

**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**

**AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY  
LIQUIDATOR, IN SUPPORT OF APPROVAL OF FIRST  
EARLY ACCESS DISTRIBUTION**

I, Peter A. Bengelsdorf, hereby depose and say:

1. I was appointed Special Deputy Liquidator of The Home Insurance Company ("Home") by the Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of Home. I submit this affidavit in support of the Liquidator's Motion for Approval of First Early Access Distribution to Insurance Guaranty Associations ("Motion"). The facts and information set forth below are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information and belief.

2. The Motion seeks approval of the first early access distribution to insurance guaranty associations in an amount equal to the reported claims that the guaranty associations have paid under Home insurance policies from entry of the liquidation order through June 30, 2004, less recoveries and deposits.

3. In September, 2003, the Liquidator applied for approval of an Early Access Distribution Plan ("Plan") to provide for the disbursement of assets of the Home estate from time to time to the New Hampshire Insurance Guaranty Association

("NHIGA"), the New Hampshire Life and Health Guaranty Association, and to any similar organization in another state (the "guaranty associations"). The Plan included a form of Early Access Distribution Agreement ("Agreement") to be entered by guaranty associations receiving an early access distribution. The Court approved the Plan and Agreement by order entered October 22, 2003.

4. The guaranty associations established by statute in New Hampshire and other states generally provide ongoing payment of most claims under insurance policies issued by the insolvent insurer, subject to statutory and policy limits and conditions. Where the pertinent policy so provides, and subject to statutory limitations, guaranty associations generally pay both indemnity and indemnity and defense expenses (commonly referred to as allocated loss adjustment expense or "ALAE" payments). In the Liquidator's view, such claims are Class II policy related claims.<sup>1</sup>

5. Since the commencement of this liquidation proceeding, fifty two guaranty associations have reported making payments under insurance policies issued by Home. As of September 22, 2004, the guaranty associations have reported paying \$42,092,850.02 under policies of insurance issued by Home through June 30, 2004 (\$37,712,521.75 in indemnity and \$4,380,328.27 in ALAE). The guaranty associations also reported recoveries (e.g., subrogation recoveries) totaling \$1,150,761.07, so the unreimbursed payments total \$40,942,088.95. A chart showing the payments, recoveries

---

<sup>1</sup> The New Hampshire Insurance Guaranty Association ("NHIGA") and other guaranty associations have taken the position that ALAE should be classified as a Class I administration cost. This difference of views does not affect the Motion because guaranty associations will receive the same payment on ALAE through June 30, 2004 under the Motion as they would if the view of NHIGA and other guaranty associations were correct. The difference is that an early access distribution under the Motion is subject to the Agreement, including the repayment provision of the Agreement. If it were later determined that ALAE should be treated as an administration cost, then the ALAE portion of the early access distribution would be reclassified in the Liquidator's accounts as a Class I administration cost, in which case the ALAE portion would not be subject to the Agreement.

and unreimbursed payments through June 30, 2004 (as reported to the Liquidator by each guaranty association through September 22, 2004) is attached as Exhibit A. It is expected that the guaranty associations will submit significant additional requests for reimbursement from the Home estate in the future due to their ongoing obligations on claims under policies of insurance issued by Home and that additional early access distributions will be proposed.

6. As of June 30, 2004, the unrestricted liquid assets of the Home estate in the Liquidator's control totaled \$572,450,897 as set forth in the Statement of Net Assets attached as Exhibit B.<sup>2</sup> The liquid assets available to the Liquidator are approximately 13 times the amount of the guaranty associations' reported payments under Home policies through June 30, 2004, and they exceed the guaranty associations' payments under Home policies through June 30, 2004 by approximately \$530 million.

7. To receive an early access distribution under the Plan, a guaranty association must execute the Agreement. The Agreement provides that the signatory guaranty association will return early access distributions that the Liquidator subsequently determines are necessary to pay claims of secured creditors or creditors whose claims fall into the same or a higher priority class than those of the guaranty association.

