

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 J T THORPE 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 J T Thorpe Company Successor Trust (the "Trust") on its own behalf and on behalf of and as successor in interest to Reorganized J T Thorpe Company, Thorpe Corporation, and Thorpe Products Company (Reorganized J T Thorpe Company, Thorpe Corporation, and Thorpe Products Company are referred to hereafter individually and collectively as "Thorpe"¹), and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. The Settlement Agreement was negotiated under the supervision of the Special Deputy Liquidator. Affidavit of Peter A. Bengelsdorf in Support of Motion for Approval of

¹ J T Thorpe Company is the subject of a Chapter 11 bankruptcy proceeding, In re: J T Thorpe Company, Chapter 11 Case No. 0241487-H5-11 (Bankr. S.D. Tex.), and it is the subject of a plan of reorganization that established the J T Thorpe Company Successor Trust. See id., Plan of Reorganization under Chapter 11 of the Bankruptcy Code for J T Thorpe Company (Oct. 1, 2002); Order Confirming J T Thorpe Company's Plan of Reorganization (Jan. 17, 2003); and In re: J T Thorpe Company, Order Adopting and Approving The Bankruptcy Court's Supplement to (1) Findings of Fact and Conclusions of Law Supporting Confirmation of J T Thorpe Company's Plan of Reorganization and (2) Order Confirming J T Thorpe Company's Plan of Reorganization, U.S. Dist. Ct, S.D. Tex., Houston Div., No. 02-41487-H5-11, Mar. 3, 2004. Under the plan, bodily injury asbestos claims against the Company were assumed by the Trust, which is to resolve and pay asbestos claims pursuant to certain claim resolution procedures, and the Company was discharged from those claims. The plan included a channeling injunction which directs all asbestos claims against the Company to the Trust and an asbestos entity injunction which generally enjoins the assertion of claims against then settling insurers of the Company.

Settlement Agreement with J T Thorpe Trust (“Bengelsdorf Aff.”) ¶ 2. 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.

2. Home issued two insurance policies to Thorpe for various policy periods between March 1, 1978 and April 1, 1980. Settlement Agreement, second Whereas clause. Upon Home’s placement in liquidation, Thorpe filed two proofs of claim in the Home liquidation with respect to insurance coverage for asbestos-related bodily injury claims. Settlement Agreement, fourth Whereas clause. The Trust is the successor in interest to Thorpe as respects insurance coverage for asbestos-related bodily injury liabilities. *Id.*, fifth Whereas clause.² Bengelsdorf Aff. ¶ 3.

3. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$19,000,000 as a Class II priority claim of the Trust 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 the Trust 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 that the Trust has under the policies. See Settlement Agreement ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and the Trust arising from or related to the proofs of claim or the policies. *Id.* ¶¶ 3, 4. (The Settlement Agreement only resolves matters as to which the Trust is the successor to Thorpe, and it does not release claims as to which coverage was retained by Thorpe. Settlement Agreement, ¶ 5.) The Liquidator also releases claims respecting the underlying matters covered by the proofs

² Although the Trust is the successor to Thorpe only with respect to Thorpe’s asbestos-related bodily injury liabilities, the only proofs of claim filed by Thorpe in the Home liquidation proceeding relate to asbestos claims.

of claim against other insurers of the Trust that agree to release such claims against Home. Id. ¶ 6. The Trust agrees that, in the event the bankruptcy proceeding is re-opened, it will seek the bankruptcy court's designation of Home as a protected party under the bankruptcy court's channeling injunction portion of the Trust's plan of reorganization. See fn. 1; Settlement Agreement ¶ 8. Finally, the Trust agrees to reduce collection from any insurer to the extent necessary to extinguish any liability that the Liquidator or Home may have to such insurer. Settlement Agreement ¶ 9. Bengelsdorf Aff. ¶ 6.

