

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 MALLINCKRODT**

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 Mallinckrodt. 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 Mallinckrodt Inc., a Delaware corporation now known as Mallinckrodt LLC (Mallinckrodt”) and Mallinckrodt US LLC, formerly known as Mallinckrodt Inc., a New York corporation, for itself and as successor in interest to Commercial Solvents Corporation and International Mineral & Chemical Corporation (“Mallinckrodt/IMC”) (hereinafter when used collectively, both Mallinckrodt and Mallinckrodt/IMC are referred to as “Claimant”) 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: (a) eight insurance policies to Mallinckrodt/IMC under which Commercial Solvents Corporation was the named insured for various policy periods between June 30, 1966 and June 30, 1975; (b) fifteen insurance policies to Mallinckrodt/IMC under which International Mineral & Chemical Corporation was the named insured for various policy periods between January 1, 1968 and August 1, 1985; and (c) seven insurance policies to Mallinckrodt under which Mallinckrodt Inc. was the named insured for various policy periods between August 1, 1970 and August 31, 1979. Settlement Agreement, first Whereas clause. Upon Home's placement in liquidation, Claimant filed thirty-two 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 and for asbestos bodily injury. Settlement Agreement, third Whereas clause.

4. The Liquidator and Claimant have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters under the policies, with two exceptions. The Settlement Agreement specifically excludes from the settlement all asbestos bodily injury claims under the policies and proofs of claim. Settlement Agreement, ¶ 2. The Settlement Agreement also specifically excludes claims or proofs of claim filed by Mosaic Global Holding Inc., Schnitzer Steel Industries Inc., or Schnitzer Investment Corp. under policies issued by Home. Settlement Agreement, ¶ 3. 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 with respect to the settled claims in the aggregate amount of

\$10,569,391 as a Class II priority claim of Claimant under RSA 402-C:44. Settlement Agreement ¶ 4(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve the proofs of claim and all claims Claimant has under the policies other than the excluded claims. Id. ¶4(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. ¶ 4(C).

6. The Settlement Agreement is intended to resolve the proofs of claim and all claims under the policies other than the excluded claims. See Settlement Agreement ¶¶ 4(B), 7. To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Claimant arising from or related to the proofs of claim or the policies other than the excluded claims. Id. ¶¶ 5, 6. The Liquidator and Claimant agree that the Recommended Amount does not involve Home insurance policies reinsured by Mallinckrodt's captive reinsurance company Carnforth, Inc., so the Liquidator agrees not to seek reimbursement from that company. Id. ¶ 4(D), (E). The Liquidator also agrees not to pursue claims respecting the underlying non-excluded matters covered by the proofs of claim against other insurers of Claimant that agree not to pursue such claims against Home. Id. ¶ 8.

7. The Liquidator is not aware of any third party claimants who have asserted claims under the policies other than potentially with respect to excluded matters. However, in resolving all matters relating to the proofs of claim and the policies other than the excluded matters, the Settlement Agreement contemplates denial of any third party claimants' claims under the policies in the Home liquidation without prejudice to their claims against Claimant. Accordingly, Claimant acknowledges in the Settlement Agreement that it is intended to resolve all matters between Claimant and the Liquidator/Home relating to the proofs of claim and the

policies (other than the excluded claims), including asserted rights of third party claimants. Settlement Agreement ¶ 7. Claimant agrees to address, at its sole cost, the claims of claimants asserting claims against Claimant with respect to non-excluded matters as if Claimant had no insurance coverage from Home under the policies. Id. Claimant agrees to indemnify the Liquidator and Home against claims (other than the excluded claims) arising from the policies up to the amounts actually distributed to Claimant. Id.


8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Claimant will not harm the third party claimants, who will continue to have their full claims against Claimant. As noted above, Claimant has agreed to address these claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 7. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Claimant from those claims up to the limits of the policies but only entitle the 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, Claimant will continue to be fully responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 7.

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 claims for 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 Home's policies respecting the underlying liabilities of Claimant. The Liquidator accordingly

recommends approval of the Settlement Agreement and allowance of the \$10,569,391 settlement amount as a Class II claim of Claimant in accordance with RSA 402-C:45 and RSA 402-C:44.

10. The Liquidator submits 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 5 day of December, 2011.



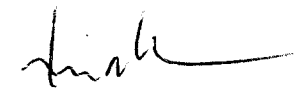
Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

STATE OF CALIFORNIA
COUNTY OF VENTURA

On December 5, 2011 before me, Tina Le, 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 

Signature of Notary Public

