

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

In Re Liquidator Number: 2005-HICIL-11
Proof of Claim Number: INTL 700617
Claimant Name: Century Indemnity Company

**LIQUIDATOR'S RESPONSE TO CIC'S SUBMISSION REGARDING
"NATIONWIDE ARBITRATION AWARDS" CLAIM**

In accordance with the Referee's Ruling of March 16, 2006, Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of the Home Insurance Company ("Home"), hereby responds to the § 15 submission filed by Century Indemnity Company ("CIC") regarding the claims asserted under proof of claim INTL 700617 ("POC") for liabilities of Nationwide Mutual Insurance Company ("Nationwide") under two arbitration awards. CIC's claims should be denied because it has not met its burden of establishing the legal and factual grounds for its claim. CIC has not identified any legal basis under which Home could be liable to CIC for the liabilities of Nationwide under the arbitration awards. CIC's claim that Home is liable for Nationwide's portion of future costs incurred by CIC in administering Nationwide's M.E. Ruddy Pool ("Ruddy Pool") business also fails because Nationwide has transferred the administration of that business to PRO Limited ("PROL"), so there are no CIC costs to be reimbursed. Since CIC has not established that Home is liable on its claim, it may not setoff that claim against its obligations to Home.

As required by § 15(b) of the Claims Procedures, the contested issues of law and fact and exhibits relied upon by the Liquidator are as follows:

Contested issues:

Of law:

- a. Should CIC's claim be denied because CIC failed to present any legal argument addressing Home's alleged liability in its § 15 submission despite notice that the issue presented was such liability?
- b. Is Home liable to CIC for the liabilities of Nationwide to Home under the arbitration awards where Home has not received payment or any other economic benefit from Nationwide?
- c. Is Home liable to CIC for the alleged obligations of Nationwide to Home under the arbitration award for 50% of future cost of administering Nationwide's fixed pool share of Ruddy Pool business where Nationwide has transferred the administration to a third-party?

Of fact: The Liquidator is not aware of any contested issues of fact.

Exhibits relied upon:

- a. The Affidavit of Thomas J. Wamser ("Wamser Aff.") submitted by CIC;
- b. Contract R between Home and Nationwide attached as Exhibit A to the Wamser Affidavit;
- c. The Insurance and Reinsurance Assumption Agreement between Home (as well as other persons selling their interests in AFIA) and Insurance Company of North America ("INA") dated January 31, 1984 ("Assumption Agreement") attached as Exhibit B to the Wamser Affidavit;
- d. The July 17, 2003 order of the arbitration panel ("Phase 3 Order") attached as Exhibit 5 to CIC's Submission and as explained in Nationwide Mut. Ins. Co. v. Home Ins. Co., 429 F.3d 640, 642-43 (6th Cir. 2005);
- e. CIC's POC attached as Exhibit A hereto;
- f. CIC's April 1, 2005 letter attached as Exhibit 4 to CIC's Submission;
- g. The Claims Protocol attached as Exhibit B hereto;
- h. Transcript of March 10, 2006 hearing in 2005-HICIL-11 attached as Exhibit C hereto;
- i. The Affidavit of Jonathan Rosen ("Rosen Aff.") attached as Exhibit D hereto; and

- j. CIC's June 9, 2006 e-mail and letter in 2006-HICIL-18 and 21 attached as Exhibit E hereto.

The Liquidator's legal brief follows.

Background

1. Contract R. This proceeding concerns CIC's claims arising from Home's reinsurance of Nationwide, a member of the Ruddy Pool. Home reinsured Nationwide on Ruddy Pool business under a contract known as Treaty R or Contract R ("Contract R"). See Wamser Aff. ¶ 2 & Ex. A.

2. The Assumption Agreement. The liabilities of Home under Contract R were among the AFIA Liabilities assumed and reinsured by CIC, as successor to INA, under the Assumption Agreement. See Wamser Aff. ¶ 2 & Ex. B. The Assumption Agreement provides in pertinent part that "[CIC] hereby assumes as its direct obligation and agrees to pay on behalf of [Home] when payment thereof is due all insurance and reinsurance liabilities [that constitute AFIA Liabilities]." Assumption Agreement ¶ 2 (emphasis added). "[W]here an insurance or reinsurance contract included in AFIA Liabilities was issued in the name of [Home], [CIC] will make direct payment to the insured . . . as required by such contract." Id. ¶ 6.¹

3. The Assumption Agreement also obligated CIC to administer and service the AFIA Liabilities, including Contract R. See Wamser Aff. ¶ 4. Under that agreement, CIC controlled all matters concerning the AFIA Liabilities (as it was ultimately liable for them). The Assumption Agreement provided that "[CIC] shall (1) administer and service the AFIA Liabilities including their investigation, payment, settlement, defense . . ., (2) have all authority to act in the name of [Home] as may be required to perform such administration and service, and (3) bear all costs and expenses related to the AFIA Liabilities and their administration and

¹ In the event of Home's insolvency, the reinsurance under the Assumption Agreement is to be paid to Home's liquidator under the Assumption Agreement's insolvency clause. See Assumption Agreement ¶ 6 at p. 5.

service.” Assumption Agreement ¶ 3 (emphasis added). “[Home] shall cooperate with INA in the above administration of the AFIA Liabilities taking such actions as INA shall reasonably request in writing including instituting or joining in any action or proceeding related to the AFIA Liabilities. None of the Sellers [including Home] shall make any payment of any AFIA Liabilities without the prior written approval of [CIC] unless under order or a court of competent jurisdiction or an appropriate action of a proper regulatory body.” *Id.* ¶ 5 (emphasis added). By the Assumption Agreement, “[CIC] undertakes to indemnify [Home], not only in form but in fact against the loss or liability arising out of the AFIA Liabilities.” *Id.* ¶ 6.

4. From the early 1990’s, ACE INA Services U.K. Limited (“AISUK”), “acting as disclosed agent for CIC,” administered Nationwide’s Rutty Pool business. See Wamser Aff. ¶ 4.

5. The Nationwide arbitration and panel awards. During the 1990’s, Nationwide commenced arbitration proceedings against Home, alleging among other things that Home violated certain of its duties under Contract R, including its duties as administrator of the Rutty Pool business. See Wamser Aff. ¶ 5; Nationwide Mut. Ins. Co. v. Home Ins. Co., 429 F.3d 640, 642-43 (6th Cir. 2005) (noting that the arbitration went on for years and also involved numerous challenges in the federal district court and four appeals to the Sixth Circuit). Nationwide contended that Home’s obligations extended to Nationwide’s fronted share, and were not limited to Nationwide’s fixed pool share. Nationwide v. Home, 429 F.3d at 650. During the pendency of the arbitration, Home continued to cover Nationwide on a fronted pool share basis under a reservation of rights. See *id.*

6. In accordance with the Assumption Agreement, CIC administered the arbitration in Home’s name and controlled Home’s positions in the arbitration. CIC continued to control the arbitration and the related litigation after appointment of the Liquidator for Home. Rosen Aff.

¶ 5. In administering the Nationwide business and making payments on a fronted pool share basis, CIC acted to protect its own interests as the party assuming and reinsuring Home's obligations under Contract R. See Assumption Agreement ¶¶ 2, 3, 5, 6.

7. The arbitration panel issued two orders during the course of the arbitration that are at issue here. Wamser Aff. ¶ 5. The panel's December 4, 1998 order ("Phase 2 Order") is not included in CIC's submission, but it is summarized in the Wamser Affidavit as follows:

[T]he panel held that Home is only liable for 50% of Nationwide's fixed pool share of the administration costs and that Nationwide is liable for 50% of Home's costs associated with Nationwide's fixed pool share.

Wamser Aff. ¶ 6. This assumes that Home advances such administration costs and then recovers 50% of those costs from Nationwide. The award was confirmed by the courts. See Nationwide Mut. Ins. Co. v. Home Ins. Co., 90 F. Supp. 2d 893, 897 (S.D. Ohio 2000), aff'd, 278 F.3d 621 (6th Cir. 2002).

8. The panel's July 17, 2003 order ("Phase 3 Order") awarded a net amount of \$1.25 million to Home. Wamser Aff. ¶ 7. The Phase 3 Order (CIC Submission Ex. 5) identifies the elements resulting in the net award as follows:

¶ 8. Nationwide has failed in most respects to sustain its burden of demonstrating specific damages flowing from specific breaches by Home. The Panel nevertheless believes that some damage necessarily resulted from Home's breaches, and concludes in its discretion that it would be wrong to deprive Nationwide of any recovery at all. We accordingly award to Nationwide the sum of \$750,000 in respect of Home's breaches of duty.

¶ 9. Home is awarded the sum of \$1,250,000 in respect of its counterclaims for administrative costs and interest.

¶ 10. Nationwide is awarded a contribution from Home of \$500,000 toward Nationwide's costs.

¶ 11. Home is awarded a contribution from Nationwide of \$1,250,000 toward Home's costs.

The award was confirmed by the district court, and the Sixth Circuit affirmed. Nationwide v. Home, 429 F.3d 640.

9. The Sixth Circuit’s decision clarifies that paragraph 9 of the Phase 3 Order granted “Home’s request for recovery of its ‘fronting share administrative costs’ (FSAC).” Nationwide v. Home, 429 F.3d at 643. It explained that the panel “awarded Home the FSAC costs it incurred on Nationwide’s behalf when it was under no obligation to do so.” Id. at 650. “Home [had] filed counterclaims seeking approximately \$1,700,000 for costs incurred in administering Nationwide’s fronted liability and \$370,000 in interest on balances Home advanced on Nationwide’s behalf for payments Home made to Nationwide’s cedents on contracts Nationwide fronted for the pool.” Id. at 650 n.13. The Home’s claims thus totaled \$2,070,000, id., while the panel awarded only \$1,250,000. Phase 3 Order ¶ 9.

10. The Sixth Circuit’s decision also clarifies that paragraph 11 of the Phase 3 Order was an award of “part of [Home’s] costs in the arbitration.” Id. at 643.

11. Contrary to CIC’s suggestion (Wamser Aff. ¶ 7), the net award was not an award of administration costs. The administrative costs award (Phase 3 Order ¶ 9) was only one of the four elements comprising the Phase 3 Order. The net award of \$1.25 million in the Phase 3 Order consists of awards to Home of \$1,250,000 in fronting share administrative costs and interest (¶ 9) plus \$1,250,000 in arbitration costs (¶ 11) minus the awards to Nationwide of \$750,000 for Home’s breaches of duty under Contract R (¶ 8) and \$500,000 in Nationwide’s arbitration costs (¶ 10). Phase 3 Order ¶¶ 8-11. After specifying the four elements of its award in paragraph 8-11 of the Phase 3 Order, the arbitration panel stated that “[a]ll other claims and counterclaims between the parties are dismissed.” Id. ¶ 12.

