

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 CENTRAL HUDSON**

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), moves that the Court enter an order in the form submitted herewith approving a Settlement Agreement and Mutual Release ("Settlement Agreement") between Central Hudson Gas & Electric Corporation ("Central Hudson") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. Home issued four insurance policies to Central Hudson for policy periods between January 8, 1965 and November 23, 1974. Upon Home's placement in liquidation, Central Hudson filed a proof of claim in the Home liquidation. The proof of claim seeks coverage under the policies for claims for environmental clean up costs and damages. Affidavit of Peter A. Bengelsdorf in Support of Motion for Approval of Settlement Agreement with Central Hudson ("Bengelsdorf Aff.") ¶ 3.

2. The Liquidator and Central Hudson have negotiated a Settlement Agreement reflecting a resolution of the proof of claim and all matters under the policies, except for claims concerning defense and indemnity for asbestos litigation against Central Hudson ("Asbestos Claims"), which are the subject of a separate, pre-liquidation agreement. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1. Bengelsdorf Aff. ¶ 4.

3. The Settlement Agreement provides that the Liquidator will recommend allowance of Central Hudson's proof of claim in the aggregate amount of \$4,000,000 as a Class II priority claim under RSA 402-C:44. Settlement Agreement ¶ 3(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve Central Hudson's proof of claim and all claims concerning it under the policies, except with respect to Asbestos Claims. *Id.* ¶ 3(B). Distributions based on that allowance will be made at the same intervals and at the same percentages as distributions to other Class II creditors of Home. *Id.* ¶ 3(C). *Bengelsdorf Aff.* ¶ 5.

4. The Settlement Agreement is intended to resolve Central Hudson's proof of claim, and all claims concerning it under the policies, except Asbestos Claims. See Settlement Agreement ¶¶ 2(B), 6. To that end, the Settlement Agreement provides for mutual releases of all claims (except for Asbestos Claims) between Home and Central Hudson arising from or related to the policies (including the proof of claim). *Id.* ¶¶ 4, 5. The Liquidator also agrees not to pursue certain claims respecting Central Hudson against other insurers that agree not to pursue such claims against Home. *Id.* ¶ 7. *Bengelsdorf Aff.* ¶ 6.

5. The Liquidator is not aware of any third party claimants asserting claims under the policies with respect to Central Hudson. However, in resolving all matters relating to the proof of claim and the policies (except for Asbestos Claims), the Settlement Agreement contemplates denial of any third party claimant's claims regarding Central Hudson in the Home liquidation without prejudice to their claims against Central Hudson. Accordingly, Central Hudson acknowledges in the Settlement Agreement that it is intended to resolve all matters between Central Hudson and the Liquidator/Home relating to the policies and proof of claim (except for Asbestos Claims), including asserted rights of third party claimants. Settlement

Agreement ¶ 6. Central Hudson agrees to address, at its sole cost, the claims of claimants asserting claims against Central Hudson as if the Central Hudson had no insurance coverage from Home under the policies. *Id.* Central Hudson agrees to indemnify the Liquidator and Home against claims arising from the policies up to the allowance actually received by Central Hudson. *Id.* Bengelsdorf Aff. ¶ 7.

6. The denial of any third party claimants' proofs of claim without prejudice to their claims against Central Hudson will not harm the third party claimants, who will continue to have their full claims against Central Hudson. As noted above, Central Hudson has agreed to address these claims as if it had no insurance coverage from Home under the policies. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Central Hudson from those claims up to the limits of the policies but only entitle the third party claimants (assuming their claims are allowed) to a presently undetermined percentage distribution at the future date when a distribution is made. See RSA 402-C:40, I; Gonya v. Commissioner, New Hampshire Insurance Dept., 153 N.H. 521, 535 (2006) (noting the "inherent uncertainty of any creditor's recovery in a liquidation"). It is not expected that the allowed claims of any third party claimants (or other Class II creditors) will be paid in full. Under the Settlement Agreement, Central Hudson will continue to be fully responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 6.

7. The Settlement Agreement reflects a compromise of the claims asserted in Central Hudson's proof of claim. It is the result of negotiations involving Home's Claims Department, under the supervision of the Special Deputy Liquidator, which has extensive experience in assessing the exposure presented by environmental pollution claims under Home's insurance policies. The agreed settlement amount is based on careful evaluation and negotiation of

coverage obligations under Home's policies respecting the underlying liabilities of Central Hudson. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$4,000,000 settlement amount as a Class II claim in accordance with RSA 402-C:45 and RSA 402-C:44. Bengelsdorf Aff. ¶ 9.

