

Jonathan Rosen
03/05/2004 01:19 PM

To: thomas.wamser@ace-ina.com
cc: "Leslie, J. David JDL" <JDL@Rackemann.com>, "Peter Bengelsdorf" <pabinsconsult@aol.com>, "Smith, Eric A. EAS" <EAS@Rackemann.com>, "Peter Roth" <peter.roth@doj.nh.gov>, "David Steinberg" <david.steinberg@cliffordchance.com>, "Philip Hertz" <philip.hertz@cliffordchance.com>
Subject: Re: CIC/ ACE-INA : Letter Agreement

Dear Tom:

Pursuant to our recent discussions, attached please find a draft letter agreement addressing administration of Home's AFIA business that we have prepared as a means of ensuring the orderly and consistent handling of such business, having due regard to considerations attendant to Home's insolvency. Before issuing the letter in final form, we thought it appropriate to give you an opportunity to comment on its terms and I would thus appreciate your feedback as soon as possible. I will be in London through next Thursday and will, accordingly, give you a call on Friday in order to advance matters. As always, I appreciate your assistance and consideration.

With kind regards,

Jonathan Rosen
Chief Operating Officer
The Home Insurance Company In Liquidation
59 Maiden Lane
New York, New York 10038
Tel: (212) 530 7336
Fax: (212) 548 0727



CICACE-INAltr.doc

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**THE HOME
INSURANCE
COMPANY**
In Liquidation



59 Maiden Lane
New York, New York 10038

Pete Bengelsdorf
Special Deputy Liquidator
Tel (212) 530 3741
Fax (212) 530 6143
Peter.Bengelsdorf@homeinsco.com

March __, 2004

DRAFT

VIA COURIER

Thomas J. Wamser, Esq.
Assistant General Counsel
ACE USA
Law Department
Routing TL35S
1601 Chestnut Street
Philadelphia, Pennsylvania 19101

**Re: The Home Insurance Company (“Home ” or “HICIL”) – Administration of AFIA
Business**

Dear Tom:

As you are aware, pursuant to the Insurance and Reinsurance Assumption Agreement (with respect to Home’s AFIA business written prior to December 30, 1983) and the Reinsurance Treaty and Management Agreement (with respect to Home’s AFIA business written after December 30, 1983) entered into on January 31, 1984, by and between Home and Insurance Company of North America (“INA”) (collectively, the “Agreements”), INA undertook certain enumerated management, administrative and service obligations, which it agreed (a) to perform in compliance with *“commercially reasonable standards in the insurance industry and the standards prescribed by, or by practice of, any governmental authority having jurisdiction”*; and (b) to be responsible for all costs and expenses arising out of or relating to such obligations. As you are further aware, under and in terms of the Agreements, INA agreed that in the event of the insolvency of Home, all liabilities of Home with respect to Home’s AFIA business would be payable directly by INA to Home on the basis of such liabilities, without diminution because of Home’s insolvency or because Home has failed to pay all or a portion of any claim.

The insolvency of Home creates a number of administrative issues that need to be addressed. This letter is therefore intended to describe the process for the continued administration of Home’s AFIA business. The Liquidator recognizes that to the extent Century Indemnity Company (“CIC”), as successor to INA, provides or causes the provision of services beyond those required under the Agreements, it should be reasonably compensated for such additional

Thomas J. Wamser, Esq.

March __, 2004

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services. The term "Liquidator" as used in this letter means the liquidator of HICIL appointed by the New Hampshire Superior Court for Merrimack County (the "Court"), the Special Deputy Liquidator and their agents and representatives.

