

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 R. LAVIN & SONS INC.**

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 R. Lavin & Sons Inc. 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”) between R. Lavin & Sons Inc. (“Lavin”) 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 seven insurance policies to Lavin for certain policy periods between December 31, 1963 and October 1, 1994. Upon Home’s placement in liquidation, Lavin filed six proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for environmental clean up costs and damages. Lavin had previously commenced coverage litigation against Home regarding its claims.

4. Lavin is in a liquidating reorganization under the bankruptcy laws in a bankruptcy proceeding before the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Action”). Pursuant to a Liquidation Plan approved by the Bankruptcy Court, Lavin’s affairs are controlled by the Post Confirmation Creditors’ Committee (“Committee”) and the Disbursing Agent for the Committee. One of the assets within the control of the Committee is the claim asserted in the proofs of claim.

5. The United States has asserted a claim against Lavin in the Bankruptcy Action for alleged damages by Lavin to the property of the United States which form part of the basis for the Lavin proofs of claim in the Home liquidation. The United States has also filed a proof of claim in the Home liquidation for the same alleged damages. Under orders of the Bankruptcy Court, the United States is to receive a portion of any amount paid by Home to Lavin from Lavin.

6. The Liquidator and Lavin have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters under the policies. The Disbursing Agent for the Committee executed the Settlement Agreement for Lavin. Settlement Agreement at 15. The Settlement Agreement is subject to approval by this Court. Id. ¶ 1. The Settlement Agreement is also conditioned upon (a) approval by the Bankruptcy Court in the Bankruptcy Action and (b) withdrawal of the United States’ proof of claim in the Home liquidation. Id. As discussed in paragraph 12 below, these conditions have been satisfied.

7. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$2,346,774 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

Lavin has 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).

8. 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 Lavin arising from or related to the proofs of claim or the policies. Id. ¶¶ 3, 4. It also provides for withdrawal of the United States' proof of claim. Id. ¶ 1. The Liquidator also agrees not to pursue certain claims respecting Lavin against other insurers that agree not to pursue such claims against Home. Id. ¶ 6.

9. The Liquidator is not aware of any third party claimants asserting claims under the policies other than the United States (under the proof of claim which it has withdrawn as discussed below). 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 Lavin. Accordingly, Lavin acknowledges in the Settlement Agreement that it is intended to resolve all matters between Lavin and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Lavin agrees to address, at its sole cost, the claims of claimants asserting claims against Lavin as if Lavin had no insurance coverage from Home under the policies. Id. Lavin agrees to indemnify the Liquidator and Home against claims arising from the policies up to the amounts actually distributed to Lavin. Id.

10. The denial of any third party claimants' proofs of claim without prejudice to their claims against Lavin will not harm the third party claimants, who will continue to have their claims against Lavin subject to the Lavin liquidating plan of reorganization. As noted above, Lavin has agreed to address any such 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 Lavin from those claims up to the limits of the policies but only entitle any 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, Lavin will continue to be responsible for any third party claimants' claims against it (subject to the liquidating plan of reorganization). See Settlement Agreement ¶ 5.

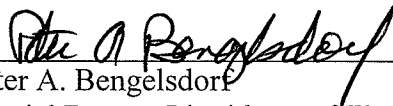
11. The Settlement Agreement reflects a compromise of the claims asserted in the proofs of claim. It is the result of negotiations involving Home's Claims Department, under my supervision, which has extensive experience in assessing the exposure presented by environmental claims under Home's insurance policies. The agreed settlement amount is based on careful evaluation and negotiation of coverage obligations under Home's policies respecting the underlying liabilities of Lavin. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$2,346,774 settlement amount as a Class II claim in accordance with RSA 402-C:45 and RSA 402-C:44.

12. The conditions to the Settlement Agreement other than this Court's approval have been satisfied. The Bankruptcy Court in the Bankruptcy Action approved the Settlement Agreement in an Order Approving Insurance Litigation Settlement issued November 13, 2008.

The United States withdrew its proof claim in the Home liquidation and agreed to the corresponding allowance of \$0 on that proof of claim on December 17, 2008. Copies of the Bankruptcy Court's order and the United States' acknowledgement of the \$0 allowance based on its withdrawal of its proof of claim are attached as Exhibits 1 and 2.

