

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

**MOTION FOR APPROVAL OF REINSURANCE
COMMUTATION AGREEMENT WITH SIRIUS AMERICA**

Roger A. Sevigny, Insurance Commissioner of 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 Sirius America Insurance Company, formerly known as White Mountains Reinsurance Company of America and Folksamerica Reinsurance Company, a New York Insurance Company, on behalf of itself and its parents, subsidiaries, affiliates, predecessors, successors and assigns, including all business originally written by Belvedere America Reinsurance Company, C-F Insurance Company, Christiana General Insurance Company, Christiana General Insurance Corporation of New York, Great Lakes American Reinsurance Company, Great Lakes Reinsurance Company (US Branch), Fester Fothergill & Hartung, Ltd., FF&H Management Corporation, Folksamerica General Insurance Corporation of New York, Folksamerica National Reinsurance Company, Imperial Casualty and Indemnity Company, MONY Reinsurance Corporation, PCA Property & Casualty Insurance Company, Risk Capital Reinsurance Company, Stockbridge Insurance Company, Storebrand International Insurance Company, Storebrand Reinsurance Company Limited, Storebrand-Norden Reinsurance Company Limited,

Surety Reinsurance Company, Switzerland General Insurance Company of New York and USF Re Insurance Company (collectively "Sirius America"). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Commutation Agreement between the Liquidator and Sirius America. 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 Sirius America ("Bengelsdorf Confidential Affidavit") submitted herewith under seal. The Commutation Agreement is subject to approval by the Court. Commutation Agreement ¶ 1. Bengelsdorf Confidential Affidavit ¶ 2.

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. Collection of reinsurance is the principal asset marshalling task of the Home liquidation. Bengelsdorf Confidential Affidavit ¶ 3.

3. Sirius America provided Home with reinsurance coverage under various reinsurance contracts during the years 1972 through 1994. These contracts include both treaties (which cover exposures for various classes of business) and facultative certificates (which cover exposures from a particular Home policy or policies), and they provide reinsurance coverage for a broad spectrum of risks, including property, casualty, energy, marine, workers compensation, directors and officers and retrocessional business. A significant part of the business of Sirius America Insurance Company (formerly White Mountains Reinsurance Company of America and Folksamerica Reinsurance Company) is acquiring portfolios of run-off business, and it is

managing the run-off of business originally written by other insurers, including those included in the definition of “Sirius America.” The bulk of the reinsurance that is the subject of this commutation was written directly by Sirius America Insurance Company (formerly White Mountains Reinsurance Company of America and Folksamerica Reinsurance Company), with small portions originally written by some of the other companies. Bengelsdorf Confidential Affidavit ¶ 4.

4. Home provided Sirius America with reinsurance coverage under other reinsurance contracts. Bengelsdorf Confidential Affidavit ¶ 5.

5. Home thus “ceded” reinsurance to Sirius America (which “assumed” the exposures), and Home also “assumed” reinsurance from Sirius America (which “ceded” the exposures). The Liquidator seeks to recover from Sirius America the value of Home’s ceded reinsurance to Sirius America less the value of Sirius America’s ceded reinsurance to Home, which Sirius America asserts as offset. Bengelsdorf Confidential Affidavit ¶ 6.

6. The Commutation Agreement provides for the commutation of all of Home’s ceded business to Sirius America and all of Sirius America’s ceded business to Home. It provides for the full and final settlement of all past, present and future obligations and liabilities under the commuted reinsurance agreements for a payment to Home of a settlement sum. Commutation Agreement tenth Whereas clause, ¶¶ 2, 10. It includes mutual releases of claims under the commuted reinsurance agreements. Commutation Agreement ¶¶ 5-6. Sirius America has filed a proof of claim regarding its ceded reinsurance contracts in the Home liquidation. Since Sirius America’s claims are satisfied through offset as part of the commutation, the proof of claim will be given a Class V determination of zero. See Commutation Agreement, fifth Whereas clause, ¶ 4. Bengelsdorf Confidential Affidavit ¶ 7.

