

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

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

**LIQUIDATOR'S MOTION FOR APPROVAL OF
REINSURANCE COMMUTATION AGREEMENT WITH
CONSTELLATION REINSURANCE COMPANY**

NOW COMES Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), in accordance with the Order Establishing Procedures for Review of Certain Agreements to Assume Obligations or Dispose of Assets entered April 29, 2004, and moves that the Court enter an order in the form submitted herewith approving a reinsurance commutation agreement (the "Agreement") between Home and Constellation Reinsurance Company ("Constellation"). As reasons therefor, the Liquidator states as follows:

1. As part of its business, Home entered into reinsurance agreements with numerous reinsurers under which Home ceded and the reinsurers assumed a portion of Home's obligations under policies of insurance or reinsurance agreements written by Home. Collection of reinsurance is the principal asset marshalling task of the Home liquidation.

2. The present motion concerns a commutation agreement (the "Agreement") with Constellation, a financially troubled reinsurer. A redacted copy of the Agreement (with economic terms removed) is attached as Exhibit A. The Agreement is subject to approval by the Court and is not effective until two business days after such approval is granted. Agreement ¶ 3. 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 Constellation Reinsurance Company (“Bengelsdorf Confidential Aff.”) that has been filed under seal herewith.

3. Constellation was placed into rehabilitation by the New York Insurance Department in 1986, and then into liquidation in 1987. In 1992, a plan of reorganization was approved for Constellation, thereby ending its liquidation. Constellation again operated as a solvent reinsurer but did not write new business as its operations were restricted to runoff. In 2002, Constellation increased its asbestos-related “incurred but not reported” (“IBNR”) reserves. As a result, as of December 31, 2002, Constellation had a significant surplus impairment. In response to this impairment, Constellation submitted a plan to eliminate capital impairment pursuant to New York Regulation 141 (the “Plan”), which was approved by the New York Superintendent of Insurance (the “Superintendent”) on January 27, 2004. The Plan involved commutation offers to all cedents to Constellation. Bengelsdorf Confidential Aff. ¶ 2.

4. Under New York law, Constellation had to offer the same terms to all cedents and the terms were non-negotiable. In order to become effective, the proposed commutations had to be accepted by enough cedents so that the effect of their commutations would restore Constellation’s surplus to the required minimum under New York law. Enough cedents accepted the proposed commutations to potentially allow Constellation to restore its reported surplus. On October 29, 2004, the Superintendent granted his approval for Constellation to implement the Plan. Bengelsdorf Confidential Aff. ¶ 3.

5. Home ceded both property and casualty exposures for periods between 1977 and 1985 to Constellation under certain reinsurance agreements. Home also assumed reinsurance risk from Constellation. Bengelsdorf Confidential Aff. ¶ 4.

6. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Agreement. Bengelsdorf Confidential Aff. ¶¶ 2-9. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Agreement is fair and reasonable and that it is in the best interests of the policyholders and other creditors of Home. Bengelsdorf Confidential Aff. ¶ 10.

7. The Agreement and certain supporting materials have been provided to members of the National Conference of Insurance Guaranty Funds' Reinsurance Commutation 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 Aff. ¶ 11.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with Constellation Reinsurance Company;
- B. Enter an Order in the form submitted herewith approving the Agreement; and
- C. Grant such other and further relief as justice may require.


Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF
INSURANCE OF THE STATE OF NEW HAMPSHIRE,
SOLELY IN HIS CAPACITY AS LIQUIDATOR OF THE
HOME INSURANCE COMPANY,

By his attorneys,

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January 12, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with Constellation Reinsurance Company and the Proposed Order Approving Motion for Approval of Reinsurance Commutation Agreement with Constellation Reinsurance Company were sent, this 12th day of January, 2005, by first class mail, postage prepaid to all persons on the attached service list. The accompanying Confidential Affidavit was not so served.



Eric A. Smith

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