties have agreed to compromise the EPA Claims and this Release Agreement is contingent upon the allowance of the EPA Claims in the total amount of \$27,044,146 by the Superior Court of the State of New Hampshire, Merrimack County (“Liquidation Court”) as a Class II priority claim under N.H. RSA 402-C:44, as provided in the Settlement Agreement dated October 2, 2018 (Attachment A), and Home’s payment to the United States in respect of the EPA Claims of the presently approved *pro rata* percentage payment. This Release Agreement will be effective only after Home has made the payment described in the immediately preceding sentence.

3. EPA also has a Class II priority claim under N.H. RSA 402-C:44 in the amount of \$4,125,000 relating to insureds Paul Sauget, Industrial Salvage and Disposal and Sauget & Company (“Sauget Claim”), as provided in the Settlement Agreement and Mutual Release dated March 31, 2010 (Attachment B). The Sauget Executor has received 25 percent of the Sauget Claim from Home through two interim distributions pursuant to that agreement. This Release Agreement is contingent upon Home’s payment in respect of the Sauget Claim of the presently approved *pro rata* percentage payment. This Release Agreement will be effective only after Home has made the payment described in the immediately preceding sentence.

4. The United States Department of Labor (“DOL”) has a \$2,672,527 claim against Home pursuant to the Longshore and Harbor Workers’ Act, 33 U.S.C. §§ 901-50, that has been assigned to priority Class III (claims of the federal government), pursuant to N.H. Rev. Stat. § 402-C:44 (“DOL Claim”).

5. The effectiveness of this Release Agreement is further conditioned upon (a) approval of the Settlement Agreement dated October 2, 2018 between DOJ and Home regarding the EPA Claims by the Liquidation Court, (b) allowance of the EPA Claims as a

Class II claim in the Home liquidation by the Liquidation Court, and (c) approval of this Release Agreement by the Liquidation Court.

6. The Parties do not intend this Release Agreement to release any possible claims the United States may have or may acquire against anyone for tax, fraud (including, but not limited to, securities and pension benefit fraud), criminal liabilities, or reimbursement liabilities and penalties arising under 42 U.S.C. § 1395y(b), or any liability under 31 U.S.C. § 3713(b) arising from such claims.

7. Except for the express terms of this Release Agreement, the Parties do not intend to create, enhance, diminish, defeat or otherwise affect such claims, if any, as the United States may have against the Liquidator or the Home estate.

8. The United States enters into this Release Agreement in reliance upon the information contained in the Affidavit of Roger A. Sevigny dated April 11, 2012, attached as Attachment C to this Release Agreement.

### **III. AGREEMENT**

1. This Release Agreement becomes effective only upon (a) approval of this Release Agreement by the Liquidation Court, and (b) payment of the presently approved Class II distribution of 30 percent of the EPA Claims (\$8,113,243.80) to EPA and payment of the remaining five percent of the presently approved Class II distribution of the Sauget Claim (\$206,250) to the Sauget Executor within 90 days after approval of this Release Agreement by the Liquidation Court.

2. The Parties agree that the DOL Claim is approved as a claim entitled to Class III claim priority. Home will pay the DOL Claim to the extent, and only to the extent, that funds are available to pay Class III claims.

3. The Parties agree that, until the Home insurance insolvency proceeding is closed, the United States has the right to offset any amounts owed by the United States to Home to reduce amounts owed by Home to the United States.

4. Subject to the conditions in paragraphs III. 1-3, and the exclusions in the immediately following paragraph, the United States hereby releases and discharges the Liquidator, the Special Deputy Liquidator, the Insurance Department, and Home from any and all liability and obligations under 31 U.S.C. § 3713 in connection with Home's liquidation. As used in this paragraph and the following paragraph, the terms Liquidator, Special Deputy Liquidator, the Insurance Department, and Home shall include their respective subsidiaries, affiliates, predecessors, successors, and assigns and their respective officers, directors, employees, attorneys, and agents.

5. Notwithstanding any other provision of this Release Agreement, the United States does not release the Liquidator, the Special Deputy Liquidator, the Insurance Department, and Home for:

(a) any claim arising under any criminal law or any liability under 31 U.S.C. § 3713(b) arising from such claim;

(b) any criminal, civil, or administrative claim, right or defense arising under Title 26, U.S. Code (Internal Revenue Code) or any liability under 31 U.S.C. § 3713(b) arising from such claim;

(c) any claim or action arising under 31 U.S.C. § 3729 *et seq.* (False Claims Act), 31 U.S.C. §§ 3801 - 3812 (Program Frauds Civil Remedies Act), 42 U.S.C. § 1320a-7a (Civil Monetary Penalties statute), 29 U.S.C. Ch. 18 (Employee Retirement Income Security



Program), or 42 U.S.C. § 1395y(b) (Medicare as Secondary Payer) or any liability under 31 U.S.C. § 3713(b) arising from such claim;

(d) any claim arising under any other statute or common law principle governing pension benefit, fraudulent conveyance or any other form of fraud or any liability under 31 U.S.C. § 3713(b) arising from such claim; or

(e) any obligation created by this Release Agreement, the Settlement Agreement dated October 2, 2018, the Settlement Agreement and Mutual Release dated March 31, 2010, or payment on the DOL Claim of a Liquidation Court approved *pro rata* percentage payment if Home makes any payment on Class III priority claims, or any liability under 31 U.S.C. § 3713(b) arising from those obligations.

6. Under the terms of this Release Agreement, the United States or its duly authorized representative shall have the right, prior to the destruction of Home's records, in accordance with the orders of the Liquidation Court, during normal business hours, on a date and at a location agreed upon by the Parties, to inspect, and if it wishes, to copy at its own expense, such documents, books, and records of the estate, and of the Liquidator, as shall be reasonably necessary to determine the existence and amount of claims the United States may have against the Home estate, or to determine Home's compliance with the terms of this Release Agreement. No documents, books, or records of the estate may be destroyed by the Liquidator unless notice is given to the United States of any motion filed with the Liquidation Court requesting approval of additional destruction. If the Liquidator does not request approval from the Liquidation Court, he or she must obtain prior written authorization from the United States before destruction of any documents, books, or records of the estate or the Liquidator.

7. Except for the express undertakings of the Liquidator and the United States in this Release Agreement, nothing in this Release Agreement shall be construed:

(a) to establish or perfect any claims, substantive rights, or procedural rights of the United States;

(b) to limit, restrict, diminish, or defeat any claims, substantive rights, or procedural rights of the United States;


(c) to establish or perfect any objections or defenses, substantive rights, or procedural rights of the Liquidator, the Special Deputy Liquidator, or the Insurance Department; or

(d) to limit, restrict, diminish, or defeat any defenses, substantive rights, or procedural rights of the Liquidator, the Special Deputy Liquidator, or the Insurance Department.

8. The Parties agree that this Release Agreement shall not be effective unless and until it is approved by the Liquidation Court, if approval is required, and the time for appeals of any such approval has expired. The Parties further agree to cooperate with each other in seeking prompt approval of this Release Agreement from the Liquidation Court, including, but not limited to, making the necessary witnesses available for testimony considered necessary or appropriate to provide the Liquidation Court with an adequate record upon which to approve this Release Agreement.

