

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 2015 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 2015 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 2015 (the “2015 Employee Compensation Plans”) and a compensation and incentive/retention plan in 2015 (the “Special Deputy Plan”) for Peter A. Bengelsdorf, the Special Deputy Liquidator of Home (the “Special Deputy Liquidator”) (collectively, the “Plans”). The Motion reflects the recommendations of Ernst & Young LLP (E & Y), experienced insurance industry compensation consultants, concerning the appropriate compensation structure for employees of Home.

3. The Special Deputy Liquidator was recruited from private industry and appointed to manage the operations of the liquidation.¹ 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 contractor, he pays the full Social Security tax (employer and employee share) on his compensation. Pursuant to the Consulting Agreement, the Special Deputy Liquidator was paid base compensation at an hourly rate of \$250 from 2003 through 2011 and \$285 beginning in 2012 when his total base compensation was capped at \$600,000. 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; \$175,000 during 2011 and 2012; \$150,000 during 2013; and \$50,000 during 2014 as well as an annual “Stay Bonus” of \$400,000 during each such year. The reductions in potential annual incentive bonus amounts were at the Special Deputy Liquidator’s request.

4. Home operated internationally and specialized in affording complex forms of insurance to large enterprises. Due to the sophisticated nature of Home’s insurance products, operations and supporting reinsurance programs, an experienced and stable liquidation staff operating under the management of a well-qualified and competent Special Deputy Liquidator will materially contribute to the efficient collection of assets and adjudication of claims. This is illustrated by the increase in Home’s liquid assets from the day the Order of Rehabilitation was

¹ The Special Deputy Liquidator also served as Special Deputy Commissioner during Home’s rehabilitation.

entered, approximately \$12.7 million as of March 2003, to an estimated \$1.59 billion as of September 30, 2014. (These figures exclude USI Re and give credit for \$232 million of Class II early access distributions to guaranty associations to date, \$51.9 million in Class I distributions to guaranty associations, \$3.15 million in workers compensation advance payments to guaranty associations, and \$56.4 million in assets held by states to pay Home claims.)² Most of this increase is attributable to a combination of reinsurance recoveries and other financial settlements negotiated by the Special Deputy Liquidator and Home's experienced staff. Maximizing the prompt collection of assets advantages Home's creditors and is one of the principal statutory goals of the liquidation. This objective can be facilitated through an alignment of creditor interests with the interests of Home's employees.

5. As Liquidator, I seek to continue to provide compensation consistent with best practices with respect to compensation in insurance company liquidations, provide competitive annual and long-term earnings opportunities and balance performance-based rewards with short-term and long-term retention. To this end, I have engaged E & Y to review, among other things, 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 Special Deputy Plan. The overall compensation framework includes compensation and incentive/retention components designed to align incentives to the Special Deputy Liquidator with liquidation goals.

² Motions for approval of compensation plans filed in prior years have included USI Re assets in the calculation of liquid invested assets. Due to the completion of the USI Re liquidation proceeding in 2013, the \$1.59 billion figure referenced in this motion does not include USI Re.

6. The proposed 2015 Special Deputy Plan, described in the E & Y letter dated October 13, 2014 (attached as Exhibit D to the Motion), has three 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 employee or other executive of Home. He provides similar services, at no cost to Home, respecting certain other 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 is intended to provide the Special Deputy Liquidator with compensation consistent with competitive market positioning in relation to Home's current executive team.

7. In prior years, the Special Deputy Plan has consisted of three components: base compensation, an annual incentive bonus structure, and a "Stay Bonus". For 2015, I propose that base compensation remain unchanged while the Special Deputy Liquidator has requested that the annual incentive bonus structure be eliminated and that the Stay Bonus be reduced to \$325,000:

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. The 2012 Special Deputy Plan proposed an adjustment to the structure of the Special Deputy Liquidator's base compensation such that his hourly rate increased to \$285 and his total base compensation was capped at \$600,000. This adjustment was approved by the court in an order dated January 25, 2012.

i. The 2013 Special Deputy Plan continued the structure of the 2012 Special Deputy plan except that the Special Deputy Liquidator's hourly rate was increased to \$325. The proposed modification envisioned that the Special Deputy Liquidator would be paid twelve monthly installments of \$50,000 and, if he worked fewer than 2,100 hours, an amount equal to the shortfall in hours multiplied by the \$325 hourly rate would be deducted from the "Stay Bonus" otherwise payable to him. If the Special Deputy Liquidator worked more than 2,100 hours then no additional base compensation would be payable and there would be no adjustment to his "Stay Bonus". The increase in the Special Deputy Liquidator's hourly rate was intended to better reflect the market rate but did not increase the Special Deputy Liquidator's compensation or Home's expenses. The 2013 Special Deputy Plan, reflecting these modifications, was approved by the court in an order dated December 20, 2012. The 2014 Special Deputy Plan provided for adjustment to the "Stay Bonus" if the Special Deputy Liquidator worked fewer than 2,000 hours.

