

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 HONEYWELL**

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 Honeywell International Inc., its predecessors, successors, subsidiaries and affiliates (including but not limited to Allied Corporation, Allied Chemical Corporation, The Bendix Corporation, Eltra Corporation, Midland-Ross Corporation, The Signal Companies, individually and collectively hereinafter referred to as "Honeywell") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. Home issued thirty-six (36) insurance policies to Honeywell for certain policy periods between February 15, 1968 and March 1, 1985. Upon Home's placement in liquidation, Honeywell filed thirty-six (36) proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for asbestos bodily injury.

Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Settlement Agreement with Honeywell ("Bengelsdorf Aff.") ¶ 3.

2. The Liquidator and Honeywell have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters between them under the policies. A copy of

the Settlement Agreement is attached hereto as Exhibit A. 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 the proofs of claim in the aggregate amount of \$75,500,000 as a Class II priority claim under RSA 402-C:44. Settlement Agreement ¶ 2(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve the proofs of claim and all claims Honeywell has under the policies. Id. ¶ 2(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. ¶ 2(C). Bengelsdorf Aff. ¶ 5.

4. The Settlement Agreement is intended to resolve the proofs of claim and all claims under the policies. See Settlement Agreement ¶¶ 2(B), 5. To that end, the Settlement Agreement provides for mutual releases of all claims between Home and Honeywell arising from or related to the proofs of claim or the policies. Id. ¶¶ 3, 4. Bengelsdorf Aff. ¶ 6.

5. Except for one claim identified in the Settlement Agreement, the Liquidator is not aware of any third party claimants asserting claims under the policies. See Settlement Agreement ¶ 10 (noting one third party claim and one contribution claim). This third party claim was not within the Honeywell proof of claim, was not considered in the settlement and will not be affected by the settlement. See id. ¶ 5. However, in resolving all matters relating to the proofs of claim and the policies, the Settlement Agreement contemplates denial of any other third party claimants' claims under the policies in the Home liquidation without prejudice to their claims against Honeywell. Accordingly, Honeywell acknowledges in the Settlement Agreement that it is intended to resolve all matters between Honeywell and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Honeywell agrees to address, at its sole cost, the claims of claimants

asserting claims against Honeywell as if Honeywell had no insurance coverage from Home under the policies. *Id.* Honeywell agrees to indemnify the Liquidator and Home against claims arising from the policies up to the amounts actually distributed to Honeywell, except with respect to the identified third party claim, which concerns a recently filed action regarding alleged environmental contamination. *Id.*; see *id.* ¶ 10. *Bengelsdorf Aff.* ¶ 7.

6. The denial of any future third party claimants' proofs of claim without prejudice to their claims against Honeywell will not harm the third party claimants, who will continue to have their full claims against Honeywell. As noted above, Honeywell has agreed to address these claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 5. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Honeywell 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, Honeywell will continue to be fully responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 5. *Bengelsdorf Aff.* ¶ 8.

7. The Settlement Agreement reflects a compromise of the claims asserted in the proofs 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 asbestos bodily injury 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 Honeywell. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$75,500,000 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 Straits Steel (May 3, 2009); Order Approving Settlement Agreement with R. Lavin & Sons Inc. (February 23, 2009); Order Approving Settlement Agreement with MidAmerican (August 19, 2008); Order Approving Settlement Agreement with Georgia-Pacific (April 3, 2008); 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 Honeywell.

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:

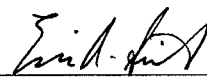
- A. Grant this Motion;
- B. Enter an Order in the form submitted herewith approving the Settlement Agreement, approving the Liquidator's claim recommendation, and allowing Honeywell's claim as a Class II claim in the aggregate amount of \$75,500,000; and
- C. Grant such other and further relief as justice 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,
MICHAEL A. DELANEY
ATTORNEY GENERAL

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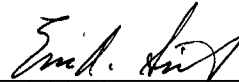


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160 Federal Street
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February 9, 2010

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Honeywell, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 9th day of February, 2010, 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. 03-E-0106

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is made this 19th day of January, 2010, by and between Honeywell International Inc. ("Honeywell") its predecessors, successors, subsidiaries and affiliates (including but not limited to Allied Corporation, Allied Chemical Corporation, The Bendix Corporation, Eltra Corporation, Midland-Ross Corporation, The Signal Companies, individually and collectively hereinafter referred to as "Claimants") on the one hand, and Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, solely in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), on the other hand (the Claimants and the Liquidator are hereinafter referred to collectively as the "Parties").

