

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 FIRST STATE**

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") among the Liquidator and First State Insurance Company ("First State") and others. As reasons for this motion, the Liquidator respectfully states:

1. This motion requests approval of a Reinsurance Commutation Agreement, Settlement and Release ("Commutation Agreement") between the Liquidator on behalf of The Home Insurance Company and as successor in interest to the Home Syndicate (NYIE), the Home Indemnity Company and City Insurance Company (NJ) (collectively, "Home"), on the one part, and First State Insurance Company ("First State"), in its own independent capacity and pursuant to an assumption reinsurance agreement effective as of December 31, 1992 between and among First State, New England Reinsurance Corporation on its own behalf and as successor in interest to the First State Syndicate (NYIE) (collectively, "NERCO"), and New England Insurance Company ("NEIC"), on the other part, (First State, NERCO and NEIC hereafter collectively referred to as the "First State Pool Companies"). 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 Motion for Approval of Reinsurance Commutation Agreement with First State (“Bengelsdorf Confidential Affidavit”) submitted herewith under seal. The Commutation Agreement is subject to approval by the Court. Commutation Agreement ¶ 2.

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 previously entered into a commutation agreement with NERCO, NEIC, and First State dated as of March 21, 2003 that commuted certain reinsurance assumed and ceded treaty agreements among them. That agreement excluded the business that is the subject of this commutation. Bengelsdorf Confidential Affidavit ¶ 4.

4. The Commutation Agreement that is the subject of this Confidential Affidavit addresses all remaining reinsurance obligations among the parties, except one. It covers facultative reinsurance assumed and ceded between Home and the First State Pool Companies and facultative and treaty business assumed and ceded through Home’s and the First State Pool Companies’ participations in two reinsurance pools (the “ECRA Pool” and the “CMC Pool”). Commutation Agreement ¶ 1. The Commutation Agreement excludes one reinsurance agreement referred to as the “Whole Account Treaty.” Commutation Agreement ¶ 1(c). Bengelsdorf Confidential Aff. ¶ 5.

5. The Commutation Agreement provides for the full and final settlement of all past, present and future obligations and liabilities under the commuted reinsurance agreements for a sum certain paid to the Liquidator. Commutation Agreement ¶ 3. Bengelsdorf Confidential Aff. ¶ 6.

6. The valuation of the commutation reflects the setoff of amounts assumed by Home. Mutuality exists for setoff purposes because the First State Pool was formed in 1993, and the pool agreement fits within the principles articulated in In the Matter of the Liquidation of The Home Ins. Co., 157 N.H. 543 (2008). Bengelsdorf Confidential Aff. ¶ 8.

7. The Commutation Agreement provides that First State will pay the commutation sum to the Liquidator by wire transfer within fourteen days after the effective date, which is thirty-one days after entry of the Court's order approving the Commutation Agreement. Commutation Agreement ¶¶ 2, 3. The other provisions of the Commutation Agreement, including mutual releases (Commutation Agreement ¶¶ 6-7), are set forth in the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 9.

8. 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. ¶ 11.

9. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶¶ 5-10.

10. 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. ¶ 11.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with First State;
- 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,

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June 3, 2011

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Reinsurance Commutation Agreement with First State and the Proposed Order Approving Reinsurance Commutation Agreement with First State were sent, this 3rd day of June, 2011, 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
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 Roger A. Sevigny, New Hampshire Insurance Commissioner, solely in his capacity as Liquidator (the "Liquidator") of The Home Insurance Company, on behalf of The Home Insurance Company and as successor in interest to the Home Syndicate (NYIE), the Home Indemnity Company and City Insurance Company (NJ) (collectively "Home"), on the one part, and First State Insurance Company ("First State"), in its own independent capacity and pursuant to an assumption reinsurance agreement (the "Assumption Reinsurance Agreement") effective as of December 31, 1992 between and among First State, New England Reinsurance Corporation, on its own behalf and as successor in interest to the First State Syndicate (NYIE) (collectively, "NERCO"), and New England Insurance Company ("NEIC"), on the other part. First State, NERCO and NEIC are hereinafter collectively referred to as the "First State Pool Companies." First State, the First State Pool Companies, the Liquidator and Home are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, Home and the First State Pool Companies entered into various identified and unidentified reinsurance agreements pursuant to which Home ceded liabilities to the First State Pool Companies, who assumed such liabilities from Home, and the First State Pool Companies ceded liabilities to Home, who assumed such liabilities from the First State Pool Companies, all subject to the terms and conditions of the agreements governing those reinsurance arrangements (the "Reinsurance Agreements");

