

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Rehabilitation of
The Home Insurance Company**

Docket No. 03-E-0112

**In the Matter of the Rehabilitation of
US International Reinsurance Company**

**MOTION FOR ORDER APPROVING NOTICE OF
LIQUIDATION ORDER AND CLAIM FILING DEADLINE**

Paula T. Rogers, Commissioner of Insurance ("Commissioner"), as Rehabilitator ("Rehabilitator") of The Home Insurance Company ("The Home") and US International Reinsurance Company ("USI Re"), by her attorneys, the Office of the Attorney General, hereby moves, assuming the Court grants her petitions for orders of liquidation, for an order approving the proposed notice to be given of the liquidation orders, claim filing deadline and cancellation of in-force policies in these proceedings. On May 8, 2003, the Rehabilitator filed petitions requesting that The Home and USI Re be placed in liquidation and that she be appointed as their liquidator. In the event that the petitions are granted, the Commissioner, as Liquidator ("Liquidator"), will be required to provide notice of the liquidation orders and of the claim filing deadline for claims against the insurers. See RSA 402-C:26. The Rehabilitator has taken steps to determine what notice can be provided, and she submits this motion to request approval of the mail and publication notice described below. A proposed order approving notice with forms of the proposed notices is submitted herewith.

Background

1. The Home and USI Re. The Home was incorporated in 1973, although its predecessor corporations were established as long ago as 1853. It created its subsidiary USI Re in 1979 to handle reinsurance business. The Home also had other subsidiaries that were merged into The Home as part of its reorganization in 1995: The Home Indemnity Company, City Insurance Company, Home Lloyds Insurance Company of Texas, The Home Insurance Company of Indiana, The Home Insurance Company of Wisconsin, and The Home Insurance Company of Illinois. The Home and its subsidiaries wrote insurance and reinsurance in almost all states and territories of the United States, as well as in Canada, the United Kingdom, Bermuda and Hong Kong. The Home and its subsidiaries generally stopped writing new personal lines business in the late 1980's, and they stopped writing all new business, including commercial lines, in 1995. Affidavit of Peter A. Bengelsdorf ("Bengelsdorf Aff.") ¶¶ 2-3.

The Home and USI Re were placed in rehabilitation by orders entered March 5 and March 12, 2003, respectively, and the Commissioner was appointed as their Rehabilitator. On May 8, 2003, the Rehabilitator filed petitions requesting that The Home and USI Re be placed in liquidation. Since that time, the Rehabilitator has reviewed the applicable statutes and the insurers' books and records to evaluate how best to provide notice of the liquidation order and the claim filing deadline pursuant to New Hampshire law.

2. The Notice Statutes. The principal statute concerning notice in an insurer liquidation proceeding is RSA 402-C:26, which requires the Liquidator to give notice of the liquidation order by mail to insurance regulators, agents, and potential creditors. RSA

402-C:26, I(a). The statutes also require that a claim filing deadline be established, as the notice to potential claimants “shall require claimants to file with the liquidator their claims together with proper proofs thereof under RSA 402-C:38 on or before a date the liquidator specifies in the notice.” RSA 402-C:26, II. The statute concludes that “[i]f notice is given in accordance with this section, the distribution of the assets of the insurer . . . shall be conclusive with respect to all claimants, whether or not they received notice.” RSA 402-C:26, III. The Commissioner is also required by the insurance guaranty association enabling statute to notify the association of the existence of an insolvent insurer “not later than 3 days after he receives notice of the determination of the insolvency.” RSA 404-B:10, I(b).

The Liquidator must also publish notice of the liquidation order in a newspaper of general statewide circulation or in Merrimack County, “the last publication to be not less than 3 months before the [claim filing deadline.]” RSA 402-C:26, I(a). Finally, the Liquidator is “to report to the court what notice has been given” within fifteen days of the date of the liquidation order, and that the Court “may order such additional notice as it deems appropriate.” RSA 402-C:26, I(c). These statutes are discussed in greater detail below.

