

**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 PETER A. BENGELSDORF, SPECIAL DEPUTY  
LIQUIDATOR, IN SUPPORT OF MOTION FOR APPROVAL OF  
SETTLEMENT AGREEMENT WITH GUARANTY FUNDS**

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

1. I was appointed Special Deputy Liquidator of the Home Insurance Company (“Home”), by the Insurance Commissioner for the State of New Hampshire, as Liquidator (“Liquidator”) of Home. I submit this affidavit in support of the Liquidator’s Motion for Approval of Settlement Agreement with Guaranty Funds. 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.

1. The motion seeks approval for the Settlement Agreement (“Settlement Agreement”) between 56 state property and casualty insurance guaranty associations or funds who have signed the Settlement Agreement (the “Guaranty Funds”) and the Liquidator. The Settlement Agreement was negotiated under my supervision. A copy of the Settlement Agreement is attached as Exhibit 1 to the Liquidator’s motion. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1(b).

2. Upon entry of the Order of Liquidation for Home on June 13, 2003, the insurance guaranty funds in the states and territories of the United States became obligated in accordance

with their founding statutes to pay covered claims as well as the legal fees and other expenses of defending insureds pursuant to policies of insurance issued by Home.

3. Guaranty funds have filed proofs of claim in the Home liquidation, and they have asserted (and will continue to assert) claims for reimbursement of defense expenses through various Uniform Data Standard feeds and reports and Financial Information Questionnaire submissions to the Liquidator. The Liquidator has accordingly issued notices of determination allowing claims for defense expenses in certain amounts. The Liquidator has assigned the allowed defense expense amounts to Class II “policy related” priority under RSA 402-C:44 as claims “arising from and within the coverage of” insurance policies issued by Home within RSA 402-C:44, II.

4. Over time, an increasing number of guaranty funds have filed requests for review of the priority assigned to defense expenses by the Liquidator in the notices of determination. The guaranty funds filing the requests for review have contended that defense expenses should properly be assigned to Class I “administration cost” priority under RSA 402-C:44 as expenses “in handling claims” within RSA 404-B:11, II.

5. The Liquidator and certain guaranty fund representatives discussed their differing positions and the process of litigating the issues before the Referee, the Superior Court, and the New Hampshire Supreme Court. After extensive discussions, the Liquidator and the representatives negotiated the Settlement Agreement. In order to provide for a comprehensive resolution and equivalent treatment of guaranty funds going forward, the Settlement Agreement required that at least 55 of the 56 property and casualty insurance guaranty associations or funds listed on Exhibit A to the Settlement Agreement sign by June 30, 2013. Settlement Agreement

¶ 1(a).<sup>1</sup> As all 56 of the listed guaranty funds signed the Settlement Agreement in the time allowed, the Liquidator now moves for approval of the Settlement Agreement.

6. In sum, the Settlement Agreement provides that 10% of the allowed amount of pending and future Guaranty Fund claims for defense expenses will be assigned to Class I and 90% will be assigned to Class II. Previously determined Guaranty Fund claims for defense expenses which have been allowed by the Court or for which the time to object had passed are not reopened and remain as finally determined Class II claims.

7. More specifically, the Settlement Agreement provides that where a Guaranty Fund has submitted a claim for defense expenses and the Liquidator has not yet issued a notice of determination, or where the Liquidator had issued a notice of determination (or a notice of redetermination) but the objection period had not run by March 8, 2013, or where the Guaranty Fund had filed a timely request for review, then 10% of the allowed defense expense will be assigned to Class I priority and 90% of the allowed defense expense will be assigned to Class II priority. Settlement Agreement ¶ 2(a). The total amount of such pending Guaranty Fund claims for defense expenses addressed by the Liquidator as of March 8, 2013 was approximately \$25.6 million, of which \$2.56 million will be Class I and \$23.04 million Class II under the settlement. The Settlement Agreement then provides that all future allowed Guaranty Fund claims for defense expenses will be allocated in the same 10% Class I and 90% Class II proportion. Settlement Agreement Id. ¶ 2(b). The Settlement Agreement finally provides that Guaranty Fund claims for defense expenses that had been determined by a notice of determination or notice of redetermination as to which the period for objection had run as of March 8, 2013 are final and are not affected by the Settlement Agreement. Settlement

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<sup>1</sup> Exhibit A does not include the Puerto Rico and North Dakota guaranty funds. Neither of those funds has submitted claims in the Home liquidation.

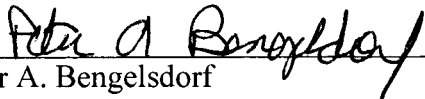
Agreement ¶ 2(c). The total allowed amount of such final Guaranty Fund claims for defense expenses as of March 8, 2013 was approximately \$13.4 million.

8. The Settlement Agreement reflects a compromise of disputed positions regarding the proper priority of defense expenses. Litigation over this issue could be factually complex, as it might involve consideration of the proper classification and treatment of numerous specific amounts and various categories of expenses in the Uniform Data System; it would also likely extend through appeal to the New Hampshire Supreme Court. Litigation also presents risk to Class II claimants of Home other than the Guaranty Funds. As noted above, the Guaranty Funds' pending defense expense claims total approximately \$25.6 million. If the Guaranty Funds' position were to prevail, those amounts – and all future allowed defense expense amounts – would be assigned to Class I and paid in full. This would reduce the assets available to distribute to Class II claimants, who will only receive a percentage distribution on their allowed claims. Under the Settlement Agreement, only 10% of such amounts will be assigned to Class I.

9. I believe that the 10% Class I and 90% Class II settlement allocation of the Guaranty Funds' defense expenses is a fair and reasonable compromise that appropriately reflects the uncertainty and expense of litigation and benefits Class II claimants by avoiding risk that the Guaranty Funds' allowed defense expense amounts would be paid in full as Class I and reduce the assets available for distribution to Class II claimants. Where, as here, the dispute can be resolved in a favorable way that significantly reduces the potential loss to the policy level creditors of Home posed by an adverse outcome, I believe that it is appropriate to settle the matter, subject to the Court's approval.


10. For these reasons, I believe that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home.

Signed under the penalties of perjury this 13 day of June, 2013.

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

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

Subscribed and sworn to, before me, this 13<sup>th</sup> day of June, 2013.

  
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Notary Public/Justice of the Peace

Chiara Dolcino  
My Commission Expires  
10/6/15