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October 8, 2003

William S. McGraw, Clerk  
Merrimack County Superior Court  
4 Court Street  
Concord, NH 03301

RECEIVED

OCT 09 2003

N.H. INSURANCE DEPARTMENT

Re: *In the Matter of the Liquidation of The Home Insurance Company*  
Docket No. 03-E-0106

Dear Mr. McGraw:

Enclosed for filing in the above-referenced matter is an *Application for Approval of Early Access Distribution Plan*.

If you have any questions please feel free to contact me at any time.

Very truly yours,

//Peter C. L. Roth\\

Peter C.L. Roth  
Senior Assistant Attorney General  
Environmental Protection Bureau  
(603) 271-3679

Enclosure

cc: Roger A. Sevigny, Commissioner, New Hampshire Department of Insurance  
✓ Alex Feldvebel, Deputy Commissioner, New Hampshire Department of Insurance  
Pete Bengelsdorf, Special Deputy Liquidator  
Service List

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**

**APPLICATION FOR APPROVAL OF  
EARLY ACCESS DISTRIBUTION PLAN**

In accordance with RSA 402-C:29, III, Roger A Sevigny, Insurance Commissioner of the State of New Hampshire, as the Liquidator ("Liquidator") of The Home Insurance Company ("The Home"), by his attorneys, the Office of the Attorney General, hereby applies for approval of an Early Access Distribution Plan to govern the distribution of certain assets to insurance guaranty associations from time to time pursuant to further order of this Court. The proposed Early Access Distribution Plan ("Plan"), including a form Early Access Distribution Agreement ("Agreement"), is attached as Exhibit 1 hereto. In support thereof, the Liquidator states:

1. The liquidator of a domestic insurer such as The Home is directed by RSA 402-C:29, III, to submit a proposal to this Court for the purpose of disbursing certain assets of the insolvent insurer's estate from time to time to the New Hampshire Insurance Guaranty Association, the New Hampshire Life and Health Guaranty Association, and to any similar organizations in another state (the "guaranty associations"). Such proposals are commonly referred to as early access distribution plans.

2. The statutory schemes adopted by New Hampshire and other states for the liquidation of insolvent insurers contemplate the ongoing payment by the guaranty associations of most claims under insurance policies issued by the insolvent insurer, subject to statutory and policy limits and conditions. The guaranty associations generally assess their member insurers

for the amounts necessary to continue claim payments of the insolvent insurer, and become subrogated to the rights of policyholders and claimants to the extent of the payments made on their behalf.

3. In the case of this liquidation, the guaranty associations are expected to handle and pay most claims under insurance policies issued by The Home.

4. Drafts of an early access distribution plan and a form early access distribution agreement (to be entered by the Liquidator and each guaranty association that will receive distributions) were provided for comment to a committee of guaranty associations formed to coordinate matters concerning the liquidation of The Home, the Home Guaranty Association Coordinating Committee. The plan and agreement were then revised to address certain comments provided by the Committee.

5. RSA 402-C:29, III, requires that an early access distribution plan include provisions for the disbursement of marshalled assets and subsequent disbursement of assets as they become available, after reserving amounts for the payment of the expenses of administration and the claims falling within the other priorities established in RSA 402-C:44, I – V. (The reserving provision properly requires reserving of amounts for claims with priority higher than or equal to that of the guaranty associations' claims, which will fall within RSA 402-C:44, I and II, because all claims in those classes must be paid in full "before the members of the next class receive any payment." RSA 420-C:44, introductory paragraph.) RSA 402-C:29, III, also requires that the plan provide for the equitable allocation of disbursements among the various guaranty associations. The Plan submitted herewith satisfies those criteria.

6. If the Plan is approved by the Court, the Liquidator intends to seek the Court's approval for an initial distribution after the claim filing deadline of June 13, 2004, when timely claims will have been filed, subject to receipt of a waiver from the United States.

7. RSA 402-C:29, III, further requires that the plan provide for the Liquidator to secure from each guaranty association entitled to receive disbursements an agreement to provide for the return of such disbursements as may be required to pay claims of secured creditors, or claims falling within the priorities established in RSA 402-C:44, I – V, in accordance with such priorities. (As noted above, this requirement properly requires repayment of amounts necessary to pay claims of equal or higher priority than the guaranty associations' claims.) The Agreement submitted herewith satisfies that requirement.

8. In accordance with RSA 402-C:29, III, notice of this Application was mailed by first class certified mail to the guaranty associations (or their management organizations) in each of the states and to the commissioners of insurance of each of the states on September 9, 2003 thirty days before the filing of this Application. Copies of the Plan and the Agreement were included with the notice.

