

**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 ROGER A. SEVIGNY, LIQUIDATOR,  
IN SUPPORT OF APPROVAL OF 2012 COMPENSATION PLAN FOR  
THE SPECIAL DEPUTY LIQUIDATOR**

I, Roger A. Sevigny, hereby depose and say:

1. I am the Insurance Commissioner of the State of New Hampshire and Liquidator (“Liquidator”) of The Home Insurance Company (“Home”). I submit this affidavit in support of the Liquidator’s Motion for Approval of 2012 Compensation Plans (“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 concerns the approval of integrated compensation plans for the employees of Home in 2012 (the “2012 Employee Compensation Plans”) and a compensation and incentive/retention plan in 2012 (the “Special Deputy Plan”) for Peter A. Bengelsdorf, the Special Deputy Liquidator of Home (the “Special Deputy Liquidator”) (collectively, the “Plans”). The 2012 Employee Compensation Plans consist of annual salary programs supplemented, in certain cases, by an Annual Incentive Plan (“Annual Plan”) and a Collection Incentive Plan (“Collection Plan”). The Plans are intended to reward performance and reinforce retention of essential employees and the Special Deputy Liquidator in order to facilitate the

successful, efficient and prompt completion of the liquidation process. The Motion reflects the recommendation of Ernst & Young LLP (“E&Y”), experienced insurance industry compensation consultants, concerning the appropriate compensation structure for employees of Home and the Special Deputy Liquidator.

3. My overall goal is to maximize the amount of assets available to pay the claims of Home’s creditors as promptly as possible. This objective can be facilitated through an alignment of creditor interests with the interests of Home’s employees, as well as the Special Deputy Liquidator. An additional objective of the proposed Special Deputy Plan is to provide the Special Deputy Liquidator with the appropriate market competitive incentives to remain in his position so that he ultimately helps accomplish the foregoing goal.

4. The proposed Plans and their estimated cost have been reviewed with the National Conference of Insurance Guaranty Funds’ Subcommittee on Home (“NCIGF Subcommittee”). The NCIGF Subcommittee has advised that it has no objection to approval of the proposed 2012 Employee Compensation Plans or the Special Deputy Plan.

5. Shortly after the liquidation proceeding began in June 2003, the Special Deputy Liquidator was recruited from private industry and appointed to manage the operations of the liquidation.<sup>1</sup> The Special Deputy Liquidator is a consultant to the Liquidator, not an employee of Home. The terms of his engagement are described in a June 11, 2003 Consulting Agreement which was approved by the Court on June 30, 2003 (the “Consulting Agreement”). The Consulting Agreement remains in effect until terminated. The Special Deputy Liquidator does not participate in the incentive compensation plans for employees of Home, nor does he receive any health and welfare, retirement or severance benefits from Home. As an independent

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<sup>1</sup> The Special Deputy Liquidator also served as Home’s Special Deputy Commissioner prior to liquidation.

contractor, he pays the full Social Security tax (employer and employee share) on his compensation.

6. Pursuant to the Consulting Agreement, the Special Deputy Liquidator has been paid an hourly rate of \$250 since his engagement began in 2003. The Special Deputy Liquidator was eligible to receive an annual incentive award of \$400,000 during 2004 and 2005; \$300,000 during 2006, 2007 and 2008; \$200,000 during 2009 and 2010; and \$175,000 in 2011 as well as an annual “Stay Bonus” of \$400,000 during each such year. The reductions in potential annual incentive bonus amounts were recommended by the Special Deputy Liquidator.

7. The Special Deputy Liquidator is the top executive of Home, who reports directly to the Liquidator. A well-qualified and competent Special Deputy Liquidator will materially contribute to the efficient collection of assets as well as the orderly administration and expedited closure of the estate. The present Special Deputy Liquidator has demonstrated his abilities by facilitating the increase in Home’s cash and liquid invested assets from approximately \$12.7 million as of March 2003 (when the Home rehabilitation order entered) to an estimated \$1.4 billion as of September 30, 2011. (These figures include USI Re, \$212 million of Class II early access distributions to guaranty associations to date, \$36 million in Class I distributions to guaranty associations and \$12 million of additional Class I guaranty association claims that are currently being processed.) Most of this increase is attributable to a combination of reinsurance recoveries and other financial settlements negotiated either by the Special Deputy Liquidator or Home’s staff under his direction. Maximizing the prompt collection of assets advantages Home’s creditors.

