

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 SIXTH MOTION FOR APPROVAL  
OF DISPOSAL OF CERTAIN RECORDS**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves that the Court enter an order pursuant to RSA 402-C:50 approving the disposal of (1) boxes of closed claims files for environmental, mass tort and workers' compensation claims that have had no activity for 15 years, instead of 20 years, (2) closed claim files involved in a proof of claim once a year has passed from Court approval of the claim determination, (3) files concerning operations of the former Canadian branch of Home, and (4) quarterly financial statements. As further reasons therefor, the Liquidator states as follows:

1. Background. As set forth in the Liquidator's five previous motions for approval of disposal of certain records filed November 24, 2004, July 15, 2005, July 3, 2008, February 16, 2011, and July 29, 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. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Liquidator's Sixth Motion for Approval of Disposal of Certain Records ("Bengelsdorf Aff.") ¶ 2.

2. The New Hampshire Insurers Rehabilitation and Liquidation Act provides for disposal of documents of insurers in liquidation in RSA 402-C:50, which provides:

Whenever it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he or she may recommend to the court what records should be retained for future reference and what should be disposed of. The court shall enter an order thereon. Until further order of the court, the commissioner shall keep all records the court orders preserved and shall destroy the remainder whether or not the records have been photographed or otherwise reproduced.

3. Pursuant to this statute, the Court authorized disposal of certain categories of records in response to the first five motions by Orders Approving the Disposal of Certain Records entered December 16, 2004, August 12, 2005, August 19, 2008, May 2, 2011, and November 10, 2011. Pursuant to these orders, liquidation staff will have disposed of over 71,000 boxes of documents by the end of 2013. Nonetheless, the Liquidator expects that approximately 105,900 boxes will remain in storage with off-site vendors at year end, in addition to the boxes stored at the liquidation offices. The annual cost of maintaining the records with off-site vendors is presently approximately \$430,000 per year, and disposal of even part of the boxes in off-site storage would result in significant savings. Bengelsdorf Aff. ¶ 3.

4. Closed claims files. Of the remaining approximately 105,900 boxes stored with vendors, 62,485 consist of closed claim files. This motion concerns boxes of claim files for environmental, mass tort and workers' compensation claims that have been closed with no activity for lengthy periods. The Liquidator previously moved for authority for approval to dispose of boxes of closed claim files with no activity for 20 years (for environmental, mass tort and workers' compensation claims) or 10 years (for other types of claims), unless the files 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 10, 2008).

The Court approved of the disposal of such files, except those that relate to pending or anticipated litigation, on August 19, 2008. Order Approving the Disposal of Certain Records, Schedule ¶ 1(b) (August 19, 2008) (copy attached as Exhibit A). The Liquidator subsequently moved for approval to dispose of closed claim files based upon existing box inventories, without the need for re-inventorying of boxes. Liquidator's Fifth Motion for Approval of Disposal of Certain Records (Closed Claim Files) (July 29, 2011), and the Court authorized disposal on that basis on November 10, 2011. Order Approving the Disposal of Certain Records (November 10, 2011) (copy attached as Exhibit B). Bengelsdorf Aff. ¶ 4.

5. As it has been over five years since the Court approved disposal of closed claim files, the Liquidator has again considered the appropriate period for retaining boxes of closed claim files as to which there has been no activity, meaning that no one has recalled the files for any reason during the period. The Liquidator has concluded that a reduction of the 20 year "no-activity" period for retention of closed claim files for environmental, mass tort and workers' compensation claims to 15 years is appropriate. The 10 year period for other types of claims will remain unchanged, and closed claim files involved in a pending proof of claim or pending or anticipated litigation will continue to be retained. Bengelsdorf Aff. ¶ 5.

6. There are two principal reasons for retaining closed claim files: (1) the file relates to a pending proof of claim or pending or anticipated litigation, and (2) the closed claim may for some reason reopen. The Liquidator is retaining and will continue to retain closed claim files that relate to open proofs of claim or pending or anticipated litigation. The Liquidator has concluded, however, that keeping other closed workers' compensation and environmental or mass tort claim files that have been closed with no activity for 15 years is not warranted by the

remote chance that a file may be reopened, especially in light of imaged/electronic records that will continue to be available. Bengelsdorf Aff. ¶ 6.