WHEREFORE, the Liquidator requests that the Court enter an order approving the Early Access Distribution Plan and form Early Access Distribution Agreement. A proposed form of order is submitted herewith.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE COMMISSIONER  
OF THE STATE OF NEW HAMPSHIRE, AS  
LIQUIDATOR OF THE HOME INSURANCE  
COMPANY,

By his attorneys

PETER W. HEED, ATTORNEY GENERAL

  
//Peter C. L. Roth\\

---

Peter C.L. Roth  
Senior Assistant Attorney General  
Environmental Protection Bureau  
NEW HAMPSHIRE DEPARTMENT OF JUSTICE  
33 Capitol Street  
Concord, N.H. 03301-6397  
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Of Counsel:

J. David Leslie  
Eric A. Smith  
Rackemann, Sawyer & Brewster  
One Financial Center  
Boston, MA 02111  
(617) 542-2300

October 8, 2003

## EARLY ACCESS DISTRIBUTION PLAN

### THE HOME INSURANCE COMPANY IN LIQUIDATION

#### A. Introduction

The Home Insurance Company ("The Home"), a New Hampshire domiciled insurance company, was placed in liquidation, and the Insurance Commissioner of the State of New Hampshire ("Commissioner") was appointed its Liquidator ("Liquidator"), by Order of Liquidation entered by the Superior Court of Merrimack County, New Hampshire ("New Hampshire Court") on June 11, 2003. The New Hampshire Court entered a superseding Order of Liquidation on June 13, 2003 (the "Liquidation Order").

The provisions of RSA 402-C:29 require the Liquidator to apply for approval of a proposal to disburse assets out of The Home's marshaled assets, from time to time as such assets become available, to insurance guaranty associations. The Liquidator has prepared an application for approval of this Early Access Distribution Plan to be filed with the New Hampshire Court within 120 days of the final determination of the insolvency of The Home, pursuant to the requirements of New Hampshire Revised Statutes Annotated 402-C:29, III. Copies of the application will be served upon all of the property/casualty and life/health guaranty associations, and upon the commissioners of insurance in each of the states, the District of Columbia, and Puerto Rico pursuant to the requirements of RSA 402-C:29, III(e).

#### B. Federal Government Claims

The Liquidator understands (based on the federal government's stance in other ongoing liquidations) that the United States Department of Justice on behalf of the federal government may assert that the claim filing deadline, the one year deadline for claims to be filed against the estate of The Home, does not apply to any claims it might ultimately assert against The Home in light of the Federal Priority Act (the "Act"), 31 U.S.C. § 3713. The Liquidator and his representatives are engaged in preliminary discussions with the Department of Justice but at this time it is unknown whether or not the federal government will oppose attempts to disburse assets to the guaranty associations at an early stage of the proceedings. The Liquidator will seek to obtain a limited waiver of any alleged federal priority claim prior to any distributions to guaranty associations.

#### C. Distribution Formula

The Liquidator will determine the amounts for distribution and the equitable allocation of those amounts to guaranty associations based upon the formula described below. The Liquidator will provide his recommendation as to any proposed distribution to the Court, with a copy to each guaranty association, summarizing the basis for each proposed distribution. It is the present intention of the Liquidator to recommend an initial distribution of assets marshaled to date pursuant to the formula after the claim filing deadline, and to make subsequent distributions on an annual basis thereafter.

1. Available Liquid Assets: The Liquidator will determine the market value of available liquid assets marshaled in The Home estate at the time of a proposed distribution. Available liquid assets will include cash; short-term investments, including without limitation U. S. Treasury bills and notes; and any other securities which are readily marketable and in the opinion of the Liquidator could be liquidated for a price deemed reasonable, and without material adverse economic impact. Available liquid assets would not include any amounts in the custody of an ancillary receiver of The Home, or any other amounts held on deposit. The Liquidator will continue to pursue reasonable efforts to marshal the assets of The Home, and to invest the proceeds in a prudent manner in assets which shall constitute available liquid assets.
2. Reserve for Administration Costs: At the time of a proposed distribution, the Liquidator will estimate the total reserve required to cover the remaining costs and expenses of administration of the estate to conclusion. The Liquidator will also estimate the total reserve required to cover the remaining expenses of the New Hampshire Insurance Guaranty Association and other guaranty associations in handling claims under policies of The Home to conclusion. To the extent deemed feasible and reasonably prudent by the Liquidator, a portion of such reserves may be provided for out of non-liquid assets of the estate.
3. Amount Available for Policy Related Claims: This amount will be determined by subtracting #2 from #1 (except to the extent that the Liquidator provides for a portion of the reserve necessary for #2 out of non-liquid assets).
4. Reserve for Policy Related Claims Not Covered by Guaranty Associations. The Liquidator will also estimate the total reserve required for policy related claims within RSA 402-C:44, II, which will not be covered by a guaranty association. To the extent deemed feasible and reasonably prudent by the Liquidator, a portion of such reserve may be provided for out of non-liquid assets of the estate.
5. Total Amount Available for Distribution to Guaranty Associations: This amount will be determined by subtracting #4 from #3 (except to the extent that the Liquidator provides for a portion of the reserve necessary for #4 out of non-liquid assets).
6. Amount Available for Distribution to Particular Guaranty Association: All guaranty associations which have reported loss payments to the Liquidator attributable to The Home policy related claims will be eligible to receive a pro-rata share of any partial distributions. The amount of each such association's share of a distribution would be determined as follows:
  - a. The loss payments reported to the Liquidator by each guaranty association attributable to policy related claims will be determined.

