

**THE STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS**

**SUPERIOR COURT**

**Docket No. 217-2003-EQ-00106**

**In the Matter of the Liquidation of  
The Home Insurance Company**

**LIQUIDATOR'S MOTION FOR APPROVAL  
OF SETTLEMENT AGREEMENT WITH JKB CONTRACTING**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves that the Court enter an order in the form submitted herewith approving a Settlement Agreement ("Settlement Agreement") between the Liquidator and JKB Contracting, Inc., A.J. Khan and Talat K. Jaleel Khan (collectively, "JKB"). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Settlement Agreement between the Liquidator and JKB. A redacted copy of the Settlement Agreement (with economic terms removed) is attached as Exhibit A. A complete copy of the Settlement Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Settlement Agreement with JKB ("Bengelsdorf Confidential Affidavit") submitted under seal herewith.

2. The Settlement Agreement was negotiated under the supervision of the Special Deputy Liquidator. It is subject to approval by the Court. Settlement Agreement ¶ 1(a). Bengelsdorf Confidential Affidavit ¶ 2.

3. The Settlement Agreement resolves a claim by the Liquidator against JKB for pre-liquidation payments by Home arising from a performance bond issued by Home to JKB

Contracting, a now defunct contractor in New York City. Bengelsdorf Confidential Affidavit ¶ 3.

4. In 1995, JKB Contracting entered into a subcontract with Hercules Construction and Development, Inc., later known as Buildco Construction Corp. (“Buildco”), to install an HVAC system for the reconstruction of a maintenance shop owned by the New York City Transit Authority. Home issued a performance bond to JKB Contracting with Buildco as obligee to assure JKB Contracting’s performance of the subcontract. Bengelsdorf Confidential Affidavit ¶ 4.

5. Home had previously entered a General Indemnity Agreement with JKB Contracting and its principals, A.J. Kahn and Talat K. Jaleel Khan, that covered the performance bond. Bengelsdorf Confidential Affidavit ¶ 5.

6. In 1998, Buildco notified Home that JKB Contracting was in breach of its contract. After investigation of the claim, Home entered into a “take over” agreement with Buildco and paid to finish the project, which was completed in early 2001. Bengelsdorf Confidential Affidavit ¶¶ 6-7.

7. In 2004, the Liquidator brought suit against JKB Contracting and its principals in the Supreme Court of the State of New York, County of New York. The Home Insurance Company in Liquidation v. JKB Contracting, Inc., A.J. Khan and Talat Jaleel Khan, Index No. 600073/04. Bengelsdorf Confidential Affidavit ¶ 8.

8. The Bengelsdorf Confidential Affidavit summarizes the history of the matter and the reasons that support the determination to enter the Settlement Agreement. Bengelsdorf Confidential Affidavit ¶¶ 8-16.

9. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator

submits that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and other creditors of Home. The Settlement Agreement resolves a lawsuit and converts the Liquidator's disputed claim into immediate cash. See Bengelsdorf Confidential Aff. ¶ 17.

10. The Liquidator accordingly recommends approval of the Settlement Agreement. Bengelsdorf Confidential Affidavit ¶ 16.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Settlement Agreement with JKB Contracting;
- B. Enter an Order in the form submitted herewith approving the Settlement Agreement; 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

May 13, 2016

**Certificate of Service**

I hereby certify that a copy of the foregoing Motion for Approval of Settlement Agreement with JKB Contracting and the Proposed Order Approving Settlement Agreement with JKB Contracting were sent, this 13<sup>th</sup> day of May, 2016, by first class mail, postage prepaid to all persons on the attached service list. The Confidential Affidavit being filed under seal was not so served.



---

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. 217-2003-EQ-00106

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, 22<sup>nd</sup> Floor  
San Francisco, California 94111

Jeffrey W. Moss, Esq.  
Morgan Lewis & Bockius, LLP  
One Federal Street  
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 7<sup>th</sup> 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, 14<sup>th</sup> 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, Esq.  
Rath Young Pignatelli  
One Capital Plaza  
Concord, New Hampshire 03302-1500

Robert E. Murphy, Esq.  
Michael J. Tierney, Esq.  
Wadleigh, Starr & Peters, PLLC  
95 Market Street  
Manchester, New Hampshire 03101

Mark J. Andreini, Esq.  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190

S E T T L E M E N T A G R E E M E N T

AGREEMENT, made this \_\_\_\_\_ day of April 2016, by and between ROGER A. SEVIGNY, INSURANCE COMMISSIONER OF THE STATE OF NEW HAMPSHIRE SOLELY IN HIS CAPACITY AS LIQUIDATOR ("Liquidator") OF THE HOME INSURANCE COMPANY) (also known as THE HOME INSURANCE COMPANY IN LIQUIDATION) (hereinafter collectively referred to as "Indemnitee") on the one hand, and JKB CONTRACTING, INC., A.J. KHAN and TALAT K. JALEEL KHAN (hereinafter collectively referred to as "Indemnitors") on the other hand. (The Indemnitee and Indemnitors are hereinafter individually referred to as "Party" and collectively referred to as the "Parties").