7. Very few claims that have been closed for a long period reopen. For instance, during 2012, only 39 workers' compensation claims that were closed prior to the liquidation proceeding commenced in 2003 were reopened, and only four policyholder accounts had environmental or mass tort claims closed prior to the liquidation reopen. The closed claim file boxes to be disposed of as a result of the reduction in the "no activity" period include files for over 528,019 workers' compensation claims closed prior to liquidation and 2,767 environmental/mass tort accounts with files closed prior to liquidation. The 15 year retention period for closed claims with no activity proposed by the Liquidator is quite long. By contrast, in the years prior to 1995 (when the Home suspended its document disposal program in connection with the restructuring transaction), Home had a policy of generally retaining closed claim files for seven years. Bengelsdorf Aff. ¶ 7.

8. The Home's imaged/electronic records available to the Liquidator generally provide sufficient information to reopen a claim even when the original claim file is not available. Where a closed workers' compensation claim file does reopen, for instance, the Liquidator would typically refer to the closed claim file, if available, to identify the claimant, to establish that there was a compensable injury for which the claimant received benefits, and to determine what amounts had been paid on the claim. That basic information is generally available from Home's imaged/electronic records on the liquidation computer system. Bengelsdorf Aff. ¶ 8.

9. The cost of maintaining boxes of closed claim files is significant. Each box in storage with an off-site vendor presently costs approximately \$4.32 in storage charges per year.

The proposed five-year reduction in the “no activity” retention period will permit disposal of approximately 18,000 boxes in 2014, as opposed to approximately 1,250 boxes in 2014 and additional boxes in each succeeding year under the present standard. Disposal of these boxes in 2014 instead of over the next five years will save the Home estate approximately \$260,000 in storage charges. Bengelsdorf Aff. ¶ 9.

10. In the circumstances, the Liquidator has concluded that claim files for workers’ compensation, environmental and mass tort claims that have been closed with no activity for 15 years are no longer useful. The Liquidator accordingly recommends and requests approval pursuant to RSA 402-C:50 to dispose of closed claim file boxes with no activity for 15 years (for environmental, mass tort and workers’ compensation claims) or 10 years (for other types of claims), unless they are involved in a pending proof of claim or pending or anticipated litigation, based upon review of the existing inventories.<sup>1</sup> Bengelsdorf Aff. ¶ 10.

11. The Liquidator also recommends that closed claim files involved with a proof of claim be disposed of once a year has passed after the claim determination has been approved by the Court because they are no longer useful. The Court has previously approved the disposal of records concerning claim determinations that have been approved for more than a year. Order Approving the Disposal of Certain Records issued May 2, 2011 (approving the disposal of records identified in the fourth document disposal motion, including as described in paragraph 5 of the motion records concerning claim determinations approved by the Court where a year has passed since the approval (copy attached as Exhibit C)). These records include claim files that are closed by the Liquidator in connection with the determination of the proof of claim. The

---

<sup>1</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). The Liquidator will continue to retain any closed claim files that can be identified as concerning the California and Minnesota plaintiffs.

Liquidator's prior motion did not expressly address previously closed claim files that are involved with a proof of claim. However, those files are no longer useful once the proof of claim has been determined. Moreover, the proofs of claim and the notices of determination have been imaged and continue to be available, and as noted in paragraph 8 above, Home's imaged/electronic records generally provide sufficient information to reopen a claim even when the original claim file is not available. In the circumstances, closed claim files involved with a proof of claim that has been determined are no longer useful. The Liquidator accordingly recommends and requests approval pursuant to RSA 402-C:50 to dispose of closed claim files involved in a proof of claim after a year has passed from Court approval of the claim determination.<sup>2</sup> Bengelsdorf Aff. ¶ 11.

