

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**

Docket No. 03-E-0112

**In the Matter of the Liquidation of
US International Reinsurance Company**

**MOTION FOR APPROVAL OF REINSURANCE
COMMUTATION AGREEMENTS WITH WAUSAU**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”) and of US International Reinsurance Company (“USI Re”) (Home and USI Re are collectively referred to as the “Companies”), hereby moves that the Court enter an order in the form submitted herewith approving (a) a Reinsurance Commutation Agreement, Settlement and Release (the “Home Commutation Agreement”) between the Liquidator of Home and Employers Insurance Company of Wausau f/k/a Employers Insurance of Wausau, a Mutual Company (“Wausau”), and (b) a Reinsurance Commutation Agreement, Settlement and Release (the “USI Re Commutation Agreement”) between the Liquidator of USI Re and Wausau. (The Home Commutation Agreement and the USI Re Commutation Agreement are collectively referred to as the “Commutation Agreements.”) As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Commutation Agreements between the Liquidator and Wausau. A redacted copy of the Home Commutation Agreement (with economic terms removed) is attached as Exhibit 1. The USI Re Commutation Agreement is a claim

allowance and is attached as Exhibit 2. Complete copies of the Commutation Agreements are attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Reinsurance Commutation Agreements with Wausau (“Bengelsdorf Confidential Affidavit”) submitted herewith under seal.

2. As a part of their business, the Companies entered into reinsurance agreements with numerous reinsurers under which the Companies ceded and reinsurers assumed portions of the Companies’ obligations under policies of insurance written by the Companies. Collection of reinsurance is the principal remaining asset-marshalling task of the Home and USI Re liquidations. Bengelsdorf Confidential Affidavit ¶ 3.

3. Wausau reinsured Home under numerous property, casualty, D&O, petrochemical and retrocessional treaties and facultative certificates for various shares of the underlying insurance risks for periods from 1962 through 1985. (Wausau also reinsured Home as a participant in certain reinsurance pools, under reinsurance contracts effective after January 1, 1986, and under reinsurance contracts covering only workers compensation risks. These pool participations and reinsurance contracts are not included in the commutation. See Home Commutation Agreement ¶¶ 1(a) (definition of “Settled Agreements” excluding “Pool/Agency/Syndicate Business” and “Liberty Mutual Reinsurance Contracts”). Bengelsdorf Confidential Affidavit ¶ 4.

4. Home reinsured Wausau for various shares of certain property and casualty business, including general liability, under reinsurance treaties and facultative certificates for periods from the early 1960’s through 1982. Bengelsdorf Confidential Aff. ¶ 5.

5. Home's subsidiary USI Re reinsured Wausau for similar business under reinsurance treaties and facultative certificates for periods from 1983 through 1989. Bengelsdorf Confidential Aff. ¶ 6.

6. Wausau also reinsured USI Re under certain retrocessional contracts, but the value of those contracts is relatively small. Bengelsdorf Confidential Aff. ¶ 7.

7. The Liquidator has sought to recover from Wausau the value of Home's ceded reinsurance balances, net of Home's assumed reinsurance balances. Wausau in turn sought to collect under its reinsurance agreements with USI Re in the USI Re liquidation by filing three proofs of claim, and Wausau asserted that it could use both Home's and USI Re's reinsurance obligations to it as setoffs against its obligations to Home. Bengelsdorf Confidential Aff. ¶ 8.

8. Wausau and Home have had significant reinsurance disputes since the late 1990's, including litigation in federal court, Sevigny v. Employers of Wausau, C.A. No. 1:05-CV-00278-SM (D. N.H.) (the "Setoff Litigation"). Bengelsdorf Confidential Aff. ¶ 9.

9. The USI Re Commutation Agreement provides for the commutation of all reinsurance agreements between USI Re and Wausau and the full and final settlement of all past, present and future obligations and liabilities under the reinsurance agreements between them for (i) the allowance of Wausau's claim in the USI Re liquidation as a Class V claim in the amount of \$2,690,737, and (ii) dismissal of the Setoff Litigation. USI Re Commutation Agreement, fifth Whereas clause, ¶¶ 1, 5. Bengelsdorf Confidential Aff. ¶ 15.

