

**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 LIQUIDATOR'S FIFTH MOTION FOR  
APPROVAL OF DISPOSAL OF CERTAIN RECORDS (CLOSED CLAIM FILES)**

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 Fifth Motion for Approval of Disposal of Certain Records (Closed Claim Files). The facts and information set forth 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. As set forth in the Liquidator's four previous motions for approval of disposal of certain records filed November 24, 2004, July 15, 2005, July 3, 2008, and February 16, 2011, the Home estate has numerous documents that are no longer needed, and it continues to incur significant expense to store the documents. The Liquidator accordingly has sought approval of the Court to dispose of categories of documents that the Liquidator has determined are no longer useful.

3. The Court authorized disposal of certain categories of records in response to the first four motions by Orders Approving the Disposal of Certain Records entered on December 16, 2004, August 12, 2005, August 19, 2008, and May 2, 2011. Pursuant to these orders, the

liquidation staff has disposed of 23,353 boxes of documents. Nonetheless, 152,541 boxes remain in storage with off-site vendors in addition to boxes stored at the liquidation offices. The annual cost of maintaining the records with off-site vendors alone is presently approximately \$556,000 per year, and disposal of even part of the boxes in off-site storage would result in significant savings.

4. The motion concerns boxes of claim files that have been closed with no activity for at least 20 years (for environmental, mass tort and workers' compensation claims) or 10 years (for other types of claims). The Liquidator previously moved for authority to dispose of these closed claim files, unless they were involved in a pending dispute or proof of claim, on the ground that they were no longer useful. Liquidator's Third Motion for Approval of Disposal of Certain Records ¶ 4(b) (July 3, 2008). The Court approved of the disposal of these files, except those that relate to pending or anticipated litigation, on August 19, 2008. Order Approving the Disposal of Certain Records (August 19, 2008). That Order authorized disposal of "closed claim files with no activity for 20 years for environmental, mass tort and workers' compensation claims or for 10 years for other types of claims." August 19, 2008 Order, Schedule ¶ 1(b).

5. Liquidation staff has accordingly been identifying for disposal boxes of closed claim files with no activity for the specified 20 year/10 year periods where the files are not related to a proof of claim or a dispute/litigation. This identification process has been conducted in accordance with the Summary of Document Disposal Procedures attached as Exhibit F to the Liquidator's Eighteenth Report filed September 18, 2005. The document disposal procedures provide for identification of boxes eligible for disposal based on a review of inventory lists, which is to be followed by an actual review of a sample of the boxes to confirm that they contain material eligible for disposal.

6. Liquidation staff's review of samples of boxes that were identified as eligible for disposal has revealed that in many instances the box inventories are not complete. All the boxes contained only closed claim materials for files closed for the requisite number of years. However, numbers of the boxes included closed claim files that either are not listed on the inventory lists or are only partially identified on the inventory lists. Some of the partially identified files are identified only by line of business and date of closure.

7. The Liquidator has attempted to address this issue by having boxes of closed claim files identified as eligible for disposal delivered to the Manchester, New Hampshire office for review by liquidation staff. Staff have reviewed boxes in groups of 300, prepared new box inventories, reviewed the new inventories to confirm that the files were in fact eligible for disposal, removed ineligible files or re-boxed the files as necessary, and then arranged for disposal of the boxes where warranted.

8. This intensive process has proved to be time consuming and expensive. To date, liquidation staff has spent approximately 6,200 hours of staff time in reviewing 4,034 boxes of closed claims files. The review involved out-of-pocket vendor costs of \$35,883 in retrieving and delivering boxes for review. It has resulted in disposal of 3,100 boxes of closed claim files.