United States of America

Dated: 11/20/18

  
By: Sharon C. Williams  
Trial Attorney  
Civil Division  
Department of Justice  
Attorney for the United States

**John R. Elias, Insurance Commissioner of the State  
of New Hampshire, in his capacity as Liquidator of  
The Home Insurance Company**

Dated: 11/21/18

*Peter A. Bengelsdorf*  
By: Peter A. Bengelsdorf, in his capacity as  
Special Deputy Liquidator of The Home  
Insurance Company

# **ATTACHMENT A**

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made between the United States of America ("U.S.") on behalf of the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of the Navy ("Navy"), U.S. Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration of the United States Department of Commerce ("NOAA") (collectively referred to as the "Federal Claimants"), acting by and through the United States Department of Justice ("DOJ"), on the one hand, and John R. Elias, Insurance Commissioner of the State of New Hampshire, in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), on the other hand, (the Federal Claimants and the Liquidator are each a "Party" and collectively the "Parties").

**WHEREAS**, Home is being liquidated pursuant to the June 13, 2003 Order of the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home;

**WHEREAS**, the Federal Claimants filed the following five Proofs of Claim in the Home liquidation asserting claims under policies of insurance issued by Home or its predecessors to the following entities or persons that the Federal Claimants claim are liable under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C.A. §§ 9601 to 9675 ("Proofs of Claim").

1. POC No. GOVT709578 (formerly CLMN705062):  
Alleging that Lilian Wiesner, John Massei and Executeam Corp. are liable under Section 107(a) of CERCLA for costs incurred by EPA at the Stanton Cleaners Area Groundwater Contamination Superfund Site in Great Neck, NY;
2. POC No. GOVT709580 (formerly CLMN705064):  
Alleging that Paul Sauget, Industrial Salvage and Disposal and Sauget & Company are liable under Section 107 of CERCLA for costs incurred by EPA at the Sauget Area 1 Superfund Site in the Village of Sauget and the Village of Cahokia, IL;
3. POC No. GOVT709581 (formerly CLMN705061):  
Alleging that Ace Manzo Inc., &/or Dominick and Carmella Manzo &/or D. Manzo & Sons, Inc. &/or Dominick & Carmella Manzo &/or D&C Leasing & Realty Company are liable under Section 107 of CERCLA for costs incurred by EPA at the Burnt Fly Bog Superfund Site in Monmouth County, NJ;
4. POC No. GOVT709582 (formerly CLMN705063):  
Alleging that R. Lavin & Sons, Inc. is liable for costs EPA has incurred under CERCLA and for costs the Navy, DOI and NOAA have incurred for natural resource damages at Naval Station Great Lakes located in northeastern Illinois;
5. POC No. CLMN710659:  
Alleging that Azusa Pipe and Tube Bending Corp. is liable under Section 107 of CERCLA for costs incurred by EPA at the Baldwin Park Operable Unit in the San Gabriel

Valley in Los Angeles, CA.

**WHEREAS**, the DOJ also filed a protective proof of claim on behalf of EPA, DOI, NOAA, the U.S. Department of Defense and other agencies relating to any claims held by these agencies that are not currently known or are not currently known to relate to the Home Insurance Company. POC No. GOVT709579 (formerly CLMN705065) ("Protective Proof of Claim").

**WHEREAS**, by this Settlement Agreement the United States withdraws the Protective Proof of Claim without prejudice.

**WHEREAS**, POC Nos. GOVT709578, GOVT709580, GOVT709581 and GOVT709582 have previously been resolved.

**WHEREAS**, DOJ, on behalf of EPA, has informed Home that it is prepared to file additional Proofs of Claim alleging that the Home insurance policies listed below potentially provide coverage in whole or in part for EPA's claims against the following entities or persons insured by Home ("Additional Proofs of Claim"):

1. Alleging that Sharon Steel Corporation ("Sharon Steel") is liable under Section 107 of CERCLA for costs incurred and to be incurred by EPA at the Sharon Steel Corporation (Farrell Works Disposal Area) Superfund Site located in the city of Farrell and the city of Hermitage, Pennsylvania.  
Policies:
  - HEC9555865 effective 11/18/1967 – 11/18/1970
  - HEC9793659 effective from 11/18/1970 – 2/4/1971
  - HXL269008 12/28/1990 – 12/28/1991
  - HXL1642477 12/28/1991 – 12/28/1992
  - HXL0272601 2/15/1992 – 2/15/1993
  - GLRF990674 10/1/1990 – 10/1/1991;
2. Alleging that Manson Construction and Engineering Company ("Manson Construction") is liable under Section 107 of CERCLA for costs incurred and to be incurred by EPA at the Lower Duwamish Waterway Superfund Site located in Seattle, Washington.  
Policies:
  - GA4704165 for the period 3/15/1974 – 6/30/1976
  - GA9252764 for the period 6/30/1976 – 6/30/1977
  - GA9709886 for the period 6/30/1979 – 6/30/1980
  - GA9985236 for the period 6/30/1980 – 4/1/1981
  - MH518465 for the period 6/30/1975 – 6/30/1976
3. Alleging that Duwamish Shipyard, Inc. is liable under Section 107 of CERCLA for costs incurred and to be incurred by EPA at the Lower Duwamish Waterway Site located in Seattle, Washington.  
Policies:
  - GA9265644 for the period 8/15/1976 – 8/15/1977
  - GA9393898 for the period 8/15/1977 – 8/15/1978
  - GA9563192 for the period 8/15/1978 – 8/15/1979
  - GA9897882 for the period 8/15/1979 – 8/15/1980
  - GA9985275 for the period 8/15/1980 – 8/15/1981
  - GL1258879 for the period 8/15/1981 – 8/15/1982

- MH527648 for the period 8/15/1977 – 8/15/1978
  - MH533485 for the period 7/31/1980 – 3/1/1981
4. Alleging that Explorer Pipeline Company is liable under Section 107 of CERCLA for costs incurred by EPA at the U.S. Oil Recovery Superfund Site located in Pasadena, Texas.
- Policies:
- GA4841604 for the period 2/1/1975 – 2/1/1976
  - GA9250881 for the period 2/1/1976 – 2/1/1977
  - GA9380513 for the period 2/1/1977 – 2/1/1978
  - GA9262999 for the period 2/1/1978 – 2/1/1979
  - GA9888411 for the period 2/1/1979 – 2/1/1980
  - GA9987186 for the period 2/1/1980 – 2/1/1981
  - GA9989679 for the period 2/1/1981 – 2/1/1982
  - GA9994394 for the period 2/1/1982 – 2/1/1983
  - GA9994494 for the period 2/1/1983 – 2/1/1984
  - GA9994573 for the period 2/1/1984 – 2/1/1985
  - GA1450509 for the period 2/1/1985 – 2/1/1986
  - GL994553 for the period 2/1/1986 – 2/1/1987
5. Alleging that Louisville Varnish Company, Inc. is liable under Section 107 of CERCLA for costs incurred by EPA at the Lee's Lane Landfill Superfund Site located in Louisville, Kentucky.
- Policies:
- GA 9892190 for the period 2/1/1979 – 2/1/1980
  - GA 9988561 for the period 2/1/1980 – 2/1/1981
  - GL 1255212 for the period 2/1/1981 – 2/1/1982
  - GL 1262313 for the period 2/1/1982 – 2/1/1983
6. Alleging that Shaw Trucking is liable under Section 107 of CERCLA for costs incurred by EPA at the Petroleum Products Superfund Site located in Pembroke Park, Florida.
- Policies:
- IDRPI78523

This Settlement Agreement shall be deemed to satisfy any requirement that the Federal Claimants file additional proofs of claim relating to these claims.

