

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 USF&G**

John R. Elias, 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 the Reinsurance Commutation, Settlement and Release Agreement (the “Agreement”) between the Liquidator and United States Fidelity and Guaranty Company (“USF&G”). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Agreement between the Liquidator and USF&G. A redacted copy of the Agreement (with economic terms other than the recommended allowance removed) is attached as Exhibit 1. A complete copy of the Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Reinsurance Commutation Agreement with USF&G (“Bengelsdorf Confidential Affidavit”) submitted herewith under seal. The Agreement was negotiated under the direction of the Special Deputy Liquidator. It is subject to approval by the Court. Agreement ¶ 2.

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. USF&G is a subsidiary of The St. Paul Companies, whose ultimate parent is The Travelers Companies, Inc. Bengelsdorf Confidential Affidavit ¶ 4.

4. Home and USF&G entered into reinsurance agreements, including both reinsurance agreements under which Home was reinsured by USF&G and reinsurance agreements under which USF&G was reinsured by Home. Agreement, first and second whereas clauses. These agreements included ceded and assumed reinsurance directly between Home and USF&G as well as ceded and assumed reinsurance through the Excess Casualty Reinsurance Association (“ECRA”) Pool. *Id.* USF&G also ceded and Home assumed obligations through the United States Aircraft Insurance Group (“USAIG”) Pool. *Id.*, second whereas clause. Bengelsdorf Confidential Affidavit ¶ 5.

5. USF&G filed proofs of claim in the Home liquidation asserting reinsurance claims. Agreement, fifth whereas clause. USF&G also filed proofs of claim asserting contribution claims against Home based on USF&G payments to insureds also insured by Home where there was a cost-sharing agreement between the insurers prior to Home’s liquidation, contending that it paid additional amounts that would have been paid by Home under the cost-sharing agreements. See Agreement, eighth whereas clause. Bengelsdorf Confidential Affidavit ¶ 6.

6. The Liquidator sought to recover from USF&G the value of all of Home’s ceded business to USF&G. USF&G sought to use the value of its ceded business to Home and its contribution claims as offsets against its obligations to Home pursuant to RSA 402-C:34 and to obtain an allowance to the extent that its claims against Home exceeded Home’s claims against

it. The Liquidator and USF&G negotiated the Agreement to resolve these issues. Bengelsdorf Confidential Affidavit ¶ 7.

7. The Agreement provides for the commutation of all of Home's ceded business to USF&G, which consist principally of ECRA Pool and some treaty business, and all of USF&G's ceded business to Home, which consists of treaty, facultative and Pool business relationships. Agreement, first, second and eleventh whereas clauses, ¶ 10. The Agreement also resolves USF&G's contribution claims against Home to the extent that they are based on payments made by USF&G as of December 2017. Agreement, eighth and tenth whereas clauses, ¶ 10. "Future Claims" (contribution claims arising from amounts paid by USF&G after December 2017) are not included in the Agreement. USF&G reserves the right to present those claims for determination as Class V claims in the future. Agreement, tenth whereas clause. Bengelsdorf Confidential Affidavit ¶ 8.

8. The Agreement provides for the commutation of all reinsurance business between Home and USF&G and the resolution of USF&G's contribution claims (as of December 2017) for a Class V allowance in the net amount of \$1,320,574. Agreement ¶ 3. Once the commutation and the allowance are approved, Home will have concluded its reinsurance relationships with USF&G and resolved the present contribution claims. Bengelsdorf Confidential Affidavit ¶ 9.

9. The commutation and allowance is appropriate. The recommended allowance represents the difference between (a) the agreed total of USF&G claims consisting of (i) the agreed present value total of USF&G's outstanding ceded paid amounts, case reserves and incurred but not reported ("IBNR") reserves and (ii) the agreed value of USF&G's contribution claims based on paid amounts as of December 2017 and (b) the agreed present value total of

Home's outstanding ceded paid amounts, case reserves and IBNR reserves under the reinsurance contracts. See Agreement, sixth, seventh and ninth whereas clauses. Bengelsdorf Confidential Affidavit ¶ 10.

10. Offset of mutual debts or credits is authorized by RSA 402-C:34. Because netting the agreed ultimate values of the reinsurance obligations and value of the contribution claims produces a balance in USF&G's favor, an allowance to USF&G is proper. Reinsurance and contribution claims fall within the residual Class V priority under RSA 402-C:44, so the allowance to USF&G should be in that priority class. Bengelsdorf Confidential Affidavit ¶ 11.

