

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 VERNAY**

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 Vernay. 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 Vernay Laboratories, Inc. (“Vernay”) 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 one insurance policy to Vernay for the policy period between April 4, 1969 and April 4, 1972. Upon Home’s placement in liquidation, Vernay filed a proof of claim in the Home liquidation regarding claims under the policy, including but not limited to claims for coverage for environmental clean up costs and damages.

4. The Liquidator and Vernay have negotiated a Settlement Agreement reflecting a resolution of the proof of claim and all matters between them under the policy. 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 \$475,000 as a Class II priority claim 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 proof of claim and all claims Vernay has under the policy. 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 proof of claim and all claims under the policy. See Settlement Agreement ¶¶ 2(B), 5. To that end, the Settlement Agreement provides for mutual releases of all claims between Home and Vernay arising from or related to the proof of claim or the policy. Id. ¶¶ 3, 4. The Liquidator also agrees not to pursue certain claims respecting the underlying matters covered by the proof of claim against other insurers of Vernay 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 policy. However, in resolving all matters relating to the proofs of claim and the policy, the Settlement Agreement contemplates denial of any third party claimants' claims under the policy in the Home liquidation without prejudice to their claims against Vernay. Accordingly, Vernay acknowledges in the Settlement Agreement that it is intended to resolve all matters between Vernay and the Liquidator/Home relating to the proof of claim and the policy, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Vernay agrees to address, at its sole cost, the claims of claimants asserting claims against Vernay as if Vernay had no insurance


coverage from Home under the policy. Id. Vernay agrees to indemnify the Liquidator and Home against claims relating to the policy (except for claims by Century Indemnity Company, which the Liquidator has previously resolved) up to the amount actually distributed to Vernay pursuant to the Settlement Agreement. Id.

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Vernay will not harm the third party claimants, who will continue to have their claims against Vernay. As noted above, Vernay has agreed to address these claims as if it had no insurance coverage from Home under the policy. Settlement Agreement ¶ 5. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Vernay from those claims up to the limits of the policy but only entitle the third party claimants (assuming their claims are 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, Vernay 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 Home's Claims Department, under my supervision, which has extensive experience in assessing the exposure presented by environmental cleanup claims under Home's insurance policy. The agreed settlement amount is based on careful evaluation and negotiation of coverage obligations under Home's policy respecting the underlying liabilities of Vernay. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$475,000 settlement amount as a Class II claim 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 3rd day of January, 2012.




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

STATE OF CALIFORNIA
COUNTY OF VENTURA

On January 3, 2012 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

