

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 FULLER AUSTIN**

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 Fuller-Austin. 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 Fuller-Austin Insulation Company (“Company”) and the Fuller-Austin Settlement Trust (“Trust”) (the Company and Trust collectively, “Fuller-Austin”) 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 one insurance policy to Dynalectron Corporation, the parent company of the Company, under which the Company is an insured, for the policy period between February 1, 1977 and March 2, 1978. Settlement Agreement, first Whereas clause.

Upon Home's placement in liquidation, Fuller-Austin filed a proof of claim in the Home liquidation regarding claims under the policy, including but not limited to claims for coverage for asbestos-related bodily injury. Settlement Agreement, fourth Whereas clause.

4. The Liquidator and Fuller-Austin have negotiated a Settlement Agreement reflecting a resolution of the proof 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 proof of claim in the aggregate amount of \$2,166,000 as a Class II priority claim of Fuller-Austin 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 proof of claim. 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. All distributions to Fuller-Austin will be made to the Trust. Id. ¶ 2(C).

6. The Settlement Agreement is intended to resolve the proof of claim. See Settlement Agreement ¶¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Fuller-Austin arising from or related to the proof of claim. Id. ¶¶ 4, 5. The Liquidator also agrees not to pursue claims against Fuller-Austin's other insurers, all of whom have reached settlements with Fuller-Austin. Id. ¶ 7; Settlement Agreement, fifth Whereas clause.

7. The Liquidator is not aware of any third party claimants who have asserted claims under the policy. However, in resolving all matters relating to the proof of claim, the Settlement Agreement contemplates denial of any third party claimants' claims in the Home liquidation without prejudice to their claims against Fuller-Austin. Accordingly, Fuller-Austin agrees to

address, at its sole cost, the claims of claimants asserting claims against Fuller-Austin as if Fuller-Austin had no insurance coverage from Home under the policy. Fuller-Austin also agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to the policy, including asserted rights of third party claimants, up to the amounts ultimately distributed or distributable to Fuller-Austin. Settlement Agreement ¶ 6.

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Fuller-Austin will not harm the third party claimants, who will continue to have their full claims against Fuller-Austin, although those claims can only be paid in accordance with the provisions of the Trust and the Company's bankruptcy plan.¹ As noted above, Fuller-Austin has agreed to address these claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 6. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Fuller-Austin from those claims up to the limits of the policy 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, the Trust will continue to be responsible for any third party claimants' claims against it in accordance with its terms and the provisions of the Company's bankruptcy plan. See Settlement Agreement ¶ 6.

9. The Settlement Agreement differs from other settlement agreements previously approved by the Court. While Fuller-Austin and the Liquidator release each other from any

¹ The Company made a bankruptcy filing in 1998 (In re: Fuller-Austin Insulation Company, Chapter 11 Case No. 98-2038 (Bankr. D. Del.), and it is the subject of a plan of reorganization that established the Trust. Under the plan, asbestos claims against the Company were assumed by the Trust, which is to resolve and pay asbestos claims pursuant to certain claim resolution procedures, and the Company was discharged from those claims. The plan included an asbestos insurance company injunction which generally enjoined the assertion of claims, including asbestos claims, against insurers of the Company (except by the Trust or reorganized Company).

claims arising from or related to the proof of claim, the Settlement Agreement does not resolve all matters arising from or related to the Home insurance policy. Fuller-Austin is currently pursuing claims against Zurich-American Insurance Company and others in Fuller-Austin Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al. in San Francisco Superior Court, which is coordinated with other cases in the same court (the “Zurich Litigation”). Settlement Agreement sixth Whereas clause. The Liquidator acknowledges that he is aware of Fuller-Austin’s pending claims in the Zurich Litigation and takes no position as to the claims and defenses in the Zurich Litigation. The Settlement Agreement is not intended to have any effect on the Zurich Litigation. Id. ¶ 3. Since the Settlement Agreement does not resolve all matters under the Home policy, it specifically addresses claims against insurance guaranty associations. Id., seventh Whereas clause, ¶¶ 4, 6.

10. The Settlement Agreement reflects a compromise of the claims asserted in the proof 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 asbestos-related bodily injury claims under Home’s insurance policies. The agreed recommended settlement amount is based on careful evaluation and negotiation of coverage obligations under Home’s policy respecting the underlying liabilities of Fuller-Austin. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$2,166,000 recommended amount as a Class II claim of Fuller-Austin in accordance with RSA 402-C:45 and RSA 402-C:44.

11. 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 23 day of October, 2012.

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

STATE OF CALIFORNIA
COUNTY OF VENTURA

On October 23, 2012 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 Tina Le
Signature of Notary Public