8. As described in the October 20, 2011, recommendation letter from E&Y’s Performance & Reward Practice, attached as Exhibit D to the motion filed herewith and

discussed in more detail below, E&Y reviewed the scope and duties of the Special Deputy Liquidator position and, based on its experience in working with other companies in liquidation and distressed situations as well as “healthy” companies, identified comparable positions against which to evaluate market competitiveness of the 2012 Special Deputy Plan. E&Y advises that a competitive compensation level is one that approximates 85%-115% of the targeted market level (typically a range between the 50<sup>th</sup> and 75<sup>th</sup> percentile). E&Y found that the Special Deputy Liquidator’s proposed 2012 total direct compensation (or TDC, defined as base salary plus annual incentive and “Stay Bonus”) after adjustment for the absence of benefits is significantly less than competitive (or 60.5%) of median market levels (50<sup>th</sup> percentile) and is significantly less than competitive (or 37.2%) of the 75<sup>th</sup> percentile market levels. Estimated Total Cash Compensation (or TCC, defined as base salary plus annual incentives) is highly competitive (or 124.1%) of median market levels (50<sup>th</sup> percentile) and is less than competitive (or 80.2%) of 75<sup>th</sup> percentile market levels. In general, the Special Deputy Liquidator’s proposed 2012 compensation is less competitive than the total direct compensation for Home’s other top executives at the 50<sup>th</sup> and 75<sup>th</sup> percentiles, while his total cash compensation is more competitive at the 50<sup>th</sup> percentile but less competitive at the 75<sup>th</sup> percentile.

9. The proposed 2012 Special Deputy Plan is described in the E&Y letter and has four primary objectives. First, it recognizes the Special Deputy Liquidator’s role as top executive of the Home liquidation operation. Although an independent contractor, the Special Deputy Liquidator works at least the hours of a full-time employee and, because he is responsible for Home’s day-to-day operations, he has more responsibility than any other employee of Home. He provides similar services, at no cost to Home, respecting certain pending New Hampshire insurer receiverships. Second, the Plan acknowledges the Special Deputy

Liquidator's significant accomplishments to date as evidenced by the large increase in Home's cash and liquid invested assets and the resolution of numerous business issues as described in the Liquidator's quarterly reports. Third, the Special Deputy Plan aligns the Special Deputy Liquidator's incentives with those of Home's creditors and the Liquidator's goals for Home. Specifically, the Special Deputy Liquidator must marshal assets of Home; hire and maintain Home's staff; prepare and file timely and accurate reports for the Liquidator (and ultimately with the Court); and operate Home in a cost-effective manner. Fourth, the Special Deputy Plan is intended to provide the Special Deputy Liquidator with compensation consistent with competitive market positioning in relation to Home's current executive team.

10. The Special Deputy Plan continues to consist of three components: base compensation, an annual incentive bonus structure, and a "Stay Bonus". The 2012 Special Deputy Plan adjusts the structure of the Special Deputy Liquidator's base compensation while the Annual Incentive and "Stay Bonus" remain unchanged (except for the possible deduction discussed below in subparagraph a).

a. *Base Compensation.* From 2003 through 2011, the Special Deputy Liquidator's base compensation was calculated by applying a \$250 per hour rate to the number of hours worked and billed. At this hourly rate, base compensation for the Special Deputy Liquidator in 2011 is anticipated to be \$612,000. Under the 2012 Special Deputy Plan, as requested by the Special Deputy Liquidator, this structure would be modified with the Special Deputy Liquidator's hourly rate increased to \$285 and his total base compensation capped at \$600,000. Full payment of the \$600,000 would be contingent on the Special Deputy Liquidator working 2,100 hours between January 1, 2012 and December 20, 2012. The Special Deputy Liquidator would be paid twelve monthly installments of \$50,000. If he works fewer than 2,100 hours, an

amount equal to the shortfall in hours multiplied by the \$285 hourly rate would be deducted from the “Stay Bonus” otherwise payable to him on December 20, 2012. If the Special Deputy Liquidator works more than 2,100 hours then no additional base compensation would be payable and there would be no adjustment to his “Stay Bonus”. I believe that a 14% increase in the Special Deputy Liquidator’s hourly rate, after no change in that rate for over eight years, is reasonable. Further, the impact of the increased hourly rate is constrained by the \$600,000 maximum base salary payable. E&Y’s analysis of the reasonableness of the Special Deputy Liquidator’s 2012 compensation uses the \$600,000 maximum base amount.

b. *Annual Incentive.* The Special Deputy Plan provides an annual incentive bonus structure (“AI”). As with the AI component of the Special Deputy Liquidator’s compensation plans from 2004 through 2011, the Liquidator will set annual goals for the Special Deputy Liquidator (e.g., success in marshaling assets, organization performance within budget, implementation of an effective claim determination operation, obtaining an appropriate independent auditor opinion, timely and accurate reporting to the Liquidator and the Court throughout the performance year). After the end of the year, the Liquidator will evaluate the Special Deputy Liquidator’s performance with respect to each of those goals and determine the AI bonus based upon those accomplishments. The 2012 AI provides the Special Deputy Liquidator with an opportunity to earn an AI bonus of \$175,000 (equal to the AI bonus in 2011 and down from the AI bonus of \$200,000 in 2010 and 2009, \$300,000 in 2008, 2007, and 2006, and \$400,000 in 2005).

