

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 03-E-0106

**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 WESTERN ASBESTOS SETTLEMENT TRUST**

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 for 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 Western Asbestos Settlement Trust. 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 the Western Asbestos Settlement Trust (“Trust”), in its capacity as the sole owner of Western Asbestos Company, and pursuant to the authority granted in the Order Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief (“Confirmation Order”) as the successor to MacArthur Co. and Western MacArthur Co. to “initiate, prosecute, defend and resolve” all Asbestos Insurance Actions in the name of MacArthur Co., Western MacArthur Co. and/or Western Asbestos Company (the “MacArthur

Companies”) (collectively, “Claimants”),¹ 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 seven insurance policies under which the Claimants are named insureds for various policy periods between January 1, 1976 and January 1, 1983. Upon Home’s placement in liquidation, the Claimants filed seven proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for alleged asbestos-related bodily injury. Settlement Agreement, first Whereas clause, third Whereas clause.

4. The Liquidator and the Claimants have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.² Following approval, the pending disputed claim proceeding (2011-HICIL-48) will be dismissed. See id. ¶ 10.

5. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$242,500,000 as a Class II priority claim of the Claimants under RSA 402-C:44. Settlement Agreement ¶ 3(A).³ Allowance of this recommended amount as a Class II claim will fully and finally resolve the proofs of claim. Id. ¶ 3(B). Distributions based on that allowance will be made at the same intervals and at the same

¹ The Trust was created in accordance with the provisions of the Second Amended Joint Plan of Reorganization approved by the Confirmation Order in the bankruptcy proceedings for the MacArthur Companies, In re Western Asbestos Company, Western MacArthur Co., and Mac Arthur Co., Jointly Administered under No. 02-46284 T (Bkrcty. N.D. Cal. January 27, 2004).

² Claimants are also to seek approval of the Settlement Agreement from the bankruptcy court that entered the Confirmation Order in the MacArthur Companies bankruptcy proceeding. Settlement Agreement ¶ 2. However, as the bankruptcy proceeding has concluded, it is not clear that the bankruptcy court will hear the matter, and that approval is accordingly not required. Id.

³ The parties agree that the recommended amount is a compromise of matters in dispute and does not reflect the view of any party as to the value of Claimants’ claims should the matter be adjudicated. Settlement Agreement ¶ 5.

percentages as distributions to other Class II creditors of Home. All distributions to Claimants will be made to the Trust. Id. ¶ 3(C).

6. The Settlement Agreement is intended to resolve the proofs of claim. See Settlement Agreement ¶ 3(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 proofs of claim. Id. ¶¶ 6, 7. The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the proofs of claim against other insurers of the Claimants that agree not to pursue such claims against Home. Id. ¶ 8. The Claimants release claims against Home by insurers with whom they have previously settled and agree to release or prohibit the assertion of claims by insurers with whom they settle in the future. Id.

7. The Liquidator is not aware of any third party claimants who have asserted claims under the policies. However, in resolving all matters relating to the proofs of claim, the Settlement Agreement contemplates denial of any third party claimants' claims under the policies in the Home liquidation without prejudice to their claims against the Claimants. Accordingly, the Claimants agree to address, at their sole cost, the claims of claimants asserting claims against the Claimants as if the Claimants had no insurance coverage from Home under the policies. Settlement Agreement ¶ 9(A). The Claimants agree to indemnify the Liquidator and Home against claims arising from the policies (other than Guaranty Association claims, which are addressed below) up to the amounts ultimately distributed or distributable to the Claimants. Id. ¶ 9(A), (C).

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against the Claimants will not harm the third party claimants, who will continue to have their full claims against the Claimants, although those claims can only be paid in accordance

with the provisions of the Trust and the MacArthur Companies bankruptcy plan.⁴ As noted above, the Claimants have agreed to address these claims as if they had no insurance coverage from Home under the policies. Settlement Agreement ¶ 9(A). Third party claimants' proofs of claim against the insolvent Home, if not denied with this 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 a presently undetermined percentage distribution at the future date when a distribution is made. It is not expected that the allowed claims of any third party claimants (or other Class II creditors) will be paid in full. Under the Settlement Agreement, the Trust will continue to be responsible for any third party claimants' claims against Claimants in accordance with its terms and the provisions of the MacArthur Companies bankruptcy plan. See Settlement Agreement ¶ 9(A).

