

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

**CENTURY INDEMNITY COMPANY'S SUBMISSION REGARDING
"NATIONWIDE AWARDS" CLAIM**

Century Indemnity Company ("CIC"), pursuant to RSA 402-C:41, Paragraph 15 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation, dated January 19, 2005 (the "Claims Procedures"), and the Referee's Order of March 16, 2006, hereby files this Submission concerning CIC's Claim INTL 700617 (the "Claim"):

**I.
PRELIMINARY STATEMENT**

1. Home reinsured four members of the M.E. Rutty Pool ("Rutty Pool"), including Nationwide Mutual Insurance Company ("Nationwide"), under Contract R. CIC, in turn, reinsured the Nationwide and other Rutty Pool liabilities of Home under the Insurance and Reinsurance Assumption Agreement (the "Assumption Agreement"). Having assumed Home's obligation to administer certain reinsurance business underwritten by Nationwide, CIC incurred significant administration costs on Home's behalf and in Home's name. In arbitration proceedings between Nationwide and Home, the arbitration panel (the "Panel") issued two awards (the "Nationwide Awards"), holding that certain of those incurred costs were in excess of Home's obligations to Nationwide, and thus in excess of CIC's obligations under the Assumption

Agreement. CIC is entitled to set off the amounts of such costs, and that set off right accrues as soon as the costs are, or were, incurred by CIC.

2. At the March 10, 2006 hearing on the Claim (the "Hearing"), the Liquidator conceded that CIC "is entitled to the benefit of that over-funding" and that CIC "may offset." Transcript of March 10, 2006 Hearing ("Hearing Transcript"), attached as Exhibit 1, at 8:16-25. The Liquidator's sole stated grounds at the Hearing for disallowing the Claim are (1) that the costs incurred by CIC with regard to its obligations to Home to administer the Nationwide business may only be set off against Nationwide's underlying claims against Home, and (2) that CIC's set off right does not arise until those underlying Nationwide claims are admitted into the Home estate.¹ Hearing Transcript at 8:16-21, 12:14-15, 21-24.

3. But the Liquidator's arguments run counter to the basic law of set off. The simple fact is that this Claim is against Home for amounts paid by CIC on Home's behalf. It is black letter law that parties may set off mutual debts, no matter how those debts arose—CIC may set off amounts it paid for (and through) Home against *any* debt CIC owes to Home, not just amounts that may one day arise out of Nationwide's claims against Home. It is equally well-settled that a reinsurer's set off right accrues as soon as the insolvent insurer becomes indebted to the reinsurer; there simply is no ground for the Liquidator to argue that CIC's right of set off against Home does not accrue until the underlying Nationwide claims against Home are admitted. If the Liquidator's argument were correct, a reinsurer could be forced to wait decades for a set off that it is already entitled to, and the accrual of that set off right would be solely in the hands of the Liquidator, incentivizing the Liquidator to seek a timing windfall by delaying the

¹ In the event the Liquidator raises new arguments in support for his disallowing the Claim, CIC reserves the right to amend, supplement or modify the arguments and positions contained herein, and to supplement this Submission as necessary. CIC notes that it and the Referee (in making her ruling of March 16, 2006), relied on the Liquidator's explanation of its position in relation to HICIL-11.

determination of claims involving set off. It simply cannot be the case that CIC's entitlement to the benefit of the Nationwide Awards hinges upon Nationwide's decision to prosecute its claim(s) against Home and the Liquidator's decision to allow them; CIC's claim is against Home, not against Nationwide, and Home owes CIC now. Because the Liquidator's arguments for disallowing the Claim are based upon a fundamental misapprehension of the law governing set off, the Claim should be allowed in its entirety. Furthermore, CIC should be entitled to set off the contingent amounts of this Claim as they arise.²

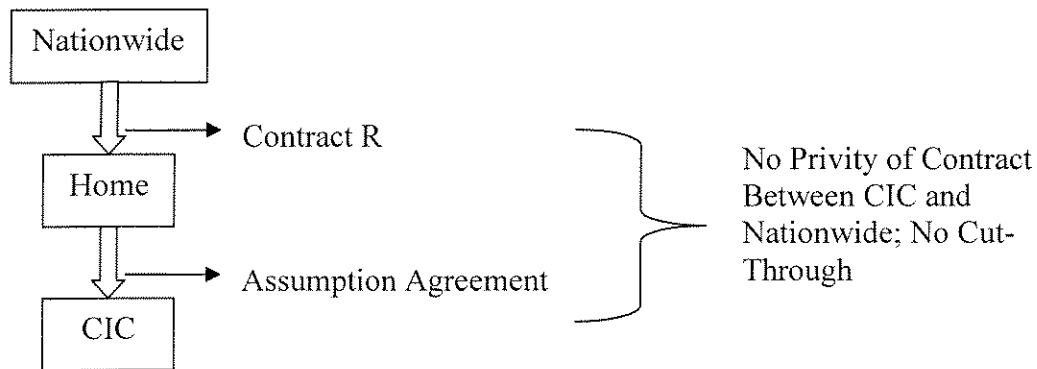
II. STATEMENT OF FACTS

4. At the Hearing, the Liquidator conceded that "there are no factual disputes" regarding this Claim. Hearing Transcript at 18: 23-24. Nonetheless, we set forth the relevant facts below as they relate to the timing of CIC's set off claim.

5. The Claim arises out of Home's reinsurance contract (Contract R) with Nationwide, one of the M.E. Ruddy Pool ("Ruddy Pool") members. *See* Affidavit of Thomas J. Wamser ("Wamser Aff."), attached as Exhibit 2, at ¶ 2. Pursuant to the Insurance and Reinsurance Assumption Agreement (the "Assumption Agreement"), CIC reinsures Home's liabilities arising from Home's reinsurance of Nationwide under Contract R. *Id.* at. (A copy of Contract R and the Assumption Agreement are attached as Exhibits A and B to the Wamser Aff.)

² Furthermore, if the Referee agrees with the Liquidator's position, the Claim should not be disallowed, but rather should be granted pending set off against future Nationwide claims.

The following diagram illustrates the contractual obligations among CIC, Home and Nationwide:



6. As the diagram above shows, the contractual connection is between CIC and Home under the Assumption Agreement; Nationwide is not a party to the Assumption Agreement, and there is no privity of contract between CIC and Nationwide. Indeed, Nationwide has no rights under the Assumption Agreement. *See* Assumption Agreement, Exhibit B to the Wamser Aff. at ¶ 12. Rather, Nationwide's sole recourse is to Home under Contract R. The United States Court of Appeals for the Sixth Circuit affirmed this position in Nationwide Mutual Insurance Co. v. Home Insurance Co., 150 F.3d 545 (6th Cir. 1998), attached as Exhibit C to the Wamser Aff.

7. Under the Assumption Agreement, CIC has the obligation to administer and service the "AFIA Liabilities" on Home's behalf. *See* Exhibit B to the Wamser Aff. at ¶ 3. In 1996, ACE INA Services U.K. Limited ("AISUK"), acting as the disclosed agent for CIC (and as the successor to CIGNA Services U.K. Limited), began to take on and administer Nationwide's Ruddy Pool business on behalf of Home under a full reservation of rights pending determination of various arbitration disputes concerning Home's obligations under Contract R. *See* Wamser Aff. at ¶ 4; Services Agreement between AFIA and CIGNA Services U.K. Limited, attached as Exhibit 3, at § 2. In administering the Nationwide business, AISUK made payments out of

Home's account, rather than CIC's account. In fact, the checks bore Home's name. Wamser Aff. at ¶ 4.

8. Nationwide instituted arbitration proceedings against Home, alleging that Home violated certain of its duties under Contract R, including its duties as administrator of the Ruddy Pool business.³ Wamser Aff. at ¶ 5. The Claim derives from the Nationwide Panel's rulings in two phases of the arbitration, which were affirmed, respectively, by the United States District Court for the Southern District of Ohio and the United States Court of Appeals for the Sixth Circuit as set forth below.

9. First, in phase two of the Nationwide arbitration, the Panel held in its December 4, 1998 order 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.⁴ 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. As set forth in the April 1, 2005 letter from Michael Durkin of AISUK to 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 Ruddy Pool business on behalf of Home. See Letter from Michael Durkin to Jonathan Rosen, dated April 1, 2005, attached as Exhibit 4.

10. Second, in phase three of the Nationwide arbitration, Home was awarded a net amount of \$1.25 million, an award for the administration costs incurred by AISUK on its behalf

³ Again, the Referee should note that the parties to the arbitration were Home and Nationwide and that AISUK was only involved in these matters on Home's behalf.

⁴ The December 4, 1998 Order of the Panel was affirmed by the United States District Court for the Southern District of Ohio. See *Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 90 F. Supp. 2d 893, 897-98 (S.D. Ohio 2000).

in excess of what the Panel determined they should have been. *See* Order of the Panel, dated July 17, 2003, attached as Exhibit 5.⁵ As noted above, the Liquidator has conceded that CIC is entitled to the benefit of the Panel's July 17, 2003 Order.

