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 FOURTH INTERIM DISTRIBUTION TO CLAIMANTS WITH ALLOWED CLASS II CLAIMS

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 Fourth Interim Distribution to Claimants with Allowed Class II Claims. 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.

Summary

2. The Liquidator's principal goals in this liquidation are to determine claims and collect assets for the ultimate purpose of distributing assets to the creditors of Home. While there are more claims to determine and assets to collect, I believe that it is presently reasonable to make a fourth interim distribution of ten (10) percent on Class II claims that have been allowed by the Court. This fourth interim distribution would bring the total interim distribution percentage to forty (40) percent. Such a distribution would permit creditors with allowed policy-related priority claims to receive a percentage payment of their claims while reasonably

reserving assets to provide for future, equivalent distributions to claimants whose claims have not yet been addressed.

3. The Liquidator has previously made three interim distributions totaling 30% to Class II creditors. The third interim distribution was approved by order dated October 18, 2018. Since that time, the Liquidator has continued to determine claims and collect remaining assets. Most significantly, in 2019, the Liquidator moved for approval of a claim amendment deadline to require the final submission of claims in the liquidation and to cut-off post-deadline claims and potential claims. After delays related to the pandemic, litigation and appeal, the Claims Amendment Deadline was finally established as January 26, 2023. Now that the Claim Amendment Deadline has passed, no further claims can be submitted.

4. Since the deadline, the liquidation team has preliminarily reviewed recent submissions, finally determined the claims of many insurance guaranty associations, and continued to resolve policyholder claims. In light of the Claim Amendment Deadline, the resolution of claims, and the available assets, the Liquidator now believes it reasonable and prudent to make a fourth interim distribution of 10% to creditors with allowed Class II claims. The Liquidator accordingly moves for approval of the proposed fourth interim distribution pursuant to RSA 402-C:46, I.

Background

5. Home is a New Hampshire domiciled insurance company incorporated in 1973, although its predecessor corporations were established as long ago as 1853. Home and its subsidiaries (most of which were merged into Home in 1995) wrote insurance and reinsurance in all states and some territories of the United States, as well as in Canada, the United Kingdom, Bermuda and Hong Kong. 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 1995.

6. By Order of Liquidation entered June 13, 2003, the Court declared Home insolvent and appointed the Insurance Commissioner as Liquidator to liquidate the company pursuant to the Insurers Rehabilitation and Liquidation Act, RSA 402-C ("Act").

7. The Liquidator is charged with (a) marshaling and liquidating the assets of Home; (b) investigating and evaluating claims to determine the liabilities of Home and make recommendations for allowance to the Court; and (c) with Court approval, distributing assets to the policyholders, insureds, third party claimants and other creditors of the Home estate (collectively, "claimants"), all in accordance with the provisions of the Act.

8. As described in the Liquidator's reports, liquidation staff under my supervision have been investigating, negotiating and determining claims and filing reports of claims and recommendations with the Court. As of June 1, 2023, the Liquidator has presented and the Court has approved claim recommendations, including settlements, for Class II proofs of claim with a total allowed amount of $2.989 billion, an increase of $379 million over the Class II determinations of $2.61 billion as of June 30, 2018 referred to in the motion for approval of the third interim distribution. The number of remaining open Class II proofs of claim for insureds and claimants and guaranty associations decreased by 756 between June 1, 2018 and June 1, 2023, net of 253 new filed proofs of claim filed during the same period. (The Court-approved claim determinations for all priority classes as of March 31, 2023 totaled 20,282 claim determinations with a total allowed amount of approximately $3.4 billion.)

9. Liquidation staff under my supervision have also been collecting assets, in particular reinsurance. As a result of these efforts, the Liquidator has approximately

$799 million in unrestricted liquid assets (net of liabilities for interim distributions not paid in cash) under his control as of March 31, 2023.

10. With Court approval, the Liquidator has made eleven Class II early access distributions to insurance guaranty associations totaling approximately $256 million as of March 31, 2023.[1] As described in the motions for approval of the eleven early access distributions, these distributions are subject to "claw back" agreements under which the guaranty associations will return early access distributions if necessary to pay claims of claimants with claims in the same or a higher priority class. Certain states took control of special deposits made by Home as a condition of doing business in order to secure its obligations to certain creditors in those states. Those deposits with interest after draw down now total approximately $22 million, which the Liquidator is setting off against claims of guaranty associations in those states.

