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February 23, 2005

BY OVERNIGHT COURIER

Gary Lee, Esq.
Lovells
16th Floor
900 Third Avenue
New York, New York 10022

Re: In the Matter of the Liquidation of The Home Insurance Company

Dear Mr. Lee:

This letter will follow up on our January 28, 2005, meet and confer call and subsequent exchange of e-mails.

1. With respect to the administrative expense issue, the Liquidator agreed to provide supplemental answers to the ACE Companies' interrogatories number 9, 14, 20 and 21. A copy of the Liquidator's Supplemental Answers and Objections to the ACE Companies' Interrogatories is enclosed.

2. This will confirm that no documents were withheld from production based solely on the stated objection to the ACE Companies' document requests number 16, 17, 19 or 25. To the extent any responsive documents have been withheld on grounds of privilege or work product, they have been listed on the Liquidator's privilege logs as most recently provided to you on February 14, 2005.

3. This will confirm that discussions with AFIA Cedents concerning an agreement only began after September 1, 2003. In September 2003, the Liquidator and Joint Provisional Liquidators discussed with the ACE Companies a potential three-corner arrangement involving the ACE Companies, AFIA Cedents and Home as set forth in the Liquidator's answer to BMC's interrogatory number 1. The ACE Companies did not positively respond, and discussions with AFIA Cedents exploring the possibility of a direct agreement began after the first Informal

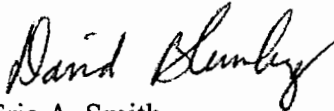
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Creditors' Committee meeting on October 21, 2003, as set forth in the Liquidator's answer to the ACE Companies' interrogatory number 5.

4. With respect to the ACE Companies' request for confirmation of "the date on which the Liquidator determined that payments under the proposed Agreement would constitute 'administrative expenses'", the request erroneously assumes that some formal "determination" to that effect was made. A determination that the payments to AFIA Cedents contemplated by the Agreement constitute administrative expenses (or "administration costs") within RSA 402-C:44, I, was part of the Liquidator's decision to negotiate and ultimately enter the Agreement.

Very truly yours,


for Eric A. Smith

Enclosure

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 SUPPLEMENTAL ANSWERS AND
OBJECTIONS TO THE ACE COMPANIES' INTERROGATORIES**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby provides supplemental responses to the ACE Companies' First Set of Interrogatories to Liquidator dated October 4, 2004, by agreement with the ACE Companies. The Liquidator incorporates the Preliminary Statement and General Objections in the Liquidator's Answers and Objections to the ACE Companies' Interrogatories dated November 24, 2004.

Supplemental Answers and Objections to ACE Interrogatories

9. Identify and describe in detail the basis for your claim that any payment to the AFIA Cedents under the Agreement is not "on account of their claim" and does not violate RSA 402-C:44, I, as stated by Peter Roth at the July 15 Oral Argument.

Answer: The Liquidator objects to this request as not relevant to the necessity, reasonableness, and fairness of the Agreement and beyond the scope of discovery permitted by the Order on Remand, in which the Court concluded that the payments are administrative expenses within RSA 402-C:44, I. Order on Remand at 10, 14. The Liquidator further notes that the basis for his position has been set forth in the Liquidator's brief filed with the New Hampshire Supreme Court (and supported by briefs of the National Association of Insurance Commissioners ("NAIC") and National Conference of Insurance Guaranty Funds ("NCIGF")) and memoranda of law submitted to the Superior Court. Notwithstanding this objection, and to

avoid unnecessary motion practice, the Liquidator responds that the contingent payments to AFIA Cedents contemplated by the Agreement comply with RSA 402-C:44 because they fall within the administration cost priority of RSA 402-C:44, I, as explained in the answer to interrogatory 20 below, which addresses this interrogatory.

14. Identify and describe in detail the basis for your contention in Paragraph 21 of the Motion that “it is appropriate to agree that the AFIA Cedents may receive a portion of the net proceeds” because it “is in essence a cost of obtaining and collecting an asset of the Home estate for the benefit of the policyholders and other creditors of Home.”

Answer: The Liquidator objects to this request as not relevant to the necessity, reasonableness, and fairness of the Agreement and beyond the scope of discovery permitted by the Order on Remand, in which the Court concluded that the payments are administrative expenses within RSA 402-C:44, I. Order on Remand at 10, 14. The Liquidator further notes that the basis for his position has been set forth in the Liquidator’s brief filed with the New Hampshire Supreme Court (and supported by briefs of the NAIC and NCIGF) and memoranda of law submitted to the Superior Court. Notwithstanding this objection, and to avoid unnecessary motion practice, the Liquidator incorporates the answer to interrogatory 20 below, which addresses this interrogatory.

