

**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 SEVENTH 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 seventh 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, 2010, less (a) guaranty association recoveries, and (b) approved first through sixth 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 Seventh 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.<sup>1</sup> 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 premiums. See, e.g., RSA 404-B:16. The guaranty associations also are subrogated to the rights

---

<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.

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 association 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. 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. The Liquidator moved for approval of a sixth early access distribution of approximately \$37 million on November 17, 2009, and the Court approved the sixth early access distribution on March 17, 2010. The Liquidator applied deductions and a 40% percentage cap and made sixth early access distributions totaling \$16,540,874.18 on June 20, 2010.<sup>2</sup> 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, 2010, the guaranty associations have reported paying \$334,369,053.94 under policies of insurance issued by Home through September 30, 2010 (\$296,894,884.30 in indemnity and \$37,474,169.64 in ALAE). The guaranty associations also reported recoveries (e.g., subrogation, net worth and second injury fund recoveries) totaling \$33,255,077.72, so the guaranty association payments after recoveries total \$301,113,976.22 at this time. The approved first through sixth early access distribution amounts – now paid by the estate or through deduction of state deposits – totaled \$268,239,751.19, so the potential total for the seventh early access distribution is \$32,874,225.03.<sup>3</sup> A chart showing the payments and recoveries through September 30, 2010 (as reported by each guaranty association through October 30, 2010) together with the previous early access payments and the potential seventh early access distribution amounts is attached as Exhibit A to the Bengelsdorf Affidavit. Bengelsdorf Aff. ¶ 6.

---

<sup>2</sup> Certain guaranty associations have returned some funds after the early access distributions. These amounts are not reflected in this paragraph.

<sup>3</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.

6. As of December 31, 2010, the unrestricted liquid assets of the Home estate in the Liquidator's control totaled \$1,064,776,389 as set forth in the Statement of Net Assets attached as Exhibit B to the Bengelsdorf Affidavit. The liquid assets available to the Liquidator are thus approximately thirty-two times the amount of the guaranty associations' payments eligible for a seventh early access distribution, and they exceed those payments by over \$1 billion. The liquid assets that would remain after the proposed seventh early access distribution are approximately 3.4 times the amount of the guaranty associations' net payments through September 30, 2010. 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 three guaranty associations have executed the Agreement. 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 through sixth early access distributions were based on 100% of guaranty fund payments as of September 30, 2006, September 30, 2007, September 30, 2008 and September 30, 2009, 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 seventh 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 thirty-five guaranty associations: Alaska Insurance Guaranty Association, California Insurance Guarantee Association, Colorado Insurance Guaranty Association, Florida Property & Casualty Insurance Guaranty Association, Florida Workers Compensation Insurance Guaranty Association, Hawaii Insurance Guaranty Association, Idaho Insurance Guaranty Association, Illinois Insurance Guaranty Association, Indiana Insurance Guaranty Association, Maryland Property and Casualty Insurance Guaranty Association, Massachusetts Insurers Insolvency Fund, Minnesota Insurance Guaranty Association, Missouri Insurance Guaranty Association, Nebraska Insurance Guaranty Association, New Hampshire 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, North Carolina Insurance Guaranty Association, Ohio Insurance Guaranty Association, Ohio Life & Health Insurance Guaranty Association, Oregon Insurance Guaranty Association, Pennsylvania Property & Casualty Insurance Guaranty Association, Pennsylvania Worker’s Compensation Security Fund, Puerto Rico Insurance Guaranty Association, Rhode Island Insurance Guaranty Association, South Carolina Property & Casualty Insurance Guaranty Association, South Dakota Property & Casualty Insurance Guaranty Association, Texas Property & Casualty Insurance Guaranty Association, Vermont Insurance Guaranty Association, Washington Insurance Guaranty Association, West Virginia Insurance Guaranty Association,

West Virginia Life and Health Insurance Guaranty Association, and the Wisconsin Insurance Guaranty Association. Use of the cap and the credit for funds held will reduce the amount distributed in the seventh early access distribution by a total of approximately \$21.3 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 prior 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 prior early access distributions, the Liquidator may deduct the amount of a deposit in a particular state from the seventh early access distribution to the guaranty association in the state. Bengelsdorf Aff. ¶ 10.

10. The Liquidator asks guaranty associations for clarification regarding payments, expenses, or recoveries. There is now one such inquiry pending (with the Arizona Property and Casualty Insurance Guaranty Association), but this guaranty association is not eligible for an early access distribution because of the deposits that exceed the reported claims in the state. The guaranty association has been contacted about the question. 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 potential 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 prior early access distributions. It appears unlikely that the United States will grant a further waiver at this time. However, in light of the statutory claw back agreements with guaranty associations receiving early access distributions as discussed in paragraphs 1 and 7, as well as the factors described in paragraph 6, the Liquidator believes that making the proposed seventh early access distribution is reasonable and prudent even without such a waiver. The Liquidator will consider this issue anew in connection with any future proposed early access distributions. See Bengelsdorf Aff. ¶ 12.



WHEREFORE, the Liquidator requests that the Court:

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

B. Enter an order in the form submitted herewith approving the seventh early access distribution based on reported guaranty association payments through September 30, 2010, 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

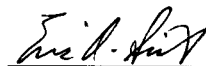
C. Grant such other and further relief as justice may require.

