

**THE STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS.**

**SUPERIOR COURT**

**Docket No. 217-2003-EQ-00106**

**In the Matter of the Liquidation of  
The Home Insurance Company**

**LIQUIDATOR'S RESPONSE TO AFIA CEDENTS' OBJECTIONS TO  
MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE**

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), submits this response to objections to the Liquidator's Motion for Approval of Claim Amendment Deadline filed by four insurers or groups of insurers that were reinsured by Home (that is, "ceded" risk to Home) through the American Foreign Insurance Association ("AFIA") in England:

1. Catalina London Limited on its own behalf and as successor to KX Reinsurance Company Limited, Catalina Worthing Insurance Limited as successor to L&E Insurance Company Limited, Catalina Worthing Insurance Limited as successor to Excess Insurance Company Limited (the "Catalina Group");
2. Zurich Insurance plc, German Branch ("Zurich") and Württembergische Versicherung AG ("Württembergische") (collectively "Zurich" for convenience);
3. Indemnity Marine Assurance Co., Nderlande Reassurantie Groep NV, NRG Victory Reinsurance Limited, NRG Fenchurch Insurance Company Ltd., New Zealand Reinsurance Company, Tenecom Limited, Underwriters at Lloyd's of London, Winterthur Swiss Ins. Co., and World Auxiliary Corp. Ltd. (collectively "Resolute"); and
4. Nationwide Mutual Insurance Company ("Nationwide").

Although Nationwide and the Catalina Group do not acknowledge it, these "cedents" are distinct from policyholders, and their claims fall within the residual priority Class V under RSA 402-C:44. The Liquidator is responding separately to the objection of MW Custom Papers LLC, successor to Mead Corporation ("MWCP"), a policyholder.

## Introduction

This response addresses the objections of AFIA cedents, so it necessarily focuses on the concerns of this particular group of reinsureds. However, as described in the Liquidator's motion for approval of a claim amendment deadline, the Liquidator requests that the Court approve a final deadline based on the progress of the liquidation and considerations focusing on the interests of Class II creditors, who will receive distributions from the estate. The AFIA cedents do not fall in that class. They stand to receive administrative payments out of the estate because of an agreement entered in 2004 to facilitate the collection of reinsurance for the benefit of Class II creditors. Their desire to keep the estate open is contrary to the interests of the Class II creditors with allowed claims who can only receive the full possible distribution on their claims when the estate is closed. The proposed deadline is a means to that end.

The Class II claimants themselves plainly favor the deadline and closure of the liquidation proceeding. Notice of the Liquidator's motion for approval of the claim amendment deadline was sent to all claimants with open claims, including the 237 policyholders/insureds with open proofs of claim as of May 31, 2019. Only one policyholder (MWCP) filed a general objection by the November 18, 2019 deadline for objections to the motion.<sup>1</sup> Given the lack of Class II opposition, Nationwide's and Zurich's attempts to argue on behalf of Class II claimants should be disregarded. The AFIA cedents' arguments must be considered in the overall context of the Home estate and its Class II creditors. Otherwise, there is a danger of letting the AFIA tail "wag the dog."

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<sup>1</sup> The Catholic Foreign Mission Society of American Inc. aka Maryknoll Father and Brothers, a policyholder, and the New York Liquidation Bureau objected based on "revival" statutes for sexual abuse claims in Hawaii and New York. Those objections are likely to become moot. See Liquidator's Response to First Group of Objections (filed December 13, 2019). An additional policyholder, Johnson & Johnson, filed an untimely objection on December 24, 2019, which the Liquidator received on December 26, 2019. All filings and orders in the Home liquidation proceeding referred to in this response may be found on the Liquidation Clerk's website, [www.hicilerk.org](http://www.hicilerk.org), in the chronological docket at [http://www.hicilclerk.org/Hicil.nsf/vwCourtFilesDocs?ReadForm&Court+Files\(HICIL\)](http://www.hicilclerk.org/Hicil.nsf/vwCourtFilesDocs?ReadForm&Court+Files(HICIL)).

## Background

The AFIA cedent objectors assert claims under reinsurance contracts they entered with Home through AFIA. Their claims accordingly fall in the residual Class V priority class. See In the Matter of Liquidation of Home Ins. Co., 154 NH. 472, 477 (2006) (“Home I”) (“The claims of the AFIA Cedents based upon their pre-liquidation reinsurance contracts with Home fall into the ‘all other claims’ category of Class V.”). As Class V claimants, the AFIA cedents will not receive any distributions from the Home estate because Home will not have sufficient assets to make any distribution to creditors below the Class II priority. See id.

The AFIA cedents’ interest in the Home estate instead stems from an agreement (the “AFIA Agreement”) entered in 2004 and upheld by the New Hampshire Supreme Court in 2006. Home I, 154 N.H. 472. In light of the AFIA cedents’ present objections, the history and workings of the AFIA Agreement need to be briefly described.

AFIA. As set forth in the Supreme Court’s opinion, Home conducted business in the United Kingdom as a member of AFIA. In 1984, CIGNA purchased AFIA, and as part of the transaction its subsidiary Insurance Company of North America (“INA”) entered into an Assumption Agreement (governed by New York law) under which it assumed the reinsurance obligations of Home with respect to AFIA. Home I, 154 N.H. at 474. The Assumption Agreement contained an insolvency clause requiring INA to pay obligations directly to Home or its liquidator in the event of Home’s insolvency. Id. Century Indemnity Company (“CIC”) succeeded to INA’s obligations in 1999. Id. at 475.

Home’s insolvency in 2003 meant that all claimants, including the AFIA cedents, had to file proofs of claims in the liquidation. Home I, 154 N.H. at 475. As a consequence of Home’s insolvency and the priority scheme, AFIA cedents would not receive any distribution from the

estate and had no incentive to file and prove claims (except to the extent they could be used as setoffs). Id. at 477, 486. This would deprive the estate of reinsurance from CIC of the AFIA business, which (based on 2002 financial statements) was estimated to total approximately \$231 million. Id.

AFIA Agreement. To address this situation, the Liquidator proposed an arrangement which was ultimately agreed as the AFIA Agreement. Exhibit 1. The AFIA Agreement provided AFIA cedents with an incentive to pursue their claims by providing that a part of the reinsurance collected from CIC on the claims (after certain deductions) would be paid to the AFIA cedents through a Scheme of Arrangement approved by the English courts. See Home I, 154 N.H. at 477.<sup>2</sup> CIC challenged the AFIA Agreement. The New Hampshire Supreme Court upheld it, concluding that (1) the payments to the AFIA cedents constituted Class I payments to collect assets, not distributions on Class V claims, id. at 482-85; (2) the payments were necessary to collect assets, id. at 486-88; and (3) the agreement was fair and reasonable as it benefits Class II claimants, id. at 489-91. A Scheme of Arrangement implementing the AFIA Agreement was approved by the English court. Zurich Ex. E.

