

**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 MOTION FOR APPROVAL OF AMENDED  
CLAIMS PROTOCOL WITH CENTURY INDEMNITY COMPANY**

Christopher R. Nicolopoulos, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves that the Court enter an order in the form submitted herewith approving an amended claims protocol (the "Amended Protocol") with Century Indemnity Company ("CIC") to provide for the ongoing handling by CIC of certain Home-related American Foreign Insurance Association ("AFIA") claims after the Claims Amendment Deadline ("CAD"). The Amended Protocol is attached as Exhibit A to this motion. As reasons therefor, the Liquidator states as follows:

**Summary**

1. The Liquidator requests approval of the Amended Protocol to provide for the determination of AFIA claims involving unpaid "case reserve" amounts after the CAD. The Amended Protocol will update and amend the claims protocol (the "Protocol") approved by the Court on November 12, 2004. That Protocol has governed the determination of paid losses submitted by insurers that ceded business to Home through AFIA ("AFIA Cedents") throughout this liquidation. The Protocol is expressly limited to such paid claims. Now that the CAD has been established, the Liquidator will need to value and determine known claims that have not yet been paid but for which the AFIA Cedents have established case reserve valuations. The Amended Protocol extends the Protocol to address such claims. As with the Protocol, the

Amended Protocol provides for CIC to provide the described services at no additional cost to Home. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator in Support of Approval of Amended Claims Protocol with Century Indemnity Company (“Bengelsdorf Aff.”) ¶ 3.

2. Prior to Home’s liquidation, AFIA claims were handled by an affiliate of the ACE Group of companies (of which CIC is a member) based in London. The Protocol provided for the continued involvement of CIC and its affiliate (then known as ACE-INA Services U.K Limited) in the determination of paid claims in the liquidation by having that company review the claims and make recommendations to the Liquidator. It also provided a process for the payment of reinsurance on those claims from CIC to the Liquidator subject to setoffs permitted by law. Bengelsdorf Aff. ¶ 4.

3. In 2019, the Liquidator moved for approval of the CAD. The Court ultimately entered an Order Approving Claim Amendment Deadline (the “CAD Order”) on January 28, 2021. The CAD Order barred Post-Claims Amendment Deadline Claims and Potential Claims. CAD Order ¶ 5. It thus required that known claims be filed by the CAD so that the Liquidator may value and determine those claims. This will require the Liquidator to value and determine claims even if they have not yet been paid. The existing Protocol does not provide for this. Bengelsdorf Aff. ¶ 5.

4. The New Hampshire Supreme Court affirmed the CAD Order on interlocutory appeal by an AFIA Cedent (Zurich Insurance plc, German Branch). *In the Matter of the Liquidation of Home Ins. Co.*, 2022 WL 3330553 (N.H. Aug. 12, 2022). Bengelsdorf Aff. ¶ 6.

5. Now that the CAD Order is final, the Liquidator and CIC have negotiated the Amended Protocol to provide for the determination of the case reserves, in addition to paid losses, with the involvement of CIC’s affiliate (now known as Chubb Services UK Limited

(“CSUK”). The Amended Protocol continues to provide a process for CIC to pay reinsurance on claims, when allowed, subject to setoffs provided by law, and includes a few other minor revisions. The Amended Protocol is intended to update the original Protocol to make changes required by the CAD in order to provide for the determination of unpaid AFIA claims and move efficiently toward closure of the Home estate. It does not otherwise change the original Protocol. A markup showing the revisions to the original Protocol is attached as Exhibit B. Bengelsdorf Aff. ¶ 7.

### **Background**

6. The AFIA situation has been the subject of significant litigation before this Court and the New Hampshire Supreme Court, and the background has been summarized in several decisions. *See, e.g., In the Matter of Liquidation of Home Ins. Co.*, 2022 WL 3330553, \*1-\*2 (N.H. Aug. 12, 2022); *In the Matter of Liquidation of Home Ins. Co.*, 166 N.H. 84, 87, 92, 93-94 (2014) (discussing the original Protocol); *In the Matter of Liquidation of Home Ins. Co.*, 154 N.H. 472, 474-475 (2006) (describing AFIA reinsurance arrangements). It was summarized as well in the Liquidator’s motion for approval of the original Protocol in 2004. Bengelsdorf Aff. ¶ 8.

7. In brief, Home’s unincorporated UK Branch wrote insurance and reinsurance business in the United Kingdom. Among other things, the Home UK Branch entered certain contracts under which the AFIA Cedents ceded insurance risk to Home through AFIA. Bengelsdorf Aff. ¶ 9.

