

At IAS Part 2 of the Supreme Court of the State of New York, County of New York, at the courthouse, 71 Thomas Street, in the County, City and State of New York, on the 12th day of Aug., 2011.

P R E S E N T :

HON. LOUIS B. YORK, J. S. C.

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In the Matter of

the Ancillary Receivership of

THE HOME INSURANCE COMPANY.
-----X

Index No.: 402671/03
**SUBJECT TO SEALING ORDER
DATED AUGUST 12, 2011
ORDER NO. 159**

Based upon the attached verified petition ("Verified Petition") of Jonathan L. Bing, Special Deputy Superintendent and Agent of James J. Wrynn, Superintendent of Insurance of the State of New York, as Ancillary Receiver ("Ancillary Receiver") of The Home Insurance Company ("The Home"), duly verified the 11th day of August, 2011, the affirmation of Victor J. D'Angelo, Esq., dated August 11, 2011, the exhibits thereto and upon all other papers previously submitted and all proceedings heretofore had herein;

AND, it appearing from the Verified Petition and attachments thereto that the interests of The Home, in ancillary receivership, its creditors, and all others interested in the affairs of The Home will best be served by the approval of the recommendation of the Ancillary Receiver as to the allowance and payment of the claims set forth in the Bordereau attached to the affirmation of Victor J. D'Angelo and made part of the Verified Petition;

NOW, based upon the application of the Ancillary Receiver, it is

ORDERED, that the relief requested in the Verified Petition is granted; and it is

further

FILED

AUG 12 2011

NEW YORK
COUNTY CLERK'S OFFICE

ORDERED, that the recommendation made by the Ancillary Receiver, as set forth in the Verified Petition, regarding the approval of the allowance and the payment of the claims in the amounts set forth in the Bordereau attached thereto, be and the same hereby is approved;

ORDERED, that the Ancillary Receiver is directed to provide the Commissioner of Taxation and Finance, as Custodian of the Property/Casualty Insurance Security Fund, with the appropriate certificates to effectuate payment of such allowed claims;

ORDERED, that the amount recommended for payment by the Ancillary Receiver be paid out of the Property/Casualty Insurance Security Fund, pursuant to Section 7603 of the New York Insurance Law;

ORDERED, that the Ancillary Receiver is directed to pay in full, without interest, to Liberty Mutual Insurance Company, the total amount allowed for the claims.

ENTER



J. S. C.

LOUIS B. YORK
J.S.C.

FILED

AUG 12 2011

NEW YORK
COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 2

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In the Matter of

Index No.: 402671/03

the Ancillary Receivership of

VERIFIED PETITION

THE HOME INSURANCE COMPANY.

-----X
TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:

The Verified Petition of Jonathan L. Bing, Special Deputy Superintendent and Agent of James J. Wrynn, Superintendent of Insurance of the State of New York, as Ancillary Receiver (“Ancillary Receiver”) of The Home Insurance Company (“The Home”) respectfully alleges and sets forth the following upon information and belief:

1. The Home, pursuant to an order of a court of competent jurisdiction in the State of New Hampshire, was placed into liquidation on June 13, 2003. On September 24, 2003, the then-Superintendent of Insurance of the State of New York (and his successors in office) was appointed Ancillary Receiver of The Home in the State of New York.

2. The Home provided five annual “Manuscript Excess Liability” insurance policies to Kentile Floors, Inc. (“Kentile” or “Insured”), effective January 1, 1977 through January 1, 1982 (“Home Policies”). Kentile submitted 76 claims, listed in the Bordereau¹ submitted under seal as Exhibit A to the affirmation of Victor J. D’Angelo, Esq., filed by individual claimants against the Insured seeking to recover monetary damages for the Insured’s alleged failure to disclose and warn them of the known dangers associated with asbestos-containing products used and/or manufactured by the Insured. As a result of the exposure to asbestos-containing products,

¹ In connection with the settlements of these claims against the Insured, the parties entered into confidentiality provisions which prohibit the parties from revealing the details of or consideration for the settlements. Accordingly, the Ancillary Receiver has provided to the Court a spread sheet (“Bordereau”) under seal pursuant to an Order of this Court dated August , 2011 which provides confidential facts relating to the settlements so that this Court may

the claimants have alleged that they sustained personal injuries.

