

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
COMMUTATION AGREEMENT WITH DOMINION**

Roger A. Sevigny, Insurance Commissioner for 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 Reinsurance Commutation Agreement, Settlement and Release ("Commutation Agreement") between The Dominion Insurance Company Limited ("Dominion") and the Liquidator. As reasons therefor, the Liquidator states as follows:

1. Dominion entered into certain reinsurance agreements (the "Reinsurance Agreements") with Home's United Kingdom Branch ("Home U.K."), which participated in the American Foreign Insurance Association ("AFIA"). In the Reinsurance Agreements, Dominion ceded to Home, and Home accepted specified shares, of Dominion's liabilities under other reinsurance agreements. Upon Home's placement in liquidation, Dominion filed a proof of claim in the Home liquidation regarding claims under the Reinsurance Agreements. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Commutation Agreement with Dominion and Claim Recommendation ("Bengelsdorf Aff.") ¶ 3.

2. The Commutation Agreement was negotiated between Dominion and ACE INA Services UK Limited, acting for Century Indemnity Company ("CIC"). CIC handles AFIA claim related matters in accordance with the Claims Protocol between CIC and the Liquidator

approved by the Court on November 12, 2004. The Liquidator accepted CIC's recommendation and entered the Commutation Agreement. Bengelsdorf Aff. ¶ 4.

3. The Commutation Agreement is a settlement of Dominion's reinsurance claims against Home. It is analogous to the Liquidator's settlement agreements with policyholders, not to the Liquidator's other commutation agreements, which generally resolve claims by Home against a reinsurer of Home. Bengelsdorf Aff. ¶ 5.

4. The Commutation Agreement reflects a resolution of the proof of claim and all matters under the Reinsurance Agreements for an allowance in the amount of \$1,750,000 (which is in addition to previously allowed Dominion claims in the amount of \$601,866.15). A copy of the Commutation Agreement is attached as Exhibit A hereto. The Commutation Agreement is subject to approval by the Court. Commutation Agreement ¶ 1. Bengelsdorf Aff. ¶ 6.

5. Pursuant to the Commutation Agreement, the Liquidator recommends allowance of Dominion's claim in the amount of \$1,750,000 as a Class V priority claim under RSA 402-C:44. Allowance of the recommended amount as a Class V claim will fully and finally resolve the proofs of claim and all claims Dominion has under the Reinsurance Agreements. Distributions based on that allowance will be made at the same intervals and at the same percentages as distributions to other Class V creditors of Home. Commutation Agreement ¶ 2. Bengelsdorf Aff. ¶ 7.

6. The Commutation Agreement is intended to resolve the proof of claim and all remaining claims under the Reinsurance Agreements. See Commutation Agreement ¶ 2. To that end, the Commutation Agreement provides for mutual releases of all claims between the Liquidator and Dominion arising from or related to the proofs of claim or the Reinsurance Agreements. Id. ¶¶ 3, 4, 6. Bengelsdorf Aff. ¶ 8.

7. The Commutation Agreement reflects a compromise of the claims asserted in the proof of claim. It has been reviewed by the Reinsurance Department, under the supervision of the Special Deputy Liquidator, which has extensive experience in evaluating claim values under reinsurance agreements. Based on that review, the Liquidator recommends approval of the Commutation Agreement and allowance of the \$1,750,000 settlement amount as a Class V claim of Dominion in accordance with RSA 402-C:45 and RSA 402-C:44. Bengelsdorf Aff. ¶ 9.¹

8. The Liquidator's agreement to a negotiated resolution with Dominion and the Court's approval of such agreements are authorized by the broad authority of the Liquidator to "compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court," RSA 402-C:45, I, and the authority of the Court to "approve, disapprove or modify any report on claims by the liquidator." RSA 402-C:45, II. It is also an appropriate exercise of the Liquidator's authority ("[s]ubject to the court's control") 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.

9. In his Motion for Approval of Settlement with Northwestern National Insurance Company and Settlement Agreement and Assignment of Distribution with AK Steel Corporation ¶¶ 19-23 (February 16, 2006), the Liquidator provided his analysis of New Hampshire law, including RSA 402-C:40 III, as it applies to comprehensive policy coverage compromise and settlement in an insurer liquidation context. Although the compromise in this case involves a settlement of reinsurance claims, rather than insurance claims, that analysis is also applicable to the proposed Commutation Agreement with Dominion.

