

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

**Docket No. 03-E-0106
In the Matter of the Liquidation of
The Home Insurance Company**

**LIQUIDATOR'S MOTION FOR APPROVAL OF SETTLEMENT
AGREEMENT WITH UTICA MUTUAL INSURANCE COMPANY**

In accordance with the Order Establishing Procedures for Review of Certain Agreements to Assume Obligations or Dispose of Assets entered April 29, 2004, Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), moves that the Court enter an order in the form submitted herewith approving a Settlement Agreement and Mutual Release ("Settlement Agreement") between Utica Mutual Insurance Company ("Utica") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. This motion requests approval of the Settlement Agreement between the Liquidator and Utica resolving an action brought by the Liquidator against Utica. The Settlement Agreement is subject to approval by the Court and will become effective on such approval. See Settlement Agreement ¶ 1. A copy of the Settlement Agreement, with financial terms redacted, is attached as Exhibit A. A complete copy of the Settlement Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Settlement Agreement with Utica Mutual Insurance Company ("Bengelsdorf Confidential Aff.") submitted herewith under seal.

2. Lichtman Associates, Inc. ("Lichtman"), was an insurance agent for Home. Lichtman placed general liability, automobile liability and workers' compensation insurance

coverage for Premier Roofing, Inc. (“Premier”) with Home in 1990 and 1991 (the “Premier Policies”). Bengelsdorf Confidential Aff. ¶ 3.

3. Utica issued an Insurance Agents and Brokers Errors and Omissions policy to Lichtman for the period February 6, 1992 to February 6, 1993, pursuant to which Utica provided Lichtman with insurance coverage for claims made or asserted during the policy period (the “Utica Policy”). Bengelsdorf Confidential Aff. ¶ 4.

4. During the term of the Utica Policy, Lichtman put Utica on notice of a claim Home made against Lichtman arising out of the placement of the Premier Policies. Bengelsdorf Confidential Aff. ¶ 5.

5. Home subsequently commenced arbitration against Lichtman asserting, *inter alia*, that Lichtman committed certain errors and omissions with respect to the placement of the Premier Policies. Bengelsdorf Confidential Aff. ¶ 6.

6. In the arbitration Home received an award in its favor and against Lichtman of \$910,361.93 arising from Lichtman’s errors and omissions with respect to the placement of the Premier Policies (the “Award”). The United States District Court for the District of Connecticut confirmed the Award on April 2, 2002 and then entered judgment thereon. Bengelsdorf Confidential Aff. ¶ 7.

7. After Home was placed into liquidation, Liquidator commenced an action against Utica in this Court, Roger A. Sevigny, Insurance Commissioner as Liquidator of The Home Insurance Company v. Utica Mutual Insurance Company, Docket No. 04-E-0152 (the “Liquidator’s Action”), seeking recovery of \$910,361.93 plus interest under the Utica policy with respect to Lichtman’s errors and omissions in the placement of the Premier Policies. Bengelsdorf Confidential Aff. ¶ 8.

8. Utica filed an answer in the Liquidator's Action, which denied coverage under the Utica Policy and liability to the Liquidator. Utica's answer asserted, among other things, that Lichtman breached a condition precedent to coverage contained in the Utica Policy by assuming liability without Utica's prior written consent in an April 30, 1992 letter to Premier. Specifically, Utica asserted that Lichtman, by agreeing with Premier to reduce the loss limits of the Premier Policies from \$250,000 to \$100,000, improperly assumed liability in violation of the "cooperation clause" contained in the Utica Policy. Bengelsdorf Confidential Aff. ¶ 9.

9. Both the Liquidator and Utica moved for summary judgment. On July 22, 2005, the Court issued an Order granting summary judgment in favor of the Liquidator in the amount of \$910,361.93, together with interest accruing from April 2, 2002, the date judgment was entered on the Award. The Court held that because Lichtman, in the April 30, 1992 letter, did not assume or admit liability to Home as "the mischief that the cooperation clause is intended to prevent, namely collusion between an insured (Lichtman) and a claimant (Home), could not arise from the April 30, 1992 letter." Bengelsdorf Confidential Aff. ¶ 10.

