

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 SAUGET ESTATE AND OTHERS**

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 Sauget Estate and Others. 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 the United States of America on behalf of U.S. EPA, the estate of Paul C. Sauget on behalf of itself and Sauget and Company (“The Estate”), Solutia Inc., Parmicia Corporation, Cerro Flow Products, Inc., and Union Electric Company (hereinafter collectively referred to as “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 eleven insurance policies to Sauget and Company for certain policy periods between April 12, 1967 and April 12, 1979. Upon Home’s placement in liquidation,

Claimants filed seven proofs of claim in the Home liquidation as insureds under the policies or as third party claimants regarding claims against Sauget and Company and Paul C. Sauget, including but not limited to claims for coverage for environmental clean up costs and damages.

4. The Liquidator and Claimants have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters between them under the policies or the proofs of claim. 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 \$4,125,000 as a Class II priority claim of Claimant 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 proofs of claim and all claims that 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. Such distributions shall be made to the Executor of the Estate, and all Claimants agree to look solely to such Executor for their agreed shares of the Home distribution. 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), 6. To that end, the Settlement Agreement provides for mutual releases of all claims between the Liquidator and Home and the Estate, Solutia Inc., Parmicia Corporation, Cerro Flow Products, Inc., and Union Electric Company (i.e., the Claimants other than The United States of America on behalf of U.S. EPA; hereinafter, "Private Claimants") arising from or related to the proofs of claim or the policies. Id. ¶¶ 3, 5. In addition, The United States of America on behalf of U.S. EPA (hereinafter, the

“Government Claimant”) covenants not to sue the Liquidator or Home as a result of any claims arising from or related to the proofs of claim or the policies, while the Liquidator releases the Government Claimant. *Id.* ¶¶ 4, 5. The Liquidator also agrees not to pursue certain claims respecting the underlying matters covered by the proofs of claim against other insurers of Sauget and Company or Paul Sauget that agree not to pursue such claims against Home. *Id.* ¶ 7.

7. The Liquidator is not aware of any third party claimants (with the exception of the Claimants other than the Estate, which acts for the insureds) asserting claims under the policies. Claimants acknowledge in the Settlement Agreement that it is intended to resolve all matters between Claimants and the Liquidator/Home relating to the proofs of claim and the policies. Settlement Agreement ¶ 6. However, in resolving all matters relating to the proofs of claim and the policies, the Settlement Agreement contemplates denial of any third party claimants (other than Claimants) under the policies in the Home liquidation without prejudice to their claims against Sauget and Company and Paul Sauget. The Estate accordingly agrees to address, at its sole cost, the claims of third party claimants (other than the Claimants) asserting claims against Sauget and Company or Paul Sauget as if they had no insurance coverage from Home under the policies. *Id.* The Estate agrees to indemnify the Liquidator and Home against such claims arising from the policies up to the amounts actually distributed to Claimants. *Id.*¹

8. Denial of any third party claimants’ proofs of claim (other than those of Claimants) without prejudice to their claims against Sauget and Company and Paul Sauget will not harm those third party claimants, who will continue to have their full claims against Sauget and Company and Paul Sauget. As noted above, the Estate has agreed to address these claims as

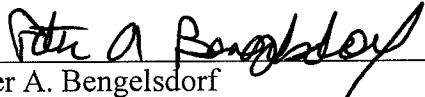
¹ Century Indemnity Company has submitted a contribution claim in respect of the policies. Unlike third party claimants’ claims, a contribution claim is independent of the insured’s claims (although derived from the same underlying circumstances), and it will remain to be determined on its own merits in the liquidation proceeding. See Settlement Agreement ¶ 6.

if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 6. Such third party claimants' claims against the insolvent Home, if not denied with the Settlement Agreement, would release Sauget and Company and Paul Sauget from those claims up to the limits of the policies but only such third party claimants (assuming their claims were 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 Estate will continue to be fully responsible for any third party claimants' claims against it. Id.

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 environmental and other 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 Sauget and Company and Paul Sauget. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$4,125,000 settlement amount as a Class II claim of Claimants 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 TH 12 day of April, 2010.



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

STATE OF CALIFORNIA
COUNTY OF VENTURA

On April 12, 2010 before me, Mynníe M. Hachiya, Notary Public personally appeared Peter A. Bengelsdorf, Special Deputy Liquidator of The Home Insurance Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Mynníe M. Hachiya
Signature of Notary Public

