

**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**

**MOTION FOR APPROVAL OF REINSURANCE  
COMMUTATION AGREEMENT WITH ANCON**

Roger A. Sevigny, Commissioner of Insurance for 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 Ancon Insurance Company, Inc., formerly known as Ancon Insurance Company, S.A. (“Ancon”). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Commutation Agreement between the Liquidator and Ancon. 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 Ancon (“Bengelsdorf Confidential Affidavit”) submitted herewith under seal.

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 under policies of insurance or reinsurance agreements written by Home. Collection of reinsurance is the principal asset-marshalling task of the Home liquidation. Bengelsdorf Confidential Affidavit ¶ 3.

3. Home entered a fronting agreement with Ancon under which Home “fronted” for Ancon by writing certain risks in the Excess and Casualty Reinsurance Association (“ECRA”) pool for periods from 1980 through 1982 which were then fully reinsured by Ancon under a quota share reinsurance agreement. This reinsurance agreement is attached as Exhibit A to the Commutation Agreement. The Liquidator seeks to recover from Ancon the value of Home’s ceded reinsurance balances under the reinsurance agreement. Bengelsdorf Confidential Aff. ¶ 4.

4. The Commutation Agreement provides for the commutation of the reinsurance agreement, which is the only ceded or assumed business Home has with Ancon. The Commutation Agreement provides for the full and final settlement of all past, present and future obligations and liabilities under the reinsurance agreement for a payment of sum certain to the Liquidator. Commutation Agreement ¶ 2, 5. Bengelsdorf Confidential Aff. ¶ 5.

5. The Commutation Agreement provides that Ancon will pay the commutation sum to the Liquidator in two forms: (a) by authorizing the Liquidator to draw down a letter of credit and (b) by paying the remainder by wire transfer within fourteen days of the Court’s approval of the Commutation Agreement. Commutation Agreement ¶ 2. The other provisions of the Commutation Agreement, including mutual releases (Commutation Agreement ¶¶ 5-6), are set forth in the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 7.

6. 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 objection to the Commutation Agreement. See Bengelsdorf Confidential Aff. ¶ 9.

7. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶¶ 4-9. 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 and uncertainty in the collection of reinsurance. See Bengelsdorf Confidential Aff. ¶ 10.

WHEREFORE, the Liquidator respectfully requests that this Court:

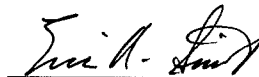
- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with Ancon;
- B. Enter an Order in the form submitted herewith approving the Commutation Agreement; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

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

By his attorneys,  
KELLY A. AYOTTE  
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



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

January 8, 2009

**Certificate of Service**

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with Ancon and the Proposed Order Approving Reinsurance Commutation Agreement with Ancon were sent, this 8th day of January, 2009, by first class mail, postage prepaid to all persons on the attached service list. The accompanying Confidential Affidavit was not so served.



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Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of  
The Home Insurance Company  
Docket No. 03-E-0106

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

Peter Van Tol, Esq.  
Lovells  
590 Madison Avenue  
New York, New York 10022

Gail M. Goering, Esq.  
Adam Goodman, Esq.  
Eric Haab, Esq.  
Lovells  
One IBM Plaza  
330 N. Wabash Avenue, Suite 1900  
Chicago, Illinois 60611

Peter G. Callaghan, Esq.  
Preti, Flaherty, Beliveau, Pachos  
& Haley, PLLP  
57 North Main Street  
P.O. Box 1318  
Concord, New Hampshire 03302-1318

George T. Campbell, III, Esq.  
Robert A. Stein, Esq.  
Robert A. Stein & Associates, 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

Jack B. Gordon, Esq.  
Fried, Frank, Harris, Shriver  
& Jacobson, LLP  
1001 Pennsylvania Avenue  
Washington, D.C. 20004

Stephan P. Parks, Esq.  
Doreen F. Connor, Esq.  
Wiggin & Nourie, P.A.  
670 North Commercial Street, Suite 305  
P.O. Box 808  
Manchester, New Hampshire 03105-0808

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

David H. Simmons, Esq.  
Mary Ann Etzler, Esq.  
de Beaubien, Knight, Simmons,  
Mantzaris & Neal, LLP  
332 North Magnolia Avenue  
P.O. Box 87  
Orlando, Florida 32801

**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, the New Hampshire Insurance Commissioner, solely in his capacity as Liquidator (the "Liquidator") of The Home Insurance Company, 59 Maiden Lane, New York, New York ("Home") and Ancon Insurance Company, Inc., 100 Bank Street, Burlington, Vermont ("Ancon"), formerly known as Ancon Insurance Company, S.A., referred to herein as ("Ancon"). The Liquidator and Ancon are referred to collectively herein as the "Parties."