10. Utica appealed to the New Hampshire Supreme Court. The Supreme Court reversed the grant of summary judgment in a 3JX decision dated August 10, 2006 (No. 2005-0610), holding that "the trial court erred when it ruled that the April 30, 1992 letter, which Lichtman signed, did not, as a matter of law, violate the cooperation clause because, in it, Lichtman did not 'assume or admit liability to The Home' or 'seek to settle any claim as to The Home.'" The Supreme Court remanded the action to the Court to determine whether Lichtman's breach of the condition precedent contained in the Utica Policy was "substantial and material" and whether this breach "caused [Utica] to suffer prejudice." Bengelsdorf Confidential Aff. ¶ 11.

11. After remand, the parties exchanged written discovery and then engaged in court directed mediation on August 10, 2007 in front of William J. Mulvey. As part of the mediation process, Mr. Mulvey obtained confidential statements from the parties and listened to presentations from counsel. The mediation provided the parties with feedback regarding the merits of their respective positions and led to this settlement. Bengelsdorf Confidential Aff. ¶ 12.

12. The Settlement Agreement provides that Utica will pay the Liquidator a final settlement sum by wire within fifteen days after the effective date. Settlement Agreement ¶ 2. Immediately upon receipt by the Liquidator of the settlement sum, the parties shall cause neither party docket markings (with prejudice) to be filed in the Liquidator's Action. Id. ¶ 4. The other provisions of the settlement, including mutual releases of claims regarding the Liquidator's Action (id. ¶¶ 5, 6), are set forth in the Settlement Agreement. Bengelsdorf Confidential Aff. ¶ 14.

13. For the reasons set forth at paragraphs 11-15 of the Confidential Bengelsdorf Affidavit, the Liquidator submits that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and other creditors of Home. The Settlement Agreement will convert a contingent, unliquidated asset into immediate cash and avoid delay, cost and uncertainty in the collection of this asset through the litigation process. Bengelsdorf Confidential Aff. ¶ 15.

WHEREFORE, the Liquidator respectfully requests that this Court:

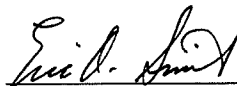
- A. Grant this Motion;
- B. Enter an Order in the form submitted herewith approving the Settlement Agreement with Utica; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

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

By his attorneys,
KELLY A. AYOTTE
ATTORNEY GENERAL

J. Christopher Marshall
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650

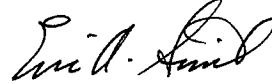


J. David Leslie
Eric A. Smith
Rackemann, Sawyer & Brewster
One Financial Center
Boston, MA 02111
(617) 542-2300

October 18, 2007

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Utica Mutual Insurance Company, and the Proposed Order, were sent, this 18th day of October, 2007, by first class mail, postage prepaid to all persons on the attached service list. The Confidential Bengelsdorf Affidavit was not so served.



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106
SERVICE LIST

Ronald L. Snow, Esq.
Lisa Snow Wade, Esq.
Orr & Reno
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Gary Lee, Esq.
James J. DeCristofaro, Esq.
Kathleen E. Schaaf, Esq.
Julie D. Dyas, Esq.
Morrison & Foerster
1290 Avenue of the Americas
New York, New York 10104-0050

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

Gail M. Goering, Esq.
Adam Goodman, Esq.
Eric Haab, Esq.
Lovells
One IBM Plaza
330 N. Wabash Avenue, Suite 1900
Chicago, Illinois 60611

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

Martin P. Honigberg, Esq.
Sulloway & Hollis, P.L.L.C.
9 Capitol Street
P.O. Box 1256
Concord, New Hampshire 03302-1256

George T. Campbell, III, Esq.
Robert A. Stein, Esq.
Robert A. Stein & Associates, PLLC
One Barberry Lane
P.O. Box 2159
Concord, New Hampshire 03302-2159

David M. Spector, Esq.
Dennis G. LaGory, Esq.
Kristy L. Allen, Esq.
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606

Jack B. Gordon, Esq.
Fried, Frank, Harris, Shriver
& Jacobson, LLP
1001 Pennsylvania Avenue
Washington, D.C. 20004

Andrew W. Serell, Esq.
Rath, Young and Pignatelli
One Capital Plaza
P.O. Box 1500
Concord, New Hampshire 03302-1500

Stephan P. Parks, Esq.
Doreen F. Connor, Esq.
Wiggin & Nourie, P.A.
670 North Commercial Street, Suite 305
P.O. Box 808
Manchester, New Hampshire 03105-0808

Michael Cohen, Esq.
Cohen & Buckley, LLP
1301 York Road
Baltimore, Maryland 21093

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is made by and between Utica Mutual Insurance Company ("Utica") and Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, solely in his capacity as Liquidator (the "Liquidator") of The Home Insurance Company ("Home") (collectively, the "Parties").

