

**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 HOLCIM**

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 Holcim. 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 Holcim (US) Inc. and its predecessor entities, Ideal Cement Company, Ideal Basic Industries, Inc., and Holnam, Inc. (collectively, “Holcim”), 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. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.

3. Home issued seven insurance policies to Ideal Cement Company, Ideal Basic Industries, Inc., or Holnam, Inc. for various periods between December 31, 1964 and March 1,

1995 for which Claimant Holcim (US) Inc. is the successor to the rights of the insurance proceeds. These policies together with all other insurance policies Home may have issued to Holcim are referred to collectively as the "Policies". Settlement Agreement, first Whereas clause.

4. Holcim submitted claims in the Home liquidation seeking coverage for environmental property damage claims, environmental bodily injury or personal injury claims or other environmental claims ("Environmental Claims") that have been assigned seven proof of claim numbers, which together with any other proofs of claim hereinbefore or hereinafter filed by Holcim in the Home liquidation asserting Environmental Claims are defined collectively as the "Environmental Proofs of Claim". Settlement Agreement, third Whereas clause.

5. All proofs of claim by Holcim asserting coverage for claims other than Environmental Claims under the Policies were resolved pursuant to a Settlement Agreement and Mutual Release between Holcim and the Liquidator which was approved by order of the Liquidation Court dated May 21, 2015 ("2015 Settlement Agreement"). Holcim also filed a proof of claim with regard to retrospective premium agreements which was assigned proof of claim number INSU703426. That proof of claim was resolved by Notice of Determination No. INSU703426-01 approved by order of the Liquidation Court dated September 18, 2014. The 2015 Settlement Agreement and Notice of Determination INSU703426-01 are not affected by the Settlement Agreement and remain in full force and effect. Settlement Agreement, fourth Whereas clause.

6. The Liquidator and Holcim have negotiated the Settlement Agreement to resolve Holcim's Environmental Claims, which are the only remaining claims that have been asserted, or could have been or could be asserted, and resolve all matters concerning the Environmental

Proofs of Claim and all remaining rights and obligations with respect to the Policies. Settlement Agreement, fifth Whereas clause and ¶ 2.

7. The Settlement Agreement provides that the Liquidator will recommend allowance of the Environmental Proofs of Claim in the aggregate amount of \$12,000,000 as a Class II priority claim of Holcim 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 Environmental Proofs of Claim and all remaining claims Holcim 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).

8. The Settlement Agreement is intended to resolve the Environmental Proofs of Claim and all remaining claims Holcim has under the Policies. Settlement Agreement, fifth Whereas clause, ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and Holcim arising from or related to Environmental Claims, the Environmental Proofs of Claim or the Policies. *Id.* ¶¶ 3, 4. The Liquidator also agrees to waive claims against Holcim's other insurers that agree to waive such claims against Home, and Holcim agrees to use reasonable commercial efforts to obtain such agreements in connection with settlements with other insurers. *Id.* ¶ 7.

9. The Liquidator is not aware of any unresolved proofs of claim that have been submitted in relation to the Policies. *See* Settlement Agreement ¶ 5. However, in resolving all matters relating to the Environmental Proofs of Claim, the Settlement Agreement contemplates denial of any third party claimants' Environmental Claims in the Home liquidation without prejudice to their claims against Holcim. *Id.* Accordingly, Holcim agrees to address, at its sole cost, the Environmental Claims of claimants against Holcim as if Holcim had no insurance

coverage from Home under the Policies. Holcim also agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to the Environmental Proofs of Claim or Environmental Claims under the Policies, including asserted rights of third party claimants, up to the amount ultimately distributed or distributable to Holcim. Id.

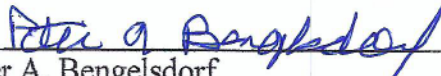
10. The denial of any third party claimants' proofs of claim without prejudice to their claims against Holcim will not harm the third party claimants, who will continue to have their claims against Holcim. As noted above, Holcim has agreed to address these environmental claims as if it had no insurance coverage from Home under the policies. Settlement Agreement ¶ 5. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release Holcim from those claims up to the limits of the policies but only entitle the third party claimants (assuming their claims were allowed) to the 30% interim distribution and any later distribution at a presently undetermined percentage 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 will be paid in full. Under the Settlement Agreement, Holcim will continue to be responsible for any third party claimants' claims against it. See id.

11. The Settlement Agreement reflects a compromise of the claims asserted in the Environmental 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 Home's Policies respecting the underlying liabilities of Holcim. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$12,000,000

recommended amount as a Class II claim of Holcim in accordance with RSA 402-C:45 and RSA 402-C:44.

12. 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 1<sup>ST</sup> day of May, 2023.

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

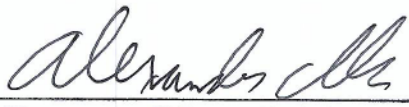
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF VENTURA

On May 1, 2023 before me, Alexander Ilao, 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