11. The ceded and assumed reinsurance claims were valued on a comparable basis, and liquidation staff carefully evaluated the reinsurance claims and the contribution claims. Home is a net debtor to USF&G by \$1,320,574, which is the difference between USF&G's reinsurance and present contribution claims and Home's reinsurance claims. Bengelsdorf Confidential Affidavit ¶ 12.

12. The Agreement provides for the Class V allowance of the net \$1,320,574 amount to resolve the reinsurance relationships between Home and USF&G and close USF&G's contribution claims as of December 2017. Agreement ¶ 3. The Agreement fully and finally resolves USF&G's reinsurance claims and its contribution claims (other than Future Claims) as well as the Liquidator's reinsurance claims. Agreement ¶¶ 4, 5. The other provisions of the Agreement, including mutual releases by the Liquidator and USF&G (Agreement ¶¶ 6, 7), are set forth in the Agreement. The releases do not include future contribution claims. Bengelsdorf Confidential Affidavit ¶ 14.

13. The 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 Agreement. Bengelsdorf Confidential Affidavit ¶ 15.

14. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Agreement. Bengelsdorf Confidential Affidavit ¶¶ 8-15. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Agreement is fair and reasonable and in the best interests of the policyholders and other creditors of Home. The Agreement will appropriately resolve a complex set of reinsurance relationships, as well as contribution claims as of December 2017. The Liquidator recommends that the Agreement be approved and that USF&G’s proofs of claim be allowed as a Class V claim in accordance with RSA 402-C:45 and RSA 402-C:44 in the net aggregate amount of \$1,320,574 (not including Future Claims as defined in the Agreement). See Bengelsdorf Confidential Affidavit ¶ 16.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with USF&G;
- B. Enter an Order in the form submitted herewith approving the Agreement and allowing USF&G’s claims as a Class V claim in the net amount of \$1,320,574 (not including Future Claims as defined in the Agreement); and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

JOHN R. ELIAS, INSURANCE
COMMISSIONER OF THE STATE OF
NEW HAMPSHIRE, SOLELY AS
LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

By his attorneys,

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February 25, 2019

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with USF&G and the Proposed Order Approving Reinsurance Commutation Agreement with USF&G were sent, this 25th day of February, 2019, 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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SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106

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REDACTED

**REINSURANCE COMMUTATION, SETTLEMENT
AND RELEASE AGREEMENT**

THIS REINSURANCE COMMUTATION SETTLEMENT AND RELEASE AGREEMENT (the "Agreement") is made and entered into by and between John R. Elias, the New Hampshire Insurance Commissioner, solely in his capacity as court appointed liquidator (the "Liquidator") of The Home Insurance Company ("Home") and United States Fidelity and Guaranty Company ("USF&G"). The Liquidator, Home and USF&G are referred to herein individually by name or as "Party" and collectively herein as the "Parties."

WITNESSETH:

WHEREAS, Home and USF&G entered into certain reinsurance agreements (the "Home Ceded Reinsurance Agreements"), pursuant to which Home ceded to USF&G, and USF&G accepted from Home, a certain share of Home's liabilities as more fully reflected in the percentages of participation and periods for each of the respective Home Ceded Reinsurance Agreements. For the avoidance of doubt, Home Ceded Reinsurance Agreements includes any and all reinsurance agreements pursuant to which Home is the cedent and USF&G is the reinsurer, including those reinsurance arrangements pursuant to which Home ceded to USF&G through the Excess Casualty Reinsurance Association ("ECRA");

WHEREAS, USF&G entered into certain reinsurance agreements (the "USF&G Ceded Reinsurance Agreements"), pursuant to which USF&G ceded to Home, and Home accepted from USF&G, a certain share of USF&G's liabilities as more fully reflected in the percentages of participation and periods for each of the respective USF&G Ceded Reinsurance Agreements. For the avoidance of doubt, USF&G Ceded Reinsurance Agreements includes any and all reinsurance agreements pursuant to which USF&G is the cedent and Home is the reinsurer, including those reinsurance arrangements pursuant to which USF&G ceded to Home through ECRA and the United States Aircraft Insurance Group ("USAIG");

