

07/22/2020

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AC 17-0694

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made as of this ____ day of July, 2020, by and between Nancy Gibson as Receiver ("Receiver"), pursuant to Montana Code 27-20-101 et seq. and the orders described below, for (i) Robinson Insulation Company ("Robinson") and (ii) Grogan Robinson Lumber Company ("Grogan") (collectively, the "Robinson Entities" or "Claimant"), on the one hand, and Christopher R. Nicolopoulos, 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 (Claimant and the Liquidator are hereinafter referred to collectively as the "Parties").

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

WHEREAS, Home issued the following insurance policy under which Robinson is the named insured:

<u>Policy Number</u>	<u>Policy Period</u>
BOP 8808854	2/11/80 – 2/11/83

which together with all other insurance policies Home may have issued to Robinson and Grogan are defined collectively as the "Policies".

WHEREAS, Claimant has submitted a proof of claim in The Home Liquidation seeking coverage in connection with liability arising out of asbestos bodily injury which has been assigned proof of claim number INSU715186, which together with any other proofs of claim hereinbefore or hereinafter filed by Claimant in the Home liquidation are defined collectively as "Proofs of Claim";

WHEREAS, the Receiver was appointed by the Order Creating Receivership for Robinson Insulation Company (“Receivership Order”) issued by the Asbestos Court of the State of Montana (“Asbestos Court”) on March 23, 2018 in In re Asbestos Litigation, AC 17-0694 (MT Asb. Cl. Ct.) (“Receivership Court”) and is to seek an Order Granting Motion for Amended Receivership Order (“Amended Receivership Order”) by the Receivership Court to expand the authority of the Receiver to include Grogan. In addition to the authority granted by the Receivership Order and the authority to be granted by the Amended Receivership Order, if the Asbestos Court does grant such authority, the Receiver has authority to assert and settle, subject to approval by the Receivership Court, claims against insurers pursuant to the Order Granting Receiver Litigation and Settlement Authority (Robinson Insulation Company) issued by the Receivership Court on January 23, 2020;

WHEREAS, to effectuate the terms of a proposed settlement agreement between the Receiver and other insurers of the Robinson Entities, the Receiver with the concurrence of the insurers and counsel for the asbestos claimants has moved the Asbestos Court to order the creation of a Trust (“Trust”) and the transfer to the Trust of rights and duties with respect to the proceeds of the proposed settlement agreement. The motion provides that upon any future Court-approved settlement of insurance obligations of other insurers with respect to claims against the Robinson Entities, all resulting payments from such insurers or liquidators of insolvent insurers which have resolved their insurance obligations shall be paid to the Trust. The motion further provides for the assignment and assumption by the Trust of all rights and responsibilities of the Receiver.

WHEREAS, the Parties are now 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 their rights and obligations with respect to the Policies; and

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 the occurrence of all of the following events:

- A. A final order (that is, an order from which no appeal lies, or which has been affirmed on all available appeals) (“Final Order”) from the Liquidation Court approving the Settlement Agreement and a Class II priority allowance in the full Recommended Amount (“Final Liquidation Court Approval Order”).
- B. Final Order(s) from the Receivership Court in the Robinson Insulation Company Receivership (“Final Asbestos Claims Court Approval Order(s)”):
 - (i) Entering the Order Granting Motion for Amended Receivership Order;
 - (ii) Approving the Settlement Agreement, including the release of all rights under the Policies; and
 - (iii) Entering a permanent injunction barring all claims against Home and the Liquidator relating to insurance coverage released by the Receiver on behalf of Robinson or Grogan, including but not limited to past or future claims by persons asserting claims for bodily injury with respect to asbestos (“Injunction”). The injunction shall state, in substance, as follows: “Pursuant to the Court’s inherent equitable authority, (a) all Persons who hold or assert, or may in the future hold or assert, any Claim against Robinson, Grogan, or the Receiver arising in connection with the activities covered by the Policies, or in connection with the activities of Robinson or Grogan giving rise to the Claims that have been made or that

could be made under the Policies, (b) all claims by third party claimants and by other insurers alleging they are entitled to contribution, indemnification, or subrogation with respect to the Policies including any claims for defense or indemnity for claims made under the Policies against the Liquidator or Home by other insurers of Claimant, or by any individuals or entities asserting “direct action” claims arising or relating to the Policies; and (c) all persons who may claim to be an insured, additional insured, or otherwise entitled to any benefit under the Policies, are permanently stayed, barred, restrained, and enjoined from asserting any such Claim or right to entitlement, from commencing a proceeding, or taking any other action against Home or the Liquidator for the purpose of obtaining any recovery or other relief from Home or the Liquidator based on, under, arising out of, related or attributable to, and/or in connection with the Policies.”

