

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 SECOND
EARLY ACCESS DISTRIBUTION**

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 of the State of New Hampshire, as Liquidator (“Liquidator”) of Home. I submit this affidavit in support of the Liquidator’s Motion for Approval of Second Early Access Distribution to Insurance Guaranty Associations (“Motion”). The facts and information set forth below 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 of the second early access distribution to insurance guaranty associations in an amount equal to the reported claims that the guaranty associations have paid under Home insurance policies from entry of the liquidation order through September 30, 2005, less (a) guaranty association recoveries, and (b) approved first early access distribution amounts, and also subject to deduction for unreturned deposits.

3. On October 8, 2003, the Liquidator applied for approval of an Early Access Distribution Plan (“Plan”) to provide for the disbursement of assets of the Home estate from time to time to the New Hampshire Insurance Guaranty Association (“NHIGA”), the New Hampshire

Life and Health Insurance Guaranty Association, and any similar organization in another state (the “guaranty associations”) in accordance with RSA 402-C:29, III. The Plan included a form of Early Access Distribution Agreement (“Agreement”) to be entered into by guaranty associations receiving an early access distribution. The Court approved the Plan and Agreement by order entered October 22, 2003.

4. 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. Where the pertinent policy so provides, and subject to statutory limitations, guaranty associations generally pay both indemnity and defense expenses (commonly referred to as allocated loss adjustment expense or “ALAE” payments). In the Liquidator’s view, such claims are Class II policy related claims.¹

5. On October 1, 2004, the Liquidator moved for approval of a first early access distribution to guaranty associations of approximately \$40.9 million based on reported guaranty fund payments less recoveries through June 30, 2004, subject to deductions based on unreturned deposits held by various states. The Court approved the first early access distribution on October 15, 2004. The Liquidator applied deductions based on deposits held by certain states and made first early access distributions to guaranty associations totaling \$35,321,789.43.

6. Since the commencement of this liquidation proceeding, fifty-seven guaranty associations have reported making payments under insurance policies issued by Home. As of

¹ NHIGA and other guaranty associations have taken the position that ALAE is a Class I administration cost. This difference of views does not affect the Motion because guaranty associations will receive the same payment on account of ALAE through September 30, 2005 under the Motion as they would receive if the view of NHIGA and other guaranty associations were correct. The difference is that an early access distribution under this motion is subject to the Agreement, including the repayment provision of the Agreement. If it were later determined that ALAE paid by guaranty associations should be treated as an administration cost, then the ALAE portion of the early access distribution would be reclassified in the Liquidator’s accounts as a Class I administration cost, in which case the ALAE portion would not be subject to the Agreement.

November 15, 2005, the guaranty associations have reported paying \$107,981,471.65 under policies of insurance issued by Home through September 30, 2005 (\$94,442,855.47 in indemnity and \$13,538,616.80 in ALAE). The guaranty associations also reported recoveries (e.g., subrogation recoveries) totaling \$3,933,994.57, and the guaranty association payments less recoveries total \$104,047,477.08. The approved first early access distribution amounts – now paid by the estate or through deduction of state deposits – totaled \$40,942,088.95, so the potential total for the second early access distribution is \$63,105,388.13. A chart showing the payments and recoveries through September 30, 2005 (as reported by each guaranty association through November 15, 2005) together with the first and second early access distribution amounts is attached hereto as Exhibit A.

7. It is expected that the guaranty associations will submit significant additional requests for reimbursement from the Home estate in the future due to their ongoing obligations on claims under policies of insurance issued by Home.

8. As of September 30, 2005, the unrestricted liquid assets of the Home estate in the Liquidator's control totaled \$708,322,688 as set forth in the Statement of Net Assets attached hereto as Exhibit B.² The liquid assets available to the Liquidator are thus approximately eleven times the amount of the guaranty associations' payments eligible for a second early access distribution, and they exceed those payments by approximately \$645 million. The liquid assets that would remain after the proposed second early access distribution are more than six times the amount of the guaranty associations' net payments through September 30, 2005.