12. CIC's claim. By the POC, AISUK (for CIC) asserted a two-part claim against Home allegedly totaling \$20 million: (1) a claim for the net award of \$1.25 million against Nationwide in the Phase 3 Order, and (2) a contingent claim for the 50% of the costs of administering Nationwide's fixed pool share that Nationwide may owe to Home for that administration in the future under the Phase 2 Order (presumably the remainder of the claim -- \$18.75 million). See POC (Exhibit A); April 1, 2005 letter (Exhibit 4 to the CIC Submission).

13. Post-award developments. Home was placed in liquidation on June 11, 2003, shortly before the July 17, 2003 Phase 3 Order, which was only final when confirmed by the Sixth Circuit in 2005. Nationwide v. Home, 429 F.3d 640.² The Liquidator has neither collected any money from Nationwide based on the \$1.25 million Phase 3 Order arbitration award nor used that award to offset any liability of Home to Nationwide. The Liquidator also has not collected any money or taken any offset on account of Nationwide's potential future liability under the Phase 2 Order. Rosen Aff. ¶ 9.

14. The Liquidator is informed that AISUK stopped processing Nationwide's Ruddy Pool business at Nationwide's request during mid-2003, and that no action was taken with respect to Nationwide's Ruddy Pool business until late 2004. At that time, Nationwide removed the administration of its Ruddy Pool business from AISUK and engaged another third-party administrator, PROL, to administer that business. CIC, through AISUK, is thus no longer performing that work and has not done so since sometime in 2003. It is accordingly likely that Nationwide will assert that the Phase 2 Order entitles it to collect 50% of the Ruddy Pool fixed pool share administration costs incurred by PROL from Home – a reversal of the situation as presented by CIC. Rosen Aff. ¶ 8.

² The Sixth Circuit denied Nationwide's request for rehearing en banc in 2006.

15. This development resolves the Phase 2 Order part of the POC. This aspect of the claim depends on CIC's incurring expense in administering Nationwide's Rutty Pool business.

As stated by CIC:

To the extent that CIC, through AISUK and on behalf of Home, incurred administration costs in excess of 50% of Nationwide's fixed pool share, CIC is entitled to reimbursement of those costs from Home. This component of the Claim is contingent, and will become absolute as costs are incurred during the course of AISUK's administration of the Nationwide Rutty Pool business on behalf of Home.

Wamser Aff. ¶ 6 (emphasis added). Since Nationwide has transferred the administration of its Rutty Pool business to PROL, there will be no such costs incurred by AISUK for CIC.³

ARGUMENT

HOME IS NOT LIABLE TO CIC FOR NATIONWIDE'S LIABILITY TO HOME.

A. CIC Fails To Address The Principle Issue: Whether Home Is Liable To CIC.

16. The Liquidator has repeatedly pointed out that the principal issue in this disputed claim proceeding is liability. As stated at the March 10, 2006 hearing in this matter: "It's a legal question. Is Home liable for that arbitration award to [CIC]?" 3/10/06 Tr. at 20 (Exhibit C). See id. at 8 ("The reason the Liquidator denied the claim is because it is our position that Home is not liable to [CIC] with respect to the award against Nationwide."), 13 ("We disagree that Home is liable to CIC for an award against Nationwide."). The Liquidator also made this point in denying the claim, in denying reconsideration, and in the objection to CIC's request for evidentiary hearing, where the Liquidator stated that: "The issue is thus whether the Assumption Agreement (or some other legal ground) makes Home liable to [CIC] with respect to the arbitration award against Nationwide." Objection ¶ 5 (emphasis in original).

³ To the extent Nationwide were to assert a claim against Home for 50% of fixed pool share administration costs (or otherwise), any such amount would not be a Home liability under the Assumption Agreement ¶ 3 as confirmed by the Claims Protocol ¶ 5.1.

17. Despite this, CIC fails to offer any legal basis for Home's asserted liability in its submission. CIC simply assumes that Home is liable for Nationwide's obligations. It does not articulate any legal theory under which this might be the case. The setoff arguments that occupy most of CIC's submission all presuppose that Home is liable to CIC for Nationwide's liability to Home. They assume that there is a "mutual debt" between Home and CIC as required by RSA 402-C:34 (emphasis added). Absent liability, however, there is no debt owed by Home to CIC.

18. CIC's continued efforts to shift the burden of presenting the claim and supporting legal and factual analysis to the Liquidator should not be rewarded. The claimant bears the burden of substantiating its claim, both legally and factually. See RSA 402-C:38, I (claimant is to supply a "verified statement" including "[t]he particulars of the claim" and [a] copy of any written instrument which is the foundation of the claim"), II (Liquidator may request claimant "to present information or evidence supplementary to that required under paragraph I, and may take testimony under oath, require production of affidavits or depositions or otherwise obtain additional evidence"); Claims Procedures Order §§ 5(b)-(d), 6(a). Section 15 of the Claims Procedures requires a claimant state the disputed issues, identify the materials on which it relies and provide a "legal brief." Claims Procedures Order § 15(b).

19. Here, CIC was on notice that the issue to be decided by the Referee is whether Home is liable for its claims but failed to address the question. It also chose not to even explain the factual basis for its claim, and left it to the Liquidator -- who did not control Home's arbitration position or administer the Ruddy Pool business -- to explain the arbitration awards and point out that AISUK is no longer administering the Nationwide business for CIC. CIC has asserted in 2006-HICIL-18 and 21 that a failure to provide information supporting "a baseline understanding of the factual and legal issues involved" warrants dismissal. See Exhibit E (CIC

June 9, 2006 email and letter requesting dismissal for failure to provide mandatory disclosures). Since CIC has chosen not to substantiate its claim by presenting any argument on liability and only skeletal facts despite being aware that liability was the principle issue for the § 15 submission, CIC's claim should be denied.

20. The denial of CIC's claim does not mean that CIC will not receive the economic benefit of the awards against Nationwide. As the Liquidator made clear at the March 10, 2006 hearing (3/10/06 Tr. at 8), CIC will receive the economic benefit of the \$1.25 million award against Nationwide when Nationwide's claims against Home are allowed by the Court. At that time, the Nationwide liability represented by the Phase 3 Order will be used to satisfy a Home liability, which is also a CIC liability, by offset. Once Home has benefited from Nationwide's liability, so will CIC. CIC is already effectively receiving the benefit of the Phase 2 Order because Nationwide has removed that responsibility from AISUK and transferred it to PROL. CIC is no longer administering Nationwide's Rutty Pool business, and the \$18.75 million valuation CIC forecast for this claim in its proof of claim has no basis.

B. Home Is Not Liable To CIC In Contract Or Under Principles of Unjust Enrichment Because Home Has Not Benefited From The Arbitration Awards Establishing Nationwide's Liability.

21. Home has not received the benefit of the Phase 2 and Phase 3 Orders. The Assumption Agreement does not contain any provision that would make Home liable for a Nationwide liability. Under the Assumption Agreement, CIC assumed "as its direct obligation" and agreed to pay on Home's behalf Home's obligations for the AFIA Liabilities, such as Contract R, directly to the reinsureds, such as the Rutty Pool members. Assumption Agreement ¶¶ 2, 6. CIC agreed to administer and service the AFIA Liabilities and bear all costs and expenses related to the liabilities and their administration and service. *Id.* ¶ 3. It also acquired

the authority to act in Home's name in the administration and service of the liabilities, while Home was obligated to cooperate with CIC (including instituting actions or proceedings) and could not make payment without CIC approval except by court or regulatory direction. *Id.* ¶¶ 3, 5. Home could only be liable to CIC where Home has received the amounts from Nationwide or obtained the benefit of those amounts by offsetting them against Home's allowed liabilities to Nationwide. That has not happened here.

22. This does not mean that the Liquidator can somehow delay matters to CIC's detriment. Under the Assumption Agreement, CIC could bring proceedings against Nationwide in Home's name to collect on the Phase 3 Order. See Assumption Agreement ¶ 5. (Indeed, the Liquidator assented to continuation of the arbitration and related litigation during the liquidation.) If the \$1.25 million were collected from Nationwide, then Home would benefit and CIC would be entitled to benefit as well. If, as is more likely, Nationwide were to assert offsetting claims against Home in the collection proceeding, then upon the determination of those claims and their use as an offset against Home, it would benefit from the award and CIC would also be entitled to benefit. CIC, however, has taken no steps to collect on the arbitration award. *Rosen Aff.* ¶ 10.

23. New York law governs the Assumption Agreement, Assumption Agreement § 10, so the Liquidator has considered whether there is an implied or extra-contractual basis for Home's alleged liability to CIC on a theory of unjust enrichment under New York law. There is no basis for CIC to assert such a claim. "To prevail on a claim of unjust enrichment, a plaintiff must show that (1) defendant was enriched (2) at plaintiff's expense, and (3) that 'it is against equity and good conscience to permit . . . defendant to retain what is sought to be recovered.'" *Clark v. Daby*, 300 A.D.2d 732, 732 (2d Dep't 2002), quoting *Lake Minnewaska Mountain*

Houses, Inc. v. Rekis, 259 A.D.2d 797, 798 (3d Dep’t 1999), quoting Paramount Film Distributing Corp. v. State of New York, 30 N.Y.2d 415, 421 (1972), cert. denied, 414 U.S. 829 (1973).⁴

24. None of the required elements are present here. First, Home has not been enriched by the arbitration awards. It has not received the \$20 million from Nationwide. Home is not liable to CIC for amounts it never received. Cf. Geller v. County Line Auto Sales, Inc., 86 F.3d 18, 22 (2d Cir. 1995) (no unjust enrichment where “Kleppner, not the defendants, received the health care benefits”).⁵

25. Second, an uncollected arbitration award does not enrich Home “at plaintiff’s expense.” See Clark, 300 A.D.2d at 732; City of Syracuse v. R.A.C. Holdings, Inc., 258 A.D.2d 905, 906 (4th Dep’t 1999). Here, Home has not benefited in any way that corresponds to a loss or detriment to CIC. Absent Home’s liquidation, Nationwide would still apply the arbitration awards against Home’s/CIC’s obligations to Nationwide under Contract R. Further, CIC is not bearing the costs of administering Nationwide’s Rutty Pool business.

26. Third, the circumstances here do not meet the “equity and good conscience” standard required for any unjust enrichment claim. As stated in the leading case of Paramount Film Distributing, 30 N.Y.2d at 421, the “essential inquiry in any action for unjust enrichment or restitution is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered. . . . Generally, courts will look to see if a benefit has been

⁴ Similarly, under New Hampshire law, “[t]he doctrine of unjust enrichment is that one shall not be allowed to profit or enrich himself at the expense of another contrary to equity. . . . [A] trial court may require an individual to make restitution for unjust enrichment if he has received a benefit that would be unconscionable to retain.” Pella Windows & Doors, Inc. v. Faraci, 133 N.H. 585, 586 (1990) (citations and quotations omitted). To be entitled to restitution for unjust enrichment, the party must demonstrate both the unjust enrichment and that “the person sought to be charged must have wrongfully secured a benefit, or passively received one which it would be unconscionable to retain.” In re Haller, 150 NH 427, 430 (2003) (quoting 66 Am. Jur. 2d Restitution and Implied Contract, § 10).

