

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

2004 APR - 4 P 3: 18  
SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of  
The Home Insurance Company

AFFIDAVIT OF JONATHAN ROSEN

I, Jonathan Rosen, hereby depose and say:

1. I am the Chief Operating Officer of The Home Insurance Company In Liquidation, a position I have held since shortly after the liquidation commenced. Prior to that, I was Executive Vice President and Reinsurance Counsel of The Home Insurance Company ("Home") and Executive Vice President of Risk Enterprise Management Limited, a third party administrator that, amongst other things, administered the business of Home. The facts and information set forth below are either within my own knowledge, 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 Liquidator of Home has filed the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents ("Motion"). Four members of the ACE group of companies, Century Indemnity Company ("Century"), ACE Property and Casualty Insurance Company ("ACE P&C"), ACE American Reinsurance Company ("AARe"), and Pacific Employers Insurance Company ("PEIC") (collectively, "ACE Companies") have submitted an objection to the Motion ("ACE Objection"). In their papers, the ACE Companies assert that they possess claims against Home for paid losses, reserves and incurred but not reported losses. However, Home also has claims (for paid losses, reserves and incurred but not reported losses) against three of the four ACE Companies, Century, ACE P&C and AARe.

3. The amounts of Home's claims against Century, ACE P&C and AARe vastly exceed the amounts of those companies' asserted claims against Home, leaving Century, ACE P&C and AARe, on any analysis, as net debtors to Home. Broken down by individual company, the claims are as follows:

	<u>Home's claims*</u>	<u>ACE asserted claims</u>	<u>Net debt to Home</u>
Century	\$234 million	\$11.9 million	\$222.1 million
AARe	\$29 million	\$233,000	\$28.77 million
ACE P&C	\$18 million	\$1.3 million	\$16.7 million

Home does not appear to have claims against PEIC, which is alleged to have claims against Home of approximately \$25,000.

4. The claims of Home against Century noted above include \$231 million of claims under the Insurance and Reinsurance Assumption Agreement entered between Home, Insurance Company of North America (“INA”) and others and dated January 31, 1984 (the “INA Agreement”). Century has succeeded to INA’s obligations under the INA Agreement, including obligations to handle claims against Home under treaties entered into by Home in connection with the American Foreign Insurance Association (“AFIA” and the “AFIA Treaties”) with entities that ceded liabilities to Home under the AFIA Treaties (the “AFIA Cedents”). The \$231 million amount is the latest reported to Home’s United Kingdom regulatory authorities by ACE INA Services U.K. Limited, a member of the ACE group of companies, which serves as the United Kingdom representative for Home’s United Kingdom Branch with respect to the AFIA Treaties by reason of the INA Agreement. Based on information provided by certain of the AFIA Cedents, however, Home believes that the \$231 million amount is significantly understated. Furthermore, the \$231 million amount (whether correct or not) is predicated on the assumption that the AFIA Cedents will assert and pursue their claims under the AFIA Treaties.

5. The INA Agreement contains an “insolvency clause,” which is included within paragraph 6 of that agreement. That clause requires INA (now Century) to pay obligations under the INA Agreement directly to Home or its Liquidator in the event of Home’s insolvency, on the basis of Home’s liability without diminution because of the insolvency or because Home’s Liquidator has failed to pay all or a portion of any claim. However, to the extent that the AFIA

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\* These figures include estimated case reserves and incurred but not reported losses (“IBNR”) as well as paid losses, although Home’s reserving methodology and the actuarial assumptions for the determination of IBNR is in the process of being updated and refined and the amount of Home’s claims is expected to increase.

Cedents do not file and pursue their claims under the AFIA Treaties the amounts Century will be obligated to pay to Home's Liquidator will be reduced accordingly.

6. During the summer and fall of 2003, I met with representatives of a number of the AFIA Cedents or their successors. During the meetings, certain of those representatives, including Equitas Limited ("Equitas") and Agrippina AG ("Agrippina"), informed me that they would not file or expend resources in pursuing claims in the Home liquidation where they were unlikely to receive a distribution on those claims, except to the extent they would be able to use the claims as offsets in relation to reinsurance claims Home has against them under agreements separate and distinct from Home's AFIA business. The potentially offsetting claims of the AFIA Cedents as a whole, however, constitute a relatively small percentage (presently estimated at approximately 25%) of their ultimate claims which, as noted above, have been valued in an amount of at least \$231 million.

7. During the course of my meetings, certain of the AFIA Cedent representatives, including Equitas and Agrippina, also informed me that they were considering attempting to "cut through" and deal directly with ACE in an effort to seek payment on their claims under the AFIA Treaties by going around Home's Liquidator. In particular, they said that they were exploring whether they could obtain direct rights against ACE (i.e., Century) under the INA Agreement because that agreement had contemplated that INA would assume the obligations under the AFIA Treaties through a novation, and that Home would be bypassed in the process.

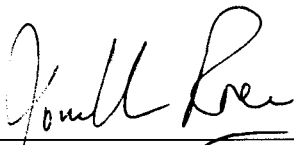
8. On September 26, 2003, Home's Liquidator and Joint Provisional Liquidators wrote to Century to express concern that attempts might be made to conduct dealings directly between Century and AFIA Cedents and advise that the Liquidator and Joint Provisional Liquidators viewed such efforts as unlawful. A copy of that letter is attached hereto as Exhibit A.

9. During the course of my meetings with AFIA Cedent representatives, including Equitas and Agrippina, they also expressed the view that assets of Home in the United Kingdom should be "walled off" for the exclusive benefit of United Kingdom creditors, such as the AFIA Cedents. While many of the AFIA Cedents are companies domiciled or with operations outside of the United Kingdom, the AFIA Treaties were, in the main, written in the United Kingdom and

are governed by English law. While Home's Liquidator and Joint Provisional Liquidators believe this position had no merit, there are Home assets in the United Kingdom. Specifically, there are reinsurance agreements entered into in the United Kingdom between Home and BAFCO Reinsurance Company Limited of Bermuda ("BAFCO") covering Home's AFIA business. BAFCO is now a member of the ACE group of companies and is presently known as Century International Reinsurance Company Limited.

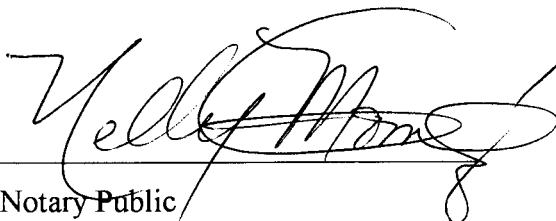
10. Under the INA Agreement, Century has certain rights to participate in the determination of claims under the AFIA Treaties by Home's Liquidator. The Liquidator intends to respect those rights, and on March 5, 2004, I sent a draft letter to Thomas J. Wamser, Esq., Assistant General Counsel of ACE USA, who is an attorney responsible for the legal aspects of the ACE group's involvement in AFIA, outlining how Home's Liquidator proposes that Century participate in the claim determination process. A copy of that letter and my accompanying email is attached hereto as Exhibit B. I am awaiting a response to that letter, which Mr. Wamser has assured me is imminent.

Signed under the penalties of perjury this 26th day of March, 2004.

  
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Jonathan Rosen

STATE OF NEW YORK  
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 26th day of March, 2004

  
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Notary Public

NELLY M. GOMEZ  
Notary Public, State of New York  
Notice: 5005271  
Qualified in Brow County  
Certificate Filed in NY County  
Commission Expires December 7, 2006