

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 MARVIN**

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 Marvin. 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 Marvin Lumber and Cedar Company and Marvin Windows of Tennessee, Inc. (collectively, “Marvin”) 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 nine insurance policies to Marvin under which Marvin asserts coverage for various policy periods between September 1, 1986 and December 24, 1994. Settlement Agreement, first Whereas clause. Upon Home’s placement in liquidation, Marvin

filed nine proofs of claim in the Home liquidation including claims for coverage for products liability claims. Settlement Agreement, third Whereas clause. The Settlement Agreement does not address eleven workers' compensation policies, which are excluded from the Settlement Agreement. Settlement Agreement, first Whereas clause.

4. The Liquidator and Marvin have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters under the policies, with the exception of the eleven workers' compensation 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 proofs of claim in the aggregate amount of \$950,000 as a Class II priority claim of Marvin 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 and all claims Marvin 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. All distributions will be made to Marvin Lumber and Cedar Company. Id. ¶ 2(C).

6. The Settlement Agreement is intended to resolve the proofs of claim and all claims that Marvin has under the policies. See Settlement Agreement ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Marvin arising from or related to the proofs of claim or the policies. Id. ¶¶ 3, 4. The Liquidator also releases claims respecting the underlying matters covered by the proofs of claim against other insurers of Marvin that agree to release such claims against Home. Id. ¶ 6.

7. In resolving all matters relating to the proofs 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 Marvin. Accordingly, Marvin acknowledges in the Settlement Agreement that it is intended to resolve all matters between Marvin and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. See Settlement Agreement, fourth Whereas clause, ¶ 5. Marvin agrees to address, at its sole cost, the claims of claimants asserting claims against Marvin as if Marvin had no insurance coverage from Home under the policies.

Settlement Agreement ¶ 5. Marvin agrees to indemnify the Liquidator and Home against claims arising from the policies up to the amounts ultimately distributed or distributable to Marvin, including a certain claim against Marvin filed with the Liquidator by a partnership and certain partners (the “Waterford” claims). Id.

8. The only third party claims under the policies of which the Liquidator is aware are the Waterford claims. The Liquidator is mailing, first class postage prepaid, a copy of this Motion to the Waterford claimants.

9. The denial of the Waterford claimants’ proofs of claim and any other third party claimants’ proofs of claim without prejudice to their claims against Marvin will not harm the Waterford claimants or the third party claimants because they will continue to have their claims against Marvin. As noted above, Marvin has agreed to address these claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 5. All third party claimants’ proofs of claim against the insolvent Home, if not denied with this agreement, would release Marvin 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, Marvin 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 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 product liability claims 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 Marvin. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$950,000 settlement amount as a Class II claim of Marvin 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 10 day of June, 2014.

Peter A Bengelsdorf

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

STATE OF CALIFORNIA
COUNTY OF VENTURA

On 06-10, 2014 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