

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

2004 JUL 23
SUPERIOR COURT 314

**In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106**

**LIQUIDATOR'S MOTION FOR APPROVAL OF PARTIAL
COMMUTATION AGREEMENT WITH CERTAIN FACULTATIVE REINSURERS**

In accordance with the Order Establishing Procedures for Review of Reinsurance Commutation Agreements entered July 23, 2003, Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home") by his attorneys, the Office of Attorney General, hereby moves that the Court enter an Order in the form submitted herewith approving a partial reinsurance commutation agreement entitled "Settlement Agreement and Release" (the "Agreement") by and between the Liquidator and Accident and Casualty Insurance Company of Winterthur Switzerland, Liberty Mutual Insurance Per Helmsman (Underwriting) Ltd., National Casualty Company, National Casualty Company of America Limited and Companhia de Seguros Fidelidade - Mundial SA (the "Reinsurers"). As reasons therefor, the Liquidator states as follows:

1. As part of its business, Home entered into reinsurance agreements with numerous reinsurers under which Home ceded and the reinsurers assumed a portion of Home's obligations under policies of insurance or reinsurance agreements written by Home. Collection of reinsurance is the principal asset marshalling task of the Home liquidation, potentially involving hundreds of millions of dollars.

2. Commutation agreements with reinsurers are often particularly desirable in a liquidation. 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 has sought and will seek to negotiate commutation agreements with reinsurers of Home to recover reinsurance where appropriate. See RSA 402-C:25, VI, C:34, C:36.

3. This motion concerns a partial commutation of three facultative reinsurance contracts (the "Facultative Certificates") pursuant to which Home ceded to the Reinsurers and other reinsurers part of Home's liabilities with respect to a policy of insurance Home issued to a American Telephone & Telegraph Co. ("AT&T") for the period of October 15, 1967 to October 15, 1970 (the "Policy"). A copy of the Agreement is attached as Exhibit A to this motion. The confidential terms of the Agreement have been redacted from the Exhibit. A complete copy of the Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion For Approval of Commutation Agreement With Certain Facultative Reinsurers ("Bengelsdorf Confidential Aff.") that has been filed under seal herewith.

4. In the 1980's, AT&T asserted claims for insurance coverage under the Policy in respect of certain environmental pollution liabilities asserted against AT&T (the "AT&T Claims"). During the course of litigation, Home entered into a settlement agreement with AT&T concerning the AT&T Claims in July 1994 (the "AT&T Settlement"). The AT&T Settlement provided for certain payments from Home to AT&T on an ongoing basis for remediation activity, including operation and maintenance, at three environmental sites, with Home's obligations being subject to a cap. Prior to the commencement of liquidation proceedings, Home made payments to AT&T under the AT&T Settlement and submitted reinsurance claims to the

Reinsurers and other reinsurers under the first of the Facultative Certificates.¹ Bengelsdorf Confidential Aff. ¶¶ 4 & 5.

5. The Reinsurers' participation in the Facultative Certificates was unusual in that their subscription shares were substantially reduced at later points in the three year Policy period. In light of their changing participations over the life of the Policy, the Reinsurers disputed their applicable share of the losses allocated to the Policy on reinsurance claims arising from the AT&T Settlement. They therefore withheld a percentage of the recovery sought by Home. Bengelsdorf Confidential Aff. ¶ 6.

6. As a result of this dispute, Home brought an action against the Reinsurers in 1999 in the Supreme Court of the State of New York. The Reinsurers and others brought a declaratory action against Home in 2001. (The declaratory action against Home was stayed in light of the Liquidation Order for Home.) On May 5, 2004, the court in Home's action denied Home's motion for summary judgment. Bengelsdorf Confidential Aff. ¶ 7.

7. In these circumstances, the Liquidator negotiated and entered into the Agreement with the Reinsurers, which is subject to approval by the Court. The Agreement will end the two pending actions and provide for the Reinsurers to pay Home a specified sum (the "Settlement Amount") in full and final settlement of all past, present and future liabilities due or potentially due from the parties to each other under the Facultative Certificates arising from the AT&T Settlement Agreement. The Agreement is properly described as a partial commutation because the Facultative Certificates remain in effect except with respect to claims arising from the AT&T Settlement. The other provisions of the Agreement, including mutual releases of claims under

¹ The Reinsurers involved here bear only part of the billings rendered to the subscribers of the first of the Facultative Certificates. Home has entered commutation agreements with certain other reinsurers who were parties to the Facultative Certificates. Bengelsdorf Confidential Aff. ¶ 5.

the Facultative Certificates arising from the AT&T Settlement, are set forth in the copy of the agreement attached as Exhibit A to this motion.

8. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Agreement. Bengelsdorf Confidential Aff. ¶¶ 3-10.

9. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Agreement is fair and reasonable and in the best interests of the policyholders and other creditors of Home.

10. The Agreement and certain supporting materials have been provided to members of the National Conference of Insurance Guaranty Funds' Reinsurance Commutation Subcommittee on The Home Insurance Company, in Liquidation ("NCIGF Subcommittee"), who have entered confidentiality agreements. The NCIGF Subcommittee has confirmed that it does not object to the Agreement. Bengelsdorf Confidential Aff. ¶ 11.

CONCLUSION

For the reasons stated, the Liquidator requests that his motion be granted and that the Court enter an Order in the form submitted herewith approving the Agreement.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF
INSURANCE OF THE STATE OF NEW HAMPSHIRE,
SOLELY IN HIS CAPACITY AS LIQUIDATOR OF THE
HOME INSURANCE COMPANY,

By his attorneys

KELLY A. AYOTTE, ATTORNEY GENERAL



Peter C.L. Roth
Senior Assistant Attorney General
Environmental Protection Bureau
NEW HAMPSHIRE DEPARTMENT OF JUSTICE
33 Capitol Street
Concord, N.H. 03301-6397
(603) 271-3679

Of Counsel:

J. David Leslie
Eric A. Smith
Rackemann, Sawyer & Brewster
One Financial Center
Boston, MA 02111
(617) 542-2300

July 23, 2004

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

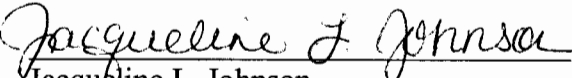
In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106

CERTIFICATE OF SERVICE

I, Jacqueline L. Johnson, do hereby certify that on July 23, 2004 I served a true copy of the following documents upon the parties named on the attached Service List, by first class mail, postage prepaid:

1. *Liquidator's Motion for Approval of Partial Commutation Agreement with Certain Facultative Reinsurers*
2. *Redacted Settlement Agreement and Release*
3. *Confidential Affidavit of Peter A. Bengelsdorf* (filed under seal)
3. (proposed) *Order Approving Asset Management Agreement*

Dated: July 23, 2004


Jacqueline L. Johnson

SERVICE LIST

Ronald L. Snow, Esq.
Orr & Reno
One Eagle Sq., PO Box 3550
Concord, NH 03302-3550

Gary Lee, Esq.
Lovells-16th Floor
900 Third Avenue
New York, NY 10022

Pieter Van Tol, Esq.
Lovells
900 Third Ave., 16th Floor
New York, NY 10022

Eric D. Jones, Esq.
Rachlin Downs Martin PLLC
199 Main Street PO Box 190
Burlington, VT 05402-0190

Gail M. Goering, Esq.
Lovells – One IBM Plaza
330 N. Wabash Ave., Suite 1900
Chicago, IL 60611

Adam Goodman, Esq.
Lovells – One IBM Plaza
330 N. Wabash Ave., Suite 1900
Chicago, IL 60611

Eric Haab, Esq.
Lovells
330 N. Wabash Ave., Suite 1900
Chicago, IL 60611

Andre Bouffard, Esq.
Rachlin Downs Martin PLLC
199 Main Street PO Box 190
Burlington, VT 05402-0190

Exhibit A
The Agreement

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into by and between Roger A. Seigny, New Hampshire Insurance Commissioner, solely in his capacity as Liquidator (the "Liquidator") of THE HOME INSURANCE COMPANY ("Home") on the one part, and ACCIDENT AND CASUALTY INSURANCE COMPANY OF WINTERTHUR SWITZERLAND, LIBERTY MUTUAL INSURANCE PER HELMSMAN (UNDERWRITING) LTD., NATIONAL CASUALTY COMPANY, NATIONAL CASUALTY COMPANY OF AMERICA LIMITED and COMPANHIA DE SEGUROS FIDELIDADE - MUNDIAL SA (collectively, "the Reinsurers") on the other part.

