

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Liquidation of
The Home Insurance Company**

**AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY
LIQUIDATOR, IN SUPPORT OF APPROVAL OF
CLAIMS PROTOCOL WITH CENTURY INDEMNITY COMPANY**

I, Peter A. Bengelsdorf, hereby depose and say:

1. I was appointed Special Deputy Liquidator of The Home Insurance Company (“Home”) by the Insurance Commissioner of the State of New Hampshire (“Commissioner”), as Liquidator (“Liquidator”) of Home. I submit this affidavit in support of the Liquidator’s Motion for Approval of Claims Protocol with Century Indemnity Company (“Motion”). The facts and information set forth below are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information and belief.

2. The Motion seeks approval of a protocol (the “Protocol”) between the Liquidator and Century Indemnity Company (“CIC”) concerning the ongoing handling by CIC of certain claims against Home related to American Foreign Insurance Association (“AFIA”) business. A copy of the Protocol is attached as Exhibit A to the Motion.

3. The Home’s unincorporated United Kingdom branch operation (“Home UK Branch”) wrote insurance and reinsurance business in the United Kingdom as a participating member of AFIA, and then reinsured that business with the AFIA members as well as a number of other third party reinsurers. Among other things, the Home UK Branch entered into certain

treaties (the “AFIA Treaties”) under which a number of insurers (the “AFIA Cedents”) ceded insurance risk to Home.

4. In 1984, CIGNA and certain of its subsidiaries purchased AFIA. As part of that transaction, Insurance Company of North America (“INA”, now known as CIC), Home and certain other insurance companies entered an Insurance and Reinsurance Assumption Agreement, dated January 31, 1984 (the “Assumption Agreement”) and a Reinsurance Treaty and Management Agreement dated January 31, 1984 (the “Treaty Management Agreement”). As pertinent here, in those agreements INA agreed to indemnify Home for the insurance and reinsurance liabilities relating to AFIA business – the AFIA Liabilities, as defined in the Assumption Agreement, and the AFIA License Business, as defined in the Treaty Management Agreement (collectively, the “Claims”), and to provide administration and servicing of the Claims at its own cost.

5. Since 1984, the Claims have been handled and paid on Home’s behalf by INA or later CIC or other members of the ACE group at their own expense pursuant to the Assumption Agreement and Treaty Management Agreement. CIC and its agents have developed institutional knowledge and systems in England to handle the Claims and possess records pertinent to the handling of the Claims.

6. Home’s liquidation affects the adjustment and payment of the Claims. All claims against Home, including the Claims, now must be filed with the Liquidator and determined and paid in accordance with the provisions of the New Hampshire insurer liquidation statute, RSA 402-C, and the Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation entered December 19, 2003, as amended (the “Claims Procedure Order”).

7. The Assumption Agreement and the Treaty Management Agreement contain “insolvency clauses” providing that in the event of Home’s insolvency, its liquidator is to give notice to INA of the pendency of a claim which would involve possible liability on the part of INA, and that during the pendency of the claim, INA may investigate the claim and interpose, at its own expense, in the proceeding where the claim is to be adjudicated any defense or defenses that it may deem available to Home. The Claims Procedures Order recognizes such contractual provisions in permitting persons who are directly affected by a Disputed Claim proceeding to seek to participate by filing a motion to participate. Persons that “have a contractual right to interpose defenses that they deem available to Home” are to identify the contract in question and state that they have a contractual right to interpose defenses. Claims Procedures Order ¶ 9(b).

8. In light of CIC’s historic involvement in the determination of the Claims, the specialized nature of the Claims (which as pertinent here principally involve claims under reinsurance contracts governed by English law), CIC’s rights under the insolvency clauses, CIC’s role as indemnitor and administrator concerning the Claims under the Agreements, and the application of the provisions of RSA 402-C and the Claims Procedures Order to claims against Home in liquidation, the Liquidator sought to reach an agreement with CIC to provide for the ongoing involvement of CIC in the handling of the Claims.¹ After extensive negotiations, the Liquidator and CIC have reached the Protocol for the ongoing handling of claims by CIC (sometimes acting through ACE-INA Services U.K.) and the Liquidator. The Protocol describes and clarifies the process for CIC’s continued performance of administration and service

¹ Such an agreement will be necessary regardless of the outcome of the pending appeal in the New Hampshire Supreme Court from the Court’s April 29, 2004 order approving the agreement with the AFIA Cedents. Those AFIA Cedents that are subject to claims by the Liquidator would, in all events, want to establish their Claims against Home up to the amount of Home’s claims against them for offset purposes.

obligations under the Assumption Agreement and the Treaty Management Agreement. It will only become effective upon approval by the Court.