5. The Liquidator is not aware of any third party claimants asserting claims under the policies. However, in resolving all of the Trust's claims relating to the proofs of claim and the policies, the Settlement Agreement contemplates denial of any third party claimants' asbestos bodily injury claims under the policies in the Home liquidation without prejudice to their claims against the Trust. See Settlement Agreement, ¶ 6. The Trust agrees to address, at its sole cost, the claims of claimants asserting claims against the Trust as if the Trust had no insurance coverage from Home under the policies. Id. Bengelsdorf Aff. ¶ 7.

6. The denial of any third party claimants' asbestos bodily injury proofs of claim without prejudice to their claims against the Trust will not harm the third party claimants, whose claims have been channeled to the Trust and who will continue to have their claims against the Trust. As noted above, the Trust has agreed to address these claims as if it had no insurance coverage from Home under the policies, Settlement Agreement ¶ 6, although payment of these claims can only be made in accordance with the bankruptcy plan and Trust. Third party claimants' proofs of claim against the insolvent Home, if not denied with the agreement, would release the Trust from those claims up to the limits of the policies but only entitle the third party claimants (assuming their claims were allowed) to the 15% interim distribution and any later distribution at a presently undetermined percentage at the future date when 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) of Home will be paid in full. Under the Settlement Agreement, the Trust will continue to be responsible for any third party claimants’ claims against it in accordance with the terms of the Trust and the provisions of Thorpe’s bankruptcy plan. See Settlement Agreement ¶ 6. 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 the Claims Department, under the supervision of the Special Deputy Liquidator, which has extensive experience in assessing the exposure presented by 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 the Trust. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$19,000,000 settlement amount as a Class II claim of the Trust 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 Washington Gas (July 15, 2013); Order Approving Settlement Agreement with Wisconsin Energy (March 18, 2010); Order Approving Settlement Agreement with Straits Steel (May 3, 2009); 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 the Trust.

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 the Trust's claim as a Class II claim in the aggregate amount of \$19,000,000; 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,

JOSEPH A. FOSTER
ATTORNEY GENERAL

J. Christopher Marshall
NH Bar ID No. 1619
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650



J. David Leslie
NH Bar ID No. 16859
Eric A. Smith
NH Bar ID No. 16952
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110
(617) 542-2300

April 17, 2015

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with J T Thorpe Trust, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 17th day of April, 2015, 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

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SERVICE LIST

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

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

Robert A. Stein, Esq.
The Stein Law Firm, PLLC
One Barberry Lane
P.O. Box 2159
Concord, New Hampshire 03302-2159

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

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

David H. Simmons, Esq.
Mary Ann Etzler, Esq.
Daniel J. O'Malley, Esq.
deBeaubien, Knight, Simmons,
Mantzaris & Neal, LLP
332 North Magnolia Avenue
P.O. Box 87
Orlando, Florida 32801

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

Richard Mancino, Esq.
Willkie Farr & Gallagher, LLP
787 Seventh Avenue
New York, New York 10019

Joseph G. Davis, Esq.
Willkie Farr & Gallagher, LLP
1875 K Street, N.W.
Washington, DC 20006

Albert P. Bedecarre, Esq.
Quinn Emanuel Urguhart Oliver & Hedges, LLP
50 California Street, 22nd Floor
San Francisco, California 94111

Jeffrey W. Moss, Esq.
Morgan Lewis & Bockius, LLP
225 Franklin Street
16th Floor
Boston, Massachusetts 02110

Gerald J. Petros, Esq.
Hinckley, Allen & Snyder LLP
50 Kennedy Plaza, Suite 1500
Providence, Rhode Island 02903

Christopher H.M. Carter, Esq.
Hinckley, Allen & Snyder LLP
11 South Main Street, Suite 400
Concord, New Hampshire 03301

Robert M. Horkovich, Esq.
Robert Y. Chung, Esq.
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020

Andrew B. Livernois, Esq.
Ransmeier & Spellman, P.C.
One Capitol Street
P.O. Box 600
Concord, New Hampshire 03302-0600