The terms of the Agreements as they relate to the management, administration and service obligations of INA, are unaffected by the insolvency of Home. Under the Agreements, however, INA has the right to be notified of the pendency of a claim filed in Home's liquidation that would involve possible liability on the part of INA under the Agreements and has the right to investigate such claim and interpose, at its own expense, in the claim's adjudication proceeding any defenses that it deems available to HICIL. If INA is successful in its defenses, this will, upon court approval, result in the expense thus incurred being chargeable against HICIL as part of the expense of liquidation to the extent of the pro rata share of the benefit which may accrue to HICIL solely as a result of the defense undertaken by INA. Furthermore, the Agreements are explicit in their requirement that INA prepare, maintain and preserve indefinitely appropriate financial and business records, books of account and documents relative to Home's AFIA business.

In view of the foregoing, and having due regard to the New Hampshire liquidation statutes and the order establishing procedures regarding claims entered by the Court on December 19, 2003, as amended and in effect from time to time (the "Claims Procedures Order") in and about the insolvency of Home, it is both necessary and desirable to effectuate mechanisms and processes that ensure the due, proper, orderly and consistent handling of Home's AFIA business by and among HICIL and CIC acting through ACE INA Services U.K. Limited ("ACE-INA"). The purpose of this letter, therefore, is to obtain agreement between HICIL, CIC and ACE-INA on the manner in which Home's AFIA business (being that business which remains in the name of Home or which is the responsibility of Home or in relation to which Home enjoys rights and entitlements) will be handled and, following such agreement, as confirmed by appropriate signature hereto, this letter will be presented to the Court for approval. For the avoidance of doubt, any reference in this letter to CIC, CIRC (as defined herein) or ACE-INA shall be construed as including their predecessors or successors in title.

1. Claims Submission, Adjustment and Adjudication

- 1.1 ACE-INA shall provide all personnel necessary to effectively perform the management, administration and service obligations undertaken by CIC pursuant to the Agreements.
- 1.2 With respect to inwards reinsurance claims involving Home's AFIA business already submitted to ACE-INA and inwards reinsurance claims submitted to ACE-INA in the normal course between the date hereof through June 13, 2004, ACE-INA shall, at the cost and expense of CIC, process, reconcile with the claimants and/or the relevant brokers as the case may be, and diligently pursue prompt review, investigation, appraisal and adjustment of the claims submitted. Immediately following adjustment of a claim, ACE-INA shall, in writing, notify HICIL of its recommendations with respect to the agreement, in whole or in part, of the claim submitted. Subject to the filing by the claimant of a Proof of Claim ("POC") with respect to such claim, in the event the Liquidator concurs with the recommendations of ACE-INA (through issuance of a Notice of Determination, a copy of which shall be provided by HICIL to ACE-INA), ACE-INA, at the cost and expense of CIC, shall diligently pursue, prosecute and secure all outwards reinsurance recovery in relation thereto. ACE-INA or CIC

shall not, however, make direct payment to claimants on agreed claims, but ACE-INA shall, instead, effect remittance therefor to HICIL in accordance with Paragraph 2.3 below. Save for those claims involving Home's AFIA business that ACE-INA or CIC has disputed that are, at the cost and expense of CIC, already the subject of arbitration or litigation proceedings that are not stayed, should ACE-INA reject a claim submitted under this Paragraph 1.2, in whole or in part, the claimant shall be notified by ACE-INA of the reason for such rejection and the defenses asserted in relation thereto and the provisions of Paragraphs 1.3 through 1.6 shall apply mutatis mutandis in connection therewith.