AFIA Claims Post-AFIA Agreement. Since that time, AFIA cedents have submitted paid loss claims in the Home liquidation. CIC was obligated under the 1984 Assumption Agreement to handle AFIA claims and had done so before Home's liquidation, so the Liquidator and CIC agreed on a protocol for the handling of AFIA claims in the liquidation. The Claims Protocol was entered August 6, 2004 and approved by this Court on November 12, 2004. Exhibit 2. Under the Protocol, CIC (through its agent ACE-INA UK Services Limited ("ACE-INA"), now Chubb International Services UK Limited ("CISUK")), reviews the claims and makes

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<sup>2</sup> The AFIA Agreement has other provisions, including a prohibition on AFIA cedents pursuing "cut-through" agreements to recover directly from CIC, by-passing the Liquidator. Id. at 477.

recommendations to the Liquidator. See Protocol ¶¶ 2.1-2.3. If the Liquidator agrees, a notice of determination is issued to the claimant pursuant to the Claims Procedures Order. *Id.* ¶ 2.4. If the claimant agrees, the determination is presented to the Court in a Liquidator’s report of claims and recommendations.<sup>3</sup> Once the determination is approved, CIC applies any offsets it may have and makes payment to the Liquidator. See Protocol ¶¶ 3.3, 3.4.<sup>4</sup>

Payment from Reinsurance Proceeds. Under the Scheme implementing the AFIA Agreement, the proceeds actually received by the Liquidator from CIC after any applicable CIC offset (“Gross Proceeds”) are subject to certain deductions, principally for (1) proceeds reflecting AFIA cedent claims that were satisfied by offset between the cedent and Home (that is, where the AFIA cedent applied its claim against Home as an offset against its own liability to Home) – these amounts are retained by Home since it satisfied the underlying AFIA liability, and (2) the costs of administering the Scheme and collecting reinsurance from CIC – these costs are paid out of the proceeds. The amounts remaining after the deductions (“Net Proceeds”) are then divided 50/50 between the Home estate and the Scheme. The Home share goes to the estate for the benefit of Class II creditors, while the Scheme share constitutes the “Scheme Assets.” The Scheme Administrators, after consulting with the Scheme Creditors’ Committee, are to distribute the Scheme Assets to AFIA cedents in proportion to their “Established Scheme Liabilities” (which are the cedents’ claims allowed in the liquidation after deduction of claims satisfied by offset). See Zurich Ex. E, Scheme, Cl. 1.1, 2.2, 2.3, 2.8. See generally *id.*, Explanatory Statement, Section E, ¶¶ 1, 2.

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<sup>3</sup> If the AFIA cedent disagrees with the determination, then the matter is determined in a disputed claim proceeding before the Referee pursuant to the Claims Procedures Order as supplemented by the protocol. See Protocol ¶ 2.13.

<sup>4</sup> The Liquidator and CIC have litigated over the propriety of asserted CIC offsets before the Referee and the courts on several occasions, with the result that in many instances CIC’s offsets have been reduced or removed. See, *e.g.*, In the Matter of Liquidation of Home Ins. Co., 158 N.H. 677 (2009).

As a result of this structure, the AFIA cedents are incentivized to file and prove claims beyond those they would prove to obtain a setoff. See Home I, 154 N.H. at 487. Contrary to Zurich's assertions, AFIA cedents are not obligated to submit claims. See Zurich Ex. E, Explanatory Statement, Section F, ¶ 1.2. No claimant is obligated to pursue claims in the liquidation. But if they do not, they will not receive payments out of Scheme Assets. This point is demonstrated by Nationwide, which has not filed any of its own AFIA claims in the liquidation since June 17, 2013, although it receives allowances under an arrangement by which part of certain "Rutty Pool" claims submitted by Zurich and Württembergische that include a Nationwide portion are credited to Nationwide.

Zurich and Württembergische Agreements. In their objection, Zurich and Württembergische confusingly refer to "Settlement Agreements" between themselves and the Liquidator. Those settlements do not concern the incentive for the filing of cedents' claims in the Home estate. That subject was addressed by the AFIA Agreement (to which Zurich became party) approved in Home I. Exhibit 1. The settlement agreements (Zurich Exs. A-2, B-2) were separate agreements approved by this Court on February 17, 2005 as to Zurich (Agrippina) and on March 21, 2006 as to the Württembergische. As explained in the Liquidator's motions, the settlement agreements resolved disputes regarding the "Treaty R" reinsurance contracts between Home and the two cedents including (1) whether Home was obligated to indemnify the cedents for a "fixed pool share" of claims instead of the greater "fronted share", and (2) how Home would address its obligations under Treaty R to administer underlying claims against Zurich and Württembergische that were reinsured through AFIA. See Liquidator's Motion for Approval of Settlement Agreement with Wüstenrot & Württembergische AG (March 1, 2006); Liquidator's Motion for Approval of Settlement Agreement with Agrippina (January 25, 2005).

In the settlement agreements, Zurich and Württembergische agreed that Home was obligated on a “fixed pool share” basis, and the Liquidator agreed on how Home (itself or through AISUK) would administer the underlying claims against Zurich or Württembergische. Zurich and Württembergische also agreed that the underlying claims against them as so adjusted would automatically be deemed part of their proofs of claim so they could be determined and admitted in the Home estate. The settlement agreements say nothing about how long Home’s estate is to remain open, which is a matter outside both the AFIA Agreement and the settlement agreements.

## ARGUMENT

### **I. IN CONSIDERING THE PROPOSED CLAIM AMENDMENT DEADLINE, THE COURT SHOULD FOCUS ON THE INTERESTS OF POLICYHOLDERS, NOT REINSUREDS SUCH AS THE AFIA CEDENTS.**

As an initial matter, the interests of concern in evaluating whether and when to establish a claim amendment deadline are those of the policyholders and insureds of Home, and claimants against those policyholders, not reinsureds. In enacting the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C (“Act”), the Legislature sought to protect policyholders, insureds and claimants under insurance policies issued by the insolvent insurer. The Act provides Class II priority (following the Class I priority for administration costs) for “Policy Related Claims,” which are defined as the claims of policyholders, beneficiaries and insureds under policies and claims by third-party claimants against insureds under policies. RSA 402-C:44, II. As the New Hampshire Supreme Court stated:

[T]he purpose of RSA chapter 402-C is to protect preferred creditors by reserving assets for them, including people insured by Home, and people with claims against those insured by Home. See RSA 402-C:1, IV. RSA 402-C:1, III provides that the statute should be ‘liberally construed’ to effectuate this purpose.

Home I, 154 N.H. at 488. Accord, In the Matter of Liquidation of Home Ins. Co., 158 N.H. 677, 681 (2009).

While Nationwide and the Catalina Group do not acknowledge it, the AFIA cedent objectors all assert claims under reinsurance contracts and thus all are Class V claimants. See Home I, 154 NH. at 477. They are not preferred creditors, and will not receive distributions. See id. The Act does not seek to protect the interests of reinsureds over the interests of the Class II policy-related claimants.<sup>5</sup>

In these circumstances, the Liquidator's judgment concerning the balance of interests underlying the proposed claim amendment deadline and the Court's review of the proposed deadline should properly focus on the interests of the Class II policy-level claimants. Those claimants are given priority by the Legislature, and they are the only claimants who will receive a distribution from the Home estate in light of its limited assets.

**II. THE AMBASSADOR DECISION HAS NO BEARING HERE BECAUSE HOME'S CLASS II CREDITORS HAVE NOT BEEN PAID IN FULL AND HOLDING THE LIQUIDATION OPEN PREJUDICES THEM BY PREVENTING A GREATER PERCENTAGE DISTRIBUTION.**

Zurich and Resolute rely on the Vermont Supreme Court's decision in In re Ambassador Ins. Co., 198 Vt. 341, 114 A.3d 492 (2015). However, that case involved what the Vermont court itself termed "unique circumstances" (114 A.3d at 497), and it is not relevant to the balancing of interests required in Home. The critical fact in Ambassador was that, due to a recovery from the insurer's auditor for professional malpractice, the liquidator had sufficient

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<sup>5</sup> This is a widely shared view. Courts addressing similar statutes in other states have consistently held that the priority for policyholders, beneficiaries, and insureds is intended to protect typical insurance consumers, not insurance companies under reinsurance contracts. See In re Liquidations of Reserve Ins. Co., 122 Ill.2d 555, 524 N.E.2d 538, 541 (1988); Pioneer Annuity Life v. Nat. Equity Life, 159 Ariz. 148, 765 P.2d 550, 554 (Ct. App. 1988); Neff v. Cherokee Ins. Co., 704 S.W.2d 1, 7 (Tenn. 1986); Foremost Life Ins. Co. v. Dep't of Ins., 274 Ind. 181, 409 N.E.2d 1092, 1095-96 (1980).



assets to pay all allowed policy-level claims “in full, with interest.” Id. at 494. After those claims were paid, there was still \$92 million left to address remaining and future claims. Id.

