

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 HOLCIM**

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 Holcim. 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 Holcim (US) Inc. and its predecessor entities, Ideal Cement Company, Ideal Basic Industries, Inc., and Holnam, Inc. (collectively, “Holcim”), 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 seven insurance policies to Ideal Cement Company, Ideal Basic Industries, Inc., or Holnam, Inc. for various policy periods between July 1, 1965 and

March 1, 1995. Holcim, Inc. is the successor to the rights of the insurance proceeds under each policy. Settlement Agreement, first Whereas clause.

4. Holcim has 17 proofs of claim pending in the Home liquidation. Seven concern environmental claims and ten concern claims other than environmental claims. Settlement Agreement, third Whereas clause. The Settlement Agreement resolves all matters concerning Holcim's claims under the policies and the proofs of claim, except that environmental claims and the seven environmental proofs of claim are specifically excluded from the Settlement Agreement. Settlement Agreement, third and fourth Whereas clauses and ¶ 2. The excluded claims and excluded proofs of claim are not included within references to proofs of claim and claims below. They remain to be addressed.

5. The Liquidator and Holcim have negotiated a Settlement Agreement reflecting a resolution of the proofs of claim and all matters under the policies. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.

6. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$4,015,510 as a Class II priority claim of Holcim under RSA 402-C:44. Settlement Agreement ¶ 3(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve the proofs of claim and all claims Holcim has under the policies. 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. ¶ 2(C).

7. The Settlement Agreement is intended to resolve the proofs of claim and all claims Holcim has under the policies. Settlement Agreement, fourth Whereas clause, ¶ 3(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the

Liquidator, Home and Holcim arising from or related to the proofs of claim or the policies.

Id. ¶¶ 4, 5. The Liquidator also agrees to waive claims against Holcim's other insurers that agree to waive such claims against Home, and Holcim agrees to use reasonable commercial efforts to obtain such agreements in connection with settlements with other insurers. Id. ¶ 7.

8. Other than the excluded environmental proofs of claim, the Liquidator is not aware of any unresolved proofs of claim that have been submitted in relation to the policies and Holcim. However, in resolving all matters relating to the proofs of claim, the Settlement Agreement contemplates denial of any third party claimants' non-environmental claims in the Home liquidation without prejudice to their claims against Holcim. Settlement Agreement, ¶ 6. Accordingly, Holcim agrees to address, at its sole cost, the non-environmental claims of claimants against Holcim as if Holcim had no insurance coverage from Home under the policies. Holcim also agrees to indemnify and hold the Liquidator and Home harmless from all non-environmental claims arising from or relating to the policies, including asserted rights of third party claimants, up to the amount ultimately distributed or distributable to Holcim. Id.


9. The denial of any third party claimants' proofs of claim without prejudice to their claims against Holcim will not harm the third party claimants, who will continue to have their claims against Holcim. As noted above, Holcim has agreed to address these claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 6. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Holcim from those claims up to the limits of the policies but only entitle the third party claimants (assuming their claims were allowed) to the 15% interim distribution and any later distribution at a presently undetermined percentage at the future date when 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, Holcim will continue to be responsible for any third party claimants' claims against it. See, id.

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 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 Holcim. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$4,015,510 recommended amount as a Class II claim of Holcim 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 March, 2015.



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

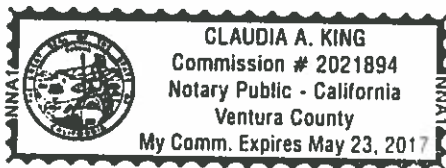
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA
COUNTY OF VENTURA

On March 10, 2015 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