

To: Office of the Clerk,  
Merrimack County Superior Court  
163 N. Main Street, P.O. Box 2880  
Concord, New Hampshire 03301-2880

Copy: Liquidator  
Home Ins. Co. In Liquidation  
P.O. Box 1720  
Manchester, NH 03105-1720

**Attention:**

**The Home Docket No. 03-E-0106**

**THE STATE OF NEW HAMPSHIRE**

MERRIMACK, SS

SUPERIOR COURT

IN THE MATTER OF LIQUIDATION  
OF THE HOME INSURANCE COMPANY

DOCKET #03-E-0106

**OBJECTION TO LIQUIDATOR'S NOTICE OF DETERMINATION OF CLAIM**

**AND NOW COMES** Tenova Inc. f/k/a Tenova Core Inc. f/k/a Core Furnace Systems Corp. f/k/a Techint Technologies Inc., the successor in interest of Salem Furnace Company (collectively, "Tenova"), by and through its undersigned counsel, Meyer, Unkovic & Scott LLP, and respectfully submits its Objection to the Liquidator's October 15, 2018 Notice of Determination as follows:

1. Tenova was issued an insurance policy by the Home Insurance Company ("Home"), effective 5/31/79-5/31/82, providing \$500K annual aggregate limits.
2. Pre-liquidation, Home accepted Tenova's demand for defense and indemnification and entered into and participated in a cost-sharing agreement for defense costs of Tenova regarding asbestos bodily injury lawsuits.
3. Home was found to be insolvent and ordered liquidated by the Superior Court of Merrimack County, New Hampshire by Order dated June 11, 2003 (revised by Order of June 13, 2003).

4. Since liquidation, solvent primary carriers have continued making payments pursuant to the cost-sharing agreement, but Home has ceased making payments to Tenova in breach of its contractual obligations.

5. On or about May 2004, Tenova filed a Proof of Claim and all appropriate documentation to preserve its rights against Home at Proof of Claim No.: INSU178484-01 in accordance with the Home Claim Procedures (the "Procedures") approved by this Court.

6. Tenova therefore demonstrated its claim and the obligation of Home to pay it, as agreed in the policy issued to Tenova by Home and the cost-sharing agreement subsequently entered into.

7. Notably, Home accepted the Proof of Claim and at no point was any objection made by Home as to whether coverage is applicable to Tenova pursuant to its Proof of Claim; thus, the amount and validity of Tenova's claim is **not** in dispute.

8. On or about October 15, 2008, Tenova received a letter from the Liquidator regarding a Notice of Determination of Tenova's Proof of Claim, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

9. In the Notice of Determination, the Liquidator, *inter alia*, disallowed Tenova's Proof of Claim because "solvent primary carriers are making all payments."

10. The Notice of Determination further states that "[t]he Pennsylvania Property & Casualty Insurance Guaranty Association (PPCIGA) is monitoring the claim and will participate on Home's behalf **if solvent primary coverage is fully exhausted.**" (Emphasis added.)

11. Moreover, the Notice of Determination states:

In the event circumstances should change in the future whereby Salem incurs costs which are not reimbursed by solvent carriers or PPCIGA, it could submit a **new** Proof of Claim referencing this Proof of Claim and said circumstances. Pursuant to N.H. Revised

Statutes Section 402-C:37 II, the Liquidator would then take account of such circumstances in **considering whether the new Proof of Claim qualifies as an Excused Late Filing**, as set forth herein.

Ex. A. (Emphasis added.)

12. Respectfully, Tenova disagrees with the Liquidators' Notice of Determination and rationale therein and therefore files the instant Objection with this Court.

13. RSA 402-C:44 requires that classes of claims against an insolvent insurance company's estate such as Tenova's are Class II claims.

14. RSA 402-C:44 governs the order of distribution of claims from a liquidated insurer's estate, and establishes classes of claimants as part of the distribution process. After a fifty-dollar per claim deductible, "**every claim in each class shall be paid in full or adequate funds retained for the payment** before the members of the next class receive any payment."

RSA 402-C:44. (Emphasis added.)

15. Most importantly, the statute provides that "**no subclasses shall be established within any class.**" *Id.* (Emphasis added.)

16. The Supreme Court of New Hampshire has previously recognized in these proceedings that subclasses cannot be created within a class in derogation of the statute. *In re Liquidation of Home Ins. Co.*, 154 N.H. 472, 485, 913 A.2d 712, 723 (N.H. 2006) (disagreeing that an agreement proposed by the liquidator created impermissible subclasses by splitting Class V into two groups but recognizing the general unlawfulness of the creation of a subclass within a class).

