

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL S. ARIO,  
Insurance Commissioner of the  
Commonwealth of Pennsylvania,  
in his official capacity as Liquidator  
of Reliance Insurance Company,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

No. 269 M.D. 2001

2009 APR 28 P 2:00

FILED  
COMMONWEALTH COURT  
OF PENNSYLVANIA

IN RE: *Commutation, Settlement Agreement and Release between  
Reliance Insurance Company (In Liquidation) and  
Continental Casualty Company and The Continental Insurance Company  
as successor in interest to Continental Reinsurance Corporation.*

**ORDER**

AND NOW, this \_\_\_ day of \_\_\_\_\_ 2009, upon consideration of the  
Liquidator's Petition for Approval of the Commutation, Settlement Agreement and Release  
("Settlement Agreement") between Reliance Insurance Company ("Reliance" or "Estate")  
and Continental Casualty Company and The Continental Insurance Company as successor

in interest to Continental Reinsurance Corporation ("Reinsurers") submitted by the Liquidator of Reliance Insurance Company ("Liquidator") regarding certain reinsurance agreements specifically identified in the Settlement Agreement ("Reinsurance Agreements"):

**The Court ACCEPTS** the Liquidator's representations that the Settlement Agreement is in the best interest of the Estate, as the Settlement Agreement allows the Liquidator to terminate and commute the Reinsurance Agreements and the Estate will receive an economic benefit amounting to \$6,450,000;

**Further**, the Court accepts the Liquidator's representations that the Settlement Agreement is a fair and reasonable settlement of the Reinsurers' obligations to the Estate under the Reinsurance Agreements, and that the payment contemplated under the Settlement Agreement constitutes fair and reasonable value to the Estate;

**Accordingly**, the Court accepts the Liquidator's representations and based thereon approves the Commutation, Settlement Agreement and Release attached hereto and marked as Exhibit A.

Further, counsel for the Liquidator is directed to serve a copy of this Order upon those listed on the Master Service List and file with the Court an affidavit that service has been effectuated.

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**BONNIE BRIGANCE LEADBETTER**  
**President Judge**

RECEIVED AND FILED  
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Plaintiff,  
  
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RELIANCE INSURANCE COMPANY,  
  
Defendant.

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No. 269 M.D. 2001

IN RE: *Commutation, Settlement Agreement and Release between Reliance Insurance Company (In Liquidation) and Continental Casualty Company and The Continental Insurance Company as successor in interest to Continental Reinsurance Corporation.*

**Liquidator's Petition For Approval Of  
Commutation, Settlement Agreement And Release**

Petitioner Joel S. Ario, Insurance Commissioner for the Commonwealth of Pennsylvania, in his capacity as Statutory Liquidator ("Liquidator") of Reliance Insurance Company ("Reliance" or "Estate"), respectfully requests that this Court enter an Order approving the

("Reliance" or "Estate"), respectfully requests that this Court enter an Order approving the Commutation, Settlement Agreement and Release ("Settlement Agreement"), attached hereto as Exhibit A, between Reliance and Continental Casualty Company and The Continental Insurance Company as successor in interest to Continental Reinsurance Corporation ("Reinsurers").

In support of this petition, the Liquidator avers the following:

1. On October 3, 2001, this Court found Reliance insolvent and appointed the Commissioner as Liquidator of Reliance pursuant to Article V of the Insurance Department Act of 1921, 40 P.S. §221.1 et seq. ("Act"). The Act confers broad powers on the Liquidator to marshal the assets of Reliance in order to maximize the value of the insolvent insurer's estate for eventual distribution to its policyholders and creditors.

2. The Act authorizes the Liquidator to take such actions as deemed "necessary or expedient to . . . conserve or protect [the insolvent insurer's] assets or property[,]” including the power to “compromise” claims involving assets of the insolvent insurer in order to accomplish or aid in achieving the purposes of liquidation. See 40 P.S. §221.23(6, 9, and 23).

3. One way in which the Liquidator “compromises” claims and “conserves” assets is through commutation. A commutation is a settlement agreement reached between a reinsured and its reinsurer by which the reinsurance obligation is terminated through an agreement by the reinsurer to pay funds that are both due and not yet due under the reinsurance agreement.