9. To receive an early access distribution under the Plan, a guaranty association must execute the Agreement. The Agreement provides that the signatory guaranty association will

² This amount excludes other Home assets also in the Liquidator's possession: \$4,718,583 in illiquid assets and \$542,328 in liquid assets presently subject to restrictions limiting their use.

return early access distributions that the Liquidator subsequently determines are necessary to pay claims of secured creditors or creditors whose claims fall into the same or a higher priority class than those of the guaranty association. All but three guaranty associations executed the Agreement in connection with the first early access distribution. (Those three guaranty associations did not receive a first early access distribution, although they may have received payments from deposits held in their states.)

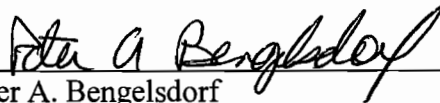
10. The Plan provides for a formula to determine the percentage distribution to be made to guaranty associations based on their Home claim payments. However, in view of (a) the significant excess of the liquid assets available to the Liquidator over the proposed second early access distribution amounts based on the guaranty associations' payments under Home policies through September 30, 2005, (b) the future requests for reimbursement that will be submitted by guaranty associations due to their ongoing obligations on covered claims under Home insurance policies, and (c) the guaranty associations' agreement to return early access distributions necessary to pay creditors in the same or higher priority class as reflected in the Agreement, the Liquidator is of the view that it is reasonable and in accordance with the legislative policy of RSA 402-C:29, III, to make a second early access distribution to each guaranty association equal to the guaranty association's reported claim payments under Home insurance policies through September 30, 2005, less (i) guaranty association recoveries through September 30, 2005, and (ii) the first early access distribution amounts, all as set forth on Exhibit A.

11. Prior to liquidation, Home had made deposits in a number of states as required by the laws of those states. As contemplated by the Early Access Distribution Plan and the Order Approving First Early Access Distribution, the Liquidator deducted the amount of deposits in certain states from the first early access distribution where the deposit had not been returned to

the Liquidator. This served to provide equivalent reimbursement from Home to the various guaranty associations. Where deposits remain unreturned and were not deducted in connection with the first early access distribution, the Liquidator may deduct the amount of a deposit in a particular state from the second early access distribution to the guaranty association in the state.

12. As noted in the Plan, the United States Department of Justice has asserted in other insurer liquidations that the claim filing deadline does not apply to claims by the Federal Government in light of the federal priority act, 31 U.S.C. § 3713, so that it can at any time file claims entitled to payment by the Receiver on pain of personal liability. The Liquidator is accordingly seeking to obtain a limited waiver of any alleged federal priority claim, which is necessary before the second early access distribution can be made.

Signed under the penalties of perjury this 22nd day of November, 2005.



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

STATE OF NEW YORK
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 22nd day of November, 2005



Notary Public/Justice of the Peace

NELLY M. GOMEZ
Notary Public, State of New York
No. 0160-5005271
Qualified in Brooklyn County
Certificate Filed in N.Y. County
Commission Expires December 7, 2006

Guaranty Association Loss Payments and Recoveries Through 09/30/05
(as reported through 11/15/05)