**WITNESSETH:**

**WHEREAS**, Home was a member of the Excess Casualty Reinsurance Association Pool (the "ECRA Pool") and issued certain reinsurance contracts assuming liabilities through the ECRA Pool and which Home, in turn, retroceded to Ancon pursuant to Quota Share Reinsurance Agreement on which Ancon participated from January 1, 1980 through December 31, 1982 (the "Reinsurance Agreement"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference;

**WHEREAS**, Ancon provided Home with Intesa Sanpaolo S.p.a. Letter of Credit No. [REDACTED] in the amount of \$ [REDACTED] which Ancon has maintained for the benefit of Home (the "LOC");

**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 "Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home; 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 Agreement 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

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respect to the Reinsurance Agreement and, in consequence thereof, to 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 Court (the "Effective Date"). This Agreement is conditioned upon approval by the Court and in the event that the 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 payable to Home for the commutation of the Reinsurance Agreement is \$ [REDACTED] (the "Settlement Sum"). The Settlement Sum shall be satisfied as follows: (a) at any time after the Effective Date, Home shall be entitled to draw down in full on the LOC, which has a value of \$ [REDACTED]; and (b) within fourteen (14) days after the Effective Date, Ancon shall pay \$ [REDACTED] to Home via wire transfer as follows:

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

in full and final settlement of any and all past, present and future obligations and liabilities due or potentially due under the Reinsurance Agreement, with time being of the essence in the performance by Ancon in effecting such payment. 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 Ancon fails to timely pay any portion of the Settlement Sum in accordance with Paragraph 2, it shall pay (a) interest on any unpaid amount at [REDACTED] per annum from the Effective Date; and (b) any reasonable costs, including reasonable attorneys' fees, incurred by the Liquidator or 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, if any, in respect of late payment as determined and calculated as aforesaid shall constitute a full and final settlement and release hereunder as if payment of the Settlement Sum had been made in full.

4. Notwithstanding the provisions of Paragraph 3, in the event that Ancon fails to pay any portion of the Settlement Sum within fourteen (14) days of the Effective Date (and notwithstanding and without prejudice to any claim that may be asserted by the Liquidator for interest and Collection Costs), the Liquidator shall be entitled, at his sole discretion and election, to either seek enforcement of this Agreement or, by notice in writing to Ancon, to terminate this Agreement and return all amounts already paid, in which event (a) this Agreement shall be null and void; (b) the *status quo ante* of the Parties shall be fully restored; and (c) all of the rights and obligations of the Parties with respect to the Reinsurance Agreement shall be fully reinstated as if this Agreement had never been made.

5. Subject to the terms and conditions of this Agreement and to the timely payment in full by Ancon 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 Ancon, 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 Ancon by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurance Agreement. Additionally, the Liquidator fully understands and expressly waives Home's rights and benefits with respect to the Reinsurance Agreement under any provision of law which substantially provides that:

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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 the terms and conditions of this Agreement and in consideration of the release of Ancon pursuant to Paragraph 5 above, Ancon, 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 Ancon ever had, now has, or hereafter may have against the Liquidator and/or Home by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurance Agreement. Additionally, Ancon fully understands and expressly waives its rights and benefits with respect to the Reinsurance Agreement 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 instrument 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.

8. If any provision of this Agreement is 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 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.

9. Subject to the provisions of paragraphs 1 and 4, the Parties hereby agree that this Agreement shall take precedence over and supersede the Reinsurance Agreement 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 Agreement. 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 Agreement.

10. 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.

11. 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 Agreement. 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 Agreement, other than with respect to the terms and conditions herein contained.

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12. (A) Ancon 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 Ancon to be bound by its terms; and (B) the Liquidator represents and warrants that, subject to the approval of the Court as provided in paragraph 1, 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; and 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 and the Liquidator to be bound by its terms.

13. 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. 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 Agreement commuted and released hereunder.

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

15. 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 the Court.

16. 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.

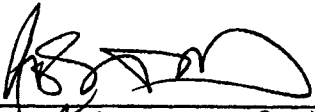
17. The Parties, without further consideration, agree to execute and deliver such other documents and take such other action as may be necessary to effect and implement this Agreement.

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 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 Ancon Insurance Company, Inc.

