

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 PUBLICKER**

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 Publicker. 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 Publicker Industries, Inc., n/k/a Chazak Value Corp. (“Publicker”) 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 fifteen insurance policies to Publicker under which the Company is an insured, for the policy periods between January 19, 1968 and December 19, 1995. Settlement

Agreement, first Whereas clause. (Home also issued two workers' compensation policies to Publicker which are excluded from the Settlement Agreement.) Upon Home's placement in liquidation, Publicker filed eighteen proofs of claim in the Home liquidation regarding claims under the policies, including but not limited to claims for coverage for environmental damage and bodily injury claims. Settlement Agreement, third Whereas clause.

4. The Liquidator and Publicker 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 \$1,200,000 as a Class II priority claim of Publicker 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 Publicker will be made to Chazak Value Corp. Id. ¶ 2(C).

6. The Settlement Agreement is intended to resolve the proofs of claim. See Settlement Agreement, sixth Whereas clause, ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Publicker arising from or related to the proofs of claim. Id. ¶¶ 5, 6. The Liquidator also agrees not to pursue claims against Publicker's other insurers that agree not to pursue such claims against Home. Id. ¶ 7.

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 Publicker. Accordingly, Publicker agrees to address, at its sole cost, the claims of claimants asserting claims against Publicker as if Publicker had no insurance coverage from Home under the policies. Publicker 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 ultimately distributed or distributable to Publicker. Settlement Agreement ¶ 8..

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against Publicker will not harm the third party claimants, who will continue to have their claims against Publicker. As noted above, Publicker 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 Publicker 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, Publicker will continue to be responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 5.

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 Publicker 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, Publicker is pursuing claims against Zurich-American Insurance Company and others in PepsiAmericas, Inc., 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 fifth Whereas clause. The Liquidator acknowledges that he is aware of Publicker’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., sixth Whereas clause, ¶¶ 5, 8.

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 environmental damage and 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 Publicker. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$1,200,000 recommended amount as a Class II claim of Publicker in accordance with RSA 402-C:45 and RSA 402-C:44.

