

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 ANSWERS AND OBJECTIONS
TO BENJAMIN MOORE & CO.'S INTERROGATORIES**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby responds to the First Set of Interrogatories to Liquidator from Benjamin Moore & Co. ("BMC") dated October 13, 2004 ("BMC Interrogatories").

Preliminary Statement

The Liquidator responds to the BMC Interrogatories in accordance with the Order on Remand entered October 8, 2004. The Court there directed that, in the present circumstances and pending clarification of the New Hampshire Supreme Court's order entered September 13, 2004, "the parties may conduct discovery limited to the necessity, reasonableness, and fairness of the agreement." Order on Remand at 13. See *id.* at 14 ("The parties may conduct discovery limited to the necessity, fairness, and reasonableness of the compromise and agreement.").

General Objections

Each response below is made subject to the following general objections even though the objections are not specifically referred to therein:

1. The Liquidator objects to the BMC Interrogatories to the extent they seek information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege.

2. The Liquidator objects to the definitions and instructions set forth in the BMC Interrogatories to the extent they purport to impose obligations beyond those imposed by the New Hampshire Superior Court Rules, including but not limited to the following:

a. The Liquidator objects to the definition of “identify” and “describe” and instruction 7 as overbroad and unduly burdensome. With respect to identification of documents, the Liquidator will produce documents referred to in the answers below in accordance with the Liquidator’s response to the BMC Document Request.

b. The Liquidator objects to the definitions of “refer to” and “relate to” as overbroad and unduly burdensome. The Liquidator construes these terms to mean referring to, describing, evidencing, or constituting.

c. The Liquidator objects to the definition of “document” as overbroad and unduly burdensome. The Liquidator will produce documents as set forth in the Liquidator’s response to the BMC Document Request.

d. The Liquidator objects to the definition of “Home” as overbroad, in particular insofar as it may purport to include the Joint Provisional Liquidators (appointed by and responsible to the High Court of Justice in London), accountants, attorneys, and other independent persons. The Liquidator responds in accordance with the responses set forth below based on information from the Special Deputy Liquidator

and liquidation staff involved in the subject matters of the interrogatories, the Liquidator and pertinent staff at the New Hampshire Insurance Department, and information received from the Joint Provisional Liquidators.

Interrogatory Answers and Objections

1. Identify and describe in detail all alternatives to the Agreement that were considered by the Liquidator for recovery [sic – of] the reinsurance held by Home on the risk ceded to Home through the Home UK Branch.

Answer: The Liquidator reasonably construes this interrogatory to ask for alternatives to the Agreement that were considered for recovery of indemnity or reinsurance with respect to claims under the AFIA Treaties.

The Liquidator considered attempting to negotiate an agreement with ACE to commute the indemnity obligations of Century Indemnity Company under the Insurance and Reinsurance Assumption Agreement dated January 31, 1984 (“Assumption Agreement”) and address other aspects of the situation, including the reinsurance contracts entered with BAFCO Reinsurance Company of Bermuda Limited, a Bermudian company: an Excess of Loss Reinsurance Agreement signed December 23, 1982, a Second Excess of Loss Reinsurance Agreement also signed December 23, 1982 and a First Supplemental Excess of Loss Reinsurance Agreement signed February 1, 1985 (as amended, the “BAFCO Agreements”), and the expected assertion by AFIA Cedents of direct rights against ACE. The Liquidator and the Joint Provisional Liquidators had a “without prejudice” meeting with ACE on September 30, 2003, during which the Liquidator suggested the possibility of a three-cornered commutation transaction among Home, ACE and the AFIA Cedents, subject to court approval. The discussions with ACE

over the concept of such a potential comprehensive business resolution did not meaningfully progress.

The Liquidator considered waiting to see what claims were filed and prosecuted in the Home liquidation by AFIA Cedents and then seeking recovery on those claims that were allowed. However, in view of statements and positions asserted by AFIA Cedents, the Liquidator believed that significant AFIA Cedents would only file and prosecute claims that could be used by the AFIA Cedent involved to offset claims by the Liquidator against the cedent, thereby depriving the Liquidator of the ability to pursue a substantial portion of an estate asset.

2. With respect to all alternatives identified or described in response to the preceding interrogatory, describe all estimates for recovery by the Home estate made by the Liquidator.

Answer: The Liquidator made no “estimate for recovery” in the context of a potential business resolution with ACE because any recovery would be a negotiated amount and negotiations did not meaningfully progress.