WHEREAS, the Home Ceded Reinsurance Agreements and the USF&G Ceded Reinsurance Agreements shall be defined herein as the "Settled Reinsurance Agreements";

WHEREAS, Home was placed into liquidation by the June 13, 2003 Order of 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 (the liquidation proceedings referred to herein as the "Home Liquidation");

WHEREAS, in accordance with the procedures prescribed by the Liquidation Court, USF&G submitted proofs of claim in the Home estate ("USF&G POC");

WHEREAS, the Parties agree that the value of the Home Ceded Reinsurance Agreements is [REDACTED]

WHEREAS, the Parties agree that the value of the USF&G Ceded Reinsurance Agreements is [REDACTED]

WHEREAS, USF&G has asserted, in the Home Liquidation, a right to recover amounts it has paid, as of December 2017, on behalf of Home for insurance contribution claims arising from certain cost-sharing agreements entered prior to Home's insolvency (the "Contribution Claims");

WHEREAS, the Contribution Claims shall be given Class V residual priority classification in the Home estate, pursuant to under N.H. RSA 402-C:44, in the amount of [REDACTED]

WHEREAS, for the avoidance of doubt, the Contribution Claims are valued as of December 2017 and specifically exclude future payments USF&G may pay on behalf of Home for insurance contribution claims arising from certain cost-sharing arrangements, with USF&G being entitled to present these payments for determination in the Home Liquidation as Class V residual claims (hereinafter the "Future Claims");

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 Reinsurance Agreements and the past and present rights of USF&G regarding the Contribution Claims with immediate effect in order to resolve any and all pending outstanding issues between the Parties and eliminate the uncertainty of contingent liabilities for presently unresolved and/or unasserted claims with respect to the Settled Reinsurance Agreements and the Contribution Claims and, in consequence thereof, to enter into mutual releases relating thereto, all in accordance with the terms and conditions hereinafter contained; and

WHEREAS, this Agreement is the product of arms-length negotiations resulting in a compromise freely entered into by the Parties (following advice from their legal and other professional advisors) for their mutual benefit and in good faith, with the intend and effect of releasing them from USF&G's and Home's respective obligations under the Settled Reinsurance Agreements.

NOW THEREFORE, intending to be legally bound, in consideration of the promises, covenants, representations, warranties, payments, agreements and other good and valuable consideration recited and set forth herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. The recitals contained above are hereby incorporated by reference as though fully set forth herein.
2. This Agreement shall only become effective on the date that this Agreement is approved by the Liquidation Court ("Court Approval"). 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. Home and the Liquidator will use their best efforts to have this Agreement approved by the Liquidation Court as soon as possible.
3. No payment is required from USF&G to the Liquidator or from the Liquidator to USF&G in connection with the settlement and commutation of the liabilities

arising under the Settled Reinsurance Agreements. The Parties agree that the balances due from Home under the USF&G Ceded Reinsurance Agreements combined with the amounts due pursuant to the Contribution Claims equal or exceed the balances due from USF&G under the Home Ceded Reinsurance Agreements. Upon Court Approval, the Liquidator shall be deemed to have issued and USF&G shall be deemed to have accepted a Notice of Determination with respect to the USF&G POC, assigning a Class V residual classification in the amount of US\$1,320,574.00, to reflect the value of the USF&G Ceded Reinsurance Agreements plus the Contribution Claims, but not the Future Claims, less the value of the Home Ceded Reinsurance Agreements.

4. This Agreement shall fully and finally resolve the USF&G POC filed in the Home Liquidation with respect to the USF&G Ceded Reinsurance Agreements and the Contribution Claims and USF&G shall waive and forever be barred from bringing or asserting any subsequent claim in the Home Liquidation with respect to the USF&G Ceded Reinsurance Agreements and Contribution Claims. For the avoidance of doubt, this Agreement does not apply to the Future Claims.

5. This Agreement shall fully and finally resolve any claims that Home (and the Liquidator) has, or may have in the future, against USF&G with respect to the Home Ceded Reinsurance Agreements and Home (and the Liquidator) shall waive and forever be barred from bringing or asserting any claims against USF&G with respect to the Home Ceded Reinsurance Agreements.