WHEREAS, Home issued the following insurance policies:

Allied Corporation

<u>Policy Number</u>	<u>Policy Period</u>
HEC9826168	07/01/79-03/01/80
HEC1203772	10/01/83-03/01/85

Allied Chemical Corporation

<u>Policy Number</u>	<u>Policy Period</u>
HEC9793708	04/15/71-03/01/72
HEC9919862	04/15/71-05/30/74
HEC9919859	04/15/71-05/30/74
HEC4344561	03/0001/72-3/1/73
HEC4429238	03/01/73-03/01/76
HEC9208956	03/01/76-03/01/77
HEC9329030	03/01/77-03/01/78
HEC9693853	03/01/78-03/01/79

Bendix

<u>Policy Number</u>	<u>Policy Period</u>
HEC9730354	12/31/69-12/31/72
HEC4428952	12/31/72-12/31/75
HEC9208534	12/31/75-10/1/76
HEC9346935	10/1/76-10/1/77
HEC9791370	12/31/69-12/31/72
HEC4356715	12/31/72-12/31/75
HEC9558267	2/15/68-12/31/69
HEC9305202	12/31/68-12/31/71
HEC9006976	12/31/75-10/1/76
HEC9328580	10/1/76-10/1/77
HEC9006977	12/31/75-10/1/76
HEC9328581	10/1/76-10/1/77
HEC9902316	10/1/82-10/1/83

Eltra Corporation

<u>Policy Number</u>	<u>Policy Period</u>
HEC9531437	07/01/77-07/01/78
HEC9694095	07/01/78-07/01/79
HEC9826182	07/01/79-03/01/80

Honeywell Inc.

<u>Policy Number</u>	<u>Policy Period</u>
HEC9791233	11/21/69-11/21/70
HEC9791233	11/21/70-11/21/72
HEC4356613	11/21/72-11/21/75
HEC9006924	11/21/75-07/01/77
HEC9531491	07/01/77-07/01/78
HEC9631842	07/01/78-07/01/79

Midland Ross Corporation

<u>Policy Number</u>	<u>Policy Period</u>
HEC9792008	03/01/70-03/01/73
HEC4429291	03/01/73-03/01/76

The Signal Companies

Policy Number	Policy Period
HEC9304708	10/01/68-10/03/70
HEC9328422	10/01/76-10/01/77

which 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, Claimants seek payment from Home respecting claims, including but not limited to claims for asbestos bodily injury, against them, and Claimants have submitted proofs of claim in the Home liquidation estate relating to the above-referenced Policies that have been assigned the following proof of claim numbers:

INSU703390	INSU703408
INSU703391	INSU703409
INSU703392	INSU703410
INSU703393	INSU703411
INSU703394	INSU703412
INSU703395	INSU703413
INSU703396	INSU703414
INSU703397	INSU703415
INSU703398	INSU703416
INSU703399	INSU703417
INSU703400	INSU703418
INSU703401	INSU703419
INSU703402	INSU703328
INSU703403	INSU703330
INSU703404	INSU703331
INSU703405	INSU703332
INSU703406	INSU703333
INSU703407	INSU703903

which together with any other proof of claim hereinbefore or hereinafter filed by Claimants in the Home liquidation estate are defined as the "Proofs of Claim";

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

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

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

1. Effectiveness. This Settlement Agreement is conditioned and shall only become effective (the "Effective Date"), upon approval by the Liquidation Court. The Liquidator shall move at his expense for approval of this Settlement Agreement promptly following execution by both Parties.

2. Recommendation, Allowance and Classification of Claims.

A. Subject to all the terms of this Settlement Agreement, and with the agreement of Claimants, which by Claimants' execution hereof is hereby granted, the Liquidator shall recommend pursuant to RSA § 402-C:45 that the Proofs of Claim be allowed in the aggregate amount of \$75,500,000 (the "Recommended Amount"), as a Class II priority claim under RSA § 402-C:44. The Liquidator shall seek allowance of the Recommended Amount as a Class II claim by the Liquidation Court in the Liquidator's motion for approval of this Settlement Agreement.

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

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

3. Release by Claimants. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II claim, Claimants for themselves and on behalf of their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns (including any trustee or other statutory successor), irrevocably and unconditionally release and discharge the Liquidator and Home and each of their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and/or demands arising from or related to the Proofs of Claim or the Policies, in law, admiralty or equity, which

Claimants, their subsidiaries, affiliates, predecessors, successors and assigns, ever had, now have or hereafter may have against the Liquidator or Home or their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proofs of Claim or the Policies.

