THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. **SUPERIOR COURT**

Docket No. 217-2003-EQ-00106

In the Matter of the Liquidation of
The Home Insurance Company

LIQUIDATOR'S MOTION FOR APPROVAL OF THIRD INTERIM DISTRIBUTION TO CLAIMANTS WITH ALLOWED CLASS II CLAIMS

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves for approval of a third interim distribution to claimants with allowed Class II claims. As reasons therefor, the Liquidator states:

Introduction

1. The Liquidator's principal goals in this liquidation are to determine claims and collect assets for the ultimate purpose of distributing assets to the creditors of Home. While there are more claims to determine and assets to collect, the Liquidator believes that it is presently reasonable to make a third interim distribution of five (5) percent on Class II claims that have been allowed by the Court. This third interim distribution would bring the total interim distribution percentage to thirty (30) percent. Such a distribution would permit creditors with allowed policy-related priority claims to receive a percentage payment of their claims while reasonably reserving assets to provide for future, equivalent distributions to claimants whose claims have not yet been addressed. The Liquidator accordingly moves for approval of the proposed third interim distribution pursuant to RSA 402-C:46, I, subject, however, to receipt of a waiver of priority claims from the United States as to that distribution. Affidavit of Peter A.

Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Third Interim Distribution to Claimants with Allowed Class II Claims ("Bengelsdorf Aff.") ¶ 2.

Background Regarding Home and the Liquidation

2. Home is a New Hampshire domiciled insurance company incorporated in 1973, although its predecessor corporations were established as long ago as 1853. Home and its subsidiaries (most of which were merged into Home in 1995) wrote insurance and reinsurance in all states and some territories of the United States, as well as in Canada, the United Kingdom, Bermuda and Hong Kong. Home and its subsidiaries generally stopped writing personal lines business in the early 1990's, and they stopped writing all business, including commercial lines (subject to certain personal lines mandatory renewal requirements), in 1995. Bengelsdorf Aff. ¶ 3.

3. By Order of Liquidation entered June 13, 2003, the Court declared Home insolvent and appointed the Insurance Commissioner as Liquidator to liquidate the company pursuant to the Insurers Rehabilitation and Liquidation Act, RSA 402-C ("Act"). Bengelsdorf Aff. ¶ 4.

4. The Liquidator is charged with (a) marshaling and liquidating the assets of Home; (b) investigating and evaluating claims to determine the liabilities of Home and make recommendations for allowance to the Court; and (c) with Court approval, distributing assets to the policyholders, insureds, third party claimants and other creditors of the Home estate (collectively, "claimants"), all in accordance with the provisions of the Act. See RSA 402-C:25, :38, :41, :45, :46. Bengelsdorf Aff. ¶ 5.

5. As described in the Liquidator's reports, the Liquidator has been investigating, negotiating and determining claims and filing reports of claims and recommendations with the

Court. As of June 30, 2018, the Liquidator has presented and the Court has approved claim recommendations, including settlements, for 18,924 Class II claim determinations with a total allowed amount of approximately $2.61 billion. This represents an increase of 2,060 determinations with an allowed amount of $485 million from the 16,864 Class II determinations and $2.125 billion Class II allowances as of June 30, 2015 referred to in the motion for approval of the second interim distribution. (The Court-approved claim determinations for all priority classes as of June 30, 2018 totaled 23,727 claim determinations with a total allowed amount of approximately $2.97 billion.) Bengelsdorf Aff. ¶ 6.

6. The Liquidator has also been collecting assets, in particular reinsurance. As a result of these efforts, the Liquidator has approximately $913 million in unrestricted liquid assets (net of liabilities for interim distributions not paid in cash) under his control as of June 30, 2018. Bengelsdorf Aff. ¶ 7.

