

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

2009-01-13 10:14:42

IN RE: *Commutation, Settlement Agreement and Release between  
Reliance Insurance Company (In Liquidation) and  
Munich Reinsurance America, Inc. formerly known as  
American Re-Insurance Company*

**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 Munich Reinsurance America, Inc. formerly known as American Re-Insurance

Company (“Reinsurer”) submitted by the Liquidator of Reliance Insurance Company (“Liquidator”):

**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 \$73,250,000;

**Further**, the Court accepts the Liquidator’s representations that the Settlement Agreement is a fair and reasonable settlement of the Reinsurer’s 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**

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

2001-118-1-142

IN RE: *Commutation, Settlement Agreement and Release between  
Reliance Insurance Company (In Liquidation) and  
Munich Reinsurance America, Inc. formerly known as  
American Re-Insurance Company*

**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

Commutation, Settlement Agreement and Release (“Settlement Agreement”), attached hereto as Exhibit A, between Reliance and Munich Reinsurance America, Inc. formerly known as American Reinsurance Company (“Reinsurer”). 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, the Liquidation Team Reinsurance Manager and the Chief

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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.

Actuary, who, along with the Vice-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 Reinsurer concerns 105 different reinsurance agreements ("Reinsurance Agreements") involving workers' compensation, directors & officers and professional errors & omissions ("D&O/E&O") liability business, business produced through Reliance's agent Environment Compliance Services ("ECS") as well as programs of business produced by several divisions within Reliance, including property and casualty business. The Reinsurer participated in varying percentages or amounts with regard to each of the Reinsurance Agreements specifically identified in the Settlement Agreement.

9. The majority of the workers compensation reinsurance agreements were 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, these provide coverage in excess of ground up retentions that range from \$1 million to \$3 million per occurrence, with some individual claims attaching at higher points due to facultative reinsurance arrangements inuring to the benefit of the reinsurer. These workers' compensation reinsurance agreements provided limits of liability ranging from \$1 million to \$3 million for each occurrence. Overall, depending on the provisions of the specific

agreement, these reinsurance agreements provided maximum coverage that ranges from \$5 million to \$15 million for the entire agreement. Some of the reinsurance agreements, reinsuring workers compensation and property/casualty policies written through program managers, provided coverage on a pro-rata basis.

10. Several of the workers' compensation reinsurance agreements relate to particular programs such as Occucare, OHU and Administaff. For these programs, the reinsurance agreement provides pro rata coverage for all losses. Similarly, the reinsurance agreements relating to the First Capital and Pause programs provide pro rata coverage for property and casualty losses under those programs.

11. The D&O/E&O 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.

12. The ECS excess of loss reinsurance agreements provided coverage for the following lines of business: general liability, pollution liability (legal, clean up, errors & omissions), automobile and property. The pollution liability was written mostly on a claims made basis, but did include some occurrence policies. These reinsurance agreements attach at the \$2 million per occurrence level and provide limits up \$38 million per occurrence, subject to aggregates.

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

14. With this information Reliance's actuaries conducted an in-depth analysis to determine appropriate commutation values. For the workers' compensation excess of loss reinsurance agreements, Reliance's actuaries have taken the general approach for those claims identified as "lifetime" claims of valuing these claims given several assumptions relating to future medical expenses, the affects of medical inflation and where appropriate, discounting the claims for mortality. Then the specifications of the treaty are applied to the resulting claim values. For all of the other reinsurance agreements and the non-lifetime claims under the workers' compensation excess of loss reinsurance agreements, Reliance's actuarial model used a variety of traditional and generally accepted actuarial methods. This work was reviewed by PwC in connection with their review of the entire portfolio of the Reinsurance Agreements, and PwC agrees with the ranges developed by Reliance.

15. Reliance then negotiated with the Reinsurer to commute its obligations under the Reinsurance Agreements for an agreed amount of \$73,250,000 ("Commutation Amount") which falls within the range of values established by the Reliance actuaries. The Commutation Amount allows a credit for offsetting amounts for reinstatement premiums, payments made since the claims review and other balances due to the Reinsurer.