By:  Date: December 15, 2008  
Name: A.B.S. Lowrey  
Title: V.P. Ancon Ins Co ACH

Roger A. Sevigny, New Hampshire Insurance Commissioner, solely in his capacity as Liquidator of The Home Insurance Company

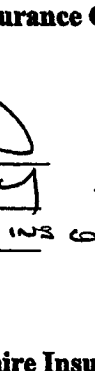
By:  Date: December 11, 2008  
Name: Jonathan Rosen  
Title: Chief Operating Officer of The Home Insurance Company in Liquidation

Exhibit A

**QUOTA SHARE REINSURANCE AGREEMENT**  
made and entered into

by and between

**THE HOME INSURANCE COMPANY**  
(a Member of Excess and Casualty Reinsurance  
Association, and hereinafter referred to as the  
"Member")

and

**ANCON INSURANCE COMPANY, S.A.**  
(hereinafter referred to as the "Retrocessionaire")

**ARTICLE I**

**UNDERTAKING**

The Member agrees to cede and the Retrocessionaire agrees to assume a quota share of the Member's participation in the Excess and Casualty Reinsurance Association, hereinafter referred to as ECRA, equal to the ratio that the number of shares of the Retrocessionaire shown in Item 2 of the attached Schedule bears to the total number of shares of the Member shown in the said Item 2 for the syndicate year shown in Item 3 of the attached Schedule. The Member and the Retrocessionaire agree to accept their respective duties, liabilities and obligations as set forth in this Agreement and the Retrocessionaire further agrees to assume the aforementioned quota share of any and all expenses, obligations or withholdings allocated to the Member in connection with the membership of the said Member in ECRA.

**ARTICLE II**

**FOLLOW THE FORTUNES**

Except as otherwise provided herein, the Retrocessionaire, to the extent of its interest assumed under this Agreement, shall follow in every respect the fortunes and actions of the Member with respect to the said Member's participation and membership in ECRA. Thus, the Retrocessionaire's obligation to follow the said fortunes and actions applies to matters arising out of membership of the Member in ECRA and to those matters arising out of reinsurance assumed by the Member through participation in ECRA.

In the event of the termination of this Agreement the obligation of the Retrocessionaire to follow the fortunes and actions of the Member shall nonetheless continue with respect of all matters which arise out of the membership and participation of the Member in ECRA and which relate to this Agreement until all such matters have been finally settled.



### ARTICLE III

#### COMMENCEMENT AND TERMINATION

This Agreement shall commence on the date indicated in Item 4 of the attached Schedule and shall continue until terminated and apply to any business ceded on or after that date. Subsequent amendment of this agreement shall be in writing and endorsed by a responsible officer of the respective parties.

The Member or the Retrocessionaire may terminate this Agreement on December 31st of any year by sending written notice of such termination to the other party hereto by registered mail. The number of months that such notice must be given prior to the December 31st on which termination is to become effective is shown in Item 5 of the attached Schedule.

The Member may terminate this Agreement without notice either retroactively to the preceding December 31st or on any date subsequent thereto if the Retrocessionaire: transfers its portfolio of business to another entity; is acquired by, merged, amalgamated, or consolidated with another company; undergoes a material change in its management, control or ownership; loses its paid up capital in whole or in part; becomes insolvent, is placed in rehabilitation, conservatorship, receivership or liquidation; has any authorization to do business suspended or withdrawn; repudiates, contravenes the provisions of, or fails to fulfill its obligations under this Agreement; has its principal office in or is organized under the laws of a country involved in a declared or undeclared war; or manifests prospective or actual inability to fulfill its obligations under this Agreement. Such inability shall be deemed to exist if postal services are interrupted for more than two months, or if the Retrocessionaire is unable to make full payment to the USA without delay due to currency exchange regulations or procedures.

If the Member's participation in ECRA is terminated or is reduced by ECRA, the Member may thereupon cancel this Agreement without notice to the Retrocessionaire. Such cancellation shall be effective as of the date of such production or termination.

In the event this Agreement is terminated or the Retrocessionaire's share(s) as shown in Item 2 of the attached Schedule, is reduced, the Member may thereupon effect a portfolio withdrawal or require a securities escrow account from the Retrocessionaire or any combination of the two events. Such withdrawal or securities escrow account shall be made by debiting an amount equal to the Retrocessionaire's share as of the date of such termination or reduction, of all outstanding liabilities including but not limited to unearned premium reserves, contingency commission reserves and all loss reserves including reserves for losses incurred but not reported. The amount of such outstanding liabilities and loss reserves shall be the amounts established by the Underwriting Manager of ECRA, Excess and Treaty Management Corporation, herein referred to as ETMC. ETMC may require a securities escrow account pursuant to this agreement unless and until all liability for loss or expense of the Member due to Member's reinsurance of insurance policies which has been retroceded to the Retrocessionaire has been satisfied.

