

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 DIOCESE OF GALLUP**

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 Diocese of Gallup. 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 the Roman Catholic Church of the Diocese of Gallup (“Diocese”) 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 allegedly issued four insurance policies to the Diocese and/or the Bishop of the Diocese of Gallup for various policy periods between October 1, 1965 and October 1, 1977, which, together with all other insurance policies Home may have issued to the Diocese or under

which the Diocese may be insured are referred to collectively as the “Policies”. Settlement Agreement, second Whereas clause. Upon Home’s placement in liquidation, the Diocese filed a proof of claim with respect to insurance coverage for alleged bodily injury in the Home liquidation, which, together with any other proofs of claim hereinbefore or hereinafter filed by the Diocese in the Home liquidation are referred to collectively as the “Proofs of Claim”. *Id.*, sixth Whereas clause.

4. The Diocese also submitted claims under the Policies to the New Mexico Property and Casualty Insurance Guaranty Association (“NMPCIGA”), and the Diocese and the NMPCIGA are entering into a settlement regarding those claims. Settlement Agreement, fourth Whereas clause. The NMPCIGA has advised the Diocese and the Liquidator that it will seek recovery from the Home estate for its settlement amount. See *id.*, fifth Whereas clause.

5. The Diocese is the subject of a bankruptcy proceeding pending before the United States Bankruptcy Court for the District of New Mexico (“Bankruptcy Court”), In re Roman Catholic Church of the Diocese of Gallup, No. 13-13676-tll (Bankr. D.N.M.). Settlement Agreement, seventh Whereas clause. This Settlement Agreement and the Diocese’s settlement agreement with the NMPCIGA are subject to approval by the Bankruptcy Court. Because of the pending bankruptcy proceeding for the Diocese and the anticipated plan of reorganization for the Diocese, the Settlement Agreement contains certain provisions that vary from other settlement agreements between the Liquidator and policyholder claimants.

6. The Liquidator and the Diocese have negotiated the Settlement Agreement reflecting a resolution of the Proofs of Claim and all matters between them under the Policies. Settlement Agreement, eighth Whereas clause. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1(A). It is also subject to approval by the Bankruptcy Court. *Id.* ¶ 1(B). It is also conditioned upon entry by the Bankruptcy Court of an order

approving a buyback of the Policies under the Bankruptcy Code (although this condition may be waived by the Liquidator), and the Bankruptcy Court's approval of a plan of reorganization ("Plan") for the Diocese that includes channeling injunctions to protect Home and the Liquidator by channeling all claims relating to the Policies to a trust to be established as part of the Plan. Id. ¶¶ 1(C) and (D). The Diocese has filed such a Plan, including channeling injunctions and the creation of a trust, with the Bankruptcy Court.

7. The Settlement Agreement will become effective when all of the conditions noted in paragraph 6 above are satisfied. Settlement Agreement ¶ 1.

8. The Settlement Agreement provides that the Liquidator will recommend allowance of the Proofs of Claim in the amount of \$3,750,000 (the "Recommended Amount") as a Class II priority claim under RSA 402-C:44. Settlement Agreement ¶ 2(A).

9. The Settlement Agreement also provides that the \$1,850,000 amount of the NMPCIGA's settlement with the Diocese will be allowed as a Class II claim of the NMPCIGA in the Home estate once the NMPCIGA has paid that amount to the Diocese or the Diocese's assignee and submitted proof of the payment to the Liquidator. Settlement Agreement ¶ 2(B).

10. Allowance of the Recommended Amount as a Class II claim will fully and finally resolve the Proofs of Claim and all claims the Diocese has under the Policies. Settlement Agreement ¶ 2(C). 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(D).

11. The Settlement Agreement is intended to resolve the Proofs of Claim and all claims that the Diocese has under the Policies. See Settlement Agreement ¶ 2(C). To that end, the Settlement Agreement provides for a release by the Diocese of all claims against Home and the Liquidator. The release will take the form of the release of all settling insurers set forth in the Plan for the Diocese pending before the Bankruptcy Court. Id. ¶ 3.

12. In resolving all of the Diocese's 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 the Diocese 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 the Diocese under the Policies. See Settlement Agreement ¶ 4. The Diocese agrees to address, at its sole cost, any such claims of third-party claimants against the Diocese as if there had been no liquidation proceeding for Home and as if the Diocese had no insurance coverage from Home by virtue of the Policies. Id. Such claims by third parties against the Diocese will be determined in accordance with the Plan, the Bankruptcy Court's order confirming the Plan, and the Bankruptcy Code. Id.

13. 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 the Diocese will not harm third party claimants, who will continue to have their claims against the Diocese subject to the provisions of the Plan and the confirmation order (which will channel such third party claims to the trust) and the Bankruptcy Code. As noted above, the Diocese has agreed to address these claims as if it had no insurance coverage from Home under the Policies. Settlement Agreement ¶ 4. Third party claimants' proofs of claim against the insolvent Home, if not denied with the agreement, would release the Diocese 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, the Diocese is responsible for any third party claimants' claims against it, and they will be resolved in

accordance with the Plan, the confirmation order, and applicable bankruptcy law and the procedures. See *id.* ¶ 4.

14. The Liquidator is not aware of any proof of claim, other than the NMPCIGA's 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 a 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 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.

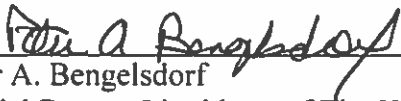
15. The Settlement Agreement contains provisions to minimize or avoid contribution or related claims between insurers of the Diocese. See Settlement Agreement ¶¶ 2(E), 6.

16. 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 the Diocese. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$3,750,000 settlement amount as a Class II claim of the Diocese in accordance with RSA 402-C:45 and RSA 402-C:44.

17. The Liquidator also recommends approval, upon payment to the Diocese or the Diocese's assignee by the NMPCIGA and submission of proof of that payment to the Liquidator, of the \$1,850,000 settlement payment by the NMPCIGA as a Class II claim of the NMPCIGA in accordance with RSA 402-C:45 and RSA 402-C:44.

18. I believe that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home.

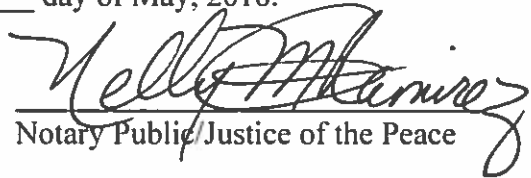
Signed under the penalties of perjury this 17th day of May, 2016.



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 17th day of May, 2016.



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