John A. Hubbard
615 7th Avenue South
Great Falls, Montana 59405

Paul W. Kalish, Esq.
Ellen M. Farrell, Esq.
Timothy E. Curley, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

Harry L. Bowles
306 Big Hollow Lane
Houston, Texas 77042

Gregory T. LoCasale, Esq.
White and Williams, LLP
One Liberty Place, Suite 1800
Philadelphia, Pennsylvania 19103-7395

Kyle A. Forsyth, Esq.
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Washington, D.C. 20044-0875

W. Daniel Deane, Esq.
Nixon Peabody LLP
900 Elm Street, 14th Floor
Manchester, New Hampshire 03861

Joseph C. Tanski, Esq.
John S. Stadler, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110

Steven J. Lauwers, Esq.
Michael S. Lewis
Rath Young Pignatelli
One Capital Plaza
Concord, New Hampshire 03302-1500

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made by and between the J T Thorpe Company Successor Trust ("Claimant") on its own behalf and, to the full extent it received rights under the Plan, as defined below, on behalf of and as successor in interest to Reorganized J T Thorpe Company, Thorpe Corporation, and Thorpe Products Company (Reorganized J T Thorpe Company, Thorpe Corporation, and Thorpe Products Company are referred to hereinafter individually and collectively as "Thorpe"), on the one hand, and Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, solely in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), on the other hand (the Claimant and the Liquidator are hereinafter referred to collectively as the "Parties").

WHEREAS, asbestos-related bodily injury claims were asserted against Thorpe;

WHEREAS, Home issued two (2) insurance policies to Thorpe to which Claimant is the successor in interest as respects insurance coverage for asbestos-related bodily injury liabilities:

<u>Policy Number</u>	<u>Policy Period</u>
GA0996492	3/1/78-4/1/79
GA0996599	4/1/79-4/1/80

which together with all other insurance policies that Home may have issued to Thorpe to the extent they provide insurance coverage with respect to asbestos-related bodily injury liabilities are defined collectively as the "Policies";

WHEREAS, Home is being liquidated pursuant to the June 13, 2003 Order of the Merrimack County Superior Court (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home;

WHEREAS, Thorpe submitted claims in the Home liquidation estate with respect to insurance coverage for asbestos-related bodily injury liabilities that have been assigned the following proof of claim numbers:

INSU473866
INSU703350

which, together with any other proof of claim hereinbefore or hereinafter filed by Thorpe or the Claimant in the Home liquidation to the extent they seek insurance coverage with respect to asbestos-related bodily injury liabilities, are defined collectively as the "Proofs of Claim";

WHEREAS, by virtue of the final confirmation order entered in *In re J T Thorpe Company*, No. 02-41487-H5 11 (Bankr. S.D. Tex.), Claimant is the successor in interest to the claims submitted by Thorpe in the Home liquidation estate with respect to insurance coverage for asbestos-related bodily injury liabilities;

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

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 that the Liquidation Court declines to approve the Settlement Agreement or allow the Recommended Amount in full, or in the event that the Settlement Agreement or allowance in full of the Recommend Amount is disapproved pursuant to a final order not subject to appeal, this Settlement Agreement shall be null and void and without any force or effect and the Parties in that event shall return to the status quo ante in all respects, except as specified below;

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 become effective only upon approval by the Liquidation Court of the Settlement Agreement and the full Recommended Amount (the "Effective Date"). The Liquidator shall move at his expense for approval of this Settlement Agreement and the Recommended Amount promptly following execution by both Parties and shall use his reasonable best efforts to secure such approval. In the event that the Liquidation Court declines to approve the Settlement Agreement and allow the Recommended Amount in full, or in the event such approval is subsequently reversed in a decision not subject to further appeal, this Settlement Agreement shall be null and void and without any force or effect, and the Parties shall return to their positions status quo ante this Settlement Agreement as if no such agreement (except for this Paragraph 1) ever was reached, with this Settlement Agreement thereafter being inadmissible for any purpose in any dispute between the Parties.