4. Prior to entering into a commutation, Reliance staff takes several steps, including the following, to ensure that the commutation is fair and reasonable to the Estate and in the best interests of its policyholders, claimants and the general public:

(a) Reliance staff develops a complete list of reinsurance agreements to be included in the commutation;

- (b) Reinsurance accounting specialists for Reliance verify balances and reconcile differences with the reinsurer;
- (c) The Reliance claims staff reviews ceded case reserves;
- (d) Actuaries for Reliance determine the projected ultimate loss, discounted and undiscounted, taking into consideration specific contract features such as reinstatement premiums, sliding scale rates, commission adjustments and/or loss corridors<sup>1</sup> as well as the impact of other applicable reinsurance and off-sets;
- (e) Reliance staff and the reinsurer exchange commutation proposals and discuss justifications;
- (f) Reliance staff evaluates the commutation proposal based on nominal results, the discounted results, the volatility and trends of the business, disputed issues and any administrative savings; and
- (g) Reliance staff and the reinsurer secure any required approvals.

5. The Liquidator also has established a Commutation Working Group which performs accounting and data reconciliations, actuarial analyses, and claims reviews and analyses. The Commutation Working Group is largely comprised of several key senior management employees each of whom has over 20 years of insurance and reinsurance experience.

6. In addition, the Liquidator has established a Commutation Committee, consisting of the Chief Liquidation Officer, President, and Chief Actuary, who, along with the Vice-

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<sup>1</sup> A loss corridor is a mechanism contained in certain reinsurance agreements that requires the ceding insurer to be responsible for a certain amount of the ultimate net loss that is above the company's designated retention and below the designated limit; and which would otherwise be reimbursed under the reinsurance agreement. A loss corridor is usually expressed as a loss ratio percentage of the reinsurer's earned premium, or a combined ratio if the reinsurance agreement provides for a ceding commission to the company. Loss corridors are employed to mitigate the volatility of reinsurance agreements.

President for Commutations and the Executive Vice-President for Reinsurance, review all commutation proposals. Any commutation in excess of \$1,000,000 must be approved by the Commutation Committee.

7. In addition, Reliance's independent consulting actuaries, PricewaterhouseCoopers ("PwC"), have reviewed Reliance's commutation approach both generally and with respect to individual transactions and have concluded that the process Reliance utilizes to estimate liabilities ceded to reinsurers is reasonable for commutation purposes.

8. The commutation memorialized in the Settlement Agreement with the two Reinsurers concerns 12 different reinsurance agreements ("Reinsurance Agreements") involving directors & officers and professional errors & omissions ("D&O/E&O") liability business. The Reinsurers participated in varying percentages or amounts with regard to each of the Reinsurance Agreements specifically identified in the Settlement Agreement.

#### D&O/E&O Reinsurance Agreements

9. The Reinsurers assumed varying shares of the 12 Reinsurance Agreements. These Reinsurance Agreements were all excess of loss reinsurance agreements. An excess of loss reinsurance agreement is one in which the reinsurer promises to pay individual losses once payments by the reinsured exceed a certain amount. Specifically, from 1987 to 1993 the Reinsurers had varying shares of reinsurance providing \$4 million of coverage in excess of \$1 million each occurrence. From 1997 to 1998 the Reinsurers assumed varying shares of reinsurance providing \$18 million of coverage in excess of \$2 million for each occurrence. From 1998 to 2000 the Reinsurers assumed varying shares of reinsurance providing \$24 million of coverage in excess of \$1 million for each occurrence.

10. The policies covered by the Reinsurance Agreements were written on both a primary and excess basis and were primarily claims made policies. Some of the claims made policies were written with extended reporting endorsements. An extended reporting endorsement permits an insured to report a claim after the expiration date of the claims made policy, for a specified additional period of time, if the claim itself arose during the policy period. The E&O policies provided coverage for various classes of professional risks, including small and large law firms, architects and engineers, and insurance agents

11. As part of its due diligence for this Settlement Agreement, senior Reliance actuarial and experienced claims personnel conducted a review of the relevant D&O/E&O claims under the Reinsurance Agreements in order to both verify the accuracy of the reserves and to project the timing of payments for each relevant claim. During this review, they determined the Reinsurers' share of paid losses and loss adjustment expenses and also established reserves for the Reinsurers' portion. Reserves are estimates of amounts to be paid in the future on known and expected losses.