⁵ “[W]hen a court assesses damages in an unjust enrichment case, the focus is not upon the cost to the plaintiff, but rather it is upon the value of what was actually received by the defendants.” Iacomini v. Liberty Mutual Ins. Co., 127 N.H. 73, 78 (1985) (quoting R. Zoppo Co., Inc. v. City of Manchester, 122 N.H. 1109, 1113 (1982)).

conferred on the defendant under mistake of fact or law, if the benefit still remains with the defendant, if there has been otherwise a change of position by the defendant, and whether the defendant's conduct was tortious or fraudulent." *Id.* See Lake Minnewaska Mountain Houses, 259 A.D.2d at 799 ("[P]rinciples of equity mandate consideration of the totality of the circumstances."); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Chipetine, 221 A.D.2d 284, 286 (1st Dep't 1995) ("In so doing, courts will consider whether the benefit remained with the defendant, and whether defendant's conduct was tortious or fraudulent.").

27. These factors weigh heavily against any finding of unjust enrichment here. CIC litigated the arbitration to protect itself, and the arbitration award has not been paid because Nationwide is expected to have claims against Home (for which CIC is 100% responsible under the Assumption Agreement) that exceed the amount of the award. Most likely for the same reason, CIC has chosen not to seek to collect on the arbitration award. Home has not received the \$1.25 million (or any amount for that matter) from Nationwide under the arbitration awards. Home thus never had or benefited from the award establishing Nationwide's liability. Home certainly has not engaged in any tortious or fraudulent conduct, and there is no passive receipt of a benefit that would support an unjust enrichment claim.⁶

28. Further, allowing the claim against Home would result in a net loss to Home because CIC would immediately offset the \$1.25 million against its obligations to Home while Home has not received that amount or any benefit from it. Allowing a claim for administrative costs would give CIC recovery for costs it has not incurred. "Generally, if a plaintiff's recovery will lead to an undue net loss to a defendant by reason of a changed position, as will often be the case when the funds have been disbursed, then the parties being equally innocent, recovery may

⁶ See Concrete Constructors, Inc. v. Harry Shapiro & Sons, Inc., 121 N.H. 888, 891 (1981) (rejecting a claim of unjust enrichment because the defendants were not "holding any sums not expended, and neither defendant profited or became enriched at the expense of the plaintiff").

be denied.” Paramount Film Distributing, 30 N.Y.2d at 422 (denying recovery where fees had been “disbursed long ago”). This is particularly true where the defendant did not receive the funds at issue. See Geller, 86 F.3d at 22 (no unjust enrichment where payments made to another, not defendants). In the circumstances, equity does not impose liability on Home for Nationwide’s obligations.

29. CIC will appropriately receive the benefit of the Phase 3 Order when Nationwide proves its claims against Home. Contrary to CIC’s suggestion (CIC Submission ¶ 3), the Liquidator does not control the timing of assertion of claims by Nationwide. Nationwide determines when to assert claims, and it has every incentive to prosecute claims up to the amount of the Phase 3 Order to offset those liabilities. CIC will handle Nationwide’s claims and make recommendations to the Liquidator under the Claims Protocol.⁷ So too, CIC is free to initiate action to recover from Nationwide on the Phase 3 Order. Rosen Aff. ¶¶ 10-11.

30. Finally, as noted in ¶ 20 above and notwithstanding that Home is not liable to CIC for the amounts, CIC will receive the economic benefit of the \$1.25 million arbitration award when it is used to offset Nationwide’s claims. When the Court allows Nationwide’s claims (after CIC involvement under the Claims Protocol), Home will be liable to Nationwide on the claims, and Nationwide will offset the liabilities. At the same time, CIC is liable to Home for Nationwide’s claim under the Assumption Agreement, and it will benefit because Home’s liability will be reduced by the \$1.25 million Nationwide liability. In this way, CIC will receive the benefit of the payments at the same time as Home does. At present, however, Home is not liable to CIC for the Nationwide award because it has never received payment or any other economic benefit from the award. Since Home is not liable to CIC, CIC cannot offset

⁷ While the Liquidator could determine the order in which CIC is to adjust the claims under the Claims Protocol § 2.3, no direction that would delay CIC’s consideration of Nationwide’s claims has been given.

Nationwide's liability against CIC's payment obligations to Home under the Assumption Agreement.

CONCLUSION

For the reasons stated, the Referee should deny CIC's \$20 million claim and rule that CIC is not entitled to any setoff for it.

Respectfully submitted,

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

By his attorneys,




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June 19, 2006

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Response CIC's Submission was sent, this 19th day of June, 2006, by email to all persons on the attached service list.



Eric A. Smith

SERVICE LIST

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PROOF OF CLAIM

The Home Insurance Company,

Merrimack County Superior Court, State of New Hampshire 03-E-0106

Read Carefully Before Completing This Form

Please print or type

FOR LIQUIDATOR'S USE ONLY
DATE PROOF OF CLAIM RECEIVED JUN 14 2004
HICIL

INTL 700617

The Deadline for Filing this Form is June 13, 2004.

You should file this Proof of Claim form if you have an actual or potential claim against The Home Insurance Company of any of its former subsidiaries* ("The Home") even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be postmarked no later than June 13, 2004. Failure to timely return this completed form will likely result in the DENIAL OF YOUR CLAIM. You are advised to retain a copy of this completed form for your records.

- 1. Claimant's Name: ACE INA SERVICES U.K. LIMITED
- 2. Claimant's Address: KENT, HOUSE ROMNEY PLACE, MAIDSTONE ME15 6ET, ENGLAND
- 3. Claimant's Telephone Number: (+44) 1622 403391
Fax Number: (+44) 1622 403045
Email address: MIKE.DURKIN@ACE-INA.COM
- 4. Claimant's Social Security Number, Tax ID Number or Employer ID Number: _____
- 5. Claim is submitted by (check one):
 - a) Policyholder or former policyholder
 - b) Third Party Claimant making a claim against a person insured by The Home
 - c) Employee or former employee
 - d) Broker or Agent
 - e) General Creditor, Reinsurer, or Reinsured
 - f) State or Local Government Entity
 - g) Other; describe: _____

If your name, address, e-mail address, or telephone number set forth above are incorrect, or if they change, you must notify the Liquidator so she can advise you of new information.

Describe in detail the nature of your claim. You may attach a separate page if desired. Attach relevant documentation in support of your claim, such as copies of outstanding invoices, contracts, or other supporting documentation.

AWARD AGAINST NATIONWIDE IN RESPECT OF NATIONWIDE v HOME

6. Indicate the total dollar amount of your claim. If the amount of your claim is unknown, write the word "unknown", BUT be sure to attach sufficient documentation to allow for determination of the claim amount.

\$ 20M (if amount is unknown, write the word "unknown").

7. If you have any security backing up your claim, describe the nature and amount of such security. Attach relevant documentation.

8. If The Home has made any payments towards the amount of the claim, describe the amount of such payments and the dates paid:

9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim?

10. Do you claim a priority for your claim? If so, why:

11. Print the name, address and telephone number of the person who has completed this form.

Name: M Durkin

Address: AS ABOVE

Phone Number: _____

12. If represented by legal counsel, please supply the following information:
- a. Name of attorney: _____
 - b. Name of law firm: _____
 - c. Address of law firm: _____
 - d. Attorney's telephone: _____
 - e. Attorney's fax number: _____
 - f. Attorney's email address: _____

13. If using a judgment against The Home as the basis for this claim:
- a. Amount of judgment _____
 - b. Date of judgment _____
 - c. Name of case _____
 - d. Name and location of court _____
 - e. Court docket or index number (if any) _____

14. If you are completing this Proof of Claim as a Third Party Claimant against an insured of The Home, you must conditionally release your claim against the insured by signing the following, as required by N.H. Rev. Stat. Ann. § 402-C:40 I:

I, _____ (insert claimant's name), in consideration of the right to bring a claim against The Home, on behalf of myself, my officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives hereby release and discharge _____ (insert name of defendant(s) insured by The Home), and his/her/its officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives, from liability on the cause(es) of action that forms the basis for my claim against The Home in the amount of the limit of the applicable policy provided by The Home; provided, however, that this release shall be void if the insurance coverage provided by The Home is avoided by the Liquidator.

Claimant's signature

Date

15. All claimants must complete the following:

I, MICHAEL DURKIN (insert individual claimant's name or name of person completing this form for a legal entity) subscribe and affirm as true, under the penalty of perjury as follows: that I have read the foregoing proof of claim and know the contents thereof, that this claim in the amount of TWENTY MILLION dollars (\$ 20M) against The Home is justly owed, except as stated in item 9 above, and that the matters set forth in this Proof of Claim are true to the best of my knowledge and belief. I also certify that no part of this claim has been sold or assigned to a third party.

M Durkin
Claimant's signature

June 11, 2004
Date

Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

16. Send this completed Proof of Claim Form, postmarked by June 13, 2004, to:

The Home Insurance Company in Liquidation
P.O. Box 1720
Manchester, New Hampshire 03105-1720

You should complete and send this form if you believe you have an actual or potential claim against The Home even if the amount of the claim is presently uncertain.

Home Insurance Company

Supplementary Information for question 5

We reserve the right, pursuant to New Hampshire Rev. Stat. sections 402-C:37-39, at any time, to amend or supplement this Proof of Claim in the event contingent claims develop or become absolute, the existence of a previously unknown claim becomes known, and factual and/or legal circumstances require such amendment or supplementation. This number has been furnished to you in the interests of providing an estimated range for contingent and unknown claims (which at the present time are indeterminate and could change)".

_____)
 In the Matter of the Arbitration Between)
)
 NATIONWIDE MUTUAL INSURANCE)
 COMPANY,)
) Petitioner,)
)
 -and-)
)
 HOME INSURANCE COMPANY,)
)
) Respondent.)
 _____)

Before:
 Eugene Wollan, Esq., Umpire
 Ronald A. Jacks, Esq., Arbitrator
 Stephen Ruttle, Q.C., Arbitrator

ORDER

The Panel, having considered the closing submissions, the evidentiary hearing, and all prior proceedings in this arbitration, issues this Final Order and Award:

1. Contract R is a contract of reinsurance.
2. The Addendum to Contract R, by necessary inference, imposed on Home a duty to supervise Rutty's inward and outward claim handling in respect of Nationwide's fixed pool share only but not a duty to otherwise replace Nationwide in the runoff or to fund Rutty.
3. In relation to Nationwide's fixed pool share of inward and outward claims, Home and Rutty agreed to deal only with each other. In relation to all other matters, Nationwide retained responsibility to supervise Rutty.
4. Home had a duty to pay accounts within a reasonable time from receipt. In that regard, Home also had the right to make reasonable inquiries and conduct reasonable inspections.
5. In exercising those rights and fulfilling those duties, Home was obligated to act in good faith and with fair dealing.
6. Although many of Home's queries and inspections were appropriate and legitimate, others were excessive and inappropriate. Likewise, many of Home's claim payments were timely but others were not. To the extent that some queries and inspections were excessive, and to the extent that some claim payments (including the Excess claim) were untimely, they constituted breaches of duty by Home.
7. Home's breaches of duty did not amount to bad faith.