16. After agreement upon the Commutation Amount, Reliance entered into the Settlement Agreement effective December 29, 2008, subject to the approval of this Court. The Settlement Agreement settles with certainty the claims against the Reinsurer for losses under the Reinsurance Agreements specifically identified in the Settlement Agreement.

17. Specifically, the Settlement Agreement provides that the Reinsurer shall pay Reliance the Commutation Amount to commute their obligations under the Reinsurance Agreements. The Commutation Amount is due within 10 calendar days of when the Reinsurer receives 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 Reinsurer, 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).

18. 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 Reinsurer is a fair and reasonable commutation of the Reinsurer's obligations to Reliance under the Reinsurance Agreements.

19. 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.

20. 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 \$73,250,000 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 Reinsurer 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.

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

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

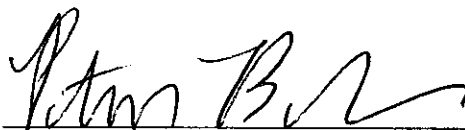
(b) appropriate notice to the Reinsurer of Court approval.

Payment of the Commutation Amount is due within ten (10) calendar days following notice to the Reinsurer of the approval of the Settlement Agreement by this Court.

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 Reinsurer' 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,



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PRESTON BUCKMAN (I.D. #57570)  
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Attorney for Plaintiff, Joel S. Ario, Insurance  
Commissioner of the Commonwealth of  
Pennsylvania, in his official capacity as Liquidator  
of Reliance Insurance Company

Dated: June 11, 2009

**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 June 11, 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: June 15, 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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# EXHIBIT A

## COMMUTATION, SETTLEMENT AGREEMENT AND RELEASE

THIS COMMUTATION, SETTLEMENT AGREEMENT AND RELEASE ("Agreement"), made effective and entered into this 29<sup>th</sup> day of December, 2008, by and between Munich Reinsurance America, Inc., formerly known as American Re-Insurance Company, Princeton, New Jersey, USA (hereinafter 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 predecessors, successors, assigns, affiliates, shareholders, officers, directors, 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, and demands whatsoever, whether based in tort, contract, equity or other legal theory, and whether known or unknown or suspected or unsuspected by either or both parties, fixed or contingent, 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. The releases contained herein are made on behalf of Reliance Insurance Company in its own right and as successor in interest by merger to its former subsidiaries other than the Canadian Branch of Reliance Insurance Company, Reliance National Insurance Co. (Europe) Limited, Reliance National Asia RE PTE, Ltd., Reliance National Compania Argentina de Seguros S.A., Reliance National de

Mexico S.A. (formerly Seguros Renamex), and RENASA Insurance Company Limited (together, the International Subsidiaries) and do not apply to claims arising from business written by the International Subsidiaries.

### **Release of the Cedant**

2. In consideration of the release set out in Article 1 herein, the Reinsurer hereby irrevocably releases the Cedant, its predecessors, successors, assigns, affiliates, shareholders, officers, directors, 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, and demands whatsoever, whether based in tort, contract, equity or other legal theory, and whether known or unknown or suspected or unsuspected by either or both parties, fixed or contingent, 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.

### **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. The Cedant warrants and represents that all entities that constituted the "Company" or "Reinsured" as defined in the Reinsurance Agreements, with the exception of Sable Insurance Company and the International Subsidiaries set forth above, have merged into Reliance Insurance Company and are included in this Agreement.

#### **Consideration**

4. The Reinsurer agrees to pay the Cedant the total sum of Seventy Three Million Two Hundred Fifty Thousand United States Dollars (US\$73,250,000.00) ("the Consideration"). Said payment shall be made no later than the Completion Date which shall be ten (10) calendar days following the Reinsurer's receipt of (i) notice to the Reinsurer by facsimile of the execution of this Agreement by the Cedant or its assignee and (ii) the approval of the Agreement by the Commonwealth Court of Pennsylvania in accordance with Article 15 herein. 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 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 its 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.

