

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 SWISS REINSURANCE
AMERICA CORPORATION**

Roger A. Sevigny, 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 Swiss Reinsurance America Corporation ("SRA"). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Commutation Agreement between the Liquidator and SRA. 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 Swiss Reinsurance America Corporation ("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. SRA was formerly known as North American Reinsurance Corporation (“North American Re”), is successor in interest pursuant to transfer and assumption agreements to Underwriters Reinsurance Company, formerly known as Buffalo Reinsurance Company, Unionamerica Reinsurance Company and Buffalo Insurance Company (“Underwriters Re”), and Western Atlantic Reinsurance Corporation (“Western Atlantic Re”) and is successor in interest by merger to the United States Branch of Swiss Reinsurance Company (“US Branch Swiss Re”). Bengelsdorf Confidential Aff. ¶ 4.

4. Home entered various reinsurance agreements with North American Re, Underwriters Re, Western Atlantic Re and US Branch Swiss Re covering periods from the early 1970s to the mid-1990s under which Home ceded certain liabilities to those companies. The reinsurance agreements include both excess and proportional treaty and facultative reinsurance agreements covering virtually all lines of business. The Liquidator seeks to recover from SRA the value of Home’s ceded reinsurance balances. Bengelsdorf Confidential Aff. ¶ 5.

5. The Commutation Agreement provides for the commutation of Home’s business with SRA originally written by North American Re, Underwriters Re, Western Atlantic Re, and US Branch Swiss Re, except for reinsurance agreements exclusively reinsuring pool or agency business or AFIA business. Commutation Agreement ¶ 1(a), (b), (e). The commutation does not include any other ceded or assumed business of SRA, including business ceded or assumed by the former GE Reinsurance Corporation, formerly known as Kemper Reinsurance Company, and it does not include assumed or ceded business of any other subsidiary of Swiss Reinsurance Company. *Id.* ¶ 1(a). Bengelsdorf Confidential Aff. ¶ 6.

6. SRA filed a proof of claim in the Home liquidation for reinsurance ceded to Home. This Home assumed business, consisting of excess casualty business from the late 1970s

to early 1980s primarily from North American Re, is being commuted in the Commutation Agreement. The Liquidator evaluated SRA's valuation of this business and concluded that it is reasonable. Bengelsdorf Confidential Aff. ¶ 7.

7. The Commutation Agreement provides for the full and final settlement of all past, present and future obligations and liabilities under the commuted reinsurance agreements for a sum certain to be paid to the Liquidator. Commutation Agreement ¶ 3. Bengelsdorf Confidential Aff. ¶ 8.

8. The Commutation Agreement provides that SRA will pay the commutation sum to the Liquidator by wire transfer within fourteen days after the date the Liquidator advises SRA of the Court's approval of the Commutation Agreement. Commutation Agreement ¶ 3. The other provisions of the Commutation Agreement, including mutual releases (Commutation Agreement ¶¶ 5-6), are set forth in the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 10.

9. 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. See Bengelsdorf Confidential Aff. ¶ 12.

10. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶¶ 4-12. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Commutation 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. ¶ 13.

WHEREFORE, the Liquidator respectfully requests that this Court:


- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with Swiss Reinsurance America Corporation;
- 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
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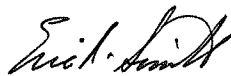


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November 17, 2008

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Reinsurance Commutation Agreement with Swiss Reinsurance America Corporation and the Proposed Order Approving Reinsurance Commutation Agreement with Swiss Reinsurance America Corporation were sent, this 17th day of November, 2008, 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
NH Bar ID No. 16952

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 Swiss Reinsurance America Corporation ("SRA"). The Liquidator and SRA are referred to collectively herein as the "Parties."

WITNESSETH:

WHEREAS, Home and SRA have entered into various reinsurance agreements pursuant to which, under certain agreements, Home ceded liabilities to SRA and SRA assumed such liabilities from Home subject to the terms and conditions of the agreements; and, under other of the agreements, SRA ceded liabilities to Home and Home assumed such liabilities from SRA subject to the terms and conditions of the agreements (the "Reinsurance Agreements").