3. Review of records. In preparation for entry of liquidation orders, the Rehabilitator has sought to determine the information available from the records of The Home and USI Re to provide the notice pursuant to the statute, in particular to potential claimants.

a. Computer records. The Home has a number of computer systems containing information with respect to operations of The Home, including the former

subsidiaries merged into The Home, and USI Re (the “computer systems”). The Rehabilitator has arranged for review of the computer systems to determine what information is available, focusing especially on names and addresses to permit development of a mailing list or lists for notice purposes. The review sought to identify information concerning the following broad classes of potential claimants: present claimants against the insurers or persons insured by the insurers, policyholders (both in-force and historical), producers (agents and brokers), reinsureds that ceded reinsurance to the insurers, reinsurers who assumed reinsurance from the insurers, vendors (including third-party administrators and defense counsel retained by The Home), and former employees. Bengelsdorf Aff. ¶¶ 5-6. The records are summarized on Exhibit A to the Bengelsdorf Affidavit.

Claimants: There are approximately 11,000 currently open claims against The Home or persons insured by The Home.¹ The computer systems contain most of the names and addresses of the approximately 4,000 insureds whose policies are at issue in the claims. They also contain names and addresses for approximately 6,000 of the claimants. Several hundred of the claims concern asbestos or other mass torts, which may involve thousands of individual claimants. The names and addresses of these claimants are not available on the system, but the computer records contain names and addresses for the approximately 700 plaintiffs’ attorneys. The names and addresses of the remaining 4,300 claimants will be researched manually. Bengelsdorf Aff. ¶ 7.

Policyholders: The Home’s computer systems includes records with name and address information for various policyholders. Together these records provide name and

¹ This number reflects the results of the eight year run-off of The Home since 1995, when approximately 100,000 open claims were pending. See Bengelsdorf Aff. ¶ 22, Ex. B.

address information for approximately 260,000 insureds. Bengelsdorf Aff. ¶ 8, Ex. A. The information goes back for varying lengths of time. It generally covers the period from 1993 or 1994, although the some records go back to 1986 and the perpetual policies listed in the records may have incepted one hundred years ago. Id.

The computer records for policyholders are limited for two principle reasons. *First*, policyholder name and address information for periods before the advent of computers were not generally entered into the systems once the systems were introduced. *Second*, until 1995, The Home generally had a practice of purging name and address information from the computer systems three years after the policy period ended because The Home generally did not need access to the information that long after the policy was cancelled or expired. However, it appears that even the information for the period 1993 and later is not complete. Among other things, The Home retired its computer systems for personal lines homeowners business in 1996 and for personal lines automobile business in 1997, and the policyholder information on those systems was unfortunately not retained. Bengelsdorf Aff. ¶ 9.

The Rehabilitator has identified approximately 55 computer tapes that contain the names, policy numbers and producers, but not the addresses, of approximately seven million additional historic policyholders for periods going back to about 1972. Bengelsdorf Aff. ¶ 8.

Producers: The Producer Database contains the names and addresses of approximately 36,700 producers who were not terminated or closed and removed from the system. The information in some instances goes back to the early 1900's.

Approximately 3,700 large or international policyholder accounts were assigned a producer number and appear on this list. Bengelsdorf Aff. ¶ 10.

Assumed reinsurance: Records concerning reinsurance written by The Home and USI Re provide names and addresses for approximately 2,600 persons that ceded or retroceded insurance to The Home or USI Re. A significant portion of the assumed reinsurance business was written through brokers, who customarily would have been the persons with whom The Home or USI Re would deal on the business. The records contain the names and addresses of approximately 330 such brokers. The records cover business written by The Home prior to 1983 and by USI Re since 1983, when it became the principal writer of reinsurance and took over much of the reinsurance previously written by The Home. Bengelsdorf Aff. ¶ 11.

Ceded reinsurance: The Home and USI Re ceded or retroceded reinsurance both directly and through reinsurance brokers and other intermediaries. The electronic records of such reinsurance cessions contain the names and addresses of approximately 30 reinsurance intermediaries and 620 reinsurers. The information in the records goes back to different periods ranging from the early 1990's to the early 1960's. Bengelsdorf Aff. ¶ 12.

Vendors: The vendors who provide services or goods to The Home or USI Re are listed by name and address (and taxpayer identification number) in the computer records for purposes of sending 1099 forms at each year end. The vendors include third-party administrators who handle claims and defense counsel retained by The Home to defend insureds under policies that provide for a defense. There are approximately 6,700 vendors on the 1099 lists for the past two years (2002 and 2001). Bengelsdorf Aff. ¶ 13.

