

**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 SOUTHLAND**

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 Southland. 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 Comet Street, Inc. (“Comet”), formerly known as Southland Oil Company, which company had previously done business as VGS Corporation (“VGS”; Comet, Southland Oil Company, and VGS are collectively referred to herein as “Southland”) 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 to VGS under which Southland Oil Company was the named insured for two policy periods between November 1, 1979 and November 1,

1984, and one insurance policy to VGS Corporation D/B/A Southland Oil Co., et al., for the policy period from April 1, 1977 to January 26, 1978. Settlement Agreement, first Whereas clause. Upon Home's placement in liquidation, Southland filed three proofs of claim in the Home liquidation. Settlement Agreement, third Whereas clause.

4. The Liquidator and Southland have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters under 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 proofs of claim in the aggregate amount of \$750,000 as a Class II priority claim of Southland 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 proofs of claim and all claims Southland has 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).

6. The Settlement Agreement is intended to resolve the proofs of claim and all claims under the policies. See Settlement Agreement ¶¶ 2(B), 6. To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Southland arising from or related to the proofs of claim or the policies. *Id.* ¶¶ 4, 5. The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the proof of claim against other insurers of Southland that agree not to pursue such claims against Home. *Id.* ¶ 7.

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 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 Southland. Accordingly, Southland acknowledges in the Settlement Agreement that it is intended to resolve all matters between Southland and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 6. Southland agrees to address, at its sole cost, the claims of claimants asserting claims against Southland as if Southland had no insurance coverage from Home under the policies. *Id.* Southland agrees to indemnify the Liquidator and Home against claims arising from the policies up to the amounts distributed or distributable to Southland. *Id.*

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Southland will not harm the third party claimants, who will continue to have their full claims against Southland. As noted above, Southland has agreed to address these claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 6. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Southland 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, Southland will continue to be fully responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 6.

9. Southland is currently pursuing claims against Zurich-American Insurance Company and others in Fuller-Austin Asbestos Settlement Trust, et al. v. Zurich-American Insurance Co., et al. in San Francisco Superior Court. Settlement Agreement, fourth Whereas

clause. The Liquidator acknowledges that he is aware of Southland's pending claims in the litigation and takes no position as to the claims and defenses in the litigation. The Settlement Agreement is not intended to have any effect on the litigation. See Settlement Agreement, ¶ 3.

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 environmental claims 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 Southland. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$750,000 settlement amount as a Class II claim of Southland in accordance with RSA 402-C:45 and RSA 402-C:44.

11. The Liquidator submits 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 19 day of October, 2012.

*Peter A Bengelsdorf*

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

STATE OF CALIFORNIA  
COUNTY OF VENTURA

On OCTOBER 19, 2012 before me, CLAUDIA A. KING - 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 *Claudia A. King*  
Signature of Notary Public

