

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

LIQUIDATOR'S MOTION FOR
APPROVAL OF 2023 COMPENSATION PLANS

Christopher R. Nicolopoulos, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves that the Court enter an order approving the compensation plans for Home's key employees in 2023 (the "2023 Key Employee Compensation Plan") and for Peter A. Bengelsdorf, the Special Deputy Liquidator of Home (the "Special Deputy Liquidator") (the "2023 Special Deputy Plan") (collectively, the "Plans"). A summary of the incentive component of the 2023 Key Employee Compensation Plan is attached as Exhibit A. A summary of the Special Deputy Plan is provided in the Liquidator's Affidavit. The Plans are based on compensation plans originally proposed and approved in 2004 and, subject to changes over time, proposed and approved in each subsequent year. The Plans are intended to reward performance and reinforce retention of essential employees and the Special Deputy Liquidator in order to facilitate the successful, efficient and prompt completion of the liquidation process. In support hereof, the Liquidator respectfully represents as follows:

1. The Retention of Experienced Employees and the Special Deputy Liquidator Benefits Creditors. Home operated internationally and specialized in affording complex forms of insurance to large enterprises. The liquidation of Home, with total estimated undiscounted

claims of \$4 billion, is one of the largest and most complex insurer liquidations ever conducted. Due to the sophisticated nature of Home's insurance products, operations, and supporting reinsurance programs, an experienced and stable senior 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. Affidavit of Christopher R. Nicolopoulos, Liquidator, in Support of Approval of Approval of 2023 Compensation Plans ("Nicolopoulos Aff.") ¶ 3.

2. The success of liquidation staff and the Special Deputy Liquidator in that regard is illustrated by the increase in Home's liquid assets from when the Order of Rehabilitation was entered, approximately \$12.7 million as of March 2003, to an estimated \$793 million of unrestricted liquid assets as of September 30, 2022. (The September 30, 2022 figure is net of the \$681 million of interim distributions to Home's policy-level creditors, \$256 million of early access distributions to guaranty associations, and \$109 million of Class I distributions to guaranty associations for their administration expenses.) 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. Nicolopoulos Aff. ¶ 4; Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of 2023 Key Employee Compensation Plans ("Bengelsdorf Aff.") ¶ 3.

3. Home Employees. The Liquidator initially hired 98 employees, 93 from the former manager of Home (Risk Enterprise Management) and 5 others, to handle the liquidation of Home. The present staff is 28 (full and part-time) employees and 5 IT consultants. All employees and consultants are located in New York City except for 1 part-time employee in

Massachusetts, 1 employee in Maryland, and 3 full and 1 part-time employees in Bedford, NH. Bengelsdorf Aff. ¶ 4.

4. The Special Deputy Liquidator. 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. His responsibilities are a combination of those performed in a “healthy” insurance company by a chief executive officer and chief operating officer. 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. Nicolopoulos Aff. ¶ 5.

5. Structure and History of Compensation Plans for Liquidation Staff. As set forth in the Liquidator’s Motion for Approval of Compensation Plans dated April 5, 2004, the Liquidator engaged E&Y to assist in the design of the compensation plans. E&Y had experience in the design of such plans for large insurers, like Home, in liquidation. Bengelsdorf Aff. ¶ 5.

6. With E&Y’s assistance, the Liquidator accordingly developed and requested approval for three integrated incentive plans in 2004. The Court approved those compensation plans by an order issued April 21, 2004. Of those three incentive plans, only the Annual Incentive Plan (“AIP”) currently remains in effect. Bengelsdorf Aff. ¶ 6.

7. A version of the AIP has been approved each year since 2004 although, over time, the number of employees eligible to participate has been reduced from 78 (in 2004) to 4 (in 2023). This plan is designed to provide additional cash compensation based on the overall

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

performance of Home’s liquidation and the individual employee during the annual plan cycle. (At the outset of the Plan Year, the Liquidator, upon consideration of the recommendations of the Special Deputy Liquidator, sets the annual corporate and individual performance goals. Payout of any amounts due pursuant to the AIP is made thirty days following the release of unaudited financial results for the Plan Year.) Bengelsdorf Aff. ¶ 7.

8. The Proposed 2023 Compensation Plan for Key Liquidation Staff. The Liquidator seeks to continue to provide compensation to key employees that is appropriate and reasonable for an insurance company in liquidation. The Liquidator proposes to continue the AIP in 2023, with no changes from 2022, at a total anticipated cost of \$514,900. This figure may be compared with AIP payments (in millions) for prior years:

Year	Payment	Year	Payment	Year	Payment
2004	\$ 2.61	2010	\$ 1.73	2016	\$ 0.91
2005	\$ 2.28	2011	\$ 1.58	2017	\$ 0.91
2006	\$ 2.28	2012	\$ 1.17	2018	\$ 0.86
2007	\$ 2.23	2013	\$ 1.17	2019	\$ 0.75
2008	\$ 2.29	2014	\$ 1.31	2020	\$ 0.58
2009	\$ 1.86	2015	\$ 0.93	2021	\$ 0.49
				2022 (est.)	\$ 0.49

Four employees will be eligible for the AIP in 2023. Bengelsdorf Aff. ¶ 8.

