

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**

Docket No. 03-E-0112

**In the Matter of the Liquidation of
US International Reinsurance Company**

**AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY
LIQUIDATOR, IN SUPPORT OF LIQUIDATOR'S FOURTH MOTION FOR
APPROVAL OF DISPOSAL OF CERTAIN RECORDS**

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

1. I was appointed Special Deputy Liquidator of The Home Insurance Company ("Home") and US International Reinsurance Company ("USI Re") (collectively, the "Companies"), by the Insurance Commissioner for the State of New Hampshire, as Liquidator ("Liquidator") of Home and USI Re. I submit this affidavit in support of the Liquidator's Fourth Motion for Approval of Disposal of Certain Records. The facts and information set forth 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 pursuant to RSA 402-C:50 of the disposal of certain categories of records of the Companies that are no longer useful.

3. As set forth in the Liquidator's Motion for Approval of Disposal of Certain Records filed November 24, 2004, the Liquidator's Second Motion for Approval of Disposal of Certain Records filed July 15, 2005, and the Liquidator's Third Motion for Approval of Disposal of Certain Records filed July 3, 2008, Home and USI Re stopped the disposal of records under

their record retention policy in 1995. Home generally did not conduct new or renewal business after 1995, USI Re did not conduct new or renewal business after 1990, and both Companies have been in liquidation since June 2003. As a result of these circumstances, the Companies have numerous documents that are no longer needed, and the estates continue to incur significant expense to store the documents.

4. The Court authorized disposal of certain categories of records in response to the First Motion, Second Motion, and Third Motion by Orders Approving the Disposal of Certain Records entered on December 16, 2004, August 12, 2005, and August 19, 2008. Pursuant to these orders, the liquidation staff has disposed of approximately 20,500 boxes of documents. Nonetheless, over 155,000 boxes remain in storage with off-site vendors in addition to boxes stored at the liquidation offices. The annual cost of maintaining the records with off-site vendors alone is approximately \$556,000, and disposal of even part of the boxes in off-site storage would result in significant savings. Liquidation staff has accordingly sought to identify for disposal additional categories of records which are no longer useful.

5. Based on the review by the liquidation staff, the Liquidator has determined that the categories of documents described in paragraphs 6 to 11 below being stored by the Companies are no longer useful.

6. Records concerning claim determinations approved for more than a year. These files concern notices of determination that have become final and have been included in the Liquidator's reports of claims and recommendations submitted to the Court. The Liquidator proposes to dispose of such files where the Court has approved the Liquidator's recommendations and a year has passed since entry of the approval order. The files contain copies of claimants' proofs of claim, the materials submitted in connection with the proofs of claim, the notices of determination, and other correspondence or records. These documents are

no longer useful. The proofs of claim and notices of determination themselves have been imaged and are available to the liquidation staff if needed. The Court has approved over 8,000 claim determinations (involving a greater number of proofs of claim), and the number will continue to grow as the liquidation progresses.

7. Uninventoried files. The document disposal procedures attached as Exhibit F to the Liquidator's Eighteenth Report dated September 13, 2005 provide for review of box inventory lists to identify boxes of files eligible for disposal. However, prior to Home's liquidation, many boxes of files were sent to storage without being inventoried beyond a general description of the types of files in the box. Given the absence of any file inventory, the documents in the boxes are not useful. The time and expense that would be required to retrieve the boxes from the vendor and inventory all of the boxes to create a file by file inventory would be significant, and it would be an unnecessary expenditure of the Home estate's assets. The Liquidator therefore requests approval to dispose of two categories of uninventoried boxes:

- i. *Professional liability program administrator underwriting files:* There are nearly 800 boxes of policy and underwriting records of Home's program administrator for professional liability business dating from 1990 to 1996. The records generally include policy declarations, premium bearing endorsements, premium development information for the policy, correspondence between the program administrator and Home's insured, and the policy application. In the absence of an inventory, the boxes of documents are not useful.
- ii. *Staff counsel files:* The Court's Order of August 12, 2005 authorized disposal of staff counsel files. As described in the Second Motion, these files contain material relating to legal issues on claims including depositions, medical reports, summons and complaints, and correspondence from outside counsel.

This material often duplicates material in Home's claim files. There are almost 1,000 staff counsel boxes dating from 1989 through 1995 in storage for which no inventory lists are available. In the absence of inventories, the boxes of documents are not useful.