**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' 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.



### **Execution and Approval**

13. Except as disclosed in Article 15, each party to this Agreement represents that it is authorized to enter into this Agreement and the transactions contemplated herein.

14. Except as disclosed in Article 15, 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.

15. 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.

16. 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.

### **Miscellaneous**

17. For a period of twenty four (24) months following the effective date of this Agreement, the parties agrees to cooperate with each other in providing the other party with such financial information, loss notices, proofs of loss and other data, copies of documents and other materials and information that such party may reasonably request with respect to the Contracts to assist the other party so as to enable it to pursue recovery of losses ceded to the Contracts from the parties' retrocessionaires.

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

**RELIANCE INSURANCE COMPANY (In Liquidation)**

By: *David S. Bruehl*  
Title: *Chief Liquidation Officer*  
Date: *December 29, 2008*

**MUNICH REINSURANCE AMERICA, INC., FORMERLY KNOWN AS  
AMERICAN RE-INSURANCE COMPANY**

By: *Ross Strum*  
Title: *Vice President*  
Date: *12/28/08*

**EXHIBIT A**

	<b>Reliance Ref</b>	<b>Effective</b>	<b>Coverage</b>
<b>RIC WC 1st Excess</b>	J04	1993	\$2 mill x \$1 mill
	22P	1994	\$2 mill x \$1 mill
	90P	1995	\$2 mill x \$1 mill
	20T	1996	\$2 mill x \$1 mill
	02U	1997	\$1 mill x \$1 mill
	33U	1998	\$1 mill x \$1 mill
<b>RIC WC 2nd Excess</b>	J05	1993	\$3 mill x \$3 mill
	23P	1994	\$3 mill x \$3 mill
	91P	1995	\$3 mill x \$3 mill
	21T	1996	\$3 mill x \$3 mill
<b>OHU</b>	693HAA	12/1/96-12/31/99	\$2.5M xs 500K
	08C5AA	1/1/00-10/31/00	\$2.5M xs 500K
	692HAA	12/1/96-12/31/99	85% of 1st 500K
	08C4AA	1/1/00-10/31/00	85% of 1st 500K
<b>D&amp;O/E&amp;O</b>	630HAA	07/01/1996-6/30/97	\$1M xs 1M
	631HAA	07/01/1996-6/30/97	\$8M xs 2M
	632HAA	07/01/1996-6/30/97	\$10M xs 10M
	748LAA	07/01/1997-6/30/98	\$1M xs 1M
	749LAA	07/01/1997-6/30/98	\$18M xs 2M
	838VAA	07/01/1998-6/30/00	\$1M xs 1M
	839VAA	07/01/1998-6/30/00	\$18M xs 2M
	840VAA	07/01/1998-6/30/00	\$5M xs 20M
<b>ECS</b>	1847AA	02/01/1991-12/31/91	ECS HAZ WASTE/AUTO XS
	1R53AA	06/01/1991-9/30/92	ECS PROPERTY QS TO 13.5MM
	2Q10AA	10/01/1992-9/30/93	ECS PROPERTY QS TO 13.5MM
	2R20AA	01/01/1992-12/31/92	ECS GL/PL \$3M XS \$2M
	2R21AA	01/01/1992-12/31/92	ECS GL/PL \$5M XS \$5M
	2Z10AA	01/01/1992-12/31/92	ECS AUTO RECAP XOL
	319AAA	12/31/1993-12/31/94	ECS CAS LIAB/POLL 1ST XOL3MX2M
	320AAA	12/31/1993-12/31/94	ECS GL/PL \$7.5M XS \$5M
	321AAA	12/31/1993-12/31/94	ECS GL/PL \$7.5M XS \$12.5M
	3Q57AA	01/01/1993-12/30/93	ECS GL/PL \$3M XS \$2M
	3Q58AA	01/01/1993-12/30/93	ECS GL/PL \$5M XS \$5M
	3Q71AA	01/01/1993-12/30/93	ECS GL/PL \$5M XS \$10M
	3X75AA	10/01/1993-30/94	ECS PROPERTY QS TO 10MM
	3X75AA	10/01/1993-9/30/94	ECS PROPERTY QS TO 10MM
	418AAA	01/01/1994-12/31/94	ECS AUTO XOL 8M XS 2M
	418DAA	12/31/1994-12/30/95	ECS GL/PL \$3M XS \$2M
	419DAA	12/31/1994-12/30/95	ECS GL/PL \$7.5M XS \$5M
	420DAA	12/31/1994-12/30/95	ECS GL/PL \$7.5M XS \$12.5M