**WHEREAS**, "Home Insureds" shall mean the entities and persons insured by Home listed in the above Whereas clauses.

**WHEREAS**, the Parties seek to resolve all claims that were asserted, or could have been or could be asserted under or concerning the Proofs of Claim and Additional Proofs of Claim.

**WHEREAS**, the Liquidator disputes the claims in whole or in part, and EPA asserts that the claims for coverage are meritorious;

**WHEREAS**, the Federal Claimants do not intend to file Proofs of Claim in the Home liquidation beyond the Additional Proofs of Claim.

**WHEREAS**, the Parties have agreed to reach a compromise of disputed positions to avoid the time and expense of litigation and facilitate the timely closing of the Home liquidation, without admission of liability and without admission of the ultimate validity or invalidity of any of the Parties' positions or arguments;

**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 will be effective only (the "Effective Date") upon approval of the Settlement Agreement by the Liquidation Court and allowance by the Liquidation Court of the Recommended Amount as a Class II claim. This Settlement Agreement is also subject to the condition that the United States and the Liquidator shall enter into a release under 31 U.S.C. § 3713 on terms mutually acceptable to both sides ("Release Agreement"). The Liquidator shall report to the Liquidation Court concerning this Settlement Agreement promptly following execution by all Parties. The Liquidator shall move for approval of this Settlement Agreement, the allowance of the Recommended Amount as a Class II claim, and the Release Agreement after the United States notifies the Liquidator following the completion of the public comment period as provided in paragraph 6.c. below.
2. Recommendation, Allowance, and Classification of Claims.
  - a. Subject to all the terms of this Settlement Agreement, and with the agreement of the Federal Claimants, which by the Federal Claimants' execution hereof is hereby granted, the Liquidator shall recommend pursuant to N.H. RSA 402-C:45 that CLMN710659 and the Additional Proofs of Claim be allowed in the amount of \$27,044,146 (the "Recommended Amount") as a Class II priority claim under N.H. RSA 402-C:44. The Liquidator shall seek allowance of the Recommended Amount as a Class II priority claim by the Liquidation Court in the Liquidator's motion for approval of this Settlement Agreement.
  - b. Allowance of the Recommended Amount as a Class II claim by the Liquidation Court shall fully and finally resolve the Proofs of Claim and the Additional Proofs of Claim. In the event that the Liquidation Court does not allow the Recommended Amount as a Class II claim, this Settlement Agreement shall be null and void and shall have no force and effect and the Parties will be returned to *status quo ante*, as if no such agreement was ever reached, with this Settlement Agreement thereafter being inadmissible for any purpose in any dispute between the Parties.
  - c. If and when the Liquidation Court allows the Recommended Amount as a Class II claim, Federal Claimants shall become a Class II creditor in the Home liquidation pursuant to N.H. RSA 402-C:44, and the Federal 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. Distributions shall be made as set forth in paragraph 3(b) below.
  - d. Notwithstanding any other provision of this Settlement Agreement, this Settlement Agreement shall not affect the rights of the parties as to the allowance to the



Department of Labor Longshore Special Fund under proof of claim GOVT700090 and its priority as previously determined in litigation or the rights of the parties including the EPA under the Settlement Agreement and Mutual Release regarding proofs of claim including GOVT709580 that was approved by the Liquidation Court on June 3, 2010.

3. Allocation of and Distributions on the Recommended Amount.

a. The Parties agree that the Recommended Amount is based upon claims asserted against Home Insureds with respect to their alleged liability at specified Superfund sites, as set forth above, and that the Recommended Amount shall be allocated as follows:

- (i) Sharon Steel Corporation: \$16,000,000 for the Sharon Steel Corporation (Farrell Works Disposal Area) Superfund Site;
- (ii) Manson Construction and Engineering Company: \$6,298,630 for the Lower Duwamish Waterway Site;
- (iii) Duwamish Shipyard, Inc.: \$2,200,000 for the Lower Duwamish Waterway Site;
- (iv) Azusa Pipe & Tube Bending Corp.: \$2,224,999 for the San Gabriel Valley Area 2 Site;
- (v) Explorer Pipeline Company: \$300,000 for the U.S. Oil Recovery Site;
- (vi) Louisville Varnish Company, Inc.: \$19,609 for Lee's Lane Landfill; and
- (vii) Shaw Trucking: \$908 for the Petroleum Products Site.

b. At the time of each Class II distribution from the Home estate, the Liquidator shall pay the distribution amount on the allocated portions of the Recommended Amount set forth in paragraph 3(a) in accordance with instructions provided by the United States as follows:

- (i) For the Sharon Steel Corporation (Farrell Works Disposal Area) Superfund Site:  
Site ID/Spill ID Number: 03DX

The total amount received by EPA pursuant to Paragraph 3(a)(i) above shall be deposited in the Sharon Steel Corporation (Farrell Works Disposal Area) Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

- (ii) For the Lower Duwamish Waterway Site:  
Site ID/Spill ID Number: 10NQ

The total amount received by EPA pursuant to Paragraph 3(a)(ii) and (iii) above shall be deposited in the Lower Duwamish Waterway Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

- (iii) For the San Gabriel Valley Area 2 Site:  
Site ID/Spill ID Number: 09M5

The total amount received by EPA pursuant to Paragraph 3(a)(iv) above shall be deposited in the San Gabriel Valley Area 2 Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

- (iv) For the U.S. Oil Recovery Superfund Site:  
Site ID/Spill ID Number: A6X7

The total amount received by EPA pursuant to Paragraph 3(a)(v) above shall be deposited in the U.S. Oil Recovery Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

- (v) For the Lee's Lane Landfill Superfund Site:  
Site ID/Spill ID Number: 0443

The total amount received by EPA pursuant to Paragraph 3(a)(vi) above shall be deposited in the Lee's Lane Landfill Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

- (vi) For the Petroleum Products Superfund Site:  
Site ID/Spill ID Number: 04H5

The total amount received by EPA pursuant to Paragraph 3(a)(vii) above shall be deposited in the Petroleum Products Superfund Site Special Account established by EPA within the Hazardous Substances Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred to the Hazardous Substances Superfund.