2. Court Approvals. Claimant shall move promptly at its expense for approval of the Amended Receivership Order, this Settlement Agreement and entry of the Injunction by the Receivership Court. Upon receipt by the Liquidator of the Final Asbestos Claims Court order(s), and an executed copy of the Settlement Agreement signed by the Receiver, the Liquidator shall move promptly at his expense to obtain a Final Liquidation Court Approval Order. The “Effective Date” of this Settlement Agreement is the date upon which both a Final Liquidation Court Approval Order and all Final Asbestos Claims Court order(s) are entered. In the event a Final Liquidation Court Approval Order or any Final Asbestos Claims Court Approval Orders are not entered, 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 ever was reached, with this Settlement Agreement thereafter being inadmissible for an purpose in any dispute between the Parties.

A. Review of Receiver's Request for Approval by Liquidator. The Claimant will provide the Liquidator with the final draft of its motion to be submitted to the Receivership Court seeking approval of the Settlement Agreement and entry of the Injunction, including the proposed terms of the injunction. The Liquidator may withdraw from this Settlement Agreement within five (5) days of receipt by the Liquidator of the draft motion if the Liquidator determines that the motion and proposed Injunction does not adequately protect the interests of the Liquidator and Home.

B. Recommendation, Allowance, and Classification of Claims.

- (i) 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 \$1,412,291 (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.
- (ii) Upon the Effective Date, allowance of the Recommended Amount as a Class II claim by the Liquidation Court ("Allowed Amount") shall fully and finally resolve the Proofs of Claim and any and all claims of whatever nature that Claimant has under the Policies.

3. Distribution. Upon the Effective Date, Claimant will become a Class II creditor in the Home liquidation 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. Subject to receipt of written notice by the Liquidator pursuant to Section 9 hereof with regard to an assignment to the Trust, all distributions to Claimant shall be: (i) made payable to Nancy Gibson, as Receiver for Robinson Insulation Company and Grogan Robinson Lumber Company, and (ii) sent to the Claimant at the following address:

Nancy Gibson, Esq.
4110 Weeping Willow Drive
Missoula, Montana 59803

Email: nancy@ngibsonlaw.com

Claimant agrees that it will promptly notify the Liquidator of any change of address or addressee, including for any assignee (trustee). Upon an order of the Receivership Court establishing a Qualified Settlement Fund Trust for the purpose of receiving and distributing the funds to be paid hereunder and subject to Section 9 hereof, all payments are to be made to the trustee of that Qualified Settlement Fund Trust.

4. Release by Claimant. Subject to the terms of this Settlement Agreement, and upon the Effective Date, the Receiver, in her capacity as such and on behalf of the Robinson Entities and each of their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns, 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), from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and/or demands, arising from or related to the Proofs of Claim or the Policies, in law, admiralty, or

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

5 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 its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns, irrevocably and unconditionally releases and discharges the Receiver, the Robinson Entities and each of their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and/or demands, arising from or related to the Proofs of Claim or the Policies, in law, admiralty, or equity, which the Liquidator, Home, or their subsidiaries, affiliates, predecessors, successors, and assigns, ever had, now have, or hereafter may have against the Receiver, the Robinson Entities, or their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proofs of Claim or the Policies.

6. Resolution of Matters. Claimant acknowledges that this Settlement Agreement is intended to resolve all matters arising out of or relating to any rights Claimant ever had, now has or hereafter may have in the Policies and the Proofs of Claim, including any asserted rights of third-party claimants against Claimant under the Policies, and Claimant agrees to address, at its sole cost and expense, any such 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. Claimant agrees that it will not look to Home for any further payment relating to any claims of third-party claimants against Claimant. In consideration of the Recommended Amount being allowed by the Liquidation Court as a Class II claim, Claimant agrees to indemnify and hold the Liquidator and Home harmless from and against any and all claims, losses, liabilities, debts, damages, costs or expenses related to the Proofs of Claim or arising under the Policies, and such indemnification shall be capped at the total amount ultimately distributed or distributable in relation to the Recommended Amount as allowed by the Liquidation Court . Subject to the scope of indemnification set forth in the preceding sentence, the future obligations of Claimant under this paragraph shall extend to and include (by way of example and not limitation) any claims for defense or indemnity for claims made under the Policies against the Liquidator or Home by other insurers of Claimant, or by any individuals or entities asserting "direct action" claims (i.e., claims by allegedly injured parties asserted directly against Home) arising out of or related to the Policies. The Liquidator shall promptly notify Claimant of any such claim, and shall afford Claimant the opportunity to reasonably participate in the defense of such claims. The Liquidator shall assert all defenses to such claims reasonably available to the Liquidator, including defenses under the Order of Liquidation or the New Hampshire Insurers Rehabilitation and Liquidation Act. Claimant shall cooperate with the Liquidator (including but not limited to the provision of affidavits or testimony) to defend against and resolve such claims. The Liquidator represents and warrants that he is presently

unaware of any claims that would trigger any indemnification obligation of Claimant pursuant to this Settlement Agreement. The Receiver's indemnification obligations hereunder shall be extinguished and assumed by the Trustee appointed in connection with the creation of the Trust upon the receipt by the Trust of the distribution payments made by the Liquidator under this Settlement Agreement, and the Trustee may use funds from the Trust for purposes of fulfilling such indemnification obligations.

