

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 STATE FARM**

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 (“Commutation Agreement”) between the Liquidator and State Farm Fire & Casualty Company (“State Farm”). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Commutation Agreement between the Liquidator and State Farm. 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 State Farm (“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 written by Home. Collection of reinsurance is the principal asset-marshalling task of the Home liquidation. Bengelsdorf Confidential Affidavit ¶ 3.

3. Home entered into a number of reinsurance agreements with State Farm regarding property and casualty business covering periods from the late 1960's to the mid-1970's under which Home ceded relatively small shares of certain liabilities to State Farm. State Farm entered into a reinsurance agreement with Home regarding property business for periods from 1978 through 1984 under which State Farm ceded relatively small shares of certain liabilities to Home. State Farm has not sought any recovery with respect to this agreement because there are no outstanding paid amounts or reserves, but it is included in the Commutation Agreement to conclude the business relationship. The Liquidator seeks to recover from State Farm the value of all of Home's ceded reinsurance balances under the Home ceded agreements (with no deduction for any amount under the State Farm ceded agreement). Bengelsdorf Confidential Aff. ¶ 4.

4. The Commutation Agreement provides for the commutation of the reinsurance agreements between Home and State Farm and the full and final settlement of all past, present and future obligations and liabilities under the reinsurance agreements for a payment to the Liquidator. Commutation Agreement ¶ 2, 5. Bengelsdorf Confidential Aff. ¶ 5.

5. The Commutation Agreement provides that State Farm will pay the commutation sum to the Liquidator by wire transfer within ten (10) business days following notice from the Liquidator to State Farm of the Court's approval of the Commutation Agreement. Commutation Agreement ¶ 2. The other provisions of the Commutation Agreement, including mutual releases (Commutation Agreement ¶¶ 4-5), are set forth in the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 7.

6. 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. ¶ 9.

7. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶¶ 4-9. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Commutation Agreement is fair and reasonable and that it is 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. ¶ 10.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with State Farm;
- 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,
MICHAEL A. DELANEY
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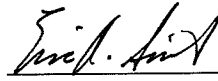


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June 15, 2010

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with State Farm and the Proposed Order Approving Reinsurance Commutation Agreement with State Farm were sent, this 15th day of June, 2010, 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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REDACTED

**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 State Farm Fire & Casualty Company ("State Farm"). The Liquidator, Home and State Farm are referred to collectively herein as the "Parties."

WITNESSETH:

WHEREAS, Home and State Farm previously entered into certain reinsurance agreements identified in Exhibit "A" attached hereto and incorporated herein by reference (the "Ceded Reinsurance Agreements"), pursuant to which Home ceded to State Farm, and State Farm accepted from Home, a certain share of Home's liabilities as more fully reflected in the percentages of participation and periods for each respective Reinsurance Agreement as set forth in Exhibit "A";

WHEREAS, Home and State Farm previously entered into certain reinsurance agreements identified in Exhibit "B" attached hereto and incorporated herein by reference (the "Assumed Reinsurance Agreements"), pursuant to which State Farm ceded to Home, and Home accepted from State Farm, a certain share of State Farm's liabilities as more fully reflected in the percentages of participation and periods for each respective Reinsurance Agreement as set forth in Exhibit "B";

WHEREAS, the Ceded Reinsurance Agreements and the Assumed Reinsurance Agreements are referred to herein as the "Reinsurance 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 Reinsurance Agreements, Home and State Farm 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.

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 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.

2. Within ten (10) business days after the Effective Date, State Farm will pay to the Liquidator the sum of \$ [REDACTED] (the "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 State Farm to each other under the Reinsurance Agreements, with time being of the essence in the performance by State Farm in effecting such payment. The payment of the 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 Settlement Sum shall be transferred free and clear of and without any deduction for or on account of any set-off or counterclaim.