At the time of any cash distribution pursuant to this Settlement Agreement, Home shall transmit written confirmation of such distribution to DOJ and EPA at the addresses specified below, and email confirmation of such distribution to the EPA Cincinnati Financial Office at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) with reference to the DOJ Case Number 90-11-3-08308 and the above Site/Spill ID Number for each of the sites:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-08308

Robert A. Roberts  
Attorney-Advisor  
United States Environmental Protection Agency  
Office of Site Remediation Enforcement  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Mailcode: 2272A

4. Federal Claimants' Covenant Not to Sue.

- a. In consideration of the execution of the Settlement Agreement and the approval by the Liquidation Court, the United States, on behalf of the Federal Claimants, covenants not to file a civil action (including a proof of claim) against the Liquidator or Home with respect to any and all liabilities and obligations to the Federal Claimants arising under CERCLA under policies issued by Home to the Home Insureds named in the Proofs of Claim and the Additional Proofs of Claim, whether such liabilities and obligations are known or unknown, reported or unreported, vested or contingent, and whether currently existing or arising in the future. As used in this paragraph, the term Liquidator shall include the New Hampshire Insurance Department ("NHID") and the Special Deputy Liquidator, and the terms Liquidator and Home shall include their respective subsidiaries, affiliates, predecessors, successors, and assigns and their respective officers, directors, employees, attorneys, and agents in their capacity as such.
- b. With respect to the policies issued by Home to the Home Insureds named in the Proofs of Claim and the Additional Proofs of Claim, the Federal Claimants waive the benefits of California Civil Code Section 1542, which provides: "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.", and any similar statute.
- c. The United States specifically reserves, and this Settlement Agreement, including the provisions of Paragraph 4.a, is without prejudice to (i) any action seeking to impose criminal liability, (ii) any action based on the failure to meet a requirement of this Settlement Agreement, (iii) any claim against Home by the Federal Claimants based on the liability of the Home Insureds under any statute other than CERCLA, and (iv) any claim of any federal agency or department, other than EPA, DOI, NOAA and Navy.
- d. The covenant set forth in Paragraph 4.a extends only to the persons set forth in paragraph 4.a and does not extend to any other person. The United States expressly reserves all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or in equity, which it may have against all other persons, firms, corporations, or entities for any matter arising at or relating in any manner to the sites or claims addressed herein. Further, nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), to enter into any settlement that gives

rise to contribution protection for any person not a party to this Settlement Agreement.

5. The Liquidator's Covenant Not to Sue.

a. In consideration of the execution of this Settlement Agreement and the approval of the Liquidation Court, the Liquidator, in his capacity as such and on behalf of Home, covenants not to file a civil action against the United States or any department or agency thereof, with respect to any and all liabilities and obligations to the Federal Claimants arising under insurance policies issued by Home to the Home Insureds named in the Proofs of Claim and the Additional Proofs of Claim, whether such liabilities and obligations are known or unknown, reported or unreported, vested or contingent, and whether currently existing or arising in the future, including but not limited to (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507, (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, (iii) any claim arising out of response activities at any of the sites identified in the Proofs of Claim and the Additional Proofs of Claim, and (iv) any claim to recover all or any part of the Recommended Amount set forth in paragraph 2 of this Settlement Agreement. The Liquidator does not waive the right, if any, to sue any other insurer of the insured parties for indemnity or contribution. As used in this paragraph, the term Liquidator shall include the NHID and the Special Deputy Liquidator, and the terms Liquidator and Home shall include their respective subsidiaries, affiliates, predecessors, successors, and assigns and their respective officers, directors, employees, attorneys, and agents in their capacity as such.

b. With respect the policies issued by Home to the Home Insureds named in the Proofs of Claim and the Additional Proofs of Claim, the Liquidator and Home waive the benefits of California Civil Code Section 1542, which provides: "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.", and any similar statute.

c. Notwithstanding any other provision of this Settlement Agreement, the Liquidator specifically reserves, and this Settlement Agreement is without prejudice to, any claim based on any obligation under this Settlement Agreement.

6. Court Approval and Public Comment.

a. The Liquidator shall recommend this Settlement Agreement for approval to the Liquidation Court. The Liquidator advises EPA that this Settlement Agreement will be submitted to the Liquidation Court, and the Parties agree that approval of the Liquidation Court is a condition precedent to the effectiveness of this Settlement Agreement, including the covenants set forth in Paragraphs 4 and 5, and to the payment of any distribution amounts to EPA. If the Liquidation Court approves the Liquidator's recommendation and enters a final order thereon, the Liquidator shall pay EPA at the time of each Class II distribution from the Home estate, the distribution amount on the allocated portions of the Recommended Amount set forth in paragraph 3.a above.

b. The Parties agree that this Settlement Agreement is conditioned upon the execution and approval of a mutually-agreed Release Agreement, and that the execution and approval of this Settlement Agreement shall be a condition precedent to the effectiveness of the Release Agreement.

c. This Settlement Agreement shall be subject to at least a 30-day period of public comment following publication of notice of this Settlement Agreement in the Federal Register. The Federal Claimants shall publish notice of this Settlement Agreement in the Federal Register promptly following execution of this Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Settlement Agreement disclose facts which indicate that the Agreement is not in the public interest. After the conclusion of the public comment period, the United States will promptly notify the Liquidator as to whether or not it is going forward with the Agreement.

d. If for any reason (a) this Settlement Agreement is withdrawn or consent is withheld by the United States as provided in Paragraph 6.c, or (b) the Settlement Agreement or Release Agreement is not approved by the Liquidation Court: (i) this Settlement Agreement shall be null and void, and the Parties hereto shall not be bound under this Settlement Agreement or under any documents executed in connection herewith; (ii) the Parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (iii) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

7. Resolution of Matters. On the Effective Date, the Federal Claimants' Proofs of Claim and Additional Proofs of Claim shall be fully resolved and terminated, with prejudice, with each Party bearing its own costs and fees in connection with the Proofs of Claim and Additional Proofs of Claim and the negotiation and performance of this Settlement Agreement.

8. Governing Law and Venue. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire, except to the extent that federal law applies, without regard to the conflicts of laws provisions thereof. The Parties agree that the exclusive venue for any dispute between the Parties arising out of this Settlement Agreement shall be the Liquidation Court or, if removed, the United States District Court for the District of New Hampshire. The Parties reserve their respective rights regarding removal.

9. Agreement as Compromise. The Parties acknowledge and agree that this Settlement Agreement is a compromise in settlement of disputed liabilities, obligations, and positions, made to avoid the time and expense of litigation and to facilitate the timely closing of the Home liquidation, without admission of liability and without admission of the ultimate validity or invalidity of any of the Parties' positions or arguments.

10. 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 advice of their own legal counsel, and that they have executed this Settlement Agreement without reliance on any statements, warranties, or representations by the other Party other than representations and warranties contained herein. 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.

11. Counterparts. This Settlement Agreement may be executed and delivered in multiple counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one Settlement Agreement.

12. Successor-in-Interest Bound. This Settlement Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective successors and assigns.

13. Entire Agreement. This Settlement Agreement and the Release Agreement together constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof. The terms of this Settlement Agreement, including any attached exhibits, may be modified only by a subsequent written agreement by all the Parties. Where the modification constitutes a material change to this Settlement Agreement, it shall be effective only upon approval of the Liquidation Court.

14. 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.

15. Notice. All notices to be given under this Settlement Agreement shall be given in writing by first class U.S. mail or overnight delivery and by email directed to the individuals noted below or to such other individual(s) as a Party may designate in writing from time to time.