11. With Court approval, the Liquidator has also made three interim distributions totaling 30% on allowed Class II claims. On February 13, 2012, the Liquidator moved for approval of an initial interim distribution of 15%. The Court approved the initial interim distribution in an Order issued March 13, 2012, as amended July 2, 2012 ("First Distribution Order"). On September 28, 2015, the Liquidator moved for approval of a second interim distribution of 10%. The Court approved the second interim distribution in an Order issued November 16, 2015, as amended on March 7, 2016 ("Second Distribution Order"). On September 28, 2018, the Liquidator moved for approval of a third interim distribution of 5%. The Court approved the third interim distribution in an Order issued October 18, 2018 ("Third

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[1] This total is the amount distributed by the Liquidator after application of the deductions and caps provided for in the orders approving the early access distributions.

Distribution Order"). The Distribution Orders provide that the Liquidator is to make these distributions to subsequently allowed Class II claims after each December 31 and June 30.

12. Both the first and second interim distributions were subject to receipt of a waiver of federal priority claims from the United States, and the Liquidator requested such waivers from the United States Department of Justice ("US DOJ"). As described in the Liquidator's reports, the United States provided a waiver with respect to the first interim distribution on November 5, 2014 and a waiver with respect to the second interim distribution on July 18, 2016.

13. The third interim distribution was also subject to receipt of a waiver of federal priority claims from the US DOJ. The Liquidator subsequently entered a Release Agreement with the United States in conjunction with a Settlement Agreement between the Federal Claimants and the Liquidator. Those two agreements were approved by the Court by Order dated March 26, 2019, and other conditions were satisfied on April 10, 2019, thereby making the Settlement Agreement and the Release Agreement effective. The Release Agreement provided the necessary waiver of federal priority claims allowing the third interim distribution and subsequent distributions to proceed.

14. In light of the Release Agreement, the Liquidator does not need to seek a waiver of federal priority claims respecting the fourth interim distribution.

15. As of June 1, 2023, the Liquidator has made a total of $681 million in interim distributions to non-guaranty association claimants with allowed Class II claims and one guaranty association with allowed Class II claims in excess of those on which early access was calculated. In accordance with the Distribution Orders, the Liquidator has also deemed a portion of the early access distributions to guaranty associations to be distributions on allowed Class II claims that are no longer subject to "claw back."

16. As noted above, a Claim Amendment Deadline of January 26, 2023 has been established. In 2019, the Liquidator concluded that to move this proceeding toward closure and protect the interests of the creditors with allowed Class II claims it was necessary to establish a deadline by which claimants with open proofs of claim must finally amend their claims. The Liquidator accordingly filed a Motion for Approval of Claim Amendment Deadline on August 1, 2019 seeking to establish a deadline for the amendment of claims. Claims filed after the claim amendment deadline and potential claims (claims that cannot be specifically identified by the deadline) would be barred. The Court issued orders approving a Claim Amendment Deadline dated January 28, 2021 ("CAD Orders"). An objector, Zurich Insurance Company, German Branch, ultimately pursued an interlocutory appeal.

17. On August 12, 2022, the New Hampshire Supreme Court issued its Opinion affirming the Superior Court's CAD Orders. The Court issued its mandate on August 29, 2022, and the January 28, 2021 Order Approving Claim Amendment Deadline became effective that day. The Order Approving Claim Amendment Deadline established the Claim Amendment Deadline as the date 150 days from the date of the Order, or January 26, 2023.

18. Since the Claim Amendment Deadline has passed, the Liquidator is not accepting new claims.

Fourth Interim Distribution

19. I believe that in light of the Claim Amendment Deadline barring new claims, sufficient assets have been collected and sufficient claims determined to warrant making a fourth interim distribution of 10% on allowed Class II claims and subsequently allowed Class II claims. Together with the previously approved interim distributions totaling 30%, this would result in a total proposed interim distribution of 40%. As with the previous interim distributions, the

Liquidator bases his request on the assets and amounts that may be credited against claims, the projected Class I expenses of liquidation, and the estimated unpaid Class II liabilities. Each of these elements is addressed below.

