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 OBJECTION TO CENTURY INDEMNITY COMPANY'S MOTION FOR STAY OF ARBITRATION OF KWELM CLAIMS AGAINST HOME AND CROSS-MOTION TO COMPEL ARBITRATION

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of the Home Insurance Company ("Home"), hereby objects to the motion of Century Indemnity Company ("CIC") for stay of arbitration of the KWELM claims against Home. The Liquidator also cross-moves to compel arbitration.

CIC fundamentally misconstrues the Court's July 27, 2006 Order on Liquidator's Report and Recommendation on KWELM's Proofs of Claim (the "July 27 Order"). The July 27 Order did not require denial of the KWELM claims that were the subject of the Liquidator's report. Rather, it directed that the claims be resolved pursuant to the August 6, 2004 Claims Protocol approved by the Court on November 12, 2004 ("Claims Protocol"). The Liquidator has followed that process by invoking the arbitration mechanism provided for in the Claims Protocol as previously advocated by CIC and accepted by the Court in the July 27 Order.

Having persuaded the Court not to approve allowance of the KWELM claims into the estate on the ground that the Liquidator must first proceed under the Claims Protocol, CIC is estopped from now asserting that the Claims Protocol does not apply. This would produce a windfall for CIC to the detriment of Home's policyholders and other creditors. The Court should accordingly deny CIC's motion for stay and instead direct that the arbitration proceed forthwith. As further reasons, the Liquidator states:

Background

A. The KWELM Scheme and Home/KWELM Claims

1. The background to this dispute is summarized at pages 1-2 of the Court's July 27 Order (CIC Motion Ex. A). Briefly, the KWELM companies were reinsurers of Home that were also reinsured by Home through Home's UK Branch's participation in the American Foreign Insurance Association ("AFIA"). As acknowledged by CIC, the KWELM companies timely filed proofs of claim in the Home liquidation. CIC Motion ¶ 5.

2. In 1993, a runoff scheme of arrangement for the KWELM companies was approved by the creditors of those companies (including Home) and sanctioned by the High Court of Justice in London, England, as to the four English companies and the Supreme Court of Bermuda as to the Bermudian company. In 2004, the runoff scheme was converted to a cutoff scheme (the "Scheme") to achieve closure of the estates, and the Scheme was approved by the creditors (including Home) and sanctioned by the English and Bermudian courts. Home, as a Scheme creditor, is bound by the Scheme under English and Bermudian law. Each of the schemes was enforced in the United States by orders of the Bankruptcy Court for the Southern District of New York under 11 U.S.C. § 304.

3. Under the Scheme, the values of creditor claims, including paid losses, case reserves and incurred but not reported claims ("IBNR"), are crystallized by establishing a discounted ultimate incurred amount, thereby "cutting-off" the "run-off" of the companies' obligations for purposes of calculating a final accelerated distribution. Creditors are required to file claims against KWELM with the Scheme Administrators by a bar date. Claims against KWELM are then determined by the Scheme Administrators and, in the event of a dispute, by a person appointed to resolve such disputes (the "Scheme Adjudicator"). Where, as is the case

here, KWELM has claims against a creditor (such as Home) that may offset the creditor's claims against KWELM, the Scheme provides that KWELM's claims are also to be valued in the same way by the Scheme Administrators and, if disputed, by the Scheme Adjudicator to the extent of the creditor's claims against KWELM. The claims against and by KWELM are then offset to arrive at KWELM's net liability for Scheme distribution purposes.

4. Home filed its proof of claim against KWELM by the deadline set by the Scheme. The Liquidator pursued the proof of claim to preserve and collect the several million dollars by which Home's claims against KWELM exceed KWELM's claims against Home. In March 2005, the Scheme Administrators determined Home's net claim (after considering KWELM's offsetting claims against Home) to be $2,985,272. (The Scheme Administrator valued Home's claims at $14,842,658 and KWELM's offsetting claims at $11,857,386.) The Liquidator, in conjunction with CIC (subject to a reservation of rights), objected to the determination.

5. Home's claims against KWELM on a "cut-off" basis were subsequently resolved by agreement with the Scheme Administrators for $19.7 million. KWELM's offset claims against Home remained before the Scheme Adjudicator. (CIC, through its affiliate AISUK, participated in the proceedings before the Scheme Adjudicator on behalf of Home pursuant to the Insurance and Reinsurance Assumption Agreement between CIC and Home.[1]) On February 7, 2006, the Scheme Adjudicator determined KWELM's offset claims to be $3,910,842 (down from $11,857,386). The Scheme Administrators then made distributions under the Scheme based on KWELM's net obligations to Home ($15,789,158 – the difference between Home's $19,700,000 claim against KWELM and KWELM's $3,910,842 claim against Home).

[1] CIC/AISUK's participation was subject to a reservation of rights as against Home.

B. The Liquidator's Report and Recommendation and the July 27 Order

6. On March 15, 2006, the Liquidator filed his Report and Recommendation on the KWELM Companies' Proofs of Claim recommending that the Court approve the KWELM claim against Home in the amount determined by the Scheme Adjudicator ($3,910,842) less the amounts previously allowed by the Court (approximately $1.7 million). Among other things, the Liquidator relied on principles of comity and the Section 304 orders enforcing the Scheme in the United States. See July 27 Order at 3-4.

7. CIC objected to the Liquidator's recommendation. It contended that the Section 304 orders did not apply to Home as a debtor of KWELM. Most significantly, CIC contended that the KWELM claims must be determined under the New Hampshire liquidation procedures, particularly the Claims Protocol (attached as Exhibit 1), and that those procedures provide for application of English law which would reduce the amount of the claims:

> CIC argues that the protections of the procedural order of this Court, specifically the claims procedures order most recently restated and approved on 1/19/2005 and the protocol on AFIA related claims approved on 11/12/2004, require determination of KWELM claims values in the New Hampshire liquidation of Home. Further, CIC notes that Home liquidation procedures, most particularly the protocol, provide for the proper application of English law to the contracts which determine Home's liability to KWELM companies. And, CIC asserts that if English law is properly applied to those claims, their values will be substantially diminished from those assigned in the KWELM scheme, thus reducing CIC's ultimate liability to Home.

July 27 Order at 3-4 (emphasis added).

8. In the July 27 Order, the Court accepted CIC's arguments and declined to approve the Liquidator's recommendation on the KWELM claim. July 27 Order at 5. Most importantly, the Court agreed that the Claims Protocol included procedures for disputes over English law contracts which should govern the KWELM claims:

> [T]he Liquidator and CIC carefully considered and agreed upon detailed procedures to address anticipated disputes over processing of AFIA claims in the Home liquidation. A

> lengthy protocol governing the handling of AFIA related claims was submitted to the Court for review and approval. It included protocols for disputes involving contracts implicating English law. From review of the testimony and pleadings, and with particular reference to the affidavit of John Frederick Powell, the Court is unable to conclude that the procedures used to establish KWELM companies' setoff entitlements meaningfully correspond to the procedures and the protocol addressing AFIA related claims in the Home estate, nor is the Court able to find a compelling reason for setting those procedures and protocols aside for this discrete set of claims.

Id. at 5 (emphasis added).

C. The Liquidator's Submission of the KWELM Claims and Invocation of Arbitration under the Claims Protocol

9. In accordance with the July 27 Order, the Liquidator sent CIC a letter on August 10, 2006 requesting that CIC review and make recommendations regarding the KWELM claims pursuant to paragraph 2.3 of the Claims Protocol. The letter outlined the elements of the KWELM claims and attached the Scheme Adjudicator's February 7, 2006 decision showing the amount of the claims. CIC omitted this letter from its motion, and a copy of the letter and the enclosed Scheme Adjudicator's decision is attached as Exhibit 2.

10. After an exchange of emails during September and October 2006 (attached as Exhibit 3), CIC responded to the August 10 letter in a letter dated November 2, 2006 (CIC Motion Ex. B). CIC took the position that as to approximately $900,000.00 (corresponding to the case reserves and IBNR remaining from the Scheme Adjudicator's decision) of the KWELM claims "there is simply nothing to determine" because they had not been presented by a broker or KWELM, while approximately $366,000.00 in paid claims (allowed by the Scheme Adjudicator) had either not been presented in accordance with the Claims Protocol or had been previously rejected by CIC. November 2 letter at 2.

11. The Liquidator disagreed with CIC's recommendation as to these disputed amounts and invoked the dispute resolution process under the Claims Protocol in a letter dated

November 27, 2006 (CIC Motion Ex. C). As provided in paragraph 2.5 of the Claims Protocol, representatives of CIC and the Liquidator conferred on December 11, 2006. As no resolution was reached, the Liquidator referred the dispute to arbitration and proposed an arbitrator in accordance with paragraph 2.5 of the Claims Protocol in a letter that same day (CIC Motion Ex. D). CIC then filed its motion for stay of arbitration.

ARGUMENT

12. The Liquidator has properly invoked arbitration as provided in the Claims Protocol to resolve KWELM's claims against Home. CIC contends that (a) the Court has determined that the amounts from the Scheme Adjudicator's determination may not be admitted in the estate, and (b) that the claims have not been submitted to CIC for review and adjustment. CIC Motion at 1, ¶¶ 11, 13, 15. However, CIC misreads the Court's July 27 Order. The Order did not determine the merits of the KWELM claims as presented but left them to the procedures provided by the Claims Protocol, which the Liquidator has now invoked. CIC is estopped from taking the position that this matter may not be the subject of proceedings under the Claims Protocol because it successfully persuaded the Court of the contrary in opposing the Liquidator's recommendation regarding the KWELM claims. Accordingly, the Court should deny CIC's motion and order that the arbitration proceed.

A. The Liquidator Has Properly Invoked Arbitration Under The Claims Protocol.

13. In the July 27 Order, the Court did not hold that the amounts of the KWELM claims from the Scheme Adjudicator's decision could not be admitted into the Home estate. It held only that the KWELM claims had to proceed under the Claims Protocol. See July 27 Order at 5. In particular, the Court held that it was not "able to find a compelling reason for setting those procedures and protocols aside for this discrete set of claims." Id. The Court thus

"declined to approve" the Liquidator's report. Id. The Court made no determination on the merits of the KWELM claims as presented in that report; it just left them to the process otherwise provided.

14. The Liquidator has now properly invoked that process by submitting the KWELM claims for review by CIC in accordance with the Claims Protocol. First, contrary to CIC's position (CIC Motion ¶ 15), CIC has had an opportunity to consider the disputed amounts. The Liquidator presented them in the August 10, 2006 letter (Exhibit 2) omitted from CIC's motion. That letter advised CIC of the KWELM claims as valued by the Scheme Adjudicator and requested CIC's recommendation pursuant to paragraph 2.3 of the Claims Protocol.

15. Second, after CIC refused to accept the disputed part of the KWELM claims in the November 2, 2006 letter (CIC Motion Ex. B), the Liquidator notified CIC of his disagreement in writing and provided reasons for disagreeing in the November 27, 2006 letter (CIC Motion Ex. C) as required by paragraph 2.5 of the Claims Protocol. Third, the Liquidator and CIC then conferred to attempt mutual resolution as required by paragraph 2.5 on December 11, 2006. Fourth, when no mutual resolution was reached, the Liquidator referred the matter to a single arbitrator and proposed a potential arbitrator as provided by paragraphs 2.5 and 2.7 of the Claims Protocol in the December 11, 2006 letter (CIC Motion Ex. D). In that letter, the Liquidator proposed that the arbitrator be Colin Edelman, Q.C., an English barrister whom CIC and the Liquidator had previously agreed on as an English law expert in connection with disputed claims proceedings 2005-HICIL-18 and 2005-HICIL-21.

16. The Liquidator has thus properly commenced arbitration proceedings under the Claims Protocol to determine the question whether Home is liable for the disputed amounts under the English law reinsurance contracts between Home and KWELM.

B CIC Is Estopped From Contending That The KWELM Claims Are Not Properly The Subject Of Arbitration Under The Claims Protocol.

17. In the earlier proceedings, CIC's position was that the KWELM claims had to proceed under the Claims Protocol and that, as a matter of English law applied under that Protocol, Home was not liable for those claims as determined by the Scheme Adjudicator. Now that the Liquidator seeks to have that issue determined by an arbitrator as provided in the Claims Protocol, however, CIC seeks to avoid the question by asserting that there is "nothing to determine" under the Protocol. It is estopped from this contention by its earlier positions.

18. "The doctrine of judicial estoppel generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." Cohoon v. IDM Software, Inc., 153 N.H. 1, 4-5 (2005), quoting In re Pack Monadnock, 147 N.H. 419, 425-26 (2002). "Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, [it] may not thereafter, simply because [its] interests have changed, assume a contrary position." Kelleher v. Martin Lumbar & Cedar Co., 152 N.H. 813, 848 (2005), quoting New Hampshire v. Maine, 532 U.S. 742, 749 (2001). The three factors that "typically inform" application of judicial estoppel are whether the party's later position is clearly inconsistent with its earlier position, whether the party succeeded in persuading the Court to accept its earlier position, and whether the party would derive an unfair advantage if estopped. Cohoon, 153 N.H. at 5; Pack Monadnock, 147 N.H. at 426.

