

**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 SOMERSET TIRE**

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 Somerset Tire. 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 Somerset Tire Services, Inc. ("Somerset Tire") 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 two insurance policies under which Somerset Tire is the named insured for various policy periods between December 31, 1979 and December 31, 1984. Settlement Agreement, first Whereas clause. Upon Home's placement in liquidation, Somerset Tire filed a proof of claim in the Home liquidation regarding environmental cleanup costs and

damages, particularly at Somerset Tire's property in Bound Brook, New Jersey (the "Site"). Settlement Agreement, third Whereas clause.

4. Somerset Tire has previously reached a separate agreement with the New Jersey Property-Liability Insurance Guaranty Association (the "NJPLIGA"). NJPLIGA's payment to Somerset Tire will be addressed in the Home proceeding as a separate claim. Settlement Agreement, fifth Whereas clause. The Settlement Agreement between the Liquidator and Somerset Tire is a negotiated resolution of Somerset Tire's remaining claim with respect to the Site, as well as all other matters under the proof of claim and the policies. 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 proof of claim in the aggregate amount of \$2,650,000 as a Class II priority claim of Somerset Tire under RSA 402-C:44. Allowance of the recommended amount as a Class II claim will fully and finally resolve the proof of claim and all claims Somerset Tire has under the policies. 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. Settlement Agreement ¶ 2.

6. The Settlement Agreement is intended to resolve the proof of claim and all claims under the policies. See Settlement Agreement ¶¶ 2(B), 5. To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Somerset Tire arising from or related to the proof of claim or the policies. Id. ¶¶ 3, 4. The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the proof of claim against other insurers of Somerset Tire that agree not to pursue such claims against Home. Id. ¶ 6.

7. The Liquidator is not aware of any third party claimants asserting claims under the policies. However, in resolving all matters relating to the proof of claim and the policies, the Settlement Agreement contemplates denial of any third party claimants' claims under the policies in the Home liquidation without prejudice to their claims against Somerset Tire. Accordingly, Somerset Tire acknowledges in the Settlement Agreement that it is intended to resolve all matters between Somerset Tire and the Liquidator/Home relating to the proof of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Somerset Tire agrees to address, at its sole cost, the claims of claimants asserting claims against Somerset Tire as if Somerset Tire had no insurance coverage from Home under the policies. Id. Somerset Tire agrees to indemnify the Liquidator and Home against claims arising from the policies up to the amounts ultimately distributed to Somerset Tire. Id.

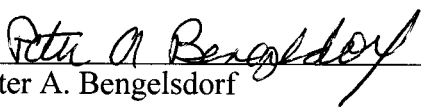
8. The denial of any third party claimants' proof of claim without prejudice to their claims against Somerset Tire will not harm the third party claimants, who will continue to have their full claims against Somerset Tire. As noted above, Somerset Tire has agreed to address these claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 5. Third party claimants' proof of claim against the insolvent Home, if not denied with this agreement, would release Somerset Tire 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, Somerset Tire will continue to be fully responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 5.

9. 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 environmental clean-up costs and damages under Home's insurance policies. The agreed settlement amount is based on careful evaluation and negotiation of coverage obligations under Home's policies respecting the underlying liabilities of Somerset Tire. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$2,650,000 settlement amount as a Class II claim of Somerset Tire in accordance with RSA 402-C:45 and RSA 402-C:44.

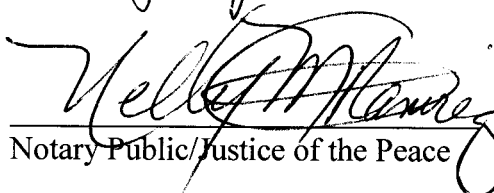
10. I believe that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home.

Signed under the penalties of perjury this 13 day of July, 2011.

  
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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 13<sup>th</sup> day of July, 2011.

  
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Notary Public/Justice of the Peace