20. I believe it is reasonable and prudent to base an interim distribution on assets held by the Liquidator and amounts that may be credited against claims. As of March 31, 2023, these consist of $799 million of unrestricted liquid assets (net of liabilities for interim distributions not paid in cash as of that date) held by the Liquidator, the $681 million previously distributed to non-guaranty association claimants as the previous interim distributions, the $256 million in early access distributions previously paid to guaranty associations, and the $22 million in special deposits under the control of certain states. A total of $1.758 billion is thus available to the Liquidator for potential distribution to claimants or, in the case of prior distributions and deposits, to be applied by the Liquidator against the claims of claimants.

21. While the Liquidator will collect reinsurance in the future, I believe it is not reasonable or prudent at this point to base a distribution on potential collections because of the significant uncertainties over future recoveries. Those uncertainties include, but are not limited to: (a) the timing of any collection, which depends on the timing of the determination of the underlying loss and case reserves and the billing and payment of reinsurance; (b) the present value discount involved; (c) the offsets available to reinsurers; (d) potential defenses to reinsurance coverage for particular claims or types of claims; (e) potential changes in the law; and (f) the possibility that reinsurers may themselves become insolvent or subject to restrictions on payments.

22. I similarly believe it would not be reasonable or prudent at this point to base a distribution on future investment returns. Future income on investments is subject to significant uncertainties, including, but not limited to, the timing and magnitude of interest rate changes by

the United States Federal Reserve and the amount and timing of distributions and liquidation expenses.

23. Any potential distribution must reflect a reserve for the Liquidator's projected Class I administration costs and the Class I claims of guaranty associations. The priority statute requires that adequate funds be retained to pay all Class I costs before any distribution may be made to succeeding priority classes. RSA 402-C:44. The Liquidator's expenses are designated as Class I administration costs in RSA 402-C:44, I, while the guaranty associations' claim expenses in handling claims are accorded the same priority by RSA 404-B:11, II. I conservatively estimate that the Class I costs, including both the expenses of the Home liquidation and the guaranty associations' Class I claim expenses, will total approximately $100 million over the remaining life of the Home estate ($60 million for the liquidation and $40 million for the guaranty associations).

24. In order to assure equal treatment for all Class II claimants, including those with unresolved claims, any potential distribution must provide for all Class II obligations of Home even though some have not yet been determined. The evaluation of Home's potential Class II liabilities is a complex and challenging task requiring significant expertise. The Liquidator had previously engaged the internationally-known Milliman actuarial consulting firm to estimate the unpaid direct obligations of Home, that is, the total unpaid obligations of Home with respect to its insurance policies, in connection with the first and second interim distributions. As described in the motions for approval of the second and third interim distributions, Milliman provided the Liquidator with its June 18, 2015 Roll-Forward Analysis of Unpaid Loss and ALAE as of June 13, 2003 and December 31, 2014 (the "Milliman Report"). The Milliman Report estimated Home's unpaid loss and allocated loss adjustment expense ("ALAE") and mapped those projected liabilities to the applicable priority classes.

25. The Milliman Report's Executive Summary set forth Milliman's "actuarial Central Estimate" of Home's unpaid Class II liabilities as of December 31, 2014. The actuarial Central Estimate is an estimate of the expected value over a range of reasonably possible outcomes and is most properly viewed as the average of a wide range of possible outcomes. Milliman's actuarial Central Estimate of Class II unpaid loss and ALAE was $4.034 billion.

26. In addition to the actuarial Central Estimate, the Executive Summary included a confidence level table with estimates of the unpaid Class II loss and ALAE at higher confidence levels. This reflects the possibility that Home's Class II liabilities may exceed the actuarial Central Estimate, which is a point in a range of reasonably possible outcomes. The estimate at each higher confidence level was intended to encompass approximately that percentage of the possible outcomes, although there is a range of remaining possible outcomes above each estimate.

27. As noted above, the priority statute requires that all claimants in a priority class receive equal treatment, RSA 402-C:44, while the distribution statute requires that any distribution protect the interests of claimants with unresolved claims. RSA 402-C:46, I. To provide for unresolved claims, the Liquidator used estimates of Home's Class II liabilities at the 95% confidence level in setting the first and second interim distributions and the 90% confidence level for the third interim distribution. In light of the passage of time, the shrinking body of unresolved claims, and the Claim Amendment Deadline cutting off additional claims and potential claims, the actuarial analysis of the Milliman Report is increasingly inapplicable. In the circumstances, I believe that the most reasonable way to evaluate the potential liabilities of the estate is to consider the amount of Class II claims allowed to date, the Liquidator's reserves for guaranty association and non-guaranty association Class II claims and to add a substantial contingency reserve. I conservatively estimate the total of these factors as $4.145 billion. (I note

that this is reasonably comparable to the Milliman central estimate of $4.034 billion – which did not reflect the impact of the Claim Amendment Deadline.)

