

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

2004 APR -2 P 3:19  
SUPERIOR COURT  
MERRIMACK COUNTY  
MERRIMACK, NH

Docket No 03 - E - 0106

In the matter of the Liquidation of The Home Insurance Company

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AFFIDAVIT OF  
GERNOT WARMUTH

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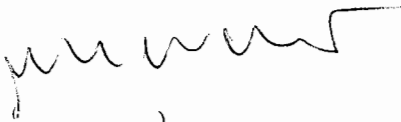
I, GERNOT WARMUTH, of Kennedy Allee 97, 6056 Frankfurt am Main, Germany, MAKE OATH AND SAY AS FOLLOWS:

1. I am a lawyer qualified to practise in Germany and in California, United States of America. A substantial part of my practice relates to insolvency matters. I am of counsel to the firm Scheiber & Partner of the above address. I make this affidavit on the instruction of my client, Zurich Versicherung AG (Deutschland) (legal successor in interest to Agrippina Versicherung AG) of Solmsstrasse 37-47, 60486 Frankfurt, Germany ('Zurich')
2. I make this affidavit on the basis of information and documents which are within my personal knowledge and/or which have been supplied to me. To the extent that the matters to which I depose herein derive from my personal knowledge they are true and to the extent that they derive from information and documents supplied to me they are true to the best of my knowledge and belief. Save where the context otherwise requires, any defined terms used in this affidavit shall have the same meaning as when those defined terms are used in the Objections and Response dated 19 March 2004 filed by the ACE Companies.
3. I am instructed to make this affidavit by my client Zurich, which is an insurance company.
4. Zurich is a substantial creditor of The Home Insurance Company ('Home'), through its AFIA pool participations, whereunder Home reinsured Zurich, pursuant to a so-called Reinsurance Contact R ('Treaty R'), in respect of Zurich's liabilities incurred under policies of insurance and reinsurance underwritten on behalf of Zurich by M.E. Ruty Underwriting Agencies Limited of London. There is now produced and shown to me and exhibited hereto marked 'GW1' a copy of the said reinsurance contract between Home and Zurich.

5. I understand that the ACE Group (as run-off manager for Home's AFIA business) estimates Zurich's outstanding claims against Home under Treaty R to be at least US\$18 million as at year end 2003. I should stress that these figures do not include incurred but not reported items (IBNR). Zurich has not yet filed a proof of claim in the Home liquidation proceeding. Zurich is a member of the Informal Creditors Committee established by the Joint Provisional Liquidators of Home following their appointment in May 2003.
6. I would draw this court's attention to Article IX of Treaty R which provides that, in the event of Home becoming insolvent and in certain other circumstances, Zurich has the right to terminate its participation in Treaty R. The nature and ambit of Zurich's termination rights under this Article have been the subject of discussions between Zurich and Home's liquidation team and it is fair to say that Zurich and Home have not reached any agreed view on how those termination provisions would operate. However, both sides have reserved their rights on this issue. Hitherto Zurich has not purported to exercise its termination rights under Article IX, although it has reserved its right to do so in certain circumstances.
7. The Liquidator has provided me with copies of the papers filed by the ACE Companies in support of their objection to the Liquidator's Motion seeking approval of the Agreement and compromise with AFIA Cedents. I wish to contradict certain assertions made by the ACE Companies in their papers.
8. In paragraph 12 of their Objection and Response, the ACE Companies assert that, even without the Agreement and the proposed scheme of arrangement, the AFIA Cedents would be likely to file proofs of claim in the liquidation of Home. I disagree strongly with that assertion. Assuming that the Liquidator's position that AFIA Cedents are Class V creditors in the Home estate is correct - i.e. that reassured creditors of Home rank behind direct insureds and other priority creditors - I do not believe that Zurich would expend any time or effort in filing claims in the Home liquidation, unless the proposed scheme of arrangement (as envisaged in the Agreement) were likely to proceed. Since Zurich would stand to receive no distribution from the Liquidator, I am mystified as to why the ACE Companies believe that an AFIA Cedent like Zurich would wish to incur the time and expense of pursuing a proof of claim in the absence of the proposed scheme. It is important to bear in mind that there is much more to pursuing a claim against Home than simply filing a proof of claim; that is merely the first step. The individual items of claim must then be agreed with whoever is administering the run-off of the AFIA business on the Liquidator's behalf (presumably the ACE Group). My personal experience in advising creditors (especially insurance companies) in insolvency situations is that this can be a slow, cumbersome and expensive process, frequently involving recourse to litigation.
9. In paragraph 13 of their Objection and Response, the ACE Companies assert that the Liquidator has adduced no evidence to substantiate his belief that the AFIA Cedents would look to the possibility of 'walling off' the AFIA assets in a separate English liquidation of Home or negotiating side agreements with the ACE Group reinsurers of Home on the AFIA business or of seeking some other similar remedy. I can certainly confirm that Zurich has already given a lot of thought to the possible alternative

solutions which might be available to it to counteract the detrimental effect of reassureds' subordinated status under New Hampshire liquidation law. In common with the other Informal Creditors Committee members, we also wanted to consider the possibility of establishing a separate English liquidation for Home, under which the assets of the UK branch would be "ring-fenced" for the benefit of UK branch creditors. In addition, Zurich has considered whether it could negotiate a cut-through agreement with the ACE Group, which might enable ACE group companies to make direct payments to Zurich as the 'price' for Zurich committing itself to refrain from making claims against the Home estate in liquidation. The most attractive line of argument would be for Zurich to assert that the ACE Group reinsurers are in fact directly obliged to Zurich for losses arising on Treaty R anyway, given that INA, BAFCO and their successors in title have apparently been paying AFIA Cedents' claims direct since 1984 and thus could be said to have voluntarily assumed a novation of those liabilities, or that the ACE Group companies are effectively obliged to accept such a novation as a result of the commitments which the CIGNA group gave to accept such a novation at the time of the AFIA business transfer in 1984. However, the most likely outcome would be that Zurich would seek to negotiate a direct compromise agreement with the ACE Group which would probably involve termination of Treaty R and the collection by Zurich of Ruddy pool common account reinsurances.

10. I have been quite open in my discussions with the Liquidator's staff about the fact that Zurich has been looking at these alternatives and would continue to do so unless a satisfactory solution could be found. I recall that I told Jonathan Rosen, Chief Operating Officer of Home, that Zurich would not bother to file claims in the liquidation and that it would look at negotiating a compromise agreement with ACE of the type described in the final sentence of paragraph 9 above. If the proposed scheme founders, Zurich would look very seriously at these options.



Sworn this 31st day of May 2004

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At :

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Before :

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**Notary Public**

**Nummer 149 der Urkundenrolle für 2004**

Die umstehende Unterschrift des Rechtsanwalts Gernot A. Warmuth, geschäftsansässig Kennedyallee 77, 60596 Frankfurt am Main, der mir von Person bekannt ist und mir auf meine Befragen erklärte, daß eine Vorbefassung im Sinne von § 3 Abs. 1 Nr. 1 BzRG nicht vorliege, wurde vor mir vollzogen.

Frankfurt am Main, 31. März 2004



Kosten: GERNOT  
**Geschäftswert: € 3.000,00**

Gebühr § 45 KostO  
zuzüglich 16% MWSt.

€ 10,00

  
(Birr)  
Notar

