

**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 BOTHNIA**

John Elias, 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 the Reinsurance Commutation Agreement, Settlement and Release (the “Agreement”) between the Liquidator and Bothnia International Insurance Company Limited (“Bothnia”) as successor in interest to Assicurazioni Generali S.p.A. UK Branch (“Generali”). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Agreement between the Home and Bothnia. A redacted copy of the Agreement (with economic terms removed) is attached as Exhibit 1. A complete copy of the Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Reinsurance Commutation Agreement with Bothnia (“Bengelsdorf Confidential Affidavit”) submitted herewith under seal. The Agreement is subject to approval by the Court. 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. Generali is the London-based UK Branch operation of Assicurazioni Generali S.p.A, a large Italian insurance group. Home entered into reinsurance agreements with Generali consisting of treaties in which Generali participated that covered virtually all lines of business, as well as a small number of facultative contracts, for various periods between January 1969 and December 1992. Home “ceded” risks to Generali, and Generali “assumed” the exposures, under the reinsurance contracts in accordance with their terms and conditions. Home did not reinsure Generali. Bengelsdorf Confidential Affidavit ¶ 4.

4. Bothnia is a Finnish insurance company that is part of Compre, a group that specializes in the acquisition and management of insurance and reinsurance companies and portfolios in run-off (that is, companies that are no longer writing new business and books of insurance and reinsurance contracts for past periods). Bengelsdorf Confidential Affidavit ¶ 5.

5. Generali is going into run-off and will no longer write new business. As part of that process, it has agreed to transfer certain assumed reinsurance contracts (including all the Home reinsurance contracts) to Bothnia pursuant to an Italian business transfer process regulated by Istituto per la Vigilanza sulle Assicurazioni (“IVASS”). This IVASS procedure requires counterparties such as Home to honor a transfer of the obligations despite not having voluntarily agreed to it. The transfer was agreed in December 2017, and it is expected to be approved by IVASS on or about September 30, 2018. See Agreement, fourth and fifth Whereas clauses. Bengelsdorf Confidential Affidavit ¶ 6.

6. The Liquidator seeks to recover from Generali, and from Bothnia after the transfer, the value of all of Home’s ceded business to Generali. Both Bothnia and Generali are

parties and signatories to the Agreement. Agreement, first paragraph, signature page, ¶ 3.  
Bengelsdorf Confidential Affidavit ¶ 9.

7. The Agreement provides for the commutation of all of Home's ceded business to Bothnia/Generali for a settlement payment to Home. Agreement ¶¶ 3, 11. Once the commutation is approved and the payment is made, Home will have concluded its business relationships with Bothnia and Generali. Bengelsdorf Confidential Affidavit ¶ 10.

8. The Agreement provides that, within 10 business days of the day that the Agreement becomes effective, the commutation sum shall be paid to Home via wire transfer. Agreement ¶ 3. The other provisions of the Agreement, including mutual releases by the Liquidator and Bothnia (Agreement ¶¶ 6, 7), are set forth in the Agreement. Bengelsdorf Confidential Affidavit ¶ 12.

9. The 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 into confidentiality agreements. The NCIGF Subcommittee has advised the Liquidator that it has no objections to the Agreement. Bengelsdorf Confidential Affidavit ¶ 13.

10. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Agreement. Bengelsdorf Confidential Affidavit ¶¶ 7-8, 10-14. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Agreement is fair and reasonable and in the best interests of the policyholders and other creditors of Home. The Agreement will convert future reinsurance obligations into immediate cash and avoid delay in the collection of reinsurance. Bengelsdorf Confidential Affidavit ¶ 14.

WHEREFORE, the Liquidator respectfully requests that this Court:

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

Respectfully submitted,

JOHN ELIAS, INSURANCE  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, SOLELY AS  
LIQUIDATOR OF THE HOME  
INSURANCE COMPANY,

By his attorneys,

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July 5, 2018

**Certificate of Service**

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with Bothnia and the Proposed Order Approving Reinsurance Commutation Agreement with Bothnia were sent, this 5th day of July, 2018, 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.



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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. 217-2003-EQ-00106

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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"), Bothnia International Insurance Company Limited ("Bothnia") as successor in interest to Assicurazioni Generali S.p.A. UK Branch ("Generali"). The Liquidator, Home, Generali, and Bothnia are referred to collectively herein as the "Parties."

**WITNESSETH:**

**WHEREAS**, Home and Bothnia entered into various reinsurance agreements, pursuant to which Home ceded liabilities to Bothnia, which Bothnia 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**, in addition to their past and present obligations under the Reinsurance Agreements, Home and Bothnia 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;

**WHEREAS**, Generali and Bothnia have agreed to transfer certain of Generali's reinsurance business, including the Reinsurance Agreements, to Bothnia, pursuant to an insurance business transfer scheme under an Italian procedure regulated by Istituto per la Vigilanza sulle Assicurazioni (IVASS);

*K*



WHEREAS, approval of the Transfer is anticipated to occur on or about September 30, 2018; 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. In the event that this Agreement is approved by the Liquidation Court after the Transfer is effected, all the rights, obligations and duties set forth in this Agreement shall be transferred and assumed by Bothnia, with Bothnia being substituted in the place of Generali, for all purposes under this Agreement.
3. The agreed consideration to be remitted by Bothnia to Home for the commutation of the Reinsurance Agreements is \$ [REDACTED] (the "Settlement Sum"). Within 10 business days after the Effective Date, the Settlement Sum shall be paid 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 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. If Generali and or Bothnia fails to pay any portion of the Settlement Sum provided for in paragraph 3, within ten (10) business days after the Effective Date, Bothnia 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 Settlement 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 Settlement Sum had been made in full within ten (10) business days after the Effective Date.

5. Notwithstanding the provisions of Paragraph 4, in the event that Bothnia fails to pay any portion of the Settlement Sum within ten (10) business days after the Effective Date (and notwithstanding and without prejudice to any claim that may be asserted by the Liquidator for interest and Collection Costs), the Liquidator shall be entitled, at his sole discretion, to either seek enforcement of this Agreement or, by notice in writing to Bothnia, to terminate this Agreement and return all amounts already paid, in which event (a) this Agreement shall be null and void; (b) the *status quo ante* of the Parties shall be fully restored; and (c) all of the rights and obligations of the Parties with respect to the Reinsurance 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 Bothnia 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 Bothnia, 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 Bothnia 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.

7. Subject to approval by the Liquidation Court and in consideration of the release of Bothnia pursuant to Paragraph 6 above, Bothnia 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 Bothnia 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, Bothnia 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.

8. 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.

9. 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.

10. 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.

11. 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.

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. 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.

14. 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.

15. (a) Bothnia 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.

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

17. 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.

18. 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.

19. 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,

20. 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: May 9, 2018  
Name: Peter A. Bengelsdorf  
Title: Special Deputy Liquidator of The Home Insurance Company

**Bothnia International Insurance Company Limited**

By: Kari Maki Date: May 18, 2018  
Title: Managing Director  
KARI MÄKI

**Assicurazioni Generali S.p.A. UK Branch**

By: William Bill Green Date: May 10, 2018  
Title: HEAD OF AVIATION & MARINE CLAIMS.

Agreed.  
[Signature]