

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**

**MOTION FOR APPROVAL OF REINSURANCE
COMMUTATION AGREEMENT WITH MUNICH**

Roger A. Seigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), hereby moves that the Court enter an order in the form submitted herewith approving a Reinsurance Commutation Agreement, Settlement and Release (the “Commutation Agreement”) between the Liquidator and Munich Reinsurance America, Inc., formerly known as American Re-Insurance Company (“Munich”). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Commutation Agreement between the Liquidator and Munich. A redacted copy of the Commutation Agreement (with economic terms removed) is attached as Exhibit 1. A complete copy of the Commutation Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Reinsurance Commutation Agreement with Munich (“Bengelsdorf Confidential Affidavit”) submitted herewith under seal.

2. As a 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. Bengelsdorf Confidential Affidavit ¶ 3.

3. Munich is a reinsurance company with which Home entered into various reinsurance agreements, including property and casualty excess and proportional treaties, as well as facultative agreements. Under these reinsurance agreements, Home ceded certain liabilities to Munich and assumed other liabilities from Munich. The reinsurance agreements covered periods from the early 1960s through the mid-1990s. Munich filed a timely proof of claim in the Home liquidation for its ceded reinsurance balances. The Liquidator seeks to recover from Munich the value of Home's ceded reinsurance balances net of its assumed obligations to Munich.

Bengelsdorf Confidential Aff. ¶ 4.

4. The Commutation Agreement provides for the commutation of all of Home's business with Munich (subject to the exception noted at paragraph 6 below). It provides for the full and final settlement of all past, present and future obligations and liabilities under the reinsurance agreements (subject to the single exception) for a sum certain. Commutation Agreement ¶ 3, 9. This net sum reflects both Home's claims against Munich and Munich's claims against Home. Bengelsdorf Confidential Aff. ¶ 5.

5. The Commutation Agreement provides that Munich will pay the entire commutation sum to the Liquidator by wire transfer within ten days of the Court's approval of the Commutation Agreement. Commutation Agreement ¶ 3. The other provisions of the Commutation Agreement, including mutual releases (Commutation Agreement ¶¶ 6-7), are set forth in the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 7.

6. The Commutation Agreement excludes from the commutation any claim by Home against Munich under one facultative certificate where the claim arises from a specified incident. Commutation Agreement ¶ 9. Home's insured has not filed a claim regarding the incident, but such a claim is possible. Bengelsdorf Confidential Affidavit ¶ 8.

7. The Commutation Agreement and certain supporting materials have been provided to members of the National Conference of Insurance Guaranty Funds' 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 Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 10.

8. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Agreement. Bengelsdorf Confidential Affidavit ¶¶ 4-10. 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. The Commutation Agreement will convert future reinsurance obligations into immediate cash and avoid delay and uncertainty in the collection of reinsurance. See Bengelsdorf Confidential Aff. ¶ 11.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with Munich;
- B. Enter an Order in the form submitted herewith approving the Commutation 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

J. Christopher Marshall
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650

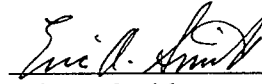


J. David Leslie
Eric A. Smith
Rackemann, Sawyer & Brewster
One Financial Center
Boston, MA 02111
(617) 542-2300

September 10, 2007

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with Munich and the Proposed Order Approving Reinsurance Commutation Agreement with Munich were sent, this 10th day of September, 2007, by first class mail, postage prepaid to all persons on the attached service list. The accompanying Confidential Affidavit was not so served.



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

In the Matter of the Liquidation of
US International Reinsurance Company
Docket No. 03-E-0112

SERVICE LIST

Ronald L. Snow, Esq.
Lisa Snow Wade, Esq.
Orr & Reno
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Gary Lee, Esq.
James J. DeCristofaro, Esq.
Kathleen E. Schaaf, Esq.
Julie D. Dyas, Esq.
Morrison & Foerster
1290 Avenue of the Americas
New York, New York 10104-0050

Peter Van Tol, Esq.
Lovells
590 Madison Avenue
New York, New York 10022

Gail M. Goering, Esq.
Adam Goodman, Esq.
Eric Haab, Esq.
Lovells
One IBM Plaza
330 N. Wabash Avenue, Suite 1900
Chicago, Illinois 60611

Andre Bouffard, Esq.
Eric D. Jones, Esq.
Downs Rachlin Martin PLLC
199 Main Street
P.O. Box 190
Burlington, Vermont 05402-0190

Peter G. Callaghan, Esq.
Preti, Flaherty, Beliveau, Pachos
& Haley, PLLP
57 North Main Street
P.O. Box 1318
Concord, New Hampshire 03302-1318