Employees: The Home has had no employees since its reorganization in 1995 (when a separate management company was formed to operate The Home), while USI Re never had any employees (employees of The Home or the management company operated USI Re). The Home has records of approximately 11,000 former employees, including 4,600 who are receiving pensions or other benefits. Those pension benefits are being paid pursuant to an ERISA-subject plan sponsored by Zurich Insurance Company and consequently should not be affected by The Home's liquidation. However, approximately 1,800 former Home employees are receiving medical, dental, life insurance, accidental death and disability insurance or long-term disability benefits from The Home. These welfare benefit plans will be terminated by The Home after the liquidation orders enter. The names and addresses of these former employees are available. Bengelsdorf Aff. ¶ 14.

b. Paper records. The Home and USI Re have voluminous paper records at The Home's New York offices and in storage with Iron Mountain. The records in archives total approximately 170,000 storage boxes, including records of claims, policy files, departmental archives, accounting, investments, and human resources. (There are additional claim records at 17 claim and field offices and 20 third-party administrators around the country.). The Rehabilitator has sought to determine how many of these boxes are likely to contain policies that could be reviewed to identify policyholder names and addresses. An analysis indicates that approximately 35,000 boxes are likely to contain policies. Bengelsdorf Aff. ¶ 15.

c. Records abroad. The Home and USI Re wrote insurance and reinsurance abroad, including in Canada, the United Kingdom, Bermuda and Hong Kong.

United Kingdom, Bermuda, Hong Kong: The computer records described above include the names and addresses of claimants, policyholders, assumed and ceded reinsurers/brokers and vendors that are available on The Home computer systems for the United Kingdom, Bermuda and Hong Kong. However, the two books of business described below are not included within The Home's records in the United States.

Bengelsdorf Aff. ¶ 16.

Much of The Home's direct insurance and reinsurance written in the United Kingdom was written through an entity known as AFIA. AFIA has been managed by an administrator in the United Kingdom, now ACE/INA. The records of this business are maintained in the United Kingdom by ACE/INA. The Joint Provisional Liquidators appointed for The Home's United Kingdom branch by the High Court of Justice in England on May 8, 2003 have requested information from ACE/INA to create a mailing list for the claimants and reinsureds/policyholders on the AFIA book. ACE/INA has provided names and addresses for approximately 100 of the entities that ceded the largest amounts of reinsurance to The Home in the United Kingdom. There are approximately 2,000 such cedants and 200 brokers for whom addresses have not been provided.

Bengelsdorf Aff. ¶¶ 16-17.

City Insurance Company, a subsidiary of The Home that merged into The Home in 1995, also wrote assumed reinsurance business in the United Kingdom through agencies known as H.S. Weavers (Underwriting) Agencies Limited and C.R. Driver & Company. That business is being administered by an entity known as CMGL. The Joint Provisional Liquidators have asked CMGL for information, and CMGL has provided

names and addresses for approximately 145 reinsurers and 19 brokers. Bengelsdorf Aff.

¶ 18.

Canada. The Home's Canadian branch is in surplus as its Canadian special deposits exceed its projected liabilities. The Rehabilitator has sought to negotiate an assumption and transfer agreement with a Canadian insurer under which Canadian claims will be paid by the acquirer and the surplus assets transferred to the Rehabilitator. The Rehabilitator proposes not to send notice to Canadian claimants or policyholders in light of the contemplated transaction under which The Home's Canadian obligations will be assumed by a Canadian company and paid by that company. Bengelsdorf Aff. ¶ 19.

3. The proposed notice. The Liquidator requests that the Court approve notice as set forth in the proposed order approving notice. That order provides for notice to (1) insurance regulatory officials, (2) insurance guaranty funds, (3) potential claimants, based generally on the computer records of The Home, and (4) in-force policyholders (policyholders whose policies have not expired).

The Liquidator will send the insurance regulatory officials and guaranty funds a copy of the liquidation orders and a brief cover letter by fax or e-mail.

