

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 2013
SETTLEMENT AGREEMENT WITH MALLINCKRODT**

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 2013 Settlement Agreement with Mallinckrodt. 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 dated April 24, 2013 (“2013 Settlement Agreement”) between Mallinckrodt Inc., a Delaware corporation now known as Mallinckrodt LLC (“Mallinckrodt”) and Mallinckrodt US LLC, formerly known as Mallinckrodt Inc., a New York corporation, for itself and as successor in interest to Commercial Solvents Corporation and International Mineral & Chemical Corporation (“Mallinckrodt/IMC”) (hereinafter Mallinckrodt and Mallinckrodt/IMC are referred to collectively as “Claimant”) and the Liquidator. The 2013 Settlement Agreement was negotiated

under my supervision. A copy of the 2013 Settlement Agreement is attached as Exhibit A to the Liquidator's motion.

3. Home issued: (a) eight insurance policies to Mallinckrodt/IMC under which Commercial Solvents Corporation was the named insured for various policy periods between June 30, 1966 and June 30, 1975; (b) fifteen insurance policies to Mallinckrodt/IMC under which International Mineral & Chemical Corporation was the named insured for various policy periods between January 1, 1968 and August 1, 1985; and (c) seven insurance policies to Mallinckrodt under which Mallinckrodt Inc. was the named insured for various policy periods between August 1, 1970 and August 31, 1979. 2013 Settlement Agreement, first Whereas clause. Upon Home's placement in liquidation, Claimant filed thirty-two proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for environmental clean-up costs and damages and for asbestos bodily injury. 2013 Settlement Agreement, third Whereas clause.

4. Claimant and the Liquidator previously settled all claims by, or on behalf of, Claimant for environmental clean-up costs, except for the Schnitzer Claims discussed below (the "Environmental Settlement"). The Environmental Settlement Agreement was approved by the Court on December 21, 2011. 2013 Settlement Agreement, fourth Whereas clause.

5. The 2013 Settlement Agreement and the Environmental Settlement each specifically exclude from their terms all claims and proofs of claim made by Schnitzer Steel, Inc. and Schnitzer Investment Corp. ("Schnitzer Claims"). 2013 Settlement Agreement, fourth Whereas clause. Nothing in the 2013 Settlement Agreement is intended to affect the Schnitzer Claims. 2013 Settlement Agreement, ¶ 2.

6. The Liquidator and Claimant have negotiated the 2013 Settlement Agreement reflecting a resolution of the remaining proofs of claim and all remaining matters under the policies, subject only to the exclusion of the Schnitzer Claims. 2013 Settlement Agreement, sixth Whereas clause, ¶ 2. The 2013 Settlement Agreement is subject to approval by the Court. 2013 Settlement Agreement ¶ 1.

7. The 2013 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 \$6,000,000 as a Class II priority claim of Claimant under RSA 402-C:44. 2013 Settlement Agreement ¶ 3(A). Allowance of the recommended amount as a Class II claim, together with the previous allowance of \$10,569,391 for the Environmental Settlement, will fully and finally resolve the proofs of claim and all claims Claimant has under the policies other than the excluded claims. Id. ¶ 3(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. ¶ 3(C).

8. The 2013 Settlement Agreement is intended to resolve the proofs of claim and all claims under the policies other than the excluded claims. See 2013 Settlement Agreement ¶¶ 3(B), 6. To that end, the 2013 Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Claimant arising from or related to the proofs of claim or the policies other than the excluded claims. Id. ¶¶ 4, 5. The Liquidator and Claimant agree that the Recommended Amount does not involve Home insurance policies reinsured by Mallinckrodt's captive reinsurance company Carnforth, Inc., so the Liquidator agrees not to seek reimbursement from that company. Id. ¶ 3(D), (E). The Liquidator also agrees not to pursue claims respecting the underlying non-excluded matters covered by the proofs of claim against other insurers of Claimant that agree not to pursue such claims against Home. Id. ¶ 7.

9. The Liquidator is not aware of any third party claimants who have asserted claims under the policies other than potentially with respect to excluded matters.¹ However, in resolving all matters relating to the proofs of claim and the policies other than the excluded matters, the 2013 Settlement Agreement contemplates denial of any third party claimants' claims under the policies in the Home liquidation without prejudice to their claims against Claimant. Accordingly, Claimant acknowledges in the 2013 Settlement Agreement that it is intended to resolve all matters between Claimant and the Liquidator/Home relating to the proofs of claim and the policies (other than the excluded claims), including asserted rights of third party claimants. 2013 Settlement Agreement ¶ 6. Claimant agrees to address, at its sole cost, the claims of claimants asserting claims against Claimant with respect to non-excluded matters as if Claimant had no insurance coverage from Home under the policies. Id. Claimant agrees to indemnify the Liquidator and Home against claims (other than the excluded claims) arising from the policies up to the amounts actually distributed to Claimant. Id.

10. The denial of any third party claimants' proofs of claim without prejudice to their claims against Claimant will not harm the third party claimants, who will continue to have their claims against Claimant. As noted above, Claimant has agreed to address these claims as if it had no insurance coverage from Home under the policies. 2013 Settlement Agreement ¶ 6. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Claimant 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

¹ Several insurers have submitted contribution claims 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 be determined under applicable law in the liquidation proceeding.

paid in full. Under the 2013 Settlement Agreement, Claimant will continue to be responsible for any third party claimants' claims against it. See 2013 Settlement Agreement ¶ 6.

11. The 2013 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 claims for asbestos bodily injury 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 Claimant. The Liquidator accordingly recommends approval of the 2013 Settlement Agreement and allowance of the \$6,000,000 settlement amount as a Class II claim of Claimant in accordance with RSA 402-C:45 and RSA 402-C:44.

12. The Liquidator submits that the 2013 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 3 day of May, 2013.

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

STATE OF CALIFORNIA
COUNTY OF VENTURA

On May 3, 2013 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 Tina Le
Signature of Notary Public

