

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 UNION OIL**

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 Union Oil. 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 Union Oil Company of California, for itself and as successor to Molybdenum Corporation of America (“Molybdenum”), including all divisions of Union Oil Company of California, its former parent Unocal Corporation, and any subsidiaries and affiliates in which Union Oil Company of California has a 50% or greater interest, but not including Chevron Corporation or any subsidiaries thereof other than Union Oil Company of California (collectively, “Union Oil”), 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 eighteen insurance policies to Union Oil for the policy period between April 24, 1962 and November 1, 1986, and two insurance policies to Molybdenum for the policy periods between December 4, 1963 and December 9, 1971 (collectively, the “policies”). Union Oil has also alleged coverage as an additional insured under Home insurance policies issued to lessees of Union 76 service stations (“dealer policies”).¹ Upon Home’s placement in liquidation, Union Oil filed five proofs of claim in the Home liquidation regarding claims under the policies and dealer policies, including but not limited to claims for coverage for environmental clean up costs and damages.

4. The Liquidator and Union Oil have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters under the policies and the dealer 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 \$10,316,566 as a Class II priority claim of Union Oil under RSA 402-C:44. Settlement Agreement ¶ 2(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve the proofs of claim and all claims Union Oil has under the policies and the dealer 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 and the dealer policies. See Settlement Agreement ¶¶ 2(B), 5. To that end, the Settlement Agreement provides for mutual releases of all claims between the Liquidator, Home and Union Oil arising from or related to the proofs of claim, the policies and the dealer

¹ Home also issued (a) certain insurance policies in which Union Oil’s interest was as a joint venturer or working interest holder; (b) workers compensation policies, fiduciary liability policies, fidelity policies; and (c) surety bonds. These policies are excluded from the Settlement Agreement and are not referred to below.

policies . Id. ¶¶ 3, 4. As Union Oil and the California Insurance Guarantee Association are currently in litigation involving the claims subject to the proofs of claim, the Settlement Agreement release specifically includes a release by Union Oil of all claims against the California Insurance Guarantee Association and other insurance guaranty associations. Id. ¶3. The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the proofs of claim against other insurers of Union Oil that agree not to pursue such claims against Home. Id. ¶ 6.

7. The Liquidator is aware of no unresolved proofs of claim specifically referencing the policies or the dealer policies other than the proofs of claim filed by Union Oil (except for one proof of claim filed by another insurance company). However, in resolving all matters relating to the proofs of claim, the policies, and the dealer policies, the Settlement Agreement contemplates denial of any third party claimants' claims under the policies and the dealer policies in the Home liquidation without prejudice to their claims against Union Oil.

Accordingly, Union Oil acknowledges in the Settlement Agreement that it is intended to resolve all matters between Union Oil and the Liquidator/Home relating to the proofs of claim, the policies, and the dealer policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Union Oil agrees to address, at its sole cost, the claims of claimants asserting claims against Union Oil as if Union Oil had no insurance coverage from Home under the policies or the dealer policies. Id. Union Oil agrees to indemnify the Liquidator and Home against claims arising from the policies and the dealer policies up to the amounts actually distributed to Union Oil.² Id.

² One insurer has submitted a contribution claim in respect of the policies. See Settlement Agreement ¶ 5. Unlike third party claimants' claims, a contribution claim is independent of the insured's claims (although derived from the same underlying circumstances), and the insurer's claim will remain to be determined on its own merits in the liquidation proceeding.

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Union Oil will not harm the third party claimants, who will continue to have their full claims against Union Oil. As noted above, Union Oil has agreed to address these claims as if it had no insurance coverage from Home under the policies or the dealer policies. Settlement Agreement ¶ 5. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Union Oil from those claims up to the limits of the policies or the dealer 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, Union Oil will continue to be fully responsible for any third party claimants' claims against it. 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 the Claims Department, under my supervision, which has extensive experience in assessing the exposure presented by environmental clean up costs and damages under Home's insurance policies. The agreed settlement amount is based on careful evaluation and negotiation of coverage obligations under the policies and the dealer policies respecting the underlying liabilities of Union Oil. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$10,316,566 settlement amount as a Class II claim of Union Oil 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 28TH day of October, 2010.

Peter A. Bengelsdorf

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 28TH day of October, 2010.

Nelly M. Gomez

Notary Public/Justice of the Peace

NELLY M. GOMEZ-AMICEZ
Notary Public, State of New York
No. 01605005271
Qualified in Dutch County
Certificate Filed in N.Y. County
Commission Expires December 7, 2010