

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 AGREEMENTS WITH BORGWARNER MORSE TEC LLC,
BORGWARNER, INC., FLOWSERVE CORPORATION, AND YORK
INTERNATIONAL CORPORATION**

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 Agreements with BorgWarner Morse Tec LLC, BorgWarner, Inc., Flowserve Corporation, and York International Corporation. 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 three Settlement Agreements and Mutual Releases (the “Settlement Agreements”), the first between the Liquidator and BorgWarner Morse Tec LLC and BorgWarner, Inc. (collectively, “BorgWarner”), the second between the Liquidator and Flowserve Corporation (“Flowserve”), and the third between the Liquidator and York International Corporation (“York”). The Settlement Agreements were negotiated under my

supervision. Copies of the BorgWarner Settlement Agreement, the Flowserve Settlement Agreement, and the York Settlement Agreement are attached to the Liquidator's motion.

3. Home issued two insurance policies under which BorgWarner Corporation is the named insured for various policy periods between July 1, 1968 and September 1, 1974 which, together with all other insurance policies Home may have issued to BorgWarner Corporation are referred to collectively as the "Policies" in the Settlement Agreements. Settlement Agreements, second whereas clause.

4. Each of BorgWarner Morse TEC LLC, Flowserve and York is a successor with respect to certain liabilities related to BorgWarner Corporation and has certain rights under the Policies. BorgWarner Morse TEC LLC is a successor to BorgWarner Corporation; Flowserve is a successor to BorgWarner Industrial Products, Inc., subsidiary of BorgWarner Corporation; and York is a successor to BorgWarner Corporation. BorgWarner, Inc., has certain rights under the Policies. As described below, the three Settlement Agreements together resolve all rights and obligations BorgWarner, Flowserve and York have under the Policies.

5. BorgWarner submitted a proof of claim in the Home liquidation seeking coverage under the Policies for asbestos bodily injury exposures which was assigned proof of claim number INSU703495 which, together with all other proofs of claim hereinbefore or hereinafter filed by BorgWarner under the Policies in the Home liquidation, are referred to collectively as the "BorgWarner Proof of Claim". BorgWarner Settlement Agreement, third whereas clause. Two partial allowances relating to liabilities arising out of asbestos bodily injury exposures under the Policies were previously issued as Notice of Determination INSU703495-01 for \$9,463,604.18 and INSU703495-02 for \$2,790,795.45. These partial allowances were approved by the Court on September 18, 2014 and June 15, 2015, respectively. Id., fifth whereas clause.

6. Burns International Services Corporation (“Burns”) filed proofs of claim in the Home liquidation seeking coverage under the Policies for asbestos bodily injury exposures for itself and on behalf Flowserve and York. The Burns claims were assigned proof of claim numbers INSU702471, INSU702472, INSU702473, and INSU702474 (the “Burns Proof of Claim”).¹ The claims filed on behalf of Flowserve were assigned proof of claim INSU715195 which, together with all other proofs of claim hereinbefore or hereinafter filed by Flowserve in the Home liquidation are referred to collectively as the “Flowserve Proof of Claim” The claims filed on behalf of York were assigned proof of claim INSU715194 which, together with all other proofs of claim hereinbefore or hereinafter filed by York in the Home liquidation are referred to collectively as the “York Proof of Claim”. BorgWarner Settlement Agreement, fourth whereas clause; Flowserve and York Settlement Agreements, third whereas clauses.

7. The Liquidator and BorgWarner have negotiated the BorgWarner Settlement Agreement reflecting a resolution of all remaining matters concerning the BorgWarner Proof of Claim and their rights and obligations with respect to the Policies. See BorgWarner Settlement Agreement, sixth whereas clause, ¶ 2(B). The Liquidator and Flowserve have negotiated the Flowserve Settlement Agreement reflecting a resolution of all matters concerning the Flowserve Proof of Claim and their rights and obligations with respect to the Policies, and the Liquidator and York have negotiated the York Settlement Agreement reflecting a resolution of all matters concerning the York Proof of Claim and their rights and obligations with respect to the Policies. See Flowserve and York Settlement Agreements, fifth whereas clause, ¶ 2(B). The Settlement Agreements do not address any rights or obligations of Burns under the Policies.

¹ Burns also filed two proofs of claim seeking coverage for environmental damages under the Policies which were assigned numbers INSU709398 and INSU709399 (the “Burns Environmental Claims”). The Burns Proof of Claim and the Burns Environmental Claims are not the subject of the Settlement Agreements.

8. Each of the Settlement Agreements is subject to approval by the Court.

Settlement Agreements ¶ 1.

