

**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  
WESTERN ASBESTOS SETTLEMENT TRUST**

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 the Western Asbestos Settlement Trust ("Trust"), in its capacity as the sole owner of Western Asbestos Company, and pursuant to the authority granted in the Order Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief ("Confirmation Order") as the successor to MacArthur Co. and Western MacArthur Co. to "initiate, prosecute, defend and resolve" all Asbestos Insurance Actions in the name of MacArthur Co., Western MacArthur Co. and/or Western Asbestos Company (the "MacArthur Companies") (collectively, "Claimants")<sup>1</sup> and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. Home issued seven insurance policies under which the Claimants are named insureds for various policy periods between January 1, 1976 and January 1, 1983. Upon Home's placement in liquidation, the Claimants filed seven proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for alleged

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<sup>1</sup> The Trust was created in accordance with the provisions of the Second Amended Joint Plan of Reorganization approved by the Confirmation Order in the bankruptcy proceedings for the MacArthur Companies, In re Western Asbestos Company, Western MacArthur Co., and Mac Arthur Co., Jointly Administered under No. 02-46284 T (Bkrcty. N.D. Cal. January 27, 2004).

asbestos-related bodily injury. Settlement Agreement, first Whereas clause, third Whereas clause. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Settlement Agreement with Western Asbestos Settlement Trust (“Bengelsdorf Aff.”) ¶ 3.

2. The Liquidator and the Claimants have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim. A copy of the Settlement Agreement is attached as Exhibit A hereto. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.<sup>2</sup> Following approval, the pending disputed claim proceeding (2011-HICIL-48) will be dismissed. See id. ¶ 10. Bengelsdorf Aff. ¶ 4.

3. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$242,500,000 as a Class II priority claim of the Claimants under RSA 402-C:44. Settlement Agreement ¶ 3(A).<sup>3</sup> Allowance of this recommended amount as a Class II claim will fully and finally resolve the proofs of claim. 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. All distributions to Claimants will be made to the Trust. Id. ¶ 3(C). Bengelsdorf Aff. ¶ 5.

4. The Settlement Agreement is intended to resolve the proofs of claim. See Settlement Agreement ¶ 3(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and the Claimants arising from or related to the proofs of claim. Id. ¶¶ 6, 7. The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the proofs of claim against other insurers of the Claimants that

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<sup>2</sup> Claimants are also to seek approval of the Settlement Agreement from the bankruptcy court that entered the Confirmation Order in the MacArthur Companies bankruptcy proceeding. Settlement Agreement ¶ 2. However, as the bankruptcy proceeding has concluded, it is not clear that the bankruptcy court will hear the matter, and that approval is accordingly not required. Id.

<sup>3</sup> The parties agree that the recommended amount is a compromise of matters in dispute and does not reflect the view of any party as to the value of Claimants’ claims should the matter be adjudicated. Settlement Agreement ¶ 5.

agree not to pursue such claims against Home. Id. ¶ 8. The Claimants release claims against Home by insurers with whom they have previously settled and agree to release or prohibit the assertion of claims by insurers with whom they settle in the future. Id. Bengelsdorf Aff. ¶ 6.

5. The Liquidator is not aware of any third party claimants who have asserted claims under the policies. However, in resolving all matters relating to the proofs of claim, the Settlement Agreement contemplates denial of any third party claimants' claims under the policies in the Home liquidation without prejudice to their claims against the Claimants. Accordingly, the Claimants agree to address, at their sole cost, the claims of claimants asserting claims against the Claimants as if the Claimants had no insurance coverage from Home under the policies. Settlement Agreement ¶ 9(A). The Claimants agree to indemnify the Liquidator and Home against claims arising from the policies (other than Guaranty Association claims, which are addressed below) up to the amounts ultimately distributed or distributable to the Claimants. Id. ¶ 9(A), (C). Id. Bengelsdorf Aff. ¶ 7.