19. Each of these three factors is satisfied here. As shown below, CIC's present position that there is nothing to determine under the Claims Protocol is clearly inconsistent with its earlier position that the Protocol should apply to determination of the KWELM claims that were the subject of the Liquidator's recommendation. The Court accepted this position in the July 27 Order. Finally, CIC would derive an unfair advantage if, having successfully prevented

approval of the KWELM claim as recommended by Liquidator, CIC could then prevent resolution of the dispute under the Claims Protocol, as it had advocated.

20. First, in its March 27, 2006 Response in Opposition to Liquidator's Report and Recommendation on KWELM Companies' Proofs of Claim (the "CIC Response" attached as Exhibit 4), CIC contended that the reinsurance contracts between Home and KWELM were governed by English law, and that under that law Home would not be liable to KWELM for the non-paid amounts determined by the Scheme Adjudicator:

> This assessment of the KWELM Companies' setoff amounts was not intended to – and does not – establish Home's liability. As set forth in the accompanying affidavit of John Frederick Powell (the 'Powell Affidavit'), the KWELM Scheme is not designed to determine the claims of the KWELM companies against Home for any purpose other than as assessments for setoff purposes. The contracts of reinsurance between KWELM and Home, which are governed by English law, do not allow for the recovery of estimated potential future losses, such as IBNR losses underlying some of KWELM's purported claims. The KWELM Scheme does not alter the terms of such contracts. The KWELM Scheme only binds creditors of KWELM in their capacity as creditors, and it is not enforceable against Home as a debtor except to the extent it reduces Home's creditor balance by assessed offset. In short, the KWELM companies themselves could not have sought those amounts in the Liquidator's Report from Home even under the KWELM Scheme.

CIC Response ¶ 2. See id. ¶ 23 ("And, as set forth in the Powell Affidavit, neither the terms of the reinsurance contracts at issue nor English law allow for the recovery against a reinsurer, like Home, of outstanding loss reserves or an estimated potential loss such as an IBNR claim."); id. ¶ 24 ("Such an [English law] expert would no doubt decide that the amounts determined by the Scheme Adjudicator are only assessments of KWELM's outstanding and IBNR losses for setoff purposes, for which reinsurance payments are not recoverable.").

21. CIC argued that these English law issues had to be determined through the process provided by the Claims Protocol, including arbitration:

> Under the Protocol, Home is to provide CIC with a copy of any proof of claim submitted against Home's estate. Protocol at ¶ 2.2. Following CIC's receipt of a claim, CIC is to

> administer and service the Claim and, within 10 days of receipt, must notify Home in writing of its recommendation with respect to acceptance or rejection of the claim. Protocol at ¶ 2.3. If Home disagrees with CIC's recommendation under the Protocol, Home and CIC are to confer in an attempt to resolve their disagreement and, if unable to do so within ten days, the matter is to be referred to an arbitrator. Protocol at ¶ 2.5. The Liquidator's attempt to gain allowance of KWELM's claims based on both claims CIC denies should be paid and on estimates of KWELM's outstanding and IBNR losses, effectively denies CIC of its rights under the Protocol, including the right to challenge the legitimacy of the claims in issue and, where appropriate, invoke the English law dispute procedure to resolve any disputes.

CIC Response ¶ 16 (emphasis added). CIC concluded that "the KWELM companies' claims at issue in the Report must be presented to CIC and adjusted in the manner prescribed by the Protocol." Id. ¶ 18 (emphasis added).

22. CIC made these points again at oral argument. It asserted that "[t]he protocol was put in place to deal with English law disputes, and there are English law disputes relating to these claims, and none of those English law disputes are covered by the assessment of set off, and the reason the Liquidator wants you to approve what is, in effect, a non-judicial act, is because if you subject these claims to the adjudication process under the claims procedures order and under the protocol and much more importantly under the English law that applies to these reinsurance contracts, these claims are going to be disallowed." June 2, 2006 Transcript ("Tr.") at 10-11 (cited pages attached as Exhibit 5). Furthermore, CIC asserted that the KWELM claims are "going to get disallowed when they go through the process that the referee and the Court have established and they go in front of an English QC, an English QC is going to say well, hang on a second; there are elements of these claims that are clearly not recoverable under English law." Tr. at 11. See id. at 36.

23. Second, the Court accepted CIC's arguments in the July 27 Order. It summarized CIC's position that if English law were applied to the KWELM claims it would reduce their value from that assigned under the Scheme. July 27 Order at 3-4. Then the Court noted that the

Liquidator and CIC had agreed on the Claims Protocol governing the handling of AFIA related claims and that it included protocols for disputes implicating English law. Id. at 5.

24. Third, CIC would derive an unfair advantage if it were now permitted to assert that there is "nothing to determine" under the Claims Protocol. Letting CIC contend that the KWELM claims must proceed through the Claims Protocol and then avoid that process would deprive the Liquidator of the opportunity to collect reinsurance from CIC for claims that Home has already paid to KWELM through offset. CIC would thus reap a windfall to the detriment of Home's policyholders and other creditors, which would frustrate the legislative purpose of obtaining full payment from reinsurers despite an insurer's insolvency.[2] See In the Matter of the Liquidation of The Home Insurance Co., No. 2005-740, slip op. at 16 (N.H. December 5, 2006).

C. The Equities Weigh Against Granting A Stay Of Arbitration.

25. That CIC would gain an unfair advantage through a stay is particularly significant because the equities bear directly on whether to grant the motion. A motion for stay of arbitration seeks an order directing the parties to cease arbitration and is thus "injunctive in character." Tejidos de Coamo, Inc. v. ILGWU, 22 F.3d 8, 10 (1st Cir. 1994). Accordingly, CIC must show that it would suffer irreparable harm without a stay and that the balance of the equities is in its favor. See Smith v. New Hampshire Bd. of Psychologists, 138 N.H. 548, 554 (1994) ("Absent an immediate danger of irreparable harm, an injunction will not issue."); Vigitron, Inc. v. Ferguson, 120 N.H. 626, 632 (1980) (in considering injunctive relief, "the court must balance all of the equities, including the relative hardship to the parties"). Arbitration under the Claim Protocol will not cause CIC irreparable injury; CIC will merely need to defend

[2] In response to the Liquidator's pointing out that CIC should already have views on IBNR for KWELM at least through AISUK internal actuarial analyses, CIC responded that "CIC does indeed have a view on IBNR: CIC will regard any attempt on Home's part to seek allowance of anything other than agreed and undisputed unpaid claims as a breach of its duty of utmost good faith under the Assignment [sic] and Assumption Agreement." CIC November 2 letter at 3.

the position it took in response to the Liquidator's report. The Liquidator (and Home's policyholders and other creditors), on the other hand, will be harmed because a stay would deprive the Liquidator of the opportunity to show that Home is liable for the disputed amounts under English law. This would prevent the Liquidator, who already paid the amounts to KWELM through setoff, from seeking reinsurance for them from CIC, which would harm the policyholder creditors of Home.

26. CIC attempts to diminish the impact of its position on Home and its creditors by continuing to contend that KWELM itself will prosecute claims in the Home liquidation. CIC Motion ¶¶ 5, 10. CIC made this argument in connection with the Liquidator's recommendation as well. CIC Surreply in Opposition to Liquidator's Report and Recommendation on KWELM Companies' Proofs of Claim ¶ 2 (April 13, 2006). The Court plainly did not view this issue as significant, because the July 27 Order does not mention it at all. As the Liquidator noted in his Reply to CIC's Opposition at 1 (April 10, 2006), the KWELM Scheme Administrators have had no reason to prosecute claims in the Home proceeding since KWELM's net obligation was determined under the Scheme. Once Home's obligations were setoff against KWELM's obligations to Home, the Scheme Administrators had received the economic benefit of those claims and had no reason to prosecute them further. The Scheme Administrators confirmed this in a letter dated April 12, 2006 to the Liquidator (attached as Exhibit 6). CIC again makes much of the apparent presentation of some claims by brokers but, as the Liquidator showed through the Affidavit of Jonathan Rosen filed with the Liquidator's Response to CIC's Surreply (April 15,

2006), those claims were so-called "pipeline" claims that all predated the Scheme Adjudicator's February 7, 2006 determination.[3]

27. The issue for arbitration is whether the Home reinsurance contracts reinsure the amounts as determined by the Scheme Adjudicator under the Scheme. This is the issue that CIC disputed in its earlier filings, and the Liquidator – holding a contrary view – now seeks to test CIC's assertions before an English arbitrator as contemplated by the Claims Protocol, which encompasses claims for loss reserves (including IBNR) where "required by law." Claims Protocol at 2. Having persuaded the Court to decline to approve these amounts because they had not gone through the process provided by the Claims Protocol, CIC should not be able to avoid the process under the Protocol now that it has been invoked by the Liquidator.

[3] The dates of the claims were based on the "CP-13" forms presented to AISUK and provided by CIC/AISUK to the Liquidator. CIC/AISUK stopped providing those forms to the Liquidator in relation to KWELM after the Liquidator filed the Rosen Affidavit, so the Liquidator lacks information about any subsequent submissions.

WHEREFORE, the Court should deny CIC's motion for stay of arbitration, grant the Liquidator's cross-motion to compel arbitration, order that CIC arbitrate this matter as provided in the Claims Protocol, and grant such other and further relief as it deems appropriate.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF INSURANCE OF THE STATE OF NEW HAMPSHIRE, SOLELY AS LIQUIDATOR OF THE HOME INSURANCE COMPANY,

By his attorneys,

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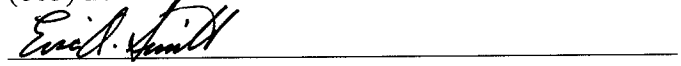

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January 4, 2007

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Objection to CIC's Motion for Stay of Arbitration of KWELM Companies' Claims Against Home and Cross-Motion to Compel Arbitration were sent, this 4th day of January, 2007, by first class mail, postage prepaid to all persons on the attached service list.

Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106

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THE HOME INSURANCE COMPANY
In Liquidation

Exhibit 1

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August 6, 2004

VIA COURIER

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Re: The Home Insurance Company ("Home " or "HICIL") – Administration of AFIA Business

Dear Tom:

This letter sets out our proposals for the establishment of a protocol for the ongoing handling by Century Indemnity Company ("CIC") of claims in respect of AFIA Liabilities, as defined in an Insurance and Reinsurance Assumption Agreement dated 31 January 1984 (the "I & R Assumption Agreement") between, inter alia, HICIL and Insurance Company of North America (the predecessor of CIC) and in respect of AFIA Licence Business, as defined in a Reinsurance Treaty and Management Agreement dated 31 January 1984 (the "Treaty Management Agreement") between, inter alia, HICIL and Insurance Company of North America (the "Agreements"). Pursuant to the Agreements, CIC undertook certain management, administrative and service obligations in respect of AFIA Liabilities and AFIA Licence Business (each as defined below).

The insolvency of Home creates a number of administrative issues that need to be addressed and this letter is intended to describe the process for the continued performance by CIC of its obligations under the Agreements. The Liquidator recognizes that to the extent CIC provides or causes the provision of services beyond those required under the Agreements, CIC should receive reasonable compensation for such additional services.

In view of the foregoing, and having due regard to the New Hampshire liquidation statutes and the Claims Procedures Order (as defined below), it is desirable to put in place mechanisms and processes to ensure the due, proper, orderly and consistent handling of Claims (as defined below) by and among HICIL and CIC.

This letter, therefore, seeks agreement between HICIL and CIC on the above mechanisms and processes. Following such agreement, as confirmed by signature for CIC below, this letter will be presented to the Court (as defined below) for approval, upon which it will be effective. For the avoidance of doubt, except as may be subsequently agreed by CIC and Home, the terms of this letter will apply solely to paid losses that have been presented pursuant to a POC (as defined below) in the HICIL liquidation and determined in accordance with the Claims Procedures Order (as defined below) and not to any loss reserves (including reserves for losses that are incurred but not reported) that the claimants have established, except as may otherwise be required by law.

1. Definitions

In this letter, the following terms shall have the following meanings:

"ACE-INA" means ACE INA Services U.K. limited or such other agent appointed by CIC that is reasonably acceptable to HICIL;

"AFIA Liabilities" means AFIA Liabilities as defined in the I & R Assumption Agreement and the assumed liabilities of HICIL under AFIA Licence Policies as defined in the Treaty Management Agreement;

"AFIA Licence Business" has the meaning given in the Treaty Management Agreement:

"Agreements" means the I & R Assumption Agreement and the Treaty Management Agreement;

"CIC" means Century Indemnity Company, including its predecessors or successors in title;

"CIRC" means Century International Reinsurance Company, including its predecessors or successors in title;

"Claim" means an inward reinsurance claim against HICIL in respect of an AFIA Liability presented in a POC;

"Claimant" means a person submitting a Claim in the HICIL liquidation;

"Claims Procedures Order" means the order establishing procedures regarding claims entered in the HICIL liquidation made by the Court on December 19, 2003, as otherwise amended and in effect from time to time;

"Court" means the New Hampshire Superior Court for Merrimack County;

"HICIL" or "Home" means The Home Insurance Company, including its predecessors or successors in title;

"Liquidator" means the New Hampshire Insurance Commissioner, acting solely in his capacity as liquidator of HICIL appointed by the Court, the Special Deputy Liquidator and his and their agents and representatives;

"POC" means a proof of claim properly filed pursuant to N.H. RSA 402-C:37 and C:38; and

"Notice of Determination", "Notice of Disputed Claim", "Notice of Redetermination", "Objection", "Request for Review" and "Disputed Claim proceeding" have the meanings given in the Claims Procedures Order.

