

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 EIGHTH
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 Eighth 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 eighth 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, 2011 as reported by October 30, 2011, less (a) guaranty association recoveries, and (b) approved first through seventh early access distribution amounts. The early access distributions will also be subject to deductions for unreturned or unpaid funds, deductible reimbursements, amounts classified as Class I administration costs, and questioned claim items, and to application of a distribution cap equal to forty percent of the total incurred costs (paid

amounts plus case reserves but not including incurred but not reported reserves) projected for each guaranty association.

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, 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. 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. The guaranty associations’ obligations encompass both indemnity payments and claim expense payments that are covered by a policy issued by Home. Such claims are Class II claims.¹

¹ Certain guaranty associations have taken the position that claim expense is a Class I administration cost. The Liquidator agrees that the receipt of an early access distribution by a guaranty association shall not be deemed to constitute an admission by the guaranty association that claim expense is a Class II claim.

5. Since the commencement of this liquidation proceeding, fifty-seven guaranty associations have reported making indemnity or defense payments under insurance policies issued by Home. Beginning in 2004, the Liquidator has almost annually moved for and the Court has approved early access distributions based on reported guaranty association payments less recoveries. Most recently, the Liquidator moved for approval of a seventh early access distribution of approximately \$32.8 million on March 10, 2011, and the Court approved the seventh early access distribution on March 21, 2011. The Liquidator applied deductions and a 40% percentage cap and made seventh early access distributions totaling \$7,827,361.66.

6. As of October 30, 2011, the guaranty associations have reported paying \$385,122,923.74 regarding policies of insurance issued by Home through September 30, 2011 (\$344,200,840.22 in indemnity and \$40,922,083.52 in claim expense). The guaranty associations also reported recoveries (e.g., subrogation, net worth and second injury fund recoveries) totaling \$39,036,422.80, so the guaranty association payments after recoveries total \$346,086,500.94 at this time. The approved first through seventh early access distribution amounts (which are then subject to deductions and the cap) totaled \$301,113,976.22, so the potential total for the eighth early access distribution is \$44,972,524.72.² A chart showing the payments and recoveries through September 30, 2011 (as reported by each guaranty association through October 30, 2011) together with the previously approved early access amounts and the potential eighth early access distribution amounts is attached hereto as Exhibit A.

7. As of September 30, 2011, the unrestricted liquid assets of the Home estate in the Liquidator's control totaled \$1,097,726,092 as set forth in the Statement of Net Assets attached hereto as Exhibit B. The liquid assets available to the Liquidator are thus approximately

² The amounts paid by guaranty associations and the prior early access distribution amounts in this paragraph include the \$3,148,212.13 paid to workers compensation claimants on behalf of guaranty funds during 2003 by the Liquidator as advances on early access distributions in order to avoid disruptions in payments to the claimants.

twenty-four times the amount of the guaranty associations' payments eligible for an eighth early access distribution, and they exceed those payments by over \$1 billion. The liquid assets that would remain after the proposed eighth early access distribution are approximately three times the amount of the guaranty associations' net payments through September 30, 2011.

8. 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 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. This is sometimes referred to as a "claw back". All but two guaranty associations have executed the Agreement.

9. 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. The first two early access distributions equaled one hundred percent (100%) of the amounts the guaranty funds had paid as of September 30, 2005. The third through seventh early access distributions were based on 100% of guaranty fund payments as of September 30 for each year from 2006 through 2010 but they were subject to a distribution cap equal to forty percent (40%) of the total incurred costs (paid amounts plus case reserves but not including any incurred but not reported reserves) projected by each guaranty association. The Liquidator plans to apply this 40% cap to the proposed eighth early access distribution as well. The cap is designed to avoid situations in which a "claw back" pursuant to RSA 402-C:29, III(b)(4) may be necessary by keeping each

guaranty association's total early access distributions at a level of no more than 40% of its total projected incurred costs. The cap is expected to affect thirty-seven guaranty associations.³

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 orders approving the prior early access distributions, the Liquidator deducted the amount of deposits in certain states from the prior distributions 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 prior early access distributions, the Liquidator will deduct the amount of a deposit in a particular state from the eighth early access distribution to the guaranty association in the state. The Liquidator may also deduct amounts due to Home from guaranty associations for other reasons where the guaranty association has not paid the amount to the Liquidator.

11. The guaranty associations receive so-called "deductible recoveries" from certain policyholders who had entered agreements with Home under which they were to reimburse Home for amounts it paid to claimants within agreed deductible amounts. The guaranty associations that have paid claims within those amounts may recover from such policyholders as

