

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY**

DISPUTED CLAIMS DOCKET

**In Re Liquidator Number: 2008-HICIL-42
Proof of Claim Number: RAHM 700612-32
Claimant Name: KX Reinsurance Company
Limited**

STIPULATION AND AGREED CONFIDENTIALITY ORDER

WHEREAS, KX Reinsurance Company Limited (“KX”) has filed proof of claim no. RAHM 700612-32 (the “Proof of Claim”) in the liquidation proceeding for The Home Insurance Company (“Home”);

WHEREAS, Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, as Liquidator (“Liquidator”) of Home, has disallowed certain of KX’s claims presented in the Proof of Claim (“Claims”);

WHEREAS, a disputed claims proceeding has been commenced pursuant to the Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation entered January 19, 2005, as amended from time to time (the “KX Disputed Claim Proceeding”);

WHEREAS, Century Indemnity Company (“CIC”) has sought and been granted leave to intervene in the KX Disputed Claim Proceeding;

WHEREAS, KX and CIC, with the agreement of the Liquidator (the “Parties,” and individually, “Party”), desire to expedite and facilitate the resolution of the KX Disputed Claim

Proceeding by entry of a confidentiality order to govern treatment of confidential and sensitive business and financial records and factual information;

NOW THEREFORE, the Liquidator and CIC stipulate and agree as follows:

1. **Effective Date.** This Stipulation and Agreed Confidentiality Order (the “Order”) shall take effect only when it is signed by the Parties and entered by the Referee.

2. **Definitions.**

- a. The term “provider” means a Party or other person that provides information in the KX Disputed Claim Proceeding;
- b. The term “designator” means a provider that designates information as “Confidential Material”;
- c. The term “Proceeding” means the KX Disputed Claim Proceeding, and includes motions to recommit, and any appeals therefrom;
- d. The term “Confidentiality Agreement” means any agreement or order (except for this Order) that limits the ability of a provider to use or disclose documents or any other information concerning the Claims;
- e. The term “Confidential Material” means sensitive proprietary business or financial information or documents, the disclosure of which may adversely affect the provider’s competitive position or business operations or any actual or prospective legal dispute involving the provider other than proceedings regarding the Claims, or which is subject to a Confidentiality Agreement. In the event that a Confidentiality Agreement is relied on as the basis for designation, a copy shall be provided by the designator to the other Party, or the Parties; and

f. The term “recipient” means any Party or person provided with material designated as Confidential Material in the Proceeding.

3. **Scope of Order.** Pursuant to N.H. Super. Ct. R. 35(c), this Order and the procedures contained herein shall govern the provision, receipt and use of Confidential Material, in any form and by any Party or person, in the Proceeding.

4. **Designation of Confidential Material.** A provider seeking to protect information or documents it provides pursuant to this Order shall designate such material as Confidential Material as follows:

- a. In the case of documents and information contained therein, designation shall be made by placing the following legend on the front page of the document and each page so designated: “CONFIDENTIAL”;
- b. In the case of written submissions or filings and the information contained therein, designation shall be made by means of a statement at the conclusion of the submission specifying the portion of the submission deemed Confidential Material and by placing on the front page and each page so designated: “CONFIDENTIAL -- SUBJECT TO CONFIDENTIALITY ORDER”: and
- c. In the case of testimony, the designation shall be made by placing the legend “CONFIDENTIAL -- SUBJECT TO CONFIDENTIALITY ORDER” on the first page of the transcript and each page so designated and providing a copy of the marked transcript to the other Party within twenty-one (21) days following receipt of the transcript.

The Parties shall use their reasonable best efforts to limit the documents and information designated as Confidential Material.

5. **Use of Confidential Material.** Absent written agreement between the designator and the recipient, all Confidential Material shall be used solely for resolving the Proof of Claim and the Proceeding and, subject to the provisions of this Order, for the collection of reinsurance relating to the same Claim, and for no other purpose whatsoever.

