

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

AFFIDAVIT OF
GARETH HOWARD HUGHES

I, GARETH HOWARD HUGHES, of 1 More London Place, London SE1 2AF, a licensed insolvency practitioner and a partner in the firm of chartered accountants Ernst & Young LLP ("E&Y") MAKE OATH AND SAYS AS FOLLOWS:

1. I am one of the Joint Provisional Liquidators of The Home Insurance Company ("the Company"), having been appointed by the High Court of Justice in England and Wales on 8 May 2003 pursuant to an order of Mr Justice Pumfrey together with my colleague Margaret Elizabeth Mills ("Ms Mills") (the "Appointment Order"). In this statement, I refer to both myself and Ms Mills as "the Joint Provisional Liquidators".
2. I make this statement with the knowledge and approval of Roger Sevigny ("Mr Sevigny"), who is the liquidator of the Company ("the NH Liquidator"). I make this statement in support of the NH Liquidator's response to the motion to compel directed to the NH Liquidator filed in the Superior Court for Merrimack County in the State of New Hampshire on behalf of Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company and ACE American Reinsurance Company (the "ACE Motion").
3. The facts and matters set out below are either within my own knowledge gained through my extensive involvement in this matter, in which case I confirm that they are true, or are based on information provided to me by others. Facts and matters set out in this statement which are not within my own knowledge are based on information supplied to me by (a) employees of Ernst & Young LLP who work on this matter under my supervision, (b) my English legal advisers, Clifford Chance Limited Liability

Partnership ("Clifford Chance"), and (c) Rackemann Sawyer & Brewster, in their capacity as US legal advisers to the NH Liquidator. Where facts and matters are not within my own knowledge but based on information supplied to me, they are true to the best of my knowledge, information and belief.

4. A bundle of copy documents to which I refer in this statement is exhibited, marked "GHH2". References to page numbers below are to the page numbers of "GHH2".
5. The business of E&Y in London includes the provision of restructuring and insolvency services. I am the head of the E&Y Financial Services Corporate Restructuring team ("Corporate Restructuring") in London. The Corporate Restructuring team provides advice and services to troubled companies, including formal insolvency procedures such as provisional liquidations, compulsory liquidations, creditors' and members' voluntary liquidations, administrative receiverships, administrations, company voluntary arrangements and schemes of arrangement. In this Affidavit these proceedings are referred to as "formal insolvency proceedings" (even though schemes of arrangement may be implemented in respect of solvent companies).
6. Margaret Elizabeth Mills is also a member of the E&Y Corporate Restructuring team. Internal arrangements at E&Y are such that, where an E&Y partner takes an appointment in respect of a formal insolvency proceeding, at least two E&Y partners will be appointed on a joint and several basis. One partner will have principal conduct of the proceeding and the second partner is appointed in order to have another person authorised to act in respect of the matter in the event the first partner is unable to do so: I am the lead Joint Provisional Liquidator regarding Home.
7. Where an English company enters into provisional liquidation or liquidation proceedings, its day-to-day affairs will cease to be conducted by its pre-insolvency management board and will instead be conducted by a provisional liquidator, or liquidator, as relevant. A provisional liquidator or liquidator must be an individual who is qualified to act as an "insolvency practitioner" in accordance with the Insolvency Act 1986 and legislation derived from it, or, where no such individual has been requested or is available or willing to take the appointment, an officer of the court known as the "Official Receiver".
8. As the Appointment Order indicates, both of the Joint Provisional Liquidators are licensed insolvency practitioners. The Appointment Order also recognises that the Joint Provisional Liquidators are partners of E&Y and appoints them in that capacity (see GHH2, page 1).
9. By the terms of the Appointment Order, the Joint Provisional Liquidators jointly and severally have power to carry out the following functions, namely:
 - 9.1 to locate, protect, secure, take possession of, collect and get in the property and assets (of whatever nature) to which the Company is or appears to be entitled within England and Wales;

