

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**

**LIQUIDATOR'S MOTION FOR APPROVAL OF
CLAIMS PROTOCOL WITH CENTURY INDEMNITY COMPANY**

NOW COMES Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), and moves that the Court enter an order in the form submitted herewith approving a claims protocol (the "Protocol") with Century Indemnity Company ("CIC") for the ongoing handling by CIC of certain Home-related American Foreign Insurance Association ("AFIA") claims. As reasons therefor, the Liquidator states as follows:

1. 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. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Claims Protocol with Century Indemnity Company ("Bengelsdorf Aff.") ¶ 3.

2. 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. Bengelsdorf Aff. ¶ 4.

3. 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. Bengelsdorf Aff. ¶ 5.

4. 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”). Bengelsdorf Aff. ¶ 6.

5. 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). Bengelsdorf Aff. ¶ 7. See also RSA 405:49, II (reinsurance contracts may provide that a liquidator is to give notice of claims to reinsurers of claims on reinsured policies and that the reinsurer may investigate the claim, intervene in the proceeding in which the claim is pending and interpose any defenses it considers may be available).

6. 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 obligations under the Assumption Agreement and the Treaty Management Agreement. It will only become effective upon approval by the Court. Bengelsdorf Aff. ¶ 8.

7. 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,

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. Bengelsdorf Aff. ¶ 8, n. 1.

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. Bengelsdorf Aff. ¶ 9.

8. 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. Bengelsdorf Aff. ¶ 10.

9. 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. *Bengelsdorf Aff.* ¶ 11.

10. The Liquidator submits that the Agreement is fair and reasonable and that it is in the best interests of 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. See *Bengelsdorf Aff.* ¶ 12.

11. In order to facilitate efficient resolution of the Claims, and in deference to the request of both CIC and the AFIA creditors, the Liquidator also recommends 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 reduce 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. See *Bengelsdorf Aff.* ¶ 13.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Claims Protocol With Century Indemnity Company;
 - B. Enter an Order in the form submitted herewith approving the Protocol;
- and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF
INSURANCE OF THE STATE OF NEW
HAMPSHIRE, SOLELY IN HIS CAPACITY AS
LIQUIDATOR OF THE HOME INSURANCE
COMPANY,

By his attorneys,

KELLY A. AYOTTE
ATTORNEY GENERAL



Suzanne M. Gorman
Senior Assistant Attorney General
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, N.H. 03301-6397
(603) 271-3650

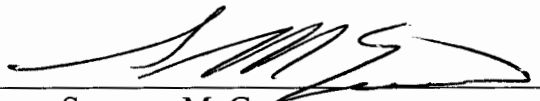
Of Counsel:

J. David Leslie
Eric A. Smith
Rackemann, Sawyer & Brewster
One Financial Center
Boston, MA 02111
(617) 542-2300

August 26, 2004

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Claims Protocol With Century Indemnity Company and accompanying Affidavit and the Proposed Order Approving Claims Protocol With Century Indemnity Company was sent, this day, by first class mail, postage prepaid to all persons on the attached service list.



Suzanne M. Gorman

SERVICE LIST

Ronald L. Snow, Esq.
Orr & Reno
One Eagle Sq., PO Box 3550
Concord, NH 03302-3550

Gary Lee, Esq.
Lovells-16th Floor
900 Third Avenue
New York, NY 10022

Pieter Van Tol, Esq.
Lovells
900 Third Ave., 16th Floor
New York, NY 10022

Eric D. Jones, Esq.
Rachlin Downs Martin PLLC
199 Main Street PO Box 190
Burlington, VT 05402-0190

Gail M. Goering, Esq.
Lovells – One IBM Plaza
330 N. Wabash Ave., Suite 1900
Chicago, IL 60611

Adam Goodman, Esq.
Lovells – One IBM Plaza
330 N. Wabash Ave., Suite 1900
Chicago, IL 60611

Eric Haab, Esq.
Lovells
330 N. Wabash Ave., Suite 1900
Chicago, IL 60611

Andre Bouffard, Esq.
Rachlin Downs Martin PLLC
199 Main Street PO Box 190
Burlington, VT 05402-0190