

**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 ITT**

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 ITT. 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 ITT Corporation, formerly known as ITT Industries, Inc. and before that known as ITT Corporation and prior thereto as International Telephone and Telegraph Corporation, on behalf of itself and Rayonier, Inc. (in its own capacity and as successor to Southern Wood Piedmont Company), on whose behalf ITT Corporation is authorized to make claims and enter into the Settlement Agreement, 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 eight insurance policies to International Telephone and Telegraph Corporation, under which International Telephone and Telegraph Corporation is the named insured, for various policy periods between April 26, 1964 and July 1, 1977. Settlement Agreement, first Whereas clause. Upon Home's placement in liquidation, ITT filed eight proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for environmental property damage and bodily injury ("Underlying Environmental Claims") and asbestos bodily injury ("Underlying Asbestos Claims"; collectively, "Underlying Claims"). Settlement Agreement, third Whereas clause.

4. The Liquidator and ITT have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim. The Settlement Agreement is subject to approval by the Court. Settlement Agreement, seventh Whereas clause, ¶ 1.

5. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$103,730,000 as a Class II priority claim of ITT under RSA 402-C:44, consisting of \$23,000,000 in respect of Underlying Environmental Claims and \$80,730,000 in respect of Underlying Asbestos Claims. Settlement Agreement ¶ 2(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve the proofs 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 will be made to ITT Corporation. Id. ¶ 2(C).

6. The Settlement Agreement is intended to resolve the proofs 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 ITT arising from or related to the proofs of claim. Id. ¶¶ 5, 6. The Liquidator also agrees not to pursue claims for contribution or other

reimbursement against ITT's other insurers, both those who have already reached settlements with ITT and those who reach settlements in the future, provided such insurers similarly release their claims against Home and the Liquidator. Id. ¶ 7.

7. The Liquidator is not aware of any third party claimants who have asserted claims under the policies.<sup>1</sup> However, in resolving all matters relating to the proofs of claim, the Settlement Agreement contemplates denial of any third party claimants' claims in the Home liquidation without prejudice to their claims against ITT. Accordingly, ITT agrees to address, at its sole cost, the claims of claimants asserting claims against it as if ITT had no remaining limits of liability from Home under the policies. Settlement Agreement ¶ 8(A). ITT also agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to the policies, except claims asserted by other insureds, up to the amounts ultimately distributed or distributable to ITT under the Settlement Agreement. Id. ¶ 8(A), (B).

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against ITT will not harm the third party claimants, who will continue to have their claims against ITT. As noted above, ITT has agreed to address these claims as if it had no remaining limits of liability under the policies. Settlement Agreement ¶ 8(A). Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release ITT 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

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<sup>1</sup> Several insurers have submitted contribution claims 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 be determined under applicable law in the liquidation proceeding.

Agreement, ITT will continue to be responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 8.

9. Two insureds under the policies other than ITT have also filed proofs of claim. Their claims will remain to be addressed in the Home liquidation without regard to the Settlement Agreement. If the claims of the other insureds are subject to the same limits of liability under the policies as the claims of ITT resolved by the Settlement Agreement, and the total allowed amounts subject to those limits for all insureds exceed the limits, then the allowed amounts for all insureds will be subject to adjustment under RSA 402-C:40, III, so the policy limits are not exceeded.

10. The Settlement Agreement differs from most other settlement agreement previously approved by the Court, although it is similar to the Settlement Agreement with Fuller-Austin approved by the Court on December 20, 2012. While ITT and the Liquidator release each other from any claims arising from or related to the proofs of claim, the Settlement Agreement does not resolve all matters arising from or related to the Home insurance policies. Similar to Fuller-Austin, ITT is pursuing claims against Zurich-American Insurance Company and others in ITT Corporation 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, fifth Whereas clause. The Liquidator acknowledges that he is aware of ITT'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 policies, it specifically addresses claims against insurance guaranty associations. Id., sixth Whereas clause, ¶¶ 5, 8.

11. 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 environmental property damage and bodily injury claims and 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 policies respecting the Underlying Claims. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$103,730,000 recommended amount as a Class II claim of ITT in accordance with RSA 402-C:45 and RSA 402-C:44.

12. 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 9 day of August, 2013.



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

STATE OF CALIFORNIA  
COUNTY OF VENTURA

On August 9, 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 *Claudia A. King*  
Signature of Notary Public