III. ARGUMENT

A. **CIC May Set Off the Nationwide Payments Made For and On Home's Behalf Against Any Debt Owed to Home**

11. The Liquidator's contention that CIC may only assert set off against underlying Nationwide claims has no legal basis. CIC's claim is against *Home* for amounts paid through and on behalf of *Home*—whether Nationwide files and prosecutes its claim(s), and whether those claims are allowed, is utterly irrelevant to when CIC's claim against Home arose. The liquidation statute plainly provides that "[m]utual debts or mutual credits between the insurer and another person" shall be set off, without specifying a particular kind of debt against which "another person" may assert set off. *See* RSA 402-C:34. RSA 402-C:34 only lists three exceptions to the rule that mutual debts may be set off, and does not include an exception for debts arising out of unrelated transactions. Accordingly, by the plain terms of the statute, CIC may claim set off against *any* debt it owes to Home, not just against any liability it may (or may not) have one day to Home arising from underlying Nationwide claims if or whenever they are admitted.

12. Indeed, "[t]he defining characteristic of setoff is that 'the mutual debt and claim...are generally those arising from *different* transactions.'" *Newbury Corp. v. Fireman's Fund Ins. Co.*, 95 F.3d 1392, 1398 (9th Cir. 1995) (emphasis in original) (*quoting 4 Collier on Bankruptcy* ¶ 553.03, at 553-14 (15th ed. 1995)). *See Malinowski v. New York State Dept. of*

⁵ The July 17, 2003 Order of the Panel was affirmed by the United States Court of Appeals for the Sixth Circuit. *See Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 429 F.3d 640 (6th Cir. 2005).

Labor, 156 F.3d 131, 133 (2d Cir. 1998) ("In set-off, the mutual debts arise from different transactions."); *In re Public Serv. Co. of New Hampshire*, 107 B.R. 441, 444 (Bankr. D. N.H. 1989) ("Setoff...allows a mutual pre-petition claim of a creditor to be setoff against a pre-petition claim of the debtor which arose out of a *different transaction* than the creditor's claim.") (emphases added). Mutual debts must "involve *fungible* operations which can be set-off against each other."⁶ *United States v. Ameco Elec. Found.*, 224 F. Supp. 783, 786 (E.D.N.Y. 1963) (emphasis added). New Hampshire courts have long recognized a right of set off where the parties' debts arise from different, unrelated transactions. *See, e.g., Arcadia Knitting Mills, Inc. v. Elliott Mfg. Co.*, 89 N.H. 188, 195 A. 681, 681-83 (1937). By contrast, the Liquidator cannot cite to any New Hampshire case limiting set off in the way he urges here.

13. The rule that set off is available for *all* mutual debts applies with full force in insurance insolvency proceedings. Courts have repeatedly allowed set off against insurers in insolvency or receivership proceedings where the mutual debts arise from wholly unrelated transactions. *See, e.g., Scammon v. Kimball*, 92 U.S. 362, 367 (1875); *Transit Cas. Co. v. Selective Ins. Co.*, 137 F.3d 540, 545-46 (8th Cir. 1998); *In re Midland Ins. Co.*, 582 N.Y.S.2d 58, 61-63 (1992). When the claimant is a reinsurer, the rule is the same. *See, e.g., Transit*, 137 F.3d at 545-46; *Midland Ins. Co.*, 582 N.Y.S.2d at 61-63; *Comm'r of Ins. v. Munich American Reins. Co.*, 429 Mass. 140, 143-45 (1999) (upholding reinsurers' right of set off against insolvent insurers). Thus, the Liquidator's argument runs counter to the liquidation statute and the law of set off, and should be rejected.

⁶ The Liquidator, in fact, has conceded that payments made in cash by CIC and Home's debts to CIC are fungible. *See, e.g.,* Hearing Transcript at 10:2-5 ("So, [CIC] paid over 3.2 million dollars. We don't dispute that, they did and are entitled to deduct that.")

B. CIC Is Entitled to Immediate Set Off

14. The Liquidator also argues that CIC's set off right does not accrue until Nationwide's claims against Home are allowed against Home's estate. However, it is well settled that a reinsurer's set off arises when the insolvent insurer's debt to the reinsurer becomes due and owing, even if the insolvent insurer's debt to the reinsurer is not yet presently due. That is, the availability of any reinsurer setoff should be determined *before* any general distribution of the insolvent insurer's assets. *See, e.g., Stamp v. Ins. Co. of North America*, 908 F.2d 1375, 1380 (7th Cir. 1990); *Prudential Reins. Co. v. Superior Ct.*, 3 Cal. 4th 1118, 1128-32 (1992). That is because the insolvent insurer's debt to the reinsurer "may exist even though it has not been valued conclusively The right of set-off may be asserted . . . even though at the time the petition is filed one of the debts involved is absolutely owing but not presently due, or where a definite liability has accrued but is as yet unliquidated." *Stamp*, 908 F.2d at 1380 (*quoting 4 Collier on Bankruptcy* ¶ 68.10[2] (14th ed. 1977)). Indeed, it is black letter law that "debts and credits of an insolvent insurer amount[] to mutual obligations for purposes of equitable setoff even if the obligations [are] technically not payable until closing of the insolvency estate." *Prudential*, 3 Cal. 4th at 1128 (*citing, inter alia, Carr v. Hamilton*, 129 U.S. 252 (1889); *Scammon*, 92 U.S. 362).

15. The Claims Protocol dated August 10, 2004 (the "Claims Protocol"), which the Liquidator negotiated with CIC, reflects the Liquidator's agreement with the principle that CIC is entitled to immediate set off. The Claims Protocol expressly recognizes that any ongoing payment obligation of CIC "shall be net of set-off in compliance with N.H. RSA 402-C:34." Claims Protocol at ¶ 3.4. The Claims Protocol further requires a report by CIC within 30 business days after the end of each month; that report includes a statement of both the amounts

payable by CIC to Home *and* amounts claimed by CIC as offset against the amounts payable. *Id.* at ¶ 3.3.

16. Moreover, consistent with RSA 402-C:34, the case law and the Claims Protocol, the Referee has already recognized CIC's entitlement to immediate set off. With regards to claim 2005-HICIL-2, the Liquidator argued, as here, that "setoff is properly delayed until the claim is allowed by the Court." Referee's Report, dated October 21, 2005 ("Report"), at 4. There, as here, CIC argued that "RSA 402-C:34, the Order of Liquidation and the [Claims Protocol] 'permit immediate assertion of setoff when a debt arises.'" *Id.* The Referee squarely rejected the Liquidator's argument and agreed with CIC, holding that "a plain reading of RSA 402-C:34 clearly supports CIC's position that offsets are to be allowed prior to a claim being 'allowed or paid.'" *Id.* at 5. In her Report, the Referee further specified that CIC's set off right accrues as soon as CIC receives the necessary documentation for "proper calculation of its set off." *Id.* at 6. Here, there can be no doubt that CIC may immediately set off any Nationwide administrative costs that have been calculated to be in excess of CIC's obligations to Home under the Assumption Agreement.

17. It is no surprise that the Report, the case law, the Claims Protocol and the liquidation statute all point to immediate reinsurer set off here, given the patent inequity of the Liquidator's argument. CIC has already incurred payments that the Liquidator concedes were in excess of CIC's obligations to Home, and yet the Liquidator would have CIC wait, perhaps for decades, perhaps forever, until the Nationwide claims are allowed. Under the Liquidator's preferred rule, the Liquidator could seek a timing windfall by delaying the determination of claims involving set off. But CIC's entitlement does not hinge upon whether Nationwide decides to file and prosecute its claims, and it does not hinge upon the Liquidator's decision to determine

claims later rather than sooner. This Claim is against *Home*—what becomes of Nationwide's underlying claims against Home will not change that simple fact.

18. In order to ameliorate the unfairness of his position, the Liquidator suggests that, if Nationwide's claim is for less than the amount to which CIC is entitled, CIC could sue Nationwide for the shortfall, and thus fully recover. However, the Liquidator must know that CIC cannot sue Nationwide for any shortfall because there is no privity of contract between CIC and Nationwide. CIC's obligations under the Assumption Agreement run to Home, and only to Home. Nationwide is not a party to the Assumption Agreement, and the Assumption Agreement specifies that it confers no rights upon any third party. *See* Exhibit B to the Wamser Aff. at ¶ 12. Just as Nationwide could not sue CIC, so CIC could not sue Nationwide, and the Referee should reject the Liquidator's attempt at portraying this matter as a dispute between CIC and Nationwide.

19. Notwithstanding the Liquidator's claims, the case law, the Claims Protocol, the liquidation statute and the Referee's own past holding all dictate that CIC is entitled to set off the excess Nationwide administrative costs as soon as they become due and owing to CIC. Because the mutuality requirement of RSA 402-C:34 is satisfied and Home's grounds for disallowing the Claim are baseless, all amounts owed by Home to CIC regarding the Nationwide Awards may be set off against CIC's liability to Home.

**IV.
CONCLUSION**

For the reasons stated above, the Claim should be allowed in its entirety, and CIC should be entitled to set off the contingent amounts of this Claim as they arise.

Respectfully submitted,

By: Gary Lee

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Attorneys for Century Indemnity Company

EXHIBIT 1

1 DIVISION: HICIL

2 -----X

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

6
7 In re Liquidator Number: 2005-HICIL-11

8 Proof of Claim Number: INTL 700617

9 Claimant Name: Century Indemnity Company

10 -----X

11
12 March 10, 2006

13
14 HELD AT: HICIL

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16 BEFORE: HONORABLE
17 Referee PAULA ROGERS

18
19 APPEARANCES: MR. LEE
20 MR. LESLIE

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23 TRANSCRIBER: TERESA VON REINE
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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 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 Wuertembergische.
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 REFeree 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

EXHIBIT 2

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 THOMAS J. WAMSER

Thomas J. Wamser, being duly sworn, deposes and states the following:

1 . I am Associate General Counsel of ACE-INA and submit this affidavit in support of the submission of Century Indemnity Company ("CIC") regarding the "Nationwide" claim, INTL 700617 (the "Claim"). Unless otherwise indicated herein, this affidavit is based upon my personal knowledge and a review of the records maintained by CIC and its agent ACE INA Services U.K. Ltd. ("AISUK") regarding the Claim.

