

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 SEVENTH MOTION FOR APPROVAL  
OF DISPOSAL OF CERTAIN RECORDS**

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 (1) approving the disposal of open claim file records and closed claims files sent by various insurance guaranty associations to the Liquidator where the guaranty association has imaged the open claim file records, the closed claim file or critical portions of the closed claim file, (2) authorizing the Liquidator to direct guaranty associations that image open claim file records, closed claim files or critical portions of the closed claim file to dispose of the open claim file records or the closed claim files instead of sending them to the Liquidator; and (3) approving the disposal of reinsurance records, including closed reinsurance claim files and reinsurance contract files, concerning reinsurance that has been commuted once the commutation has been implemented and any commutation payment made. As further reasons therefor, the Liquidator states as follows:

1. Background. As set forth in the Liquidator's six previous motions for approval of disposal of certain records filed November 24, 2004, July 15, 2005, July 3, 2008, February 16, 2011, July 29, 2011, and December 10, 2013, along with the Liquidator's motion for approval to dispose of imaged records filed in January, 2005 (the "Imaging Motion"), 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. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Liquidator's Seventh Motion for Approval of Disposal of Certain Records ("Bengelsdorf Aff.") ¶ 2.

2. The New Hampshire Insurers Rehabilitation and Liquidation Act provides for disposal of documents of insurers in liquidation in RSA 402-C:50, which provides:

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 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.

3. Pursuant to this statute and the Liquidator's motions, the Court authorized disposal of certain categories of records by Orders Approving the Disposal of Certain Records entered December 16, 2004, August 12, 2005, August 19, 2008, May 2, 2011, November 10, 2011, and January 30, 2014 and the Order Approving Disposal of Imaged Records entered February 17, 2005. The Order Approving Disposal of Imaged Records provided that the Liquidator may dispose of papers records where imaged copies are stored on Home's computer system. Pursuant to these orders, liquidation staff has disposed of over 84,077 boxes of documents by the end of 2014. Nonetheless, approximately 94,376 boxes remained in storage with off-site vendors at the end of 2014, in addition to the boxes stored at the liquidation offices. The annual cost of storing the records with off-site vendors is presently approximately \$381,664 per year, and disposal of even part of the boxes in off-site storage would result in significant savings. Bengelsdorf Aff. ¶ 3.

4. Closed claims files and open claim records from guaranty associations. Of the remaining boxes stored with vendors, approximately 2,500 boxes consist of open claim file records and closed claim files that have been sent to the Liquidator by the insurance guaranty associations handling the claims. Bengelsdorf Aff. ¶ 4.

5. The various states have all established insurance guaranty associations to provide for payment of certain claims under insurance policies issued by insurers that become insolvent to avoid excessive delay in payment and financial loss to claimants or policyholders. See, e.g., RSA 404-B:2 (purpose of New Hampshire Insurance Guaranty Association – “NHIGA”). Insurance guaranty associations are charged with handling “covered claims” under policies of insurance issued by insurers that have become insolvent, subject to statutory limitations. See, e.g., RSA 404-B:5, IV (definition of “covered claim”); RSA 404-B:8 (powers and duties of NHIGA). Claims under policies of insurance issued by Home have been handled by guaranty associations in fifty-two states and other jurisdictions. Bengelsdorf Aff. ¶ 5.

6. At the beginning of the Home liquidation, the Liquidator sent claim files concerning then-pending claims to the appropriate guaranty associations. Subsequently, the guaranty associations have been notified of additional claims, and they have requested and the Liquidator has provided pertinent claims files, if any exist, or policy-related materials to the guaranty associations so that the guaranty associations could create such files. The guaranty association then added material to the claim files as they handled and resolved the claims. Bengelsdorf Aff. ¶ 6.

7. The guaranty associations have closed many of the claims they are handling. Most of the guaranty associations send the claim files concerning closed claims under Home policies to the Liquidator when the claims are closed. Other guaranty associations, rather than

waiting until the claim is closed, image the claim records during the handling of the claim and periodically send the paper claim file records to the Liquidator. As of February 3, 2015, the guaranty associations had sent claims files and records concerning 4,677 closed claims and 1,782 open claims to the Liquidator. These files total approximately 2,500 boxes of documents. At the present annual storage rate of \$4.05 per box, the Home liquidation is paying \$10,125- per year to store these boxes. Disposal of a portion of these boxes, or avoiding storing such boxes in the future, will result in savings to the Home estate. Bengelsdorf Aff. ¶ 7.

8. Imaging by guaranty associations. The Liquidator has been informed that over the past few years most guaranty associations have begun imaging records. To the extent that the guaranty associations have imaged copies of the claim file records they are sending to the Liquidator and will allow the Liquidator access to them, there is no good reason for the Liquidator to retain the paper records. Even where a guaranty association does not retain a complete imaged copy of the claim file, the imaged records may provide sufficient information to reopen the claim if necessary. The Liquidator accordingly has asked the guaranty associations about their imaging practices by distributing a questionnaire (attached to the Bengelsdorf Affidavit) to the guaranty associations through the National Conference of Insurance Guaranty Funds (“NCIGF”). The purpose of the questionnaire was two-fold: (a) to determine whether the guaranty associations are imaging and will in the future image the claim file records (or critical parts of them) that they are providing to the Liquidator, and (b) to determine to what extent the guaranty associations have imaged the claim file records they provided to the Liquidator in the past. Bengelsdorf Aff. ¶ 8.