- 1.3 With respect to claims involving Home's AFIA business not previously submitted to ACE-INA that are noticed through the timely filing by a claimant of a POC in the HICIL estate, HICIL shall provide ACE-INA with a copy of such filing and any and all supplements thereto. Upon receipt of the POC, ACE-INA shall, at the cost and expense of CIC, process and diligently pursue prompt review, investigation, appraisal and adjustment of the claims submitted and the supplements thereto. Immediately following adjustment of a claim, ACE-INA shall, in writing, notify HICIL of its recommendations with respect to the agreement or rejection, in whole or in part, of the claim submitted, together with the reasons for such recommendations. In the event that the Liquidator concurs with the recommendations of ACE-INA, he shall issue a Notice of Determination to the claimant concerned, with a copy to ACE-INA and ACE-INA shall thereafter effect remittance with respect to the agreed part of the claim to HICIL in accordance with Paragraph 2.3 below and shall, at the cost and expense of CIC, diligently pursue, prosecute and secure all outwards reinsurance recovery in relation thereto. In the event that the Liquidator disagrees with the recommendations of ACE-INA, he shall notify ACE-INA thereof in writing, together with the reasons therefor, and the parties shall thereafter promptly confer to attempt mutual resolution of the disagreement. Should the parties be unable to reach such mutual resolution, the Liquidator shall, at his sole discretion and at such time and upon such terms that he exclusively deems appropriate, issue a Notice of Determination to the claimant concerned, subject to a full reservation of rights on the part of HICIL and CIC as against each other with respect to such Notice of Determination.
- 1.4 The parties acknowledge that should a claimant disagree with a Notice of Determination, the claimant may, at its option, submit a Request for Review to the Liquidator within thirty (30) days of issue of the Notice of Determination. In such event, the Liquidator shall promptly provide ACE-INA with a copy of the Request for Review and within thirty (30) days thereafter, ACE-INA shall provide HICIL with written recommendations in relation thereto, together with the reasons for such recommendations. Should the Liquidator agree with the recommendations of ACE-INA, he shall issue a Notice of Redetermination to the claimant consistent therewith and shall provide ACE-INA with a copy thereof. Should the Liquidator disagree with the recommendations of ACE-INA, he shall notify ACE-INA thereof in writing, together with the reasons therefor, and the parties shall thereafter promptly confer to attempt mutual resolution of the disagreement. In the event that the parties are unable to reach such mutual resolution, the Liquidator shall, at his sole discretion and at such time and upon such terms that he exclusively deems appropriate, issue a Notice of Redetermination to the claimant concerned, subject to a full reservation of rights on the part of HICIL and CIC as against each other with respect to such Notice of Redetermination.

1.5 It is further acknowledged by the parties that should a claimant disagree with a Notice of Determination it is not obliged to submit a Request for Review but may, at its option, file an Objection with the Court within sixty (60) days of issue of the Notice of Determination. A claimant that disagrees with Notice of Redetermination may also file an Objection with the Court within sixty (60) days of issue of the Notice of Redetermination. In either event, the Liquidator shall promptly provide ACE-INA with a copy of the Objection so filed and shall provide ACE-INA with a copy of the Notice of Disputed Claim sent by the Liquidation Clerk to the claimant in response to the filing of the Objection, so as to avail CIC of its right under the Agreements to interpose defenses in the ensuing Disputed Claim proceeding. In the event that CIC elects to interpose defenses in the Disputed Claim proceeding it shall, at its own cost and expense, seek leave to so participate by filing a Motion to Participate with the Referee no later than thirty (30) days after the date of mailing to the claimant of the Notice of Disputed Claim proceeding, identifying the contract in question and stating that it has a contractual right to interpose defenses. Disputed Claims shall be adjudicated solely in accordance with the Claims Procedures Order as amended, varied, supplemented or replaced from time to time and should CIC participate therein, it shall, at its own cost and expense, interpose any defense or defenses that it may deem available to HICIL, although the cost or expense so incurred shall be chargeable, subject to approval by the Court, against HICIL as part of the expense of liquidation to the extent of the pro rata share of the benefit which may accrue to HICIL solely as a result of the defense undertaken by CIC. Nothing in this Paragraph 1.5 shall prevent, preclude or otherwise interfere with the right of the Liquidator to directly participate in the Disputed Claim proceeding in such manner as he, in his sole discretion deems necessary or expedient.

