

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

2004 APR 27 3 14  
SUPERIOR COURT

Docket No. 03-E-0106

NEW HAMPSHIRE SUPERIOR COURT  
MERRIMACK, NEW HAMPSHIRE

In the Matter of the Liquidation of  
the Home Insurance Company  
(the "Company")

**AFFIDAVIT OF RHYDIAN WILLIAMS  
IN SUPPORT OF THE LIQUIDATOR'S REPLY IN SUPPORT OF APPROVAL OF  
AGREEMENT AND COMPROMISE WITH AFIA CEDANTS**

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I, RHYDIAN WILLIAMS, of 9, Ryves Avenue, Yateley, Hampshire, United Kingdom,  
GU46 6FB, MAKE OATH AND SAY as follows:

1. I am an employee of Equitas Limited ("**Equitas**") and I am duly authorised to make this Affidavit on behalf of Equitas in support of the Liquidators' Reply in Support of Approval of Agreement and Compromise with AFIA Cedants.
2. I have the requisite knowledge of the matters referred to herein in my capacity as Head of Pools, Security & Insolvency of Equitas.
3. Equitas is a member of an informal committee of creditors of the Company (the "**Informal Creditors' Committee**") established in the English provisional liquidation proceedings being conducted in relation to the Company's UK branch (the "**Provisional Liquidation**"). The Informal Creditors' Committee consists of creditors of the Company (the "**AFIA Cedants**") in respect of the reinsurance treaties underwritten by it through its UK branch as a fronting company for the American Foreign Insurance Association ("**AFIA**").
4. Subject to the agreement or other determination of contingent liabilities of Equitas to the Company and the Company to Equitas, I believe, and I understand the Company to believe, Equitas to be a substantial creditor of the Company. According to the figures of the officeholders in the Provisional Liquidation (the "**Joint Provisional**

Liquidators"), Equitas' claims are estimated to represent approximately 54% of the total claims of the Informal Creditors' Committee.

5. I make this affidavit to confirm the matters referred to in paragraphs 7 to 10 and 12 to 13 below.

**The filing of proofs of claim**

6. I refer to paragraph 12 of the Objections and Response of the ACE Companies to the Liquidators Motion for the Approval of Agreement and Compromise with AFIA Cedants filed in this matter (the "Objections and Response") and in particular the assertion therein that the concern of the Company's New Hampshire liquidator (the "Liquidator") that AFIA Cedants will not file proofs of claim absent the proposed "incentive" need not be taken at face value. I also refer to the same parties' Memorandum filed in support thereof (under "Argument", Section II, sub-sections (B) and (C)).
7. In the absence of the Company entering into a scheme of arrangement (the "Scheme") pursuant to section 425 of the Companies Act 1985 of England and Wales with its AFIA Cedants in substantially the terms set out in the letter agreement between the Joint Provisional Liquidators and the members of the Informal Creditors' Committee (the "Agreement"), as signed by Equitas on 2<sup>nd</sup> February, 2004, or another acceptable agreement, Equitas would be highly unlikely to file and prosecute proofs of claim ("Claims") in respect of such claims as it may have against the Company, beyond that which may be required to realise any applicable set-off.
8. In our experience, the filing and, more particularly, the prosecution of Claims is usually a time consuming and costly exercise to carry out. As such, Equitas must give consideration to the likelihood of it receiving a distribution, and the ultimate size of any distribution received, in order to determine whether the filing and prosecution of claims is commercially logical.
9. On the information currently available to me, I understand that in the Company's New Hampshire liquidation (the "Liquidation"), Equitas will, if admitted, rank as a Class V creditor, subordinated to the rights of senior-ranking creditors of the Company, including, most significantly, its direct policyholders. I further understand from discussions held with the Company and its advisers that the Company is unlikely to be able to meet the claims of these prior ranking creditors in full, thereby rendering it

highly unlikely that funds will be available to make any distribution to Class V creditors such as Equitas in the Liquidation.

10. Based upon this information, it would not make economic sense for Equitas to expend time and resources on filing and prosecuting Claims, particularly in circumstances where Equitas is of the view that it may be possible to reach alternative arrangements with, or seek other remedies against the ACE group of companies (see further paragraph 12 below).

#### Alternatives to the Agreement and Scheme

11. I now refer to paragraphs 8 and 13 of the Objections and Response and the assertion that the Liquidator cannot justify the Agreement by his suggestion that certain AFIA Cedants might seek to make side agreements with Century International Reinsurance Company Limited ("Century") to receive payments directly from Century outside of the Liquidation.
12. Prior to the principal terms of the Agreement having been agreed, Equitas had actively considered what alternatives may be available to it given the apparent likelihood that it would not receive any distribution in the Liquidation as a Class V creditor. Certain of the alternatives considered included the extent to which it was possible to:
  - (a) establish a separate United Kingdom liquidation in respect of the Company, pursuant to which its UK situs assets could be ring fenced and distributed solely to the UK creditors of the Company, including Equitas;
  - (b) negotiate "cut-through arrangements" with the ACE group of companies which reinsured the Company's AFIA Business (under which the ACE company concerned will agree to make payments to Equitas in exchange for Equitas' agreement not to file proofs of claim in the Liquidation); and/or
  - (c) assert that ACE Group companies are primarily liable to the AFIA Cedants under the Company's policies issued through AFIA, for example as a result of a deemed novation of those policies or through waivers and/or estoppel, bearing in mind that, as I understand the position, Century or their predecessors in title had - prior to the onset of the Liquidation - been paying AFIA Cedants' claims direct on this business for almost twenty years.
13. In the event, it proved unnecessary to continue our investigations into the extent to which any of these alternatives were available to Equitas, given that agreement had

been reached on the Agreement. However, should the Court determine that the Agreement is unlawful, Equitas would certainly reconsider all lawful alternatives open to it.

Sworn at *33 St Mary Axe, London EC3, England*

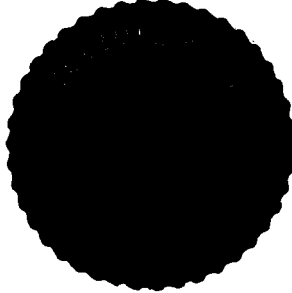
This *1st* day of *April* 2004

Before me

~~A solicitor empowered to administer oaths~~

*[Signature]*  
Notary Public London, England  
(Ian R. Campbell)

My Commission expires at Death



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