Martin P. Honigberg, Esq.
Sulloway & Hollis, P.L.L.C.
9 Capitol Street
P.O. Box 1256
Concord, New Hampshire 03302-1256

George T. Campbell, III, Esq.
Robert A. Stein, Esq.
Robert A. Stein & Associates, PLLC
One Barberry Lane
P.O. Box 2159
Concord, New Hampshire 03302-2159

David M. Spector, Esq.
Dennis G. LaGory, Esq.
Kristy L. Allen, Esq.
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606

Jack B. Gordon, Esq.
Fried, Frank, Harris, Shriver
& Jacobson, LLP
1001 Pennsylvania Avenue
Washington, D.C. 20004

Andrew W. Serell, Esq.
Rath, Young and Pignatelli
One Capital Plaza
P.O. Box 1500
Concord, New Hampshire 03302-1500

Stephan P. Parks, Esq.
Doreen F. Connor, Esq.
Wiggin & Nourie, P.A.
670 North Commercial Street, Suite 305
P.O. Box 808
Manchester, New Hampshire 03105-0808

Michael Cohen, Esq.
Cohen & Buckley, LLP
1301 York Road
Baltimore, Maryland 21093

**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"), on behalf of Home, and Munich Reinsurance America, Inc. formerly known as American Re-Insurance Company ("Munich") (collectively, the "Parties").

WITNESSETH:

WHEREAS, Home and Munich have entered into various reinsurance agreements pursuant to which, under certain agreements, Home ceded liabilities to Munich and Munich assumed such liabilities from Home subject to the terms and conditions of the agreements; and, under other of the agreements, Munich ceded liabilities to Home and Home assumed such liabilities from Munich subject to the terms and conditions of the agreements; and

WHEREAS, the Parties wish to finally resolve any and all obligations and liabilities arising under any and all reinsurance agreements entered into between Home and Munich (the "Reinsurance Agreements"), except as expressly provided otherwise under this Agreement; and

WHEREAS, by the June 13, 2003 Order of the New Hampshire Superior Court for Merrimack County ("the Court"), Home was placed in liquidation under the authority of the Liquidator; and

WHEREAS, in the context of the Home liquidation proceedings, Munich has filed Proof of Claim No. Rced332964 (the "POC") with respect to alleged incurred liabilities owed by Home to Munich under the terms of the Reinsurance Agreements; and

WHEREAS, the Liquidator seeks to collect from Munich the net value of liabilities owed by Munich to Home under the terms of the Reinsurance Agreements; and

WHEREAS, in addition to the known obligations and liabilities under the Reinsurance Agreements, the Parties recognize and understand that a portion of Home's and Munich's respective obligations and liabilities thereunder presently are unknown but may become due in the future; that these unknown obligations and liabilities cannot be determined in an amount certain at this time; and that a commutation of all obligations and liabilities of Home and Munich under the Reinsurance Agreements, except as expressly provided otherwise under this Agreement, will resolve all pending and outstanding issues between the Parties and will eliminate the uncertainty of contingent liabilities for presently unknown, unresolved and/or unasserted claims with respect to the Reinsurance Agreements; and

WHEREAS, the Parties agree that it is mutually in their best interests to fully and finally settle and commute Home's and Munich's past, present and future rights, obligations and liabilities (whether known or unknown) under the Reinsurance Agreements, except as expressly provided otherwise under this Agreement, and to 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 shall only become effective on the date that this Agreement is approved by the Court (the "Effective Date"). This Agreement is conditioned upon approval by the Court and in the event that the Court does not approve this Agreement, it shall be deemed null and void *ab initio* and of no force or effect.
2. Upon approval of this Agreement by the Court, the POC and any other Proof of Claim filed by Munich in the Home liquidation proceedings shall be deemed fully and finally resolved with prejudice and Munich agrees that it shall then be forever barred and precluded from filing any subsequent Proof of Claim in the Home liquidation proceedings with respect to the Reinsurance Agreements.
3. Within ten (10) business days after the Effective Date, Munich will pay to the Liquidator the net sum of [REDACTED] (the "Net Settlement Sum") in full and final settlement

of any and all past, present and future obligations and liabilities due or potentially due from Home and Munich to each other under the Reinsurance Agreements, except as provided otherwise pursuant to Paragraph 9, with time being of the essence in the performance by Munich in effecting such payment. The payment of the Net Settlement Sum shall be effected by wire transfer to the following account:

Citizens Bank, Manchester, NH, USA

[REDACTED]
For the Account of The Home Insurance Company in
Liquidation
[REDACTED]

The Net Settlement Sum shall be transferred free and clear of and without any deduction for or on account of any set-off or counterclaim.

