

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**

**AFFIDAVIT OF PETER A. BENGELSDORF,
SPECIAL DEPUTY LIQUIDATOR, IN SUPPORT OF
APPROVAL OF SETTLEMENT**

I, Peter A. Bengelsdorf, hereby depose and say:

1. I was appointed as Special Deputy Liquidator of The Home Insurance Company ("The Home") by the Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home, effective June 11, 2003. I submit this affidavit in support of the Liquidator's Motion for Approval of Settlement. The motion requests approval of a settlement ("Settlement") between The Home and Barry L. Kroll and Williams and Montgomery, Ltd. (the "Defendants") and Great American Insurance Group ("Great American").

2. The Defendants are an individual attorney and a law firm licensed to practice in the State of Illinois, whom The Home engaged in 1993 to represent it in litigation regarding The Home's denial of coverage to two entities, Empire Chem and Empire Chem Realty. The Settlement concerns a malpractice action (the "Action") The Home brought against the Defendants due primarily to the Defendants' failure to advise the Home to file a bond in order to stay execution pending the appeal of a judgment in the underlying Empire Chem litigation. The Home asserts that its failure to timely file the

appropriate bond compromised The Home's ability to appeal. Furthermore, the Defendants' actions prompted sanctions to be assessed against The Home.

3. After trial of the Action, a judgment was entered in favor of the Home in the amount of \$6,981,334.75 in October of 2001 (the "Judgment"). The Defendants appealed the Judgment to the Appellate Court of Illinois, which affirmed it on August 8, 2003. The Defendants filed a Petition for Leave to Appeal from the Appellate Court's decision with the Illinois Supreme Court, which petition is currently pending.

4. The amount of the Judgment without interest is \$6,981,334.75. The total of the Judgment plus interest as of November 30, 2003 is \$8,336,093.55.

5. Representatives of the Defendants, Great American, the insurer that provided the Defendants with malpractice insurance coverage, and representatives of the Liquidator under my direction have sought to negotiate a settlement by which the Action would be settled on an agreed-upon amount, the Liquidator would release the Defendants from liabilities, damages, rights, claims or obligations relating to the Action and the Defendants would dismiss the Petition for Leave to Appeal.


6. The Defendants, Great American, and the Liquidator have now agreed on the Settlement, subject to approval by this Court. A copy of the Settlement is attached as Exhibit A to the Liquidator's motion.

7. The Settlement provides for (a) payment to the Home by Great American of \$7,500,000 in satisfaction of the Judgment; (b) the cooperation of The Home, Defendants and Great American to request that the Illinois Supreme Court reserve its ruling on the Petition for Leave to Appeal pending approval by this Court; and (c) execution of a releasing agreement whereby the Home will release the Defendants from liabilities, damages, rights, claims or obligations relating to the Action. Other terms of

the Settlement are set forth in the copy of the Settlement at Exhibit A of the Liquidator's motion.

8. I believe that the Settlement is fair and reasonable and that it is in the best interests of the policyholders and other creditors of The Home. The Settlement is for reasonable consideration in light of the uncertainty as to whether the Illinois Supreme Court will grant the Defendants' Petition for Leave to Appeal and the substantial additional costs and uncertainty that would result if the Defendants' Petition for Leave to Appeal were granted. In addition, the Settlement will expedite the final determination and payment by Great American to The Home, which will benefit the policyholders and other creditors of The Home generally.

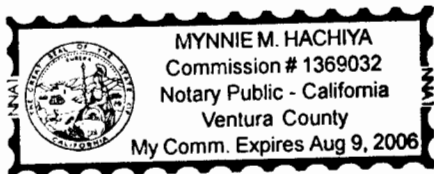
Signed under the penalties of perjury this 5TH day of December, 2003.

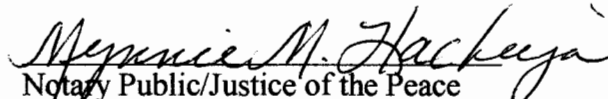


Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

STATE OF NEW YORK
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 5 day of December, 2003





Notary Public/Justice of the Peace