

MERRIMACK, SS.

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Docket No. 03-E-0106

2003 SEP 10 P 3:21
MERRIMACK

In the Matter of the Liquidation of
The Home Insurance Company

LIQUIDATOR'S MOTION FOR APPROVAL OF COMPENSATION
PLAN FOR THE SPECIAL DEPUTY LIQUIDATOR

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves that the Court enter an order approving the compensation plan (the "Plan") for Peter A. Bengelsdorf, the Special Deputy Liquidator of Home (the "Special Deputy Liquidator") as described in Ernst & Young LLP's ("E&Y") letter attached hereto as Exhibit A. The Plan is intended to reward the Special Deputy Liquidator's performance and reinforce retention of his services in order to facilitate the prompt completion of the liquidation process. The Plan has been reviewed with the National Conference of Insurance Guaranty Fund's Subcommittee on Home which has indicated its non-objection to this Motion. In support hereof, the Liquidator respectfully represents as follows:

1. The Terms of the Special Deputy Liquidator's Present Engagement.

Shortly after the liquidation proceeding began in June 2003, the Liquidator recruited the Special Deputy Liquidator from private industry and appointed him to manage the operations of the liquidation.¹ The Special Deputy Liquidator is a consultant to the

Liquidator, not an employee of Home. The terms of his engagement are described in a Consulting Agreement by and between him and the Liquidator, dated June 11, 2003 (the "Consulting Agreement"). According to the Consulting Agreement, the current compensation arrangement for the Special Deputy Liquidator consists solely of an hourly work rate of \$250. He does not participate in any other compensation programs, including those incentive compensation plans the Court previously approved for employees of Home, nor does he receive any health and welfare, retirement or severance benefits from Home. Affidavit of Roger A. Sevigny, Liquidator, in Support of Approval of Compensation Plan For Special Deputy Liquidator ("Sevigny Aff.") ¶ 4.

2. The Retention of the Special Deputy Liquidator Benefits Creditors.

The Special Deputy Liquidator is the top executive of Home, who reports directly to the Liquidator. As described in the advisory letter from E&Y's Human Capital Practice attached as Exhibit A and discussed in more detail below, E&Y reviewed the scope and duties of the Special Deputy Liquidator position and, based on its experience in working with other companies in liquidation and distressed situations as well as "healthy" companies, identified comparable positions against which to develop a market competitive compensation program. A well-qualified and competent Special Deputy Liquidator will materially contribute to the efficient collection of assets. The present Special Deputy Liquidator has demonstrated his abilities by facilitating the increase in Home's cash and liquid invested assets from

¹ The Special Deputy Liquidator also served as Special Deputy Rehabilitator to the Commissioner of Insurance prior to liquidation.

\$3.1 million on March 5, 2003 to approximately \$629.5 million at June 30, 2004.

Most of this increase is attributable to a combination of reinsurance recoveries and other financial settlements either negotiated by the Special Deputy Liquidator or by Home's staff under his direction. Maximizing the prompt collection of assets is one of the principal statutory goals of the liquidation. RSA 402-C:25 (VI). The Liquidator believes that this objective can be facilitated through retention of the Special Deputy Liquidator. Sevigny Aff. ¶ 5.

3. The Special Deputy Liquidator Should Receive Market Competitive Compensation. The Liquidator retained E&Y, a nationally recognized compensation consultant with extensive experience in the design of compensation plans for large insurers in liquidation, like Home, to evaluate present compensation and, where appropriate, suggest modifications. As described above, E&Y has conducted an evaluation of the Special Deputy Liquidator's compensation and designed a compensation plan. Sevigny Aff. ¶ 6.

E&Y examined the competitiveness of the Special Deputy Liquidator's current compensation in comparison to other comparable positions. Based upon E&Y's experience, a competitive compensation level is one that approximates 90-110% of targeted market levels (typically a range between the 50th and 75th percentile of the market). E&Y found that the Special Deputy Liquidator's current total direct compensation (or TDC, defined as base salary plus annual and long-term incentives) after adjustment for the absence of benefits is 45% of median (50th percentile) and 21% of the 75th percentile market levels, a level which E&Y describes as "significantly below market and less competitive than the overall TDC" for Home's other employees. Notably, the

Special Deputy Liquidator does not participate in an incentive plan. E&Y determined that most top executives of an insurer in liquidation of this size would be full participants in such a plan. Sevigny Aff. ¶ 6.

Based on this evaluation, E&Y recommended modifications to the Special Deputy Liquidator's compensation. E&Y suggests a separate² incentive plan for the Special Deputy Liquidator with incentives that would align his performance with the interests of Home's creditors and, in combination with other forms of compensation, would provide the Special Deputy Liquidator with market competitive compensation, which it defines as approximately the 50th percentile of market levels. (The present TDC for employees of Home, for instance, range between the 50th and 75th percentile.) Sevigny Aff. ¶ 6.