7. With Court approval, the Liquidator has made eleven Class II early access distributions to insurance guaranty associations totaling approximately $256 million as of June 30, 2018.[1] As described in the motions for approval of the eleven early access distributions, these distributions are subject to "claw back" agreements required by RSA 402-C:29, III, under which the guaranty associations will return early access distributions if necessary to pay claims of claimants with claims in the same or a higher priority class. Certain states took control of special deposits made by Home as a condition of doing business in order to secure its obligations to certain creditors in those states. Those deposits with interest now total approximately $56 million, which the Liquidator is setting off against claims of guaranty associations in those states. Bengelsdorf Aff. ¶ 8.

[1] This total is the amount distributed by the Liquidator after application of the deductions and caps provided for in the orders approving the early access distributions.

8. With Court approval, the Liquidator has also made two interim distributions totaling 25% on allowed Class II claims. On February 13, 2012, the Liquidator moved for approval of an initial interim distribution of 15%. The Court approved the initial interim distribution in an Order issued March 13, 2012, as amended July 2, 2012 ("First Distribution Order"). On September 28, 2015, the Liquidator moved for approval of a second interim distribution of 10%. The Court approved the second interim distribution in an Order issued November 16, 2015, as amended March 7, 2016 ("Second Distribution Order"). The First and Second Distribution Orders provide that the Liquidator is to make these distributions to subsequently allowed Class II claims after each December 31 and June 30. Bengelsdorf Aff. ¶ 9.

9. Both the First and Second Distribution Orders provide that the distributions are subject to receipt of a waiver of federal priority claims from the United States, and the Liquidator promptly requested such waivers from the United States Department of Justice ("US DOJ"). As described in the Liquidator's reports, the United States provided a waiver with respect to the first interim distribution on November 5, 2014 and a waiver with respect to the second interim distribution on July 18, 2016. Bengelsdorf Aff. ¶ 10.

10. As of June 30, 2018, the Liquidator has made a total of $493.1 million in first and second interim distributions to non-guaranty association claimants with allowed Class II claims (including payments into escrow on one claim). In accordance with the Orders, the Liquidator has also deemed $103 million of the early access distributions to guaranty associations to be distributions on allowed Class II claims that are no longer subject to "claw back." Bengelsdorf Aff. ¶ 11.

11. The Liquidator now believes that sufficient assets have been collected and sufficient claims determined to warrant making a third interim distribution on allowed Class II claims. Bengelsdorf Aff. ¶ 12.

The Statutory Framework for Distributions

12. The Act provides that:

> Under the direction of the court, the liquidator shall pay dividends in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.

RSA 402-C:46, I. Any distribution thus must satisfy two basic conditions. First, the distribution must assure "the proper recognition of priorities." Second, it must assure a "reasonable balance" between paying money to known creditors (the "expeditious completion of the liquidation") and protecting the interests of claimants whose claims have not been resolved (the "unliquidated and undetermined claims").

13. To assure "proper recognition of priorities," a distribution must comply with the priority provision of the Act, RSA 402-C:44. That statute provides in pertinent part that:

> Subject to the $50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class.

RSA 402-C:44.[2] Any distribution must thus assure that (1) all claims in each successive class will be paid in full (or adequate funds retained) before any payment is made to the next succeeding class, and (2) all claims within a class will be treated equally.

14. To assure a "reasonable balance" between completion of the liquidation and protection of undetermined claims, any distribution must both pay funds to those with allowed claims and protect those with claims that have not yet progressed through the claim

[2] The $50 deductible does not apply to claims of guaranty associations. RSA 402-C:44.

determination and allowance process of RSA 402-C:41 and 45. That "protection" can only be achieved by reserving funds for unresolved claims so that they may be treated equally with others in the same priority class once they are allowed.

The Proposed Third Interim Distribution

15. The Liquidator seeks approval to make a third interim distribution of 5% on allowed and subsequently allowed Class II claims. Together with the previously approved interim distributions totaling 25%, this would result in a total proposed interim distribution of 30%. As with the previous interim distributions, the Liquidator bases his request on the assets and amounts that may be credited against claims, the projected Class I expenses of liquidation, and the estimated unpaid Class II liabilities. Each of these elements is addressed below. Bengelsdorf Aff. ¶ 13.

