

**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**

**LIQUIDATOR'S MOTION FOR APPROVAL OF  
ASSIGNMENT AND RELEASE AGREEMENT WITH  
MINNESOTA INSURANCE GUARANTY ASSOCIATION**

David J. Bettencourt, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), moves that the Court enter an order in the form submitted herewith approving an Assignment and Release Agreement ("Assignment Agreement") between the Minnesota Insurance Guaranty Association ("MIGA") and the Liquidator. The Assignment Agreement is assented to by the Workers' Compensation Reinsurance Association ("WCRA") of Minnesota. As reasons therefor, the Liquidator states as follows:

1. The Assignment Agreement was negotiated under the supervision of the Special Deputy Liquidator. A copy of the Assignment Agreement is attached hereto as Exhibit A. The Assignment Agreement is subject to approval by the Court. Assignment Agreement § 10(a). Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Assignment Agreement with Minnesota Insurance Guaranty Association ("Bengelsdorf Aff.")

¶ 2.

2. Background. Prior to its liquidation, Home issued policies to policyholders in Minnesota. Those policies included workers' compensation policies. Certain workers' compensation policies issued in Minnesota were reinsured by the WCRA pursuant to reinsurance

agreements between the WCRA and Home, the WCRA's Restated Plan of Operation, or under the WCRA's enabling statute, Minnesota Statutes Section 79.34 to 79.40. Prior to Home's liquidation, Home paid workers' compensation claims under policies issued in Minnesota and billed WCRA for reinsured amounts. The WCRA paid Home the reinsured amounts.

Bengelsdorf Aff. ¶ 3.

3. On June 13, 2003, Home was declared insolvent and placed in liquidation proceedings by an Order of Liquidation issued by the Superior Court for Merrimack County, New Hampshire in Docket No. 217-2003-EQ-00106. Bengelsdorf Aff. ¶ 4.

4. As a result of Home's liquidation, Home stopped paying claims, including workers' compensation claims in Minnesota. The liquidation triggered insurance guaranty associations around the country, including MIGA. MIGA began paying claims, including workers' compensation claims, under policies issued by Home regarding Minnesota risks. Bengelsdorf Aff. ¶ 5.

5. MIGA timely filed a proof of claim in the Home liquidation asserting claims for amounts that MIGA pays under policies of insurance issued by Home. During the course of the liquidation, the Liquidator has allowed claims paid by MIGA under Home policies as Class II priority claims. Bengelsdorf Aff. ¶ 6.

6. The WCRA reinsurance is an asset of the estate payable to the Liquidator. The Liquidator has accordingly billed the WCRA for amounts allowed to MIGA and covered by the WCRA reinsurance. During the liquidation, the WCRA has paid those amounts to the Liquidator. Bengelsdorf Aff. ¶ 7.

7. Prior to the January 26, 2023 Claims Amendment Deadline, MIGA submitted amendments to its proof of claim identifying open claims and its case reserves for those claims.

The Liquidator and MIGA have agreed on the present value of the MIGA claims reserves. That \$20,414,885.93 value and recent paid values are included as Class II priority claims of MIGA on the Liquidator's Report of Claims and Recommendations as of October 16, 2023. Bengelsdorf Aff. ¶ 8.

8. The allowed claim reserve amount represents an estimate of amounts that MIGA will pay on known workers' compensation claims in the future. The WCRA does not wish to pay reinsurance before payment of the underlying claim to the claimant by MIGA. Bengelsdorf Aff. ¶ 9.

9. The Assignment Agreement. To address this situation, the Liquidator and MIGA have agreed to assign the right to collect reinsurance from the WCRA from Home to MIGA. Assignment Agreement § 2(a), (d). MIGA will thus be able to collect reinsurance on claims covered by MIGA from the WCRA as the claims are paid. The WCRA has assented to the assignment. Assignment Agreement § 4. MIGA agrees to release the Liquidator with respect to any amounts recoverable through the assignment. Assignment Agreement § 2(c). Bengelsdorf Aff. ¶ 10.

