

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 J T THORPE TRUST**

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 J T Thorpe Trust. 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 J T Thorpe Company Successor Trust (the “Trust”) on its own behalf and on behalf of and as successor in interest to Reorganized J T Thorpe Company, Thorpe Corporation, and Thorpe Products Company (Reorganized J T Thorpe Company, Thorpe Corporation, and Thorpe Products Company are referred to hereafter individually and collectively as “Thorpe”¹), and the Liquidator. The Settlement Agreement was negotiated under

¹ J T Thorpe Company is the subject of a Chapter 11 bankruptcy proceeding, In re: J T Thorpe Company, Chapter 11 Case No. 0241487-H5-11 (Bankr. S.D. Tex.), and it is the subject of a plan of reorganization that established the J T Thorpe Company Successor Trust. See id., Plan of Reorganization under Chapter 11 of the Bankruptcy Code for J T Thorpe Company (Oct. 1, 2002); Order Confirming J T Thorpe Company’s Plan of

my supervision. A copy of the Settlement Agreement is attached as Exhibit A to the Liquidator's motion.

3. Home issued two insurance policies to Thorpe for various policy periods between March 1, 1978 and April 1, 1980. Settlement Agreement, second Whereas clause. Upon Home's placement in liquidation, Thorpe filed two proofs of claim in the Home liquidation with respect to insurance coverage for asbestos-related bodily injury claims. Settlement Agreement, fourth Whereas clause. The Trust is the successor in interest to Thorpe as respects insurance coverage for asbestos-related bodily injury liabilities. *Id.*, fifth Whereas clause.²

4. The Liquidator and the Trust have negotiated the Settlement Agreement reflecting a resolution of the proofs of claim and all matters between them 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 \$19,000,000 as a Class II priority claim of the Trust 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 the Trust 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).

Reorganization (Jan. 17, 2003); and *In re: J T Thorpe Company*, Order Adopting and Approving The Bankruptcy Court's Supplement to (1) Findings of Fact and Conclusions of Law Supporting Confirmation of J T Thorpe Company's Plan of Reorganization and (2) Order Confirming J T Thorpe Company's Plan of Reorganization, U.S. Dist. Ct, S.D. Tex., Houston Div., No. 02-41487-H5-11, Mar. 3, 2004. Under the plan, bodily injury 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 a channeling injunction which directs all asbestos claims against the Company to the Trust and an asbestos entity injunction which generally enjoins the assertion of claims against then settling insurers of the Company.

² Although the Trust is the successor to Thorpe only with respect to Thorpe's asbestos-related bodily injury liabilities, the only proofs of claim filed by Thorpe in the Home liquidation proceeding relate to asbestos claims.

6. The Settlement Agreement is intended to resolve the proofs of claim and all claims that the Trust has under the policies. See Settlement Agreement ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and the Trust arising from or related to the proofs of claim or the policies. Id. ¶¶ 3, 4. (The Settlement Agreement only resolves matters as to which the Trust is the successor to Thorpe, and it does not release claims as to which coverage was retained by Thorpe. Settlement Agreement, ¶ 5.) The Liquidator also releases claims respecting the underlying matters covered by the proofs of claim against other insurers of the Trust that agree to release such claims against Home. Id. ¶ 6. The Trust agrees that, in the event the bankruptcy proceeding is re-opened, it will seek the bankruptcy court's designation of Home as a protected party under the bankruptcy court's channeling injunction portion of the Trust's plan of reorganization. See fn. 1; Settlement Agreement ¶ 8. Finally, the Trust agrees to reduce collection from any insurer to the extent necessary to extinguish any liability that the Liquidator or Home may have to such insurer. Settlement Agreement ¶ 9.

7. The Liquidator is not aware of any third party claimants asserting claims under the policies. However, in resolving all of the Trust's claims relating to the proofs of claim and the policies, the Settlement Agreement contemplates denial of any third party claimants' asbestos bodily injury claims under the policies in the Home liquidation without prejudice to their claims against the Trust. See Settlement Agreement, ¶ 6. The Trust agrees to address, at its sole cost, the claims of claimants asserting claims against the Trust as if the Trust had no insurance coverage from Home under the policies. Id.


8. The denial of any third party claimants' asbestos bodily injury proofs of claim without prejudice to their claims against the Trust will not harm the third party claimants, whose

claims have been channeled to the Trust and who will continue to have their claims against the Trust. As noted above, the Trust has agreed to address these claims as if it had no insurance coverage from Home under the policies, Settlement Agreement ¶ 6, although payment of these claims can only be made in accordance with the bankruptcy plan and Trust. Third party claimants' proofs of claim against the insolvent Home, if not denied with the agreement, would release the Trust from those claims up to the limits of the policies but only entitle the third party claimants (assuming their claims were allowed) to the 15% interim distribution and any later distribution at a presently undetermined percentage at the future date when distribution is made. It is not expected that the allowed claims of any third party claimants (or other Class II creditors) of Home 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 the terms of the Trust and the provisions of Thorpe's bankruptcy plan. See Settlement Agreement ¶ 6.

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 the Trust. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$19,000,000 settlement amount as a Class II claim of the Trust in accordance with RSA 402-C:45 and RSA 402-C:44.

10. I believe that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home.

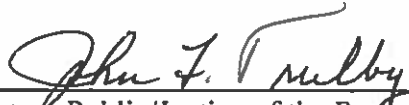
Signed under the penalties of perjury this 14 day of April, 2015.



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

STATE OF NEW YORK
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 14th day of April, 2015.



Notary Public/Justice of the Peace

JOHN F. TRULBY
NOTARY PUBLIC, State of New York
No. 43-4931270
Qualified in Richmond County
Commission Expires June 20, 2018