b. From the amounts reported in #6a above will be subtracted any amounts recovered (or projected to be recovered) by such association from salvage, subrogation, second injury and other statutory forms of reinsurance recovery, attributable to the payments reported in #6a above.

c. From the amounts determined in #6a above will be subtracted any amounts previously paid to such association from the liquidation of deposits or other assets of The Home located in such state. Additional amounts in such state held by an ancillary receiver, remaining on deposit, or available through qualifying bonds issued on behalf of The Home, will also be subtracted, unless a guaranty association is able to demonstrate that reasonable efforts have been made to reach such additional amounts without success. "Reasonable efforts" shall not be construed so as to require that a guaranty association institute suit to reach such assets. The Liquidator will cooperate as reasonably necessary to facilitate such reasonable efforts by a guaranty association.

d. A distribution percentage will be determined for each qualifying association by dividing:

- (i) the excess (if any) of the amount in #6a over the amounts in #6b and #6c for each qualifying association, by
- (ii) the sum of the amounts determined in (i) above for all qualifying associations.

e. Each qualifying association's share of the distribution from the estate will be determined by applying the percentages expressed in #6d above to the amount calculated in #5 above.

#### D. Execution of Early Access Distribution Agreement

Any guaranty association making application for an early access distribution will be required to execute a standard form agreement with the Liquidator pursuant to RSA 402-C:29, III(b)(4). The form agreement will include the following key provisions:

1. A commitment to return to the Liquidator all or the necessary portion of any distribution(s) which is later determined to be necessary to pay claims of secured creditors or other creditors of equal or higher priority than the guaranty association, or which are ultimately determined to exceed the amount of the distribution to which such association is entitled.
2. A commitment to submit to the exclusive jurisdiction of the New Hampshire Court for the purpose of adjudicating any disputes which might arise under the Early Access Distribution Plan. Such commitment shall be solely for the benefit of the Liquidator, and shall not be construed as conveying any rights on third parties.



3. A commitment to report on a timely basis all information reasonably requested by the Liquidator in order to implement the Early Access Distribution Plan, or otherwise distribute the assets of The Home.

Because there may be differences of opinion among the Liquidator and the guaranty associations with respect to certain matters, the agreement will provide that the Liquidator's payment of any distribution and any guaranty association's acceptance of a payment pursuant to the distribution formula will be without prejudice to his or its position on all issues concerning final or other distributions from the estate of The Home or otherwise, and with a full reservation of his and its rights as respects such distributions and otherwise.

A copy of the standard form Early Access Distribution Agreement is attached as Exhibit A.

**EXHIBIT A**

**THE HOME INSURANCE COMPANY IN LIQUIDATION**  
**EARLY ACCESS DISTRIBUTION AGREEMENT**

THIS AGREEMENT is made and entered into by and between Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, solely in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("The Home"), and \_\_\_\_\_ ("Association").

WHEREAS, The Home was determined to be insolvent and ordered to be liquidated, and the Liquidator was appointed by an Order of Liquidation entered by the Superior Court for Merrimack County, New Hampshire (the "Court"), on June 11, 2003 and superseded by an Order of Liquidation entered June 13, 2003;

WHEREAS, the Liquidator has prepared an Early Access Distribution Plan ("Plan") concerning partial distributions to the Association and other insurance guaranty associations from assets of The Home pursuant to New Hampshire Revised Statutes Annotated, 402-C:29, III, which was approved by an order of the Court entered \_\_\_\_\_, 2003, and which is incorporated herein by reference;

NOW, THEREFORE, in consideration of the distribution of assets of The Home by the Liquidator to the Association pursuant to the Plan, the parties agree as follows:

1. Within thirty (30) days of its receipt of a written request from the Liquidator, the Association hereby agrees to return to the Liquidator the amount of any distribution which it previously received under the Plan, and which the Liquidator subsequently determines to be necessary to pay claims of secured creditors, or creditors whose claims fall into the same or a higher priority category than those of the Association. If the return of such distribution will necessitate a member company assessment by the Association, then the Association shall have an additional ninety (90) days to return such distribution to the Liquidator. The return of all or part of any such distribution by the Association shall be without prejudice as respects the Association's ultimate claim against the estate of The Home.