8. The Court has previously approved similar settlement agreements. See, *e.g.*, Order Approving Settlement Agreement with Tampa Electric (October 15, 2007); Order Approving Commutation Agreement with Northwestern National Insurance Company and Settlement Agreement and Assignment of Distribution with AK Steel Corporation (March 10, 2006). The Liquidator's negotiation and the Court's approval of such agreements are authorized by the broad authority of the Liquidator to "compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court," RSA 402-C:45, I, and the authority of the Court to "approve, disapprove or modify any report on claims by the liquidator." RSA 402-C:45, II. It is also an appropriate exercise of the Liquidator's authority ("[s]ubject to the court's control") to "do such other acts . . . as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation." RSA 402-C:25, XXII.

9. In his Motion for Approval of Commutation with Northwestern National Insurance Company and Settlement Agreement and Assignment of Distribution with AK Steel Corporation ¶¶ 19-23 (February 16, 2006), the Liquidator provided his analysis of New Hampshire law, including RSA 402-C:40 III, as it applies to this type of comprehensive policy coverage compromise and settlement in an insurer liquidation context. That analysis also applies to the proposed Settlement Agreement with Central Hudson.

10. The Liquidator submits that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home. See Bengelsdorf Aff. ¶ 10.

WHEREFORE, the Liquidator respectfully requests that this Court:

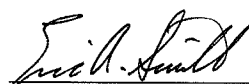
- A. Grant this Motion;
- B. Enter an Order in the form submitted herewith approving the Settlement Agreement, approving the Liquidator's claim recommendation, and allowing Central Hudson's claim as a Class II claim in the amount of \$4,000,000; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

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

By his attorneys,
KELLY A. AYOTTE
ATTORNEY GENERAL

J. Christopher Marshall
Civil Bureau
New Hampshire Department of Justice
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(603) 271-3650

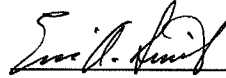


J. David Leslie
Eric A. Smith
Rackemann, Sawyer & Brewster
160 Federal Street
Boston, MA 02110
(617) 542-2300

February 8, 2008

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Central Hudson, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 8th day of February, 2008, by first class mail, postage prepaid to all persons on the attached service list.



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

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is made this 9th day of JANUARY ^{2008 ONC/awk} 2007, by and between Central Hudson Gas & Electric Corporation (hereinafter referred to as "Central Hudson" on the one hand, and Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, solely in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), on the other hand (Central Hudson and the Liquidator are hereinafter referred to collectively as the "Parties").

WHEREAS, Home issued the following insurance policies to Central Hudson under which Central Hudson is a named insured:

<u>Policy Number</u>	<u>Policy Period</u>
HEC 9544005	01/08/1965 - 01/08/1968
HEC 9557308	03/23/1966 - 03/23/1967
HEC 9557680	03/23/1967 - 01/1/1969
HEC 9664401	01/01/1969 - 11/23/1974

which together with all other insurance policies that Home may have issued to Central Hudson are defined as the "Policies."

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

WHEREAS, Central Hudson seeks payment from Home for liabilities it has incurred for environmental clean up costs and damages and Central Hudson has submitted a proof of claim in the Home liquidation estate, which has been assigned the following proof of claim number:

INSU700013

and which is defined as the "Proof of Claim."

WHEREAS, the Parties are desirous of resolving all claims that were asserted, or could have been or could be asserted, between them and resolving all matters concerning the Proof of Claim and all rights and obligations with respect to the Policies except for Asbestos claims; and

WHEREAS, the Parties agree that this Settlement Agreement is subject to and conditioned upon its approval by the Liquidation Court and allowance of the Recommended Amount (as defined below) into the Home liquidation estate and in the event the Liquidation Court does not approve the Settlement Agreement and allow the Recommended Amount, this Settlement Agreement shall be null and void and without any force or effect.

NOW, THEREFORE, in consideration of all the respective transactions contemplated by this Settlement Agreement, and the mutual covenants and representations herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Effective Upon Approval. This Settlement Agreement is conditioned and shall only become effective (the "Effective Date") upon approval by the Liquidation Court.