The Liquidator estimated that the wait and see approach would result in recovery of only a fraction of the value of the Assumption Agreement and/or the BAFCO Agreements. In a filing with the United Kingdom insurance regulatory, the Financial Services Authority, ACE-INA Services U.K. Limited (“ACE-INA”) acting for Home’s UK Branch had estimated the gross ultimate value of the AFIA Cedents’ claims – and thus of the ACE group’s obligations – at approximately £143 million (approximately \$231 million) as of December 31, 2002. That valuation presumed that the AFIA Cedents would pursue their claims. In light of the liquidation of Home, the Liquidator believed that the AFIA Cedents would only file and prosecute claims to the extent necessary to

preserve offset rights, which were estimated to be only a relatively small percentage of the AFIA Cedents' claims.

3. Identify all persons involved in the consideration of any alternatives to the Agreement, or in the preparation of any estimates for recovery under any alternative scenarios.

Answer: The principal persons involved in the consideration of the matters referred to in the answers to Interrogatories 1 and 2 above were:

- Peter A. Bengelsdorf, Special Deputy Liquidator of The Home Insurance Company
- Jonathan Rosen, Chief Operating Officer, The Home Insurance Company
- Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, as Liquidator of The Home Insurance Company
- Gareth Hughes, Ernst & Young, as Joint Provisional Liquidator of The Home Insurance Company
- Sarah Ellis, Assistant Director, Ernst & Young

4. Identify and describe all estimates of reinsurance recoverable by Home on the risk ceded to Home through the Home UK Branch, in the absence of the Agreement.

Answer: The Liquidator reasonably construes this interrogatory to ask about estimates of indemnity or reinsurance recoverable by the Liquidator or Joint Provisional Liquidators with respect to claims under the AFIA Treaties. The Liquidator incorporates the response to Interrogatory 2 above. For the sake of clarity, the Liquidator notes that information concerning potential ultimate gross liabilities under the AFIA Treaties was received from ACE-INA in various forms (including the Financial Services Authority filing referred to above), and that the information was reviewed and evaluated in considering the Liquidator's approach to the AFIA situation. That information assumed that the AFIA Cedents would pursue claims as they had prior to Home's liquidation, and it did not constitute an estimate of reinsurance recoverable by the Liquidator or Joint Provisional Liquidators. The Liquidator objects to providing that information and

evaluation as not relevant to the necessity, reasonableness, and fairness of the Agreement, beyond the scope of discovery permitted by the Order on Remand, and unduly burdensome.

5. Identify all persons involved in the preparation of any of the estimates identified in response to the preceding interrogatory.

Answer: The Liquidator reasonably construes this interrogatory to ask about estimates of indemnity or reinsurance recoverable by the Liquidator or Joint Provisional Liquidators with respect to claims under the AFIA Treaties. The Liquidator incorporates the response to Interrogatory 3 above.

6. State the amount of the professional fees and related costs incurred to date by Home in connection with the negotiation, approval, and litigation concerning the Agreement.

Answer: The Liquidator objects to this interrogatory as not relevant to the necessity, reasonableness, and fairness of the Agreement, and beyond the scope of discovery permitted by the Order on Remand.

7. Identify all reinsurance contracts of Home that have been commuted or settled in this Liquidation proceeding under which Home ceded its risk as a reinsurer. With respect to each such contract, state the name of the insurer to which Home ceded risk, and the face amount of the coverage that was settled as between Home and its reinsurer(s).

Answer: The Liquidator objects to this interrogatory as not relevant to the necessity, reasonableness, and fairness of the Agreement, beyond the scope of discovery permitted by the Order on Remand, and unduly burdensome.

8. State the number of proofs of claim filed to date by reinsureds of Home that have been or should be classified as Class V under RSA 402-C:44, excluding claims by AFIA Cedents, and claims stating they are filed for offset purposes only. As to all such proofs of claim, state the name of the claimant and the amount of the claim.

Answer: The Liquidator objects to this interrogatory as not relevant to the necessity, reasonableness, and fairness of the Agreement, beyond the scope of discovery permitted by the Order on Remand, and unduly burdensome.

* * *

The facts and information set forth above are either within my own knowledge gained through my involvement with this matter, 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.

Signed under the penalties of perjury this 23rd day of November, 2004.



Peter A. Bengelsdorf
Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

STATE OF CALIFORNIA
COUNTY OF VENTURA

Subscribed and sworn to, before me, this 23 day of November, 2004

Mynnie M. Hachiya
Notary Public/Justice of the Peace

As to objections:

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November 24, 2004

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2004, a copy of the Liquidator's Answers and Objections to Benjamin Moore & Co.'s Interrogatories was served upon the persons named on the attached Service List, by first class mail, postage prepaid.

Dated: November 24, 2004



Eric A. Smith

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