28. As of June 1, 2023, the Court had allowed Class II claims, including settlements, totaling approximately $2.989 billion. Of that total, approximately $700 million are allowances for claims of the guaranty associations and $2.29 billion are allowances for claims of policyholders, insureds, and third party claimants or their assignees.

29. Based on the foregoing, and after careful review and consideration of the circumstances, the Liquidator seeks approval to make a fourth interim distribution of 10% for a total interim distribution of 40%. The assets ($1.758 billion) less the projected Class I expenses ($100 million) all divided by the estimated Class II liabilities ($4.145 billion) produces a potential distribution percentage of 40%, which after subtracting the previous interim distributions totaling 30% results in a potential fourth interim distribution of 10%. The calculation of the fourth interim distribution percentage is set forth on Exhibit 1 to the motion, which is also attached as Exhibit 1 to this affidavit.

30. I believe the proposed fourth interim distribution percentage is consistent with the mandate of RSA 402-C:46, I, to protect claimants with undetermined claims. As discussed above, it uses a substantial contingency to address the risk that the ultimate Class II liabilities may exceed reserve estimates.[2] The Liquidator will hold approximately $557 million after the fourth interim distribution is paid on the allowed Class II claims as of May 31, 2023. (Additional fourth distribution amounts will be paid out on subsequently allowed claims.)

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[2] Because of the reduced number of pending claims that remain to be negotiated or otherwise resolved, the Liquidator does not believe it appropriate to further disclose reserve and contingency amounts.

31. There is also the possibility, with respect to a Home policy with aggregate limits, that the individual claims allowed respecting that policy could over time exceed those limits. In such a case, claim allowances related to that policy would then need to be reduced, as required by RSA 402-C:40, IV, on a pro rata basis to adjust the total of such allowances to the aggregate policy limits. This presents a potential risk, for such policies, that the allowed amounts on which a distribution is based might later be reduced. This further supports taking a conservative approach. However, liquidation staff is tracking claims against policies, and there presently are only a small number of policies that the Liquidator believes might be affected. Further, the allowances involving policies with aggregate limits to date are generally settlement agreements with policyholders that include indemnities against third party claims. At the proposed interim distribution percentage, these agreements present little credit risk (as to the indemnities) because the Liquidator may set off against future distribution amounts to such a policyholder any unsatisfied indemnity obligation.

32. The 10% fourth interim distribution percentage will result in an additional distribution amount of approximately \$299 million. However, an actual cash distribution will only be made to the holders (the claimants or their assignees) of the \$2.289 billion of allowed Class II non-guaranty association claims and also to the guaranty associations that have allowed Class II claims in excess of those on which early access was calculated, who together will receive approximately \$242 million. The guaranty associations that have already received early access distributions at the 40% percentage on their claims will not receive any additional distributions at this time. Instead, a portion of the early access distributions paid to guaranty associations will be deemed permanent distributions no longer subject to claw back.

33. Since the interim distribution percentage reflects a reserve for future Class II liabilities, the Liquidator also seeks approval to make a 10% fourth interim distribution on

Class II claims that are allowed after the fourth interim distribution is approved. The Liquidator will make the fourth interim distribution to all claimants with allowed Class II claims as of the last day of the month in which the distribution is approved. The Liquidator will make the fourth interim distribution after that "record date." The Liquidator will make the interim distribution on subsequently allowed Class II claims after each December 31 and June 30 with respect to claims allowed during the preceding six months.

34. In accordance with RSA 402-C:44, the first $50 of the allowed amount on each claim will be deducted from the claim (except for guaranty association claims), and the distribution will be calculated by applying the fourth interim distribution percentage to the remaining amount.

