

**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 ARIZONA FUND**

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 Arizona Fund. 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.

2. The motion seeks approval for the Settlement Agreement and Mutual Release (“Settlement Agreement”) between the Arizona Property and Casualty Insurance Guaranty Fund (“Arizona Fund” or “Fund”) and the Liquidator. The Settlement Agreement was negotiated under my supervision. A copy of the Settlement Agreement is attached as Exhibit A to the Liquidator’s motion. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.

3. The Settlement Agreement concerns the claims submitted in the Home liquidation by the Arizona Fund under proofs of claim numbers GOVT 18901-11 and GOVT 18901-12. These were the proofs of claim at issue in disputed claim proceedings 2011-HICIL-50 and 2011-

HICIL-51. Settlement Agreement, Second Whereas Clause. Those claims concerned administrative expenses that the Fund allocated to the Home liquidation, including certain amounts for dues paid by the Fund to the National Conference of Insurance Guaranty Funds (“NCIGF”). Id., Third Whereas Clause.

4. The Liquidator disallowed a portion of the administrative expenses that the Arizona Fund had allocated to the Home liquidation, and he assigned NCIGF dues to Class V priority under RSA 402-C:44. Settlement Agreement, Third and Fourth Whereas Clauses. The Fund objected, and the disputed claim proceedings were heard by the Referee. On December 20, 2012, the Referee issued an Order (“Referee’s Order”) upholding the Liquidator’s disallowance of amounts sought for administrative expenses and the assignment of the NCIGF dues to Class V. Id., Fifth and Sixth Whereas Clauses. The Fund filed a Motion to Recommit the Referee’s Order, and on October 31, 2013, the Court issued an Order (“Superior Court Order”) denying the Motion to Recommit. Id., Seventh Whereas Clause. The Fund filed a Rule 7 Notice of Mandatory Appeal from the Superior Court Order with the New Hampshire Supreme Court. Id., Eighth Whereas Clause. The Fund has moved the Supreme Court to stay that appeal pending this Court’s ruling on this motion.

5. The Settlement Agreement provides that the Liquidator will recommend that, of the administrative expenses that are the subject of the proofs of claim, the total amount of \$150,694.92 be allowed as a Class I priority claim under RSA 402-C:44. Settlement Agreement ¶ 2(A). It further provides that, of the NCIGF dues that are the subject of the proofs of claim and the NCIGF dues that are the subject of the Arizona Fund’s pending requests for review concerning NCIGF dues for 2003-2005, the total amount of \$38,779.13 be allowed as a Class V priority claim under RSA 402-C:44. Id. ¶ 2(B). These amounts are the same as the amounts and priorities allowed by the Liquidator in the notices of determination upheld in the Referee’s Order

and the Superior Court Order. The Liquidator had allowed administrative expenses for the 2006-2010 years in the amount of \$150,694.92 at Class I and NCIGF dues for the 2006-2010 years in the amount of \$27,674.53 at Class V. See the Liquidator's Objection to Claimant Arizona Fund' Motion to Recommit (February 4, 2013) at 6, 7. The additional \$11,104.60 in NCIGF dues included in the settlement is the amount that the Liquidator had allowed for NCIGF dues at Class V for the years 2003-2005; the Fund had filed pending requests for review of the priority of those dues. See id. at 7 n. 6.

6. The Settlement Agreement also provides that the priority of the \$38,779.13 of NCIGF dues for 2003 through 2010 to be allowed at Class V under the settlement shall be adjusted in accordance with any subsequent settlement agreement between the Liquidator and the guaranty funds or associations generally that provides that a portion of allowed NCIGF dues be treated as a Class I priority claim. Settlement Agreement ¶ 2(B). In the event that the Liquidator enters such a settlement, the Liquidator shall recommend that the percentage of allowed NCIGF dues to be treated as Class I under that general agreement shall also apply to \$38,779.13 amount. Id. Other guaranty associations have pending requests for review of the priority of NCIGF dues, and this provision will permit the Arizona Fund to be treated equally in the event a subsequent general settlement is reached concerning the priority issue. Any such settlement would be subject to approval by the Court.

7. The Settlement Agreement further provides that promptly after Court approval (the "Effective Date"), the Arizona Fund will withdraw and dismiss its appeal to the New Hampshire Supreme Court with prejudice. Settlement Agreement ¶ 5. It also provides for mutual releases between the Fund and the Liquidator of all claims arising from the proofs of claim and the requests for review concerning the NCIGF dues. Id. ¶¶ 3, 4.

8. The Settlement Agreement is the result of negotiations under my supervision. The Settlement Agreement reflects a compromise to avoid an appeal to the New Hampshire Supreme Court. It allows the amounts of administrative expenses and NCIGF dues upheld in the Superior Court Order and applies Class V priority to NCIGF dues in accordance with the Superior Court Order. It contains an additional provision that permits the Arizona Fund to be treated similarly to other guaranty associations in the event of a general settlement concerning priority of NCIGF dues. Such a provision is a reasonable resolution to avoid the appeal given the amounts involved. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of \$150,694.92 as a Class I priority claim and \$38,779.13 as a Class V priority claim in accordance with RSA 402-C:45 and RSA 402-C:44.

9. 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 22 day of January, 2014.

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

STATE OF CALIFORNIA  
COUNTY OF VENTURA

On Jan 22, 2014 before me, Tina Le, 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 Tina Le  
Signature of Notary Public