8. In 1984, CIGNA and certain of its subsidiaries purchased AFIA. As part of that transaction, Insurance Company of North America (“INA”) (now known as CIC), Home and certain other insurance companies entered an Insurance and Reinsurance Assumption Agreement

(the “Assumption Agreement”) and a Reinsurance Treaty and Management Business (the “Treaty Management Agreement”). As pertinent here, in those agreements INA agreed to indemnify Home for the insurance and reinsurance liabilities relating to AFIA business (the “AFIA Liabilities”, as defined in the Assumption Agreement, and the “AFIA License Business,” as defined in the Treaty Management Agreement (collectively, the “AFIA Claims”)), and to provide administration and servicing of the claims at its own cost. Bengelsdorf Aff. ¶ 10.

9. From 1984 through 2003, the AFIA Claims were handled and paid on Home’s behalf by INA, later CIC, or other members of the ACE group at their own expense pursuant to the Assumption Agreement and Treaty Management Agreement. CIC and its agents developed institutional knowledge and systems in England to handle the AFIA Claims and held the records pertinent to the handling of the AFIA claims. Bengelsdorf Aff. ¶ 11.

10. Home’s liquidation affected the adjustment and payment of the AFIA Claims. All claims against Home, including the AFIA Claims, had to be filed with the Liquidator and determined and paid in accordance with the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C, and the Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation entered December 19, 2003, as amended (“Claims Procedures Order”). Bengelsdorf Aff. ¶ 12.

11. The Assumption Agreement and the Treaty Management Agreement contain “insolvency clauses” providing that in the event of Home’s insolvency, INA (now CIC) will pay reinsurance to the Liquidator based on claims as determined in the liquidation, and provides INA with the right to interpose defenses that it deems available to Home in the claim determination process. Bengelsdorf Aff. ¶ 13.



12. In light of CIC's historic involvement in the determination of AFIA Claims, the specialized nature of the AFIA Claims (which principally involve claims under reinsurance contracts governed by English law), CIC's rights under the insolvency clauses, CIC's role as indemnitor and administrator regarding the AFIA Claims under the Agreements, and the application of RSA 402-C and the Claims Procedures Order to claims against Home in liquidation, the Liquidator sought to negotiate an agreement with CIC to provide for its ongoing involvement in the handling of AFIA Claims. After extensive negotiations, the Liquidator and CIC agreed on the original Protocol, and the Liquidator moved for approval of the Protocol. The Court approved the Protocol by Order dated November 12, 2004. *Bengelsdorf Aff.* ¶ 14.

13. The Protocol established a process for the ongoing handling of AFIA Claims by CIC (acting by ACE/INA Services U.K., now CSUK). Among other things, the Protocol addressed (i) the roles of CIC and the Liquidator in the handling and determination of AFIA Claims, (ii) the manner of resolution of any disagreements between the Liquidator and CIC regarding recommendations with respect to AFIA Claims and the treatment of related costs, (iii) the procedures that apply between CIC and the Liquidator in the event of disputes with AFIA Cedents over determination of the AFIA Claims, including procedures to be applied when the underlying contracts are governed by English law, and (iv) procedures for the sharing of information between the Liquidator and CIC and for the reporting and reinsurance remittance obligations of CIC with respect to AFIA Claims. *Bengelsdorf Aff.* ¶ 15

14. The Protocol has operated very well over the past 18 years. During that time, CIC has evaluated AFIA Claims and made recommendations to the Liquidator respecting their allowance, the Liquidator has allowed the claims in accordance with CIC's recommendations, the AFIA Cedents have been advised of the determinations, and CIC has paid reinsurance, net of

setoffs. There have been no disputes over the evaluation of AFIA Claims between CIC and the Liquidator. There have been very few disputes over the determination of AFIA Claims between the AFIA Cedents and the Liquidator, and none over the past ten years.<sup>1</sup> Bengelsdorf Aff. ¶ 16.

### **The Amended Protocol**

15. The CAD Order requires that claimants, including the AFIA Cedents, file all claims against Home by the CAD and provide information regarding the value of the claims. When claimants, including AFIA Cedents, identify those known claims, the Liquidator will need to evaluate and value them. With respect to claims by insurers such as the AFIA Cedents, this will require that the Liquidator evaluate “case reserves,” which are the insurer’s estimate of the value of claims that have not yet been paid. Once the Liquidator has established such a value, the Liquidator will seek to recover any reinsurance with respect to the claim. Bengelsdorf Aff. ¶ 17.