Respectfully submitted,

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

By his attorneys,  
MICHAEL A. DELANEY,  
ATTORNEY GENERAL

J. Christopher Marshall  
NH Bar ID No. 1619  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397  
(603) 271-3650



---

J. David Leslie  
NH Bar ID No. 16859  
Eric A. Smith  
NH Bar ID No. 16952  
Rackemann, Sawyer & Brewster P.C.  
160 Federal Street  
Boston, MA 02110  
(617) 542-2300

March 9, 2010

Certificate of Service

I hereby certify that a copy of the foregoing Motion For Approval of Seventh Early Access Distribution To Insurance Guaranty Associations, the accompanying Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, and the Proposed Order Approving Seventh Early Access Distribution To Insurance Guaranty Associations was sent, this 9th day of March, 2010, by first class mail, postage prepaid to all persons on the attached service list.



---

Eric A. Smith  
NH Bar ID No. 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of  
The Home Insurance Company  
Docket No. 03-E-0106

SERVICE LIST

Lisa Snow Wade, Esq.  
Orr & Reno  
One Eagle Square  
P.O. Box 3550  
Concord, New Hampshire 03302-3550

Gary S. Lee, Esq.  
James J. DeCristofaro, Esq.  
Kathleen E. Schaaf, Esq.  
Morrison & Foerster  
1290 Avenue of the Americas  
New York, New York 10104-0050

Pieter Van Tol, Esq.  
Lovells  
590 Madison Avenue  
New York, New York 10022

Peter G. Callaghan, Esq.  
Preti, Flaherty, Beliveau, Pachos  
& Haley, PLLP  
57 North Main Street  
P.O. Box 1318  
Concord, New Hampshire 03302-1318

George T. Campbell, III, Esq.  
Robert A. Stein, Esq.  
Robert A. Stein & Associates, PLLC  
One Barberry Lane  
P.O. Box 2159  
Concord, New Hampshire 03302-2159

David M. Spector, Esq.  
Dennis G. LaGory, Esq.  
Schiff Hardin LLP  
6600 Sears Tower  
Chicago, Illinois 60606

Michael Cohen, Esq.  
Cohen & Buckley, LLP  
1301 York Road  
Baltimore, Maryland 21093

David H. Simmons, Esq.  
Mary Ann Etzler, Esq.  
Daniel J. O'Malley, Esq.  
deBeaubien, Knight, Simmons,  
Mantzaris & Neal, LLP  
332 North Magnolia Avenue  
P.O. Box 87  
Orlando, Florida 32801

Martin P. Honigberg, Esq.  
Suloway & Hollis, P.L.L.C.  
9 Capitol Street  
P.O. Box 1256  
Concord, New Hampshire 03302-1256

Richard Mancino, Esq.  
Willkie Farr & Gallagher, LLP  
787 Seventh Avenue  
New York, New York 10019

Joseph G. Davis, Esq.  
Willkie Farr & Gallagher, LLP  
1875 K Street, N.W.  
Washington, DC 20006

Albert P. Bedecarre, Esq.  
Quinn Emanuel Urguhart Oliver & Hedges, LLP  
50 California Street, 22<sup>nd</sup> Floor  
San Francisco, California 94111

Jeffrey W. Moss, Esq.  
Morgan Lewis & Bockius, LLP  
225 Franklin Street  
16<sup>th</sup> Floor  
Boston, Massachusetts 02110

Gerald J. Petros, Esq.  
Hinckley, Allen & Snyder LLP  
50 Kennedy Plaza, Suite 1500  
Providence, Rhode Island 02903

Christopher H.M. Carter, Esq.  
Hinckley, Allen & Snyder LLP  
11 South Main Street, Suite 400  
Concord, New Hampshire 03301

Robert M. Horkoviceh  
Robert Y. Chung  
Anderson Kill & Olick, P.C.  
1251 Avenue of the Americans  
New York, New York 10020

Andrew B. Livernois  
Ransmeier & Spellman, P.C.  
One Capitol Street  
P.O. Box 600  
Concord, New Hampshire 03302-0600

John A. Hubbard  
615 7<sup>th</sup> Avenue South  
Great Falls, Montana 59405

Adebowale O. Osijo  
2015 East Pontiac Way, Suite 209  
Fresno, California 93726

Jim Darnell, Esq.  
Jim Darnell, P.C.  
310 N. Mesa Street, Suite 212  
El Paso, Texas 79901

Edmond J. Ford, Esq.  
Ford & Weaver, P.A.  
10 Pleasant Street, Suite 400  
Portsmouth, New Hampshire 03801

Paul W. Kalish, Esq.  
Ellen M. Farrell, Esq.  
Timothy E. Curley, Esq.  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2595

Harry L. Bowles  
306 Big Hollow Lane  
Houston, Texas 77042

Michael S. Olsan, Esq.  
Christine G. Russell, Esq.  
Brendan D. McQuiggan, Esq.  
White and Williams, LLP  
One Liberty Place, Suite 1800  
Philadelphia, Pennsylvania 19103-7395

Kyle A. Forsyth, Esq.  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice  
P.O. Box 875  
Washington, D.C. 20044-0875