

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 API 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 API 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 API Inc. Asbestos Settlement Trust (“API Trust”) 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 ten insurance policies to Asbestos Products Inc. (“API Products”) and API Inc. (“API Inc.”) under which Asbestos Products Inc. and API Inc. were the named insureds for various policy periods between April 30, 1970 and July 1, 1995. Settlement Agreement, first Whereas clause. (Eleven workers compensation insurance policies that Home

issued to Asbestos Products Inc. and API Inc. are excluded from the terms of the Settlement Agreement. Id.) Upon Home's placement in liquidation, API Inc. filed eight proofs of claim in the Home liquidation regarding claims under the policies. Settlement Agreement, third Whereas clause. (Another proof of claim filed by API Inc. as reorganized in bankruptcy is excluded from the terms of the Settlement Agreement. Id.) In the API Inc. bankruptcy proceeding, API Trust succeeded to all rights of API Products and API Inc. with respect to asbestos-related claims under the policies. Settlement Agreement, fourth Whereas clause.¹ API Trust and API Inc. have asserted claims against Home in a declaratory judgment action in Minnesota. Settlement Agreement, fifth Whereas clause. That action has not been pursued as against Home in light of the Home liquidation proceeding.

4. The Liquidator and API Trust have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim, all matters under the policies, and the Declaratory Judgment Action. 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 with respect to the settled claims in the aggregate amount of \$21,500,000 as a Class II priority claim of API Trust 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 API Trust 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).

¹ API Inc. filed a bankruptcy petition in 2005 (In re: API Inc., Chapter 11 Case No. 05-30073 (Bankr. D. Minn.)), and it is the subject of a plan of reorganization that established the API Trust. Under the Third Amended Plan of Reorganization of A.P.I. Inc. (November 21, 2005) as Modified at Confirmation (the "Plan"), API Trust succeeded to all of the asbestos insurance rights of Asbestos Products Inc. and API Inc. and was authorized to act on behalf of Asbestos Products Inc. and API Inc. in respect of asbestos claims and coverage under the policies.

6. The Settlement Agreement is intended to resolve the proofs of claim and all claims API Trust has 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 API Trust arising from or related to the proofs of claim or the policies. Id. ¶¶ 3, 4. API Trust will also dismiss all claims against Home in the Declaratory Judgment action. Id. ¶ 3. The Liquidator agrees not to pursue claims respecting the underlying matters covered by the proof of claim against other insurers of API Trust that agree not to pursue such claims against Home. Id. 6.

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 API Trust. Accordingly, API Trust acknowledges in the Settlement Agreement that it is intended to resolve all matters between API Trust and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. API Trust agrees to address, at its sole cost, the claims of claimants asserting claims against API Trust as if API Trust had no insurance coverage from Home under the policies. Id. API Trust agrees to indemnify the Liquidator and Home against claims arising from the policies or the proofs of claim up to the amount ultimately distributed or distributable to API Trust. Id.

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

provisions of the API Trust and the bankruptcy plan.² As noted above, API Trust has agreed to address these claims as if it had no insurance coverage from Home under the policies.

Settlement Agreement ¶ 5. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release API Trust from those claims up to the limits of the policy 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, API Trust will continue to be responsible for any third party claimants' claims against it in accordance with its terms and the provisions of the bankruptcy plan. See Settlement Agreement ¶ 5.

9. 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 settlement amount is based on careful evaluation and negotiation of coverage obligations under Home's policies respecting the underlying liabilities of API Trust. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$21,500,000 settlement amount as a Class II claim of API Trust in accordance with RSA 402-C:45 and RSA 402-C:44.

² Under the provisions of the Plan, the API Trust assumed all asbestos claims against A.P.I. Inc., and those claims are to be paid in accordance with the Trust Agreement and the Trust Distribution Procedures.

10. I submit 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 21 day of November, 2012.

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

STATE OF CALIFORNIA
COUNTY OF VENTURA

On November 21, 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

