

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

ROGER A. SEVIGNY, in his official	)	Civil No. 13-401-PB
capacity as INSURANCE	)	
COMMISSIONER OF THE STATE OF	)	
NEW HAMPSHIRE, as LIQUIDATOR	)	
OF THE HOME INSURANCE	)	
COMPANY,	)	
	)	Answer to Complaint
Plaintiff,	)	and Affirmative Defenses
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA	)	
And ERIC H. HOLDER, JR., in his official	)	
capacity as ATTORNEY GENERAL	)	
OF THE UNITED STATES,	)	
	)	
Defendants.	)	
	)	
	)	

**ANSWER TO COMPLAINT**

The United States of America, on behalf of Eric H. Holder, Jr., in his official capacity as Attorney General of the United States (Defendants or United States), hereby answers the Complaint (Docket (Dkt.) 1) of plaintiff Robert A. Sevigny, in his official capacity as Insurance Commissioner of the State of New Hampshire, as Liquidator of the Home Insurance Company (Plaintiff or Home), asserts affirmative defenses, and states as follows:

1. The allegations contained in sentence one are the Plaintiff’s characterization of the action to which no response is required; to the extent they may be deemed allegations of fact, they are denied. Sentence two contains conclusions of law to which no response is required; to the extent they may be

deemed allegations of fact, they are denied. The allegations contained in sentence three of paragraph one are the Plaintiff's characterization of the action and conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

### **Jurisdiction and Venue**

2. The allegations contained in paragraph two are legal conclusions to which no response is required; to the extent they may be deemed allegations of fact, they are denied. Defendants aver that the Court does not have jurisdiction and that United States did not waive sovereign immunity from this suit.
3. The allegations contained in paragraph three are legal conclusions to which no response is required; to the extent they may be deemed allegations of fact, they are denied. Defendants aver that declaratory relief is not proper and that there is no actual controversy.
4. The allegations contained in paragraph four are legal conclusions to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

### **Parties**

5. Defendants deny the allegations in paragraph five for lack of knowledge sufficient to form a belief as to their truth.
6. Defendants deny the allegations in paragraph six for lack of knowledge sufficient to form a belief as to their truth.
7. Defendants deny the allegations in paragraph seven for lack of knowledge sufficient to form a belief as to their truth.

8. Admits.

**The New Hampshire Insurer Liquidation Proceeding**

9. The allegations in paragraph nine contain conclusions of law to which no response is required. To the extent they may be deemed allegations of fact, Defendants deny that the New Hampshire liquidation is the proper forum for all claims against Home and otherwise deny the allegations in paragraph nine for lack of knowledge sufficient to form a belief as to their truth.
10. Defendants deny the allegations in paragraph ten for lack of knowledge sufficient to form a belief as to their truth.
11. The allegations in the first and second sentences of paragraph 11 contain conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, Defendants deny the first and second sentences in paragraph 11 for lack of knowledge sufficient to form a belief as to their truth. Regarding the third sentence, Defendants admit only that the United States submitted seven proofs of claim, most recently in 2005. The remainder of sentence three refers to Plaintiff's characterizations to which no response is required; to the extent the clause "[a]s described below" is deemed an allegation of fact, it is denied.
12. The allegations in paragraph 12 contain conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, Defendants deny the allegations in paragraph 12 for lack of knowledge sufficient to form a belief as to their truth.

13. Defendants deny the allegations in the first sentence of paragraph 13 for lack of knowledge sufficient to form a belief as to their truth. Regarding the second sentence, Defendants admit only that in reliance upon the representations in the respective affidavits of the Liquidator's representative, the United States and the Home Insurance Company entered into six agreements, each titled Release Agreement, the terms of which speak for themselves; Defendants otherwise deny the allegations in the second sentence to the extent they are not consistent with the terms of the Release Agreements. The allegation contained in sentence three is Plaintiff's characterization of the action to which no response is required; to the extent it may be deemed an allegation of fact, it is denied. Defendants deny the allegations in the fourth sentence of paragraph 13 for lack of knowledge sufficient to form a belief as to their truth.
14. The allegations contained in paragraph 14 are legal conclusions to which no response is required; to the extent they may be deemed allegations of fact they are denied.

**The 15 Percent Interim Distribution**

15. The allegations in paragraph 15 are legal conclusions to which no response is required; to the extent they may be deemed allegations of fact they are denied.
16. Defendants deny the allegations in sentences one and two of paragraph 16 for lack of knowledge sufficient to form a belief as to their truth. Defendants admit that attached as Exhibit A to the Complaint is a document titled Liquidator's Motion for Approval of Interim Distribution to Claimants with

Allowed Class II Claims; the document speaks for itself. Defendants otherwise deny the allegations in paragraph 16.

