

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**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
CLAIM AMENDMENT DEADLINE**

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 Motion for Approval of Claim Amendment Deadline. 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 Liquidator’s Motion for Approval of Claim Amendment Deadline (the “Motion”) seeks approval for a claim amendment deadline as described in the Motion and set forth in the Proposed Order Approving Claim Amendment Deadline (“Proposed Order”) submitted with the Motion.

3. Home is a New Hampshire-domiciled insurance company incorporated in 1973, although its predecessor corporations were established as long ago as 1853. Home had a number of insurer subsidiaries, most of which were merged into Home as part of its reorganization in

1995.¹ Home and its subsidiaries wrote insurance and reinsurance in almost all states and territories of the United States, as well as in Canada, Bermuda, Hong Kong, and the United Kingdom, where Home's unincorporated branch operation wrote business as a member of the American Foreign Insurance Association. Home and its subsidiaries generally stopped writing personal lines business in the early 1990's, and they stopped writing all business, including commercial lines (subject to certain personal lines mandatory renewal requirements in a few states), in 1995.

4. Home is in liquidation pursuant to the Order of Liquidation entered June 13, 2003, in which the Court declared Home insolvent and appointed the Insurance Commissioner as Liquidator to liquidate the company. The Order of Liquidation established the deadline for filing of claims in the liquidation as June 13, 2004 (the "Claim Filing Deadline"). The Court also issued an Order Approving Notice on June 11, 2003 approving notice of the Order of Liquidation and the Claim Filing Deadline.

5. A total of 20,785 proofs of claim have been filed in the liquidation as of May 31, 2019. As described in the Liquidator's reports, the Liquidator has been reviewing and determining claims throughout the liquidation. The Liquidator has filed numerous reports of claims and recommendations and motions for approval of policyholder settlements with the Court since 2004. As of May 31, 2019, the Court has approved claim recommendations, including settlements, resolving a total of 19,695 proofs of claim with a total allowed amount of approximately \$3.08 billion for all priority classes.

6. The Motion focuses on the policy-related claims assigned Class II priority by RSA 402-C:44, II, although the Claim Amendment Deadline is to apply to all claims except

¹ A reinsurer subsidiary, US International Reinsurance Company ("USI Re"), was the subject of a separate liquidation proceeding in this Court, Docket No. 03-E-0112. After a claim amendment deadline of December 31, 2008, the USI Re liquidation proceeding was concluded on December 3, 2013.

administration costs and federal claims. The Liquidator concluded early in the liquidation that there would not be sufficient assets to make any distribution to priority classes below Class II. The total amount of Home's Class II liabilities can be determined only by resolving all Class II claims, and the final distribution percentage to Class II creditors cannot be calculated and the distribution made until all claims have been determined.²

7. The remaining 1,090 open proofs of claim include 887 proofs of claim that involve Class II policy-related claims.³ As of May 31, 2019, the Liquidator has recommended and the Court has approved Class II determinations or settlements resolving 17,370 proofs of claim with a total allowed amount of approximately \$2.705 billion. These resolved Class II proofs of claim represent 95% of the 18,257 Class II proofs of claim. The 887 remaining open Class II proofs of generally involve policyholder or guaranty association claims.

8. As of May 31, 2019, there are 237 policyholders/insureds with open Class II proofs of claim (representing a total of 828 Class II proofs of claim).⁴ Of these remaining policyholder accounts, 131 involve non-workers compensation claims and 106 involve only

² The Liquidator engaged the actuarial consulting firm Milliman, Inc., to provide an estimate of Home's ultimate unpaid Class II obligations in connection with the first two interim distributions, leading to an undiscounted actuarial central estimate of \$4.034 billion as of December 31, 2014. Executive Summary of Milliman's Roll-Forward Analysis of Unpaid Loss and ALAE as of June 13, 2003 and December 31, 2014, Summary by Class at 2 (attached as Exhibit F to the Liquidator's Fifty-Seventh Report (June 24, 2015)). This actuarial central estimate "should be interpreted as an estimate of the expected value over [a] range of reasonably possible outcomes." Executive Summary at 4. See *id.* at 8 ("the average of a wide range of possible outcomes"). Milliman noted that "[t]he uncertainty in our estimates is greater than it otherwise would be due to the liquidation of Home and the resulting involvement of state GAs and insureds, including their agents, in the process of handling and determining claims. Because Home is in liquidation, its historical loss experience as well as the experience since Home entered liquidation is less predictive of future claim activity, both with respect to the timing of claim reporting and payment, and with respect to the size of the payments that will ultimately be made." *Id.* at 8. Because of such factors, the uncertainties in reserve estimates, and the shrinking number of open claims (which will be determined through the liquidation process), the Liquidator has not engaged Milliman to perform another analysis.

