

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 QUINTEC INDUSTRIES**

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 Quintec Industries. 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 Roger G. Segal, as Bankruptcy Trustee for Quintec Industries, Inc. (“Quintec”) 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 one insurance policy to Quintec for the policy period October 1, 1984 to October 1, 1985. Settlement Agreement, first Whereas clause. Upon Home’s placement in liquidation, Quintec filed one proof of claim in the Home liquidation regarding claims under

the policy, including but not limited to claims concerning alleged asbestos bodily injury.

Settlement Agreement, third Whereas clause.

4. The Liquidator and Quintec have negotiated a Settlement Agreement reflecting a resolution of the proof of claim and all matters under the policy. The Settlement Agreement is subject to approval by the Court and by the United States Bankruptcy Court for the District of Utah (the “Bankruptcy Court”), before which Quintec’s Chapter 7 bankruptcy case is pending (Case No. 11-21374 RKM). Settlement Agreement, Intro. and ¶ 1.

5. The Settlement Agreement provides that the Liquidator will recommend allowance of the proof of claim with respect to the settled claims in the aggregate amount of \$12,500,000 as a Class II priority claim of Quintec 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 Quintec has under the policy. *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). The distributions will be made to Quintec’s bankruptcy trustee. *Id.*

6. The Settlement Agreement is intended to resolve the proof of claim and all claims under the policy. See Settlement Agreement ¶¶ 2(B), 5. To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Quintec arising from or related to the proof of claim or the policy. *Id.* ¶¶ 3, 4.¹ The Liquidator also agrees not to pursue claims respecting the underlying matters covered by the proof of claim against other insurers of Quintec that agree not to pursue such claims against Home. *Id.* ¶ 6.

¹ The Settlement Agreement includes a “reservation of rights” in paragraph 21 to address concerns of Quintec (a Utah company) over Utah Code Annot. Section 15-4-4, which requires releasing parties to “reserve” claims against anyone else (e.g., joint tortfeasors or others who may be jointly liable) not released in the settlement agreement; without such reservation language either Quintec or Home arguably might be releasing parties it (they) had not intended.

7. The Liquidator is not aware of any third party claimants who have asserted claims under the policy. However, in resolving all matters relating to the proof of claim and the policy, the Settlement Agreement contemplates denial of any third party claimants' claims under the policy in the Home liquidation without prejudice to their claims against Quintec. Accordingly, Quintec acknowledges in the Settlement Agreement that it is intended to resolve all matters between Quintec and the Liquidator/Home relating to the proof of claim and the policy, including asserted rights of third party claimants. Settlement Agreement ¶ 5. Quintec agrees to address, at its sole cost, the claims of claimants asserting claims against Quintec as if Quintec had no insurance coverage from Home under the policy. Id. Quintec agrees to indemnify the Liquidator and Home against claims arising from the policy up to the amounts ultimately distributed or distributable to Quintec. Id.

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Quintec will not affect their claims against Quintec. As noted above, Quintec has agreed to address these claims as if it had no insurance coverage from Home under the policy. Settlement Agreement ¶ 5. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Quintec 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, Quintec will continue to be responsible for third party claimants' claims against it, subject to the requirements of its own bankruptcy proceeding. Quintec will receive the distributions under the policies, and the distributions will


be available for distribution in the bankruptcy in accordance with the bankruptcy procedures.

See Settlement Agreement ¶ 5.

9. 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 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 policy respecting the underlying liabilities of Quintec. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$12,500,000 settlement amount as a Class II claim of Quintec in accordance with RSA 402-C:45 and RSA 402-C:44.

10. The Liquidator submits 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 18 day of January, 2013.


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

STATE OF CALIFORNIA
COUNTY OF VENTURA

On JAN 18, 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 Claudia A. King
Signature of Notary Public