WHEREAS, for the period February 6, 1992 to February 6, 1993, Utica issued an Insurance Agents and Brokers Errors and Omissions policy to Lichtman Associates, Inc. ("Lichtman"), pursuant to which Utica provided insurance coverage for claims made or asserted during the policy period (the "Utica Policy");

WHEREAS, Lichtman was an insurance agent for Home that placed general liability, automobile liability and workers' compensation insurance coverage for Premier Roofing, Inc. ("Premier") in 1990 and 1991 (the "Premier Policies");

WHEREAS, during the term of the Utica Policy, Lichtman put Utica on notice of a claim Home made against Lichtman arising out of the placement of the Premier Policies;

WHEREAS, Home commenced arbitration against Lichtman asserting, *inter alia*, that Lichtman committed certain errors and omissions with respect to the placement of the Premier Policies;

WHEREAS, in the arbitration Home received an award in its favor and against Lichtman of \$910,361.93 arising from Lichtman's errors and omissions with respect to the placement of the Premier Policies (the "Award");

WHEREAS, the United States District Court for the District of Connecticut confirmed the Award and then entered judgment thereon;

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

WHEREAS, the Liquidator commenced an action in the Court against Utica under Docket No. 04-E-0152 seeking recovery of \$910,361.93 plus interest under the Utica Policy with respect to Lichtman's errors and omissions in the placement of the Premier Policies (the "Liquidator's Action");

WHEREAS, Utica denied coverage under the Utica Policy and liability to the Liquidator, alleging among other grounds, that Lichtman materially and substantially breached a condition precedent to coverage contained in the Utica Policy;

WHEREAS, the Parties engaged in court-ordered mediation on August 10, 2007, through which process the Parties have now agreed to settle and fully and finally resolve the Liquidator's Action without any admission of liability or responsibility and without prejudice to their respective positions;

NOW, THEREFORE, subject to the terms and conditions hereof, in consideration of the 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 agree as follows:

1. Effective upon Approval. This Settlement Agreement is conditioned and shall only become effective (the "Effective Date"), upon approval by the Court in the liquidation proceeding for Home. "Effective Date" means the date of clerk's notice accompanying Court approval. In the event that the Court does not approve this Settlement Agreement it shall be null and void and of no force and effect.

2. Payment to Liquidator. Within fifteen (15) days after the Effective Date, Utica shall in full and final settlement of the Liquidator's Action, pay to the Liquidator, by wire transfer, the total sum of [REDACTED] (the "Settlement Sum"), with time being of the essence in the payment by Utica of the Settlement Sum. Said wire transfer shall be directed to:

Bank: Citizens Bank - Manchester, NH
ABA: [REDACTED]
For the Account of: The Home Insurance Company in Liquidation
286 Commercial Street, Manchester, NH 03108
Account: [REDACTED]
Reference: Premium Accounting

3. Interest. If Utica fails to pay any portion of the Settlement Sum within fifteen (15) days after the Effective Date, it shall pay (a) interest on any unpaid amount at the rate of [REDACTED] from the Effective Date; and (b) any reasonable costs, including reasonable attorneys' fees, incurred by the Liquidator or Home in recovering the Settlement Sum in full (the "Collection Costs"). The acceptance by the Liquidator of the Settlement Sum together with all interest and Collection Costs due, if any, in respect of late payment as determined and calculated as aforesaid shall constitute a full and final settlement and release hereunder as if payment of the Settlement Sum had been made in full within fifteen (15) days after the Effective Date.

4. Neither Party Docket Markings. Immediately upon receipt by the Liquidator of the Settlement Sum, the Parties shall cause to be filed Neither Party Docket Markings (with prejudice) in the Liquidator's Action with the Court.

5. Release by the Liquidator. Subject to the terms of this Settlement Agreement and receipt by the Liquidator of the Settlement Sum, the Liquidator, on his own behalf, and on behalf of Home and his and its officers, directors, employees, agents, attorneys, shareholders, parents,

predecessors, successors and assigns, hereby releases and discharges Utica, Robert Blackwood, Lichtman Associates Inc. and John Lichtman, Individually and their respective parents, subsidiaries and affiliates, and each of its and their present and former officers, directors, employees, attorneys, liquidators, shareholders, servants and agents, and the successors and assigns of each of them, 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, counterclaims and demands whatsoever, in law, admiralty or in equity, which the Liquidator or Home ever had, now has, or hereafter may have against Utica, Robert Blackwood, Lichtman Associates Inc. and John Lichtman, Individually by reason of any matter whatsoever with respect to the Liquidator's Action.

