

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

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

**MOTION FOR APPROVAL OF REINSURANCE
COMMUTATION AGREEMENT WITH PROVIDENCE WASHINGTON
INSURANCE COMPANY (SEATON)**

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 Providence Washington Insurance Company, solely in its capacity as successor in interest to Unigard Mutual Insurance Company, subsequently renamed Unigard Security Insurance Company, and which was later renamed Seaton Insurance Company (“PWIC”). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Commutation Agreement between the Liquidator and PWIC. 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 PWIC (“Bengelsdorf Confidential Affidavit”) submitted herewith under seal. The Commutation Agreement is subject to approval by the Court. Commutation Agreement ¶ 1. Bengelsdorf Confidential Affidavit ¶ 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. 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 Unigard Mutual Insurance Company, which was subsequently renamed Unigard Security Insurance Company, which was later renamed Seaton Insurance Company ("Seaton"). Seaton was merged into PWIC effective March 31, 2015. Seaton provided Home with reinsurance coverage under various treaties covering periods from 1972 through 1985 for a broad spectrum of risks, including aviation, casualty, energy, marine, workers compensation and directors and officers liability business. Seaton also reinsured Home through Seaton's participation as a member of the Excess Casualty Reinsurance Association ("ECRA") pool at various times from the late 1960's to the early 1980's. Bengelsdorf Confidential Affidavit ¶ 4.

4. Home provided Seaton with reinsurance coverage through Home's participation in the ECRA pool and in the Carpenter Management Pool, as well as under certain direct reinsurance contracts. Bengelsdorf Confidential Affidavit ¶ 5.

5. Home thus "ceded" reinsurance to Seaton (which "assumed" the exposures), and Home also "assumed" reinsurance from Seaton (which "ceded" the exposures). Seaton also insured certain direct insureds who were also insured by Home. Where Seaton has made payments to these common insureds that were increased due to Home's insolvency, Seaton may have a claim for contribution against Home. Bengelsdorf Confidential Affidavit ¶ 6.

6. Prior to its merger with PWIC, Seaton had asserted ceded reinsurance and contribution claims against Home in Proof of Claim No. AMBC 465914 (“Seaton Proof of Claim”). Bengelsdorf Confidential Affidavit ¶ 7.

7. The Liquidator previously entered into a commutation agreement with PWIC in January 2015. That commutation agreement was approved by the Court on June 15, 2015. The January 2015 commutation agreement preceded the merger of Seaton and PWIC, which was effective March 31, 2015, so the Seaton business remains to be resolved. Bengelsdorf Confidential Affidavit ¶ 8.

8. The Liquidator seeks to recover from PWIC, as successor to Seaton, the value of Home’s ceded reinsurance to Seaton less the value of Seaton’s ceded reinsurance to Home and other claims against Home. Bengelsdorf Confidential Affidavit ¶ 9.

9. The Commutation Agreement provides for the commutation of all of Home’s ceded business to PWIC (Seaton) and the commutation of all of PWIC’s (Seaton’s) ceded business to Home and resolution of all PWIC’s (Seaton’s) contribution claims against Home. Commutation Agreement first, fourth – sixth whereas clauses. Bengelsdorf Confidential Affidavit ¶ 10. It provides for the full and final settlement of all past, present and future obligations and liabilities under the reinsurance agreements between Home and PWIC (Seaton) and PWIC’s (Seaton’s) contribution claims against Home for a payment to Home of a settlement sum. Commutation Agreement ¶¶ 3, 10. Bengelsdorf Confidential Affidavit ¶ 11. This includes resolution of all PWIC’s rights under the Seaton Proof of claim, which shall be deemed withdrawn with prejudice. Commutation Agreement ¶ 2. Bengelsdorf Confidential Affidavit ¶ 11.

10. The Commutation Agreement provides that PWIC will pay the settlement sum to the Liquidator by wire transfer within ten business days after the Court's approval of the Commutation Agreement. Commutation Agreement ¶ 3. The other provisions of the Commutation Agreement, including mutual releases (Commutation Agreement ¶¶ 5-6), are set forth in the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 15.

11. 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 objections to the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 17.

12. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶¶ 10-18. 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 Affidavit ¶ 18.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with Providence Washington Insurance Company (Seaton);
- B. Enter an Order in the form submitted herewith approving the Commutation Agreement and deeming Proof of Claim No. AMBC 465914 withdrawn with prejudice; 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,

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October 18, 2016

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with Providence Washington Insurance Company (Seaton) and the Proposed Order Approving Reinsurance Commutation Agreement with Providence Washington Insurance Company (Seaton) were sent, this 18th day of October, 2016, 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

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The Home Insurance Company
Docket No. 217-2003-EQ-00106

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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 ("Home"), and Providence Washington Insurance Company solely in its capacity as successor in interest to Unigard Mutual Insurance Company, subsequently renamed Unigard Security Insurance Company, and which was later renamed Seaton Insurance Company ("Providence Washington"). The Liquidator, Home and Providence Washington are referred to collectively herein as the "Parties."

WITNESSETH:

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

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, Providence Washington submitted Proof of Claim No. AMBC 465914 in the Home estate seeking recovery for amounts Providence Washington has paid with respect to certain insurance claims as a result of Home's insolvency (the "POC");

WHEREAS, on May 30, 2013, Home issued a Notice of Determination with respect to the POC determining that the claims were deemed under N.H. RSA 402-C:44 as Class V residual priority classification but deferring any determination as to the dollar amount allowed in the Home estate;

WHEREAS, in addition to their past and present obligations under the Reinsurance Agreements and the POC, Home and Providence Washington 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 the POC; 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 and the POC 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 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. Upon the Effective Date, any Proof of Claim that Providence Washington has filed in the Home estate, including the POC, shall be deemed withdrawn with prejudice and Providence Washington hereby agrees that upon the Effective Date it shall be forever barred and precluded from filing any subsequent Proofs of Claim in the Home estate.
3. In addition to all amounts previously agreed and paid, the net consideration, after taking into account the amounts allowed under the POC, to be remitted by Providence Washington to Home is [REDACTED] (the "Net Settlement Sum"). Within 10 days after the

Effective Date, Providence Washington shall pay the Net Settlement Sum to Home by wire transfer of funds directed as follows:

Citizens Bank, Manchester, NH, USA

For the Account of The Home Insurance Company in Liquidation
Account No. [REDACTED]
Attention: Efraim Abramsohn

The Net Settlement Sum shall be transferred free and clear of and without any deduction for or on account of any set-off or counterclaim except as recited in this Agreement.

4. If Providence Washington fails to pay any portion of the Net Settlement Sum provided for in paragraph 3, within ten (10) business days after the Effective Date, Providence Washington 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 Net Settlement Sum in full (the "Collection Costs"). The acceptance by Home of the Net 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 Net Settlement Sum had been made in full within ten (10) business days after the Effective Date.

5. Subject to the terms and conditions of this Agreement and to the payment in full by Providence Washington of the Net Settlement Sum in accordance with paragraph 4 above, 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 Providence Washington, 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 Providence Washington by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurance Agreements or the POC. Additionally, the Liquidator fully understands and expressly waives Home's rights and benefits with respect to the Reinsurance Agreements and the POC 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. Subject to approval by the Liquidation Court and in consideration of the release of Providence Washington pursuant to Paragraph 5 above, Providence Washington 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, specialities, 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 Providence Washington 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 and the POC. Additionally, Providence Washington fully understands and expressly waives its rights and benefits with respect to the Reinsurance Agreements and the POC 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 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 (other than by way of inter-company affiliated reinsurance) to any other entity any of the rights, entitlements or interests in or to the Reinsurance Agreements or the POC.

8. 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.

9. 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.

10. Subject to the provisions of paragraph 1, the Parties hereby agree that this Agreement shall take precedence over and supersede the Reinsurance Agreements and the POC 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 and the POC. 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 or the POC.

11. 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.

12. 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.

13. 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 and the POC. 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 and the POC, other than with respect to the terms and conditions herein contained.

14. (a) Providence Washington 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 Home's rights and obligations under the Reinsurance Agreements and the POC 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.

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

16. 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.

17. 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.

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

By: Peter A. Bengelsdorf Date: August 19 2016
Name: Peter A. Bengelsdorf
Title: Special Deputy Liquidator of The Home Insurance Company

Providence Washington Insurance Company solely in its capacity as
successor-in-interest to Unigard Mutual Insurance Company, subsequently
renamed Unigard Security Insurance Company, subsequently renamed
Seaton Insurance Company

By: Terese Reah Date: August 19 2016
Name: Terese Reah
Title: VP & Treasurer