

**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 THE JULY 2008 LOMBARD AGREEMENT**

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 an agreement (the “July 2008 Lombard Agreement”) between Lombard General Insurance Company (“Lombard”), Fairfax Financial Holdings Limited (“Fairfax”, the parent company of Lombard), Deloitte & Touche Inc., as Canadian Liquidator of the insurance business in Canada of Home (“Canadian Liquidator”), and the Liquidator. As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the July 2008 Lombard Agreement. A redacted copy of the July 2008 Lombard Agreement is attached as Exhibit 1. A complete copy of the July 2008 Lombard Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of the July 2008 Lombard Agreement (“Bengelsdorf Confidential Affidavit”) submitted herewith under seal.

2. The insurance business of Home in Canada (“Home Canada”) was carried on through a branch operation. The policy obligations of Home Canada were secured by special deposits held in trust in Canada which, as of March 31, 2003, totaled approximately C\$51 million. These deposits were deemed by the Liquidator to substantially exceed the policy obligations of Home Canada. To date, C\$29 million of those deposits have been remitted to the

Liquidator, C\$15 million paid to Lombard as described in paragraph four below, leaving, after deducting the operating expenses incurred by the Canadian Liquidator, approximately C\$4.5 million in its custody. The C\$4.5 million is expected to ultimately be remitted to the Liquidator net of the Canadian Liquidator's operating expenses, including taxes. Bengelsdorf Confidential Affidavit ¶ 2.

3. By a Winding-Up Order entered June 26, 2003, the Ontario Superior Court of Justice ("Canadian Court") ordered that Home Canada be wound-up. The Canadian Court also appointed the Canadian Liquidator as provisional liquidator of Home Canada, including the Canadian special deposits, by an Appointment Order entered that same day. Bengelsdorf Confidential Affidavit ¶ 3.

4. On December 19, 2003, this Court approved an Assumption Reinsurance Agreement (the "Assumption Reinsurance Agreement") entered into by the Canadian Liquidator, the Liquidator, Fairfax, and Lombard, pursuant to which Lombard assumed all of Home Canada's liabilities arising under policies of insurance and assumed reinsurance contracts. Lombard was paid C\$15 million from the Canadian assets, C\$8 million of which was deemed fully earned, with the remaining C\$7 million subject to an experience adjustment in 2008 based upon loss experience through December 31, 2007 ("the Section 2.3 Payment"). Up to C\$3.5 million of that C\$7 million could, depending on loss experience, ultimately be paid to the Canadian Liquidator. The Canadian Court approved the Assumption Agreement on November 18, 2003. Bengelsdorf Confidential Affidavit ¶ 4.

5. As described in the Bengelsdorf Confidential Affidavit, certain issues have arisen between the parties to the Assumption Reinsurance Agreement concerning the proper calculation of the Section 2.3 Payment. Bengelsdorf Confidential Affidavit ¶ 5. The Liquidator, the Canadian Liquidator, Fairfax, and Lombard have accordingly negotiated the July 2008 Lombard

Agreement to address and resolve those issues. The July 2008 Lombard Agreement requires Lombard to pay C\$3.5 million to the Canadian Liquidator promptly after approval of the July 2008 Lombard Agreement by this Court and the Canadian Court, and it requires the Canadian Liquidator to remit such payment to the Liquidator within three days. Bengelsdorf Confidential Affidavit ¶ 6.

6. Lombard's agreement to make the C\$3.5 million Section 2.3 Payment to the Liquidator (through the Canadian Liquidator) is contingent upon the terms and conditions of the July 2008 Lombard Agreement. The terms of that agreement are critical to Lombard making the maximum Section 2.3 Payment and therefore constitute "actual and necessary costs of ... recovering the assets of the insurer" within Class I of the priority statute, RSA 402-C:44, I. Accordingly, the Liquidator's obligations under the July 2008 Lombard Agreement should be afforded administration cost priority. Bengelsdorf Confidential Affidavit ¶ 7.

7. Through the July 2008 Lombard Agreement, the Liquidator, the Canadian Liquidator, Fairfax, and Lombard seek to avoid unnecessary arbitration or litigation. The July 2008 Lombard Agreement facilitates and is a necessary precursor to the timely closure of the Canadian provisional liquidation proceeding and the consequent reversion of the remaining Canadian assets to the domiciliary estate. Most importantly, the July 2008 Lombard Agreement results in the Liquidator's immediate collection of the C\$3.5 million Section 2.3 Payment. For these reasons, and those described in the Bengelsdorf Confidential Affidavit, the July 2008 Lombard Agreement is fair and reasonable and in the best interests of the policyholders and other creditors of Home. Bengelsdorf Confidential Affidavit ¶ 8.