12. With this information and employing generally accepted actuarial models, the actuaries at Reliance were able to develop a range of net present value estimates for the Reinsurers' portion of the claims ceded under the Reinsurance Agreements. This work was reviewed by PwC in connection with their review of the entire portfolio of D&O/E&O reinsurance agreements, and PwC agrees with the ranges developed by Reliance. Reliance then negotiated with the Reinsurers to commute their obligations under the Reinsurance Agreements for an agreed amount of \$6,450,000 which falls within the range of values established by the Reliance actuaries.

### Settlement Agreement

13. Reliance negotiated a settlement of \$6,450,000 for the remaining exposure under the Reinsurance Agreements and entered into the Settlement Agreement effective February 6, 2009, subject to the approval of this Court. The Settlement Agreement settles with certainty the claims against the Reinsurers for losses under the Reinsurance Agreements specifically identified in the Settlement Agreement.

14. Specifically, the Settlement Agreement provides that the Reinsurers shall pay Reliance \$6,450,000 to commute their obligations under the Reinsurance Agreements (“Commutation Amount”). The Commutation Amount is due within 10 calendar days of when the Reinsurers receive notice that the Settlement Agreement was approved by this Court. In the event that this Court does not approve the Settlement Agreement, it will become null and void. The Commutation Amount was negotiated with the Reinsurers, and the Liquidator has taken the necessary steps to determine, and has concluded, that the terms of the Settlement Agreement are fair and reasonable to the Estate and in the best interests of its policyholders, claimants and the general public. See 40 P.S. §§221.1(c), 221.23(9).

15. Based on the analysis of the terms of the Settlement Agreement, and the evaluation of the transaction as a whole by the Liquidator’s staff and Reliance staff members familiar with the business dealings under the Reinsurance Agreements, the Liquidator has determined that payment of the Commutation Amount by the Reinsurers is a fair and reasonable commutation of the Reinsurers’ obligations to Reliance under the Reinsurance Agreements.

16. Keith Kaplan, Executive Vice President for Reinsurance at Reliance, is responsible for all facets of ceded and assumed reinsurance at Reliance including accounting, billing, claims, commutations, coverage analysis, and dispute management. He has specific



knowledge regarding the risks to the Estate of attempting to collect reinsurance through billing, negotiation or the dispute resolution process. As set forth in his Confidential Affidavit (attached as "Sealed Exhibit B"), Mr. Kaplan has identified several specific advantages to the Estate arising from the consummation of the transaction memorialized in the Settlement Agreement.

17. The Settlement Agreement will further achievement of the liquidation objectives under the Act. The commutation transaction will assist the Liquidator in marshalling and maximizing Reliance's immediately available assets while minimizing any unavoidable loss to policyholders, claimants and creditors resulting from the Reliance insolvency. See 40 P.S. §221.1(c).

(a) First, the Settlement Agreement converts future reinsurance obligations into immediate cash for the Estate. Specifically, the Estate receives \$6,450,000 which can be invested until it is distributed.

(b) Second, the Settlement Agreement eliminates both the internal and external administrative costs associated with continued reporting and collection efforts, including legal fees.

(c) Third, this commutation eliminates any potential future credit risk associated with collection of the reinsurance proceeds in the event that the reinsurers become insolvent.

(d) Fourth, no person or firm has earned or will earn any contingent fee or extra remuneration of any type as a result of this transaction.

18. Under the terms of the Settlement Agreement, the Commutation will be fully consummated upon satisfaction of the following conditions:

(a) execution of the Settlement Agreement by an authorized representative of the Liquidator;

(b) execution of the Settlement Agreement by an authorized representative of the Reinsurers;

(c) approval of the transaction by this Court; and

(d) appropriate notice to the Reinsurers of Court approval.