This meant that the policy-related claimants with allowed claims were not prejudiced by keeping the liquidation open. Ambassador, 114 A.3d at 501 (“As of May 2012, all court-approved priority-four [policy priority] claims had been paid in full, plus interest. . . . In this case, no priority-four claimants are currently prejudiced by allowing additional time . . .”). Ambassador had “ample resources” and it was “*not* currently insolvent, although it may become insolvent in the future.” Id. at 500 (emphasis in original). This distinguished Ambassador from other insurer liquidations:

In the typical liquidation, the insurance company is insolvent, meaning it lacks sufficient assets to meet its debts. In such cases, the limited assets relative to the outstanding debt generally force an end to the liquidation proceeding: at some point, the insolvent estate runs out of money, or its assets drop to a point where it becomes uneconomic to continue administering the estate. . . . This factor distinguishes this case from the other long-tail insurance cases noted above.

Id. at 499-500.

Home, by contrast, is insolvent. The presently allowed Class II (policy-related) claims total approximately \$2.73 billion, while the available assets (those held by the Liquidator and those previously distributed as early access distributions or interim distributions) total approximately \$1.75 billion. See Liquidator’s Seventy-Fifth Report (filed December 26, 2019) at pages 2, 5. Class II claimants will only receive a percentage distribution on their claims. Most importantly, so long as claims can still be filed and claims remain undetermined, the Liquidator must hold assets instead of distributing them. As explained in his motions for approval of interim distributions, the Liquidator cannot distribute all available assets but instead must hold a conservative reserve to be able to make equal percentage distributions to Class II claimants whose claims have not yet been determined and to pay for the ongoing costs of the

liquidation. See Liquidator's Motion for Approval of Third Interim Distribution ¶¶ 12-14, 19 (September 28, 2018). To date, the Liquidator has made interim distributions totaling only 30% on the allowed Class II claims, and he is holding undistributed assets of about \$808 million.

This is quite unlike Ambassador, and holding these funds prejudices those with allowed policy-level claims. In Ambassador, policy claimants had been paid in full, with interest, so holding the remaining \$92 million to pay future claims and the costs of the ongoing liquidation did not adversely affect policy claimants. In Home, after 16 years of liquidation, the claimants with allowed policy claims have only received 30% in interim distributions on their claims. The entire \$808 million held by the Liquidator could be paid to those claimants and they would still receive only a percentage of their claims. Further, where the claims will not be paid in full, the estate will not pay interest (as it is assigned to Class VII in RSA 402-C:44) and the value of the allowed claims is eroding. In these circumstances, keeping the liquidation open and holding assets based on the potential for future determinations prejudices the existing creditors who otherwise would stand to receive those funds.

In sum, contrary to Zurich's portrayal, Home is not a case where there are "ample funds" to pay claims so that there is no adverse consequence from holding the estate open. There are insufficient funds to pay even those with presently allowed claims. The interests of those creditors in bringing the liquidation to closure so they may receive the maximum distribution possible must be given weight. There were no such interests implicated in Ambassador.

Zurich's reliance on factors noted in the Ambassador decision (which the Vermont court said should be considered "among other factors," 114 A.3d at 500) is thus misplaced. The Liquidator explained the considerations underlying the proposed claim amendment deadline in the motion. In essence, this proceeding has been ongoing for 16 years, the most recent Home

policies expired 24 years ago, the vast bulk of Class II claims have been determined, and the assets have been collected (except for remaining reinsurance on as-yet-undetermined claims). Holding the proceeding open harms Class II creditors as they cannot obtain the full possible distribution on their claims and involves ongoing expense.

The factors in Ambassador address much the same issues and similarly support a claim amendment deadline. First, as to “the company’s remaining assets,” Home has no excess assets that can be devoted to future claims. Unlike Ambassador, Home is insolvent and cannot pay its policy level claims in full. It does not have “ample resources” to cover future policy-related claims. The Liquidator has collected the assets that can be collected except for reinsurance on not yet allowed claims, and the assets have been distributed except for a necessary reserve that does not cover even the existing allowed claims. Second, as to “the nature and amount of its remaining liabilities,” the Liquidator has determined 95% of the proofs of claim and made great progress in determining the Class II liabilities. To actually determine what the remaining liabilities are, however, a claims deadline needs to be established. Third, as to “the administration costs of the estate,” they are currently \$13 million per year. So long as claims remain open and can be presented, the Liquidator will need to maintain a claims staff and administrative structure to handle the claims, address reinsurance, and make distributions. These costs, while reasonable and necessary, only remain so while a substantial volume of claims is being addressed. Fourth, as to “the extent to which delay in termination of the liquidation proceedings results in a delay of full payment to priority claim holders,” any delay in this proceeding delays making the full possible distribution to policy-related creditors. Unlike Ambassador, the interests of creditors with allowed policy-related claims “would be substantially compromised by continuation of the liquidation.” Ambassador, 114 A.3d at 501. Simply put,

delay in the proceeding delays payment to the policy-related creditors. A claim amendment deadline will expedite the proceeding and reduce that delay, and it should be approved.

**III. WHILE THE REMAINING VALUE OF THE AFIA REINSURANCE IS UNCERTAIN, IT DOES NOT WARRANT KEEPING THE HOME ESTATE OPEN.**

The objectors suggest that their “incurred but not reported” or “IBNR” claims are large and that cutting them off will deprive the Home estate of reinsurance that will benefit Class II creditors.<sup>6</sup> However, IBNR values are uncertain, and they should be given limited weight in considering whether to keep the estate open.

As Resolute and Zurich acknowledge, the remaining IBNR associated with AFIA cedents is uncertain. See Resolute Objection at 3 (“The Objectors’ future claims remain uncertain.”); AFIA claims have not developed “to the point where a realistic quantification can be made.”); Zurich Objection at 3 (“Future values [of IBNR] are subject to significant uncertainty and simplistic assumptions that may result in a wide range of possible outcomes.”). See also Ostrager, *supra* note 6, § 1:03 (in the definition of “IBNR”: “As courts have noted, IBNR reserves are extremely conjectural and may need adjustment over time.”).

While the remaining AFIA IBNR value is unclear, it does not warrant keeping the liquidation open. Even assuming AFIA cedents will prove claims over time, the potential benefit to Home’s Class II creditors could only be a fraction of whatever IBNR value is ascribed to the AFIA cedents’ claims. Under the AFIA Agreement and the Scheme, the reinsurance collected on AFIA cedents’ future claims will be reduced by (1) CIC’s offsets of all types, including

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<sup>6</sup> IBNR should be distinguished from “case reserves.” “Incurred-But-Not-Reported Reserves (or ‘IBNR’)” are “reserves set aside before claims are even filed, based upon historical data, including loss experience.” Ostrager & Vyskocil, *Modern Reinsurance Law and Practice*, § 1:03 (3d ed. 2014). Case Reserves, by contrast, are reserves for known claims that have been reported. See *id.* (definition of “Loss Reserves”). The proposed claim amendment deadline would cut-off IBNR but permit case reserves to be valued and allowed.

reinsurance and contribution claims,<sup>7</sup> and (2) the costs of the UK proceedings and collecting the reinsurance from CIC. The amount that remains will be divided equally between the Home estate and the Scheme.

One practical way of looking at the value of AFIA is to consider the benefit to the Home estate over the past five years. From 2015 through 2019, the AFIA cedents have averaged \$3.05 million in claim allowances per year;<sup>8</sup> CIC’s claims applied as offsets have averaged approximately \$1.15 million per year; and the average annual reinsurance collection from CIC has been approximately \$1.8 million per year. (Due to timing differences in reporting of NODs issued, CIC setoffs, and collection of reinsurance, the numbers within each year do not total.)

