

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 TRONOX**

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 Tronox. 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 Tronox Incorporated Tort Claims Trust and Tronox Inc. (“Tronox”), successors in interest to Kerr-McGee Corporation and Kerr-McGee Worldwide Corporation and their affiliates (“Kerr-McGee”) 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 eighteen insurance policies to Kerr-McGee for policy periods between January 1, 1973 and April 1, 1995. Settlement Agreement, first Whereas clause. After

Home's placement in liquidation, Kerr-McGee filed six proofs of claim in the Home liquidation regarding various bodily injury and property damage claims under the policies. Settlement Agreement, third Whereas clause.

4. The Liquidator and Tronox 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.

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 \$4,592,333 as a Class II priority claim of Tronox under RSA 402-C:44. Settlement Agreement ¶ 3(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve the proofs of claim and all claims Tronox has under the policies with one exception. Id. ¶ 3(B). The Ledgerwood workers' compensation claim is expressly excluded from the Settlement Agreement. Id. ¶ 2. Distributions based on the allowance will be made at the same intervals and at the same percentages as distributions to other Class II creditors of Home, except that Tronox will not receive the initial distribution. Id. ¶ 3(C). This is because the proofs of claim are unexcused late filings within RSA 402-C:37, III. All distributions will be made to Tronox Incorporated Tort Claims Trust.

6. The Settlement Agreement is intended to resolve the proofs of claim and all claims under the policies other than the Ledgerwood claim. See Settlement Agreement ¶¶ 3(B), 6. With that exception, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Tronox arising from or related to the proofs of claim or the policies. Id. ¶¶ 4, 5. The Liquidator also agrees not to pursue claims respecting the underlying

matters covered by the proofs of claim against other insurers of Tronox that agree not to pursue such claims against Home. Id. ¶ 7.

7. The Liquidator is not aware of any third party claimants who have asserted claims under the policies.¹ 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 Tronox. Accordingly, Tronox acknowledges in the Settlement Agreement that it is intended to resolve all matters between Tronox and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 6. Tronox agrees to address, at its sole cost, the claims of claimants asserting claims against Tronox as if Tronox had no insurance coverage from Home under the policies. Id. Tronox agrees to indemnify the Liquidator and Home against claims arising from the policies, but the obligation to pay shall be satisfied only by setoff against amounts to be distributed to Tronox. Id.

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Tronox will not harm the third party claimants, who will continue to have their claims against Tronox, although those claims can only be paid in accordance with the provisions of the Trust document and Tronox's bankruptcy plan (which channels all tort claims to the Tronox Incorporated Tort Claims Trust).² As noted above, Tronox has agreed to address these

¹ Certain of Kerr-McGee's insurers have submitted contribution claims in respect of the policies. Settlement Agreement ¶ 6. 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 be determined under applicable law in the liquidation proceeding.

² Tronox Incorporated made a bankruptcy filing in 2010, (In re Tronox Incorporated, et al., Chapter 11 Case No. 09-10156 (ALG), Bankr. S.D. N.Y.), and it is the subject of a plan of reorganization that established the Tronox Incorporated Tort Claims Trust. See Findings of Fact and Conclusions of Law and Order Signed on 11/30/2010 Confirming the First Amended Joint Plan of Reorganization of Tronox Incorporated et al., *id.* at Doc. 2567 (the "Order"); Notice of Filing Amended Exhibits to the Plan Supplement for the First Amended Joint Plan of Reorganization of Tronox Incorporated *et al.* pursuant to Chapter 11 of the Bankruptcy Code (Execution Versions of

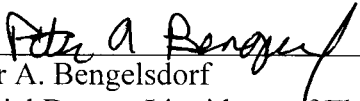
claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 6. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Tronox from those claims up to the limits of the policies but only entitle the third party claimants (assuming their claims were allowed) to a presently undetermined percentage distribution inclusive of the pending 15% interim distribution in the future 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, Tronox will continue to be responsible for any third party claimants' claims against it accordance with the terms of the Trust and the provisions of Tronox's bankruptcy plan. See Settlement Agreement ¶ 6.

9. 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 claimants asserting bodily injury and property damage liability 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 Tronox. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$4,592,333 settlement amount as an unexcused late-filed Class II claim of Tronox in accordance with RSA 402-C:45, RSA 402-C:44, and RSA 402-C:37, III.

the Tort Claims Trust Agreement and Distribution Procedures), *id.* at Doc. 2768. Under the plan, bodily injury and non-governmental property damage claims against Tronox were assumed by the Trust, which is to resolve and pay such claims. The order approving the plan channels all tort claims to the Trust. Order, ¶ 184.

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 25 day of October, 2013.



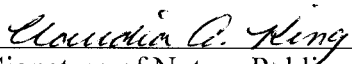
Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

STATE OF CALIFORNIA
COUNTY OF VENTURA

On OCTOBER 25, 2013 before me, CLAUDIA A. KING - 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