WHEREAS, SRA was formerly known as North American Reinsurance Corporation ("North American Re"), is successor in interest pursuant to transfer and assumption agreements to Underwriters Reinsurance Company, formerly known as Buffalo Reinsurance Company, Unionamerica Reinsurance Company and Buffalo Insurance Company ("Underwriters Re"), and Western Atlantic Reinsurance Corporation ("Western Atlantic Re"), and is successor in interest by merger to the United States Branch of Swiss Reinsurance Company ("US Branch Swiss Re");

WHEREAS, certain of the Reinsurance Agreements were entered into by Home and SRA (since its name change on May 11, 1995), North American Re, Western Atlantic Re, Underwriters Re or the US Branch Swiss Re, including any predecessor companies of North American Re, Western Atlantic Re, Underwriters Re or US Branch Swiss Re, and are hereinafter collectively referred to as the "Settled Agreements" (as hereinafter defined) and the Parties wish to finally resolve any and all obligations and liabilities arising under the Settled Agreements;

WHEREAS, Home is in liquidation pursuant to the June 13, 2003 Order of Liquidation issued by the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home;

WHEREAS, in addition to their past and present obligations under the Settled Agreements, Home and SRA 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 Settled 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 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. 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 Reinsurance Agreements entered into by Home and (i) SRA since its name change on May 11, 1995, (ii) North American Re including its predecessor companies, (iii) Western Atlantic Re including its predecessor companies, (iv) Underwriters Re including its predecessor companies, or (v) the US Branch Swiss Re including its predecessor companies, other than those exclusively reinsuring (I) Pool/Agency/Syndicate Business (as hereinafter defined), or (II) Home

U.K. Branch Business (as hereinafter defined). For the avoidance of doubt, the Settled Agreements otherwise exclude any and all assumed and ceded business of SRA, including but not limited to business assumed or ceded by the former GE Reinsurance Corporation, formerly known as Kemper Reinsurance Company or Kemperco Reinsurance Company including business transferred by American Motorists Insurance Company ("GE Re"), acquired by SRA as successor-in-interest by merger to GE Re, and do not include any assumed or ceded business of any other subsidiary of Swiss Reinsurance Company.

- (b) "Pool/Agency/Syndicate Business" shall mean (i) any business underwritten on behalf of Home or SRA by an Independent Underwriting Agent (as hereinafter defined) either acting for Home or SRA alone or jointly with other underwriters as members of an Underwriting Pool (as hereinafter defined); (ii) any reinsurance specifically procured by an Independent Underwriting Agent from Home or SRA to cover business underwritten on behalf of Home or SRA by that Independent Underwriting Agent either acting for Home or SRA alone or jointly with other underwriters as members of an Underwriting Pool; or (iii) any reinsurance where Home ceded to a pool or association in which SRA was a member or participant including, but not limited to, the Agency Managers Pool and the Excess Casualty Reinsurance Association.
- (c) "Independent Underwriting Agent" shall mean any third party not a party to this Agreement acting as agent and in that capacity appointed by Home or SRA and given authority to underwrite insurance and/or reinsurance business on behalf of Home or SRA.
- (d) "Underwriting Pool" shall mean an arrangement whereby an Independent Underwriting Agent was appointed to act collectively on behalf of Home or SRA 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 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.

2. This Agreement shall only become effective on the date that the Liquidator advises SRA that this Agreement is approved by the Liquidation Court (the "Effective Date"). This Agreement is conditioned upon approval by the Liquidation Court and in the event that the Liquidation Court does not approve this Agreement, it shall be deemed null and void *ab initio* and of no force or effect.

