4/5/04 KB EXHIBIT 3

Replaced by Affidavit of April 5 04

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

Docket No. 03-0106

In the Matter of the Liquidation of
The Home Insurance Company

Affirmation of Robin Knowles QC
in relation to the Liquidator's Motion for Approval
of Agreement and Compromise with AFIA Cedents

I, ROBIN KNOWLES, one of Her Majesty's Counsel, of 3-4 South Square, Gray's Inn, London, England, hereby affirm and say:

1. I am a member of the English Bar admitted to practice law in England. As a member of the English Bar, I am qualified to advise and express an opinion on English Law.

2. I have an Honours Degree in Law from the University of Cambridge. I have been in practice at the English Bar since 1984, and specialise in commercial, financial and business law, including insolvency law. In 1999 I was appointed Queen's Counsel. I sit as a Recorder (a part time judge) in the Crown Court. I am a Bencher of the Honourable Society of the Middle Temple and the Treasurer of the Commercial Bar Association in England.

3. I appeared before the English High Court on the application for an order placing the Home Insurance Company ("the Company") into provisional liquidation. Home is not in liquidation in England.

4. I have reviewed the Affidavit of Richard Hacker Q.C. and been asked to give my opinion on the following observations made by Mr Hacker:

   (1) Mr Hacker's observation that it is questionable whether a scheme of arrangement that infringes the *pari passu* principle would be sanctioned by the

[redacted]

English Court (see paragraph 22 of Mr Hacker's Affidavit);

(2) Mr Hacker's observation that "[i]f any AFIA Cedent were to suggest to the English Court that local assets should be ring-fenced to meet their claims ... the [English] court would summarily dismiss the suggestion without requiring any significant debate or argument" and without litigation that was complex, time-consuming, protracted or costly (see paragraph 11 of Mr Hacker's Affidavit).

5. I turn to the first of these two observations. The *pari passu* principle is an important general principle in the law applicable to an English liquidation or bankruptcy. In a liquidation or a bankruptcy it would see the property of a company in liquidation available for unsecured creditors applied in satisfaction of those unsecured liabilities equally.

6. The English Court can be expected to examine closely a scheme of arrangement that proposes to depart from the principle. But it is a characteristic of a scheme of arrangement that in an appropriate case it can allow flexibility that would not be possible in a liquidation.

7. This flexibility is reflected by, for example, the following judicial observations. In Re Trix Ltd Mr Justice Plowman observed:

> "It is elementary that if it is desired to distribute the assets of a company otherwise that strictly in accordance with the creditors' rights, the proper way to do it is by a scheme of arrangement ..."

The English Court of Appeal observed (in Re BCCI SA (No 3)):

> "As I see it, in a liquidation there can be a departure from the pari passu rule by a scheme of arrangement ... There are some things that cannot be done without a scheme of arrangement and in the normal run that would include a very large number of proposals, and indeed almost all, if not all, proposals for re-arrangements of rights as between creditors of different companies or different classes of creditors."

8. I should add, in connection with the first of Mr Hacker's observations, that at paragraph 22 of his Affidavit he states "I am informed that there are creditors whose claims rank *pari passu* with those of the AFIA Cedents in a liquidation of Home (whether an English or a New Hampshire liquidation) and who would therefore fall to be treated as members of the same class as the AFIA Cedents."

9. The underlining of the word "therefore" is mine. I underline the word because I must disagree with the apparent proposition that those whose claims would rank *pari passu* in a liquidation are necessarily all to be treated as members of the same class in the context of a scheme of arrangement. The question of classification is more complex. I do not develop this point, because I am not clear that Mr Hacker himself would support the proposition, given his use of the words "I am informed". Suffice to say I do not see good reason why the AFIA Cedents on their own cannot form a separate class for the purposes of a scheme of arrangement.

10. I turn to the second of the two observations by Mr Hacker. I accept that if any AFIA Cedent were to suggest to the English Court that local assets should be ring-fenced to meet their claims it is possible, but not certain, that the English court would "summarily dismiss" the suggestion. However this is in the sense of there being argument that is short and a decision that is robust. The dismissal would not be "summary" in the sense of an alternative to a full trial: the hearing in question would be the full, final, hearing (subject to appeal).

11. Words like "complex", "time-consuming", "protracted" or "costly" are, of course, relative. The specific considerations are, to my mind these:

    (1) Where the sums at issue are large, the preparation will tend to be full. In practice parties will tend to prepare thoroughly, and at attendant cost, for all sensible eventualities at the hearing, even if in the event some of that preparation is not all used.

    (2) The potential for factual complexity (whatever the limits to legal complexity) should not be underestimated.

    (3) The time involved is not simply the time at the hearing at first instance. The time to the hearing at first instance might be measured in months. But there is also the time to and taken by hearings for permission to appeal, and by an appeal itself if permission is granted.

12. For me, the terms "complex", "time-consuming", "protracted" or "costly" are appropriate in the present case, even if (as I accept is possible) the ultimate argument in Court is short and the decision of the Court is robust. "Summary dismissal" "without requiring any significant debate or argument" is certainly not guaranteed. It is certainty of avoiding the possibility that things do get complex, time-consuming, protracted or expensive that is so often one of the benefits of a scheme of arrangement.

13. I should add that, as I understand the scheme of arrangement proposed, it offers not simply the certainty of avoiding the possibility that a "walling-off" or "ring-fencing" attempt by AFIA Cedents leads to proceedings that are complex, time-consuming, protracted or expensive. It also addresses the implications were AFIA Cedents to attempt to "cut through". Proceedings concerning attempts to "cut through" in this case could be expected to involve complex factual and legal issues that I would expect almost certainly to involve very considerable time and cost.

14. The facts and information set out in this Affirmation are based on information provided to me by others, and are true to the best of my knowledge information and belief. The opinions expressed in this Affirmation are my own, and represent my true opinion on the points under consideration.

Signed under the penalties of perjury this 2nd day of April 2004.

Executed at London, England
on 2nd April 2004

Robin Knowles QC

Subscribed and affirmed to me before me this 2nd day of April 2004 at London, England

Notary Public

Notary Public London, England
(Ian R. Campbell)
My Commission expires at Death

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