

**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 DUKE ENERGY**

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 Duke Energy. 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 Duke Energy Indiana Inc., formerly known as PSI Energy, Inc. and Public Service Company of Indiana, Inc. (“Duke Energy”) 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 three insurance policies to Public Service Company of Indiana, Inc. for various policy periods between September 1, 1964 and December 31, 1972. Settlement Agreement, first Whereas clause. Home also issued three insurance policies to Public Service

Company of Indiana, Inc. and its subsidiary, South Construction Company, Inc., for various policy periods between December 31, 1972 and December 31, 1974. Settlement Agreement, second Whereas clause. Upon Home's placement in liquidation, Duke Energy filed nine proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for asbestos bodily injury and environmental clean-up costs and damages. Settlement Agreement, fourth Whereas clause.

4. The Liquidator and Duke Energy have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters under the policies. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.<sup>1</sup>

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 \$1,575,000 as a Class II priority claim of Duke Energy under RSA 402-C:44. Allowance of the recommended amount as a Class II claim will fully and finally resolve the proof of claim and all claims Duke Energy has under the policies. 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. Settlement Agreement ¶ 2.

6. The Settlement Agreement is intended to resolve the proofs of claim and all claims under the policies. See Settlement Agreement ¶¶ 2, 5. To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Duke Energy arising from or related to the proofs of claim or the policies. Id. ¶¶ 3, 4. The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the proofs of claim

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<sup>1</sup> For the avoidance of doubt, the settlement specifically excludes policies issued to Cincinnati Gas & Electric Company, Union Light Heat and Power Company, Cinergy Corp. or Cinergy Services, Inc., and a proof of claim under one such policy. Settlement Agreement, second and fourth Whereas clauses.

against other insurers of Duke Energy that agree not to pursue such claims against Home. Id.

¶ 6.

7. The Liquidator is not aware of any third party claimants who have asserted claims under the policies.<sup>2</sup> 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 Duke Energy. Accordingly, Duke Energy acknowledges in the Settlement Agreement that it is intended to resolve all matters between Duke Energy and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Duke Energy agrees to address, at its sole cost, the claims of claimants asserting claims against Duke Energy as if Duke Energy had no insurance coverage from Home under the policies. Id. Duke Energy agrees to indemnify the Liquidator and Home against claims arising from the policies up to the amounts ultimately distributed or distributable to Duke Energy.<sup>3</sup> Id.

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Duke Energy will not harm the third party claimants, who will continue to have their full claims against Duke Energy. As noted above, Duke Energy has agreed to address these 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 Duke Energy 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

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<sup>2</sup> Certain London market insurers have 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.

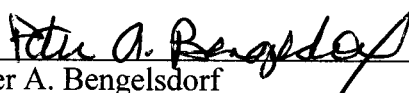
<sup>3</sup> Duke Energy's agreement excludes indemnification for the contribution claim. See footnote 2.

expected that the allowed claims of any third party claimants (or other Class II creditors) will be paid in full. Under the Settlement Agreement, Duke Energy 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 claims for asbestos bodily injury and 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 Duke Energy. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$1,575,000 settlement amount as a Class II claim of Duke Energy in accordance with RSA 402-C:45 and RSA 402-C:44.

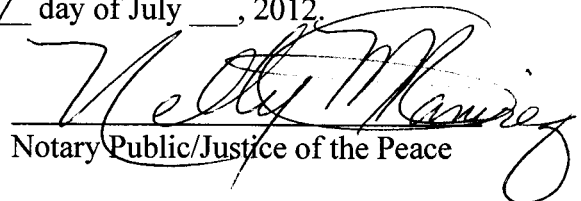
10. I believe that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home.

Signed under the penalties of perjury this 17<sup>th</sup> day of July, 2012.

  
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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 17<sup>th</sup> day of July, 2012.

  
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Notary Public/Justice of the Peace