Guaranty Association	ALAE Expenses	Indemnity Payments	Guaranty Association Recoveries	Net Payments	Guaranty Association Recoveries	Net Payments	Approved First Year Access Amount	Total for Second Year Access
Alaska Ins. Guaranty Assoc.	424,890.81	413,073.02	837,773.63	(43,381.77)	794,391.86	340,568.87	\$	\$ 453,822.89
Alabama Ins. Guaranty Assoc.	2,396,113.82	151,978.30	2,548,092.12	0.00	2,548,092.12	1,187,868.83	\$	\$ 1,360,223.29
Arkansas Property & Casualty Ins. Guaranty Assoc.	403,411.51	68,863.04	472,274.55	(3,542.98)	468,731.57	255,447.07	\$	\$ 213,284.50
Arizona Property & Casualty Ins. Guaranty	99,900.00	10,172.48	110,072.48	0.00	110,072.48	109,130.95	\$	\$ 941.53
Arizona Industrial Commission	527,758.06	2,754.58	530,512.64	0.00	530,512.64	242,152.70	\$	\$ 288,359.94
California Ins. Guaranty Assoc.	5,606,579.70	1,703,258.46	7,309,838.16	(89,082.52)	7,220,755.64	2,736,557.83	\$	\$ 4,484,197.81
Colorado Ins. Guaranty Assoc.	982,311.14	73,081.52	1,055,392.66	(42,546.90)	1,012,845.76	500,639.93	\$	\$ 512,205.83
Connecticut Ins. Guaranty Assoc.	1,995,143.34	193,364.25	2,188,507.59	(118,882.71)	2,069,624.88	779,528.61	\$	\$ 1,290,096.27
District of Columbia Ins. Guaranty Assoc.	127,404.32	90,221.14	217,625.46	0.00	217,625.46	71,230.04	\$	\$ 146,395.42
Delaware Ins. Guaranty Assoc.	360,967.24	51,644.90	412,612.14	(163,643.36)	248,968.78	179,524.51	\$	\$ 69,444.27
Florida Ins. Guaranty Assoc.	36,286.20	364,906.74	401,192.94	0.00	401,192.94	10,184.59	\$	\$ 391,008.35
Florida Workers Compensation Ins Guaranty Assoc.	8,339,891.82	67,118.01	8,953,009.83	0.00	8,953,009.83	3,178,335.45	\$	\$ 5,774,673.38
Georgia Insurers Insolvency Pool	3,081,975.52	489,875.01	3,571,850.53	(1,240,377.17)	2,331,473.36	1,282,789.68	\$	\$ 1,048,673.68
Hawaii Ins. Guaranty Assoc.	769,755.87	185,753.04	965,508.91	(14,944.18)	950,564.73	228,737.68	\$	\$ 721,827.05
Iowa Ins. Guaranty Assoc.	289,373.23	23,722.99	313,096.22	0.00	313,096.22	208,734.40	\$	\$ 104,361.82
Idaho Ins. Guaranty	70,729.09	180.00	70,909.09	0.00	70,909.09	30,669.72	\$	\$ 40,239.37
Illinois Ins. Guaranty Fund	1,095,862.38	52,040.18	1,147,902.56	(2,829.50)	1,145,073.06	480,070.34	\$	\$ 665,002.72
Indiana Ins. Guaranty Assoc.	88,284.00	3,444.84	91,728.84	(7,856.63)	83,872.21	28,640.44	\$	\$ 55,231.77
Kansas Ins. Guaranty Assoc.	1,048,282.94	29,410.74	1,077,693.68	(15,983.02)	1,061,710.66	586,738.76	\$	\$ 474,971.90
Kentucky Ins. Guaranty Assoc.	1,867,931.26	37,022.70	1,905,633.96	(161,973.24)	1,743,660.72	784,185.39	\$	\$ 959,475.33
Louisiana Ins. Guaranty Assoc.	641,857.15	156,708.33	798,565.48	(1,640.92)	796,924.56	289,007.71	\$	\$ 507,916.85
Massachusetts Insurers Insolvency Fund	2,276,731.57	939,026.15	3,215,757.72	(6,782.89)	3,208,974.83	808,363.68	\$	\$ 2,302,601.35
Maryland Property & Casualty Ins. Guaranty Assoc.	887,707.31	89,026.94	976,734.25	0.00	976,734.25	324,033.77	\$	\$ 652,700.48
Maine Ins. Guaranty Assoc.	406,962.90	27,383.47	434,346.37	(118.80)	434,227.57	128,364.92	\$	\$ 305,862.65
Michigan Property & Casualty Guaranty Assoc.	2,170,951.76	225,932.89	2,396,884.65	(351,610.99)	2,045,273.67	973,359.57	\$	\$ 1,071,914.10
Minnesota Ins. Guaranty Assoc.	7,689,308.55	670,607.91	8,359,916.46	(95,600.29)	8,264,316.17	3,398,063.82	\$	\$ 4,866,252.35
Missouri Property & Casualty Ins. Guaranty Assoc.	328,647.09	20,122.80	348,769.89	0.00	348,769.89	183,131.86	\$	\$ 165,638.03
Mississippi Ins. Guaranty Assoc.	733,624.30	388,205.02	1,121,829.32	(9,498.70)	1,112,330.62	600,702.61	\$	\$ 511,628.01