- 9.2 to locate, protect, secure, take possession of, collect and get in the books, papers and records of the Company including the accounting and statutory records in England and Wales;
- 9.3 to investigate the affairs of the Company so far as it is necessary to locate, protect, secure, take possession of, collect and get in the assets of the Company within England and Wales; and
- 9.4 to do all such things as may be necessary or expedient for the protection of the Company's property or assets within England and Wales.
10. Without prejudice to the generality of these powers, the Joint Provisional Liquidators also have a number of additional powers, including:
 - 10.1 to carry on the business of the Company in England and Wales to the extent necessary to process and settle claims against the Company and effect reinsurance recoveries;
 - 10.2 to enter into commutations with creditors or debtors of the Company in respect of business carried on by the Company in England and Wales; and
 - 10.3 if thought appropriate to finalise the terms of a scheme of arrangement and explanatory statement to be issued to the Company's creditors or any of them, if reasonably satisfied that such scheme has a reasonable prospect of being approved by the requisite majority of creditors and sanctioned by the English Court and, subject to such approval and sanction, to implement such scheme.
11. Given the breadth of the Joint Provisional Liquidators' powers and responsibilities in respect of the Company under the Appointment Order, the complexity and international nature of the Company's estate and the amount of time required in order to conduct the provisional liquidation effectively, it has not been possible nor indeed desirable for the Joint Provisional Liquidators personally to perform all of the work necessary to the provisional liquidation. The Joint Provisional Liquidators do not have their own staff but, as partners in E&Y, rely on a team of E&Y personnel at different levels to assist in the conduct of the provisional liquidation under the Joint Provisional Liquidators' supervision.
12. The Home provisional liquidation has been staffed principally as follows:
 - 12.1 Gareth Hughes, Partner, Corporate Restructuring (the lead Joint Provisional Liquidator and engagement partner). I have overall responsibility for the provisional liquidation of the Company pursuant to my appointment as Joint Provisional Liquidator in the Appointment Order;
 - 12.2 Sarah Ellis, Assistant Director, Corporate Restructuring (the engagement manager). Ms. Ellis is the person responsible for the day-to-day management of the Company's provisional liquidation and she supervises the work performed by other staff engaged in the administration of the provisional liquidation;

- 12.3 Benjamin Cairns, Senior Executive, Corporate Restructuring. Mr Cairns has had responsibility for the management of certain specific areas within the provisional liquidation, including consideration of the business of the City Insurance Company (a company which was merged into the Company in 1995). Mr Cairns reports to Ms. Ellis. His involvement in the provisional liquidation has declined over time and is currently minimal;
- 12.4 Matthew Harrison, Executive, Corporate Restructuring. Mr Harrison assists Ms. Ellis and Mr Cairns in their duties, carrying out time consuming tasks or recurring case management tasks. For example, Mr Harrison has recently taken responsibility for much of the day-to-day creditor contact and claims determination process. Mr Harrison regularly reports to Ms. Ellis.
13. Whilst Ms. Ellis, Mr. Cairns, and Mr. Harrison are the Joint Provisional Liquidators' principal staff (the "Core Staff"), this team is supplemented by other E&Y staff, as necessary for particular tasks (the "E&Y staff"). The Core Staff had my authority to seek legal advice on my behalf from Clifford Chance with respect to the conduct of the provisional liquidation and indeed have been in regular communication with Clifford Chance in that regard. The Core Staff also had my authority to act on legal advice received from Clifford Chance in respect of the conduct of the provisional liquidation under my supervision.
14. I understand that, in the ACE Motion, the ACE Companies claim that the involvement of the E&Y staff in attorney-client privileged communications or the disclosure to E&Y staff of privileged communications would generally waive the benefit of attorney-client privilege. I understand that the basis for this argument is that the ACE Companies presume that the Joint Provisional Liquidators retained E&Y to provide auditing / accounting services (see GHH2, page 11). This is incorrect for the reasons set out below.
15. The Joint Provisional Liquidators have not 'retained' E&Y to provide auditing, accounting or any other services to the Joint Provisional Liquidators in respect of the Company. To characterise the relationship between the Joint Provisional Liquidators and E&Y as based on a retainer is to misstate it. The Joint Provisional Liquidators are partners at E&Y and, as such, are entitled to use E&Y's premises, services, facilities and staff in the conduct of their appointments. In particular, no charges are levied upon the Joint Provisional Liquidators in respect of any work carried on by the E&Y staff or other services / facilities made available to the Joint Provisional Liquidators.
16. The fees charged by the Joint Provisional Liquidators in respect of their appointment are charged together with the fees incurred by the E&Y staff. By Rule 4.30 of the Insolvency Rules 1986 (the "Rules") (GHH2, page 31), the remuneration of a provisional liquidator must be fixed by the English court from time to time on his application. In fixing his remuneration, the English court must take into account:
- "the time properly given by him (as provisional liquidator) and his staff in attending to the company's affairs"* [emphasis added].