7. The Commutation Agreement provides that Sirius America will pay the settlement sum to the Liquidator by wire transfer within ten business days after the Court's approval of the Commutation Agreement. Commutation Agreement ¶ 2. The other provisions of the Commutation Agreement, including mutual releases of all matters under the commuted reinsurance agreements (Commutation Agreement ¶¶ 5-6), are set forth in the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 8.

8. 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 objections to the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 13.

9. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶¶ 7-12. 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 in the collection of reinsurance. See Bengelsdorf Confidential Affidavit ¶ 12.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with Sirius America;
- 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, INSURANCE
COMMISSIONER OF THE STATE OF
NEW HAMPSHIRE, SOLELY AS
LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

By his attorneys,

JOSEPH A. FOSTER
ATTORNEY GENERAL

J. Christopher Marshall,
NH Bar ID No. 1619
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650



J. David Leslie
NH Bar ID No. 16859
Eric A. Smith
NH Bar ID No. 16952
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110
(617) 542-2300

May 4, 2016

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with Sirius America and the Proposed Order Approving Reinsurance Commutation Agreement with Sirius America were sent, this 4th day of May, 2016, by first class mail, postage prepaid to all persons on the attached service list. The Confidential Affidavit being filed under seal was not so served.



Eric A. Smith
NH Bar ID No. 16952

THE STATE OF NEW HAMPSHIRE

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Docket No. 217-2003-EQ-00106

SERVICE LIST

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

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

Robert A. Stein, Esq.
The Stein Law Firm, PLLC
One Barberry Lane
P.O. Box 2159
Concord, New Hampshire 03302-2159

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

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

David H. Simmons, Esq.
Mary Ann Etzler, Esq.
Daniel J. O'Malley, Esq.
deBeaubien, Knight, Simmons,
Mantzaris & Neal, LLP
332 North Magnolia Avenue
P.O. Box 87
Orlando, Florida 32801

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

Richard Mancino, Esq.
Willkie Farr & Gallagher, LLP
787 Seventh Avenue
New York, New York 10019

Joseph G. Davis, Esq.
Willkie Farr & Gallagher, LLP
1875 K Street, N.W.
Washington, DC 20006

Albert P. Bedecarre, Esq.
Quinn Emanuel Urguhart Oliver & Hedges LLP
50 California Street, 22nd Floor
San Francisco, California 94111

Jeffrey W. Moss, Esq.
Morgan Lewis & Bockius, LLP
One Federal Street
Boston, Massachusetts 02110

Gerald J. Petros, Esq.
Hinckley, Allen & Snyder LLP
50 Kennedy Plaza, Suite 1500
Providence, Rhode Island 02903

Christopher H.M. Carter, Esq.
Hinckley, Allen & Snyder LLP
11 South Main Street, Suite 400
Concord, New Hampshire 03301

Robert M. Horkovich, Esq.
Robert Y. Chung, Esq.
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020

Andrew B. Livernois, Esq.
Ransmeier & Spellman, P.C.
One Capitol Street
P.O. Box 600
Concord, New Hampshire 03302-0600

John A. Hubbard
615 7th Avenue South
Great Falls, Montana 59405

Paul W. Kalish, Esq.
Ellen M. Farrell, Esq.
Timothy E. Curley, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

Harry L. Bowles
306 Big Hollow Lane
Houston, Texas 77042

Gregory T. LoCasale, Esq.
White and Williams, LLP
One Liberty Place, Suite 1800
Philadelphia, Pennsylvania 19103-7395

Kyle A. Forsyth, Esq.
Commercial Litigation Branch/Civil Division
United States Department of Justice
P.O. Box 875
Washington, D.C. 20044-0875

W. Daniel Deane, Esq.
Nixon Peabody LLP
900 Elm Street, 14th Floor
Manchester, New Hampshire 03861

Joseph C. Tanski, Esq.
John S. Stadler, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110

Steven J. Lauwers, Esq.
Michael S. Lewis, Esq.
Rath Young Pignatelli
One Capital Plaza
Concord, New Hampshire 03302-1500

Robert E. Murphy, Esq.
Michael J. Tierney, Esq.
Wadleigh, Starr & Peters, PLLC
95 Market Street
Manchester, New Hampshire 03101