3. The New York Liquidation Bureau ("Bureau") is the entity that carries out the duties of the Ancillary Receiver. Attached hereto and made a part hereof is the affirmation of Victor J. D'Angelo, an attorney with the Bureau, and exhibits thereto (Bordereau submitted under seal), indicating that based on the potential liability of the Insured and the likelihood of substantial damages being awarded to the plaintiffs in these cases, the approval of the allowance and payments of the allowed claims in the total amount of \$2,449,940.28 is fair, reasonable and in the best interest of the Bureau's fiduciary obligations. Accordingly, the Ancillary Receiver respectfully recommends to this Court that the claims be allowed in the amount of \$2,449,940.28.

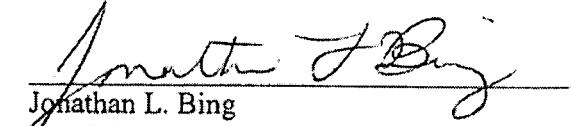
4. The Ancillary Receiver is also seeking the Court's approval of the payment of the allowed claims to Liberty Mutual Insurance Company ("Liberty Mutual"). Attached hereto and made part hereof is a Bordereau setting forth the amount payable to Liberty for reimbursement of its payments of The Home's *pro rata* share of the settlement of the 76 claims which would be payable out of the Property/Casualty Insurance Security Fund ("P/C Fund") maintained in accordance with Article 76 of the New York Insurance Law ("Insurance Law"). Accordingly, the Ancillary Receiver respectfully recommends to this Court that the payment of the reimbursement to Liberty be allowed in the amount of \$ 2,449,940.28. A copy of the Release signed by Liberty Mutual is annexed as Exhibit B.

5. No previous application has been made for the relief requested herein to this or any court.

evaluate whether to grant the Ancillary Receiver's recommendation for the approval of the settlement and payment of these claims.

WHEREFORE, the Ancillary Receiver requests that this Court grant an order in the form hereto attached approving the Ancillary Receiver's recommendation of allowance of said claims and providing for the payment thereof to Liberty Mutual out of the P/C Fund as provided in Section 7603 of the Insurance Law.

Dated: New York, New York
August 11, 2011


Jonathan L. Bing
Special Deputy Superintendent
and Agent of James J. Wynn,
Superintendent of Insurance of the State of
New York as Ancillary Receiver of The
Home Insurance Company

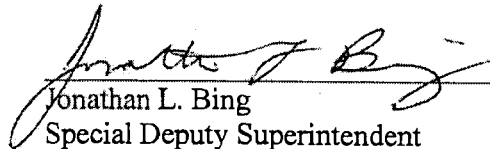
L11739/VJD/gi

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Jonathan L. Bing, being duly sworn, deposes and says:

That he has read the foregoing Verified Petition, and that the same is true to his knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes to be true; that the reason this petition is verified by this deponent rather than by the Superintendent of Insurance is that deponent is the duly appointed Special Deputy Superintendent and Agent of the Superintendent of Insurance as Ancillary Receiver of The Home Insurance Company and as such is acquainted with the facts alleged therein.

Deponent further says that the sources of his information and the grounds of his belief as to the matters to be alleged on information and belief are from or were derived from the records, books and papers of The Home Insurance Company in the possession of the Ancillary Receiver and communications made to deponent by employees of the Ancillary Receiver.


Jonathan L. Bing
Special Deputy Superintendent
and Agent of James J. Wrynn,
Superintendent of Insurance of the State of
New York as Ancillary Receiver of The
Home Insurance Company

Sworn to before me this
11th day of August 2011


Notary Public

MELISSA A. DELL'ORTO
Notary Public, State of New York
No. 02DE6189305
Qualified in New York County
Commission Expires August 4, 2012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
In the Matter of

Index No.: 402671/03

the Ancillary Receivership of

AFFIRMATION

THE HOME INSURANCE COMPANY.
-----X

Victor J. D'Angelo, an attorney at law, duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under the penalties of perjury:

1. I am an attorney with the New York Liquidation Bureau ("Bureau"), the entity that carries out the duties of the Superintendent of Insurance as Ancillary Receiver ("Ancillary Receiver") of The Home Insurance Company ("The Home"). I make this affirmation upon information and belief, the sources of which are the files maintained by the Bureau and communications made to the affirmant by employees of the Ancillary Receiver and Liberty Mutual Insurance Company ("Liberty").

