

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of  
The Home Insurance Company.

Docket No. 03-E-106

In the Matter of the Liquidation of  
US International Reinsurance Company.

Docket No. 03-E-112

**PARTIALLY ASSENTED TO MOTION FOR  
COURT APPROVAL OF CONTRACT SECURING SERVICES OF  
SPECIAL DEPUTY LIQUIDATOR, PETER BENGELSDORF, AND  
REQUEST FOR EXPEDITED DETERMINATION**

Now comes, Paula T. Rogers, Commissioner of the State of New Hampshire Department of Insurance (the "Liquidator"), by her attorneys, the Office of the Attorney General, in her capacity as Liquidator of The Home Insurance Company and US International Reinsurance Company (together the "Insurers"), pursuant to Orders dated June 13, 2003 (the "Liquidation Orders"), and respectfully moves, on an expedited basis, that the Court approve a contract securing the services of a Special Deputy Liquidator pursuant to RSA 402-C:25, I. In support hereof, the Liquidator respectfully represents as follows:

1. On June 11, 2003 and June 13, 2003, the Liquidator was appointed by this Court to be the Liquidator of the Insurers. An Order of Liquidation for The Home, superseding the June 11, 2003 order, entered on June 13, 2003.

2. Pursuant to RSA 402-C:25, I, the Liquidator is empowered to employ a Special Deputy Liquidator to act for her in all matters concerning the liquidations of the Insurers.
3. The Special Deputy Liquidator is to have all of the powers and immunities of the Liquidator under RSA 402-C, and all of the powers, immunities and protections set forth in the Liquidation Orders. The Special Deputy Liquidator shall serve at the pleasure of the Liquidator in accordance with the terms of the contract attached hereto as Exhibit A.
4. The Liquidator has selected Peter Bengelsdorf, whose usual place of business is 59 Maiden Lane, New York, NY to serve as Special Deputy Liquidator. Peter Bengelsdorf is well qualified to serve in this capacity because of his many years of experience in the insurance business and because he served as Special Deputy Commissioner for purposes of the rehabilitations of the Insurers.
5. The Liquidator may determine the compensation of the Special Deputy Liquidator and such, along with certain other terms and conditions of his employment, is set forth in the attached contract. The terms and conditions of Mr. Bengelsdorf's employment as Special Deputy Liquidator are substantially the same as those under which he served as Special Deputy Commissioner, which contract was approved by this Court by order dated March 7, 2003.
6. It is intended that the Special Deputy Liquidator be a state official for purposes of RSA 99-D:2 and RSA 541-B:19, and entitled to the protections

and immunities of those laws, which protections shall continue beyond the termination of the contract. The Special Deputy Liquidator shall not be considered a state official for any other purpose.

**REQUEST FOR EXPEDITED DETERMINATION**

7. Because the Liquidator and the Special Deputy Liquidator must address immediate concerns relating to the operations of the Insurers, including the employment of numerous individuals to assist the with the liquidation of the insurers and contracting for essential goods and services, the Liquidator respectfully requests expedited determination of this motion.
8. Counsel to the Liquidator has attempted to contact attorneys for each of the intervenors in this matter, Sherilyn B. Young, Esq., Connie Rakowsky, Esq., Richard V. Wiebusch, Esq., and David Gottesman, Esq., to seek their concurrence. Attorney Gottesman, Attorney Rakowsky, and Attorney Young assent. Attorney Wiebusch could not assent within the time given before this motion needed to be filed..

WHEREFORE, the Liquidator prays that this Court enter an order granting this motion in the form of order proposed and granting such other and further relief as may be just.

Respectfully submitted,

PAULA T. ROGERS, COMMISSIONER  
THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF INSURANCE

By her attorneys,

PETER W. HEED  
ATTORNEY GENERAL

Dated: June 22, 2003

By:           //Peter C. L. Roth\            
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Senior Assistant Attorney General  
Environmental Protection Bureau  
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Of Counsel:  
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One Financial Center  
Boston, MA 02111  
(617) 542-2300

CERTIFICATE OF SERVICE

I, Peter C.L. Roth, do hereby certify that on June 22, 2003 I served a true copy of the foregoing upon the attached Service List, by first class mail, postage prepaid.

Dated: June 22, 2003

//Peter C. L. Roth\\

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Peter C.L. Roth

## SERVICE LIST

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## CONSULTING AGREEMENT

**THIS CONSULTING AGREEMENT** (the "Agreement"), is made effective as of this 11<sup>th</sup> day of June 2003, by and between Paula T. Rogers, Commissioner, State of New Hampshire Insurance Department ("Department"), having its principal place of business at 56 Old Suncook Road, Concord, New Hampshire 03301-5151, (the "Liquidator") and Peter Bengelsdorf (the "Consultant").