12. Canadian Branch records. Home had a Canadian "branch" through which it conducted its operations in Canada. Following issuance of the Order of Liquidation for Home by this Court, Home's Canadian branch was placed in liquidation and Deloitte & Touche was appointed as its liquidator (the "Canadian liquidator") by the Ontario Superior Court of Justice. In 2008, the Canadian liquidator, the Liquidator, and Lombard General Insurance Company of Canada ("Lombard") entered an agreement providing among other things for transfer of certain funds to the Liquidator and for the Liquidator to indemnify Lombard against certain potential claims made within five years of the agreement. This "July 2008 Lombard Agreement" was approved by this Court on August 19, 2008. Bengelsdorf Aff. ¶ 12.

13. In 2008, after the Canadian Liquidator determined all claims filed with him, the Canadian liquidator provided 286 boxes of records to the Liquidator along with a box inventory. The inventory indicates that the boxes contain closed claim files, policy files, reinsurance files,

---

<sup>2</sup> Consistent with the Liquidator's Supplemental Filing Concerning Fourth Motion for Approval of Disposal of Certain Records, the Liquidator will retain such records with respect to companies involved in litigation in California and Minnesota.

accounting and financial files relating to the Canadian branch from the pre- and post-liquidation periods. On December 17, 2008, the Canadian court approved the Canadian liquidator's motion to close the Canadian estate and discharge the Canadian liquidator. The Liquidator has retained the boxes of records provided by the Canadian liquidator since then as a precaution in the event that Lombard called on the five-year indemnity under the July 2008 Lombard Agreement.<sup>3</sup>

Bengelsdorf Aff. ¶ 13.

14. The five year indemnity period has now passed without any claim for indemnity, and the liquidation proceeding for the Home Canadian branch has been closed since 2008. The Liquidator has accordingly concluded that the Canadian Branch records are no longer useful and recommends and requests approval to dispose of them. Bengelsdorf Aff. ¶ 14.

15. Quarterly statements. The Liquidator has identified boxes containing extra copies of Home quarterly financial statements (including 10-Q's) for pre-liquidation periods. The Liquidator has no use for extra copies and recommends and requests approval to dispose of them. Bengelsdorf Aff. ¶ 15.

---

<sup>3</sup> Home's subsidiary US International Reinsurance Company ("USI Re") had a Canadian branch that was merged into Home's Canadian branch in 1996. The records at issue here include some records of the former USI Re Canadian Branch. Those records are of no use to the Liquidator of USI Re, and the Court authorized their disposal in the Order Approving Disposal of Records issued in the USI Re liquidation (No. 03-E-0112) on September 13, 2013. They have been retained as they were intermingled with the records of Home's Canadian Branch as described in the USI Liquidator's Motion for Approval of Disposal of Records at 3 n.2 (No. 03-E-0112, filed July 8, 2013).

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Sixth Motion for Approval of Disposal of Certain Records;
- B. Enter an Order in the form submitted herewith approving disposal of: (1) boxes of closed claim files with no activity for 15 years (for environmental, mass tort and workers' compensation claims) or 10 years (for other types of claims), unless they are involved in a pending proof of claim or pending or anticipated litigation, based upon review of the existing inventories; (2) closed claim files involved in a proof of claim after a year has passed from Court approval of the claim determination, (3) Canadian branch records; and (4) extra quarterly financial statements, including 10-Qs; 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,

JOSEPH A. FOSTER  
ATTORNEY GENERAL

J. Christopher Marshall  
NH Bar ID No. 1619  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, N.H. 03301-6397  
(603) 271-3650



---

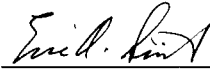
J. David Leslie  
NH Bar ID No. 16859  
Eric A. Smith  
NH Bar ID No. 16952  
Rackemann, Sawyer & Brewster  
160 Federal St.  
Boston, MA 02110  
(617) 542-2300

December 9, 2013



**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Sixth Motion for Approval of Disposal of Certain Records, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 9<sup>th</sup> day of December, 2013, by first class mail, postage prepaid to all persons on the attached service list.