6. The denial of any third party claimants' proofs of claim without prejudice to their claims against the Claimants will not harm the third party claimants, who will continue to have their full claims against the Claimants, although those claims can only be paid in accordance with the provisions of the Trust and the MacArthur Companies' bankruptcy plan.<sup>4</sup> As noted above, the Claimants have agreed to address these claims as if they had no insurance coverage from Home under the policies. Settlement Agreement ¶ 9(A). Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release the Claimants from those claims up to the limits of the policies but only entitle the third party claimants

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<sup>4</sup> As part of the Confirmation Order, all Asbestos Related Claims (including claims for personal injury from asbestos against any of the MacArthur Companies) were channeled to, and are to be paid solely from, the Trust. Confirmation Order ¶ 32. Further, all entities that hold any Asbestos Related Claim against an Asbestos Insurance Company (which includes Home) are enjoined from taking any action without the express permission of the trustees of the Trust to collect on that claim. Id. ¶ 34.

(assuming their claims were 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, the Trust will continue to be responsible for any third party claimants’ claims against Claimants in accordance with its terms and the provisions of the MacArthur Companies’ bankruptcy plan. See Settlement Agreement ¶ 9(A). Bengelsdorf Aff. ¶ 8.

7. The Settlement Agreement is different from other settlement agreements previously approved by the Court because it does not resolve all matters under the Home insurance policies. The Claimants are pursuing claims against Zurich-American Insurance Company and other companies in Western Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al., Case No. CGC-04-436181 (San Francisco Superior Ct.), which is coordinated with other cases in the same court (the “Zurich Litigation”). Settlement Agreement fifth Whereas clause. As part of the Zurich Litigation, the Claimants have asserted claims against the California Insurance Guarantee Association under the Home policies, and they have, or may, assert such claims against other insurance guaranty associations. Id., seventh Whereas clause. The Liquidator acknowledges that he is aware of the Claimants’ pending claims in the Zurich Litigation and takes no position as to those claims. The Settlement Agreement is not intended to affect those claims other than the claim asserted by the Claimants against the California Insurance Guarantee Association. Id. ¶ 4. Bengelsdorf Aff. ¶ 9.

8. When an insurance guaranty association such as the California Insurance Guarantee Association responds to a claim under an insolvent insurer’s policy, the association generally has a corresponding claim in the insurer’s liquidation both for its expenses and any

payment to the claimant. See, e.g., RSA 402-C:44; RSA 404-B:11. The Settlement Agreement provides for this in paragraphs 9 and 10. As described below, these provisions are designed to maintain the position of the Home estate and its Class II creditors under the Settlement Agreement regardless of the outcome of Claimants' claim against the California Insurance Guarantee Association or any other insurance guaranty association under the Home policies. Bengelsdorf Aff. ¶ 10.

9. The insurance guaranty association issues are addressed in the Settlement Agreement as follows. The Claimants agree to dismiss, without prejudice, their claims against the California Insurance Guarantee Association in the Zurich Litigation. Settlement Agreement ¶ 10. If the Claimants subsequently pursue claims under the Home policies against any insurance guaranty association, they acknowledge that the association's expenses of addressing the claim and any recovery from the association may become a claim in the Home liquidation. Id. ¶ 9(B)(1). The Home and its Class II creditors are protected against the impact of such a claim because any such expenses or recovery will be deducted from the recommended amount allowed to Claimants as a Class II claim in the Home liquidation. Id. If the expenses and recovery exceed the recommended amount, Claimants will not recover anything from the Home liquidation. Id. ¶ 9(B)(2). Furthermore, unless the insurance guaranty association agrees not to assert a claim in the Home liquidation for the excess amounts, Claimants agree to indemnify Home and the Liquidator by paying an amount that will negate the effect of the amount of the recoveries and expenses in excess of the recommended amount on any distributions to Class II claimants in the Home liquidation. Id. This indemnity obligation is not capped by amounts distributed to Claimants, id. ¶ 9(C), and the Claimants' obligation under this provision will be secured by the Claimants placing 75% of any such excess recovery into escrow. Id. ¶ 9(B)(2). Finally, in the event that Claimants' claims against insurance guaranty associations and the