16. Assets. The Liquidator believes it is reasonable and prudent to base an interim distribution on assets held by the Liquidator and amounts that may be credited against claims. As of June 30, 2018, these consist of $913 million of unrestricted liquid assets (net of liabilities for interim distribution not paid in cash at that date) held by the Liquidator, the $493 million previously distributed to non-guaranty association claimants as the previous interim distributions, the $256 million in early access distributions previously paid to guaranty associations, and the $56 million in special deposits under the control of certain states. A total of $1.718 billion is thus available to the Liquidator for potential distribution to claimants or, in the case of prior distributions and deposits, to be applied by the Liquidator against the claims of claimants. Bengelsdorf Aff. ¶ 14.

17. While the Liquidator will collect reinsurance in the future, the Liquidator believes it is not reasonable or prudent at this point to base a distribution on potential collections because

of the significant uncertainties over future recoveries. Those uncertainties include, but are not limited to: (a) the timing of any collection, which depends on the timing of the determination of the underlying loss and the billing and payment of reinsurance or on the willingness of reinsurers to agree to a voluntary commutation of reinsurance; (b) the present value discount involved in any commutation; (c) the offsets available to reinsurers; (d) potential defenses to reinsurance coverage for particular claims or types of claims; (e) potential changes in the law; and (f) the possibility that reinsurers may themselves become insolvent or subject to restrictions on payments. The Liquidator will consider the potential for further interim distributions in the future, and assets subsequently collected will be considered at that time. Bengelsdorf Aff. ¶ 15.

18. The Liquidator similarly believes it would not be reasonable or prudent at this point to base a distribution on future investment returns. Future income on investments is subject to significant uncertainties, including, but not limited to, the timing and magnitude of interest rate increases by the United States Federal Reserve and the amount and timing of distributions and liquidation expenses. Bengelsdorf Aff. ¶ 16.

19. Liquidation Expenses. Any potential distribution must reflect a reserve for the Liquidator's projected Class I administration costs and the Class I claims of guaranty associations. The priority statute requires that adequate funds be retained to pay all Class I costs before any distribution may be made to succeeding priority classes. RSA 402-C:44; see In the Matter of the Liquidation of The Home Ins. Co., 154 N.H. 472, 482 (2006). The Liquidator's expenses are designated as Class I administration costs in RSA 402-C:44, I, while the guaranty associations' claim expenses in handling claims are accorded the same priority by RSA 404-B:11, II. The Liquidator conservatively estimates that the Class I costs, including both the expenses of the Home liquidation and the guaranty associations' Class I claim expenses, will

total approximately $234 million over the remaining life of the Home estate ($119 million for the liquidation and $115 million for the guaranty associations). Bengelsdorf Aff. ¶ 17.

20. Unpaid Class II Liabilities of Home. In order to assure equal treatment for all Class II claimants, including those with unresolved claims, any potential distribution must provide for all Class II obligations of Home even though some have not yet been determined. See RSA 402-C:46, I. The evaluation of Home's potential Class II liabilities is a complex and challenging task requiring significant expertise, and the Liquidator had accordingly engaged the internationally-known Milliman actuarial consulting firm to estimate the unpaid direct obligations of Home, that is, the total unpaid obligations of Home with respect to its insurance policies, in connection with the first and second interim distributions. As described in the motion for approval of the second interim distribution, Milliman provided the Liquidator with its June 18, 2015 Roll-Forward Analysis of Unpaid Loss and ALAE as of June 13, 2003 and December 31, 2014 (the "Milliman Report"). The Milliman Report estimated Home's unpaid loss and allocated loss adjustment expense ("ALAE") and mapped those projected liabilities to the applicable priority classes. A copy of the Executive Summary ("Executive Summary") of the Milliman Report is attached as Exhibit A to the Bengelsdorf Affidavit.[3] Bengelsdorf Aff. ¶ 18.