Potential claimants of The Home or USI Re will be given notice through the mailing of the notices of the liquidation orders and the proof of claim forms attached as exhibits to the proposed order approving notice and through broad publication. There are separate notices and proofs of claim for The Home and USI Re. The notices advise of the entry of the liquidation order and provide the information required by RSA 402-C:26, and they contain brief summaries of information that may be useful to various groups that will be sent the notice. The proofs of claim request the information authorized by RSA

402-C:38. They also contain a release of the insurers' insureds for third-party claimants as provided by RSA 402-C:38, I(a)(7), and RSA 402-C:40, I. Both the notice and the proof of claim advise of the claim filing deadline required by RSA 402-C:26, II, and RSA 402-C:37, I, which will be one year from the entry of the liquidation orders (the largest period permitted by the statute). The published notice will advise of the liquidation orders and claim filing deadline and describe how to obtain a proof of claim.

In-force policyholders and bondholders will be mailed a notice of cancellation in addition to the notice of the liquidation order and claim filing deadline and the proof of claim form.

ARGUMENT

THE PROPOSED NOTICE ORDER IS A REASONABLE AND APPROPRIATE APPLICATION OF THE STATUTORY NOTICE REQUIREMENTS TO THE LIQUIDATIONS OF THE HOME AND USI RE.

The proposed notice order reasonably addresses the requirements of the New Hampshire statutes in light of the information available to the Rehabilitator.

I. Notice To Potential Claimants By Mailings Based Generally On Name And Address Information Maintained On The Computer Systems And Broad Publication Notice Is Appropriate.

The Liquidator proposes to mail notice of the liquidation orders, including the claim filing deadline, and proof of claim forms to numerous categories of potential claimants using the name and address information available on The Home's computer systems. The systems permit a mailing to approximately 287,000 potential claimants, including in-force policyholders, historic policyholders whose policies are the subject of open claims, current claimants (with some manual research) or—in mass tort situations—their attorneys, most historic policyholders back to 1994, reinsureds and brokers who

ceded reinsurance to The Home and USI Re, reinsurers and brokers to whom The Home and USI Re ceded reinsurance, recent vendors, and former employees presently receiving medical and insurance benefits under plans funded by The Home. This notice will be supplemented with broad publication notice of the liquidation orders, the claim filing deadline and information on how to obtain a proof of claim form. In these liquidations, where the insurers stopped writing insurance approximately eight years ago, this notice is reasonable and appropriate, reasonably calculated to reach potential claimants, and in the best interests of The Home, USI Re and their policyholders and creditors.

Section C:26 provides for notice of the liquidation order to be sent “by first class mail within this state and by airmail outside this state at the last known address” to “all persons known or reasonably expected to have claims against the insurer, including all policyholders.” RSA 402-C:26, I(a). The notice also must “require claimants to file with the liquidator their claims together with proper proofs thereof under RSA 402-C:38 on or before a date the liquidator specifies in the notice.”² RSA 402-C:26, II. The notice to policyholders also must include notice of “impairment and termination of coverage under RSA 402-C:22,” and, where applicable, notice of withdrawal of the insurer from the defense of any case in which the insured is interested, and notice of the right to file a claim under RSA 402-C:40. RSA 402 C:26, I(b). The proposed notice addresses these requirements. See the exhibits to the proposed order approving notice. In-force policyholders will also receive a cancellation notice. Id.

² The Rehabilitator has included a claim filing deadline one year from the entry of the liquidation order in the proposed liquidation order. While RSA 402-C:26, II, and C:37, I, authorize the Liquidator to specify the deadline date in the notice, provided it is no less than 6 months nor more than one year after entry of the liquidation order, RSA 402-C:40, II, refers to the date for filing of claims “specified in the order of liquidation.”

The statutory requirement of notice to “potential claimants” (as this group is referred to in RSA 402-C:26, II) is broad. The statute extends beyond insureds and third-party claimants who have pending claims or are in payment status (the known claimants) to include persons “reasonably expected to have claims.” It also specifically includes “all policyholders,” which might include some historic policyholders back to the founding of The Home in 1853. While the reference to “policyholders” reasonably should be construed to refer to persons with in-force policies, who would have claims for return premium and are the most likely group to have claims under policies, a similar California statute has been construed to encompass historic occurrence policyholders. Middleton v. Imperial Ins. Co., 666 P.2d 1 (Cal. 1983) (where notice of liquidation had not been mailed to an historic “occurrence” policyholder, that policyholder was not bound by the claim filing deadline).