1.6 In the event that a Disputed Claim proceeding results in a final determination of the claim at issue adverse to HICIL, ACE-INA or CIC shall effect remittance on the basis of such determination to HICIL in accordance with Paragraph 2.3 below. If CIC elects not to participate in a Disputed Claim proceeding or fails to timely file a Motion to Participate therein, the Liquidator shall not be obliged to defend the claim and shall be entitled, at his sole discretion, to consent to the entry of judgment in relation thereto, which consent shall be final and binding on CIC. Should the Liquidator decide to defend the claim notwithstanding the election of CIC not to participate in the Disputed Claim proceeding or the failure of CIC to timely file a Motion to Participate therein and a determination of the claim at issue is, in the first instance, determined adverse to HICIL, the Liquidator shall not be obliged to appeal the determination, which shall then be final and binding on CIC.

2. Reports, Remittances and Inspection of Records

2.1 Within ten (10) business days after the end of each calendar month, ACE-INA shall provide to HICIL a report detailing the status of all inwards reinsurance claims being handled by ACE-INA pursuant to Paragraphs 1.2 and 1.3 above, which report shall contain on a by-cedent basis (a) the name of the underlying insured; (b) the nature of each claim; (c) the amount of each claim; (d) the date each claim was presented to ACE-INA; (e) the adjustment status of each claim, including details of developments and positions advanced in all ongoing legal actions indicating (i) the nature of the action; (ii) the forum in which it is being

conducted; and (iii) the amount at issue; and (f) a summary of claims adjusted in the preceding month indicating for each claim (i) the amount agreed; (ii) the amount disputed; and (iii) the reason for the amount disputed.

2.2 Within ten (10) business days after the end of each calendar month, ACE-INA shall provide to HICIL a report detailing the status of all outwards reinsurance recoveries being handled by ACE-INA pursuant to Paragraphs 1.2 and 1.3 above, which report shall contain on a by-reinsurer basis (a) a statement showing the amount of reinsurance collected in the preceding month by-claim; (b) a statement showing uncollected reinsurance by-claim, together with the date on which uncollected reinsurance was presented to the reinsurer for payment; (c) an explanation of all outwards reinsurance classified as uncollectible; (d) details of developments advanced in all ongoing legal actions indicating (i) the nature of the action; (ii) the forum in which it is being conducted; and (iii) the amount at issue; and (e) the amount by-claim for which time bar can be asserted by the reinsurer.

2.3 ACE-INA shall promptly notify CIC (with a copy to HICIL) of (a) its recommendation to agree inwards reinsurance claims as provided in Paragraphs 1.2 and 1.3; (b) the concurrence by the Liquidator with the recommendations of ACE-INA relative to agreed claims as provided in Paragraphs 1.2 and 1.3; (c) a claim determination adverse to HICIL in a Disputed Claim proceeding as provided in Paragraph 1.6; and (d) the grant to a claimant of an adverse costs award in a Disputed Claim Proceeding. Immediately upon receipt of such notification, CIC shall provide ACE-INA with sufficient funds to effect timely and appropriate remittance to HICIL to satisfy CIC's obligations under the Agreements. Within fifteen (15) days after the end of each calendar month, ACE-INA shall (a) provide HICIL with a statement showing (i) all amounts payable by CIC to HICIL pursuant to Paragraphs 1.2, 1.3, 1.5 and 1.6 for the preceding month; (ii) the amount of funds received from CIC with respect to such payables; (iii) payments received from Century International Reinsurance Company Limited ("CIRC"), as successor to BAFCO Reinsurance Company, Ltd., in the preceding month for purposes of indemnification of HICIL by reason of the reinsurance arrangements entered into between them, together with the detail of claims for which such indemnification was effected; and (iv) any amounts claimed in offset against amounts due HICIL, together with full detail and an explanation as to the basis for the asserted offset; and (b) effect a wire transfer to such account as may, from time to time, be designated by the Liquidator for the balance then construed and recognized by ACE-INA as being due. ACE-INA and CIC agree and acknowledge that the Liquidator fully reserves all rights in relation to any offset asserted.