<b>The Home Insurance Company in Liquidation</b>						
<b>Dollar Amount of AFIA Notices of Determination Issued During 2015-2019 and From Inception</b>						
	2015	2016	2017	2018	2019	Total From Inception (2004)
<b>Total All AFIA Cedents</b>	\$18,388,577 <sup>9</sup>	\$2,664,361	\$3,300,648	\$3,214,048	\$1,992,112 <sup>10</sup>	\$133,997,778 <sup>11</sup>

<b>Dollar Amount of AFIA NODs over the Past Five Years 2015-2019</b>	
2015	\$4,075,124 – not including Enstar commutation (see note 8)
2016	\$2,664,361
2017	\$3,300,648
2018	\$3,214,048
2019	\$1,992,112 – 11 months
<b>Average</b>	<b>\$3,049,259</b>

<sup>7</sup> The reinsurance collected from CIC on the \$134 million of allowed claims has been approximately \$87.8 million because CIC is applying setoffs and credits (net of offsets the Liquidator has successfully challenged).

<sup>8</sup> This average excludes the \$14.3 million Enstar commutation amount. In light of the commutation, there will be no future claims from the Enstar companies, so the value of those claims should not be considered in evaluating the potential benefit to the estate in the future.

<sup>9</sup> Includes \$14,313,453 commutation for Enstar Client Companies

<sup>10</sup> Includes \$100,000 AFIA part of commutation for National Casualty Co.

<sup>11</sup> After setoffs, the total amount collected from CIC on these NODs is \$87,829,406.

<b>CIC Setoffs Asserted During the Past Five Years</b>	
2015	(\$723,482) – negative due to removal of Kentile setoff
2016	\$2,249,520
2017	\$1,341,369
2018	\$1,638,104
2019	\$1,281,050 – 11 months
<b>Average</b>	<b>\$1,157,312</b>

<b>Reinsurance Collected on AFIA NODs Over the Past Five Years</b>	
2015	\$4,436,813 – does not include Enstar commutation
2016	\$440,834
2017	\$1,820,949
2018	\$1,322,482
2019	\$950,913 – 11 months
<b>Average</b>	<b>\$1,794,398</b>

Even making the unrealistic assumptions that there will be no costs of the UK proceeding and no collection costs to be deducted, the value to the Home estate after the split required by the AFIA Agreement and Scheme is half of that, or about \$900,000 per year.

An annual benefit of approximately \$900,000 does not warrant holding the estate open. To place that number in context, it is worth noting that the cost of administering the liquidation (its budget) was approximately \$13 million in 2019 – several times the benefit from AFIA.

The average AFIA annual allowances of slightly over \$3 million per year since 2015 also indicates that the IBNR numbers Zurich mentions are exaggerated. While Zurich does not offer its own IBNR number, its objection refers to (1) a \$313 million IBNR number reflecting values received from AFIA cedents in 2012, and (2) a \$231 million loss reserve number from 2002. Zurich Objection at 7, 8. The first number comes from values the Liquidator received from AFIA cedents to attempt “global” commutation discussions in 2012. See Zurich Ex. D at 2. (That exhibit is a report subject to Scheme confidentiality, so the Liquidator does not discuss it except to note that CIC responded with a widely different view of the potential value. See *id.* at 3.) The second number comes from a financial statement as of December 31, 2002, prepared for Home’s UK branch by ACE-INA shortly before Home was placed in liquidation. It was used

in an illustration prepared in connection with the Liquidator's motion for approval of the AFIA Agreement, and it was cited in Home I. (The number was not a "representation" by the Liquidator as to the value of the CIC reinsurance. It was a starting point for an "Illustration" of the potential workings of the AFIA Agreement based upon the financial statement number and other assumptions. See Liquidator's Supplemental Reply in Support of Motion for Approval of Agreement with AFIA Cedents (April 16, 2004), Exhibit A (Illustration).)

If the first IBNR number were correct, that implies that the liquidation proceeding would need to last at least 100 years ( $\$313 \text{ million in IBNR} \div \$3 \text{ million/year in NODs}$ ) to determine the claims. If the second number were correct, then after reduction to account for the  $\$134 \text{ million in NODs to date}$ , that implies that the liquidation would need to last 32 more years ( $\$97 \text{ million loss reserves} \div \$3 \text{ million/year in NODs}$ ).<sup>12</sup>

#### **IV. THE AFIA CEDENTS' ALTERNATIVES ARE ESSENTIALLY PROPOSALS TO KEEP THE ESTATE OPEN INDEFINITELY.**

The objectors proposed alternative approaches to address their IBNR claims are not practical and legally feasible, and all would have the effect of prolonging the liquidation to the detriment of those with allowed Class II claims.

##### **A. IBNR Cannot Properly Be "Estimated" And Allowed.**

Resolute, Nationwide and Zurich all propose that the Liquidator be required to allow "estimation" of unknown claims (IBNR). This is an unusual position for companies that are themselves reinsurers to take. As discussed below, reinsurers have vigorously opposed estimation of IBNR in insurer liquidations in other states. Not surprisingly, neither Zurich nor Resolute offer statutory or caselaw support for their request that IBNR be allowed, while

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<sup>12</sup> According to Zurich, there are presently at least  $\$33.7 \text{ million}$  of case reserves. Zurich Objection at 22. Case reserves would be included in the  $\$97 \text{ million loss reserve number}$ , and they are not proposed to be cut-off by the deadline.

Nationwide cites only to a case depending on a statute not found in New Hampshire. The leading cases reject “estimation” of IBNR as inconsistent with the liquidation statutes, and the Act does not provide for estimation. The Liquidator has accordingly proposed a deadline that “cuts-off” IBNR. The objectors’ approach would take the Liquidator and Court down a path that would involve years of litigation with doubtful prospects.<sup>13</sup>

Reinsurers – through the Reinsurance Association of America (“RAA”) – successfully opposed estimation of IBNR in two large liquidations where it was attempted. In re Liquidation of Integrity Ins. Co., 193 N.J. 86, 935 A.2d 1184 (2007); Quackenbush v. Mission Ins. Co., 46 Cal. App. 4th 458, 54 Cal. Rptr. 2d 112 (1996). In Quackenbush, the RAA challenged a liquidation plan in the Mission proceeding that would have permitted the liquidator to actuarially estimate future IBNR losses. Quackenbush, 54 Cal. Rptr. 2d at 115-16. The California Court of Appeal struck down the plan as in conflict with the California statutes. It concluded that Cal. Ins. Code § 1025 prohibited claimants with future IBNR claims from participating in the liquidation until liability for and the amount of the claims became certain. Id. at 114; see id. at 117. In Integrity, the RAA again attacked a liquidation plan that would have allowed actuarial estimation of IBNR. Integrity, 935 A.2d at 1186. A decade later, the New Jersey Supreme Court ruled that the plan conflicted with the New Jersey statutes. The court held that N.J.S.A. 17:30C-28(a)(1) required that claims be “absolute” to be allowed and that IBNR was not. Id. at 1190-91. “IBNR claims are actuarial estimates and are, therefore, not absolute.” Id. at 1190.

The case cited by Nationwide rested on a liquidation statute that expressly permitted the actuarial estimation of claims. The Missouri Court of Appeals upheld estimation in the Holland-

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<sup>13</sup> See Ambassador, 114 A.3d at 504 (Noting that “Ambassador argues that if estimation is required for remaining claims, Ambassador’s reinsurers will most certainly take the position that they have no obligation to pay based on estimates, and the estate will become involved in long-term, expensive and unnecessary litigation.”).



America liquidation because “[t]he General Assembly specifically endorsed IBNR claims in [Mo. Rev. Stat.] § 375.1212.4.” Angoff v. Holland-America Ins. Co. Trust, 937 S.W.2d 213, 217 (Mo. Ct. App. 1996). That statute expressly provided an arbitration process for determination of IBNR:

The liability of the insurer relating to liabilities incurred, but for which claims relating to such liabilities are not reported, accrued or claimed, shall be determined with reference to the provisions of this subsection. In such an event, the amount of such liabilities shall be calculated, at their present value, by a panel appointed pursuant to this subsection. The liquidator and the claimant shall each appoint one arbitrator, and the court shall appoint a special magistrate who shall preside over all proceedings under this subsection. Thereupon, the panel shall hear and determine the amount of such liabilities . . . .