associations' claims in the Home liquidation have not been resolved at the time the Liquidator is to make a distribution, the distribution is to be placed in escrow until (i) the Claimants' claim against the insurance guaranty association or associations is resolved, (ii) the Claimants waive all claims against the associations, and (iii) the association or associations' claims in the Home liquidation are resolved. Id. ¶ 9(B)(3). Bengelsdorf Aff. ¶ 11.

10. The Settlement Agreement reflects a compromise of the claims asserted in the proofs of claim. It is the result of negotiations involving the Claims Department, under the supervision of the Special Deputy Liquidator, which has extensive experience in assessing the exposure presented by asbestos-related bodily injury claims under Home's insurance policies. The agreed recommended amount is based on careful evaluation and negotiation of coverage obligations under Home's policies respecting the underlying liabilities of the Claimants. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$242,500,000 recommended amount as a Class II claim of the Claimants in accordance with RSA 402-C:45 and RSA 402-C:44. Bengelsdorf Aff. ¶12.

11. The Court has previously approved similar settlement agreements, although without the insurance guaranty association aspects noted in paragraphs 7-9 above. See, e.g., Order Approving Settlement Agreement with Wisconsin Energy (March 18, 2010); Order Approving Settlement Agreement with Straits Steel (May 3, 2009); Order Approving Settlement Agreement with Georgia-Pacific (April 3, 2008); 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.

12. 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 policy coverage compromises and settlements in an insurer liquidation context. That analysis also applies to the proposed Settlement Agreement with the Claimants.

13. 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. ¶ 13.

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 the Claimants' claim as a Class II claim in the aggregate amount of \$242,500,000; 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,  
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March 7, 2011



**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with Western Asbestos Settlement Trust, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 7th day of March, 2011, by first class mail, postage prepaid to all persons on the attached service list.



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Eric A. Smith  
NH Bar ID No. 16952

THE STATE OF NEW HAMPSHIRE

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SUPERIOR COURT

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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 18th day of February 2011, by and between the Western Asbestos Settlement Trust ("Trust"), P.O. Box 3413, Reno, Nevada, in its capacity as the sole owner of Western Asbestos Company, and pursuant to the authority granted in the Order Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief, dated January 27, 2004 (the "Confirmation Order") as the successor to MacArthur Co. and Western MacArthur Co. to "initiate, prosecute, defend and resolve" all Asbestos Insurance Actions in the name of MacArthur Co., Western MacArthur Co. and/or Western Asbestos Company (the "MacArthur Companies") (collectively, "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 under which Claimants are named insureds:

<u>Policy Number</u>	<u>Policy Period</u>
GA-9 25 26 30	1/1/76-1/1/77
GA-9 37 68 91	1/1/77-1/1/78
GA-9 55 96 85	1/1/78-1/1/79
GA-9 71 09 95	1/1/79-1/1/80
GA-9 98 75 81	1/1/80-1/1/81
GA-9 99 33 35	1/1/81-1/1/82
GL-1 24 58 16	1/1/82-1/1/83,

which together with all other insurance policies that Home may have issued to Claimants 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 against them, including but not limited to claims for alleged asbestos-related bodily injury ("Asbestos Claims"), and Claimants have submitted proofs of claim in the Home liquidation that have been assigned the following proof of claim numbers:

<u>Policy Number</u>	<u>Claim Number</u>
GA-9 25 26 30	INSU274428
GA-9 37 68 91	INSU274338
GA-9 55 96 85	INSU274454
GA-9 71 09 95	INSU274475
GA-9 98 75 81	INSU274533

