

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 LIQUIDATOR'S SIXTH 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"), by the Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of Home. I submit this affidavit in support of the Liquidator's Sixth Motion for Approval of Disposal of Certain Records ("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. As set forth in the Liquidator's five previous motions for approval of disposal of certain records filed November 24, 2004, July 15, 2005, July 3, 2008, February 16, 2011, and July 29, 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.

3. The Court authorized disposal of certain categories of records in response to the first five motions by Orders Approving the Disposal of Certain Records entered December 16, 2004, August 12, 2005, August 19, 2008, May 2, 2011, and November 10, 2011. Pursuant to

these orders, liquidation staff will have disposed of over 71,000 boxes of documents by the end of 2013. Nonetheless, approximately 105,900 boxes are expected to remain in storage with off-site vendors at year end, in addition to the boxes stored at the liquidation offices. The annual cost of maintaining the records with off-site vendors is presently approximately \$430,000 per year, and disposal of even part of the boxes in off-site storage would result in significant savings.

4. Of the remaining approximately 105,900 boxes stored with vendors, 62,485 consist of closed claim files. The Motion concerns boxes of claim files for environmental, mass tort and workers' compensation claims that have been closed with no activity for lengthy periods. The Liquidator previously moved for authority for approval to dispose of boxes of closed claim files with no activity for 20 years (for environmental, mass tort and workers' compensation claims) or 10 years (for other types of claims), unless the files 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 10, 2008). The Court approved of the disposal of such files, except those that relate to pending or anticipated litigation, on August 19, 2008. Order Approving the Disposal of Certain Records, Schedule ¶ 1(b) (August 19, 2008). The Liquidator subsequently moved for approval to dispose of closed claim files based upon existing box inventories, without the need for re-inventorying of boxes. Liquidator's Fifth Motion for Approval of Disposal of Certain Records (Closed Claim Files) (July 29, 2011), and the Court authorized disposal on that basis on November 10, 2011. Order Approving the Disposal of Certain Records (November 10, 2011).

5. As it has been over five years since the Court approved disposal of closed claim files, the Liquidator has again considered the appropriate period for retaining boxes of closed claim files as to which there has been no activity, meaning that no one has recalled the files for

any reason during the period. The Liquidator has concluded that a reduction of the 20 year “no-activity” period for retention of closed claim files for environmental, mass tort and workers’ compensation claims to 15 years is appropriate. The 10 year period for other types of claims will remain unchanged, and closed claim files involved in a pending proof of claim or pending or anticipated litigation will continue to be retained.

6. There are two principal reasons for retaining closed claim files: (1) the file relates to a pending proof of claim or pending or anticipated litigation, and (2) the closed claim may for some reason reopen. The Liquidator is retaining and will continue to retain closed claim files that relate to open proofs of claim or pending or anticipated litigation. The Liquidator has concluded, however, that keeping other closed workers’ compensation and environmental or mass tort claim files that have been closed with no activity for 15 years is not warranted by the remote chance that a file may be reopened, especially in light of imaged/electronic records that will continue to be available.

7. Very few claims that have been closed for a long period reopen. For instance, during 2012, only 39 workers’ compensation claims that were closed prior to the liquidation proceeding commenced in 2003 were reopened, and only four policyholder accounts had environmental or mass tort claims closed prior to the liquidation reopen. The closed claim file boxes to be disposed of as a result of the reduction in the “no activity” period include files for over 528,019 workers’ compensation claims closed prior to liquidation and 2,767 environmental/mass tort accounts with files closed prior to liquidation. The 15 year retention period for closed claims with no activity proposed by the Liquidator is quite long. By contrast, in the years prior to 1995 (when the Home suspended its document disposal program in

connection with the restructuring transaction), Home had a policy of generally retaining closed claim files for seven years.

8. The Home's imaged/electronic records available to the Liquidator generally provide sufficient information to reopen a claim even when the original claim file is not available. Where a closed workers' compensation claim file does reopen, for instance, the Liquidator would typically refer to the closed claim file, if available, to identify the claimant, to establish that there was a compensable injury for which the claimant received benefits, and to determine what amounts had been paid on the claim. That basic information is generally available from Home's imaged/electronic records on the liquidation computer system.

9. The cost of maintaining boxes of closed claim files is significant. Each box in storage with an off-site vendor presently costs approximately \$4.32 in storage charges per year. The proposed five-year reduction in the "no activity" retention period will permit disposal of approximately 18,000 boxes in 2014, as opposed to approximately 1,250 boxes in 2014 and additional boxes in each succeeding year under the present standard. Disposal of these boxes in 2014 instead of over the next five years will save the Home estate approximately \$260,000 in storage charges.