20. Identify and describe in detail the basis for your claim that any payment to the AFIA Cedents qualifies as an “administrative expense” as referred to in the September 13 Order.

Answer: The Liquidator construes this interrogatory to ask for the basis of the Liquidator’s position that the payments to AFIA Cedents as provided in the Agreement constitute administration costs (also referred to as administrative expenses) within RSA 402-C:44, I. The Liquidator objects to this request as not relevant to the necessity, reasonableness, and fairness of the Agreement and beyond the scope of discovery permitted by the Order on Remand, in which the Court concluded that the payments are administrative expenses within

RSA 402-C:44, I. Order on Remand at 10, 14. The Liquidator further notes that the basis for his position has been set forth in the Liquidator's brief filed with the New Hampshire Supreme Court (and supported by briefs of the NAIC and NCIGF) and memoranda of law submitted to the Superior Court. Notwithstanding this objection, and to avoid unnecessary motion practice, the Liquidator answers as follows:

The contingent payments to AFIA Cedents contemplated by the Agreement comply with RSA 402-C:44 because they are costs of collecting assets within the administration cost priority of RSA 402-C:44, I. That section provides first priority for the costs of collecting assets as part of the priority for "the costs and expenses of administration," which expressly includes, but is not limited to, the "actual and necessary costs of preserving or recovering the assets of the insurer." RSA 402-C:44, I. The contingent payments to AFIA Cedents from assets recovered as a result of the Agreement are collection costs like finders' or contingency fees, which would fall within the administration cost priority. Such contingent payments from realized assets to those who make collection possible are appropriate priority costs of collection. The language of RSA 402-C:44, I, moreover, is properly construed broadly to be consistent with the wide authority given the Liquidator to "do such other acts as are necessary or expedient to collect, conserve or protect" the insurer's assets under RSA 402-C:25, VI, and to take other acts "as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation" under RSA 402-C:25, XXII. The Insurers Rehabilitation and Liquidation Act is to be "liberally construed" to further the protection of the interests of insureds, creditors, and the public (not debtors), see RSA 402-C:1, III, IV, and this requires a construction that facilitates the collection of assets for distribution to the priority creditors as determined in RSA 402-C:44 in order to equitably apportion "unavoidable" loss as directed by RSA 402-C:1, IV.

The contingent payments to AFIA Cedents provided for in the Agreement are administration costs because they are costs of preserving and recovering an asset of Home: the amounts potentially due from the ACE Group (in particular the obligations of Century under the Assumption Agreement) or Third Party Reinsurers with respect to AFIA business that would not be collectible by the Liquidator under the circumstances of the Home liquidation without the Agreement. As described in the answer to interrogatory 11, the AFIA Cedents are not obligated to incur the time and expense of filing and prosecuting claims, and they have no reason to do so except to the limited extent necessary to preserve offset rights. For the reasons set forth in that answer, the Liquidator reasonably concluded that the AFIA Cedents would not file and prosecute claims, except to preserve offset rights, and that this would reduce the amounts recoverable from Century for the estate under the Assumption Agreement. To address this issue (and the “cut-through” and “walling-off” issues described in the answers to interrogatories 1, 3, 7, and 15), the Liquidator and Joint Provisional Liquidators negotiated the Agreement.

As described in the answer to interrogatories 5, 10, and 19, the payments are a necessary, negotiated percentage of the Proceeds as defined in the Agreement (amounts actually collected less the specified deductions). Agreement §§ 1.2, 1.3, 1.9. As noted above, the AFIA Cedents would have reason to pursue claims up to the value of Home’s claims against them for offset purposes. The Agreement addresses this by providing that, to the extent that AFIA Cedents’ claims are offset by Home’s claims against them, the corresponding recoveries are deducted and retained entirely by Home. Agreement § 1.3.4. The payments to AFIA Cedents will benefit the policyholders and other Class II creditors of Home because the assets of the estate will be increased as described in the answer to interrogatory 18. They clearly constitute a cost of collection because they are contingent on actual receipt of amounts from the ACE Group (in

addition to being contingent on the AFIA Cedents proving claims through the determination process, which will involve Century as set forth in the Protocol approved on November 12, 2004). If nothing is recovered, or if recoveries do not exceed the specified deductions, AFIA Cedents will not receive anything under the Agreement regardless of their allowed claims in the liquidation. See Agreement § 1.3.

The payments contemplated by the Agreement are not class V distributions on the AFIA Cedents' allowed claims but payments to obtain recoveries under the Assumption Agreement. The Agreement bases payments to AFIA Cedents on amounts received by the estate. Agreement §§ 1.2, 1.3, 1.9. If the Liquidator is unable to collect recoveries in excess of the deductions specified in the Agreement, the AFIA Cedents will receive nothing regardless of their allowed claims in the liquidation. The payments thus will not reduce the assets otherwise available for distributions to creditors. While the payments will be calculated and allocated among AFIA Cedents based on their respective allowed claims, the payments are not on account of those claims but rather on account of the amounts recovered from the ACE Group subject to the deductions specified in the Agreement.