Montana Ins. Guaranty Assoc.	304,263.17	24,924.50	329,187.67	(42,073.47)	287,114.20	161,954.93	\$	\$ 125,159.27
North Carolina Ins Guaranty Assoc	1,034,530.62	159,073.55	1,193,604.15	(67,383.23)	1,126,220.92	748,769.37	\$	\$ 377,451.55
Nebraska Property & Liability Ins. Guaranty Assoc.	154,589.97	16,010.66	170,600.63	(32,051.64)	138,548.99	83,956.67	\$	\$ 86,543.96
New Hampshire Ins. Guaranty Assoc.	709,960.04	37,688.25	747,648.29	0.00	747,648.29	358,801.58	\$	\$ 358,846.71
New Hampshire Life & Health Ins Guaranty Assoc	1,304.33	0.00	1,304.33	0.00	1,304.33	-	\$	\$ 1,304.33
New Jersey Property-Liability Ins Guaranty Assoc.	5,893,197.08	1,187,215.69	7,080,412.77	(20,000.00)	7,060,412.77	481,859.53	\$	\$ 6,578,553.24
New Jersey W/C Security Fund	2,193,576.45	271,989.09	2,465,565.54	(25,096.43)	2,440,469.11	1,013,539.18	\$	\$ 1,426,929.93
New Mexico Ins. Guaranty	312,695.29	62,011.80	374,707.09	(106.20)	374,600.89	145,647.84	\$	\$ 228,953.05
Nevada Ins. Guaranty Assoc.	145,000.00	5,896.00	150,896.00	0.00	150,896.00	5,955.50	\$	\$ 144,940.50
Superintendent of Ins. of NY	16,967,351.43	1,236,671.50	18,198,022.93	(236,019.08)	17,962,003.85	6,873,224.70	\$	\$ 11,088,779.15
Ohio Ins. Guaranty Assoc.	5,000.00	79,560.69	84,560.69	0.00	84,560.69	7,360.31	\$	\$ 77,200.38
Ohio Life & Health Ins Guaranty Assoc	27,250.00	0.00	27,250.00	0.00	27,250.00	-	\$	\$ 27,250.00
Oklahoma P & C Ins. Guaranty Assoc.	827,551.24	56,183.80	883,735.04	0.00	883,735.04	405,882.38	\$	\$ 477,852.66
Oregon Ins. Guaranty	816,040.46	135,882.89	951,922.95	(423,583.82)	528,339.13	328,090.70	\$	\$ 200,248.43
Pennsylvania Property & Casualty Ins. Guaranty Assoc.	747,472.72	439,518.35	1,186,991.07	(288.06)	1,186,703.01	318,206.31	\$	\$ 868,494.70
Pennsylvania Workers' Compensation Security Fund	9,076,316.30	483,843.04	9,560,159.34	0.00	9,560,159.34	4,156,406.31	\$	\$ 5,403,753.03
Puerto Rico Ins Guaranty Assoc	0.00	852.39	852.39	0.00	852.39	-	\$	\$ 852.39
Rhode Island Ins. Guaranty Assoc.	524,841.11	27,811.78	552,652.89	(21,854.93)	530,797.96	276,331.19	\$	\$ 254,466.77
South Carolina Property & Casualty Ins. Guaranty Assoc.	362,206.41	69,247.61	431,454.02	(8,499.80)	422,954.22	210,272.15	\$	\$ 212,682.07
South Dakota Property & Casualty Ins. Guaranty Assoc.	457,806.48	23,789.67	481,596.15	0.00	481,596.15	393,236.32	\$	\$ 88,359.83
Tennessee Ins. Guaranty Assoc.	1,224,085.53	360,442.93	1,584,528.46	(39,056.03)	1,545,472.43	764,358.32	\$	\$ 781,114.11
Texas Property & Casualty Ins. Guaranty Assoc.	3,619,463.24	867,377.93	4,486,841.17	(263,819.91)	4,223,021.26	2,057,041.84	\$	\$ 2,165,979.42
Utah Property & Casualty Ins. Guaranty Assoc.	369,588.47	47,357.63	416,946.10	(3,402.87)	413,543.23	268,075.64	\$	\$ 145,467.59
Virginia P&C Ins. Guaranty Assoc.	2,213,059.18	451,337.91	2,664,397.09	(237,039.36)	2,427,357.73	903,693.96	\$	\$ 1,523,663.75
Vermont Ins. Guaranty Assoc.	107,891.30	20,945.01	128,836.31	(330.46)	128,505.85	16,048.19	\$	\$ 112,457.66
Washington Ins. Guaranty Assoc.	104,900.00	227,728.52	332,628.52	0.00	332,628.52	201,923.87	\$	\$ 130,704.65
Wisconsin Ins. Security Funds	1,403,258.97	111,728.97	1,514,987.94	(143,082.90)	1,371,905.04	736,638.53	\$	\$ 635,266.51
West Virginia Ins. Guaranty	0.00	28,519.99	28,519.99	0.00	28,519.99	-	\$	\$ 28,519.99
West Virginia Life & Health Guaranty	101,120.00	15,420.00	116,540.00	0.00	116,540.00	-	\$	\$ 116,540.00
Total :	94,442,855.47	13,538,616.18	107,981,471.65	(3,933,994.57)	104,047,477.08	40,942,088.95	\$	\$ 63,105,388.13

