

FILED
03-24-2023
CIRCUIT COURT
DANE COUNTY, WI
2019CV001209

EXHIBIT A

COMMUTATION AND RELEASE AGREEMENT

This Commutation and Release Agreement (the "Commutation Agreement") effective as of March 21, 2023 (the "Effective Date"), is entered into by and between

ON THE FIRST PART

Northwestern National Insurance Company of Milwaukee, Wisconsin (In Liquidation), and its predecessor and successor companies, including but not limited to merger with affiliated companies, Universal Reinsurance Company and Bellefonte Underwriters Insurance Company. Hereafter referred to individually and collectively as "NNIC", and

ON THE SECOND PART

Swiss Reinsurance America Corporation, on behalf of itself and as successor to **GE Reinsurance Corporation** and **Underwriters Reinsurance Company**; and

ON THE THIRD PART

Westport Insurance Corporation, on behalf of itself and formerly known as **Employers Reinsurance Corporation** and **Puritan Insurance Company**; and

ON THE FOURTH PART

Swiss Re Europe S.A., UK Branch, on behalf of itself; and

ON THE FIFTH PART

Swiss Re Europe S.A., Niederlassung Deutschland, on behalf of itself and as successor to **Swiss Re Frankona Ruckversicherungs-Aktiengesellschaft**; and

ON THE SIXTH PART

Swiss Re Europe S.A., filial af Swiss Re Europe S.A., Luxembourg, on behalf of itself and formerly known as Swiss Re Denmark Reinsurance A/S.

Hereafter the second, third, fourth, fifth, and sixth Parties are referred to individually and collectively as "Swiss Re," and NNIC and Swiss Re are each a "Party" to this Commutation Agreement and are collectively referred to herein as "the Parties."

RECITALS

WHEREAS:

A. NNIC and Swiss Re are parties to various reinsurance agreements, whereby

1. Swiss Re committed to reinsure certain risks insured or reinsured by NNIC, and
2. NNIC committed to reinsure certain risks reinsured by Swiss Re; and

It is expressly understood and agreed by the Parties that this Commutation Agreement shall apply to any and all of the reinsurance agreements ever entered into between the Parties prior to the Effective Date of this Commutation Agreement and which Reinsurance Agreements are now terminated (hereafter the Inwards Agreements and the Outwards Agreements are collectively referred to as the "Reinsurance Agreements"); and

B. Swiss Re has offered to pay and NNIC has agreed to accept in full satisfaction of both Parties' past, present and future obligations and liabilities under the Reinsurance Agreements the sum set forth herein to be paid in the manner set forth herein (the "Commutation Amount"); and

- C. NNIC and Swiss Re now desire to fully and finally settle and commute all their respective past, present and future obligations and liabilities known and unknown under the Reinsurance Agreements regardless of whether the ultimate payments under the Reinsurance Agreements would be more than or less than the Commutation Amount.
- D. Cedent was placed into liquidation (hereafter, the "Liquidation Proceedings") effective on May 2, 2019 pursuant to an Order of Liquidation With a Finding of Insolvency entered by the Circuit Court of Dane County, Wisconsin, (hereafter, the "Supervising Court") and Nathan Houdek, the Wisconsin Commissioner of Insurance, is the Cedent's statutory and court-affirmed liquidator (hereafter, the "Liquidator"); and
- E. This Commutation Agreement shall not be valid and enforceable by and between the Parties, unless approved by order of the Supervising Court.