2.4 Upon reasonable advance notice and at all reasonable times, ACE-INA shall confer with and place at the disposal of HICIL, either directly or through its authorized representatives, the financial and business records, books of account and documents maintained by ACE-INA relative to Home's AFIA business, which HICIL shall have the right to inspect and copy.

3. Inwards Commutations

3.1 CIC and ACE-INA acknowledge that inwards reinsurance commutations involving Home's AFIA business are constrained by the Claims Procedures Order, as amended, varied, supplemented or replaced from time to time. As a result, while CIC and/or ACE-INA may negotiate inwards commutations with Home's AFIA cedents, CIC and/or ACE-INA may

consummate no commutation agreements with any such cedent absent the Liquidator's express written authority to that effect. In that regard, CIC and/or ACE-INA shall advise HICIL of the details of any commutation discussions in progress and shall provide such assistance and cooperation as the Liquidator may reasonably deem necessary or expedient to assess the propriety of any commutation proposal and, where appropriate, to obtain Court approval thereof. Furthermore, nothing in this Paragraph 3.1 shall prevent or preclude the Liquidator, at his sole discretion, from entering into a commutation with any of Home's AFIA cedents, subject to a full reservation of rights on CIC's part in connection therewith.

4. Rutty Pool Business

4.1 CIC, through ACE-INA, agrees to continue, at CIC's sole cost and expense, to diligently administer and service the run-off of the business of the Rutty Pool members with whom HICIL contracted pursuant to those certain reinsurance agreements respectively designated as Contract R. In that regard, the Liquidator acknowledges that the extent of such run-off obligations is a matter of dispute with the various Rutty Pool members. Pending resolution of such disputes, however, ACE-INA shall (a) administer and service the inwards liabilities of each affected Rutty Pool member, including the investigation, appraisal and adjustment of such liabilities; (b) effect timely notification to each affected Rutty Pool member of the results of such investigation, appraisal and adjustment; (b) process and collect reinsurance on agreed claims related to the inwards liabilities of each affected Rutty Pool member and deposit such collections into an escrow account until resolved as among the Rutty Pool members; and (c) effect timely remittance to HICIL pursuant to Paragraph 2.3 with respect to CIC's obligations relative to the reinsurance assumed by HICIL under and in terms of each respective Contract R.

5. Role of ACE-INA

5.1 The parties acknowledge that ACE-INA is the agent of CIC. CIC undertakes that it will procure that ACE-INA will at all times perform its obligations hereunder or, in the alternative, CIC will perform those obligations itself. In any event, CIC acknowledges that it is primarily obligated to carry out the obligations set forth in this letter and pursuant to the Agreements.

6. Reservation of Rights

6.1 Nothing in this letter shall be construed so as to prejudice, negate or otherwise interfere with the rights of HICIL under the Agreements or any other contractual arrangements involving or relating to Home's AFIA business as against any other party thereto (including their successors or assigns). In particular, but without derogating from the generality of the foregoing, the Liquidator reserves the right to assert that each or both of CIC and CIRC and/or any other person or entity having contractual obligations to indemnify HICIL with respect to Home's AFIA business are liable to indemnify HICIL thereunder.

6.2 Nothing in this letter shall be construed so as to prejudice, negate or otherwise interfere with the rights of CIC as against HICIL under the Agreements or any other contractual arrangements to which CIC or its predecessors are a party involving or relating to Home's AFIA business.

Thomas J. Wamser, Esq.
March __, 2004
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* * *

If CIC and ACE-INA are in agreement with the foregoing, please have a duly authorized representative of each entity confirm same by signing and returning to me a counterpart of this letter. I appreciate your consideration and assistance.

Sincerely,

Pete Bengelsdorf

**AGREED AND ACCEPTED
CENTURY INDEMNITY COMPANY**

By: _____

Name: _____

Title: _____

Date: _____

**AGREED AND ACCEPTED
ACE INA SERVICES U.K. LIMITED**

By: _____

Name: _____

Title: _____

Date: _____