This chart does not reflect \$2,660,950.01 paid on behalf of guaranty associations by the Liquidator to worker's compensation claimants during 2003 as advances on early access distributions in order to avoid disruptions in payment to the claimants during the transition of the claims from Home to the guaranty associations.

The Home Insurance Company In Liquidation

Statement of Net Assets (Modified Cash Basis) (Unaudited)

	<u>September 30,</u> <u>2005</u>	<u>December 31,</u> <u>2004</u>
Assets		
Unrestricted bonds, short-term investments and cash at cost:		
Bonds (Note 2)	\$547,872,362	\$425,845,179
Short-term investments	90,247,890	90,609,091
Certificates of deposit	-	156,556
Cash and cash equivalents	<u>64,629,428</u>	<u>88,031,228</u>
Total unrestricted bonds, short-term investments and cash at cost	702,749,680	604,642,054
Common stocks, marketable, at market value (Note 2)	214,985	396,748
Interest income due and accrued	<u>5,358,023</u>	<u>4,064,169</u>
Total unrestricted liquid assets	708,322,688	609,102,971
Unrestricted illiquid assets: (Note 1)		
Surplus notes, at fair value	129,200	129,200
Common stocks, at fair value	1,910,285	14,000,000
Limited partnership interests, at fair value	<u>2,679,098</u>	<u>3,497,773</u>
Total unrestricted illiquid assets	4,718,583	17,626,973
Restricted liquid assets:		
Bonds, at cost (Note 2)	-	53,699,125
Cash and cash equivalents (Note 5)	<u>542,328</u>	<u>848,689</u>
Total restricted liquid assets	542,328	54,547,814
Fixed assets (net of accumulated depreciation of \$455,177 and \$270,708)	403,265	424,106
Receivable from US International Reinsurance Company (Note 4)	<u>-</u>	<u>1,115,913</u>
Total assets, excluding certain amounts	713,986,864	682,817,777
Liabilities		
Incurred but unpaid administrative expenses and investment expenses (Note 3)	4,316,330	5,608,065
Reserve related to real estate tax refund (Note 6)	5,245,113	5,245,113
Net assets, excluding certain amounts	<u>\$704,425,421</u>	<u>\$671,964,599</u>

See accompanying notes.