

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**

**LIQUIDATOR'S MOTION FOR APPROVAL OF  
AGREEMENTS CONCERNING ARIZONA SPECIAL DEPOSITS**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves that the Court enter an order in the form submitted herewith approving two agreements (the "Agreements") concerning special deposits in Arizona: (1) an Agreement for Distribution of Special Deposit by and among the Liquidator, the Director of the Arizona Department of Insurance (the "Director"), and the Arizona Property and Casualty Insurance Guaranty Fund (the "Arizona Guaranty Fund") (the "Fund Agreement"), and (2) an Agreement to Release Workers Compensation Deposits between the Liquidator, the Director, and the Industrial Commission of Arizona ("ICA") (the "ICA Agreement"). Copies of the Agreements are attached as Exhibits A and B. As reasons for this motion, the Liquidator respectfully states:

1. The Arizona special deposit. Home's policy obligations in Arizona were secured by special deposits held in trust in Arizona under a security agreement (the "Security Agreement") entered in March, 1996, among Home, the Director, and the Arizona State Treasurer (the "Treasurer"). Pursuant to the Security Agreement, Home deposited funds as security for Arizona residents who were Home policyholders or claimants against policyholders of Home. Presently, the Director, through the Treasurer, is holding \$3,700,000 pursuant to the Security Agreement. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support

of Motion for Approval of Agreements Concerning Arizona Special Deposits (“Bengelsdorf Aff.”) ¶ 3. The deposit held under the Security Agreement is a special deposit in that it is held for the security or benefit of one or more limited class of persons. See RSA 402-C:3, XII (definition of “special deposit claims”).

2. Since Home’s liquidation commenced, the Arizona Guaranty Fund has been paying “covered claims” under Home policies pursuant to its statutory obligations. The Liquidator and the Arizona Guaranty Fund believe that the future claims liability payable by the Arizona Guaranty Fund for Arizona residents who are policyholders of or claimants against policyholders of Home will not exceed \$1,000,000 (it has paid approximately \$110,000 as of September 30, 2004). As the Arizona Guaranty Fund is paying claims secured by the special deposit, it wants to provide for payment of those actual and anticipated liabilities from the special deposit. The Liquidator wishes to obtain reversion of the excess deposit to the Home estate. Bengelsdorf Aff. ¶ 4. See RSA 402-C:3, X (“general assets” includes, with respect to property deposited for the benefit of limited classes of persons, the property “in excess of the amount necessary to discharge the sums secured thereby”).

3. The Fund Agreement. The Fund Agreement addresses the handling of the special deposit pursuant to the Security Agreement. The parties to the Fund Agreement agree that, within thirty (30) days of this Court’s approval of the Agreement, the Director shall issue an order (i) releasing \$1,000,000 of the special deposit to the Arizona Guaranty Fund in partial payment of Home’s known and future obligations to Arizona residents paid or to be paid by the Arizona Fund, and (ii) releasing the remaining balance of such funds (expected to be approximately \$2,700,000) to the Liquidator to become part of the general assets of Home’s estate. The Fund Agreement is subject to approval by the Court. Bengelsdorf Aff. ¶ 5.

4. Under the Fund Agreement, the Arizona Guaranty Fund will report paid claims to the Liquidator at least quarterly. If the Liquidator makes disbursements to guaranty associations under the early access plan, the Arizona Guaranty Fund agrees that the Liquidator may take a credit for the special deposit funds against any early access distribution that the Arizona Fund might otherwise receive. Any special deposit funds remaining with the Arizona Guaranty Fund will be returned to the Liquidator upon the earlier of (i) payment of all covered claims by the Arizona Guaranty Fund, or (ii) the Liquidator's determination to make a final distribution in the New Hampshire liquidation proceeding. Bengelsdorf Aff. ¶ 6.

5. The Arizona workers compensation special deposit. Home also secured its workers compensation obligations to Arizona residents with a workers compensation special deposit (the "WC Deposit") held by the Director through the Treasurer in an amount of approximately \$8,284,000. Since Home's liquidation began, the ICA has paid covered claims of Arizona residents in fulfillment of Home's obligations under workers compensation policies and Arizona workers compensation statutes totaling approximately \$291,755 (including costs and expenses) as of September 30, 2004. The Liquidator and ICA agree that, based upon ICA's most recent actuarial study, the future claims liability payable by ICA for Home's Arizona workers compensation obligations should not exceed \$4,007,000 (an amount reflecting a discount to present value). Since the ICA is paying claims secured by the WC Deposit, it wants to obtain access to the deposit. The Liquidator wants to obtain the return of the excess WC Deposit to the Home estate. Bengelsdorf Aff. ¶ 7.

6. The ICA Agreement. The ICA Agreement addresses the WC Deposit. The parties to the ICA Agreement agree that, within thirty (30) days of this Court's approval of the agreement, the Director shall issue an order (i) releasing \$4,007,000 of the WC Deposit to ICA

in partial payment of Home's Arizona workers compensation obligations, and (ii) releasing the balance of the WC Deposit to the Liquidator to become part of the general assets of Home's estate. The ICA Agreement is subject to the approval of the Court. Bengelsdorf Aff. ¶ 8.

7. Under the ICA Agreement, the ICA will report payments on workers compensation claims to the Liquidator at least quarterly. The portion of the WC Deposit released to the ICA is to be used to pay the covered claims of Arizona resident claimants of Home together with costs and expenses as provided under Arizona law. If the Liquidator makes disbursements to guaranty associations under an early access plan, the ICA agrees that the Liquidator may take a credit for the WC Deposit funds against any early access distribution that the ICA might otherwise receive. Any funds remaining with the ICA will be returned to the Liquidator upon the earlier of (i) payment of all covered claims by ICA, or (ii) the Liquidator's determination to make a final distribution in the New Hampshire liquidation proceeding, in which case the excess deposit will be determined through an actuarial study. Bengelsdorf Aff. ¶ 9.

8. The Liquidator submits that the Agreements are fair and reasonable and that they are in the best interests of the policyholders and other creditors of Home. The Agreements provide for (a) the prompt and orderly return to the Home estate of excess amounts of special deposits, (b) appropriate access to the special deposits for the Arizona Guaranty Fund and the ICA which are paying covered claims of Arizona resident claimants and policyholders of Home that are secured by the special deposits, and (c) the ultimate reversion to the Home estate of amounts not needed to pay claims secured by the special deposits. See Bengelsdorf Aff. ¶ 10. This is consistent with the New Hampshire statutes concerning special deposits. See RSA 402-C:3, X and XII.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Agreements Concerning Arizona Special Deposits;
- B. Enter an Order in the form submitted herewith approving the Agreements; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

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

By his attorneys,

KELLY A. AYOTTE  
ATTORNEY GENERAL

Suzanne M. Gorman  
Senior Assistant Attorney General  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, N.H. 03301-6397  
(603) 271-3650



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

January 3, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Agreements Concerning Arizona Special Deposits, the Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Agreements Concerning Arizona Special Deposits, and a proposed form of order were sent, this 3d day of January, 2005, by first class mail, postage prepaid to all persons on the attached service list.



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Eric A. Smith

THE STATE OF NEW HAMPSHIRE

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SERVICE LIST

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

Gary Lee, Esq.  
Pieter Van Tol, Esq.  
Lovells  
16<sup>th</sup> 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.  
Rachlin Downs Martin PLLC  
199 Main Street  
P.O. Box 190  
Burlington, Vermont 05402-0190