2. I submit this affirmation in support of the Ancillary Receiver's application seeking the approval of the allowance and payment of the allowed claims filed in the ancillary receivership proceeding of The Home totaling \$2,449,940.28.

3. Kentile Floors, Inc. ("Kentile" or "Insured"), submitted 76 claims arising out of exposure to asbestos products. The Home provided five annual "Manuscript Excess Liability" insurance policies to Kentile, effective January 1, 1977 through January 1, 1982 ("Home Policies"). The 76 claimants listed in the annexed Bordereau, submitted herewith under seal as Exhibit A,² have filed individual claims against the Insured seeking to recover monetary

² In connection with the settlements of these claims against the Insured, the parties entered into confidentiality provisions which prohibit the parties from revealing the details of or consideration for the settlements. Accordingly, the Ancillary Receiver has provided to the Court a spread sheet ("Bordereau") under seal pursuant to an Order of this Court dated August , 2011 which provides those facts necessary for the Court to evaluate whether to grant the Ancillary Receiver's recommendation for the approval of the settlement and payment of these claims.

damages for the Insured's alleged failure to disclose and warn them of the known dangers associated with asbestos-containing products used and/or manufactured by the Insured. As a result of the exposure to asbestos-containing products, the claimants have alleged that they sustained personal injuries.

4. The Insured was insured for this liability by multiple insurers, including Liberty Mutual Insurance Company and The Home, under an extensive tower of coverage. The Home insured the Insured under excess liability insurance policies number HEC 9345894, HEC 9655432, HEC 9802011, HEC 9834671 and HEC 9911128 effective from January 1, 1977 through January 1, 1982, each with a \$5,000,000.00 aggregate limit. The claims against the The Home policies were timely filed. Claimants settled their claims against the Insured for a total of \$10,161,551.30 ("the Settlement"), of which The Home's prorated share is \$2,449,940.28. The settlements of the underlying claims were analyzed by the Bureau and were found to be fair and reasonable. The settlement amount of \$2,449,940.28 will be paid from the P/C Fund. The individual settlement amounts are based upon allocation procedures generally accepted by carriers in the litigation of asbestos claims where there are multiple coverage blocks involving several insurers, as exists here.

5. The Home's *pro rata* share was computed based upon generally accepted allocation methodology. The Ancillary Receiver respectfully requests this Court's approval of the allowance of the Settlements.

6. Because of delays inherent in the rehabilitation/liquidation process, the Superintendent as Rehabilitator or Liquidator has been specifically exempted by the Legislature from the "prompt payment of settlement rule" found in CPLR §5003-a. *See* CPLR §5003-a (specifically excluding from the prompt payment of settlements rule settlements subject to

Article 74 of the Insurance Law); *see also Asseng v. Arbacas*, 181 Misc.2d 816, 818 (Sup. Ct., 1999) (“In recognition of the delays inherent in the liquidation process and the mandatory statutory procedure for payment of claims covered by the Security Funds, CPLR §5003-a, which provides for the prompt payment of settlements, specifically excludes settlements subject to Article 74 of the Insurance Law”).

7. However, in the case of these Kentile settlements, Liberty Mutual concluded that, aside from its own allocated share, it was also required to pay The Home’s allocated share of the settlement, reserving its right to seek contribution for that payment at a later time. In a sworn affidavit submitted on July 7, 2011, to Justice Ramos in a related insurance coverage proceeding, counsel for Liberty Mutual explained that, because of the delay in the Ancillary Receiver’s processing of the Kentile claims, Liberty Mutual felt constrained to front The Home’s allocated share of those settlements, pursuant to its own obligations under the prompt-payment rule of CPLR §5003-a, and in furtherance of the best interests of Liberty Mutual and its insureds. Liberty Mutual is now seeking from the Ancillary Receiver equitable contribution for its payment of The Home’s *pro rata* share of the settlement. It is the Ancillary Receiver’s belief that Liberty Mutual paid The Home’s allocated share of these settlements under the good faith belief that it was obliged to do so in furtherance of its own and the Insured’s best interest.