WITNESSETH:

WHEREAS, for the period October 15, 1967 to October 15, 1970 Home issued a certain policy of insurance to American Telephone & Telegraph Co. ("AT&T") bearing Policy No. HEC 955 5788 ("the Policy"); and

WHEREAS, the Reinsurers severally subscribed to Reinsurance Contract No. K20430, ("the Facultative Certificate") pursuant to which Home ceded to the Reinsurers, and the Reinsurers accepted from Home, a certain share of Home's liabilities with respect to the Policy as more fully reflected in the percentages of participation and period of the Facultative Certificate as set forth therein; and

WHEREAS, AT&T asserted claims for insurance coverage under, *inter alia*, the Policy in respect of certain environmental pollution liabilities including but not limited to liabilities arising from environmental pollution claims relating to 35 sites at issue in a declaratory judgment action as well as 196 other hazardous waste sites ("the AT&T Coverage Litigation and Claims"); and

WHEREAS, Home entered into a settlement agreement with AT&T concerning the AT&T Coverage Litigation and Claims ("the AT&T Settlement Agreement"), which agreement provides for payments by Home to AT&T on an ongoing basis in accordance with specific circumstances; and

WHEREAS, Home has to date made certain payments to AT&T under the terms of the AT&T Settlement Agreement and has submitted reinsurance claims to the Reinsurers seeking recovery under the Facultative Certificate with respect thereto (the Reinsurance Claims”); and

WHEREAS, the Reinsurers have disputed the Reinsurance Claims, which are presently the subject of litigation pending between Home and, *inter alia*, the Reinsurers in the Supreme Court of the State of New York in two separate lawsuits respectively entitled *The Home Insurance Company vs. Accident & Casualty Insurance Company of Winterthur Switzerland et al*, No. 602153/99 (“the Home Litigation”) and *Certain Underwriters at Lloyd’s et al vs. The Home Insurance Company*, No. 601543/01 (“the Reinsurers Litigation”); and

WHEREAS, in addition to the Facultative Certificate being at issue in the Reinsurers Litigation, the plaintiffs therein placed at issue their respective rights and obligations with respect to the AT&T Settlement Agreement under and in terms of Reinsurance Contract Nos. CX1885 and CX1886 (“the Additional Facultative Certificates”), pursuant to which Home ceded to the reinsurers at risk, and the reinsurers at risk accepted from Home, a certain share of Home’s liabilities with respect to the Policy as more fully reflected in the percentages of participation and periods of the Additional Facultative Certificates as set forth therein; and

WHEREAS, on June 13, 2003 the Superior Court of New Hampshire (the “Court”) issued an order placing Home in liquidation, following which the Reinsurers Litigation was stayed in accordance with the order of the Court, as was the counterclaim asserted by the Reinsurers in the Home Litigation; and

WHEREAS, in accordance with the terms and conditions hereinafter contained, the parties desire to settle all of their past and present rights and obligations with respect to the Reinsurance Claims that are the subject of the Home Litigation and the Reinsurers Litigation and, in addition, desire to fully and finally resolve their respective rights and obligations that may become due in the future under the Facultative Certificate and the Additional Facultative Certificates with respect to the AT&T Settlement Agreement in order to eliminate the uncertainty of contingent liabilities between the parties for presently unresolved and/or unasserted claims relative thereto.

NOW THEREFORE, intending to be legally bound, in consideration of the promises, covenants, representations, warranties, payments, agreements and other good and valuable consideration recited and set forth herein, the sufficiency of which is mutually acknowledged, the parties agree as follows:

1. In addition to all amounts previously paid with respect to the Reinsurance Claims, the Reinsurers shall, within fourteen (14) days after the Effective Date of this Agreement (as defined in Paragraph 2 below), pay to Home their several shares of the sum of [REDACTED] as set forth on Exhibit A hereto, which is incorporated herein by reference ("the Settlement Sum") in full and final settlement of any and all past, present and future liabilities due or potentially due from the parties to this Agreement to each other under the Facultative Certificate and the Additional Facultative Certificates with respect to the AT&T Settlement Agreement, with time being of the essence in the performance by the Reinsurers in effecting such payment. The payment of the Settlement Sum shall be effected by wire transfer as follows:

Citizens Bank, Manchester, NH, USA
ABA No. [REDACTED]
For the Account of The Home Insurance Company in
Liquidation
Account No. [REDACTED]

2. This Agreement shall only become effective ("the Effective Date") two (2) Business Days after approved by the New Hampshire Superior Court for Merrimack County (the "Court"), being the court before which liquidation of Home is presently pending.