---

Eric A. Smith  
NH Bar ID No. 16952

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

SERVICE LIST

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

Gary S. Lee, Esq.  
James J. DeCristofaro, Esq.  
Kathleen E. Schaaf, Esq.  
Morrison & Foerster  
1290 Avenue of the Americas  
New York, New York 10104-0050

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.  
Schiff Hardin LLP  
6600 Sears Tower  
Chicago, Illinois 60606

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

David H. Simmons, Esq.  
Mary Ann Etzler, Esq.  
Daniel J. O'Malley, Esq.  
deBeaubien, Knight, Simmons, Mantzaris & Neal, LLP  
332 North Magnolia Avenue  
P.O. Box 87  
Orlando, Florida 32801

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

Richard Mancino, Esq.  
Willkie Farr & Gallagher, LLP  
787 Seventh Avenue  
New York, New York 10019

Joseph G. Davis, Esq.  
Willkie Farr & Gallagher, LLP  
1875 K Street, N.W.  
Washington, DC 20006

Albert P. Bedecarre, Esq.  
Quinn Emanuel Urguhart Oliver & Hedges, LLP  
50 California Street, 22<sup>nd</sup> Floor  
San Francisco, California 94111

Jeffrey W. Moss, Esq.  
Morgan Lewis & Bockius, LLP  
225 Franklin Street  
16<sup>th</sup> Floor  
Boston, Massachusetts 02110

Gerald J. Petros, Esq.  
Hinckley, Allen & Snyder LLP  
50 Kennedy Plaza, Suite 1500  
Providence, Rhode Island 02903

Christopher H.M. Carter, Esq.  
Hinckley, Allen & Snyder LLP  
11 South Main Street, Suite 400  
Concord, New Hampshire 03301

Robert M. Horkovich, Esq.  
Robert Y. Chung, Esq.  
Anderson Kill & Olick, P.C.  
1251 Avenue of the Americas  
New York, New York 10020

Andrew B. Livernois, Esq.  
Ransmeier & Spellman, P.C.  
One Capitol Street  
P.O. Box 600  
Concord, New Hampshire 03302-0600

John A. Hubbard  
615 7<sup>th</sup> Avenue South  
Great Falls, Montana 59405

Adebowale O. Osijo  
2015 East Pontiac Way, Suite 209  
Fresno, California 93726-3978

Paul W. Kalish, Esq.  
Ellen M. Farrell, Esq.  
Kristine E. Nelson, Esq.  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2595

Harry L. Bowles  
306 Big Hollow Lane  
Houston, Texas 77042

Gregory T. LoCasale, Esq.  
White and Williams, LLP  
One Liberty Place, Suite 1800  
Philadelphia, Pennsylvania 19103-7395

Kyle A. Forsyth, Esq.  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice  
P.O. Box 875  
Washington, D.C. 20044-0875

W. Daniel Deane, Esq.  
Nixon Peabody LLP  
900 Elm Street, 14<sup>th</sup> Floor  
Manchester, New Hampshire 03861

Joseph C. Tanski, Esq.  
John S. Stadler, Esq.  
Nixon Peabody LLP  
100 Summer Street  
Boston, Massachusetts 02110

Steven J. Lauwers, Esq.  
Rath Young Pignatelli  
One Capital Plaza  
Concord, New Hampshire 03302-1500

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

Docket No. 03-E-0112

In the Matter of the Liquidation of  
US International Reinsurance Company

ORDER APPROVING THE DISPOSAL OF CERTAIN RECORDS

On consideration of the third motion of Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company and U.S. International Reinsurance Company, for an order approving the disposal of records described in the motion and set forth on the attached schedule (the "Records"), and the supporting affidavit of Peter A. Bengelsdorf, it is hereby ORDERED as follows:

1. Disposal of the Records is reasonable, prudent and in the best interests of the liquidation of the Companies;
2. The Liquidator's Third Motion for Approval of Disposal of Certain Records is GRANTED, and the disposal of the Records is APPROVED, *with the exception that any records on the attached schedule which relate to pending or anticipated litigation shall be retained.*

