

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**

**LIQUIDATORS' MOTION TO APPROVE HOME'S PARTICIPATION
IN THE PROPOSED SCHEMES OF ARRANGEMENT RELATING
TO THE ENGLISH & AMERICAN INSURANCE COMPANY**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves by and through his attorneys for grant of the authority necessary to participate in the proposed Schemes of Arrangement ("Proposed Schemes", Part II of the document attached as Exhibit A¹) filed with the English court facilitating the winding up of the business of English & American Insurance Company ("EAIC") and the related English & American Underwriting Agency Limited pools ("EAUA Pools"). Specifically, the Liquidator seeks authorization to promote a scheme respecting Home's involvement in the EAUA Pools (the "Home Scheme"), to vote in favor of similar schemes for the other companies involved in the EAUA Pools, to enter into an Inter-Participant Follow the Fortunes Agreement ("FTF Agreement", attached as Exhibit B) relating to EAIC and the EAUA Pools and to vote in favor of the EAIC proposed scheme of arrangement ("EAIC Scheme"), and to enter into an agreement regarding the valuation and accounting procedures laid out in the EAUA Scorecard ("Scorecard", attached as Exhibit C).

The Proposed Schemes would amend the plans currently governing the winding up of EAIC and the EAUA Pools, converting them from their existing run-off status to cut-off

¹ Exhibit A is titled "A Proposal in Relation to Schemes of Arrangement Pursuant to Part 26 of the Companies Act 2006 between English & American Insurance Company Limited and The Insurance Corporation of Singapore (U.K.) Limited *et al.*". Part I of the Exhibit contains an "Explanatory Statement" regarding the proposed scheme which follows as Part II.

schemes. A cut-off scheme would allow the accelerated and efficient winding up of EAIC and the EAUA Pools by crystallizing the net present value of liabilities arising out of such business, applying these crystallized values to set-off any reinsurance claims, and closing the EAIC liquidation and the EAUA pools in the most cost effective manner. The Proposed Schemes operate on a unified basis and are presented in a single document but, under English law, are technically separate schemes applicable to EAIC and each company that participated in the EAUA Pools and is promoting a scheme, including Home. The Liquidator has considered the relative benefits and costs of the Proposed Schemes, has evaluated the available alternatives, has negotiated terms with other interested parties, and has determined that participation in the Proposed Schemes is in the best interests of Home's insureds, creditors, and the public generally. The Liquidator therefore requests that the Court enter an order in the form submitted herewith, authorizing the Liquidator to participate in and promote the Proposed Schemes and enter into the FTF Agreement and Scorecard.

Background

1. EAIC is an English insurer that became insolvent in 1993. See Exhibit A page 4, ¶ 1.1 [hereinafter "Ex. A at page(*paragraph*)"]. The EAUA Pools are insurance and reinsurance pools led by EAIC in which Home participated prior to EAIC's insolvency. Affidavit of Efraim Abramsohn at ¶ 2. [submitted herewith and hereinafter referenced as "Aff. at ___"].

2. The EAUA Pools provided insurance and reinsurance to third-parties which was shared amongst the pool members through intra-pool reinsurance. Aff. at 3. Contracts of insurance or reinsurance were written on policies of certain pool members, (that is, coverage was "fronted" by those members), and reinsured by the EAUA Pools. *Id.* External creditors of the EAUA Pools therefore have claims against the fronting EAUA Pool members which give rise to

claims for reimbursement under the intra-pool reinsurance agreements. *Id.* Members of the EAUA Pools, including Home, were fronting members at different times and for different pools. *Id.* In many instances, therefore, EAUA Pool members such as Home are simultaneously debtors and creditors in respect of the EAUA Pools. *Id.*

3. EAIC has by far the largest individual company share in the EAUA Pools (approximately 70% of remaining liabilities). *Ex. A* at 4(1.1). Since EAIC's insolvency in 1993, EAIC has been in run-off overseen by the English courts, administered by partners from KPMG LLP ("Scheme Administrators"), and managed by PRO Insurance Solutions Limited ("Scheme Managers").² *Ex. A* at iv, 8(2.1), and 11(3). The English run-off of EAIC and each of the EAUA Pools has been operated on a unified basis and coordinated through run-off arrangements which, with respect to EAIC, have been approved by the English court (the "Existing Agreements"). *Ex. A* at 4(1.1), 8(2.1) and 11(3).

