

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**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 SCHNITZER STEEL (PROLER/MRI)**

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 Schnitzer Steel (Proler/MRI). 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 Schnitzer Steel Industries, Inc., solely in its capacity as successor to Proler International Corporation (“Proler”) and MRI Corporation (“MRI”) (collectively, “Schnitzer”), 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 twelve insurance policies to Proler and MRI for various periods between October 1, 1980 and October 1, 1983. Settlement Agreement, first Whereas clause.

Upon Home's placement in liquidation, Proler and MRI filed three proofs of claim in the Home liquidation concerning environmental claims under the policies. See id., fourth Whereas clause.

4. In 1996, Proler, including its subsidiary MRI became a subsidiary of Schnitzer Steel Industries, Inc. Settlement Agreement, sixth Whereas clause. In 2008, Proler and MRI were liquidated and dissolved, and their remaining assets were distributed to Schnitzer Steel Industries or a subsidiary of Schnitzer Steel Industries. See id., seventh and eighth Whereas clauses.

5. The Liquidator and Schnitzer have negotiated the Settlement Agreement reflecting a resolution of the proofs of claim and all matters between them under the policies. Settlement Agreement, fifth Whereas clause. (Home also entered a related reinsurance agreement with Cityvest Reinsurance Company, Ltd., and a security agreement with Proler that are closed out by the settlement. See id., second and fifth Whereas clauses.) The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.¹

6. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the amount of \$225,000 as a Class II priority claim of Schnitzer 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 Schnitzer 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. Id. ¶ 2(C).

7. The Settlement Agreement is intended to resolve the proofs of claim and all claims that Schnitzer has under the policies. See Settlement Agreement ¶ 2(B). To that end, the

¹ Schnitzer has other proofs of claim in the Home liquidation asserting claims under policies issued to entities other than Proler and MRI. Those proofs of claim and policies are not addressed in the Settlement Agreement and remain for determination in the liquidation.

Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Schnitzer 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 Schnitzer that agree to release such claims against Home. Id. ¶ 6.

8. The Liquidator is not aware of any third party claimants asserting claims under the policies. However, in resolving all of Schnitzer's claims 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 Schnitzer. See Settlement Agreement, ¶ 5. Schnitzer agrees to address, at its sole cost, the claims of claimants asserting claims against Schnitzer as if Schnitzer had no insurance coverage from Home under the policies. Id. Schnitzer 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 amount ultimately distributed or distributable to Schnitzer. Id.

9. The denial of third party claimants' claims without prejudice to their claims against Schnitzer will not harm the third party claimants, who will continue to have their claims against Schnitzer. As noted above, Schnitzer 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 the agreement, would release Schnitzer from those claims up to the limits of the policies but only entitle the third party claimants (assuming their claims were allowed) to the initial interim distributions and any later distribution at a presently undetermined distribution percentage from Home 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) of Home will be paid in full. Under the Settlement Agreement,

Schnitzer will continue to be responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 5.

10. The Liquidator is not aware of any proofs of claim asserting a claim to the same policy limits as the claims of Schnitzer resolved by the Settlement Agreement. However, if a claim of another claimant is subject to the same limit of liability as the claims resolved by the Settlement Agreement, and if the total allowed amounts for all claimants exceed the limit, then the allowed amounts for all claimants will be subject to adjustment under RSA 402-C:40, IV, so that the policy limit will not be exceeded. See Settlement Agreement ¶ 5.

11. 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 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 Schnitzer. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$225,000 settlement amount as a Class II claim of Schnitzer in accordance with RSA 402-C:45 and RSA 402-C:44.

12. 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 25 day of January, 2016.

Peter A. Bengelsdorf

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 25th day of January, 2016.

Neily M. Gomez-Ramirez
Notary Public/Justice of the Peace

Neily M. Gomez-Ramirez
Notary Public State of New York
No. 01GO5005271
Qualified in Bronx County
Commission Expires 2/1/2019