8. Third party files. In certain cases, the Liquidator or the Companies received or will receive files from third parties. The Liquidator requests approval to handle these files based upon the inventories prepared by the third party, such as outside counsel and third party administrators. The time and expense that would be required to inventory all of the boxes to create the liquidation's own inventory would be significant and would be an unnecessary expenditure of the Companies' estates' assets. The Liquidator requests approval to dispose of two categories of files received from third parties.

i. Files from outside counsel: These files were created or maintained by outside counsel formerly retained by one of the Companies to render professional service relative to a matter. The files have been closed for a period of time that exceeds the law firm's retention policies and were offered back to the Companies or the Liquidator to store in lieu of following the firm's usual disposal policy. This material often duplicates material in the Companies' files. As there are potentially hundreds of boxes of files that have been or will be offered to be returned by former counsel, the Liquidator requests approval to rely on the inventories supplied by counsel. Based on a review of counsels' inventories, liquidation staff will determine whether any files in the boxes concern a proof of claim, a pending dispute or anticipated litigation. If not, the Liquidator recommends disposal of the files as not useful.

ii. *Files from third party administrators:* These files were created or maintained by third party administrators (“TPAs”) formerly retained either by one of the Companies or their insureds/reinsureds to render administration services. The files have been closed for a period of time that exceeded the TPA’s retention policies and were offered back to the Companies to store in lieu of following the firm’s usual disposal policy. These files contain materials assembled in connection with claims, other correspondence, or records of the TPA, the material components of which are claim financial information that is already included on computer systems. As there are potentially thousands of boxes of such files that have been or will be offered to be returned by TPAs, the Liquidator requests approval to rely upon the inventories supplied by the TPA. Based on review of the TPAs’ inventories, liquidation staff will determine whether any files in the boxes concern a proof of claim, a pending dispute or anticipated litigation. If not, the Liquidator recommends disposal of the files as not useful.

9. Other files. The following categories of files are not useful to the liquidation:

i. *Instruction manuals, guides and other resource materials:* These files contain manuals, guides, newsletters and other resource materials including instruction manuals, service manuals, loss control bulletins, loss control technical procedure manuals, loss control service directories, newsletters, marketing presentations, workshop/seminar materials, personnel procedures, underwriting guides, licensing of adjusters surveys, approved legal counsel panels, and second injury fund information.

ii. *Closed non-claim-related litigation files:* These files contain litigation records dated both before and after the Home receivership began on March 5,

2003 concerning closed, non-claim litigation matters, such as collections, retaliatory tax disputes, and voluntary market premium litigation.

iii. *Car titles and keys for stolen vehicles:* These files contain records dating from 1972 to 1983 relating to salvage activity, including car titles and keys to stolen vehicles that were never recovered.

iv. *Annual reports for non-Home companies:* These files contain annual reports dating from 1988 to 1993 for companies not affiliated with Home

v. *Participating dividend payment records:* These files contain calculation and payment records of policyholders' participating dividends dating from 1990 to 2000.

10. Input forms. Input Forms are pre-liquidation handwritten internal forms prepared by Home's field offices and used by the New York Office to input new or updated information into the automated deductible system, such as insured name, policy number, policy inception or expiration dates, deductible amounts, and coverage. These records are no longer necessary and should be destroyed.

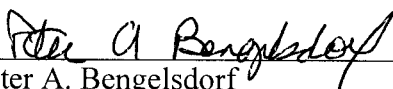
11. USI Re files. There are approximately 2,500 boxes of pre-liquidation USI Re files in storage that are not useful. The boxes generally contain closed claim files, accounting files and contract files, dating from 1983 until early 2003. The files are not useful for two reasons. First, all the claims against USI Re have been determined, presented to the Court in the Liquidator's reports of claims and recommendations and approved by the Court; the last day for filing or amending claims against USI Re was the Claim Amendment Deadline of December 31, 2008, and substantially all of the assets of USI Re have been collected. Accordingly, there is no need to retain these boxes of USI Re documents while the Liquidator prepares a plan for distribution of assets to present to the Court. Second, while there are handwritten inventories of

the boxes, experience and a recent sampling have shown that the inventories do not correspond with the actual contents of the boxes. As such, the documents in the boxes cannot meaningfully be accessed and are not useful for this reason as well.

12. The Liquidation staff continues to evaluate the documents in storage to identify further categories of unnecessary records. To the extent such categories are identified, the Liquidator will seek the Court's approval for their disposal.

13. For the reasons described above, I believe that the disposal of the records described in paragraphs 6 through 11 above is reasonable, prudent and in the best interests of the liquidation and of the policyholders and other creditors of the Companies.

Signed under the penalties of perjury this 15 day of February, 2011.



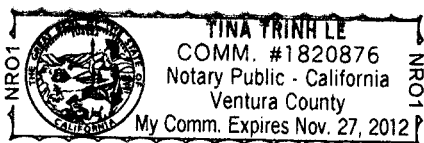
Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

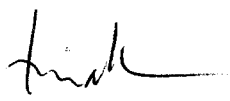
STATE OF CALIFORNIA
COUNTY OF VENTURA

On 2 - 15, 2011 before me, Tina Trinh Le, Notary Public, personally appeared Peter A. Bengelsdorf, Special Deputy Liquidator of The Home Insurance Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature 

Signature of Notary Public