8. The Plan provides for a formula to determine the percentage distribution to be made to guaranty associations based on their Home claim payments. However, in view of (a) the significant excess of the liquid assets available to the Liquidator over the guaranty associations' total payments under Home policies through June 30, 2004, (b) the


---

<sup>2</sup> This amount excludes other Home assets also in the Liquidator's possession: \$54,532,814 in liquid assets presently subject to restrictions limiting their use and \$17,257,486 in illiquid assets. See Exhibit B.

future requests for reimbursement that will be submitted by guaranty associations due to their ongoing obligations on claims under Home insurance policies, and (c) the guaranty associations' agreement to return early access distributions necessary to pay creditors in the same or higher priority class as reflected in the Agreement, I believe it is reasonable and in accordance with the legislative policy of RSA 402-C:29, III, to make an early access distribution to each guaranty association equal to the guaranty association's reported payments under Home insurance policies, less subrogation and other recoveries, through June 30, 2004, as set forth on Exhibit A. Prior to liquidation, Home had made deposits in a number of states as required by the laws of those states. As contemplated by the Early Access Distribution Plan, unless the deposit has been returned to the Liquidator, the Liquidator may deduct the amount of a deposit in a particular state from the early access distribution to the guaranty association in the state in order to provide equivalent reimbursement from Home to the various guaranty associations.

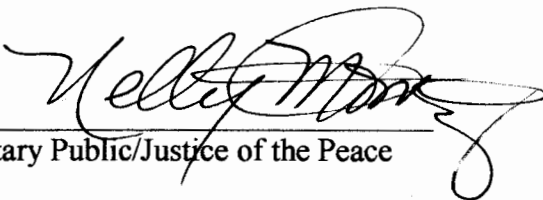
9. As noted in the Plan, the United States Department of Justice has asserted in other insurer liquidations that the claim filing deadline does not apply to claims by the Federal Government in light of the federal priority act, 31 U.S.C. § 3713, so that it can at any time file claims entitled to payment by the Receiver on pain of personal liability. The Liquidator is accordingly seeking to obtain a limited waiver of any alleged federal priority claim, which is necessary before the first early access distribution can be made.

Signed under the penalties of perjury this 27<sup>TH</sup> day of September, 2004.

  
Peter A. Bengelsdorf  
Special Deputy Liquidator of The Home Insurance  
Company

STATE OF NEW YORK  
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 27<sup>TH</sup> day of September, 2004

  
Notary Public/Justice of the Peace

NELLY M. GOMEZ  
Notary Public, State of New York  
No. ~~060~~-5005271  
Qualified in ~~Oran~~ . . . County  
Certificate Filed in ~~N.Y.~~ . . . County  
Commission Expires December 7, 2006