937 S.W.2d at 216 n.9 (quoting § 375.1212.4). The court also referred to Mo. Rev. Stat. § 375.1220.2, providing that:

If the fixing or liquidation of any claim or claims would unduly delay the administration of the liquidation . . . the determination and allowance of such claim or claims may be made by an estimate. Any such estimate shall be based upon an actuarial evaluation made with reasonable actuarial certainty or upon another accepted method of valuing claims with reasonable certainty.

937 S.W.2d at 217. See *id.* at 215 n. 4 (quoting statute). There are no such provisions in the New Hampshire Act, so the Angoff case offers no guidance here.

If the objectors seriously contend that estimation and allowance of IBNR is permitted by the Act and that reinsurers will in fact pay IBNR based on such allowances, they should explain why.

**B. The Claim Amendment Deadline Must Apply Equally To All Claimants.**

Resolute and Zurich propose that the claim amendment deadline not apply to AFIA cedents. However, the deadline must apply equally to all claims in the estate.<sup>14</sup> Any exemption

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<sup>14</sup> The only “exceptions” in the Proposed Order are for (1) Class I administration costs, which are not pre-liquidation claims at all but costs of the ongoing proceeding, see In the Matter of Liquidation of Home Ins. Co., 158 N.H. 396,

of AFIA claims from the deadline would create a subclass of Class V claimants whose claims will have more time to develop than others. The creation of subclasses within priority classes is inconsistent with RSA 402-C:44 (“No subclasses shall be established within any class.”).<sup>15</sup>

Even if the proposed exception were extended to all Class V claims, allowing one priority class more time than others is legally and practically flawed. The Act is intended to produce an “[e]quitable apportionment of unavoidable loss.” RSA 402-C:1, IV(d). It is not equitable to allow one group of claimants more time to submit claims than others, as that would increase their claims in the estate compared to those whose claims are cut-off earlier. Further, different deadlines for different priority classes would result in inconsistent claims for offset purposes. Offsets apply regardless of priority class. That is, a person that has an obligation to Home can apply its own claim against Home as an offset no matter what priority that claim has. See RSA 402-C:34 (allowing setoff of mutual debts). If there were different claim amendment deadlines for different classes, a party could be prejudiced because its claims are cut-off while the other party’s claims continue to emerge.

For instance, many of the Liquidator’s claims for reinsurance are based on policyholders’ Class II claims. Those underlying claims will be cut-off by the claim amendment deadline. If the Liquidator pursued reinsurance on such a claim and Class V claims were not subject to a deadline, the reinsurer could assert offsets based on its Class V reinsurance claims or contribution claims that could continue to grow even through the Liquidator’s claims were fixed.

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399 (2009), and (2) claims of the federal government, which cannot be subjected to state filing deadlines due to preemption by the Federal Priority Statute (31 U.S.C. § 3713) and which in any event have been resolved by the Settlement Agreement with Federal Claimants approved by the Court on March 26, 2019. See Liquidator’s Motion at 20-21.

<sup>15</sup> Nationwide’s contention that a claim amendment deadline itself would create subclasses within the priority classes is wrong. The claim amendment deadline determines the claims that can be considered in the liquidation. It does not distinguish between allowed claims in a priority class.

Alternatively, if the Liquidator's claims for reinsurance were based on underlying Class V reinsurance claims that could continue to grow, the reinsurer might contend it was inequitable to have a deadline that cut-off its offsetting Class II subrogation claims. Under the claim amendment deadline as proposed, claims and offsets will be based on a common cut-off date.

A separate claim amendment deadline for a class of claims is neither legal nor practical. It constitutes an invitation to litigation with reinsurers that is likely to complicate and delay closure of the estate.

**C. Commutation Of The AFIA Cedents' Claims Serves No Purpose Absent CIC's Agreement On Value, And Their Proposal To Open Negotiation At This Late Date Ignores History.**

Zurich and Nationwide contend that they should be allowed to negotiate commutations with the Liquidator. However, such two-party efforts makes no sense. Unlike Class II policyholders who stand to receive a distribution from the Home estate, the AFIA cedents fall in Class V and will not receive any distribution. The only reason to negotiate a commutation is to collect reinsurance. As a practical matter, this requires that the cedent directly negotiate any material commutation value with CIC because a commutation of the AFIA cedent's reinsurance with Home is meaningful only if CIC then commutes its reinsurance by paying the agreed value.<sup>16</sup> Commutations are voluntary business decisions, and CIC cannot be compelled to commute.

To state the obvious, if CIC does not agree with the commutation value, it is unlikely to pay it. Under the 1984 Assumption Agreement, CIC has the right to administer AFIA claims.

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<sup>16</sup> See Liquidator's Motion for Approval of Commutation Agreement with Dominion ¶ 2 (Sept. 15, 2010) (commutation negotiated directly between Dominion and CIC); Liquidator's Motion for Approval of Commutation Agreements with Enstar Companies ¶¶ 2, 4 (May 28, 2015) (commutation negotiated directly between Enstar and CIC). Cf. Liquidator's Motion for Approval of Commutation Agreement with National Casualty Co. ¶ 7 (August 23, 2019) (CIC agreed on value of small AFIA part of commutation).

Indeed, it did so without Home involvement from 1984 until Home's liquidation in 2003. In the event Home becomes insolvent, CIC has rights to interpose defenses in the proceeding in which a claim is to be determined. In light of CIC's contractual rights and its familiarity with the AFIA business, the Claims Protocol provides that CIC (through CISUK) is to adjust AFIA claims in the first instance in accordance with its obligations under the 1984 Assumption Agreement, see Claims Protocol ¶ 2, and it specifically contemplates that CIC is to conduct commutation discussions directly with the cedent. Claims Protocol ¶ 4.1.

In these circumstances, "commutation discussions" between an AFIA cedent and the Liquidator without regard to CIC serve no purpose. An agreement by the Liquidator to allow some amount of IBNR as a cedent's claim to which CIC does not agree will yield not reinsurance but litigation.

Nor should the claim amendment deadline be delayed so that Zurich and Württembergische can seek to negotiate with CIC. As the materials included with their objection make clear, Zurich and Württembergische knew that in 2012 the Liquidator attempted to conduct "global" commutation discussions with CIC using values obtained from AFIA cedents. See Zurich Ex. D at 2. The Liquidator and Scheme Administrators reported on the lack of progress in the discussions in later reports to the Scheme Creditors' Committee (of which Zurich and Württembergische are members). Zurich and Württembergische also knew that AFIA cedents within the Enstar Group had conducted commutation negotiations directly with CIC because the Scheme Creditors' Committee was consulted regarding those discussions in 2015, and the commutation was reported to the Scheme Creditors' Committee. This was also described in the Liquidator's Motion for Approval of Commutation Agreement with Enstar Client Companies ¶¶ 2-5 (May 28, 2015), which was granted on June 22, 2015.

Having been aware since at least 2015 that the Liquidator's attempt at a global commutation based on the cedents' values had not been productive, and that another cedent had negotiated a commutation directly with CIC, Zurich and Württembergische cannot appropriately seek to hold the liquidation open on the ground that they would now like a try at negotiation.

**D. Settlements With Policyholders Present Different Considerations From Commutations With AFIA Cedents.**

Zurich notes that the Liquidator has entered many comprehensive policy release settlements with policyholders to finally resolve their claims in the liquidation, and these settlements may include paid losses, case reserves (known but still outstanding claims), and an element for potential future claims (IBNR).<sup>17</sup> This does not present some inappropriate distinction.

The critical point about these settlements is that, like commutations, they are voluntary compromises. (Also, unlike the claims of AFIA cedents, they have value to the parties without receiving a reinsurer's agreement.) To the extent that they may involve future claims, the policyholder and the Liquidator must come to an agreement. A policyholder cannot compel the Liquidator to allow such claims. See Fuller-Austin Insulation Co. v. Highlands Ins. Co., 135 Cal. App. 4th 958, 38 Cal. Rptr. 3d 716, 742 (2006) ("While calculating the aggregate value of present and future asbestos claims is helpful and often necessary in other contexts, no authority exists for utilizing such a valuation to affix an insurer's indemnity obligation."); see id., 38 Cal. Rptr. 3d at 746. The Liquidator similarly cannot compel a policyholder to agree to a value for them.