8. Section 7603(a)(1) of the New York Insurance Law provides that “The property/casualty insurance security fund shall be used in the payment of allowed claims remaining unpaid, in whole or in part, by reason of the inability due to insolvency of an authorized insurer to meet its insurance obligations under policies” N.Y. Ins. L. § 7603(a)(1). An “allowed claim” is defined as “a claim which has been allowed by the court in a proceeding under article seventy-four of this chapter” N.Y. Ins. L. §7602(g). The P/C Fund covers valid requests for contribution and subrogation from other insurers who have paid claims

that would have been allowed and paid by the P/C Fund. *See, e.g., American Manufacturers Mut. Ins. Co. v. Morgan*, 296 A.D.2d 491 (2nd Dept. 2002) (supplemental uninsured motorist insurer has subrogation rights against the insolvent insurer via the Security Fund.); *Fireman's Fund Ins. Co. v. Wisham*, 6 Misc.3d 1017(A), 800 N.Y.S.2d 345 (Sup. Ct. 2005) (same).

9. Under New York law, payments of a settlement by an insurer which included a co-insurers *pro rata* share are not “voluntary” when made for the protection of its own interests and in discharge of an existing liability, and are subject to a claim of equitable contribution. *Travelers Ins. Co. v. Nory Construction*, 184 Misc.2d 366, 370-371 (S. Ct., Monroe Co. 2000); *see also, e.g., Gerseta Corp. v. Equitable Trust Co.*, 241 N.Y. 418, 425-426, 150 N.E. 501 (N.Y. 1926) (equitable subrogation arises “so long as the payment was made either under compulsion or for the protection of some interest of the party making the payment, and in discharge of an existing liability”); *Americas Ins. Co. v. Stolt-Nielsen, Inc.*, 97 CIV. 8018(RCC), 2004 WL 2199497 (S.D.N.Y. Sept. 30, 2004) (“An insurer is not a volunteer when it makes a good-faith payment under a reasonable belief that such payment is necessary to protect itself”) *Vigilant Ins. Co. v. Employers Ins. of Wausau*, 626 F. Supp. 262, 269 (S.D.N.Y. 1986) (“Second, even if the settlements were considered ‘voluntary’, Vigilant is entitled to contribution from Employers. Although New York courts once held that an insurer who voluntarily pays more than his share of a loss could not then demand contribution from a second insurer, ‘the majority of cases now recognize the undesirability of rewarding the insurer which refuses to honor its contractual obligations, and hold that payment by an insurer which properly undertakes a burden of settlement or defense does not render it a volunteer not entitled to recover.’”) (*quoting* Appleman, *Insurance Law and Practice*, § 4921 at 538 (1981)). Accordingly, the Ancillary Receiver is seeking approval for the payment to Liberty of its advancement of The Home’s *pro rata* share of the settlement. The Home’s *pro rata* share of the settlements on a per claimant

basis is detailed in the Bordereau, submitted under seal.

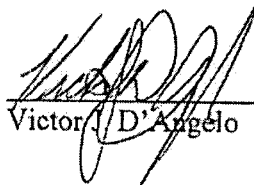
10. Pursuant to the aforementioned agreement to keep the terms of the underlying settlements confidential, the stipulations of discontinuance, stipulations of settlement and releases are not attached hereto.

11. I submit to this Court that these are valid claims totaling \$ 2,449,940.28, eligible to be paid out of the Property/Casualty Insurance Security Fund ("P/C Fund") maintained pursuant to Section 7603 of the New York Insurance Law ("Insurance Law").

12. No previous application has been made for the relief requested herein to this or any court.

WHEREFORE, the Ancillary Receiver requests that this Court grant an order in the form hereto attached approving the Ancillary Receiver's recommendation of allowance of said claims and the payment of the allowed claims to Liberty as a reimbursement for The Home's *pro rata* share of the settlements thereof out of the P/C Fund as provided in Section 7603 of the Insurance Law.