2 . The Claim arises out of Home's reinsurance contract (Contract R) with Nationwide, one of the M.E. Ruddy Pool ("Ruddy Pool") members, attached as Exhibit A. Pursuant to the Insurance and Reinsurance Assumption Agreement (the "Assumption Agreement"), attached as Exhibit B, CIC reinsures Home's liabilities arising from Home's reinsurance of Nationwide under Contract R.

3 . The contractual connection is between CIC and Home under the Assumption Agreement; Nationwide is not a party to the Assumption Agreement, and there is no privity between CIC and Nationwide. Indeed, Nationwide has no rights under the Assumption Agreement. Rather, Nationwide's sole recourse is to Home under Contract R. The United States


Court of Appeals for the Sixth Circuit affirmed this position in Nationwide Mutual Insurance Co. v. Home Insurance Co., 150 F.3d 545 (6th Cir. 1998), attached as Exhibit C.

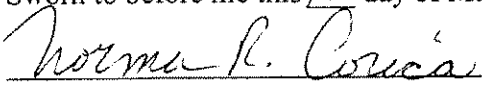
4 . Under the Assumption Agreement, CIC has the obligation to administer and service the "AFIA Liabilities" on Home's behalf. In 1996, AISUK, acting as the disclosed agent for CIC (and as the successor to CIGNA Services U.K. Limited), began to take on and administer Nationwide's Ruddy Pool business on behalf of Home under a full reservation of rights pending determination of various arbitration disputes concerning Home's obligations under Contract R. In administering the Nationwide business, AISUK made payments out of Home's account, rather than CIC's account. In fact, the checks bore Home's name.

5 . Nationwide instituted arbitration proceedings against Home, alleging that Home violated certain of its duties under Contract R, including its duties as administrator of the Ruddy Pool business. The Claim derives from the arbitration panel's rulings in two phases of the arbitration.

6 . First, in phase two of the Nationwide arbitration, the 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. 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 Ruddy Pool business on behalf of Home.

7. Second, in phase three of the Nationwide arbitration, Home was awarded a net amount of \$1.25 million, an award for the administration costs incurred by AISUK on its behalf in excess of what the Panel determined they should have been.


Thomas J. Wanser

Sworn to before me this 15 day of May, 2006

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Norma R. Corica, Notary Public
City Of Philadelphia, Philadelphia County
My Commission Expires Nov. 29, 2008
Member, Pennsylvania Association Of Notaries

**Wamser Aff.
EXHIBIT A**

REINSURANCE CONTRACT NO.R.

made between

NATIONWIDE MUTUAL INSURANCE COMPANY

for the account of

NATIONWIDE GENERAL INSURANCE COMPANY of

P.O.BOX 1881, Columbus, Ohio, 43216

(hereinafter referred to as the "Reassured")

as underwritten for by

M.E.RUTTY UNDERWRITING AGENCIES LTD. of

5-7 Ireland Yard, London EC4

(hereinafter referred to as the "Agent")

and

HOME INSURANCE COMPANY of New York

acting through its branch office at

26/28 Fenchurch Street, London, EC3

(hereinafter referred to as the "Reinsurers")

RECITALS

- (1) WHEREAS under agreements dated July 1, 1962 and December 17, 1963 between the Agent and the Reassured, the Agent accepted insurance and reinsurance business on behalf of the Reassured for the underwriting years 1962/3, 1964, 1965 and 1966 and
- (2) WHEREAS the Agent ceased to write new business after 31st January, 1967 and
- (3) WHEREAS the Reassured desire to effect reinsurance in respect of their liability under any and/or all policies and/or contracts of insurance and/or reinsurance written by the Agent on their behalf (hereinafter referred to as the "Original Policies") and
- (4) WHEREAS the Reinsurers having had full disclosure and inspection of the Agent's records and accounts relating to the Original Policies and all claims and outstanding matters thereunder have agreed to afford such reinsurance to the Reassured in accordance with the terms and conditions of this Contract, NOW it is hereby agreed as follows:

ARTICLE 1

This Contract is in respect of all losses which the Reassured may be or may become liable to pay, arising out of risks written for the Reassured by the Agent during 1962/3, 1964, 1965 and 1966 underwriting years of account,

Cont/.....

CI1000095

excluding however "Stop and Shop" Losses arising from or consequent upon a fire on 5th August, 1969, but including the Reassured's participation in the 1963/4 First Surplus Treaty.

The Reinsurers hereon shall follow all terms, conditions and settlements as agreed by or on behalf of the Reassured under the Original Policies included in the accounts reinsured hereby.

ARTICLE II

This Contract covers all claims due for payment on or after 1st January 1977 as hereinbefore defined and shall remain in force until all the liability hereunder shall have been exhausted, subject however to such cancellation provision as hereinafter defined in ARTICLE IX.

ARTICLE III

Notwithstanding anything contained herein to the contrary, this Contract shall exclude:

- a) Any loss or liability accruing to the Reassured directly or indirectly and whether as Insurer or Reinsurer from any Pool or Insurers or Reinsurers formed for the purposes of covering Atomic or Nuclear Energy Risk.

Furthermore, this Contract is also subject to the following Nuclear Incident Exclusion Clauses which are attached hereto and shall form an integral part hereof:
 - 1) NUCLEAR INCIDENT EXCLUSION CLAUSES - LIABILITY - REINSURANCE - U.S.A./CANADA.
 - 11) NUCLEAR INCIDENT EXCLUSION CLAUSES - PHYSICAL DAMAGE - REINSURANCE - U.S.A./CANADA.
- b) Life, Financial Guarantee and Insolvency Risks.
- c) Furthermore, it is understood and agreed that:
 - 1) As regards Non-Marine business accepted by the Reassured this Contract shall exclude loss or damage directly caused by War and/or Civil War but this exclusion shall not apply to such business which is permitted under the terms of the United Kingdom Market War and/or Civil War Risks Exclusion Agreement.

11) As regards Marine and Aviation business accepted by the

Reassured this Contract shall include loss, damage, liability or expense caused by or resulting from the risks of War, as covered in the Original Policy(ies) provided that such loss, damage, liability or expense would be recoverable under the terms and conditions of the relevant Institute War and Strikes Clauses or War sections of the relevant Institute War and Strikes Clauses or relevant London Aviation Clauses in current use at the inception of this Contract or at the time when the War Risks cover would have commenced under the original Insurance or Reinsurance within the terms of these clauses, whichever is the earlier; except that if the risks of War are covered in the Original Policy(ies) under clauses approved by the London Hull War Risks Joint Sub-Committee, or in respect of Cargo interest under the Standard War Risks Clause of any country which complies with the limitation of the United Kingdom Waterborne Agreement, the foregoing proviso shall not apply.

The Reinsurers warrant that they are unaware as at the date hereof that any business has been placed by the Agent which is excluded under the terms of this clause.

ARTICLE IV

The Consideration to be paid by the Reassured to the Reinsurers for this Contract shall be £100,393.00 plus U.S.\$224,691.00 plus Can\$1,372.00 payable at inception.

The Reinsurers hereon shall have the right to receive any payments under any reinsurance placed by the Agent on behalf of the Reassured and any other income, derived from any source that otherwise would have been payable to the Reassured. The Reinsurers shall bear all expenses of whatever nature which would otherwise have been claimed or requested from the Reassured by the Agent during the run off period.

ARTICLE V

It is understood and agreed that settlement of all claims; refunds, returns Premiums and original Profit Commission and administration of all premiums, additional premiums and policy adjustments shall be effected on behalf of the Reinsured by the Agent and/or their appointed agents.

It is further understood and agreed that the Reinsurers hereon will receive all premium adjustments due on the Original Policies without deduction of overriding commission and all recoveries under surplus, excess loss, "stop loss" and other reinsurances effected for joint account, payable to the Reassured on or after 1st January 1977 and will be responsible for payment of all returns of premium and reinsurance premiums payable thereafter.

ARTICLE VI

In the event of losses exceeding pounds 25,000 which may give rise to claims under this Contract the Agent shall give immediate notice to the Reinsurers, but inadvertent error in or omission of such notification shall not in any way prejudice the rights of the Reassured under this Contract.

ARTICLE VII

Reinsurers shall be bound unconditionally by all loss settlements made by the Agent, including compromise settlements, where such settlements are within the terms and conditions of the Original Policies and of this Contract. The Reinsurers' contribution to any other loss settlement shall be conditional upon prior notification of such settlement being given to the Reinsurers by the Agent and to their agreement thereto which agreement shall not be unreasonably withheld.

The Agent will conduct the settlement of or resistance to claims as conscientiously as if they were liable for the whole amount of the claim or claims that arise.

ARTICLE VIII

The Reinsurers and/or their nominees shall at all reasonable times be entitled to inspect all books, relevant records, correspondence, documents and vouchers in the possession of or accessible to the Agent, and in any way connected with the adjustment of a loss applying to this Agreement, it being understood that the Agent or the Reassured cannot be called upon to supply documentary evidence other than that which they themselves have received.

