

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**

**MOTION FOR APPROVAL OF FIFTH EARLY ACCESS
DISTRIBUTION TO INSURANCE GUARANTY ASSOCIATIONS**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby applies for approval of a fifth 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 September 30, 2008, less (a) guaranty association recoveries, and (b) approved first, second, third and fourth early access distribution amounts. The early access distributions will also be subject to deductions for unreturned deposits and questioned claim items and application of a percentage distribution cap. As reasons therefor, the Liquidator states:

1. On October 8, 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 Insurance Guaranty Association, and any similar organization in another state (the "guaranty associations") in accordance with RSA 402-C:29, III. The Plan included a form of Early Access Distribution Agreement ("Agreement") to be entered into by guaranty associations receiving an early access distribution. The Court approved the Plan and Agreement

by order entered October 22, 2003. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Fifth Early Access Distribution (“Bengelsdorf Aff.”) ¶ 3.

2. The statutory schemes adopted by New Hampshire and other states for the liquidation of insolvent insurers contemplate the ongoing payment by the guaranty associations of most claims under insurance policies issued by the insolvent insurer, subject to statutory and policy limits and conditions. See RSA 402-C:29, III; RSA 402-C:44, II. See also, e.g., RSA 404-B:8, I(a) (NHIGA is obligated on “covered claims” under insurance policies issued by the insolvent insurer); RSA 404-B:8, I(b) (NHIGA is deemed the insurer to the extent of its obligation on covered claims and to such extent has the “rights, duties, and obligations” of the insurer). The “covered claims” payable by guaranty associations generally are claims, including claims for unearned premiums, which arise out of and are within the coverage and not in excess of applicable limits of insurance policies issued by the insolvent insurer. E.g., RSA 404-B:5, IV (definition of “covered claim”). The guaranty associations’ obligations thus encompass both indemnity payments and defense expense payments (commonly referred to as allocated loss adjustment expense or “ALAE” payments) covered by a policy issued by Home. Such claims are Class II claims. RSA 402-C:44, II.¹ See Bengelsdorf Aff. ¶ 4.

3. The insurer liquidation statutes provide for early access distributions to guaranty associations because the associations are ultimately funded by the insurance-buying public. The guaranty associations generally are initially funded by assessments on their member insurers. See, e.g., RSA 404-B:8, I(c). The member insurers pass on these assessments in their rates and

¹ Certain guaranty associations have taken the position that ALAE is a Class I administration cost. This difference of views does not affect this motion because guaranty associations will generally receive the same payment on account of ALAE through September 30, 2008 under this motion as they would receive if the view of these guaranty associations were correct. The difference is that an early access distribution under this motion is subject to the Agreement, including the repayment provision of the Agreement and RSA 402-C:29, III, described in paragraph 7 below. The Liquidator agrees that the receipt of an early access distribution by a guaranty association shall not be deemed to constitute an admission by the guaranty association that ALAE is a Class II claim.

premiums. See, e.g., RSA 404-B:16. The guaranty associations also are subrogated to the rights of policyholders and claimants to the extent of the payments the associations make on claims arising under the insurer's policies, and they submit requests for reimbursement to the insurer's liquidator. See, e.g., RSA 404-B:11, I and III.

4. On October 1, 2004, the Liquidator moved for approval of a first early access distribution to guaranty associations of approximately \$40.9 million based on reported guaranty fund payments less recoveries through June 30, 2004, subject to deductions based on unreturned deposits held by various states. The Court approved the first early access distribution on October 15, 2004. The Liquidator applied deductions based on deposits held by certain states and made first early access distributions to guaranty associations totaling \$35,321,789.43. The Liquidator moved for approval of a second early access distribution of approximately \$63.1 million on November 23, 2005, and the Court approved the second early access distribution on December 9, 2005. The Liquidator applied deductions based on deposits held by certain states and made second early access distributions totaling \$57,334,436.82. The Liquidator moved for approval of a third early access distribution of approximately \$48.4 million on February 1, 2007, and the Court approved the third early access distribution on March 12, 2007. The Liquidator applied deductions and a 40% percentage cap and made third early access distributions totaling \$39,276,227.69. The Liquidator moved for approval of a fourth early access distribution of approximately \$36.4 million on October 30, 2007, and the Court approved the fourth early access distribution on November 16, 2007. The Liquidator applied deductions and a 40% distribution cap and made fourth early access distributions totaling \$33,805,881.59 on February 12, 2008. Bengelsdorf Aff. ¶ 5.

5. Since the commencement of this liquidation proceeding, fifty-seven guaranty associations have reported making indemnity or ALAE payments under insurance policies issued by Home. As of October 30, 2008, the guaranty associations have reported paying \$252,840,062.03 under policies of insurance issued by Home through September 30, 2008 (\$223,072,261.73 in indemnity and \$29,767,800.30 in ALAE). The guaranty associations also reported recoveries (e.g., subrogation, net worth and second injury fund recoveries) totaling \$21,647,175.32, so the guaranty association payments after recoveries total \$231,192,886.71 at this time. The approved first, second, third and fourth early access distribution amounts – now paid by the estate or through deduction of state deposits – totaled \$192,010,255.87, so the potential total for the fifth early access distribution is \$39,182,630.84.² A chart showing the payments and recoveries through September 30, 2008 (as reported by each guaranty association through October 30, 2008) together with the previous early access payments and the potential fifth early access distribution amounts is attached as Exhibit A to the Bengelsdorf Affidavit. Bengelsdorf Aff. ¶ 6.