WHEREAS, Home and NERCO, NEIC and First State previously entered into a Reinsurance Commutation Agreement, Settlement and Release dated as of March 21, 2003 (the "2003 Commutation Agreement"), pursuant to which certain of the Reinsurance Agreements, as listed in Schedules A and B to the 2003 Commutation Agreement, were fully and finally settled, released and commuted;

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

WHEREAS, the Parties wish to fully and finally resolve any and all obligations and liabilities arising under the Reinsurance Agreements that were not part of the 2003 Commutation Agreement (the "Settled Agreements" as defined below), with the express exception of the Whole Account Treaty (as defined below);

WHEREAS, in addition to their past and present obligations under the Settled Agreements, Home and the First State Pool Companies recognize and understand that a portion of their respective obligations thereunder may become due in the future; that these future obligations and liabilities cannot be determined in an amount certain at this time; and that a commutation of these future and uncertain obligations and the Parties' past and present obligations will resolve all pending and outstanding issues between the Parties and will eliminate the uncertainty of contingent liabilities for presently unresolved and/or unasserted claims with respect to the Settled Agreements; 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 Settled Agreements and 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. The Parties agree that "Settled Agreements" shall mean all identified and unidentified:

(a) facultative reinsurance directly ceded by Home to any of the First State Pool Companies ("directly ceded" means facultative reinsurance ceded directly from one Party to the other or through a reinsurance intermediary);

(b) facultative and treaty reinsurance ceded by Home to any of the First State Pool Companies through their respective participations, if any, as members of the Excess Casualty Reinsurance Association Pool (the "ECRA Pool");

(c) facultative and treaty reinsurance ceded by Home to any of the First State Pool Companies through their respective participations, if any, as members of the pool managed by the Carpenter Management Corporation or by The Worexco Corporation (the "CMC Pool"), except where any of the First State Pool Companies reinsure Home pursuant to the Whole Account Quota Share Reinsurance Agreement (CMC Pool Reference Nos. 999-3 and 1418-10, NERCO Reference Nos. 4085 and 10035) entered into between the CMC Pool, on behalf of its pool members, and NERCO (the "Whole Account Treaty") which is expressly excluded from the scope of this Agreement;

(d) facultative reinsurance directly ceded by any of the First State Pool Companies to Home;

(e) facultative and treaty reinsurance ceded by any of the First State Pool Companies to Home through Home's participations, if any, as members of the ECRA Pool; and

(f) facultative and treaty reinsurance ceded by any of the First State Pool Companies to Home through Home's participations, if any, as members of the CMC Pool.

The term "Settled Agreements" specifically excludes common account excess of loss reinsurance ceded by entities that are not defined as, or controlled by, Parties to this Agreement.

2. This Agreement shall only become effective on the 31st day after the date that the clerk of the Liquidation Court has made written notice that the Liquidation Court has approved the Agreement, provided that no motion challenging the Liquidation Court's approval has been filed during the intervening period (the "Effective Date"). This Agreement is conditioned upon approval by the Liquidation Court and in the event that the Liquidation Court does not approve this Agreement as drafted and agreed by the Parties, it shall be deemed null and void *ab initio* and of no force or effect.

3. Within fourteen (14) days after the Effective Date, First State shall pay to Home the net sum of \$ [REDACTED] (the "Settlement Sum") in full and final settlement of any and all past, present and future obligations and liabilities due or potentially due from Home and the First State Pool Companies to each other under the Settled Agreements, with time being of the essence in the performance by First State in effecting such payment. The payment of the Settlement Sum shall be effected by wire transfer to the following account:

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

The Settlement Sum shall be transferred free and clear of and without any deduction for or on account of any set-off or counterclaim.

4. Without prejudice to the Liquidator and Home's right to elect to terminate this Agreement under Paragraph 5 below, if First State fails to pay any portion of the Settlement Sum within fourteen (14) days of the Effective Date, First State shall pay (1) interest on any unpaid amounts at [REDACTED] per annum; and (2) any and all costs, including reasonable attorneys' fees, incurred by the Liquidator and/or Home in recovering the Settlement Sum in full (the "Collection Costs"). The acceptance by the Liquidator and/or Home of the Settlement Sum together with all interest and Collection Costs due in respect of late payment as determined and calculated as aforesaid shall (subject to the terms of this Agreement) constitute a full and final settlement and release by the Liquidator and/or Home hereunder as if payment of the Settlement Sum had been made in full within fourteen (14) days after the Effective Date.