ARTICLE IX

Should the Reinsurers

- i) Lose the whole or part of its paid up capital, or
- ii) Go into liquidation or a receiver be appointed,

the Reassured have the right to terminate their participation in this Contract forthwith by giving notice in writing to the Reinsurers, and the Reinsurers shall have the same right vis-a-vis the Reassured.

FATIGETIDE MUTUAL INSURANCE CO

In order to secure the Reassured in the event of liquidation, either voluntary or compulsory of the Reinsurers, or in the event of any default by the Reinsurers in performance of any of their obligations under this contract, any further monies which may after the occurrence of any of the events contemplated in this clause be available for or credited to or claimable by the Reinsurers shall be held upon trust for the Reassured as sole and absolute beneficiaries.

ARTICLE X

It is hereby understood and agreed that any amendments and/or alterations to this Contract that are agreed either by correspondence and/or Brokers Slip Endorsements shall be automatically binding hereon and shall be considered as forming an integral part hereof.

ARTICLE XI

This Contract is negotiated through Harrington, Austin Limited, 2/12 Wilson Street, London EC2M 2TJ through whom all correspondence between parties hereto shall be addressed.

ARTICLE XII

It is hereby declared and agreed that any inadvertent delays, errors or omissions made in connection with this Contract shall not be held to relieve either of the parties hereto from any liability which would have attached to them hereunder if such delay, error or omission had not occurred and it is further agreed that in all things coming within the scope of this Contract the Reinsurers shall share to the extent of their interest the fortunes of the Reassured.

Nevertheless it is understood and agreed that any such delay, error or omission shall be rectified as soon after its discovery as possible.

The Reinsurers acknowledge having made the enquiries and inspections referred to in RECITAL (4) hereof unconditionally waive and release any present or future right to avoid or terminate this Contract, for non-disclosure, misrepresentation or any other cause whatever.

ARTICLE XIII

As a precedent to any right of action hereunder, if any dispute shall arise between the Reassured and the Reinsurers with reference to the interpretation of this Contract or their rights with respect to any transaction involved, whether such dispute arises before or after termination of this Contract, such dispute, upon the written request of either party, shall be submitted to three arbitrators, one to be chosen by each party, and the third by the two so chosen. If either party refuses or neglects to appoint an arbitrator within thirty days after the receipt of written notice from the other party requesting it to do so, the requesting party may appoint two arbitrators. If the two arbitrators fail to agree in the selection of a third arbitrator within thirty days of their appointment, each of them shall name two, of whom the other shall decline one and the decision shall be made by drawing lots. All arbitrators shall be executive officers of insurance or reinsurance companies or Underwriters at Lloyd's, London not under the control of either party to this Contract.

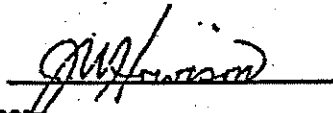
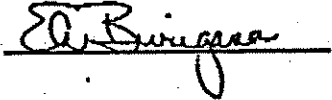
The arbitrators shall interpret this Contract as an honourable engagement and not as merely a legal obligation; they are relieved of all judicial formalities and may abstain from following the strict rules of law, and they shall make their award with a view of effecting the general purpose of this Contract in a reasonable manner rather than in accordance with a literal interpretation of the language. Each party shall submit its case to its arbitrator within thirty days of the appointment of the third arbitrator.

Conc/.....

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The decision in writing of any two arbitrators, when filed with the parties hereto, shall be final and binding on both parties. Judgment may be entered upon the final decision of the arbitrators in any court having jurisdiction. Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration. Said arbitration shall take place in Columbus, Ohio unless some other place is mutually agreed upon by the Reassured and the Reinsurers.

Signed: **NATIONWIDE MUTUAL INSURANCE COMPANY**
NATIONWIDE GENERAL INSURANCE COMPANY

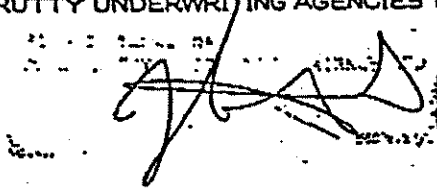



Dated: June 22, 1977
HOME INSURANCE COMPANY



We acknowledge that we are fully aware of and (having been so requested by the Reassured and the Reinsurers) consent to the arrangements proposed in this Contract. We undertake to carry out the obligations under this Contract which fall on ourselves and to send accounts to the Home Insurance Company and to deal with them in all respects.

Signed: M.E.RUTTY UNDERWRITING AGENCIES LIMITED.

A handwritten signature in black ink, appearing to read 'M.E. Rutty', is written over a faint, circular stamp. The signature is fluid and somewhat stylized.

We will from now on deal only with M.E.RUTTY UNDERWRITING AGENCIES LIMITED.

Signed: HOME INSURANCE COMPANY



CI1000101

**Wamser Aff.
EXHIBIT B**

INSURANCE AND REINSURANCE
ASSUMPTION AGREEMENT

This Assumption Agreement dated January 31, 1984, (hereinafter referred to as the "Assumption Agreement") between FIREMAN'S FUND INSURANCE COMPANY, a California corporation, ST. PAUL FIRE AND MARINE INSURANCE COMPANY, a Minnesota insurance corporation, THE AMERICAN INSURANCE COMPANY, a New Jersey insurance corporation, HARTFORD FIRE INSURANCE COMPANY, a Connecticut insurance corporation, THE HOME INSURANCE COMPANY, a New Hampshire insurance corporation and AETNA INSURANCE COMPANY, a Connecticut insurance corporation (hereinafter referred to collectively as the "Sellers"), and INSURANCE COMPANY OF NORTH AMERICA, a Pennsylvania insurance corporation (herein "INA") is executed and takes effect simultaneously with the Closing of the Purchase Agreement No. 1 and Purchase Agreement No. 2, each as amended (the "Purchase Agreements"), each dated and entered into on December 30, 1983.

1. Except as provided herein, terms used and entities referred to in this Assumption Agreement shall have the same definitions and identifications as in the Purchase Agreements.

2. In consideration of the transfer by the Total Sellers of the assets (including both ledger and non-ledger) shown on the statutory balance sheet of AFIA as of the closing date, and all other tangible assets owned directly by AFIA, or tangible assets in which AFIA has beneficial ownership, to the Purchasers, as designated by CIGNA, or any of them, INA hereby assumes as its direct obligation and agrees to pay on behalf of each Seller when payment thereof is due all insurance and reinsurance liabilities of each of the Assigning Sellers arising under or related to the business of AFIA described in Section 1.1(c)(ii) of the Purchase Agreements and included in AFIA Obligations (herein the "AFIA Liabilities") (it being understood that AFIA Liabilities do not include obligations arising as holders of Stock or liabilities for income taxes). The parties confirm and agree that, since none of the AFIA Liabilities assumed hereby by INA has been written or accepted in the name of INA through or by AFIA, none of the AFIA Liabilities as so assumed shall be subject to the provisions of Article XI of the Constitution of AFIA.

3. INA shall (1) administer and service the AFIA Liabilities including their investigation, payment, settlement, defense and the processing and collection of any reinsurance related thereto, (2) have all authority to act in the name of a Seller 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 service. INA shall comply in such administration with commercially reasonable standards in the insurance industry and the standards prescribed by, or by practice of, any governmental authority having jurisdiction and shall be responsible for all penalties and claims in tort actions or otherwise arising from the failure or alleged failure to comply with such standards.

4. INA shall prepare, maintain and preserve indefinitely and permit the Sellers reasonable access to appropriate financial and business records, books of account and documents (including insurance and reinsurance policies and correspondence and proofs of loss, premium collection records, and records of insurance and reinsurance claims and recoveries relating thereto) relating to the AFIA Liabilities, and this Agreement related to the status of any liability or regulatory obligation the Sellers might have or come to have on account of the AFIA Liabilities. INA shall prepare and deliver to each Seller as promptly as practicable but in any event within 75 days after the end of each six month period commencing with that ending June 30, 1984, an account for such period of such Seller's AFIA Liabilities in such detail and covering such matters as the Sellers shall reasonably and timely request and shall allow each Seller at its own expense to conduct or cause auditors

of its choice to conduct an annual audit of such account and the AFIA Liabilities.

5. Each of the Sellers 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 shall make any payment of any AFIA Liability without the prior written approval of INA unless under order of a court of competent jurisdiction or an appropriate action of a proper regulatory body. Each of the Sellers shall give written notice of any process or written claim served upon such Seller in connection with the AFIA Liabilities as promptly as practicable.

6. Except as otherwise specifically provided in this paragraph 6, where an insurance or reinsurance contract included in AFIA Liabilities was issued in the name of a Seller, INA will make direct payment to the insured, or will make payment on behalf of the insured to third parties, as required by such contract regardless of whether this Assumption Agreement is a reinsurance of the Seller's original liability under such contract or is a retrocession of the Seller's liability under a reinsurance agreement reinsuring the liability of another Seller under such other Seller's contract. Where the original contract was not issued in the name of a Seller, INA shall make payment to

the reinsured or retrocedent in accordance with the reinsurance contract or retrocession contract out of which the Seller's liability arises. The provisions of this paragraph shall apply in the event of the continuing solvency of the Seller and also in the event of the insolvency of the Seller where INA with the consent of the direct insured or insureds has assumed policy obligations as provided in clause (b) of the last paragraph of this paragraph 6.

