

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 MOTION FOR PROTECTIVE ORDER**

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

1. I was appointed Special Deputy Liquidator of The Home Insurance Company ("Home") and U.S. International Reinsurance Company ("USI Re") (collectively, the "Companies"), by the Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of the Companies. I submit this affidavit in support of the Liquidator's Motion for Protective Order ("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. My staff has conducted a preliminary review in an effort to evaluate the effort and expense that would be involved in responding to the requests listed on the California Subpoenas received from the plaintiffs in the Fuller Austin Asbestos Settlement Trust, Western Asbestos Settlement Trust and PepsiAmericas, Inc. actions in California. As described below, based on that preliminary review, response to the subpoenas would require the liquidation team to review the equivalent of 22 trailer trucks of documents plus a minimum of 25 million pages of electronic records (many of which would need to be restored from outdated tapes first) to identify potentially responsive documents, and then review responsive documents for privilege and

statutory confidentiality. This would require substantial efforts by senior liquidation staff and counsel (inside and outside) over several months, as well as additional staff time and significant out of pocket costs in retrieving, assembling and returning documents to storage, exceeding \$1 million.

3. Broad requests for "financial" or "operations" records must be considered in the context of the approximately 160,000 boxes of documents in offsite storage and the equivalent of thousands more boxes at Home's two operations centers in New York and Manchester, plus electronic records. The requests for financial records from 1985 to the present encompasses the records of several departments (finance, investment, treasury, accounting, actuarial) for that twenty year period. Based on a preliminary review¹ (which could not be limited by date), there are approximately 6,000 boxes of such records in off-site storage, and an estimated 300 boxes of financial records at the Home liquidation's operational headquarters in New York. The requests for operational and management records from 1990 would extend to include not only reports (estimated at approximately 30 boxes) and records of employees on the distribution list for the recapitalization transaction (approximately 2,000 boxes not limited by date, much of which would not concern that transaction). Documents that relate to the Services Agreement under which REM administered Home could include essentially all financial, claims, and administrative records for the period 1995 to 2003.

4. The requests for policy and claims records and materials concerning proofs of claim also involve voluminous documents. The California subpoenas identify approximately 180 policies allegedly issued to or for the benefit of the plaintiffs. The policies and underwriting files for the plaintiffs could consist of thousands of pages. Moreover, based on preliminary

¹ The estimates of boxes and documents are present estimates based on preliminary investigation. The numbers could move either up or down as investigation continues. Additional issues may arise as more is learned about the available records.

review, there are or were over 900 claims under policies issued to plaintiffs. Storage information is available for approximately 300 claims, and those claims involve over 350 boxes. There are also over 1,600 boxes of claims drafts (including microfiche that would need to be printed out) that may contain information on paid claims. The plaintiffs have filed numerous proofs of claim with the Liquidator to be determined in the liquidation, and additional materials are being submitted in connection with the plaintiffs' proofs of claim. (Eight or more insurance guaranty funds may also be involved in handling some of these claims.)

5. Production of the voluminous requested records for production would be an extremely time-consuming and expensive task. The at least 11,000 boxes (about 22 tractor trailer loads) in off-site storage would need to be retrieved. These boxes, and the additional material at the Home liquidation's operational headquarters, would need to be stored and reviewed to determine what of the voluminous materials is actually responsive to the requests. Responsive materials would have to be reviewed for attorney-client privilege and work product materials. Both of these tasks would take significant time of senior liquidation staff and counsel over several months: staff to identify responsive documents and identify the personnel involved in the records, counsel to identify and log privileged documents. The Home staff involved in the recapitalization transaction and many of the contracts with Zurich included a number of attorneys, and Home also had outside counsel. Home's files thus are expected to contain many privileged documents and will need to be reviewed with care. Certain of the materials, including financial records, would also need to be reviewed to determine the applicability of the statutory confidentiality provisions. Documents to be produced would need to be Bate-stamped and copied.

6. In August 2003, the Liquidator received consolidated backup tapes from REM with data from ten servers covering an unknown period. The tapes are believed to contain approximately 40 gigabytes (GB) of information. Identification of responsive records from this data would require restoring the data to servers from the tapes and then manual review of the files on the restored servers. Seven of the tapes are from servers that used an older operating system. The Home liquidation would not be able to restore these tapes internally because the liquidation's hardware is not compatible with the old servers or their software. The liquidation could restore the data from the other three servers, but it would need to lease or buy hardware to do so. Once the data was recovered, it would need to be reviewed both to identify any responsive documents and to separate out documents regarding REM clients other than Home. The responsive documents would then need to be reviewed for privilege.

