

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 IN SUPPORT OF
APPROVAL OF SETTLEMENT AGREEMENT WITH CLEAVER-
BROOKS AND COCA-COLA**

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

1. I was appointed as Special Deputy Liquidator of The Home Insurance Company ("Home") by the Insurance Commissioner of the State of New Hampshire, acting as liquidator of Home ("Liquidator"), effective June 11, 2003. I submit this affidavit in support of the Liquidator's motion for approval of a Settlement Agreement and Mutual Release ("Settlement Agreement") with claimants Cleaver-Brooks, Inc., formerly known as Aqua-Chem, Inc. (Cleaver-Brooks") and The Coca-Cola Company ("Coca-Cola"). The facts and information set forth in this affidavit are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information and belief.

2. Coca-Cola, a global corporation in the beverage industry currently headquartered in Georgia, owned Aqua-Chem, Inc. (now Cleaver-Brooks) from 1972 through 1981. Aqua-Chem, Inc., a manufacturer of industrial boilers located in Wisconsin, is listed as a named insured on six excess liability policies Home issued to Coca-Cola for policy periods between January 1, 1973 and January 1, 1979. Coca-Cola and Cleaver-Brooks (the "Claimants") filed proofs of claim in the Home liquidation regarding these policies. The proofs of claim seek

coverage under the policies for claims, including but not limited to claims for asbestos bodily injury, asserted against the Claimants.

3. The Liquidator and the Claimants have reached an agreement to resolve the proofs of claim and all matters under the policies that is reflected in the Settlement Agreement attached as Exhibit A to the Liquidator's motion. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.

4. Coca-Cola has filed additional proofs of claim asserting claims under seven other Home policies issued to it after September 1, 1981 that contain asbestos exclusions. These additional proofs of claim and policies are not affected by the Settlement Agreement. See Settlement Agreement at first and third Whereas clauses.

5. The Settlement Agreement provides that the Liquidator will recommend allowance of Claimants' proofs of claim in the aggregate amount of \$74,000,000 as a Class II claim. Settlement Agreement ¶ 2(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve the Claimants' proofs of claim, with the exception of those identified in paragraph 4 above. 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). The distributions will be made to an escrow account to be used solely for the payment of defense and indemnity costs incurred in connection with asbestos claims against Cleaver-Brooks. Id. ¶ 2(D).

6. The Settlement Agreement is intended to resolve the Claimants' proofs of claim and all matters relating to the policies. See Settlement Agreement ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims between Home and the Claimants arising from or related to the proofs of claim or the policies. Id. ¶¶ 3, 5.

7. The Liquidator's review of proofs of claim has identified proofs of claim filed by seven law firms on behalf of numerous persons asserting third party asbestos claims against the Claimants' policies. In resolving all matters relating to the proofs of claim and the policies, the Settlement Agreement contemplates denial of all third party claimants' claims in the Home liquidation without prejudice to their claims against the Claimants. Accordingly, the Claimants acknowledge in the Settlement Agreement that it is intended to resolve all matters between them and the Liquidator/Home relating to the policies and proofs of claim, including asserted rights of third party claimants. Settlement Agreement ¶ 7. The Claimants agree to address, at their sole cost, the claims of claimants asserting asbestos claims against Cleaver-Brooks as if the Claimants had no insurance coverage from Home under the policies. Id. The Claimants agree to indemnify the Liquidator and Home against claims arising from the policies. Id.

8. The denial of the third party claimants' proofs of claim without prejudice to their claims against Claimants will not harm the third party claimants, who will continue to have their full claims against Cleaver-Brooks. As noted above, Cleaver-Brooks has agreed to address these claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 7. The third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Cleaver-Brooks from those claims up to the limits of the policies (which all equal or exceed \$5 million above the limits of primary policies issued by other insurers) but only entitle the third party claimants (assuming their claims are allowed) to a presently undetermined percentage distribution at the future date when a distribution is made. It is not expected that the allowed claims of third party claimants (or other Class II creditors) will be paid in full. Under the Settlement Agreement, the Claimants will continue to be fully responsible for the third party claimants' claims against Cleaver-Brooks, and the distributions on

the recommended amount are to be used solely for the payment of defense and indemnity costs of such claims. See Settlement Agreement ¶¶ 2(D), 7. The seven law firms have been provided with copies of this motion.

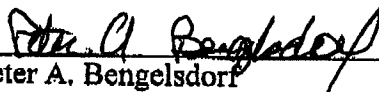
9. The Claimants have previously entered and may in the future enter settlement agreements with other insurers regarding coverage for asbestos claims. See Settlement Agreement at fourth Whereas clause. These agreements may contain provisions under which the settling insurers agree not to pursue claims, including claims for contribution, reimbursement, set-off, indemnity, subrogation, attorney's fees or costs, against non-settling insurers (such as Home) who agree not to pursue claims against the settling insurers. In order to take advantage of these provisions, the Settlement Agreement contains an additional release provision. *Id.* ¶ 6. By this provision, the Liquidator and Home release settling insurers from claims provided that the settling insurers release Home. This will avoid contribution and other claims between Home and other insurers regarding asbestos claims against Cleaver-Brooks. The Settlement Agreement includes a contingent release and judgment reduction provision that is also intended to avoid contribution claims under Wisconsin law. *Id.* ¶ 4. (A coverage action between Cleaver-Brooks and various insurers is pending in Wisconsin.)

10. The Settlement Agreement reflects a compromise of the claims asserted in the Claimants' proofs of claim. It is the result of negotiations involving Home's Claims Department, under my supervision, which has extensive experience in assessing the exposure presented by asbestos 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 numerous underlying claims against Cleaver-Brooks. The Liquidator accordingly recommends

approval of the Settlement Agreement and allowance of the \$74,000,000 settlement amount as a Class II claim in accordance with RSA 402-C:45 and RSA 402-C:44.

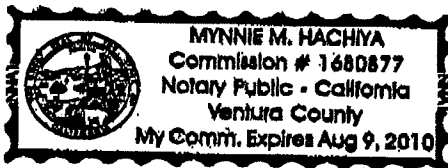
11. I believe that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home.

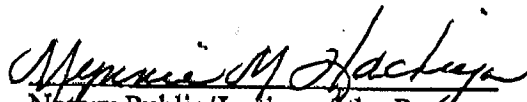
Signed under the penalties of perjury this 29th day of March, 2007.


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

STATE OF CALIFORNIA
COUNTY OF VENTURA

Subscribed and sworn to, before me, this 29 day of March, 2007.




Notary Public/Justice of the Peace