NOW, THEREFORE, in consideration of the covenants and recitals set forth herein and the payments to be made hereunder, it is agreed by and between NNIC and Swiss Re as follows:

TERMS

1. The Recitals are incorporated into and made an integral part of the Terms of this Commutation Agreement.
2. **Commutation Amount and Payment.** Upon both (i) receipt by the Reinsurer of the Supervising Court's written order approving this Commutation Agreement, and (ii) execution by both Parties and delivery of this Commutation Agreement, whichever is later in time (hereafter the "Effective Date"), Swiss Re shall within thirty (30) business days remit payment by wire transfer to NNIC the Commutation Amount of \$100,000.00 (one hundred thousand United States dollars). In this Commutation Agreement business day means a day (other than a Saturday or Sunday) which is not a public holiday in the United States and on which banks are open for general business in the State of New York. The wire transfer shall be made to the account designated by the Liquidator.
3. **Full and Final Settlement.** NNIC shall accept the sum set forth in paragraph 2 as full and final settlement of any and all amounts claimed heretofore or hereinafter to be due between the Parties

arising under or in respect of the Reinsurance Agreements. The settlement of the Commutation Amount shall be direct from Swiss Re to NNIC, and not remitted to any intermediary for this transaction. The Parties acknowledge that any balances owed to any intermediary in respect of the Reinsurance Agreements shall be the sole obligation of the respective Party that owes such balance and any such balances will be settled directly with said intermediary.

4. **Release.** Excepting only the obligations provided under this Commutation Agreement, including, without limitation, obligations, representations, or warranties hereunder which require performance after execution of this Commutation Agreement and, subject to the receipt of the Commutation Amount, each Party hereto does hereby release and discharge the other, its predecessors, parents, affiliates, agents, officers, directors, shareholders, policyholders and assigns from any and all liabilities, including but not limited to, all obligations, adjustments, executions, offsets, actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, claims, demands, duties, doings, omissions, costs, expenses and/or losses whatsoever, whether known or unknown, reported or unreported, and whether arising in the past, present or future, which it has, and its successors and assigns ever had, nor have, or hereafter may have whether grounded in law or in equity, in contract or in tort, against the other Party by reason of any matter whatsoever arising out of the Reinsurance Agreements, it being the intention of the Parties that this Commutation Agreement operate as a full and final settlement of each Parties' current and future liabilities to the other party under said Reinsurance Agreements. The Parties each acknowledge that the payment described in paragraph 2 herein is a complete accord, satisfaction, settlement and commutation of all the liability and obligations of each Party under the Reinsurance Agreements.
5. **Sanctions.** Payment of the Agreed Sum by the Reinsurer shall be made only insofar as and as long as this is not in breach of or contradiction to economic, trade or financial sanctions or embargoes directly or indirectly applicable to the contracting Parties. The Reinsurer also relies upon the Reinsured/Broker that no payment or part payment to Insureds/ Claimants under this Agreement falls under or is in breach of the relevant sanctions' regimes.

6. **Unknown Events, Statutory Waiver.** The Parties expressly assume the risk that acts, omissions, matters, causes or things may have occurred which are not known or are not suspected to exist by one or more of them. To the fullest extent permitted by law, the Parties hereby waive the terms and provisions of any statute, rule or doctrine of common law which either:
- a. narrowly construes releases purporting by their terms to release claims in whole or in part based upon, arising from or related to such acts, omissions, matters, causes or things, or,
 - b. which restricts or prohibits the releasing of such claims,

even extending to claims of a Party that the Party had not known or suspected to exist at the time of executing the release, which if known may have materially affected its settlement with the other Party.

The Parties acknowledge that they have been advised by their respective attorneys concerning, and are familiar with, the provisions of California Civil Code Section 1542, which reads as follows: "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 release, which if known by him must have significantly affected his settlement with the debtor." The Parties expressly waive any and all rights under California Civil Code Section 1542 and under any other federal or state statute or law of similar effect with respect to this Commutation Agreement.

7. **Final Agreement.** The Parties hereby agree that this Commutation Agreement is final and binding and cannot be voided or opened by either Party for any reason, including but not limited to the discovery of facts, circumstances, or legal decisions, subsequent or otherwise, different from or in addition to those now known or believed to be true regarding the subject matter of this Commutation Agreement.
8. **Arm's Length Agreement.** This Commutation Agreement is the product of arm's length negotiations and the terms of this Commutation Agreement have been completely read and fully understood and voluntarily accepted by both NNIC and Swiss Re.