10. In the circumstances, I have concluded that claim files for workers' compensation, environmental and mass tort claims that have been closed with no activity for 15 years are no longer useful. The Liquidator accordingly recommends and requests approval pursuant to RSA 402-C:50 to dispose of closed claim file boxes with no activity for 15 years (for environmental, mass tort and workers' compensation claims) or 10 years (for other types of

claims), unless they are involved in a pending proof of claim or pending or anticipated litigation, based upon review of the existing inventories.¹

11. The Liquidator also recommends that closed claim files involved with a proof of claim be disposed of once a year has passed after the claim determination has been approved by the Court because they are no longer useful. The Court has previously approved the disposal of records concerning claim determinations that have been approved for more than a year. Order Approving the Disposal of Certain Records issued May 2, 2011 (approving the disposal of records concerning claim determinations approved by the Court where a year has passed since the approval). These records include claim files that are closed by the Liquidator in connection with the determination of the proof of claim. The Liquidator's prior motion did not expressly address previously closed claim files that are involved with a proof of claim. However, those files are no longer useful once the proof of claim has been determined. Moreover, the proofs of claim and the notices of determination have been imaged and continue to be available, and as noted in paragraph 8 above, Home's imaged/electronic records generally provide sufficient information to reopen a claim even when the original claim file is not available. In the circumstances, I have concluded that closed claim files involved with a proof of claim that has been determined are no longer useful. The Liquidator accordingly recommends and requests approval pursuant to RSA 402-C:50 to dispose of closed claim files involved in a proof of claim after a year has passed from Court approval of the claim determination.²

¹ 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). The Liquidator will continue to retain any closed claim files that can be identified as concerning the California and Minnesota plaintiffs.

² Consistent with the Liquidator's Supplemental Filing Concerning Fourth Motion for Approval of Disposal of Certain Records, the Liquidator will retain such records with respect to companies involved in litigation in California and Minnesota.

12. Home had a Canadian “branch” through which it conducted its operations in Canada. Following issuance of the Order of Liquidation for Home by this Court, Home’s Canadian branch was placed in liquidation and Deloitte & Touche was appointed as its liquidator (the “Canadian liquidator”) by the Ontario Superior Court of Justice. In 2008, the Canadian liquidator, the Liquidator, and Lombard General Insurance Company of Canada (“Lombard”) entered an agreement providing among other things for transfer of certain funds to the Liquidator and for the Liquidator to indemnify Lombard against certain potential claims made within five years of the agreement. This “July 2008 Lombard Agreement” was approved by this Court on August 19, 2008.

13. In 2008, after the Canadian Liquidator determined all claims filed with him, the Canadian liquidator provided 286 boxes of records to the Liquidator along with a box inventory. The inventory indicates that the boxes contain closed claim files, policy files, reinsurance files, accounting and financial files relating to the Canadian branch from the pre- and post-liquidation periods. On December 17, 2008, the Canadian court approved the Canadian liquidator’s motion to close the Canadian estate and discharge the Canadian liquidator. The Liquidator has retained the boxes of records provided by the Canadian liquidator since then as a precaution in the event that Lombard called on the five-year indemnity under the July 2008 Lombard Agreement.³

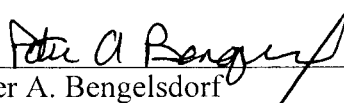
14. The five year indemnity period has now passed without any claim for indemnity, and the liquidation proceeding for the Home Canadian branch has been closed since 2008. In the

³ Home’s subsidiary US International Reinsurance Company (“USI Re”) had a Canadian branch that was merged into Home’s Canadian branch in 1996. The records at issue here include some records of the former USI Re Canadian Branch. Those records are of no use to the Liquidator of USI Re, and the Court authorized their disposal in the Order Approving Disposal of Records issued in the USI Re liquidation (No. 03-E-0112) on September 13, 2013. They have been retained as they were intermingled with the records of Home’s Canadian Branch as described in the USI Liquidator’s Motion for Approval of Disposal of Records at 3 n.2 (No. 03-E-0112, filed July 8, 2013).

circumstances, I have concluded the Canadian Branch records are no longer useful. The Liquidator accordingly recommends and requests approval to dispose of them.

15. The Liquidator has identified boxes containing extra copies of Home quarterly financial statements (including 10-Q's) for pre-liquidation periods. The Liquidator has no use for extra copies and recommends and requests approval to dispose of them.

Signed under the penalties of perjury this 4th day of December, 2013.

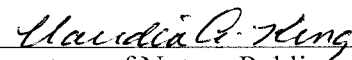

Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

STATE OF CALIFORNIA
COUNTY OF VENTURA

On Dec. 4, 2013 before me, CLAUDIA A. KING - 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

