

**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 GRC GLOBAL FUND (CYTEC)**

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 of 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 GRC Global Fund. 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 GRC Global Fund LLC (“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 thirty insurance policies under which American Cyanamid Company (“Cyanamid”) is a named insured for various policy periods between March 28, 1966 and June 30, 1985 which, together with all other insurance policies Home may have issued to

Cyanamid are referred to collectively as the “Policies”. Settlement Agreement, fourth Whereas clause.

4. In 1993, Cyanamid spun off its business unit, Cytec Industries, Inc. (“Cytec”), and assigned to Cytec the rights to claim coverage under the Policies for liabilities assumed by Cytec (“Cyanamid Assignment”). Settlement Agreement second Whereas clause.

5. In 2004, Cyanamid on behalf of Cytec submitted claims in the Home liquidation seeking coverage under the Policies for various categories of claims, including asbestos, lead, silica and benzene claims, which coverage claims Cyanamid had assigned to Cytec. Settlement Agreement fifth Whereas clause. The claims in the Home liquidation were assigned eighteen proof of claim numbers which, together with all other proofs of claim hereinbefore or hereinafter filed in the Home liquidation relating to the Cyanamid Assignment and/or the Cytec Assignment described below are referred to collectively as the “Proofs of Claim”. Id.

6. In 2010, Cytec assigned to Claimant all of Cytec’s rights and claims under the Policies including any rights to receive future payments (“Cytec Assignment”). Settlement Agreement, third Whereas clause. The Liquidator subsequently issued a notice of determination to Claimant on one of the Proofs of Claim (INSU701077) in the amount of \$192,033, which was approved by the Court on March 7, 2016 (“Prior Allowance”). Id., sixth Whereas clause.

7. The Liquidator and the Claimant have negotiated the Settlement Agreement reflecting a resolution of all matters concerning the Proofs of Claim and their rights and obligations with respect to the Policies. The Settlement Agreement is subject to approval by the Court. Settlement Agreement, seventh Whereas clause, ¶ 1.

8. The Settlement Agreement provides that the Liquidator will recommend allowance of the Proofs of Claim in the aggregate amount of \$700,000 (the “Recommended Amount”) as a Class II priority claim under RSA 402-C:44. Settlement Agreement ¶ 2(A). With

the exception of Claimant's right to receive distributions on the Prior Allowance and the Recommended Amount, allowance of the Recommended Amount as a Class II claim will fully and finally resolve the Proofs of Claim and all claims the Claimant has under the Policies. Id. ¶ 2(A) and (B). Distributions based on the Recommended Amount, once it is allowed, will be made at the same intervals and at the same percentages as distributions to other Class II creditors of Home. Id. ¶ 2(C).

9. The Settlement Agreement is intended to resolve the Proofs of Claim and all claims that the Claimant 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 Claimant arising from or related to the Proofs of Claim or the Policies. Id. ¶¶ 3, 4.

10. In resolving all of the Claimant's claims relating to the Proofs of Claim and the Policies, 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 Policies and the Proofs of Claim, including any asserted rights of third-party claimants against the Claimant under the Policies. Settlement Agreement ¶ 5. 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 Policies. Id. The Claimant further agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to the Proofs of Claim or the Policies, including asserted rights of third party claimants, up to the amount ultimately distributed or distributable in relation to the Recommended Amount. Id.

11. There were numerous third party proofs of claim asserting claims against Cyanamid and the Policies and two contribution claims by insurers. All but two of those proofs

of claim were disallowed, and the Court has approved those disallowances in acting on claims reports. The two remaining proofs of claim (for third party claims as mentioned in Settlement Agreement ¶ 6) have recently been disallowed, one on the ground that Cytec has settled with the third party claimant and the other for failure to complete the conditional release of the insured required by RSA 402-C:38, I(a)(7). These third party claimants will not be harmed by the Settlement Agreement.<sup>1</sup> The denial of any future third party claimant's claim under the Policies without prejudice because of the Settlement Agreement will not harm the third party claimant, who will continue to have claims against Cyanamid (or Cytec or the Claimant, if applicable). Third party claimants' proofs of claim against the insolvent Home, if not denied with the agreement, would release Cyanamid from those claims up to the limits of the Policies 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.

12. Other than the denied claims noted in paragraph 11 above, the Liquidator is not aware of any proofs of claim asserting a claim to the same policy limits as the Proofs of Claim 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. See Settlement Agreement ¶ 6.


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<sup>1</sup> Since the two third party claimants who were recently issued notices of determination could still timely object to the determinations, a copy of the Liquidator's Motion for Approval of Settlement Agreement with GRC Global Fund is being served on counsel for each of the third party claimants.

13. 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 the Policies respecting the underlying liabilities of Cyanamid and Cytec. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$700,000 settlement amount as a Class II claim of Claimant in accordance with RSA 402-C:45 and RSA 402-C:44.

14. 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 25 day of September, 2018.

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


A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF VENTURA

On SEPTEMBER 25, 2018 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   
Signature of Notary Public

