

**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 NORFOLK SOUTHERN CORPORATION**

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 Norfolk Southern Corporation. 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 Norfolk Southern Corporation and its subsidiaries and, to the extent it has authority to bind them, its affiliates, predecessors and successors, and all persons or entities acting by, through or under any of them including, but not limited to, Norfolk and Western Railway, Southern Railway and Kentucky & Indiana Terminal Railroad (collectively the "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 13 policies under which Claimant is the named insured for various periods between July 11, 1968 and November 15, 1974 which, together with all other insurance policies Home may have issued to Claimant are referred to collectively as the "Policies".

Settlement Agreement, second Whereas clause. Claimant submitted a proof of claim in the Home liquidation seeking coverage for outstanding losses from environmental claims, repetitive stress injury claims, deleterious substance claims, other employee claims under FELA, and other claims which were assigned six proof of claim numbers which, together with any other proofs of claim hereinbefore or hereinafter filed by Claimant in the Home liquidation, are referred to collectively as the "Proofs of Claim". *Id.*, third Whereas clause.

4. 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.<sup>1</sup> 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 amount of \$759,000 (the "Recommended Amount") as a Class II priority claim 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 Claimant 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 that the Claimant has under the Policies. Settlement Agreement ¶ 2(B). To that end, the

---

<sup>1</sup> The Settlement Agreement does not affect a prior settlement agreement entered in 1996 pertaining to environmental claims relating to 35 identified sites which are unrelated to the environmental claims included in the Proofs of Claim. Settlement Agreement, fourth Whereas clause.

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.

7. 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 also agrees to indemnify and hold the Liquidator and Home harmless from all claims related to Proofs of Claim or arising under the Policies, including asserted rights of third party claimants, up to the amount ultimately distributed or distributable in relation to the Recommended Amount. Id.

8. The Liquidator is not aware of any third party claimants asserting claims under the Policies. 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 Policies. Settlement Agreement ¶ 5. 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 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. Under the

Settlement Agreement, the Claimant is responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 5.

9. The Liquidator is not aware of any claim in the Home liquidation asserting a claim subject to the same limit in the Policies as the claim resolved by the Settlement Agreement. However, if a claim of another claimant is subject to the same limit 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.

10. 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 the Claimant. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$759,000 settlement amount as a Class II claim of Claimant in accordance with RSA 402-C:45 and RSA 402-C:44.

11. 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 28 day of April, 2020.

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

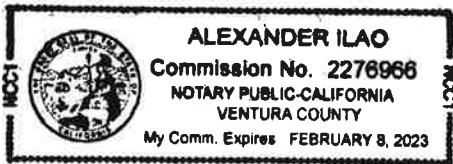
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF VENTURA

On April 28, 2020, 2020 before me, Alexander Ilae, 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 Alexander Ilae  
Signature of Notary Public