¹ Because this Commutation Agreement is purely a determination of "inwards" reinsurance claims against Home by a claim allowance, and not a resolution of "outwards" claims by Home against a reinsurer, it is not an asset collection matter, and the Liquidator has not consulted with the National Conference of Insurance Guaranty Funds as he does concerning significant "outwards" commutations.

10. The Liquidator believes that the Commutation Agreement is fair and reasonable and that it is in the best interests of the policyholders and other creditors of Home. Bengelsdorf Aff. ¶ 10.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion;
- B. Enter an Order in the form submitted herewith approving the Commutation Agreement, approving the Liquidator's claim recommendation, and allowing Dominion's claim as a Class V claim in the aggregate amount of \$1,750,000; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

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

By his attorneys,
MICHAEL A. DELANEY
ATTORNEY GENERAL

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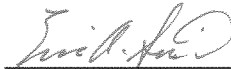


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September 15, 2010

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Commutation Agreement with Dominion, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 15th day of September, 2010, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith
NH Bar ID No. 16952

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

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**REINSURANCE COMMUTATION
AGREEMENT, SETTLEMENT AND RELEASE**

THIS REINSURANCE COMMUTATION AGREEMENT, SETTLEMENT AND RELEASE (the "Agreement") is made and entered into by and between The Dominion Insurance Company Limited of 2 Knoll Rise, Orpington, Kent BR6 0NX ("Dominion") and 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, United States of America ("Home"). Dominion, the Liquidator and Home are referred to collectively herein as the "Parties."

WITNESSETH:

WHEREAS, Home, through its United Kingdom Branch ("Home U.K."), participated in the American Foreign Insurance Association ("AFIA"), in which capacity it entered into certain reinsurance agreements with Dominion, as set forth in the attached Schedule A, pursuant to which Dominion ceded to Home, and Home accepted from Dominion, a certain share of Dominion's liabilities as more fully reflected in the percentages of participation and periods for each respective reinsurance agreement (the "Dominion-AFIA 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;

WHEREAS, Dominion seeks payment from Home under the Dominion-AFIA Reinsurance Agreements, in relation to which Dominion has submitted a proof of claim in the Home estate, which has been assigned Proof of Claim Nos. RAHM 331425, and which together with any other proof of claim that Dominion may have otherwise filed or could subsequently seek to file in the Home estate with respect to Dominion-AFIA Reinsurance Agreements are hereby defined as the "Dominion-AFIA Proofs of Claim;"



WHEREAS, the Joint Provisional Liquidators appointed in the United Kingdom and insurance companies and syndicates ceding liabilities into AFIA (the "AFIA Cedents"), with the approval of the Liquidator, entered into an agreement leading to a Scheme of Arrangement with respect to Home U.K.'s AFIA liabilities (the "Scheme"), sanctioned by The High Court of England and Wales. The agreement was also approved by the New Hampshire Supreme Court. The Scheme entitled the AFIA Cedents, including Dominion, to share in Scheme proceeds under the terms of the Scheme based on the allowance of their claims into the Home estate;

WHEREAS, Home has previously issued Notices of Determination with respect to Dominion-AFIA Proofs of Claim in the amount of \$601,866.15 (the "NODs");

WHEREAS, after negotiations between Dominion and ACE INA Services UK Limited (acting for Century Indemnity Company, which approves this commutation), the Parties have agreed that subject to the terms of this Agreement, and in addition to the amounts previously set forth in the NODs, the value of Dominion's claim in the Home estate under the Dominion-AFIA Reinsurance Agreements shall be fully and finally established in the amount of U.S. Dollars \$1,750,000.00 (the "Recommended Allowance");

WHEREAS, the Parties agree that this Agreement is subject to and conditioned upon approval by the Liquidation Court. In the event that the Liquidation Court does not so approve this Agreement, it shall be null and void ab initio and without any force or effect; 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 Dominion-AFIA Reinsurance Agreements 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 Dominion-AFIA Reinsurance Agreements 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 (the "Effective Date"), upon approval by the Liquidation Court. In the event that the Liquidation Court does not approve this Agreement then it shall be (a) null and void, shall be and remain of no force and effect and the Parties shall be returned to *status quo ante*, as if no such agreement was ever reached; and (b) inadmissible for any purpose in any litigation, arbitration or other dispute resolution forum between the Parties.