421DAA	12/31/1994-12/30/95	ECS GL/PL \$10M XS \$20M
481CAA	10/01/1994-9/30/95	ECS PROPERTY QS TO 5MM
481CAA	10/01/1994-9/30/95	ECS PROPERTY QS TO 5MM
509FAA	10/01/1995-9/30/96	ECS PROPERTY Q/S TO \$5M
509FAA	10/01/1995-9/30/96	ECS PROPERTY Q/S TO \$5M
522DAA	01/01/1995-12/31/95	ECS AUTO XOL 4M XS 1M
542FAA	12/31/1995-12/30/96	ECS GL/PL \$7.5M XS \$5M
543FAA	12/31/1995-12/30/96	ECS GL/PL \$7.5M XS \$12.5M
544FAA	12/31/1995-12/30/96	ECS GL/PL \$17.5 XS \$20M
547FAA	12/31/1995-12/30/96	ECS TRANS \$4M XS \$1M
605GAA	01/01/1996-6/30/96	ECS GL SEMI AUTO XOL 4M XS 1M
616JAA	12/31/1996-12/30/97	ECS GL/PL XOL 7.5M XS 5M
617JAA	12/31/1996-12/30/97	ECS GL/PL XOL 10M XS 12.5M
618JAA	12/31/1996-12/30/97	ECS GL/PL XOL 17.5M XS 22.5M
635HAA	07/01/1996-6/30/97	ECS OCCURRENCE GL XS CESSION
636HAA	07/01/1996-6/30/97	ECS UMBRELLA QUOTA SHARE
646HAA	07/01/1996-12/30/97	ECS 1ST CAS CAT XL 5MX5M SP RV
651JAA	12/31/1996-12/30/97	ECS GL/PL 1ST XOL 3MX2M SP RVW
662HAA	10/01/1996-9/30/97	ECS PROPERTY Q/S TO \$5M
662HAA	10/01/1996-9/30/97	ECS PROPERTY Q/S TO \$5M
663JAA	12/31/1996-12/30/97	ECS TRANSPORTATION 4M XS 1M
672HAA	10/01/1996-9/30/97	ECS SURETY 1ST XOL 2.25MX750K
701MAA	10/01/1997-9/30/98	ECS PROPERTY QS
725MAA	10/01/1997-9/30/98	ECS SURETY 1ST XOL 2.25MX750K
734LAA	07/01/1997-6/30/98	ECS GL/OCC CASUALTY XOL
735LAA	07/01/1997-6/30/98	ECS GL/UMBRELLA QUOTA SHARE
769MAA	12/31/1997-12/30/98	ECS TRANSPORTATION 2ND CAS XOL
776MAA	12/31/1997-12/30/98	ECS CASUALTY PER RISK 2ND XOL
777MAA	12/31/1997-12/30/98	ECS CASUALTY PER RISK 3RD XOL
778MAA	12/31/1997-12/30/98	ECS CASUALTY PER RISK 4TH XOL
792MAA	12/31/1997-98	ECS GL/PL 1ST XOL 3MX2M SP RVW
801XAA	10/01/1998-12/31/99	ECS SURETY 1ST XOL 2MX1M SP RV
814XAA	12/31/1998-99	ECS TRANSPORTATION 2ND XOL CAS
826VAA	07/01/1998-12/31/99	ECS GL/OCC CASUALTY XOL
827VAA	07/01/1998-12/31/99	ECS GL/UMBRELLA QUOTA SHARE
841WAA	10/01/1998-12/31/99	ECS PROPERTY QS TO \$5M
852XAA	12/31/1998-99	ECS GL/PL \$3M xs 2M (including Canadian Branch) ECS GL/PL \$7.5M xs 5M (including Canadian Branch)
853XAA	12/31/1998-99	
854XAA	12/31/1998-99	ECS GL/PL \$10M xs 12.5M
855XAA	12/31/1998-99	ECS GL/PL 17.5M xs 22.5M
887VAA	07/01/1998-12/30/99	ECS GL/POLLUTION XOL 5TH LAYER
45R	8/1/98-10/1/00	40% of \$300k x 0
46R	8/1/98-10/1/00	Statutory x \$300k
46R SL	8/1/98-10/1/00	\$5 mill Agg xs \$3.76 mill
49R	4/1/99-10/1/00	Statutory x \$0
47B	7/1/99-10/1/00	Statutory x \$0