2. Recommendation, Allowance, and Classification of Claims.

A. Subject to all the terms of this Settlement Agreement, and with the agreement of Claimant, which by Claimant's execution hereof is hereby granted, the Liquidator shall recommend pursuant to N.H. RSA 402-C:45 that the Proofs of Claim be allowed in the amount of \$19,000,000 (the "Recommended Amount") as a Class II priority claim under N.H. RSA 402-C:44. The Liquidator shall seek allowance of the Recommended Amount as a Class II

priority claim by the Liquidation Court in the Liquidator's motion for approval of this Settlement Agreement.

B. Allowance of the Recommended Amount as a Class II claim by the Liquidation Court shall fully and finally resolve the Proofs of Claim and any and all other claims of whatever nature that Claimant has against Home under the Policies.

C. If and when the Liquidation Court approves the Settlement Agreement and allows the full Recommended Amount as a Class II claim, Claimant will become a Class II creditor in the Home liquidation estate pursuant to N.H. RSA 402-C:44, and Claimant 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.

D. The Liquidator shall not seek reimbursement of the Recommended Amount or any part thereof, directly or indirectly, from any person or entity, whether by way of a claim for contribution, indemnification, subrogation, retrospective premium, deductible, or otherwise; provided that nothing in this Paragraph 2D shall preclude the Liquidator from seeking reimbursement of such amounts from Home's reinsurers, solely in their capacities as such, nor shall anything in this Paragraph 2D preclude the Liquidator from raising the Settlement Agreement and the Recommended Amount as a defense to any claim for contribution, indemnification, subrogation, retrospective premium, deductible, or otherwise made by another insured under the Policies or from asserting a claim for contribution, indemnification, or subrogation from any insurer (a "Plaintiff Insurer") that asserts these types of claims against the Liquidator or Home in connection with the Policies. In the event that the Liquidator or Home successfully prosecutes a claim for contribution, indemnification, or subrogation against any Plaintiff Insurer, and the Liquidator or Home's recovery exceeds the recovery of the Plaintiff

Insurer, the Liquidator shall transfer to Claimant the difference between the Liquidator or Home's recovery from the Plaintiff Insurer and the Plaintiff Insurer's recovery from the Liquidator or Home, less any litigation expenses incurred by the Liquidator or Home.

3. Release by Claimant. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Settlement Agreement and the full Recommended Amount as a Class II claim, upon the Effective date Claimant for itself and on behalf of its trustees, officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, solely in their capacities as such, irrevocably and unconditionally releases and discharges the Liquidator and Home and each of their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns (including any trustee or other statutory successor), solely in their capacities as such (collectively, the "Liquidator Released Parties"), 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, 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 to the Policies, which the Claimant or its subsidiaries, affiliates, predecessors, successors, and assigns, solely in their capacities as such, ever had, now have, or hereafter may have against the Liquidator Released Parties, arising from or related to the Proofs of Claim or to the Policies.

4. Release by Liquidator. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Settlement Agreement and the full Recommended Amount as a Class II claim, upon the Effective Date the Liquidator, in his capacity as such, and on behalf

of Home and each of their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns, solely in their capacities as such, irrevocably and unconditionally releases and discharges Claimant and each of its trustees, officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns (including any trustee or statutory successor), solely in their capacities as such (collectively, the "Claimant Released Parties"), 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, 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 to the Policies, which the Liquidator, Home, or their subsidiaries, affiliates, predecessors, successors, and assigns, solely in their capacities as such, ever had, now have, or hereafter may have against Claimant Released Parties arising from or related to the Proofs of Claim or to the Policies.