8. Nationwide has failed in most respects to sustain its burden of demonstrating specific damages flowing from specific breaches by Home. The Panel nevertheless believes that some damage necessarily resulted from Home's breaches, and concludes in its discretion that it would be wrong to deprive Nationwide of any recovery at all. We accordingly award to Nationwide the sum of \$750,000 in respect of Home's breaches of duty.

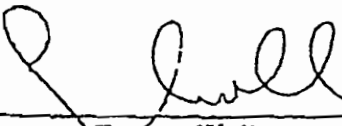
9. Home is awarded the sum of \$1,250,000 in respect of its counterclaims for administrative costs and interest.

10. Nationwide is awarded a contribution from Home of \$500,000 toward Nationwide's costs.

11. Home is awarded a contribution from Nationwide of \$1,250,000 toward Home's costs.

12. All other claims and counterclaims between the parties are dismissed.

Dated: July 17, 2003



Eugene Wollan
Umpire

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company

Docket No.: 03-E-0106

ORDER APPROVING CLAIMS PROTOCOL
WITH CENTURY INDEMNITY COMPANY

The Court held a hearing this date, at which all interested parties were represented, on the motion of Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of the Home Insurance Company ("Home") for an order approving a claims protocol (the "Protocol") with Century Indemnity Company. After considering the offers of proof and the supporting confidential affidavit of Peter A. Bengelsdorf, the Court concludes that:


1. The Protocol is reasonable, prudent and in full accordance with the law;
2. The Protocol is in the best interests of the liquidation of Home;
3. The Protocol is entered into in good faith; and
4. The interests of the claimants are well protected.

Accordingly, the Liquidator's Motion for Approval of Claims Protocol with Century Indemnity Company is **GRANTED**, and the Protocol is **APPROVED**.

So ordered.

Date

11/12/04


Kathleen A. McGuire
Presiding Justice

**THE HOME
INSURANCE
COMPANY**
In Liquidation



59 Maiden Lane
New York, New York 10038

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

August 6, 2004

VIA COURIER

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

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

Dear Tom:

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

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

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

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

1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Submission, Adjustment and Adjudication of AFIA Liabilities

- 2.1 CIC shall make available such personnel as are reasonably necessary to perform effectively the management, administration and service obligations undertaken by CIC pursuant to the Agreements. HICIL agrees and confirms that, if, and to the extent that, CIC incurs costs (including internal costs) in providing services pursuant to this letter agreement that are in excess of those incurred by CIC in the fulfillment of CIC's obligations under the Agreements prior to the liquidation of HICIL, such additional costs reasonably incurred by CIC in such management, administration and/or servicing shall (and the Liquidator agrees that they shall) be chargeable by CIC to HICIL, and payable to CIC as an administration cost pursuant to N.H. RSA 402-C:44, I. CIC shall present such additional costs to the Liquidator for determination pursuant to the Claims Procedures Order and RSA 402-C:41.
- 2.2 With respect to Claims that are submitted through the filing by a claimant of a POC in the HICIL estate, HICIL shall provide CIC with a copy thereof and all supplements thereto. In the event that an amendment to the Claims Procedures Order or RSA 402-C materially alters the procedures for the determination of Claims that are submitted by the filing of a POC in the HICIL estate, either party shall have the right to terminate this letter agreement upon written notice to the other party. This provision shall not have and shall not be construed to have any effect on the parties' obligations under the Agreements.
- 2.3 Upon receipt of the POC, CIC (through ACE-INA) shall administer and service the Claim in accordance with the relevant Agreement. HICIL shall determine the order in which Claims are to be administered and serviced. HICIL shall defend and hold harmless CIC (and ACE-INA) against any action or proceeding brought by a Claimant arising from CIC's (or ACE-INA's) compliance with HICIL's determination as to the order in which Claims are to be administered and serviced. Following adjustment of a Claim, CIC (through ACE-INA) shall, within ten (10) business days and in writing, notify HICIL of its recommendations with respect to the agreement or rejection, in whole or in part, of the Claim, together with the reasons for such recommendations.
- 2.4 If the Liquidator concurs with the recommendations of CIC, he shall issue a Notice of Determination to the relevant Claimant, with a copy to CIC. CIC shall effect remittance to HICIL in respect of the Claim to the extent allowed on the Notice of Determination in accordance with paragraphs 3.3 and 3.4.
- 2.5 If the Liquidator disagrees with the recommendations of CIC, he shall notify CIC thereof in writing, and give his reasons for so disagreeing. The Liquidator and CIC shall thereafter promptly confer to attempt mutual resolution of their disagreement. If the parties do not reach such mutual resolution within ten (10) business days, the matter shall be referred (by either party) to a single arbitrator ("Arbitrator") agreed upon by the parties.

- 2.6 Where the contract underlying the Claim at issue is not governed by English law, the Arbitrator shall be chosen from the panel of arbitrators maintained by ARIAS (US). If the parties cannot agree on the identity of the Arbitrator within five (5) business days, each party shall submit the names of three (3) candidates, each of whom shall be chosen from the panel of arbitrators maintained by ARIAS (US). Within three (3) business days of the exchange of the lists of candidates, the parties shall either agree on the Arbitrator from the six (6) candidates selected or each party shall delete two (2) of the other party's candidates and the Arbitrator shall be chosen by lot from the remaining two (2) candidates. The Arbitrator shall resolve the disagreement between the parties as to whether the Claim should be agreed or rejected, in whole or in part, on written submissions by the parties, which the parties shall be entitled to supplement with information and documentation relating to the Claim, and shall issue a ruling promptly after receiving such submissions; provided that, if the Arbitrator considers that the decision required of him cannot be made on the basis of the written submissions provided, the Arbitrator shall be entitled to call for such other submissions as he considers necessary in order for him to reach a decision.
- 2.7 Where the contract underlying the Claim at issue is governed by English law, the Arbitrator shall have the qualifications required by Rule 6.3 of the Arias (UK) Arbitration Rules, 2ed 1997. If the parties cannot agree on the identity of the Arbitrator within five (5) business days, the Arbitrator shall be chosen by the Chairman of ARIAS (UK). The Arbitrator appointed shall have the qualifications required by Rule 6.3. The parties agree that the Arbitrator is entitled and bound to resolve and determine by declaration any disagreement between the parties as to whether the Claim should be agreed or rejected, in whole or in part. The Arbitrator's award shall be based on written submissions by the parties, which the parties shall be entitled to supplement with information and documentation relating to the Claim. The Arbitrator shall issue his award promptly after receiving such submissions. If, however, the Arbitrator considers that he cannot make an award on the basis of such submissions, he shall be entitled to call for such additional submissions and information that he considers necessary in order for him to make his award. In resolving the disagreement between the parties, the Arbitrator will solely interpret the terms and conditions of the contract entered into between Home and the Claimant. The Arbitrator will apply the proper law of the contract, without regard to the law of any other legal system, in resolving the disagreement between the parties.
- 2.8 The cost of the Arbitration shall be apportioned equally between the parties. The Liquidator shall issue a Notice of Determination in accordance with the Arbitrator's ruling, and shall not, unless the ruling is subject to being vacated on a ground specified in N.H. RSA 542:8, in any proceeding before the Court take a position contrary to the Arbitrator's ruling. The Liquidator will seek approval to seal the ruling to prevent disclosure to any third party. CIC shall thereafter effect remittance to HICIL in respect of the Claim, to the extent allowed on the Notice of Determination, in accordance with paragraphs 3.3 and 3.4.
- 2.9 The parties acknowledge that, should a Claimant disagree with a Notice of Determination, the Claimant may, at its option, submit a Request for Review to the Liquidator in accordance with the Claims Procedures Order. In such event, the Liquidator

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

- 2.10 If the Liquidator concurs with the recommendations of CIC, he shall issue a Notice of Redetermination to the relevant Claimant consistent with those recommendations, with a copy to CIC. CIC shall effect remittance to HICIL in respect of the Claim to the extent allowed on the Notice of Redetermination in accordance with paragraphs 3.3 and 3.4
- 2.11 If the Liquidator disagrees with the recommendations of CIC, he shall notify CIC thereof in writing, and give his reasons for disagreeing. The parties shall thereafter promptly confer to attempt mutual resolution of their disagreement.
- 2.12 If the parties are unable to reach such mutual resolution within ten (10) business days, the matter shall be referred (by either party) to an Arbitrator and the provisions of paragraphs 2.5 to 2.8 inclusive shall apply; provided that in the event that the parties have, pursuant to paragraphs 2.6 or 2.7, as the case may be, already arbitrated specific issues raised in the Request for Review, the parties shall not be entitled to re-arbitrate such issues and the rulings rendered with respect thereto shall have a preclusive effect and shall be and remain binding on the parties.
- 2.13 The parties further acknowledge that, should a Claimant disagree with a Notice of Determination, the Claimant is not obliged to submit a Request for Review but may, at its option, file an Objection with the Court in accordance with the Claims Procedures Order. A Claimant that disagrees with a Notice of Redetermination may also file an Objection with the Court in accordance with the Claims Procedures Order. In either event, the Liquidator shall promptly provide CIC with a copy of the Objection so filed and shall provide CIC with a copy of the Notice of Disputed Claim sent by the Liquidation Clerk to the claimant in response to the filing of the Objection, so as to avail CIC of its right under the Agreements to interpose defenses in the ensuing Disputed Claim proceeding. If CIC elects to interpose defenses in the Disputed Claim proceeding it shall, at its own cost and expense, seek leave to so participate by filing a Motion to Participate with the Referee no later than thirty (30) days after the date of mailing to the claimant of the Notice of Disputed Claim, identifying the contract in question and stating that it has a contractual right to interpose defenses. The Liquidator agrees that CIC has the right to participate in Disputed Claims proceedings and to raise any defense or defenses available to HICIL, and shall assent to CIC's participation.
- 2.14 The Disputed Claim proceedings procedures shall be governed by New Hampshire law. Questions of contractual construction and interpretation with respect to the Disputed Claim shall be governed by applicable law in accordance with the express terms of the contract, without regard to the law of any other legal system. Where the contract is silent as to its governing law and English law may apply, the Referee shall appoint an expert (with the qualifications and in the manner provided for below) and consult with such expert to determine which law is applicable. The Referee's decision on choice of law shall be final and binding on the parties.

