

**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 PHOENIX**

Roger A. Sevigny, Insurance Commissioner of 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 Phoenix Insurance Company (“Phoenix”). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Commutation Agreement between the Liquidator and Phoenix. 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 Phoenix (“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. Collection of reinsurance is the principal asset marshalling task of the Home liquidation. Bengelsdorf Confidential Affidavit ¶ 3.

3. Home entered into various reinsurance agreements with Phoenix. Phoenix provided Home with reinsurance coverage on both a treaty and facultative basis for periods between 1961 and 1985 for a broad spectrum of risks, including both property and casualty business. Home also ceded business to the Carpenter Management Pool (“CMP”), in which Phoenix was a participant. Phoenix’s share of the reinsurance it assumed from Home through the CMP is included in the commutation. The Liquidator seeks to recover from Phoenix the value of Home’s ceded reinsurance. Bengelsdorf Confidential Aff. ¶ 4.

4. The Commutation Agreement provides for the commutation of all the business between Home and Phoenix. It provides for the full and final settlement of all past, present and future obligations and liabilities under the reinsurance agreements for a sum certain. Commutation Agreement ¶ 3, 9. Bengelsdorf Confidential Aff. ¶ 6.

5. The Commutation Agreement provides that Phoenix will pay the commutation sum to the Liquidator in two parts: (a) the CMP manager is to remit to Home on behalf of Phoenix an amount representing Phoenix’s share of a particular loss ceded to CMP (this payment has been made); and (b) the remaining sum by wire transfer within fifteen business days of Phoenix’s receipt of the Court’s approval of the Commutation Agreement. Commutation Agreement ¶ 2. The other provisions of the Commutation Agreement, including mutual releases (Commutation Agreement ¶¶ 4-5), are set forth in the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 8.

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. Bengelsdorf Confidential Affidavit ¶ 10.

7. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶¶ 5-9. 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 in the collection of reinsurance. See Bengelsdorf Confidential Aff. ¶ 13.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with Phoenix;
- 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.

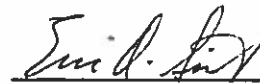
Respectfully submitted,

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

By his attorneys,

JOSEPH A. FOSTER  
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



---

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

April 24, 2014

**Certificate of Service**

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with Phoenix and the Proposed Order Approving Reinsurance Commutation Agreement with Phoenix were sent, this 24<sup>th</sup> day of April, 2014, by first class mail, postage prepaid to all persons on the attached service list. The Confidential Affidavit being filed under seal 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

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

Robert A. Stein, Esq.  
The Stein Law Firm, 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

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

David H. Simmons, Esq.  
Mary Ann Etzler, Esq.  
Daniel J. O'Malley, Esq.  
deBeaubien, Knight, Simmons,  
Mantzaris & Neal, LLP  
332 North Magnolia Avenue  
P.O. Box 87  
Orlando, Florida 32801

Martin P. Honigberg, Esq.  
Sulloway & Hollis, P.L.L.C.  
9 Capitol Street  
P.O. Box 1256  
Concord, New Hampshire 03302-1256

Richard Mancino, Esq.  
Willkie Farr & Gallagher, LLP  
787 Seventh Avenue  
New York, New York 10019

Joseph G. Davis, Esq.  
Willkie Farr & Gallagher, LLP  
1875 K Street, N.W.  
Washington, DC 20006

Albert P. Bedecarre, Esq.  
Quinn Emanuel Urguhart Oliver & Hedges, LLP  
50 California Street, 22<sup>nd</sup> Floor  
San Francisco, California 94111

Jeffrey W. Moss, Esq.  
Morgan Lewis & Bockius, LLP  
225 Franklin Street  
16<sup>th</sup> Floor  
Boston, Massachusetts 02110

Gerald J. Petros, Esq.  
Hinckley, Allen & Snyder LLP  
50 Kennedy Plaza, Suite 1500  
Providence, Rhode Island 02903

Christopher H.M. Carter, Esq.  
Hinckley, Allen & Snyder LLP  
11 South Main Street, Suite 400  
Concord, New Hampshire 03301

Robert M. Horkovich, Esq.  
Robert Y. Chung, Esq.  
Anderson Kill & Olick, P.C.  
1251 Avenue of the Americas  
New York, New York 10020

Andrew B. Livernois, Esq.  
Ransmeier & Spellman, P.C.  
One Capitol Street  
P.O. Box 600  
Concord, New Hampshire 03302-0600

John A. Hubbard  
615 7<sup>th</sup> Avenue South  
Great Falls, Montana 59405

Paul W. Kalish, Esq.  
Ellen M. Farrell, Esq.  
Kristine E. Nelson, Esq.  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2595

Harry L. Bowles  
306 Big Hollow Lane  
Houston, Texas 77042

Gregory T. LoCasale, Esq.  
White and Williams, LLP  
One Liberty Place, Suite 1800  
Philadelphia, Pennsylvania 19103-7395

Kyle A. Forsyth, Esq.  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice  
P.O. Box 875  
Washington, D.C. 20044-0875

W. Daniel Deane, Esq.  
Nixon Peabody LLP  
900 Elm Street, 14<sup>th</sup> Floor  
Manchester, New Hampshire 03861

Joseph C. Tanski, Esq.  
John S. Stadler, Esq.  
Nixon Peabody LLP  
100 Summer Street  
Boston, Massachusetts 02110

Steven J. Lauwers, Esq.  
Rath Young Pignatelli  
One Capital Plaza  
Concord, New Hampshire 03302-1500



**REDACTED**

**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 ("Home"), and Phoenix Insurance Company ("Phoenix"). The Liquidator, Home and Phoenix are referred to collectively herein as the "Parties" and each individually by name or as a "Party".

