

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**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 ZY-TECH GLOBAL INDUSTRIES**

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 Zy-Tech Global Industries. 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 Zy-Tech Global Industries, Inc. (“Claimant”) 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 an insurance policy to Zidell, Inc., and other named insureds including Zidell Explorations, Inc., for the period July 1, 1980 to July 1, 1981, which, together with all other insurance policies Home may have issued to Zidell, Inc., Zidell Explorations, Inc., their subsidiaries and affiliates are referred to collectively as the “Policy”. Settlement

Agreement, first Whereas clause. During the policy period, Zidell Valve was a division of Zidell Explorations, Inc. Zidell Valve was incorporated as a subsidiary of Zidell Explorations, Inc., in 1986, and it underwent a name change to Zy-Tech Global Industries, Inc., in 2001. Settlement Agreement, second Whereas clause.

4. Upon Home's placement in liquidation, the Claimant filed a proof of claim in the Home liquidation regarding asbestos related personal injury claims which, together with any other proofs of claim hereinbefore or hereinafter filed by the Claimant in the Home liquidation, are referred to collectively as the "Proof of Claim". Settlement Agreement, fourth Whereas clause.

5. Zidell Companies and Zidell Marine Corporation have asserted proofs of claim relating to coverage for environmental property damage claims under the Policy (the "Environmental Claims"). Settlement Agreement, fifth Whereas clause. The Settlement Agreement is not intended to address the rights or obligations of Zidell Companies or Zidell Marine Corporation regarding the Environmental Claims. Settlement Agreement ¶ 2.

6. The Liquidator and the Claimant have negotiated the Settlement Agreement reflecting a resolution of the Proof of Claim and all matters between them under the Policy. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.

7. The Settlement Agreement provides that the Liquidator will recommend allowance of the Proof of Claim in the aggregate amount of \$725,000 ("Recommended Amount") as a Class II priority claim 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 Proof of Claim and all claims the Claimant has under the Policy. *Id.* ¶ 3(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.* ¶ 3(C).

8. The Settlement Agreement is intended to resolve the Proof of Claim and all claims that the Claimant has under the Policy. See Settlement Agreement ¶¶ 2, 3(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home, and the Claimant arising from or related to the Proof of Claim or the Policy. Id. ¶¶ 4, 5. For the avoidance of doubt, the releases exclude the Environmental Claims. Id.

9. In resolving all of the Claimant's claims relating to the Proof of Claim and the Policy, the Settlement Agreement is intended to resolve all matters arising out of or relating to any rights the Claimant ever had, now has, or hereafter may have in the Policy and the Proof of Claim, including any asserted rights of third-party claimants against the Claimant under the Policy. See Settlement Agreement ¶ 6. The Claimant agrees to address, at its sole cost, any such claims of third-party claimants against the Claimant as if there had been no liquidation proceeding for Home and as if the Claimant had no insurance coverage from Home by virtue of the Policy. Id. The Claimant also agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to the Proof of Claim or the Claimant's rights under the Policy, including asserted rights of third party claimants, up to the amount ultimately distributed or distributable to the Claimant. Id. For the avoidance of doubt, this provision excludes the Environmental Claims. Id.

10. The Liquidator is not aware of any third party claimants asserting claims involving Claimant's rights under the Policy. However, the denial of any third party claimants' claims without prejudice to their claims against the Claimant will not harm the third party claimants who will continue to have their claims against the Claimant. As noted above, the Claimant has agreed to address these claims as if it had no insurance coverage from Home under the Policy. Settlement Agreement ¶ 6. Third party claimants' proofs of claim against the insolvent Home, if not denied with the agreement, would release the Claimant from those claims

up to the limits of the policy but only entitle the third party claimants (assuming their claims were allowed) to the initial interim distributions and any later distribution at a presently undetermined distribution percentage from Home 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 Claimant will continue to be responsible for any third party claimants' claims against it. Id.

11. The Liquidator is not aware of any proofs of claim asserting a claim to the same policy limits as the Proof of Claim which is resolved by the Settlement Agreement. However, if a claim of another claimant is subject to the same limit of liability as the claims resolved by the Settlement Agreement, and if the total allowed amounts for all claimants exceed the limit, then the allowed amounts for all claimants will be subject to adjustment under RSA 402-C:40, IV, so that the policy limit will not be exceeded. Settlement Agreement ¶ 7.

12. 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 claims under Home's insurance policies. The agreed settlement amount is based on careful evaluation and negotiation of coverage obligations under the Policy respecting the underlying liabilities of the Claimant. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$725,000 settlement amount as a Class II claim of the Claimant in accordance with RSA 402-C:45 and RSA 402-C:44.

13. 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 15 day of November, 2016.

Peter A Bengelsdorf

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 15th day of November, 2016.

Nelly M. Gomez-Ramirez
Notary Public/Justice of the Peace

Nelly M. Gomez-Ramirez
Notary Public State of New York
No. 01GO5005271
Qualified in Bronx County
Commission Expires 2/1/2019