9. **Agreement Not to File Suit; Closure of Liquidation.** NNIC and Swiss Re absolutely and unconditionally covenant and agree with each other, and their respective successors and assigns, that after the effective date of this Commutation Agreement, neither Party will hereafter for any reason whatsoever, demand, claim or file suit or initiate arbitration proceedings against the other in respect of any matters relating to the Reinsurance Agreements. Swiss Re agrees that it will not object to or otherwise challenge the Liquidator's actions to close the liquidation estate including, but not limited to, the final distribution of assets from the estate and the discharge of the estate from liquidation.
10. **Accord and Satisfaction.** The Parties each acknowledge that the payment described in paragraph 2 herein, as complete accord, satisfaction, settlement and commutation of all the liability and obligations of each Party under the Reinsurance Agreements.
11. **Binding on Successors.** The rights, duties and obligations of the Parties under this Commutation Agreement shall be final and binding upon and inure to the benefit of the Parties hereto and their respective successors, liquidators, receivers and assigns.
12. **Authority.** Each Party represents and warrants to the other that it is fully authorized and empowered to execute and deliver this Commutation Agreement; that the person executing this Commutation Agreement is fully authorized to do so; that there are no pending conditions, agreements, transactions, negotiations, or actions or proceedings of any kind to which either is a Party that would render this Commutation Agreement or any part thereof void, voidable or unenforceable. Notwithstanding the foregoing terms of this Article 12, as a condition precedent to this Commutation Agreement being valid and enforceable by and between the Parties, the Liquidator on behalf of the Cedent will obtain an order of the Supervising Court approving this Commutation Agreement.
13. **Entire Agreement.** This Commutation Agreement shall constitute the entire agreement between the Parties as respects its subject matter. All discussions and agreements previously entertained between the parties concerning the subject matter of the Commutation Agreement are merged into the Commutation Agreement. This Commutation Agreement may not be modified or amended except by written instrument executed by each of the Parties hereto.

14. Confidentiality. The Parties agree to maintain the terms of this Commutation Agreement in confidence (but not the existence of this Commutation Agreement) unless disclosure is required as a result of a court order, subpoena, law, regulation, account procedure, reinsurance contract, or lawful discovery procedures or a review or inquiry by any regulatory authority. If either Party is served with a subpoena for the production of this Commutation Agreement, the Party so served shall promptly notify the other Party and afford it an opportunity to object to its production or otherwise intervene. Notwithstanding the foregoing, either Party may disclose any of the terms of this Commutation Agreement to such Party's agents, attorneys, accountants, consultants, Swiss Res and others having a legitimate need to know.
15. Continuing Cooperation. From time to time, at the request of any Party, without further consideration and at their own expense and within a reasonable period of time after the request is made, the Parties hereby agree to execute and deliver any and all further documents and to do all acts, as any one of the Parties to this Commutation Agreement may reasonably request, which may be necessary or appropriate to fully implement the provisions or objectives of this Commutation Agreement.
16. Governing Law. The laws of the State of Wisconsin shall govern this Commutation Agreement, without regard to its conflicts of law principles.
17. Severability. If any term or provision of this Commutation Agreement shall be held void, illegal or unenforceable, the validity of the remaining portions or provision shall not be affected thereby. However, if any court, arbitration panel, or governmental or regulatory body renders an order, ruling, or other determination declaring that this Commutation Agreement or any material provision of this Agreement is null and void, the Parties acknowledge and agree that each Party shall be restored to the position it was in just prior to entering into this Commutation Agreement; provided that the Party that received the Commutation Amount shall repay to the Party that paid the Commutation Amount the full sum of the Commutation Amount.
18. Counterparts. This Commutation Agreement may be signed in counterparts and exchanged in hardcopy form or by any form of electronic transmission. Each executed counterpart shall be deemed an original. All executed counterparts taken together shall constitute one and the same

original agreement. Each Party agrees that any electronic signature of a Party included in this Commutation Agreement is intended to authenticate this writing and to have the same force and effect as a manual (wet-ink) signature. "Electronic Signature" means any process attached to or logically associated with a record and executed and adopted by a Party with the intent to sign such record, including facsimile or electronic signatures pursuant to applicable law.