10. The USI Re Commutation Agreement is the result of negotiations regarding Wausau's proofs of claim by the Claims Department, under the supervision of the Special Deputy Liquidator, which has extensive experience in assessing exposures claims under USI Re's reinsurance contracts. The Liquidator recommends approval of the USI Re Commutation

Agreement and allowance of the \$2,690,737 commutation amount as a Class V claim in accordance with RSA 402-C:45 and RSA 402-C:44. Bengelsdorf Confidential Aff. ¶ 16.

11. The Home Commutation Agreement provides for the commutation of all reinsurance agreements between Home and Wausau (with the exceptions noted in paragraph 1 of the Home Commutation Agreement) and the full and final settlement of all past, present and future obligations and liabilities under the reinsurance agreements between them for (i) a payment of a sum certain by Wausau to the Liquidator of Home, (ii) an assignment to the Liquidator of all rights to the \$2,690,737 allowance that Wausau will receive in the estate of USI Re under the USI Re Commutation Agreement, and (iii) dismissal of the Setoff Litigation. Home Commutation Agreement ¶¶ 3, 5. Bengelsdorf Confidential Aff. ¶ 17. The Liquidator will not use Wausau's assigned claim as an offset against Home's obligations to USI Re as that is not permitted by RSA 402-C:34, II(b). Bengelsdorf Confidential Aff. ¶ 20. Dismissal of the Setoff Litigation will be through a stipulation of dismissal that expressly states the dismissal with prejudice is the result of compromise and does not waive or prejudice the parties' positions. Home Commutation Agreement, Exhibit. Bengelsdorf Confidential Aff. ¶ 21.

12. The Home Commutation Agreement provides that Wausau will pay the settlement sum to the Liquidator by wire transfer within fourteen (14) days following notice to Wausau of the Court's approval of the Commutation Agreement. Home Commutation Agreement ¶ 3. The other provisions of the Commutation Agreements, including mutual releases (Home Commutation Agreement ¶¶ 6-7; USI Re Commutation Agreement ¶¶ 2 3), are set forth in the Commutation Agreements. Bengelsdorf Confidential Affidavit ¶ 22.

13. The Commutation Agreements 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 Home Commutation Agreement. (The NCIGF Subcommittee has no interest in the USI Re Commutation Agreement because there is no guaranty fund involvement with the USI Re estate.) Bengelsdorf Confidential Aff. ¶ 24.

14. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Commutation Agreements. Bengelsdorf Confidential Affidavit ¶¶ 9-24. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Commutation Agreements are fair and reasonable and that they are in the best interests of the policyholders and other creditors of Home and USI Re. The Commutation Agreements will convert future reinsurance obligations into immediate cash, avoid delay and uncertainty in the collection of reinsurance, and resolve longstanding and difficult litigation. See Bengelsdorf Confidential Aff. ¶ 25.

WHEREFORE, the Liquidator respectfully requests that this Court:


- A. Grant this Motion for Approval of Reinsurance Commutation Agreements with Wausau;
- B. Enter an Order in the form submitted herewith approving the Commutation Agreements; 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,
MICHAEL A. DELANEY
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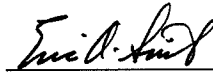


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October 16, 2009

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreements with Wausau and the Proposed Order Approving Reinsurance Commutation Agreements with Wausau were sent, this 16th day of October, 2009, 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

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

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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 Employers Insurance Company of Wausau f/k/a Employers Insurance of Wausau, a Mutual Company ("Wausau"). The Liquidator and Wausau are referred to collectively herein as the "Parties."

WITNESSETH:

WHEREAS, Home and Wausau entered into various reinsurance agreements pursuant to which either Home ceded liabilities to Wausau that Wausau assumed or Wausau ceded liabilities to Home that Home assumed, all in accordance with the terms and conditions therein contained (the "Reinsurance Agreements");

WHEREAS, certain of the Reinsurance Agreements are hereinafter collectively referred to as the "Settled Agreements" (as defined hereunder);

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, the Liquidator commenced an action against Wausau, which is currently pending in the United States District Court, District of New Hampshire, Civil Action No. 1:05-CV-00278-SM (the "Federal Court Action");

WHEREAS, in addition to their past and present obligations under the Settled Agreements, Home and Wausau 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;

