

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 AND
MUTUAL RELEASE WITH PNEUMO ABEX LLC AND PEPSI-COLA
METROPOLITAN BOTTLING COMPANY**

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 and Mutual Release (“Settlement Agreement”) with PneumoAbex LLC (formerly known as Pneumo Abex Corporation) and Pepsi-Cola Metropolitan Bottling Company (formerly known as PepsiAmericas, Inc.) (collectively “Claimants”) and the Liquidator.¹ 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 which was negotiated under my supervision. A copy of the Settlement Agreement is attached as Exhibit A to the Liquidator’s motion.

¹ Capitalized terms not otherwise defined in this affidavit are described in the Settlement Agreement.

3. Home issued nine insurance policies under which Claimants assert entitlement to insurance coverage for various policy periods between August 1, 1962 and August 1, 1970. Upon Home's placement in liquidation, the Claimants filed six 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.

5. The Settlement Agreement provides that the Liquidator will recommend allowance of the Proofs of Claim in the aggregate amount of \$41,750,000 as a Class II priority claim of the Claimants under RSA 402-C:44. Settlement Agreement ¶ 2(A).² Allowance of this recommended amount as a Class II claim will fully and finally resolve the proofs of claim. 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). All distributions to Claimants, until notification to the Liquidator otherwise in writing by each of the Claimants, will be made into an escrow account on behalf of the Claimants and the escrow information shall be provided to the Liquidator. Id., 2(D).

6. The Settlement Agreement is intended to resolve the Proofs of Claim. See 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 Proofs of Claim. Id. ¶¶ 5, 6. The Liquidator also agrees not to pursue claims respecting the

² 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 ¶ 4.

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 Claimants are pursuing claims against Zurich-American Insurance Company and other companies in PepsiAmericas, Inc. et al. v. Zurich-American Insurance Co., et al., CGC 05-4421140 (San Francisco Superior Ct.), which is coordinated with other cases in the same court (the “Zurich Litigation”). Settlement Agreement fifth Whereas clause. The Liquidator acknowledges that he is aware of the Claimants’ pending claims in the Zurich Litigation and takes no position as to the claims and defenses in the Zurich Litigation. The Settlement Agreement is not intended to affect those claims. Id. ¶ 3.

8. 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 ¶ 8(A). The Claimants agree to indemnify the Liquidator and Home against claims arising from the Policies up to the amounts ultimately distributed or distributable to the Claimants. Id. ¶ 8(B).


9. 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. 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 ¶ 8(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 Claimants will continue to be responsible for any third party claimants' claims against Claimants. See Settlement Agreement ¶ 8(A).

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 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 \$41,750,000 recommended amount as a Class II claim of the Claimants 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 15 day of August, 2011.



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

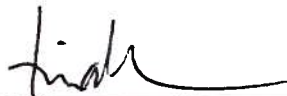
STATE OF CALIFORNIA
COUNTY OF VENTURA

On 8-15, 2011 before me, Tina Le, 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: 

Signature of Notary Public