

**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 NINTH MOTION FOR  
APPROVAL OF RETENTION AND DISPOSAL OF CERTAIN RECORDS**

David J. Bettencourt, 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 retention and disposal of records of Home and the Home liquidation as described below. As reasons therefor, the Liquidator states as follows:

**Background**

1. The Liquidator previously filed eight motions for approval of disposal of certain records on November 24, 2004, July 15, 2005, July 3, 2008, February 16, 2011, July 29, 2011, December 10, 2013, June 18, 2015, and September 26, 2017, as well as a motion for approval to dispose of imaged records filed in January, 2005 (the “Imaging Motion”). As set forth in those motions, 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 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 Ninth Motion for Approval of Retention and Disposal of Certain Records (“Bengelsdorf Aff.”)

¶ 2.

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

**Disposition of Records During and After Termination of Liquidation. -**

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 and the Liquidator's motions, the Court has authorized disposal of various categories of records by Orders Approving the Disposal of Certain Records entered December 16, 2004, August 12, 2005, August 19, 2008, May 2, 2011, November 10, 2011, January 30, 2014, June 24, 2015, and October 17, 2017, and the Order Approving Disposal of Imaged Records entered February 17, 2005. The Order Approving Disposal of Imaged Records provided that the Liquidator may dispose of paper records that would otherwise be retained where imaged copies are stored on Home's computer system. Pursuant to these orders, liquidation staff has disposed of over 100,000 boxes of documents stored at Iron Mountain through June 30, 2023. Bengelsdorf Aff. ¶ 3.

4. Nonetheless, approximately 55,000 boxes remain in storage with off-site vendors (principally Iron Mountain), in addition to a large number of boxes stored in the basement of the building at 61 Broadway, New York, that houses the principal liquidation offices. The annual cost of storing the records with off-site vendors is approximately \$267,300 per year, and disposal of even part of the boxes in off-site storage would result in significant savings. Bengelsdorf Aff. ¶ 4.

## **Current Status**

5. The liquidation is now starting to move toward closure. Most importantly for purposes of this motion, the Claim Amendment Deadline of January 26, 2023 was established, the Liquidator gave notice of that deadline as directed by the Court, and the Claim Amendment Deadline has now passed. Accordingly, no further claims may be submitted in the Home liquidation. Bengelsdorf Aff. ¶ 5.

6. Since the Claim Amendment Deadline, liquidation staff has reviewed all of the proofs of claim and amendments submitted by the deadline to identify the policyholders and other claimants and the policies and other contracts that are the subject of the remaining open proofs of claim. Bengelsdorf Aff. ¶ 6.

7. Liquidation staff has identified those records stored at Iron Mountain, other storage vendors and in the basement of 61 Broadway which are relevant to the remaining open proofs of claim. These records include policies and other contracts, closed claim files and other records that have a bearing on the claims asserted in the open proofs of claim. Earlier document disposal orders required the Liquidator to retain documents concerning pending disputes or anticipated litigation. Those documents had previously been identified, and those records will also continue to be retained. Bengelsdorf Aff. ¶ 7.

8. Since no further claims can be submitted, records which do not pertain to an open proof of claim, a pending dispute or anticipated litigation, potential reinsurance collection or the ongoing administration of the estate are no longer useful. Bengelsdorf Aff. ¶ 8.

9. Liquidation staff has identified the categories of documents that need to be retained for purposes of bringing the liquidation to closure. The records that will continue to be useful are:

- a. Records concerning policies and reinsurance contracts and claims under policies and reinsurance contracts that are necessary for the determination of the remaining open proofs of claim<sup>1</sup>;
- b. Records concerning policies and reinsurance contracts and claims under policies and reinsurance contracts that are necessary for the resolution of a pending dispute or anticipated litigation;
- c. Records concerning reinsurance contracts and the underlying claims that are necessary for claims by the Liquidator based upon past claim determinations or the determination of remaining open proofs of claim;
- d. Records of claim determinations and allowances in the liquidation and other records necessary for making distributions to persons with allowed claims in the estate;
- e. Financial records of the liquidation necessary for the continued administration of the estate, including records necessary for the preparation of final tax returns for the Home liquidation; and
- f. Records necessary for the ongoing administration of the estate, including but not limited to vendor and employment contracts, personnel records, and records concerning assets of the estate and their management.