4. At present, the Existing Agreements are designed to accomplish an orderly run-off of the liabilities relating to EAIC and the EAUA Pools with claims filed with the Scheme Managers in the ordinary course of business. *Aff.* at 4. Under the Existing Agreements, claims resulting from EAIC's business and the EAUA Pools are addressed only as they become ripe. *Id.* The Scheme Administrators estimate that in the normal course and without the adoption of the Proposed Schemes, it would take at least another seventeen years to run off the remaining business. *Ex. A* at 10(2.3). The Scheme Administrators, supported by the EAIC Creditors' Committee, also estimate that the likely future costs of collecting outstanding assets in the ordinary course under the Existing Agreements would outweigh the likely recoveries. *Ex. A* at 4(1.1) and 8(2.2). The Scheme Administrators and EAIC Creditors' Committee have therefore

² If the Proposed Schemes are adopted, the Scheme Managers will remain unchanged. *Ex. A* at 32(5.15).

determined that the Existing Agreements are no longer in the interest of creditors and have developed the Proposed Schemes to bring finality to the run-off. Id.

5. The Scheme Managers advise that Home's cash position in relation to EAIC and the EAUA Pools, an asset of the Home estate, is currently \$ 97,872. Aff. at 5. The Scheme Managers also estimate that the net present value to Home of its ultimate recovery, if the Proposed Schemes were to be adopted, would be approximately \$ 1.29 million, a portion of which may be set off against Home's non-EAUA Pool liabilities owed to other EAUA Pool participants. Id. If the Proposed Schemes are not adopted, Home stands to realize substantially less than \$ 1.29 million.

6. *The Proposed Schemes.* The Proposed Schemes would amend the Existing Agreements such that they would become "closing" or "cut-off" schemes, bringing finality to the run-off and closing the business of EAIC and the EAUA Pools. Ex. A at 4(1.1) and 8(2.2). The scheme applicable to each member will become binding under English law when it has been: i) approved by a majority in number, representing not less than 75% in value of the creditors of that company; ii) subsequently sanctioned by the English court; and iii) delivered to the Registrar of Companies in England and Wales. Ex. A at 14(4.1).

7. *Purpose.* The Scheme Administrators and the English creditors' committee have developed the Proposed Schemes to speed the winding-up of EAIC and the EAUA Pools and to reduce administrative expenses. Ex. A at 20(5.1). More specifically, the scheme for each company is designed to value creditors' claims against that company and against the EAUA Pools generally and to discharge those claims in full. Ex. A at 144(2.1.3). In respect of Home, the purpose of the Home Scheme is to resolve Home's intra-pool balances, in relation to which Home is an ultimate net creditor, crystallize offset in certain instances, as well as to value claims

against Home's EAUA Pool business and to facilitate the admission of proofs of claim in the New Hampshire liquidation proceeding in accordance with the Claims Procedures Order. Ex. A at 144(2.1.5).

8. *Inward Claims.* Under the Existing Agreement, claims made against EAIC and the fronting members of the EAUA Pools are evaluated by the Scheme Managers in the ordinary course of business, that is, only as they become ripe. Aff. at 4. Under the Proposed Schemes, creditors of EAIC and the EAUA Pools will be required to file proofs of claim with the Scheme Managers. Ex. A at 144-47(2.2-2.3).³ These creditors, including both third-party claimants and members of the EAUA Pools, will identify their various contingent or outstanding claims and will use actuarial methodologies to determine a present value of those claims. Id. If the claimant and Scheme Managers agree to the value of the claim the claim is classified as an agreed item. Ex. A at 147-48(2.4.1-2.4.4).

9. *Disputed Inwards Claims.* If the Scheme Managers disagree with the claimant, clarification and additional information may be requested or provided. Ex. A at 148-51(2.4.5-2.4.7); see also Ex. A at 24-25 (5.5.2-5.5.3). If agreement still cannot be reached, the matter will be referred to a Scheme Adjudicator as a disputed claim. Ex. A at 151-54(2.4.8-2.5). The Scheme Adjudicator, a partner at Towers Perrin, will review the filings of the claimant and Scheme Managers, request and review such additional information as may be necessary, and ascertain the value of the claim. Ex. A at 26(5.6) and 151-54(2.5). Pursuant to the Proposed Schemes and FTF Agreement, the Scheme Adjudicator's ascertainment of the inward claim will be binding on the Scheme Managers, the claimant, EAIC, and the other companies participating in the EAUA Pools for purposes of intra-pool reinsurance claims. Ex. A at 26(5.6) and

³ Appendix C to the Proposed Schemes contains a Specimen Claim Form and instructions for completion of the form. Ex. A at 296 et seq.