5. In the event that the First State Pool Companies fail to pay any portion of the Settlement Sum within fourteen (14) days after the Effective Date the Liquidator on behalf of Home shall be entitled, at his sole election, by notice in writing to the First State Pool Companies, to terminate this Agreement, in which event (a) this Agreement shall be null and void; and (b) all of the rights and obligations of the Parties with respect to the Settlement Agreements shall be fully reinstated as if this Agreement had never been made.

6. Subject to the terms and conditions of this Agreement and to the timely payment in full by First State 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, the First State Pool Companies, 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, return 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 and/or Home ever had, now has, or hereafter may have against the First State Pool Companies by reason of any matter whatsoever arising out of or in connection with or in relation to the Settled Agreements. Additionally, the Liquidator fully understands and expressly waives his rights and benefits with respect to the Settled Agreements 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. Subject to the terms and conditions of this Agreement and to approval by the Liquidation Court and in consideration of the release of the First State Pool Companies pursuant to Paragraph 6 above, First State, on its own behalf, on behalf of the First State Pool Companies, and on behalf of 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, return 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 First State Pool Companies ever had, now have, 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 Settled Agreements. Additionally, the First State Pool Companies fully understand and expressly waive their rights and benefits with respect to the Settled Agreements 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.

8. 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 neither they nor their predecessors have prior hereto assigned or otherwise transferred to any other entity any of the rights, entitlements or interests in or to the Settled Agreements.

9. This Agreement embodies the final, complete and entire agreement between the Parties with respect to the subject matter hereof. 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 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.

10. If any provision of this Agreement, other than Paragraph 3, 6 or 7, is invalid, unenforceable or illegal under the law of any applicable 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 that any court of competent jurisdiction or governmental agency renders an order, ruling, or other determination declaring that Paragraph 3, 6 or 7 of this Agreement is unenforceable or null and void, it is mutually agreed by the Parties that each shall be restored to the position it was in just prior to entering into this Agreement.

11. Subject to the provisions of paragraph 2, the Parties hereby agree that this Agreement shall take precedence over and supersede the Settled 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 Settled 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 Settled Agreements, except to enforce the terms of this Agreement.

12. 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.

13. For a period of three (3) years following the Effective Date of this Agreement, Home will supply the First State Pool Companies with notices and proofs of loss which are issued in the ordinary course of Home's reinsurance operations with respect to those claims that would have otherwise been ceded to the First State Pool Companies had this Agreement not been effected.

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

15. 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 Settled 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 Settled Agreements, other than with respect to the terms and conditions herein contained.

16. (a) First State 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 and on behalf of the First State Pool Companies; 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 the Agreement's contents and that the Agreement is being executed freely and voluntarily with an intent for First State and the First State Pool Companies to be bound by the Agreement's terms; and (b) the Liquidator represents and warrants that, subject to the Liquidation Court's approval, he 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 Home's 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; that he has read this Agreement, understands its contents, and that the Agreement is being executed freely and voluntarily with an intent for Home and the Liquidator to be bound by the Agreement's terms.

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

18. 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 as necessary to effectuate the terms of this Agreement; except that the Parties may disclose the terms of this Agreement to and through their agents, 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, reinsurers 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 Liquidation Court.

19. The Parties represent that the consideration for this Agreement, provided in exchange for the Parties' mutual promises made herein, is fair and reasonable. The Parties shall 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.

20. This Agreement may be executed in multiple counterparts, each of which, when so executed and 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.

21. All notices under this Agreement shall be in writing, as follows:

If to First State:

The Hartford
One Hartford Plaza
Hartford, CT 06115
Attention: General Counsel

If to the Liquidator:

The Home Insurance Company
in Liquidation
61 Broadway
New York, NY 10006
Attention: Russell Bogin

or to such other address(es) as notified in writing by either Party to the other.

22. 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 this Agreement and the Parties agree to submit to the jurisdiction of the Liquidation Court for such purposes.

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

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

By: Peter A. Bengelsdorf Date: May 5, 2011

Name: Peter A. Bengelsdorf
Title: Special Deputy Liquidator

**First State Insurance Company, on its own capacity and on behalf of
New England Insurance Company and New England Reinsurance
Company pursuant to the Assumption Reinsurance Agreement**

By: Glenn A. Frankel Date: May 5, 2011

Name: Glenn A. Frankel
Title: V.P. of Horizon Management,
as management agent