To provide broad yet reasonable notice, the Liquidator has reviewed the computer records of The Home, including USI Re, for name and address information concerning persons that may fall in the class of potential claimants, including (1) present claimants against the insurers and persons insured by the insurers, (2) in-force policyholders and historical policyholders, (3) producers, including agents and brokers, (4) reinsureds that ceded reinsurance to the insurers, (5) reinsurers who assumed reinsurance from the insurers, (6) vendors, including third party administrators and defense counsel retained by the insurers, and (7) former employees. The proposed mailings to potential claimants are as follows (see Bengelsdorf Aff. ¶ 20):

- Open claims (currently approximately 11,000). The notice and proof of claim will be mailed to the policyholders whose policies are the subject of open claims, some of whom may have to be identified manually, and to the claimants, approximately 4,300 of whom will be identified manually. For

asbestos/mass tort claims where the individual claimants—who in some cases number in the thousands—are not listed on the computer system the mailing will be sent to the 700 claimants' attorneys at the names and addresses listed on the computer system.

- Present and historic policyholders of The Home (and merged companies) based on the names and addresses available on various computer systems. This mailing will be sent to approximately 260,000 historic policyholders, including the 1000 in-force policyholders and bondholders. The in-force policyholders and bondholders will also be sent a notice of cancellation.
- Reinsureds ceding to The Home or USI Re and brokers through whom reinsurance was ceded to The Home or USI Re as listed on The Home's computer systems (approximately 3,000).
- Reinsurers to whom The Home or USI Re ceded and brokers through whom The Home or USI Re ceded reinsurance as listed on The Home's computer system (approximately 650).
- AFIA reinsureds and brokers based on the names and addresses provided by ACE/INA (approximately 100).
- Former City brokers and reinsureds based on the names and addresses provided by CMGL (approximately 160).
- Former employees receiving medical or insurance benefits pursuant to plans funded by The Home (approximately 1,800).
- Vendors and service providers, including third-party administrators and defense counsel for insureds retained by The Home, based on 1099 lists for the past two years (2001 and 2002) (approximately 6,700).
- Governments, including (i) the United States Government (the Department of Justice, The Internal Revenue Service, the Department of Labor, and the Pension Benefit Guaranty Corporation), (ii) State governments (state departments of revenue and other state agencies as appropriate).

These lists include potential claimants in the United Kingdom, Bermuda, and Hong Kong. The Rehabilitator proposes not to give notice to Canadian claimants or policyholders because of a contemplated transaction with a Canadian insurer. The Rehabilitator has entered a term sheet for such a transaction, subject to court approval, that would provide for the Canadian company to assume those obligations in exchange

for an amount that is significantly less than The Home's special deposits in Canada. The proposed transaction would permit the return to the Rehabilitator of the excess Canadian special deposits. Notice to Canadian claimants and policyholders of the New Hampshire liquidation order and proof of claim process would be confusing because the Canadian company will deal with claim and policy matters under Canadian policies if the transaction is completed. The Rehabilitator has discussed the proposed transaction and notice issues with the Canadian regulatory authority, the Office of the Supervisor of Financial Institutions ("OSFI"). While the transaction will be addressed in the context of a Canadian winding up proceeding, OSFI has indicated that it does not oppose the transaction and in these circumstances shares the view that notice to Canadian claimants and policyholders is not appropriate. See Bengelsdorf Aff. ¶ 19.

The Rehabilitator has considered whether it is feasible to manually identify the names and addresses of additional historic policyholders for further mailing. There are approximately 35,000 boxes that may contain such information, and they are estimated to contain over four million policies. However, review of the files in those boxes would be expensive and time-consuming. First, the Iron Mountain fees for retrieval and restorage are \$2.88 per box, and there will be additional shipping charges of \$750 per shipment of 260 boxes, for a total of approximately \$200,000. Second, the review of the boxes would require significant personnel and time. The Home recently conducted a search of approximately 6,000 boxes to create a list of policyholder names and policy numbers in those boxes. This effort required an initial review by two people, full time, for two weeks to identify 4,000 boxes for further review, and the review of those boxes took the equivalent of 2.5 people working full time for three months. As review of the 35,000

boxes would seek more information, it is estimated that a person could review about 80-100 boxes per month for a total of 350-400 person-months. That is, it would take a team of 10 people approximately 35-40 months to create a list of policyholder names and addresses from the boxes. Bengelsdorf Aff. ¶ 21.