6. As of September 30, 2008, the unrestricted liquid assets of the Home estate in the Liquidator's control totaled \$871,307,584 as set forth in the Statement of Net Assets attached as Exhibit B to the Bengelsdorf Affidavit.³ The liquid assets available to the Liquidator are thus approximately twenty-two times the amount of the guaranty associations' payments eligible for a fifth early access distribution, and they exceed those payments by approximately \$832 million. The liquid assets that would remain after the proposed fifth early access distribution are

² The amounts paid by guaranty associations and the prior early access distribution amounts in this paragraph include the \$3,148,212.13 paid to workers compensation claimants on behalf of guaranty funds during 2003 by the Liquidator as advances on early access distributions in order to avoid disruptions in payments to the claimants.

³ This amount excludes other Home assets also in the Liquidator's possession: \$3,870,659 in illiquid assets and \$340,917 in liquid assets presently subject to restrictions limiting their use. See Ex. B.

approximately 3.8 times the amount of the guaranty associations' net payments through September 30, 2008. Bengelsdorf Aff. ¶ 7.

7. To receive an early access distribution under the Plan, a guaranty association must execute the Agreement. As required by RSA 402-C:29, III, 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. This is sometimes referred to as a "claw back". All but two guaranty associations have executed the Agreement. (Those two guaranty associations have not received any early access distributions, although the deposits held in their states exceed their current paid amounts.) See Bengelsdorf Aff. ¶ 8.

8. 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 covered claims under policies of insurance issued by Home. The first two early access distributions accordingly equaled one-hundred percent (100%) of the amounts the guaranty funds had paid as of September 30, 2005. The third and fourth early access distributions were based on 100% of guaranty fund payments as of September 30, 2006 and September 30, 2007, respectively, but they were subject to a distribution cap equal to forty percent (40%) of the total incurred costs (paid amounts plus case reserves but not including any incurred but not reported reserves) projected by each guaranty association. The Liquidator plans to apply this 40% cap to the proposed fifth early access distribution as well. The cap is designed to avoid situations in which a "claw back" pursuant to RSA 402-C:29, III(b)(4) may be necessary by keeping each guaranty association's total early access distributions at a level of no more than 40% of its total

projected incurred costs. The cap is expected to affect twenty-two guaranty associations: Alaska Insurance Guaranty Association, Florida Insurance Guaranty Association, Florida Workers Compensation Insurance Guaranty Association, Hawaii Insurance Guaranty Association, Idaho Insurance Guaranty Association, Massachusetts Insurers Insolvency Fund, Maryland Property and Casualty Insurance Guaranty Association, New Hampshire Life and Health Guaranty Association, Nevada Insurance Guaranty Association, New York Liquidation Bureau, North Carolina Insurance Guaranty Association, Ohio Insurance Guaranty Association, Ohio Life & Health Insurance Guaranty Association, Oregon Insurance Guaranty Association, Puerto Rico Insurance Guaranty Association, South Carolina Insurance Guaranty Association, South Dakota Property & Casualty Insurance Guaranty Association, Utah Insurance Guaranty Association, Vermont Insurance Guaranty Association, Washington Insurance Guaranty Association, West Virginia Insurance Guaranty Association, and the West Virginia Life and Health Insurance Guaranty Association. Use of the cap will reduce the amount to be distributed in the fifth early access distribution by a total of approximately \$16.3 million. Bengelsdorf Aff. ¶ 9.

9. 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 and the orders approving the first, second, third and fourth early access distributions, the Liquidator deducted the amount of deposits in certain states from the early access distributions where the deposit had not been returned to the Liquidator. This served to provide equivalent reimbursement from Home to the various guaranty associations. Where deposits remain unreturned and were not deducted in connection with the previous early access distributions, the Liquidator may deduct the amount of a deposit in a particular state from the fifth early access distribution to the guaranty association in the state. Bengelsdorf Aff. ¶ 10.

10. The Liquidator asks guaranty associations for clarification regarding payments or recoveries with respect to specific claims. There are now four such inquiries pending (with the California Insurance Guarantee Association, Ohio Life and Health Insurance Guaranty Association, Tennessee Insurance Guaranty Association, and West Virginia Insurance Guaranty Association, respectively), and the Liquidator plans to withhold early access distributions based on those claims until the inquiries are resolved. The guaranty associations have been contacted about the questions. Bengelsdorf Aff. ¶ 11.

11. 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. See 31 U.S.C. § 3713(b); Ruthardt v. United States, 303 F.3d 375, 384-386 (1st Cir. 2002), cert. denied, 538 U.S. 1031 (2003). The Liquidator obtained limited waivers of alleged federal priority claims as a precondition to making the previous early access distributions, and will need to obtain a waiver before making the fifth early access distribution as well. See Bengelsdorf Aff. ¶ 12.

WHEREFORE, the Liquidator requests that the Court:

A. Grant this Motion for Approval of Fifth Early Access Distribution to Insurance Guaranty Associations;

B. Enter an order in the form submitted herewith approving the fifth early access distribution based on reported guaranty association payments through September 30, 2008, less recoveries and previous early access distribution amounts, all as set forth on Exhibit A to the Bengelsdorf Affidavit, and subject to the percentage cap and deductions for unreturned deposits and claim clarifications; and

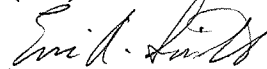
C. Grant such other and further relief as justice may require.

Respectfully submitted,

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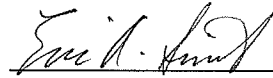


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November 25, 2008

Certificate of Service

I hereby certify that a copy of the foregoing Motion For Approval of Fifth Early Access Distribution To Insurance Guaranty Associations, the accompanying Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, and the Proposed Order Approving Fifth Early Access Distribution To Insurance Guaranty Associations was sent, this 25th day of November, 2008, by first class mail, postage prepaid to all persons on the attached service list.



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