5. Release Does Not Extend to Other Coverage Claims Asserted By Thorpe (if any).

Notwithstanding anything in this Settlement Agreement to the contrary, including but not limited to paragraphs 3 and 4 above, and for the avoidance of doubt, (a) this Settlement Agreement resolves the Proofs of Claim and rights under the Policies only to the extent of any claims for which the Trust, pursuant to the Plan, is the successor of Thorpe; and (b) this Settlement Agreement does not resolve, release, or discharge, without limitation, any claims with respect to coverage under the Policies as to which the Trust did not receive rights to proceeds

pursuant to the Plan and related documents or any claims with respect to coverage retained by Thorpe under the Plan and related documents.

6. Resolution of Matters. The Parties acknowledge that this Settlement Agreement is intended to resolve all matters as between them arising out of or relating to any rights or obligations the Parties ever had, now have, or hereafter may have under the Policies or the Proofs of Claim. Claimant agrees to address, at its sole cost and expense, any claims of third-party claimants against Claimant as if there had been no liquidation proceeding for Home and as if Claimant had no insurance coverage from Home by virtue of the Policies, except that Claimant can take into account the fact of this Settlement Agreement and the net proceeds thereof in establishing payment percentages and analyzing the assets available to Claimant for payment of third-party claims.

7. Mutual Release of Settling Carriers. Claimant agrees to use reasonable commercial efforts to cause any settlement agreement it enters into after the effective date of this Settlement Agreement with any other insurance company (or liquidator thereof) regarding insurance coverage for asbestos-related bodily injury claims to include a waiver by that other insurance company (or liquidator) of any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation, or recoupment, against Home regarding insurance coverage for asbestos-related bodily injury claims. Without need for further action, the Liquidator agrees to waive, relinquish, and release any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation, or recoupment, regarding insurance coverage for asbestos-related bodily injury claims against any other insurance company which executes a settlement with Claimant that includes a provision that is materially the same as this Paragraph 7.

8. Bankruptcy Court Injunction. In the event that, at any point in the future, Claimant reopens the Thorpe bankruptcy case for any reason, Claimant will seek, at that time, to designate the Liquidator and Home as protected parties under the asbestos bodily injury permanent channeling injunction approved by the Plan (the "Channeling Injunction"). Should Claimant reopen the Thorpe bankruptcy case, the Liquidator shall pay all expenses incurred by Claimant, including the costs of notice, in connection with efforts to seek the approval order and the designation of the Liquidator and Home as protected parties under the Channeling Injunction ("Home Settlement Approval Order and Injunction"); provided, however, that if notice is required for some other purpose than seeking the Home Settlement Approval Order and Injunction, (a) the Liquidator and Claimant shall meet and confer concerning an appropriate allocation of notice costs as between seeking the Home Settlement Approval Order and Injunction on the one hand and such other purpose on the other hand, and (b) if the Liquidator and Claimant cannot agree on such allocation, they agree to be bound by any such allocation by the Bankruptcy Court, which allocation shall be final and binding on the Parties and not subject to challenge or appeal by either of them. Notwithstanding anything in this Paragraph 8 to the contrary and for the avoidance of doubt, Claimant has no obligation under this Settlement Agreement to reopen the Thorpe bankruptcy case for this or any other reason.

9. Judgment Reduction. In the event that Claimant obtains a judgment against any insurer, Claimant shall reduce or return the amount of any judgment, including any associated interest or costs, to which Claimant would be entitled in connection with any cause of action against any such insurer to the extent necessary to extinguish any liability of the Liquidator and Home for any claim by such insurer against the Liquidator and/or Home with respect to such judgment.

10. No Assignments. Solely to the extent of matters released under this Settlement Agreement: (a) Claimant warrants and represents 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 the Proofs of Claim, or the claims, losses, and expenses released herein, to any person or entity; and (b) Claimant represents that it is not aware of any assignment, conveyance, or transfer by Thorpe of any claims, demands, causes of action, rights or obligations related in any way to the Policies, or any proceeds thereof, or the Proofs of Claim, or the claims, losses, and expenses released herein, to any person or entity other than Claimant. For the avoidance of doubt, the phrase "released herein" applies to all subparts of 10(a) and (b). Claimant shall not assign or otherwise transfer this Settlement Agreement or any rights or obligations thereunder without the written consent of the Liquidator, which consent shall not be unreasonably withheld.