- 2.15 The Disputed Claim proceedings shall be conducted by the Referee, who may appoint an expert to assist the Referee. Where the law applicable to the contract is English law (or where it has been determined as above stated that the contract is to be construed in accordance with English law), the Referee shall appoint an expert (or, as applicable, retain and be assisted by the expert appointed as stated above) with knowledge of the law of insurance and reinsurance in England as well as industry custom and practice. Such expert shall be either a retired English judge or a Queen's Counsel of the English bar and, in either case, shall be a person disinterested in the subject matter of the Disputed Claim proceeding. HICIL and CIC shall attempt to jointly propose a person to be appointed as such expert by the Referee, provided that, if HICIL and CIC do not agree on a person to be jointly proposed, HICIL and CIC shall each be entitled to submit to the Referee the names of three candidates fulfilling the above requirements. The Referee shall choose the expert. The Referee may prescribe such further reasonable procedures and provisions as the Referee, in the exercise of discretion, deems appropriate to assist in the adjudication of Disputed Claims. The foregoing includes, but is not limited to, the receipt of documents and other information relating to the Disputed Claim and the taking of evidence. The expert shall issue a Report and Recommendation to the Referee after the evidence has closed whereupon the Referee shall provide a copy of the Report and Recommendation to each of the Claimant, HICIL and CIC. The Referee may use the Report and Recommendation as the Referee deems appropriate and shall attach a copy of the Report and Recommendation as an exhibit to the Referee's Report to the Court. The costs of the Referee and the expert shall be chargeable against HICIL as part of the expense of the HICIL liquidation.
- 2.16 Should CIC participate in Disputed Claim proceedings, it shall, at its own cost and expense, interpose any defense or defenses that it may deem available to HICIL, although the cost or expense so incurred shall be (and the Liquidator acknowledges and agrees that they shall be) chargeable, subject to approval by the Court, against HICIL as part of the expense of the HICIL liquidation as an administration cost pursuant to N.H. RSA 402-C:44, I, to the extent of the pro rata share of the benefit which may accrue to HICIL solely as a result of the defense undertaken by CIC and to the extent not otherwise received by CIC under paragraph 2.17.
- 2.17 The Referee shall make an award of costs in every Disputed Claim proceeding in which CIC participates involving a contract governed by English law. If an order for costs is made against CIC, CIC shall bear those costs without recourse to HICIL. If an order for costs is made against the claimant, CIC, to the extent that CIC has incurred those costs, shall (and the Liquidator acknowledges and agrees that CIC shall) be entitled to the benefit of such order, and to receive and retain payment of such costs in full without diminution or set-off of any kind whatsoever, as administration costs pursuant to N.H. RSA 402-C:44, I.
- 2.18 The Liquidator and/or HICIL and CIC shall fully cooperate with each other (including in this ACE-INA) in relation to the matters covered by this letter and in particular information relating to notices, Requests for Review and/or Objections and the defense of Claims. Once CIC has commenced administering and servicing a Claim, the Liquidator and/or HICIL shall provide CIC with a copy of any written communication between the Liquidator and/or HICIL and the Claimant concerning the Claim and shall share the

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

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

3. Reports, Remittances and Inspection of Records

- 3.1 CIC (through ACE-INA) shall within ten (10) business days after the end of each three month period, provide to HICIL copies of the *brokers' forms* relating to each Claim being handled by CIC or, where the details of the Claim are not the subject of a *broker's form*, copies of the relative *cedant's form*, supplemented, where those *forms* are not adequate for the purpose, by information from CIC, disclosing, on a by-cedent basis (a) the name of the underlying insured; (b) the nature and amount of each Claim; (c) the date each Claim was presented to CIC; (e) the adjustment status of each Claim, and where a Claim is the subject of legal action, details of (i) the nature of the action; (ii) the forum in which it is being conducted; (iii) the amount at issue; and (iv) material developments (if any) in it since the previous such report; and (f) a summary of Claims adjusted in the preceding three month period indicating for each Claim (i) the amount agreed; (ii) the amount disputed; and (iii) the reason for the amount disputed; and (g) a summary of all payments made by CIC to HICIL in that three month period.
- 3.2 The reasonable costs incurred by CIC (and/or ACE-INA) in collecting and compiling the reports called for by paragraph 3.1 (including the internal and staff costs of CIC and/or ACE-INA) and of providing the same to HICIL shall (and the Liquidator agrees that they shall) be chargeable by CIC to HICIL, and payable to CIC as an administration cost pursuant to N.H. RSA 402-C:44, I. CIC will not charge HICIL for any systems enhancements necessary to produce any report required by paragraph 3.1.
- 3.3 Within thirty (30) business days after the end of each month, CIC shall (a) provide HICIL with a statement showing (i) all amounts payable by CIC to HICIL pursuant to paragraphs 2.4, 2.8, 2.10, 2.19 and 3.7 for the preceding month; (ii) the amount of funds paid by CIC with respect to such payables; and (iii) any amounts claimed in offset in accordance with paragraph 3.4 against amounts due to HICIL, together with sufficient detail and an explanation as to the basis for the asserted offset; and (b) subject to the proviso to this paragraph, effect a wire transfer to such account as may, from time to time, be designated by the Liquidator for the balance. CIC agrees and acknowledges that the Liquidator fully reserves all rights in relation to any offset asserted. CIC reserves (and the Liquidator acknowledges that CIC so reserves) all rights in respect of any payments made, including as to amount and as to the obligation of CIC to make the same; PROVIDED THAT, where the Claimant has submitted a request for Review or an Objection in respect of a Claim disputing the quantum of the Claim or elements of it, CIC shall make remittance in respect of any portions of the Claim allowed in full or agreed between CIC and the Claimant. CIC shall not be obliged to make remittance in respect of the disputed amount unless and until the relevant proceedings settle the disputed amount or it is negotiated and agreed between the claimant and CIC with the concurrence of the

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

- 3.4 Notwithstanding anything herein to the contrary, payments to HICIL shall be net of set-off in compliance with N.H. RSA 402-C:34 or otherwise allowed by New Hampshire law.
- 3.5 CIC will not be liable to make payment in respect of any AFIA Liability unless the relevant Claim has been allowed in the HICIL liquidation. The Liquidator will consent to CIC's standing to object to the Liquidator's decision to permit a late filed Claim to receive dividends pursuant to N.H. RSA 402-C:37, II or III. Where on such objection the late filed Claim is not permitted to receive dividends pursuant to N.H. RSA 402-C:37, II or III, CIC shall be entitled to recover the amount in fact paid by it in respect of any such Claim, whether by way of deduction from subsequent payments or otherwise.
- 3.6 In the event that HICIL considers that CIC has ceased to administer and service a Claim, including failing to notify HICIL of its recommendations in accordance with paragraphs 2.3 and/or 2.9, the Liquidator shall give written notice to CIC specifying and giving details of the failure complained of and the actions that the Liquidator considers required of CIC to cure the alleged failure and requesting CIC to effect such action within twenty (20) business days from receipt by CIC of the notice. If CIC disputes that there is a failure on its part or that the steps specified in the notice are necessary and appropriate, CIC shall so advise HICIL in writing within twenty (20) business days of its receipt of the notice. If CIC considers that the notice does disclose a failure on its part, CIC shall cure the same within twenty (20) business days of its receipt of the notice.
- 3.7 If CIC fails to timely file a Motion to Participate as described in paragraph 2.13 or, having timely filed a Motion to Participate, CIC fails to participate in a Disputed Claim proceeding (CIC having previously administered and serviced the Claim and notified HICIL of its recommendations in accordance with paragraph 2.3 and, if applicable, notified HICIL of its recommendations in accordance with paragraph 2.9), the Liquidator shall not be obliged to defend the Claim and shall be entitled, at his sole discretion, to consent to the entry of judgment in relation to it. This consent will be final and binding on CIC. Should the Liquidator decide to defend the AFIA Liability notwithstanding the election of CIC to refrain from participating in the Disputed Claim proceeding or the failure of CIC to file in timely fashion a Motion to Participate therein and a determination of the relevant AFIA Liability at issue is, in the first instance, determined adverse to HICIL, the Liquidator shall not be obliged to appeal the determination. That determination will then be final and binding on CIC.
- 3.8 Upon reasonable advance notice and at all reasonable times, CIC shall confer with and place at the disposal of HICIL, either directly or through its authorized representatives, the financial and business records, books of account and documents maintained by CIC (or ACE-INA) relative to AFIA Liabilities and AFIA Licence Business. HICIL shall have the right at its own cost to inspect and copy any such records and books of account.

4. Commutations

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

5. Ruty Pool Business

- 5.1 CIC (through ACE-INA) shall, at the sole cost of CIC, to the extent determined through litigation, arbitration or an agreement approved by HICIL with each affected Ruty Pool member (a) administer and service the inwards liabilities of each affected Ruty Pool member, including the investigation, appraisal and adjustment of such liabilities; (b) effect timely notification to each affected Ruty 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 Ruty Pool member.

6. Role of ACE-INA

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

7. Reservation of Rights

- 7.1 Nothing in this letter shall be construed so as to prejudice, negate or otherwise interfere with the rights of HICIL under the Agreements or any other contractual arrangements involving or relating to Home's AFIA business as against any other party thereto (including their successors or assigns). In particular, but without derogating from the generality of the foregoing, the Liquidator reserves the right to assert that each or both of CIC and CIRC and/or any other person or entity having contractual obligations to indemnify HICIL with respect to Home's AFIA business are liable to indemnify HICIL thereunder.
- 7.2 Nothing in this letter shall be construed so as to prejudice, negate or otherwise interfere with the rights of CIC, CIRC or any other company within the ACE group of insurance undertakings as against HICIL whether under the Agreements or otherwise including the right to assert that neither CIC nor CIRC has any contractual obligation to indemnify HICIL with respect to AFIA Liabilities or AFIA Licence Business, and in particular, but without derogating from the generality of the foregoing: (i) if and to the extent that HICIL takes any action (or fails to take any action) the effect of which, subject to paragraph 2.8, is to undermine or interfere with defenses raised by CIC to a Claim, CIC reserves all of its rights in relation to any reinsurance or other indemnity or payment obligation (including pursuant to this letter agreement) regarding that Claim; and (ii) the payment

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

8. CIRC Reinsurance Recovery

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

9. No variation

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

10. Material Breach

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

11. Notices

- 11.1 Any notice, consent or other communication ("notice") provided for under or given, made or served in connection with this letter shall be validly given, made or served if in writing and delivered personally or sent by registered or certified pre-paid first class post or by facsimile to the address or facsimile number (and marked for the attention of the person stated) below:

If to HICIL:

Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 10038
Attention: Jonathan Rosen
Facsimile Number: (212) 530 3100

If to CIC:

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

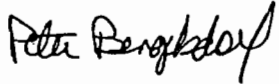
Century Indemnity Company
c/o ACE USA
Law Department
Routing TL35S
1601 Chestnut Street
Philadelphia, Pennsylvania 19101
Attention: Thomas Wamser
Facsimile Number: (215) 640 5571

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

* * *

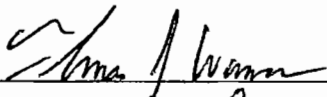
If CIC is in agreement with the foregoing, please have a duly authorized representative confirm same by signing and returning to me a counterpart of this letter. I appreciate your consideration and assistance.