4. If Munich fails to pay any portion of the Net Settlement Sum within ten (10) business days after the Effective Date, Munich shall pay (a) interest on any unpaid amounts at a rate that is equal to [REDACTED]

[REDACTED] from the Effective Date; and (b) any and all costs, including reasonable attorneys fees, incurred by the Liquidator in recovering the Net Settlement Sum in full (the "Collection Costs"). The acceptance by the Liquidator 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 the Liquidator and Home hereunder as if payment of the Net Settlement Sum had been made in full within ten (10) business days after the Effective Date.

5. Notwithstanding the provisions of Paragraph 4, in the event that Munich fails to pay any portion of the Net Settlement Sum within ten (10) business days after the Effective Date (and notwithstanding and without prejudice to any claim that may be asserted by the Liquidator for interest and Collection Costs), the Liquidator shall be entitled, at his sole discretion, to either seek enforcement of this Agreement or, by notice in writing to Munich, to terminate this Agreement and return all amounts already paid, in which event (a) this Agreement shall be null

and void; (b) the *status quo ante* of the Parties shall be fully restored; and (c) all of the rights and obligations of the Parties with respect to the Reinsurance Agreements shall be fully reinstated as if this Agreement had never been made.

6. Subject to the terms of this Agreement and to the timely payment in full by Munich of the Net Settlement Sum, the Liquidator on behalf of Home, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns, irrevocably and unconditionally releases and discharges Munich, 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 to one of both parties, suspected or unsuspected, fixed or contingent in law or in equity, which the Liquidator or Home ever had, now has, or hereafter may have against Munich by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurance Agreements, except as provided otherwise pursuant to Paragraph 9. Additionally, the Liquidator fully understands and expressly waives Home's rights and benefits with respect to the 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 the terms of this Agreement and in consideration of the release of Munich pursuant to Paragraph 6 above, Munich on behalf of itself, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns, irrevocably and unconditionally releases and discharges the Liquidator and Home, and 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 to one or both parties, suspected or unsuspected, fixed or contingent in law or in equity, which Munich ever had, now has, or hereafter may have against the Liquidator and/or Home by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurance Agreements, except as provided otherwise pursuant to Paragraph 9. Additionally, Munich fully understands and expressly waives its rights and benefits with respect to the 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. The Parties agree and acknowledge that the consideration for this Agreement, provided in exchange for the Parties' mutual promises made herein, is fair and reasonable and that they have each received and/or paid fair market value for the reinsurance protections being commuted. 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.

9. The Parties agree and acknowledge that, to the extent Home provided insurance to [REDACTED] and such insurance was reinsured by Munich pursuant to the terms and conditions of the Certificate of Facultative [REDACTED] that Home's and Munich's obligations and liabilities to one another under the Facultative Certificate for such claims shall be excluded from

the scope of this Agreement, shall fully survive this Agreement and shall be and remain in full force and effect.

10. This Agreement shall, subject to its approval by the Court, 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. 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.

11. This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire.

12. This Agreement embodies the final, complete and entire agreement between the Parties. 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. 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.

13. If any provision of this Agreement is invalid, unenforceable or illegal under the law of any applicable jurisdiction, the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby and, upon the agreement of the Parties, the remaining provisions of this Agreement shall remain valid and enforceable. However, in the event of such invalidity, unenforceability 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.

14. The Parties hereby agree that this Agreement shall take precedence over and supersede the 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 Home and Munich under the

Reinsurance Agreements, except as provided otherwise pursuant to Paragraph 9. 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 Reinsurance Agreements except, to the extent necessary pursuant to Paragraph 9, the Facultative Certificate.

15. 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.

16. 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.

17. 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 the terms of the 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 Reinsurance Agreements, other than with respect to the terms and conditions herein contained.

18. (a) Munich represents and warrants that it is a legally constituted entity 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 approval by the Court, he is duly authorized to enter into this Agreement and the transactions contemplated herein; 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 the Liquidator and Home to be bound by its terms.

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

20. 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 as 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. All notices under this Agreement shall be in writing, as follows:

If to Munich:
Munich Re America
555 College Road East
Princeton, NJ 08543

Attention: Ross Sturm

If to the Liquidator:
The Home Insurance Company
in Liquidation
59 Maiden Lane
New York, NY 10038
Attention: Jonathan Rosen

or to such other address (es) as notified in writing by either Party to the other.

22. This Agreement may be executed in multiple counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one

and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail to the other Party shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective authorized officials.

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

By: Peter A. Bengtsson

Date: September 5, 2007

Name: Peter A. Bengtsson
Title: Special deputy Liquidator
Home Insurance Company
in Liquidation

Munich Reinsurance America, Inc.

By: Ross Sturm

Date: September 5, 2007

Name: Ross Sturm

Title: Vice President