

**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 REINSURANCE  
COMMUTATION AGREEMENT WITH NRG LONDON**

NOW COMES Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), and moves that the Court enter an order in the form submitted herewith approving a Commutation and Release Agreement (the "Agreement") with NRG London Reinsurance Company Ltd. ("NRG London"). 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.

2. The present motion concerns the Agreement between the Liquidator and NRG London. A redacted copy of the agreement (with economic terms removed) is attached as Exhibit A. The Agreement is subject to approval by the Court and only becomes effective on such approval and signature (which will take place on approval). See Agreement ¶ 3. A complete copy of the Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Reinsurance Commutation Agreement with NRG ("Bengelsdorf Confidential Aff.") that has been filed under seal herewith.

3. NRG London is a London based reinsurer which ceded reinsurance to Home and assumed both treaty and facultative reinsurance business from Home. Home's ceded treaty business with NRG London was commuted in 2002. Bengelsdorf Confidential Aff. ¶ 3.

4. The Agreement provides for commutation of Home's ceded facultative contracts with NRG, except for any contracts involving pool, agency or syndicate business or Home UK Branch business (the "Settled Agreements"). The Agreement provides for the full and final settlement of all past, present and future claims under the Settled Agreements. Agreement ¶ 3. Bengelsdorf Confidential Aff. ¶ 4.

4. NRG London has asserted offsetting claims and filed a proof of claim in Home's liquidation proceeding under reinsurance contracts by which NRG London ceded reinsurance to Home (the "Assumed Reinsurance Agreements"). The Liquidator has evaluated this claim and agreed on an appropriate amount (\$45,322) with NRG London. The Agreement provides that the Liquidator will recommend approval of this amount, which constitutes a Class V claim, when seeking approval of the NRG Agreement and provides NRG London with an agreed setoff credit of this amount. The Agreement thus also provides for the full and final settlement of all past, present and future claims under the Assumed Reinsurance Agreements. See Agreement ¶¶ 3, 4. Bengelsdorf Confidential Aff. ¶ 5.

5. The Agreement provides that NRG will pay Home the resulting settlement sum within fifteen days after the effective date. The other provisions of the Agreement, including mutual releases of claims arising from the Settled Agreements and the Assumed Reinsurance Agreements (Agreement ¶¶ 6, 7), are set forth in the Agreement. Bengelsdorf Confidential Aff. ¶ 6.

6. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Agreement. Bengelsdorf Confidential Aff. ¶¶ 4-9. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Agreement is fair and reasonable and that it is in the best interests of the policyholders and other creditors of Home. Bengelsdorf Confidential Aff. ¶ 9.

7. 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 advised the Liquidator that it has no objection to the Agreement. Bengelsdorf Confidential Aff. ¶ 8.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with NRG London and approve the Liquidator's recommendation regarding NRG London's claims;
- B. Enter an Order in the form submitted herewith approving the Agreement; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

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

By his attorneys,

KELLY A. AYOTTE  
ATTORNEY GENERAL

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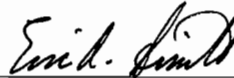
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May 22, 2006

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with NRG London and the Proposed Order Approving Motion for Approval of Reinsurance Commutation Agreement with NRG London were sent, this 22nd day of May, 2006, by first class mail, postage prepaid to all persons on the attached service list. The accompanying Confidential Affidavit was not so served.



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Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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

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**REINSURANCE COMMUTATION  
AGREEMENT, SETTLEMENT AND RELEASE**

**THIS REINSURANCE COMMUTATION AGREEMENT, SETTLEMENT AND RELEASE** (the “Agreement”) is made and entered into by and between Roger A. Sevigny, New Hampshire Insurance Commissioner, solely in his capacity as Liquidator (the “Liquidator”) of The Home Insurance Company (“Home”), and NRG London Reinsurance Company Ltd., a corporation created under the laws of the United Kingdom (“NRG London”).

**WITNESSETH:**

**WHEREAS**, in April 2002, Home and NRG London (collectively, the “Parties”), entered into a commutation agreement pursuant to which the Parties agreed to fully and finally commute and resolve the obligations that Home ceded to NRG London, and NRG London accepted from Home, under treaty reinsurance agreements entered into between the Parties (the “Commutated Agreements”);

**WHEREAS**, in addition to the Commuted Agreements, the Parties entered into certain facultative reinsurance agreements, pursuant to which Home ceded to NRG London, and NRG London accepted from Home, a certain share of Home’s liabilities as fully reflected in the percentages of participation and periods set forth in each respective agreement (the “Ceded Facultative Agreements”);