9. The BorgWarner Settlement Agreement provides that the Liquidator will recommend allowance of the BorgWarner Proof of Claim in the amount of \$30,259,032 (“BorgWarner Recommended Amount”) as a Class II priority claim under RSA 402-C:44. BorgWarner Settlement Agreement ¶ 2(A). This is in addition to the two prior partial allowances. Allowance of the BorgWarner Recommended Amount as a Class II claim will fully and finally resolve the BorgWarner Proof of Claim and all claims BorgWarner 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).

10. The Flowserve Settlement Agreement provides that the Liquidator will recommend allowance of the Flowserve Proof of Claim in the amount of \$7,630,616 (“Flowserve Recommended Amount”) as a Class II priority claim under RSA 402-C:44. Flowserve Settlement Agreement ¶ 2(A). Allowance of the Flowserve Recommended Amount as a Class II claim will fully and finally resolve the Flowserve Proof of Claim and all claims Flowserve 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).

11. The York Settlement Agreement provides that the Liquidator will recommend allowance of the York Proof of Claim in the amount of \$4,360,352 (“York Recommended Amount”) as a Class II priority claim under RSA 402-C:44. York Settlement Agreement ¶ 2(A). Allowance of the York Recommended Amount as a Class II claim will fully and finally resolve the York Proof of Claim and all claims York 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).

12. Each Settlement Agreement is intended to resolve the proofs of claim of the claimant (BorgWarner, Flowserve or York as the case may be) and all claims that the claimant has under the Policies. See Settlement Agreements ¶ 2(B). To that end, each Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home, and the claimant arising from or related to the proofs of claim or the Policies. Id. ¶¶ 3, 4.

13. In resolving all of the claimant's claims relating to its proofs of claim and the Policies, each 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 its proofs of claim, including any asserted rights of third-party claimants against the claimant under the Policies. Settlement Agreements ¶ 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 Policies. Id. Each claimant agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to its proofs of claim or the Policies, including asserted rights of third party claimants, up to the amount ultimately distributed or distributable in relation to the Recommended Amount. Id.

14. 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 a claimant (BorgWarner, Flowserve, or York) will not harm the third party claimants who will continue to have their claims against the claimant. As noted above, each claimant has agreed to address third party claims against it as if it had no insurance coverage from Home under the Policies. Settlement Agreements ¶ 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 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 Agreements, each claimant will continue to be responsible for any third party claimants' claims against it. See Settlement Agreements ¶ 5.

15. With the exception of the Burns Proofs of Claim, the Liquidator is not aware of any pending proofs of claim asserting a claim to the same policy limit as the proofs of claim resolved by the three Settlement Agreements.² However, if a claim of another claimant is subject to the same limit of liability as the claims resolved by the three Settlement Agreements, 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 Agreements ¶ 6.

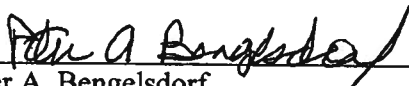
16. The Settlement Agreements reflect compromises of the claims asserted in the proofs of claim. They are the result of negotiations involving the Claims Department, under my supervision, which has extensive experience in assessing the exposure presented by claims under Home's insurance policies. The agreed settlement amounts are based on careful evaluation and negotiation of coverage obligations under the Policies respecting the underlying liabilities of the claimants. The Liquidator accordingly recommends approval of the Settlement Agreements and allowance of the \$30,259,032 settlement amount to BorgWarner, the \$7,630,616 settlement

² The Burns Environmental Claims do not assert a claim to the same policy limits as the proofs of claim concerning asbestos. Two insurers filed contribution claims respecting BorgWarner but both have been disallowed.

amount to Flowserve, and the \$4,360,352 settlement amount to York as Class II claims of the respective claimants in accordance with RSA 402-C:45 and RSA 402-C:44.

17. I believe that the Settlement Agreements are fair and reasonable and in the best interests of the policyholders and creditors of Home.

Signed under the penalties of perjury this 5 day of September, 2019.


Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance Company

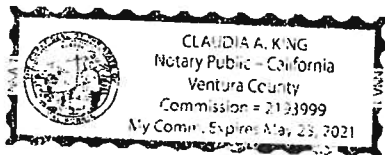
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA
COUNTY OF VENTURA

On SEPTEMBER 5, 2019 before me, CLAUDIA A. KING - NOTARY PUBLIC, personally appeared Peter A. Bengelsdorf, Special Deputy Liquidator of The Home Insurance Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Claudia A. King
Signature of Notary Public