WHEREFORE, the Liquidator respectfully requests that this Court enter an Order in the form attached hereto:

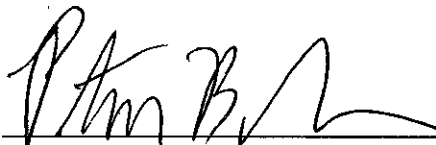
(a) Finding that the Settlement Agreement and Commutation Amount are in the best interest of the Estate;

(b) Finding that the Settlement Agreement is a fair and reasonable settlement of the Reinsurers' obligations under the Reinsurance Agreements;

(c) Finding the payment contemplated by the Settlement Agreement constitutes fair and reasonable value to the Estate; and

(d) Approving the terms of the Settlement Agreement attached as Exhibit A.

Respectfully submitted,



PRESTON BUCKMAN (I.D. #57570)

Special Funds Counsel

Pennsylvania Insurance Department

Capitol Associates Building

Governor's Office of General Counsel

901 North 7<sup>th</sup> Street

Harrisburg, PA 17102

(717) 787-6009

Attorney for Plaintiff, Joel S. Ario, Insurance  
Commissioner of the Commonwealth of  
Pennsylvania, in his official capacity as Liquidator  
of Reliance Insurance Company

Dated: April 28, 20 09

**VERIFICATION**

I, David S. Brietling, Chief Liquidation Officer for Reliance Insurance Company, in liquidation, am authorized by Joel S. Ario, Insurance Commissioner of the Commonwealth of Pennsylvania, pursuant to 40 P.S. §221.23, to act on his behalf in his capacity as the Statutory Liquidator of Reliance Insurance Company. I hereby verify that the facts set forth in the foregoing pleading are true and correct to the best of my knowledge, information and belief.

I understand that this Verification is made subject to the penalties of 18 P.S. §4904 relating to unsworn falsification to authorities.

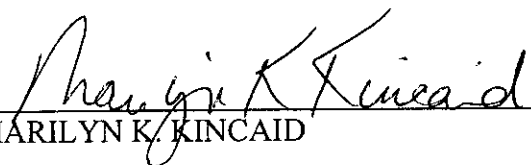
Executed on April 28, 2009

  
\_\_\_\_\_  
DAVID S. BRIETLING

**CERTIFICATE OF SERVICE**

I, Marilyn K. Kincaid, hereby certify that on or about this day, pursuant to the Court's Order of December 12, 2008, service of the foregoing was made on the attached Master Service List through the transmission of a Notice of Filing and through posting of a true and correct copy in PDF file format on the Reliance Documents website at [www.reliancedocuments.com](http://www.reliancedocuments.com).

Dated: April 28, 2009

  
MARILYN K. KINCAID

## Master Service List

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v.

Reliance Insurance Company

No. 269 M.D. 2001 (Commonwealth Court of Pennsylvania)

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(Counsel for Republic Western Insurance Company)

# Exhibit A



## COMMUTATION, SETTLEMENT AGREEMENT AND RELEASE

THIS COMMUTATION, SETTLEMENT AGREEMENT AND RELEASE (“Agreement”), made effective and entered into this 6<sup>th</sup> day of February, 2009, by and between Continental Casualty Company and The Continental Insurance Company as successor in interest to Continental Reinsurance Corporation (hereinafter jointly known as the “Reinsurer”) and Joel S. Ario, Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as Statutory Liquidator of Reliance Insurance Company (In Liquidation) (hereinafter known as the “Cedant”). David S. Brietling, Chief Liquidation Officer, is acting on behalf of Joel S. Ario, who is acting on behalf of the Cedant pursuant to the powers granted to him under Title 40, Purdon’s Statutes, Section 221.20, et seq. and other applicable statutes, regulations and laws.

### RECITALS

A. The Reinsurer and the Cedant entered into contracts of reinsurance wherein the Reinsurer obligated itself to accept from the Cedant the cession of a certain percentage of liabilities with respect to risks written or assumed by the Cedant and/or agents of the Cedant, and;

B. The reinsurance agreements referred to in Recital A above are set out on Exhibit A attached hereto and are herein collectively referred to as “the Contracts”, and;

C. Pursuant to the Contracts, there are loss developments, the total amount of which are not fully known or not yet capable of determination, representing liabilities which are or may come due from the Reinsurer to the Cedant, and;