WHEREAS, as part of the resolution of their respective obligations as contained in this Agreement, the Liquidator and Wausau have executed a stipulation of dismissal of the Federal Court Action in the form attached hereto as Exhibit A and incorporated into this Agreement by reference (the "Stipulation of Dismissal"); 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 foregoing Recitals that are made part of this Agreement and 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 other than: (i) Pool/Agency/Syndicate Business (as hereinafter defined) and (ii) the Liberty Mutual Reinsurance Contracts (as hereinafter defined);
- (b) "Pool/Agency/Syndicate Business" shall mean any Reinsurance Agreements (i) 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); (ii) specifically procured by an Independent Underwriting Agent from Wausau 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; or (iii) pursuant to which Home ceded to a pool or association in which Wausau 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 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) "Liberty Mutual Reinsurance Contracts" shall mean: (i) all reinsurance contracts between Home and Wausau with an effective date on or after January 1, 1986; and (ii) all reinsurance contracts between Home and Wausau with an effective date prior to January 1, 1986 that solely and exclusively concern workers' compensation business, with the exception of workers' compensation contracts written through Wausau International Underwriters and/or Lansing B Warner.

2. This Agreement shall only become effective on the date that this Agreement, that certain agreement entered into simultaneously herewith between Wausau and the Liquidator in his capacity as Liquidator of US International Reinsurance Company ("Wausau-USI Re Agreement), and the Recommended Allowance as provided in the Wausau-USI Re Agreement are approved by the Liquidation Court (the "Effective Date"). This Agreement is conditioned upon such approval, failing which this Agreement shall be deemed null and void *ab initio* and of no force or effect, with this Agreement being inadmissible for any purpose in any dispute between the Parties.

3. Within fourteen (14) days after the Effective Date, Wausau will pay to the Liquidator the sum of [REDACTED] (the "Net Settlement Sum") and hereby irrevocably assigns all right, title and interest to any allowance that Wausau may receive from the estate of US International Reinsurance Co. ("USI Re") as set forth in the Reinsurance Commutation, Settlement and Release Agreement entered into between Wausau and USI Re (the "Additional Consideration"), in full and final settlement of any and all past, present and future obligations and liabilities due or potentially due from Home and Wausau to each other under the Settled Agreements, with time being of the essence in the performance by Wausau in effecting such payment. Payment of the Net Settlement Sum shall be effected by transmittal of a check payable to The Home Insurance Company in Liquidation via overnight mail to Home addressed as follows:

Mr. Efraim Abramsohn
The Home Insurance Company in Liquidation
59 Maiden Lane
New York, NY 10038

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 whatsoever, whether arising out of or relating to the Settled Agreements or otherwise.

4. If Wausau fails to pay any portion of the Net Settlement Sum within fourteen (14) days after the Effective Date, Wausau shall pay (1) interest on any unpaid amounts at the compound rate of [REDACTED] calculated from the Effective Date; and (2) any and all costs, including reasonable attorneys' fees, incurred by Home in recovering the Net 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 Net Settlement Sum had been made in full within fourteen (14) days after the Effective Date.

5. Within ten (10) days after payment of the Net Settlement Sum, the Parties will file the Stipulation of Dismissal of the Federal Court Action with the United States District Court for the District of New Hampshire.

6. Subject to the terms and conditions of this Agreement, to the timely payment in full by Wausau of the Net Settlement Sum and the Additional Consideration, 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 Wausau, 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, returned 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 Wausau by reason of any matter whatsoever arising out of or in connection with or in relation to the Settled Agreements as well as all claims and counterclaims asserted in the Federal Court Action. Additionally, the Liquidator fully understands and expressly waives Home's 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. Subject to approval by the Liquidation Court and in consideration of the release of Wausau pursuant to Paragraph 6 above, Wausau 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, returned 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 Wausau 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 as well as all claims and counterclaims asserted in the Federal Court Action. Additionally, Wausau 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.

8. 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 they have not prior hereto assigned or otherwise transferred to any other entity any of the rights, entitlements or interests in or to the Settled Agreements commuted and released hereunder.

9. 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.

10. 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, 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. 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.

12. 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.