The Parties acknowledge that they are aware that they or their attorneys or other representatives may hereafter discover or be informed of claims, facts or legal theories in addition to or different from those which are now known or believed to exist with respect to the Liquidator's Action, and the Parties further acknowledge that in the future they may incur additional damages or losses relating to the subject matter of this Settlement Agreement, but that nevertheless it is their intention to hereby fully, finally and forever settle and release all claims which the Liquidator and or Home could have brought against Utica, Robert Blackwood, Lichtman Associates Inc. and/or John Lichtman individually, whether known or unknown, suspected or unsuspected, past or future. In furtherance of such intention, the releases given herein shall be and remain in effect as full and complete general releases notwithstanding the

discovery, existence or occurrence of any such additional claims, facts, theories, damages or losses.

6. Release by Utica. Subject to the terms of this Settlement Agreement, Utica and its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns, hereby irrevocably and unconditionally releases and discharges the Liquidator and Home and each of their parents, subsidiaries and affiliates and each of their present and former officers, directors, employees, attorneys, liquidators, shareholders, servants and agents, and the successors and assigns of each of them, 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, counterclaims and demands whatsoever, in law, admiralty or in equity, which Utica ever had, now has or hereafter may have against the Liquidator or Home by reason of any matter whatsoever with respect to the Liquidator's Action.

7. 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.

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 without regard to the conflicts of law provisions thereof. The Parties agree that the Court in the Home liquidation proceeding shall be the exclusive venue for any dispute between and among the Parties arising out of this Settlement Agreement.

9. Due Diligence. The Parties acknowledge and agree that, in executing this Settlement Agreement, they have relied upon their own judgment and upon the recommendations of their legal counsel, if any, that they have read the Settlement Agreement and have had the opportunity to consider the terms and effects of each and to ask any questions that they have of anyone, and that they have executed this Settlement Agreement voluntarily and with full understanding of its terms and effects.

10. 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.

11. Power and Authority to Execute. Each Party hereto represents and warrants that it has the full power and authority to execute, deliver and perform this Settlement Agreement; that the individual signing on behalf of a Party has been duly authorized by that Party to execute this Settlement Agreement on its behalf; that no other agreement, undertaking, contract or matter is known to exist that might render this Settlement Agreement void, voidable or unenforceable; and that it has read this Settlement Agreement; that it understands the contents of this Settlement Agreement; and that this Settlement Agreement is being executed freely and voluntarily with an intent for it to be bound by the terms contained in this 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 officers, directors, employees, affiliates, attorneys, liquidators, receivers, administrators, agents, representatives, successors and assigns.

13. Entire Agreement. This Settlement Agreement constitutes the entire agreement and understanding among the Parties with respect to the subject matter thereof. This Settlement Agreement supersedes all prior agreements and understandings, whether written or oral, concerning such matters.

14. Commercial Accommodation. The Parties agree and acknowledge that this Settlement Agreement is being entered into solely as a commercial accommodation, without regard to the respective positions of the Parties under the terms of the Utica Policy or taken in the Liquidator's Action. As such, the Parties agree that this Settlement Agreement shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any Party regarding any aspect of the Liquidator's Action or the Utica Policy, other than with respect to the terms and conditions herein contained.

15. 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.

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

17. No Waiver. No waiver of any right under this Settlement Agreement shall be deemed effective unless contained in writing signed by the Party or an authorized officer 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 provisions of this Settlement Agreement. This Settlement Agreement may not be amended except in a document signed by the Party or an officer of the Party to be charged.

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.

UTICA MUTUAL INSURANCE COMPANY

By: Paul E. Walters
Name: Paul E. Walters
Title: E + O Claims Manager
Date: 10/5/07

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

By: _____

Name: Jonathan Rosen

Title: Chief Operating Officer of The
Home Insurance Company in Liquidation

Date: October 4, 2007

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 provisions of this Settlement Agreement. This Settlement Agreement may not be amended except in a document signed by the Party or an officer of the Party to be charged.

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.

UTICA MUTUAL INSURANCE COMPANY

By: _____

Name: _____

Title: _____

Date: _____

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

By:  _____

Name: Jonathan Rosen

Title: Chief Operating Officer of The
Home Insurance Company in Liquidation

Date: October 4, 2007