

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**

**AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY
LIQUIDATOR, IN SUPPORT OF APPROVAL OF AMENDED CLAIMS PROTOCOL
WITH CENTURY INDEMNITY COMPANY**

I, Peter A. Bengelsdorf, hereby depose and say:

1. I was appointed Special Deputy Liquidator of The Home Insurance Company (“Home”) by the Insurance Commissioner of the State of New Hampshire, as Liquidator (“Liquidator”) of Home. I submit this affidavit in support of the Liquidator’s Motion for Approval of Amended Claims Protocol with Century Indemnity Company (“Motion”). The facts and information set forth below are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information and belief.

2. The present motion requests approval of an amended claims protocol (the “Amended Protocol”) with Century Indemnity Company (“CIC”), negotiated under my direction, to provide for the handling by CIC of certain Home-related American Foreign Insurance Association (“AFIA”) claims after the Claims Amendment Deadline (“CAD”). A copy of the Amended Protocol is attached as Exhibit A to the motion.

3. 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.

4. 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.

5. 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.

6. The New Hampshire Supreme Court affirmed the CAD Order on interlocutory appeal by an AFIA Cedent (Zurich Insurance plc, German Branch) on August 12, 2022.

7. 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 to the motion.

8. 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. It was summarized as well in the Liquidator's motion for approval of the original Protocol in 2004.

9. 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.

10. 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.

11. 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.

12. 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”).

13. 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.

14. 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.

15. 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.

16. 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.¹

17. 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.

18. The Protocol only applies to paid losses, not reserves. The Liquidator according sought to agree with CIC to expand the Protocol to address case reserves.

19. The Amended Protocol does this. It expands the Protocol to apply to case reserves, as well as paid losses. Amended Protocol at 2.² 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 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

¹ There have been disputes between CIC and the Liquidator over the extent of permissible setoffs. That subject falls outside of the Protocol and Amended Protocol.

² 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. CAD Order ¶ 5(b) (barring Potential Claims).

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 and its 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 the motion (markup showing revisions from Protocol to Amended Protocol).

20. 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.

21. 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.

22. I believe 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.

23. 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.

Signed under the penalties of perjury this 9 day of December, 2022.

Peter A. Bengelsdorf

Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA
COUNTY OF VENTURA

On December 9, 2022 before me, Alexander Ilao, Notary Public, personally appeared Peter A. Bengelsdorf, Special Deputy Liquidator of The Home Insurance Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Alexander Ilao*
Signature of Notary Public