Occucare

<u>Treaty #</u>	<u>Part%</u>	<u>Treaty Description</u>	<u>Eff. Date</u>	<u>Exp. Date</u>
323AAA	60	WC XS 2.5M XS 2.5M EACH OCCUR	12/31/1993	12/30/1994
3Q63AA	60	WC XS 2.5M XS 2.5M EACH OCCUR	1/1/1993	12/30/1993
57E4AA	100	ADMINISTAFF (NWA 1596807)	11/1/1995	10/31/1996
57E6AA	100	ADMINISTAFF (NWA 0103215)	11/1/1995	10/31/1996
57E8AA	100	ADMINISTAFF (NWA 0119019)	11/1/1995	10/31/1996
67E5AA	100	ADMINISTAFF (NWA 1596807)	11/1/1996	10/31/1997
67E7AA	100	ADMINISTAFF (NWA 0103215)	11/1/1996	10/31/1997
67E9AA	100	ADMINISTAFF (NWA 0119019)	11/1/1996	10/31/1997
690HAA	40	WORKERS COMP CYBERCOMP 250K QS	12/1/1996	2/28/1998
877NAA	35	WORKERS COMP CYBERCOMP 250K QS	3/1/1998	12/31/1998
920XAA	45.71429	WC SPECIALTY MIDDLE MARKET QS	1/1/1999	12/31/1999
965WAA	35	WORKERS COMP CYBERCOMP 250K QS	1/1/1999	12/31/1999
653HAA	37.5	FIRST CAPITAL GL 80% QS	9/1/1996	8/31/1997
745LAA	9.375	FIRST CAPITAL 80% QS TO 10M	7/1/1997	6/30/1998
812WAA	33.33333	FIRST CAPITAL CASUALTY Q/S	9/1/1998	8/31/1999
702MAA	37.5	FIRST CAPITAL GL 80% Q.S.	9/1/1997	8/31/1998
813WAA	10.66667	FIRST CAPITAL PROPERTY Q/S	9/1/1998	8/31/1999
979ZAA	14.29337	PAUSE PROGRAM CAS Q.S. TO 15M	5/1/1999	4/30/2000
889SAA	14.29184	PAUSE PROGRAM CASUALTY Q/S	5/1/1998	4/30/1999

**EXHIBIT B**

For Reliance/The Liquidator

Keith Kaplan  
Reliance Insurance Company (In Liquidation)  
Three Parkway  
Philadelphia, PA 19102  
Phone: 215-864-4250  
Fax : 215-864-4955

For Munich Reinsurance America, Inc.

General Counsel  
Munich Reinsurance America, Inc.  
Princeton, NJ 08543-5241  
Phone: 609-243-4200  
Fax: 609-243-4257

# EXHIBIT B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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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.

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No. 269 M.D. 2001

IN RE: *Commutation, Settlement Agreement and Release between  
Reliance Insurance Company (In Liquidation) and  
Munich Reinsurance America, Inc. formerly known as American Re-Insurance  
Company*

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.