17. The only argument set forth by the Liquidator in the Notice of Determination is in essence that "others are paying [Tenova] right now," and therefore, Tenova, as a Class II claimant, is not entitled to the same level of payment priority as other Class II claimants.

18. However, the fact that other insurers are presently paying Tenova defense costs does not nullify Home's obligation to pay or contribute per the terms of its policy issued to Tenova and its subsequent cost-sharing agreement.

19. Indeed, the fact that other parties are paying what is owed under their policies does not nullify Home's obligations under its own policy; Home is contractually obligated under both the policy it issued to Tenova and the cost sharing agreement it entered into - period.

20. Thus, the Liquidator's decision in its Notice of Determination is contrary to the language of the statute at RSA 402-C:44 because the Liquidator's decision has in essence created an impermissible subclass within the Class II claimants.

21. Furthermore, Tenova is severely disadvantaged by the Notice of Determination in that it will be forced to refile an entirely new proof of claim and then be subjected to the Liquidator's discretion as to whether such a "late" filing would be "excused."

22. This is severely prejudicial to Tenova. Tenova timely and properly filed its Proof of Claim in May 2004, and Tenova should not be forced to incur additional expenses and time in filing a new proof of claim based on an arbitrary decision to deny its earlier Proof of Claim, especially when the filing of such a new claim, per the Notice of Determination, may not be approved.

23. The resolution of Tenova's Objection rests entirely on a legal issue – the interpretation of the statute and whether the Liquidator's determination and disallowance of Tenova's claim creates a subclass with the Class II claimants, which Tenova respectfully submits that it does.

24. For the foregoing reasons, Tenova respectfully requests this Court grant its Objection and allow its Proof of Claim No.: INSU178484-01.

**WHEREFORE**, Tenova prays that this Honorable Court shall:

- A. Grant the relief requested; and
- B. Grant such other and further relief as the Court deems just and proper.

Dated: December 10, 2018

Respectfully submitted,

MEYER, UNKOVIC & SCOTT LLP

By: 

Beth A. Slagle, Esq.  
Ashley L. Wilkinson, Esq.

535 Smithfield Street, Suite 1300  
Pittsburgh, PA 15222  
(412) 456-2800  
(412) 456-2864 (fax)

*Attorneys for Tenova Inc. f/k/a Tenova Core  
Inc. f/k/a Core Furnace Systems Corp. f/k/a  
Techint Technologies Inc., the successor in  
interest of Salem Furnace Company*

# EXHIBIT “A”

**THE HOME INSURANCE COMPANY IN LIQUIDATION**

P.O. Box 1720

Manchester, New Hampshire 03105-1720

Tel: (800) 347-0014

Date: 10/15/2018

Class: II

Meyer Unkovic & Scott  
Attn: Elaina A. Smiley, Esq.  
535 Smithfield St, Suite 1300  
Pittsburgh, PA 15222-2315

RE: NOTICE OF DETERMINATION  
Proof of Claim No.: INSU178484-01

Determination Summary

Gross Amount of Claim	: \$ Unknown
Amount Allowed by Liquidation	: \$ 0

Explanation: This Proof of Claim was filed on behalf of Core Furnace Systems formerly doing business as Techint Technologies as successor to Salem Corporation and reporting asbestos bodily injury lawsuits. Home wrote 1 primary policy for Salem, effective 5/31/79-5/31/82, providing \$500K annual aggregate limits. Pre-liquidation, Home participated in a cost-sharing agreement for defense costs. Since liquidation, solvent primary carriers are making all payments. The Pennsylvania Property & Casualty Insurance Guaranty Association (PPCIGA) is monitoring the claim and will participate on Home's behalf if solvent primary coverage is fully exhausted. Therefore, this Proof of Claim is disallowed. In the event circumstances should change in the future whereby Salem incurs costs which are not reimbursed by solvent carriers or PPCIGA, it could submit a new Proof of Claim referencing this Proof of Claim and said circumstances. Pursuant to N.H. Revised Statutes Section 402-C:37 II, the Liquidator would then take account of such circumstances in considering whether the new Proof of Claim qualifies as an Excused Late Filing, as set forth therein.

Dear Claimant :

The purpose of this letter is to provide you with a determination set forth above of claims you have presented to The Home Insurance Company in Liquidation ("The Home"), under the Proof(s) of Claim specified above. The Home expects to present notice of this determination to the Superior Court for Merrimack County, New Hampshire (the "Court") for approval in accordance with New Hampshire Revised Statute, RSA 402-C:45. Read this Notice of Determination carefully as it sets forth your rights and obligations in detail.

The Home has now made a Determination on the claims as set forth above in accordance with The Home Claim Procedures (the "Procedures")\* approved by the Court. If the claim has been allowed, in whole or in part, it has been assigned a Class II priority as a "policy related claim" pursuant to the Order of Distribution set forth in RSA 402-C:44 and will be placed in line for payment as directed by the Court from the assets of The Home. The first \$50 of the amount allowed on each claim in this class shall be deducted from the amount distributed as specified in RSA 402-C:44.