Dated: New York, New York
August 11, 2011


Victor J. D'Angelo

**EXHIBIT 'A' REDACTED AS PER SEALING ORDER OF
JUSTICE LOUIS B. YORK DATED AUGUST 12, 2011**

RELEASE CORPORATION - ARTICLE 76

Co. Claim No.:
Liq No.:
Attn:

KNOW ALL BY THESE PRESENTS:

That Liberty Mutual Insurance Company ("Liberty Mutual")
a corporation with its office and principal place of business at 175 Berkeley Street
Boston, Massachusetts 02117

in the The Home Insurance Company, in consideration that its claim
The Home Insurance Company Rehabilitation, Liquidation
or Ancillary Receivership proceeding (the "proceeding"), based upon its claims against The Home Insurance
Company in Ancillary Receivership ("The Home") for the reimbursement of its payment of The Home's
pro rata share of the 76 claims identified on Exhibit A ("Reimbursement Amount")

be allowed in said proceeding in the sum of Two Million Four Hundred and Forty Nine Thousand Nine
Hundred and Forty Dollars and Twenty Eight Cents (\$2,449,940.28)

upon which payment shall be made to Liberty Mutual under and pursuant to the provisions of Article 76 of the
New York Insurance Law does hereby for itself, its successors and assigns, remise, release and forever discharge
the Superintendent of Insurance of the State of New York, individually, and pursuant to the New York Insurance
Law as Administrator of the Property/Casualty Insurance Fund under Section 7603 or the Public Motor Vehicle
Liability Fund under Section 7604, or pursuant to the New York Workers' Compensation Law, the Workers'
Compensation Security Fund under Section 107, and as Rehabilitator, Liquidator or Ancillary Receiver
("the Receiver") of The Home
his/her heirs, executors, administrators, assigns and successors in office, the estate of The Home, from any and
all right, cause of action, claim or demand of whatsoever kind, nature or description at law or in equity or created
by statute which it now has or which its successors or assigns can, shall, or may hereafter have only with respect
to The Home's pro rata share of the 76 claims identified on Exhibit A. For purposes of clarification, the
foregoing release shall become effective upon payment of the Reimbursement Amount to Liberty Mutual.

It being further expressly understood and agreed that claim in the amount of aforesaid will be recommended for
allowance to the Supreme Court in the liquidation proceeding.

IN WITNESS WHEREOF, said corporation has caused these presents to be signed by its duly authorized
representative this 11th day of August, 2011.

BY: Fred Wiedmann
FRED WIEDMANN
ASBESTOS CLAIMS MANAGER

STATE OF New Hampshire]

COUNTY OF Strafford] ss:

On this 11 day of August, 2011, before me personally appeared
Fred Wiedmann, who by me being duly sworn did depose and
say that he resides in Dover, NH that
(s)he is the Asbestos Claims Manager of the Liberty Mutual
the corporation described in, and which executed the above instrument.

Darcy Adams
Notary



**EXHIBIT 'A' TO THE RELEASE (EXHIBIT 'B') REDACTED AS
PER SEALING ORDER OF JUSTICE LOUIS B. YORK DATED
AUGUST 12, 2011**

Index No.: 402671/03

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

In the Matter of
the Ancillary Receivership of
THE HOME INSURANCE COMPANY.

ORDER, VERIFIED PETITION AND AFFIRMATION
(Payment Order)

JOHN PEARSON KELLY
Attorney for Superintendent of Insurance as Ancillary Receiver

Office and Post Office Address, Telephone

New York Liquidation Bureau
110 William Street
New York, NY 10038
(212) 341-6755
Fax (212) 608-3398

ATTORNEY CERTIFICATION

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, belief and reasonable inquiry, the contentions in the above referenced document(s) are not frivolous.

Dated: August 11, 2011
New York, New York


Victor D'Angelo

NOTICE OF ENTRY

that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on the day of 20

NOTICE OF SETTLEMENT

that an order
settlement to the HON.

of which the within is a true copy will be presented for
one of the judges of the within named court, at
20 at

Dated:

, on

Yours, etc.

JOHN PEARSON KELLY
Attorney for Superintendent of Insurance as
Ancillary Receiver

Office and Post Office Address, Telephone

New York Liquidation Bureau
110 William Street
New York, NY 10038
(212) 341-6755
Fax (212) 608-3398