Mark J. Andreini, Esq.
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

**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 Sirius America Insurance Company, formerly known as White Mountains Reinsurance Company of America and Folksamerica Reinsurance Company, a New York insurance company, on behalf of itself and its parents, subsidiaries, affiliates, predecessors, successors and assigns, including all business originally written by Belvedere America Reinsurance Company, C-F Insurance Company, Christiania General Insurance Company, Christiania General Insurance Corporation of New York, Great Lakes American Reinsurance Company, Great Lakes Reinsurance Company (US Branch), Fester Fothergill & Hartung, Ltd., FF&H Management Corporation, Folksamerica General Insurance Corporation of New York, Folksamerica National Reinsurance Company, Imperial Casualty and Indemnity Company, MONY Reinsurance Corporation, PCA Property & Casualty Insurance Company, Risk Capital Reinsurance Company, Stockbridge Insurance Company, Storebrand International Insurance Company, Storebrand Reinsurance Company Limited, Storebrand-Norden Reinsurance Company Limited, Surety Reinsurance Company, Switzerland General Insurance Company of New York and USF Re Insurance Company (hereinafter collectively referred to as the "Sirius America"). The Liquidator, Home and Sirius America are referred to collectively herein as the "Parties."

WITNESSETH:

WHEREAS, Home and Sirius America entered into various reinsurance agreements, pursuant to which Home ceded liabilities to Sirius America, which Sirius America assumed in accordance with the terms and conditions therein contained (the "Ceded Reinsurance Agreements");

WHEREAS, Sirius America and Home entered into various reinsurance agreement, pursuant to which Sirius America ceded liabilities to Home, which Home assumed in accordance with the terms and conditions therein contained (the "Assumed Reinsurance Agreements");

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, Sirius America filed a Proof of Claim in the Home estate, which has been denominated as POC No. AMBC464821 (the "POC");

WHEREAS, in addition to their past and present obligations under the Reinsurance Agreements, Home and Sirius America 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. The agreed consideration to be remitted by Sirius America to Home for the commutation of the Reinsurance Agreements is [REDACTED] (the "Settlement Sum"). Within 10 business days after the Effective Date, Sirius America shall pay the Settlement Sum to Home by wire transfer of funds directed as follows:

Citizens Bank, Manchester, NH, USA
ABA No. [REDACTED]
For the Account of The Home Insurance Company in Liquidation
Account No. [REDACTED]
Attention: Efraim Abramsohn

The 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 Sirius America fails to pay any portion of the Settlement Sum provided for in paragraph 2, within ten (10) business days after the Effective Date, Sirius America 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) business days after the Effective Date.

4. This Agreement shall fully and finally resolve the POC and Sirius America shall waive and forever be barred from bringing or asserting any subsequent claim in the Home estate with respect to the POC.

5. Subject to the terms and conditions of this Agreement and to the timely payment in full by Sirius America 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 Sirius America, 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 Sirius America 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.

6. Subject to approval by the Liquidation Court and in consideration of the release of Sirius America pursuant to Paragraph 5 above, Sirius America 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 Sirius America ever had, now has, or hereafter may have against the Liquidator and Home by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurance Agreements or the POC. Additionally, Sirius America fully understands and expressly waives its rights and benefits with respect to the Reinsurance Agreements or the POC 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 as provided for in paragraph 1, 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.

8. 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.

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, 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.

10. 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. However, nothing in this paragraph 10 shall prevent either Party from asserting or pursuing any claim for breach of the terms of this Agreement or any express warranty contained herein.

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 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.

14. (a) Sirius America 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.

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 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.


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 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.

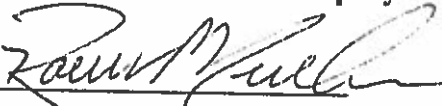
19. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the conflicts of law provisions thereof. The Parties agree that the Liquidation Court shall be the exclusive venue for any dispute between the Parties arising out of this 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: April 20, 2016
Name: Peter A. Bengelsdorf
Title: Special Deputy Liquidator of The Home Insurance Company

Sirius America Insurance Company

By:  Date: April 20, 2016
Name: Robert P. Kushn
Title: Senior Vice President & General Counsel