

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 FLEXIBLE PRODUCTS**

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 Flexible Products. 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 Flexible Products Company (“Flexible Products”) 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 six insurance policies to Flexible Products for various policy periods between January 1, 1979 and May 31, 1984. Settlement Agreement, first Whereas clause. Upon Home’s placement in liquidation, Flexible Products filed a proof of claim in the Home

liquidation regarding claims under the policies, including but not limited to claims for coverage regarding isocyanate claims. Settlement Agreement, third Whereas clause.

4. The Liquidator and Flexible Products have negotiated a Settlement Agreement reflecting a resolution of the proof 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 proof of claim in the aggregate amount of \$450,000 as a Class II priority claim of Flexible Products 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 Flexible Products 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).

6. A disputed claim proceeding between Flexible Products and the Liquidator is pending before the Referee, No. 2013-HICIL-56. Settlement Agreement, fourth Whereas clause. If and when the Liquidation Court allows the recommended amount as a Class II claim, Flexible Products and the Liquidator will jointly request that the disputed claims proceeding be dismissed with prejudice and without costs. Id. ¶ 2(D).

7. The Settlement Agreement is intended to resolve the proof of claim and all claims 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 Flexible Products arising from or related to the proof of claim or the policies. Id. ¶¶ 3, 4. The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the proof of claim

against other insurers of Flexible Products that agree not to pursue such claims against Home.

Id. ¶ 6.

8. The Liquidator is not aware of any third party claimants asserting claims under the policies. However, in resolving all matters relating to the proof 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 Flexible Products. Accordingly, Flexible Products acknowledges in the Settlement Agreement that it is intended to resolve all matters between Flexible Products and the Liquidator/Home relating to the proof of claim and the policies, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Flexible Products agrees to address, at its sole cost, the claims of claimants asserting claims against Flexible Products as if Flexible Products had no insurance coverage from Home under the policies. Id. Flexible Products agrees to indemnify the Liquidator and Home against claims arising from the policies up to the amounts ultimately distributed or distributable to Flexible Products. Id.

9. The denial of any third party claimants' proofs of claim without prejudice to their claims against Flexible Products will not harm the third party claimants, who will continue to have their claims against Flexible Products. As noted above, Flexible Products 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 Flexible Products 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 beyond the pending 15% interim 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, Flexible Products will continue to be responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 5.

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 claims for coverage 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 Flexible Products. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$450,000 settlement amount as a Class II claim of Flexible Products 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 4 day of September, 2013.

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

STATE OF CALIFORNIA
COUNTY OF VENTURA

On 09-04, 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

