

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

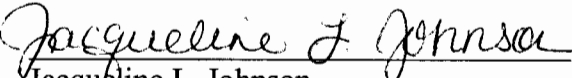
In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106

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