**WITNESSETH:**

**WHEREAS**, Home entered into various reinsurance agreements, pursuant to which Home ceded liabilities to Phoenix that Phoenix assumed in accordance with the terms and conditions therein contained (the "Reinsurance Agreements");

**WHEREAS**, the Reinsurance Agreements shall include all contracts of reinsurance between Phoenix as a reinsurer and Home as a cedent, whether known or unknown, and specifically including pool and business associations (whether voluntary or involuntary), including but not limited to the Carpenter Management Corp. Pool ("CMC Pool"), as well as self-insurance, risk retention groups or underwriting groups;

**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**, in addition to their past and present obligations under the Reinsurance Agreements, Home and Phoenix 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 Reinsurance 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 Reinsurance Agreements with immediate effect 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. This Agreement shall only become effective on the date that this Agreement is approved by the Liquidation Court (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, it shall be deemed null and void *ab initio* and of no force or effect.

2. The agreed consideration to be remitted by Phoenix to Home for the commutation of the Reinsurance Agreements is [REDACTED] United States Dollars [REDACTED] (the "Settlement Sum"). The Settlement Sum shall be satisfied as follows: (1) Excess Treaty Management Corporation ("ETMC") as manager of the CMC Pool has remitted on behalf of Phoenix the sum of [REDACTED] United States Dollars [REDACTED] to Home, which represents Phoenix's share of the reinsurance it assumed from Home through the CMC Pool with respect to [REDACTED]; and (2) within fifteen (15) business days of Phoenix's receipt of notice of the Liquidation Court's approval of this Agreement (the "Notice"), Phoenix shall pay the sum of [REDACTED] (the "Commutation Sum") to Home by wire transfer of funds directed as follows:

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

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 Phoenix fails to pay any portion of the Commutation Sum provided for in Paragraph 2, within fifteen (15) business days after Phoenix's receipt of the Notice, Phoenix shall pay (1) interest on any unpaid amounts at the rate of [REDACTED] per year from the Effective Date; and (2) any and all costs, including reasonable attorneys' fees, incurred by Home in recovering the Commutation Sum in full (the "Collection Costs"). The acceptance by 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 Home hereunder as if payment of the Commutation Sum had been made in full within fifteen (15) business days after Phoenix's receipt of the Notice.

4. Subject to the terms and conditions of this Agreement and to the timely payment in full by Phoenix of the Commutation 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 Phoenix, 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 Phoenix by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurance Agreements. Additionally, the Liquidator fully understands and expressly waives Home's rights and benefits with respect to the Reinsurance 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.

5. Subject to approval by the Liquidation Court and in consideration of the release of Phoenix pursuant to Paragraph 4 above, Phoenix 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 Phoenix ever had, now has, or hereafter may have against the Liquidator and Home by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurance Agreements. Additionally, Phoenix fully understands and expressly waives its rights and benefits with respect to the Reinsurance 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.

6. This Agreement shall, subject to its approval by the Liquidation Court as provided for in Paragraph 1, 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 Agreements.

7. This Agreement 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 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 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 Paragraph 1, the Parties hereby agree that this Agreement shall take precedence over and supersede the 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 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 Reinsurance Agreements.

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, 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.

12. 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 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 Reinsurance Agreements, other than with respect to the terms and conditions herein contained.

13. (a) Phoenix 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 it to be bound by its terms; and (b) the Liquidator represents and warrants that he has the exclusive power and authority to enforce the Home's rights and obligations under the Reinsurance Agreements and that, subject to the Liquidation Court's approval, he is duly authorized to enter this Agreement and the transactions contemplated herein; 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 is fully authorized to execute this Agreement freely and voluntarily on his behalf with an intent for Home to be bound by its terms.

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

15. 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 Liquidation Court.

16. 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.

17. 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.

18. Unless another person is designated, in writing, for receipt of notices (including the Notice) hereunder, notices to the respective Parties shall be sent to the following:

To Phoenix: Richard D. Dupree  
Vice President, Reinsurance Commutations & Liquidations  
One Tower Square, S206B  
Hartford, CT 06183  
Fax No: 860-954-3155  
Email: RDDUPREE@travelers.com

With a Copy to: Scott P. Birrell  
Vice President & Associate General Counsel  
Reinsurance Legal Group  
One Tower Square, MS4A  
Hartford, CT 06183


Fax No: 877-883-7395  
Email: SBIRRELL@travelers.com

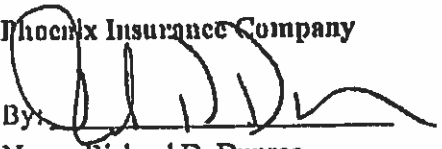
To Liquidator: Russell G. Bogin  
Vice President & Reinsurance Counsel  
The Home Insurance Company in Liquidation  
61 Broadway  
New York, New York 10006  
Fax No.: 212-530-3100  
Email: russell.bogin@homeinsco.com

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

By:  Date: April 9, 2014  
Name: Peter A. Bengelsdorf  
Title: Special Deputy Liquidator of The Home Insurance Company

~~Phoenix Insurance Company~~  
  
By: \_\_\_\_\_ Date: April 7th, 2014  
Name: Richard D. Dupree  
Title: Vice-President