

**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 APPROVAL OF LEASE MODIFICATION AGREEMENT**

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

1. I was appointed as Special Deputy Liquidator of The Home Insurance Company ("The Home") by the Insurance Commissioner, as Liquidator ("Liquidator") of The Home, effective June 11, 2003. I submit this affidavit in support of the Liquidator's Motion for Approval of Lease Modification Agreement.

2. The present motion concerns a Partial Surrender and Extension of Term Agreement (the "Lease Modification") between the Liquidator and Mitchell E. Rudin, as Receiver for Olympia & York Maiden Lane Company, LLC (the "Landlord") negotiated under my direction and concerning office space and storage space in the basement at 59 Maiden Lane, New York, New York. The Lease Modification (by its terms) will not be effective until it is approved by the Court.

3. The Home entered into a lease with the Landlord, dated as of December 1998 for office space and storage space located at 59 Maiden Lane, New York, New York (as amended, the "Lease"). This original leased premises included 271,911 square feet of office space and 14,301 of storage space. The Lease provided that The Home would surrender square footage over time to the Landlord. The Home currently leases the entire 5<sup>th</sup> floor (37,719 rentable square feet), the entire but smaller 17<sup>th</sup> floor (16,368

rentable square feet) and a portion of the basement storage space (10,583 rentable square feet) (collectively, the "Premises") for a term expiring December 31, 2006. The office space is for a rental rate of \$31.50 per square foot while the storage space is for a rental rate \$15.00 per square foot.

4. The Premises were the operational headquarters of The Home and U.S. International Reinsurance Company ("USI Re") (collectively, the "Companies") prior to entry of the Orders of Liquidation. The liquidation has continued to use the 5<sup>th</sup> floor of the Premises since entry of those orders, but the 17<sup>th</sup> floor has been gradually vacated as operations have been reduced and centralized on the 5<sup>th</sup> floor and Risk Enterprise Management Ltd. ("REM") has located personnel to other offices.

5. As set forth in more detail in the Liquidator's reports, the Liquidator has worked to organize a stand-alone operation to conduct the liquidation of the Companies. The Liquidator has sought to benefit from the experience and knowledge of personnel previously employed at The Home's operational headquarters in New York City by engaging those personnel as part of the liquidation staff. The Liquidator also has sought to take advantage of The Home's existing New York facilities in establishing an operational base for the liquidation. The Liquidator anticipates that the liquidation will continue to have operations in New York City after the existing Lease term expires on December 31, 2006. However, the liquidation operation is much reduced compared to the pre-liquidation operations of the Companies, and the liquidation does not need the 17<sup>th</sup> floor space included within the Lease.

6. In these circumstances, the Liquidator engaged in discussions with the Landlord to seek to surrender the smaller 17<sup>th</sup> floor space and extend the Lease of the 5<sup>th</sup> floor space after December 31, 2006. Subject to approval by the Court, the Liquidator

and the Landlord have now entered the Lease Modification. The Lease Modification provides that The Home will surrender all of the space on the 17<sup>th</sup> floor on October 31, 2003, leaving certain furniture, fixtures and equipment estimated to have a value less than the cost of its removal in the space. At the time of the surrender, The Home will pay to the Landlord a lump sum of \$143,775.00, representing the rent and additional rent that would have been due for that space through December 31, 2003. Upon acceptance of the surrender and the payment from The Home, the Landlord will forever release The Home from any obligations attributable to that space on the 17<sup>th</sup> floor. The Landlord and The Home have also agreed to extend the term of the existing lease until December 31, 2008 at the current rental rate.

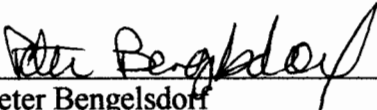
7. According to its original terms, the Lease obligated The Home to pay \$1.86 million per year through December 31, 2006 (\$5.89 million over the remaining term -- November 1, 2003 through December 31, 2006). The Lease Modification, by contrast, would obligate The Home to pay \$1.3 million per year through December 31, 2008 (\$6.95 million over the remaining term -- November 1, 2003 through December 31, 2008). The other provisions of the Lease Modification are set forth in the copy of the Lease Modification attached to the Liquidator's motion.

8. While the Liquidator could potentially disaffirm the Lease in its entirety, I believe it is unwise to do so because a relocation of The Home's operations from the Premises would be extremely disruptive. The liquidation of the Companies needs to retain its presence in New York, where its operations and staff presently work, to assure continuity of its operations. In addition, I believe that terms and conditions of the Lease Modification are consistent with commercial real estate transactions of a similar type. I have evaluated the options and engaged in extensive arms length negotiations with the

Landlord. The result of those negotiations is the Lease Modification, which provides for the surrender of certain space, which the liquidation no longer requires, and an extension of the term regarding the space that is necessary for the liquidation's current and future operations, as now contemplated.

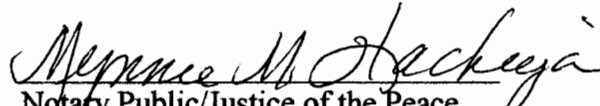
9. In these circumstances, I believe that the Lease Modification is fair and reasonable and that it is in the best interests of the policyholders and other creditors of The Home.

Signed under the penalties of perjury this 7 day of October, 2003.

  
Peter Bengelsdorf  
Special Deputy Liquidator of The Home Insurance Company

STATE OF CALIFORNIA  
COUNTY OF VENTURA

Subscribed and sworn to, before me, this 7 day of October, 2003

  
Notary Public/Justice of the Peace