D. The parties hereto recognize and understand that, based upon current economic projections, a substantial portion of the Reinsurer’s obligations to the Cedant may become payable in the future rather than at present; that the Reinsurer’s future liabilities and obligations to the Cedant pursuant to the Contracts have been evaluated, but cannot be determined in an amount certain at this time; and that a settlement and commutation of the Reinsurer’s obligations

to the Cedant based upon present calculations of outstanding losses, including incurred but not reported losses, will eliminate the uncertainty of contingent liabilities for presently unresolved or unasserted claims, and;

E. The Reinsurer and the Cedant agree that it is in each of their best interests and in the best interests of their respective policyholders and creditors to adjust and settle their differences and to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual benefits to be received by the parties hereto and the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

#### **Commutation of Reinsurance Agreements**

1. Subject to the receipt by the Cedant of the Consideration as set out in Article 4 herein, together with any collection expenses and accrued interest due as is more particularly described in Article 8 (c) and 9 below, and in further consideration of the release contained in Article 2 herein the Cedant hereby irrevocably releases the Reinsurer, its parents, affiliates, subsidiaries, predecessors, successors, assigns, shareholders, officers, directors, employees, agents, sub-agents, brokers and sub-brokers from One Hundred Percent (100%) of all adjustments, obligations, liabilities, offsets, actions, causes of action, proofs of claim, suits, debts, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, conversions, costs, agreements, promises, damages, expenses, judgment claims, causes of action, judgments, suits, arbitrations, mediations, and demands whatsoever, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, by either or both parties, fixed or contingent, claimed or unclaimed, matured or unmatured, at law or in equity, whether alleged to arise under contract or tort, or statutory, or common law, arising out of, or in connection with the Reinsurer's participations on the Contracts, whether or not any of such contracts are void or voidable, including but not limited to any and all fraud, misrepresentation, and bad faith claims arising under or related to the Contracts. The releases contained herein are only made on behalf of

Reliance Insurance Company in its own right and as successor in interest by merger to its former subsidiaries shown on the attached Exhibit C and, without limiting the generality of the forgoing, it is the intent of the Cedant that this release operates as a full and final release and discharge of the Reinsurer from any and all duties, obligations, and liabilities arising under or relating to the Contracts and specifically do not apply to claims arising from business written by the Canadian Branch of Reliance Insurance Company, Reliance National Insurance Co. (Europe) Limited, Reliance National Asia RE PTE, Ltd. or any other former non-domestic subsidiary that is not part of Reliance Insurance Company as a result of a merger.

Each party acknowledges that statutory, regulatory or common law may limit the waiver or release of unknown or unsuspected claims. Without accepting that such statutory, regulatory, or common law applies to this Agreement, each party hereby waives and releases any and all rights it might have pursuant to such statutory, regulatory, or common law in connection with the subject matter of this Agreement. The releases, representations and warranties and other provisions contained in this Agreement shall not apply to any agreements between the parties other than the Contracts.

### **Release of the Cedant**

2. In consideration of the release set out in Article 1 herein, the Reinsurer hereby irrevocably and unconditionally releases the Cedant, its parents, affiliates, subsidiaries, predecessors, successors, assigns, shareholders, officers, directors, employees, receivers, liquidators, administrators, agents, sub-agents, brokers and sub-brokers from One Hundred Percent (100%) of all adjustments, obligations, liabilities, offsets, actions, causes of action, proofs of claim, suits, debts, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, conversions, costs, agreements, promises, damages, expenses, judgment claims, causes of action, judgments, suits, arbitrations, mediations, and demands whatsoever, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, by either or both parties, fixed or contingent, claimed or unclaimed, matured or unmatured, at law or in equity, whether

alleged to arise under contract or tort, or statutory, or common law, arising out of, or in connection with the participation of the Cedant on the Contracts, whether or not any of such contracts are void or voidable including but not limited to any and all fraud, misrepresentation, and bad faith claims arising under or related to the Contracts. Without limiting the generalities of the foregoing, it is the intent of the Reinsurer that this release operates as a full and final release and discharge of the Cedant from any and all duties, obligations, and liabilities arising under or relating to the Contracts.