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

5. Resolution of Matters and Indemnification. Claimants acknowledge that this Settlement Agreement is intended to resolve all matters arising out of or relating to any

rights they ever had, now have or hereafter may have in the Policies and the Proofs of Claim, including any asserted rights of claimants against Claimants under the Policies, and Claimants agree to address, at their sole cost and expense, any such claims of claimants against Claimants as if there had been no liquidation proceeding for Home and as if Claimants had no insurance coverage from Home by virtue of the Policies. In consideration of the Recommended Amount being allowed by the Liquidation Court as a Class II claim, Claimants agree to indemnify and hold the Liquidator and Home harmless from and against any and all claims, losses, liabilities, or debts arising from or related to the Policies, with the exception of Proof of Claim CLMN713049 referenced in Paragraph 10 herein; provided, however, that such indemnification (i) shall be capped at the amount actually distributed in relation to the Recommended Amount as allowed by the Liquidation Court; and (ii) shall not include internal costs or expenses incurred by or on behalf of the Liquidator or Home in resolving the indemnified claim. The future obligations of Claimants under this paragraph shall extend to and include (by way of example and not limitation) any claims made under the Policies against the Liquidator or Home by vendors of or respecting Claimants (including claims for defense and indemnity), by other insurers of Claimants, and by any individuals or entities asserting "direct action" claims arising out of or related to the Policies. The Liquidator shall promptly notify Claimants of any such claim and take no action that would prejudice the outcome of any such claim. Claimants shall cooperate with the Liquidator to eliminate claims against the Liquidator or Home by any individual or entity arising out of or relating to the Policies.

6. No Assignments. Claimants warrant and agree that they have not assigned, conveyed, or otherwise transferred any claims, demands, causes of action, rights, or obligations related in any way to the Policies, or any proceeds thereof, or to the claims, losses and expenses released herein, to any person or entity.

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 exclusive venue for any dispute between the Parties arising out of the Proofs of Claim or this Settlement Agreement shall be the Liquidation Court.

9. Due Diligence. The Parties acknowledge and agree that, in negotiating and executing this Settlement Agreement, they have relied upon their own judgment and upon the recommendations of their own legal counsel, that they have read this Settlement Agreement and have had the opportunity to consider its terms and effects and that they have executed this Settlement Agreement voluntarily and with full understanding of its terms and effects. This Settlement Agreement is the product of negotiations between the Parties. No Party shall be charged with having promulgated this Settlement Agreement, and the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement.

10. Representation. The Liquidator represents that he has reviewed the proofs of claim submitted in the Home Insurance Company liquidation and that as of the date this Settlement Agreement is signed on his behalf, he is aware of no other unresolved proofs of claim that have been submitted specifically referencing the Policies other than the Proofs of Claim filed by Claimants, with the exception of the following Proofs of Claim: INTL702091, a contribution claim filed on behalf of Certain Underwriters at Lloyd's London; and CLMN713049, relating to a suit brought on behalf of The Mitchell Group, Inc. against Honeywell International, Inc., filed in the U.S. District Court Southern District Indiana in May 2009, involving a CERCLA action for remediation of allegedly contaminated property located at 10930 East 59th Street in Indianapolis, Indiana.

11. No Third Party Rights. This Settlement Agreement is entered into solely for the benefit of the Liquidator, Home and Claimants and is not intended to, and does not give or create any rights to or in any person or entity other than the Parties.

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

13. Power and Authority to Execute. Subject to the approval of the Liquidation Court required by paragraph 1, each Party hereto represents and warrants that it has the full power and authority to execute, deliver and perform this Settlement Agreement; that all requisite and necessary approvals have been obtained to consummate the transactions contemplated by this Settlement Agreement, that there are no other agreements or transactions to which it is a party that would render this Settlement Agreement, or any part thereof, void, voidable or unenforceable; that each individual signing on behalf of a Party has been duly authorized by that Party to execute this Settlement Agreement on its behalf; and that no claims being released under the terms of this Settlement Agreement have been assigned, sold, or otherwise transferred to any other entity.

14. 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.

15. 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.

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

17. 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.

18. 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.

19. 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 Claimants, to:

Tanya Holcomb
Chief Corporate Litigation Counsel
Assistant General Counsel
Honeywell International Inc.
101 Columbia Road
Morristown, NJ 07962

With a Copy to:

Lois H. Fuchs
Vice President, Risk Management
Honeywell International Inc.
101 Columbia Road
Morristown, NJ 07962

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

and

J. David Leslie, Esq.
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One Financial Center
Boston, MA 02111
Fax: 617-542-7437

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.

Honeywell International Inc.

By: Tanya Holcomb

Name: Tanya Holcomb

Title: Chief Corporate Litigation Counsel

Date: January 15, 2010

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

By: Thomas W. Kober

Name: Thomas W. Kober

Title: Chief Claims Officer

Date: January 19, 2010