7. Multiple Claims. The Home policies against which this claim is made contain 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 unaware of any claim in the Home Liquidation asserting a claim subject to the same limit in the Home policies as this claim. 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, to the extent required by RSA 402-C:20 (IV). The Liquidator will be unable to determine whether, or the extent to which, Claimant's claim may be subject to proration until all claims against the policy have been determined. If the aggregate allowed amount of claims exceeds the applicable limit such that Claimant's claim is subject to proration, the Liquidator will inform Claimant accordingly.

8. Mutual Release of Settling Carriers. Claimant agrees to use reasonable commercial efforts to cause any future settlement agreement relating to the underlying matters covered by the Proofs of Claim with any other insurance company to include a waiver by that other insurance company of any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation, or recoupment, against Home regarding the underlying matters

covered by the Proofs of Claim. The Liquidator agrees to waive, relinquish and release any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation, or recoupment, as to the underlying matters covered by the Proofs of Claim against any other insurance company which executes a settlement with Claimant that includes a provision that is materially the same as this paragraph.

9. No Assignments. 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. 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, except that Claimant's rights and obligations under this Settlement Agreement may upon written notice to the Liquidator but without further consent of the Liquidator be assigned to a trust created to assume and take assignment of all rights and obligations of the Receiver with respect to settled liability insurance coverage of the Robinson Entities, and to fulfill distribution obligations arising from the settlement of insurance claims upon the fulfillment of all conditions set forth in paragraphs 1 and 2, provided that, as a condition of the assignment, the trustee accepts the obligations of Claimant under this Agreement, including but not limited to, paragraphs 6 and 10.

10. 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. Claimant acknowledges it is aware of the requirements of the Medicare Secondary Payer Act and the Medicare, Medicaid and SCHIP Extension Act of 2007, including provisions concerning Medicare set-asides and/or notification to the Centers for Medicare and Medicaid Services ("CMS") regarding certain Medicare-eligible, or potentially eligible, claimants who enter into settlement agreements that may justify recovery for Medicare

covered case-related services. Claimant acknowledges that it may be obligated, and otherwise agrees, to provide data, if and when required or requested, for CMS regarding claimants who will share in distributions from Claimant's assets that include a portion of the Recommended Amount.

11. 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.

12. 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.

13. 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 rights to or in any person or entity other than the Parties.

14. 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.

15. Power and Authority to Execute. Subject to the approval of the Liquidation Court and the Receivership Court as set forth in Paragraphs 1 and 2, 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.

16. 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, agents, attorneys, liquidators, receivers, administrators, successors, and assigns.

17. 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.

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

19. Validity of Settlement Agreement. Subject to approval of this Settlement Agreement by the Liquidation Court and the Receivership Court as required by Paragraphs 1 and 2, each Party represents and warrants that this Settlement Agreement is a legal, valid, and binding obligation, enforceable in accordance with its terms.

20. 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.

21. Notice. All notices to be given under this Settlement Agreement shall be given by e-mail and first class U.S. mail directed to:

If to Claimant, to:

Nancy Gibson, Esq.
4110 Weeping Willow Drive
Missoula, Montana 59803

Email: nancy@ngibsonlaw.com

and

Allan McGarvey, Esq.
McGarvey, Heberling, Sullivan & Lacey, p.C.
345 First Avenue East
Kalispell, Montana 59901

Email: amcgarvey@mcgarveylaw.com

If to the Liquidator, to:

Angela Anglum, Esq.
VP Legal Affairs & Corporate Secretary
The Home Insurance Company in Liquidation
61 Broadway, 6th Floor
New York, New York 10006
Email: angela.anglum@homeinsco.com

and

J. Christopher Marshall
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street

Concord, New Hampshire 03301-6397
Email: christopher.marshall@doj.nh.gov

and

J. David Leslie, Esq.
Rackemann, Sawyer & Brewster, P.C.
160 Federal Street
Boston, Massachusetts 02110-1700
Email: dleslie@rackemann.com

22. 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.

WHEREFORE, the Parties have caused this Settlement Agreement to be executed on their respective behalves by their duly authorized representatives.

**NANCY GIBSON AS RECEIVER FOR (I)
ROBINSON INSULATION COMPANY AND (II)
GROGAN ROBINSON LUMBER COMPANY**

By: _____

Name: _____

Title: _____

Date: ____ day of _____, 2020

**CHRISTOPHER R. NICOLOPOULOS, INSURANCE
COMMISSIONER OF THE STATE OF
NEW HAMPSHIRE, SOLELY IN HIS
CAPACITY AS LIQUIDATOR OF
THE HOME INSURANCE COMPANY**

By: _____

Name: _____

Title: _____

Date: ____ day of _____, 2020