³ Alaska Insurance Guaranty Association, Arizona Property and Casualty Insurance Guaranty Association, California Insurance Guarantee Association, Colorado Insurance Guaranty Association, Florida Property & Casualty Insurance Guaranty Association, Florida Workers Compensation Insurance Guaranty Association, Hawaii Insurance Guaranty Association, Idaho Insurance Guaranty Association, Illinois Insurance Guaranty Association, Indiana Insurance Guaranty Association, Maryland Property and Casualty Insurance Guaranty Association, Massachusetts Insurers Insolvency Fund, Minnesota Insurance Guaranty Association, Missouri Insurance Guaranty Association, Nebraska Insurance Guaranty Association, Nevada Insurance Guaranty Association, New Hampshire Insurance Guaranty Association, New Hampshire Life and Health Insurance Guaranty Association, New Jersey Property and Liability Insurance Guaranty Association, New Jersey Workers Compensation Security Fund, New York Liquidation Bureau, North Carolina Insurance Guaranty Association, Ohio Insurance Guaranty Association, Ohio Life & Health Insurance Guaranty Association, Pennsylvania Worker's Compensation Security Fund, Puerto Rico Insurance Guaranty Association, Rhode Island Insurance Guaranty Association, South Carolina Property & Casualty Insurance Guaranty Association, South Dakota Property & Casualty Insurance Guaranty Association, Texas Property & Casualty Insurance Guaranty Association, Utah Insurance Guaranty Association, Vermont Insurance Guaranty Association, Virginia Insurance Guaranty Association, Washington Insurance Guaranty Association, West Virginia Insurance Guaranty Association, West Virginia Life and Health Insurance Guaranty Association, and the Wisconsin Insurance Guaranty Association.

more fully set forth in the Liquidator's Motion for Approval of Agreement Regarding Home Deductible Policies filed March 23, 2011, but those amounts are not included within the recoveries identified on Exhibit A. The Liquidator will deduct the amount of such deductible recoveries by a particular guaranty association from the eighth early access distribution to that association.

12. The guaranty associations may also receive Class I administration expense payments for certain amounts included within claim expenses that are not defense payments pursuant to a Home policy. The Liquidator will deduct the amount of any such Class I payments from the eighth early access distribution.

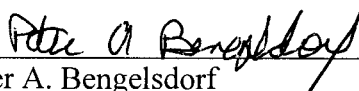
13. The Liquidator asks guaranty associations for clarification regarding payments, expenses, or recoveries. There is now one questioned matter (from the New York Liquidation Bureau) which is the subject of a request for review and not included in the early access calculations.

14. Use of the cap and credits for deductible recoveries, Class I claim expenses, and deposits and funds held will reduce the amount distributed in the eighth early access distribution by a total of approximately \$30 million. The Liquidator expects that the total amount distributed will be approximately \$15 million.

15. 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 potential personal liability. The Liquidator obtained limited waivers of alleged federal priority claims as a precondition to making the first through sixth early access distributions. It appears unlikely that the United States will grant a

further waiver at this time.⁴ However, in light of the statutory claw back agreements with guaranty associations receiving early access distributions as discussed in paragraphs 3 and 8, as well as the factors described in paragraph 7, the Liquidator believes that making the proposed eighth early access distribution is reasonable and prudent even without such a waiver. The Liquidator will consider this issue anew in connection with any future proposed early access distributions.

Signed under the penalties of perjury this 7TH day of December, 2011.

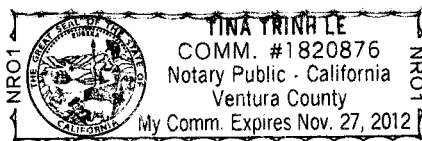

Peter A. Bengelsdorf
Special Deputy Liquidator of
The Home Insurance Company


STATE OF CALIFORNIA
COUNTY OF VENTURA

On December 7, 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: 
Signature of Notary Public

⁴ Indeed, the Liquidator and the United States are presently litigating priority issues with respect to a provision of the Longshore and Harbor Workers Compensation Act. Hilda Solis, Secretary, U.S. Dept. of Labor v. The Home Ins. Co. and Roger A. Sevigny, Ins. Comm'r, as Liquidator of The Home Ins. Co., No. 1:10-cv-572 (D. N.H.).

**Guaranty Association Indemnity/Expense and Recoveries
Through 09/30/11 (as reported by 10/30/11)**

This chart includes the \$3,148,212.13 paid on behalf of guaranty associations by the Liquidator for 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)

	September 30, 2011	December 31, 2010
Assets		
Unrestricted bonds, short-term investments and cash at cost:		
Bonds (Note 2)	\$1,017,410,223	\$1,009,905,128
Short-term investments	9,488,989	15,063,281
Cash and cash equivalents	62,406,051	39,807,980
Total unrestricted bonds, short-term investments and cash at cost	1,089,305,263	1,064,776,389
Common stocks, marketable, at market value (Note 2)	192,346	217,668
Interest income due and accrued	8,228,483	8,486,876
Receivable from US International Reinsurance Company (Note 4)	-	3,110
Total unrestricted liquid assets	1,097,726,092	1,073,484,043
Unrestricted illiquid assets: (Note 1)		
Limited partnership interests	878,668	1,388,452
Total unrestricted illiquid assets	878,668	1,388,452
Restricted liquid assets - cash (Note 5)	404,373	404,373
Total assets, excluding certain amounts	1,099,009,133	1,075,276,868
Liabilities		
Incurred but unpaid administrative expenses and investment expenses (Note 3)	3,305,723	3,895,868
Claims checks payable (Note 1)	10,893	52,426
Total liabilities	3,316,616	3,948,294
Net assets, excluding certain amounts	\$1,095,692,517	\$1,071,328,574