

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 SETTLEMENT

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 the Court to enter an order approving a settlement (the "Settlement") between The Home and Barry L. Kroll and Williams and Montgomery, Ltd. (the "Defendants") and Great American Insurance Group ("Great American"). As reasons therefor, the Liquidator states as follows:

1. The Defendants are an individual attorney and a law firm licensed to practice in the State of Illinois, whom The Home engaged in 1993 to represent it in litigation regarding The Home's denial of coverage to two entities, Empire Chem and Empire Chem Realty. The Settlement concerns a malpractice action (the "Action") The Home brought against the Defendants due primarily to the Defendants' failure to advise the Home to file a bond in order to stay execution pending the appeal of a judgment in the underlying Empire Chem litigation. The Home asserts that its failure to timely file the appropriate bond compromised The Home's ability to appeal. Furthermore, the Defendants' actions prompted sanctions to be assessed against The Home. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Settlement ("Bengelsdorf Aff.") ¶ 2.

GRANTED.
[Signature]
11/13/04

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2. After trial of the Action, a judgment was entered in favor of the Home in the amount of \$6,981,334.75 in October of 2001 (the "Judgment"). The Defendants appealed the Judgment to the Appellate Court of Illinois, which affirmed it on August 8, 2003. The Defendants filed a Petition for Leave to Appeal from the Appellate Court's decision with the Illinois Supreme Court, which petition is currently pending.

Bengelsdorf Aff. ¶ 3.

3. The amount of the Judgment without interest is \$6,981,334.75. The total of the Judgment plus interest as of November 30, 2003 is \$8,336,093.55. Bengelsdorf Aff. ¶ 4.

4. Representatives of the Defendants, Great American, the insurer that provided the Defendants with malpractice insurance coverage, and representatives of the Liquidator have sought to negotiate a settlement by which the Action would be settled on an agreed-upon amount, the Liquidator would release the Defendants from liabilities, damages, rights, claims or obligations relating to the Action and the Defendants would dismiss the Petition for Leave to Appeal. Bengelsdorf Aff. ¶ 5.

5. The Defendants, Great American, and the Liquidator have now agreed on the Settlement, subject to approval by this Court. A copy of the letter reflecting the Settlement is attached as Exhibit A. Bengelsdorf Aff. ¶ 6.

6. The Settlement provides for (a) payment to the Home by Great American of \$7,500,000 in satisfaction of the Judgment; (b) the cooperation of The Home, Defendants and Great American to request that the Illinois Supreme Court reserve its ruling on the Petition for Leave to Appeal pending approval by this Court; and (c) execution of a releasing agreement whereby the Home will release the Defendants

from liabilities, damages, rights, claims or obligations relating to the Action. Other terms of the Settlement are set forth in the copy of the Settlement at Exhibit A. Bengelsdorf Aff. ¶ 7.

7. The Liquidator submits that the Settlement is fair and reasonable and that it is in the best interests of the policyholders and other creditors of The Home. The Settlement is for reasonable consideration in light of the uncertainty as to whether the Illinois Supreme Court will grant the Defendants' Petition for Leave to Appeal and the substantial additional costs and uncertainty that would result if the Defendants' Petition for Leave to Appeal were granted. In addition, the Settlement will expedite the final determination and payment by Great American to The Home, which will benefit the policyholders and other creditors of The Home generally. See Bengelsdorf Aff. ¶ 8.

8. The Home's counsel in the malpractice action against the Defendants has been retained on a sliding-scale contingency basis. Counsel represented The Home at trial in 2001 and on appeal. Counsel's contingency fee is \$2,442,500 (which equals 32.56% of the settlement amount). That fee is a cost of the collection of this asset for The Home's estate, and it appropriately should be paid from the settlement proceeds.

WHEREFORE, the Liquidator requests that his motion be granted and that the Court enter an Order in the form submitted herewith approving the Settlement and payment of The Home's counsel's contingency fee.

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

PETER W. HEED, ATTORNEY GENERAL



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December 18, 2003

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106

In the Matter of the Liquidation of
US International Reinsurance Company
Docket No. 03-E-0112

CERTIFICATE OF SERVICE

I, Peter C.L. Roth, do hereby certify that on December 18, 2003 I served a true copy of the foregoing, upon the attached Service List, by first class mail, postage prepaid.

Dated: December 18, 2003



Peter C.L. Roth

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