21. The Executive Summary set forth Milliman's "actuarial Central Estimate" of Home's unpaid Class II liabilities as of December 31, 2014. The actuarial Central Estimate is an estimate of the expected value over a range of reasonably possible outcomes and is most properly viewed as the average of a wide range of possible outcomes. Executive Summary at 4

[3] "ALAE" as used in the Milliman Report includes both expenses to defend an insured pursuant to defense obligations in a Home insurance policy, which are generally Class II, and expenses to evaluate and defend against claims for coverage by a policyholder or insured, which are Class I. The estimated unpaid Class I ALAE (see Executive Summary, Summary by Class Exhibit, Page 1) is included in the estimated liquidation expenses discussed in paragraph 19 above.

and 8. Milliman's actuarial Central Estimate of Class II unpaid loss and ALAE was $4.034 billion. See Executive Summary, Exhibit 1 and Summary by Class Exhibit, Page 2. Bengelsdorf Aff. ¶ 19.

22. In addition to the actuarial Central Estimate, the Executive Summary included a confidence level table with estimates of the unpaid Class II loss and ALAE at higher confidence levels. Executive Summary, Exhibit 1. This reflects the possibility that Home's Class II liabilities may exceed the actuarial Central Estimate, which is a point in a range of reasonably possible outcomes. The estimate at each higher confidence level is intended to encompass approximately that percentage of the possible outcomes, although there is a range of remaining possible outcomes above each estimate. The results at the higher confidence levels broadly illustrate the potential variability of outcomes, but are not precise, and the range of potential variability is greater above the Central Estimate than below it. See Executive Summary at 5 and 8. Bengelsdorf Aff. ¶ 20.

23. As noted above, the priority statute requires that all claimants in a priority class receive equal treatment, RSA 402-C:44, while the distribution statute requires that any distribution protect the interests of claimants with unresolved claims. RSA 402-C:46, I. To provide for unresolved claims, the Liquidator used estimates of Home's Class II liabilities at the 95% confidence level in setting the earlier interim distributions. In light of the passage of time and the shrinking body of unresolved claims, the Liquidator proposes to use the estimate at the 90% confidence level for the third interim distribution. At this point in the liquidation, the Liquidator believes that the 90% confidence level encompasses a reasonable and prudent percentage of potential outcomes, although there is still the possibility of an outcome that exceeds it, perhaps significantly. Milliman's 90% confidence level estimate of Home's unpaid

Class II liabilities was \$4.970 billion. (The 95% confidence level estimate was \$5.405 billion.) Executive Summary, Exhibit 1. Bengelsdorf Aff. ¶ 21.

24. Allowed Class II Claims. As of June 30, 2018, the Court had allowed Class II claims, including settlements, totaling approximately \$2.61 billion. Of that total, approximately \$516 million are allowances for claims of the guaranty associations and \$2.094 billion are allowances for claims of policyholders, insureds, and third party claimants or their assignees. Bengelsdorf Aff. ¶ 22.

25. The Distribution Percentage. Based on the foregoing, and after careful review and consideration of the circumstances, the Liquidator seeks approval to make a third interim distribution of 5% for a total interim distribution of 30%. The assets (\$1.718 billion) less the projected Class I expenses (\$234 million) all divided by the estimated Class II liabilities at the 90% confidence level (\$4.970 billion) produces a potential distribution percentage of 29.9%, which after subtracting the previous interim distributions totaling 25% results in a potential third interim distribution of 4.9% which the Liquidator has rounded to 5%. The calculation of the third interim distribution percentage is set forth on Exhibit 1. Bengelsdorf Aff. ¶ 23.

