

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 ROHM AND HAAS**

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 Rohm and Haas. 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 Rohm and Haas Company (“Rohm”) 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 seventeen insurance policies to Rohm for various policy periods between March 1, 1968 and March 1, 1979. Settlement Agreement, first Whereas clause. Upon Home’s placement in liquidation, Rohm filed seventeen proofs of claim in the Home liquidation

regarding claims under the policies, including but not limited to claims for coverage for environmental clean-up costs and damages. Settlement Agreement, third Whereas clause.

4. The Liquidator and Rohm 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 in the aggregate amount of \$23,300,000 as a Class II priority claim of Rohm 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 Rohm has under the policies. 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. See Settlement Agreement ¶¶ 2(B), 5. To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Rohm 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 against other insurers of Rohm that agree not to pursue such claims against Home. Id. ¶ 6.

7. The Liquidator is not aware of any third party claimants asserting claims under the policies.¹ However, in resolving all matters relating to the proofs of claim and the policies,

¹ The third party claimants listed on Exhibit A to the Settlement Agreement had asserted claims under the policies. See Settlement Agreement ¶ 5. However, their claims were denied (without prejudice to their claims against Rohm) by notices of determination mailed on December 10, 2012. The claimants did not submit any request for review to the Liquidator or file any objection with the Court within the 60 day period allowed by RSA 402-C:41, I, and § 8 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation dated January 19, 2005. Accordingly, they cannot further object to the determinations.

the Settlement Agreement contemplates denial of any third party claimants' claims under the policies in the Home liquidation without prejudice to their claims against Rohm. Accordingly, Rohm acknowledges in the Settlement Agreement that it is intended to resolve all matters between Rohm and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Rohm agrees to address, at its sole cost, the claims of claimants asserting claims against Rohm as if Rohm had no insurance coverage from Home under the policies. Id. Rohm agrees to indemnify the Liquidator and Home against claims arising from the policies up to the amounts ultimately distributed or distributable to Rohm. Id.

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Rohm will not harm the third party claimants, who will continue to have their claims against Rohm. As noted above, Rohm 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 Rohm 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 (beyond the pending 15% interim 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, Rohm will continue to be 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

coverage for 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 Rohm. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$23,300,000 settlement amount as a Class II claim of Rohm in accordance with RSA 402-C:45 and RSA 402-C:44.

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 4 day of March, 2013.

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

STATE OF CALIFORNIA
COUNTY OF VENTURA

On 03/04, 2013 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