In the event that the Member withdraws the portfolio, the Retrocessionaire shall thereby be relieved of all further liability in relation thereto except that should any unsatisfied liability to either the Member or to the Retrocessionaire later be found, an adjustment shall be made to correct such inequity.

#### ARTICLE IV

##### CONTINGENT COMMISSION

The Management Agreement between the Member and ETMC provides for the payment of a contingent commission to ETMC. The Retrocessionaire's share of such contingent commission shall be calculated as if the Retrocessionaire were a Member of ECRA.

#### ARTICLE V

##### OVERRIDING COMMISSION

The Retrocessionaire shall pay to the Member an overriding commission which shall be calculated by multiplying the gross net written premium ceded under this Agreement by the percentage shown in Item 6 of the attached Schedule. The definition of the term "gross net written premium," as used herein, is set forth in the Management Agreement between the Member and ETMC.

#### ARTICLE VI

##### FEDERAL EXCISE TAX

The Retrocessionaire shall pay to the Member the full amount of U.S. Federal Excise Tax which may become due because the Retrocessionaire is an alien reinsurer.

#### ARTICLE VII

##### ACCOUNTS AND SETTLEMENTS

Statements of account shall be submitted to the Retrocessionaire at the interval shown in Item 7 of the attached Schedule and the Retrocessionaire will receive statements of account from the party specified in Item 8 of the attached Schedule.

Balances due to the Retrocessionaire shall be settled as soon as possible but balances due from the Retrocessionaire shall be settled immediately upon receipt of a statement of account. Balances of account will be settled between the Retrocessionaire and the party specified in Item 9 of the attached Schedule. Settlements of balances due shall not be delayed because of any error in an account or because of any dispute as to the accuracy of an account. Any such error shall be adjusted in a subsequent account if the party making the request regarding the accuracy of the account gives written notice specifying its objection to the account.

#### ARTICLE VIII

##### SECURITY FOR RESERVES

The Retrocessionaire shall provide the Member with security for the reserves specified in Item 10 of the attached Schedule in the form as shown in Item 11 of attached schedule.

## ARTICLE IX

### RETROCESSION PROHIBITION

The Retrocessionaire shall not reinsure or retrocede except by way of excess of loss protection any part of the business assumed under this Agreement without the express written permission of the Member. Nevertheless, nothing in this Article shall be deemed to prohibit intercompany pooling arrangements among members of a group of companies under common ownership.

## ARTICLE X

### ERRORS AND OMISSIONS

Errors and omissions made by either party hereto shall not relieve the other of its contractual obligations but shall be corrected as soon as possible upon discovery.

## ARTICLE XI

### INSOLVENCY

In the event of the insolvency of the Member, this reinsurance shall be payable directly to the Member, or to its liquidator, receiver, conservator or statutory successor on the basis of the liability of the Member without diminution because of the insolvency of the Member or because the liquidator, receiver, conservator or statutory successor of the Member has failed to pay all or a portion of any claim. It is agreed, however, that the liquidator, receiver, conservator or statutory successor of the Member shall give written notice to the Retrocessionaire of the pendency of a claim against the Member, indicating the policy or the bond reinsured, which claim would involve a possible liability on the part of the Retrocessionaire within a reasonable time after such claim is filed in the conservation or liquidation proceeding or in the receivership, and that during the pendency of such claim, the Retrocessionaire may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defense or defenses that it may deem available to the Member or its liquidator, receiver, conservator or statutory successor. The expense thus incurred by the Retrocessionaire shall be chargeable, subject to the approval of the court, against the Member as a part of the expense of conservation or liquidation to the extent of the pro-rata share of the benefit which may accrue to the Member solely as a result of the defense undertaken by the Retrocessionaire.

The reinsurance shall be payable by the Retrocessionaire to the Member or to its liquidator, receiver or statutory successor, except as provided by Section 315 of the New York Insurance Law or except (a) where the contract specifically provides another payee of such reinsurance in the event of the insolvency of the Member, and (b) where the Retrocessionaire with the consent of the direct insured or insureds has assumed such policy obligations of the Member as direct obligations of the Retrocessionaire to the payees under such policies and in substitution for the obligations of the Member to such payees.