35. In order to avoid sending distribution checks to addresses that are out-of-date, the Liquidator will follow the procedure for confirming the name and address of the payee described in the Liquidator's Report Regarding Process for Interim Distribution dated November 12, 2014. In brief, unless liquidation staff has recently confirmed the name and address in connection with a prior interim distribution, liquidation staff will request confirmation by email or letter to the claimant or, where applicable, its assignee at the most recent address reflected in the Home liquidation's records. If the claimant or assignee does not respond in writing within 14 days, liquidation staff will follow up by telephone (if the liquidation's records include a telephone number) or conduct an internet search in an effort to identify a current address for a follow up letter. If the claimant or assignee responds in writing and confirms the payee and an address, the Liquidator will issue the check and mail it to the claimant or assignee at that address. If the Liquidator does not receive a written response, the Liquidator will not for the moment issue a check.

36. The Liquidator, with assistance of the investment management firm Conning, invests the assets of the estate in accordance with the Fourth Revised Statement of Investment Policy approved by the Court on September 10, 2012. Those guidelines provide maximum asset allocations for single issuers and for asset classes as a percentage of Home's total portfolio. The fourth interim distribution is expected to be approximately $242 million based on allowed Class II claims as of May 31, 2023. Additional amounts will be distributed on subsequently allowed Class II claims, and distributions will also be made on allowed Class I claims.

37. Distributions of the contemplated size may result in the remaining portfolio being temporarily out of compliance with certain of the investment policies. The Liquidator generally holds investments to maturity. Conning estimates that, as of July 11, 2023, assuming distributions of $300 million, the remaining portfolio would likely exceed the 65% maximum allocation for corporate bonds, the 10% maximum allocation to securities rated BBB+ or below, the 1.25% single issue limit for certain issuers of securities rated A, and the 0.50% single issuer limit for certain issuers of securities rated BBB. Given maturities in the portfolio, Conning estimates that the portfolio will be back in compliance with the portfolio allocation limits for corporate bonds and BBB+ securities by the end of 2023. While several of the single issuer limits will also be back in compliance by year-end, others will not be. (All single issuer exposures are expected to be less than 2% for A rated securities and less than 0.75% for BBB.) As securities mature, the portfolio will eventually come into compliance with the single issuer limits as well. The actual percentage deviations, number of specific issuers and timeframe for curing non-compliance with investment guidelines will not be known until after the actual distribution occurs.

38. I do not view these anticipated temporary deviations from the investment policy as material and am comfortable that the portfolio will continue to be invested reasonably and

prudently. However, once a distribution occurs, any deviations are likely to continue beyond the 90-day period provided in the investment policy for bringing the portfolio into compliance. The Liquidator accordingly requests authority for the temporary deviations in the motion and the proposed order.

Signed under the penalties of perjury this 4TH day of August, 2023.

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

> A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA
COUNTY OF VENTURA

On August 4th, 2023 before me, Arz Lubnan Abdelhadi, 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.

ARZ LUBNAN ABDELHADI
Notary Public - California
Ventura County
Commission # 2337207
My Comm. Expires Nov 13, 2024

Signature ______________________
Signature of Notary Public

<u>EXHIBIT 1</u>

Fourth Interim Distribution

($ in millions)

A. Assets (at 3/31/23)

Unrestricted liquid assets (net of liabilities for interim distributions not paid in cash at 3/31/23)	$799
Prior Interim Distributions (30%)	681
Assets held by states	22
Early access to GAs	256
Total:	$1,758

B. Class I Unpaid and Estimated Future Administration Costs

Estimated Liquidator administration costs	$60
Estimated GA Class I costs	40
Total:	$100

C. Class II Unpaid Policy Related Claims

Class II Determined (5/31/23):	$2,989
GA and non-GA Reserves and Contingency	1,156
Total:	$4,145

D. [(Assets (A) – Class I Expenses (B)) ÷ Class II Claims (C)] – 30% Prior Distributions = Fourth Distribution %

(1,758 – 100) ÷ 4,145 = 40% – 30% = 10% Fourth Interim Distribution

E. Allowed Class II Claims

At 5/31/23	$2,989 (including $700 GA claims)

F. Distribution Amounts and Remaining Assets after Initial Distribution

Amount of 4th Interim Distribution	2,989 x 10% = 299
Less GA Portion already in early access	573 x 10% = 57
Amount Paid Out	$242

Unrestricted Liquid Assets	799
Less 4th Interim Distribution Paid Out	242
Remaining after 4th Distribution	557

(additional distribution will follow as additional claims are allowed)