

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 ZURICH FUNDS WITHHELD AGREEMENT**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), by his attorneys, the Office of the Attorney General, hereby moves that the Court enter an order approving a Memorandum of Agreement, dated November 7, 2003 (the "Agreement") between Home and Zurich American Insurance Company, as successor in interest to Zurich Insurance Company, United States Branch, Zurich American Insurance Company of Illinois and Steadfast Insurance Company (collectively, "Zurich"), concerning funds withheld and other matters under a Master Facultative Agreement between Home and Zurich. As reasons therefore, the Liquidator states:

1. Home and certain subsidiaries (which were subsequently merged into Home) and Zurich entered into the Master Facultative Agreement ("Master Fac Agreement") as of February 9, 1995. At that time, certain of Home's insureds were reluctant to accept Home's security for purposes of policy renewal, and as a means of preserving Home's franchise, Zurich agreed to "front" (i.e., issue policies in its name that would be 100% reinsured with Home, net of facultative reinsurance purchased in Zurich's name by Home on Zurich's behalf) the affected business pending completion of Home's reorganization. Under the Master Fac Agreement, Zurich ceded to Home 100%

of Zurich's obligations (net of the facultative reinsurance) with respect to the fronted policies and ceded to Home 100% of the premiums on the policies (net of ceding commission and certain other amounts). To secure Home's obligations to Zurich as reinsurer, and to provide Zurich with a funding mechanism for the payment of losses under the "fronted" policies, Home agreed in the Master Fac Agreement that premium received by Zurich and payable with respect to the Home reinsurance would be accounted for and held by Zurich on behalf of Home. These funds, together with interest, are referred to as the "Funds Withheld." Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, In Support of Motion for Approval of Zurich Funds Withheld Agreement ("Bengelsdorf Aff.") ¶ 3.

2. The amount of the Funds Withheld presently exceeds the estimated claims liabilities under the fronted policies plus actuarially projected incurred but not reported reserves ("IBNR"). Bengelsdorf Aff. ¶ 4.

3. In order to provide for the release to Home of these excess funds and address issues concerning the future of the Funds Withheld, Home and Zurich have now entered the Agreement, subject to approval of the Court. A copy of the Agreement is attached as Exhibit A. Bengelsdorf Aff. ¶¶ 2, 5.

4. The Agreement provides that within seven days of approval by the Court, Zurich will remit \$25 million of the Funds Withheld to Home. Beginning on January 31, 2005, and annually thereafter through January 31, 2008, Zurich will perform a calculation of the estimated claims liabilities and actuarial IBNR to determine whether there remains an excess amount in the Funds Withheld. If so, Zurich will remit the excess amount to Home within seven days of the calculation. Home will have the right to inspect Zurich's

records, and may arbitrate with Zurich in the event that Home believes the excess amount was not correctly calculated and remitted. If Zurich fails to perform a calculation as required by the Agreement, Home has the right to perform the calculation at Zurich's expense, and that calculation will be binding on Zurich for purposes of determining whether there is an excess amount. Bengelsdorf Aff. ¶ 6.

5. The Agreement provides that Zurich will take over the collection of facultative reinsurance for the policies and that Zurich will be responsible for the collection of retrospective premium or deductible recoveries from insureds under the "fronted" policies, with the exception of matters in litigation where both Home and Zurich policies are involved. The Agreement also provides that any retrospective premiums under the policies collected by Zurich (net of expenses) will be paid to Home, and not placed in the Funds Withheld, unless the estimated claims liabilities and actuarial IBNR exceed the Funds Withheld balance. Any return premium due to insureds will be paid from the Funds Withheld. Any deductible recoveries under the policies collected by Zurich (net of expenses) will be placed in the Funds Withheld. Bengelsdorf Aff. ¶ 7.

6. The Agreement further provides for a final commutation of the Master Fac Agreement in 2009. On January 31, 2009, Zurich will perform a final calculation of estimated claims liabilities and actuarial IBNR and advise Home of the calculation. If Zurich and Home agree on the calculation, there will be a commutation, including payment to Home and mutual releases, based on the calculation. If Home disagrees with Zurich's calculation, the dispute will be arbitrated. If Zurich fails to perform the calculation, Home may perform it on Zurich's behalf and at Zurich's expense. Bengelsdorf Aff. ¶ 8.

7. The Agreement serves to bring assets within the control of the Liquidator immediately and over the next five years and to wind-up an arrangement that otherwise would continue for an indeterminate period. It provides for the immediate payment to Home of \$25 million in excess funds presently included in the Funds Withheld, the determination and payment of excess amounts to Home in the future based on calculations of estimated claims liabilities and actuarial IBNR that are subject to review and challenge by Home, and the ultimate commutation of the Master Fac Agreement based upon calculations in 2009. It also resolves issues concerning the handling and collection of facultative reinsurance, retrospective premiums and deductible recoveries to reduce the administrative burden on Home. Bengelsdorf Aff. ¶ 9.

8. For these reasons, the Liquidator submits that the Agreement is fair and reasonable and that it is in the best interests of the policyholders and other creditors of Home. See Bengelsdorf Aff. ¶ 10.

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

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

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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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