

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 NOTICE OF SETTLEMENT AGREEMENT, SUBJECT
TO CONDITIONS, WITH THE UNITED STATES OF AMERICA
ON BEHALF OF FEDERAL CLAIMANTS**

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby notifies the Court and interested persons that the Liquidator has entered a Settlement Agreement ("Settlement Agreement" or "Agreement"), subject to conditions, with 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"). The Settlement Agreement is attached as Exhibit A.

1. This notice is to inform the Court and interested persons that the Liquidator has entered the Settlement Agreement. The Agreement is not effective, as it is subject to three conditions: (a) approval of the Settlement Agreement and allowance of the Recommended Amount (discussed below) as a Class II claim by the Court, (b) approval of a separate, mutually acceptable release of claims under 31 U.S.C. § 3713 from the United States (the "Release Agreement", attached as Exhibit B) by the Court, and (c) a public comment period following publication of notice of the Settlement Agreement in the Federal Register, after which the United States may determine to withdraw from the Agreement. See Agreement ¶¶ 1, 6.

2. Because the United States reserves the right to withdraw from the Settlement Agreement if comments regarding the Agreement disclose facts which indicate that it is not in the public interest (Agreement ¶ 6.c), the Liquidator will not move for approval of the Settlement Agreement until after the period for public comment has passed and the United States has notified the Liquidator as to whether or not it is going forward with the Agreement. (It is expected that the public comment period will be thirty days.) At that time, the Liquidator will file a motion with the Court for approval of the Agreement, allowance of the Recommended Amount as a Class II claim, and approval of the Release Agreement. If the United States withdraws from the Agreement, the Liquidator will file a further notice to report that to the Court.

3. The Settlement Agreement is a compromise. See Agreement, eleventh Whereas clause, ¶ 9. It will resolve the proofs of claim filed by the Federal Claimants and identified in the second and sixth Whereas clauses as the Proofs of Claim and the Additional Proofs of Claim, which will be fully resolved and terminated with prejudice. See Agreement ¶ 7. The principal elements of the Agreement are (a) agreement on recommended Class II allowances totaling \$27,044,146 (the “Recommended Amount”) for seven of the proofs of claim filed by the Federal Claimants, Agreement ¶¶ 2, 3; and (b) covenants not to sue by each of the Federal Claimants and the Liquidator with respect to policies issued by Home to the insureds named in the Proofs of Claim and the Additional Proofs of Claim, Agreement ¶¶ 4, 5. In addition, by the Settlement Agreement, the United States will withdraw its Protective Proof of Claim without prejudice. Agreement, third and fourth Whereas clauses. (The Federal Claimants do not intend to file more claims in the Home liquidation. Agreement, tenth Whereas clause.)

4. The Settlement Agreement is conditioned upon approval by the Court of the Release Agreement concerning United States' claims under the Federal Priority Act, 31 U.S.C. § 3713. Agreement ¶¶ 1, 6.b, 6.d. Effectiveness of the Release Agreement is also conditioned upon approval of the Settlement Agreement by the Court. Agreement ¶ 6.b. The Release Agreement, when effective, will facilitate distributions to Class II creditors of the Home estate.

5. The Liquidator anticipates that the Federal Claimants will soon provide notice of the Settlement Agreement and the public comment period in the Federal Register. As described in paragraph 2 above, the Liquidator will file an approval motion or a further notice after the United States advises as to whether or not it is going forward with the Agreement following the public comment period.

Respectfully submitted,

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

By his attorneys,

GORDON J. MACDONALD
ATTORNEY GENERAL

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November 21, 2018

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Notice of Settlement Agreement, Subject to Conditions, with the United States of America on Behalf of Federal Claimants was sent, this 21st day of November, 2018, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith
NH Bar ID No. 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 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
- HXLF269008 12/28/1990 – 12/28/1991
- HXL1642477 12/28/1991 – 12/28/1992
- HXLF0272601 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 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

If to the Liquidator, to:

Thomas W. Kober
Chief Claims Officer
The Home Insurance Company in Liquidation
61 Broadway, 6th Floor
New York, New York 10006
Email: 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

and

J. David Leslie, Esq.
Rackemann, Sawyer & Brewster PC
160 Federal Street
Boston, Massachusetts 02110-1700
Email: 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

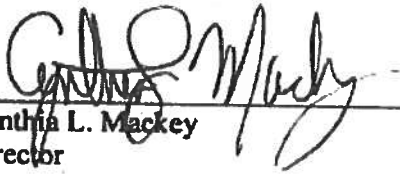
By: Jeffrey H. Wood
Jeffrey H. Wood
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

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

ATTACHMENTS OMITTED