

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Liquidation of
The Home Insurance Company**

**LIQUIDATOR'S FIFTH MOTION FOR APPROVAL
OF DISPOSAL OF CERTAIN RECORDS (CLOSED CLAIM FILES)**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves that the Court enter an order pursuant to RSA 402-C:50 approving the disposal of boxes of Home's closed claims files based upon existing box inventories, which inventories may not list all closed claim files within the boxes or may be otherwise incomplete. The Liquidator has re-inventoried several thousand boxes of closed claim files, and that process has proved time-consuming and expensive. Since the boxes at issue contain only claims files that have been closed for at least 10 years (20 in the case of environmental, mass tort or workers compensation claims), the expenditure of significant estate resources is not warranted. As further reasons therefor, the Liquidator states as follows:

1. Background. As set forth in the Liquidator's four previous motions for approval of disposal of certain records filed November 24, 2004, July 15, 2005, July 3, 2008, and February 16, 2011, the Home estate has numerous documents that are no longer needed, and it continues to incur significant expense to store the documents. The Liquidator accordingly has sought approval of the Court to dispose of categories of documents that the Liquidator has determined are no longer useful pursuant to RSA 402-C:50.¹ Affidavit of Peter A. Bengelsdorf,

¹ RSA 402-C:50 provides that: "Whenever it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he or she may recommend to the court what records

Special Deputy Liquidator, in Support of Liquidator's Fifth Motion for Approval of Disposal of Certain Records (Closed Claim Files) ("Bengelsdorf Aff.") ¶ 2.

2. The Court authorized disposal of certain categories of records in response to the first four motions by Orders Approving the Disposal of Certain Records entered on December 16, 2004, August 12, 2005, August 19, 2008, and May 2, 2011. Pursuant to these orders, the liquidation staff has disposed of 23,353 boxes of documents. Nonetheless, 152,541 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 presently approximately \$556,000 per year, and disposal of even part of the boxes in off-site storage would result in significant savings. Bengelsdorf Aff. ¶ 3.

3. The closed claims files. This motion concerns boxes of claim files that have been closed with no activity for at least 20 years (for environmental, mass tort and workers' compensation claims) or 10 years (for other types of claims). The Liquidator previously moved for authority to dispose of these closed claim files, unless they were involved in a pending dispute or proof of claim, on the ground that they were no longer useful. Liquidator's Third Motion for Approval of Disposal of Certain Records ¶ 4(b) (July 3, 2008). The Court approved of the disposal of these files, except those that relate to pending or anticipated litigation, on August 19, 2008. Order Approving the Disposal of Certain Records (August 19, 2008) (copy attached as Exhibit A). That Order authorized disposal of "closed claim files with no activity for 20 years for environmental, mass tort and workers' compensation claims or for 10 years for other types of claims." August 19, 2008 Order, Schedule ¶ 1(b). Bengelsdorf Aff. ¶ 4.

should be retained for future reference and what should be disposed of. The court shall enter an order thereon. Until further order of the court, the commissioner shall keep all records the court orders preserved and shall destroy the remainder whether or not the records have been photographed or otherwise reproduced."

4. Liquidation staff has accordingly been identifying for disposal boxes of closed claim files with no activity for the specified 20 year/10 year periods where the files are not related to a proof of claim or a dispute/litigation. This identification process has been conducted in accordance with the Summary of Document Disposal Procedures attached as Exhibit F to the Liquidator's Eighteenth Report filed September 18, 2005 (copy attached as Exhibit B). The document disposal procedures provide for identification of boxes eligible for disposal based on a review of inventory lists, which is to be followed by an actual review of a sample of the boxes to confirm that they contain material eligible for disposal. Bengelsdorf Aff. ¶ 5.

5. The incomplete inventories. Liquidation staff's review of samples of boxes that were identified as eligible for disposal has revealed that in many instances the box inventories are not complete. All the boxes contained only closed claim materials for files closed for the requisite number of years. However, numbers of the boxes included closed claim files that either are not listed on the inventory lists or are only partially identified on the inventory lists. Some of the partially identified files are identified only by line of business and date of closure. Bengelsdorf Aff. ¶ 6.

6. The review process. The Liquidator has attempted to address this issue by having boxes of closed claim files identified as eligible for disposal delivered to the Manchester, New Hampshire office for review by liquidation staff. Staff have reviewed boxes in groups of 300, prepared new box inventories, reviewed the new inventories to confirm that the files were in fact eligible for disposal, removed ineligible files or re-boxed the files as necessary, and then arranged for disposal of the boxes where warranted. Bengelsdorf Aff. ¶ 7.

7. This intensive process has proved to be time consuming and expensive. To date, liquidation staff has spent approximately 6,200 hours of staff time in reviewing 4,034 boxes of

closed claims files. The review involved out-of-pocket vendor costs of \$35,883 in retrieving and delivering boxes for review. It has resulted in disposal of 3,100 boxes of closed claim files.

Bengelsdorf Aff. ¶ 8.

