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**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 SIXTH  
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 Sixth 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 sixth 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, 2009 as reported by October 30, 2009, less (a) guaranty association recoveries, and (b) approved first, second, third, fourth, and fifth 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 distribution cap equal to forty percent of the total

incurred costs (paid amounts plus case reserves but not including incurred but not reported reserves) projected for each guaranty association.

3. 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.

4. 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. 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. 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.<sup>1</sup>

5. 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

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<sup>1</sup> Certain guaranty associations have taken the position that ALAE is a Class I administration cost. 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.

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 to guaranty associations 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 to guaranty associations 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% percentage cap and made fourth early access distributions totaling \$33,805,881.59 on November 13, 2008. The Liquidator moved for approval of a fifth early access distribution of approximately \$39.1 million on November 25, 2008, and the Court approved the fifth early access distribution on January 12, 2009. The Liquidator applied deductions and a 40% percentage cap and made fifth early access distributions totaling \$22,843,900.03 on March 18, 2009.

6. 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, 2009, the guaranty associations have reported paying \$293,865,033.75 under policies of insurance issued by Home through September 30, 2009

(\$260,025,857.37 in indemnity and \$33,839,176.38 in ALAE). The guaranty associations also reported recoveries (e.g., subrogation, net worth and second injury fund recoveries) totaling \$25,625,282.56, so the guaranty association payments after recoveries total \$268,239,751.19 at this time. The approved first, second, third, fourth, and fifth early access distribution amounts – paid by the estate or through deduction of state deposits – totaled \$231,192,886.71, so the potential total for the sixth early access distribution is \$37,046,864.48.<sup>2</sup> A chart showing the payments and recoveries through September 30, 2009 (as reported by each guaranty association through October 30, 2009) together with the previous early access payments and the potential sixth early access distribution amounts is attached hereto as Exhibit A.

7. As of September 30, 2009, the unrestricted liquid assets of the Home estate in the Liquidator's control totaled \$974,545,023 as set forth in the Statement of Net Assets attached hereto as Exhibit B. The liquid assets available to the Liquidator are thus approximately twenty-six times the amount of the guaranty associations' payments eligible for a sixth early access distribution, and they exceed those payments by approximately \$937 million. The liquid assets that would remain after the proposed sixth early access distribution are approximately 3.5 times the amount of the guaranty associations' net payments through September 30, 2009.

8. 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. This is sometimes referred to as "claw back". All but two guaranty associations have executed the Agreement. (Those two guaranty associations have

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<sup>2</sup> 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.

not received any early access distributions, although the deposits held in their states exceed their current paid amounts.)

9. 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 equaled one hundred percent (100%) of the amounts the guaranty funds had paid as of September 30, 2005. The third, fourth and fifth early access distributions were based on 100% of guaranty fund payments as of September 30, 2006, September 30, 2007, and September 30, 2008 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 sixth 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, Maryland Property and Casualty Insurance Guaranty Association, Massachusetts Insurers Insolvency Fund, Missouri Insurance Guaranty Association, Montana Insurance Guaranty Association, Nebraska Insurance Guaranty Association, New Hampshire Life and Health Insurance Guaranty Association, Nevada Insurance Guaranty Association, New Jersey Workers Compensation Security Fund, New York Liquidation Bureau, Ohio Insurance Guaranty Association, Ohio Life & Health Insurance Guaranty Association, Pennsylvania Worker’s

Compensation Security Fund, 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 distributed in the sixth early access distribution by a total of approximately \$14.1 million.

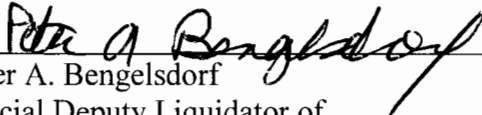
10. Prior to liquidation, Home had made deposits in a number of states as required by the laws of those states. As contemplated by the Early Access Distribution Plan and the orders approving the prior early access distributions, the Liquidator deducted the amount of deposits in certain states from the prior 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 prior early access distributions, the Liquidator may deduct the amount of a deposit in a particular state from the sixth early access distribution to the guaranty association in the state.

11. The Liquidator asks guaranty associations for clarification regarding payments or recoveries with respect to specific claims. There is now one such inquiry pending (with the Tennessee Insurance Guaranty Association), and the Liquidator plans to withhold the early access distribution based on such claim until the inquiry is resolved. The guaranty association has been contacted about the question.

12. 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 obtained

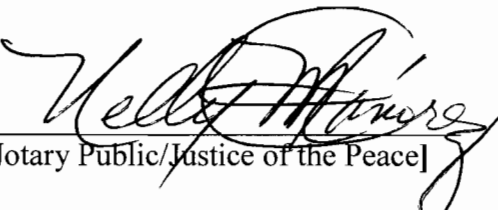
limited waivers of alleged federal priority claims as a precondition to making the prior early access distributions, and will need to obtain a waiver before making the sixth early access distribution as well.

Signed under the penalties of perjury this 13<sup>th</sup> day of November, 2009.

  
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 13<sup>th</sup> day of November, 2009

  
Notary Public/Justice of the Peace

NELLY M. GOMEZ  
Notary Public, State of New York  
No. ~~0160~~ 5005271  
Qualified in ~~Brooklyn~~ County  
Certificate Filed in ~~N.Y.~~ County  
Commission Expires December 7, 2010.





## The Home Insurance Company In Liquidation

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

	<u>September 30, 2009</u>	<u>December 31, 2008</u>
<b>Assets</b>		
Unrestricted bonds, short-term investments and cash at cost:		
Bonds (Note 2)	\$910,567,517	\$780,430,643
Short-term investments	9,509,750	49,738,716
Cash and cash equivalents	<u>44,940,492</u>	<u>98,735,353</u>
<b>Total unrestricted bonds, short-term investments and cash at cost</b>	<b>965,017,759</b>	<b>928,904,712</b>
Common stocks, marketable, at market value (Note 2)	215,431	277,937
Interest income due and accrued	9,278,667	7,060,880
Receivable from US International Reinsurance Company (Note 4)	<u>33,166</u>	<u>23,088</u>
<b>Total unrestricted liquid assets</b>	<b>974,545,023</b>	<b>936,266,617</b>
Unrestricted illiquid assets: ( Note 1)		
Surplus notes	-	146,800
Common stocks	96,329	101,995
Limited partnership interests	<u>1,688,725</u>	<u>2,014,731</u>
<b>Total unrestricted illiquid assets</b>	<b>1,785,054</b>	<b>2,263,526</b>
Restricted liquid assets - cash (Note 5)	417,852	417,852
<b>Total assets, excluding certain amounts</b>	<b>976,747,929</b>	<b>938,947,995</b>
<b>Liabilities</b>		
Incurred but unpaid administrative expenses and investment expenses (Note 3)	4,116,867	5,080,004
Notices of Determination approved for Class I creditors (Note 8)	-	2,932,508
Claims checks payable (Note 1)	<u>631</u>	<u>241,897</u>
<b>Total liabilities</b>	<b>4,117,498</b>	<b>8,254,409</b>
<b>Net assets, excluding certain amounts</b>	<b><u>\$972,630,431</u></b>	<b><u>\$930,693,586</u></b>