GA-9 99 33 35  
GL-1 24 58 16

INSU274535  
INSU274653,

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

WHEREAS, Claimants have reached settlements regarding insurance coverage for Asbestos Claims with certain of their other insurers; and Claimants may in the future reach settlements regarding insurance coverage for Asbestos Claims with certain of their other insurers (all such past and future insurers are defined as the "Settling Insurers");

WHEREAS, the Claimants are currently pursuing claims against Zurich-American Insurance Company, individually and as successor to Zurich Insurance Company; Zurich American Insurance Company of Illinois, Steadfast Insurance Company, Zurich Insurance Company (Switzerland), Individually and as a Successor in Interest, Parent, and Alter Ego of Zurich Home Investments Limited formerly known as ZCI Investments Limited, Centre Reinsurance Limited (Barbados), Centre Reinsurance Limited (Bermuda), and Centre Reinsurance Holdings, Ltd., American Guarantee and Liability Insurance Co., American Zurich Insurance Company, and Orange Stone Reinsurance (Ireland), formerly known as Centre Reinsurance (Dublin), successor to Centre Reinsurance International (hereinafter the "Zurich Defendants") in the matter styled *Western Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al.*, case no. CGC-04-436181 (San Francisco Superior Ct.), which is coordinated for all current purposes with *Fuller-Austin Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al.*, Case Nos. CGC 04-431719 (San Francisco Superior Ct.), *PepsiAmericas, Inc. et al. v. Zurich-American Insurance Co., et al.*, CGC 05-442140 (San Francisco Superior Ct.), and *Pneumo Abex, LLC v. Zurich-American Insurance Co., et al.*, Case No. CGC 05-442745 (San Francisco Superior Ct.) (collectively, the "Zurich Litigation");

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

WHEREAS, Claimants have asserted claims against the California Insurance Guarantee Association which are pending as part of the Zurich Litigation and have, or may, assert claims against other insurance guaranty associations established by law to provide for payment of certain covered claims in case of the insolvency of an insurer ("Insurance Guaranty Associations");

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) in the Home liquidation 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 upon and shall only become effective (the "Effective Date"), upon approval by the Liquidation Court. The Liquidator shall move for approval of this Settlement Agreement promptly following execution of this Settlement Agreement by all Parties.

2. Bankruptcy Court Approval. Promptly following execution of this Settlement Agreement by all Parties, Claimant shall move for an order from the United States Bankruptcy Court for the Northern District of California, which entered the Confirmation Order in the Mac Arthur bankruptcy proceedings in Case Nos. 02-46284 T through 02-02-46286 T, approving entry into this Settlement Agreement. Claimants shall use their best efforts to secure a final order from the Bankruptcy Court approving the Trust's entry into this Settlement Agreement. The Parties shall cooperate in seeking such court approval. Failure to obtain approval of the Bankruptcy Court shall not affect the Parties' obligations hereunder.

3. 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 \$242,500,000 (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 against Home and the Liquidator. 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 were ever reached, with this Settlement Agreement then being inadmissible for any purpose in any dispute between the Parties.

C. When the Liquidation Court allows the Recommended Amount as a Class II claim (the "Class II Allowed Claim"), Claimants will become Class II creditors in the Home liquidation 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. All distributions to Claimants shall be paid to the Trust.

4. Acknowledgement of Other Claims. The Liquidator acknowledges that he is aware of the Claimants' pending claims in the Zurich Litigation and takes no position as to those claims. This Settlement Agreement is not intended to affect those claims other than the claim asserted by Claimants in the Zurich Litigation against the California Insurance Guarantee Association.

5. Agreement as to Recommendation and Allowance. As part of this Settlement Agreement, the Liquidator and the Claimants acknowledge and agree that the Recommended



Amount is a compromise of matters in dispute and does not reflect the view of any Party as to the value of Claimants' claims should the matter be adjudicated.