You may have other claims against The Home for which you may receive other Notices of Determination. You will have a separate right to dispute each Notice of Determination. If your claim has been allowed in whole or in part, this Notice of Determination does not mean that your claim will immediately be paid, or that it will be paid in full or at all. Pursuant to order of the Court, The Home may make distributions of its assets as a percentage of all allowed claims in a particular priority class in The Home estate as approved by the Court. The amount of the final payment for allowed claims will be determined by the final ratio of assets to liabilities and the applicable priority. Please be advised that the final percentage of payment you receive from The Home, at the time The Home estate is finally closed, is the total payment amount that you will be entitled to for this claim.

The Liquidator does not expect there to be assets sufficient to make a distribution to creditors in classes below Class II.

Any and all distributions of assets may be affected and/or reduced by any payments you have received on this claim from any other sources not listed on the Notice of Distribution. Any such distributions by The Home are based on The Home's knowledge and/or understanding of the amounts you have received in settlement and/or reimbursement of this claim from all other sources at the time of the allowance or thereafter. Should The Home subsequently become aware of prior recoveries from other sources The Home has the right to reduce its future distribution payments to you to the extent of such other recoveries or to seek and obtain repayment from you with respect to any previous distributions that were made to you. The Home policy against which this claim is made contains certain limits. New Hampshire RSA 402-C:40, IV provides that in the event multiple claims against such a policy are filed, and the aggregate allowed amount of all claims to which the same limit of liability in the policy is applicable exceeds that limit, then each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. The Liquidator is presently unaware of any proof of claim filed in the Home estate asserting a claim subject to the same limit in the Home policy as this claim. However, if an allowance is made such that the aggregate allowed amount of all claims subject to the same limit exceeds the limit, each claim will be prorated so that the total equals the policy limit. The Liquidator will be unable to determine whether, or the extent to which your claim may be subject to proration until all claims against the policy are identified and evaluated. If the aggregate allowed amount of claims exceeds the applicable

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\*A copy of the January 19, 2005 Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation may be obtained from the website of the Office of the Liquidation Clerk for The Home Insurance Company in Liquidation and US International Reinsurance Company in Liquidation, [www.hicilclerk.org](http://www.hicilclerk.org)



limit such that your claim is subject to proration, the Liquidator will inform you accordingly.

Further, if you seek or receive any future payment from any other source on this claim after you receive a distribution payment from The Home you must notify The Home at the address below and The Home has the right to recover from you the distribution payments in whole or in part, to the extent of any such other future recoveries.

As a condition to receipt of any distributions, The Home shall be entitled to any rights to subrogation you may have against any third party and you shall be deemed to have assigned to The Home such rights upon receipt of any distributions. You shall also be obliged to reimburse The Home for any legal fees or other costs associated with The Home recovering from you any distribution payments to which you are not entitled.

The following instructions apply to this Notice of Determination:

#### Claim Allowed

1. If this claim has been allowed in whole or in part and you agree with the determination, sign and date the enclosed Acknowledgment of Receipt of the Notice of Determination and mail the completed Acknowledgment to The Home.

#### Claim Disallowed

2. A. If all or part of your claim has been disallowed or you wish to dispute the determination or creditor classification for any reason, you may file a Request for Review with the Liquidator. The Request for Review is the first of two steps in the process of disputing a claim determination. The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination.

#### REQUEST FOR REVIEW FILING REQUIREMENTS:

- (a) Sign and return the attached Acknowledgment of Receipt form.
- (b) On a separate page, state specifically the reasons(s) you believe that the determination is in error and how it should be modified. Please note the Proof of Claim number on that page and sign the page.
- (c) Mail the Request for Review to:  
The Home Insurance Company in Liquidation  
P.O. Box 1720  
Manchester, NH 03105-1720

You should keep a copy of this Notice of Determination, Acknowledgment of Receipt and Request for Review, then mail the Original Request for Review to us by U.S. Certified Mail.

- (d) The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination. The Request for Review must be in writing.
- (e) The Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination.

IF A REQUEST FOR REVIEW IS NOT FILED WITH THE HOME WITHIN THE THIRTY (30) DAY PERIOD, YOU MAY NONETHELESS DIRECTLY FILE AN OBJECTION WITH THE COURT WITHIN SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE. You do not have to file the Request for Review as a prerequisite to dispute the Notice of Determination. Please see Section 2B (below) for the Objections to Denial of Claims.