10. The WCRA reinsurance is an asset of the Home estate. Assignment Agreement, Eighth Whereas Clause. Accordingly, the Liquidator and MIGA have agreed that the value of the assigned reinsurance should be considered part of the distributions from the Home estate to MIGA so that all Class II creditors will receive the same distribution percentage. Assignment Agreement § 2(b). Bengelsdorf Aff. ¶ 11.

11. The Liquidator and MIGA have agreed that the present value of the outstanding MIGA liabilities reinsured by the WCRA is \$10,105,245. Assignment Agreement, Ninth Whereas Clause. That "Assignment Value" will be taken into account in the calculation of the

final distribution to MIGA. *See* Assignment Agreement § 10(d), Exhibit A. In the event that early access distributions to MIGA plus the Assignment Value result in a distribution percentage above the final distribution percentage ultimately determined for the estate, MIGA will return the excess amount to the Liquidator. Assignment Agreement § 10(d). In the event that the early access distributions to MIGA plus the Assignment Value are less than the amount to be distributed to MIGA based on its allowed Class II claims and the final distribution percentage, MIGA will receive an additional distribution. Bengelsdorf Aff. ¶ 12.

12. Other terms of the assignment and release are set forth in the Assignment Agreement. The Assignment Agreement will become effective on the date that the Court has approved both (1) the Assignment Agreement and (2) the final determination of MIGA's Class II proof of claim. Assignment Agreement § 10(b). MIGA's Class II claims have been determined in partial determinations over the course of the liquidation. The final determinations concerning MIGA's Class II claims are set forth in the Liquidator's Report of Claims and Recommendations as of October 16, 2023. Bengelsdorf Aff. ¶ 13.

13. The Liquidator's negotiation and the Court's approval of the Assignment Agreement is authorized by the Liquidator's authority, "[s]ubject to the court's control," to "[c]ollect all debts and moneys due and claims belonging to the insurer" and "do such other acts as are necessary or expedient to collect, conserve or protect its assets or property," RSA 402-C:25, VI, and to "do such other acts . . . as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation." RSA 402-C:25, XXII.

14. The Assignment Agreement serves to preserve the value of the WCRA reinsurance for the estate by assigning the right to reinsurance recoverables to MIGA and obtaining credit for that assignment against Class II distributions to MIGA. The Assignment

Value is a fair and reasonable present value of estimated future WCRA recoverables based on known claims against MIGA under Home workers' compensation policies. The value was agreed on through negotiations between the Liquidator and MIGA. *See Bengelsdorf Aff.* ¶ 14.

15. The Liquidator submits that the Assignment Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home. *See Bengelsdorf Aff.* ¶ 15.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion;
- B. Enter an Order in the form submitted herewith approving the Assignment Agreement; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

DAVID J. BETTENCOURT, INSURANCE  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, SOLELY AS  
LIQUIDATOR OF THE HOME  
INSURANCE COMPANY,

By his attorneys,

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*/s/ Eric A. Smith*

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October 23, 2023

**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Assignment Agreement with Minnesota Insurance Guaranty Association, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 23<sup>rd</sup> day of October, 2023, by first class mail, postage prepaid to all persons on the attached service list.

/s/ Eric A. Smith  
Eric A. Smith  
NH Bar ID No. 16952

**STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS.**

**SUPERIOR COURT**

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

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# **EXHIBIT A**

## ASSIGNMENT AND RELEASE AGREEMENT

This Assignment and Release Agreement (the "Agreement") is made and entered into as of this 10th day of October, 2023 by and between the Insurance Commissioner of New Hampshire, solely in his capacity as Liquidator (the "Liquidator") of The Home Insurance Company ("Home"), and the Minnesota Insurance Guaranty Association ("MIGA"), with the assent of the Workers' Compensation Reinsurance Association ("WCRA") of Minnesota.