³ This does not include proofs of claim where the determination provided that the claimant could submit further claims.

⁴ This tally counts all entities within the coverage of a policy, including the named insured and its successors, as one policyholder/insured if they filed a consolidated proof of claim or proofs of claim. Where the insured, additional named insureds, and/or their successors filed separate proofs of claim, the entities are counted separately.

workers compensation claims. In most instances, the 131 non-workers compensation accounts involve long-tail claims such as asbestos, lead, talcum powder, environmental or other mass tort claims that depend upon complex underlying facts or lawsuits and emerge over time, if at all. Such claims may not implicate Home coverage – which is often high level excess coverage – for many years, if ever. In certain instances, the underlying claims are being fully paid by solvent insurers. These insureds whose proofs of claim remain open generally are not willing to voluntarily resolve their proofs of claim.

9. There are also 59 open Class II proofs of claim filed by insurance guaranty associations for claims against Home insureds or Home that are being handled as “covered claims” by the associations in accordance with their respective statutes. Subject to statutory limitations, insurance guaranty associations handle and, where appropriate, pay claims under Home policies and in turn have a claim against the Home estate. The guaranty associations are currently handling approximately 2,063 open claims under Home policies. Guaranty association payments under Home policies are accorded Class II priority – the same priority to which the claimants would have been entitled absent the guaranty association.⁵

10. As of May 31, 2019, there are also approximately 304 proofs of claim that have been issued determinations as to Class V priority only, deferring determination as to amount, since there will not be assets sufficient to make any distribution to claims below Class II priority.

11. The Liquidator has been collecting assets, in particular reinsurance. As a result of these efforts, the Liquidator has approximately \$808.4 million in cash and invested assets under

⁵ Guaranty associations’ claims include defense expenses incurred under Home policies. The Liquidator initially assigned such claims to Class II priority, while guaranty associations contended they were entitled to Class I priority. Pursuant to a Settlement Agreement approved by the Court on July 15, 2013, 90% of guaranty association defense expense claims are assigned to Class II and 10% to Class I.

his control as of May 31, 2019. Additional assets have already been collected and distributed as early access distributions to guaranty associations or as interim distributions as described below.

12. With Court approval, the Liquidator has made eleven Class II early access distributions to insurance guaranty associations pursuant to RSA 402-C:29, III totaling total \$256.1 million as of May 31, 2019. In addition, certain states have taken control of special deposits that with interest now total approximately \$55.7 million which the Liquidator is setting off against claims of guaranty associations in those states.

13. With Court approval, the Liquidator made three interim distributions totaling 30% on allowed Class II claims: an initial interim distribution of 15% in 2014, a second distribution of 10% in 2016, and a third distribution of 5% in 2019.⁶ In accordance with the approval orders, newly allowed Class II claims receive the 30% interim distribution percentage following the next July 1 or December 31. As of May 31, 2019, a total of \$620.1 million in interim distributions has been paid to non-guaranty association Class II creditors.

14. Adding the \$808.4 million in estate assets, the \$256.1 million of early access distributions to guaranty associations, the \$620.1 million in interim distributions to non-guaranty association claimants, and the \$55.7 million in deposits, a total of approximately \$1.74 billion in assets is either available for distribution or has been distributed to Class II claimants. The collection of Home's assets is mostly complete except for reinsurance recoveries on claims that have not yet been determined.