6. **Disclosure.** Confidential Material shall not be disclosed directly or indirectly by any recipient to persons other than:

- a. a Party, or officer, director, agent, representative, consultant, contractor, employee or auditor of such Party, including in-house counsel and full and part-time employed legal staff and interpreters, translators, copy services, database or coding services, in each case who can articulate a reasonable need to have access to Confidential Material in order for such Party to participate in the Proceeding;
- b. any government entity that regulates a Party;
- c. outside counsel to a Party regarding the Proceeding, including all regular and temporary employees of such counsel or the counsel's law firm or agency and interpreters, translators, copy services, database or coding services used by such counsel, in each case who can articulate a reasonable need to have access to Confidential Material in order for such Party to participate in the Proceeding;

- d. the Merrimack Superior Court (the “Court”) or the Referee, the New Hampshire Supreme Court, their respective employees or agents, and any stenographers transcribing any hearings during the Proceeding;
- e. witnesses, if any, providing written or oral testimony in the Proceeding, but only to the extent disclosure occurs in preparation for or during such testimony, and provided that
 - i. each witness, prior to its receipt of Confidential Material, executes an undertaking in the form attached hereto as Exhibit A agreeing to be bound by this Order and consenting to the jurisdiction of the Referee and the Court;
 - ii. counsel making disclosure shall inform each person that the material is confidential and may not be disclosed or used except as provided in this Order, and
 - iii. nothing in this Order precludes a witness from reviewing the transcript of his or her testimony at any time;
- f. other persons who counsel believes are potential witnesses or sources of information that may be or lead to evidence in the Proceeding and to whom counsel of record believes such material needs to be shown for a Party to effectively participate in the Proceeding, provided that each person, prior to their receipt of Confidential Material, executes an undertaking in the form attached hereto as Exhibit A agreeing to be bound by this Order and consenting to the jurisdiction of the Referee and the Court;

- g. experts or consultants retained in good faith to assist counsel in the Proceeding (including assisting the Parties' in-house counsel), but only to the extent disclosure occurs in the course of the formulation of the expert's or consultant's opinion or report, preparation of advice or preparation for or during testimony, and provided that such person, prior to his or her receipt of Confidential Material, executes an undertaking in the form attached hereto as Exhibit A agreeing to be bound by this Order and consenting to the jurisdiction of the Referee and the Court; and
- h. reinsurers of a Party in connection with a claim for reinsurance; provided that the recipient shall advise the reinsurers that the material is confidential and may not be disclosed except as provided in this Order and use its reasonable best efforts to obtain from such reinsurers, prior to their receipt of Confidential Material, an undertaking in the form attached hereto as Exhibit A agreeing to be bound by this Order and consenting to the jurisdiction of the Referee and the Court.

Subject to paragraph 7 of this Order, absent written agreement between the designator and the recipient, any recipient seeking to disclose any Confidential Material to any person not set forth in this Paragraph 6 must make a motion to the Referee for resolution. Prior to disclosing any Confidential Information to persons set forth in this paragraph 6 where an undertaking in the form attached hereto as Exhibit A is required, the recipient shall serve upon counsel to the other Party the applicable executed undertaking prior to disclosing the Confidential Material.

7. **Compelled Disclosure.** In the event that a recipient is served with or is otherwise subject to legal process (including subpoena or discovery notice) that requires testimony

concerning, or production of, or requires the recipient to otherwise disclose Confidential Material, to the extent permitted by law, the recipient subject to such process shall promptly, and at least five (5) days prior to the time to object (or as soon as practicable if there are less than five days remaining to object), notify in writing the designator's counsel of the subpoena or process and provide the designator with a copy of such subpoena or process so the designator may assert any applicable privileges and objections with respect to such requests for Confidential Material. The recipient shall cooperate with the designator in the assertion of any objections. Nothing in this Order shall prevent or govern disclosure to regulators or other governmental actors as required by law.

8. **Public Disclosure and Pre-existing or Otherwise-obtained Information.** If any Confidential Material is publicly disclosed in a manner that does not violate this Order, it shall not be considered Confidential Material after its disclosure. Nothing in this Order shall be construed to apply to or control the use or dissemination of documents or information by a Party or person (a) existing in the files of the Party or person prior to the date of this Order, or (b) received by the Party or person at any time from a person other than the designator.

