

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 POLYONE CORPORATION
AND GOODRICH 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 PolyOne Corporation and Goodrich 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 PolyOne Corporation, formerly known as The Geon Company (“PolyOne”), Goodrich Corporation, formerly known as B.F. Goodrich Company (“Goodrich” and, with PolyOne, “Claimants”), 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 ten policies under which B.F. Goodrich Company (“BFG”) is the named insured for various periods between January 1, 1973 and July 1, 1985 which, together with all other insurance policies Home may have issued to BFG before the effective date of the Settlement Agreement, are referred to collectively as the “Policies”. Settlement Agreement, second Whereas clause.

4. PolyOne submitted a proof of claim in the Home liquidation seeking coverage under the Policies in connection with asserted liability arising out of contamination at a site in Calvert City, Kentucky presently or formerly operated by BFG (the “Calvert City Site”), which was assigned two proof of claim numbers and which, together with any other proofs of claim hereinbefore or hereinafter filed by PolyOne in the Home liquidation asserting claims under the Policies, are referred to collectively as the “PolyOne Proofs of Claim”. Id., third Whereas clause. The Liquidator disallowed the two proofs of claim, and PolyOne objected to the disallowance. PolyOne’s claim is presently pending as Disputed Claim Proceeding 2019-HICIL-62 (the “Disputed Claim Proceeding”). Id.¹

5. Goodrich submitted a proof of claim in the Home liquidation seeking coverage under the Policies in connection with asserted liability arising out of contamination at the Calvert City Site, as well as other matters, which was assigned ten proof of claim numbers and which, to the extent they assert claims with respect to the Calvert City Site, and together with any other proofs of claim hereinbefore or hereinafter filed by Goodrich in the Home liquidation to the extent they assert claims with respect to the Calvert City Site, are referred to collectively as the

¹ PolyOne has also asserted claims in the Home liquidation under policies other than those issued to BFG. Those claims have been disallowed and are not affected by the Settlement Agreement.

“Goodrich Calvert City Proofs of Claim”. *Id.*, fourth Whereas clause. Goodrich is a participant in the Disputed Claim Proceeding. *Id.*²

6. The Liquidator and the Claimants have negotiated the Settlement Agreement reflecting a resolution of all matters concerning the PolyOne Proofs of Claim and all PolyOne’s rights and obligations with respect to the Policies and all matters concerning the Goodrich Calvert City Proofs of Claim and all Goodrich’s rights and obligations with respect to the Policies as to the Calvert City Site. 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 PolyOne Proofs of Claim and the Goodrich Calvert City Proofs of Claim in the amount of \$15,000,000 (the “Recommended Amount”) as a Class II priority claim of PolyOne 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 PolyOne Proofs of Claim, the Goodrich Calvert City Proofs of Claim, all claims that PolyOne has under the Policies, and all claims that Goodrich has under the Policies with respect to the Calvert City Site. *Id.* ¶ 2(B). Distributions based on that allowance will be made to PolyOne at the same intervals and at the same percentages as distributions to other Class II creditors of Home. *Id.* ¶ 2(C).

8. The Settlement Agreement is intended to resolve the PolyOne Proofs of Claim, the Goodrich Calvert City Proofs of Claim, all claims that PolyOne has under the Policies, and all claims that Goodrich has under the Policies with respect to the Calvert City Site. Settlement Agreement ¶ 2(B). To that end, the Settlement Agreement provides for (a) mutual releases of all claims among the Liquidator, Home, and PolyOne arising from or related to the PolyOne Proofs

² Goodrich is also asserting claims in the Home liquidation under the Policies concerning matters other than the Calvert City Site. Those claims are not affected by the Settlement Agreement.

of Claim or the Policies, id. ¶¶ 3, 5, and (b) mutual releases of all claims among the Liquidator, Home, and Goodrich arising from or related to the Goodrich Calvert City Proofs of Claim or the Policies with respect to the Calvert City Site, id. ¶¶ 4, 6.

9. The Settlement Agreement provides for the parties to file a stipulation of dismissal of the Disputed Claim Proceeding with prejudice when the Settlement Agreement becomes effective. Settlement Agreement ¶ 7. The parties have filed a joint motion to stay the Disputed Claim Proceeding with the Referee pending the Court's action on this motion.

10. In resolving all of PolyOne's claims relating to the PolyOne Proofs of Claim and the Policies and all of Goodrich's claims relating to the Goodrich Calvert City Proofs of Claim and the Policies as to the Calvert City Site, the Settlement Agreement is intended to resolve all matters arising out of or relating to any rights PolyOne ever had, now has, or hereafter may have in the Policies and the PolyOne Proofs of Claim, and that Goodrich ever had, now has, or hereafter may have in the Goodrich Calvert City Proofs of Claim or the Policies as to the Calvert City Site, including any asserted rights of third-party claimants against the Claimants under the Policies. Settlement Agreement ¶ 8. Each Claimant agrees to address, at its sole cost, any such claims of third-party claimants against that Claimant as if there had been no liquidation proceeding for Home and as if that Claimant had no insurance coverage from Home by virtue of the Policies. Id. PolyOne also agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to the PolyOne Proofs of Claim or the Policies, or to the Goodrich Calvert City Proofs of Claim or the Policies as to the Calvert City Site, including asserted rights of third party claimants, up to the amount ultimately distributed or approved for distribution to PolyOne in relation to the Recommended Amount. Id.

11. 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 Claimants will not harm the third party claimants, who will continue to have their claims against the Claimants. As noted above, the Claimants have agreed to address such claims as if they had no insurance coverage from Home under the Policies, in accordance with the terms of the Settlement Agreement. Settlement Agreement ¶ 8. Third party claimants' proofs of claim against the insolvent Home, if not denied with the agreement, would release the Claimants 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, Claimants are responsible for any third party claimants' claims. See Settlement Agreement ¶ 8.

12. The Liquidator is not aware of any proof of claim asserting a claim subject to the same limits in the Policies 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 ¶ 9.

13. The Settlement Agreement reflects a compromise of the claims asserted in the PolyOne Proofs of Claim and the Goodrich Calvert City 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 Claimants. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the

\$15,000,000 settlement amount as a Class II claim of PolyOne 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 23 day of June, 2020.

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

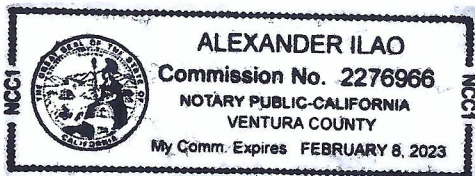
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA
COUNTY OF VENTURA

On June 23, 2020 before me, Alexander Ilao, 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 Ilao
Signature of Notary Public