### **Warranties**

3. To the best information and belief of each of the parties to this Agreement, the following express warranties apply:

a. There are no pending agreements, transactions, negotiations, regulatory actions or lawsuits in which any of the parties are involved nor are there any threatened regulatory actions or lawsuits of which any of the parties are aware that would render this Agreement or any part thereof void, avoidable, or unenforceable;

b. No party hereto has transferred, assigned, or contracted to transfer or assign to any person, corporation, company or entity any of its rights, title, benefit or obligations directly arising out of or in connection with the Contracts, including without limitation any balances, accounts, costs, claims, counterclaims or demands which are within the contemplation of this Agreement;

c. The Reinsurer has not commuted or otherwise settled with or contracted to commute or settle with any person, corporation, company or entity any of their respective rights, title, benefit or obligations directly arising out of or in connection with the Contracts, including without limitation any balances, accounts, costs, claims, counterclaims or demands which are within the contemplation of this Agreement;

d. Except as disclosed in Article 16, no further action, consent, or approval of any person, entity, or arbitration panel is required for the execution, delivery, or performance

of any promise, covenant, agreement, condition, payment, or consideration of or under this Agreement by such party;

e. No promise, covenant, agreement, condition, payment, or consideration of or under this Agreement by such party violates any law or conflicts with any order, writ, injunction, judgment, award, or decree of any court, arbitration panel, or governmental or regulatory body;

f. No promise, covenant, agreement, condition, payment, or consideration of or under this Agreement by such party violates any article of incorporation or by-law of such party;

g. It is not a party to any agreement, transaction, or negotiation that would render this Agreement, or any part thereof, void, voidable, or unenforceable;

h. It has not assigned, sold, or transferred any claim or right intended to be discharged or released by or under this Agreement;

i. It is not aware of any third party that has, or might assert, an independent interest, separate and apart from any further obligations intended to be fully discharged or released by or under this Agreement;

j. It has completely read, fully understands, and voluntarily accepts the terms and conditions of this Agreement.

#### **Consideration**

4. The Reinsurer agrees to pay the Cedant the total sum of Six Million Four Hundred and Fifty Thousand United States Dollars (US\$6,450,000) (“the Consideration”). Said payment shall be made no later than ten (10) calendar days following notice to the Reinsurer by facsimile of the execution of this Agreement by the Cedant or its assignee and the approval of the Agreement by the Commonwealth Court of Pennsylvania in accordance with Article 16 herein (“the Completion Date”). Notwithstanding the foregoing, if the ten (10) day period expires on a weekend or a holiday, then the transfer must be completed by the end of the next business day.

Reinsurer shall transfer the Consideration to the following account:

|                 |                               |
|-----------------|-------------------------------|
| Name of Bank:   | Mellon Bank<br>Pittsburgh, PA |
| ABA Number:     | 043000261                     |
| Credit:         | Reliance Insurance Company    |
| CHIPS No.:      | 044840                        |
| Account Number: | 079-7806                      |
| S.W.I.F.T.:     | MELN US 3P                    |
| Ref:            | Kathy Lee                     |

The parties also agree that any claim recoveries including but not limited to salvage and subrogation, any escrow funds with third party claim administrators and any unremitted cash with intermediaries that relate to the Contracts is the property of the Cedant.

#### **Successors and Assigns**

5. This Agreement shall inure to the benefit of and bind the Reinsurer and its successors and assigns and the Cedant and their respective successors and assigns.

#### **Independent Investigation**

6. Each of the parties acknowledges that it has entered into this Agreement in reliance upon its own independent investigation and analysis of the Contracts and its respective rights and obligations thereunder, and not on the basis of any representation made or not made by the other party hereto. Each of the parties further acknowledges that it has read this Agreement, that it has had the opportunity to discuss it with legal counsel, and that it fully understands all of the terms herein.

The parties hereby agree that this 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 the 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 Agreement.