2. Asbestos Claims Expressly Excluded from this Settlement Agreement. On March 20, 2001, Central Hudson, Home, and various other insurers entered into a confidential settlement agreement (the "Asbestos Agreement") concerning defense and indemnity for asbestos litigation against Central Hudson (referred to herein as "Asbestos Claims"). Nothing in this Settlement Agreement is intended to address Asbestos Claims or to extinguish or alter in any way Home's obligations under the Asbestos Agreement.

3. Recommendation, Allowance and Classification of Claim.

A. Subject to all the terms of this Settlement Agreement, and with the agreement of Central Hudson, which, by Central Hudson's execution hereof is hereby granted, the Liquidator shall recommend pursuant to RSA § 402-C:45 that the Proof of Claim be allowed in the

aggregate amount of \$4,000,000 (the "Recommended Amount"), as a Class II priority claim under RSA § 402-C:44. The Liquidator shall contemporaneously seek allowance of the Recommended Amount as a Class II claim by the Liquidation Court in connection with 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 Proof of Claim and any and all claims of whatever nature that Central Hudson has under the Policies except for Asbestos Claims. In the event that the Liquidation Court does not allow the Recommended Amount as a Class II claim, this Settlement Agreement shall be null and void and shall have no force and effect and the Parties will be returned to *status quo ante*, as if no such agreement was ever reached, with this Settlement Agreement then being inadmissible for any purpose in any dispute between the Parties.

C. If and when the Liquidation Court allows the Recommended Amount as a Class II claim, Central Hudson will become a Class II creditor in the Home liquidation estate pursuant to N.H. RSA § 402-C:44, and Central Hudson shall receive distributions on the Recommended Amount at the same intervals and at the same percentages as other Class II creditors of Home.

4. Release by Central Hudson. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount, Central Hudson for itself and to the extent it has the current actual authority to act on and behalf of, its officers, directors, employees, agents, attorneys, predecessors, and its successors and assigns (including any trustee or other statutory successor), hereby irrevocably and unconditionally releases and discharges the Liquidator and Home and each of their officers, directors, employees, agents, attorneys, affiliates, predecessors, successors and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts,

controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and/or demands, except for Asbestos Claims, arising from or related to the Proof of Claim or the Policies, in law, admiralty or equity, which Central Hudson, its predecessors, successors and assigns, ever had, now has or hereafter may have against the Liquidator or Home or their officers, directors, employees, agents, attorneys, affiliates, predecessors, successors and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proof of Claim or the Policies.

5. Release by Liquidator. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount, the Liquidator, in his capacity as such, and on behalf of Home and each of their officers, directors, employees, agents, attorneys, affiliates, predecessors, and their successors and assigns (including any liquidator or statutory successor), hereby irrevocably and unconditionally releases and discharges Central Hudson and its officers, directors, employees, agents, attorneys, predecessors, successors and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, retrospective premiums, deductibles, self-insured retentions, claims and/or demands, except for matters regarding Asbestos Claims, arising from or related to the Proof of Claim or the Policies, in law, admiralty or equity, which the Liquidator, Home, or their affiliates, predecessors, successors and assigns, ever had, now has or hereafter may have against Central Hudson or its officers, directors, employees, agents, attorneys, predecessors, successors and assigns, all whether known or unknown, suspected or unsuspected, fixed or

contingent, in law, admiralty or equity, arising from or related to the Proof of Claim or the Policies.

6. Resolution of Matters and Indemnification. Central Hudson acknowledges that this Settlement Agreement is intended to resolve all matters except for Asbestos Claims arising out of or relating to any rights it ever had, now has or hereafter may have in the Policies and the Proof of Claim, including any asserted rights of claimants against Central Hudson under the Policies. Central Hudson agrees to handle and address, at its sole cost and expense, any said claims of claimants against Central Hudson as if there had been no liquidation proceeding for Home, and as if Central Hudson had no insurance coverage from Home by virtue of the Policies. In consideration of the Recommended Amount being allowed by the Liquidation Court, Central Hudson agrees to indemnify and hold the Liquidator and Home harmless from and against any and all claims, losses, liabilities, debts, damages, costs or expenses (except for those arising from the Asbestos Agreement) arising from or related to the Policies and such indemnification shall be capped at the Recommended Amount as allowed by the Liquidation Court. ("Indemnified Claims"). The future obligations of Central Hudson under this paragraph shall extend to and include (by way of example and not limitation) any claims, except for Asbestos Claims and claims arising from the Asbestos Agreement, made under the Policies against the Liquidator or Home by vendors of or respecting Central Hudson (including claims for defense and indemnity), by other insurers of Central Hudson, and by any individuals or entities asserting "direct action" claims arising out of or related to the Policies. The Liquidator shall promptly notify Central Hudson of any Indemnified Claims, shall keep Central Hudson informed of material developments regarding such claims, and shall afford Central Hudson the opportunity to reasonably participate in the defense of such claims. The Liquidator shall assert all defenses reasonably available to the Liquidator to such claims against the Liquidator or Home, including