2. Submission, Adjustment and Adjudication of AFIA Liabilities

2.1 CIC shall make available such personnel as are reasonably necessary to perform effectively the management, administration and service obligations undertaken by CIC pursuant to the Agreements. HICIL agrees and confirms that, if, and to the extent that, CIC incurs costs (including internal costs) in providing services pursuant to this letter agreement that are in excess of those incurred by CIC in the fulfillment of CIC's obligations under the Agreements prior to the liquidation of HICIL, such additional costs reasonably incurred by CIC in such management, administration and/or servicing shall (and the Liquidator agrees that they shall) be chargeable by CIC to HICIL, and payable to CIC as an administration cost pursuant to N.H. RSA 402-C:44, I. CIC shall present such additional costs to the Liquidator for determination pursuant to the Claims Procedures Order and RSA 402-C:41.

2.2 With respect to Claims that are submitted through the filing by a claimant of a POC in the HICIL estate, HICIL shall provide CIC with a copy thereof and all supplements thereto. In the event that an amendment to the Claims Procedures Order or RSA 402-C materially alters the procedures for the determination of Claims that are submitted by the filing of a POC in the HICIL estate, either party shall have the right to terminate this letter agreement upon written notice to the other party. This provision shall not have and shall not be construed to have any effect on the parties' obligations under the Agreements.

2.3 Upon receipt of the POC, CIC (through ACE-INA) shall administer and service the Claim in accordance with the relevant Agreement. HICIL shall determine the order in which Claims are to be administered and serviced. HICIL shall defend and hold harmless CIC (and ACE-INA) against any action or proceeding brought by a Claimant arising from CIC's (or ACE-INA's) compliance with HICIL's determination as to the order in which Claims are to be administered and serviced. Following adjustment of a Claim, CIC (through ACE-INA) shall, within ten (10) business days and in writing, notify HICIL of its recommendations with respect to the agreement or rejection, in whole or in part, of the Claim, together with the reasons for such recommendations.

2.4 If the Liquidator concurs with the recommendations of CIC, he shall issue a Notice of Determination to the relevant Claimant, with a copy to CIC. CIC shall effect remittance to HICIL in respect of the Claim to the extent allowed on the Notice of Determination in accordance with paragraphs 3.3 and 3.4.

2.5 If the Liquidator disagrees with the recommendations of CIC, he shall notify CIC thereof in writing, and give his reasons for so disagreeing. The Liquidator and CIC shall thereafter promptly confer to attempt mutual resolution of their disagreement. If the parties do not reach such mutual resolution within ten (10) business days, the matter shall be referred (by either party) to a single arbitrator ("Arbitrator") agreed upon by the parties.

2.6 Where the contract underlying the Claim at issue is not governed by English law, the Arbitrator shall be chosen from the panel of arbitrators maintained by ARIAS (US). If the parties cannot agree on the identity of the Arbitrator within five (5) business days, each party shall submit the names of three (3) candidates, each of whom shall be chosen from the panel of arbitrators maintained by ARIAS (US). Within three (3) business days of the exchange of the lists of candidates, the parties shall either agree on the Arbitrator from the six (6) candidates selected or each party shall delete two (2) of the other party's candidates and the Arbitrator shall be chosen by lot from the remaining two (2) candidates. The Arbitrator shall resolve the disagreement between the parties as to whether the Claim should be agreed or rejected, in whole or in part, on written submissions by the parties, which the parties shall be entitled to supplement with information and documentation relating to the Claim, and shall issue a ruling promptly after receiving such submissions; provided that, if the Arbitrator considers that the decision required of him cannot be made on the basis of the written submissions provided, the Arbitrator shall be entitled to call for such other submissions as he considers necessary in order for him to reach a decision.

2.7 Where the contract underlying the Claim at issue is governed by English law, the Arbitrator shall have the qualifications required by Rule 6.3 of the Arias (UK) Arbitration Rules, 2ed 1997. If the parties cannot agree on the identity of the Arbitrator within five (5) business days, the Arbitrator shall be chosen by the Chairman of ARIAS (UK). The Arbitrator appointed shall have the qualifications required by Rule 6.3. The parties agree that the Arbitrator is entitled and bound to resolve and determine by declaration any disagreement between the parties as to whether the Claim should be agreed or rejected, in whole or in part. The Arbitrator's award shall be based on written submissions by the parties, which the parties shall be entitled to supplement with information and documentation relating to the Claim. The Arbitrator shall issue his award promptly after receiving such submissions. If, however, the Arbitrator considers that he cannot make an award on the basis of such submissions, he shall be entitled to call for such additional submissions and information that he considers necessary in order for him to make his award. In resolving the disagreement between the parties, the Arbitrator will solely interpret the terms and conditions of the contract entered into between Home and the Claimant. The Arbitrator will apply the proper law of the contract, without regard to the law of any other legal system, in resolving the disagreement between the parties.

2.8 The cost of the Arbitration shall be apportioned equally between the parties. The Liquidator shall issue a Notice of Determination in accordance with the Arbitrator's ruling, and shall not, unless the ruling is subject to being vacated on a ground specified in N.H. RSA 542:8, in any proceeding before the Court take a position contrary to the Arbitrator's ruling. The Liquidator will seek approval to seal the ruling to prevent disclosure to any third party. CIC shall thereafter effect remittance to HICIL in respect of the Claim, to the extent allowed on the Notice of Determination, in accordance with paragraphs 3.3 and 3.4.

2.9 The parties acknowledge that, should a Claimant disagree with a Notice of Determination, the Claimant may, at its option, submit a Request for Review to the Liquidator in accordance with the Claims Procedures Order. In such event, the Liquidator

shall promptly provide CIC with a copy of the Request for Review and within twenty (20) business days thereafter, CIC shall in writing notify HICIL of its recommendations in relation to that AFIA Liability, together with the reasons for such recommendations.

2.10 If the Liquidator concurs with the recommendations of CIC, he shall issue a Notice of Redetermination to the relevant Claimant consistent with those recommendations, with a copy to CIC. CIC shall effect remittance to HICIL in respect of the Claim to the extent allowed on the Notice of Redetermination in accordance with paragraphs 3.3 and 3.4

2.11 If the Liquidator disagrees with the recommendations of CIC, he shall notify CIC thereof in writing, and give his reasons for disagreeing. The parties shall thereafter promptly confer to attempt mutual resolution of their disagreement.

2.12 If the parties are unable to reach such mutual resolution within ten (10) business days, the matter shall be referred (by either party) to an Arbitrator and the provisions of paragraphs 2.5 to 2.8 inclusive shall apply; provided that in the event that the parties have, pursuant to paragraphs 2.6 or 2.7, as the case may be, already arbitrated specific issues raised in the Request for Review, the parties shall not be entitled to re-arbitrate such issues and the rulings rendered with respect thereto shall have a preclusive effect and shall be and remain binding on the parties.

2.13 The parties further acknowledge that, should a Claimant disagree with a Notice of Determination, the Claimant is not obliged to submit a Request for Review but may, at its option, file an Objection with the Court in accordance with the Claims Procedures Order. A Claimant that disagrees with a Notice of Redetermination may also file an Objection with the Court in accordance with the Claims Procedures Order. In either event, the Liquidator shall promptly provide CIC with a copy of the Objection so filed and shall provide CIC with a copy of the Notice of Disputed Claim sent by the Liquidation Clerk to the claimant in response to the filing of the Objection, so as to avail CIC of its right under the Agreements to interpose defenses in the ensuing Disputed Claim proceeding. If CIC elects to interpose defenses in the Disputed Claim proceeding it shall, at its own cost and expense, seek leave to so participate by filing a Motion to Participate with the Referee no later than thirty (30) days after the date of mailing to the claimant of the Notice of Disputed Claim, identifying the contract in question and stating that it has a contractual right to interpose defenses. The Liquidator agrees that CIC has the right to participate in Disputed Claims proceedings and to raise any defense or defenses available to HICIL, and shall assent to CIC's participation.

2.14 The Disputed Claim proceedings procedures shall be governed by New Hampshire law. Questions of contractual construction and interpretation with respect to the Disputed Claim shall be governed by applicable law in accordance with the express terms of the contract, without regard to the law of any other legal system. Where the contract is silent as to its governing law and English law may apply, the Referee shall appoint an expert (with the qualifications and in the manner provided for below) and consult with such expert to determine which law is applicable. The Referee's decision on choice of law shall be final and binding on the parties.

2.15 The Disputed Claim proceedings shall be conducted by the Referee, who may appoint an expert to assist the Referee. Where the law applicable to the contract is English law (or where it has been determined as above stated that the contract is to be construed in accordance with English law), the Referee shall appoint an expert (or, as applicable, retain and be assisted by the expert appointed as stated above) with knowledge of the law of insurance and reinsurance in England as well as industry custom and practice. Such expert shall be either a retired English judge or a Queen's Counsel of the English bar and, in either case, shall be a person disinterested in the subject matter of the Disputed Claim proceeding. HICIL and CIC shall attempt to jointly propose a person to be appointed as such expert by the Referee, provided that, if HICIL and CIC do not agree on a person to be jointly proposed, HICIL and CIC shall each be entitled to submit to the Referee the names of three candidates fulfilling the above requirements. The Referee shall choose the expert. The Referee may prescribe such further reasonable procedures and provisions as the Referee, in the exercise of discretion, deems appropriate to assist in the adjudication of Disputed Claims. The foregoing includes, but is not limited to, the receipt of documents and other information relating to the Disputed Claim and the taking of evidence. The expert shall issue a Report and Recommendation to the Referee after the evidence has closed whereupon the Referee shall provide a copy of the Report and Recommendation to each of the Claimant, HICIL and CIC. The Referee may use the Report and Recommendation as the Referee deems appropriate and shall attach a copy of the Report and Recommendation as an exhibit to the Referee's Report to the Court. The costs of the Referee and the expert shall be chargeable against HICIL as part of the expense of the HICIL liquidation.

2.16 Should CIC participate in Disputed Claim proceedings, it shall, at its own cost and expense, interpose any defense or defenses that it may deem available to HICIL, although the cost or expense so incurred shall be (and the Liquidator acknowledges and agrees that they shall be) chargeable, subject to approval by the Court, against HICIL as part of the expense of the HICIL liquidation as an administration cost pursuant to N.H. RSA 402-C:44, I, to the extent of the pro rata share of the benefit which may accrue to HICIL solely as a result of the defense undertaken by CIC and to the extent not otherwise received by CIC under paragraph 2.17.

2.17 The Referee shall make an award of costs in every Disputed Claim proceeding in which CIC participates involving a contract governed by English law. If an order for costs is made against CIC, CIC shall bear those costs without recourse to HICIL. If an order for costs is made against the claimant, CIC, to the extent that CIC has incurred those costs, shall (and the Liquidator acknowledges and agrees that CIC shall) be entitled to the benefit of such order, and to receive and retain payment of such costs in full without diminution or set-off of any kind whatsoever, as administration costs pursuant to N.H. RSA 402-C:44, I.

2.18 The Liquidator and/or HICIL and CIC shall fully cooperate with each other (including in this ACE-INA) in relation to the matters covered by this letter and in particular information relating to notices, Requests for Review and/or Objections and the defense of Claims. Once CIC has commenced administering and servicing a Claim, the Liquidator and/or HICIL shall provide CIC with a copy of any written communication between the Liquidator and/or HICIL and the Claimant concerning the Claim and shall share the

substance of any other communication between the Liquidator and/or HICIL and the Claimant concerning the Claim with CIC.

2.19 If a Disputed Claim proceeding results in a final determination of the relevant AFIA Liability adverse to HICIL, CIC shall effect remittance on the basis of such determination to HICIL in accordance with paragraphs 3.3 and 3.4.