Sincerely,



Pete Bengelsdorf
Special Deputy Liquidator

**AGREED AND ACCEPTED
CENTURY INDEMNITY COMPANY**

By: 
Title: Assistant General Counsel
Date: 8/10/04

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DIVISION: HICIL

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BEFORE THE COURT-APPOINTED REFEREE IN RE:
THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET

In re Liquidator Number: 2005-HICIL-11
Proof of Claim Number: INTL 700617
Claimant Name: Century Indemnity Company

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March 10, 2006

HELD AT: HICIL

BEFORE: HONORABLE
Referee PAULA ROGERS

APPEARANCES: MR. LEE
MR. LESLIE

TRANSCRIBER: TERESA VON REINE

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RE RE V.
WITNESS DIRECT CROSS DIRECT CROSS D. J

E X H I B I T S

For In
PETITIONER DESCRIPTION I.D. Ev.

1 [START TAPE 11]

2 REFEREE ROGERS: . . . hearing on
3 each of these files and the moving party
4 would like to address that I'm sure.

5 MR. LEE: I was just about to get
6 off the case. I think that in order to
7 understand the reasons why we're seeking
8 an evidentiary hearing it's probably
9 useful to explain the claim because, I
10 think, they have a lot of claims in front
11 of you and I think we need to explain
12 what distinguishes them.

13 HICIL-11 has two component parts.
14 One of which is absolute. In other
15 words, it's a fixed number we all know
16 what it is, and the second has contingent
17 elements.

18 REFEREE ROGERS: Yes, as I
19 understand that claim, the fixed part
20 comes out of the arbitration. Is that
21 correct and that's a 1.25 million figure?

22 MR. LEE: It comes out of an
23 arbitration that I believe has now been
24 ratified. [speaking off mic].

25 The 6th Circuit Court of Appeals has

1 affirmed the basis for that arbitration award, so
2 the number is fixed. And what that
3 amount relates to is the costs that AIS-
4 UK, it is the effective leader, sort of
5 the Claims Manager Operation of Century
6 in the UK, has incurred in acting for and
7 on behalf of the Home and administering
8 the Ruddy Pool business. And I think as
9 you recall, Home reinsures four of the
10 six Ruddy Pool members and pursuant to
11 the terms of the assumption agreement
12 Century has an obligation to administer
13 that business.

14 In correspondence with the Joint
15 Provisional Liquidators in August of 2003
16 and in various other places as well
17 beyond merely correspondence, Home agreed
18 that, that sort of award or those sorts
19 of costs in favor of the Home benefit
20 Century Indemnity. I mean effectively
21 what we're doing is we're paying for the
22 administration. We're doing it on their
23 behalf and to the extent to which there's
24 an award in excess of what the obligation
25 was which is effectively what the 6th

1 Circuit found ratifying the arbitration award that
2 claim benefits us. It's our money. And
3 we believe there have been admissions to
4 that effect and accordingly, why do we
5 think we need discovery. Why do we think
6 we need an evidentiary hearing with
7 respect to that case?

8 REFEREE ROGERS: Exactly why?

9 MR. LEE: Well, the liquidator has
10 denied the claim. Admissions have been
11 made. I think that we're entitled to
12 test what the reversal is, what the basis
13 for those reversals are. I mean, I don't
14 think that we can really understand it
15 just simply from the letters. In other
16 words, we've put ours forward. We've put
17 it forward in letters. We put it forward
18 in our mandatory disclosures. We put it
19 in front of you in relation to our
20 objection. We know why we think the
21 claim is valid. We don't really know why
22 other than the fact that presumably the
23 liquidator doesn't want CIC to have
24 setoff. What the basis is for and I
25 think it's absolutely critical for the

1 Referee in order to have an understanding not just
2 of this claim, but the rationale for
3 denying the claim, that we have an
4 opportunity to cross-examine the right to
5 review those letters.

6 REFERENCE ROGERS: This is a good
7 place for me to stop you for just a
8 minute because in looking at the
9 liquidators response, the response seems
10 a bit murky. In other words, attorney
11 Lee is saying that there have been
12 "admissions", I don't know that. But
13 that's his suggestion. There has been a
14 denial and so at this point would
15 somebody from the liquidators teams
16 explain to me what their rationale is for
17 basically valuing that claim at zero.

18 MR. LESLIE: We begin from the proof
19 of claim itself which was submitted by
20 AIS-UK on behalf of Century and we don't
21 dispute that the claim was validly
22 submitted. There's no technical argument
23 here about the AIS-UK aspect. But the
24 proof of claim describes it as arising
25 out of an award against Nationwide in

1 respect of Nationwide v. Home. And attached to the
2 proof of claim are three pieces of paper.
3 One is a reservation by AIS-UK on behalf
4 of Century to amend the claim which is
5 non-controversial and then a two-page
6 arbitration award which is the basis for
7 the assertion of liability against the
8 Home. So what we have is an arbitration
9 award which is styled Nationwide Mutual
10 Insurance Company v. Home Insurance
11 Company. As Century asserts in its
12 papers and as Mr. Lee has asserted this
13 morning they seek to have a finding that
14 the Home is liable to Century with
15 respect to this arbitration award against
16 Nationwide. Now, I think cutting through
17 this the issue is the issue of concern
18 over essentially the arbitration award
19 when one looks at the two-page award
20 which is the end result of years of
21 dispute between Home in reality AIS-UK
22 Century. Home was essentially uninvolved
23 in this arbitration. This was Century
24 pursuant to the Assumption Agreement and
25 in dispute with Nationwide. But what we

1 have with the arbitration award is a net award of
2 1.25 million dollars to Home from
3 Nationwide. The reason the liquidator
4 denied the claim is because it is our
5 position that Home is not liable to
6 Century with respect to the award against
7 Nationwide. Now that is not a subtle way
8 of attempting to deny Century an offset.
9 The point is the point of whether Home is
10 liable. Century is entitled to the
11 offset. Century represents that it
12 funded the Nationwide payments. That it
13 is the source of, pursuant to the
14 Assumption Agreement, it's the source of
15 the funding that ultimately led to that
16 net award, and we don't deny it. And we
17 don't deny that, to the extent that the
18 supervising court allows claims against
19 Nationwide, that Century may offset
20 against those allowed claims up to 1.25
21 million dollars. We don't deny that.
22 Century is entitled to the benefit of
23 that over-funding. What we do deny is
24 that Home is liable and if I might, to
25 illustrate this. [pause]

1 May I approach?

2 REFEREE ROGERS: Oh, certainly. Is
3 it a schematic?

4 MR. LESLIE: No, it's not a
5 schematic. This is an AIS-UK produced
6 report which it produces every month
7 pursuant to the claim protocol.

8 I think this will help place in
9 context the disputed claims that are
10 before you right now. This is a, as I
11 say, this is an AIS-UK produced report.
12 It's a setoff report and under the claim
13 protocol every month AIS-UK provides to
14 the Home as it's required to do kind of a
15 cash statement of where things stand
16 under the protocol and what offsets
17 Century asserts. So what we see here is
18 essentially that AIS-UK has reviewed 15.4
19 million dollars. I'm just going to speak
20 about the US dollar column.

21 REFEREE ROGERS: Yes, that's fine.

22 MR. LESLIE: 15.4 million dollars of
23 claims and recommended them. It shows a
24 deduction which the liquidator does not
25 dispute. The WPROR is without prejudice

1 reservation of rights which is something we often
2 see on AIS-UK documents. So, they paid
3 over 3.2 million dollars. We don't
4 dispute that, they did and are entitled
5 to deduct that. The next number Home
6 sellers payable to ACE reflects the
7 obligations—the asserted obligations of
8 Home pursuant to a quota share agreement
9 entered into as part of the 1984 sale of
10 the AFIA business to then CIGNA and now
11 the ACE Companies are essentially filling
12 that role. So, this is the assertion of
13 Home's liability as a reinsurer of that
14 business and we're not disputing that.
15 So really until we get down to the 7.6
16 million dollar number there's really no
17 area of disagreement between the
18 liquidator and Century. Now we enter
19 that area. Now, I've dropped down to the
20 bottom of this Exhibit for a moment.
21 This is my handwriting by the way. If
22 one looks at 5-ECRA-HICIL-2, what I've
23 tried to do is illustrate how these
24 numbers correlate to disputed claims.
25 HICIL-2 is the ECRA matter which was

1 resolved by a ruling of the Referee earlier and
2 again that's a resolved matter. So,
3 Century may offset 1.85 million dollars
4 pursuant to order of the Referee. Above
5 that is CIC which is essentially
6 HICIL-14. This is to this point the cash
7 offsets asserted by CIC with respect to
8 salvage and—excuse me, subrogation and
9 contribution claims. So that's HICIL-14.
10 Now we move up and we see four—the four
11 members of the Ruddy Pool. Agrippina,
12 FAI, Nationwide and Wuerrtembergische.
13 Now if one looks to one I denominated as
14 HICIL-11 which is the claim we're talking
15 about right now one sees the \$1,250,000
16 number. That's the net award from the
17 arbitration award. The other numbers
18 under Ruddy net the HICIL-11 are
19 essentially HICIL-12.

20 REFERENCE ROGERS: Okay.

21 MR. LESLIE: Which are the other
22 Ruddy Pool liabilities. Again, it tracks
23 with, I would respectfully suggest, it
24 tracks with the claimant HICIL-11 which
25 is that the Home is liable to Century

1 with respect to these liabilities of Ruddy Pool
2 members. So, the area of dispute is that
3 the liquidator denies that Home is
4 liable. The liquidator does not deny
5 that Century may offset. Where we are in
6 disagreement and what this Exhibit
7 illustrates and is not a matter that's
8 before the Referee at the moment. What it
9 illustrates is how Century is making use
10 of these offsets. In other words, the
11 7.6 million dollars of net amounts due at
12 this point are being offset by all of
13 these assertive Ruddy Pool obligations.
14 Our position would be that Century may
15 offset against allowed Nationwide claims
16 up to the 1.25 million after which as to
17 Nationwide, Century's obligations then
18 are due to the Home net of other offsets
19 it may have to the extent that it were to
20 prevail on HICIL-14, it would be able to
21 offset that. But our argument would be
22 Century does not get to offset against
23 allowed claims with respect to other AFIA
24 cedents a Nationwide obligation and
25 that's why this disputed claim proceeding

1 is here and that's what the focus of the
2 disagreement is. We disagree that Home
3 is liable to CIC for an award against
4 Nationwide, and that is not our way of
5 precluding Century from getting the
6 benefit of the offset.