13. 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. In addition, and until such time as The Home liquidation proceeding becomes final, Home agrees on a periodic basis to provide Wausau with the claim billings Wausau would have received in the ordinary course of business but for this Agreement.

14. 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.

15. (a) Wausau 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 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 Home to be bound by its terms.

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

17. 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 Liquidation Court.

18. 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.

19. This Agreement may be executed in multiple counterparts, each of which, when so 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. This Agreement shall be of no force and effect until executed by the Parties.

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

If to Wausau:

Nationwide Indemnity Company
600 Westwood Drive
Wausau, WI 64402-8067
Attention: Frederick C. Schaefer

If to the Liquidator:

The Home Insurance Company
in Liquidation
59 Maiden Lane
New York, NY 10038
Attention: Russell G. Bogin

- and -

NH Department of Justice
33 Capitol Street
Concord, NH 03301-6397
Attention: J. Christopher Marshall

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

21. 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: *Peter A. Bengelsdorf* Date: August 6, 2009
Name: Peter A. Bengelsdorf
Title: Special Deputy Liquidator of The Home Insurance Company

Employers Insurance of Wausau, a Mutual Company

By: *John A. Tencer, Jr.* Date: August 7, 2009
Name: *John A. Tencer, Jr.*
Title: *Associate Vice President*

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Roger A. Sevigny, Insurance
Commissioner as Liquidator of the
Home Insurance Company,
Plaintiff

v.

Employers Insurance of Wausau, a Mutual
Company,
Defendant

Civil Action No. 1:05-CV-00278-SM

STIPULATION OF DISMISSAL

The Parties hereby agree that the captioned action shall, pursuant to Fed. Rule Civ. P. 41(a)(1)(A)(ii) be dismissed with prejudice and without costs to either Party. It is agreed and understood that in entering into this Stipulation of Dismissal the Parties wish to resolve their present dispute fully and finally and without precedent, without regard to the merits of the lawsuit, by way of compromise and without waiver of or prejudice to their respective positions in this action or any other claim or dispute and solely as a commercial accommodation. As such, the Parties agree that this Stipulation of Dismissal shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any Party hereto.

Respectfully submitted,

**ROGER A. SEVIGNY, INSURANCE
COMMISSIONER, AS LIQUIDATOR OF THE
HOME INSURANCE COMPANY,**

By his attorneys,

**KELLY A. AYOTTE
ATTORNEY GENERAL**

**J. Christopher Marshall, Attorney (NH Bar #1619)
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EMPLOYERS INSURANCE COMPANY OF WAUSAU

By its Attorneys,

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**Doreen Connor, #421
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P.O. Box 808
Manchester, NH 03105
(603) 669-2211
dconnor@wiggin-nourie.com**

_____, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Stipulation of Discontinuance has been served on the following persons on the ___ day of _____, 2009 and in the manner specified here: Electronically served through ECF on Natasha Lisman, Esquire at lisman@srbc.com, Andrew R. Levin, Esquire at Levin@srbc.com and Doreen F. Connor, Esquire at dconnor@wiggin-nourie.com, counsel for the Defendant.

J. Christopher Marshall

**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 US International Reinsurance Company ("USI Re"), and Employers Insurance Company of Wausau f/k/a Employers Insurance of Wausau, a Mutual Company ("Wausau"). The Liquidator and Wausau are referred to collectively herein as the "Parties."

WITNESSETH:

WHEREAS, USI Re and Wausau entered into various reinsurance agreements pursuant to which either USI Re ceded liabilities to Wausau that Wausau assumed or Wausau ceded liabilities to USI Re that USI Re assumed, all in accordance with the terms and conditions therein contained (the "Reinsurance Agreements");

WHEREAS, USI Re 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 USI Re;

WHEREAS, the Liquidator of The Home Insurance Company ("Home") commenced an action against Wausau, which is currently pending in the United States District Court, District of New Hampshire, Civil Action No. 1:05-CV-00278-SM (the "Federal Court Action");

WHEREAS, Wausau seeks payment from USI Re under the Reinsurance Agreements, in relation to which Wausau has submitted proofs of claim in the USI Re estate, which have been assigned Proof of Claim Nos. RAUS 332058, RAUS 332060 and RAUS 712787, and which together with any other proof of claim that Wausau may have otherwise filed or could subsequently seek to file in the USI Re estate are defined as the "Proofs of Claim";

WHEREAS, the Parties have agreed that subject to the terms of this Agreement, the net value of Wausau's claim in the USI Re estate under the Reinsurance Agreements shall be fully and finally established in the amount of \$2,690,737.00 (the "Recommended Allowance");

WHEREAS, in addition to their past and present obligations under the Reinsurance Agreements, Wausau and USI Re 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 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 Reinsurance Agreements with immediate effect and enter into mutual releases relating thereto, all in accordance with the terms and conditions hereinafter contained.