3. Reports, Remittances and Inspection of Records

3.1 CIC (through ACE-INA) shall within ten (10) business days after the end of each three month period, provide to HICIL copies of the *brokers' forms* relating to each Claim being handled by CIC or, where the details of the Claim are not the subject of a *broker's form*, copies of the relative *cedant's form*, supplemented, where those *forms* are not adequate for the purpose, by information from CIC, disclosing, on a by-cedent basis (a) the name of the underlying insured; (b) the nature and amount of each Claim; (c) the date each Claim was presented to CIC; (e) the adjustment status of each Claim, and where a Claim is the subject of legal action, details of (i) the nature of the action; (ii) the forum in which it is being conducted; (iii) the amount at issue; and (iv) material developments (if any) in it since the previous such report; and (f) a summary of Claims adjusted in the preceding three month period indicating for each Claim (i) the amount agreed; (ii) the amount disputed; and (iii) the reason for the amount disputed; and (g) a summary of all payments made by CIC to HICIL in that three month period.

3.2 The reasonable costs incurred by CIC (and/or ACE-INA) in collecting and compiling the reports called for by paragraph 3.1 (including the internal and staff costs of CIC and/or ACE-INA) and of providing the same to HICIL shall (and the Liquidator agrees that they shall) be chargeable by CIC to HICIL, and payable to CIC as an administration cost pursuant to N.H. RSA 402-C:44, I. CIC will not charge HICIL for any systems enhancements necessary to produce any report required by paragraph 3.1.

3.3 Within thirty (30) business days after the end of each month, CIC shall (a) provide HICIL with a statement showing (i) all amounts payable by CIC to HICIL pursuant to paragraphs 2.4, 2.8, 2.10, 2.19 and 3.7 for the preceding month; (ii) the amount of funds paid by CIC with respect to such payables; and (iii) any amounts claimed in offset in accordance with paragraph 3.4 against amounts due to HICIL, together with sufficient detail and an explanation as to the basis for the asserted offset; and (b) subject to the proviso to this paragraph, effect a wire transfer to such account as may, from time to time, be designated by the Liquidator for the balance. CIC agrees and acknowledges that the Liquidator fully reserves all rights in relation to any offset asserted. CIC reserves (and the Liquidator acknowledges that CIC so reserves) all rights in respect of any payments made, including as to amount and as to the obligation of CIC to make the same; PROVIDED THAT, where the Claimant has submitted a request for Review or an Objection in respect of a Claim disputing the quantum of the Claim or elements of it, CIC shall make remittance in respect of any portions of the Claim allowed in full or agreed between CIC and the Claimant. CIC shall not be obliged to make remittance in respect of the disputed amount unless and until the relevant proceedings settle the disputed amount or it is negotiated and agreed between the claimant and CIC with the concurrence of the

Liquidator, in which event remittance will be made in such amount within thirty (30) business days after the month next following such settlement or agreement.

3.4 Notwithstanding anything herein to the contrary,payments to HICIL shall be net of set-off in compliance with N.H. RSA 402-C:34 or otherwise allowed by New Hampshire law.

3.5 CIC will not be liable to make payment in respect of any AFIA Liability unless the relevant Claim has been allowed in the HICIL liquidation. The Liquidator will consent to CIC's standing to object to the Liquidator's decision to permit a late filed Claim to receive dividends pursuant to N.H. RSA 402-C:37, II or III. Where on such objection the late filed Claim is not permitted to receive dividends pursuant to N.H. RSA 402-C:37, II or III, CIC shall be entitled to recover the amount in fact paid by it in respect of any such Claim, whether by way of deduction from subsequent payments or otherwise.

3.6 In the event that HICIL considers that CIC has ceased to administer and service a Claim, including failing to notify HICIL of its recommendations in accordance with paragraphs 2.3 and/or 2.9, the Liquidator shall give written notice to CIC specifying and giving details of the failure complained of and the actions that the Liquidator considers required of CIC to cure the alleged failure and requesting CIC to effect such action within twenty (20) business days from receipt by CIC of the notice. If CIC disputes that there is a failure on its part or that the steps specified in the notice are necessary and appropriate, ~~CIC shall so advise HICIL in writing within twenty (20) business days of its receipt of~~ the notice. If CIC considers that the notice does disclose a failure on its part, CIC shall cure the same within twenty (20) business days of its receipt of the notice.

3.7 If CIC fails to timely file a Motion to Participate as described in paragraph 2.13 or, having timely filed a Motion to Participate, CIC fails to participate in a Disputed Claim proceeding (CIC having previously administered and serviced the Claim and notified HICIL of its recommendations in accordance with paragraph 2.3 and, if applicable, notified HICIL of its recommendations in accordance with paragraph 2.9), the Liquidator shall not be obliged to defend the Claim and shall be entitled, at his sole discretion, to consent to the entry of judgment in relation to it. This consent will be final and binding on CIC. Should the Liquidator decide to defend the AFIA Liability notwithstanding the election of CIC to refrain from participating in the Disputed Claim proceeding or the failure of CIC to file in timely fashion a Motion to Participate therein and a determination of the relevant AFIA Liability at issue is, in the first instance, determined adverse to HICIL, the Liquidator shall not be obliged to appeal the determination. That determination will then be final and binding on CIC.

3.8 Upon reasonable advance notice and at all reasonable times, CIC shall confer with and place at the disposal of HICIL, either directly or through its authorized representatives, the financial and business records, books of account and documents maintained by CIC (or ACE-INA) relative to AFIA Liabilities and AFIA Licence Business. HICIL shall have the right at its own cost to inspect and copy any such records and books of account.

4. Commutations

4.1 CIC acknowledges that inwards reinsurance commutations involving AFIA Liabilities and AFIA Licence Business are constrained by the Claims Procedures Order. As a result, while CIC may negotiate inwards commutations with Home's AFIA cedents, CIC may consummate no commutation agreements with any such cedent absent the Liquidator's express written authority to that effect. In that regard, CIC shall advise HICIL of the details of any commutation discussions in progress and shall provide such assistance and cooperation as the Liquidator may reasonably deem necessary or expedient to assess the propriety of any commutation proposal and, where appropriate, to obtain Court approval for it.

5. Rutty Pool Business

5.1 CIC (through ACE-INA) shall, at the sole cost of CIC, to the extent determined through litigation, arbitration or an agreement approved by HICIL with each affected Rutty Pool member (a) administer and service the inwards liabilities of each affected Rutty Pool member, including the investigation, appraisal and adjustment of such liabilities; (b) effect timely notification to each affected Rutty Pool member and HICIL of the results of such investigation, appraisal and adjustment; and (c) pay on HICIL's behalf such unallocated loss adjustment expenses that are determined as the obligations of HICIL related to the inwards liabilities of each affected Rutty Pool member.

6. Role of ACE-INA

6.1 The parties acknowledge that ACE-INA is the agent of CIC. CIC undertakes that it will procure that ACE-INA will at all times perform CIC's obligations hereunder or, in the alternative, CIC will perform those obligations itself.

7. Reservation of Rights

7.1 Nothing in this letter shall be construed so as to prejudice, negate or otherwise interfere with the rights of HICIL under the Agreements or any other contractual arrangements involving or relating to Home's AFIA business as against any other party thereto (including their successors or assigns). In particular, but without derogating from the generality of the foregoing, the Liquidator reserves the right to assert that each or both of CIC and CIRC and/or any other person or entity having contractual obligations to indemnify HICIL with respect to Home's AFIA business are liable to indemnify HICIL thereunder.

7.2 Nothing in this letter shall be construed so as to prejudice, negate or otherwise interfere with the rights of CIC, CIRC or any other company within the ACE group of insurance undertakings as against HICIL whether under the Agreements or otherwise including the right to assert that neither CIC nor CIRC has any contractual obligation to indemnify HICIL with respect to AFIA Liabilities or AFIA Licence Business, and in particular, but without derogating from the generality of the foregoing: (i) if and to the extent that HICIL takes any action (or fails to take any action) the effect of which, subject to paragraph 2.8, is to undermine or interfere with defenses raised by CIC to a Claim, CIC reserves all of its rights in relation to any reinsurance or other indemnity or payment obligation (including pursuant to this letter agreement) regarding that Claim; and (ii) the payment

obligations stated in this letter agreement are predicated upon (and are not separate and independent from) a payment obligation under the Agreements and, accordingly, CIC reserves all its rights to argue that any action taken (or not taken) by HICIL and/or the Liquidator that would vitiate the payment obligation under the relevant Agreement does vitiate that obligation and such shall apply equally to vitiate the corresponding obligation under this letter agreement.

8. CIRC Reinsurance Recovery

8.1 Unless CIC invokes paragraph 7.2 and provided that CIC performs its obligations under this letter agreement, including without limitation paragraph 3.3 (b), HICIL agrees not to seek reinsurance recovery from CIRC.

9. No variation

No amendment, variation or supplement to this letter or the agreements contained in it shall be effective unless made in writing and signed on behalf of HICIL and CIC and approved by the Court.

10. Material Breach

In the event that either party considers that the other party has materially breached this letter agreement, the party shall give written notice to the other party specifying and giving details of the matter complained of and the actions that it considers required to cure the alleged material breach and requesting the other party to effect such action within twenty (20) business days from receipt of the notice. If the receiving party disputes that there is a material breach on its part or that the steps specified in the notice are necessary and appropriate, it shall so advise the notifying party in writing within twenty (20) business days of its receipt of the notice. If the receiving party considers that the notice does disclose a material breach on its part, it shall cure the same within twenty (20) business days of its receipt of the notice.

11. Notices

11.1 Any notice, consent or other communication ("notice") provided for under or given, made or served in connection with this letter shall be validly given, made or served if in writing and delivered personally or sent by registered or certified pre-paid first class post or by facsimile to the address or facsimile number (and marked for the attention of the person stated) below:
If to HICIL:
Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 10038
Attention: Jonathan Rosen
Facsimile Number: (212) 530 3100

If to CIC:

Century Indemnity Company
c/o ACE USA
Law Department
Routing TL35S
1601 Chestnut Street
Philadelphia, Pennsylvania 19101
Attention: Thomas Wamser
Facsimile Number: (215) 640 5571

11.2 A party may by written notice, served in accordance with this paragraph, change its address for the purpose of any subsequent notice.

* * *

If CIC is in agreement with the foregoing, please have a duly authorized representative confirm same by signing and returning to me a counterpart of this letter. I appreciate your consideration and assistance.

Sincerely,

Pete Bengelsdorf

Pete Bengelsdorf
Special Deputy Liquidator

AGREED AND ACCEPTED
CENTURY INDEMNITY COMPANY

By: Thos J Wamser

Title: Assistant General Counsel

Date: 8/10/04

Exhibit 2

THE HOME INSURANCE COMPANY
In Liquidation

59 Maiden Lane
New York, NY 10038

Jonathan Rosen
Chief Operating Officer
Tel: (212) 530-7336
Fax: (212) 548-0727
jonathan.rosen@homeinsco.com

August 10, 2006

VIA TELECOPY AND REGULAR MAIL

Thomas J. Wamser, Esq.
ACE-INA
Law Department
436 Walnut Street, WA04K
Philadelphia, PA 19106

Re: Proofs of Claim of Kingscroft Insurance Company Limited ("Kingscroft") (POC No. RAHM 700335), Walbrook Insurance Company Limited ("Walbrook") (POC No. RAHM 331506), El Paso Insurance Company Limited ("El Paso") (POC No. INTL 709436), Lime Street Insurance Company Limited ("Lime Street") (POC No. RAHM 700333), and Mutual Reinsurance Company Limited ("Mutual Re") (POC No. RAHM 700334) (collectively, the "KWELM Companies")

Dear Tom:

As you are no doubt aware, the Court's July 27, 2006 "Order on Liquidator's Report and Recommendation on KWELM Companies' Proofs of Claim" directed the Liquidator to the "carefully considered and agreed upon detailed procedures to address anticipated disputes over processing of AFIA related claims in the Home liquidation..." (Order, p 5) as advocated by Century Indemnity Company ("CIC") in its March 27, 2006 "Response in Opposition to Liquidator's Report and Recommendation on KWELM Companies' Proofs of Claim" (Response pp 7-10). Accordingly, the Liquidator hereby requests, pursuant to paragraph 2.3 of the August 6, 2004 letter agreement between the Home Insurance Company in Liquidation ("Home") and CIC (the "Protocol"), that CIC immediately review and make its recommendations (including the reasons therefor) respecting the agreement or rejection, in whole or in part, of the below described claims of the respective KWELM Companies.