In the event of the insolvency of a Seller, this reinsurance shall be payable directly to such Seller, or to its liquidator, receiver, conservator or statutory successor on the basis of the liability of such Seller without diminution because of the insolvency of such Seller or because the liquidator, receiver, conservator or statutory successor of such Seller has failed to pay all or a portion of any claim. It is agreed, however, that the liquidator, receiver, conservator or statutory successor of a Seller shall give written notice to INA of the pendency of a claim against such Seller indicating the policy or bond reinsured which claim would involve a possible liability on the part of INA within a reasonable time after such claim is filed in the conservation or liquidation proceeding or in the receivership, and that during the pendency of such claim, INA may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be

adjudicated any defense or defenses that it may deem available to such Seller or its liquidator, receiver, conservator or statutory successor. The expense thus incurred by INA shall be chargeable, subject to the approval of the court, against such Seller as part of the expense of conservation or liquidation to the extent of the pro rata share of the benefit which may accrue to such Seller solely as a result of the defense undertaken by INA.

INA undertakes to indemnify each Seller, not only in form but in fact against the loss or liability arising out of the AFIA Liabilities.

As to all reinsurance made, ceded, renewed or otherwise becoming effective under this Assumption Agreement, the reinsurance shall be payable by INA to each Seller or to its liquidator, receiver, conservator or statutory successor, except as provided by Section 315 of the New York Insurance Law or except (a) where this Assumption Agreement specifically provides another payee of such reinsurance in the event of the insolvency of a Seller, and (b) where INA with the consent of the direct insured or insureds has assumed such policy obligations of such Seller as direct obligations of INA to the payees under such policies and in substitution for the obligations of such Seller to such payees.

7. As a condition precedent to enforcement of any right under this Agreement by judicial proceedings, if any

dispute shall arise between any of the parties to this Agreement with reference to its interpretation or their rights under it, such dispute shall be submitted to arbitration upon the written request of any party to the dispute. Three arbitrators shall be selected by mutual agreement of all parties to the dispute. If within 30 days after request for arbitration the parties to the dispute have not agreed on the choice of all arbitrators, then the arbitrators not then agreed upon shall be selected by the Presiding Judge of the Supreme Court of New York in and for the County of New York. The arbitrators shall be disinterested retired or active executive officers of insurance or reinsurance companies authorized to transact business in the United States of America.

The arbitrators are relieved from all judicial formalities and may abstain from following strict rules of law. They shall interpret this Agreement as an honorable engagement and not merely as a legal obligation; they shall make their award with a view to the general purpose of this Agreement in a reasonable manner rather than in accordance with a literal interpretation of language. A majority decision by the arbitrators shall be final and binding on the parties to such arbitration. Judgment may be entered upon the final decision of the arbitrators in any court having jurisdiction. Each party to the arbitration shall jointly and equally bear with the other parties, the expense

of the arbiters and the arbitration. Such arbitration shall take place in New York, New York or such other location as the parties to the arbitration may agree.

8. The Assigning Sellers and INA shall without further consideration, at any time and from time to time at or after the execution and delivery of this Agreement execute and deliver all such further documents and instruments and take such other action as may be reasonably requested by any other party to this Agreement in order to effectuate the terms of this Agreement or the transactions contemplated by it. INA shall without further consideration, at any time from time to time, execute and deliver any documents or instruments or take such action as may be reasonably requested by any of the Assigning Sellers in order that appropriate recognition be given this Assumption Agreement on the statutory insurance accounting statements of such Assigning Seller.

9. All notices, requests, consent requests, instructions, approvals and other communications provided for under this Assumption Agreement shall be validly given, made, sent or served, if in writing and delivered personally or sent by telex or by registered or certified first class mail, return receipt requested, postage prepaid to the following address:

If to INA,

Insurance Company of North America
c/o CIGNA Corporation
One Logan Square
Philadelphia, Pennsylvania 19103
Attention: Corporate Secretary
Telex: 834442

If to Hartford,

Hartford Fire Insurance Company
Hartford Plaza
Hartford, Connecticut 06115
Attention: General Counsel
Telex: 99236

If to Home,

The Home Insurance Company
59 Maiden Lane
New York, New York 10038
Attention: General Counsel
Telex: 710 581 5629

If to Aetna,

Aetna Insurance Company
c/o CIGNA Corporation
One Logan Square
Philadelphia, Pennsylvania 19103
Attention: Corporate Secretary
Telex: 834442

If to Fireman's,

Fireman's Fund Insurance Company
777 San Marin Drive
Novato, California 94998
Attention: General Counsel
Telex: 910 482 9507

If to American,

The American Insurance Company
777 San Marin Drive
Novato, California 94998
Attention: General Counsel
Telex 910 482 9507

If to St. Paul,

St. Paul Fire and Marine Insurance Company
685 Washington Street
St. Paul, Minnesota
Attention: Corporate Secretary
Telex: 297082

Each party hereto may by written notice delivered to the other parties change its address for the purpose of any subsequent notice.

10. This Assumption Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York.

11. No party hereto shall assign its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other parties hereto; provided, however, that INA may assign its rights and obligations hereunder to any insurance company or companies which are subsidiaries of CIGNA and are reasonably acceptable to each of the Sellers and such assignee assumes in writing the obligations of INA hereunder; and provided, further, however, that no such assignment or assumption shall relieve INA of its obligations hereunder for which with the assignee it shall be jointly and severally liable.

12. Subject to paragraph 11 hereof, this Assumption Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Assumption Agreement, express or implied, is intended, or shall be

construed, to confer upon or give to any person, firm or corporation (other than the parties hereto and their permitted successors and assigns) any rights or remedies under or by reason of this Assumption Agreement, or any term, provision, condition, undertaking, warranty, representation, indemnity, covenant or agreement contained herein.

13. The terms, provisions and conditions of this Assumption Agreement may not be changed, modified, amended or waived in any manner except by an instrument in writing duly executed by all of the parties hereto.

14. This Assumption Agreement is entered into under the terms of the Purchase Agreements and in any situation where there is a conflict between the terms of this Assumption Agreement and the Purchase Agreements, the terms of the Purchase Agreements shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Assumption Agreement to be executed in their respective names by their respective duly authorized officers on the date first above written.

FIREMAN'S FUND INSURANCE COMPANY

By David M. Sorensten

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY

By W. J. H.

THE AMERICAN INSURANCE COMPANY

By David M. Sorensten

HARTFORD FIRE INSURANCE COMPANY

By M. S. Wild

THE HOME INSURANCE COMPANY

By Chas. W. Allen

AETNA INSURANCE COMPANY

By Jerry

INSURANCE COMPANY OF NORTH
AMERICA

By Jerry

**Wamser Aff.
EXHIBIT C**

Westlaw.

150 F.3d 545

Page 1

150 F.3d 545, 1998 Fed.App. 0243P
(Cite as: 150 F.3d 545)

H

Briefs and Other Related Documents
1998 Fed.App. 0243P

United States Court of Appeals, Sixth Circuit.
NATIONWIDE MUTUAL INSURANCE
COMPANY, Plaintiff-Appellee
(97-3325)/Cross-Appellant (97-3405),
v.

HOME INSURANCE COMPANY, Defendant,
Insurance Company of North America; INA
Corporation; Cigna Corporation; Cigna
International Corporation, Defendants-Appellants
(97-3325)/Cross-Appellees (97-3405).
Nos. 97-3325, 97-3405.

Argued June 18, 1998.
Decided Aug. 6, 1998.

Insurer brought suit against reinsurer and against assignees that had assumed reinsurer's obligations for breach of reinsurance contract. The United States District Court for the Southern District of Ohio, Edmund A. Sargus, Jr., J., dismissed claims against reinsurer pending arbitration, denied assignees' motion for summary judgment, and dismissed claims against assignees pending arbitration. Assignees appealed, and insurer cross-appealed. The Court of Appeals, Boggs, Circuit Judge, held that: (1) third-party disclaimer in assumption agreement precluded direct suit by insurer against assignees and limited insurer to exercising its rights against reinsurer, and (2) effect of insolvency clause in assumption agreement was not ripe for adjudication.

Reversed.

West Headnotes

[1] Insurance 217 ↪3621

217 Insurance
217XXXII Reinsurance
217k3621 k. Estoppel and Waiver of

Defenses. Most Cited Cases

Under New York law, insurer could not bring suit directly against assignees for breach of reinsurance contracts where agreement by which assignees assumed reinsurer's obligations contained third-party disclaimer, which precluded any person or entity other than parties to assumption agreement from having recourse against assignees if assignees failed to fulfill their obligations under agreement.

[2] Insurance 217 ↪3621

217 Insurance
217XXXII Reinsurance
217k3621 k. Estoppel and Waiver of
Defenses. Most Cited Cases

Under New York law, insurer's potential status as obligee-beneficiary of assumption agreement under which its reinsurer's obligations were assumed by assignees did not allow it to sue assignees directly for breach of reinsurance contracts in face of disclaimer in assumption agreement that precluded any third party from having recourse against assignees for any failure to satisfy obligations under assumption agreement.

[3] Insurance 217 ↪3621

217 Insurance
217XXXII Reinsurance
217k3621 k. Estoppel and Waiver of
Defenses. Most Cited Cases

Under New York law, assignee's direct assumption of reinsurer's obligations to insurer, in sense that assignees agreed to make payments directly to insured, did not entitle insurer to bring suit directly against assignees for breach of reinsurance obligations in face of disclaimer in assumption agreement between assignees and reinsurer that barred third parties from enforcing rights under agreement.