WHEREAS, in connection with and as part of to the resolution of their respective obligations as contained in this Agreement and that certain agreement entered into simultaneously between Wausau and the Liquidator in his capacity as Liquidator of Home ("the Wausau-Home Agreement"), the Liquidator and Wausau have executed a stipulation of dismissal of the Federal Court Action in the form attached hereto as Exhibit A and incorporated into this Agreement by reference (the "Stipulation of Dismissal"); and

NOW THEREFORE, intending to be legally bound, in consideration of the foregoing Recitals that are made part of this Agreement and 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, that certain agreement entered into simultaneously herewith between Wausau and the Liquidator in his capacity as Liquidator of The Home Insurance Company (the "Wausau-Home Agreement") and the Recommended Allowance are approved by the Liquidation Court (the "Effective Date"). This Agreement is conditioned upon such approval, failing which this Agreement shall be deemed null and void *ab initio* and of no force or effect. In the event that the Court does not approve this Agreement, the Wausau-Home Agreement or the Recommended

Allowance as a Class V claim, it shall be deemed null and void *ab initio* and of no force or effect, with this Agreement then being inadmissible for any purpose in any dispute between the Parties. The Liquidator shall submit the Recommended Allowance to the Liquidation Court as a Class V priority claim under N.H. Rev. Stat. Ann. § 402-C:44. Subject to and upon the Liquidation Court's approval of the Recommended Allowance, this Agreement, and the Wausau-Home Agreement, the Proofs of Claim shall be deemed resolved with prejudice and Wausau hereby agrees, upon approval of the Recommended Allowance, as set forth in paragraph 2 herein any and all claims of whatever nature against USI Re shall be deemed fully extinguished and it shall be forever barred and precluded from filing any subsequent Proof of Claim in the USI Re estate.

2. Subject to the terms of this Agreement and conditioned upon the Liquidation Court approving the Recommended Allowance, Wausau, for itself, and on behalf of its respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns (including any trustee or other statutory successor), irrevocably and unconditionally releases and discharges the Liquidator and USI Re and each of their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and/or demands arising from or related to the Proofs of Claim and/or the Reinsurance Agreements in law, admiralty or equity, which Wausau, its subsidiaries, affiliates, predecessors, successors and assigns, ever had, now has or hereafter may have against the Liquidator or USI Re or their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proofs of Claim and/or the Reinsurance Agreements as well as all claims and counterclaims asserted in the Federal Court Action. Additionally, Wausau fully understands and expressly waives Wausau'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.

3. Subject to the terms and conditions of this Agreement and in consideration of the release of the Liquidator and USI Re pursuant to Paragraph 2 above, the Liquidator, in his capacity as such, and on behalf of USI Re and each of their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns (including any liquidator or statutory successor), irrevocably and unconditionally releases and discharges Wausau and its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and/or demands arising from or related to the Proofs of Claim and/or the Reinsurance Agreements, in law, admiralty or equity, which the Liquidator, USI Re, or their subsidiaries, affiliates, predecessors, successors and assigns, ever had, now has or hereafter may have against Wausau or its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proofs of Claim and/or the Reinsurance Agreements as well as all claims and counterclaims asserted in the Federal Court Action. Additionally, the Liquidator and USI Re fully understand and expressly waive their respective 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.

4. This Agreement shall, subject to its approval by the Liquidation Court, including approval of the Recommended Allowance, 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 commuted and released hereunder.

5. Within ten (10) days after payment of the Net Settlement Sum, the Parties will file the Stipulation of Dismissal of the Federal Court Action with the United States District Court for the District of New Hampshire.

6. 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, 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.