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

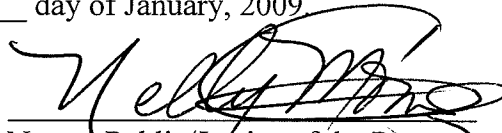
Signed under the penalties of perjury this 6TH day of January, 2009.



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 6th day of January, 2009



Notary Public/Justice of the Peace

NELLY M. GOMEZ
Notary Public, State of New York
No. 0100500271
Qualified in Stuyvesant County
Certificate filed in N.Y. County
Commission Expires December 7, 2010.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:) CHAPTER 11
)
R. LAVIN & SONS INC.,) Case No. 01 B 06301
)
Debtor.) The Honorable Pamela S. Hollis

**ORDER APPROVING
INSURANCE LITIGATION SETTLEMENT**

At Chicago, in said District, this 13th day of November, 2008.

THIS CAUSE coming to be heard on the Motion of the Post-Confirmation Committee (“Committee”) of R. Lavin & Sons, Inc., debtor herein, to settle certain insurance claims with the state-appointed liquidator of The Home Insurance Company (“Home”) in accordance with the Creditors’ Committee’s Amended Liquidating Plan of Reorganization confirmed by order of this Court dated September 13, 2001, as amended, by order of this Court dated January 15, 2004 (the “Motion”); due and proper notice being given to all parties hereto; no further notice being necessary or warranted under the circumstances; the Court having heard and considered the statements of counsel present; no parties having filed an objection to the Motion or otherwise being heard to object to the entry hereof; good cause having been shown for the entry hereof for the reasons stated in open court; and the Court being otherwise fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Motion is hereby granted, approving the buy-back of an asset of the Estate pursuant to Section 363 of the Bankruptcy Code.
2. The Committee is hereby authorized to: (a) proceed with the Settlement Agreement and Mutual Release with Home described in the Motion; and (b) execute such other

documents or take such other action as is necessary to consummate the transactions contemplated therein without further order of this Court.

3. Pursuant to the terms of the Settlement Agreement and Mutual Release, the United States shall withdraw its proof of claim against Home within 30 days after the entry of this Order.

4. Upon the receipt of the settlement funds contemplated in the Home Settlement and Release Agreement, the Committee is hereby authorized and directed 1) to disburse funds to the United States in partial satisfaction of the United States claim approved November 30, 2006 according to the formula approved by this Court in that settlement; 2) to disburse funds to the MWRD in partial satisfaction of the MWRD claim approved January 14, 2004 according to the formula approved by this Court; and 3) to deposit the remainder of the settlement funds in the Estate's account to be used for the administration of the Estate and as otherwise authorized by the Reorganization Plan.

5. The terms of this Order and the Settlement Agreement and Mutual Release are hereby binding upon the Debtor, its estate, all creditors and equity security holders of the Debtor, the Committee and its members, and all of their respective successors and assigns, including without limitation, any trustee subsequently appointed as a representative of the Debtor's estate in the Chapter 11 case, any trustee appointed in the Bankruptcy Case if it is converted to a Chapter 7 case and/or any trustee appointed in any subsequent proceeding against the Debtor under the Bankruptcy Code.

ENTER:

U.S. BANKRUPTCY JUDGE

ENTERED

NOV 13 2008

PAMELA S. HOLLIS
BANKRUPTCY JUDGE

This Order prepared by:

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Special Environmental Counsel to the
Post-Confirmation Committee



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FROM: Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

DATE: 12-16-08

SENT BY: Krystal-Rose Perez

FOR: Robert Darnell

TO: Ron Barta

FAX No. 212-299-3772

NUMBER OF PAGES SENT (INCLUDING COVER PAGE):

SPECIAL INSTRUCTIONS:

THE HOME INSURANCE COMPANY IN LIQUIDATION
P.O. Box 1720
Manchester, New Hampshire 03105-1720
Tel: (800) 347-0014

POC #: GOVT709582

Amount Allowed: \$ 0

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 Acknowledgment).

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

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: Robert W. Dainoff

Printed Name: Robert W. Dainoff

Title: Trial Attorney

Date: 12/17/08