16. The Protocol only applies to paid losses, not reserves. The Liquidator accordingly sought to agree with CIC to expand the Protocol to address case reserves. Bengelsdorf Aff. ¶ 18.

17. The Amended Protocol does this. It expands the Protocol to apply to case reserves, as well as paid losses. Amended Protocol at 2.<sup>2</sup> It provides for CIC to evaluate and participate in the determination of case reserves presented by proof of claim or amendment by the CAD using the same procedures as apply to paid losses. *See* Amended Protocol ¶ 2. CIC is to perform its obligations to manage, administer and review case reserves at no additional cost to

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<sup>1</sup> There have been disputes between CIC and the Liquidator over the extent of permissible setoffs. *See, e.g., In the Matter of Liquidation of Home Ins. Co.*, 153 N.H. 673, 681-682, 683-684 (2009); *In the Matter of Liquidation of Home Ins. Co.*, 157 N.H. 543, 545 (2008). That subject falls outside of the Protocol and Amended Protocol.

<sup>2</sup> The Amended Protocol continues to provide that it does not apply to reserves for losses that are incurred but not reported (“IBNR”). Amended Protocol at 2. That is appropriate, as IBNR claims are “cut off” by the CAD. *See Matter of Liquidation of Home Ins. Co.*, 2022 WL 3330533 at \*3, \*4-\*5; CAD Order ¶ 5(b) (barring Potential Claims).

the Home estate. Amended Protocol ¶ 2.1. CIC shall not recommend rejection of a claim on the ground that it is a case reserve and not a paid loss. Amended Protocol ¶ 2.3. The provisions of the Protocol concerning reports, remittances, and inspection of records concerning allowed paid loss claims will now also apply to allowed case reserve claims. *See* Amended Protocol ¶ 3. The Amended Protocol attaches guidance to AFIA Cedents respecting the information they should submit to provide for the efficient and informed determination of their claims. *See* Amended Protocol ¶ 2.3, Exhibit A (Cedent Guidelines Re Amendments to Proofs of Claim and Addendum to Address AFIA Claim Determinations). The Amended Protocol otherwise carries forward the provisions of the original Protocol with a few minor updates. *See* Exhibit B to this motion (markup showing revisions from Protocol to Amended Protocol). Bengelsdorf Aff. ¶ 19.

18. The Liquidator provided a draft of the Amended Protocol, its exhibits (the cedent guidelines and addendum), and a series of questions and answers, as well as a marked draft showing the revisions from the original Protocol, to the Scheme Administrators of the UK Scheme of Arrangement for Home. On October 6, 2022, the Scheme Administrators in London provided these documents to the AFIA Cedents who are members of the Scheme Creditors' Committee ("SCC") and asked if the AFIA Cedents had any questions or comments. Bengelsdorf Aff. ¶ 20.

19. Not having received any questions or comments, the Scheme Administrators sent a follow-up email on November 4, 2022 to the AFIA Cedents who are members of the SCC asking for any questions or comments by November 9, 2022. On November 9, 2022, UK counsel for two AFIA Cedents (Württembergische and Zurich) emailed several questions to the Scheme administrators. The Liquidator prepared responses to those questions, which the Scheme Administrators provided to UK Counsel for Württembergische and Zurich and the AFIA

Cedents on the SCC on November 11, 2022. No further questions or comments were received. Bengelsdorf Aff. ¶ 21.

20. The Liquidator submits that the Amended Protocol is fair and reasonable and that it is in the best interests of the policyholders and other creditors of Home. The Amended Protocol will provide for CIC's continued involvement in the determination of AFIA claims now including the case reserves that may be presented at the CAD. It continues the structure of the Protocol that has permitted the effective and efficient determination of AFIA claims and collection of reinsurance throughout this proceeding, and it extends that structure to the type of claims that will be submitted by AFIA Cedents at the CAD. Bengelsdorf Aff. ¶ 22.

