

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
SETTLEMENT AGREEMENT WITH AIG PROPERTY CASUALTY COMPANY**

Pursuant to Paragraph 1 of the April 29, 2004 Order Establishing Procedures for Review of Certain Agreements to Assume Obligations or Dispose of Assets ("April 29, 2004 Order"), 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 a Settlement Agreement and Mutual Release ("Settlement Agreement") resolving a dispute between the Liquidator and AIG Property Casualty Company ("AIG"), formerly known as Birmingham Fire Insurance Company ("BFIC"). As reasons therefor, the Liquidator states as follows:

1. The motion seeks approval for the Settlement Agreement between the Liquidator and AIG to resolve a reinsurance collection dispute. The Settlement Agreement was negotiated under the supervision of the Special Deputy Liquidator. The Settlement Agreement is subject to approval of the Court. Settlement Agreement ¶ 1. A copy of the Settlement Agreement with confidential information redacted is attached as Exhibit A. An unredacted copy is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Settlement Agreement with AIG Property Casualty Company ("Bengelsdorf Aff.") submitted herewith. Bengelsdorf Aff. ¶¶ 2-3.¹

¹ The Bengelsdorf Affidavit is filed under seal pursuant to Paragraph 3 of the April 29, 2004 Order. Because the settlement is a compromise and the affidavit concerns the Liquidator's settlement analysis, it would be adverse to the interests of the liquidation to disclose it.

2. The Settlement Agreement represents a compromise resolving a dispute between the Liquidator and AIG concerning AIG's alleged reinsurance of a part of an insurance policy issued by Home to Monsanto Company ("Monsanto") that was involved in the recent settlement agreement between the Liquidator and Monsanto ("Monsanto Settlement Agreement"). Bengelsdorf Aff. ¶ 4.

3. Home issued various liability policies to Monsanto. These policies include umbrella liability policy HEC 9329287 for the policy period April 1, 1979 through April 1, 1980 (the "Policy"). Bengelsdorf Aff. ¶ 5.

4. As pertinent here, the Liquidator believes Home obtained reinsurance for the Policy through a broker, North American Managers ("NAM"), and that NAM placed a 40% portion of the risk on the Policy with BFIC on a facultative basis identified as Birmingham Fire certificate No. C79-56509 (the "Facultative Certificate"). However, Liquidation staff have performed a diligent search of Home's records for the Facultative Certificate without success. Bengelsdorf Aff. ¶ 6.

5. Monsanto asserted claims in the Home liquidation, including claims under the Policy. The Liquidator settled the claims with Monsanto for a Class II allowance of \$24,700,000 in the Monsanto Settlement Agreement dated June 6, 2023 subject to court approval. This Court approved the Monsanto Settlement Agreement and the Class II allowance on August 1, 2023. Bengelsdorf Aff. ¶ 7.

6. On August 14, 2023, the Liquidator billed reinsurers for their shares of the Class II allowance. In particular, the Liquidator billed AIG for a sum under the Facultative Certificate. Bengelsdorf Aff. ¶ 8.

7. AIG did not pay the billing, disputing that BFIC issued the Facultative Certificate and reinsured risks under the Policy. Bengelsdorf Aff. ¶ 9.

8. In addition to exchanging information, the Liquidator and AIG entered negotiations to see if the dispute could be resolved on an amicable basis. The negotiation history is set forth in the Bengelsdorf Affidavit. Bengelsdorf Aff. ¶¶ 12-13.

9. AIG and the Liquidator have now negotiated the Settlement Agreement. The principal terms of the settlement are that AIG will pay a sum certain to the Liquidator within ten business days of the Liquidator notifying AIG that the Court has approved the Settlement Agreement (Settlement Agreement ¶ 2), and upon that payment the Liquidator and AIG each release the other from claims relating to the Monsanto Policy, AIG's alleged reinsurance of that Policy, and the alleged Facultative Certificate (Settlement Agreement ¶¶ 3-4). Other provisions are set forth in the Settlement Agreement. Bengelsdorf Aff. ¶ 14.

10. Subject to the Court's control, the Liquidator is authorized to collect debts and moneys due to Home and to compromise such claims, on terms he believes best, by RSA 402-C:25, VI.

11. For the reasons set forth in the Bengelsdorf Affidavit, the Liquidator submits that the Settlement Agreement represents a fair and reasonable resolution of the dispute between the Liquidator and AIG that is in the best interests of the policyholders and creditors of Home. See Bengelsdorf Aff. ¶¶ 15-17.