We have, in accordance with paragraph 2.2 of the Protocol, previously provided CIC with the proofs of claim submitted by the KWELM Companies. The amounts claimed against Home for each of those entities are founded on the attached KWELM Scheme Adjudicator's February 7, 2006 certification of Home's liability to KWELM pursuant to the KWELM Scheme of Arrangement as follows:

Kingscroft	$195,865
Walbrook	$2,214,137
El Paso	$25,651
Lime Street	$16,798
Mutual Re	$1,458,391
Total	$3,910,842

Of the total Home $3,910,842 liability to the KWELM Companies certified by the KWELM Scheme Adjudicator, $2,490,765 related to unsettled paid losses. Of that amount, $1,739,215 in paid losses has already been approved by the Court based upon CIC recommendations made pursuant to the Protocol, broken out for each impacted KWELM Companies as follows:

Kingskroft	$95,830
Walbrook	$985,677
Mutual Re	$657,708
Total	$1,739,215

In addition, CIC has previously agreed $487,239 of paid losses based upon claims submissions by the KWELM Companies, in relation to which Notices of Determination have now been issued and copied to you under separate cover, broken out for each impacted KWELM Company as follows:

Kingskroft	$28,090
Walbrook	$255,682
El Paso	$4,077
Mutual Re	$199,391
Total	$487,239

In view of the foregoing, there remains $1,684,387 of the Scheme Adjudicator's certification for which CIC has yet to make a recommendation under the Protocol, of which $264,309 relates to paid losses and $1,420,077 constitutes discounted loss reserves (based upon certification of undiscounted case reserves of $1,065,724 and undiscounted IBNR of $1,119,010). From the information at our disposal, we are unable to break out the $264,309 of paid losses attributable to each respective KWELM Company, but from the considerable detail maintained by AISUK this should be readily discernable to facilitate a CIC recommendation. We are, however, able to attribute the entire $1,684,387 of the Scheme Adjudicator's certification on a by-KWELM Company basis, which breaks out as follows:

Kingscroft	$71,945
Walbrook	$972,778
El Paso	$21,574
Lime Street	$16,798
Mutual Re	$601,292
Total	$1,684,387

We look forward to receipt of CIC's recommendations and accompanying reasons with respect to the remaining $1,684,387 of KWELM Company claims at your earliest convenience.

Sincerely,

Jonathan Rosen

cc: Pete Bengelsdorf
J. David Leslie, Esq.
Gary Lee, Esq.

TULLENS TOAT
PICKHURST LANE
PULBOROUGH
WEST SUSSEX
RH20 1DA

Mr J. Rosen,
Home Insurance Company in Liquidation,
59, Maiden Lane,
New York, NY 10038
USA

The Scheme Administrators,
KWELM,
John Stow House,
18 Bevis Marks,
London EC3A 7JB

7th February, 2006

Dear Sirs,

Adjudication of KWELM Outwards Reinsurance Claim

I have been provided with the papers and documents as required in the Scheme of Arrangement. Both the creditor and the Scheme Administrators have responded to my enquiries.

I have considered the information as necessary and consulted the Scheme Actuary. I now set out below my adjudication of the disputed matters.

The Disputed Matters

The Creditor has raised a number of reconciliation type issues relating to the claimed unsettled paid losses and outstanding (case) loss reserves. These can be summarised as follows ;

1. The claims were not agreed due to outstanding queries they had raised to which no reply had been received.
2. The claims included " representative fees" which are disputed as not recoverable.
3. Certain claims arise from participation in the EW Payne pools .
4. Certain claims have been paid.
5. Certain claims had not been advised by KWELM to Home.
6. Certain claims were time barred.
7. Certain case reserves were overstated.

In addition the Creditor disputes the valuation of IBNR . The principle areas of objection in this regard surround the methodology utilised by the Scheme Administrators for the purpose of calculating its outwards IBNR. It is argued that this does not follow the methodology as set out in the Scheme Document.

Certificate

I hereby certify the amount due by Home to the KWELM Companies to be US$3,910,842 comprised as follows;

Unsettled paid losses $2,490,765
Ceded case reserves $1,065,724 (Undiscounted)
Ceded IBNR $1,119,010 (Undiscounted)
Discounted reserves $1,420,077

The allocation of the US$3,910,842 by KWELM Company is as follows;
Kingscroft-$195,865
Walbrook-$2,214,137
El Paso-$25,651
Lime Street-$16,798
Mutual-$1,458,391

In accordance with 9.5.7 of the KWELM Closure Provisions I direct that my remuneration and expenses be shared equally between the Scheme Administrators and the Scheme Creditor. My fee invoice will follow under separate cover.

Reasoning

I find that most of the queries in respect of paid losses had previously been responded to and that in any event these did not affect the Creditors liability to KWELM. Similarly I find that the items claimed to be not advised have in fact been advised in the normal way. I find these to be valid claims due by the Creditor.

I have however adjusted the amount claimed in respect of certain representatives fees which are not recoverable. While I find that the vast majority of the amounts claimed as paid by the Creditor in fact remain outstanding an amount of $8,446-90 in respect of Keene Corporation did transpire to have been previously settled as had $16,912-12 in respect of the EW Payne pools. The remaining EW Payne pool items are due.

Due to the application of offset I find that none of the amounts due by the Creditor are time barred.

Arising from my investigation of various of the issues raised by the Creditor I find case reserves to have been overstated by $687,463.

The IBNR position is a complex one. .9.4.14 of the KWELM Scheme closure provisions state that "in the event that the Scheme Creditor disputes any amount of Outwards reserves and IBNR so stated they shall return the Outwards Reserves and IBNR Statement to the scheme Administrators as soon as possible in accordance with clause 9.9, together with the amounts of Outwards Reserves and Outwards IBNR they are prepared to agree with the Supporting Information". While the Creditor has in its objection letter set out its reasons for disagreeing the IBNR calculations it has not provided its own calculations. Notwithstanding this I have considered the Creditor's objections.

The Creditor complains that the Scheme Administrators have not followed the methodology of IBNR calculation set out in the Scheme. They appear to suggest that the IBNR should be derived from an application of the agreed inwards claims to the Outwards reinsurance programme. I reject this objection as it would not be possible to approach the calculations in this way and hence this could not have been contemplated when the Scheme was developed. Inward claims as agreed by the Scheme Administrators often include a bulk IBNR to cover unreported claims. As such these amounts are not broken down to an individual claim level and they could not be applied to the outwards programme. Clearly what was intended was that a consistent approach be used in valuing inwards and outwards claims.

I therefore consulted with the Scheme Actuary and asked him to calculate an outwards IBNR for the Creditor using a method consistent to that utilised in dealing with similar inwards claims. He has confirmed to me that the $1,119,010 figure certified above is arrived at on this basis. Hence it is not necessary to consider the appropriateness or otherwise of the calculations performed by KMS.

Yours Faithfully,

Ivor Kiverstein
Scheme Adjudicator
KWELM Scheme Of Arrangement

Exhibit 3

Smith, Eric A. EAS

From: jonathan.rosen@homeinsco.com
Sent: Friday, October 20, 2006 5:18 PM
To: Lee, Gary
Cc: Leslie, J. David; pabinsconsult@aol.com; Wamser, Thomas J; Smith, Eric A. EAS
Subject: RE: KWELM

Gary:
Please explain the allegedly "mammoth" NOD reconciliation project you refer to. My letter of August 10, 2006 to Tom Wamser identified the amount of the KWELM Companies' claims against Home, the paid losses that had previously been the subject of NODs as recommended by CIC, and the amounts that had just been the subject of NODs also issued on CIC recommendations, leaving $1,684,387 in paids and discounted loss reserves to be addressed by CIC. CIC knows what claims the NODs relate to as it made recommendations on those claims, while CIC's involvement with the Scheme Adjudicator over paids should permit it to readily identify the additional claims that are the paid portion of the $1,684,387 (which we understand to total $264,309 as stated in my letter). Indeed, CIC (by AISUK) performed a reconciliation of the paid claims in connection with the April 27, 2005 Notice of Objection provided to the Scheme Administrator. That reconciliation was updated as part of AISUK's September 30, 2005 letter to the Scheme Adjudicator. The $264,309 in paids not yet agreed should be known to CIC already, having due regard not only to the foregoing, but also to the June 7, 2005 compendium provided to AISUK by the Scheme Administrator's representatives (comprehensively detailing paids, as well as case reserves and IBNR, with respect to the KWELM Companies).

Your statement that CIC "will continue to respond to KWELM's claims as they are presented to AISUK" in a manner "consistent with" the Court's ruling is both inapposite and not responsive to the issue. In my letter, the Liquidator requested that CIC provide its recommendation regarding both (1) those paids not yet agreed, and (2) the discounted loss reserves (consisting of case reserves and IBNR) presented by the Scheme Adjudicator's certification. As with the paids, CIC should be able to provide recommendations on the loss reserves now. CIC has case reserves with respect to the KWELM Companies' claims, and it provided comments on the KWELM Companies' case reserves in both the April 27, 2005 Notice of Objection and the September 30, 2005 letter to the Scheme Adjudicator. CIC similarly should already have views on IBNR for KWELM at minimum through AISUK's internal actuarial analyses.

Under both the Claims Protocol and the Court's ruling (which referred matters to the Protocol as CIC had requested), CIC is obligated to provide recommendations concerning the KWELM Companies' claims. In the event that CIC continues to take the position that loss reserves – case and IBNR – are not recoverable (as it asserted in its filings with the Court, e.g., CIC's March 27, 2006 Opposition ¶¶ 14, 23), please confirm that position.

We note that CIC has previously taken the position that it has recommended denial of the KWELM Companies' claims. CIC March 27, 2006 Opposition ¶ 24.
Accordingly, we require that CIC respond promptly, and in any event within fourteen days. If CIC does not respond within that time, we will deem CIC to have recommended denial, thereby triggering the process provided under §
2.5 of the Claims Protocol.

Regards,

Jonathan Rosen
Chief Operating Officer

The Home Insurance Company In Liquidation
59 Maiden Lane
New York, New York 10038
Tel: (212) 530 7336
Fax: (212) 548 0727

"Lee, Gary"
<Gary.Lee@LOVELLS.com>
10/16/2006 02:33 PM

To: <jonathan.rosen@homeinsco.com>
cc: <jdl@rackemann.com>, <pabinsconsult@aol.com>, "Wamser, Thomas J" <Thomas.Wamser@ace-ina.com>
Subject: RE: KWELM

Confidential

Jonathan. We are still having trouble reconciling what is in your letter against the NoDs received, and continue to try to reconcile the two which I am advised is a "mammoth" project. That being said, we will continue respond to KWELM's claims as they are presented to AISUK in a manner consitent with Judge McGuire's ruling.

Regards,

Gary S. Lee
Lovells
590 Madison Avenue
New York, N.Y. 10022
Tel. (212) 909-0604
Fax. (212) 909-0660
E.mail: gary.lee@lovells.com

-----Original Message-----
From: jonathan.rosen@homeinsco.com [mailto:jonathan.rosen@homeinsco.com]

Sent: Wednesday, October 11, 2006 4:10 PM
To: Lee, Gary
Cc: jdl@rackemann.com; pabinsconsult@aol.com; Wamser, Thomas J
Subject: Re: KWELM

Gary, I had hoped that I would have heard from you by now. More than two months have passed since my August 10 letter to CIC and I would appreciate CIC's recommendation as requested therein consistent with the Protocol mandate. Please let me know where things stand as soon as possible.

Regards,

Jonathan Rosen
Chief Operating Officer
The Home Insurance Company In Liquidation
59 Maiden Lane

New York, New York 10038
Tel: (212) 530 7336
Fax: (212) 548 0727

"Lee, Gary"

<Gary.Lee@LOVELLS .com>

To: "Wamser, Thomas J" <Thomas.Wamser@ace-ina.com>, <jonathan.rosen@homeinsco.com>
cc: <jdl@rackemann.com>, <pabinsconsult@aol.com>

Subject: KWELM

09/18/2006 12:35 PM

Confidential

Jonathan, I am following up with you on KWELM. AISUK is working on a reconciliation of KWELM claims at participant level (they have not been reconciled at the level on the Home ledger to this point in time), and this project is taking longer than we anticipated to complete - including trying to reconcile the amounts now agreed. We expect it will be done in the next 2 weeks or so. At that point we intend to respond to KWELM's claims as they are presented to AISUK in a manner consitent with Judge McGuire's ruling.

Regards

Gary S. Lee
Lovells
590 Madison Avenue
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Tel. (212) 909-0604
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E.mail: gary.lee@lovells.com

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Exhibit 4

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

CENTURY INDEMNITY COMPANY'S RESPONSE IN OPPOSITION TO LIQUIDATOR'S REPORT AND RECOMMENDATION ON KWELM COMPANIES' PROOFS OF CLAIM

Century Indemnity Company ("CIC"), by its attorneys Lovells, respectfully submits this response in opposition to the report and recommendation (the "Report") of Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator (the "Liquidator") of the Home Insurance Company ("Home") regarding the above-captioned proofs of claim filed by the KWELM companies (Kingscroft Insurance Company Ltd., Walbrook Insurance Company Ltd., El Paso Insurance Company Ltd., Lime Street Insurance Company Ltd., and Mutual Reinsurance Company Ltd.), sometimes referred collectively as "KWELM," dated March 15, 2006 (the "Report"). As discussed more fully below, the Liquidator has no authority to issue the Report and his doing so is an attempt to circumvent both the New Hampshire RSA §§ 402-C:37 and C:38 (the "RSA"), the provisions for the determination of claims under the claims procedures order entered by this Court and the claims protocol entered into between Home and CIC (also approved by Court order), which together comprise the exclusive means for the adjudication of AFIA cedent claims against Home's estate. Further, the Report interferes with the sole and exclusive jurisdiction of this Court to administer Home's liquidation by seeking this

Court's approval of an extraneous non-judicial assessment of setoff made in the context of KWELM's foreign scheme. The "determinations" that the Liquidator asks to have allowed as claims against Home were intended to create a balance for setoff purposes only, and not to establish a debtor balance and Home's liability to KWELM.

Accordingly, CIC opposes the Report and respectfully requests (i) that the relief sought in the Report be denied in its entirety; or alternatively, (ii) that the Court's consideration of the Report be adjourned pending determination of the KWELM companies' claims in accordance with the Protocol.

SUMMARY

1. The Liquidator is without authority to issue the Report because CIC, through its agent ACE INA Services U.K. ("AISUK"), has sole responsibility for administering and servicing filed proofs of claim under the Insurance and Reinsurance Assumption Agreement, dated January 31, 1984, (the "Assumption Agreement") on behalf of Home. The Liquidator not only consented to AISUK's administration of filed claims, but insisted on it. As a result, the Liquidator and CIC, on behalf of AISUK, negotiated a protocol for the determination of claims (the "Protocol"), which was subsequently approved by Court order on the basis of this Court's exclusive jurisdiction over Home's liquidation.[1] The Liquidator here seeks to replace the negotiated and Court-ordered Protocol with a non-judicial assessment under the KWELM Scheme designed solely for purposes of setoff in order to arrive at Home's net claim for distribution in KWELM's insolvency. The relief recommended in the Report—that the KWELM companies' setoff balances be allowed as Class V claims—abrogates the Protocol, this Court's

[1] This Court has sole jurisdiction over all aspects of Home's liquidation, including the determination of claims against Home. This is made clear in the RSA, as well as in the Court's June 13, 2003 Order of Liquidation for Home, the Claims Procedures, the Protocol and substantial caselaw.

claims procedures order and the overarching RSA, which combined set forth the exclusive mechanism for the assertion, adjudication and admission of AFIA claims against Home's estate.

2. This assessment of the KWELM companies' setoff amounts was not intended to—and does not—establish Home's liability. As set forth in the accompanying affidavit of John Frederick Powell (the "Powell Affidavit"), the KWELM Scheme is not designed to determine the claims of the KWELM companies against Home for any purpose other than as assessments for setoff purposes. The contracts of reinsurance between KWELM and Home, which are governed by English law, do not allow for the recovery of estimated potential future losses, such as IBNR losses underlying some of KWELM's purported claims. The KWELM scheme does not alter the terms of such contracts. The KWELM Scheme only binds creditors of KWELM in their capacity as creditors, and is not enforceable against Home as a debtor except to the extent that it reduces Home's creditor balance by an assessed offset. In short, the KWELM companies themselves could not have sought those amounts in the Liquidator's Report from Home even under the KWELM scheme. *See* Powell Aff. at ¶¶ 23-38.

3. In addition, the concept of comity to the KWELM Scheme's "determinations" does not come into play here because the assessments made under the Scheme were solely for purposes of setoff and not for the purpose of determining liability. There are simply no foreign claim adjudications to which to grant comity. The Powell Affidavit clearly explains why under English law the setoff assessment under the Scheme does not provide a basis for holding Home liable. Even if the Scheme had resulted in claim determinations, it would be repugnant to the RSA, the Protocol and this Court's administration of Home's liquidation to extend comity to an inquisitorial process that does not afford the parties the same due process rights as New Hampshire's claim adjudication procedure.

4. The amended order of the United States Bankruptcy Court for the Southern District of New York (the "New York Bankruptcy Court"), dated March 31, 2004, enforcing the Scheme in the United States under 11 U.S.C. § 304 (the "Amended § 304 Order") does not address, let alone compel, the allowance of the KWELM's claims as "determined" by the Scheme. The Amended § 304 Order did no more than ratify an earlier order of the New York Bankruptcy Court that was issued with respect to the KWELM companies' initial runoff scheme of arrangement (the "Original § 304 Order") and made it applicable to KWELM's cutoff scheme. The Original and Amended § 304 Orders enforce the KWELM schemes by enjoining actions asserted against the KWELM companies outside of the Schemes and channeling claims against the KWELM companies to the Scheme procedures.

5. Moreover, if, as the Liquidator contends, the Amended § 304 Order did seek to require the allowance of the KWELM companies' claims against Home's estate as assessed under the Scheme, such an order would be barred under the McCarran-Ferguson Act, 15 U.S.C. §§1012, *et seq.*, which precludes Federal law from ineffectuating state insurance regulations.

6. Finally, the Liquidator's suggestion that CIC is estopped or otherwise precluded from challenging the Report because "it has already had the opportunity to protect [its own debtor interests] through AISUK's successful representation of Home before the Scheme Adjudicator," Report at 14, is inaccurate. AISUK acted only on Home's behalf pursuant to its contractual obligation under the Assumption Agreement, and with Home's consent and insistence. At all times, AISUK made clear that it participated in the KWELM proceedings only on behalf of Home, and AISUK and CIC both reserved their rights to challenge positions taken by Home and/or the KWELM companies in the Scheme and any attempt to allow the KWELM companies' claims against Home. *See, e.g.*, the last paragraph of the letter from M.E. Durkin of AISUK to

Mark Langbridge of KWELM Management Services Ltd., dated April 12, 2005 (the "Durkin Letter"), attached as Exhibit C to the Report.

BACKGROUND

7. In 1993, a runoff scheme of arrangement for the KWELM companies was approved by KWELM's creditors, including Home, and sanctioned by the High Court of Justice in London, England as to the four English KWELM companies and the Supreme Court of Bermuda as to the Bermudian KWELM company. This runoff scheme was subsequently converted into a cutoff scheme of arrangement (the "Scheme" or the "KWELM Scheme") in order to close the KWELM companies' estates, and the Scheme was similarly approved by the KWELM companies' creditors, including Home, and sanctioned by the English and Bermudian courts in February 2004.

8. On December 14, 1993, the New York Bankruptcy Court issued the Original § 304 Order, enforcing the KWELM companies' runoff scheme of arrangement and enjoining creditors of KWELM from taking action against the KWELM companies outside of the scheme. On March 31, 2004, following the conversion of KWELM's runoff scheme to a cutoff scheme, the New York Bankruptcy Court issued the Amended § 304 Order, making the terms of the Original § 304 Order applicable to the cutoff Scheme. Neither the Original nor Amended § 304 Orders require the allowance against Home's estate of any KWELM company claims that may be determined under the Scheme (as indeed they could not under the McCarran-Ferguson Act, as discussed below), but only channeled actions against the KWELM companies to the Scheme.

9. Following court-sanction of the Scheme, AISUK acted on behalf of Home (pursuant to its obligations under the Assumption Agreement) in relation to KWELM's claim

against Home. Home not only consented to AISUK's acting on its behalf, but insisted upon it.[2] At all times, AISUK maintained the position that any claims against Home must be adjudicated and determined in Home's New Hampshire liquidation proceeding.

10. Home's claims against KWELM (after reduction by KWELM's setoff claims) were ultimately resolved by agreement with the Scheme Administrator at $19.7 Million. After setoff, each of the KWELM companies is a "net debtor" to Home, and the Scheme Administrator has subsequently made payments under the Scheme based on the KWELM companies' net liability to Home.

11. On August 10, 2004, Home and CIC entered into the Protocol, which set out the exclusive process for administering and servicing AFIA claims. The Protocol sets forth the process under which claims from AFIA cedents are to be considered and adjusted and, where agreed, are to be determined, approved and submitted to the Court for allowance in Home's liquidation. The Protocol was subsequently approved by order of the Court on November 12, 2004.

12. On January 19, 2005, the Court entered the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company (the "Claims Procedures").

13. The KWELM companies timely filed their respective proofs of claim against Home, and since then have continued to participate in Home's liquidation by presenting claims to Home and AISUK for adjudication under the Protocol and Claims Procedures. To date, the

---

2 At all times during the course of its representation of Home in the Scheme proceedings, AISUK and its principal, CIC, made clear that AISUK was acting only on behalf of Home and reserved their rights to challenge positions taken by Home. *See, e.g.*, the Durkin Letter attached as Exhibit C to the Report.

KWELM companies have presented approximately $1.7 Million in claims, and of that amount, all but approximately $30,000-$50,000 has successfully gone through the adjudication process under the Protocol and Claims Procedures.[3]

14. On February 7, 2006, the Scheme Adjudicator set out his non-judicial assessment with respect to the KWELM companies' claims in an aggregate amount of $3,910,842, and allocated them among the five KWELM companies. As noted above, of that $3.9 Million, approximately $1.7 Million has already been agreed to by AISUK in accordance with the Protocol and Claims Procedures, and has been submitted and allowed against Home's estate. The amount assessed by the Scheme Adjudicator that is truly in dispute in the Report is only approximately $2.2 Million. Those amounts were and are disputed and are not recoverable under the English law-governed contracts of reinsurance relevant here.

ARGUMENT

I. LIQUIDATOR IS WITHOUT AUTHORITY TO ISSUE THE REPORT BECAUSE (I) CIC ALONE IS RESPONSIBLE FOR ADMINISTERING KWELM CLAIMS AND (II) THE REPORT CIRCUMVENTS NEW HAMPSHIRE INSURANCE INSOLVENCY STATUTE AND COURT-ORDERED PROTOCOL

A. The Liquidator Attempts To Circumvent Protocol And CIC's Responsibility For KWELM Claims Administration.

15. Under the Assumption Agreement, CIC is obligated for the ongoing administration of claims in respect of the AFIA pool, including claims of the KWELM companies against Home. The Protocol, in turn, was entered into by Home and CIC specifically

[3] There was a dispute over the Liquidator's determination with respect to approximately $30,000-$50,000 in claims submitted by the Walbrook and Mutual KWELM companies, and those companies subsequently sought to withdraw those claims. CIC opposed their withdrawal motion. The parties ultimately agreed that Walbrook and Mutual could withdraw those claims, but would not re-present them for adjudication in Home's liquidation.

for "the establishment of a protocol for the ongoing handling by [CIC] of claims in respect of AFIA liabilities ... and this letter is intended to describe the process for the continued performance by CIC of its obligations under the [Assumption Agreement]." *See* Protocol, introductory ¶¶ 1-2. The Protocol, at ¶¶ 2.2 - 2.5, sets forth the exclusive procedure for the adjudication and determination of AFIA claims against Home, and the Liquidator's Report and his recommendation that the KWELM companies' claims be allowed against Home circumvents that procedure.

16. In entering into the Protocol, CIC and Home agreed that the "Liquidator and/or HICIL and CIC shall fully cooperate with each other (including in this ACE-INA) in relation to the matters covered by this letter and in particular information relating to notices, Requests for Review and/or Objections and the defense of Claims." Protocol at ¶ 2.18. Under the Protocol, Home is to provide CIC with a copy of any proof of claim submitted against Home's estate. Protocol at ¶ 2.2. Following CIC's receipt of a claim, CIC is to administer and service the Claim and, within 10 days of receipt, must notify Home in writing of its recommendation with respect to acceptance or rejection of the claim. Protocol at ¶ 2.3. If Home disagrees with CIC's recommendation under the Protocol, Home and CIC are to confer in an attempt to resolve their disagreement and, if unable to so resolve it within ten days, the matter is to be referred to an arbitrator. Protocol at ¶ 2.5. The Liquidator's attempt to gain allowance of KWELM's claims based on both claims CIC denies should be paid and on estimates of KWELM's outstanding and IBNR losses, effectively denies CIC of its rights under the Protocol, including the right to challenge the legitimacy of the claims in issue and, where appropriate, invoke the English law dispute procedure to resolve any disputes.

17. The Protocol's function as the sole mechanism for the adjudication of the KWELM claims against Home's estate derives from this Court's exclusive jurisdiction to administer Home's liquidation under the RSA and the KWELM's companies' submission to that jurisdiction. The exclusive jurisdiction of one court over an insurance liquidation is a well-settled principle. *See Todd v. Lakeland Chrysler-Plymouth-Dodge, Inc.*, 834 P.2d 387, 390 (Kan. Ct. App. 1992) ("The need for giving one state exclusive jurisdiction over insurance liquidation proceedings has long been recognized in the courts."). Moreover, by previously submitting claims against Home in Home's liquidation pursuant RSA § 402-C:38 and by following the process set forth in the Protocol, the KWELM companies' have subjected themselves to the Court's exclusive jurisdiction over adjudication of their claims. *See Corcoran v. Frank B. Hall & Co.*, 149 A.D.2d 165, 173-74 (N.Y. App. Div. 1989) ("[I]t is well established that in filing a proof of claim in liquidation, a claimant submits itself to the jurisdiction of the liquidation court."); *In re Emmet*, 164 A.D. 586, 588 (N.Y. App. Div. 1918) ("By filing its claim with the Superintendent of Insurance against the insolvent corporation ... the Supreme Court acquired jurisdiction over the appellant ... .").