Exhibit A

Guaranty Association Loss  
Payments and Recoveries Through June 30, 2004

Exhibit B

Statement of Net Assets as of June 30, 2004

**Guaranty Association Loss Payments and Recoveries Through 6/30/04  
(as reported through 9/22/04)**

Guaranty Association	Indemnity	ALAE Expense	Total Payments	Recoveries	Net Payments
	Payments	Payments			
Alaska Ins. Guaranty Association	145,839.21	211,055.34	356,894.55	(16,325.58)	340,568.97
Alabama Ins. Guaranty Association	1,121,215.95	66,652.88	1,187,868.83	0.00	1,187,868.83
Arkansas Property & Casualty Ins. Guaranty Association	219,554.71	35,996.06	255,550.77	(103.70)	255,447.07
Arizona Property & Casualty Ins. Guaranty Association	99,900.00	9,230.95	109,130.95	0.00	109,130.95
Arizona Industrial Commission	242,152.70	0.00	242,152.70	0.00	242,152.70
California Insurance Guarantee Association	2,319,714.64	479,727.26	2,799,441.90	(62,884.07)	2,736,557.83
Colorado Ins. Guaranty Association	460,393.39	40,246.54	500,639.93	0.00	500,639.93
Connecticut Ins. Guaranty Association	770,938.33	50,147.37	821,085.70	(41,557.09)	779,528.61
District of Columbia Ins. Guaranty Association	48,234.17	22,995.87	71,230.04	0.00	71,230.04
Delaware Ins. Guaranty Association	195,812.60	25,798.80	221,611.40	(42,086.89)	179,524.51
Florida Ins. Guaranty Association	3,978.20	6,206.39	10,184.59	0.00	10,184.59
Florida Workers Compensation Ins. Guaranty Association	2,935,284.21	243,051.24	3,178,335.45	0.00	3,178,335.45
Georgia Insurers Insolvency Pool	1,501,168.52	237,971.12	1,739,139.64	(456,339.96)	1,282,799.68
Hawaii Ins. Guaranty Association	161,233.15	68,384.58	229,617.73	(880.05)	228,737.68
Iowa Ins. Guaranty Association	197,595.19	11,139.21	208,734.40	0.00	208,734.40
Idaho Ins. Guaranty Association	30,820.98	0.00	30,820.98	(151.26)	30,669.72
Illinois Ins. Guaranty Association	464,264.78	15,805.56	480,070.34	0.00	480,070.34
Indiana Ins. Guaranty Association	26,507.45	2,132.99	28,640.44	0.00	28,640.44
Kansas Ins. Guaranty Association	577,251.01	9,767.13	587,018.14	(279.38)	586,738.76
Kentucky Ins. Guaranty Association	814,235.13	15,671.44	829,906.57	(45,721.18)	784,185.39
Louisiana Ins. Guaranty Association	232,584.07	56,423.64	289,007.71	0.00	289,007.71
Massachusetts Ins. Guaranty Association	752,294.89	158,096.99	910,391.88	(4,028.20)	906,363.68
Maryland Property & Casualty Ins. Guaranty Association	309,962.47	14,071.30	324,033.77	0.00	324,033.77
Maine Ins. Guaranty Association	121,731.75	6,751.97	128,483.72	(118.80)	128,364.92
Michigan Property & Casualty Ins. Guaranty Association	945,828.52	102,911.49	1,048,740.01	(75,340.44)	973,399.57
Minnesota Ins. Guaranty Association	3,108,980.70	323,812.71	3,432,793.41	(34,729.79)	3,398,063.62
Missouri Property & Casualty Ins. Guaranty Association	177,816.54	5,315.32	183,131.86	0.00	183,131.86
Mississippi Ins. Guaranty Association	461,550.03	141,268.13	602,818.16	(2,115.55)	600,702.61
Montana Ins. Guaranty Association	148,578.23	13,646.77	162,225.00	(270.07)	161,954.93
North Carolina Ins. Guaranty Association	655,819.45	94,089.96	749,909.41	(1,140.04)	748,769.37
Nebraska Property & Liability Ins. Guaranty Association	68,657.25	15,299.42	83,956.67	0.00	83,956.67
New Hampshire Ins. Guaranty Association	337,314.47	23,286.01	360,600.48	(1,798.90)	358,801.58
New Jersey Property - Liability Ins. Guaranty Association	384,219.39	97,640.14	481,859.53	0.00	481,859.53
New Jersey Compensation Rating and Inspection Bureau	925,656.49	114,240.12	1,039,896.61	(26,357.43)	1,013,539.18
New Mexico Ins. Guaranty Association	124,914.55	20,792.69	145,707.24	(59.40)	145,647.84
Nevada Ins. Guaranty Association	0.00	5,955.50	5,955.50	0.00	5,955.50
New York Liquidation Bureau	6,656,465.19	242,925.39	6,899,390.58	(26,165.88)	6,873,224.70
Ohio Ins. Guaranty Association	0.00	7,360.31	7,360.31	0.00	7,360.31
Oklahoma Property & Casualty Ins. Guaranty Association	382,888.66	22,993.72	405,882.38	0.00	405,882.38
Oregon Ins. Guaranty Association	468,383.53	84,787.41	553,170.94	(225,080.24)	328,090.70
Pennsylvania Property & Casualty Ins. Guaranty Association	216,606.30	101,728.07	318,334.37	(128.06)	318,206.31
Pennsylvania Workers Compensation Security Fund	3,947,127.97	209,278.34	4,156,406.31	0.00	4,156,406.31
Rhode Island Ins. Guaranty Association	293,710.72	4,475.40	298,186.12	(21,854.93)	276,331.19
South Carolina Property & Casualty Ins. Guaranty Association	184,133.43	34,478.52	218,611.95	(8,339.80)	210,272.15
South Dakota Property & Casualty Ins. Guaranty Association	378,494.81	14,741.51	393,236.32	0.00	393,236.32
Tennessee Ins. Guaranty Association	716,749.91	87,809.42	804,559.33	(40,201.01)	764,358.32
Texas Property & Casualty Ins. Guaranty Association	1,580,407.73	483,936.66	2,064,344.39	(7,302.55)	2,057,041.84
Utah Property & Casualty Ins. Guaranty Association	255,517.41	12,558.23	268,075.64	0.00	268,075.64
Virginia Ins. Guaranty Association	757,389.46	154,343.46	911,732.92	(8,038.96)	903,693.96
Vermont Ins. Guaranty Association	8,574.89	7,803.76	16,378.65	(330.46)	16,048.19
Washington Ins. Guaranty Association	89,900.00	112,023.87	201,923.87	0.00	201,923.87
Wisconsin Insurance Security Fund	684,168.62	53,501.31	737,669.93	(1,031.40)	736,638.53
<b>Total :</b>	<b>37,712,521.75</b>	<b>4,380,328.27</b>	<b>42,092,850.02</b>	<b>(1,150,761.07)</b>	<b>40,942,088.95</b>