WHEREAS, on February 22, 1995, JKB Contracting, Inc. (hereinafter referred to as ("JKB")) entered into a subcontract with Buildco Construction Corp. (then known as Hercules Construction and Development, Inc. and hereinafter referred to as "Buildco") to provide a complete HVAC installation in connection with Buildco's contract with the New York City Transit Authority for the reconstruction of the East 180th Street, Bronx, New York, Maintenance Shop; and

WHEREAS, on May 9, 1995, The Home Indemnity Company issued a Subcontract Performance Bond, Bond No.: NBF 78-45-52, in the penal sum of \$1,912,000.00, on behalf of JKB in connection with JKB's



aforesaid subcontract with Buildco; and

WHEREAS, by Articles of Merger effective on June 13, 1995, The Home Indemnity Company was merged with and into its parent, The Home Insurance Company, which has succeeded to all of the assets and liabilities of its subsidiary; and

WHEREAS, by order dated June 13, 2003, issued by the Superior Court, State of New Hampshire, which vacated and superseded an order dated June 11, 2003, The Home Insurance Company was declared to be insolvent and the Commissioner of Insurance of the State of New Hampshire was appointed its Liquidator and by reason thereof, the Liquidator and The Home Insurance Company (also known as The Home Insurance Company in Liquidation) are collectively referred to herein as Indemnitee; and

WHEREAS, on June 10, 1992, the Indemnitors executed and delivered to The Home Indemnity Company a General Indemnity Agreement under the terms of which each of the Indemnitors agreed, in consideration of the execution or procurement of any surety bond, undertaking or recognizance on behalf of JKB, to exonerate and hold harmless The Home Indemnity Company against any and all liability, loss, costs, damages, fees of attorneys and other expenses which The Home Indemnity Company might sustain or incur by reason of, or in consequence of the execution of surety bonds on behalf of JKB including, but not limited to, sums paid or liabilities incurred in

settlement of, and expenses paid or incurred in connection with claims, suits or judgments under said bonds; and

WHEREAS, on February 19, 1998, Buildco declared JKB to be in default of its subcontract for a complete HVAC installation at New York City Transit Authority's 180th Street, Bronx, New York, Maintenance Shop, and thereafter pursued a claim under Bond No.: NBF 78-45-52; and

WHEREAS, in responding to Buildco's claim, Indemnatee has incurred net expenditures of \$1,732,774.72, in addition to having paid fees to consultants and attorneys; and

WHEREAS, Indemnatee has heretofore commenced an action in the Supreme Court of the State of New York, County of New York entitled The Home Insurance Company in Liquidation v. JKB Contracting, Inc., A.J. Khan and Talat Jaleel Khan, Index No.: 600073/04, by which Indemnatee seeks to recover sums in excess of \$2.5 million under the General Indemnity Agreement executed by Indemnitors; and

WHEREAS, the Indemnitors filed an answer to the complaint, alleging, inter alia, that Indemnatee's payments were unnecessary, unreasonable and made in bad faith, and also asserting counterclaims for damages claimed to have been incurred by JKB for Indemnatee's alleged bad faith and interference with JKB's subcontract with Buildco; and

WHEREAS, the Parties hereto seek to avoid the vagaries and

expense of litigation and trial, and the uncertainty of the outcome thereof, and to amicably resolve the claims asserted in the foregoing litigation.

NOW THEREFORE, in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Indemnitors, jointly and severally, shall pay the amount of [REDACTED] ("Settlement Amount") to Indemnitee as follows:

(a) [REDACTED] immediately upon execution of this Settlement Agreement by all parties, by delivery of a check in said sum made payable to Mait, Wang & Simmons, Attorney Trust Account. The proceeds of such check shall be held in escrow pending approval of this settlement by the supervising New Hampshire court. The settlement shall be promptly presented for approval by Indemnitee following Indemnitee's receipt of the fully executed Settlement Agreement. Should this settlement be rejected by the supervising court then, and in that event, the settlement shall be null and void and

the monies held by Indemnitee's counsel shall be returned to the Indemnitors.