B. If your claim is disallowed in whole or in part, you may file an Objection with the Court at

Office of the Clerk, Merrimack County Superior Court  
163 N. Main Street, P.O. Box 2880  
Concord, New Hampshire 03301-2880  
Attention: The Home Docket No. 03-E-0106

within sixty (60) days from the mailing of the Notice of Determination and bypass the Request for Review procedures as noted in Section 2A (above). If the Request for Review is timely filed, as outlined in Section 2A, the Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination. If the redetermination is to disallow the claim, you may still file an Objection with the Court. You have sixty (60) days from the mailing of the Notice of Redetermination to file your Objection. Please also sign and return the Acknowledgment of Receipt form and mail a copy of the Objection to the Liquidator.

IF YOU DO NOT FILE AN OBJECTION WITH THE COURT WITHIN EITHER SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE OF DETERMINATION OR SIXTY (60) DAYS FROM THE MAILING OF ANY NOTICE OF REDETERMINATION, YOU MAY NOT FURTHER OBJECT TO THE DETERMINATION.

A timely filed Objection will be treated as a Disputed Claim and will be referred to the Liquidation Clerk's Office for adjudication by a Referee in accordance with the Procedures.

3. You must notify The Home of any changes in your mailing address. This will ensure your participation in future distributions, as applicable. For purposes of keeping The Home informed of your current address, please notify us at the address given on the letterhead above.

Sincerely yours,

Peter Bengelsdorf, Special Deputy Liquidator  
For John R. Elias, Liquidator  
of The Home Insurance Company in Liquidation

If you wish to speak to someone regarding this Notice of Determination, please contact:

Allison Rose  
Senior Manager  
Home Insurance Company in Liquidation  
Phone : 212-530-4108

**THE HOME INSURANCE COMPANY IN LIQUIDATION**

P.O. Box 1720  
Manchester, New Hampshire 03105-1720  
Tel: (800) 347-0014

POC #: INSU178484-01

Amount Allowed: \$ 0

Meyer Unkovic & Scott  
Attn: Elaina A. Smiley, Esq.  
535 Smithfield St, Suite 1300  
Pittsburgh, PA 15222-2315

**ACKNOWLEDGMENT OF RECEIPT**

I hereby acknowledge receipt of the Notice of Determination as a Class II Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Determination of my Claim against The Home Insurance Company in Liquidation and in that regard advise as follows:

(Check off all applicable items.)

I agree to the determination.

I reject the determination and want to file a Request for Review (specific reasons must be included along with return of the signed Acknowledgment).

I reject the determination and intend to file a separate Objection with the Court, without filing a Request for Review.

I have not assigned any part of this claim.

I have not made any other recoveries with respect to this claim.

I have not sought and do not intend to seek any other recoveries with respect to this claim.

I have made recovery from others with respect to this claim (full details must be included with this Acknowledgement).

I have sought or intend to seek recovery from others with respect to this claim (full details must be included with this Acknowledgement).

I request that The Home mail further correspondence to:

\_\_\_\_\_ Same name as above.  
New name \_\_\_\_\_

\_\_\_\_\_ Same address as above  
New address \_\_\_\_\_  
\_\_\_\_\_

This Acknowledgment of Receipt must be completed, signed and returned to The Home in order to be eligible for distributions from The Home estate as directed by the Court.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

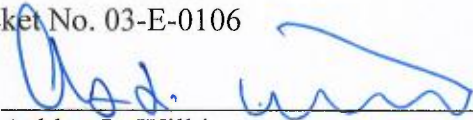
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing **OBJECTION TO LIQUIDATOR'S NOTICE OF DETERMINATION OF CLAIM** was served upon the Court by U.S. certified mail this 10<sup>th</sup> day of December, 2018, addressed as follows:

Office of the Clerk, Merrimack County Superior Court  
163 N. Main Street, P.O. Box 2880  
Concord, New Hampshire 03301-2880  
Attention: The Home Docket No. 03-E-0106

  
\_\_\_\_\_  
Ashley L. Wilkinson

**THE STATE OF NEW HAMPSHIRE**

MERRIMACK, SS

SUPERIOR COURT

IN THE MATTER OF LIQUIDATION  
OF THE HOME INSURANCE COMPANY

DOCKET #03-E-0106

**ORDER OF COURT**

AND NOW, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, upon consideration of the Objection to Liquidator's Notice of Determination filed on behalf of Tenova Inc. f/k/a Tenova Core Inc. f/k/a Core Furnace Systems Corp. f/k/a Techint Technologies Inc., the successor in interest of Salem Furnace Company, it is **ORDERED, ADJUDGED and DECREED** that said Objection is granted. It is further ordered that Tenova's Proof of Claim No.: INSU178484-01 is allowed.

BY THE COURT:

\_\_\_\_\_ J.