3. If any of the Reinsurers fails to pay any portion of the Settlement Sum within fourteen (14) days after the Effective Date, the Reinsurer that fails to pay shall pay (a) interest on any unpaid amounts at the rate of [REDACTED] (simple rate) per annum from the Effective Date; and (b) any and all costs, including reasonable attorneys fees, incurred by Home in recovering the Settlement Sum in full (the "Collection Costs"). The acceptance by Home of the Net Settlement Sum together with all interest and Collection Costs due in respect of late payment as determined and calculated as aforesaid shall (subject to the terms of this Agreement) constitute a full and final settlement and release by Home hereunder as if payment of the Settlement Sum had been made in full within fourteen (14) days after the Effective Date.

4. It is expressly agreed and understood by the parties that this Agreement is being entered into solely as a commercial accommodation to avoid the burdens, uncertainty and costs of protracted litigation and that the parties, by entering into or performing this Agreement, make no statement, admission or concession concerning any claims or positions they have asserted against each other in the Home Litigation or the Reinsurers Litigation or any claims or positions

that they may, but for this Agreement, have in the future against each other with respect to the subject matter herein contained. Accordingly, it is agreed and understood by and between the parties that Home may, at its sole discretion, allocate the Settlement Sum in any manner or fashion it so chooses.

5. Subject to the terms of this Agreement and in consideration of and as a condition precedent to the timely payment of the Settlement Sum by the Reinsurers, the Liquidator on behalf of Home, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns, hereby irrevocably and unconditionally releases and discharges the Reinsurers, their officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, representatives, liquidators, receivers and rehabilitators and their respective predecessors, successors and assigns to the extent permitted by applicable law from any and all liabilities, adjustments, obligations, offsets, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, premiums, returned premiums, unearned premiums, losses, salvage, commissions, variances, expenses, acts, omissions, executions, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, claims and demands whatsoever, all whether known or unknown, suspected or unsuspected, fixed or contingent in law or in equity, which Home ever had, now has, or hereafter may have against the Reinsurers by reason of any matter whatsoever arising out of or in connection with or in relation to the Facultative Certificate and the Additional Facultative Certificates with respect to the AT&T Settlement Agreement.

6. Subject to the terms and conditions of this Agreement, and in consideration of the release of the Reinsurers by Home pursuant to Paragraph 5 above, the Reinsurers, on behalf of themselves, their officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns, hereby irrevocably and unconditionally release and discharge the Liquidator and Home, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents representatives, liquidators, receivers and rehabilitators and their respective predecessors, successors and assigns to the extent permitted by applicable law from any and all liabilities, adjustments, obligations, offsets, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, premiums, returned premiums, unearned premiums, losses, salvage, commissions, variances, expenses, acts, omissions, executions, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, claims and demands whatsoever, all whether known or unknown, suspected or unsuspected, fixed or contingent in law or in equity, which the Reinsurers ever had, now have, or hereafter may have against Home by reason of any matter whatsoever arising out of or in connection with or in

relation to the Facultative Certificate and the Additional Facultative Certificates with respect to the AT&T Settlement Agreement.

7. In further consideration of the releases set forth in Paragraphs 5 and 6 above, (a) as soon as practicable after the Effective Date, the Reinsurers shall do all things necessary (i) to discontinue, with prejudice, any and all counterclaims asserted by them in the Home Litigation; and (ii) to cause the discontinuance, with prejudice, of the Reinsurers Litigation both as to themselves and all other plaintiffs in that action and in that regard, the Reinsurers hereby indemnify and hold Home harmless from and against any and all liabilities and obligations of whatever nature by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurers Litigation; and (b) as soon as practicable after receipt in full of the Settlement Sum plus interest and Collection Costs as provided in Paragraph 4 above, Home shall do all things necessary to discontinue, with prejudice, the Home Litigation. Each party shall be solely responsible for and shall bear their own costs and expenses with respect to the Home Litigation and the Reinsurers Litigation.

8. This Agreement shall, subject to its approval by the Court, be binding upon and shall inure to the benefit of the parties. The parties each represent and warrant that they have not prior hereto assigned or otherwise transferred to any other entity any of the rights, entitlements or interests in or to the reinsurance agreements released hereunder.

9. This instrument embodies the final, complete and entire agreement between the parties and is the product of their own independent legal advice and analysis. No other representations, understandings or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth or referred to herein.

