

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 CONGOLEUM PLAN TRUST**

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 Congoleum Plan Trust. 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 Congoleum Plan Trust (“Trust”), as successor in interest to Congoleum Corporation¹ (“Congoleum”), 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.

¹ The Trust was established as part of Congoleum’s plan of reorganization (*In re: Congoleum Corp.*, Case No. 09-04371 (D.N.J.)). Under the plan, the Trust assumed all asbestos claims against Congoleum, which was discharged from those claims, and will resolve those claims in accordance with the plan. The plan included an Insurance Transfer Agreement, which generally assigned to the Trust Congoleum’s rights under its Home insurance policies with respect to asbestos claims.

3. Home issued one insurance policy to Congoleum for the policy period between January 28, 1970 and February 16, 1973. Settlement Agreement, first Whereas clause. Upon Home's placement in liquidation, Congoleum filed one proof of claim in the Home liquidation for coverage for asbestos bodily injury claims. Settlement Agreement, fourth Whereas clause. Pursuant to a plan of reorganization approved in *In re Congoleum Corp.*, No. 09-04371 (D.N.J.), the Trust is the successor-in-interest to Congoleum with respect to Home's insurance coverage for asbestos-related bodily injury liabilities. Id.

4. The Liquidator and the Trust have negotiated a Settlement Agreement reflecting a resolution of the proof of claim and all matters under the policy relating to Congoleum's asbestos bodily injury claims.² 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 \$14,000,000 as a Class II priority claim of the Trust 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 the Trust 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).

6. The Settlement Agreement is intended to resolve the proof of claim and all claims that the Trust has under the policy. See Settlement Agreement ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and the Trust arising from or related to the proof of claim or the policy. Id. ¶¶ 3, 4. The

² The Trust will resolve only asbestos bodily injury claims against Congoleum. To the extent Congoleum may have other, non-asbestos bodily injury claims, those claims will be separately addressed.

Liquidator also agrees to waive claims respecting the underlying matters covered by the proof of claim against other insurers of the Trust that agree to waive such claims against Home. Id. ¶ 6. The Trust also agrees to reduce any judgment it obtains against other insurers to extinguish any liability of Home for a contribution claim by that insurer. Id. ¶ 8.

7. The Liquidator is not aware of any third party claimants asserting claims under the policy.³ 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 the Trust. Accordingly, the Trust acknowledges in the Settlement Agreement that it is intended to resolve all matters between the Trust and the Liquidator/Home relating to the proof of claim and the policy, including asserted rights of third party claimants. See Settlement Agreement, fifth Whereas clause, ¶ 5. The Trust agrees to address, at its sole cost, the claims of claimants asserting claims against the Trust as if the Trust had no insurance coverage from Home under the policy. Settlement Agreement ¶ 5. The Trust agrees to indemnify the Liquidator and Home against claims arising from the policy up to the amounts ultimately distributed or distributable to the Trust. Id.

8. The Trust agrees to use best efforts to cause the Liquidator and Home to be designated as protected parties under the asbestos bodily injury permanent channeling injunction approved by the final confirmed plan in the Congoleum bankruptcy. Settlement Agreement, ¶ 7.

9. The denial of any third party claimants' proof of claim without prejudice to their claims against the Trust will not harm the third party claimants, who will continue to have their claims against the Trust, although those claims can only be paid in accordance with the

³ Three insurers have submitted contribution claims in respect of the policies. Unlike third party claimants' claims, a contribution claim is independent of the insured's claims (although derived from the same underlying circumstances), and it will be determined under applicable law in the liquidation proceeding.

provisions of Congoleum's bankruptcy plan. As noted above, the Trust 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 the Trust from those claims up to the limits of the policy 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, the Trust will continue to be responsible for any third party claimants' claims against it in accordance with the terms of the Trust. 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 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 the Trust. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$14,000,000 settlement amount as a Class II claim of the Trust 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 13TH day of January, 2015.

Peter A. Bengelsdorf

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 January 13, 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

