

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**

**MOTION FOR APPROVAL OF SECOND EARLY ACCESS
DISTRIBUTION TO INSURANCE GUARANTY ASSOCIATIONS**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), hereby applies for 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. As reasons therefor, the Liquidator states:

1. 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. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Second Early Access Distribution (“Bengelsdorf Aff.”)

¶ 3.

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. See RSA 402-C:29, III; RSA 402-C:44, II. See also, e.g., RSA 404-B:8, I(a) (NHIGA is obligated on “covered claims” under insurance policies issued by the insolvent insurer); RSA 404-B:8, I(b) (NHIGA is deemed the insurer to the extent of its obligation on covered claims and to such extent has the “rights, duties, and obligations” of the insurer). The “covered claims” payable by guaranty associations generally are claims, including claims for unearned premiums, which arise out of and are within the coverage and not in excess of applicable limits of insurance policies issued by the insolvent insurer. E.g., RSA 404-B:5, IV (definition of “covered claim”). The guaranty associations’ obligations thus encompass both indemnity payments and defense expense payments (commonly referred to as allocated loss adjustment expense or “ALAE” payments) covered by a policy issued by Home. Such claims are Class II claims. RSA 402-C:44, II.¹ See Bengelsdorf Aff. ¶ 4.

3. The insurer liquidation statutes provide for early access distributions to guaranty associations because the associations are otherwise initially funded by the insurance industry and ultimately the insurance-buying public. The guaranty associations generally are initially funded by assessments on their member insurers. See, e.g., RSA 404-B:8, I(c). The member insurers

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 this motion because guaranty associations will receive the same payment on account of ALAE through September 30, 2005 under this 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 and RSA 402-C:29, III, described in paragraph 8 below. 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 and not an early access distribution, in which case the ALAE portion would not be subject to the Agreement or RSA 402-C:29, III. See Bengelsdorf Aff. p. 2, fn. 1. The Liquidator agrees that the receipt of an early access distribution by a guaranty association shall not be deemed to constitute an admission

pass on these assessments in their rates and premiums. See, e.g., RSA 404-B:16. The guaranty associations also are subrogated to the rights of policyholders and claimants to the extent of the payments the associations make on claims arising under the insurer's policies, and they submit requests for reimbursement to the insurer's liquidator. See, e.g., RSA 404-B:11, I and III.

4. 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. Bengelsdorf Aff. ¶ 5.

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

by the guaranty association that ALAE is a Class II claim and each guaranty association shall be deemed to have reserved the right to contend that ALAE should be paid as a Class I administration cost.

through November 15, 2005) together with the first and second early access distribution amounts is attached as Exhibit A to the Bengelsdorf Affidavit. Bengelsdorf Aff. ¶ 6.

6. 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 covered claims under policies of insurance issued by Home. Bengelsdorf Aff. ¶ 7.

7. 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 as Exhibit B to the Bengelsdorf Affidavit.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. Bengelsdorf Aff. ¶ 8.

8. To receive an early access distribution under the Plan, a guaranty association must execute the Agreement. As required by RSA 402-C:29, III, the Agreement provides that the signatory guaranty association will 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.) See Bengelsdorf Aff. ¶ 9.

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. See Bengelsdorf Aff., Ex. B.

9. 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 to the Bengelsdorf Affidavit. Bengelsdorf Aff. ¶ 10.

10. 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. Bengelsdorf Aff. ¶ 11.

11. 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. See 31 U.S.C. § 3713(b); Ruthardt v. United States, 303 F.3d 375, 384-386 (1st Cir. 2002), cert. denied, 538 U.S. 1031 (2003). 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. See Bengelsdorf Aff. ¶ 12.

WHEREFORE, the Liquidator requests that the Court:

A. Grant this Motion for Approval of Second Early Access Distribution to Insurance Guaranty Associations;

B. Enter an order in the form submitted herewith approving the second early access distribution based on reported guaranty association payments through September 30, 2005, less recoveries and first early access distribution amounts, all as set forth on Exhibit A to the Bengelsdorf Affidavit; and

C. Grant such other and further relief as justice may require.

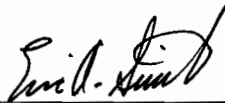
Respectfully submitted,

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

By his attorneys,

KELLY A. AYOTTE
ATTORNEY GENERAL

J. Christopher Marshall
New Hampshire Department of Justice
33 Capitol Street
Concord, N.H. 03301-6397
(603) 271-3650




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

November 23, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Motion For Approval of Second Early Access Distribution To Insurance Guaranty Associations, the accompanying Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, and the Proposed Order Approving Second Early Access Distribution To Insurance Guaranty Associations was sent, this 23d day of November 2005, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

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SERVICE LIST

Ronald L. Snow, Esq.
Lisa Snow Wade, Esq.
Orr & Reno
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Gary Lee, Esq.
Pieter Van Tol, Esq.
Lovells
16th Floor
900 Third Avenue
New York, New York 10022

Gail M. Goering, Esq.
Adam Goodman, Esq.
Eric Haab, Esq.
Lovells
One IBM Plaza
330 N. Wabash Avenue, Suite 1900
Chicago, Illinois 60611

Andre Bouffard, Esq.
Eric D. Jones, Esq.
Downs Rachlin Martin PLLC
199 Main Street
P.O. Box 190
Burlington, Vermont 05402-0190

Peter G. Callaghan, Esq.
Preti, Flaherty, Beliveau, Pachos
& Haley, PLLP
57 North Main Street
P.O. Box 1318
Concord, New Hampshire 03302-1318

Martin P. Honigberg, Esq.
Sulloway & Hollis, P.L.L.C.
9 Capitol Street
P.O. Box 1256
Concord, New Hampshire 03302-1256

George T. Campbell, III, Esq.
Robert A. Stein, Esq.
Robert A. Stein & Associates, PLLC
One Barberry Lane
P.O. Box 2159
Concord, New Hampshire 03302-2159

David M. Spector, Esq.
Dennis G. LaGory, Esq.
Kristy L. Allen, Esq.
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606

Jack B. Gordon, Esq.
Fried, Frank, Harris, Shriver
& Jacobson, LLP
1001 Pennsylvania Avenue
Washington, D.C. 20004

Andrew W. Serell, Esq.
Rath, Young and Pignatelli
One Capital Plaza
P.O. Box 1500
Concord, New Hampshire 03302-1500

Stephan P. Parks, Esq.
Doreen F. Connor, Esq.
Wiggin & Nourie, P.A.
670 North Commercial Street, Suite 305
P.O. Box 808
Manchester, New Hampshire 03105-0808

Michael Cohen, Esq.
Cohen & Buckley, LLP
1301 York Road
Baltimore, Maryland 21093