17. Defendants deny the allegations in paragraph 17 for lack of knowledge sufficient to form a belief as to their truth.
18. Defendants deny the allegations in paragraph 18 for lack of knowledge sufficient to form a belief as to their truth.
19. The allegation contained in the first sentence of paragraph 19 is a legal conclusion to which no response is required. Defendants deny the remaining allegations in paragraph 19 for lack of knowledge sufficient for form a belief as to their truth.
20. Defendants deny the allegations in paragraph 20 for lack of knowledge sufficient to form a belief as to their truth.
21. Defendants deny the allegations in paragraph 21 for lack of knowledge sufficient to form a belief as to their truth.
22. Defendants deny the allegations in paragraph 22 for lack of knowledge sufficient to form a belief as to their truth.
23. Defendants admit the allegations in the first and second sentences of paragraph 23 only to the extent they are supported by the order, which speaks for itself. The first clause of the second sentence of paragraph two alleging, “[i]n light of the position of the United States regarding the Priority Statute,” contains Plaintiff’s characterization to which no response is required; to the extent it is deemed an allegation of fact, it is denied. Defendants otherwise deny the allegations in paragraph 23.

24. Defendants admit only that on April 12, 2012, the Liquidator requested a waiver of federal priority statute claims; that Exhibit B to the Complaint contains a document purporting to be an April 12, 2012 letter from J. David Leslie to Ms. Sharon Williams of the U.S. Department of Justice; that on July 3, 2012, the Department of Justice requested information from the Liquidator and that it received a response on July 12, 2013; that on March 13, 2013, the Department of Justice requested information from the Liquidator and that it received a response on March 28, 2013; and that the Department of Justice corresponded with the Liquidator in 2012 and 2013. Defendants otherwise deny the allegations in paragraph 24.

**The United States' Proofs of Claim**

25. Defendants admit only that the United States filed seven proofs of claim in the liquidation and incorporate their answers to paragraphs 26-32 below. The contents of the seven proofs of claim speak for themselves. The remaining allegations in paragraph 25 contain Plaintiff's characterizations to which no response is required; to the extent they may be deemed allegations of fact, they are denied.
26. Defendants admit only that on or about June 26, 2003, the United States Department of Labor filed a proof of claim; that it supplemented this proof of claim on or about April 8, 2005, and February 2, 2005, ultimately seeking \$2,672,527 from Home; and that the claim is allowed in full and assigned Class III priority. Defendants admit the fourth sentence of paragraph 26 only to the extent it is supported by the opinion in *Solis v. Home Ins. Co.*, 848 F.

Supp. 2d 91 (D.N.H. 2012); that opinion speaks for itself. Defendants otherwise deny the allegations in sentence four. Defendants deny sentence five because they lack sufficient information to form a belief as to its truth. Defendants otherwise deny the allegations in paragraph 26.

27. Defendants admit that on or about June 11, 2004, the United States filed a proof of claim on behalf of the United States Environmental Protection Agency (“EPA”) concerning a claim by the EPA against Home’s insureds Lillian Wiesner, Executeam Corp., and John Massei, and that the EPA and Home’s insureds settled their claims in a consent judgment entered September 26, 2012 by the Eastern District of New York. Defendants only admit the allegations in sentences three and four to the extent they are supported by the terms of the consent judgment, which speaks for itself; otherwise the allegations in sentences three and four are denied. Defendants admit only that the EPA advised Home that it will withdraw its claim in the Home Liquidation following the EPA’s receipt of payment from the New York Liquidation Bureau. Defendants otherwise deny the allegations in paragraph 27.
28. Defendants admit that on or about June 11, 2004, the United States filed a proof of claim on behalf of the EPA concerning a claim by the EPA against Paul Sauget (Sauget), as owner and officer of Home’s insured, Sauget & Company. Defendants only admit the allegations in sentence two of paragraph 28 to the extent they are supported by the settlement agreement, which speaks for itself; Defendants otherwise deny the allegations in sentence

two. Defendants admit that the settlement agreement was approved by the Supervising Court on June 3, 2010. Defendants admit that the EPA has a Class II claim in the allowed amount of \$4,125,000 and that it should share in distributions to Class II claimants, including any interim distribution(s); Defendants lack knowledge sufficient to form a belief about the truth of the remainder of sentence four. Defendants otherwise deny the allegations in paragraph 28.

