

**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**

**LIQUIDATOR'S MOTION FOR APPROVAL  
OF COMMUTATION REVIEW PROCEDURES**

Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("The Home") hereby moves that the Court enter an order in the form submitted herewith approving procedures for review of commutation agreements between the Liquidator and reinsurers of The Home. As reasons therefor, the Liquidator states as follows:

1. As part of its business, The Home entered into reinsurance agreements with numerous reinsurers under which The Home ceded and the reinsurers assumed a portion of The Home's obligations under policies of insurance or reinsurance agreements written by The Home. Collection of reinsurance will be the principal asset marshalling task of The Home liquidation, potentially involving hundreds of millions of dollars. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Commutation Review Procedures and Motion to Impound Confidential Affidavit ("Bengelsdorf Aff.") ¶ 3.

2. Insurers such as The Home typically bill reinsurers as the insurer makes payments to insureds and claimants under reinsured policies. Collection of reinsurance thus may take considerable time as the payments depend on the insurer's own payments. In a liquidation, a reinsurer's obligations are typically determined based on the liability of

the insurer, instead of actual payments, see RSA 405:49, but the reinsurer typically would not be obligated to pay until the claim determination process is completed for the claim at issue. The collection of reinsurance thus again will take years. Bengelsdorf Aff. ¶ 4.

3. To avoid delays and uncertainty in pursuing reinsurance recoveries and for other business reasons, insurers sometimes enter commutation agreements with reinsurers under which the parties agree that the insurer will release the reinsurer from its obligations in exchange for a sum certain that reflects a projected present value of those obligations and other business considerations such as reinsurance coverage issues. Insurers such as The Home also often have assumed reinsurance obligations from their reinsurers, and the projected present value of such obligations as offsets might be considered in negotiating an appropriate commutation amount. Bengelsdorf Aff. ¶ 5.

4. In the context of a liquidation, commutations often are particularly desirable. From a liquidator's perspective, they bring cash into the estate, avoid delays and uncertainties in collecting reinsurance, and reduce administrative expenses. From the reinsurer's point of view, they provide certainty and resolve a relationship with no future business potential. The Liquidator accordingly will seek to negotiate commutation agreements with reinsurers of The Home to recover reinsurance and resolve The Home's obligations to the reinsurers, if any, where appropriate. See RSA 402-C:25, VI, C:34, C:36. Bengelsdorf Aff. ¶ 6.

5. Commutation agreements for The Home will in many instances involve material obligations and sums. Such commutation agreements accordingly will be subject to review and approval by the Court. Because there may be a number of such agreements, the Liquidator proposes that the Court establish commutation review procedures by order. Those procedures would have the following elements: (a) the filing

of a motion for approval attaching the proposed agreement but with substantive economic terms redacted, together with a supporting affidavit under seal, including an unredacted copy of the proposed agreement explaining the basis for the Liquidator's agreement to the commutation, (b) notice of the motion to all persons on the service list and any other interested person who has requested such notice, (c) review of the substantive economic terms and supporting affidavit by any interested person (other than a reinsurer of The Home) who requests such review and enters a confidentiality agreement limiting the use and disclosure of the information, (d) a deadline for opposition to the motion of ten days from filing, and (e) review by the Court, either without a hearing if the motion is unopposed or with a hearing if opposition has been filed or the Court so desires. Bengelsdorf Aff. ¶ 7. A proposed form of order is submitted herewith.

6. The Liquidator requests that the Court provide confidential treatment for the substantive economic terms of commutation agreements and the affidavits describing the basis for the agreement because release of that information would harm the estate and be adverse to the interests of policyholders, claimants and other creditors in maximizing the assets to be collected. The Liquidator has been and likely will be negotiating commutation agreements with numbers of reinsurers. If the substantive terms of a particular commutation agreement or supporting analysis are disclosed, other reinsurers will be able to use that information in determining their own negotiating positions. Disclosure of amounts that the Liquidator is willing to accept from one reinsurer and the analysis supporting that conclusion is likely to set a ceiling on the amounts the Liquidator is able to obtain from other reinsurers. Commutation agreements between insurers often contain confidentiality provisions for this reason, and the Liquidator should not be placed in a worse position than ongoing insurers. For these reasons, the Liquidator proposes to

submit the agreements with the substantive economic terms redacted and to submit the complete proposed agreement and affidavit supporting the motion for approval under seal. Bengelsdorf Aff. ¶ 8.

7. The Liquidator recognizes that certain creditors of the estates may be interested in reviewing the economic terms and analysis underlying commutation agreements, and that the views of such creditors may assist the Court. The Liquidator accordingly proposes to provide notice of motions for approval of commutation agreements to those on the service list and other interested persons who so request (other than reinsurers of The Home). Any such persons who wish to review the economic terms and supporting analysis may obtain them on request to the Liquidator provided they enter into a confidentiality agreement to limit the use of the material to review, evaluation and comment on the proposed commutation agreement and to otherwise prohibit disclosure of the material.

8. On entry of the order to liquidate The Home, the insurance guaranty funds of the various states were triggered. Upon payment of a policyholder's claim, a guaranty fund is assigned the policyholder's rights against The Home's estate. See RSA 404-B: 11, I. Therefore, the guaranty funds will be the principal creditors of The Home. Through the National Conference of Insurance Guaranty Funds, a subcommittee of guaranty funds has been established to review commutation agreements. The members of that subcommittee have already entered into confidentiality agreements with the Liquidator to permit them to review commutation agreements. Bengelsdorf Aff. ¶ 10.

9. In order to expedite and streamline the judicial review process, the Liquidator also proposes that the notice of the motion will require any opposition to the motion to be filed within ten days of the filing of the motion. In the absence of such

opposition, the Court may act on the motion without a hearing. If there is opposition, or if the Court wishes, a hearing would be scheduled. Bengelsdorf Aff. ¶ 11.

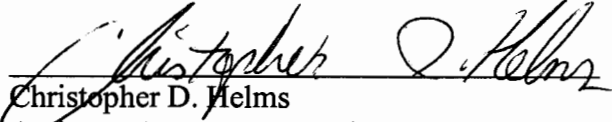
For the reasons stated, the Liquidator request that her motion be granted and that the Court enter an order in the form submitted herewith establishing reinsurance commutation agreement review procedures.

Respectfully submitted,

PAULA T. ROGERS, COMMISSIONER OF  
INSURANCE OF THE STATE OF NEW  
HAMPSHIRE, SOLELY IN HER CAPACITY AS  
LIQUIDATOR OF THE HOME INSURANCE  
COMPANY,

By her attorneys

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