In the context of the liquidation of two insurers that have not written new business in eight years, the expense of such an effort is not appropriate. With the passage of time, the likelihood of claims arising from past events drops off. This is demonstrated by the dramatic decrease in both open claims (from approximately 99,500 at 12/31/95 to 14,000 at 12/31/02) and newly reported claims (from 163,000 in 1995 to 2,600 at 2002) over the past eight years. Bengelsdorf Aff. ¶ 22, Ex. B. Indeed, the National Association of Insurance Commissioner's Insurers Rehabilitation and Liquidation Model Act provides that the court may determine that notice by publication "is sufficient notice to those persons holding an occurrence policy which expired more than four (4) years prior to the entry of the order of liquidation, and under which there are no pending claims." Insurers Rehabilitation and Liquidation Model Act § 25G, III National Association of Insurance Commissioners Model Laws, Regulations and Guidelines 555-31 (2002).

The New Hampshire liquidation statute requires that notice of a liquidation order be published in a newspaper of general statewide circulation or in Merrimack County, "the last publication to be not less than 3 months before the earliest deadline specified in the notice under paragraph III [the claim filing deadline]." RSA 402-C:26, I(a). The Liquidator proposes to provide much broader publication notice for two reasons. *First*, The Home and USI Re did business across the United States and abroad. The publication notice should reflect the scope of the insurers' business. *Second*, the notice refers to the

claim filing deadline. That deadline is essential to the liquidation of the insurers because it will define the universe of claims on which distributions from the assets of the insurers may be made. See RSA 402-C:37 (requiring proofs of claim to be filed by claim filing deadline but providing for excused and unexcused late filings); RSA 402-C:44, VIII(c) (providing for subordination of late filed claims). Since application of the deadline will mean that late claims are likely not to be paid, the deadline has due process implications. See Tulsa Professional Collection Servs., Inc. v. Pope, 485 U.S. 478 (1988). Publication notice is a reasonable way to notify potential creditors of the claim filing deadline. The Liquidator will give publication notice by:

- Publication in a newspaper in the capital and, if different, the largest city of each state and territory of the United States in which The Home or USI Re was authorized to do business
- Publication in one newspaper paper of nationwide circulation in the United States (the Wall Street Journal)
- Publication in a leading insurance trade publication (Business Insurance)
- Publication in a newspaper of general circulation where The Home had overseas branch operations (the United Kingdom, Bermuda and Hong Kong)

II. The Liquidator Will Give Prompt Notice To Insurance Regulators.

The Liquidator will provide notice of the liquidation orders to United States insurance regulators through the National Association of Insurance Commissioners, and directly to foreign regulators in jurisdictions where The Home had operations. Section C:26 requires that notice be given “as soon as possible” to the insurance commissioner of each jurisdiction where the insurer is licensed to do business “by first class mail and either by telegram or telephone.” RSA 402-C:26, I(a). In 2001, The Home was licensed to do business in 48 states and territories of the United States. USI Re was licensed in 34

states and territories. Bengelsdorf Aff. ¶ 3. The Liquidator will advise the chief insurance regulatory official of each state or territory of the United States of the liquidations order by e-mailing them a copy of the liquidation order and a brief statement through the National Association of Insurance Commissioners. This will provide each insurance regulator with notice of the orders within 24 hours after they have been entered. Because The Home also had operations abroad, the Liquidator will provide a copy of The Home liquidation order to the chief insurance regulatory officials of Canada, the United Kingdom, Bermuda and Hong Kong by e-mail or fax within 24 hours of entry of the order.

III. The Liquidator Will Give Prompt Notice To Insurance Guaranty Funds.

Most of the open claims under policies issued by The Home will be transferred to the insurance guaranty funds around the United States for handling and payment within the applicable statutory and policy limits, and the Liquidator will give prompt notice to the guaranty funds of the liquidation orders. The New Hampshire insurance guaranty association enabling statute only requires the Commissioner notify the New Hampshire association of the existence of an insolvent insurer “not later than 3 days after he receives notice of the determination of the insolvency.” RSA 404-B:10, I(b). In light of The Home’s nationwide operations, the insolvency of The Home will trigger insurance guaranty funds in states across the United States. The Liquidator accordingly proposes to give notice of the liquidation order (including the declaration of insolvency) to the executive directors of the insurance guaranty funds in each state and territory of the United States by e-mail or fax within 24 hours of entry of the liquidation order. (The Rehabilitator has already been consulting with the National Conference of Insurance

Guaranty Funds and representatives of various guaranty funds to prepare for the transfer of claims upon the entry of the liquidation order.)