3. If State Farm fails to pay any portion of the Settlement Sum within ten (10) days after the Effective Date, State Farm shall pay (1) interest on any unpaid amounts at the rate of [REDACTED] 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 ten (10) days after the Effective Date.

4. Subject to the terms and conditions of this Agreement and to the timely payment in full by State Farm 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 State Farm, 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 and/or Home ever had, now has, or hereafter may have against State Farm by reason of any matter whatsoever arising out of or in

connection with or in relation to the Reinsurance Agreements. 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.

5. Subject to approval by the Liquidation Court and in consideration of the release of State Farm pursuant to Paragraph 4 above, State Farm 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 State Farm 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. Additionally, State Farm 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.

6. 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 reinsurance agreements commuted and released hereunder.

7. 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.

8. 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.

9. In the event that New Hampshire Insurance Department as Liquidator, or the Liquidation Court requires any Reinsurance Agreement set forth in Exhibit "A" or "B" to remain in force, then the release given by the parties shall be null and void and the parties shall be returned to their original status as though this Agreement had not existed and the Settlement Sum paid pursuant to paragraph 2 shall be returned to State Farm.

10. If any payment to the Home is voided as a preferential transfer, fraudulent conveyance or otherwise by the Liquidator, such voidance will not affect the validity of the releases granted under this Agreement.

11. 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.

12. The failure of any of the Parties 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.

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 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.

15. (a) State Farm 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 he has the exclusive power and authority to enforce the Home's rights and obligations under the Reinsurance Agreements and that, subject to the Liquidation Court's approval, he is duly authorized to enter 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. 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: May 11, 2010
Name: Peter A. Bengelsdorf
Title: Special Deputy Liquidator of The Home Insurance Company

State Farm Fire & Casualty Company

By: *Jeffrey McCarty* Date: May 12, 2010
Name: Jeffrey McCarty
Title: AVP + Actuary

EXHIBIT A
REINSURANCE AGREEMENTS CEDED BY HOME INSURANCE COMPANY AND ASSUMED BY
STATE FARM FIRE & CASUALTY COMPANY
INCLUDED IN THE COMMUTATION