## The Home Insurance Company In Liquidation

### Statement of Net Assets (Modified Cash Basis) (Unaudited)

	<u>June 30, 2004</u>	<u>December 31, 2003</u>
<b>Assets</b>		
Unrestricted bonds, short-term investments and cash at cost:		
Bonds (Note 2)	\$177,939,122	\$174,531,250
Short-term investments	345,263,211	151,422,458
Certificates of deposit	156,556	321,943
Cash and cash equivalents	<u>46,639,669</u>	<u>121,185,400</u>
<b>Total unrestricted bonds, short-term investments and cash at cost</b>	<b>569,998,558</b>	<b>447,461,051</b>
Common stocks, marketable, at market value (Note 2)	784,083	18,710,427
Interest income due and accrued	<u>1,668,256</u>	<u>1,390,004</u>
<b>Total unrestricted liquid assets</b>	<b>572,450,897</b>	<b>467,561,482</b>
Unrestricted illiquid assets: ( Note 1)		
Surplus notes, at fair value	150,220	-
Common stocks, at fair value	13,604,406	17,144,990
Limited partnership interests, at fair value	<u>3,502,860</u>	<u>87,285</u>
<b>Total unrestricted illiquid assets</b>	<b>17,257,486</b>	<b>17,232,275</b>
Restricted liquid assets:		
Bonds, at cost (Note 2)	53,699,125	-
Cash and cash equivalents (Note 5)	<u>833,689</u>	<u>825,673</u>
<b>Total restricted liquid assets</b>	<b>54,532,814</b>	<b>825,673</b>
Fixed assets (net of accumulated depreciation of \$160,736 and \$61,054)	483,321	492,336
Receivable from US International Reinsurance Company (Note 4)	<u>1,115,913</u>	<u>991,083</u>
<b>Total assets, excluding certain amounts</b>	<b>645,840,431</b>	<b>487,102,849</b>
<b>Liabilities</b>		
Incurred But Unpaid Administrative Expenses and Loss Adjustment Expenses (Note 3)	2,305,215	748,612
<b>Net assets, excluding certain amounts</b>	<b><u>\$643,535,216</u></b>	<b><u>\$486,354,237</u></b>