

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 ESCROW
AGREEMENT PURSUANT TO SETTLEMENT AGREEMENT WITH
WESTERN ASBESTOS SETTLEMENT 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 an order approving an Escrow Agreement (“Escrow Agreement”) among the Western Asbestos Settlement Trust (“Trust”), Home (by the Liquidator), and Wells Fargo Bank, N.A. (“Wells Fargo”), as escrow agent (“Escrow Agent”), and establishing the escrow account (the “Western Home Escrow”) subject to the Court’s continuing jurisdiction. 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 Trust and the Liquidator propose to enter the Escrow Agreement with Wells Fargo in accordance with the Settlement Agreement and Mutual Release (“Settlement Agreement”) dated February 18, 2011 between the Liquidator and the Trust, in its capacity as the sole owner of Western Asbestos Company, and pursuant to the authority granted in the Order

Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief as the successor to MacArthur Co. and Western MacArthur Co. to “initiate, prosecute, defend and resolve” all Asbestos Insurance Actions in the name of MacArthur Co., Western MacArthur Co. and/or Western Asbestos Company (the “MacArthur Companies”) (collectively, “Claimants”). The Settlement Agreement resolved the Claimants’ proofs of claim in the Home liquidation. The Court approved the Settlement Agreement on May 2, 2011.

3. The Settlement Agreement provides that, in the event that the Claimants pursue any claim under the Policies against any Insurance Guaranty Association, the amount allowed as a Class II claim in the Home liquidation shall be the Recommended Amount set forth in the Settlement Agreement minus certain amounts. Settlement Agreement ¶ 9(B)(1).

4. The Settlement Agreement further provides that if, at the time the Liquidator is to make a distribution, (i) the Claimants are pursuing a claim against any Insurance Guaranty Association with respect to the Policies, (ii) Claimants do not waive the right to pursue claims against any Insurance Guaranty Association with respect to the Policies, or (iii) an Insurance Guaranty Association against whom Claimants have obtained a Recovery could still assert a claim in the Home liquidation regarding the Recovery, then the distribution amount shall be placed in escrow with a mutually acceptable third-party escrow agent pending certain developments. Settlement Agreement ¶ 9(B)(3). The Western Home Escrow is to be established and administered pursuant to a mutually acceptable written escrow agreement and shall be jointly administered with respect to investment of the escrowed funds. Settlement Agreement ¶ 9(B)(3).

5. The Court approved a 15% interim distribution to claimants with allowed Class II claims by order dated March 13, 2012 (as amended July 2, 2012), subject to receipt of a waiver

of Federal Priority Act claims from the United States. As described in the Liquidator's Report Regarding Release Agreement with the United States (November 6, 2014), the Liquidator received such a waiver on November 5, 2014.

6. The Trust is pursuing claims under the Policies against the California Insurance Guarantee Association ("CIGA") in Snyder. et al. v. California Insurance Guarantee Association, No. RG-13-666656 (Superior Court of California, County of Alameda). Accordingly, the distribution amount, as determined in accordance with the Settlement Agreement, must be placed in the Western Home Escrow pursuant to the Settlement Agreement.

7. In these circumstances, the Liquidator and the Trust have sought to provide for the Western Home Escrow to hold and invest distributions from the Home estate pursuant to the Settlement Agreement and to provide for disbursement of escrowed amounts in accordance with the provisions of the Settlement Agreement. The Trust, Home, and Wells Fargo Bank have now agreed on the form of Escrow Agreement attached to the Liquidator's motion as Exhibit A. The Escrow Agreement, which was negotiated under my supervision, is subject to the approval of the Court. Escrow Agreement § 1.1. The Escrow Agreement contemplates that the Western Home Escrow will be a qualified settlement fund under Treasury Regulation § 1.468B, which requires that it be established by court approval and subject to the continuing jurisdiction of the Court. See Escrow Agreement § 1.5(a).

8. The Escrow Agreement provides that, upon approval by the Court, the Liquidator will deliver \$36,328,251 to the Escrow Agent. Escrow Agreement § 1.1. That sum represents the 15% interim distribution on the Recommended Amount less certain deducted amounts.¹ Additional amounts may be delivered to the Escrow Agent by the Liquidator in the event that

¹ The parties have reserved their rights as to the deduction of certain amounts under the Settlement Agreement. See Escrow Agreement § 1.1.

additional Class II distributions are made from the Home estate. Escrow Agreement § 1.1. The Escrow Agent will hold and invest the amounts deposited in accordance with joint written instructions by the parties. Escrow Agreement § 1.2. The Escrow Agent will disburse the Western Home Escrow amounts in accordance with the joint written instructions of the parties. Escrow Agreement § 1.3.

9. In the Escrow Agreement, the Trust and the Liquidator acknowledge that all matters between them, including the determination of joint instructions to the Escrow Agent for the disbursement of escrowed amounts, are governed by the Settlement Agreement. Escrow Agreement § 4.5. The Settlement Agreement provides that the exclusive venue for any dispute arising out of the Settlement Agreement is this Court. Settlement Agreement ¶ 13. The Escrow Agreement provides that if any dispute arises or if the Escrow Agent is in doubt as to any action to be taken under the Escrow Agreement, the Escrow Agent may retain the Western Home Escrow amounts pending a determination by this Court as to delivery of the funds or may file an interpleader action with this Court. Escrow Agreement §3.5.

10. The Escrow Agreement provides for the compensation of the Escrow Agent by the Trust to be paid from the escrowed funds. Escrow Agreement § 3.4 and Ex. C thereto. It also provides for indemnities of the Escrow Agent by the Trust and limits the Escrow Agent's liability. Escrow Agreement §§ 1.5(d), 3.1, 3.2.

11. The Liquidator and Trust seek to provide clarity for taxation regarding amounts deposited in the Western Home Escrow. The Escrow Agreement accordingly provides for the Western Home Escrow to be classified as a qualified settlement fund under Treasury Regulation § 1.468B-1. Escrow Agreement § 1.5(a).

12. Subject to the terms of the Escrow Agreement, Wells Fargo Bank, N.A., 333 South Grand Ave, Los Angeles, California will serve as the escrow agent to administer the Western Home Escrow subject to the continuing jurisdiction of the Court. See Escrow Agreement § 1.5(a). The Liquidator will report to the Court regarding the status of the Western Home Escrow in the Liquidator's reports.

13. The Court's approval and order establishing the Western Home Escrow will serve the interests of the Trust and of the Home estate because it will facilitate distributions with respect to the settlement of Claimants' claims in the Home liquidation. It will also allow the parties to derive the tax benefits associated with qualified settlement funds.

14. I believe that the Escrow Agreement is fair and reasonable, appropriately serves to implement the Settlement Agreement, and is in the best interests of the policyholders and creditors of Home.

Signed under the penalties of perjury this 26 day of May, 2015.



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

STATE OF NEW YORK
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 26th day of May, 2015.


Notary Public Justice of the Peace

Nelly M. Gomez-Ramirez
Notary Public State of New York
No. 01GO5005271
Qualified in Bronx County
Commission Expires 7/1/2019