8. This manual review process has addressed only a fraction of the boxes eligible for disposal. There are approximately 32,000 other boxes of closed claim files that have been preliminarily identified as presently eligible for disposal because they satisfy the 20 year/10 year criteria of Schedule ¶ 1(b), out of a total of approximately 70,500 boxes of claims files that were closed prior to Home's liquidation. It has not yet been determined how many of the 32,000 boxes could actually be disposed of now because review of existing inventories to determine whether a closed claim file or files in the box relates to a proof of claim or dispute/litigation is ongoing. However, at least several thousand boxes could be disposed of now except that they may contain uninventoried or incompletely inventoried files. Under the existing order and procedures, these boxes would need to be reviewed and re-inventoried in order to dispose of them. Eventually, all of the closed claim boxes would need to be reviewed and re-inventoried before being disposed of. Bengelsdorf Aff. ¶ 9.

9. The Liquidator's request for relief. The Liquidator has concluded that the reviewing and re-inventorying of boxes of closed claim files is not a reasonable expenditure of estate resources. The out-of-pocket costs of having the storage vendor retrieve and deliver the 32,000 boxes preliminarily identified as eligible would be approximately \$300,000 (at \$2,808 per group of 300 boxes). The eventual review of the 70,500 boxes of closed claim files would involve vendor costs of approximately \$600,000.² The costs in terms of liquidation staff time are much greater. A box may contain up to 300 individual closed claim files. Based on experience

² These costs do not include the vendor cost of shredding and disposing of boxes determined to be subject to disposal, which is presently \$540 per group of 300 boxes. Those costs will be incurred in destroying the boxes whether they are disposed of now or after any re-inventorying.

to date, review and re-inventorying of each box takes an average of one-and-a-half hours. Assuming each staff member worked 1,800 hours per year, a complete re-inventory of the 32,000 boxes of files would require 26 person-years. Review of the 70,500 boxes of pre-liquidation closed claim files would take almost 60 liquidation staff person-years. The Liquidator believes that the time and expense required to retrieve the closed claim file boxes from the vendor and re-inventory all of the boxes to create a complete file-by-file inventory is an unnecessary expenditure of the Home estate's assets to the detriment of Home's creditors. Bengelsdorf Aff. ¶ 10.

10. Closed claim files that are not identifiable from the existing inventories are not reasonably accessible. The Liquidator believes such functionally inaccessible documents are no longer useful, and he accordingly recommends that they be disposed of. See RSA 402-C:50. Keeping boxes of closed claim files merely because they contain uninventoried or incompletely inventoried closed claim files that might not fall within Schedule ¶ 1(b) of the August 19, 2008 Order, or might relate to a proof of claim or litigation, is an unwarranted, significant expense. The annual cost of maintaining the 32,000 boxes of closed claim files preliminarily identified as eligible for disposal in storage is presently approximately \$120,000 per year, while the annual cost of maintaining the 70,500 boxes of closed claims files is approximately \$264,000 per year. It would benefit Home's creditors if these costs could be reduced by disposing of these boxes. Bengelsdorf Aff. ¶ 11.

11. In these circumstances, the Liquidator believes that it is appropriate to determine the eligibility of boxes of closed claim files for disposal (both as falling within Schedule ¶ 1(b) of the August 19, 2008 Order and as not concerning a proof of claim or litigation) based upon the existing box inventories, without reviewing and re-inventorying the boxes. Accordingly, the

Liquidator requests approval to dispose of the closed claim file boxes based upon review of the existing inventories.³ Bengelsdorf Aff. ¶ 12.

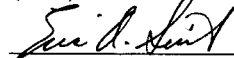
³ Certain parties to litigation in California and Minnesota have requested that the Liquidator retain any files concerning the claimant companies that are plaintiffs in those actions. See Liquidator's Supplemental Filing Concerning Fourth Motion for Approval of Disposal of Certain Records (March 18, 2011). In accordance with the August 19, 2008 Order, the Liquidator will retain any closed claim files identified based on the existing inventories as relating to a proof of claim or pending or anticipated litigation. For the avoidance of doubt, the files to be retained include any closed claim files that can be identified as concerning the California and Minnesota plaintiffs.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Fifth Motion for Approval of Disposal of Certain Records (Closed Claim Files);
- B. Enter an Order in the form submitted herewith approving disposal of boxes of closed claims files that are determined to be eligible for disposal based upon a review of existing box inventories, without review and re-inventorying of the boxes; 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, AS
LIQUIDATOR OF THE HOME INSURANCE
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By his attorneys,

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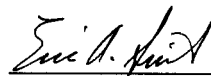


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July 28, 2011

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Fifth Motion for Approval of Disposal of Certain Records (Closed Claim Files), the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 28th day of July, 2011, by first class mail, postage prepaid to all persons on the attached service list.

A handwritten signature in cursive script, appearing to read "Eric A. Smith", is written over a horizontal line.

