

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 BURNS INTERNATIONAL SERVICES
COMPANY, LLC**

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 Burns International Services Company LLC (formerly affiliated with first-named insured Borg-Warner 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 the Settlement Agreement and Mutual Release (the “Settlement Agreement”), between the Liquidator and Burns International Services Company, LLC (“Claimant” or “Burns”). The Settlement Agreement was negotiated under my supervision. A copy of the Settlement Agreement is attached to the Liquidator’s motion.

3. Home issued two insurance policies to BorgWarner Corporation 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 or any successors thereto,

and former affiliates, including Claimant, are referred to collectively as the “Policies.”

Settlement Agreement, first whereas clause.

4. Claimant filed proofs of claim in the Home liquidation seeking coverage under the Policies for asbestos bodily injury exposures for itself and on behalf Flowserve Corporation (“Flowserve”) and York International Corporation (“York”). The Burns claims were assigned proof of claim numbers INSU702471, INSU702472, INSU702473, and INSU702474 (the “Claimant’s Asbestos Proof of Claim”). 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”.

Settlement Agreement, third whereas clause.

5. Claimant 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”). Claimants’ proofs of claim (INSU702471, INSU702472, INSU702473, INSU702474, INSU709398 and INSU709399), together with any other proofs of claim hereinbefore or hereinafter filed by Claimant in the Home liquidation are referred to as the “Proofs of Claim”). Settlement Agreement, third whereas clause.

6. The Flowserve Proof of Claim and the York Proof of Claim were resolved by settlement agreements with the Liquidator approved by the Court by Order dated October 8, 2019. That Order also approved a settlement agreement between the Liquidator and BorgWarner Morse TEC LLC and Borg Warner, Inc. (collectively, “Borg Warner”), which had submitted a proof of claim under the Policies for asbestos bodily injury exposures assigned proof of claim

number INSU703495. Settlement Agreement, fourth whereas clause. These three Settlement Agreements together resolved all rights and obligations BorgWarner, Flowserve and York had under the Policies.

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

8. The Settlement Agreement provides that the Liquidator will recommend allowance of the Proofs of Claim in the amount of \$500,000 (“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 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).

9. The Settlement Agreement is intended to resolve the Proofs of Claim of the claimant and all claims that the Claimant has 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 Claimant arising from or related to the Proofs of Claim or the Policies. *Id.* ¶¶ 3, 4.

10. In resolving all of the Claimant’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 Claimant 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 Claimant under the 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 Policies. Id. The Claimant agrees 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.

11. 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 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 third party claims against it as if it 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 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 will continue to be responsible for any third party claimants' claims against it. See Settlement Agreement ¶ 5.

12. The Liquidator is presently aware of the previously resolved Borg Warner, Flowserve and York proofs of claim, which asserted claims subject to the same limits in the

Home Policies as Claimant's Asbestos Proof of Claim.¹ The Liquidator is not aware of any pending proofs of claim asserting a claim to the same policy limits as the proofs of claim resolved by the Settlement Agreement. 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.

13. 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 Claimant. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$500,000 settlement amount as a Class II claim of the Claimant in accordance with RSA 402-C:45 and RSA 402-C:44.

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

¹ The Burns Environmental Claims do not assert a claim subject to the same limit in the umbrella policy HEC 476017 as the York Proof of Claim, Flowserve Proof of Claim and Borg Warner Proof of Claim. Two insurers filed contribution claims respecting BorgWarner, but both have been disallowed.

Signed under the penalties of perjury this 25 day of May, 2021.

Peter A. Bengelsdorf
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 Alexander Ilao
Signature of Notary Public