7 REFeree ROGERS: Attorney Lee.

8 MR. LEE: Well I'm noting that
9 fundamentally mistakes law and the
10 practice so let me just talk about first
11 of all the law. I think the law is very
12 clear that setoff is fungible. In other
13 words, Century has claims against the
14 Home arising from its subrogation rights.
15 It has claims as the Court know arising
16 from ECRA, for example. So does that mean
17 that we have to wait for ECRA claims to
18 be allowed today, in 10 years, in 20
19 years, in 30 years, before we're entitled
20 to—I don't believe that that's the law. I
21 think the law is fairly consistent that
22 as long as the parties to the transaction
23 are the same, in this case Home and
24 Century, Home has an obligation to
25 Century. Century has an obligation to

1 Home. This setoff is fundamental.
2 I raise another issue which is that, of
3 course, the liquidator completely
4 controls the timing of allowance of
5 claims. Obviously, to some extent, the
6 cedents themselves are prosecuting the
7 claims or submitting claims in whatever
8 respect they want to but fundamentally
9 the process is not controlled by us, it's
10 controlled by the liquidators. So
11 functionally speaking I'm not suggesting
12 that the liquidator would do this. We
13 could build up a situation where all of
14 our claims effectively—our setoff claims
15 don't get materialized for 20 years. But
16 the fact of the matter is and I think the
17 Referee recognizes in relation to HICIL-2
18 what we submitted—when we make the
19 payment which we do an obligation arises
20 and that's really fundamentally what's
21 happened. We've made payments. The
22 liquidator has said they don't dispute
23 the payment made WPROR, that was cash.
24 It was cash. Whatever it is the
25 liquidator decided to use that cash for

1 and apply that cash for was the liquidator's
2 choice. The same thing is true in
3 relation to the quota share payment, the
4 Home sellers payment. When we make
5 payments on account of the Home, they're
6 fungible. It's cash they owe us. They
7 owe us an amount of money and as they
8 begin to accrue claims against Century
9 those two things get setoff. That's the
10 first fundamental disagreement and I
11 think the Referee has already ruled in
12 relation to HICIL-2 when it is the claim
13 arises and I think that that ruling is
14 consistent with case law and fungibility
15 of setoff, that's our first point.

16 I think the second point is that
17 there have been admissions including from
18 Ernst & Young that Century is entitled to
19 the benefit of awards of costs and
20 expenses in circumstances where they've
21 already paid out the underlying item.
22 That's what happened here. That 1.25
23 million dollars in this particular
24 situation we've already paid. Does that
25 mean that we have to wait for Nationwide

1 to accrue 1.25 million dollars worth of claims
2 before we can set it off? Does that mean
3 that if Nationwide never has 1.25 million
4 dollars worth of claims we never get to
5 setoff but we've made a payment on behalf
6 of the Home. The viability arises when
7 we make the payment and I think that's a
8 fundamental area of disagreement with the
9 liquidator and again I think that that
10 does not drive whether or not discovery
11 and an evidentiary hearing is appropriate
12 here. I think that what drives whether
13 it's appropriate is whether or not it's
14 going to assist the Referee in
15 understanding how 20 years of
16 administration of Ruddy obligations and
17 arbitration awards can be distilled and
18 understood, number one, and number two
19 why we think it's important to have Ernst
20 & Young and the liquidator explain on the
21 stand because I agreed with the Referee
22 that their rationale for denying these
23 claims is murky and it's murky because
24 Century has shown the Referee what their
25 case is about. In outline, but

1 fundamentally what our case is about.

2 REFEREE ROGERS: It's clearer now
3 then it was before to me and I think
4 this—you have no problem with this
5 particular representation of an
6 accounting of what-

7 MR. LEE: That was the accounting as
8 of January 2006.

9 REFEREE ROGERS: And you have no
10 problem with the handwritten notes of Mr.
11 Leslie which sort of brackets out?

12 MR. LEE: No, and I'm perfectly
13 happy that Mr. Leslie has agreed that
14 neither the 3.2 million dollar payment
15 nor the 4.5 million dollar payment are
16 disputed. That is helpful too.

17 REFEREE ROGERS: I'm still—I have to
18 say I'm still having difficulty as to why
19 an evidentiary hearing is going to help
20 me in this regard. But, before I really
21 get to that what are the driving
22 documents that the Referee would need to
23 have in evaluating this claim? I mean,
24 I've seen the mandatory disclosures. And
25 I mean, the documents are voluminous but

1 what is the essence of what one needs for a legal
2 analysis.

3 MR. LESLIE: May I offer my
4 suggestions of that. Back to HICIL-11,
5 the actual disputed claim here. It's a
6 claim by Century against Home asserting
7 that Home is liable to Century for the
8 award against Nationwide. That's a legal
9 question and we feel the documents are--
10 the documents that Century supplied in
11 support of its claim which is the two-
12 page award, okay, which is the two-page
13 letter provided as the substantiation for
14 the claim in response to the liquidators
15 request and then Mr. Lee's letter
16 explaining the position of the company on
17 the Notice of Determination. These are
18 the documents that CIC provided to the
19 liquidator in substantiation of its
20 claim. It's frankly not surprising that
21 these are the documents that would be
22 provided because it isn't that
23 complicated a situation. There are no
24 factual disputes. I honestly do not
25 understand what Mr. Lee is asserting vis-

1 à-vis admissions and expenses. We have an
2 arbitration award. It's the result of
3 years of expensive arbitration and
4 litigation between essentially Century
5 and Nationwide. The arbitration award is
6 clear. 1.25 million dollars is due Home
7 by Nationwide. Now, to the extent that
8 Nationwide does not submit a claim for
9 1.25 million by the terms of the
10 agreement Century may seek to recover
11 that money from Nationwide. They are not
12 precluded from doing so. The liquidator
13 will not stand in the way of Century
14 seeking to recover that 1.25 million
15 dollars from Nationwide. I suspect if
16 Century attempts to do that Nationwide
17 will respond much like my brother Mr. Lee
18 has responded by saying we have extensive
19 claims against Home and we're not going
20 to pay that to you now until those claims
21 are allowed. We all know why Nationwide
22 isn't prosecuting those claims it's
23 because the pendency of the appeal before
24 the Supreme Court of New Hampshire right
25 now on the AFIA Settlement Agreement.

1 So, our view is the documents that the Referee
2 needs to decide this question are the
3 documents submitted by Century in
4 substantiation of its claim and the
5 Assumption Agreement. There is no need
6 to take discovery. There is no need for
7 live testimony about what went on in the
8 arbitration. The arbitrators have ruled
9 and they've done it on a two-page award.
10 That's it. It's a legal question. Is
11 Home liable for that arbitration award to
12 Century?

13 REFEREE ROGERS: And Mr. Lee you
14 could just respond to that and then
15 we'll-

16 MR. LEE: I mean there's a
17 fundamental disagreement. The payments
18 that are made are made on behalf of the
19 Home. Of course, if conduct suggests
20 that payments were made on behalf of the
21 Home, Century's claim is against the
22 Home. The admissions by the Joint
23 Provisional Liquidators are clearly
24 indicative of the fact that Century's
25 claims are against the Home. We have no

1 claims against Nationwide. We are acting on
2 behalf of the Home. So fundamentally
3 this is more than a legal disagreement
4 there's a factual dispute here. That's
5 the first issue. The second is we just
6 fundamentally also disagree about what
7 documents should be put in front of the
8 Referee.

9 The liquidator has taken the
10 position consistently that—and I think
11 this is inconsistent with what went on in
12 front of Judge McGuire, that its reasons
13 for disputing a claim are to be shielded
14 from the Referee. Whatever basis the
15 liquidator comes up with, whatever
16 analysis and determination they made is
17 something that only the liquidator is
18 entitled to know. We do not know what
19 rationale the liquidator has and as you
20 say it was murky for denying this claim.
21 What the liquidator is trying to prevent
22 in these proceedings is for us to take
23 any discovery whatsoever of the
24 liquidator and his staff and the Joint
25 Provisional Liquidator to the extent that

1 they're involved and why it is they denied these
2 claims and it's murky and it's a moving
3 target. I think that's fundamental to
4 this issue and I think that the Referee
5 will recall that when we were considering
6 the reasonableness of the agreement that
7 was before Judge McGuire we were
8 fundamentally entitled to take discovery
9 of the liquidators reasons for entering
10 into that agreement. We think that the
11 same holds true here. We are entitled to
12 take discovery. We believe there's
13 nothing that prohibits taking discovery
14 of the liquidators basis for the denial
15 then we'll understand them.

16 REFeree ROGERS: But doesn't the
17 Referee really have to take into
18 consideration what Attorney Leslie said
19 was the reason for their position on this
20 claim and simply stated that's their
21 facial reason for determining the claim
22 as they did and it is susceptible to a
23 legal analysis to determine whether it
24 was the right position. And so that's
25 the way I'm probably going to look at

1 this.

2 MR. LEE: But how do we understand
3 whether that is indeed their position,
4 because it certainly never been put in
5 writing, number one.

6 REFEREE ROGERS: Well it's now on
7 the record.

8 MR. LEE: Well, yes but again I
9 think it appropriate, and I'm not sure
10 why our discovery isn't shielded, because
11 effectively the liquidator has
12 opportunities to ask questions. We filed
13 several pieces of paper in this case.
14 The obligation, the burden, the discovery
15 was on Century throughout all of these
16 proceedings. I think that we're entitled
17 to understand and look at the
18 liquidator's evaluation of the claim and
19 understand why they denied the claim.
20 And I think once we understand and have a
21 better understanding through discovery of
22 that. It may well be then evidentiary
23 hearing is not appropriate. It may well
24 be that we could do it on the papers.
25 But let's be clear--if we go through a

1 Section 15 procedure, that could be fundamentally
2 inequitable. We basically been—we've had
3 discovery obligation throughout these
4 procedures. We had the mandatory
5 disclosures obligations. We had the
6 objection obligations. We get to put in
7 one set of papers with affidavits with no
8 chance of rebuttal. With no opportunity
9 whatsoever to test the liquidators
10 position at all and then 30 days later
11 the liquidator knowing now for the fourth
12 time what our position is gets to submit
13 papers and then the matter is remanded to
14 the Referee and that simply is
15 disproportionate.

16 REFERENCE ROGERS: I will take the
17 motion under advisement and rule rather
18 quickly on it and if indeed it goes to a
19 Section 15 hearing then I would probably
20 in that Order advise parties to set some
21 dates on their own calendars and alert
22 the liquidator clerk. If it goes the
23 other direction obviously that opens up a
24 whole nother route.

25 MR. LEE: Will you give us enough—

1 will there be if you're going to go the Section 15
2 route an opportunity to file a reply
3 because as the procedures currently are
4 stated there is no opportunity for us to
5 reply. So effectively we'll one-sided
6 discovery and no opportunity for
7 rebuttal.

8 REFeree ROGERS: You know what I
9 think you need to outline that in a
10 motion and expand on that.

11 MR. LEE: Wait for the ruling?

12 REFeree ROGERS: Yes, wait for the
13 ruling because it might be unnecessary.
14 So moving along 12 follows 11, so.

15 BROOKE: One minute please

16 REFeree ROGERS: Do you need time on
17 that Brooke.

18 BROOKE: I do, thank you.

19 [END TAPE 11]

20

C E R T I F I C A T E

1 I, Teresa Von Reine, certify that
2 the foregoing transcript is a true record
3 of said proceedings, that I am not
4 connected by blood or marriage with any
5 of the parties herein nor interested
6 directly or indirectly in the matter in
7 controversy, nor am I in the employ of
8 the counsel.