**WHEREAS**, the Commissioner has been appointed Liquidator of The Home Insurance Company ("The Home") and US International Reinsurance Company ("USI Re") by Orders of Liquidation entered by the Merrimack County Superior Court on June 11 and 13, 2003 (Docket Nos. 03-E-106 and 03-E-0112); and

**WHEREAS**, pursuant to applicable provisions of the New Hampshire Insurance Code and the Orders of Liquidation, the Liquidator is vested with the authority and responsibility to protect the interests of policyholders and creditors of The Home and USI Re (collectively, "Companies") and may appoint a Special Deputy Liquidator; and

**WHEREAS**, the Liquidator desires to secure the Services of a Special Deputy Liquidator and the Consultant desires to perform such Services for the Liquidator on the terms and conditions set forth in this Agreement; and

**WHEREAS**, it is understood and agreed that the Consultant will be appointed as the Special Deputy Liquidator for the Companies and that all actions, reports, opinions, advice (written and oral) rendered pursuant hereto will be used only by the Department for its guidance in fulfilling its responsibilities under New Hampshire Law; and

**WHEREAS**, it is understood and agreed that the Special Deputy Liquidator, subject to the approval of the Liquidator, shall have the powers of the Liquidator under RSA 402-C:25 and the Orders of Liquidation to conduct the liquidation of the Companies.

**NOW, THEREFORE**, in consideration of the foregoing and of the respective covenants and agreements of the parties herein contained, the parties hereto agree as follows:

1. **SERVICES**: The Special Deputy Liquidator shall provide the Liquidator such services as are reasonably necessary for the Liquidator to effect the liquidation of the Companies pursuant to the provisions of the New Hampshire Insurance Code and the Orders of Liquidation.

2. **TERM AND TERMINATION**: This Agreement shall be effective as of the date first written above and shall be terminated as of the earlier of:



- (a) The mutual written agreement of the parties hereto to terminate the Agreement;
- (b) The giving by either party at any time of notice of termination of this Agreement upon thirty (30) day's written notice to the other party.

Upon the termination of the Agreement for any reasons, the Special Deputy Liquidator shall cease providing Services to the Liquidator and shall immediately surrender and deliver to the Liquidator any and all reports, working papers and documents of every kind prepared by or for the Special Deputy Liquidator relating to the Companies and/or the services provided hereunder including, but not limited to, any works in progress following the termination of this Agreement.

3. COMPENSATION & EXPENSES: Provided that the Special Deputy Liquidator shall satisfactorily perform his obligations hereunder on behalf of the Liquidator, the Companies shall pay the Special Deputy Liquidator and hourly fee of \$250, plus reasonable and necessary travel expenses incurred by the Consultant including, without limitation, weekly round trip coach airfare for the Consultant to and from Newbury Park and hotel or apartment accommodations in connection with such travel. Such hourly fee of \$250 shall include time that the Consultant spends traveling between his current residence in \_\_\_\_\_ and New York, New Hampshire or any other location deemed necessary. The Consultant shall be compensated at such hourly fee for any testimony required to be given relative to services provided hereunder. The compensation of the Special Deputy Liquidator and any other special deputies, assistants and clerks, and all expenses of taking and securing possession of the property and affairs of the Companies and of conducting the liquidation of the Companies shall be paid out of the funds or assets of Companies. The Consultant shall receive an advance monthly retainer of \$25,000 or an amount which the Liquidator and Consultant mutually agree. The Consultant shall submit accurate and complete invoices to the Liquidator on a monthly basis against such advance deposit, or more frequently at the request of the Liquidator, specifying the day or days on which the Consultant provided services, the number of hours, or fraction thereof, spent providing the services, a reasonably detailed description of the tasks performed, and the expenses incurred thereon.

4. FACILITIES AND SERVICES TO BE PROVIDED TO THE CONSULTANT: On behalf of the Liquidator, the Companies shall provide all necessary facilities and services to the Special Deputy Liquidator to provide the services enumerated above.

5. RELATIONSHIPS OF PARTIES: The Special Deputy Liquidator's status under this Agreement and his performance of his duties and obligations hereunder shall be that of an independent contractor, and nothing contained in this

Agreement shall create or imply an employer/employee relationship between the Liquidator and the Special Deputy Liquidator. Nor shall this Agreement be deemed to constitute a joint venture or partnership between the parties. However, for purposes of New Hampshire RSA Chapter 402-C, the Special Deputy Liquidator shall enjoy and be vested with the same privileges, protections and immunities as the Liquidator, pursuant to the provisions of RSA 402-C and other applicable provisions of the New Hampshire statutes, and common law.

6. COVENANT: The Special Deputy Liquidator shall not, during the term of this Agreement, serve any interest or do any act or thing that may conflict with the interests of the Liquidator and its responsibility to the policyholders and creditors of the Companies. If consistent with the foregoing Covenant and if it will not diminish the Consultant's availability and capacity to fully and timely fulfill the obligations under this Contract, the Consultant may continue to serve current or new clients while performing consulting services for the Liquidator, and such retention and commitments shall not, in themselves, be deemed a breach of this Covenant.