12. The Liquidator accordingly recommends that the Court approve the Settlement Agreement. See Bengelsdorf Aff. ¶ 18.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion;
- B. Enter an Order in the form submitted herewith approving the Settlement 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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Boston, MA 02110
(617) 309-2600

December 11, 2023

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreement with AIG Property Casualty Company and the Proposed Order were sent this 11th day of December, 2023, by first class mail, postage prepaid to all persons on the attached service list. The Confidential Affidavit of Peter A. Bengelsdorf being filed under seal was not so served.

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

STATE OF NEW HAMPSHIRE

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EXHIBIT A

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE
RESPECTING REINSURANCE CLAIM**

This Settlement Agreement and Mutual Release Respecting Reinsurance Claim (“Settlement Agreement”) is made as of this 6th day of December 2023, by and between AIG Property Casualty Company, formerly known as Chartis Property Casualty Company, AIG Casualty Company and at relevant times Birmingham Fire Insurance Company of Pennsylvania (“BFIC” and collectively with the successor companies “AIG”), on the one hand, and David J. Bettencourt, Insurance Commissioner of the State of New Hampshire, solely in his capacity as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), on the other hand (AIG and the Liquidator are hereinafter referred to collectively as the “Parties”).

WHEREAS, Home issued insurance policies to Monsanto Company (“Monsanto”), including policy No. HEC 9329287 for the period April 1, 1979 to April 1, 1980 (the “Policy”);

WHEREAS, Home is being liquidated pursuant to 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;

WHEREAS, Monsanto submitted proofs of claim in the Home liquidation seeking coverage for certain claims under insurance policies issued by Home, including the Policy;

WHEREAS, Monsanto and the Liquidator entered a Settlement Agreement and Mutual Release (“Monsanto Settlement Agreement”) to resolve claims under the insurance policies, including the Policy;

WHEREAS, the Liquidation Court approved the Monsanto Settlement Agreement and a Class II allowance of \$24,700,000 to Monsanto by order dated August 1, 2023.

WHEREAS, a dispute arose between AIG and the Liquidator as to the existence of facultative reinsurance coverage of the Policy, allegedly issued to Home by BFIC as facultative reinsurance certificate No. C79-56509, for 40% of the risk on the Policy (the “Alleged Reinsurance”);

WHEREAS, the Liquidator has billed AIG under the Alleged Reinsurance (the “Reinsurance Billing”), but AIG has not paid the Reinsurance Billing;

WHEREAS, the Parties, without any determination of liability or coverage, now wish to settle and resolve all disputes between them with respect to the Alleged Reinsurance and the Reinsurance Billing;

WHEREAS, the Parties agree that this Settlement Agreement represents a compromise of disputed matters that is subject to and conditioned upon its approval by the Liquidation Court and further agree that in the event that the Liquidation Court does not approve the Settlement Agreement, this Settlement Agreement shall be null and void and without any force or effect and shall not be admissible in any proceedings between them;

NOW, THEREFORE, in consideration of all the respective transactions contemplated by this Settlement Agreement, and the mutual covenants and representations herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. This Settlement Agreement is conditioned and shall only become effective (the "Effective Date") upon approval by the Liquidation Court. The Liquidator shall move for approval of this Settlement Agreement promptly following execution by all Parties. The Liquidator shall provide AIG with a copy of the order approving this Settlement Agreement by email.

2. Within ten (10) business days of receiving the order approving the Settlement Agreement from the Liquidator, AIG shall pay the Liquidator [REDACTED] (the "Settlement Sum"). AIG agrees that time is of the essence in making payment of the Settlement Sum and agrees to effect such payment, free and clear of and without any deduction, setoff or other reduction, by wire transfer of funds to:

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

3. Subject to the terms of this Settlement Agreement, the Liquidation Court's approval of the Settlement Agreement, and the Liquidator's timely receipt of the Settlement Sum, the Liquidator, in his capacity as such, and on behalf of Home and each of their respective current officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns, irrevocably and unconditionally releases and discharges AIG and each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, from any and all claims, demands, actions and causes of action which the Liquidator, Home, or their subsidiaries, affiliates, predecessors, successors, and assigns, ever had, now have, or hereafter may have against AIG or its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, arising from or related to the Policy, the Alleged Reinsurance, or the Reinsurance Billing.

4. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Settlement Agreement, AIG for itself and on behalf of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns, irrevocably and unconditionally releases and discharges the Liquidator and Home and each of their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns (including any trustee or other statutory successor), from any and all claims, demands, actions, and causes of action which AIG, or its subsidiaries, affiliates, predecessors, successors, and assigns, ever had, now have, or hereafter may have against the Liquidator or Home or their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, all whether

known or unknown, suspected or unsuspected, fixed or contingent, arising from or related to the Policy, the Alleged Reinsurance, or the Reinsurance Billing.