11. 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. If Claimant becomes legally obligated under the Medicare Secondary Payer Act and the Medicare, Medicaid and SCHIP Extension Act of 2007 (the "Acts"), Claimant agrees to provide claims data, if and when required, to the Centers for Medicare and Medicaid Services. Claimant also agrees to provide claims data to the Liquidator, if and when requested, in the event that the Liquidator becomes legally obligated under the Acts in connection with any funds distributed pursuant to this Agreement. The Liquidator shall keep any information and documents received from the Claimant pursuant to this Section 11 confidential and shall not use such information for any purpose other than meeting obligations under the Acts. The Parties acknowledge that Claimant does not believe it has a reporting

obligation in connection with any funds distributed pursuant to this Agreement and that the Liquidator does not believe that he has such a reporting obligation.

12. 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, the Policies, or this Settlement Agreement shall be the Liquidation Court.

13. 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.

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

15. Counterparts. This Settlement Agreement may be executed in multiple counterparts, each of which, when so delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail to the other Party shall have the same force and effect as an original signature.

16. 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. Claimant further represents and warrants that it is the successor to Thorpe's asbestos-related bodily injury liabilities and to Thorpe's rights under the Policies with respect to insurance coverage for such liabilities and to the Proofs of Claim.

17. Successor-in-Interest Bound. This Settlement Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective trustees, officers, directors, employees, attorneys, liquidators, receivers, administrators, agents, representatives, successors, and assigns.

18. 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.

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

20. 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.

21. 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.

22. 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 Claimant, to:

Sunder L. Esserman, Esq.
Stutzman, Bromberg, Esserman & Plifka, P.C.
2323 Bryan Street, Suite 2200
Dallas, Texas 75201-2689
Fax: 214- 969-4999

and

Richard Shore Esq.
Gilbert LLP
1100 New York Avenue, N.W.
Washington, D.C. 20005
Fax: 202-772-2319

If to the Liquidator, to:

Thomas W. Kober, Chief Claims Officer
The Home Insurance Company in Liquidation

61 Broadway 6th Floor
New York, New York 10006
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.
Rackemann, Sawyer & Brewster, P.C.
160 Federal Street
Boston, MA 02110-1700
Fax: 617-542-7437

23. Severability. If any provision of this Settlement Agreement is invalid, unenforceable, or illegal under the law of any applicable jurisdiction, the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby and the remaining provisions of this Settlement Agreement shall remain valid and enforceable. However, in the event of such invalidity, unenforceability, or illegality, the Parties shall negotiate in good faith to amend this Settlement Agreement through the insertion of additional provisions which are valid, enforceable, and legal and which reflect, to the extent possible, the purposes contained in the invalid, unenforceable, or illegal provision. Notwithstanding anything in this Paragraph 23 to the contrary, in the event that, for any reason, Paragraph 2 of this Settlement Agreement or any part or portion thereof is not or cannot be performed, or is invalid, unenforceable, or illegal, this Settlement Agreement shall be null and void and without any force or effect, and the Parties shall return to their positions status quo ante this Settlement Agreement as if no such agreement (except for this Paragraph 23) ever was reached.

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.

J T THORPE COMPANY SUCCESSOR TRUST

By: Dan Lain

Name: Dan Lain

Title: Trustee

Date: 4/2/2015

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

By: _____

Name: _____

Title: _____

Date: _____

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.

J T THORPE COMPANY SUCCESSOR TRUST

By: _____

Name: _____

Title: _____

Date: _____

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

By: Thomas W. Koser

Name: Thomas W. Koser

Title: Chief Claims Officer

Date: March 26, 2015