

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

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

**AFFIDAVIT OF PETER A. BENGELSDORF,
SPECIAL DEPUTY LIQUIDATOR, IN SUPPORT OF
COMMUTATION REVIEW PROCEDURES AND
MOTION TO IMPOUND CONFIDENTIAL AFFIDAVIT**

I, Peter A. Bengelsdorf, hereby depose and say:

1. I was appointed as Special Deputy Liquidator of The Home Insurance Company ("The Home") by Paula T. Rogers, Commissioner of Insurance, as Liquidator of The Home, effective June 11, 2003. I submit this affidavit in support of the Liquidator's Motion for Approval of Commutation Review Procedures and Liquidator's Motion to Impound Confidential Affidavit of Peter A. Bengelsdorf.

2. As part of its business, The Home entered into reinsurance agreements with numerous reinsurers under which The Home ceded and the reinsurers assumed a portion of The Home's obligations under policies of insurance or reinsurance agreements written by The Home.

3. As part of my duties as Special Deputy Liquidator, I am charged with marshaling The Home's assets to be used for the payment of claims by policyholders and other creditors of The Home. Collection of reinsurance will be the principal asset marshaling task of The Home liquidation, potentially involving hundreds of millions of dollars.

4. Insurers such as The Home typically bill reinsurers as the insurer makes payments to insureds and claimants under reinsured policies. Collection of reinsurance thus may take considerable time as the payments depend on the insurer's own payments. In a liquidation, the reinsurers obligations are typically determined based on the liability of the insurer, instead of actual payments, but the reinsurer typically would not be obligated to pay until the claim determination process for a particular underlying claim is completed. The collection of reinsurance thus will take years.

5. To avoid delays and uncertainty in pursuing reinsurance and for other business reasons, insurers sometimes enter commutation agreements with reinsurers under which the parties agree that the insurer will release the reinsurer from its obligations in exchange for a sum certain that reflects a projected present value of those obligations and other business considerations such as reinsurance coverage issues. Insurers such as The Home may have also assumed reinsurance obligations from their reinsurers, and the projected present value of such obligations as offsets would be considered in negotiating an appropriate commutation amount.

6. In the context of a liquidation, commutations often are particularly desirable. From a liquidator's perspective, they bring cash into the estate, avoid delays and uncertainties in collecting reinsurance, and reduce administrative expenses. From the reinsurer's point of view, they provide certainty and resolve a relationship with no future business potential. The Liquidator has accordingly directed me to seek to negotiate commutation agreements with reinsurers of The Home to recover reinsurance and resolve The Home's obligations to the reinsurers, if any, where appropriate.

7. Commutation agreements will frequently involve material sums and obligations, and the Liquidator accordingly will request judicial review and approval of such commutation agreements. Because there may be a number of such agreements, the Liquidator proposes that the Court establish a commutation review process by order. That process would have the following elements: (a) the filing of a motion for approval attaching the proposed agreement but with substantive economic terms redacted, together with a supporting affidavit and a copy of the complete proposed agreement under seal that would explain the basis for the Liquidator's agreement to the commutation, (b) notice of the motion to all persons on the service list and any other person who has requested such notice, (c) review of the substantive economic terms and supporting affidavit by any interested person (other than a reinsurer of The Home) who requests such review and enters a confidentiality agreement limiting disclosure of the information, (d) a deadline for opposition to the motion of ten days from filing, and (e) review by the Court, either without a hearing if the motion is unopposed or with a hearing if opposition has been filed or the Court so desires. This process will facilitate and expedite review of proposed commutation agreements while preserving the confidentiality of commercially sensitive information.

8. The Liquidator requests that the Court provide confidential treatment for the substantive economic terms of commutation agreements and the affidavits describing the basis for the agreements by impounding the affidavits providing that information. Release of that information would harm The Home's estate and be adverse to the interests of policyholders, claimants and other creditors in maximizing the assets to be collected. The Liquidator has been and likely will be negotiating commutation agreements with

numbers of reinsurers. If the substantive terms of a particular commutation agreement or the supporting analysis are disclosed, other reinsurers will be able to use that information in determining their own negotiating positions. Disclosure of amounts that the Liquidator is willing to accept from one reinsurer and the analysis supporting that conclusion is likely to set a ceiling on the amounts the Liquidator is able to obtain from other reinsurers. Commutation agreements between insurers often contain confidentiality provisions for this reason, and the Liquidator should not be placed in a worse position than ongoing insurers. For these reasons, the Liquidator proposes to submit the agreements with the substantive economic terms redacted and to submit an affidavit supporting the approval motion containing this information and supporting analysis under seal.

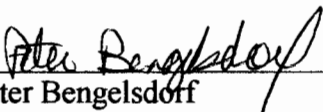
9. Certain creditors of the estates may be interested in reviewing the economic terms and analysis underlying commutation agreements, and the comment or absence of comment by such creditors may assist the Court in its review. The Liquidator accordingly proposes to provide notice of motions for approval of commutation agreements to those on the service list and other interested persons who so request (other than reinsurers of The Home). Any such persons who wish to review the economic terms and supporting analysis may obtain them on request of the Liquidator provided they enter into a confidentiality agreement to prohibit disclosure of the material.

10. Several guaranty funds, members of the National Conference of Insurance Guaranty Funds Reinsurance Commutation Subcommittee on The Home Insurance Company, in Liquidation, have already entered into confidentiality agreements with the Liquidator to permit them to review the proposed commutation agreements. The

Subcommittee has authorized the Liquidator to represent that it has no objection to approval of the Gerling commutation agreement which is being filed herewith.

11. In order to expedite and streamline the judicial review process, the Liquidator also proposes that the notice of the motion will require any opposition to the motion to be filed within ten days of the filing of the motion. In the absence of such opposition, the Court may act on the motion without a hearing. If there is opposition, or if the Court wishes, a hearing would be scheduled.

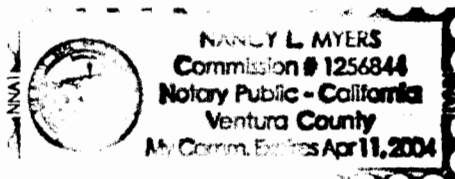
Signed under the penalties of perjury this 10 day of July, 2003.

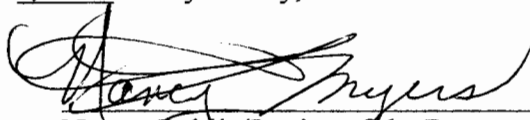


Peter Bengelsdorff
Special Deputy Liquidator of The Home Insurance
Company

STATE OF CALIFORNIA
COUNTY OF VENTURA

Subscribed and sworn to, before me, this 10 th day of July, 2003





Notary Public/Justice of the Peace