7. Subject to the provisions of paragraph 1, 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 the Parties under the 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 Reinsurance Agreements.

8. 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.

9. 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. In addition, and until such time as The Home liquidation proceeding becomes final,

Home agrees on a periodic basis to provide Wausau with the claim billings Wausau would have received in the ordinary course of business but for this Agreement.

10. 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 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.

11. (a) Wausau 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 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 USI Re to be bound by its terms.

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

13. 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 Liquidation Court.

14. 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.

15. This Agreement may be executed in multiple counterparts, each of which, when so 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. This Agreement shall be of no force and effect until executed by the Parties.

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

If to Wausau:
Nationwide Indemnity Company
600 Westwood Drive
Wausau, WI 64402-8067

Attention: Frederick Schaefer

If to the Liquidator:
US International Reinsurance Co.
in Liquidation
59 Maiden Lane
New York, NY 10038
Attention: Russell Bogin

- and -

NH Department of Justice
33 Capitol Street
Concord, NH 03301-6397
Attention: J. Christopher Marshall

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


17. 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.

18. The Parties agree that the term "Reinsurance Agreements" shall not include (a) any reinsurance contract between USI Re and Wausau with an effective date on or after January 1, 1986; and (b) any reinsurance contract between USI Re and Wausau with an effective date prior to January 1, 1986 that solely and exclusively concerns workers' compensation business, with the exception of workers' compensation contracts written through Wausau International Underwriters and/or Lansing B Warner (collectively, the Excluded Agreements").

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 US International Reinsurance Company**

By:  Date: August 6, 2009
Name: Peter A. Bengelsdorf
Title: Special Deputy Liquidator of USI International Reinsurance Company

Employers Insurance of Wausau, a Mutual Company


By:  Date: August 7, 2009
Name: ASSOCIATE VICE PRESIDENT
Title: ASSOCIATE VICE PRESIDENT

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Roger A. Sevigny, Insurance
Commissioner as Liquidator of the
Home Insurance Company,
Plaintiff

v.

Employers Insurance of Wausau, a Mutual
Company,
Defendant

Civil Action No. 1:05-CV-00278-SM

STIPULATION OF DISMISSAL

The Parties hereby agree that the captioned action shall, pursuant to Fed. Rule Civ. P. 41(a)(1)(A)(ii) be dismissed with prejudice and without costs to either Party. It is agreed and understood that in entering into this Stipulation of Dismissal the Parties wish to resolve their present dispute fully and finally and without precedent, without regard to the merits of the lawsuit, by way of compromise and without waiver of or prejudice to their respective positions in this action or any other claim or dispute and solely as a commercial accommodation. As such, the Parties agree that this Stipulation of Dismissal shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any Party hereto.

Respectfully submitted,

**ROGER A. SEVIGNY, INSURANCE
COMMISSIONER, AS LIQUIDATOR OF THE
HOME INSURANCE COMPANY,**

By his attorneys,

**KELLY A. AYOTTE
ATTORNEY GENERAL**

**J. Christopher Marshall, Attorney (NH Bar #1619)
NEW HAMPSHIRE DEPARTMENT OF JUSTICE
33 Capitol Street
Concord, N.H. 03301-6397
(603) 271-3650
christopher.marshall@doj.nh.gov**

EMPLOYERS INSURANCE COMPANY OF WAUSAU

By its Attorneys,

**Natasha C. Lisman, admitted *pro hac vice*
Andrew R. Levin, admitted *pro hac vice*
Sugarman, Rogers, Barshak & Cohen, P.C.
101 Merrimac Street, 9th floor
Boston, MA 02114
(617) 227-3030
lisman@srbc.com & Levin@srbc.com**

**Doreen Connor, #421
Wiggin & Nourie, P.A.
20 Market Street
P.O. Box 808
Manchester, NH 03105
(603) 669-2211
dconnor@wiggin-nourie.com**

_____, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Stipulation of Discontinuance has been served on the following persons on the ___ day of _____, 2009 and in the manner specified here: Electronically served through ECF on Natasha Lisman, Esquire at lisman@srbc.com, Andrew R. Levin, Esquire at Levin@srbc.com and Doreen F. Connor, Esquire at dconnor@wiggin-nourie.com, counsel for the Defendant.

J. Christopher Marshall