21. In order to facilitate the efficient determination of AFIA Claims, the Liquidator recommended in connection with the Protocol that, where the contract underlying the claim at issue is governed by English law, hearings before the Referee take place in England. There have been no such hearings. Further, the conduct of court business by video conference is now commonplace, and the Liquidator expects that the Referee could conduct hearings in that manner. However, in the event that an in-person hearing on a disputed claim were necessary (as determined by the Referee), the Liquidator continues to recommend to the Court that the Referee conduct in-person hearings regarding the allowance of AFIA Claims governed by English law in England. In such a case, the claimant, the CIC claim adjuster, counsel, pertinent documentation and any witnesses are likely to be located in England. Accordingly, an English-situs hearing may significantly reduce both litigation-related costs and travel expense and reflect a reasonable accommodation of the parties' interest. Inconvenience to the Referee could be minimized by scheduling several hearings during the same trip. Bengelsdorf Aff. ¶ 23.

WHEREFORE, the Liquidator respectfully requests that the Court:

- A. Grant this Motion for Approval of Amended Claims Protocol with Century Indemnity Company;
- B. Enter an Order in the form submitted herewith approving the Amended Protocol; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

CHRISTOPHER R. NICOLOPOULOS,  
INSURANCE COMMISSIONER OF THE  
STATE OF NEW HAMPSHIRE, AS  
LIQUIDATOR OF THE HOME  
INSURANCE COMPANY,

By his attorneys,

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December 12, 2022

**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Amended Claims Protocol with Century Indemnity Company, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 12<sup>th</sup> day of December, 2022, by first class mail, postage prepaid to all persons on the attached service list.

/s/ Eric A. Smith  
Eric A. Smith  
NH Bar ID No. 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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# **EXHIBIT A**



**THE HOME  
INSURANCE  
COMPANY IN  
LIQUIDATION**

61 Broadway, 6<sup>th</sup> Floor  
New York, New York 10006

**Peter A. Bengelsdorf**  
**Special Deputy Liquidator**  
TEL: 212-530-3711

December 5, 2022

Brandywine Group of Insurance and Reinsurance Companies  
510 Walnut Street, WB12R  
Philadelphia, PA 19106  
Attention: Brendan McQuiggan

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

Dear Mr. McQuiggan:

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) and the CAD Order (as defined below), it is desirable to put in place mechanisms and processes to ensure the due, proper, orderly and consistent handling of Claims (as defined below) by and among HICIL and CIC.

This letter, therefore, seeks agreement between HICIL and CIC on the above mechanisms and processes. It amends the existing protocol agreement letter dated August 6, 2004, approved by the Court (as defined

below) on November 12, 2004, to account for the CAD Order. Following such agreement, as confirmed by signature for CIC below, this letter will be presented to the Court for approval. This letter will be effective when (1) the Court has approved this letter and (2) the CAD Order is final. 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) and to case reserves that have been presented in a CAD Amendment (as defined below) in the HICIL liquidation and not to any reserves for losses that are incurred but not reported.

## **1. Definitions**

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

"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;

"CAD Amendment" means an amendment to a POC, which may include case reserves, properly filed on or before the claim amendment deadline fixed by the Court in the CAD order (The Liquidator has issued guidance regarding CAD Amendments in the Guidelines attached as Exhibit A hereto.);

"CAD order" means a final order of the Court approving a claim amendment deadline in substantially the proposed form of order submitted to the Court by the Liquidator on August 1, 2019;

"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;

"CSUK" means Chubb Services UK Limited, formerly known as ACNA Services U.K. limited, or such other agent appointed by CIC that is reasonably acceptable to HICIL;

"Claim" means an inward reinsurance claim for paid losses or case reserves against HICIL in respect of an AFIA Liability presented in a POC or in a CAD Amendment. (It is recognized that case reserves shall be subject to a present value discount approved by the Court.);

"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 amended January 19, 2005 and 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, the Claims Procedures Order and, if applicable, the CAD order; 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. In view of the CAD Order, CIC and HICIL agree that the obligations undertaken by CIC pursuant to the Agreements shall be deemed to include case reserves, and the costs of managing, administering and reviewing case reserves presented by CAD Amendments shall not be deemed such additional costs.
- 2.2 With respect to Claims that are submitted through the filing by a claimant of a POC or a CAD Amendment 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 or a CAD Amendment 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 or CAD Amendment, CIC (through CSUK) 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 CSUK) against any action or proceeding brought by a Claimant arising from CIC's (or CSUK'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 CSUK) 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. In view of the CAD order, CIC and HICIL agree that CIC shall not recommend rejection of a Claim, in whole or in part, on the ground that it is a case reserve and not a paid loss. It is recognized that in administering and servicing a Claim, CIC (through CSUK) may, where appropriate, request information as noted on the Addendum to the Guidelines attached as Exhibit



A hereto, and such other information as may be requested by CIC and/or the Liquidator for the administration and servicing of a particular Claim.