15. As of May 31, 2019, the liquidation staff is 39 in number (including part-time employees), plus information technology and other consultants. The size of the staff has been

⁶ The orders approving the three interim distributions each provided that the distribution was subject to receipt of a waiver of federal priority claims from the United States. The Liquidator obtained waivers from the United States Department of Justice ("US DOJ") for the first two distributions and entered the Release Agreement with the US DOJ approved by the Court on March 26, 2019, to address the third distribution and future distributions.

significantly reduced over the course of the liquidation, as in 2004 staff totaled 95. The annual cost of the liquidation has also dropped over time, from \$26.9 million in 2004 to a budget of \$13.5 million for 2019.

16. I have concluded that a “reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims” now requires a final Claim Amendment Deadline. Such a deadline will motivate claimants that have been slow or reluctant to resolve or amend their open proofs of claim claims to do so, and it will thus expedite the final determination of claims necessary to collect reinsurance and to make a final distribution of Home’s assets. While the deadline cuts off potential claims, that is necessary to achieve the final resolution of claims required to make a final distribution.

17. The proposed Claim Amendment Deadline of 150 days from the Court’s order granting the Motion is fair and reasonable in light of the progress of the liquidation. Given the time that has passed, the claims that have been determined, and the increasing difficulty of obtaining information from those with asserted but unsubstantiated claims, I have concluded that the balance of interests weighs in favor of establishing a final deadline by which claims must be amended and filed. This will benefit the broad group of policyholders and claimants with allowed claims by enabling the Liquidator to determine the remaining claims, collect any reinsurance on those claims, calculate and make the final distribution, and close the proceeding. This conclusion reflects the factors described below.

18. There has been a lengthy period of time for claims against Home to emerge. Home has been in liquidation for sixteen years (since 2003), and it was in run-off for eight years before that (since 1995). Home stopped writing insurance – that is, issuing insurance policies –

in 1995. Home did not have material coverage in force after 1996.⁷ Claims under Home policies thus have had at least twenty-three years to develop, and claimants have had sixteen years to assert claims in the liquidation. The Liquidator provided broad notice of Home's liquidation and the June 13, 2004 claim filing deadline in 2003 as required by RSA 402-C:26 and the Court's Order Approving Notice.⁸

19. The Liquidator has determined the vast majority of proofs of claim. As of May 31, 2019, the Liquidator had issued and the Court had approved determinations resolving 19,695 (almost 95%) of the 20,785 proofs of claim, including 17,370 (95%) of the 18,257 Class II proofs of claim. The Liquidator has also issued and the Court has approved determinations to guaranty associations involving thousands of claims under their proofs of claim. The approved Class II determinations for claimants, insureds and guaranty associations total approximately \$2.705 billion as of May 31, 2019. (This represents approximately 67% of Milliman's earlier actuarial central estimate of Class II liabilities, which was part of a wide range of possible outcomes, see note 2 above.) Given the passage of time and the number of claims determined, I have concluded that the liquidation is at a point where the answer to the value of the remaining claims must be arrived at through the claim determination process.

20. The insureds with remaining open proofs of claim are generally resistant to providing information or resolving the matters as the claims increasingly involve future expectations. The 828 open non-guaranty association Class II proofs of claim as of May 31,

⁷ When it was placed in liquidation, Home had approximately 1000 in-force policies and bonds, including 900 perpetual first party property policies, 5 legal liability policies with ongoing tail coverage, and 100 bonds. These policyholders and bondholders were sent notices of cancellation as well as notices of the liquidation and Claim Filing Deadline in 2003.

⁸ In accordance with the Order Approving Notice, the Liquidator mailed notice of the liquidation and proof of claim forms including the June 13, 2004 Claim Filing Deadline to approximately 334,000 potential claimants (including policyholders/insureds) and published notice of the liquidation and Claim Filing Deadline in 94 newspapers and a trade publication in the period July-September 2003. See Liquidator's First Report ¶¶ 5, 9 (July 3, 2003); Liquidator's Second Report ¶ 4 (August 11, 2003); Liquidator's Third Report ¶ 4 (September 12, 2003).

2019 involve a total of 237 policyholder accounts, of which 131 involve non-workers compensation claims and 106 involve only workers compensation. Many of the non-workers compensation accounts involve “long tail” exposures, such as asbestos or environmental exposures, that the insureds contend will result in covered liabilities that will emerge many years and, in some instances, decades into the future. Absent some requirement to update and substantiate their claims, these insureds are likely to prefer to keep them open and await future developments.