153(2.5.8). Determinations made pursuant to this process shall be final to the extent permitted by English law and claimants will have no rights against the scheme adjudicator save in respect of negligence, default, willful breaches of duty or trust, fraud, or dishonesty. Ex. A at 153(2.5.8).

10. *Reinsurance Claims.* When the universe of inward claims has been rendered certain and the value of such claims has been estimated and reduced to present value, the Scheme Managers will apply such inward claims to EAIC and the EAUA Pools' reinsurance programs to determine the availability of outward and intra-pool claims against reinsurers of EAIC and the EAUA Pools. Ex. A at 5(1.2) and 154(2.6). The Scheme Managers will then pursue collection of such reinsurance on behalf of the creditors of EAIC and the members of the EAUA Pools. *Id.* EAUA Pool participants, including Home, will have the opportunity to challenge the validity of intra-pool reinsurance claims against them but not the value of the inward claims underlying the alleged liability. Ex. A at 159-60(2.7.5). It is anticipated that collection of reinsurance through a coordinated process will reduce the administrative costs associated with such collections and accelerate agreement or adjudication with reinsurers. *Aff.* at 5; Ex. A at 17(4.5).

11. *Scheme Distributions.* Within forty-two days of resolution of a creditor's claims, debts, and any other outstanding disputed claims, the Scheme Managers will provide scheme creditors with a valuation statement. Ex. A at 27-29(5.8). The valuation statement will set out the total value of the creditor's agreed claims, will set off any scheme debts (amounts due to the EAUA Pools, including intra-pool reinsurance claims), and will reflect any payments made by or to the creditor as well as other factors necessary to reach a bottom line determination of the creditor's net position: the "Net Ascertained Claim" (or, if negative, "Net Ascertained Debt"). Ex. A at 27-29(5.8) and 154(2.7). This process allows set off to occur at the company level

rather than the pool level. Ex. A at 27-29(5.8). Set off at a company level facilitates Home's participation because it allows individual creditors to file their Net Ascertained Claims in the Home liquidation. Ex. A at 244(25.1.2). The Scheme Managers will pay Net Ascertained Claims by on behalf of each of the solvent participating insurers. Ex. A at 162(3.1.2).

12. *Home-Specific Provisions.* Recognizing that Home's position as an insolvent American insurer is unique, the Scheme Administrators and EAIC creditors' committee have negotiated specific provisions with the Liquidator that allow Home to participate. Ex. A at 49(8) and 244-46(25-27).

13. Under the Proposed Schemes, Net Ascertained Debts owed to Home will be paid to Home as they would be to other scheme creditors. Ex. A at 29-30(5.12) and 162-63(3.1). Net Ascertained Claims against Home will be filed with this Court as agreed claims. Ex. A at 49(8) and 244(25.1.2 and 25.1.3).

14. Claims against the EAUA Pools for which Home is the fronting insurer will be submitted in the first instance to the Scheme Managers to be ascertained under the Proposed Schemes. See ¶¶ 8 and 9 above. Intra-pool reinsurance claims against Home will be made by the Scheme Managers and the Liquidator will have the same opportunity as other pool participants and reinsurers to contest these alleged scheme debts. Ex. A at 159(2.7.5). Claims against Home by each creditor will then be reduced to Net Ascertained Claims under the Proposed Schemes and will be eligible, provided the creditor has filed a proof of claim in the Home liquidation, to be admitted to proof in this Court. Ex. A at 49(8) and 244(25.1.2, 25.1.3).

15. Once a Net Ascertained Claim has been filed in New Hampshire, the Proposed Schemes, FTF Agreement, and Scorecard do not impact the claims determination process in New Hampshire. Ex. A at 244(25.1.3). The Court will retain full authority to consider the validity of

the claim. Objectors' rights under the New Hampshire Liquidation Act are also fully preserved. Indeed, the Proposed Schemes explicitly note the governing authority of the Court, the Claims Procedures Order, and the set-off, priority, and other provisions of New Hampshire insurer insolvency law. Id.

16. *The FTF Agreement.* "Follow the fortunes" is a common methodology in the operation of reinsurance pools because it eliminates the need for duplicative claims evaluation, reducing administrative expenses and ensuring equal treatment of pool members. *Aff.* at 6. Pursuant to the Existing Agreements, participants in the EAUA Pools have contracted to "follow the fortunes" of fronting participants by accepting for intra-pool purposes the value of claims made by external creditors and agreed by the fronting participants. *Ex. B ¶¶ (D) and (E).* The contracts relating to the Existing Agreements, however, do not contain provisions dealing with matters that might arise as the result of conversion from a run-off to a cut-off scheme. *Ex. B ¶ (D).* To ensure continuing uniformity of treatment between the component schemes of the Proposed Schemes and between fronting and non-fronting EAUA Pool participants, the members have developed the FTF Agreement. *Ex. B ¶¶ (E) and (F).*