- 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, 3ed 2014. 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 402C: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 (and with CSUK) 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 CSUK) 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 CSUK) in collecting and compiling the reports called for by paragraph 3.1 (including the internal and staff costs of CIC and/or CSUK) 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 setoff 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 CSUK) 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 and the CAD 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 CSUK) 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 CSUK**

- 6.1 The parties acknowledge that CSUK is the agent of CIC. CIC undertakes that it will procure that CSUK 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 sent by first class post and by email to the address and the email addresses below:

If to HICIL:

Home Insurance Company in Liquidation  
61 Broadway, 6<sup>th</sup> Floor  
New York, New York 10006  
Attention: Pete Bengelsdorf, Special Deputy Liquidator  
[REDACTED]

If to CIC:

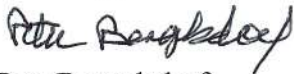
Brandywine Group of Insurance and Reinsurance Companies  
510 Walnut Street, WB12R  
Philadelphia, PA 19106  
Attention: Brendan McQuiggan  
[REDACTED]

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:

Date:

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: BRENDAN MCQUIGGAN, SVP REINSURANCE

Date: 12/5/2022



**Cedent Guidelines Re Amendments to Proofs of Claim  
(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. Information which may be desirable for determination of the claim is noted on the attached Addendum. Subject to paragraph 4, the valuation of the claim, including

## EXHIBIT A

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.



### Addendum to Address AFIA Claim Determinations

Information Type	Information/Documentation/Analysis
<p>Coverage Determination (As with paid losses). Material previously provided to ACE INA/CSUK re Home AFIA participation and coverage need not be re-submitted. If a claim has been previously allowed on a paid basis only update and information re changes is necessary.</p>	<ol style="list-style-type: none"> <li>1. Evidence of Home Insurance Company AFIA participation and coverage afforded under reinsurance contracts including:               <ol style="list-style-type: none"> <li>a. Copy of signed/stamped slip or acceptance of participation letter referable to the coverage</li> <li>b. Copy of signed wording</li> </ol> </li> <li>2. Asserted basis for coverage and copies of all relevant policies, including any relevant details regarding:               <ol style="list-style-type: none"> <li>a. Aggregate coverage</li> <li>b. Occurrence and/or Event</li> <li>c. Common Cause /Causative Agency or Prior claims paid under policies</li> <li>d. Cost Clause operation in policy—excluded, inclusive, in addition or pro rata.</li> </ol> </li> <li>3. Non-privileged analyses prepared by cedant regarding policy coverage</li> <li>4. Notices of any coverage determinations prepared by or delivered to cedant</li> <li>5. Any non-privileged documents regarding coverage determinations in formal or informal dispute resolution processes</li> </ol>
<p>Valuation</p>	<ol style="list-style-type: none"> <li>1. An estimate of liability related to a particular claim (including a description of the underlying methodology and any data used to arrive at the estimate), including, but not limited to the estimates of the following items for the following types of liabilities:               <ol style="list-style-type: none"> <li>a. <u>Environmental Liability</u>:                   <ol style="list-style-type: none"> <li>i. Compliance costs</li> <li>ii. Remediation costs</li> <li>iii. Compensation for damages to persons, property, or natural resources</li> <li>iv. Fines and penalties</li> <li>v. Punitive damages</li> <li>vi. Defense costs</li> </ol> </li> <li>b. <u>Asbestos Liability</u>:                   <ol style="list-style-type: none"> <li>i. A completed Asbestos Related Claims Form (ARCF) or information akin to one.</li> <li>ii. Economic damages</li> <li>iii. Non-economic damages</li> <li>iv. Fines and penalties</li> <li>v. Punitive damages</li> <li>vi. Defense costs</li> <li>vii. Service fees and/ or declaratory judgement expenses</li> </ol> </li> </ol> </li> </ol>

	<ol style="list-style-type: none"><li>2. Historical data regarding any costs or expenses that have already been paid and/or incurred in connection with the claim</li><li>3. Any estimate of liability related to the claim prepared by any insurer or cedant, including, but not limited to the estimates of the items noted above</li><li>4. Any expert reports prepared by or on behalf of the claimant or any insurer or cedant regarding the amount of the liability</li></ol>
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# **EXHIBIT B**

August 6, 2004

**VIA COURIER**

Thomas J. Wamsler, Esq.  
Assistant General Counsel  
ACE USA  
Law Department  
Routing TL35S

1601 Chestnut ~~December 5, 2022~~

Brandywine Group of Insurance and Reinsurance Companies  
510 Walnut Street, WB12R  
Philadelphia, Pennsylvania 19101 PA 19106  
Attention: Brendan McQuiggan

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

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Dear ~~Tom~~ Mr. McQuiggan:

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) and the CAD Order (as defined below), it is desirable to put in place mechanisms and processes to ensure the due, proper, orderly and consistent handling of Claims (as defined below) by and among HICIL and CIC.