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<sup>17</sup> The Liquidator has sought and received approval of the Court for such settlements throughout the liquidation proceeding. See, e.g., Motion for Approval of Settlement Agreement with Trane U.S., Inc. (May 13, 2019), granted June 3, 2019; Motion for Approval of Commutation with Northwestern National Insurance Company and Settlement Agreement and Assignment of Distribution with AK Steel Corporation (February 17, 2006), granted March 10, 2006.

In these circumstances, there is no disparity of treatment between Class II policyholders and Class V cedents that is not warranted by their different priority. Policyholders have an opportunity to negotiate over their Class II claims, including some element of future claims. Many have, and others have not. So too, cedents have an opportunity to negotiate over their Class V claims including some element of future claims. However, since they will not receive a distribution, there must be a reason to engage in the effort. Where there is such a reason, some cedents have availed themselves of the possibility, and others have not. But after 16 years the possibility of such resolutions at either class does not warrant holding the estate open given the adverse impact on the Class II claimants with allowed claims.

**V. THE AFIA AGREEMENT AND SCHEME AND THE ZURICH AND WÜRTTEMBERGISCHE SETTLEMENT AGREEMENTS HAVE NO BEARING ON APPROVAL OF THE CLAIM AMENDMENT DEADLINE.**

Zurich contends that a claim amendment deadline is somehow inconsistent with the AFIA Agreement and the Scheme. However, those documents provide AFIA cedents with an incentive to pursue claims in the Home liquidation. They do not provide that the Home estate will remain open for any period of time or at all. Similarly, the settlement agreements with Zurich and Würtembergische determine the basis (fixed pool share) on which claims may be allowed, and they provide that Home will administer underlying inward claims against the two companies.<sup>18</sup> Zurich and Würtembergische further agree that claims against them, when agreed, will in turn be included in their proofs of claim for determination in the Home estate. But the settlement agreements do not provide that the Home liquidation proceeding must be open indefinitely to receive such claims.

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<sup>18</sup> The Liquidator recognizes that this obligation presents a Class I expense that will need to be addressed before the liquidation proceeding closes.

The question of a claim deadline and the duration of the liquidation are matters governed by the New Hampshire Act. They are not properly (and were not) the subject of contracts with claimants. Instead, they must be determined based on the balancing of factors required by the Act as described in the Liquidator's motion.

**VI. THE PROCESS FOR THE DETERMINATION OF CLAIMS IS SEPARATE FROM APPROVAL OF THE CLAIM AMENDMENT DEADLINE.**

The Catalina Group and Resolute express concern that the process for the determination of claims after the claim amendment deadline is not clear and that they are not sure how to submit claims at the deadline. These issues are separate from the question whether to establish a deadline. Claim determinations will depend upon the particular facts and circumstances of the claims. If AFIA cedents are dissatisfied with claim determinations made after the deadline, they may seek review by the Referee and Court at that time.

In any event, as the Liquidator has advised AFIA cedents, the Liquidator intends that CIC (through CISUK) will continue to administer AFIA claims and make recommendations about the determination of the claims after the claim amendment deadline. (CISUK and its predecessor ACE-INA have handled AFIA claims under the Claims Protocol since 2004 with no disputed claim proceedings since 2010.) The Liquidator has asked CIC to administer AFIA claims after the deadline, CIC has expressed conceptual agreement, and the Liquidator has accordingly proposed that the Claim Protocol be amended to provide for CISUK to address case reserve submissions after the deadline.

The Liquidator also recognizes that AFIA cedents seek guidance as to what they will need to submit at the deadline, and the Liquidator has provided AFIA cedents (and CIC) with draft guidelines to that end. A copy of the draft guidelines, on which CIC has no comments, is

attached as Exhibit 3. The essential element in claim submissions by the deadline is the identification of claims. Information concerning the value of the claims can be supplemented afterwards.

The Liquidator will continue to work on these issues so as to provide guidance before the claim amendment deadline and a smoothly functioning determination process afterwards. However, they do not bear on approval of the proposed claim amendment deadline.

### **CONCLUSION**

The Court should overrule the AFIA cedent objections, grant the Liquidator's motion and approve the proposed claim amendment deadline.



Respectfully submitted,

JOHN R. ELIAS, INSURANCE  
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HAMPSHIRE, AS LIQUIDATOR OF THE HOME  
INSURANCE COMPANY,

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December 30, 2019

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Response to AFIA Cedents' Objections to Motion for Approval of Claim Amendment Deadline was sent, this 30th day of December, by first class mail, postage prepaid to all persons on the attached service list.



---

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NH Bar ID # 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of  
The Home Insurance Company  
Docket No. 217-2003-EQ-00106

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**WITHOUT PREJUDICE AND FOR SETTLEMENT PURPOSES ONLY**

Equitas Limited  
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London  
EC3A 8LL

22 January 2004

For Attention of : Rhydian Williams

Dear Sirs

**1. ACE Group proceeds**

1.1 In compromise of disputed positions respecting the non-novated AFIA reinsurance treaties underwritten by or on behalf of The Home Insurance Company ("Home") through the Home's UK Branch (the "AFIA Treaties"), we agree that, as soon as reasonably practicable following the agreement of a number of Informal Creditors' Committee members sufficient to give adequate assurance to Home that the Scheme (as defined in sub-paragraph 1.1.2 below) will be approved by the requisite majorities of AFIA Cedents (as defined in sub-paragraph 1.1.2 below), we will take the following steps:

1.1.1 notify members of the Informal Creditors' Committee that a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) have agreed to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us;

1.1.2 seek the approval of the supervising New Hampshire Court ("New Hampshire Order") to a compromise involving the implementation of a scheme of arrangement pursuant to section 425 of the Companies Act 1985 ("Scheme") between Home and cedents of Home in respect of the AFIA Treaties ("AFIA Cedents"), the main features of which are described in sub-paragraph 1.9 below, such New Hampshire Order to be on terms that it is conditional upon:

- (1) the sanction of the English Court in respect of the Scheme;
- (2) an order of the English Court approving the remission of the Home's assets situated in England and Wales (other than the "Net Recoveries" (as defined in sub-paragraph 1.2 below)) to the New Hampshire liquidator for administration and distribution as part of the New Hampshire liquidation ("Global Liquidation Order"); and
- (3) the approval, or "non-objection", of the Financial Services Authority to the Scheme and to the making of the Global Liquidation Order ("FSA Approval");

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1.1.3 as soon as reasonably practicable after the making of the New Hampshire Order:

- (1) make an application to the English Court for permission to convene a meeting of AFIA cedents to approve the Scheme; and
- (2) following the approval of the Scheme by the requisite majorities of AFIA Cedents, seek the sanction of the English Court in respect of the Scheme,

provided that the Scheme shall not become effective on its terms until after the making of the Global Liquidation Order and the granting of FSA Approval,

the New Hampshire Order and the Scheme to be upon such terms as may be approved by the New Hampshire Court and English Court; and

1.1.4 in order to reduce the costs of disputed claim proceedings to the Home estate, the Liquidator will recommend to the New Hampshire Court that in the resolution of reinsurance claims against Home under the AFIA Treaties, where the reinsurance contract under which the claim arises contemplates arbitration or other dispute resolution procedures with more limited discovery than that permitted under the Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation entered by the New Hampshire Court on December 19 2003 or such amended order as appropriate ("the Claims Procedures Order"), discovery in the disputed claim proceeding (including, without limiting the generality of the foregoing, requests for documents, interrogatories, requests for admissions, or evidence depositions) shall be limited to that available under the contractually contemplated procedures.

1.2 "Net Recoveries" means 50% of the "Proceeds" (as defined in sub-paragraph 1.3 below), plus 100% of those proceeds described in sub-paragraph 1.3.5 below.