9. Based on the questionnaires returned by 55 guaranty associations, 49 guaranty associations presently have imaging capability; of these, 34 presently image the complete claim

file and 8 more presently image what they consider the critical parts of the claim file, such as claimant identity, policy information, coverage determination, and amount(s) paid.<sup>1</sup> Most significantly for purposes of this motion, 37 guaranty associations presently retain an imaged copy of the paper claim file records the association sends to the Liquidator, and 11 more retain imaged copies of the critical parts of the claim file. The guaranty associations have made imaged copies of the claim files or parts of the claim files for varying periods going back as far as the commencement of Home's liquidation. All of the guaranty associations that image records will allow the Liquidator access to the association's imaged claim file records pertaining to claims under Home policies. Bengelsdorf Aff. ¶ 9.

10. These results show that many guaranty associations retain imaged records of either all or the important parts of the claims files that they are presently sending or will send to the Liquidator and a number of guaranty associations retain imaged records of all or the important parts of claim files that have been sent to the Liquidator in the past. Based on the information from the questionnaires, the Liquidator can identify the claim files that have been completely or partially imaged. Bengelsdorf Aff. ¶ 10.

11. Recommendation. The Liquidator has concluded that the paper open claim file records and the closed claim files sent to the Liquidator by the guaranty associations are no longer useful where the association has retained an imaged copy of the open claim file records, the closed claim files or the critical parts of the closed claim file. As noted above, the guaranty associations will allow the Liquidator access to these imaged records. Bengelsdorf Aff. ¶ 11.

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<sup>1</sup> For instance, where a closed workers' compensation claim file reopens, the Liquidator or guaranty association would typically refer to the closed claim file to ascertain certain critical information: 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.

12. The Liquidator accordingly recommends and requests approval pursuant to RSA 402-C:50:<sup>2</sup>

(a) To dispose of the paper records from open claims and the paper closed claim files sent to the Liquidator by the guaranty associations where the association has imaged the records or files. Imaged copies of these records will remain accessible to the Liquidator.

(b) To dispose of the paper closed claim files provided by the associations where the association has imaged the critical part of the file. The Liquidator will retain a closed claim file if it pertains to a pending proof of claim or pending or anticipated litigation based upon review of the existing inventories.

(c) To direct the guaranty associations to dispose of open claim file records and closed claim files, instead of sending them to the Liquidator, where the association has imaged the open claim file records or the closed claim file. The paper records will not be useful and the cost of shipping them to the Liquidator is unnecessary. Bengelsdorf Aff. ¶ 12.

13. Records of Commuted Reinsurance. During the course of the liquidation, the Liquidator has sought to collect reinsurance, convert potential reinsurance recoveries to cash, and resolve contractual relationships with Home's reinsurers by entering reinsurance commutation agreements. Those commutation agreements typically involve a payment to the Liquidator and mutual releases of past, present and future claims between the reinsurer and the Liquidator. See, e.g., the Reinsurance Commutation Agreement, Settlement and Release attached as Exhibit 1 to the Liquidator's Motion for Approval of Reinsurance Commutation Agreement with Phoenix

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<sup>2</sup> 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.

(April 25, 2014). Larger reinsurance commutation agreements become effective upon approval by the Court, and the Liquidator has submitted a number of commutation agreements such as the Phoenix agreement for approval by the Court. Smaller commutation agreements involving less than \$500,000 are reported to the Court in the confidential appendices submitted with the quarterly Liquidator's reports. See Order (March 23, 2004). Once the reinsurance contracts are fully and finally resolved by commutation and any commutation payment has been made, there will be no future claims involving the reinsurance contracts. Bengelsdorf Aff. ¶ 13.

14. The Home Reinsurance Department has approximately 40 boxes of records concerning commuted reinsurance, consisting of reinsurance claim files, reinsurance contract files and other records of the past dealings between the reinsurer, Home and the Liquidator. These documents are no longer useful once the reinsurance contracts have been fully and finally resolved by commutation and all payments called for in the agreement have been made. Bengelsdorf Aff. ¶ 14.

15. Recommendation. The Liquidator accordingly requests approval pursuant to RSA 402-C:50 to dispose of these records of commuted reinsurance. The Liquidator also requests approval to dispose of records concerning reinsurance that is commuted in the future, once the reinsurance has been fully and finally resolved by commutation and all commutation payments have been made. Bengelsdorf Aff. ¶ 15.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Seventh Motion for Approval of Disposal of Certain Records;
- B. Enter an Order in the form submitted herewith (1) approving the disposal of open claim file records and closed claim files sent to the Liquidator by insurance guaranty associations where the guaranty association has retained imaged copies of the open claim file records or the closed claim file; (2) approving the disposal of closed claim files sent to the Liquidator by insurance guaranty associations where the guaranty association has retained imaged copies of critical parts of the claim file, unless the claim pertains to a pending proof of claim or pending or anticipated litigation, based upon review of the existing box inventories; (3) authorizing the Liquidator to direct guaranty associations that retain imaged copies of open claim records and/or closed claim files to dispose of paper open claim file records and closed claim files instead of sending them to the Liquidator; and (4) approving the disposal of records concerning commuted reinsurance once the reinsurance contracts have been fully and finally resolved by commutation and all commutation payments have been made; 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  
COMPANY,  
By his attorneys,

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June 18, 2015



Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Seventh Motion for Approval of Disposal of Certain Records, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 18<sup>th</sup> day of June, 2015, by first class mail, postage prepaid to all persons on the attached service list.



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