7. CONFIDENTIALITY: The Special Deputy Liquidator shall receive and have access to information that is privileged and confidential. Both during and after the term of this Agreement, the Special Deputy Liquidator agrees to strictly preserve and protect the privileged and confidential nature of this information except as the Department shall authorize in writing addressed to the Special Deputy Liquidator. Privileged and confidential information shall include, but not be limited to any and all statements, models, projects, analyses, calculations and any and all materials in connection therewith concerning the financial condition or business or operations of the Companies, but does not include any documents, records or information that have become publicly available other than by reason of the Special Deputy Liquidator's failure to comply with this Agreement.

The Special Deputy Liquidator hereby acknowledges that each term and condition contained in this paragraph 7 is necessary to preserve the confidentiality of the information furnished to the Special Deputy Liquidator and that the Special Deputy Liquidator's failure to comply with any such term or condition would result in irreparable damage to the Department and the Companies in an amount that is impossible to quantify.

The Special Deputy Liquidator shall require any of its agents with employees who receive the Information (collectively "Agents") to abide by the terms of this paragraph to the same extent that the Special Deputy Liquidator is required to do so.

At such time as the Liquidator requests, the Special Deputy Liquidator and its Agents shall return to the Department or its designated representatives or shall destroy all copies of the information in any form whatsoever (including any notes,

reports, transmittal letters or other writings prepared by the Special Deputy Liquidator and its Agents). Upon the request of the Department any such destruction shall be certified in writing by the Special Deputy Liquidator.

Subject to any Court order and RSA 400-A:25, I, all information obtained by the Liquidator or the Department from the Companies, its affiliates, or its providers or other creditors, in the course of the rehabilitation, shall be considered examination workpapers and shall be given confidential treatment as provided in RSA 400-A:37, IV, (d).

8. INDEMNIFICATION: If any claim is made or any civil action is commenced against the Special Deputy Liquidator arising from such acts committed within the scope of his official duty, he shall be entitled, as a state officer or official, to defense and indemnification as set out in RSA 99-D and in accordance with the terms and conditions contained therein. The indemnification shall continue as to any claims made or threatened to be made against the Consultant arising out of circumstances prior to the date of termination of this Agreement, notwithstanding the fact that said claim(s) is not made or threatened until after such date.

9. NON-ASSIGNMENT: This Agreement is personal to the Consultant and he may not assign or delegate any of his rights or obligations hereunder without first obtaining the written consent of the Liquidator.

10. NOTICES: All notices, requests, approvals and consents and other communications required or permitted under this Agreement shall be in writing and shall be sent to the facsimile number specified below or as may be notified from time-to-time by the party in question in writing. A copy of any such notice shall also be personally delivered or sent by (a) first class U.S. Mail, registered or certified, return receipt requested, postage pre-paid; or (b) U.S. Express Mail, Federal Express, or other similar overnight bonded mail delivery services, to the address setout below, or to such address as may be notified in writing from time-to-time by the party in question to the other party.

If to the Liquidator:

New Hampshire Insurance Department  
56 Old Suncook Road  
Concord, New Hampshire 03301-5151

If to the Special Deputy Liquidator:

Peter Bengelsdorf  
56 Old Suncook Road  
Concord, New Hampshire 03301-5151

11. COUNTERPARTS: This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

12. HEADINGS: The headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

13. SEVERABILITY: If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement will remain in full force and effect.

14. WAIVER: No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.

15. AMENDMENTS: No amendments to, or change, waiver or discharge of, any provision of this Agreement shall be valid unless in writing and signed by an authorized representative of the party against which such amendment, change, waiver or discharge is sought to be enforced.

16. GOVERNING LAW: This Agreement shall be interpreted in accordance with and governed by the laws of the State of New Hampshire, without giving effect to the principles of conflicts of laws.

17. VENUE: Any action or proceeding arising out of this Agreement may be brought against either party in the Merrimack County Superior Court of the State of New Hampshire, and each party consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue laid therein.

18. ENTIRE AGREEMENT: This Agreement is the entire agreement between the parties with respect to its subject matter, and except as recited above there are no other representations, understandings or agreements between the parties relative to such subject matter.

IN WITNESS WHEREOF, each of the Department and the Special Deputy Liquidator have caused this Agreement to be signed and delivered by its duly authorized representative.

NEW HAMPSHIRE INSURANCE DEPARTMENT

//Paula T. Rogers\\

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Paula T. Rogers, Liquidator  
of The Home Insurance Company and  
US International Reinsurance Company

//Peter Bengelsdorf\\

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Peter Bengelsdorf, Consultant