### **Integration and Waiver**

7. This Agreement shall constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersedes any and all prior or contemporaneous understandings or agreements. No supplement, modification, waiver or termination hereof shall be binding or enforceable unless executed in writing by the parties to be bound thereby. No delay, omission or forbearance on the part of any party to this Agreement in exercising or enforcing any right, power or remedy under this Agreement shall impair such right, power or remedy or operate as a waiver thereof. The single or partial exercise or enforcement of such right, power or remedy shall not preclude any other or further exercise or enforcement thereof or of any other right, power or remedy. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

### **Remedies**

8. In the event that the Reinsurer fails to pay the Consideration to the Cedant by the Completion Date, the Cedant shall have all rights and remedies available at law or in equity. In addition, the Cedant shall have the express right to:

a. deem the entire Agreement null and void by notice in writing to the Reinsurer per Article 11 herein and to seek recovery of all sums due or to become due under the Contracts, or;

b. bring suit on the Agreement including interest on the agreed-upon but unpaid amount as set out in Article 8(c).

c. Without prejudice to the Cedant's rights to rescind this Agreement

pursuant to Article 8(a) above, if Reinsurer does not pay all of the Consideration recited herein to the Cedant by the Completion Date, the Reinsurer shall pay interest on any unpaid sums at a rate which is equal to one percentage point (1.00%) over the Prime Rate (the base rate on corporate loans at large U.S. money center commercial banks) as published in *The Wall Street Journal*, but in no event shall said interest be calculated at less than six percent (6%) per annum.

### **Expenses of Collection**

9. Subject to the provisions of Article 8(c) herein, if the Reinsurer fails to pay the Consideration to the Cedant by the Completion Date, Reinsurer agrees to reimburse the Cedant for all reasonable expenses including, without limitation, attorney fees which are incurred by the Cedant in the enforcement of this Agreement and collection of the consideration together with any interest accrued upon such reasonable expenses from the date of payment of such expenses at the rate set out in Article 8(c) above.

### **Choice of Laws**

10. The performance and interpretation of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania with respect to any dispute arising under this Agreement between the Reinsurer and the Cedant;

### **Notices**

11. All notices required under this Agreement shall be as follows:
- a. Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post/mail (or by air mail if overseas) or by overnight courier service, to the addresses of the parties as set out in Exhibit B attached hereto or to such other person or address as any party may specify by notice in writing to the others.
  - b. In the absence of evidence of earlier receipt, any notice or other



communication shall be deemed to have been duly served if (i) sent by first class post on the second business day after posting; (ii) sent by overnight courier on the next business day after mailing (iii) sent by air mail, six (6) days after posting, and; (iv) if delivered personally, when left during normal business hours at the address set out in Exhibit B or any alternative address specified by the receiving party.

### **Interpretation**

12. The language of this Agreement is the result of negotiation between all parties hereto, and any ambiguities in said language shall not be presumptively construed against or in favor of any party or parties hereto.

13. The parties acknowledge and agree that this Agreement reflects a compromise in settlement of disputed rights, duties, obligations, and liabilities arising under and relating to the Contracts, and neither the existence of this Agreement nor any of its provisions constitutes an admission or waiver by either party or a retraction of any position on the part of either party. The parties intend that this Agreement and its provisions be afforded the protections of Rule 408 of the Federal Rules of Evidence and any similar state rule or law that protects agreements of settlement or compromise from being used as evidence of admission, waiver, or retraction of any right or position on the part of either party. Furthermore, except only in connection with a proceeding to enforce any of its provisions as between the parties, neither this Agreement nor any of its terms shall be admissible in any other proceeding.

### **Execution and Approval**

14. Except as disclosed in Article 16, each party to this Agreement represents that it is authorized to enter into this Agreement and the transactions contemplated herein.

15. Except as disclosed in Article 16, each signatory to this Agreement represents that said signatory is authorized and empowered to execute this Agreement and the transactions contemplated herein and that any and all required corporate approval on behalf of the Reinsurer

has been properly executed and that the Agreement is entered into voluntarily.

16. With respect to the Cedant, this Agreement is subject to final approval by the Commonwealth Court of Pennsylvania (the "Court"), which has jurisdiction over the liquidation of Cedant. Upon execution by all parties hereto, the Liquidator of Cedant shall promptly make application to the Court to secure said approval. In the event the Court does not approve this Agreement, then upon such notice of disapproval, the Liquidator of Cedant shall notify the Reinsurer and this Agreement will become null and void and have no further force or effect as between the Reinsurer and the Cedant.

17. This Agreement may be signed and exchanged in counterpart by facsimile and this Agreement as so signed and exchanged will constitute the binding Agreement of the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the dates set forth.