## EXHIBIT A

2. The Association will provide reports to the Liquidator within forty-five (45) days after the end of each calendar quarter, in a format prescribed by the Liquidator, containing the following information:

- a. All claim payments made by the Association under policies of The Home;
- b. All expenses paid by the Association which will be included in its claims against the estate of The Home;
- c. All amounts recovered by the Association with respect to the claim payments made by the Association in connection with The Home, including but not limited to salvage; subrogation; second injury fund and any form of statutory reinsurance;
- d. Outstanding reserves established by the Association with respect to pending claims concerning The Home; and
- e. A statement of all amounts disbursed to the Association pursuant to the Plan, and all amounts disbursed to the Association from any other source (other than member company assessments) attributable to The Home exposures.

3. The Association hereby agrees to promptly furnish such other information as may be reasonably requested from time to time by the Liquidator, in order to implement the Plan or the liquidation of The Home.

4. Any distribution to the Association of amounts under the Plan shall not be deemed an acceptance or allowance by the Liquidator of any amount reported hereunder by the Association. The Liquidator reserves his rights (if any) under all applicable law to disallow any amount submitted for reimbursement by the Association, at any time prior to the final distribution from the estate of The Home. Upon reasonable notice, the Liquidator shall have the right to conduct audits during normal business hours of the Association's records, in order to verify the amounts submitted for reimbursement. Execution of this Agreement by the Liquidator and the making of any distribution pursuant to the Plan shall be without prejudice to the Liquidator's rights with respect to any matter relating to the Association. The Liquidator reserves all of his rights with respect to all matters relating to the Association.

## EXHIBIT A

5. The execution of this Agreement by the Association, and the acceptance by the Association of any amount distributed pursuant to the Plan, shall be without prejudice to the Association's rights with respect to any matter relating to The Home including without limiting the generality of the foregoing the Association's rights with respect to final or other distributions from the estate of The Home. The Association reserves all of its rights with respect to all matters relating to The Home including without limiting the generality of the foregoing its right to pursue claims against the estate of The Home, in any manner, including (without limitation) a manner which may not be consistent with the methodology employed under the Plan.

6. The Association hereby consents to the exclusive jurisdiction of the Superior Court for Merrimack County, New Hampshire, for the purpose of adjudicating any and all matters arising under the Plan or this Agreement. Such consent shall be solely for the benefit of the Liquidator, and shall not be construed so as to convey any rights upon third parties.

7. All notices and communications hereunder shall be in writing and shall be deemed given when delivered to the addressee, or when sent by facsimile, or by overnight mail or delivery service, addressed as follows:

(i) if to the Liquidator:

Roger A. Sevigny  
Insurance Commissioner as Liquidator  
c/o Alexander K. Feldvebel, Deputy Commissioner  
State of New Hampshire  
56 Old Suncook Road  
Concord, NH 03301-5151

with a copy to:

Peter A. Bengelsdorf  
Special Deputy Liquidator  
The Home Insurance Company in Liquidation  
59 Maiden Lane, 5<sup>th</sup> Floor  
New York, NY 10038

and a copy to:

EXHIBIT A

Rackemann, Sawyer & Brewster  
One Financial Center  
Boston, MA 02111  
Attention: J. David Leslie

(ii) If to the Association:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused their respective representatives, thereunto duly authorized, to execute this Agreement as of the date(s) indicated below.

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER, SOLELY AS LIQUIDATOR OF  
THE HOME INSURANCE COMPANY

\_\_\_\_\_  
On Behalf of the Liquidator

Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
On Behalf of the Association

Date: \_\_\_\_\_

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of  
The Home Insurance Company  
Docket No. 03-E-0106

**CERTIFICATE OF SERVICE**

I, Peter C.L. Roth, do hereby certify that on October 8, 2003, I served a true copy of the foregoing, upon the attached Service List, by first class mail, postage prepaid.

Dated: October 8, 2003

  
//Peter C. L. Roth\\

\_\_\_\_\_  
Peter C.L. Roth

## SERVICE LIST

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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

ORDER APPROVING  
EARLY ACCESS DISTRIBUTION PLAN

On consideration of the application of Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("The Home"), for approval of an Early Access Distribution Plan pursuant to RSA 402-C:29, III, it is hereby ORDERED as follows:

The Early Access Distribution Plan, including the form Early Access Distribution Agreement, is APPROVED.

So Ordered.

Dated: \_\_\_\_\_, 2003

\_\_\_\_\_  
Presiding Justice