IV. Notice Directing Agents To Notify Policyholders Should Not Be Required As The Liquidator Will Provide Notice To In-Force Policyholders As Well As Provide Producers With The Notice And Proof Of Claim.

The statutory provisions for notice to insurance agents are not applicable to the liquidation of The Home, which stopped writing new business in 1995 and has very few in-force policyholders. USI Re wrote only assumed reinsurance and did not use insurance agents. Bengelsdorf Aff. ¶ 3. The Liquidator will mail notice directly to the in-force policyholders. In these circumstances, notice to agents should not be required.

Section C:26 provides for notice of a liquidation order to be sent “by first class mail within this state and by airmail outside this state to all insurance agents having a duty under RSA 402-C:27.” RSA 402-C:26, I(b). Section C:27 requires independent agents to give notice of the liquidation order to “each policyholder or other person named in any policy issued through the agent by the company.” The legislative purpose of these sections is to provide prompt notice of the liquidation order to policyholders with in-force policies (that is, policies whose periods have not expired). The concern for in-force policyholders is evident from the provisions that deem an agent to have issued a policy if the agent “has a property interest in the expiration of the policy” or if the agent “has had in his possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another.” RSA 402-C:27. As it based the agent’s obligation to provide notice on the existence of an interest in the expiration of the policy (that is, its renewal for a succeeding policy period), the Legislature contemplated that the policy is in-force, and that the agent

has an existing relationship with the policyholder. It would not be reasonable to burden The Home's former agents with the task of providing notice if the policy has expired and the agency relationship long ago ended such that there is no ongoing relationship between agent and policyholder.³

In the context of this liquidation, the requirement of notice to agents directing them to notify policyholders is of very limited applicability, and notice to the in-force policyholders and bondholders is best provided directly by the Liquidator. The Home has been in run-off since 1995, and it has only approximately 1000 in-force policies and bonds. (USI Re has none.) Bengelsdorf Aff. ¶ 8. The names and addresses of the holders of these policies and bonds are available on The Home's computer systems, and the Liquidator will provide mail notice of the liquidation order to the policyholders and bondholders, together with a notice of cancellation of their in-force policies and bonds. In these circumstances, it is not necessary to rely on the agents to provide notice to the policyholders. Indeed, the agents may well not have current—or any—records to permit them to provide notice to in-force policyholders whose policies were written at the latest in the mid-1990's. In order to give broad notice to persons that might be aware of such former policyholders, however, the Rehabilitator will send the notice of the liquidation order and a proof of claim to the producers whose names and addresses are available on the computer systems.

³ A construction of the statute to encompass policies that have expired would obligate agents to pass on notice of the liquidation to policyholders with whom they likely have not had contact for years. The Home has a computer list of approximately 36,700 producers, including agents. Given unlimited time, it would be possible to cross reference the seven million names (without addresses) of past policyholders with these producers and provide each agent with a list of insureds that had been written through that agent, but the addresses of those historic policyholders is not available. It seems unlikely, that the agents would have readily available records that would include the names of these historic policyholders or would be able—or inclined—to devote resources to making a mailing to such persons.

CONCLUSION

For the foregoing reasons, the Rehabilitator prays that the Court grant her motion and enter the proposed order approving notice submitted herewith, and grant her such other and further relief as may be just.

Respectfully submitted,

PAULA T. ROGERS, COMMISSIONER OF
INSURANCE OF THE STATE OF NEW
HAMPSHIRE, SOLELY IN HER CAPACITY AS
REHABILITATOR OF THE HOME INSURANCE
COMPANY,

By her attorneys

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May 30, 2003

CERTIFICATE OF SERVICE

I, Peter C.L. Roth, do hereby certify that on May 30, 2003 I served a true copy of the foregoing upon Sherilyn Burnett Young, Esq., and Andrew W. Serell, Esq., of Rath, Young & Pignatelli, One Capitol Plaza, Concord, NH 03301 by first class mail, postage prepaid.

Dated: May 30, 2003



Peter C.L. Roth