This letter, therefore, seeks agreement between HICIL and CIC on the above mechanisms and processes. It amends the existing protocol agreement letter dated August 6, 2004, approved by the Court (as defined below) on November 12, 2004, to account for the CAD Order. 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.~~ This letter will be effective: when (1) the Court has approved this letter and (2) the CAD Order is final. 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) and to case reserves that have been presented in a CAD Amendment (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;

"CAD Amendment" means an amendment to a POC, which may include case reserves, properly filed on or before the claim amendment deadline fixed by the Court in the CAD order (The Liquidator has issued guidance regarding CAD Amendments in the Guidelines attached as Exhibit A hereto.);

"CAD order" means a final order of the Court approving a claim amendment deadline in substantially the proposed form of order submitted to the Court by the Liquidator on August 1, 2019;

"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;

"CSUK" means Chubb Services UK Limited, formerly known as ACE INA Services U.K. limited, or such other agent appointed by CIC that is reasonably acceptable to HICIL;

"Claim" means an inward reinsurance claim for paid losses or case reserves against HICIL in respect of an AFIA Liability presented in a POC; or in a CAD Amendment. (It is recognized that case reserves shall be subject to a present value discount approved by the Court.);

"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 amended January 19, 2005 and 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, the Claims Procedures Order and, if applicable, the CAD order; 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. In view of the CAD Order, CIC and HICIL agree that the obligations undertaken by CIC pursuant to the Agreements shall be deemed to include case reserves, and the costs of managing, administering and reviewing case reserves presented by CAD Amendments shall not be deemed such additional costs.
- 2.2 With respect to Claims that are submitted through the filing by a claimant of a POC or a CAD Amendment 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 or a CAD Amendment 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 or CAD Amendment, CIC (through ~~ACE-INA~~CSUK) 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~~CSUK) against any action or proceeding brought by a Claimant arising from CIC's (or ~~ACE-INA~~'sCSUK'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~~CSUK) 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. In view of the CAD order, CIC and HICIL agree that CIC shall not recommend rejection of a Claim, in whole or in part, on the ground that it is a case reserve and not a paid loss. It is recognized that in administering and servicing a Claim, CIC (through CSUK) may, where appropriate, request information as noted on the Addendum to the Guidelines attached as Exhibit A hereto, and such other information as may be requested by CIC and/or the Liquidator for the administration and servicing of a particular Claim.

- 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~~3ed 2014. 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~~ 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 402C: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~~ and with CSUK) 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~~ CSUK) 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-NACSUK~~) in collecting and compiling the reports called for by paragraph 3.1 (including the internal and staff costs of CIC and/or ~~ACE-NACSUK~~) 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 setoff 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-INACSUK~~) 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, and the CAD 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-INACSUK) 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-INACSUK

6.1 The parties acknowledge that ACE-INACSUK is the agent of CIC. CIC undertakes that it will procure that ACE-INACSUK 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 CRC-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~~ and by

~~facsimile email~~ to the address ~~or facsimile number (and marked for~~ and the attention of the person

stated) email addresses below:

If to HICIL:

Home Insurance Company in Liquidation

~~59 Maiden Lane~~

~~61 Broadway, 6<sup>th</sup> Floor~~

New York, New York ~~10038~~10006

Attention: ~~Jonathan Rosen~~ Pete Bengelsdorf, Special Deputy Liquidator

~~Facsimile Number: (212) 530-3100~~

If to CIC:

~~Century Indemnity Company~~

~~do ACE USA~~

~~Law Department~~

~~Routing TL35S~~

~~1601 Chestnut~~

~~Brandywine Group of Insurance and Reinsurance Companies~~

~~510 Walnut Street, WB12R~~

Philadelphia, ~~Pennsylvania 19101~~ PA 19106

Attention: ~~Thomas Wamser~~ Brendan McQuiggan

~~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:

|  
|  
By:

Title:

Date: