

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 RESCO HOLDINGS LLC**

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 Resco Holdings LLC. 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 Resco Holdings LLC (“Resco”), as successor by merger and name change to M.W. Kellogg Company, and Waste Management Holdings, Inc., as parent to Resco (collectively “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 five insurance policies under which M.W. Kellogg Company (formerly known as Pullman, Inc.) is a named insured for various periods between December 1,

1970 and February 15, 1977 which, together with all other insurance policies Home may have issued to M.W. Kellogg Company or Pullman, Inc., are referred to collectively as the “Policies”. Settlement Agreement, second Whereas clause.

4. Waste Management, Inc., submitted a proof of claim in the Home liquidation on behalf of Claimants seeking coverage for asbestos-related bodily injury and personal injury which, together with any other proofs of claim hereinbefore or hereinafter filed by Claimants in the Home liquidation, are referred to collectively as the “Proof of Claim”. Settlement Agreement, third Whereas clause.

5. Waste Management, Inc., also filed a proof of claim on behalf of and under policies issued to Rust Engineering Company which is not addressed in the Settlement Agreement. Settlement Agreement, fifth Whereas clause.

6. The Liquidator and the Claimants have negotiated the Settlement Agreement to resolve all matters concerning the Proof of Claim and all rights and obligations with respect to the Policies. Settlement Agreement, fourth Whereas clause. 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 amount of \$1,350,000 (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 Proof of Claim and all claims Claimants have 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).

8. The Settlement Agreement is intended to resolve the Proof of Claim and all claims that Claimants have under the Policies. Settlement Agreement ¶ 2(B). To that end, the

Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home, and the Claimants arising from or related to the Proof of Claim or the Policies. *Id.* ¶¶ 3, 4.

9. In resolving all of the Claimants' claims relating to the Proof of Claim and the Policies, the Settlement Agreement is intended to resolve all matters arising out of or relating to any rights the Claimants ever had, now have, or hereafter may have in the Policies and the Proof of Claim, including any asserted rights of third-party claimants against the Claimants under the Policies. Settlement Agreement ¶ 5. The Claimants agree to address, at their sole cost, any such claims of third-party claimants against the Claimants as if there had been no liquidation proceeding for Home and as if the Claimants had no insurance coverage from Home by virtue of the Policies. *Id.* The Claimants also agree to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to the Proof of Claim or the Policies, including asserted rights of third party claimants, up to the total amount ultimately distributed or distributable in relation to the Recommended Amount. *Id.*

10. 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 Claimants will not harm the third party claimants, who will continue to have their claims against Claimants. As noted above, Claimants have agreed to address these claims as if they 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 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 against them. *See* Settlement Agreement ¶ 5.

11. The Liquidator is not aware of any proofs of claim asserting a claim subject to the same policy limit as the Proof of Claim resolved by the Settlement Agreement.¹ However, if a claim of another claimant is subject to the same limit of liability as 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.

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 Policies respecting the underlying liabilities of the Claimants. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$1,350,000 settlement amount as a Class II claim of the Claimants 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.

¹ There was another proof of claim naming the same Home policies that was filed and assigned five proof of claim numbers. Those proofs of claim were disallowed in 2015 and the Court approved the disallowances in 2016.

Signed under the penalties of perjury this 1 day of June 2022.

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 1, 2022 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

