

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 CHARLES CASS, BRIAN CASS, DAVID CASS,
OHM HOLDINGS, INC., GABBROIC MANAGEMENT, LLC, AND
ENVIRONMENTAL FORENSIC INVESTIGATIONS, INC.**

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 Charles Cass, Brian Cass, David Cass, OHM Holdings, Inc., Gabbroic Management, LLC, and Environmental Forensic Investigations, Inc. 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 (the “Settlement Agreement”), between the Liquidator and Charles Cass, individually and as Trustee of the Charlton E. Cass Revocable Trust u/a/d September 9, 1987, Brian Cass, David Cass, OHM Holdings, Inc., Gabbroic Management, LLC, and Environmental Forensic Investigations, Inc. (each individually a “Claimant” and collectively the “Claimants”). The Settlement Agreement

was negotiated under my supervision. A copy of the Settlement Agreement is attached to the Liquidator's motion.

3. Home issued six insurance policies for various policy periods between November 1, 1971 and November 1, 1981 to Charles Cass, O.H.M. of Lincoln, Inc., O.H.M. of Wauwatosa, Inc., O.H.M. of Elm Grove, Inc., O.H.M. of Hampton, Inc., O.H.M. of Oconomowoc, Inc., and O.H.M. of Hartland, Inc. ("Hartland" and, collectively with the other named entities, the "Named Insured Entities") which, together with all other insurance policies Home may have issued to the Named Insured Entities or to Claimants are referred to collectively as the "Policies." Settlement Agreement, first whereas clause.

4. Charles Cass and the Named Insured Entities filed a proof of claim in the Home liquidation seeking coverage under the Policies for environmental claims at six sites. It was assigned proofs of claim numbers INSU712605, INSU712606, INSU712607, INSU712608, INSU712609, and INSU712610 which, together with any other proofs of claim hereinbefore or hereinafter filed by Claimants, are collectively referred to as the "Proofs of Claim." Settlement Agreement, third whereas clause.

5. Subsequently, the rights of the Named Insured Entities with respect to the Proofs of Claim and the Policies were assigned (by assignment or by operation of law) to Claimant Gabbroic Management, LLC, which retained Claimant Environmental Forensic Investigations, Inc. to provide certain services regarding the sites. Settlement Agreement, fourth-seventh whereas clauses.

6. The Liquidator and Claimants 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. See Settlement Agreement, eighth whereas clause, ¶ 2(B). The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.

7. The Settlement Agreement provides that the Liquidator will recommend allowance of the Proofs of Claim in the amount of \$400,000 (“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 Claimants have 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).

8. The Settlement Agreement is intended to resolve the Proofs of Claim of the claimant and all claims that the Claimants have 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 the Claimants arising from or related to the Proofs of Claim or the Policies. Id. ¶¶ 3, 4.

9. In resolving all of the Claimants’ 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 Claimants ever had, now have, or hereafter may have in the Policies and the Proofs of Claim, including any asserted rights of third-party claimants against the Claimants under the Policies. Settlement Agreement ¶ 5. The Claimants agree to address, at their sole cost, any such claims of third-party claimants against the Claimants as if there had been no liquidation proceeding for Home and as if the Claimants had no insurance coverage from Home by virtue of the Policies. Id. The Claimants agree 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 in relation to the Recommended Amount. Id.

10. 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 Claimants will not harm the third party claimants, who will continue to have their claims against the Claimants. As noted above, the Claimants have agreed to address third party claims against them as if they 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 Settlement Agreement, would release the Claimants 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 Claimants will continue to be responsible for any third party claimants' claims against them. See Settlement Agreement ¶ 5.

11. The Liquidator is not aware of any proof of claim asserting a claim subject to the same policy limits as the proofs of claim resolved by the Settlement Agreements. However, if an allowance is made such that the aggregate allowed amount of all claims subject to the same limit exceeds 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.

12. The Settlement Agreement reflects compromises of the claims asserted in the proofs of claim. It is the result of negotiations involving the Claims Department, under the supervision of the Special Deputy Liquidator, 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 Claimants. The Liquidator accordingly recommends approval of

the Settlement Agreement and allowance of the \$400,000 settlement amount as a Class II claim of the Claimant in accordance with RSA 402-C:45 and RSA 402-C:44.

13. 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 25 day of May, 2021.



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

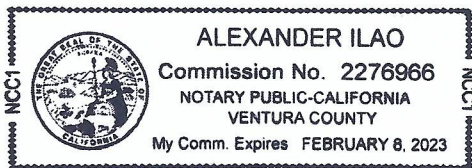
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.


STATE OF CALIFORNIA
COUNTY OF VENTURA

On May 25, 2021 before me, Alexander Ilao, 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 
Signature of Notary Public