[4] Insurance 217 ↪3621

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150 F.3d 545

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150 F.3d 545, 1998 Fed.App. 0243P
(Cite as: 150 F.3d 545)

217 Insurance

217XXXII Reinsurance

217k3621 k. Estoppel and Waiver of
Defenses. Most Cited Cases

Insurer could not directly sue assignee of reinsurer's obligations on theory that it was third-party beneficiary of assumption agreement where agreement contained third-party disclaimer that barred any person or entity other than parties to assumption agreement from enforcing agreement.

[5] Insurance 217 ↪ 3633

217 Insurance

217XXXII Reinsurance

217k3632 Actions

217k3633 k. In General. Most Cited Cases

Issues relating to effect of insolvency clause in agreement under which assignees assumed reinsurer's obligations were not ripe for adjudication in insurer's direct suit against assignees for breach of reinsurance obligations where reinsurer was not insolvent.

*546 Randolph Carson Wiseman, Bricker & Eckler, Columbus, OH; Irene C. Keyse-Walker (argued and briefed), Arter & Hadden, Cleveland, OH; Michael L. Cohen, Scanlan, Rosen & Shar, Baltimore, MD, for Plaintiff-Appellee/Cross-Appellant.

Gerald P. Ferguson (briefed), Vorys, Sater, Seymour & Pease, Columbus, OH; Clifford H. Schoenberg (argued and briefed), Harry P. Cohen (briefed), Philip J. Loree (briefed), Rosenman & Colin, New York City, for Defendants-Appellants/Cross-Appellees.

Before: MERRITT, BOGGS, and
SUHRHEINRICH, Circuit Judges.

OPINION

BOGGS, Circuit Judge.

Nationwide Mutual Insurance Company ("Nationwide") sued Home Insurance Company ("Home"), INA Corporation, Insurance Company of North America ("INA"), CIGNA Corporation, and CIGNA International Corporation.^{FN1} In its complaint, Nationwide alleged that Home and the CIGNA defendants had breached reinsurance

contracts under which they were responsible for paying certain claims filed against Nationwide. Nationwide sought declaratory relief as well as compensatory and punitive damages. The district court stayed Nationwide's claims against Home pending arbitration. The parties do not appeal this ruling.

FN1. When discussed collectively, INA Corporation, INA, CIGNA Corporation, and CIGNA International Corporation will be referred to as "the CIGNA defendants."

After the claims against Home were dismissed pending arbitration, the CIGNA defendants sought summary judgment on the claims against them. The district court denied the CIGNA defendants' motion, referred the claims against the CIGNA defendants to arbitration, and dismissed the entire case. This is the ruling that is the subject of the CIGNA defendants' appeal. Nationwide cross-appeals the district court's rejection of its third-party beneficiary argument, which it claims provides an alternative basis for holding that it can bring an action directly against the CIGNA defendants.

I

A. Nationwide's Reinsurance Agreement With Home

In the 1960s, Nationwide entered into a reinsurance pool managed by the London firm of M.E. Ruty Underwriting Agency Limited ("Ruty"). As a member of this reinsurance pool, Nationwide authorized Ruty to get, underwrite, and administer direct insurance and reinsurance business. Ruty issued policies and contracts in the name of one of the pool members. The pool member whose name was on the insurance policy or reinsurance contract was directly responsible to the insured. However, the premiums and losses arising from the insurance policies and reinsurance contracts Ruty entered into on behalf of the pool members were divided proportionately among all of the pool members.

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Nationwide and some other members of the Ruty Pool withdrew from the pool in 1966. After it withdrew from the pool, Nationwide still had ongoing obligations for continuing and contingent liabilities under insurance policies and reinsurance contracts Ruty issued in its name while it was a member of the pool. To "cut off" its potential future liabilities for insurance and reinsurance obligations arising from its participation in the pool, on June 22, 1977, Nationwide entered into a reinsurance agreement with Home. Under the agreement, Home reinsured ^{FN2} Nationwide for "all losses which [Nationwide] *547 may be or may become liable to pay arising out of risks written for" Nationwide through the Ruty Pool. This reinsurance agreement contained a broad arbitration clause, permitting either party to compel arbitration as to any disputes relating to the agreement.

FN2. Home entered into the reinsurance agreement with Nationwide through an insurance pool of United States-domiciled insurers called the American Foreign Insurance Association ("AFIA"). AFIA engaged in foreign insurance and reinsurance business on behalf of Home and its other members. Like Ruty, AFIA would issue insurance policies or reinsurance contracts in the name of a member company that was directly liable to the insured or reinsured, but all members of the pool divided premiums and losses proportionately among themselves.

B. The CIGNA Defendants Accept AFIA's Reinsurance Obligations

On December 31, 1983, the CIGNA defendants entered into purchase and assumption agreements with Home and the other members of AFIA. Under Section 1.1 of the purchase agreement, entitled "Purchase and Sale," the CIGNA defendants agreed to purchase all interests in and rights to the policies and contracts that Home and the other AFIA members entered into through the AFIA pool. This included Home's reinsurance contract with Nationwide for the Ruty Pool liabilities.

In fulfillment of its obligations under Sections 1.1 and 1.4 of the purchase agreement, CIGNA International Corporation caused its subsidiary, INA, to enter into an Insurance and Reinsurance Assumption Agreement ("Assumption Agreement") with Home and the other AFIA members. Under this Assumption Agreement, INA assumed "as its direct obligation and agree[d] to pay on behalf of [Home] when payment thereof is due all insurance and reinsurance liabilities ... included in the AFIA obligations." The Assumption Agreement further provided that "none of the [AFIA members] shall make any payments of any AFIA liability without the prior written approval of INA unless under order of a court...."

The Assumption Agreement between the CIGNA defendants and the AFIA members also contained an arbitration clause nearly identical to the one in the reinsurance agreement between Home and Nationwide, and it included a choice of law clause providing that New York law would govern the agreement. Finally, the Assumption Agreement also stated:

Nothing in this Assumption Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person, firm or corporation (other than the parties hereto ...) any rights or remedies under or by reason of this Assumption Agreement, or any term, provision, condition, undertaking, warranty, representation, indemnity, covenant or agreement contained herein....

Some time after the Assumption Agreement was entered into, claims were made on policies Ruty had written in the name of Nationwide. These policies were among those reinsured by Home. The reinsurance on them had passed to the CIGNA defendants through the Assumption Agreement.

C. The District Court's Ruling

In 1995, Nationwide sued Home and the CIGNA defendants, alleging that they had breached contracts under which they were required to cover the claims against Nationwide arising from the policies and contracts from the Ruty Pool. After the

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claims against Home were stayed pending arbitration, the CIGNA defendants sought summary judgment on the claims against them.

The district court held that Nationwide was not a third-party beneficiary to the agreements between the members of AFIA and the CIGNA defendants. The district court did, however, conclude that Nationwide was an obligee-beneficiary of these agreements and, as such, could pursue a claim directly against the CIGNA defendants for breach of contract under the terms of the Assumption Agreement between Home and the CIGNA defendants. The court reasoned that the CIGNA defendants stood in the shoes of Home as a direct obligor to Nationwide for purposes of the reinsurance contract between Nationwide and Home. The district court further reasoned that the CIGNA defendants had assumed the reinsurance contract between Home and Nationwide and thus were bound by the arbitration provision in that agreement (the same one the district court relied upon to order arbitration of Nationwide's claims against Home). Therefore, the district court denied the CIGNA defendants' motion for summary judgment, referred Nationwide's claims against them to arbitration, and dismissed the entire case.

*548 II

The central issue on appeal is whether the district court erred in concluding that Nationwide could bring a claim directly against the CIGNA defendants by virtue of the CIGNA defendants' assumption of the reinsurance contract between Nationwide and Home, or whether Nationwide is limited to exercising its rights against Home with respect to payments under this reinsurance contract. The CIGNA defendants argue that Nationwide is precluded from suing them for reinsurance coverage because of the following language:

Nothing in this Assumption Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person, firm or corporation (other than the parties hereto ...) any rights or remedies under or by reason of this Assumption Agreement, or any term, provision, condition, undertaking, warranty, representation, indemnity,

covenant or agreement contained herein....

The CIGNA defendants also contend that Nationwide's status as an obligee-beneficiary does not allow them to avoid the preclusive effect of the above-quoted disclaimer.

Nationwide cross-appeals the district court's ruling that it is not a third-party beneficiary of the agreements between Home and the CIGNA defendants. It raises the third-party beneficiary theory only as an alternative basis for allowing it to pursue a claim directly against the CIGNA defendants and does not seek to reverse the court's ruling that the CIGNA defendants are liable under an assumption theory. Nor does Nationwide challenge the district court's order submitting all of the claims against the CIGNA defendants to arbitration.

We hold that the CIGNA defendants are correct in asserting that Nationwide cannot bring suit directly against them (under either a third-party beneficiary theory or an assumption theory) to recover reinsurance benefits they assumed in their agreements with Home and the other members of AFIA.

