#### IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MICHAEL F. CONSEDINE, INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA,

.

Plaintiff,

v.

No. 183 M.D. 2002

LEGION INSURANCE COMPANY,

Defendant.

:

In Re: Commutation, Settlement and Release Agreement between Legion Insurance Company (In Liquidation) and Sirius America Insurance Company, of One Liberty Plaza (18<sup>th</sup> floor), New York, NY 10006 ("Sirius America") – Global Commutation

### **ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 2012, upon consideration of the Petition for Approval of Commutation, Settlement and Release Agreement by and between Legion Insurance Company (In Liquidation) ("Legion") and Commutation, Settlement and Release Agreement between Legion Insurance Company (In Liquidation) and Swiss Reinsurance America Corporation ("Swiss Re"), filed by Michael F. Consedine, Insurance Commissioner, in his official capacity as Statutory Liquidator of Legion Insurance Company (the "Liquidator"), and in which petition Swiss Re concurs, the Court GRANTS the Petition and approves the Commutation, Settlement and Release Agreement.



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## LIQUIDATOR'S PETITION FOR APPROVAL OF COMMUTATION, SETTLEMENT AND RELEASE AGREEMENT

Petitioner Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania in his official capacity as the Statutory Liquidator ("Liquidator") of Legion Insurance Company (In Liquidation) ("Legion"), respectfully requests that this Court enter an Order approving the Commutation, Settlement and Release Agreement ("Settlement Agreement") between Legion and Sirius America Insurance Company, formerly known as

White Mountains Reinsurance Company and Folksamerica Reinsurance Company ("Sirius America").

The Liquidator asks the Court to approve the Settlement Agreement for the reasons set forth below:

- 1. On July 25, 2003, this Court found Legion insolvent and appointed the Commissioner as Liquidator of Legion pursuant to Article V of the Insurance Department Act of 1921, 40 P.S. §§ 221.1 221.63 (hereinafter, the "Department Act").
- 2. The Act confers broad powers on the Liquidator to marshal the assets of Legion's estate for eventual distribution to its policyholders and creditors.
- 3. Prior to rehabilitation, Sirius America and its predecessors and assigns participated on various primary, first, second and third excess of loss reinsurance layers of Legion's book of business for the period of 10/1/1994 to 1/01/2003 (collectively the "Contracts") that obligated Sirius America to accept from Legion the cession of a certain portion of Legion's liabilities pertaining to business written on Legion's behalf under the workers compensation programs as detailed in Exhibit A to the Settlement Agreement, which is attached as an Exhibit to the Confidential Affidavit of Gregg C. Frederick, which is attached to this Petition.
- 4. Legion and Sirius America desire to terminate their business relationship with respect to the Contracts and the parties have agreed to commute all of their respective obligations under the Contracts.
- 5. Sirius America's obligations to Legion under the Contracts include obligations that may become payable in the future and that cannot be determined in an amount certain at this time.
- 6. Legion believes that it is in its best interest to adjust and settle Sirius America's obligations, including their future obligations, to Legion.

- 7. Accordingly, Legion has negotiated the Settlement Agreement with Sirius America, which is attached as Exhibit 1 to the Confidential Affidavit of Gregg C. Frederick, which is attached to this Petition.
- 8. Pursuant to the Settlement Agreement, Sirius America will pay \$14,023,882 to Legion.
- 9. Pursuant to the Settlement Agreement, Legion and Sirius America will release each other from liability arising out of, or in connection with the Contracts..
- 10. Legion entered into this Settlement Agreement in reliance on its independent investigation and analysis of the Contracts and Legion's rights and obligations under the Contracts.
- 11. The Liquidator believes that the Settlement Agreement is in the best interest of Legion's policyholders, claimants, creditors and the public generally.
- 12. Particularly, the Liquidator believes that Legion's receipt of approximately \$14.0 million dollars is reasonable and adequate consideration for the commutation of Sirius America's obligations to Legion under the Contracts. In the event the Court does not grant the approval sought in this Petition, the Settlement Agreement will become null and void.
- in cash is reasonable given the time value of money, the results of arbitrations that Legion initiated against other reinsurers, the costs and fees that would have been expended in arbitrating due and owing balances from the reinsurer and the benefit of certain payment now versus potential payments in the future. The Liquidator also hopes that this Settlement Agreement will lead to additional commutations with other reinsurers and, as a result, the more timely and orderly liquidation of Legion's estate for the ultimate benefit of the policyholders and creditors.

- 14. Gregg C. Frederick, Executive Vice President for Reinsurance at Legion, is responsible for all facets of ceded and assumed reinsurance at Legion including billing, claims, commutations, coverage analysis, and dispute management. He has specific knowledge regarding the risks to Legion of attempting to collect reinsurance through billing, negotiation or the dispute resolution process. As set forth in his Confidential Affidavit (attached as "Sealed Exhibit A"), Mr. Frederick has identified several specific advantages to the Estate arising from the consummation of the transaction memorialized in the Settlement Agreement.
- Thus, based on the terms of the Settlement Agreement and the evaluation of the transaction as a whole by the Liquidator, his staff, and Legion staff members familiar with the company's dealings with Sirius America, the Liquidator has determined that the Settlement Agreement is a fair and reasonable commutation of Legion's and Sirius America's obligations to each other under the Contracts. The Insurance Department Act authorizes the Liquidator to take such actions as she deems "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).
- 16. The Liquidator further believes that the Settlement Agreement will help him in achieving the objectives of liquidation under the Act, 40 P.S. §§ 221.1 221.63. The Settlement Agreement will assist the Liquidator in marshalling and maximizing Legion's immediately available assets and minimize any unavoidable loss to policyholders, claimants and creditors resulting from Legion's insolvency. See 40 P.S. § 221.1(c).
- 17. Sirius America agrees to the Settlement Agreement as evidenced by their execution of the Settlement Agreement and concurs in requesting the Court's approval of this petition.

18. For all of these reasons, the Liquidator requests that the Court approve the Settlement Agreement.

Respectfully submitted,

Amy L. Weber (I.D. # 45447)
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901 North 7<sup>th</sup> Street
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(717) 787-6009

Attorney for Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in his official capacity as Statutory Liquidator of Legion Insurance Company (In Liquidation)

Dated:	4/3/12	

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MICHAEL F. CONSEDINE, : INSURANCE COMMISSIONER : OF THE COMMONWEALTH : OF PENNSYLVANIA, :

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# SEALED EXHIBIT A TO LIQUIDATOR'S 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.

Respectfully submitted,

Amy L. Weber (I.D. #45447)
Insurance Department Counsel
Governor's Office of General Counsel
Pennsylvania Insurance Department
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Attorney for Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in his official capacity as Statutory Liquidator of Legion Insurance Company (In Liquidation)

Dated: +/3/i2