18. The Liquidator is thus obligated to adjudicate and determine the KWELM companies' claims in accordance with the Protocol: he has no alternative means for seeking allowance of the KWELM claims. The Scheme Adjudicator's assessments are not enforceable legal judgments and he is powerless to declare that "unpaid paids," outstanding loss reserves and IBNR claims must be paid by Home. These amounts may only be sought from Home by asserting claims against Home for determination in accordance with the applicable reinsurance contracts. As such, the KWELM companies' claims at issue in the Report must be presented to CIC and adjudicated in the manner prescribed by the Protocol. The Liquidator must work with

CIC to adjudicate and determine claims against Home's estate as provided for in the Protocol, and has no authority to depart from it by unilaterally seeking allowance of any claims.

B. Applicable English Law Does Not Allow For Determination Of Disputed Or Contingent Claims.

i) KWLEM Scheme Only Assesses Balances For Setoff Purposes.

19. Although the Liquidator says, no fewer than fourteen times, that the KWELM companies' claims against Home have been "determined," no determination of the unresolved KWELM companies' claims has been made to date, either under the Scheme or the Protocol. All that has occurred under the Scheme is the assessment of balances for setoff purposes. The Scheme is not binding on Home as a debtor, but merely provides a mechanism for the KWELM companies to set-off their obligations to Scheme creditors (such as Home). After this set-off, a net amount to be paid by one party or the other is ascertained. The Scheme's set-off mechanism does not establish the liability of either party, and indeed the mechanism only operates to the extent that the amount owed to a KWELM company does not exceed the amount owed by a KWELM company to its creditor. If the amount owed to a KWELM company exceeds the amount owed to the creditor, the creditor's claim in the Scheme is zero. The Scheme, therefore, arrives at a debtor balance solely for the purpose of a payment to the creditor. *See* Powell Aff. at ¶¶ 2, 7-19.

20. The Scheme does not determine liability or debtor balances, and indeed the Scheme Adjudicator had no basis for properly determining the amount of the KWELM companies' respective claims against Home because he was never provided with the KWELM claims files. All that the Scheme provides for with respect to KWELM's claims is, in large part, a high level assessment of disputed, contingent or prospective claims that may never materialize

for purposes of offsetting the KWELM companies' liability to creditors by the amount of KWELM's assessed claims against such creditor and enabling a distribution to creditors under the Scheme. *Id.*

21. Section 2.5.3 of the Scheme sets forth the Scheme's set-off provision, as follows:

> "When quantifying the amount of a Scheme Creditor's Established Scheme Liabilities (but not otherwise), such Established Scheme Liabilities shall be reduced or eliminated by set-off of the amount agreed and/or determined ... and/or prospective liabilities of the Scheme creditor to the relevant Scheme Company."

Section 2.5.3 of the Scheme is clear that the "contingent and/or prospective liabilities" of Home to a KWELM company may be used to setoff the established liability of the KWELM companies to Home, but not otherwise. In other words, under the Scheme, the "contingent or prospective liabilities" of Home to the KWELM companies cannot be used to determine KWELM's claims against Home.

22. The KWELM companies themselves recognize that the Scheme and the Protocol serve different functions. In correspondence with AISUK, KWELM has stated that the determination of debtor balances under the Scheme is solely for setoff purposes, and that the debtor balances themselves must be recovered "by agreement, or ... by arbitration under the relevant contracts." *See* letter from Mark Langbridge of KWELM Management Services Ltd. to Jonathan Rosen, dated April 14, 2005, attached as Exhibit B to the Report. The KWELM companies have acted in accordance with such view and have filed proofs of claim against Home in Home's New Hampshire liquidation proceeding and have successfully sought allowance of approximately $1.7 Million under the Protocol and Claims Procedures.

ii) Outstandings and IBNR Losses Are Not Recoverable Under The Reinsurance Contracts Or English Law.

23. There are three elements to the unresolved $2.2 Million that the Liquidator seeks to have determined as claims in the Report: (i) paid amounts that are unreimbursed; (ii) outstanding loss reserves; and (iii) amounts that are incurred by not reported ("IBNR"). Unlike the amounts already agreed by CIC, each is disputed. Under English law, these amounts are not recoverable simply by virtue of the Scheme Adjudicator's assessment and view based on setoff. They do not have the force of a judgment or Court order in any way, shape or form as to Home's liability to KWELM. Rather, whether any one of these items can be sought from Home is determined solely by reference to the contracts of reinsurance between the KWELM companies and Home. *See* Powell Aff. at ¶¶ 24-39. And, as set forth in the Powell Affidavit, neither the terms of the reinsurance contracts at issue nor English law allow for recovery against a reinsurer, like Home, of outstanding loss reserves or an estimated potential loss such as an IBNR claim. [4]

24. By effectively conceding Home's liability on grounds that the KWELM companies themselves could not establish if they had independently submitted claims against Home's estate outside of the Scheme context, the Liquidator's aim is to avoid actual review and determination of the KWELM companies' claims in accordance with the Protocol. Under the Protocol (unless the Liquidator agreed with CIC's earlier recommendation to deny the KWELM

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4 The Liquidator will undoubtedly argue that, since the KWELM companies are winding down and their contingent outstanding and IBNR losses will never become absolute, CIC will reap a windfall unless the KWELM companies' claims are now allowed against Home's estate. The timing of the KWELM companies' wind down, however, is not within the control of Home or CIC and does not justify the highly unusual measure of seeking allowance of disputed claims against the estate without proper adjudication under the Protocol. The solution to any perceived "windfall" is not to completely ignore the RSA and the Protocol, which, if they had been followed, would have been consistent with both the law and the practice in Home's liquidation thus far. CIC reserves all of its rights under the Assumption Agreement with respect to the Liquidator's attempt to allow the KWELM claims outside of the Protocol in this fashion, including the right to argue that such actions violate Home's duty of utmost good faith to CIC.

claims under Protocol ¶¶ 2.3-2.10), a Disputed Claim proceeding would be commenced with respect to the KWELM submissions under Protocol ¶ 2.13. Such a Disputed Claim proceeding would be governed by New Hampshire Law (Protocol ¶ 2.14), but where English law is applicable to the underlying reinsurance contracts (as here), the Referee is to appoint a retired English judge or Queen's counsel as an expert to issue a report and recommendation on resolution of the Disputed Claim. Such an expert would no doubt decide that the amounts determined by the Scheme Adjudicator are only assessments of KWELM's outstanding and IBNR losses for setoff purposes, for which reinsurance payments are not recoverable. *See* Powell Aff. at ¶¶ 24-39.

25. In short, the Liquidator knows that his attempt to seek allowance of the Scheme's assessment of KWELM's setoff balances as claims circumvents the Protocol and Claims Procedures, and that his only option is to try to play on another field altogether—"comity," which, as shown below, is equally unavailing.

II. COMITY PROVIDES NO BASIS FOR ALLOWANCE OF KWELM SETOFF BALANCES BECAUSE (I) THE SCHEME DID NOT RESULT IN CLAIM DETERMINATIONS AND (II) THE SCHEME PROCEDURE IS REPUGNANT TO THE PROTOCOL AND NEW HAMPSHIRE LAW AND POLICY

26. The Liquidator requests that the Court allow KWELM's claims as "determined" by the Scheme Adjudicator as a matter of comity. *See* Report at ¶ 8, 14. Knowing, as he must, that the Scheme Adjudicator has not "determined KWELM's claims" but rather only assessed them for setoff purposes, the Liquidator falls back on the general principle of the comity. At most, however, comity would only apply to allowance against Home's estate of claims that had actually been determined as claims in a foreign proceeding. The principle has no application here because the Scheme did not determine any claims that could be allowed against Home: the

Scheme only arrived at setoff assessments. As discussed above, under the Scheme and applicable English law, a KWELM company could not collect from Home based upon the setoff amount assessed under the Scheme. *See* Powell Aff. at ¶ 23-39. Since there is no foreign determination of claim here, there is nothing to accord comity to.

27. In the Report, the Liquidator puts forward the novel proposition, wholly lacking in support, that where there are "two potentially competing insolvency proceedings," it is appropriate to "centralize proceedings" and "resolve claims, including lesser offsetting claims" in the net debtor forum for the sake of consistency. Report at 11. Yet, because the Scheme only assessed the KWELM companies' claims against Home for setoff purposes, there is no "competing proceeding." Nonetheless, the Liquidator concludes that it is "not obviously repugnant" to New Hampshire policy to have KWELM's claims against Home determined in a foreign proceeding "where that determination is part of the determination of Home's larger claims against the foreign insurer." Id. (emphasis in original). On the contrary, it is antithetical to the Court-ordered Protocol and Claims Procedures to determine KWELM's claims by reference to a setoff assessment performed for administrative purposes under the Scheme and where the KWELM companies have voluntarily submitted themselves to the claim determination procedure under the Protocol. To ask this Court to allow as a claim an amount that was arrived at under a foreign mechanism designed solely to assess setoff is a complete abnegation of the process under the Protocol and is repugnant to New Hampshire's insolvent insurer liquidation statute and policy.

28. Moreover, the Scheme is not a quasi-judicial procedure akin to the Court-ordered Protocol and Claims Procedures, and the parties are not afforded the same due process rights under the Scheme as they have in the New Hampshire proceedings. *See* Powell Aff. at ¶ 22. As outlined in the Powell Affidavit, the assessment process performed by the Scheme Adjudicator

bears no resemblance to the claims determination process under the Protocol. The Scheme is essentially an inquisitorial system in which the Scheme Adjudicator (who is not a lawyer qualified to analyze the provisions of the governing reinsurance contracts) decides what he needs to know and when he needs to know it. The parties have a very limited ability to advocate their positions. Under the Scheme there is:

- No right to make oral submissions or advocate position
- No reasonable deadline or time period for addressing complex dispute issues
- No right to arbitrate
- No right to appeal

It would be uniquely repugnant to the New Hampshire RSA and this Court's administration of Home's liquidation to grant comity to a foreign Scheme's claim "determinations" where they result, as here, from a procedure so different in purpose and practice from New Hampshire's own.

III. THE SECTION 304 ORDERS DO NOT COMPEL ALLOWANCE OF KWELM SCHEME ASSESSMENTS AND THE MCCARRAN-FERGUSON ACT PRECLUDES A FEDERAL INJUNCTION REQUIRING ALLOWANCE OF KWELM CLAIMS UNDER THE SCHEME

29. The Amended § 304 Order does not compel allowance of KWELM's claims. The Amended § 304 Order (which merely ratified an original order of the New York Bankruptcy Court and made it applicable to KWELM's cutoff scheme) enforces the Scheme only insofar as it enjoins actions asserted *against* the KWELM companies outside of the Schemes. The Amended § 304 Order makes the Scheme binding on Scheme creditors, such as Home, only to the extent that such creditors must proceed against the KWELM companies in the United Kingdom through the Scheme itself. The Amended § 304 Order operates as a channeling injunction only: it does

not address, let alone compel, the allowance of the KWELM companies' claims against Home's estate as may be "determined" under the Scheme. The Liquidator's assertion that the Amended § 304 Order requires the allowance of the KWELM companies' claims in accordance with the Scheme is baseless.

30. Even if the Liquidator were correct that the Amended § 304 Order seeks to enjoin the adjudication of the KWELM companies' claims in Home's liquidation under the RSA and Court-ordered Protocol, such an injunction would be ineffective under the McCarran-Ferguson Act, 15 U.S.C. §§ 1012, *et seq.*

31. Section 1012(b) of the McCarran Ferguson Act provides in relevant part:

> No Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any State for the purpose of regulating the business of insurance ... unless such Act specifically relates to the business of insurance.

It is a well-settled principle that while § 304 orders may centralize resolution of claims against a foreign debtor by directing that creditors assert their claims against the debtor in a foreign bankruptcy proceeding, they may not operate to preempt state insurance regulations under the McCarran-Ferguson Act. Barnett Bank of Marion County, N.A. v. Nelson, 517 U.S. 25, 42 (1996) (because bankruptcy laws use general language that does not specifically relate to the business of insurance, the McCarran-Ferguson Act's anti-preemption rule applies).

32. Nor can the doctrine of comity be used to override preemption by the McCarran-Ferguson Act. "Comity [under 11 U.S.C. § 304] is to be accorded a decision of a foreign court as long as that court is of competent jurisdiction *and as long as the laws and public policy of the forum state are not violated.*" *In re Culmer*, 25 B.R. 621, 629 (Bankr. S.D.N.Y. 1982) (emphasis added). Allowing a foreign court to make a determination of Home's liability based on a setoff

amount violates such "law of the forum state;" here, the RSA, Home's Order of Liquidation, the Claims Procedures Order, the Protocol, and various rulings by the Court asserting exclusive jurisdiction over Home's liquidation procedures. The Liquidator's comity argument, even if valid, cannot stand in light of the clear preemption of the Amended § 304 Order by the McCarran-Ferguson Act.