To date, the Joint Provisional Liquidators have made three applications to the English court to seek approval of their fees. Such fees have consisted not only of the Joint Provisional Liquidators' time charges but also the time charges of all E&Y staff who have billed time to the Company's provisional liquidation. On no occasion has the English court queried the inclusion of the fees incurred by the E&Y staff in such applications.

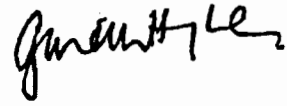
17. Any remuneration approved by the English Court is not paid to the Joint Provisional Liquidators in their personal capacity, but to E&Y as a firm. The Joint Provisional Liquidators are remunerated in respect of their position as partners of E&Y by way of drawings based upon E&Y's overall profits.
18. The allegation that the Joint Provisional Liquidators have 'retained' E&Y suggests that the Joint Provisional Liquidators would be free to seek the services provided by E&Y staff from other accountancy firms. The Joint Provisional Liquidators are partners at E&Y and as such seek, where appropriate, to involve E&Y staff in the conduct of the matters in respect of which they have been appointed. I believe that it is within the contemplation of clients who seek the appointment of an E&Y partner as an insolvency practitioner that it will be E&Y staff that would be primarily engaged in the relevant matter.
19. There appears to be some recognition in the Rules that most insolvency practitioners are members of a firm and that they themselves or their firm have employees who will carry out many of the tasks involved in certain insolvency proceedings. As such, the Rules give specific authorisation for acts to be carried out by employees of the insolvency practitioner or his firm in particular instances (GHH2, page 33-42).
20. Finally, I have been a partner at E&Y (and its predecessor) since 1988. I am also the President of the Association of Business Recovery Professionals (known by the brand name "R3"), which is the leading professional association for insolvency, business recovery and turnaround specialists in the UK. In my experience it is commonplace for insolvency practitioners who are members of an accountancy firm to use the staff, premises, facilities and services available from that firm as if the service is being provided by that firm itself, notwithstanding that they have been appointed in their personal capacity.
21. For the reasons stated above, I believe that there is an inextricable link between the Joint Provisional Liquidators and the E&Y staff and that treating them as separate for purposes of the attorney-client privilege would be artificial and run contrary to UK market practice. In dealing with complex issues in a large provisional liquidation, the Joint Provisional Liquidators need to involve staff as a team in matters requiring legal advice.
22. The negotiations with AFIA Cedents regarding the letter agreement dated 22 January 2004 were a joint effort involving teams for both the NH Liquidator and the Joint Provisional Liquidators in dealing with AFIA Cedents. The Joint Provisional Liquidators' team consisted of myself, Ms. Ellis, Mr. Cairns and Mr. Harrison,

advised by counsel from Clifford Chance (David Steinberg, Philip Hertz and Jeanette Best).

Sworn this (day of April 2005)

Before me )

Practising Solicitor REBECCA JONES.



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