

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 SWAN**

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 Swan. 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 Swan Transportation Company (“Company”) and the Swan Asbestos and Silica Settlement Trust (“Trust”) (collectively, “Swan”) 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 Tyler Corporation under which Swan Transportation Company is a named insured for policy periods between January 1, 1994 and

February 1, 1995. Settlement Agreement, first Whereas clause. Upon Home's placement in liquidation, Swan filed two proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for silica and mixed dust claims. See Settlement Agreement, third Whereas clause.

4. The Liquidator and Swan have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim. 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 \$20,000,000 as a Class II priority claim of Swan 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. 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. All distributions to Swan will be made to the Swan Asbestos and Silica Settlement Trust. Id. ¶ 2(C).

6. The Settlement Agreement is intended to resolve the proofs of claim. See Settlement Agreement, fifth Whereas clause, ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Swan arising from or related to the proofs of claim. Id. ¶¶ 4, 5. The Liquidator also agrees not to pursue claims against Swan's other insurers that agree not to pursue such claims against Home. Id. ¶ 7. Swan agrees to use reasonable efforts to obtain such agreements in connection with settlements with other insurers and to reduce any judgment it obtains against other insurers to extinguish any liability of Home for a contribution claim by that insurer. Id. ¶¶ 7, 8.

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, the Settlement Agreement contemplates denial of any third party claimants' claims in the Home liquidation without prejudice to their claims against Swan. Accordingly, Swan agrees to address, at its sole cost, the claims of claimants against Swan as if Swan had no insurance coverage from Home under the policies. Swan also agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to the policies, including asserted rights of third party claimants, up to the amounts actually received by Swan under the Settlement Agreement. Settlement Agreement ¶ 6.

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Swan will not harm the third party claimants, who will continue to have their claims against Swan, although those claims can only be paid in accordance with the provisions of the Trust documents and the Company's bankruptcy plan.¹ As noted above, Swan 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 Swan 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 inclusive of the pending 15% distribution in the future when 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, Swan

¹ Swan Transportation Company made a bankruptcy filing in 2001 (In re Swan Transportation Company, Chapter 11 Case No. 01-11690 (JKF) (Bankr. D. Del.), and it is the subject of a plan of reorganization that established the Trust. See Settlement Agreement ¶ 9. Under the plan, asbestos, silica and mixed dust claims against the Company were assumed by the Trust, which is to resolve and pay such claims. The plan includes an injunction which channels tort claims to the Trust. The plan also includes a channeling injunction specifically protecting Settling Insurers. The bankruptcy case is now closed. In the event that the bankruptcy case is reopened, the Trust will seek to designate the Liquidator and Home as protected parties under that injunction. Settlement Agreement ¶ 9.

will continue to be responsible for any third party claimants' claims against it in accordance with the terms of the Trust and the provisions of the Company's bankruptcy plan. See Settlement Agreement ¶ 6.


9. The Settlement Agreement differs from most other settlement agreements previously approved by the Court, although it is similar to the settlement agreement with Fuller-Austin approved by the court on December 20, 2012. While Swan and the Liquidator release each other from any claims arising from or related to the proofs of claim, the Settlement Agreement does not resolve all matters arising from or related to the Home insurance policies. Similar to Fuller-Austin, Swan is 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, which is coordinated with other cases in the same court (the "Zurich Litigation"). Settlement Agreement fourth Whereas clause. The Liquidator acknowledges that he is aware of Swan's pending claims in the Zurich Litigation and takes no position as to the claims and defenses in the Zurich Litigation. The Settlement Agreement is not intended to have any effect on the Zurich Litigation. Id. ¶ 3. Since the Settlement Agreement does not resolve all matters under the Home policies, it specifically addresses claims against insurance guaranty associations. Id., fifth Whereas clause, ¶ 4.

10. 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 bodily injury claims under Home's insurance policies. The agreed recommended settlement amount is based on careful evaluation and negotiation of coverage obligations under Home's policies respecting the underlying liabilities of Swan. The Liquidator accordingly recommends approval of the

Settlement Agreement and allowance of the \$20,000,000 recommended amount as a Class II claim of Swan in accordance with RSA 402-C:45 and RSA 402-C:44.

11. 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 27 day of September, 2013.



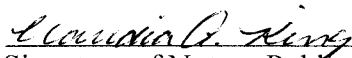
Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

STATE OF CALIFORNIA
COUNTY OF VENTURA

On Sept 27, 2013 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 
Signature of Notary Public