17. Under the FTF Agreement, each company agrees to "follow the fortunes" of the other fronting companies by accepting the ascertained value of inward claims, (as determined through the inward claims procedure described above), applicable to those companies. *Ex. B ¶ 3.1.* The FTF Agreement therefore does not change the basis of Home's participation in the EAUA Pools. *Aff.* at 6. The FTF Agreement minimizes the administrative expenses of pool participation and protects Home as a fronting carrier. *Id.* The Liquidator has therefore determined that the FTF Agreement is in the best interests of the Home estate and has executed the FTF Agreement subject to the proviso that "[t]his agreement shall not become effective as to

Home unless and until approved by the Court supervising the Home liquidation proceeding.”

Ex. B; Aff. at 6.

18. *The Scorecard.* During negotiation of the Proposed Schemes, various participants indicated that they were unwilling to participate in a follow-the-fortunes agreement unless the value of individual inward claims determined under the Proposed Schemes were capped at the “book” value of those claims for which the participants established reserves at year end 2008. Ex. C at pg. 3. In response to these objections, the English creditors committee and the Scheme Administrator developed the Scorecard procedure. Aff. at 7. All pool years in which Home participated are closed and it is highly unlikely that the Scorecard methodology will have any significant impact on Home. Id. Given its likely immateriality and the benefits of maintaining uniformity of procedure between all participants in the EAIC closing process, the Liquidator has executed the Scorecard subject to the proviso that “[t]his agreement shall not become effective as to Home unless and until approved by the Court supervising the Home liquidation proceeding.” Ex. C.

Argument

The Court should authorize the Liquidator to promote a scheme respecting Home’s involvement in the EAUA Pools, to vote in favor of the other Proposed Schemes (including the EAIC Scheme), and to enter into the FTF Agreement and Scorecard because participation in the Proposed Schemes maximizes assets available to the estate while maintaining the rights and process available to estate creditors under New Hampshire law. To this point, the Scheme Managers have administered all issues relating to the EAUA Pools on Home’s behalf and the cost of such administration has been materially born by EAIC. If the Liquidator were not permitted to participate fully in the Proposed Schemes, Home’s policyholders and creditors

would be disadvantaged because the Liquidator could not independently replicate the beneficial effects of participation, including the Scheme Managers' continued adjustment of the subject claims and collection of the related reinsurance in a unified manner.

I. Home's participation in the Proposed Schemes is in the interest of insureds, creditors, and the public generally.

The assets available for distribution in Home's estate will be maximized by participation in the Proposed Schemes. The majority of costs under the existing run-off operation, including the adjustment of inwards claims against Home, have been born by EAIC. Aff. at 8. EAIC would continue to bear these costs under the Proposed Schemes and the Liquidator anticipates general administrative cost savings from switching from a run-off to a cut-off proceeding regarding EAIC and the EAUA Pools. Id. It is most likely that the Proposed Schemes (or a substantial portion of the component schemes) will be implemented. Id. The available options for the Liquidator are therefore participation in the Proposed Schemes or independent adjustment of claims against Home relating to the EAUA Pools. Id.

The Liquidator is not presently capable of independently adjusting Home's claims relating to the EAUA Pools. Aff. at 9. EAIC and the EAUA Pools have been operated in run-off by PRO Ltd. and the Scheme Administrators since 1993. Ex. A at 8(2.1) and 11(3). Even prior to the EAIC insolvency, Home was not involved in the day to day operation of the pools. Aff. at 9. The Liquidator therefore does not have working knowledge of the operation of the EAUA Pools and does not have the institutional capacity to develop such London market knowledge quickly or in a cost effective manner. Id.

To collect Home's assets and adjust Home's obligations relating to EAIC and the EAUA Pools outside of the Existing Agreements or Proposed Schemes would require that the Liquidator hire English experts, develop a base of knowledge regarding the operation of the pre-insolvency

business and the run-off process, and independently investigate, adjust, and litigate or settle claims. Aff. at 10. It is unlikely the Liquidator would be capable of creating this infrastructure in a reasonable timeframe and, in any event, the cost would be prohibitive. Id. By participating in the Proposed Schemes, particularly in the Home Scheme, the Liquidator will not only benefit from the Scheme Managers' experience but will be able to split the costs of employing the Scheme Managers with the solvent participating companies, EAIC, and other insolvent insurers' estates. Id.; Ex. A at 11(3) ("If fragmentation of the [EAUA] Pools occurred, policyholders and/or their agents would need to make separate claims presentations and those claims would need to be separately agreed by the fragmented Pools companies. Fragmentation would also inevitably give rise to delays in settlement of policyholders' claims and potentially also to increase costs to policyholders. ... [and] [c]ollection of the Pools' remaining reinsurance would also need to be separated and would be burdensome and less efficient for... Scheme Companies.").