Bengelsdorf Aff. ¶ 9.

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<sup>1</sup> Certain insurers asserting contribution claims have requested that the Liquidator retain records concerning claims asserted by specified policyholders. The Liquidator will continue to retain such records where the insurers have filed proofs of claim asserting contribution claims respecting those policyholders by the Claim Amendment Deadline. If no such proof of claim asserting a contribution claim was filed respecting those policyholders, the Liquidator will no longer retain the records.

10. Records outside the categories listed in paragraph 9 are no longer useful and should be disposed of. Many of these records were being retained on a precautionary basis because of claims that might be filed. Now that the Claim Amendment Deadline has passed, there is no need to retain such records because no new claims can be filed. Similarly, now that the liquidation is moving toward closure, there is no need to retain historical records concerning Home or the liquidation that are not necessary for the ongoing administration of the liquidation. The Liquidator accordingly requests approval to dispose of all records outside the categories listed in paragraph 9. The records to be disposed of include, but are not limited to, the following:

- a. Policy and Underwriting Department records concerning policies or other matters that are not necessary for the determination of an open proof of claim or the resolution of a pending dispute or anticipated litigation;
- b. Claims Department records concerning claims or other matters that are not necessary for the determination of an open proof of claim or the resolution of a pending dispute or anticipated litigation;
- c. Reinsurance Department records concerning reinsurance treaties, certificates and other contracts issued by Home or other matters that are not necessary for the determination of an open proof of claim or pending dispute or anticipated litigation, as well as reinsurance treaties, certificates and other contracts issued to Home that will not be necessary for claims by the Liquidator;
- d. Finance Department records not necessary for the continued administration of the estate;
- e. Actuarial Department records not necessary for the continued administration of the estate;

- f. Legal/General Counsel's Office files not necessary for the continued administration of the estate;
- g. Records of the Human Resource Department not necessary for the continued administration of the estate;
- h. Records of the Information Technology Department not necessary for the continued administration of the estate; and
- i. Records of other Home Departments not necessary for the continued administration of the estate.

Bengelsdorf Aff. ¶ 10.

11. Under the Liquidator's contract with Iron Mountain, it presently costs an average of approximately \$4.86 per year to store a box. Accordingly, disposal of the 55,000 boxes at Iron Mountain described above will eventually save the Home estate approximately \$267,300 per year. Bengelsdorf Aff. ¶ 11.

12. Liquidation staff is identifying the boxes of records that are to be retained as described in paragraph 9 and the boxes of other records that are no longer useful based upon their knowledge of Home's records, including those concerning claims that are the subject of open proofs of claim or pending disputes or anticipated litigation, and review of existing inventories of the contents of boxes in storage. Bengelsdorf Aff. ¶ 12.

13. In 2005, the Liquidator implemented the document disposal procedures described on Exhibit F to the Liquidator's Eighteen Report (September 15, 2005). Those procedures called for a sampling of the boxes to be disposed of, including the recall of a number of selected boxes from off-site storage for review by liquidation staff, and the potential recall of additional boxes. In light of the reduced staff, the significant staff time required for such sampling and review, the

cost of recalling boxes from storage, and the greater familiarity with the Home and liquidation records obtained over the course of the liquidation, the Liquidator will no longer apply the sampling process. Bengelsdorf Aff. ¶ 13.

14. Recommendation. The Liquidator has concluded that the records described in paragraph 9 above should be retained and that other records are not useful. The Liquidator accordingly recommends and requests approval to retain the records described in paragraph 9 and dispose of other records pursuant to RSA 402-C:50. Bengelsdorf Aff. ¶ 14.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Ninth Motion for Approval of Retention and Disposal of Certain Records;
- B. Enter an Order in the form submitted herewith directing the Liquidator to retain the records described in paragraph 9 above and approving the disposal of other records; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

DAVID J. BETTENCOURT,  
INSURANCE COMMISSIONER OF THE  
STATE OF NEW HAMPSHIRE, SOLELY  
AS LIQUIDATOR OF THE HOME  
INSURANCE COMPANY,

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November 13, 2023

**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Ninth Motion for Approval of Retention and Disposal of Certain Records, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 13<sup>th</sup> day of November, 2023, by first class mail, postage prepaid to all persons on the attached service list.

/s/ Eric A. Smith  
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