9. This manual review process has addressed only a fraction of the boxes eligible for disposal. There are approximately 32,000 other boxes of closed claim files that have been preliminarily identified as presently eligible for disposal because they satisfy the 20 year/10 year criteria of Schedule ¶ 1(b), out of a total of approximately 70,500 boxes of claims files that were closed prior to Home's liquidation. It has not yet been determined how many of the 32,000 boxes could actually be disposed of now because review of existing inventories to determine whether a closed claim file or files in the box relates to a proof of claim or dispute/litigation is ongoing. However, at least several thousand boxes could be disposed of now except that they

may contain uninventoried or incompletely inventoried files. Under the existing order and procedures, these boxes would need to be reviewed and re-inventoried in order to dispose of them. Eventually, all of the closed claim boxes would need to be reviewed and re-inventoried before being disposed of.

10. I have concluded that the reviewing and re-inventorying of boxes of closed claim files is not a reasonable expenditure of estate resources. The out-of-pocket costs of having the storage vendor retrieve and deliver the 32,000 boxes preliminarily identified as eligible would be approximately \$300,000 (at \$2,808 per group of 300 boxes). The eventual review of the 70,500 boxes of closed claim files would involve vendor costs of approximately \$600,000.<sup>1</sup> The costs in terms of liquidation staff time are much greater. A box may contain up to 300 individual closed claim files. Based on experience to date, review and re-inventorying of each box takes an average of one-and-a-half hours. Assuming each staff member worked 1,800 hours per year, a complete re-inventory of the 32,000 boxes of files would require 26 person-years. Review of the 70,500 boxes of pre-liquidation closed claim files would take almost 60 liquidation staff person-years. I believe that the time and expense required to retrieve the closed claim file boxes from the vendor and re-inventory all of the boxes to create a complete file-by-file inventory is an unnecessary expenditure of the Home estate's assets to the detriment of Home's creditors.

11. Closed claim files that are not identifiable from the existing inventories are not reasonably accessible. I believe such functionally inaccessible documents are no longer useful, and recommend that they should be disposed of. Keeping boxes of closed claim files merely because they contain uninventoried or incompletely inventoried closed claim files that might not fall within Schedule ¶ 1(b) of the August 19, 2008 Order, or might relate to a proof of claim or

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<sup>1</sup> These costs do not include the vendor cost of shredding and disposing of boxes determined to be subject to disposal, which is presently \$540 per group of 300 boxes. Those costs will be incurred in destroying the boxes whether they are disposed of now or after any re-inventorying.

litigation, is an unwarranted, significant expense. The annual cost of maintaining the 32,000 boxes of closed claim files preliminarily identified as eligible for disposal in storage is presently approximately \$120,000 per year, while the annual cost of maintaining the 70,500 boxes of closed claims files is approximately \$264,000 per year. It would benefit Home's creditors if these costs could be reduced by disposing of these boxes.

12. In these circumstances, I believe it is appropriate to determine the eligibility of boxes of closed claim files for disposal (both as falling within Schedule ¶ 1(b) of the August 19, 2008 Order and as not concerning a proof of claim or litigation) based upon the existing box inventories, without reviewing and re-inventorying the boxes. Accordingly, the Liquidator requests approval to dispose of the closed claim file boxes based upon review of the existing inventories.<sup>2</sup>

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<sup>2</sup> Certain parties to litigation in California and Minnesota have requested that the Liquidator retain any files concerning the claimant companies that are plaintiffs in those actions. See Liquidator's Supplemental Filing Concerning Fourth Motion for Approval of Disposal of Certain Records (March 18, 2011). In accordance with the August 19, 2008 Order, the Liquidator will retain any closed claim files identified based on the existing inventories as relating to a proof of claim or pending or anticipated litigation. For the avoidance of doubt, the files to be retained include any closed claim files that can be identified as concerning the California and Minnesota plaintiffs.

Signed under the penalties of perjury this 26 day of July, 2011.

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

STATE OF CALIFORNIA  
COUNTY OF VENTURA

On 7-26, 2011 before me, Tina Le, Notary Public,  
personally appeared Peter A. Bengelsdorf, Special Deputy Liquidator of The Home Insurance  
Company, who proved to me on the basis of satisfactory evidence to be the person whose name  
is subscribed to the within instrument and acknowledged to me that he executed the same in his  
authorized capacity, and that by his signature on the instrument the person, or the entity upon  
behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Tina Le  
Signature of Notary Public