(b) If this settlement is approved by the supervising court, Indemnitors' [REDACTED] payment shall be immediately released to Indemnitee and, on or before December 31, 2016, Indemnitors shall make an additional payment in the sum of [REDACTED] by check made payable and delivered to Mait, Wang & Simmons, Attorney Trust Account 61 Broadway, Suite 1900, New York, New York 10006.

(c) Should Indemnitors fail to make the initial [REDACTED] payment or the additional payment of [REDACTED] within the required time frames, or otherwise breach their obligations under this Settlement Agreement, there shall be due and owing from Indemnitors to Indemnitee the liquidated sum of [REDACTED] less any sums previously paid and collected, for which Indemnitee may seek immediate recovery pursuant to CPLR 3213, and Indemnitors agree to pay the statutory interest, costs and fees incurred by Indemnitee in pursuing such recovery.

2. Conditioned on approval of this settlement by the supervising New Hampshire court, Indemnatee releases any and all claims against Indemnitors arising out of or in connection with the enforcement of the June 10, 1992 General Indemnity Agreement and losses incurred in connection with the issuance of Bond No.: NBF 78-45-52 on behalf of JKB, including but not limited to all claims asserted in The Home Insurance Company in Liquidation v. JKB Contracting, Inc., A.J. Khan and Talat Jaleel Khan, Index No.: 600073/04, as well as any and all claims that may have existed but were not asserted. Upon payments by the Indemnitors of the Settlement Amount pursuant to Paragraph 1 of this Agreement, the June 10, 1992 General Indemnity Agreement will be null and void.

3. Conditioned on approval of this settlement by the supervising New Hampshire court, Indemnitors release any and all claims against Indemnatee for damages alleged to have been incurred by virtue of Indemnatee's response to Buildco's claim under Bond No.: NBF 78-45-52, including but not limited to all counterclaims asserted in The Home Insurance Company in Liquidation v. JKB Contracting, Inc., A.J. Khan and Talat Jaleel Khan, Index No.: 600073/04.

4. Conditioned on approval of this settlement by the supervising New Hampshire court, all claims and counterclaims in the litigation entitled The Home Insurance Company in Liquidation v. JKB Contracting, Inc., A.J. Khan and Talat Jaleel Khan, Index No.:

600073/04 are hereby settled. An appropriate Stipulation of Discontinuance, with prejudice, shall be delivered to Indemnitors' counsel by Indemnitee following satisfaction of Indemnitor's obligations as specified in Paragraph 1, *infra*.

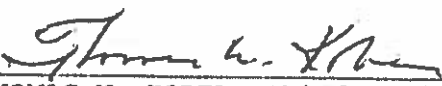
5. This Settlement Agreement contains the sole and entire understanding of the Parties with respect to the subject matter addressed herein and supersedes any and all prior discussions, negotiations, and understandings with respect thereto. Each Party acknowledges that no other Party, agent or representative of a Party, has made any promise, representation or warranty whatsoever, expressed or implied, not contained or referenced within this Settlement Agreement.

6. The representatives executing this Agreement on behalf of each party hereto represents and warrants that he or she has full power and authority to execute this Agreement on behalf of such party and that all approvals and other actions necessary in connection with the effective execution by him or her have been obtained and are in full force and effect.

7. This Agreement may be executed by facsimile or electronically, and in one or more counterparts, each of which, when read together with the signatures of those Parties signing other counterparts, shall be deemed to be a complete original copy and shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the date set forth above.

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

By:   
THOMAS W. KOBER, Chief Claims Officer

JKB CONTRACTING, INC.

By: 

A.J. KHAN

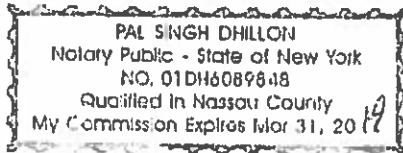
  
TALAT K. JALEEL KHAN





STATE OF NEW YORK )  
: ss.  
COUNTY OF *NASSAU* )

On April *13*, 2016, before me personally came Talat K. Jaleel Khan, personally known to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Settlement Agreement, and acknowledged to me that ~~he~~/she executed the same in ~~his~~/her individual capacity, and that by ~~his~~/her signatures on the Settlement Agreement, ~~he~~/she executed the instrument.



*Pal Singh Dhillon*  
\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEW HAMPSHIRE )  
: ss.  
COUNTY OF \_\_\_\_\_ )

On April \_\_\_\_\_, 2016, before me personally came to me known, who, being by me duly sworn, did depose and say that he/she resides in \_\_\_\_\_; that he/she is the \_\_\_\_\_ of The Home Insurance Company in Liquidation, the entity described in and which executed the above Settlement Agreement; and that he/she signed his/her name thereto with full authority to do so.

\_\_\_\_\_  
NOTARY PUBLIC