WHEREFORE, the Liquidator respectfully requests that this Court:

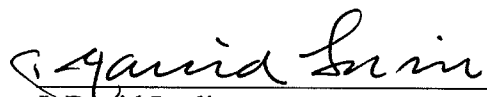
- A. Grant this Motion for Approval of the July 2008 Lombard Agreement;
- B. Enter an Order in the form submitted herewith approving the July 2008 Lombard Agreement; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

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

By his attorneys,  
KELLY A. AYOTTE  
ATTORNEY GENERAL

J. Christopher Marshall  
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Civil Bureau  
New Hampshire Department of Justice  
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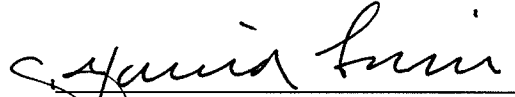
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Rackemann, Sawyer & Brewster  
160 Federal Street  
Boston, MA 02110  
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July 23, 2008

**Certificate of Service**

I hereby certify that a copy of the foregoing Motion for Approval of July 2008 Agreement with Lombard and the Proposed Order Approving July 2008 Agreement with Lombard were sent, this 23rd day of July, 2008, by first class mail, postage prepaid to all persons on the attached service list. The accompanying Confidential Bengelsdorf Affidavit was not so served.

  
\_\_\_\_\_  
J. David Leslie

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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

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## AGREEMENT

## WHEREAS:

1. The Home Insurance Company ("Home") [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
2. By an order dated June 13, 2003, Home was ordered liquidated by the Merrimack County Superior Court of the State of New Hampshire ("U.S. Court") and the New Hampshire Insurance Commissioner was appointed its liquidator ("U.S. Liquidator");
3. By an order dated June 26, 2003, the insurance business in Canada of Home ("Home Canada") was ordered wound-up by the Ontario Superior Court of Justice – Commercial List ("Canadian Court") and Deloitte & Touche Inc. was appointed Canadian Liquidator ("Canadian Liquidator") of Home Canada;
4. Pursuant to an Assumption Reinsurance Agreement ("Assumption Agreement") made October 24, 2003 between the Canadian Liquidator, the U.S. Liquidator, Lombard General Insurance Company of Canada ("Lombard") and Fairfax Financial Holdings Limited, and the Transfer and Assumption Agreement between Lombard and the Canadian Liquidator made as of October 24, 2003 ("Transfer Agreement"), Lombard assumed all the Home Canada Liabilities (as that term is defined in the Assumption Agreement) whatsoever, and, except as provided for in this Agreement, neither the Canadian Liquidator, Home Canada, the U.S. Liquidator nor Home shall have any liability of any kind for or in respect of the Home Canada Liabilities;
5. The Assumption Agreement was approved by the Canadian Court and the U.S. Court;



6. The Assumption Agreement at Section 2.3 provides for a payment ("Section 2.3 Payment") by Lombard to the Canadian Liquidator dependant upon the actuarial valuation of the Home Canada Liabilities as of December 31, 2007;
7. Lombard asserts [REDACTED] Home Canada Liabilities and has calculated the Section 2.3 Payment accordingly, and in accordance with the valuation attached hereto as Schedule A, to be \$3.5 million;
8. [REDACTED]
9. Lombard has asserted that, in the circumstances, it is not prepared to make the Section 2.3 Payment in the amount of \$3.5 million without certain [REDACTED] arrangements being put in place:

**THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY AND RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HEREBY AGREE AND ACKNOWLEDGE AS FOLLOWS ("AGREEMENT"):**

10. The Section 2.3 Payment payable to the Canadian Liquidator is \$3.5 million, and shall be paid within ten days of the date this Agreement becomes effective as described in Section 17, below. The Canadian Liquidator will remit that payment to the U.S. Liquidator, by wire transfer, within three days of its receipt from Lombard.