33. In support of his position that comity and the Amended § 304 Order requires this Court's recognition of the Scheme Adjudicator's "determination" of the KWELM companies' claims against Home, the Liquidator cites to In re Rubin, 160 B.R. 269 (Bankr. S.D.N.Y. 1993). In re Rubin, however, stands for exactly the proposition that CIC maintains: that a claim must be pursued in the forum with jurisdiction over the debtor's insolvency. In Rubin, the New York Bankruptcy Court issued a § 304 injunction, prohibiting claimants from pursuing an action for trust proceeds in New York and requiring, instead, that they proceed in Israel where the Israeli bankruptcy court administered the Israeli debtor reinsurer's liquidation. The New York Bankruptcy Court held that the McCarran-Ferguson Act was not violated by a § 304 order that required creditor claims to be filed against the Israeli debtor in the Israeli court and determined that comity considerations mandated the injunction because principles of Israeli bankruptcy law are similar to those under the United States Bankruptcy Code. The principle behind Rubin is that a creditor must proceed against a foreign debtor insurance company in a foreign tribunal where there is substantial similarity in the underlying bankruptcy law and the relevant state's insurance laws are not impeded or invalidated. For that reason, it was entirely appropriate for Home, as a creditor, to participate in the KWELM Scheme as a creditor. But there is nothing in Rubin or the other cases cited by the Liquidator that supports the conclusion that foreign claim determinations must be allowed in a domestic insolvency proceeding. To the contrary, just like the trust

claimants in Rubin, the KWELM companies must seek allowance of their purported claims as provided for in the jurisdiction of Home's liquidation.

IV. CIC IS NOT ESTOPPED FROM CHALLENGING DETERMINATION OF KWELM PAYMENTS

34. Finally, the Liquidator's suggestion that CIC is estopped from challenging the Report because "it has already had the opportunity to protect [its own debtor interests] through AISUK's successful representation of Home before the Scheme Adjudicator," Report at 14, is baseless. It was not CIC that participated in the Scheme proceedings, but AISUK, which did so only because it was required to under the Assumption Agreement and at the insistence of Home. At all times, AISUK acted only on behalf of Home under a full reservation of its position that claims against Home must be adjudicated and determined in Home's New Hampshire liquidation proceeding. There is simply no ground upon which CIC may be estopped or otherwise precluded from challenging the Report and the Liquidator's position.

CONCLUSION

Accordingly, CIC respectfully requests that the Court enter an Order:

A. Denying the relief sought in the Report in its entirety; or alternatively,

B. Adjourning consideration of the Report pending determination of the Claims in compliance with the Protocol; and

C. Granting such other and further relief as this Court deems just and proper.

Dated: March 27, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document has been served on Roger A. Sevigny, Commissioner of Insurance, Peter Bengelsdorf, Special Deputy, and the following counsel via First Class mail on March 28, 2006:

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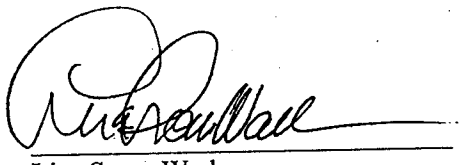

Lisa Snow Wade

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THE STATE OF NEW HAMPSHIRE

MERRIMACK, S.S.

* *

IN THE MATTER OF THE LIQUIDATION OF THE HOME INSURANCE COMPANY

DOCKET NO. 03-E-0106

* *

MOTION HEARING

TRANSCRIPT OF MOTION HEARING, ELECTRONICALLY RECORDED AT THE MERRIMACK COUNTY SUPERIOR COURT, CONCORD, NEW HAMPSHIRE, ON JUNE 2, 2006 BEFORE THE HONORABLE KATHLEEN A. MCGUIRE, PRESIDING JUSTICE

Appearances:

For the Petitioner:	J. David Leslie, Esq.
	Eric Smith, Esq.
	J. Christopher Marshall, Esq.
For the Respondent:	Lisa Snow Wade, Esq.
	Matthew P. Morris, Esq.
	Gary Lee, Esq.
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by a court or by a judge and that, Your Honor, is critical because I'm going to talk about comity a little later.

THE COURT: Okay. I thought that their -- that the cut-off scheme was managed or what's the word? Overseen -- is being overseen by a court.

MR. LEE: I think it might be helpful just for me to digress for a second and explain what a scheme is. A scheme is an agreement between KWELM and its creditors.

THE COURT: Yes.

MR. LEE: Okay? It binds its creditors. The scheme itself is blessed by a court, but the independent action of assessing set off or assessing creditor claims is not done by a judge, is not overseen by a court.

THE COURT: So once the scheme itself is blessed, I guess, by the court, that's it? The court's out of it?

MR. LEE: As to creditors, it's self-executing. As to debtors, as to amounts that KWELM owes, are the -- as to amounts that assort from -- by KWELM from third parties, like Home, it's not self-executing at all. If Home owes money to KWELM, KWELM has to do what any other claimant in the world has to do. They have to file a lawsuit. They have to go and collect it. What the scheme does absolutely not do is impact debtor rights. Those debtor rights are governed by the contract, reinsurance between KWELM, and in this case, Home, and that's critical because the assessment provides no

opportunity whatsoever for any review of what is a very high level assessment purely for the purpose of figuring out what the set off position between the two parties is, and what the set off assessment does is ignores every step of the adjudication process that this Court has put in place and the New Hampshire liquidation statute put in place, and they've replaced every single creditor anywhere in the world of hope. There's only one place a creditor can come to press their claims against the Home, and it's here, and there's only one way they can do it. The starting point is New Hampshire's liquidation statute. It tells you how to go file a proof of claim. The second point is the claims procedures order. You've told all creditors worldwide there's a claims procedures order. When you entered that order, you said creditors, this is what you must do to press your claims. Specifically with respect to eighth-year creditors, there's a protocol. The protocol was put in place to deal with English law disputes, and there are English law disputes relating to these claims, and none of those English law disputes are covered by the assessment of set off, and the reason that the Liquidator wants you to approve what is, in effect, a non-judicial act, is because if you subject these claims to the adjudication process under the claims procedures order and under the protocol and much more importantly under the English law that applies to these reinsurance contracts, these claims

are going to be disallowed. It's not about windfall; it's about the veracity of the claims. There are elements of these claims that just simply will not stand under English law, and the reason for putting this through as a block in the report is to avoid a process. Your Honor hit the nail on the head when you said and now you're going to submit these through the protocol, and Mr. Leslie's answer was no, because of comity. It's not no, because of comity; it's no, because they're going to get disallowed because when they go through the process that the referee and the Court have established and they go in front of an English QC, an English QC is going to say well, hang on a second; there are elements of these claims that are clearly not recoverable under English law. It's not about windfall, it's not about comity to a foreign court's decision, Your Honor; it's about an attempt to get claims admitted into this estate that can't otherwise get admitted, and I think that's why you've heard the word economics at least four times during the course of Mr. Leslie's presentation. What he's asking you to do is rely on economic expediency to rule in his favor, but if you grant the relief the Liquidator is seeking here, he's going to have you giving away New Hampshire's exclusive jurisdiction, exclusive jurisdiction over filing claims, adjusting claims, and prosecuting claims, and admitting them, and he wants you to give it away to a non-lawyer administrator in London who carried out a one-sided

assessment with no opportunity for review, no opportunity for oral argument, no opportunity for appeal, no contract-by-contract analysis of the underlying claims. That's not something you give comity to, Your Honor. I think it might be helpful -- I've -- if the Court has the time, I'd just like to review some of the facts. I know that there were fairly extensive pleadings here, and I think some background might be instructive --

THE COURT: Yes. Go ahead.

MR. LEE: -- in terms of what happened, in terms of the KWELM claims, what happened in the adjudication process, and I think if you look at the facts, you'll see that there are three distinct legal reasons why the Liquidator's motion should be denied. Number one, the section 304 orders address solely the channeling of foreign creditor claims against the Home -- against KWELM, excuse me. In other words, what the 304 orders talk about is U.S. creditors have to go England to get their claims admitted, but what all of the 304 cases also say is --

THE COURT: U.S. KWELM creditors?

MR. LEE: KWELM creditors have to go to the U.K., but the corroboratory of that, Your Honor, is every single one of those cases also says, and the reason that we, American courts, make U.S. creditors go to foreign estates to file their claims and to admit their claims is because we uniformly

reinsurer, here CIC, has the right to raise any defenses that it wish, and I want to clarify here and acknowledge the correctness, as I try to always do with my friend Mr. Lee, he is absolutely correct that the net amount that the Liquidator is asking to be allowed in this case is 2,000,000 -- let me just get this right.

THE COURT: 2.2?

MR. LESLIE: Yes. It's 2,171,627, and I apologize for that earlier error.

THE COURT: Okay. Is there anything else I -- we have to have a criminal bar meeting at noon, so do you have something of five -- within five minutes?

MR. LEE: I could do that.

THE COURT: Okay.

MR. LEE: I'll do my closing from last summer.

THE COURT: All right. Okay.

MR. LEE: I'll start off with the last point. It's interesting for this Court to note that $4.7 million in claims come through in a relatively short period of time in relation to KWELM, as have other identical HS Weavers' claims, and that was with the understanding that the exclusive jurisdiction in which to file claims, adjust claims, prosecute claims, and have them admitted, was through this Court, through the protocol, and through the claims procedures order. That's the only way that the claims can come through, and what you're

being asked to do is to balance economic expediency with law. In fact -- and the law is pretty clear that the reference to Judge Beatty's decision that Mr. Leslie just read to you said that the scheme is binding on all scheme creditors. It didn't say all scheme creditors and everybody else. It said all scheme creditors. It binds creditors, and it binds creditors alone. That's what the effect of section 304 is, just as New Hampshire's liquidation statute, claims procedures order and the protocol bind creditors of the Home. It's absolute necessary corroboratory, that statement, centralized administration and adjustment to claims in this state, in this court, and nowhere else in the world, and if you actually take a look at the scheme and you think about it from the perspective of the debtor, which Home is in this situation, KWELM is paying against the Home. Debtors have absolutely no say or input, whatsoever, on the terms of the scheme of arrangement. As I said in my initial comment, the scheme of arrangement is a contract, blessed by the court albeit, but a contract between KWELM and its creditors. The creditors vote to approve contractual arrangement between them and KWELM. It says nothing about debtors. Debtors are not consulted. They're not parties to the scheme. If you look at Mr. Paul's [sic] affidavit, the case law in the U.K. is fairly consistent in that regard. It doesn't bind debtors. It says nothing about them. In terms of the actual review itself, well,

you've got a agreement between KWELM and its creditors. In terms of the way that the actual process was managed, there's no evidence whatsoever the scheme adjudicator did what this Court would require of an adjudication of a claim, which is Ms. Rogers looks at the contracts, looks at the law, has the QC look at the contracts, has it look at the law, and actually determines whether, on a contract-by-contract basis, there's a valid basis for the claims. There are elements of these claims that are not valid. Some parts of these claims have yet to materialize. They're not valid under English law. That's why you're being asked, for the sake of economic expediency, to rule the wrong way.

THE COURT: Okay. I would -- I want to have a transcript of today's hearing. Now, who -- can you split the cost of that or --

MR. LEE: I think we've got it.

MR. LESLIE: Your Honor, Mr. Lee and I will split the cost of today's transcript.

MR. LEE: Yeah. We can work on that, yeah.

THE COURT: Isn't that great that you agree?

MR. LEE: Yeah.

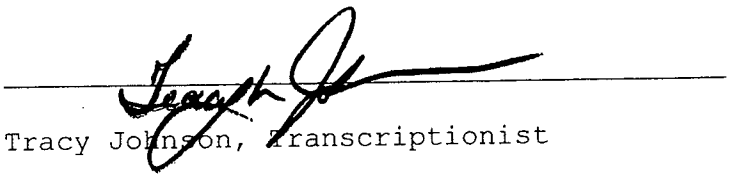
MR. LESLIE: Thank you. We do most of the time, Your Honor.

THE COURT: Okay.

MR. LESLIE: Thank you.

ATTEST:

I certify that the foregoing is a true and accurate transcript reduced to print from an electronic recording.



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KWELM

Exhibit 6

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Mr Jonathan Rosen
Chief Operating Officer
The Home Insurance Company in Liquidation
59 Maiden Lane
New York
NY 10038

12 April 2006

Dear Mr Rosen

Home Insurance Company ("Home")

I am writing to confirm the position of Home in the KWELM Scheme of Arrangement.

In accordance with the KWELM Scheme, the Scheme Administrators and the Liquidator of Home agreed Home's claim against KWELM in the amount of US$19.7m on 24 August 2005 and the Scheme Adjudicator determined KWELM's claim against Home in the amount of US$3,910,842 on 7 February 2006. Since that time the Scheme Administrators have made payment to the Liquidator of Home under the KWELM Scheme based on KWELM's net liability as finally resolved through the Scheme Adjudicator.

The Scheme Administrators made filings and participated in the Home Liquidation to preserve KWELM's position whilst the Net Debtor status of the KWELM Companies was confirmed through the proceedings under the Scheme. It has now been determined that each of the KWELM Companies is a Net Debtor of Home.

Please be advised that having completely resolved Home's and KWELM's claims against each other under the Scheme, the Scheme Administrators do not intend to take any further part in the Home Liquidation.

Yours sincerely

Scheme Administrator