A. Nationwide Cannot Bring a Claim Directly Against the CIGNA Defendants

[1] Under New York law, "where a contract's language expressly bars any contractual liability to a third party, no third party right to enforce the contract may be found." *Rosier v. Brown*, 158 Misc.2d 748, 601 N.Y.S.2d 554, 557 (N.Y.Sup.Ct.1993) (citing *Nepco Forged Prods., Inc., v. Consolidated*, 99 A.D.2d 508, 470 N.Y.S.2d 680, 681 (N.Y.App.Div.1984)). This is exactly what the third-party disclaimer provision in the Assumption Agreement between the CIGNA defendants and the members of AFIA does.

Despite Nationwide's valiant efforts to concoct alternative meanings of the third-party disclaimer language that would not preclude it from suing the CIGNA defendants on the reinsurance contract they assumed from Home, we hold that the third-party

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disclaimer language is clear and unequivocal. It bars any person or entity, except the parties to the Assumption Agreement (the members of AFIA and the CIGNA defendants), from suing on any of the obligations undertaken pursuant to the Assumption Agreement, including the CIGNA defendants' obligation to make payments on the reinsurance contract between Nationwide and Home. Under New York law, contract language is ambiguous "when it is reasonably susceptible to more than one reading." *Haber v. St. Paul Guardian Ins. Co.*, 137 F.3d 691, 695 (2d Cir.1998). We do not find reasonable any construction of the disclaimer at issue that seeks to qualify or limit its broad, simple, and absolute language preventing any third party from enforcing the Assumption Agreement.

When the members of AFIA assigned their policies and contracts to the CIGNA defendants, they were free to negotiate an agreement under which the CIGNA defendants as assignees would permit direct recourse against themselves if they did not fulfill their obligations under the reinsurance contracts of Home and other members of AFIA. The AFIA members did not do this. Instead, they signed an agreement that expressly excluded insureds from having recourse against the assignees if those assignees failed to satisfy their obligations under *549 the Assumption Agreement. This left the insureds with exactly the same recourse they would have had if Home and the other members of AFIA had never entered into the Assumption Agreement.

There is nothing wrong with this. Nationwide is not without recourse. It can pursue its claims against Home. If coverage is due, Home will be forced to meet its obligation to Nationwide and then seek indemnification from the CIGNA defendants or Home may implead the CIGNA defendants as third-party defendants to Nationwide's action for reinsurance payments. The insolvency of Home could affect this. However, as we explain below, we need not consider the effects that insolvency may have on the parties' respective rights and obligations because this issue is not yet ripe for review.

[2] The district court's holding that Nationwide was entitled to pursue its claims for breach of the

assignment agreement directly against the CIGNA defendants was premised on a legally erroneous distinction between obligee-beneficiaries and third-party beneficiaries. Obligee-beneficiaries are simply one type of third-party beneficiaries. 4 Corbin on Contracts § 774 at 6 (7th ed.1989). Therefore, whether or not Nationwide is an obligee-beneficiary is of no legal significance. It is still not a party to the agreement between the members of AFIA and the CIGNA defendants and thus is precluded from bringing a claim directly against the CIGNA defendants to enforce the reinsurance obligations the CIGNA defendants assumed from Home.

Our conclusion that under the circumstances of this case Nationwide cannot be considered a party to the agreement between the members of AFIA and the CIGNA defendants is supported by *Nicholson v. 300 Broadway Realty Corp.*, 7 N.Y.2d 240, 196 N.Y.S.2d 945, 164 N.E.2d 832, 836 (1959). In *Nicholson*, an embossing company entered into an agreement with an adjoining building owner, Nicholson, to furnish steam heat to Nicholson's building. *Id.* 164 N.E.2d at 833. Some years later, the embossing company assigned this obligation to 300 Broadway Realty, which expressly assumed the obligation to provide steam heat to Nicholson's building, but failed to do so. *Id.* 164 N.E.2d 832 at 834-36. Nicholson then sued 300 Broadway Realty under the contract Broadway had assumed. The New York Court of Appeals held that, for purposes of the assumption contract, the embossing company was the promisee, 300 Broadway Realty was the promisor, and Nicholson was a "third-party beneficiary."^{FN3} *id.*

FN3. Although Nationwide is a third party to the Assumption Agreement in the sense that it is not a party to it, for reasons explained below, unlike Nicholson, Nationwide cannot be classified as a third-party *beneficiary* entitled to bring suit to enforce an agreement to which it is not a party.

[3] It is clear that the disclaimer barring third parties from enforcing rights under the contract

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applies to Nationwide. Nationwide argues that it should be deemed beyond the scope of the disclaimer because the CIGNA defendants directly assumed Home's reinsurance obligation to Nationwide in the sense that they agreed to make payments directly to Nationwide and other insureds. This argument fails, however, because whether or not there was a direct assumption does not alter the decisive fact that Nationwide is a stranger to the Assumption Agreement through which it seeks to impose liability upon the CIGNA defendants.

Since Nationwide cannot bring suit directly against the CIGNA defendants on the Assumption Agreement or any obligations assumed therein, it cannot compel the CIGNA defendants to submit to arbitration under the terms of a contract they assumed in the Assumption Agreement with the members of AFIA.

B. Nationwide's Cross-Appeal

[4] Our resolution of the CIGNA defendants' appeal also disposes of Nationwide's cross-appeal regarding the district court's holding that Nationwide is not entitled to bring a claim directly against the CIGNA defendants under a third-party beneficiary theory. Nationwide is a third party to the Assumption Agreement in the same generic sense as every individual and entity on earth (other than the members of AFIA and the CIGNA defendants), in that it is not a party *550 to the agreement. As such, the disclaimer provision precludes it and all other third parties to the contract from enforcing it. By precluding any third party from enforcing the agreement, this same disclaimer defeats Nationwide's claim that it belongs to the discrete subset of generic third parties referred to as third-party beneficiaries, whose distinguishing characteristic is their legal right to enforce contracts to which they are not a party. *See Rosier v. Brown*, 158 Misc.2d 748, 601 N.Y.S.2d 554, 557 (N.Y.Sup.Ct.1993) (citing *Nepco Forged Prods., Inc. v. Consolidated*, 99 A.D.2d 508, 470 N.Y.S.2d 680, 681 (N.Y.App.Div.1984)). Accordingly the district court was correct to hold that Nationwide is not a third-party beneficiary.

C. Issues Relating to the Insolvency Clause are not Ripe for Decision

[5] Finally, we refuse the CIGNA defendants' invitation to rule on the effects the insolvency clause of the Assumption Agreement may have on Nationwide's ability to pursue coverage under its reinsurance agreement with Home. Issues related to insolvency are not yet ripe for consideration on the merits. Home is not insolvent at this time. A basic tenet of the doctrine of ripeness is that "a matter is considered premature for judicial review when the alleged injury is speculative or may never occur." *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1068 (6th Cir.1998) (citing *O'Shea v. Littleton*, 414 U.S. 488, 494, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974)).

III

The judgment of the district court submitting Nationwide's claims against the CIGNA defendants to arbitration and dismissing the case is REVERSED. The claims against the CIGNA defendants cannot be submitted to arbitration because the express disclaimer in the Assumption Agreement prevents Nationwide from suing the CIGNA defendants to enforce the reinsurance obligations the CIGNA defendants assumed from Home. We remand the case to the district court to enter an order dismissing Nationwide's claims against the CIGNA defendants.

C.A.6 (Ohio), 1998.
Nationwide Mut. Ins. Co. v. Home Ins. Co.
150 F.3d 545, 1998 Fed.App. 0243P

Briefs and Other Related Documents (Back to top)

- 97-3405 (Docket) (Apr. 29, 1997)
- 97-3325 (Docket) (Apr. 08, 1997)

END OF DOCUMENT

EXHIBIT 3

DATED

25th August

1993

AFIA

(1)

- and -

CIGNA Services U.K. Limited

(2)

SERVICES AGREEMENT
(LONDON BRANCH)

Lovell White Durrant
65 Holborn Viaduct
London EC1A 2DY

A3/KWC
B6/PDG

SERVICES AGREEMENT

THIS AGREEMENT made the 25th day of August 1993

BETWEEN:

1. AFIA, an unincorporated association with a place of business in the United Kingdom at Mansell Court, 69 Mansell Street, London E1 8AN (the "Association").
2. CIGNA Services U.K. Limited, a company incorporated in England (No. 1509033) whose registered office is at CIGNA House, 8 Lime Street, London EC3M 7AA ("Services").

WHEREAS:

- A. The Association has certain residual responsibilities for the operation of the run-off of certain policies of insurance written by the London Treaty Reinsurance Business Departments of The Home Insurance Company and St Paul Fire and Marine Insurance Company (the "Reinsurance Contracts")
- B. Services has agreed on the terms hereinafter to provide to the Association certain services for the purpose of enabling the Association to carry on such operations

IT IS AGREED:

1. Duration

Unless otherwise terminated in accordance with ~~ANY~~ of its provisions this Agreement shall be deemed to have commenced on 1st August 1993 and shall continue in force until the parties otherwise agree or until the expiry of not less than one year's notice of termination given by either party to the other at any time so as to expire on 31st December in any year or on any other date as may be hereafter agreed in writing between the parties.

2. Appointment

2.1 Services shall be authorised and obliged to do all such acts and things as are necessary or desirable for the purpose of the conduct of the run-off of the Reinsurance Contracts.