Home Ref #	Treaty Name	Effective Date	Expiration Date	% Of Ceded	Original Co #	Broker Name
48	ALL RISK DEDUCTIBLE PROP QUOTA SH/	01-Jan-69	31-Dec-69	10	841	WILLCOX INCORPORATED
49	ALL RISK DEDUCTIBLE PROP Q/S	01-Jan-70	31-Dec-70	8.4	841	WILLCOX INCORPORATED
62	ALL RISK DEDUCTIBLE SURPLUS TREAT	01-Apr-73	31-Mar-74	5	841	WILLCOX INCORPORATED
62	ALL RISK DEDUCTIBLE SURPLUS TREAT	01-Apr-74	31-Dec-74	5	841	WILLCOX INCORPORATED
62	ALL RISK DEDUCTIBLE SURPLUS TREAT	01-Jan-75	30-Jun-75	5	841	WILLCOX INCORPORATED
62	ALL RISK DEDUCTIBLE SURPLUS TREAT	01-Jul-75	31-Dec-75	5	841	WILLCOX INCORPORATED
62	ALL RISK DEDUCTIBLE SURPLUS TREAT	01-Jan-76	31-Dec-76	5	841	WILLCOX INCORPORATED
62	ALL RISK DEDUCTIBLE SURPLUS TREAT	01-Jan-77	31-Mar-77	5	841	WILLCOX INCORPORATED
62	ALL RISK DEDUCTIBLE SURPLUS TREAT	01-Apr-77	30-Sep-77	5	841	WILLCOX INCORPORATED
62	ALL RISK DEDUCTIBLE SURPLUS TREAT	01-Oct-77	31-Dec-77	5	841	WILLCOX INCORPORATED
65	FIRST PROPERTY CATASTROPHE EXCESS	01-Jul-71	30-Jun-72	2.25	841	GUY CARPENTER & CO
65	FIRST PROPERTY CATASTROPHE EXCESS	01-Jul-72	30-Jun-73	2.66	841	GUY CARPENTER & CO
65	FIRST PROPERTY CATASTROPHE EXCESS	01-Jul-73	30-Jun-74	2.6667	841	GUY CARPENTER & CO
65	FIRST PROPERTY CATASTROPHE EXCESS	01-Jul-74	31-Dec-74	2.66	841	GUY CARPENTER & CO
65	FIRST PROPERTY CATASTROPHE EXCESS	01-Jan-75	31-Dec-75	2.67	841	GUY CARPENTER & CO
66	SECOND PROPERTY CATASTROPHE EXCI	01-Jul-71	30-Jun-72	2.25	841	GUY CARPENTER & CO
66	SECOND PROPERTY CATASTROPHE EXCI	01-Jul-72	30-Jun-73	2.6667	841	GUY CARPENTER & CO
66	SECOND PROPERTY CATASTROPHE EXCI	01-Jul-73	30-Jun-74	2.6667	841	GUY CARPENTER & CO
66	SECOND PROPERTY CATASTROPHE EXCI	01-Jul-74	30-Jun-75	2.6667	841	GUY CARPENTER & CO
66	SECOND PROPERTY CATASTROPHE EXCI	01-Jul-75	31-Dec-75	2.67	841	GUY CARPENTER & CO
78	INLAND MARINE 2ND EXCESS OF LOSS	01-Apr-70	12-Dec-99	8.4	841	GUY CARPENTER & CO
79	THIRD CATASTROPHE EXCESS	01-Jul-71	30-Jun-72	2.25	841	GUY CARPENTER & CO
84	FOURTH PROPERTY CATASTROPHE EXCI	01-Jul-72	30-Jun-73	2.5	841	GUY CARPENTER & CO
987	HIGH LEVEL QUOTA SHARE	01-Jan-72	30-Jun-72	6.25	841	WILLCOX INCORPORATED
987	HIGH LEVEL QUOTA SHARE	01-Jul-72	31-Dec-72	5.55	841	WILLCOX INCORPORATED
987	HIGH LEVEL QUOTA SHARE	01-Jan-73	31-Dec-73	5.55	841	WILLCOX INCORPORATED
987	HIGH LEVEL QUOTA SHARE	01-Jan-74	31-Dec-74	5.55	841	WILLCOX INCORPORATED
989	HIGH LEVEL QUOTA SHARE TREATY	01-Jul-72	31-Dec-72	5.556	841	WILLCOX INCORPORATED
989	HIGH LEVEL QUOTA SHARE TREATY	01-Jan-73	31-Dec-73	5.56	841	WILLCOX INCORPORATED

EXHIBIT B
REINSURANCE AGREEMENTS CEDED BY STATE FARM FIRE & CASUALTY COMPANY AND ASSUMED BY
THE HOME INSURANCE COMPANY
INCLUDED IN THE COMMUTATION

Treaty Name	Effective	Expiration	% Of	Broker Name
First Surplus Share Reinsurance Agreement	10/1/1978	9/30/1979	2%	Herbert Clough Intermediaries
First Surplus Share Reinsurance Agreement	10/1/1979	9/30/1980	2%	Herbert Clough Intermediaries
First Surplus Share Reinsurance Agreement	10/1/1980	9/30/1981	2%	Herbert Clough Intermediaries
First Surplus Share Reinsurance Agreement	10/1/1981	9/30/1982	2%	Herbert Clough Intermediaries
First Surplus Share Reinsurance Agreement	10/1/1982	9/30/1983	2%	Herbert Clough Intermediaries
First Surplus Share Reinsurance Agreement	10/1/1983	9/30/1984	2%	Herbert Clough Intermediaries
First Surplus Share Reinsurance Agreement	10/1/1984	9/30/1985	2%	Herbert Clough Intermediaries