21. The Liquidator has collected a substantial part of the assets of the estate. As of May 31, 2019, the Liquidator controlled \$808.4 million in cash and invested assets. Adding the \$620.1 million of interim distributions paid to non-guaranty association claimants, the \$256.1 million in early access distributions to guaranty associations, and the \$55.7 million of special deposits held by states, the Liquidator has collected a total of \$1.74 billion in assets available for Class II claims. While the Liquidator is still collecting assets, the remaining additional assets (other than potential investment income) principally consist of potential reinsurance recoveries that will not be realized unless underlying claims against Home are filed and proved.

22. Keeping the liquidation open requires the payment of the ongoing costs of administering the estate. The liquidation presently has 39 liquidation staff (plus consultants), leases space in New Hampshire (through 2019) and New York, and an annual budget of \$13.5 million. In my opinion, the staff, in particular the claims staff, is appropriately experienced and sized to handle the open claims – many of which are complex and require both claims experience and knowledge of Home’s policies – and to address claims filed in connection with the Claim Amendment Deadline. However, if the estate were to remain open for the filing of claims without a deadline, the inevitable loss of experienced claims and reinsurance staff, to retirement or otherwise, who are necessary to handle the remaining complex claims and to

collect any applicable reinsurance, will hinder the liquidation process while adding to the expense of administering the proceeding due to the necessity of hiring new staff or engaging more expensive consultants. The Claim Amendment Deadline will permit more efficient and economical handling of claims and collection of reinsurance by the present experienced staff.

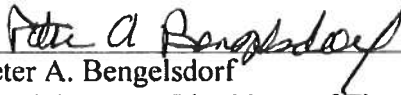
23. In these circumstances, I have concluded that a final deadline is necessary to move the liquidation to closure. Settlements, which are the principal way of resolving complex claims, are becoming more difficult as claims increasingly reflect expectations of future claims. Collection of remaining reinsurance depends upon proof of underlying claims. Absent a final deadline, claims may straggle in, potentially for decades, which will require the maintenance of a liquidation operation and deferral of a final Class II distribution.

24. Such potential claims do not warrant keeping the liquidation open indefinitely. The “reasonable balance” required by RSA 402-C:46, I, is between the expeditious completion of the liquidation and protection of “unliquidated and undetermined” claims, not contingent and unknown claims. At some point in the life of the estate, the balance tips in favor of completing the liquidation by setting a final deadline for submission of claims so that claims may be finally determined and claimants with allowed Class II claims may receive a final distribution. After careful consideration, I have concluded that, sixteen years into the liquidation and twenty-four years after Home stopped writing policies, the balance now clearly weighs in favor of establishing the Claim Amendment Deadline.

25. The U.S. Department of Justice has asserted that state claim filing deadlines do not apply to the United States Government in light of the Federal Priority Statute, 31 U.S.C. § 3713. The Liquidator has resolved all known federal claims, and in the Settlement Agreement approved on March 26, 2019, the Federal Claimants stated that they do not intend to file any more proofs of claim in the Home liquidation. Settlement Agreement, tenth whereas clause.

Further, in the Release Agreement approved on March 26, 2019, the United States released the Liquidator and Home from any and all liability and obligations under 31 U.S.C. § 3713 in connection with Home's liquidation, subject to certain exceptions. Release Agreement ¶ III.4-5. I do not anticipate more federal claims. However, given the Federal Priority Statute, and the exceptions in the Release Agreement, the Claim Amendment Deadline should not apply to the United States.

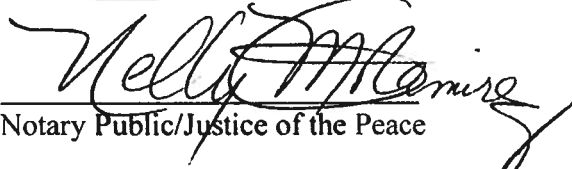
Signed under the penalties of perjury this 30 day of July, 2019.



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

STATE OF NEW YORK
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 30th day of July, 2019.



Notary Public/Justice of the Peace

Nelly M. Gomez-Ramirez
Notary Public State of New York
No. 01GO5005271
Qualified in Bronx County
Commission Expires 2/1/2019