### Recitals

WHEREAS, Home is being liquidated under the supervision of the Superior Court for Merrimack County, New Hampshire (the "Court"), in Docket No. 217-2003-EQ-00106, pursuant to the New Hampshire Insurers Rehabilitation and Liquidation Act, N.H. RSA 402-C ("Act"), and the Court appointed the Liquidator by its Order of Liquidation dated June 13, 2003;

WHEREAS, the Act provides for ten successive priority classes of claims in N.H. RSA 402-C:44;

WHEREAS, the Liquidator does not expect there to be assets sufficient to make more than a percentage distribution on claims in Priority Class II, with no distribution to lower priority classes;

WHEREAS, before the June 13, 2004 Claim Filing Deadline in the Home liquidation, MIGA filed a proof of claim with the Liquidator, designated Proof of Claim No. GOVT700061 (the "Proof of Claim"), asserting claims for amounts that MIGA pays under policies of insurance issued by Home, including Home's predecessor companies, and MIGA identified claims and provided its case reserves on open claims to the Liquidator in additional submissions by the January 26, 2023 Claim Amendment Deadline;

WHEREAS, the Liquidator has sent MIGA Notices of Claim Determination (the "Determinations") advising MIGA that the claims for amounts MIGA pays under policies of insurance issued by Home and its predecessor companies are assigned to Priority Class II;

WHEREAS, the Liquidator and MIGA have agreed on the present value of the outstanding MIGA claims reserves and the present value of the outstanding MIGA claims reserves attributable to claims reinsured by the WCRA ;

WHEREAS, the Liquidator wishes to assign, and MIGA wishes to accept, future amounts recoverable from the WCRA for MIGA claims;

WHEREAS, future amounts recoverable from the WCRA are general assets of the Home estate and therefore assets that would be available to satisfy the claims of all creditors in accordance with the priority classes set forth in the Act;

WHEREAS, the Liquidator and MIGA agree that the discounted reserves (to present value) for outstanding MIGA liabilities reinsured by the WCRA total \$10,105,245.00 (the "Assignment Value");

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth herein, and for other good and valuable consideration, the adequacy of which is hereby acknowledged, MIGA and the Liquidator agree as follows.

Section 1. Definitions.

Terms not defined elsewhere in this Agreement have the meanings set forth below.

(a) "Claims" means each and every claim for indemnification of workers' compensation loss payments paid by MIGA which the WCRA is obligated to hereafter pay to the Liquidator, for Home, under any Reinsurance Agreement between the WCRA and Home, under the WCRA's Restated Plan of Operation, or under the WCRA's Enabling Statute,

Minnesota Statutes Sections 79.34 to 79.40.

(b) "Parties" means collectively all of the entities that are party to this Agreement, and "Party" means each individual party so identified.

Section 2. Assignment and Release.

Upon the Effective Date as defined in Section 10:

(a) The Liquidator hereby unconditionally assigns to MIGA, and MIGA hereby unconditionally accepts from the Liquidator, all of the Liquidator's rights to receive indemnification from the WCRA with respect to any and all Claims.

(b) Since this assignment constitutes a transfer by the Liquidator of Home general assets (the future WCRA recoveries) to MIGA as an advance against liquidation distributions, MIGA's ultimate share in any distributions from the Home estate will be adjusted accordingly so that all creditors in the same Class II priority class with MIGA are treated equivalently. Attached, as Exhibit A, is an illustration of how that adjustment will be accomplished assuming, for purposes of illustration only, a 40% ultimate distribution to Class II creditors.

(c) MIGA hereby unconditionally releases, forgives, and forever discharges Home, and the Liquidator respecting any and all amounts recoverable through the Claims that are assigned under subsection (a) of this Section 2.

(d) Following the assignment and release made under this Section 2, the Liquidator shall thereafter have no right to indemnification of workers' compensation loss payments from the WCRA with respect to any and all Claims, and all such rights as may exist now or in the future between the Liquidator and the WCRA shall exist instead between MIGA and the WCRA.

(e) MIGA hereby agrees to defend and hold harmless the WCRA from any

and all claims arising out of the WCRA's reimbursement of payments made to MIGA with respect to Home's workers' compensation claims or from any claims related to the assignment to MIGA.

Section 3. Representations of Authority.

