

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 NEW YORK TAX SETTLEMENT**

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

1. I was appointed as Special Deputy Liquidator of The Home Insurance Company ("The Home") by the Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home, effective June 11, 2003. I submit this affidavit in support of the Liquidator's Motion for Approval of New York Tax Settlement. The motion requests approval of a settlement, reflected in the proposed stipulated judgment ("Settlement") attached to the motion, of tax certiorari proceedings between The Home and The Tax Commissioner of the City of New York and the Department of Finance ("New York City") concerning real estate taxes on the property at 59 Maiden Lane, New York, New York. I make this affidavit on the basis of information reported to me as Special Deputy Liquidator.

2. In 1995, tax certiorari petitions were filed in the New York Supreme Court, County of New York, by the owner of 59 Maiden Lane, Olympia & York Maiden Lane Company, LLC ("Olympia & York"). The petitions sought review of the assessed valuation of the 59 Maiden Lane property for tax years 1991/92 through 1995/96 and a refund of associated real estate taxes from New York City.

3. The Home obtained the right to prosecute the tax certiorari proceedings by assignment as part of a settlement of litigation between The Home, Olympia & York and others dated December 22, 1997 (“O&Y Settlement”). Under the O&Y Settlement, The Home shall control the prosecution of the tax certiorari proceedings. The O&Y Settlement further provided that The Home shall not enter any settlement of the tax certiorari proceedings without the owner’s prior written consent, which consent “shall not be unreasonably withheld.” The O&Y Settlement also provided that The Home is entitled to receive and retain a pro rata share of the net proceeds (after deduction of expenses) of the tax certiorari proceedings based on the ratio of taxes paid by The Home (under its lease) to the total tax on the 59 Maiden Lane property, as well as the owners’ share based on vacant space, but excluding amounts the owner may be obligated to remit to other tenants. This reflects the fact that The Home was one of several tenants at 59 Maiden Lane that paid real estate taxes (through higher rent under their leases) during the tax years in question, and that other tenants may be entitled to a portion of the tax refund.

4. Since that time, The Home has prosecuted the tax certiorari proceedings. The proceedings involve complex issues of fact and law concerning whether the assessed valuations of the 59 Maiden Lane property were too high for the tax years at issue. Those issues include questions concerning appropriate market valuations of the building in light of complicated 1981 and 1984 transactions with respect to the sale of the 59 Maiden Lane property and leases of that and other property between the owner and The Home, certain secured notes issued by the owner, and the presence of asbestos in the building.

5. All New York City tax certiorari proceedings are heard by one Justice of the New York Supreme Court. A settlement conference was held before that Justice (Schoenfeld, J.S.C.). As a result of that conference, the Justice made a settlement

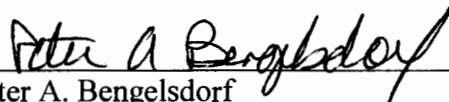
recommendation. There were further negotiations between New York City and The Home in light of the settlement recommendation, and ultimately the parties to the tax certiorari proceedings reached the proposed Settlement. As set forth in the stipulated judgment, the assessed valuation of the 59 Maiden Lane property would be significantly reduced for the tax years 1991/92 and 1992/93 and reduced by a lesser amount in 1993/94.

6. The reduced assessed valuations in the Settlement will result in a gross real estate tax refund from New York City of approximately \$16 million. Of that amount, up to approximately \$3.7 million would be distributed to other tenants of 59 Maiden Lane who had also paid real estate taxes under their leases for the tax years in question. The Home's counsel in the tax certiorari proceedings will be due a contingency fee of approximately \$1.15 million and there are also related appraisers' fees of approximately \$24,000. The Settlement is subject to the approval of this Court and also of the New York City Law Department and Comptroller's Offices in accordance with the New York City Administrative Code and Charter.

7. In accordance with the O&Y Settlement, The Home has requested the consent of the owner. The owner has not consented, on the ground that the Settlement does not provide for reductions in the assessed valuation for the tax years 1994/95 and 1995/96, which apparently would be more advantageous to it because of a possible spillover effect to tax years 1996/97 and later years for which the owner has proceedings pending. In the Liquidator's view, the owner has unreasonably withheld consent to this favorable settlement. Notice of the motion for approval of the Settlement will be provided to the owner so it may seek to express its position should it choose to do so.

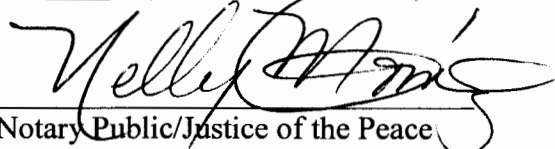
8. I believe that the Settlement is fair and reasonable and that it is in the best interests of the policyholders and other creditors of The Home. The Settlement is for reasonable consideration in light of the recommendation of the presiding Justice and the uncertainty and delay that would result from taking the tax certiorari proceedings to trial. The Settlement will expedite a significant payment by New York City to The Home, which will benefit the policyholders and other creditors of The Home generally. The payments to other tenants and to counsel and appraisers are necessary costs of the collection of this asset for The Home's estate, and they appropriately should be paid from the Settlement proceeds.

Signed under the penalties of perjury this 17th day of December, 2003.


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 17th day of December, 2003


Notary Public/Justice of the Peace

NELLY M. GOMEZ
Notary Public, State of New York
No. 0100-5005271
Qualified in New York County
Certificate Filed in N.Y. County
Commission Expires December 7, 2006