26. The Liquidator believes the proposed third interim distribution percentage is consistent with the mandate of RSA 402-C:46, I, to protect claimants with undetermined claims. As discussed above, the Liquidator is using a 90% confidence level to address the risk that the ultimate Class II liabilities may exceed estimates. There is also the possibility, with respect to a Home policy with aggregate limits, that the individual claims allowed respecting that policy could over time exceed those limits. In such a case, claim allowances related to that policy would then need to be reduced, as required by RSA 402-C:40, IV, on a pro rata basis to adjust the total of such allowances to the aggregate policy limits. This presents a potential risk, for

such policies, that the allowed amounts on which a distribution is based might later be reduced. This further supports taking a conservative approach. However, the Liquidator is tracking claims against policies, and there presently are only a small number of policies that the Liquidator believes might be affected. Further, the allowances involving policies with aggregate limits to date are almost all settlement agreements with policyholders that include indemnities against third party claims. At the proposed interim distribution percentage, these agreements present little credit risk (as to the indemnities) because the Liquidator may set off against future distribution amounts to such a policyholder any unsatisfied indemnity obligation. The Liquidator will further address this aggregate limits issue, if warranted, in any future application to increase the interim distribution percentage. Bengelsdorf Aff. ¶ 24.

27. The 5% third interim distribution percentage will result in an additional distribution of approximately $130 million. However, an actual cash distribution will only be made to the holders (the claimants or their assignees) of the $2.094 billion of allowed non-guaranty association Class II claims, who will receive approximately $104 million. The guaranty associations have already received early access distributions at a percentage in excess of the 30% total proposed interim distributions, so they will not receive any additional distributions. Instead, an additional $26 million of the early access distributions paid to guaranty associations will be deemed permanent distributions no longer subject to claw back. Bengelsdorf Aff. ¶ 25.

28. Since the interim distribution percentage reflects the Milliman estimate of all Class II liabilities, the Liquidator also seeks approval to make a 5% third interim distribution on Class II claims that are allowed after the third interim distribution is approved. The Liquidator will make the third interim distribution to all claimants with allowed Class II claims as of the last

day of the month in which a waiver of federal priority claims is received. The Liquidator will make the third interim distribution after that "record date." The Liquidator will make the interim distribution on subsequently allowed claims after each December 31 and June 30 with respect to claims allowed during the preceding six months. Bengelsdorf Aff. ¶ 26.

29. In accordance with RSA 402-C:44, the first $50 of the allowed amount on each claim will be deducted from the claim (except for guaranty association claims), and the distribution will be calculated by applying the third interim distribution percentage to the remaining amount. Bengelsdorf Aff. ¶ 27.

30. In order to avoid sending distribution checks to addresses that are out-of-date, the Liquidator will follow the procedure for confirming the name and address of the payee described in the Liquidator's Report Regarding Process for Interim Distribution dated November 12, 2014. In brief, unless the Liquidator has recently confirmed the name and address in connection with a prior interim distribution, the Liquidator will request confirmation by email or letter to the claimant or, where applicable, its assignee at the most recent address reflected in the Home liquidation's records. If the claimant or assignee does not respond in writing within 14 days, liquidation staff will follow up by telephone (if the liquidation's records include a telephone number) or conduct an internet search in an effort to identify a current address for a follow up letter. If the claimant or assignee responds in writing and confirms the payee and an address, the Liquidator will issue the check and mail it to the claimant or assignee at that address. If the Liquidator does not receive a written response, the Liquidator will not for the moment issue a check. Bengelsdorf Aff. ¶ 28.

United States Waiver

31. The US DOJ has asserted that the claim filing deadline does not apply to claims by the Federal Government in light of the Federal Priority Statute, 31 U.S.C. § 3713, so that it can at any time file claims entitled to payment by the Liquidator on pain of potential personal liability under 31 U.S.C. § 3713(b). See Ruthardt v. United States, 303 F.3d 375, 384-386 (1st Cir. 2002), cert. denied, 538 U.S. 1031 (2003). Bengelsdorf Aff. ¶ 29.