Participation in the Proposed Schemes, FTF Agreement, and Scorecard methodology will place Home on the same footing as other participating companies and the Liquidator will collect Home's assets promptly as the Proposed Schemes are wound down. Participation in the Proposed Schemes allows the Liquidator to collect otherwise uncollectible assets. Aff. at 11. It is therefore in the best interests of Home's policyholders, creditors, and the public generally for the Court to approve Home's participation as requested herein.

II. Home's participation in the Proposed Schemes is consonant with New Hampshire law.

Participation in the Proposed Schemes, as facilitated by the FTF Agreement and Scorecard, is consonant with New Hampshire law. The Proposed Schemes were negotiated by

the Liquidator to conform to the requirements of Home's liquidation and Home's creditors and other interested parties are not disadvantaged. See Ex. A at 49(8)

The Proposed Schemes will allow the Liquidator to collect estate assets. The Liquidator, under oversight by the Court, has broad authority to “[c]ollect all debts and moneys due and claims belonging to [Home], wherever located... [and] do such other acts as are necessary or expedient to collect, conserve, or protect [Home's] assets or property, including sell, compound, compromise, or assign for purposes of collection, upon such terms and conditions as he deems best, any bad or doubtful debts.” RSA 402-C:25 (VI). The Order of Liquidation entered by the Court on June 16, 2003 (McGuire, J.) further directs the Liquidator to “secure all assets... of Home” and vests the Liquidator with “title to all of the property, contracts, and rights of action... of the Home, wherever located.” Order of Liquidation at ¶¶ (f) & (g). The Liquidator is therefore authorized to enter such agreements as may be necessary to facilitate the collection of estate assets in the most cost effective manner. The Liquidator has determined that the Proposed Schemes, FTF Agreement, and Scorecard methodology are necessary to fulfill his duty to marshal estate assets. Aff. at 11.

The Proposed Schemes are appropriate mechanisms for bringing claims from the EAIC insolvency and winding up of the EAUA Pools into the Home liquidation proceeding. Under the New Hampshire Liquidation Act “[t]he Liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as he deems necessary. He may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court.” RSA 402-C:45 (I). The Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation, entered by the Court (McGuire J.) on January 19, 2005 provides the same procedure for determination of claims. ¶ 6(b). Under the

Proposed Schemes, all claims against Home must continue to be filed with the Court for approval. Ex. A at 244(25.1.2). When these claims have been filed, creditors and other interested parties will retain the same rights as they have regarding any other claim to challenge the validity or amount of the recommended claim under the terms of the Claims Procedure Order and the New Hampshire statutes. Ex. A at pg. 244(25.1.3). The substantive and procedural rights of creditors in the liquidation are therefore unaffected. Further, the Liquidator will retain the same rights as other participating insurers to investigate and challenge intra-pool reinsurance claims under the Proposed Schemes. Ex. A at 159-60(2.7.5). The Proposed Schemes do not, therefore, interfere with the operation of the New Hampshire liquidation and should be approved by the Court.

WHEREFORE, the Liquidator requests that the Court enter an order in the form submitted herewith approving Home's participation in the Proposed Schemes, authorize the Liquidator to enter into the FTF Agreement and Scorecard, and grant such other and further relief as may be just.

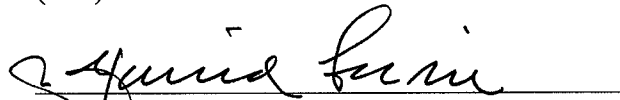
Respectfully submitted,

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February 22, 2010

Certificate of Service

I hereby certify that a copy of the foregoing Motion to Approve Home's Participation in the Proposed Schemes of Arrangement Relating to the English & American Insurance Company, Affidavit of Efraim Abramsohn, and the proposed form of order were sent, this 22nd day of February, 2010, by first class mail, postage prepaid to all persons on the attached service list. Copies of the Exhibits to the Motion to Approve Home's Participation in the Proposed Schemes of Arrangement Relating to the English & American Insurance Company (totaling approximately 400 pages) were not sent to all persons on the attached service list and, instead, are available on the Liquidation website (www.hicilclerk.org) under the "Merrimack County Superior Court Files" link.



J. David Leslie

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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