Subject to the Court approval required by Section 10, each person signing on behalf of a Party gives his or her express assurance that under any applicable governance documents, bylaws, rules, statutes, regulations, and judicial rulings, he or she has authority to enter into this Agreement and bind the Party whom he or she represents.

Section 4. Assent of the WCRA.

As indicated by its signature below, the WCRA unconditionally assents to the assignment of Claims achieved through this Agreement. No part of this Agreement shall be interpreted as altering the terms of the Reinsurance Agreement between WCRA and Home save only the recipient of reimbursement as assigned in this Agreement. All claims reimbursable by WCRA remain governed by, and solely subject to, applicable Minnesota law and all disputes for reimbursement shall be governed solely by the applicable Reinsurance Agreement between the WCRA and Home, under the WCRA's Restated Plan of Operation, or under the WCRA's Enabling Statute, Minnesota Statutes Sections 79.34 to 79.40.

Section 5. Governing Law and Forum.

This Agreement, any disputes which may arise in connection with the interpretation or enforcement of the Agreement, and the rights and obligations of the Parties generally shall be governed by the laws of the State of New Hampshire without regard or reference to choice or conflict of law rules. The Parties consent to the exclusive jurisdiction of the Court

solely for the purposes of interpreting or enforcing this Agreement and for no other purposes.

Section 6. Interpretation.

This Agreement shall not be construed or interpreted for or against any Party hereto because that Party drafted, or caused the Party's legal representative to draft, any of its provisions. The section headings herein are intended for reference and shall not by themselves determine the construction or interpretation of this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) "or" has the inclusive meaning frequently identified with the phrase "and/or," (d) "including" has the inclusive meaning frequently identified with the phrase "but not limited to" or "without limitation," and (e) the terms "dollars" and "\$" refer to United States dollars. Any reference herein to any statute, rule, regulation, operating or governance document, or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation, operating or governance document, or agreement, as it may be modified, varied, amended or supplemented from time to time.

Section 7. Entire Understanding; Modification.

This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes any and all prior understandings, agreements, plans and negotiations, whether written or oral, with respect to the subject matter hereof. All modifications to this Agreement must be in writing and signed by the Parties hereto.

Section 8. Successors and Assigns.



This Agreement shall be binding upon and inure to the benefit of each Party's predecessors, successors, assigns, and representatives.

Section 9. Execution in Counterparts.

This Agreement may be executed in one or more counterparts, any of which shall be deemed an original and all of which taken together shall constitute one and the same Agreement.

Section 10. Court Approval; Effectiveness.

(a) This Agreement is subject to approval by the Court. The Liquidator and MIGA execute this Agreement concurrent with their agreement on the value of MIGA's Class II claim in the Home estate and the value of MIGA liabilities reinsured by the WCRA. The Liquidator shall move for approval of this Agreement by the Court when he presents the determination of MIGA's Class II Proof of Claim to the Court for approval.

(b) This Agreement shall be effective on the date when the Court has approved both (1) this Agreement and (2) the final determination of MIGA's Class II Proof of Claim (the "Effective Date").

(c) During the period from the January 26, 2023 Claim Amendment Deadline through the Effective Date, the Liquidator shall continue to collect reinsurance from WCRA. After the Effective Date, MIGA shall collect reinsurance from the WCRA pursuant to the assignment set forth in Section 2(a) of this Agreement.

(d) As part of the determination of the final distribution to Class II creditors, the Liquidator shall determine the Class II distribution amount to MIGA as set forth in Section 2(b) and as illustrated on Exhibit A, and notify MIGA of that amount. The Liquidator and MIGA acknowledge that, depending upon the final Class II distribution percentage, it is possible that

MIGA may have received from the estate through early access distributions on Class II claims and the Assignment Value an amount in excess of the Class II distribution amount as calculated using the final distribution percentage. In that case, MIGA agrees to return the excess distribution amount (the excess of the early access distributions plus the Assignment Value over the calculated final distribution amount) to the Liquidator within 10 days after notice from the Liquidator.

The Liquidator and MIGA agree that WCRA shall not be responsible for reimbursement or payment of any excesses to any party as may be determined in Section 10 (d) of this Agreement.