The payments to AFIA Cedents are consistent with the language in RSA 402-C:44 requiring payment of each class in full before payment of lower classes because the payments are administration costs within RSA 402-C:44, I, and therefore first priority payments. The payments, if and when they are made, are administration costs within class I, and not distributions on lower priority claims. The statutory language was not meant to simply deny payment of any kind to lower priority creditors. It was meant to protect policyholders and other priority creditors such as guaranty funds by avoiding the siphoning of assets from higher priority creditors to lower priority creditors and consequent decreases in distribution percentages to the

higher priority creditors. Here, the payments are not reducing the assets available for distribution to policyholders and other higher priority creditors but increasing them, as explained in the answers to interrogatories 15 and 18 and indicated by the amicus support of the NCIGF.

The payments contemplated by the Agreement also do not create subclasses of creditors. Since the payments are administration costs within RSA 402-C:44, I, not distributions on allowed class V claims, no subclass is created within Class V or any other priority.

The Liquidator's position reflects both the language of RSA 402-C:44 and the established principle that statutory provisions are interpreted not in isolation but together and in light of the policy sought to be advanced by the entire statutory scheme. The purpose of the New Hampshire Insurers' Rehabilitation and Liquidation Act and the priority provision in particular is to protect policyholders. See RSA 402-C:1, IV; RSA 402-C:44, II. As explained in the answers to interrogatory 18, the Agreement increases the assets collected for the benefit of higher priority creditors such as policyholders, and it therefore furthers the statutory purposes. The position of the ACE Companies and BMC, however, frustrates the statutory purposes and would lead to the absurd result that any payment to lower priority creditors mandates depriving priority creditors of additional distributions. Their position would advantage debtors (who are not within the protective purpose of the Act) at the expense of creditors by allowing debtors a windfall in avoiding payments they would have made absent the insurer's insolvency. This is contrary to the intent of the Legislature evidenced in RSA 402-C:36 and the insolvency clause statute, RSA 405:49.

In sum, the payments to AFIA Cedents, which are contingent upon collection of assets in excess of the specified deductions, fully comply with RSA 402-C:44 as they constitute a cost of asset collection and consequently an administration cost within Class I. They are the price of

preserving and collecting Century's liabilities under the Assumption Agreement, which, as of the date of Home's liquidation, would otherwise be uncollectible. They accordingly constitute "actual and necessary costs of preserving or recovering the assets of the insurer" within RSA 402-C:44, I.

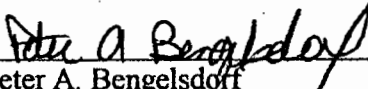
21. Identify and describe in detail the basis for your claim that any payment you make under the Agreement will not:

- (a) result in the creation of a subclass within any class of creditors;
- and
- (b) constitute a distribution to Class V creditors ahead of Class II, III and IV creditors.

Answer: The Liquidator objects to this request as not relevant to the necessity, reasonableness, and fairness of the Agreement and beyond the scope of discovery permitted by the Order on Remand, in which the Court concluded that the payments are administrative expenses within RSA 402-C:44, I. Order on Remand at 10, 14. The Liquidator further notes that the basis for his position has been set forth in the Liquidator's brief filed with the New Hampshire Supreme Court (and supported by briefs of the NAIC and NCIGF) and memoranda of law submitted to the Superior Court. Notwithstanding this objection, and to avoid unnecessary motion practice, the Liquidator responds that the contingent payments to AFIA Cedents contemplated by the Agreement do not result in the creation of a subclass or constitute a distribution to Class V creditors because they fall within the administration cost priority of RSA 402-C:44, I, as explained in the answer to interrogatory 20 above, which addresses this interrogatory.

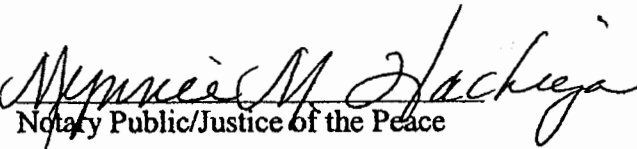
The facts and information set forth above are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information and belief.

Signed under the penalties of perjury this 18th day of February, 2005.


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

STATE OF CALIFORNIA
COUNTY OF VENTURA

Subscribed and sworn to, before me, this 18 day of February, 2005

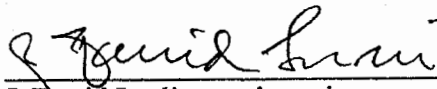

Notary Public/Justice of the Peace

As to objections:



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February 23, 2005