10. If any provision of this Agreement is invalid, unenforceable or illegal under the law of any jurisdiction, such provision shall be deemed severable from the balance of this Agreement, and the validity and enforceability of the remaining provisions of this Agreement, and the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby. In the event of such invalidity, enforceability or illegality, the parties shall negotiate in good faith to amend this Agreement through the insertion of additional provisions which are valid, enforceable and legal and which reflect, to the extent possible, the economic and other purposes contained in the invalid, unenforceable or illegal provision.

11. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Agreement, or any part hereof, or the rights of such party to thereafter enforce each and every such provision.

12. The Parties, without further consideration, agree to execute and deliver such other documents and take such other action as may reasonably be necessary to effect and implement this Agreement.

13. (a) The Reinsurers represent and warrant that they are legally constituted entities in good standing; that they are not insolvent; that they are duly authorized to enter into this Agreement and the transactions contemplated herein; that the person signing this Agreement is fully authorized to execute this Agreement on their behalf; that all requisite and necessary approvals have been obtained to consummate the transactions contemplated by this Agreement; that no other agreement, undertaking, contract or matter is known to exist that might render this Agreement void, voidable or unenforceable; and that they have read this Agreement, that they understand its contents and that it is being executed freely and voluntarily with an intent by the Reinsurers to be bound by its terms; and (b) the Liquidator represents and warrants that, subject to the Court's approval, he is duly authorized to enter into this Agreement and the transactions contemplated herein; that he will use reasonable efforts to obtain the Court's approval of this Agreement; that no other agreement, undertaking, contract or matter is known to exist that might render this Agreement void, voidable or unenforceable; that he has read this Agreement, understands its contents, and that the person signing this Agreement is fully authorized to execute this Agreement freely and voluntarily on his behalf with an intent for Home to be bound by its terms.

14. The parties acknowledge that they have entered into this Agreement in reliance on their own independent investigation and analysis of the matters forming the subject of this Agreement and their rights and obligations with respect thereto, and not on the basis of any representation by any other party hereto except those representations contained in this Agreement.

15. This Agreement shall inure to the benefit of and bind the parties and their respective predecessors, parents, affiliates, subsidiaries, successors and assigns (including their rehabilitators, liquidators or other statutory successors) to the maximum extent permitted by applicable law.

16. No supplement, amendment, variation, modification, waiver or termination of this Agreement shall be effective unless in writing and signed by the parties.

17. It is hereby agreed that the parties, including but not limited to their attorneys, agents, representatives and affiliates, will not disclose the terms of this Agreement to anyone other than is necessary to effectuate the terms of this Agreement; except that the parties may disclose the terms of this Agreement to and through their attorneys, accountants, reinsurers, retrocessionaires and auditors for a legitimate business purpose where a specific need for such disclosure arises in the judgment of such attorneys, accountants, reinsurer and auditors, or in response to lawful process. Notwithstanding the foregoing, nothing in this provision shall restrict the ability of the parties to disclose the terms of this Agreement to regulatory entities or in connection with reports and statements that they may be required from time to time to file or submit to government agencies, or in support of a motion for approval by the Court.

18. The parties represent and agree that the consideration for this Agreement, provided in exchange for the parties' mutual promises made herein, is fair and reasonable. The parties further agree to provide each other with an appropriate affidavit to this effect if such an affidavit becomes necessary to uphold or enforce the legitimacy of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective authorized officers.

**Roger A. Sevigny, New Hampshire Commissioner of Insurance,
Solely in his capacity as Liquidator of
The Home Insurance Company**


By: Jonathan Rosen

Date: ~~June~~ ^{July 2,} 2004

Name: Jonathan Rosen

Title: Chief Operating Officer

**Lord, Bissell & Brook as duly authorized representatives for and
on behalf of Accident and Casualty Insurance Company of Winterthur
Switzerland, Companhia de Seguros Fidelidade - Mundial SA, Liberty Mutual
Insurance per Helmsman (Underwriting) Ltd., National Casualty Company and
National Casualty Company of America Limited**

By: 

Date: 1 July 04

Name: R. B. Robinson

Title: Partner

EXHIBIT A

TO SETTLEMENT AGREEMENT AND RELEASE

Settling Reinsurer

Settlement Share

National Casualty Company and
National Casualty Company of America Ltd.

\$ [REDACTED]

Liberty Mutual Insurance per Helmsman
(Underwriting) Ltd.

\$ [REDACTED]

Accident and Casualty Insurance Company
of Winterthur

\$ [REDACTED]

Companhia de Seguros Fidelidade -
Mundial S.A.

\$ [REDACTED]