6. 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 each 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, 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. Further, Claimants expressly waive and relinquish all rights and benefits they may have under Section 1542 of the Civil Code of the State of California, which reads as follows: "Section 1542. [Certain claims not affected by general release.] 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," or any similar law. Such release does not extend to the Zurich Defendants or Insurance Guaranty Associations (subject to the provisions of paragraph 4, above and paragraph 9, below).

7. 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 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, in law, admiralty or equity, which the Liquidator, Home, 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. Further, the Liquidator expressly waives and relinquishes all rights and benefits he may have under Section 1542 of the Civil Code of the State of California, which reads as follows: "Section 1542. [Certain claims not affected by general release.] 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," or any similar law.

8. Additional Release. The Liquidator, in his capacity as such and on behalf of Home, releases any and all Settling Insurers with which Claimants reach settlements, from any alleged or potential claims or actions for contribution, subrogation, indemnity, reimbursement or recoupment of any kind that the Liquidator or Home has made or may or could make against any Settling Insurer with regard to insurance of Claimants provided that such Settling Insurers similarly release their claims against Home and the Liquidator with regard to insurance of Claimants. Claimants have in paragraph 6 above released claims against Home or the Liquidator for contribution, subrogation, indemnity, reimbursement or recoupment of any kind by Settling Insurers with which Claimants have reached settlements with respect to insurance of Claimants. In the event that, notwithstanding these releases, a Settling Insurer asserts a claim against Home or the Liquidator for contribution, subrogation, indemnity, reimbursement or recoupment of any kind with respect to insurance of Claimants from Home, Claimants' obligations are governed by paragraph 9 below. Claimants shall obtain the right to release or prohibit the assertion of claims for contribution, subrogation, indemnity, reimbursement or recoupment as against Home or the Liquidator with respect to insurance for Claimants in any future settlements with Settling Insurers. Claimants shall release or prohibit the assertion of claims against Home or the Liquidator for contribution, subrogation, indemnity, reimbursement or recoupment of any kind by future Settling Insurers with respect to insurance of Claimants.

9. Resolution of Matters and Indemnification.

A. (1) In consideration of the Recommended Amount being allowed by the Liquidation Court as a Class II claim, Claimants agree to address, at their sole cost and expense, any Asbestos Claims or other claims 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. Claimants further agree to indemnify and hold Home and the Liquidator harmless from and against any and all claims, losses, liabilities, debts, damages, costs or expenses arising from or related to the Policies other than Insurance Guaranty Association claims, which are addressed in subparagraph B below. The obligations of Claimants under this subparagraph A shall extend to and include (by way of example and not limitation) any claims made arising out of or relating to the Policies (including claims for defense, indemnity, contribution, reimbursement, set-off, indemnity, subrogation, attorney's fees or costs) against Home or the Liquidator by insurers of Claimants or by any individuals or entities asserting "direct action" claims.

(2) 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 and the New Hampshire Insurers Rehabilitation and Liquidation Act. The Liquidator shall promptly notify Claimants of any such claim, shall keep Claimants informed of material developments regarding such claims, and shall afford Claimants the opportunity to reasonably participate in the defense of such claims. Claimants shall cooperate with and support the Liquidator (including but not limited to the provision of affidavits or testimony) to eliminate claims against Home or the Liquidator by any insurer, individual or entity arising out of or relating to the Policies.

B. (1) Claimants acknowledge that, in the event they pursue any claim under the Policies against any Insurance Guaranty Association, the Insurance Guaranty Association's expenses of addressing the claim and any recovery may become a claim by the Insurance Guaranty Association in the Home liquidation. Claimants agree that any judgments, settlements, or other recoveries by claimants from any Insurance Guaranty Association with respect to the Policies ("Recovery" or "Recoveries") and the Insurance Guaranty Association's Policies-related expenses incurred after the Effective Date of this Agreement ("Expenses") shall be deducted from the Recommended Amount. In the event of such Expenses or Recovery, the amount allowed as a Class II claim in the Home liquidation shall be the Recommended Amount minus both (i) the Expenses, and (ii) any Recoveries.