2. Approval of this Agreement by the Liquidation Court shall constitute approval of the Recommended Allowance into the Home estate as a Class V priority claim under N.H. RSA 402-C:44 in favor of Dominion (the "Allowance"), thereby entitling Dominion to receive distributions on the Allowance at the same intervals and at the same percentages as other Class V creditors. The Parties agree that the Allowance shall constitute a full and final settlement of any and all past, present and future liabilities due or potentially due under the Dominion-AFIA Reinsurance Agreements and that the Allowance fully and finally extinguishes the Dominion-AFIA Proofs of Claim, which shall be deemed resolved with prejudice and Dominion hereby agrees that it shall be forever barred and precluded from filing any subsequent Dominion-AFIA Proof of Claim in the Home estate. This Agreement does nothing to impair any rights that Dominion has under the Scheme.

3. Subject to the terms of and conditioned upon the Liquidation Court approving this Agreement, Dominion, for itself, and on behalf of its respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns (including any trustee or other statutory successor), irrevocably and unconditionally releases and discharges the Liquidator and Home and each of their 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 Dominion-AFIA Proofs of Claim and/or the Dominion-AFIA Reinsurance Agreements in law, admiralty or equity, which Dominion, its subsidiaries, affiliates, predecessors, successors and assigns, ever had, now has or hereafter may have against the Liquidator and/or Home or their 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 Dominion-AFIA Proofs of Claim and/or the Dominion-AFIA Reinsurance Agreements.

4. Subject to the terms of and conditioned upon the Liquidation Court approving this Agreement and in consideration of the release of Home and the Liquidator pursuant to Paragraph 5 above, the Liquidator, in his capacity as such, and on behalf of Home and each of their officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, and their successors and assigns (including any liquidator or statutory successor), irrevocably and unconditionally releases and discharges Dominion and its 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 Dominion-AFIA Reinsurance Agreements, in law, admiralty or equity, which the Liquidator, Home, and/or their subsidiaries, affiliates, predecessors, successors and assigns, ever had, now has or hereafter may have against Dominion 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 Dominion-AFIA Reinsurance Agreements and/or the Dominion-AFIA Proofs of Claim.



5. 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 Dominion-AFIA Reinsurance Agreements commuted and released hereunder.

6. The Parties hereby agree that this Agreement, upon approval by the Liquidation Court, shall take precedence over and supersede the Dominion-AFIA Reinsurance Agreements 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 Dominion-AFIA Reinsurance Agreements. 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 Dominion-AFIA Reinsurance Agreements.

7. This instrument embodies the final, complete and entire agreement between the Parties and is the product of their own independent legal advice and analysis. 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. 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

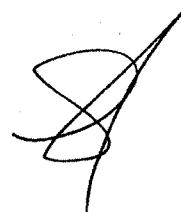


any way to affect the validity of this Agreement, or any part hereof, or the rights of such party to thereafter enforce each and every such provision.

10. 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 Dominion-AFIA Reinsurance Agreements. 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 Dominion-AFIA Reinsurance Agreements, other than with respect to the terms and conditions herein contained.

11. (A) Dominion 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 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.

12. 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.

A handwritten signature or scribble consisting of several overlapping loops and lines, located in the bottom right corner of the page.


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

14. 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

15. 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 the Dominion-AFIA Reinsurance Agreements, the Dominion-AFIA Proofs of Claim or this Agreement.

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

For and on behalf of The Dominion Insurance Company Limited

By: 
Name: SIMON JANES
Title: DIRECTOR

Date: September 1, 2010

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

By: _____
Name: Peter A. Bengelsdorf
Title: Special Deputy Liquidator

Date: September __, 2010

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15. 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 the Dominion-AFIA Reinsurance Agreements, the Dominion-AFIA Proofs of Claim or this Agreement.

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

For and on behalf of The Dominion Insurance Company Limited

By: _____
Name: _____
Title: _____

Date: September __, 2010

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

By: Peter A. Bengelsdorf
Name: Peter A. Bengelsdorf
Title: Special Deputy Liquidator

Date: September 1, 2010