defenses under the Order of Liquidation or the New Hampshire Insurers Rehabilitation and Liquidation Act. Central Hudson shall cooperate with the Liquidator (including but not limited to the provision of affidavits or testimony) to eliminate claims against the Liquidator or Home by any insurer, individual or entity arising out of or relating to the Policies.

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

8. Other Representations and Warranties. The Liquidator warrants and represents that a thorough and diligent search of Home's records has been conducted and he is not presently aware of any insurance policies, other than the insurance policies set forth in this Agreement and defined as Policies that were sold or issued to or for the benefit of Central Hudson by Home. The Liquidator also warrants and represents that he is not presently aware of any claim that would obligate Central Hudson to indemnify Home pursuant to Section ^{6 CMC/fwk} 5, above, other than the proof of claim previously disclosed to Central Hudson.

9. No Assignments. Central Hudson warrants and agrees that it has not assigned, conveyed, or otherwise transferred any claims, demands, causes of action, rights, or obligations related in any way to the Policies, or any proceeds thereof, or to the claims, losses and expenses

released herein, to any person or entity. Central Hudson shall not assign any of the rights or obligations under this Settlement Agreement without the consent of the Liquidator, which consent shall not be unreasonably withheld.

10. 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.

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

12. 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 this Settlement Agreement and have had the opportunity to consider its terms and effects and that they have executed this Settlement Agreement voluntarily and with full understanding of its terms and effects. This Settlement Agreement is the product of negotiations between the Parties. No Party shall be charged with having promulgated this Settlement Agreement, and the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement.

13. No Third Party Rights. Except as provided in Section 7, this Settlement Agreement is entered into solely for the benefit of the Liquidator and Central Hudson and is not intended to, and does not give or create any rights to or in any person or entity other than the Parties.

14. Counterparts. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. Power and Authority to Execute. Subject to the approval of the Liquidation Court required by paragraph 1, each Party hereto represents and warrants that it has the full power and authority to execute, deliver and perform this Settlement Agreement, that each individual signing on behalf of a Party has been duly authorized by that Party to execute this Settlement Agreement on its behalf, and that no claims being released under the terms of this Settlement Agreement have been assigned, sold, or otherwise transferred to any other entity.

16. 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.

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

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

19. Validity of Settlement Agreement. Subject to approval of this Settlement Agreement by the Liquidation Court as required by paragraph 1, each Party represents and warrants that this Settlement Agreement is a legal, valid and binding obligation, enforceable in accordance with its terms.

20. No Waiver. No waiver of any right under this Settlement Agreement shall be deemed effective unless contained in a writing signed by the Party or an authorized representative of the Party charged with such waiver, and no waiver of any breach or failure to

perform shall be deemed to be a waiver of any future breach or failure to perform or of any other provision of this Settlement Agreement. This Settlement Agreement may not be amended except in a document signed by the Party or an officer or other authorized official of the Party to be charged.

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

If to Central Hudson, to:

Matthew McGarril, Risk Manager
Central Hudson Gas & Electric Corp.
284 South Avenue
Poughkeepsie, NY 12601
Fax: 845-486-5560

and

Thompson Hine LLP
335 Madison Avenue
New York, NY 10017-4611
Fax: 212-344-6101

If to the Liquidator, to:

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

and

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

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.

Central Hudson Gas & Electric Corporation

By: Christopher M. Capone
Name: CHRISTOPHER M. CAPONE
Title: EVP+CFO
Date: 1/9/08

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

By: Thomas W. Kober
Name: THOMAS W. KOBER
Title: Chief Claims Officer
Date: 1/15/2008