

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

REDACTED

LIQUIDATOR'S MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT WITH AGRIPPINA

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves that the Court enter an order in the form submitted herewith approving a Settlement Agreement (the "Agreement") between Home and Zurich Versicherung Aktiengesellschaft (Deutschland), the successor to Agrippina Versicherung Aktiengesellschaft (collectively, "Agrippina"). As reasons for this motion, the Liquidator states as follows:

1. The Liquidator requests approval for the Agreement between Home and Agrippina pursuant to § 3 of the Agreement, which provides that the Agreement is subject to approval by the Court and will be null and void if approval is not obtained by February 28, 2005.

 The ACE Companies have agreed to the form and content of the Agreement. Affidavit of Jonathan Rosen in Support of Motion for Approval of Agreement with Agrippina ("Rosen Aff.") ¶ 2.

2. Background. Pursuant to agreements entered in the 1960's known as the "Agency Agreements," for the years 1962 through 1967 Agrippina became a member of a group of companies known as the "Rutty Pool" that wrote insurance and reinsurance through M.E. Rutty Underwriting Agency Limited (the "Rutty Agency"). Agrippina had two roles with respect to the Rutty Pool. It both fronted for the Rutty Pool (that is, wrote insurance or reinsurance that

was then fully reinsured by the Rutty Pool) and reinsured a portion of the Rutty Pool risks, including policies fronted by itself and others. The Rutty Agency administered the Rutty Pool business, including handling claims by policyholders and reinsureds (“policyholders”) under policies or contracts written by Agrippina as a fronting company, billing the Rutty Pool for those policyholder claims, and administering and collecting reinsurance that protected the Rutty Pool members with respect to those policyholder claims. Rosen Aff. ¶ 3.

3. In 1977, Agrippina entered a reinsurance contract with Home known as “Treaty R” under which Home (through the Home UK Branch and the American Foreign Insurance Association (“AFIA’)) retrospectively reinsured Agrippina 100% with respect to Rutty Pool business. (Home also entered into several reinsurance contracts on almost identical terms with two other members of the Rutty Pool, namely Nationwide Insurance Company (“Nationwide”) and Wurttembergische Feuerversicherung, AG, now known as Wustenrot & Wurttembergische AG (“Wurttembergische”). Under Treaty R, Home was entitled to the receipts from all reinsurances placed by the Rutty Agency on Agrippina’s behalf as well as any other income from any other source that would have been payable to Agrippina thereunder. On the other hand, Home was obligated to bear all expenses of whatever nature that would otherwise have been due from Agrippina to the Rutty Agency with respect to the Rutty Pool business, although the extent of these obligations was not precisely expressed. Rosen Aff. ¶ 4.

4. As part of the Insurance and Reinsurance Assumption Agreement (“Assumption Agreement”) entered in 1984 between Insurance Company of North America (“INA”) and members of the American Foreign Insurance Association (“AFIA”), including Home, INA agreed, among other things, to assume Home’s obligations under Treaty R. (The Assumption Agreement contemplated that INA would use its best efforts to novate Home’s Treaty R

obligations to itself under English law, but that did not occur.) Since that time, INA and its successor Century Indemnity Company ("Century") have been obligated to indemnify, and have indemnified, Home for its obligations under Treaty R. Rosen Aff. ¶ 5.

5. In the mid 1990's, the Rutty Agency ceased to perform its obligations to administer the Rutty Pool business, including the handling of policyholder claims under policies fronted by Agrippina and the handling of claims by Agrippina against the Rutty Pool. As INA (and/or its successor Century) was obligated under the Assumption Agreement to pay Home's obligations for administrative costs under Treaty R, including costs of administering policyholders claims against Agrippina and billing the Rutty Pool, it was decided as a business matter that an affiliate of INA (and/or its successor Century) now known as ACE-INA Services U.K. Limited ("ACE-INA") would perform those obligations. Rosen Aff. ¶ 6.

6. Prior to 1999, ACE-INA (acting for Home) and Agrippina disputed whether Treaty R obligated Home to indemnify and pay administration costs for policyholders' claims against Agrippina under fronted policies on a "fronted" basis (that is, to pay Agrippina the entire amount due under the Agrippina policy and related administration costs) or on a "pool share" basis (that is, to pay Agrippina only the amount due on the claim from Agrippina as a member of the Rutty Pool and a share of the administration costs). Rosen Aff. ¶ 7.

7. Home (by ACE-INA) commenced an arbitration against Agrippina to resolve the issue in 1999. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. [REDACTED]

9. After the Order of Liquidation for Home entered on June 13, 2003, [REDACTED]

[REDACTED] the Agreement is the result of negotiations over the past year and a half both with Agrippina and with representatives of the ACE Companies (ACE-INA and Century) in light of their obligations under the Assumption Agreement with respect to Treaty R. Rosen Aff. ¶ 10.

10. The Agreement. In the Agreement, the parties agree that Treaty R is amended as set forth in the Agreement, and that Home has no other obligations to Agrippina and Agrippina has no other rights against Home arising from Treaty R or the Agency Agreements. Agreement § 4.5. [REDACTED]

11. [REDACTED]

Pages 5-10 removed.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Settlement Agreement with Agrippina;
- B. Enter an Order in the form submitted herewith approving the Agreement; and
- C. Grant such other and further relief as justice may require.

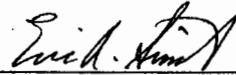
Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF
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AS LIQUIDATOR OF THE HOME INSURANCE
COMPANY,

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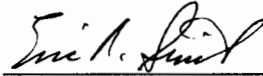
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December 30, 2004

**Exhibit A
Removed**

Certificate of Service

I hereby certify that a copy of the foregoing redacted Motion for Approval of Settlement Agreement with Agrippina was sent, this 25th day of January, 2005, by overnight courier, postage prepaid to all persons on the attached service list.



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

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