9. **Objections to Designation.** With respect to any Confidential Material designated in conformance with this Order, a Party may within a reasonable time after receipt of the Confidential Material serve a written notice of objection to such designation upon the designator. Such notice shall identify the materials from which the objecting Party wishes to have the designation removed and state the reasons for such declassification. The designator shall within twenty-one (21) days of receipt of such notice provide a response in writing advising whether or not the designator will agree to the declassification requested in the absence of agreement, the objecting Party may thereafter move for an order of declassification. The designator shall have

the burden of demonstrating that the designated material for which declassification is sought is in fact Confidential Material warranting protection under N.H. Superior Court Rule 35. The designated material in question shall continue to be treated as Confidential Material until a ruling on the motion.

10. **Use in Open Court Proceedings.** In the event that a party or participant intends to offer any Confidential Material concerning the Claims in open court proceedings, a party or participant may move for an order that will preserve confidentiality and prevent unnecessary disclosure, including a request for in camera review. The Referee will then determine whether the proffered evidence requires continued confidential treatment and, if so, what protections should be afforded.

11. **Admissibility.** Nothing herein shall be construed to affect in any way the admissibility or inadmissibility of any document, testimony or other evidence in the Proceeding.

12. **Filing Confidential Materials with the Referee or the Court.** In the event that during the Proceeding, counsel for a Party determines to file or submit in writing to the Liquidation Clerk or the Court Clerk's office any Confidential Material, or any papers containing or making reference to the substance of such material or information, such documents or portions thereof containing or making reference to such material or information shall be filed under seal in accordance with the rules of the Court, and kept under seal until further order of the Referee or the Court, as the case may be. Where possible, only confidential portions of filings with the Referee or the Court shall be inscribed with the phrase: "CONFIDENTIAL -- SUBJECT TO CONFIDENTIALITY ORDER." Each Party is authorized to file under seal any materials, information, documents, or portions thereof in accordance with this Order, without further Order

of the Referee or the Court, as the case may be; the Liquidation Clerk and the Clerk of Court, as applicable, are hereby directed to accept same for filing under seal.

13. **Third-Party Actions.** The provision of any Confidential Material in connection with the Proceeding, or any other litigation between the Parties with respect to the Claims, shall not be a waiver of any defense or privilege (including, without limitation, any attorney-client, work product or common defense privilege, any confidentiality protection based on the proprietary nature of any information or documents, or any other privilege or confidentiality protection) which a Party has or may have, including with respect to or as against third parties, and each Party expressly and fully preserves any and all privileges, confidentiality and protections, together with any and all claims or defenses associated therewith, and does not waive any such privileges, confidentiality protections, claims or defenses.

14. **Remedies.** Any violation of this Order may cause irreparable injury to the non-violating Party, entitling the non-violating Party to seek injunctive relief in addition to all other legal and equitable remedies; provided however, that no Party shall be liable for incidental damages, consequential damages, punitive damages, exemplary damages or lost profits arising out of or relating to the compliance with, or violation of this Order.

15. **Successors and Assigns.** This Order shall be binding on the Parties and their respective successors and permitted assigns.

16. **Waiver.** The failure to exercise or delay in exercising any right, power or privilege under this Order shall not operate as a waiver, and any single or partial exercise of any right, power or privilege under this Order shall not preclude the exercise of any other single or partial right, power or privilege. A waiver of any violation of any provision of this Order shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other

provision; and a waiver shall not be implied from any course of dealing among the Parties. An extension of time for performance of any obligations or other acts under this Order shall not be deemed to be an extension of the time for performance of any other obligations or any other acts.

17. **Severability.** In the event that any provision of this Order, or part thereof, is determined to be invalid, void or otherwise unenforceable, the remaining provisions of this Order shall be unaffected and the provisions concerning the use and return (or destruction) of Confidential Material are to be preserved to the fullest extent possible notwithstanding such partial invalidity.

18. **Interpretation.** Any of the terms defined in this Order may be used in the singular or the plural and in any gender, unless the context otherwise requires.

19. **Notices.** All notices required by this Order may be served by facsimile or electronic mail copy so as to be received at or before 5:00 p.m. (prevailing New Hampshire time) the day they are due. For purposes of calculating the date by which a party receiving a notice shall respond, or otherwise take action, notice received before 5:00 p.m. shall be deemed received that business day while notice received after 5:00 p.m. shall be deemed received the following business day. Any of the notice requirements herein may be waived in whole or in part, but only in a writing signed or e-mailed by an attorney for the one Party and addressed to the attorney for the other Party.