4. The Proposed Compensation Plan Has Four Primary Objectives. The proposed compensation plan ("Plan") for the Special Deputy Liquidator described in the E&Y letter has four primary objectives. First, the Plan recognizes the Special Deputy Liquidator, as the top executive of Home, is the equivalent of more than a full-time employee of Home. Although an independent contractor, the Special Deputy Liquidator works more than a full-time employee and, because he is responsible for Home's day-to-day operations, he has more responsibility than any other employee of Home. Second, the Plan acknowledges the Special Deputy Liquidator's significant accomplishments to date, as evidenced by the increase in Home's cash and liquid invested assets. Third, the Plan aligns the Special Deputy Liquidator's incentives with those of Home's creditors and the Liquidator's goals for

² E&Y recommends an independent compensation plan for the Special Deputy Liquidator because the Special Deputy Liquidator is responsible for monitoring the three incentive compensation plans in effect for employees of Home. Sevigny Aff. ¶ 6.

Home (collecting assets promptly and efficiently). Specifically, the Special Deputy Liquidator must marshal assets of Home; hire and maintain Home's staff; prepare and file timely and accurate reports for the Liquidator (and ultimately with the Court); and operate Home in a cost-effective manner. Fourth, the Plan provides the Special Deputy Liquidator with an overall market competitive compensation package.

Sevigny Aff. ¶ 7.

The Plan consists of three components. First, the Special Deputy Liquidator's present base compensation will remain at \$250 per hour. Second, the Plan creates an annual incentive bonus structure ("AI"). Each year the Liquidator will set annual goals for the Special Deputy Liquidator (*e.g.*, success in marshalling assets, organization performance within budget, implementation of an effective claim determination operation, extent of early access distributions, obtaining an appropriate independent auditor opinion, timely and accurate reporting to the Liquidator and the Court throughout the performance year). After the end of the year, the Liquidator will evaluate the Special Deputy Liquidator's performance with respect to each of those goals and determine the AI bonus based upon those accomplishments. The AI provides the Special Deputy Liquidator with an opportunity to earn an AI bonus of \$400,000. E&Y determined that this target dollar amount is similar to the target AI opportunity provided to the next most senior officer of Home, with a slight upward adjustment in recognition of the top executive's additional duties and responsibilities. Third, a "Stay Bonus" covering a twenty-two month period from March 2003 to December 2004 of \$400,000 is payable on January 1, 2005. A second "Stay Bonus"

covering the calendar year 2005 of \$400,000 is payable on January 1, 2006.³ The “Stay Bonus” provides a cash incentive to this senior and experienced Insurance Industry executive and encourages him to remain with Home.⁴ Assuming the Special Deputy Liquidator stays until January 1, 2006 and achieves all the AI goals, the estimated 2004 and 2005 costs for the Plan (excluding consulting income) are \$0.8 million and \$0.8 million, respectively. Sevigny Aff. ¶ 7.

5. The Liquidator’s Consultants Advise That the Proposed Plan is Appropriate and Prudent. The Liquidator’s consultants, E&Y, advise that the proposed Plan represents market comparable compensation in insurance company liquidations that is properly weighted toward variable or performance-based compensation and encourages a continuation of the existing working relationship. The Plan represents the level of compensation recommended by the Liquidator’s consultants in order to retain experienced employees, such as the Special Deputy Liquidator. Sevigny Aff. ¶ 8.

6. The Liquidator has authority under RSA 402-C: 25(I) and paragraph t of the Liquidation Order entered June 13, 2003, to appoint a special deputy and determine his compensation “subject to the court’s control.” The Liquidator also has authority pursuant to RSA 402-C: 25(IV) to use the property of Home and to defray the costs of collecting its assets and liquidating its property and business.

³ In the event of death or disability both the AI bonus and the Stay Bonus are paid in full. In the event the Special Deputy Liquidator is terminated without cause, such bonuses will be pro-rated.

⁴ This Plan has been in development for some months and the Special Deputy Liquidator has relied upon the expectation that such a plan would be proposed for the Court’s approval. Sevigny Aff. ¶ 7.

7. For the reasons described above and in the Sevigny Affidavit, the Liquidator submits that the Plan is fair and reasonable and in the best interests of the liquidation and of the policyholders and other creditors of Home.

WHEREFORE, the Liquidator requests that the Court enter an order in the form submitted herewith approving the Plan and grant such other and further relief as may be just.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE
COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE, SOLELY IN HIS CAPACITY AS
LIQUIDATOR OF THE HOME INSURANCE
COMPANY,

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September 10, 2004

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of the Compensation Plan for the Special Deputy Liquidator and the accompanying [Proposed] Order Approving Compensation Plan and Affidavit of Roger A. Sevigny, Liquidator, In Support of Approval of Compensation Plan for Special Deputy Liquidator have been sent, this day, by first class mail, postage prepaid to all persons on the attached service list.



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