9. The Compensation Plan for the Special Deputy Liquidator. The Special Deputy Liquidator is engaged by the Liquidator pursuant to the June 11, 2003 Consulting Agreement. The Liquidator has consulted in the past with E&Y to assist in devising and evaluating a compensation program for the Special Deputy Liquidator. At various times since the beginning of Home’s liquidation, compensation for the Special Deputy Liquidator has included base compensation, an annual incentive bonus, and a “Stay Bonus” but during recent years he has been compensated at

an hourly rate subject to an annual cap. Even with the high rate of inflation over the past year, it is felt unnecessary at this late point in the liquidation process to incur the expense to have E&Y review the market comparability of the Special Deputy Liquidator's compensation. The terms of his compensation in 2023 would accordingly be unchanged from 2022. He would continue to be compensated at an hourly rate of \$450 capped at 1,833 hours per year and total compensation of \$825,000. Nicolopoulos Aff. ¶ 6.

10. Consistent with the objective of minimizing costs as the liquidation process continues, the Special Deputy Liquidator's total compensation has been reduced by 39.5% from inception through 2023. Each of these reductions has been made at the request of the Special Deputy Liquidator and he is agreeable to the terms of his 2023 compensation as described. Nicolopoulos Aff. ¶ 7.

11. The Proposed 2023 Special Deputy Plan. The proposed 2023 Special Deputy Plan is unchanged from 2022. 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 fulltime 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. Second, the plan is intended to provide the Special Deputy Liquidator with appropriate and reasonable compensation properly positioned in relation to Home's current executive team. Nicolopoulos Aff. ¶ 8.

12. The Total Cash Compensation proposed in the 2023 Special Deputy Plan is capped at \$825,000, the same as his 2020 through 2022 compensation, with a target of 1,833 hours worked. Nicolopoulos Aff. ¶ 9.

13. E&Y evaluated the 2022 Special Deputy Plan in comparison with market levels. *See, Liquidator's Motion for Approval of 2022 Compensation Plans, filed December 27, 2021.* The Special Deputy Liquidator is a consultant to the Liquidator and not an employee of Home. Accordingly, the Special Deputy Liquidator does not participate in the incentive compensation plans for key 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. E&Y has estimated that the actual value of the \$825,000 Total Cash Compensation available to the Special Deputy Liquidator was equivalent to an employee's salary of \$660,000. E&Y advised in its October 6, 2021 letter, submitted as part of the 2022 Compensation Plan filing noted above, that it assessed the Special Deputy's total compensation to be below the market median (50th percentile). With the reported increase in inflation during the past year, the Liquidator believes that negative comparability continues to be the case. Nicolopoulos Aff. ¶ 10.

14. The Plans Are Necessary. The Liquidator believes that without the adoption of these plans the liquidation effort would be harmed because key employees could seek better, more long-term career opportunities elsewhere while the services and experience of the Special Deputy Liquidator might be lost. See Nicolopoulos Aff. ¶ 11; Bengelsdorf Aff. ¶ 9.

15. The Liquidator's Authority to Set the Terms of Employment. The Liquidator has authority under RSA 402-C:25, II, and paragraph (r) of the Order of Liquidation issued June 13, 2003, to engage employees and set the terms of their compensation "subject to the control of the court." The Liquidator also has authority pursuant to RSA 402-C: 25, IV, to use the property of Home and to defray the costs of collecting its assets and liquidating its property and business.

16. The Liquidator's Authority to Appoint a Special Deputy Liquidator. The Liquidator has authority under RSA 402-C: 25, I and paragraph (t) of the Liquidation Order entered June 13, 2003, to appoint a special deputy and determine his or her compensation "subject to the court's control."

17. The Plans are Fair and Reasonable. For the reasons described above, in the Nicolopoulos Affidavit and in the Bengelsdorf Affidavit, the Liquidator submits that the Plans are fair and reasonable and in the best interests of the liquidation and of the policyholders and other creditors of Home.

WHEREFORE, the Liquidator requests that the Court enter an order in the form submitted herewith approving the Plans and grant such other and further relief as may be just.