## ARTICLE XII

### ARBITRATION

As a precedent to any right of action hereunder, if any dispute shall arise between the Member and the Retrocessionaire with reference to the interpretation of this Agreement or their rights with respect to any transaction involved, whether such dispute arises before or after termination of this Agreement, such dispute, upon the written request of either party, shall be submitted to three arbitrators, one to be chosen by each party, and the third by the two so chosen. If either party refuses or neglects to appoint an arbitrator within thirty days after the receipt of written notice from the other party requesting it to do so, the requesting party may appoint two arbitrators. If the two arbitrators fail to agree in the selection of a third arbitrator within thirty days of their appointment, each of them shall name two, of whom the other shall decline one and the decision shall be made by drawing lots. All arbitrators shall be executive officers or retired executive officers of insurance or reinsurance companies not related to either party to this Agreement.

The arbitrators shall interpret this Agreement as an honorable engagement and not as merely a legal obligation; they are relieved of all judicial formalities and may abstain from following the strict rules of law, and they shall make their award with a view to effecting the general purpose of this Agreement in a reasonable manner rather than in accordance with a literal interpretation of the language. Each party shall submit its case to the arbitrators within thirty days of the appointment of the third arbitrator.

The decision in writing of any two arbitrators, when filed with the parties hereto, shall be final and binding on both parties. Judgment may be entered upon the final decision of the arbitrators in any court having jurisdiction. Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration. Said arbitration shall take place in New York, New York unless some other place is mutually agreed upon by the Member and the Retrocessionaire.

This Article XII constitutes a separate and independent agreement between the Member and the Retrocessionaire and shall remain in force even after cancellation of this Quota Share Reinsurance Agreement and even if the said Agreement is found wholly or partially void or is disputed. The arbitrators shall decide upon the validity of this Quota Share Reinsurance Agreement and, in the case of its invalidity, upon any dispute between the parties.

ARTICLE XIII

SERVICE OF SUIT - NON-ADMITTED REINSURERS

In the event of the failure of the Retrocessionaire to pay an amount claimed to be due hereunder, the Retrocessionaire, at the request of the Member shall submit to the jurisdiction of any Court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of New York State.

Service in process in any such suit may be made upon Mendes & Mount, 3 Park Avenue, New York, New York 10016, and in any suit instituted against the Retrocessionaire upon this Agreement, the Retrocessionaire will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

Mendes & Mount are authorized and directed to accept service of process on behalf of the Retrocessionaire in any such suit and/or upon the request of the Member to give a written undertaking to the Member that they will enter a general appearance on behalf of the Retrocessionaire in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Retrocessionaire hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in any statute or his successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Member or any beneficiary hereunder arising out of this Agreement, and hereby designates Mendes & Mount as the firm to whom the said officer is authorized to mail such process or a true copy thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed.

Date: July 17, 1980

THE HOME INSURANCE CO.

(Member)

Place: New York, New York

By: E. H. H. H. H.

Title: Assistant Vice President

Date: Aug. 18, 1980

Home Insurance Company, S.A.  
(Retrocessionaire)

Place: Hamilton, Bermuda

By: Chlorine

Title: President

SCHEDULE NO. 1

THE HOME INSURANCE COMPANY and ANCON INSURANCE COMPANY, S.A.  
 (Member) (Retrocessionaire)

This Schedule shall be a part of the Quota Share Reinsurance Agreement which commenced on the date shown in Item 4 below, shall take effect on the date shown in Item 1 below, may be amended by the issuance of any subsequent schedule, and shall continue in effect subject to any amendment until all matters related to the said Agreement have been finally settled. Reference to Item 2 through 11 shown below are found in the Articles of the said Agreement designated in parenthesis.

Item

1. (No cross reference) Inception date of this Schedule: January 1, 1980
2. (Art. I & III) Number of Retrocessionaire's shares: 10  
 Number of Member's Shares: 69
3. (Art. I) Syndicate Year 1980 Total ECRA shares: 979
4. (Art. III) Inception date of the Agreement: January 1, 1980
5. (Art. III) Number of months notice for termination: 5 months
6. (Art. V) Overriding Commission: 1%
7. (Art. III & VII) Accounts-Interval: 30 days after end of each month
8. (Art. VII) Retrocessionaire to receive accounts from: ECRA
9. (Art. VII) Accounts to be settled between Retrocessionaire and: ECRA
10. (Art. VIII) Reserves to be secured: Unearned Premium Reserves  
Contingency Commission Reserves  
Case Loss Reserves  
I.B.N.R. Loss Reserves
11. (Art. VIII) Type of security for reserves: Securities Escrow Account

For and on behalf  
of the Member

By: E. H. Haberle

Title: Assistant Vice President

Date: July 17, 1980

Place: New York, New York

For and on behalf  
of the Retrocessionaire.

By: Chorman

Title: President

Date: Aug. 18, 1980

Place: Hamilton, Bermuda