If to the Federal Claimants, to:

Myles E. Flint, II  
Senior Counsel  
U.S. Department of Justice  
Environmental Enforcement Section  
ENRD Mail Room, Room 2121  
601 D Street, NW  
Washington, D.C. 20004  
Email: Myles.Flint@usdoj.gov

and

Sharon C. Williams  
Trial Attorney  
U.S. Department of Justice  
Commercial Litigation Branch, Civil Division  
1100 L Street, NW  
Room 7004  
Washington, D.C. 20005  
Email: Sharon.William@usdoj.gov

and

Robert A. Roberts  
Attorney-Advisor  
U.S. Environmental Protection Agency  
Office of Site Remediation Enforcement  
1200 Pennsylvania Avenue, NW  
Mail Code 2272A  
Washington, D.C. 20460

Email: [Roberts.robert@epa.gov](mailto:Roberts.robert@epa.gov)

If to the Liquidator, to:

Thomas W. Kober  
Chief Claims Officer  
The Home Insurance Company in Liquidation  
61 Broadway, 6<sup>th</sup> Floor  
New York, New York 10006  
Email: [tom.kober@homeinsco.com](mailto:tom.kober@homeinsco.com)

and

J. Christopher Marshall  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
Email: [christopher.marshall@doj.nh.gov](mailto:christopher.marshall@doj.nh.gov)

and

J. David Leslie, Esq.  
Rackemann, Sawyer & Brewster PC  
160 Federal Street  
Boston, Massachusetts 02110-1700  
Email: [dleslie@rackemann.com](mailto:dleslie@rackemann.com)

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

For the Federal Claimants: United States of America on behalf of the United States Environmental Protection Agency, the United States Department of the Navy, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration of the United States Department of Commerce.

FOR THE UNITED STATES OF AMERICA

By: Jeffrey H. Wood  
Jeffrey H. Wood  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

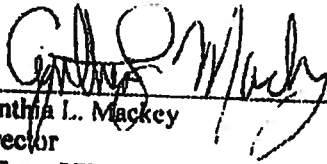
Date: 9/24/18

By: Myles E. Flint, II  
Myles E. Flint, II  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 307-1859  
Email: Myles.Flint@usdoj.gov

Date: 10/2/18



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

By:  \_\_\_\_\_

Cynthia L. Mackey  
Director  
Office of Site Remediation Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Date: 8/30/18

By:  \_\_\_\_\_

Robert A. Roberts  
Attorney-Advisor  
Office of Site Remediation Enforcement  
Office of Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Date: 8/30/18

**FOR JOHN R. ELIAS, INSURANCE COMMISSIONER OF THE STATE OF NEW HAMPSHIRE, AS LIQUIDATOR OF THE HOME INSURANCE COMPANY.**

By: Peter A. Bengelsdorf  
Peter A. Bengelsdorf  
Special Deputy Liquidator

Date: 8-16-18

# **ATTACHMENT B**

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is made this 31 day of March 2010 by and between The United States of America on behalf of U.S. EPA, The Estate of Paul C. Saugat on behalf of itself and Saugat and Company ("The Estate"), Soluta Inc., Pharmacia Corporation, Cerro Flow Products, Inc., and Union Electric Company (hereinafter collectively referred to as "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 to Saugat and Company under which Saugat and Company and Paul Saugat are the named insureds:

| <u>Policy Number</u> | <u>Policy Period</u> |
|----------------------|----------------------|
| GA 8181081           | 04/12/67 - 04/12/68  |
| GA 8348130           | 04/12/68 - 04/12/69  |
| GA 8823234           | 04/12/69 - 04/12/70  |
| GA 8829098           | 04/12/71 - 04/12/72  |
| GA 4312782           | 04/12/72 - 04/12/73  |
| GA 4878371           | 04/12/73 - 04/12/74  |
| GA 4884783           | 04/12/74 - 04/12/75  |
| GA 9100893           | 04/12/75 - 04/12/76  |
| GA 9120470           | 04/12/76 - 04/12/77  |
| GA 8270728           | 04/12/77 - 04/12/78  |
| GA 8390889           | 04/12/78 - 04/12/79  |

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

WHEREAS, Home is being liquidated pursuant to the June 13, 2003 Order of the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home;

WHEREAS, Claimants seek payment from Home respecting claims, including but not limited to claims for environmental clean up costs and damages, and Claimants have submitted proofs of claim in the Home liquidation estate that have been assigned the following proof of claim numbers:

Claimant  
The United States of America on behalf of U. S. EPA  
Paul C. Saugat

Proof of Claim Number  
GOVT708880  
INSU701168

Paul C. Saugat  
Pharmacia Corporation  
Solutia Inc.  
Cerro Flow Products, Inc.  
Union Electric

INSU704169  
INSU705112  
INSU705114  
CLAM702809  
INSU140382

which together with any other proof of claim hereinbefore or hereinafter filed by Claimants in the Home liquidation estate in relation to claims against Saugat and Company and Paul C. Saugat and their heirs, successors and assigns or under policies issued to Saugat and Company are defined as the "Proofs of Claim".

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 all rights and obligations with respect to the Policies; and

WHEREAS, the Parties agree that this Settlement Agreement is subject to and conditioned upon its approval by the Liquidation Court and allowance of the Recommended Amount (as defined below) into the Home liquidation estate 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 and shall only become effective (the "Effective Date"), upon approval by the Liquidation Court. The Liquidator shall move for approval of this Settlement Agreement promptly following execution by all of the Parties.

2. Recommendation, Allowance and Classification of Claims.

A. Subject to all the terms of this Settlement Agreement, and with the agreement of Claimants, which by Claimants' execution hereof is hereby granted, the Liquidator shall recommend pursuant to NH RSA 402-C:45 that the Proofs of Claim be allowed in the aggregate amount of \$4,125,000 (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 priority claim by the Liquidation Court in the Liquidator's motion for approval of this Settlement

**Agreement.**

**B. Allowance of the Recommended Amount as a Class II claim by the Liquidation Court shall fully and finally resolve the Proofs of Claim and any and all claims of whatever nature that Claimants have under the Policies. In the event that the Liquidation Court does not allow the Recommended Amount as a Class II claim, this Settlement Agreement shall be null and void and shall have no force and effect and the Parties will be returned to status quo ante, as if no such agreement was ever reached, with this Settlement Agreement then being inadmissible for any purpose in any dispute between the Parties.**

**C. If and when the Liquidation Court allows the Recommended Amount as a Class II claim, Claimants will become Class II creditors in the Home liquidation estate 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 such distributions to Claimants collectively under this Settlement Agreement shall be made by distribution to Diane Hackett, executor of the estate of Paul G. Saugel, deceased ("Executor"). The Parties agree that payment of distributions to the Executor shall satisfy the Liquidator's obligation to make distributions to Claimants, and the Claimants agree to look solely to the Executor for their agreed shares of any distribution.**

**3. Release by Private Claimants.** Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II claim, the Estate, Sciuta Inc., Pharmacia Corporation, Cero Flow Products, Inc., and Union Electric Company ("Private Claimants") for themselves and on behalf of each of their respective 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 respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and / or

demands arising from or related to the Proofs of Claim or the Policies, in law, admiralty or equity, which the Private Claimants or their subsidiaries, affiliates, predecessors, successors and assigns, ever had, now have or hereafter may have against the Liquidator or Home or their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, 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 or the Policies.

4. Covenant Not to Sue by Government Claimant. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II claim, the United States on behalf of the U.S. Environmental Protection Agency and any successor agency or department ("Government Claimant"), covenants not to sue the Liquidator and Home and each of their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, from any and all civil administrative or judicial actions, causes of action, liabilities, adjustments, obligations, effects, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, orders, executions, claims and/or demands arising from or related to the Proofs of Claim or the Policies, in law, admiralty or equity, which the Government Claimant ever had, now has or hereafter may have against the Liquidator or Home or their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proofs of Claim or the Policies.