ii. For 2015, I propose that base pay for the Special Deputy Liquidator follow the same structure as the 2013 Special Deputy Plan. The Special Deputy Liquidator's base compensation for 2015 would be \$600,000 payable in twelve monthly installments of \$50,000 conditioned upon a minimum of 1,850 hours worked (rather than 2,000 as in the 2014 Special Deputy Plan). If there is a shortfall based on actual hours worked from January 1, 2015 through December 31, 2015, an amount equal to the shortfall in hours multiplied by the \$325 hourly rate would be deducted from the "Stay Bonus" otherwise payable to him.

b. *Annual Incentive.* From 2004 through 2014, the Special Deputy Plan provided an annual incentive bonus structure ("AI"). The AI component of the Special Deputy Plan for those years 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 would evaluate the Special Deputy Liquidator's performance with respect to each of those goals and determine the AI bonus based upon those accomplishments. The AI bonus available for the Special Deputy Liquidator was \$400,000 in 2004; \$300,000 in each of 2006, 2007 and 2009; \$200,000 in 2009 and 2010; \$175,000 in 2011 and 2012; \$150,000 in 2013; and \$50,000 in 2014 -- each of these reductions being made at the Special Deputy Liquidator's request. For 2015, the Special Deputy Liquidator has requested that the AI bonus be eliminated with a resulting \$50,000 decrease in his potential total compensation although the Special Deputy Liquidator will continue to report his annual performance to the Liquidator.

c. *"Stay Bonus"*. Pursuant to his compensation plans from 2004 through 2014, the Special Deputy Liquidator 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 2015 Special Deputy Plan, a "Stay Bonus" covering a twelve month period from January 1, 2015 through December 31, 2015 of \$325,000 (adjustable as discussed above in subparagraph 7.a.ii) is payable on or after December 18, 2015. This \$75,000 reduction in his potential total compensation is made at the Special Deputy Liquidator's request.³

d. *Reduction in Compensation over Time*. Consistent with the objective of minimizing costs as the liquidation process continues, the Special Deputy Liquidator's total

³ 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.

compensation was reduced by more than one third from inception through 2014. In addition to these prior reductions, the 2015 Special Deputy Plan represents a decrease of more than 11% from the total compensation available under the 2014 Special Deputy Plan.

8. Prior to 2008, the term of the Consulting Agreement 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 remain in effect but be subject to annual review by the Liquidator and approval by the Court. If the Special Deputy Plan were to be terminated by the Liquidator or not approved for continuation by the Court, Mr. Bengelsdorf would receive a pro rata benefit.⁴

9. 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 2015 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 50th and 75th percentile). As stated in its advisory letter (Exhibit D), E & Y found that the Special Deputy Liquidator’s proposed 2015 total direct compensation (defined as base salary, adjusted to reflect the absence of an employee benefit plan, plus

incentive pay) is significantly below the market median (50th percentile) and is significantly less than competitive. E & Y further advises that the Special Deputy Liquidator's total cash compensation (base salary, without adjustment, plus incentive pay) is competitive of median market levels.

10. The 2015 Special Deputy Plan compensation, in E & Y's opinion, represents total direct compensation significantly below the competitive range of median market levels but total cash compensation which is competitive of median market levels.

11. I believe that without the adoption of these plans the liquidation effort would be harmed because key employees would seek better, more long-term career opportunities elsewhere while the services and experience of the Special Deputy Liquidator might be lost.

12. For the reasons described above, as well as the advice provided by E & Y, I have concluded that the Plans are fair and reasonable and in the best interests of the liquidation and of the policyholders and other creditors of Home.

⁴ If the Court approves the 2015 Special Deputy Liquidator Plan, the AI portion of the Special Deputy Liquidator's will be eliminated and only the "Stay Bonus" would continue to renew annually.

Signed under the penalties of perjury this 8th day of December, 2014.



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 day of December, 2014.



Notary Public/~~Justice of the Peace~~

SARAH K. PRESCOTT, Notary Public
My Commission Expires June 23, 2015