5. This settlement is a compromise, on a without prejudice basis, of a disputed claim for coverage under the Alleged Reinsurance, and the Settlement Sum paid, as specified herein, is not to be construed as an admission of any type on the part of AIG or the Liquidator as to liability or coverage.

6. The Liquidator warrants and represents that he has not assigned, conveyed, or otherwise transferred any claims, demands, causes of action, rights, or obligations related in any way to the Alleged Reinsurance or the Reinsurance Billing to any person or entity.

7. The Parties shall take all further actions as may be necessary to carry out the intent and purpose of this Settlement Agreement and to consummate the transactions contemplated herein.

8. This Settlement 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 exclusive venue for any dispute between the Parties arising out of this Settlement Agreement shall be the Liquidation Court.

9. The Parties acknowledge and agree that, in negotiating and executing this Settlement Agreement, they have relied upon their own judgment and upon the recommendations of their own legal counsel, that they have read this Settlement Agreement and have had the opportunity to consider its terms and effects, and that they have executed this Settlement Agreement voluntarily and with full understanding of its terms and effects. This Settlement Agreement is the product of negotiations between the Parties. No Party shall be charged with having promulgated this Settlement Agreement, and the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement.

10. This Settlement Agreement is entered into solely for the benefit of the Liquidator, Home, and AIG and is not intended to, and does not give or create any rights to or in any person or entity other than the Parties.

11. This Settlement 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 electronic mail to the other Party shall have the same force and effect as an original signature.

12. Subject to the approval of the Liquidation Court required by paragraph 1, each Party hereto represents and warrants that it has the full power and authority to execute, deliver, and perform this Settlement Agreement; that all requisite and necessary approvals have been obtained to consummate the transactions contemplated by this Settlement Agreement; that there are no other agreements or transactions to which it is a party that would render this Settlement Agreement or any part thereof, void, voidable or unenforceable; that each individual signing on behalf of a Party has been duly authorized by that Party to execute this Settlement Agreement on its behalf; and that no claims being released under the terms of this Settlement Agreement have been assigned, sold, or otherwise transferred to any other entity.

13. This Settlement Agreement constitutes the entire agreement and understanding

between the Parties with respect to the subject matter thereof. This Settlement Agreement supersedes all prior agreements and understandings, whether written or oral, concerning such matters.

14. Subject to approval of this Settlement Agreement by the Liquidation Court as required by paragraph 1, each Party represents and warrants that this Settlement Agreement is a legal, valid, and binding obligation, enforceable in accordance with its terms.

15. The Parties, including their attorneys and representatives, will not disclose the economic terms of this Settlement Agreement to anyone other than is necessary to effectuate the terms of this Settlement Agreement; except that the Parties may disclose the economic terms to their attorneys, accountants, reinsurers, retrocessionaires, and auditors for a legitimate business purpose when a specific need for such disclosure arises, and in response to lawful process. The Parties may also disclose the economic terms of this Settlement Agreement in response to a judicial or arbitration panel order compelling disclosure or as may otherwise be required by law or necessary to defend or assert claims by or against any party hereto in a judicial or arbitration proceeding. Notwithstanding the foregoing, nothing in this provision shall prohibit the Parties from disclosing the economic terms of this Settlement Agreement to regulatory entities or in connection with reports or statements they may be required to file or submit to government agencies, or in support of a motion for approval of the Settlement Agreement by the Liquidation Court.

16. All notices to be given under this Settlement Agreement shall be given by email directed to:

If to AIG, to:

J. Marcus Doran
Sr. Director
AIG Claims, Inc.
130 N. 18th St., Suite 2410
Philadelphia, PA 19103
Marcus.Doran@aig.com

and

Karen Baswell
Associate General Counsel, Reinsurance
American International Group, Inc.
1271 Avenue of the Americas, 35th Floor
New York, NY 10020
Karen.Baswell@aig.com

If to the Liquidator, to:

Angela Anglum, Esq.
Vice President Legal Affairs & Corporate Secretary
The Home Insurance Company in Liquidation

61 Broadway 6th Floor
New York, NY 10006
Angela.anglum@homeinsco.com

and
Christopher Bond, Esq.
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397
Christopher.G.Bond@doj.nh.gov

and
Eric A. Smith, Esq.
Verrill Dana LLP
One Federal Street, 20th Floor
Boston, MA 02110
easmith@verrill-law.com

WHEREFORE, the Parties have caused this Settlement Agreement to be executed on their respective behalves by their duly authorized representatives.

AIG PROPERTY CASUALTY COMPANY

By: David A. Bronocco

Name: David A. Bronocco

Title: Attorney-in-Fact

Date: December 7, 2023, and

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

By: Peter A. Benzelsdorf

Name: Peter A. Benzelsdorf

Title: Special Deputy Liquidator