11. [REDACTED]

12. The parties confirm and acknowledge that subject to the terms of this Agreement, any Home Canada Liability, as defined in the Assumption Agreement and/or the Transfer Agreement, are and shall remain pursuant to and to the extent provided for under those agreements the sole liability and responsibility of Lombard, and, except as provided for in this Agreement, the Canadian Liquidator, Home Canada, the U.S. Liquidator and Home shall bear no liability or responsibility for or in connection with any such liabilities whatsoever, past, present or future (excepting only, in the case of the U.S. Liquidator, its indemnity obligations set forth in Sections 11 and 15 hereof).

13. For greater certainty, the terms and conditions of the Assumption Agreement remain in full force and effect, provided that to the extent, if any, that there is a specific conflict between the terms of this Agreement and the terms of the Assumption Agreement, this Agreement shall prevail. Unless otherwise specified

in this Agreement, the definitions contained in the Assumption Agreement apply to the capitalized terms used herein.

14. [REDACTED]

15. [REDACTED]

[REDACTED]

c) The Parties shall cooperate with one another concerning the implementation of this Agreement including requests for documentation [REDACTED] [REDACTED] es. In this regard, the Canadian Liquidator shall, prior to its discharge, deliver to Lombard copies of all documentation in the files of Home Canada at the time of the commencement of its winding-up, of which it is aware [REDACTED] [REDACTED]

16. All monetary amounts expressed herein are expressed in Canadian dollars.
17. This Agreement shall not become effective until approved by both the Canadian Court and the U.S. Court, such U.S. Court approval order to contain confirmation that the U.S. Liquidator's obligations hereunder shall be afforded administration cost priority. The effective date of this Agreement shall be the later of the dates that the Canadian Court and U.S. Court approval orders are entered.
18. The U.S. Liquidator and the Canadian Liquidator each (i) agree not to apply to the Court to be discharged effective on a date prior to the fulfillment of each of their respective obligations hereunder, (ii) agree to give Lombard notice of any application for discharge (whether brought by the Liquidator or another party) and (iii) acknowledge that Lombard shall have standing on any such discharge application.
19. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada.

Date:

*July 2, 2008*

Lombard General Insurance Company of  
Canada

By:

*Jane Jordan*

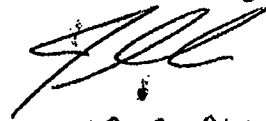
Title

*CFO*

Date: July 3 2008

Fairfax Financial Holdings Limited

By:



Title

VP & Chief Actuary

Date

Deloitte & Touche Inc., in its capacity as  
Liquidator of the insurance business in  
Canada of The Home Insurance Company,  
and not in its personal capacity

By:

Title:

Date

Roger A. Sevigny, New Hampshire Insurance  
Commissioner in his capacity as Liquidator  
of The Home Insurance Company

By:

Title:

Date:

Fairfax Financial Holdings Limited

By:

Title

Date

Deloitte & Touche Inc., in its capacity as  
Liquidator of the insurance business in  
Canada of The Home Insurance Company,  
and not in its personal capacity

By: ~~\_\_\_\_\_~~ (Glynis Bass)

Title: Vice President

Date

Roger A. Sevigny, New Hampshire Insurance  
Commissioner in his capacity as Liquidator  
of The Home Insurance Company

By:

Title:

Date:

Fairfax Financial Holdings Limited

By:

Title

Date

Deloitte & Touche Inc., in its capacity as  
Liquidator of the insurance business in  
Canada of The Home Insurance Company,  
and not in its personal capacity

By:

Title:

Date

6/27/08

Roger A. Sevigny, New Hampshire Insurance  
Commissioner in his capacity as Liquidator  
of The Home Insurance Company

By:

*Peter A Bengelsdorf*

Title:

*Peter A Bengelsdorf  
Special Deputy Liquidator*

**Schedule A**

**Return Premium Calculation as of December 31, 2007  
(First \$8 Million Deemed Fully Earned by Lombard)**

Pursuant to Section 2.3 of the October 24, 2003 Assumption Reinsurance Agreement

[Amount Payable equals 50% of (Gross Premium (a) minus the greater of either the \$8,000,000 amount deemed fully earned by Lombard (b) or the Incurred Loss (c))]

Gross Premium	a	\$15,000,000 <sup>1</sup>
Amount deemed fully earned by Lombard	b	\$8,000,000
Incurred Loss	c	\$7,532,000
Greater of "b" or "c"	d	\$8,000,000
Profit to be shared "a" minus "d"	e	\$7,000,000
Amount Payable to Canadian Liquidator – 50% of "e"		\$3,500,000

<sup>1</sup> All amounts are Canadian dollars.