1.3 "Proceeds" means the proceeds received by Home from the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) (after deducting amounts offset between Home and either the relevant ACE Group company concerned or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) in relation to AFIA business and after having taken all reasonable arguments and/or defences as regards the validity of such off-set) with respect to the AFIA Treaties (whether such proceeds are derived through an ongoing resolution process with the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) or through a commutation or similar compromise arrangement with any ACE Group company or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) relating to that company's indemnity and/or reinsurance obligations to Home) net of:

1.3.1 the costs of the UK provisional liquidation;

1.3.2 any collection costs;

1.3.3 costs incurred in our seeking the orders of the New Hampshire and English Courts set out in sub-paragraphs 1.1.1 and 1.1.2 above (including, without prejudice to the generality of the foregoing, the costs of any legal and other professional advisors in obtaining and implementing such approvals);

1.3.4 the proceeds received by Home from the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) with respect to those inwards liabilities of

Home under the AFIA Treaties which are, or will upon final adjudication be, settled by way of offset as between Home and the relevant AFIA Cedent concerned (whether such offset right derives from contract or statute); and

- 1.3.5 the proceeds received by Home from the ACE Group or any Third Party Reinsurer with respect to Home's liability under an adverse costs order as described in sub-paragraph 1.9.7 below (which amount shall be credited direct to Net Recoveries, as provided in that sub-paragraph).
- 1.4 We also agree that during the "Standstill Period" (as defined in paragraph 1.6 below) we will not enter into a commutation or similar compromise arrangement with any ACE Group company or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 hereof) relating to that company's indemnity and/or reinsurance obligations to Home in respect of the AFIA Treaties without first:
  - (1) promptly consulting with the Informal Creditors' Committee as to any such proposed commutation;
  - (2) providing all relevant documentation to the Informal Creditors' Committee at least 5 working days (where practicable) prior to such consultation (and to this end, members of the Informal Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the Liquidator pursuant to paragraph 3 of the Order Establishing Procedures for Review of Reinsurance Commutation Agreements entered by the New Hampshire Court on July 23, 2003 or any such amended order as appropriate ("the Commutations Order")). If it is not practicable for Home to comply with this 5 working days notice period, Home shall make all reasonable efforts to provide as much notice as is possible in the circumstances; and
  - (3) providing notice to the Informal Creditors' Committee in advance of any application to the supervising New Hampshire Court to approve the terms of any such proposed commutation, in accordance with the provisions of the Commutations Order.
- 1.5 You agree that:
  - 1.5.1 during the Standstill Period you shall not seek to reach any agreement or arrangement with any member of the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) whereunder you receive payment from any such entity in respect of the AFIA Treaties; and
  - 1.5.2 in determining your entitlement (if any) to receive any distribution payable to you in your capacity as a creditor in Home's New Hampshire liquidation you will bring into account, and give credit for, any payments received by you pursuant to the arrangements described in this paragraph 1.

- 1.6 "Standstill Period" shall mean the period commencing upon the date on which you agree to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us and ending on the "Standstill Termination Date" (as defined in paragraph 1.7 below).
- 1.7 "Standstill Termination Date" shall mean the earlier of:
- 1.7.1 27 February 2004, if by that date Home has not notified members of the Informal Creditors' Committee that it has determined that a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) have agreed to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us by that date;
  - 1.7.2 the date upon which the New Hampshire Court denies the New Hampshire liquidator's motion for the approval of the New Hampshire Order in substantially similar terms to those described in paragraph 1.1 above;
  - 1.7.3 the date upon which the English Court refuses to grant permission to convene a meeting of AFIA Cedents to approve the Scheme in substantially similar terms to those described in paragraph 1.1 above;
  - 1.7.4 the date upon which a majority in number representing 75% in value of the AFIA Cedents do not approve the Scheme at the meeting specially convened for this purpose (or at any adjournment thereof) in substantially similar terms to those described in paragraph 1.1 above;
  - 1.7.5 the date upon which the English Court refuses to sanction the Scheme in substantially similar terms to those described in paragraph 1.1 above;
  - 1.7.6 the date upon which the English Court refuses to make the Global Liquidation Order;
  - 1.7.7 the date upon which the Financial Services Authority notifies Home that it will not grant the FSA Approval; or
  - 1.7.8 1 June 2004 (or such other date as Home and a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) shall agree from time to time), if the English Court has not by that date sanctioned the Scheme under section 425 of the Companies Act 1985 as envisaged in paragraph 1.1.2 above.
- 1.8 "Third Party Reinsurer" shall mean a reinsurer (other than an ACE Group company), which has underwritten reinsurance in relation to AFIA business directly in favour of Home as reassured.
- 1.9 It is intended that the Scheme will have the following main features:
- 1.9.1 subject to sub-paragraph 1.9.7 below, Net Recoveries will be distributed pari passu (as far as reasonably practicable) to all AFIA Cedents according to the value of their claims against Home under the AFIA Treaties as agreed or adjudicated (net of any applicable set-off) in the New Hampshire liquidation of Home;



- 1.9.2 Net Recoveries (together with all investment income and gain accruing thereon) will be held on a segregated basis by the Scheme Administrators for application in accordance with the Scheme;
- 1.9.3 a Creditors' Committee will be established with the right to be consulted by the Scheme Administrators on any transaction or litigation as between Home and any ACE Group company which is likely to have a material impact upon Net Recoveries;
- 1.9.4 Home will not enter into a commutation or similar compromise arrangement with any ACE Group company or any Third Party Reinsurer relating to that company's indemnity and/or reinsurance obligations to Home in respect of the AFIA Treaties without first:
- (1) promptly consulting with the Creditors' Committee as to any such proposed commutation;
  - (2) providing all relevant documentation to the Creditors' Committee at least 5 working days (where practicable) prior to such consultation (and to this end, members of the Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the Liquidator pursuant to paragraph 3 of the Commutations Order). If it is not practicable for Home to comply with this 5 working days notice period, Home shall make all reasonable efforts to provide as much notice as is possible in the circumstances; and
  - (3) providing notice to the Creditors' Committee in advance of any application to the supervising New Hampshire Court to approve the terms of any such proposed commutation or arrangement, in accordance with the provisions of the Commutations Order;
- 1.9.5 in the event of a commutation with the ACE Group, the Scheme Administrators will propose to AFIA Cedents a cut-off mechanism;
- 1.9.6 the costs referred to in sub-paragraph 1.3 above are to be recovered out of the Proceeds on an incurred basis; and
- 1.9.7 should a claim be denied in the Home liquidation and a disputed claim proceeding ensue, nothing in the Scheme shall preclude an AFIA Cedent, pursuant to RSA 402-C:6, from seeking an adverse cost order against Home in such proceeding, although under the Scheme the AFIA Cedent concerned will not be permitted to enforce payment by Home of any adverse cost order that may be forthcoming as an administrative expense in the Home liquidation, but shall rather be entitled to reimbursement to the extent of any cash recovered with respect thereto from an ACE Group company or from a Third Party Reinsurer, which cash recovery shall be credited directly to the Net Recoveries and shall be payable in full to the AFIA Cedent concerned from the Net Recoveries in priority to any distribution of the Net Recoveries to AFIA Cedents pursuant to paragraph 1.9.1 hereof.

## 2. Information

You agree that you will provide to us by 13 February 2004 sufficient information concerning your claims under the AFIA Treaties (including reasonable details of paid losses, outstanding losses and IBNR) only to enable us to make the determination referred to in paragraph 1.7.1

hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

**3. Proof of Claim in Home's liquidation proceeding**

We acknowledge that, by providing information to us pursuant to paragraph 2 of this letter, you shall not be deemed to be submitting a proof of claim or similar formal claim against Home, either in the New Hampshire liquidation proceeding or in any English proceeding. We acknowledge that, by providing us with the said information pursuant to this letter, you thereby reserve all your rights in that regard.

**4. Confidentiality and Non-Disclosure**

Save as provided above, we agree that we shall not, without your prior agreement, disclose any of the information provided under paragraph 2 above to any third party (save where required so to do so by law) with the exception of (a) our legal, accounting and actuarial advisers; (b) any applicable regulator; and (c) courts of competent jurisdiction for purposes of seeking judicial approval of the arrangement proposed herein.

