

**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 SANOFI-AVENTIS**

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 sanofi-aventis. 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 sanofi-aventis (“sanofi-aventis”), on its own behalf and on behalf of its predecessors and predecessors-in-interest, Aventis Inc. (“Aventis”), Rhone-Poulenc Rorer Inc. (“RPR”), Rorer Group Inc. (“Rorer”), and sanofi-aventis’s indirect subsidiary, Armour Pharmaceutical Company (“Armour”), and Revlon Holdings LLC, the successor-in-interest to Revlon, Inc. (“Revlon”) (collectively, “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's predecessors Home Indemnity Company and City Insurance Company (both of which merged into Home) issued six insurance policies to Rorer or Revlon through which Amour is also insured for various policy periods between January 1, 1978 and December 31, 1986. Upon Home's placement in liquidation, Claimants filed six proofs of claim in the Home liquidation regarding claims under policies, including but not limited to claims under an agreement between Home and RPR that became effective in September 1994 (the "9/94 Agreement"), the Settlement Agreement Relating to the Investigation, Defense and Indemnification of AIDS-Related Claims Against Armour Pharmaceutical Company between RPR, Armour, Revlon and certain insurers including City (the 1995 Agreement") and claims for AIDS-related and hepatitis C-related bodily injury. Settlement Agreement, first and third Whereas clauses.

4. The Liquidator and Claimants have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters under the policies, the 9/94 Agreement and the 1995 Agreement. 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 \$8,250,000 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 the proofs of claim and all claims Claimants have under the policies, the 9/94 Agreement and the 1995 Agreement. *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, the 9/94 Agreement and the 1995 Agreement. See Settlement

Agreement fourth Whereas clause, ¶¶ 2, 5. To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Claimants arising from or related to the proofs of claim or the policies or the 9/94 Agreement or the 1995 Agreement. Id. ¶¶ 3, 4. The Liquidator also agrees to waive claims respecting the underlying matters covered by the proofs of claim against other insurers of Claimants that agree in a settlement with Claimants to waive 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, the policies and the 9/94 Agreement and the 1995 Agreement, the Settlement Agreement contemplates denial of any third party claimants' claims under the policies, the 9/94 Agreement or the 1995 Agreement in the Home liquidation without prejudice to their claims against Claimants. Accordingly, 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, the policies, the 9/94 Agreement and the 1995 Agreement including asserted rights of third party claimants. Settlement Agreement ¶ 5. Sanofi-aventis, on its own behalf and on behalf of the other Claimants agrees to address, at its sole cost, the claims of persons asserting claims against one or more of the Claimants as if Claimants had no insurance coverage from Home under the policies. Id. Sanofi-aventis agrees to indemnify the Liquidator and Home against claims arising from the policies, the 9/94 Agreement or the 1995 Agreement up to the amounts ultimately distributed in relation to the amount allowed under the Settlement Agreement. Id.


8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Claimants will not harm the third party claimants, who will continue to have their full claims against Claimants. As noted above, sanofi-aventis has agreed to address these claims as if Claimants 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 Claimants 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, 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 the Claims Department, under my supervision, which has extensive experience in assessing the exposure presented by claims of this nature 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 Claimants. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$8,250,000 settlement amount as a Class II claim in accordance with RSA 402-C:45 and RSA 402-C:44.

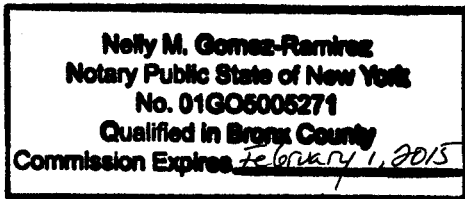
10. I believe that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home.

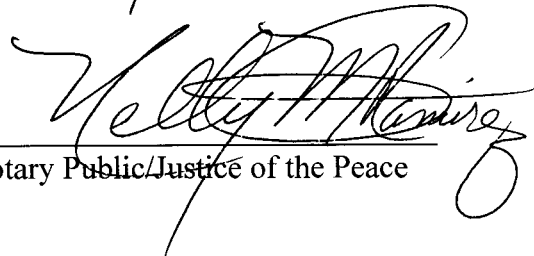
Signed under the penalties of perjury this 12 day of September, 2011.

  
\_\_\_\_\_  
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 12<sup>th</sup> day of September, 2011.



  
\_\_\_\_\_  
Notary Public/Justice of the Peace