

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 CBS OPERATIONS**

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 CBS Operations. 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 CBS Operations, Inc., as successor to Gulf & Western Industries, Inc., Universal American Corporation, E.W. Bliss Company and Viacom International, Inc. (“CBS Operations”), 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 Gulf & Western Industries, Inc. (“Gulf & Western”), for various policy periods between February 1, 1967 and January 1, 1986, two

insurance policies to Universal American Corporation (“Universal American”) for various policy periods between January 1, 1964 and January 1, 1967, three policies to E.W. Bliss Company (“E.W. Bliss”) for various policy periods between March 19, 1964 and October 15, 1988, and one policy to Viacom International, Inc. (“Viacom”) for the policy period June 5, 1971 to June 5, 1974, which, together with all other insurance policies Home may have issued to Gulf & Western, Universal American, E.W. Bliss and Viacom (except for two specified workers compensation policies issued to E.W. Bliss) are referred to collectively as the “Policies”.

Settlement Agreement, first Whereas clause. Upon Home’s placement in liquidation, CBS Operations or its predecessors filed 16 proofs of claim concerning environmental claims in the Home liquidation, all of which, together with any other proofs of claim hereinbefore or hereinafter filed by CBS Operations or its predecessors in the Home liquidation (except for six proofs of claim filed by Viacom Inc. as successor to another entity, Westinghouse Electric Corporation) are referred to collectively as the “Proofs of Claim”. *Id.*, third Whereas clause.

4. The Liquidator and CBS Operations have negotiated the Settlement Agreement reflecting a resolution of the Proofs of Claim and all matters between them under the 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 amount of \$7,000,000 (the “Recommended Amount”) as a Class II priority claim 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 CBS Operations 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).

6. The Settlement Agreement is intended to resolve the Proofs of Claim and all claims that CBS Operations 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 CBS Operations arising from or related to the Proofs of Claim or the Policies. Id. ¶¶ 3, 4.

7. In resolving all of CBS Operations' claims relating to the Proofs of Claim and the Policies, the Settlement Agreement is intended to resolve all matters arising out of or relating to any rights CBS Operations ever had, now has, or hereafter may have in the Policies and the Proofs of Claim, including any asserted rights of third-party claimants against CBS Operations under the Policies. See Settlement Agreement ¶ 5. CBS Operations agrees to address, at its sole cost, any such claims of third-party claimants against CBS Operations as if there had been no liquidation proceeding for Home and as if CBS Operations had no insurance coverage from Home by virtue of the Policies. Id. CBS Operations also agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to the Proofs of Claim or the Policies, including asserted rights of third party claimants, up to the amount ultimately distributed or distributable to CBS Operations. Id.

8. The Liquidator is not aware of any third party claimants asserting claims under the Policies. However, the denial of any third party claimants' claims without prejudice to their claims against CBS Operations will not harm third party claimants, who will continue to have their claims against CBS Operations. As noted above, CBS Operations 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 CBS Operations 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, CBS Operations is fully responsible for any third party claimants' claims against it. Id. ¶ 5.

9. The Liquidator is not aware of any proof of claim asserting a claim to the same policy limits as the Proofs of Claim which are 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. Settlement Agreement ¶ 6.

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 claims under Home's insurance policies. The agreed settlement amount is based on careful evaluation and negotiation of coverage obligations under the Policies respecting the underlying liabilities of CBS Operations and its predecessors. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$7,000,000 settlement amount as a Class II claim of CBS Operations 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 5th day of April, 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 5th day of April, 2016.

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

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