(2) In the event that Recoveries plus Expenses exceed the Recommended Amount, Claimants shall not recover anything from the Home liquidation. With respect to the amount of such Recoveries plus Expenses that is in excess of the Recommended Amount (the "Excess Recovery"), Claimants may attempt to obtain an agreement from the Insurance Guaranty Associations releasing any claim for the Excess Recovery against Home and the Liquidator. But in the event the Insurance Guaranty Associations assert a claim for the Excess Recovery in the Home liquidation which is allowed by the Liquidation Court, Claimants agree to indemnify and hold Home and the Liquidator harmless and Claimants shall be obligated to indemnify Home and the Liquidator by paying an amount that shall negate the effect of the Excess Recovery on any interim distributions and the final distribution to Class II claimants in the Home liquidation. The indemnity amount shall be calculated by the Liquidator at the time of the Excess Recovery, if a distribution has been previously made, and at the time of each distribution thereafter by calculating the distribution percentage in two ways: (i) using the Recommended Amount in the liability total and (ii) using the Recommended Amount plus the Excess Recovery in the liability total. The indemnity amount shall be the additional amount necessary to provide for a distribution at the distribution percentage resulting from calculation (i) to the liabilities used in calculation (ii). The obligation of Claimants pursuant to this provision shall be continuing, such that each increase in the Class II distribution percentage shall increase the amount payable to the Liquidator as a result of an Excess Recovery. Furthermore, to secure this obligation, Claimants shall deposit 75 percent of the Excess Recovery into escrow with a mutually acceptable third-party escrow agent (the "Escrow Agent") pending the distributions in the Home liquidation. This escrow shall be maintained by the Escrow Agent until the final distribution in the Home liquidation is made. The Liquidator shall determine the indemnity amount regarding each distribution in accordance with this subparagraph B(2) and advise the Claimants and the Escrow Agent. The Escrow Agent shall then distribute the indemnity amount for that distribution to the Liquidator. Any interest accruing on the funds while held in escrow shall be transferred to the Claimants, and the remainder after the indemnity payment regarding the final distribution shall be released to Claimants. The escrow shall be established and administered pursuant to a mutually acceptable written escrow agreement and shall be jointly administered with respect to investment of the escrowed funds. The purpose of this provision is to ensure that no Class II claimant receives less in any distribution as a result of an Excess Recovery than it otherwise would receive if Claimants had only recovered the Recommended Amount.

(3) If, at the time that the Liquidator is to make a distribution to Claimants based upon the Recommended Amount, (i) the Recoveries plus Expenses are less than the Recommended Amount, (ii) Claimants have waived all rights to any further recovery from Insurance Guaranty Associations with respect to the Policies, and (iii) the Insurance Guaranty

Associations' claims in the Home liquidation regarding the Recoveries have been resolved, the Liquidator shall make distributions to Claimants as provided for in this Agreement. If, however, at that time, (i) Claimants are pursuing a claim against any Insurance Guaranty Association with respect to the Policies, (ii) Claimants do not waive the right to pursue claims against any Insurance Guaranty Association with respect to the Policies, or (iii) an Insurance Guaranty Association against whom the Claimants have obtained a Recovery is asserting or could still assert a claim in the Home liquidation regarding the Recovery, the distribution amount shall be placed in escrow with a mutually acceptable third-party escrow agent (the "Escrow Agent") pending (i) resolution of the Claimants' claim against the Insurance Guaranty Association or Associations, (ii) receipt from the Claimant of a waiver of all claims against Insurance Guaranty Associations, and (iii) resolution of the Insurance Guaranty Association's or Associations' claims in the Home liquidation. This escrow shall be maintained by the Escrow Agent until the Claimants' claim against the Insurance Guaranty Association or Associations is finally resolved, Claimants provide a waiver of all claims against Insurance Guaranty Associations, and all such Insurance Guaranty Association claims have been finally resolved in the Home liquidation. The Liquidator shall promptly determine the allocation of the distribution amount under this subparagraph B and advise the Claimants and the Escrow Agent. The Escrow Agent shall then distribute all funds held in escrow (including principal and interest) to Claimants and the Liquidator in accordance with that allocation. In the event that Recoveries plus Expenses exceed the Recommended Amount, all funds shall be distributed to the Liquidator. Any interest accruing on the funds while held in escrow shall be transferred to the recipients of the funds, along with principal, in accordance with the allocation. The escrow shall be established and administered pursuant to a mutually acceptable written escrow agreement and shall be jointly administered with respect to investment of the escrowed funds.