c. *“Stay Bonus”.* Pursuant to his compensation plans from 2004 through 2011, the Special Deputy Liquidator has received a “Stay Bonus” of \$400,000. The “Stay Bonus” provides a cash incentive to this senior and experienced insurance industry executive and

encourages him to remain with Home. As proposed in the 2012 Special Deputy Plan, a “Stay Bonus” covering a twelve month period from January 1, 2012 through December 31, 2012 of \$400,000 (adjustable as discussed above in subparagraph a) is payable on December 20, 2012.<sup>2</sup>

11. Assuming the Special Deputy Liquidator stays until December 20, 2012 and achieves all the AI goals, the estimated 2012 cost for the incentive/retention portions of the Plan would be \$575,000. Estimated 2012 base compensation payments to the Special Deputy Liquidator under the Consulting Agreement are an additional \$600,000. Total compensation for 2012 would thus represent a \$12,000 reduction from estimated total compensation for 2011.

12. Prior to 2008, the term of the Consulting Agreement between the Liquidator and Mr. Bengelsdorf had been continuous until terminated but the term of the AI and “Stay Bonus” was annual. The AI and “Stay Bonus” had been negotiated and agreed upon each year but were not always submitted and approved before January 1 of the applicable year. This left a gap between the end of the performance year and the effective date of the next year’s plan, creating substantial risk to Mr. Bengelsdorf and his estate in the event of his death or disability during the interim. In order to avoid such unintended consequences from a gap in entitlement to the AI and “Stay Bonus,” in 2008 the Special Deputy Plan provided for the AI and “Stay Bonus” to become continuous. Under those revised procedures, the AI and “Stay Bonus” agreed by the Liquidator and approved by the Court for a given year are automatically extended and remain in effect until further action by the Court or the Liquidator. As a result, should the Liquidator terminate the Special Deputy Liquidator’s consulting engagement on or after the end of a plan year or the Court deny a motion to approve a proposed Special Deputy Plan for that year, the Special

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<sup>2</sup> In the event of death or disability both the AI bonus and the Stay Bonus are paid in full. In the event the Special Deputy Liquidator is terminated without cause or the Special Deputy Plan is terminated or not renewed, such bonuses will be pro-rated.

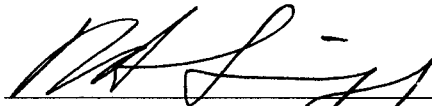
Deputy Liquidator would receive a pro-rated portion of the AI and “Stay Bonus” based on the previous year’s plan through the date of such a termination or denial. In contrast, should the Special Deputy Liquidator die or be disabled before termination or the Court’s action on a proposed Special Deputy Plan, his estate would receive the full AI and “Stay Bonus” established by the previous year’s Special Deputy Plan.

13. The Liquidator’s consultant, E&Y, advises that, overall, the proposed Special Deputy Plan provides variable or performance-based compensation while also encouraging a continuation of the existing working relationship. E&Y concludes that the estimated 2012 Special Deputy Plan compensation represents total direct compensation significantly less than market median (50<sup>th</sup> percentile) but total cash compensation which is highly competitive at the same market median level. I believe that the relative weight given to cash versus other components of compensation is appropriate in the context of a liquidation.

14. For the reasons described above, as well as the consistently strong operating results achieved throughout the liquidation, I believe that retention of the services and expertise of the Special Deputy Liquidator is highly desirable. For that reason, as well as the advice provided by E&Y, I have concluded that the 2012 Special Deputy Plan is fair and reasonable and in the best interests of the liquidation and of the policyholders and other creditors of Home.



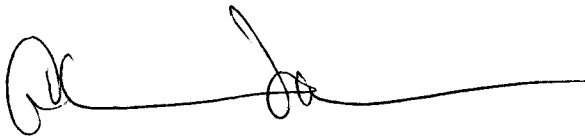
Signed under the penalties of perjury this 5<sup>th</sup> day of December, 2011.



Roger A. Sevigny, Commissioner of Insurance of  
the State of New Hampshire, solely as  
Liquidator of The Home Insurance Company

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

Subscribed and sworn to, before me, this 8<sup>th</sup> day of December, 2011.



Notary Public/Justice of the Peace

Chiara Dolcino  
My Commission Expires 10/6/15