

**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 EIGHTH 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 moves for approval of an eighth 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, 2011, less (a) guaranty association recoveries, and (b) approved first through seventh early access distribution amounts. The early access distributions will also be subject to deductions for unreturned or unpaid funds, deductible reimbursements, amounts classified as Class I administration costs, and questioned claim items and to 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 Eighth 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 claim expense payments that are 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 of policyholders and claimants to the extent of the payments the associations make on claims

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<sup>1</sup> Certain guaranty associations have taken the position that claim expense 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 claim expense is a Class II claim.

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. Since the commencement of this liquidation proceeding, fifty-seven guaranty associations have reported making indemnity or defense payments under insurance policies issued by Home. Beginning in 2004, the Liquidator has almost annually moved for and the Court has approved early access distributions based on reported guaranty association payments less recoveries. Most recently, the Liquidator moved for approval of a seventh early access distribution of approximately \$32.8 million on March 10, 2011, and the Court approved the seventh early access distribution on March 21, 2011. The Liquidator applied deductions and a 40% percentage cap and made seventh early access distributions totaling \$7,827,361.66.

5. As of October 30, 2011, the guaranty associations have reported paying \$385,122,923.74 regarding policies of insurance issued by Home through September 30, 2011 (\$344,200,840.22 in indemnity and \$40,922,083.52 in claim expense). The guaranty associations also reported recoveries (e.g., subrogation, net worth and second injury fund recoveries) totaling \$39,036,422.80, so the guaranty association payments after recoveries total \$346,086,500.94 at this time. The approved first through seventh early access distribution amounts (which are then subject to deductions and the cap) totaled \$301,113,976.22, so the potential total for the eighth early access distribution is \$44,972,524.72.<sup>2</sup> A chart showing the payments and recoveries through September 30, 2011 (as reported by each guaranty association through October 30, 2011) together with the previously approved early access payments and the

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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.

potential eighth early access distribution amounts is attached as Exhibit A to the Bengelsdorf Affidavit. Bengelsdorf Aff. ¶ 6.

6. As of September 30, 2011, the unrestricted liquid assets of the Home estate in the Liquidator's control totaled \$1,097,726,092 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 twenty-four times the amount of the guaranty associations' payments eligible for an eighth early access distribution, and they exceed those payments by over \$1 billion. The liquid assets that would remain after the proposed eighth early access distribution are approximately three times the amount of the guaranty associations' net payments through September 30, 2011. 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. 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 seventh early access distributions were based on 100% of guaranty fund payments as of September 30 for each year from 2006 through

2010, 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 eighth 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-seven guaranty associations.<sup>3</sup>

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 will deduct the amount of a deposit in a particular state from the eighth early access distribution to the guaranty association in the state. The

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<sup>3</sup> Alaska Insurance Guaranty Association, Arizona Property and Casualty 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, Nevada Insurance Guaranty Association, New Hampshire Insurance Guaranty Association, New Hampshire Life and Health Insurance Guaranty Association, New Jersey Property and Liability 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, 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, Utah Insurance Guaranty Association, Vermont Insurance Guaranty Association, Virginia Insurance Guaranty Association, Washington Insurance Guaranty Association, West

Liquidator may also deduct amounts due to Home from guaranty associations for other reasons where the guaranty association has not paid the amount to the Liquidator. Bengelsdorf Aff. ¶ 10.

10. The guaranty associations receive so-called “deductible recoveries” from certain policyholders who had entered agreements with Home under which they were to reimburse Home for amounts it paid to claimants within agreed deductible amounts. The guaranty associations that have paid claims within those amounts may recover from such policyholders as more fully set forth in the Liquidator’s Motion for Approval of Agreement Regarding Home Deductible Policies filed March 23, 2011, but those amounts are not included within the recoveries identified on Exhibit A to the Bengelsdorf Affidavit. The Liquidator will deduct the amount of such deductible recoveries by a particular guaranty association from the eighth early access distribution to that association.

11. The guaranty associations may also receive Class I administration expense payments for certain amounts included within claim expenses that are not defense payments pursuant to a Home policy. The Liquidator will deduct the amount of any such Class I payments from the eighth early access distribution.

12. The Liquidator asks guaranty associations for clarification regarding payments, expenses, or recoveries. There is now one questioned matter (from the New York Liquidation Bureau) which is the subject of a request for review and not included in the early access calculations. Bengelsdorf Aff. ¶ 13.

13. Use of the cap and credits for deductible recoveries, Class I claim expenses, and deposits and funds held will reduce the amount distributed in the eighth early access distribution

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Virginia Insurance Guaranty Association, West Virginia Life and Health Insurance Guaranty Association, and the Wisconsin Insurance Guaranty Association.

by a total of approximately \$30 million. The Liquidator expects that the total amount distributed will be approximately \$15 million.

14. 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 first through sixth early access distributions. It appears unlikely that the United States will grant a further waiver at this time.<sup>4</sup> 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 eighth 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. ¶ 15.

WHEREFORE, the Liquidator requests that the Court:

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

B. Enter an order in the form submitted herewith approving the eighth early access distribution based on reported guaranty association payments through September 30, 2011, less recoveries and previous early access distribution amounts, all as set forth on Exhibit A to the

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<sup>4</sup> Indeed, the Liquidator and the United States are presently litigating priority issues with respect to a provision of the Longshore and Harbor Workers Compensation Act, Hilda Solis, U.S. Dept. of Labor v. The Home Ins. Co. and Roger A. Seigny, Ins. Comm'r, as Liquidator of The Home Ins. Co., No. 1:10-cv-572 (D. N.H.)

Bengelsdorf Affidavit, and subject to the percentage cap and deductions for unreturned or unpaid funds, deductible reimbursements, amounts classified as Class I administration costs, and questioned items; and

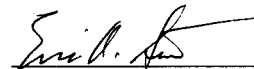
C. Grant such other and further relief as justice may require.

Respectfully submitted,

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

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December 12, 2011

Certificate of Service

I hereby certify that a copy of the foregoing Motion For Approval of Eighth Early Access Distribution To Insurance Guaranty Associations, the accompanying Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, and the Proposed Order Approving Eighth Early Access Distribution To Insurance Guaranty Associations was sent, this 12<sup>th</sup> day of December, 2011, by first class mail, postage prepaid to all persons on the attached service list.



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THE STATE OF NEW HAMPSHIRE

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Docket No. 03-E-0106

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