9 Signature ___Teresa VonReine_____

10 Date ___March 20, 2006_____

11

12

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET

In Re Liquidator Number: 2005-HICIL-11

Proof of Claim Number: INTL 700617

Claimant Name: Century Indemnity Company

AFFIDAVIT OF JONATHAN ROSEN

I, Jonathan Rosen, depose and say:

1. I am the Chief Operating Officer of The Home Insurance Company In Liquidation, a position I have held since shortly after the liquidation commenced. Prior to that, I was Executive Vice President and Reinsurance Counsel of The Home Insurance Company (“Home”) and Executive Vice President of Risk Enterprise Management Limited, a third party administrator that, amongst other things, administered the business of Home. The facts and information set forth below are either within my own knowledge, 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. This proceeding concerns CIC’s claims arising from Home’s reinsurance of Nationwide, a member of the M.E. Ruddy Pool (“Ruddy Pool”). Home reinsured Nationwide on Ruddy Pool business under a contract known as Treaty R or Contract R (“Contract R”).

3. The liabilities of Home under Contract R were among the AFIA Liabilities assumed and reinsured by CIC, as successor to Insurance Company of North America (“INA”), under the Insurance and Reinsurance Assumption Agreement Between Home (as well as other persons selling their interest in AFIA) and INA dated January 31, 1984 (“Assumption

Agreement”). Under the Assumption Agreement CIC was also obligated to administer and service the AFIA Liabilities, including Contract R.

4. From the early 1990’s, ACE INA Services U.K. Limited (“AISUK”), acting as agent for CIC, administered Nationwide’s Rutty Pool business.

5. During the 1990’s Nationwide commenced arbitration proceedings against Home, alleging among other things that Home violated certain of its duties under Contract R, including its duties as administrator of the Rutty Pool business. In accordance with the Assumption Agreement, CIC administered the arbitration in Home’s name and controlled Home’s positions in the arbitration. CIC continued to control the arbitration and the related litigation after appointment of the Liquidator for Home.

6. While I have not been directly involved with the Nationwide arbitration or related litigation, Thomas Wamser (and prior to that Mark Megaw) of CIC and Michael Durkin and Darren Bateman of AISUK have discussed the arbitration and litigation with me periodically over the years and, I believe, kept me informed of major developments.

7. The arbitration panel issued two orders during the course of the arbitration that are at issue here: the December 4, 1998 order (“Phase 2 Order”) and the July 17, 2003 order (“Phase 3 Order”). Home does not have a copy of the Phase 2 Order. The Phase 3 Order awarded a net amount of \$1.25 million to Home as set forth in the award.

8. I have been informed by Darren Bateman and Michael Cohen, Esq, (Nationwide’s counsel) that AISUK stopped processing Nationwide’s Rutty Pool business at Nationwide’s request during mid-2003, and that no action was taken with respect to Nationwide’s Rutty Pool business until late 2004. At that time, Nationwide removed the administration of its Rutty Pool business from AISUK and engaged another third-party administrator, PRO Limited (“PROL”),

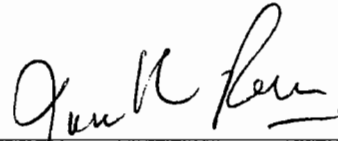
to administer that business. CIC, through AISUK, is thus no longer performing that work and has not done so since sometime in 2003. It is accordingly likely that Nationwide will assert that the Phase 2 Order entitles it to collect 50% of the Ruddy Pool fixed pool share administration costs incurred by PROL from Home – a reversal of the situation as presented by CIC.

9. The Liquidator has neither collected any money from Nationwide based on the \$1.25 million Phase 3 Order arbitration award nor used that award to offset any liability of Home to Nationwide. The Liquidator also has not collected any money or taken any offset on account of Nationwide's potential future liability under the Phase 2 Order.

10. Under the Assumption Agreement, CIC could bring proceedings against Nationwide in Home's name to collect on the Phase 3 Order. See Assumption Agreement ¶ 5. In accordance with the Assumption Agreement, the Liquidator assented to continuation of the Nationwide arbitration and related litigation during the liquidation. While CIC is free to initiate action to recover from Nationwide on the Phase 3 Order, to my knowledge CIC has taken no steps to collect on the award.

11. CIC will receive the benefit of the Phase 3 Order when Nationwide proves its claims against Home. The Liquidator does not control the timing of assertion of claims by Nationwide. Nationwide determines when to assert claims, and it has every incentive to prosecute claims up to the amount of the Phase 3 Order to offset those liabilities. CIC will handle Nationwide's claims and make recommendations to the Liquidator under the Claims Protocol. While the Liquidator could determine the order in which CIC is to adjust the claims under the Claims Protocol, no direction that would delay CIC's consideration of Nationwide's claims has been given.

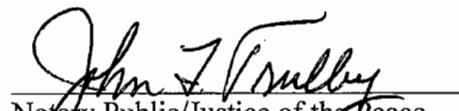
Executed under the penalties of perjury this 19th day of June 2006



Jonathan Rosen

STATE OF NEW YORK
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 19th day of June, 2006



Notary Public/Justice of the Peace

JOHN F. TRULBY
NOTARY PUBLIC, State of New York
No. 43-4931270
Qualified in Richmond County
Commission Expires June 20, 2010

Exhibit E**Smith, Eric A. EAS**

From: Morris, Matthew [Matthew.Morris@lovells.com]
Sent: Friday, June 09, 2006 1:10 PM
To: progers@dmb.com
Cc: Leslie, J. David; Smith, Eric A. EAS; Lee, Gary; jonathan.rosen@homeinsco.com; brooke.holton@hicialclerk.org; NPearson@eapdlaw.com; bgreen@eapdlaw.com; Wamser, Thomas J
Subject: RE: Follow-up to 2006-HICIL-18 & 2006-HICIL-21 Structuring Conference

Confidential

Referee Rogers--With respect to the email from Mr. Green below, Century Indemnity Company ("CIC") would point out that Paragraph 14(b) of the Claims Procedures Orders ("CPO") requires as Mandatory Disclosures "a written submission stating the amount the Claimant asserts is due, the method of calculation of the amounts owed and the allocation methodology (if applicable), along with any additional documents or other evidentiary material that the Claimant contends support the amount claimed due." Whether Winterthur confirms that it "has no additional documents to submit at this time" does not fully dispose of the issue of their failure to make Mandatory Disclosures as required by the CPO; Winterthur must still set forth the bases for its objection, how it contends London Representative Fees are covered by the applicable policies, how it may have allocated such fees to specific claims, and related matters. Only then will CIC be in a position to understand the bases for Winterthur's Objection. While CIC would not anticipate that Winterthur has other documents to provide (since they've had four months since filing the Objection to gather their documents), we do expect them to undertake the necessary (and required) preliminary analysis to allow the parties to move forward with the disputed claim proceedings Winterthur itself initiated. As I emphasized on today's conference call, these disclosures are mandatory for a reason: so that the parties have a baseline understanding of the factual and legal issues involved before proceeding with discovery and briefing. Winterthur's failure to comply with the disclosure provisions of the CPO undermines this purpose.

Again, it seems dismissal of Winterthur's objection is appropriate.

Thank you for your further consideration.

Matthew P. Morris
LOVELLS
590 Madison Avenue
New York, NY 10022
(212) 909-0641 (phone)
(212) 909-0660 (fax)

-----Original Message-----

From: BGreen@eapdlaw.com [mailto:BGreen@eapdlaw.com]
Sent: Friday, June 09, 2006 12:25 PM
To: progers@dmb.com
Cc: dleslie@rackemann.com; esmith@rackemann.com; Lee, Gary; jonathan.rosen@homeinsco.com; Morris, Matthew; brooke.holton@hicialclerk.org; NPearson@eapdlaw.com
Subject: Follow-up to 2006-HICIL-18 & 2006-HICIL-21 Structuring Conference

6/19/2006

Referee Rogers --

After this morning's Structuring Conference, we conferred with our client and we can confirm that Winterthur has no additional documents to submit at this time. Winterthur is prepared to move forward with the documents that accompanied its two Objections and the other documents contained in the Liquidator's case files for these two disputed claims.

Best regards.

Brian J. Green
212.912.2755 fax 888.325.9621

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Boston, Ft. Lauderdale, Hartford, New York, Providence, Short Hills, Stamford, West Palm Beach, Wilmington, London (Representative office)

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June 9, 2006

Direct line (212) 909-0641
matthew.morris@lovells.com
Direct fax (212) 909-0660

Our ref NYMPM/103044.1
Matter ref T0718/00023

Paula Rogers
Court-Appointed Referee
The Home Insurance Company in Liquidation
286 Commercial Street, 3rd Floor
P.O. Box 1210
Manchester, New Hampshire

RE: CONSOLIDATED DISPUTED CLAIM PROCEEDINGS HICIL-18 AND 21

Dear Referee Rogers:

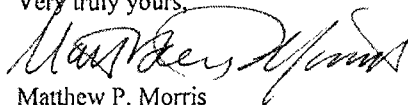
On behalf of Century Indemnity Company ("CIC"), I write in reference to the letter of Brian Green, counsel for Winterthur Swiss Reinsurance Company ("Winterthur"), to Brook Holton, dated June 9, 2006.

Paragraph 14(b) of the Claims Procedures Order ("CPO") requires that Winterthur provide "a written submission stating the amount the Claimant asserts is due, the method of calculation of the amounts owed and the allocation methodology (if applicable), along with any additional documents or other evidentiary material that the Claimant contends support the amount claimed due." Winterthur has not provided any such calculation or allocation methodology whereby it can be determined how it applied London Representative Fees to specific claims. That's the starting point for resolution of these disputed claims, and is clearly called for by the Mandatory Disclosures.

Winterthur's claim that it does not have anything more to submit "at this time" or "at this juncture" rings hollow. It suggests more is to come upon further reflection. But Winterthur's objections were filed almost four months ago. The Referee, the Liquidator and CIC should not have to wait any longer for information that Winterthur should have been in a position to provide back in February and, more to the point, was required to disclose over a month ago.

Simply put, Winterthur should be required to make its Mandatory Disclosures under the CPO, or its objections should be dismissed.

Very truly yours,



Matthew P. Morris

CC: Service List (by electronic and first-class mail)

Alicante Amsterdam Beijing Berlin Brussels Chicago Dusseldorf Frankfurt Hamburg Ho Chi Minh City Hong Kong London Madrid Milan
Moscow Munich New York Paris Prague Rome Shanghai Singapore Tokyo Warsaw Associated offices: Budapest Zagreb

Lawyers (USA) Solicitors Rechtsanwälte Avocats Advocaten Notarissen Avvocati Abogados