Respectfully submitted,

CHRISTOPHER R. NICOLOPOULOS,
COMMISSIONER OF INSURANCE FOR THE STATE
OF NEW HAMPSHIRE, AS LIQUIDATOR OF THE
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EXHIBIT A

The Home Insurance Company in Liquidation

Annual Incentive Plan ("AIP") - 2023

<u>Component</u>	<u>Plan Design</u>
Administration	The Plan will be administered by the Liquidator who retains the authority to interpret the Plan, to establish or revise the Plan rules and policies, and to make any determinations necessary to administer the Plan including individual award determinations, funding, and distributions/payouts.
Term	Annual plan, renewable at the sole discretion of the Liquidator.
Effective Date	January 1, 2023 — December 31, 2023 (the "Plan Cycle" or "Plan Year")
Eligibility	<p>Senior executive employees of The Home Insurance Company in Liquidation (the "Home") will be eligible for participation in this Plan at the sole discretion of the Liquidator.</p> <p>Eligibility will be determined on or about the beginning of the Plan Cycle and all participants will be informed in writing of their participation, potential payouts under the Plan, performance goals and payout formula(s), and Plan administration protocols no later than 60 days after the start of the Plan Cycle.</p> <p>In order to be eligible for participation in this Plan, the employee must be employed full time for the ninety-day period immediately preceding the beginning of the Plan Year and, except in the case of death, disability, involuntary termination without cause, or reduction in hours, employed full time at the end of the Plan Year</p> <p>Eligibility and/or participation in this Plan is not intended as a commitment by The Home Insurance Company in Liquidation for continued employment for the duration of the Plan Year.</p> <p>Participation is not to be construed as a guarantee of employment or of any payments under the Plan.</p>

<u>Component</u>	<u>Plan Design</u>
Payment Currency	All awards under this Plan will be paid in cash via regular payroll, subject to all tax reporting and withholding.
General Design	<p>The Plan is designed to provide additional annual cash compensation based on the overall performance of Home and the individual eligible employee during the annual Plan Cycle. Performance will be assessed in relation to annual goals as determined by the Liquidator. The Liquidator retains sole authority to determine annual goals, performance measures, and payouts.</p> <p>Annually, at the outset of the Plan Cycle, the Liquidator will set the annual corporate goals for this Plan.</p> <p>Both a "threshold" (or minimum) and "target" (or expected) level of net cash collections will be defined as a corporate goal. When the "threshold" level is attained, AIP payments will be triggered at up to 50% of the "target" payout defined for each participating position, depending on achievement of personal goals. Achievement of "target" results will trigger up to the "target" payout, depending on achievement of personal goals.</p> <p>Annual performance goals for participating individuals may also include, at the discretion of the Liquidator, an individual component. Any individual performance goals will be defined at the outset of the Plan Year in the individual confirmation (of participation) letters. The relative weighting of these individual goals in relation to the total company financial goals will also be specified.</p> <p>In 2023 the maximum 2023 bonus payout shall not exceed 100% of the target opportunity.</p>
Payout Frequency	Payouts are annual and will be made no later than 30 days following the release of unaudited annual financial results for the Plan Year.
Coordination with employment offer letters	Payouts under this Plan will be coordinated with any annual bonus/incentive payments provided in individual employment offer letters, and any eligible participating employees will receive the greater of either the AIP payment or the payment specified in the individual employment offer letter (but not both).

<u>Component</u>	<u>Plan Design</u>
Payout Decision Rules	<p>Death Award accrual ceases as of the date of death. A pro rata share of the current Plan Year's AIP payment (based on the period during the Plan Year when any accrual occurred) will be paid to the employee's estate, subject to receiving written notice of the employee's death, at the next regular year end payout date after death.</p> <p>Disability - Award accrual ceases when the employee has been disabled from performing his/her usual and customary job duties full time for more than 30 consecutive calendar days. Participation and accrual will resume upon the employee's return to full time employment and performance of his/her usual and customary job duties. A pro rata share of the current Plan Year's AIP payment (based on the period during the Plan Year when any accrual occurred) will be paid to the employee at the next regular year end payout date.</p> <p>Voluntary resignation - No payments will be made to employees who voluntarily resign their employment prior to payout.</p> <p>Involuntary termination "not for cause" or position elimination — Accrual ceases upon termination. A pro rata payment of the current Plan Year's AIP Payment (based on the period during the Plan Year when any accrual occurred) will be made to employees who are terminated involuntarily without cause at the next regular year end payout date.</p> <p>Involuntary termination "for cause" - No payments will be made to employees who are terminated "for cause" prior to payout.</p> <p>Reduction in Hours. Award accrual will cease if an employee's hours are reduced below full-time; a pro rata share of the current Plan Year's AIP payment (based on the period during the Plan Year when any accrual occurred) will be</p>