2.2 Without limiting the general authority in Clause 2.1, Services shall be authorised on behalf of the Association to:

(a) charge, collect and pay, commissions, fees and sums due;

(b) enter into reinsurance arrangements by treaty facultatively or otherwise in whole or in part and arrange for the effecting of portfolio transfers;

- (c) reject, contest, admit, adjust, handle, settle, compromise, pay or otherwise dispose of any losses and claims and incidental expenses including, where appropriate, making payments on account and ex gratia settlements;
- (d) defend and prosecute any actions, arbitrations or other proceedings and where appropriate to accept or to acknowledge service of all writs, advices, processes and other communications from time to time requiring to be served on the Association by third parties;
- (e) deal with recoveries including recovering losses and expenses from reinsurers; and
- (f) pay all fees and other duties due in relation to the matters referred to above.

3. Compliance

Services shall provide all services under this Agreement in accordance with all legal and regulatory requirements applicable from time to time, including without limitation the requirements of the Insurance Companies Act 1982 ("the 1982 Act"), the Companies Act 1985, the Financial Services Act 1986 and the Data Protection Act 1984 as amended.

4. Records, Reports and Accounts

4.1 Services shall prepare and maintain policy records in relation to the Reinsurance Contracts which record all transactions, matters and things relating to the run-off of the Reinsurance Contracts. Such records shall belong to and be the property of the Association and be open to the inspection of and audit by the Association, its duly authorised representatives and the duly authorised representatives of any reinsurers of the Association's obligations in relation to the Reinsurance Contracts at all times during normal business hours and at other times by appointment.

4.2 Services shall make all records relating to the Reinsurance Contracts available for inspection by the Secretary of State and his duly authorised representatives and furnish all such information, produce such books and papers, permit such copies to be made and provide such explanations as may be required by the Secretary of State or his duly authorised representatives pursuant to Section 44 of the 1982 Act and any like provision.

4.3 The Association shall permit Services, its employees, officers and agents to have such access as is reasonably required by Services for the purposes of performing its obligations under this Agreement to all such accounts, books, records and systems relating to the Reinsurance Contracts which are in the possession of the Association.

5. Accounting between the Association and Services

5.1 The Association shall open and maintain at all times during the appointment of Services under this Agreement a separate bank account or accounts on which designated nominees of Services from time to time will be authorised signatories, to which Services will credit all premiums and other amounts received by it in respect of the Reinsurance Contracts and from which Services will pay all claims, commissions, fees, duties, costs and expenses payable in respect of or in any way relating to the Reinsurance Contracts.

5.2 Services will render to the Association as soon as reasonably practicable after the end of the relevant month but in any event not later than 90 days thereafter statements of account made up to the last day of each calendar month or such other period as maybe hereafter agreed in writing between the parties in respect of the Reinsurance Contracts. The first such statement under this sub-clause shall be made up to cover the period from the deemed date of commencement of the appointment of Services under this Agreement to the last day of the calendar month in which such date falls or such other period as may hereafter be agreed in writing between the parties. The statements of account are to show all premiums, claims and other transactions reflecting the income and outgoings relating to the Reinsurance Contracts.

5.3 Settlement of balances of moneys owing by one party to the other will be in sterling and transactions in all other currencies shall be converted into sterling at the rates of exchange used by Services in its books of

account and approved from time to time by the Association, such transactions complying with any applicable exchange control regulations in force at the date of settlement.

5.4 The Association shall bear any loss incurred in respect of the Reinsurance Contracts otherwise than by reason of the gross negligence or wilful default of Services or its officers, employees or agents.

6. Payment and Budgeting

6.1 The Association shall pay to Services in respect of the performance of Services' obligations hereunder a sum equal to 101% of the total cost to Services of the performance of such obligations, plus any value added tax payable thereon.

6.2 Services shall render an account within 30 days following the end of each calendar month or at such other time as may be hereafter agreed in writing between the parties of the sums payable by the Association under clause 6.1 in respect of such month in such detail as the Association shall reasonably require and the Association shall pay to Services such sum within 20 days following the end of the month to which they relate.

6.3 Prior to the end of each calendar year or at such other time as may be hereafter agreed in writing between the parties, the parties shall discuss and agree a budget for the services to be provided by Services pursuant to this Agreement during the next following calendar year. Such budget shall be reviewed from time to time at the reasonable

request of either party in the light of changing circumstances and shall be amended from time to time to take account of such circumstances.

7. Provision of staff and facilities

Services shall at its own expense provide and control the necessary staff, offices, materials and facilities for the proper and efficient conduct of the run-off of the Reinsurance Contracts and the provision of services under this Agreement.

8. No partnership

Nothing in this Agreement shall constitute any partnership between the Association and Services and Services shall accordingly not at any time be liable for or bear any share of the underwriting or any other liabilities or losses of the Association except to the extent that any such other liabilities or losses shall have arisen by reason of the gross negligence or wilful default of Services or its officers, employees or agents.

9. Variations

None of the terms of this Agreement may be varied or supplemented at any time except by written agreement between the parties.

10. Governing law

This Agreement shall be governed by and construed in accordance with English law.

11. Arbitration

If any dispute or difference arises between the parties in relation to this Agreement (whether arising during or after the period of this Agreement), the same shall be referred to and settled by arbitration in accordance with the Schedule hereto.

Schedule

Arbitration

1. All matters in difference between the parties in relation to this Agreement, including its formation and validity, and whether arising during or after the period of this Agreement, may be referred by either party for decision by a sole arbitrator agreed on by the parties, or in default of agreement on whom to appoint, appointed on the application of either of them by the President for the time being of the Institute of Actuaries. The place of arbitration shall be London and the provisions of the Arbitration Acts 1950-1979 shall apply save as varied by the provisions of this Schedule.

2. The award of the arbitrator shall be binding upon the parties hereto, who hereby covenant to carry out the same. If a party shall fail to carry out any award, the other party may apply for its enforcement to a court of competent jurisdiction in any territory in which the party in default is domiciled or has assets or carries on business.

AS WITNESS the hands of duly authorised representatives the parties
and year first above written.

Signed by
for and on behalf of
AFIA in the presence of:

) MGD
)
)

[Signature]
37 Beaumont Park
London W1

Signed by
for and on behalf of
CIGNA Services U.K. Limited
in the presence of:

) JCC
)
)

[Signature]
CIGNA Services U.K. Limited

EXHIBIT 4



ace european group

ACE INA Services U.K. Limited
Run-Off Services
Kent House
Romney Place
Maidstone
Kent ME15 6LT
United Kingdom
01622 403000 tel
01622 403045 fax
www.aceeurope.com

1st April, 2005

The Home Insurance Company in Liquidation
59 Maiden Lane
New York, NY 10038
USA

For the attention of: Jonathan Rosen

Dear Jonathan,

**Re: ACE INA Services U.K. Limited ("ACE INA")
for Century Indemnity Company ("CIC")
POC Number: INTL 700617**

The POC has two main components. First CIC has a claim for reimbursement of administration expenses following the Nationwide -v- Home phase two arbitration decision. In that phase of the arbitration the panel ruled that under Contract R Home are liable for 50% of Nationwide's fixed pool share of administration costs. To the extent that Home administers Nationwide's fixed pool share it would be entitled to reimbursement of 50% of those costs from Nationwide. As such administration would be done on behalf of CIC, CIC would be entitled to a set-off for those amounts.

This claim is not absolute as no request at present has been received from Nationwide. However, the phase two award was ratified by the Sixth Circuit.

In addition to the above, CIC on behalf of Home administered Nationwide's Ruddy obligations under a full reservation of rights. In accordance with the panel ruling that administration was in excess of the obligation of Home, CIC is entitled for a set-off of these sums as well.

The other aspect of this POC relates to the result of phase three of the arbitration Nationwide -v- Home where Home was awarded a net (net being the result of all aspects of the different awards for and against Home in phase three) of \$1.25m. Prior to the final hearing in that phase Home agreed that all awards made in favour of the Home would be for the benefit of CIC. As you are aware, Nationwide applied to the District Court of Ohio to have the award dismissed or amended in its favour. Nationwide's case was dismissed in full by the District Court. Nationwide has appealed that decision to the Sixth Circuit Court of Appeal.

Although the phase three arbitration award has not yet been finalised and costs and awards in favour of the Home are still uncertain - by virtue of the appeal - the claim attributable to the administration expenses remains as phase two of the arbitration was never appealed and was confirmed by the Sixth Circuit.

Based on the continuing obligations pursuant to the award we calculated a conservative estimate of future liabilities. Actual costs chargeable and recoverable by Home can be reasonably calculated on an ongoing basis and formed part of the document disclosure in the hearing. We will continue to advise you as elements of the POC become absolute.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'M.E. Durkin', written over a horizontal line.

M.E. Durkin.
Vice President.

hmemmarch01

EXHIBIT 5

17:28 FROM ACE INA SERVICES

TO MIKE DURKIN

P. 01/03

In the Matter of the Arbitration Between)	
NATIONWIDE MUTUAL INSURANCE COMPANY,)	Before:
)	Eugene Wollan, Esq., Umpire
Petitioner,)	Ronald A. Jacks, Esq., Arbitrator
)	Stephen Ruttle, Q.C., Arbitrator
-and-)	
HOME INSURANCE COMPANY,)	<u>ORDER</u>
)	
Respondent)	

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.

17:28 FROM ACE INA SERVICES

TO MIKE DURKIN

P.02/03

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.

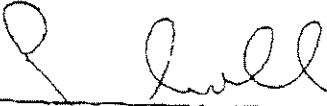
9. Home is awarded the sum of \$1,250,000 in respect of its counterclaims for administrative costs and interest.

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
Empire