Section 11. Notice.

All notices and other communications concerning this Agreement shall be effective when mailed by first class mail and emailed to the address and email address set forth below:

If to MIGA:

7600 Parklawn Ave Suite 460, Edina, MN 55435

Attn: Robert Farber, Executive Director

robert@mniga.com

If to the Liquidator:

61 Broadway, New York, NY 10006

Attn: Peter Bengelsdorf, Special Deputy Liquidator

pabinsconsult@aol.com

If to the WCRA:

400 Robert Street North, Suite 1700, Saint Paul, MN 55101-2026

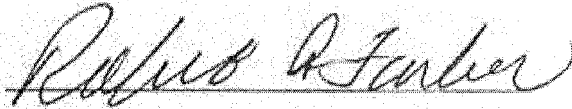
Attn: Natalie Haefner, Vice President, Claims

n.haefner@wera.biz

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the date first above written.

Attest:

MINNESOTA INSURANCE GUARANTY  
ASSOCIATION,



Name: Robert Farber

Title: Executive Director

Date: 10/11/2023

Attest:

DAVID J. BETTENCOURT, INSURANCE  
COMMISSIONER OF THE STATE OF NEW  
HAMPSHIRE, SOLELY IN HIS CAPACITY  
AS LIQUIDATOR OF THE HOME  
INSURANCE COMPANY.



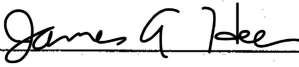
Name: Peter A. Bengelsdorf

Title: Special Deputy Liquidator

Date: 10-10-23

ASSENT

I, James Heer, in my capacity as President and Chief Executive Officer of the Minnesota Workers Compensation Reinsurance Association ("WCRA"), hereby indicate the WCRA's assent to the foregoing assignment of rights to the Minnesota Insurance Guaranty Association.



Name: James Heer

Title: President and Chief Executive Officer

Date: October 16, 2023

**Exhibit A**

**Hypothetical Illustration of MIGA's Distribution Adjustment  
Due to Assignment of General Assets (Recoverables from WCRA)**

|  |                                     |   |   |   |
|--|-------------------------------------|---|---|---|
| <b>(1) Losses Paid</b>                     | <b>(2) Discounted Case Reserves</b> | <b>(3) Distribution Basis [(1)+(2)]</b>                   | <b>(4) Discounted Case Reserves Recoverable From WCRA</b> | <b>(5) Adjusted Distribution Basis [(3)-(4)]</b>                        |
| 1,000                                      | 500                                 | 1,500   | 200   | 1,300   |
| <b>(6) Assumed Distribution Percentage</b> |                                     | <b>(7) Distribution \$ Prior To Consideration Of WCRA</b> | <b>(8) Distribution \$ After Consideration Of WCRA</b>    | <b>(9) Adjusted Distribution Percentage After Consideration of WCRA</b> |
| X%   |                                     | (3) x (6)   | (7) - (4)   | (8) / (5)   |
| 40%  |                                     | 600   | 400   | 30.77%  |

**(10) Total Percentage Received After Assignment**

$[(4) + (8)] / (3)$

40%

The initial distribution amount (7) is calculated by multiplying the assumed distribution rate (6) times the sum of paid and discounted case reserves (3). The distribution amount after considering the assignment (8) is calculated by subtracting the discounted reserves recoverable from WCRA (4) from (7). The adjusted distribution percentage (9) is calculated by dividing the distribution amount (8) by the sum of paid and discounted case reserves less the discounted case reserves recoverable from WCRA (5). This calculation shows that MIGA will receive a distribution rate below the ultimate rate on its non WCRA-reinsured claims but that, when its 100% recovery on the WCRA reinsured claims is considered, it will receive the same ultimate distribution rate on all of its claims as all other Class II creditors (10). The assignment is an advance against the final distribution, so this can also be viewed as as the ultimate distribution amount (7) being partially addressed by the assignment (4) leaving the remainder (8) to be addressed by distribution. (This exhibit does not consider any early access distributions, which will need to be accounted for.)