5. Release by Liquidator. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II claim, the Liquidator, in his capacity as such, and on behalf of Home and each of their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and their assigns (including any liquidator or statutory successor), irrevocably and unconditionally releases and discharges Claimants and each of their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, effects, suits, debts, dues, sums of

money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, warranties, trespasses, damages, judgments, extents, executions, claims and / or demands arising from or related to the Proofs of Claim or the Policies, in law, admiralty or equity, which the Liquidator, Home, or their subsidiaries, affiliates, predecessors, successors and assigns, ever had, now have or hereafter may have against Claimants or their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proofs of Claim or the Policies.

6. Restitution of Matters and Indemnification. Claimants acknowledge that this Settlement Agreement is intended to resolve all matters arising out of or relating to any rights they ever had, now have or hereafter may have in the Policies and the Proofs of Claim, including any asserted rights of third party claimants against Sauget and Company or Paul Sauget under the Policies, and the Estate agrees to address, at its sole cost and expense, any such claims of third party claimants other than Claimants as if there had been no liquidation proceeding for Home and as if Sauget and Company and Paul C. Sauget had no insurance coverage from Home by virtue of the Policies. In consideration of the Recommended Amount being allowed by the Liquidation Court as a Class II claim, the Estate agrees to indemnify and hold the Liquidator and Home harmless from and against any and all claims, losses, liabilities, debts, damages, costs or expenses arising from or related to the Policies except claims by Century Indemnity Company and such indemnification shall be capped at the amount actually distributed in relation to the Recommended Amount as allowed by the Liquidation Court. The future obligations of the Estate under this paragraph shall extend to and include (by way of example and not limitation) any claims, including claims for defense and indemnity, except claims made by Century Indemnity Company, made under the Policies against the Liquidator or Home by vendors of or respecting Sauget and Company, Claimants, by other insurers of Sauget and Company and Paul C. Sauget, and by any individual or entities asserting "direct action" claims arising out of or related to the Policies (hereinafter "indemnified Claims"). The Liquidator shall promptly notify the Executor of any such claim, and shall afford the Executor the opportunity to reasonably participate in the defense of such claims. The Liquidator shall assert all defenses to such claims reasonably



available to the Liquidator, including defenses under the Order of Liquidation or the New Hampshire Insurers Rehabilitation and Liquidation Act. The Estate shall cooperate with the Liquidator (including but not limited to the provision of affidavits or testimony) to defend against and resolve such claims.

7. Mutual Release of Settling Parties. Claimants agree to use reasonable commercial efforts to cause any settlement agreement relating to the underlying matters covered by the Proofs of Claim with any other insurance company to include a waiver by that other insurance company of any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation or recoupment, against Home regarding these matters. The Liquidator agrees to waive, relinquish and release any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation or recoupment, as to the matters covered by the Proofs of Claim against any other insurance company which executes a settlement with Claimants that includes a provision that is materially the same as this paragraph.

8. No Assignments. 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 Policies, or any proceeds thereof, or to the claims, losses and expenses released herein, to any person or entity. Claimants shall not assign or otherwise transfer this Settlement Agreement or any rights or obligations thereunder without the written consent of the Liquidator, which consent shall not be unreasonably withheld.

9. 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.

10. Governing Law and Venue. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the conflicts of law provisions thereof. The Parties agree that the exclusive venue for any dispute between the Parties arising out of the Proofs of Claim, the Policies or this Settlement Agreement shall be the Liquidation Court.

11. 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.

12. 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.

13. Counterparts. This Settlement Agreement may be executed in multiple counterparts, each of which, when so delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail to the other Party shall have the same force and effect as an original signature.

14. 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.

15. 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, liquidators, receivers, administrators, agents, representatives, successors and assigns.

16. 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 agreement and understandings, whether written or oral, concerning such matters.

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

18. 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.

19. 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.

20. Notice. All notices to be given under this Settlement Agreement shall be given by facsimile and first class U.S. mail directed to:

*It to Claimants, to:*

Chief, Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice (DJE 90-11-2-00089)  
P. O. Box 7811  
Washington, D. C. 20044-7811

and

Thomas J. Martin  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
United States Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

and

Jane E. Fodder, Partner  
Husch Blackwell Sanders LLP  
180 Carolidelet Plaza, Suite 800

St. Louis, Missouri 63105

and

Bernard Yeurea  
Cock, Shevin, Yeurea, Brauer & Bartholomew, Ltd.  
12 W. Lincoln Street  
Belleville, IL 62220

and

Richard F. Ricci  
Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, New Jersey 07068

and

Seth Landan, Partner  
Howrey LLP  
321 North Clark St.  
Suite 2400  
Chicago, Illinois 60684

and

General Counsel  
Solufa Inc.  
676 Maryville Center Drive  
St. Louis, MO 63141

*If to the Liquidator, to:*

Thomas W. Kober, Chief Claims Officer  
The Home Insurance Company in Liquidation  
69 Maiden Lane  
New York, New York 10038  
Fax: 212-299-3824

and

J. Christopher Marshall  
Civil Bureau  
New Hampshire Department of Justice  
33 Capital Street  
Concord, New Hampshire 03301-6397  
Fax: 603-271-2110

and

J. David Leslie, Esq.  
Rackemann, Sawyer & Brewster, P.C.  
160 Federal Street  
Boston, MA 02110-1700  
Fax: 617-642-7487

21. **Severability.** If any provision of this Settlement Agreement is invalid, unenforceable or illegal under the law of any applicable jurisdiction, the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby and, upon the agreement of the Parties, the remaining provisions of this Settlement Agreement shall remain valid and enforceable. However, in the event of such invalidity, unenforceability or illegality, the Parties shall negotiate in good faith to amend this Settlement Agreement through the insertion of additional provisions which are valid, enforceable and legal and which reflect, to the extent possible, the purposes contained in the invalid, unenforceable or illegal provision.

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

**The United States of America on behalf U. S. EPA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_\_\_, 2010

**The Estate of Paul C. Saugat**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_\_\_, 2010

**Solutia Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_\_\_, 2010

21. **Severability.** If any provision of this Settlement Agreement is invalid, unenforceable or illegal under the law of any applicable jurisdiction, the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby and, upon the agreement of the Parties, the remaining provisions of this Settlement Agreement shall remain valid and enforceable. However, in the event of such invalidity, unenforceability or illegality, the Parties shall negotiate in good faith to amend this Settlement Agreement through the insertion of additional provisions which are valid, enforceable and legal and which reflect, to the extent possible, the purposes contained in the invalid, unenforceable or illegal provision.

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

**The United States of America on behalf U. S. EPA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: March \_\_, 2010

**The Estate of Paul E. Sauger**

By: [Signature]  
Name: ROBERTO J. YRUEZA  
Title: ATTY. IN CHARGE OF PAUL SAUGER  
Date: March 7, 2010

**Solutia Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: March \_\_, 2010

21. Severability. If any provision of this Settlement Agreement is invalid, unenforceable or illegal under the law of any applicable jurisdiction, the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby and, upon the agreement of the Parties, the remaining provisions of this Settlement Agreement shall remain valid and enforceable. However, in the event of such invalidity, unenforceability or illegality, the Parties shall negotiate in good faith to amend this Settlement Agreement through the insertion of additional provisions which are valid, enforceable and legal and which reflect, to the extent possible, the purposes contained in the invalid, unenforceable or illegal provision.