32. In light of this potential exposure of the Liquidator to the United States for making distributions that reduce the claim-paying ability of the estate, the proposed third interim distribution will be subject to receipt of a waiver of claims by the United States in a form acceptable to the Liquidator. The Liquidator believes it would not be reasonable and prudent to make an interim distribution without a waiver of federal priority claims.[4] Bengelsdorf Aff. ¶ 30.

33. The previous interim distributions were subject to receipt of such a waiver (see First Distribution Order ¶ 8, Second Distribution Order ¶ 7), and the Liquidator ultimately obtained waivers from the US DOJ with respect to those distributions. As reported in the Liquidator's reports, the Liquidator has been working with the US DOJ in an effort to resolve federal claims and priority matters in accordance with the Release Agreement described in the Liquidator's Report Regarding Release Agreement With United States filed November 6, 2014. Active discussions are ongoing. While it appears that the known actual claims identified by the US DOJ to date can be addressed with existing assets, the potential assertion of personal liability to the United States on account of unknown "claims" makes a waiver of federal priority claims a

[4] The Liquidator has made certain early access distributions without such a waiver in light of the statutory claw back agreements with guaranty associations discussed above. The interim distribution proposed here, however, will not be subject to such a claw back agreement. Further, even if there were a basis for attempting to retrieve distributed amounts from private claimants, such an effort would be impractical. The interim distribution will be paid to hundreds of private claimants.

necessary condition of the proposed distribution. The Liquidator will request a waiver from the US DOJ promptly after approval of the third interim distribution by the Court. Bengelsdorf Aff. ¶ 31.

WHEREFORE, the Liquidator requests that the Court:

A. Grant this Motion for Approval of Third Interim Distribution to Claimants with Allowed Class II Claims;

B. Enter an order in the form submitted herewith approving the third interim distribution of 5% to creditors with allowed Class II claims and subsequently allowed Class II claims, subject to the receipt of a waiver of United States priority claims in a form acceptable to the Liquidator; and

C. Grant such other and further relief as justice may require.

Respectfully submitted,

JOHN R. ELIAS, INSURANCE COMMISSIONER OF THE STATE OF NEW HAMPSHIRE, SOLELY AS LIQUIDATOR OF THE HOME INSURANCE COMPANY,

By his attorneys,

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September 27, 2018

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Third Interim Distribution to Claimants with Allowed Class II Claims, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 27th day of September, 2018, by first class mail, postage prepaid to all persons on the attached service list.

Eric A. Smith
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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

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Exhibit 1

Third Interim Distribution
($ in millions)

A. Assets (at 6/30/18)

Unrestricted liquid assets (net of liabilities for interim distributions not paid in cash at 6/30/18)	$913
Prior Interim Distributions (25%) (excluding GAs)	493
Assets held by states	56
Early access to GAs (including interim distribution)	256
Total:	$1,718

B. Class I Unpaid and Estimated Future Administration Costs

Estimated Liquidator administration costs	$119
Estimated GA Class I costs	115
Total:	$234

C. Class II Unpaid Policy Related Claims

Milliman estimate at 90% confidence level: $4,970

D. [(Assets (A) – Class I Expenses (B)) ÷ Class II Claims (C)] – 25% Prior Distributions = Third Distribution %

(1,718 – 234) ÷ 4,970 = 29.9% - 25% = 4.9% round to 5% Third Interim Distribution

E. Allowed Class II Claims

At 6/30/18 $2,610 (including $516 GA claims)

F. Distribution Amounts and Remaining Assets after Initial Distribution

Amount of 3rd Interim Distribution	2,610 x 5% = 130
Less GA Portion (already in early access)	516 x 5% = 26
Amount Paid Out	$ 104

Unrestricted Liquid Assets	913
Less 3rd Interim Distribution	104
Remaining after 3rd Distribution	$ 809

(additional distribution will follow as additional claims are allowed)