

**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 TO IMPOUND CONFIDENTIAL  
AFFIDAVIT OF PETER A. BENGELSDORF**

Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("The Home") hereby moves that the Court enter an order impounding the July 10, 2003 Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Reinsurance Commutation Agreement and its attachments. As reasons therefor, the Liquidator states as follows:

1. The Liquidator has filed motions seeking orders (a) establishing review procedures for reinsurance commutation agreements, and (b) approving one such agreement: a Reinsurance Commutation Agreement, Settlement and Release with Gerling Global Reinsurance Corporation – U.S. Branch, Constitution Insurance Company and Gerling Global Reinsurance Corporation of America (the "Gerling Agreement").
2. The motions are supported by two affidavits of Peter A. Bengelsdorf, Special Deputy Liquidator. The first affidavit describes the reasons for the requested review procedures, which includes the filing of a confidential affidavit under seal to describe the economic terms of proposed commutation agreements and the analysis supporting the determination to enter them. Affidavit of Peter A. Bengelsdorf, Special

Deputy Liquidator, in Support of Commutation Review Procedures and Motion to Impound Confidential Affidavit (“Bengelsdorf Aff.”). The second affidavit contains the economic terms of the Gerling Agreement and summarizes the reasons for the determination to enter that agreement. Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Reinsurance Commutation Agreement (“Confidential Bengelsdorf Aff.”).

3. The Liquidator requests that the Court provide confidential treatment for the Confidential Bengelsdorf Affidavit by ordering that the affidavit and its attachment be impounded. The affidavit contains the substantive economic terms of the Gerling Agreement and the analysis concerning the determination to enter the Gerling Agreement.

4. As set forth in the Bengelsdorf Affidavit, release of the information in the Confidential Bengelsdorf Affidavit would harm the estate of The Home and be adverse to the interests of policyholders, claimants and other creditors in maximizing the assets to be collected for the estate. The Liquidator has been and likely will be negotiating commutation agreements with numbers of reinsurers. If the substantive terms of a particular commutation agreement or supporting analysis are disclosed, other reinsurers will be able to use that information in determining their own negotiating positions. Disclosure of amounts that the Liquidator is willing to accept from one reinsurer and the analysis supporting that conclusion is likely to set a ceiling on the amounts the Liquidator is able to obtain from other reinsurers. Commutation agreements between insurers often contain confidentiality provisions for this reason, and the Liquidator should not be placed in a worse position than ongoing insurers. Bengelsdorf Aff. ¶ 8.

5. The Liquidator has filed her motion for approval of the Gerling Agreement. If any potential creditor of The Home estate (other than a reinsurer of The Home) wishes to review the impounded material, the Liquidator will provide it to that person upon its execution of a confidentiality agreement to limit the use of and prohibit disclosure of the material. This represents the least restrictive means to accomplish the necessary purpose of maintaining this material as confidential. As set forth in the motion for approval of the Gerling Agreement, the members of a subcommittee of the National Conference of Insurance Guaranty Funds have already entered into confidentiality agreements with the Liquidator to permit them to review materials concerning the Gerling Agreement and have no objection to that agreement.

#### **Conclusion**

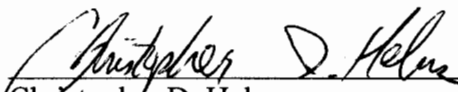
For the reasons stated, the Liquidator request that her motion be granted and that the Court enter an order impounding the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Reinsurance Commutation Agreement and its attachment. A proposed form of impoundment order is submitted herewith.

Respectfully submitted,

PAULA T. ROGERS, COMMISSIONER OF  
INSURANCE OF THE STATE OF NEW  
HAMPSHIRE, SOLELY IN HER CAPACITY AS  
LIQUIDATOR OF THE HOME INSURANCE  
COMPANY,

By her attorneys

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July 11, 2003