**WHEREAS**, certain of the Ceded Facultative Agreements are hereinafter collectively referred to as the “Settled Agreements” (as hereinafter defined);

**WHEREAS**, in addition to the Commuted Agreements and the Ceded Facultative Agreements, Home and NRG London entered into certain reinsurance agreements, pursuant to which NRG London ceded to Home, and Home accepted from NRG London, a certain share of NRG London’s liabilities as fully reflected in the percentages of participation and periods set forth in each respective agreement (the “Assumed Reinsurance Agreements”);

**WHEREAS**, Home is currently the subject of an ongoing liquidation proceeding before the New Hampshire Superior Court, Merrimack County (the “Liquidation Court”), and which is



being undertaken pursuant to Chapter 402-C of the Revised Statutes Annotated of New Hampshire ("New Hampshire Law");

**WHEREAS**, NRG London has submitted a proof of claim to Home with respect to the Assumed Reinsurance Agreements, which has been assigned Proof of Claim No. INTL 278000 (the "Proof of Claim");

**WHEREAS**, in addition to their past and present obligations under the Ceded Facultative Agreements and the Assumed Reinsurance Agreements, Home and NRG London recognize and understand that a portion of their respective obligations thereunder may become due in the future; that these future obligations and liabilities cannot be determined in an amount certain at this time; and that a commutation of these future and uncertain obligations and the Parties' past and present obligations will resolve all pending and outstanding issues between the Parties and will eliminate the uncertainty of contingent liabilities for presently unresolved and/or unasserted claims with respect to the Ceded Facultative Agreements and the Assumed Reinsurance Agreements; and

**WHEREAS**, the Parties agree that it is mutually in their best interests to fully and finally settle and commute their respective past, present and future rights, obligations and liabilities (whether known or unknown) under the Settled Agreements and the Assumed Reinsurance Agreements with immediate effect and enter into mutual releases relating thereto, all in accordance with the terms and conditions hereinafter contained.

**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. This Agreement is conditioned upon and shall only become effective (the "Effective Date") upon approval by the Liquidation Court. In the event that the Liquidation Court does not approve this Agreement, it shall be null and void and of no force and effect.

2. The Parties agree that in addition to the terms defined elsewhere in this Agreement, the terms set forth below shall be defined as follows:

- (a) "Settled Agreements" shall mean the Ceded Facultative Agreements other than those exclusively reinsuring (i) Pool/Agency/Syndicate Business (as

hereinafter defined); or (ii) Home U.K. Branch Business (as hereinafter defined).

- (b) "Pool/Agency/Syndicate Business" shall mean (i) any business underwritten on behalf of Home by an Independent Underwriting Agent (as hereinafter defined) either acting for Home alone or jointly with other underwriters as members of an Underwriting Pool (as hereinafter defined); or (ii) any reinsurance specifically procured by an Independent Underwriting Agent from NRG London to cover business underwritten on behalf of Home by that Independent Underwriting Agent either acting for Home alone or jointly with other underwriters as members of an Underwriting Pool.
- (c) "Independent Underwriting Agent" shall mean any third party acting as agent and in that capacity appointed by Home and given authority to underwrite insurance and/or reinsurance business on behalf of Home.
- (d) "Underwriting Pool" shall mean an arrangement whereby an Independent Underwriting Agent was appointed to act collectively on behalf of Home and at least one other insurance/reinsurance company or entity (jointly referred to as the "Pool Members") for the purpose of underwriting insurance/reinsurance business on behalf of the Pool Members.
- (e) "Home U.K. Branch Business" shall mean all non-novated business assumed and ceded through the participation of the United Kingdom branch of The Home Insurance Company as a member of the American Foreign Insurance Association.

3. Subject to approval by the Liquidation Court, the Parties have agreed to the commutation of the Settled Agreements in the amount of [REDACTED] and the commutation of the Assumed Reinsurance Agreements in the amount of \$45,322.00, thereby resulting in NRG London paying Home the net sum of [REDACTED] (the "Settlement Sum"). Within fifteen (15) days after the Effective Date, NRG London will pay the Settlement Sum to Home by wire transfer to the following account:

Citizens Bank, Manchester, NH, USA

ABA No. [REDACTED]  
For the Account of The Home Insurance Company in  
Liquidation  
Account No. [REDACTED]  
Attention: Efraim Abramsohn

The satisfaction of the Settlement Sum shall constitute full and final settlement of any and all past, present and future liabilities due or potentially due, and whether known or unknown, under the Settled Agreements and the Assumed Reinsurance Agreements.