9. The Protocol principally provides for CIC's involvement in the claim determination process. Under the Protocol, the Liquidator will provide copies of proofs of claim ("POC") concerning Claims to CIC. CIC will then administer and service each Claim and recommend allowance or rejection of the Claim, in whole or in part, to the Liquidator. If the Liquidator agrees with CIC's recommendation, the Liquidator will issue a notice of determination ("NOD") to the claimant. If the Liquidator disagrees with CIC's recommendation, CIC and the Liquidator will attempt to resolve their differences. If they are unable to reach agreement, the matter will be referred to arbitration (with the cost to be divided equally between them). The Liquidator will issue a NOD in accordance with the arbitrator's decision. If a claimant disagrees with a NOD and files a request for review with the Liquidator, then the Liquidator will seek CIC's recommendation concerning that request. If the Liquidator and CIC disagree on how to handle the request, they will again resolve the matter through arbitration. If a claimant disagrees with a NOD or notice of redetermination and files an objection with the Court, a disputed claim proceeding will follow in accordance with the Claims Procedure Order. The Liquidator will provide CIC with the Notice of Disputed Claim Proceeding so that CIC may elect to interpose defenses in that proceeding by filing a motion to participate. If the AFIA contract at issue may be governed by English law, the Referee is to appoint and consult with an English law expert concerning choice of law. If the law applicable to the contract is English law, then the Referee is to appoint an English law expert who is to issue a report and recommendation to the Referee.

10. The Protocol also provides procedures for reporting and payment by CIC. Within 10 business days after the end of each quarter, CIC will provide the Liquidator with copies of the brokers' forms or cedants' forms, or the information that ordinarily would be contained therein, for each Claim being handled by CIC. Reasonable costs in collecting and compiling such copies or information are chargeable to the Liquidator as administration costs. CIC will also provide the Liquidator with a report within 30 business days of the end of each month detailing amounts payable by CIC to Home, amounts paid by CIC with respect to such payables and any amounts claimed as offset. Subject to adjustment relating to disputed claims, CIC is to pay the balance to the Liquidator.

11. The Protocol puts in place mechanisms and processes to ensure the orderly and consistent handling of the Claims. The Protocol addresses, among other items, (i) the roles of CIC and the Liquidator in the handling and determination of the Claims, (ii) the manner of resolution of any disagreements between the Liquidator and CIC regarding pre-determination recommendations with respect to the Claims and the treatment of costs incurred in connection therewith, (iii) the procedures that will apply between CIC and the Liquidator in the event of disputes with underlying claimants over determination of the Claims, including procedures to be employed when the underlying contracts at issue are governed by English law, and (iv) the sharing of information between the Liquidator and CIC and the reporting and remittance obligations of CIC with respect to the Claims. The Protocol only applies to paid Claims (i) presented on a proof of claim to the Liquidator and (ii) determined in accordance with the Claims Procedure Order. The Protocol will not apply to unpaid losses, including reserves for losses that are incurred but not reported, except as may be required by law.

12. I believe the Protocol is fair and reasonable and that it is in the best interests of the liquidation and the policyholders and other creditors of Home. *First*, the Protocol reconciles and resolves a number of areas of potential dispute with CIC that could have led to costly, protracted litigation or arbitration to the detriment of the effective and efficient administration of the Claims and delayed collection by the Liquidator of CIC's indemnity obligations under the Assumption Agreement and the Treaty Management Agreement. *Second*, the Protocol provides set of procedures to lead to the prompt resolution of the Claims that accommodates the change occasioned by Home's liquidation and creates certainty in process where none exists under the Assumption Agreement and the Treaty Management Agreement. *Third*, the Protocol alleviates the prospect that the liquidation would need to absorb costs, at least in the first instance, that otherwise belong to CIC. *Fourth*, the Protocol provides for continuity in the handling of Claims by involving CIC, which because of its historic involvement in the AFIA book for the past 20 years is positioned to administer the Claims and effectively perform the servicing functions required by the Protocol.

13. In order to facilitate efficient resolution of the Claims, and in deference to the request of both CIC and the AFIA creditors, I further respectfully recommend to the Court that where the contract underlying a Claim at issue is governed by English law, hearings before the Referee in disputed claim proceedings with respect to the Claim take place in England. In such a case, the claimant, the CIC claim adjuster, counsel, third party witnesses, and pertinent documentation are likely to be located in England. Accordingly, an English-situs hearing would significantly reduces both litigation-related costs and travel expense and reflect a reasonable accommodation of the parties' interests. Inconvenience to the Referee could be minimized by scheduling several matters sequentially so they may be heard during the same trip.

Signed under the penalties of perjury this 25TH day of August, 2004.

Peter A. Bengelsdorf

Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

STATE OF CALIFORNIA
COUNTY OF VENTURA

Subscribed and sworn to, before me, this 25 day of August, 2004



Myinnie M. Hachiya
Notary Public/Justice of the Peace