

**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 RAPID-AMERICAN**

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 Rapid-American. 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 Rapid-American Corporation (“Rapid-American”) 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 Rapid-American is the named insured for various policy periods between October 31, 1977 and January 1, 1979. Settlement Agreement, first Whereas clause. Upon Home’s placement in liquidation, Rapid-American filed three proofs of claim in the Home liquidation regarding claims under the policies with respect to asbestos bodily injury claims. Settlement Agreement, third Whereas clause.

4. The Liquidator and Rapid-American 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 \$5,400,000 as a Class II priority claim of Rapid-American under RSA 402-C:44. Allowance of the recommended amount as a Class II claim will fully and finally resolve the proofs of claim and all claims Rapid-American 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 proofs of claim and all matters 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 Rapid-American arising from or related to the proofs of claim or the policies. Id. ¶¶ 3, 4. The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the proofs of claim against other insurers of Rapid-American 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.<sup>1</sup> However, in resolving the proofs of claim and all matters under 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 Rapid-American. Accordingly, Rapid-American acknowledges in the Settlement Agreement that it is intended to

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<sup>1</sup> One insurer has submitted a contribution claim in respect of the policies. Unlike third party claimants' claims, a contribution claim is independent of the insured's claims (although derived from the same underlying circumstances), and it will remain to be determined on its own merits in the liquidation proceeding.

resolve all matters between Rapid-American and the Liquidator/Home relating to the proofs of claim and all matters under the policies, including asserted rights of third party claimants under the policies. Settlement Agreement ¶ 5. Rapid-American agrees to address, at its sole cost, the claims of claimants asserting claims against Rapid-American as if Rapid-American had no insurance coverage from Home under the policies. Id. Rapid-American agrees to indemnify the Liquidator and Home against claims arising from the policies up to the amounts ultimately distributed to Rapid-American. Id.

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Rapid-American will not harm the third party claimants, who will continue to have their full claims against Rapid-American. As noted above, Rapid-American has agreed to address these claims as if it had no insurance coverage from Home under the policies.

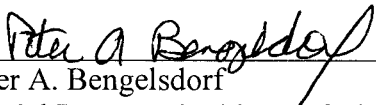
Settlement Agreement ¶ 5. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Rapid-American from those claims up to the limits of the policies but only entitle the third party claimants (assuming their claims were allowed) to a presently 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, Rapid-American will 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. It is the result of negotiations involving the Claims Department, under my supervision, which has extensive experience in assessing the exposure presented by asbestos 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 Rapid-American. The Liquidator accordingly recommends approval of the Settlement Agreement and

allowance of the \$5,400,000 settlement amount as a Class II claim of Rapid-American 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 4<sup>TH</sup> day of January, 2012.

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

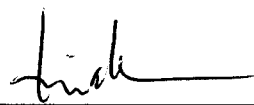
STATE OF CALIFORNIA  
COUNTY OF VENTURA

On January 4, 2012 before me, Tina Trinh 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