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

The United States of America on behalf U. S. EPA

By: Ignacia S. Moreno

Name: Ignacia S. Moreno

Title: Assistant Attorney General

Date: March 14, 2010 Environment and Natural Resources Division, U.S. Dept. of Justice

The Estate of Paul C. Saugot

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

Solutia Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

21. **Severability.** If any provision of this Settlement Agreement is invalid, unenforceable or illegal under the law of any applicable jurisdiction, the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby and, upon the agreement of the Parties, the remaining provisions of this Settlement Agreement shall remain valid and enforceable. However, in the event of such invalidity, unenforceability or illegality, the Parties shall negotiate in good faith to amend this Settlement Agreement through the insertion of additional provisions which are valid, enforceable and legal and which reflect, to the extent possible, the purposes contained in the invalid, unenforceable or illegal provision.

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

**The United States of America on behalf U. S. EPA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

**The Estate of Paul C. Sauget**


By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

**Solutia Inc.**

By:  \_\_\_\_\_

Name: Paul J. Berne

Title: Senior V.P. and General Counsel, Legal and Governmental Affairs

Date: March 11, 2010



**Pharmacia Corporation  
by Solutia Inc. Attorney-in-Fact**

By: 

Name: Paul J. Beane, III

Title: Senior V.P. and General Counsel, Legal and Governmental Affairs

Date: March 10, 2010

**Cerro Flow Products, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

**Union Electric Company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

**Pharmacia Corporation  
by Solutia Inc., its Attorney-in-Fact**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

**Cerro Flow Products, Inc.**

By: Richard F. Ricci

Name: Richard F. Ricci

Title: Counsel

Date: March 11, 2010

**Union Electric Company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

000110

**Pharmacia Corporation  
by Solutia Inc., its Attorney-in-Fact**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

**Cerro Flow Products, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

**Union Electric Company**

By: Suzanne B. Provencher

Name: Managing Assistant General Counsel

Title: Suzanne B. Provencher

Date: March 3/2010

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2010

**Pharmacia Corporation  
by Solutia Inc., its Attorney-in-Fact**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_\_\_, 2010

**Cerro Flow Products, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_\_\_, 2010

**Union Electric Company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_\_\_, 2010

**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

Name: Thomas W. Kober

Title: Chief Claims Officer

Date: March 31, 2010

# **ATTACHMENT C**

**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 AFFIDAVIT**

I, Roger A. Sevigny, hereby depose and say:

1. I am the Insurance Commissioner of the State of New Hampshire ("Commissioner") and the Liquidator ("Liquidator") of The Home Insurance Company ("Home").
2. I submit this Affidavit in support of my request for a release from the United States of America ("United States") from liability under 31 U.S.C. § 3713(b) with respect to a 15% interim distribution of assets of Home to claimants with allowed Class II claims pursuant to order of the New Hampshire court supervising the Home liquidation proceeding.
3. The facts and information set forth below are either within my knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information and belief.
4. Home is a New Hampshire domiciled insurance company incorporated in 1973, although its predecessor corporations were established as long ago as 1853. Home and its subsidiaries (most of which were merged into Home in 1995) wrote insurance and reinsurance in all states and some territories of the United States, as well as in Canada, the United Kingdom, Bermuda and Hong Kong. Home and its subsidiaries generally stopped writing personal lines business in the early 1990's, and they stopped writing all business, including commercial lines

(subject to certain personal lines mandatory renewal requirements), in 1995. From 1923 to 2010, Home's principal offices were located at 59 Maiden Lane, New York, New York 10038. For the later part of that period, its statutory offices were located at 286 Commercial Street, Manchester, New Hampshire 03101. It presently has offices at 61 Broadway, New York, New York 10006 and 55 S. Commercial Street, Manchester, New Hampshire 03105.

5. Home was placed in rehabilitation by order of the Superior Court for Merrimack County, New Hampshire ("Court") on March 5, 2003. The Commissioner as Rehabilitator moved to place Home in liquidation, and on June 13, 2003, the Court issued an Order of Liquidation declaring Home insolvent, appointing the Commissioner as Liquidator, and directing that the company be liquidated. A copy of the Order of Liquidation for Home is attached as Exhibit A.<sup>1</sup>

6. Notice of entry of the Order of Liquidation was provided to persons known or reasonably expected to have claims against Home pursuant to the Court's Order Approving Notice issued June 11, 2003. Each notice included notice of the claim filing deadline, June 13, 2004.

7. Upon entry of the Order of Liquidation, Home's claim files regarding direct insurance claims that were potentially covered by insurance guaranty associations or funds were sent to the appropriate guaranty association or fund for handling and, where appropriate, payment in accordance with their governing statutes. Newly filed claims and reopened claims under Home insurance policies that are within guaranty association coverage continue to be handled and paid by the guaranty associations. Other claims presented by proofs of claim are handled by liquidation staff, and the Liquidator makes recommendations to the Court with

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<sup>1</sup> The Court issued an initial Order of Liquidation on June 11, 2003. That order was vacated when the June 13, 2003 Order of Liquidation issued.

respect to allowance of the claims. Distributions on allowed claims will be made in accordance with orders of the Court.

8. The Liquidator has received a total of 20,479 proofs of claim through March 5, 2012. As of December 31, 2011, the Liquidator has presented and the Court has approved claim recommendations, including settlements, for a total of 12,679 Class II claims with a total allowed amount of approximately \$1.294 billion. This total includes approximately \$276 million in allowed claims of insurance guaranty associations for payments they made under policies issued by Home. (The total Court-approved claim determinations for all Classes is 14,491 claims – 12,537 final and 1,954 partial – with a total allowed amount of approximately \$1.52 billion.)

9. The unaudited December 31, 2011 financial statements for Home reflect \$1.115 billion in unrestricted liquid assets under the Liquidator's control at December 31, 2011.

10. On February 13, 2012, the Liquidator filed a motion with the Court seeking approval of an interim distribution of 15% to claimants with allowed Class II claims. The Court issued its Order Approving Interim Distribution to Claimants with Allowed Class II Claims on March 13, 2012. A copy of that order is attached as Exhibit B. The basis for the proposed interim distribution is set forth in the Liquidator's motion and the supporting affidavit. As set forth in those papers, the proposed interim distribution amount is \$194.1 million, of which \$41.4 million has previously been paid to guaranty associations as early access distributions (which are subject to clawback by the Liquidator). The amount distributed out of the estate in the interim distribution will be \$152.7 million. (The \$41.4 million of the early access distributions representing the guaranty association interim distribution will no longer be subject to clawback). After the initial interim distribution, the Home estate will have at least



\$962.3 million in assets. The 15% interim distribution will be made to Class II claims allowed during each year after 2011 after the end of each year.

11. There are 167 claimants with Class II claims allowed before December 31, 2011 who are to receive interim distributions, subject to the statutory \$50 deductible and any setoffs. (This does not include the guaranty associations.) A list of those persons is attached as Exhibit C. (Some might assign their claims in the future.)

12. Home has filed federal income tax returns on a consolidated basis with Home's subsidiaries for years through 2010, and there are no reported tax liabilities.

13. Home has been in liquidation since June 2003, and it has not made payments to insureds or claimants under its policies since entering liquidation. Payments under Home policies since June 2003 have been made by insurance guaranty associations.<sup>2</sup> The Liquidator has made eight early access distributions to guaranty associations. The Liquidator is informed that the guaranty associations generally have registered with Medicare as Responsible Reporting Entities ("RRE's") and are reporting to Medicare with respect to payments they make under Home policies. Liquidation staff has registered Home as an RRE and is preparing to report to Medicare with respect to payments made as part of the proposed interim distribution. Receipt of the requested waiver will satisfy the condition subsequent in the order so as to finally authorize the interim distribution, and the reporting will be made within 45 days of that date or as otherwise prescribed.