4. Subject to all the terms of this Agreement, including set-off under N.H. Rev. Stat. § 402-C:34 of the agreed commutation amount with respect to the Assumed Reinsurance Agreements for purposes of the Settlement Sum, and with the agreement of NRG London, the Liquidator shall recommend pursuant to N.H. Rev. Stat. § 402-C:45 that the Proof of Claim and any other proof of claim hereinbefore or hereinafter filed by NRG London in the Home liquidation be allowed in the aggregate amount of \$45,322.00 (the "Recommended Amount") as a Class V priority claim under N.H. Rev. Stat. § 402-C:44. The Liquidator shall seek allowance of the Recommended Amount as a Class V claim by the Liquidation Court in connection with the Liquidator's motion for approval of this Agreement. Allowance of the Recommended Amount as a Class V claim by the Liquidation Court shall fully and finally resolve the Proof of Claim, any other proof of claim hereinbefore or hereinafter filed by NRG London in the Home liquidation and any and all claims of whatever nature that NRG London has under the Assumed Reinsurance Agreements.

5. If NRG London fails to pay any portion of the Settlement Sum within fifteen (15) days after the Effective Date, it shall pay (a) interest on any unpaid amount at the rate of [REDACTED] per annum from the Effective Date; and (b) any reasonable costs, including reasonable attorneys' fees, incurred by the Commissioner or Home in recovering the Settlement Sum in full (the "Collection Costs"). The acceptance by Home of the Settlement Sum together with all interest and Collection Costs due, if any, in respect of late payment as determined and calculated as aforesaid shall constitute a full and final settlement and release hereunder as if payment of the Settlement Sum had been made in full within fifteen (15) days after the Effective Date.

6. Subject to approval by the Liquidation Court and in consideration of and as a condition precedent to the timely payment of the Settlement Sum by NRG London, 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 NRG London, 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 Home ever had, now has, or hereafter may have against NRG London by reason of any matter whatsoever arising out of or in connection with or in relation to the Settled Agreements and the Assumed Reinsurance Agreements. Additionally, the Liquidator fully understands and expressly waives Home's rights and benefits with respect to the Settled Agreements and the Assumed Reinsurance Agreements under any provision of law which substantially provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

7. Subject to approval by the Liquidation Court and in consideration of the release of NRG London pursuant to Paragraph 6 above, NRG London on behalf of itself, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns, hereby irrevocably and unconditionally releases and discharges the Liquidator and Home, their respective 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 NRG London ever had, now has, or hereafter may have against Home by reason of any matter whatsoever arising out of or in connection with or in relation to the Settled Agreements and the Assumed Reinsurance Agreements. Additionally, NRG London fully understands and expressly waives its rights and benefits with respect to the Settled Agreements and the Assumed Reinsurance Agreements under any provision of law which substantially provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

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 commuted and released hereunder

9. This Agreement shall be governed by and construed according to New Hampshire law (without giving effect to conflict of law principles) and the Parties agree to submit to the jurisdiction of the Liquidation Court.

10. 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.

11. 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.

12. Subject to approval by the Liquidation Court, the Parties hereby agree that this Agreement shall take precedence over and supersede the Settled Agreements and the Assumed Reinsurance Agreements and that notwithstanding anything to the contrary contained therein, this Agreement shall operate as a full and final settlement, commutation and release of the respective rights, obligations and liabilities of the Parties under the Settled Agreements and the Assumed Reinsurance Agreements. In addition, the Parties and their respective successors and assigns absolutely and unconditionally covenant and agree that upon consummation of the transactions contemplated by this Agreement, neither will demand, claim or file suit or initiate arbitration proceedings against the other with respect to any matters relating to or arising out of the Settled Agreements or the Assumed Reinsurance Agreements.

13. The failure of any party hereto 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.

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

15. The Parties agree and acknowledge that this Agreement is being entered into solely as a commercial accommodation, without regard to the respective positions of the Parties regarding their rights and obligations under and in terms of the Settled Agreements or the Assumed Reinsurance Agreements. As such, the Parties agree that this Agreement shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any party hereto regarding any aspect of the Settled Agreements or the Assumed Reinsurance Agreements, other than with respect to the terms and conditions herein contained.

16. (a) NRG London represents and warrants that it is a legally constituted entities in good standing; that it is not insolvent; that it is 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 its 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 it has read this Agreement, that it understands its contents and that it is being executed freely and voluntarily with an intent for it 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 best endeavors 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.

17. 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.

18. 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.

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

20. 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.

21. 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: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Jonathan Rosen  
Title: Chief Operating Officer

**NRG London Reinsurance Company Ltd.**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_