

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 MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
WITH AMCHEM AND UCC**

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

1. I was appointed Special Deputy Liquidator of the Home Insurance Company (“Home”), by the Insurance Commissioner for the State of New Hampshire, as Liquidator (“Liquidator”) of Home. I submit this affidavit in support of the Liquidator’s Motion for Approval of Settlement Agreement with Amchem and UCC. The facts and information set forth 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. The motion seeks approval for the Settlement Agreement and Mutual Release (“Settlement Agreement”) among Union Carbide Corporation (“UCC”), Amchem Products, Inc., a former subsidiary of UCC (“Amchem”) (UCC and Amchem are collectively referred to as the “Claimants”) and the Liquidator. The Settlement Agreement was negotiated under my supervision. A copy of the Settlement Agreement is attached as Exhibit A to the Liquidator’s motion.

3. Home issued two insurance policies to Amchem for certain policy periods between February 16, 1971 and January 1, 1976. Upon Home’s placement in liquidation, Amchem filed proofs of claim in the Home liquidation regarding claims under the policies,

including but not limited to claims for coverage for asbestos bodily injury. (Home also issued policies to UCC. Both Amchem and UCC also filed separate proofs of claim in the Home liquidation regarding claims under the UCC policies. The Settlement Agreement relates solely to the proofs of claim concerning the Amchem policies, and does not affect any UCC or Amchem proofs of claim under the UCC policies.)

4. The Liquidator and the Claimants have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters under the policies. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.

5. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$22,750,000 as a Class II priority claim under RSA 402-C:44. Settlement Agreement ¶ 2(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve all the proofs of claim and all claims Claimants have under the policies. *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).

6. The Settlement Agreement is intended to resolve the proofs of claim, and all claims under the policies. See Settlement Agreement ¶¶ 2(B), 5. 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, 4. The Liquidator also agrees not to pursue certain claims respecting the Claimants against other insurers that agree not to pursue such claims against Home. *Id.* ¶ 6.

7. The Liquidator is not aware of any third party claimants asserting claims under the policies. However, in resolving all matters relating to the proofs of claim and the policies,

the Settlement Agreement contemplates denial of any third party claimants' claims under the policies 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 the Claimants and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. The Claimants agree to address, at their sole cost, the claims of claimants asserting claims against the Claimants 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 up to the amounts actually distributed to the Claimants. *Id.*


8. The denial of any third party claimants' proofs of claim without prejudice to their claims against the Claimants will not harm the third party claimants, who will continue to have their full claims against the Claimants. As noted above, the Claimants have agreed to address these claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 5. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release the Claimants from those claims up to the limits of the policies 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 any 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 any third party claimants' claims against them. See Settlement Agreement ¶ 5.

9. The Settlement Agreement reflects a compromise of the claims asserted in the 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

bodily injury liability 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 underlying liabilities of Amchem and UCC. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$22,750,000 settlement amount as a Class II claim in accordance with RSA 402-C:45 and RSA 402-C:44.

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

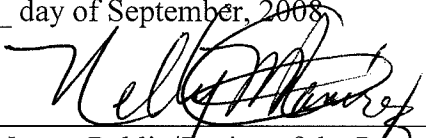
Signed under the penalties of perjury this 29th day of September, 2008.



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 29th day of September, 2008.



Notary Public/Justice of the Peace

NELLY M. GOMEZ-LAMIREZ
Notary Public, State of New York
No. 0160 -5005271
Qualified in Brox County
Certificate Filed in New York County
Commission Expires December 7, 2010