29. Defendants admit that on or about June 11, 2004, the United States filed a proof of claim on behalf of the EPA concerning a claim by the EPA against Dominick Manzo, Carmela Manzo, and Ace-Manzo, Inc. (the “Manzos”) regarding clean up at the Manzo Superfund Site. Defendants deny the second sentence of paragraph 29 for lack of knowledge sufficient to form a belief about its truth. Defendants admit only that the United States entered into a consent decree with Manzos that was approved and entered by the United States District Court for the District of New Jersey on April 29, 2001, the terms of which speak for itself; Defendants otherwise deny sentence three to the extent it is not supported by the terms of the consent decree. Defendants deny the fourth and fifth sentences of paragraph 29 for lack of information sufficient to form a belief about their truth. Defendants admit the Liquidator issued a notice of determination denying the United States’ claim on or around June 28, 2013. Defendants otherwise deny the allegations in paragraph 29.
30. Defendants admit that on or about June 11, 2004, the United States filed a proof of claim on behalf of the EPA concerning claims by the EPA, the

United States Department of the Interior, the United States Department of the Navy, and the National Oceanic and Atmospheric Administration arising out of a secondary refiner-smelter operated by Home's insured R. Lavin & Sons, Inc. ("Lavin"). Upon information and belief, Defendants admit only that on or around September 30, 2008, Lavin and the Liquidator entered a settlement arising out of the Home polices issued to Lavin; that the Supervising Court approved the settlement; that paragraph eight of the settlement agreement states that the United States will receive part of the amounts paid on Lavin's claim pursuant to the order in the bankruptcy case; and that on or about December 5, 2008, the United States withdrew its proof of claim. Defendants only admit the allegations regarding the conditions to effectiveness of the settlement in so far as they are supported by the terms of the settlement, which speaks for itself. Defendants otherwise deny the allegations in paragraph 30.

31. Defendants admit only that on or around November 15, 2005, the United States filed a proof of claim on behalf of the EPA concerning a claim by the EPA against Home's insured Azusa Pipe and Tube Bending Corp. ("Azusa"); and that on around January 9, 2012, EPA counsel advised Plaintiff that the interim remediation is currently being funded by other potentially responsible parties. Defendants lack knowledge sufficient to form a belief about the truth of allegations relating to Azusa's proof of claim and whether the Liquidator is deferring determination of the EPA's proof of claim pending further developments. Defendants deny sentences two and three for lack of knowledge sufficient to form a belief as to their truth. Defendants deny the

allegations in sentence seven and otherwise deny the allegations in paragraph 31.

32. Defendants admit only that on or about June 11, 2004, the United States filed a proof of claim on behalf of the EPA, the United States Department of the Interior, the National Oceanic and Atmospheric Administration of the Department of Commerce, the Department of Defense and any other agencies that may have claims and that the United States has not amended this proof of claim. Defendants only admit the allegations in sentences two and four of paragraph 32 to the extent they are supported by the text of the proof of claim, which speaks for itself; Defendants otherwise deny sentences two and four. Defendants deny sentences three, five, and six of paragraph 32. Defendants otherwise deny the allegations of paragraph 32.

#### **Other Matters**

33. Defendants deny the allegations of paragraph 33 for lack of knowledge sufficient to form a belief as to their truth.
34. Defendants deny sentence one for lack of information sufficient to form a belief about its truth; sentence one does not allege with whom representatives of the Department of Justice purportedly had a conversation on July 3, 2012. Regarding sentence two, Defendants admit only that it did not file a proof of claim with respect to the Thoro matter but denies the remainder of sentence two because it lacks knowledge sufficient to form a belief about its truth. Regarding sentence three, Defendants admit that Home issued a policy to Thoro but otherwise denies sentence three for lack of knowledge sufficient to

form a belief as its truth. Defendants deny sentence four for lack of knowledge sufficient to form a belief about its truth.

35. Defendants deny the allegations in sentences one, two, three, and four for lack of knowledge sufficient to form a belief about their truth. Upon information and belief, Defendants only admit that the Liquidator, LTV, and ISG entered into a settlement agreement that provided for a \$8,000,000 allowance at Class II priority; that the United States did not file a proof of claim with respect to LTV, and that pursuant to the settlement agreement, the United States is entitled to receive a percentage of the distributions from Home. Except for admitting that pursuant to the settlement agreement, the United States is entitled to receive a percentage of the distributions from Home, Defendants deny the allegations in sentences seven and eight for lack sufficient information to form a belief about their truth. Defendants otherwise deny the allegations in paragraph 35.
36. Defendants deny sentences one, two, three, and four of paragraph 36 for lack of knowledge sufficient to form a belief about their truth. Defendants admit the United States has not filed a proof of claim with respect to CDE. Defendants admit that CDE has agreed to the terms of a consent decree that if approved by the presiding court, will resolve claims alleged against CDE in the matter entitled *United States of America and the State of New Jersey v. Cornell-Dubilier Electronics, Inc.*, Civil Action No. 2:12-cv-050407-JLL-MAH (D.N.J.). Defendants deny that the consent decree resolves all potential

claims against CDE. Defendants otherwise deny the allegations in paragraph 36.

