

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 MINE SAFETY APPLIANCES**

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 of 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 Mine Safety Appliances. 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 Mine Safety Appliances Company, LLC, its predecessors, successors, holding companies, parent companies and any and all subsidiaries, affiliates, or operating groups, previously existing or now existing (“Claimant” or “MSA”), 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 eight insurance policies under which MSA is the named insured for various policy periods between April 1, 1971 and April 1, 1979 (the “Lower-Layer Policies”),

which together with all other insurance policies Home may have issued to MSA, including four upper-layer policies (the “Upper-Layer Policies”), are referred to collectively as the “Policies”. Settlement Agreement, second Whereas clause. MSA submitted claims for coverage of various underlying claims in the Home liquidation (the “Initial Proof of Claim”) which, together with all other proofs of claim hereinbefore or hereinafter filed by MSA in the Home liquidation, except for a proof of claim regarding the Upper-Layer Policies (the “Deferred Proof of Claim”), are referred to collectively as the “Proofs 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 Proofs of Claim and their rights and obligations with respect to the Policies, except for the Deferred Proof of Claim and the Upper-Layer 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 Initial Proof of Claim in the aggregate amount of \$32,762,828 (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 Initial Proof of Claim and all claims the Claimant has under the Lower-Layer 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, except that the initial distribution of 15% will be withheld as the Proofs of Claim were an unexcused late-filed claim pursuant to RSA 402-C:37, III. Id. ¶ 2(C).

6. The Settlement Agreement is intended to resolve the Initial Proof of Claim and all claims that the Claimant has under the Lower-Layer Policies. See Settlement Agreement ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the

Liquidator, Home, and the Claimant arising from or related to the Initial Proof of Claim or the Lower-Layer Policies, but not the Deferred Proof of Claim or the Upper-Layer Policies.

Id. ¶¶ 3, 4.

7. In resolving all of the Claimant's claims relating to the Initial Proof of Claim and the Lower-Layer 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 those policies and that proof of claim, including any asserted rights of third-party claimants against the Claimant under the Lower-Layer Policies. Settlement Agreement ¶ 5. 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 Lower-Layer Policies. Id. The Claimant also agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to the Initial Proof of Claim or the Lower-Layer Policies, including asserted rights of third party claimants, up to the amount ultimately distributed or distributable in relation to the Recommended Amount.

Id.

8. The Liquidator is not aware of any third party claimants asserting claims under the Lower-Layer Policies. 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 Lower-Layer Policies. Settlement Agreement ¶ 5. 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 Lower-Layer 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.

9. The Liquidator is not aware of any pending proofs of claim asserting a claim subject to the same limit in the Home policies as the Initial Proof of Claim resolved by the Settlement Agreement, with the exception of a contribution claim. 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 ¶ 6.

10. The Settlement Agreement reflects a compromise of the claims asserted in the Initial 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 Lower-Layer Policies respecting the underlying liabilities of the Claimant. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$32,762,828 settlement amount as an unexcused late-filed Class II claim of Claimant in accordance with RSA 402-C:45, RSA 402-C:44, and RSA 402-C:37.

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 13 day of November, 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 13th day of November, 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