19. Headings. The descriptive headings herein are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Commutation Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Commutation Agreement as of the dates written below.

Northwestern National Insurance Company of Milwaukee, Wisconsin (In Liquidation)

DocuSigned by:
Amy Malm
Signature: 265BDCF8ED9843E...

Title: Special Deputy Liquidator

Printed Name: Amy Malm

23-Mar-2023

Date: _____

Swiss Reinsurance America Corporation

Signature:  _____

Digitally signed by
Michelle Smith
Date: 22.03.2023
15:56:28

Title: ___ Senior Vice President _____

Printed Name: ___ Michelle Smith _____

Date: ___ 3/22/2023 _____

Swiss Reinsurance America Corporation

Signature:  _____

Digitally signed by
Robert Crowder
Date: 22.03.2023
15:48:37

Title: ___ Vice President _____

Printed Name: ___ Robert Crowder _____

Date: ___ 3/22/2023 _____

Westport Insurance Corporation

Signature:  _____

Digitally signed by
Michelle Smith
Date: 22.03.2023
15:57:12

Title: ___ Senior Vice President _____

Printed Name: ___ Michelle Smith _____

Date: ___ 3/22/2023 _____

Westport Insurance Corporation

Signature:  _____


Digitally signed by
Robert Crowder
Date: 22.03.2023
15:51:00

Title: ___ Vice President _____

Printed Name: ___ Robert Crowder _____

Date: ___ 3/22/2023 _____

Swiss Re Europe S.A., UK Branch

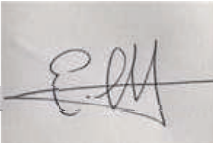
Signature:  Digitally signed by
Mark Hallam
Date: 2023.03.22
14:41:03 Z

Title: _____ Managing Director _____

Printed Name: __ Mark Hallam _____

Date: _____ 3/22/2023 _____

Swiss Re Europe S.A., UK Branch

Signature:  Digitally signed by
Emma Coffey
Date: 22.03.2023
18:22:19

Title: _____ Director _____

Printed Name: __ Emma Coffey _____

Date: _____ 3/22/2023 _____

Swiss Re Europe S.A., Niederlassung
Deutschland

Swiss Re Europe S.A., Niederlassung
Deutschland

Digitally signed by
Bruno Radke
Date: 22.03.2023
15:22:06

Signature: _____


bruno_radke@swissre.com

Title: _____ Director _____

Printed Name: _____ Bruno Radke _____

Date: _____ 3/22/2023 _____

Swiss Re Europe S.A., Niederlassung
Deutschland

Swiss Re Europe S.A.
Niederlassung Deutschland

Digitally signed
by Andreas Lex
Date: 2023.03.22
13:53:48 +01'00'

Signature: _____


andreas_lex@swissre.com

Title: _____ Vice President _____

Printed Name: _____ Andreas Lex _____

Date: _____ 3/22/2023 _____

Swiss Re Europe S.A., filial af Swiss Re Europe S.A., Luxembourg

Swiss Re Europe S.A., filial af Swiss Re Europe S.A., Luxembourg, Midtermolen 3, 4 TV, Copenhagen, Denmark 2100

Digitally signed by Birgitte Torp-Pedersen Date: 23.03.2023 09:03:56

Signature 

Birgitte.TorpPedersen@swissre.com

Title: ___ Vice President _____

Printed Name: _Birgitte Torp-Pedersen_

Date: _____ 3/23/2023 _____

Swiss Re Europe S.A., filial af Swiss Re Europe S.A., Luxembourg

Swiss Re Europe S.A., filial af Swiss Re Europe S.A., Luxembourg, Midtermolen 3, 4tv, Copenhagen, Denmark 2100

Digitally signed by Anders Carlsen Date: 23.03.2023 09:50:43

Signature: 

Anders.Carlsen@swissre.com

Title: ___ Vice President _____

Printed Name: __Anders Carlsen _____

Date: _____ 3/23/2023 _____

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