14. Liquidation staff has reviewed records regarding the proofs of claim filed in the Home liquidation to identify claims by the United States. That review has identified seven proofs of claim filed by agencies of the United States:

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<sup>2</sup> During the first few weeks of the liquidation in 2003, the Liquidator paid workers compensation benefits to claimants as advances on early access distributions to avoid disruption in payments while the claims files were transferred to the insurance guaranty associations.

- a. The U.S. Department of Labor asserted a claim for Special Fund assessments totaling \$2,672,527 under the Longshore and Harbor Workers' Compensation Act. POC No. GOVT 70090-01. The claim was allowed in full and assigned to Priority Class V. The Secretary of Labor has brought an action against the Liquidator regarding the appropriate priority for the claim. Solis v. The Home Ins. Co., et al., No. 10-cv-572-SM (D. N.H.). The district court entered judgment on January 31, 2012, and the Secretary appealed on March 30, 2012.
- b. The U.S. Environmental Protection Agency ("EPA") and in one instance another agency asserted three claims for environmental clean-up costs against Home insureds that are pending:
- POC No. GOVT 709578: Insured: Lillian Wiesner, Executeam Corp., John Massei; Site: Stanton Cleaners Groundwater Contamination Superfund Site, NY; Amount claimed \$4,000,000. The Liquidator is informed that EPA is finalizing a settlement with the New York Property and Casualty Security Fund (on behalf of implicated Home policies) and the policyholders, and it appears the settlement will resolve all asserted claims against Home.
  - POC No. GOVT 709581: Insured: Ace Manzo Inc.; Site: Manzo Superfund Site, NJ; Amount claimed: Unstated. The Liquidator is informed that the EPA has entered into a consent decree with all Manzo site defendants such that the agreed amount, once allocated, will not breach Home's excess policy.
  - POC No. CLMN 710659 (for EPA: Insured: Azusa Pipe & Tube; Site: Baldwin Park OU, San Gabriel Valley, CA; Amount claimed: Unstated. The Liquidator is informed that the interim remedy, which is expected to be completed

in 2017, is being funded by other potentially responsible parties such that Home exposure, if any, should be minimal.


- c. The EPA and in one instance other agencies asserted two claims for environmental clean-up costs against Home insureds that have been allowed at Priority Class II. Interim distributions will be made on these allowances.
- POC No. GOVT 709580: Insured: Paul Sauget; Site: Sauget Sites, IL; Allowed amount \$4,125,000. The EPA's proof of claim was resolved by a settlement agreement, to which the United States on behalf of the EPA is a party, providing that the distributions on the allowed amount will be made to an executor who will then make agreed distributions to claimants including the EPA.

-- POC No. GOVT 709582 (for EPA, the U.S. Department of the Interior ("DOI"), the U.S. Department of the Navy ("DON"), and the U.S. National Oceanic and Atmospheric Administration ("NOAA")): Insured: R. Lavin & Sons; Site: Sheridan Road, N. Chicago, IL; Allowed amount \$2,346,774.

- d. The United States filed a protective claim on behalf of EPA, DOI, NOAA, the Department of Defense and other federal agencies "as it relates to any claims held by these agencies that are not currently known or are not currently known to relate to the Home Insurance Company." POC No. GOVT 709579. The proof of claim did not refer to any specific insureds, sites or amounts.

15. Except as described above, I have no knowledge of any claims by the United States against Home, its New Hampshire estate or myself, as Liquidator.

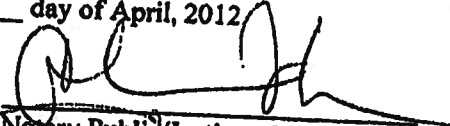
Signed under the pains and penalties of perjury this 11<sup>th</sup> day of April, 2012.



Roger A. Sevigny, Insurance Commissioner of the State of  
New Hampshire, as Liquidator of The Home Insurance  
Company

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

Subscribed and sworn to, before me, this 11<sup>th</sup> day of April, 2012



Notary Public/Justice of the Peace

Chiera Dolcini  
Notary Commission Expires

10/6/15

Exhibit C

Potential Class II Interim Distribution Recipients  
 The Home Insurance Company in Liquidation  
 List of Court Approved Class II Claims with Possible Allowances (other than guaranty associations) from Inception to 12/31/2011  
 The Distribution will be subject to \$30 deductible and to set off

| Case No.       | Policy No. | Insured    | Address    | City       | State      | Zip        | Amount     | Date       | Notes      |
|----------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| INSU1702208-01 | 01         | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 |
| INSU1702208-02 | 02         | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 |
| INSU1702208-03 | 03         | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 |
| INSU1702208-04 | 04         | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 |
| INSU1702208-05 | 05         | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 |
| INSU1702208-06 | 06         | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 |
| INSU1702208-07 | 07         | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 |
| INSU1702208-08 | 08         | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 |
| INSU1702208-09 | 09         | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 |
| INSU1702208-10 | 10         | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 | 1000000000 |





**Potential Class II Interim Distribution Recipients**  
**The Home Insurance Company in Liquidation**  
**List of Court Approved Class II Claims with Positive Allowances (other than guaranty associations) from inception to 12/31/2011**  
**The Distribution will be subject to \$30 deductible and to set offs**

| Case No. | Date     | Name                                | Address                     | City       | State | Zip   |
|----------|----------|-------------------------------------|-----------------------------|------------|-------|-------|
| 01       | 07/11/07 | Adrienne E. Carlson Trust FT 18M PA | 180 North Washington Avenue | Wilmington | DE    | 19802 |
| 01       | 03/23/08 | ABC Central Street Investors        | 3155 North Carolina Hwy     | Charlotte  | NC    | 28211 |
| 01       | 12/20/08 | ABC Central Street Investors        |                             |            |       |       |
| 01       | 02/09/11 | ABC Central Street Investors        |                             |            |       |       |
| 01       | 02/03/05 | ABC Central Street Investors        | 3155 North Carolina Hwy     | Charlotte  | NC    | 28211 |
| 01       | 02/10/05 | ABC Central Street Investors        | 3155 North Carolina Hwy     | Charlotte  | NC    | 28211 |
| 01       | 11/23/05 | ABC Central Street Investors        | 3155 North Carolina Hwy     | Charlotte  | NC    | 28211 |
| 01       | 02/27/10 | ABC Central Street Investors        | 3155 North Carolina Hwy     | Charlotte  | NC    | 28211 |
| 01       | 08/27/10 | ABC Central Street Investors        | 3155 North Carolina Hwy     | Charlotte  | NC    | 28211 |
| 01       | 11/20/11 | ABC Central Street Investors        | 3155 North Carolina Hwy     | Charlotte  | NC    | 28211 |
| 01       | 08/22/07 | ABC Central Street Investors        | 3155 North Carolina Hwy     | Charlotte  | NC    | 28211 |
| 01       | 02/02/09 | ABC Central Street Investors        | 3155 North Carolina Hwy     | Charlotte  | NC    | 28211 |
| 01       | 08/22/07 | ABC Central Street Investors        | 3155 North Carolina Hwy     | Charlotte  | NC    | 28211 |