

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**

**LIQUIDATOR'S MOTION FOR APPROVAL
OF ASSUMPTION REINSURANCE AGREEMENT**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("The Home"), by his attorneys, the Office of the Attorney General, hereby moves that the Court enter an order approving an Assumption Reinsurance Agreement between Lombard General Insurance Company of Canada ("Lombard"), Fairfax Financial Holdings Limited ("Fairfax"), Deloitte & Touche Inc., in its capacity as Canadian Liquidator of the insurance business in Canada of The Home ("Canadian Liquidator"), dated October 24, 2003 (the "Assumption Agreement") and the Liquidator concerning The Home's Canadian insurance business. As reasons therefor, the Liquidator states as follows:

1. The Home had a branch operation that carried on an insurance business in Canada since 1902 ("Home Canada"). Home Canada stopped issuing policies in 1997 and has run-off its existing business since that time. The Home secured its policy obligations in Canada with special deposits held in trust in Canada. As of March 31, 2003, those deposits totaled approximately Cdn\$51 million. These deposits substantially exceed the insurance liabilities of Home Canada as estimated by Home Canada's independent actuary. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Assumption Reinsurance Agreement ("Bengelsdorf Aff.") ¶ 2.

2. By a Winding-Up Order entered June 26, 2003, the Ontario Superior Court of Justice (“Canadian Court”) ordered that the insurance business of Home Canada be wound-up. The Canadian Court also appointed the Canadian Liquidator as provisional liquidator of the insurance business of Home Canada, including the assets of The Home in Canada, by an Appointment Order entered that same day. Bengelsdorf Aff. ¶ 3.

3. As reported in the Liquidator’s second, third and fourth reports, representatives of the Canadian Liquidator, a Canadian insurance company (Lombard), and representatives of the Liquidator, have negotiated an assumption reinsurance agreement by which the Canadian insurance obligations of The Home will be assumed by Lombard for a payment from Canadian assets. Bengelsdorf Aff. ¶ 4.

4. The Canadian Liquidator, Lombard, Fairfax (Lombard’s parent), and the Liquidator have now agreed on the terms of the Assumption Agreement, subject to approval by this Court and the Canadian Court, as well as the Canadian Minister of Finance. A copy of the Assumption Agreement is attached as Exhibit A. The Canadian Court approved the Assumption Agreement on November 18, 2003. Bengelsdorf Aff. ¶ 5.

5. The Assumption Agreement provides for (a) the transfer to Lombard by the Canadian Liquidator of all Home Canada’s interest in its policies and reinsurance of those policies; (b) the assumption by Lombard of Home Canada’s liabilities under Home Canada policies, the substitution of Lombard for Home Canada and The Home in the performance of obligations under Home Canada policies, and the issuance by Lombard of assumption certificates to certain Home Canada policyholders, (c) payment to Lombard by the Canadian Liquidator of Cdn\$15 million, subject to adjustment in 2008 to reflect

actual payments through and an actuarial valuation of Home Canada insurance liabilities as of December 31, 2007, (d) the guarantee by Fairfax of Lombard's performance of its obligations under the Assumption Agreement, and (e) the collection by the Liquidator of reinsurance amounts owing on account of the Home Canada policies and payment of those amounts to Lombard. Other terms of the transaction, including representations and warranties and indemnification provisions, are set forth in the Assumption Agreement. Bengelsdorf Aff. ¶ 6.

6. The amount to be paid to Lombard for its assumption of Home Canada's policy obligations is based on an independent actuarial analysis of Home Canada's policy liabilities as of December 31, 2002, subject to adjustment to reflect actual experience through 2007. Of the \$15 million payment, \$8 million will be fully earned by Lombard immediately. The remaining \$7 million will be subject to adjustment in 2008 based upon an actuarial re-analysis of Home Canada's policy liabilities as of December 31, 2007. At that time, Lombard is to pay the Canadian Liquidator 50% of the difference between \$15 million and the greater of (a) \$8 million and (b) the sum of the actuarial valuation of Home Canada's insurance liabilities as at December 31, 2007, and the amounts of loss and loss adjustment expense paid on account of Home Canada policies from January 1, 2003, through December 31, 2007. The Canadian Liquidator may assign to the Liquidator all its rights and obligations as to this adjustment. Bengelsdorf Aff. ¶ 7.

7. The assets of Home Canada substantially exceed its obligations. The Canadian Liquidator will pay the consideration for Lombard's assumption of Home Canada policy obligations from the assets of Home Canada, including the special deposits. By providing for the transfer of Home Canada's policy liabilities to another

insurer for a sum certain (subject to later downward adjustment), the amount of the excess in Home Canada's assets will be established, and the Canadian Liquidator will be better able to seek approval from the Canadian Court to pay those excess assets over to the Liquidator. Bengelsdorf Aff. ¶ 8.

8. The Liquidator submits that the Assumption Agreement is fair and reasonable and that it is in the best interests of the policyholders and other creditors of The Home. *First*, the Assumption Agreement is for a reasonable consideration in light of an independent actuarial analysis of the Home Canada policy liabilities, especially as it provides for the potential return of part of that consideration based upon actual experience through 2007. *Second*, the Assumption Agreement properly contemplates that policyholders and other claimants under Home Canada policies will be paid in full. This reflects the fact that the special deposits securing those policy obligations exceed the obligations, and that under Canadian law those deposits must be used first to pay the Home Canada policy liabilities. Such a use of the special deposits is consistent with New Hampshire law. See RSA 402-C:60, II ("The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits."); RSA 402-C:61. *Third*, the Assumption Agreement will expedite the determination and payment of excess Home Canada assets by the Canadian Liquidator to the Liquidator, which will benefit the policyholders and other creditors of The Home generally. The Liquidator anticipates that the Canadian Liquidator will assign the rights to the 2008 consideration adjustment to the Liquidator in connection with the

payment of excess assets, all subject to approval by the Canadian Court. See Bengelsdorf Aff. ¶ 9.

WHEREFORE, the Liquidator requests that his motion be granted and that the Court enter an Order in the form submitted herewith approving the Assumption Agreement.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE
COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE, SOLELY IN HIS CAPACITY AS
LIQUIDATOR OF THE HOME INSURANCE
COMPANY,

By his attorneys

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November 19, 2003

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

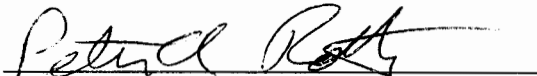
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CERTIFICATE OF SERVICE

I, Peter C.L. Roth, do hereby certify that on November 19, 2003 I served a true copy of the foregoing, upon the attached Service List, by first class mail, postage prepaid.

Dated: November 19, 2003


Peter C.L. Roth

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