We furthermore reaffirm that this letter and its contents constitute "Confidential Information" within the meaning of the Confidentiality Undertaking executed by you.

**5. Authorisation**

The New Hampshire Insurance Commissioner, Roger A. Sevigny, in his capacity as Liquidator of Home, has approved this proposal and authorised its circulation by the provisional liquidators to members of the Informal Creditors' Committee.

**6. Acceptance by Informal Creditors' Committee members**

If this proposal is acceptable to you, please indicate your acceptance to its terms by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.

*G. H. Hughes*  
.....

Signed by G. H. Hughes  
Joint Provisional Liquidator  
for and on behalf of  
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

*[Signature]*  
..... 2.2.04 .....

Signed by Equitas Limited

hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

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**6. Acceptance by Informal Creditors' Committee members**

If this proposal is acceptable to you, please indicate your acceptance to its terms by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.

*G.H. Hughes*

.....  
Signed by G. H. Hughes  
Joint Provisional Liquidator  
for and on behalf of  
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

*[Handwritten signature]*

.....  
Signed by ~~Weavers~~ JAMES TYSON  
for and on behalf of  
THE BERMUDA FIRE & MARINE INSURANCE COMPANY  
(IN LIQUIDATION)

22 January 2004

hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

**3. Proof of Claim in Home's liquidation proceeding**

We acknowledge that, by providing information to us pursuant to paragraph 2 of this letter, you shall not be deemed to be submitting a proof of claim or similar formal claim against Home, either in the New Hampshire liquidation proceeding or in any English proceeding. We acknowledge that, by providing us with the said information pursuant to this letter, you thereby reserve all your rights in that regard.

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*Gareth Hughes*

.....  
Signed by G. H. Hughes  
Joint Provisional Liquidator  
for and on behalf of  
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

*A Brennan*

.....  
Signed by Mentor Insurance Company (UK) Ltd

for and on behalf of

*A Brennan, Director*

*lcl Consulting Ltd is duly authorised agent*

hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

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*G. H. Hughes*  
.....

Signed by G. H. Hughes  
Joint Provisional Liquidator  
for and on behalf of  
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

*[Signature]*  
.....

Signed by Unionamerica Insurance Company

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If this proposal is acceptable to you, please indicate your acceptance to its terms by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.

*Gareth H. Hughes*  
.....

Signed by G. H. Hughes  
Joint Provisional Liquidator  
for and on behalf of  
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

*[Signature]*  
.....

Signed by English and America Insurance Co Ltd

hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

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*G. H. Hughes*

.....  
**Signed by G. H. Hughes**  
**Joint Provisional Liquidator**  
for and on behalf of  
**The Home Insurance Company**

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

*[Signature]*  
.....  
**Signed by Excess Insurance Company Ltd**  
**DAVID RUMFEL**  
**MANAGING DIRECTOR**

hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

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We furthermore reaffirm that this letter and its contents constitute Confidential Information within the meaning of the Confidentiality Undertaking executed by you.

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The New Hampshire Insurance Commissioner, Roger A. Savigny, in his capacity as Liquidator of Home, has approved this proposal and authorised its circulation by the provisional liquidators to members of the Informal Creditors Committee.

**6. Acceptance by Informal Creditors Committee members**

If this proposal is acceptable to you, please indicate your acceptance to its terms by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.

*Gareth Hughes*

Signed by G. H. Hughes  
Joint Provisional Liquidator  
for and on behalf of  
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement.

*Terry M. Dwyer*

Signed by Continental Insurance Company New York



hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

**3. Proof of Claim in Home's liquidation proceeding**

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**6. Acceptance by Informal Creditors' Committee members**

If this proposal is acceptable to you, please indicate your acceptance to its terms by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.



.....  
Signed by **G. H. Hughes**  
**Joint Provisional Liquidator**  
for and on behalf of  
**The Home Insurance Company**

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement



.....  
Signed by **Riverstone Management Ltd**

**THE HOME  
INSURANCE  
COMPANY**  
In Liquidation



---

59 Maiden Lane  
New York, New York 10038

Pete Bengelsdorf  
Special Deputy Liquidator  
Tel (212) 530 3741  
Fax (212) 530 6143  
Peter.Bengelsdorf@homeinsco.com

August 6, 2004

**VIA COURIER**

Thomas J. Wamser, Esq.  
Assistant General Counsel  
ACE USA  
Law Department  
Routing TL35S  
1601 Chestnut Street  
Philadelphia, Pennsylvania 19101

**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.

Thomas J. Wamser, Esq.  
August 6, 2004  
Page 2 of 11

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. Ruddy 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 Ruddy Pool member (a) administer and service the inwards liabilities of each affected Ruddy Pool member, including the investigation, appraisal and adjustment of such liabilities; (b) effect timely notification to each affected Ruddy 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 Ruddy 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:

Thomas J. Wamser, Esq.  
August 6, 2004  
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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  
Special Deputy Liquidator

**AGREED AND ACCEPTED  
CENTURY INDEMNITY COMPANY**

By: 

Title: Assistant General Counsel

Date: 8/10/04

**Cedent Guidelines Re Amendments to Proofs of Claim  
(Proposed Claim Amendment Deadline Submissions)**

Claims in the Home liquidation by cedents to Home under reinsurance or retrocessional contracts involve layers of contractual agreements and often present unusual complexity. The Liquidator accordingly provides the following guidance concerning amendments to proofs of claim that may be submitted by cedents before the proposed claim amendment deadline.

1. A cedent's claim is its assertion of a right to recover under a reinsurance contract for a loss incurred by the cedent with respect to a policyholder or a preceding reinsurer with respect to a policyholder.
2. Cedents should provide the following with respect to a claim:
  - Identification of the cedent, including the company or pool name and, if applicable, the name of the predecessor entity that originally entered into the reinsurance contract
  - Identification of the cedent's reinsurance contract with Home, including the contract number, contract period, attachment point, limits of liability, and the percentage of Home's participation
  - Identification of the reinsured loss, including policyholder name, type of loss (e.g., pollution, asbestos), cedent's claim number, Home's claim number, if known, and, where applicable, names of preceding reinsurers
  - Amount of the loss claimed under the reinsurance contract, including but separately stating both any paid amounts not previously claimed and reserves (if possible identify case reserves as IBNR will not be eligible to be allowed as a claim).
3. The information should be submitted in a form that will facilitate review of the cedent's claim. For instance, the cedent may submit a document identifying the reinsurance contract under which coverage is requested, together with a spreadsheet/bordereau identifying the reinsured losses and the paid and case reserve amounts for each under the contract. The information may be submitted in electronic format (e.g., on a CD or flash drive).
4. Providing the information described in paragraph 2 above to the Liquidator before the claim amendment deadline will be sufficient to preserve a cedent's rights as to its claim for reinsurance of the reinsured losses so identified. However, the Liquidator will review the information, and may request additional or clarifying information, to determine whether an originating loss for which coverage is claimed by the cedent consists of or includes potential claims against the policyholder (i.e., whether the loss is in whole or in part contingent as of the claim amendment deadline), in which case the claim will to that extent be barred by the claim amendment deadline. To the extent that the cedent's case reserves reflect potential claims against the policyholder, they constitute IBNR that is cut off by the claim amendment deadline.
5. The foregoing summary is not limiting. The cedent is encouraged to provide as part of its claim amendment deadline submission whatever additional information it believes will be helpful in reviewing the claim. For instance, the cedent may provide statements providing details of the reinsured loss, describing the case reserving methodology employed, and/or addressing any coverage issues. After preliminary review of the claim, the Liquidator may request such information or any other information to assist in determination of the claim. Subject to paragraph 4, the valuation of the claim, including any coverage issues, will be addressed after the claim amendment deadline. The cedent may submit, and the Liquidator may request, information concerning valuation after the claim amendment deadline.