Notices to the Liquidator shall be sent to:

Russell Bogin

By e-mail: russell.bogin@homeinsco.com
By fax: (212) 548-0729

With copies to:

Eric Smith

By e-mail: esmith@rackemann.com
By fax: (617) 542-7437

Christopher Marshall

By e-mail: christopher.marshall@doj.nh.gov
By fax: (603) 223-6230

Notices to CIC shall be sent to:

Tom Wamser

By e-mail: thomas.wamser@acegroup.com
By Fax : (215) 640-4070

With a copy to:

Gary S. Lee

By e-mail: glee@mofo.com
By Fax: (212) 468-7900

Notices to KX shall be sent to:

Marvin Mohn

By e-mail: marvin.mohn@tawa.net
By Fax: 44 (0) 207 068 8001

With a copy to:

Mark Everiss

By e-mail: meveriss@eapdlaw.com
By fax: 44 (0)20 7716 3649

20. **Survival.** Neither the termination of the Proceeding nor the termination of employment of any person who has had access to any Confidential Material shall relieve such person from the obligation of maintaining the confidentiality of such information.

21. **Return or Destruction of Designated Material.** Within sixty (60) days after the conclusion of the Proceeding, counsel for the recipient shall return all Confidential Material and copies (including excerpts and summaries thereof) to counsel for the designator, or in lieu thereof, certify in writing that such Confidential Material has been destroyed. To the extent any Confidential Material has been transmitted by a designator through an electronic transmission, deleting such electronic transmission from the computer of the recipient and any subsequent recipient shall be deemed to be destruction for the purpose of this paragraph. If Confidential Material is still needed for reinsurance collection, counsel may retain the Confidential Material needed for that purpose until it is no longer needed.

22. **Amendment of Order.** Nothing herein shall preclude a Party from seeking to amend this Order for cause shown.

23. **Retention of Jurisdiction.** The Referee shall retain jurisdiction to enforce, modify or vacate all or any portion of this Order upon appropriate motion by a party in interest (subject to the jurisdiction of the Court over any recommitals, and the jurisdiction of the New Hampshire Supreme Court, and any other court of review, over any appeals).

24. **Reservation of Rights.** KX, CIC and the Liquidator each reserve all rights as against the other regarding the Claims. For the avoidance of doubt, use of any particular word or language in this Order shall not be used to advantage or disadvantage any Party in connection with its reservation of rights, including with respect to the procedural status of the Claims.

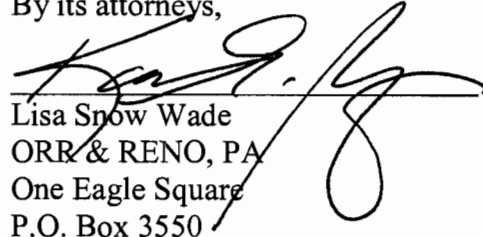
The Insurance Commissioner of the State of New
Hampshire Solely as Liquidator of the Home
Insurance Company
By its attorneys,



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Date: April __, 2009

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Date: April 2, 2009

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By its attorneys,



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Date: April 7, 2009

So Ordered:

Dated: _____

Melinda Gehris
Referee

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY**

DISPUTED CLAIMS DOCKET

**In Re Liquidator Number: 2008-HICIL-42
Proof of Claim Number: RAHM 700612-32
Claimant Name: KX Reinsurance Company
Limited**

CONFIDENTIALITY ORDER UNDERTAKING

I have read the Confidentiality Order dated [] (the "Order") in the captioned matter and I agree to be bound by its terms and conditions with respect to any documents, materials or information that are furnished to me as set forth in the Order. I further agree not to disclose to anyone any documents, material or information that are furnished to me other than in accordance with the Order and not to make any copies of any such documents, material or information other than in accordance with the Order. I hereby consent to the jurisdiction of the Referee and the Court with regard to any proceedings to enforce the terms and conditions of the Order.

Name: _____

[Title: _____]

[Intending to bind _____]

Date: _____