Dated: Aug. 19, 2008

Carol Ann Conboy  
Presiding Justice

## Schedule of Records for Disposal

### 1. General Categories

- a. Aviation business records dated prior to March 2003 including closed claim files;
- b. 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;
- c. Corporate risk management records dated prior to 1995;
- d. Facilities management and real estate records for formerly leased or owned properties dated prior to March 2003;
- e. Management and loan records for Home's former mortgage loan portfolio dated prior to March 2003;
- f. Financial reporting records prior to 1990 other than filed statements;
- g. General Counsel's Office files dated prior to March 2003;
- h. Human resources, corporate security and employee relations records dated prior to March 2003 and held beyond any statutorily required retention period;
- i. Consumer complaints records dated prior to March 2003;
- j. Information technology system documentation for no longer used systems or programs;
- k. Claim investigation records dated prior to March 2003;
- l. Investment records for former investments dated prior to March 2003;
- m. Stock records dated prior to March 2003;
- n. Records of City Insurance Co. - UK Branch dated prior to March 2003 consisting of third party administrator ("TPA") system control reports, duplicate regulatory reports, closed arbitration and commutation files, duplicate internal reporting documents, closed reinsurance collections files, correspondence regarding closed claims, and internal TPA communications;
- o. Reinsurance Department files dated prior to March 2003 other than contract files;
- p. Commercial lines rate, rule, form and statistical regulatory filings dated prior to 1997;
- q. Tax, assessment and surcharge reporting records dated prior to March 2003 and held beyond any statutorily required retention period; and
- r. Underwriting and underwriting related records dated prior to March 2003 other than policy files.

2. Records in the following categories addressed in the previous orders approving disposal of records that are dated after the cutoff date in the Court's prior orders but prior to March 2003:

First Order dated December 16, 2004:

- (g) Correspondence files, general subject files and personal expense account files of employees;
- (h) State files regarding residual property markets and FAIR (Fair Access to Insurance Requirements) plans;
- (j) Claim response time reports; and
- (k) Catastrophe bulletins and reports.

Second Order dated August 12, 2005:

- (a) Accounting department records;
- (f) Third party administrator records;
- (j) Data processing department reports;
- (p) Treasury department files; and
- (q) Human resource department files.

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

[PROPOSED]

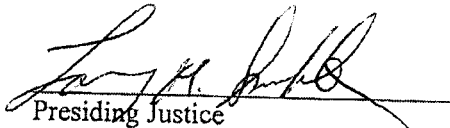
ORDER APPROVING THE DISPOSAL OF CERTAIN RECORDS

On consideration of the fifth motion of Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company, for an order approving the disposal of closed claim files as described in the motion (the "Records"), and the supporting affidavit of Peter A. Bengelsdorf, it is hereby ORDERED as follows:

1. Disposal of the Records is reasonable, prudent and in the best interests of the liquidation of the Companies;
2. The Liquidator's Fifth Motion for Approval of Disposal of Certain Records (Closed Claim Files) is GRANTED, and the disposal of the Records is APPROVED.
3. The Liquidator is authorized to dispose of boxes of closed claims files that are determined to be eligible for disposal (as to the time frames specified in Schedule ¶ 1(b) of the August 19, 2008 Order and as not concerning a proof of claim or pending or anticipated litigation) based on review of existing box inventories, without review and re-inventorying of the boxes.

*Approved*  
So Ordered.

Dated: 11/10/11

  
Presiding Justice



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

Docket No. 03-E-0112

In the Matter of the Liquidation of  
US International Reinsurance Company

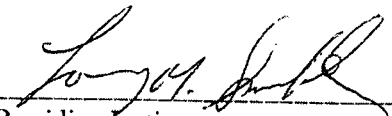
**ORDER APPROVING THE DISPOSAL OF CERTAIN RECORDS**

On consideration of the fourth motion of Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company and U.S. International Reinsurance Company, for an order approving the disposal of records described in the motion and set forth on the attached schedule (the "Records"), and the supporting affidavit of Peter A. Bengelsdorf, it is hereby ORDERED as follows:

1. Disposal of the Records is reasonable, prudent and in the best interests of the liquidation of the Companies;
2. The Liquidator's Fourth Motion for Approval of Disposal of Certain Records is GRANTED, and the disposal of the Records is APPROVED, with the exception that any records which relate to the pending or anticipated litigation shall be retained.

*APPROVED*  
So Ordered.

Dated: 5/2/11

  
\_\_\_\_\_  
Presiding Justice