**RELIANCE INSURANCE COMPANY (In Liquidation)**

By: *David S. Bruthing*  
Title: Chief Liquidation Officer  
Date: *February 6, 2009*

**CONTINENTAL CASUALTY COMPANY**

By: *Michael T. Tjell*  
Title: *SENIOR VICE PRESIDENT*  
Date: *3 FEBRUARY 2009*  
Attest: *James E. Grier*

**THE CONTINENTAL INSURANCE COMPANY** as successor in interest to  
Continental Reinsurance Corporation

By: *Michael T. Tjell*  
Title: *SENIOR VICE PRESIDENT*  
Date: *3 FEBRUARY 2009*  
Attest: *James E. Grier*

## EXHIBIT A

| <u>RELIANCE REF.</u> | <u>REINSURER REF.</u> | <u>CONTRACT DESCRIPTION</u> | <u>EFFECTIVE DATE</u> |
|----------------------|-----------------------|-----------------------------|-----------------------|
| 749LAA               | 7721                  | D&O/E&O 95% 18M XS 2M       | 07/01/1997            |
| 840VAA               | 8795                  | D&O 25M                     | 07/01/1998            |
| 839VAA               | 7721                  | D&O/E&O 18M XS 2M           | 07/01/1998            |
| 838VAA               | 8773                  | D&O/E&O 1ST XOL 1MX1M SR    | 07/01/1998            |
| 0517AA               | TX7700883             | D&O/E&O 1M XS 1M            | 07/01/1990            |
| 9346AA               | TX7700883             | D&O 4M XS 1M CO             | 07/01/1989            |
| 7332AA               | TX7700883             | D&O 4M XS 1M                | 07/01/1987            |
| 2Z48AA               | TX7702039             | D&O/E&O 3M XS 2M            | 07/01/1992            |
| 2Z47AA               | TX7700883             | D&O/E&O 1M XS 1M            | 07/01/1992            |
| 1R31AA               | TX7702039             | D&O 3M XS 2M                | 07/01/1991            |
| 1R30AA               | TX7700883             | D&O 1M XS 1M                | 07/01/1991            |
| 0516AA               | TX7702039             | D&O/E&O \$3M XS \$2M        | 07/01/1990            |

**EXHIBIT B**

For Reliance/The Liquidator

Keith Kaplan  
Reliance Insurance Company (In Liquidation)  
Three Parkway  
Philadelphia, PA 19102  
Tel. 215-864-4250  
Fax 215-864-1077

### EXHIBIT C

Mergers of the former Reliance Insurance Group of companies into Reliance Insurance Company

| Company                                      | State of Domicile | Date of Merger               |
|--|-------------------|------------------------------|
| Reliance Insurance Company of Illinois       | Illinois          | January 1, 2001              |
| Reliance National Indemnity Company          | Wisconsin         | February 13, 2001            |
| United Pacific Insurance Company             | Pennsylvania      | February 13, 2001            |
| Reliance Direct Insurance Company            | Pennsylvania      | February 13, 2001            |
| Reliance Universal Insurance Company         | California        | February 13, 2001            |
| United Pacific Insurance Company of New York | New York          | February 16, 2001            |
| Reliance National Insurance Company          | Delaware          | March 6, 2001                |
| Reliance Surety Company                      | Delaware          | March 6, 2001                |
| Reliance Lloyds                              | Texas             | April 6, 2001<br>(Dissolved) |

# Exhibit B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joel Ario  
Acting Insurance Commissioner of the  
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

***IN RE: Commutation, Settlement Agreement and Release between  
Reliance Insurance Company (In Liquidation) and Continental Casualty Company and  
The Continental Insurance Company as successor in interest to Continental Reinsurance  
Corporation***

SEALED EXHIBIT B TO THE PETITION FOR APPROVAL OF  
COMMUTATION, SETTLEMENT AND RELEASE AGREEMENT

THIS ENVELOPE IS SEALED AND CONTAINS INFORMATION DESIGNATED  
CONFIDENTIAL IN THIS CASE. IT IS NOT TO BE OPENED OR THE CONTENTS  
THEREOF TO BE DISPLAYED OR REVEALED EXCEPT BY OR UPON ORDER OF  
THE COURT OR PURSUANT TO STIPULATION OF BOTH PARTIES TO THIS ACTION.