C. Notwithstanding any other provision of this Settlement Agreement, the amount that Claimants will pay for defense and indemnity obligations under this paragraph 9 shall be limited as follows: For indemnifiable claims brought against Home or the Liquidator under subparagraph A above, Claimants' indemnity obligations, in the aggregate, shall not exceed the amount of cash ultimately distributed or distributable to Claimants pursuant to this Settlement Agreement plus the amount of any cash received by Claimants from Insurance Guaranty Associations on account of the Policies. For indemnifiable claims brought against Home or the Liquidator under subparagraph B above, Claimants' indemnity obligations shall not be so limited.

10. Dismissals. Within ten days of the Effective Date, Claimants shall (a) dismiss or discontinue, with prejudice, any pending (active or stayed) proceedings, if any, against Home and the Liquidator, and (b) dismiss or discontinue, without prejudice, their claims against the California Insurance Guarantee Association in the Zurich Litigation.

11. No Assignment. 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 Proofs of Claim or the Policies, or any proceeds thereof, or to the claims, losses and expenses released herein, to any person or entity. Claimants agree that they shall not assign, convey, or otherwise transfer any claims, demands, causes of action, rights, or obligations related in any way to the Proofs of Claim or the Policies, or any proceeds thereof, or to the claims, losses and expenses released herein, to any person or entity. Claimants shall not assign, convey or otherwise transfer this Settlement Agreement or any rights and obligations thereunder without the written consent of the Liquidator, which consent shall not be unreasonably withheld.

12. 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.

13. 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. Nothing in this paragraph shall be construed as an admission, by either Party, as to the law governing the construction, interpretation or application of the Policies.

14. 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.

15. 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.

16. 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. The Parties agree that a signature sent by facsimile or electronic mail shall have the same force and effect as an original signature.

17. 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.

18. 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, liquidator's, receivers, administrators, agents, representatives, successors and assigns.

19. 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.

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

21. 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.

22. 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.

23. 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:


Ms. Sara Beth Brown, Executive Director Western Asbestos Settlement Trust, 100 West Liberty Street, Reno, Nevada 89501-1962 Fax: 775.325.6200 and Paul A. Zevnik, Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, N.W., Washington, D.C. 20004 Fax: 202.739.4755

If to the Liquidator, to:

Thomas W. Kober, Chief Claims Officer The Home Insurance Company in Liquidation, 61 Broadway, New York, New York 10006-2504 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, J. David Leslie, Rackemann, Sawyer & Brewster, P.C. 160 Federal Street, Boston, Massachusetts 02110 Fax: 617-542-7437, and Roger E. Warin, Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036 Fax 202-429-3902.

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.

CLAIMANTS (AS DEFINED HEREIN)

By: 

Name: Sara Beth Brown

Title: Executive Director

Date: 2-18-11

**LIQUIDATOR (AS DEFINED HEREIN)**

By: Thomas W. Kober

Name: Thomas W. Kober

Title: Chief Claims Officer

Date: February 18, 2011