Eric A. Smith
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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

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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

Docket No. 03-E-0112

In the Matter of the Liquidation of
US International Reinsurance Company

ORDER APPROVING THE DISPOSAL OF CERTAIN RECORDS

On consideration of the third motion of Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company and U.S. International Reinsurance Company, for an order approving the disposal of records described in the motion and set forth on the attached schedule (the "Records"), and the supporting affidavit of Peter A. Bengelsdorf, it is hereby ORDERED as follows:

1. Disposal of the Records is reasonable, prudent and in the best interests of the liquidation of the Companies;
2. The Liquidator's Third Motion for Approval of Disposal of Certain Records is GRANTED, and the disposal of the Records is APPROVED, *with the exception that any records on the attached schedule which relate to pending or anticipated litigation shall be retained.*

Dated: Aug. 19, 2008

Carol Ann Conway
Presiding Justice

Schedule of Records for Disposal

1. General Categories

- a. Aviation business records dated prior to March 2003 including closed claim files;
- b. Closed claim files with no activity for 20 years for environmental, mass tort and workers' compensation claims or for 10 years for other types of claims;
- c. Corporate risk management records dated prior to 1995;
- d. Facilities management and real estate records for formerly leased or owned properties dated prior to March 2003;
- e. Management and loan records for Home's former mortgage loan portfolio dated prior to March 2003;
- f. Financial reporting records prior to 1990 other than filed statements;
- g. General Counsel's Office files dated prior to March 2003;
- h. Human resources, corporate security and employee relations records dated prior to March 2003 and held beyond any statutorily required retention period;
- i. Consumer complaints records dated prior to March 2003;
- j. Information technology system documentation for no longer used systems or programs;
- k. Claim investigation records dated prior to March 2003;
- l. Investment records for former investments dated prior to March 2003;
- m. Stock records dated prior to March 2003;
- n. Records of City Insurance Co. - UK Branch dated prior to March 2003 consisting of third party administrator ("TPA") system control reports, duplicate regulatory reports, closed arbitration and commutation files, duplicate internal reporting documents, closed reinsurance collections files, correspondence regarding closed claims, and internal TPA communications;
- o. Reinsurance Department files dated prior to March 2003 other than contract files;
- p. Commercial lines rate, rule, form and statistical regulatory filings dated prior to 1997;
- q. Tax, assessment and surcharge reporting records dated prior to March 2003 and held beyond any statutorily required retention period; and
- r. Underwriting and underwriting related records dated prior to March 2003 other than policy files.

2. Records in the following categories addressed in the previous orders approving disposal of records that are dated after the cutoff date in the Court's prior orders but prior to March 2003:

First Order dated December 16, 2004:

- (g) Correspondence files, general subject files and personal expense account files of employees;
- (h) State files regarding residual property markets and FAIR (Fair Access to Insurance Requirements) plans;
- (j) Claim response time reports; and
- (k) Catastrophe bulletins and reports.

Second Order dated August 12, 2005:

- (a) Accounting department records;
- (f) Third party administrator records;
- (j) Data processing department reports;
- (p) Treasury department files; and
- (q) Human resource department files.

Liquidator's Eighteenth Report – September 15, 2005

Summary of Document Disposal Procedures

- Inventory lists will be prepared identifying boxes stored at Iron Mountain (IMAR) and other storage facilities which will be disseminated to Home's staff for review.
- Based upon a review of the inventory lists, identification will be made of those boxes eligible for destruction pursuant to Court Orders, those boxes to be retained, as well as those boxes for which a dedicated review of individual files is needed due to incomplete descriptions of file contents.
- Confirmation will be made that none of the material in the boxes recommended for destruction concerns a proof of claim or involves a pending dispute. This review will be based upon an investigation of proofs of claim filed with Home and USI RE and of pending disputes involving Home and USI RE.
- Those boxes identified for destruction will be subject to an audit to confirm through a random sampling of the boxes that the material in the boxes is eligible for destruction. The random sampling methodology will utilize "categories" defined as those boxes which contain the same major description on the IMAR database. The random sampling approach to be applied is as follows:

<u>No. of Boxes in Category</u>	<u>No. of Boxes to be Sampled</u>
1 - 50	5
51 – 100	10
101 – 250	25
251 – 500	50
501 and greater	10%

If the random sampling confirms that the contents are as described on the inventory lists, no further sampling will be required. If the random sampling for a category finds that:

- (i) One box from the random sampling contains more material than described on the inventory list but that the additional material is eligible destruction, no further sampling is required.
- (ii) More than one box from the random sampling contains more material than described on the inventory list but all the additional material is eligible for

destruction an additional 10% of boxes in that category will be reviewed. If all additional material is eligible for destruction, then no additional sampling is required.

- (iii) One box from the random sampling contains more material than described on the inventory list but that the material is not eligible for destruction, that material will be pulled from the box for refileing and an additional 10% of the boxes in that category will be reviewed. If additional boxes have material not eligible for destruction, then all boxes in the category will be reviewed and all material not eligible for destruction will be pulled and refiled. If the additional boxes only have material eligible for destruction, then no further sampling is required.
- For boxes which have been identified as requiring a dedicated review, a synopsis of the material in the boxes will be developed, whereupon the document disposal procedures will be applied and recommendations will be made on retention and destruction.
- Disposal of those boxes recommended for destruction will be completed upon confirmation that the document disposal procedures have been implemented.