9. The Settlement Agreement is different from other settlement agreements previously approved by the Court because it does not resolve all matters under the Home insurance policies. The Claimants are pursuing claims against Zurich-American Insurance Company and other companies in Western Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al., Case No. CGC-04-436181 (San Francisco Superior Ct.), which is coordinated with other cases in the same court (the "Zurich Litigation"). Settlement Agreement fifth Whereas clause. As part of the Zurich Litigation, the Claimants have asserted claims against the California Insurance Guarantee Association under the Home policies, and they have, or may, assert such claims against other insurance guaranty associations. Id., seventh Whereas clause. The Liquidator acknowledges that he is aware of the Claimants' pending claims in the

⁴ As part of the Confirmation Order, all Asbestos Related Claims (including claims for personal injury from asbestos against any of the MacArthur Companies) were channeled to, and are to be paid solely from, the Trust. Confirmation Order ¶ 32. Further, all entities that hold any Asbestos Related Claim against an Asbestos Insurance Company (which includes Home) are enjoined from taking any action without the express permission of the trustees of the Trust to collect on that claim. Id. ¶ 34.

Zurich Litigation and takes no position as to those claims. The Settlement Agreement is not intended to affect those claims other than the claim asserted by the Claimants against the California Insurance Guarantee Association. Id. ¶ 4.

10. When an insurance guaranty association such as the California Insurance Guarantee Association responds to a claim under an insolvent insurer's policy, the association generally has a corresponding claim in the insurer's liquidation both for its expenses and any payment to the claimant. The Settlement Agreement provides for this in paragraphs 9 and 10. As described below, these provisions are designed to maintain the position of the Home estate and its Class II creditors under the Settlement Agreement regardless of the outcome of Claimants' claim against the California Insurance Guarantee Association or any other insurance guaranty association under the Home policies.

11. The insurance guaranty association issues are addressed in the Settlement Agreement as follows. The Claimants agree to dismiss, without prejudice, their claims against the California Insurance Guarantee Association in the Zurich Litigation. Settlement Agreement ¶ 10. If the Claimants subsequently pursue claims under the Home policies against any insurance guaranty association, they acknowledge that the association's expenses of addressing the claim and any recovery from the association may become a claim in the Home liquidation. Id. ¶ 9(B)(1). The Home and its Class II creditors are protected against the impact of such a claim because any such expenses or recovery will be deducted from the recommended amount allowed to Claimants as a Class II claim in the Home liquidation. Id. If the expenses and recovery exceed the recommended amount, Claimants will not recover anything from the Home liquidation. Id. ¶ 9(B)(2). Furthermore, unless the insurance guaranty association agrees not to assert a claim in the Home liquidation for the excess amounts, Claimants agree to indemnify Home and the Liquidator by paying an amount that will negate the effect of the amount of the

recoveries and expenses in excess of the recommended amount on any distributions to Class II claimants in the Home liquidation. Id. This indemnity obligation is not capped by amounts distributed to Claimants, id. ¶ 9(C), and the Claimants' obligation under this provision will be secured by the Claimants placing 75% of any such excess recovery into escrow. Id. ¶ 9(B)(2). Finally, in the event that Claimants' claims against insurance guaranty associations and the associations' claims in the Home liquidation have not been resolved at the time the Liquidator is to make a distribution, the distribution is to be placed in escrow until (i) the Claimants' claim against the insurance guaranty association or associations is resolved, (ii) the Claimants waive all claims against the associations, and (iii) the association or associations' claims in the Home liquidation are resolved. Id. ¶ 9(B)(3).

12. 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 asbestos-related bodily injury claims under Home's insurance policies. The agreed recommended amount is based on careful evaluation and negotiation of coverage obligations under Home's policies respecting the underlying liabilities of the Claimants. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$242,500,000 recommended 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.

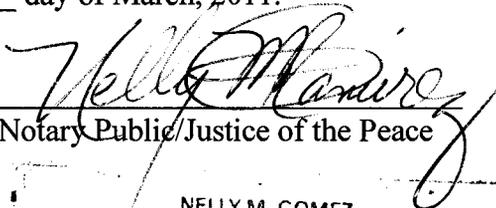
Signed under the penalties of perjury this 3rd day of March, 2011.



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

STATE OF NEW YORK
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 3rd day of March, 2011.



Notary Public/Justice of the Peace

NELLY M. GOMEZ
Notary Public, State of New York
No. 625005271
Qualified in Putnam County
Certificate Filed in N. Y. County
Commission Expires December 7, 2014