

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 THE CITY OF LOS ANGELES**

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 the City of Los Angeles. 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 the City of Los Angeles (“Los Angeles”) 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 thirteen insurance policies to National Metal & Steel Corporation and American Bulk Loading Enterprises, Inc., under which Los Angeles was an additional insured, for various policy periods between January 1, 1968 and March 1, 1981. Settlement Agreement, first Whereas clause. Upon Home’s placement in liquidation, Los Angeles filed ten

proofs of claim in the Home liquidation regarding claims under the policies. Settlement Agreement, third Whereas clause.

4. The Liquidator and Los Angeles 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 \$2,000,000 as a Class II priority claim of Los Angeles 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 Los Angeles has under the policies. *Id.* ¶2(B).¹ 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 Los Angeles 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 Los Angeles that agree not to pursue such claims against Home. *Id.* ¶ 6.

¹ The settlement with Los Angeles will not resolve any unrelated claims that the policyholders National Metal & Steel Corporation and American Bulk Loading Enterprises, Inc. may have. National Metal's separate proof of claim was denied by notice of determination mailed on December 7, 2012. Since National Metal has not objected to that determination within the 60 days allowed by RSA 402-C:41 and § 8 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation dated January 19, 2005, it may not object further to the determination.

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

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Los Angeles will not harm the third party claimants, who will continue to have their claims against Los Angeles. As noted above, Los Angeles 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 Los Angeles 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, Los


² 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.

Angeles 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 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 Los Angeles. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$2,000,000 settlement amount as a Class II claim of Los Angeles 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
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 
Signature of Notary Public