3. Within fourteen (14) days after the Effective Date, SRA 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 SRA to each other under the Settled Agreements, with time being of the essence in the performance by SRA 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
ABA No. [REDACTED]
For the Account of The Home Insurance Company in
Liquidation
Account No. [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 SRA fails to pay any portion of the Net Settlement Sum provided for in paragraph 3 within fourteen (14) days after the Effective Date, SRA shall pay (1) interest on any unpaid amounts at a rate which is equal to [REDACTED] per year from the Effective Date; and (2) 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 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.

5. Subject to the terms and conditions of this Agreement and to the timely payment in full by SRA of the Settlement Sum, the Liquidator on behalf of Home, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors and assigns, irrevocably and unconditionally releases and discharges SRA, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, 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, return premiums, unearned premiums, losses, salvage, specialties, commissions, variances, expenses, acts, omissions, bonds, bills, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, all whether known or unknown to one or both parties, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, which the Liquidator or Home ever had, now has, or hereafter may have against SRA by reason of any matter whatsoever arising out of or in connection with or in relation to the Settled Agreements. Additionally, the Liquidator fully understands and expressly waives his rights and benefits with respect to the Settled 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.

6. Subject to approval by the Liquidation Court and in consideration of the release of SRA pursuant to Paragraph 5 above, SRA on behalf of itself, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors and assigns, irrevocably and unconditionally releases and discharges the Liquidator and Home and their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, 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, return premiums, unearned premiums, losses, salvage, specialties, commissions, variances, expenses, acts, omissions, bonds, bills, covenants, contracts, controversies, agreements,

promises, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, all whether known or unknown to one or both parties, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, which SRA 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 Settled Agreements. Additionally, SRA fully understands and expressly waives its rights and benefits with respect to the Settled 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. This Agreement shall, subject to its approval by the Liquidation 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 neither they nor their predecessors have prior hereto assigned or otherwise transferred to any other entity any of the rights, entitlements or interests in or to the Settled Agreements.

8. This Agreement embodies the final, complete and entire agreement between the Parties with respect to the subject matter hereof. 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 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.

9. If any provision of this Agreement is invalid, unenforceable or illegal under the law of any applicable 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, 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.

10. Subject to the provisions of paragraph 2, the Parties hereby agree that this Agreement shall take precedence over and supersede the Settled 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. 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.

11. 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.

12. 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.

13. 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. 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, other than with respect to the terms and conditions herein contained.

14. (a) SRA 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 persons signing this Agreement are 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 the Agreement's contents and that the Agreement is being executed freely and voluntarily with an intent for it to be bound by the Agreement's terms; and (b) the Liquidator represents and warrants that, subject to the Liquidation Court's approval, 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 to be bound by its terms.

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

16. 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, reinsurers 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 Liquidation Court.

17. The Parties represent that the consideration for this Agreement, provided in exchange for the Parties' mutual promises made herein, is fair and reasonable. The Parties shall 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.

18. 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.

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

If to SRA:

Swiss Reinsurance America Corp.
475 Martingale, Suite 1200
Schaumburg, IL 60137

Attention: William E. Flaherty

If to the Liquidator:

The Home Insurance Company
in Liquidation
59 Maiden Lane
New York, NY 10038

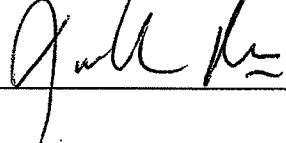
Attention: Jonathan Rosen

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

20. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the conflicts of law provisions thereof. The Parties agree that the Liquidation Court shall be the exclusive venue for any dispute between the Parties arising out of this Agreement and the Parties agree to submit to the jurisdiction of the Liquidation Court for such purposes.

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: October 21, 2008

Name: Jonathan Rosen
Title: Chief Operating Officer

Swiss Reinsurance America Corporation

By: W. E. Flaherty

Date: October 17, 2008

Name: W. E. FLAHERTY

Title: Senior Vice President

By: 

Date: October 17, 2008

Name: David A. Kenyon

Title: Senior Vice President