

**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 U.S. SILICA COMPANY**

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 U.S. Silica Company. 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 U.S. Silica Company (“U.S. Silica”), formerly known as Pennsylvania Glass Sand Corporation (“PGS”) and as successor to Ottawa Silica Company (“Ottawa Silica”) (“Claimant”), 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 six insurance policies to International Telephone and Telegraph Corporation (“ITT”) under which PGS is an additional named insured for various policy periods

between July 1, 1967 and July 1, 1977 and issued an insurance policy under which Ottawa Silica is the named insured for the period July 1, 1983 to July 1, 1985 which, together with all other insurance policies Home may have issued to Claimant, PGS, Ottawa Silica, or ITT, but only if Claimant is insured thereunder, are referred to collectively as the “Policies”. Settlement Agreement, first Whereas clause.<sup>1</sup> Claimant submitted a claim in the Home liquidation seeking coverage for silica and asbestos bodily injury claims which, together with any other proofs of claim hereinbefore or hereinafter filed by Claimant in the Home liquidation, are referred to collectively as the “Proof of Claim”. Id., third Whereas clause.

4. The Liquidator and the Claimant have negotiated the Settlement Agreement reflecting a resolution of all matters concerning the Proof of Claim and their rights and obligations with respect to 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 Proof of Claim in the aggregate amount of \$2,252,000 (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 Proof of Claim and all claims the Claimant 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 Proof of Claim and all claims that the Claimant has under the Policies. See Settlement Agreement ¶ 2(B). To that end,

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<sup>1</sup> Separate and distinct proofs of claim asserting claims for coverage under the Policies were filed by ITT on its own behalf. Those proofs of claim were resolved by a separate settlement agreement with ITT dated as of June 14, 2013 that was approved by the Court on October 24, 2013. See Settlement Agreement, fourth Whereas clause.

the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home, and the Claimant arising from or related to the Proof of Claim or the Policies. Id. ¶¶ 3, 4.

7. In resolving all of the Claimant's claims relating to the Proof of Claim and the Policies, the Settlement Agreement is intended to resolve all matters arising out of or relating to any rights the Claimant ever had, now has, or hereafter may have in the Policies and the Proof of Claim, including any asserted rights of third-party claimants against the Claimant under the Policies. Settlement Agreement ¶ 5(A). The Claimant agrees to address, at its sole cost, any such claims of third-party claimants against the Claimant as if there had been no liquidation proceeding for Home and as if the Claimant had no insurance coverage from Home by virtue of the Policies. Id. The Claimant also agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or related to claims against Claimant with respect to the Proof of Claim or the Policies, except for claims arising from or related to insureds under the Policies other than Claimant, up to the amount ultimately distributed or distributable to Claimant in relation to the Recommended Amount. Id. (The parties are not presently aware of any claims that would trigger any indemnification obligation of Claimant. Id.)

8. The Liquidator is not aware of any third party claimants asserting claims under the Policies with respect to the Claimant. However, the denial of any third party claimants' claims without prejudice to their claims against the Claimant will not harm the third party claimants, who will continue to have their claims against the Claimant. As noted above, the Claimant has agreed to address these claims as if it had no insurance coverage from Home under the Policies. Settlement Agreement ¶ 5(A). Third party claimants' proofs of claim against the insolvent Home, if not denied with the agreement, would release the Claimant 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 Claimant is responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 5(A).

9. If a claim of another claimant is subject to the same limit of liability under a policy 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 ¶ 6.

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 the Policies respecting the underlying liabilities of the Claimant. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$2,252,000 settlement amount as a Class II claim of Claimant 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 22 day of May, 2018.

*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 22<sup>nd</sup> day of May, 2018.

*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