6. Upon the Court Approval and subject to the terms of this Agreement, the Liquidator on behalf of Home, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns, irrevocably and unconditionally releases and discharges USF&G, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, representatives, liquidators, receivers and rehabilitators and their respective predecessors, successors and assigns to the extent permitted by applicable law from any and all liabilities, adjustments, obligations, offsets, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, premiums, returned premiums, unearned premiums, losses, salvage, commissions,

variances, expenses, acts, omissions, executions, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, claims and demands whatsoever, all whether known or unknown to one of both parties, suspected or unsuspected, fixed or contingent in law or in equity, which the Liquidator or Home ever had, now has, or hereafter may have against USF&G by reason of any matter whatsoever arising out of or in connection with or in relation to the Settled Reinsurance Agreements and the Contribution Claims. For the avoidance of doubt, the releases contained in this Paragraph 6 do not include the Future Claims. Additionally, the Liquidator fully understands and expressly waives Home's rights and benefits with respect to the Settled Reinsurance Agreements and the Contribution Claims 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. Upon Court Approval and subject to the terms and conditions of this Agreement and in consideration of the release of USF&G pursuant to Paragraph 4 above, USF&G on behalf of itself, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, pool members and their successors and assigns (including any liquidator or statutory successor), irrevocably and unconditionally releases and discharges the Liquidator and Home and their respective 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 Settled Reinsurance Agreements and the Contribution Claims, in law, admiralty or equity, which USF&G ever had, now has or hereafter may have against Liquidator and/or Home 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 Settled Reinsurance Agreements and the Contribution Claims. For the avoidance of doubt, the releases contained in this Paragraph 7 do not include the Future Claims. Additionally, USF&G fully understands and expressly waives its rights and benefits with respect to the Settled Reinsurance Agreements and the Contribution Claims 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 embodies the final, complete and entire agreement between the Parties as respects the Settled Reinsurance Agreements and the Contribution Claims and is the product of their own independent legal advice and analysis. This Agreement supersedes all other prior negotiations, commitments, agreements and understandings, both oral and written, between the Parties with respect to the Settled Reinsurance Agreements and the Contribution Claims, and all such prior negotiations, commitments, agreements and understandings are merged into this Agreement. 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, other than Paragraph 3, 6 or 7, is determined to be invalid, unenforceable or illegal under the law of any 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 that Paragraph 3, 6 and/or 7 is determined to be invalid, unenforceable or illegal under the law of any jurisdiction, each Party shall be restored to the position it was in just prior to entering into this Agreement. 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. This Agreement shall take precedence over and supersede the Settled Reinsurance Agreements and the Contribution Claims 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 Reinsurance Agreements and the Contribution Claims. 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 Reinsurance Agreements and the Contribution Claims. For the avoidance of doubt, this Paragraph 10 does not include the Future Claims

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 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 Reinsurance Agreements and the Contribution Claims. 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 Reinsurance Agreements and the Contribution Claims, other than with respect to the terms and conditions herein contained.

13. (A) USF&G represents that it is duly authorized to enter into this Agreement and the transactions contemplated herein, and that the representative 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 collectively be bound by its terms; and (B) the Liquidator represents and warrants that he is duly authorized to enter into this Agreement and the transactions contemplated herein on behalf of Home; 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 on behalf of the Liquidator is fully authorized to execute this Agreement freely and voluntarily on his behalf with an intent for Home and the Liquidator to be bound by its terms.

14. This Agreement shall 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.

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

16. It is hereby agreed that 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 any court.

17. The Parties represent and agree that the consideration for this Agreement, provided in exchange for the Parties' mutual promises made herein, is fair and reasonable. The Parties further agree to provide each other with an appropriate affidavit to this effect

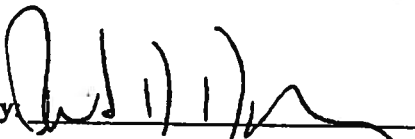
if such an affidavit becomes necessary to uphold or enforce the legitimacy of this Agreement.

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 all of 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.

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

For and on behalf of United States Fidelity and Guaranty Company


By: 

Date: February 1, 2019

Name: Richard D. Dupree

Title: Vice President of Reinsurance Operations

For and on behalf of John R. Elias, the New Hampshire Commissioner of Insurance, solely in his capacity as Liquidator of The Home Insurance Company

By: 

Date: February 1, 2019

Name: Peter A. Bengelsdorf

Title: Special Deputy Liquidator of The Home Insurance Company in Liquidation