37. The allegations contained in paragraph 37 are legal conclusions to which no response is required.
38. The allegations contained in paragraph 38 are legal conclusions to which no response is required.
39. The allegations contained in paragraph 39 are legal conclusions to which no response is required.
40. The allegations contained in paragraph 40 are Plaintiff's characterizations of the action to which no response is required; to the extent that may be deemed allegations of fact they are denied. To the extent paragraph 40 contains legal conclusions, no response is required.
41. The allegations contained in the first sentence of paragraph 41 are Plaintiff's characterization of the action to which no response is required; to the extent that they may be deemed allegations of fact they are denied. Defendants admit only that the United States has not provided the Liquidator with the waiver he requests. Defendants deny the allegation regarding the assets available for subsequent distribution for lack of knowledge sufficient to form a belief about its truth. Defendants otherwise deny the allegations in paragraph 41.

**Injury to the Liquidator and the Policyholders of Home**

42. Defendants admit only that the Liquidator sought and received approval from the Supervising Court to make the 15 percent interim distribution; that

Plaintiff asked the Supervising Court to make the 15 percent interim distribution subject to a waiver of the United States' rights under the federal priority statute with respect to the interim distribution; and that the Liquidator asked the Department of Justice to provide this waiver on April 12, 2012.

Defendants otherwise deny the allegations in paragraph 42.

43. The allegations in the first sentence of paragraph 43 are legal conclusions to which no response is required. Defendants deny the second sentence of paragraph 43.
44. The allegations in the first sentence of paragraph 44 are legal conclusions to which no response is required and to the extent that may be deemed allegations of facts, they are denied for lack of knowledge sufficient to form a belief as to their truth. The allegations in the second sentence of paragraph 44 are denied for lack of knowledge sufficient to form a belief as to their truth.
45. The allegations in paragraph 45 are legal conclusions to which no response is required.

### **Count I**

46. Defendant reasserts its responses to paragraphs one through 45.
47. Defendants deny the allegations in the paragraph 47 for lack of knowledge sufficient to form a belief as to their truth.
48. Defendants deny the allegations in the paragraph 48 for lack of knowledge sufficient to form a belief as to their truth.
49. The allegations in the first and third sentences of paragraph 49 are legal conclusions to which no response is required. Defendants deny the allegations

in the second sentence of paragraph 49 due to lack of knowledge sufficient to form a belief about their truth.

50. The allegations in paragraph 50 are legal conclusions to which no response is required.
51. The allegations in paragraph 51 are legal conclusions to which no response is required.
52. Defendants deny the allegations in paragraph 52 for lack of knowledge sufficient to form a belief as to their truth.
53. The allegations in paragraph 53 are legal conclusions to which no response is required.

#### **Count II**

54. The Court dismissed Count II of the Complaint. Nonetheless, to answer the allegations in paragraph 54, Defendant reasserts its responses to paragraphs one through 53.
55. The Court dismissed Count II of the Complaint. Nonetheless, to answer the allegations in paragraph 55, Defendant avers that the allegations contained in paragraph 55 are legal conclusions to which no response is required.
56. The Court dismissed Count II of the Complaint. Nonetheless, the allegations in paragraph 56 are denied.

The remaining five paragraphs are Plaintiff's requests for relief to which no response is required.

**General Denial**

Defendants deny each and every allegation in this Complaint not previously admitted or otherwise qualified.

**AFFIRMATIVE DEFENSES**

The United States asserts the following affirmative defenses to Home's Complaint:

1. The Court lacks jurisdiction over Count One of the Complaint.
2. Count One of the Complaint fails to state a claim on which relief can be granted.

September 4, 2014,

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**CERTIFICATE OF SERVICE**

I, Frances M. McLaughlin, hereby certify that on September 4, 2014, the United States' Answer and Affirmative Defenses were served on counsel of record pursuant to the Court's electronic filing system.

s/ Frances M. McLaughlin