7. The volume of information on these tapes is tremendous. A full page (without spaces) represents approximately 7 kilobytes (kb) of data, so the 40 GB of information when printed would take approximately 5.7 million pages. (Depending on fonts and the type of document, such as Word, Excel, email, it could be four to five times that number.) Given this volume of data, review would require significant time of senior liquidation staff and counsel at tremendous cost.

8. The liquidation's computer system was established in 2003. The liquidation system contains approximately 140 GB of data, or approximately 20 million pages at a minimum. The review necessary to identify any responsive records on that system would need to be conducted by each of the liquidation staff involved (to the extent they are still employed by the liquidation). This would again require significant time from senior liquidation staff, as well as counsel's involvement in privilege review.

9. The Liquidator's November 11, 2005 proposal is reasonable. It consolidated many of the 48 requests into 14 more focused categories of identifiable documents. The proposal also used time frames that more reasonably run from about the time of the 1995 transactions that appear to be the subject of plaintiffs' actions to the time when Home was placed in rehabilitation. Specifically, the Liquidator proposed to provide:

- Budgets for Home and its subsidiaries dated 1994 – 1998.
- Home's monthly and annual financial reports produced by Home's executive management (management reporting directly to Home's CEO) dated 1994 – 1998.
- Home's annual statements for years 1985 – 2002.
- Internal operational and management reports produced by Home's executive management dated 1994 – 1998.
- Documents dated 1994 – 1996 concerning Zurich's recapitalization of Home as described in Zurich's Form A application as amended.
- Documents dated 1994 – February 2003 concerning the Renewal Rights Agreement, Aggregate Excess of Loss Reinsurance Agreement, Facultative Reinsurance Agreement, the Fronting Amendment, Portfolio Value Swap Agreement, Services Agreement, and Securityholders' Agreement, including payments under those agreements.
- Documents dated 1995 – 1998 concerning communications from Home to its policyholders regarding Home's recapitalization by Zurich and possible renewal of policies by Zurich.
- Documents dated 1990 – February 2003 concerning the Aggregate Excess of Loss Cover, including payments thereunder.

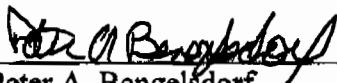
(To avoid an unreasonably burdensome search, the proposal does not propose to review individual insureds' underwriting, policy or claims files for documents in these categories.)

10. Since the Liquidator's proposal contemplates production of documents concerning the recapitalization and various contracts involving Zurich, it will still require a significant amount of time, resources and expense. It is anticipated that the proposal would require review for responsiveness and potentially privilege of over 100 boxes of documents. This will necessarily involve the attention and time of senior liquidation staff and counsel, as well as the related retrieval and return costs.

11. As the claims of Fuller-Austin (and the other California plaintiffs) against Home will be determined in the New Hampshire liquidation proceeding, the Liquidator proposed to defer the requests for documents concerning claims for coverage under Home policies. Fuller Austin and the other plaintiffs have filed proofs of claim with the Liquidator asserting claims for coverage under Home policies. The Liquidator is investigating those claims, which will be the subject of claim determinations in accordance with the Claims Procedures Order.

12. Since Insurance Department requests for information from Home or Zurich concerning the Facultative Reinsurance Facility Agreement and the responses to those requests would be subject to statutory confidentiality provisions, a search for such records would be unwarranted. In these circumstances, the Liquidator did not propose to conduct a pointless search for those documents. Similarly, given the burden of searching for electronic records, the Liquidator did not propose to conduct such a search.

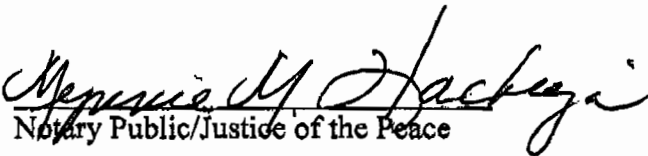
Signed under the penalties of perjury this 1st day of May, 2006.


 Peter A. Bengelsdorf
 Special Deputy Liquidator

STATE OF CALIFORNIA
 COUNTY OF VENTURA

Subscribed and sworn to, before me, this 1 day of May, 2006




 Notary Public/Justice of the Peace