

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: 2007-HICIL-32
Proof of Claim Number: INTL 278090
Claimant Name: Unione Italiana (UK) Reinsurance
Company Limited
Policyholder Account: Unione

WRITTEN SUBMISSION OF UNIONE ITALIANA (UK)
REINSURANCE COMPANY LIMITED

This document is the Written Submission stating the amount that Unione Italiana (UK) Reinsurance Company Limited (**Unione Italiana**) asserts is due and the method of calculation of the amounts owed. Unione Italiana also submits additional documents and evidentiary material that it contends support the amount claimed due (not least in order to make complete the chronology of correspondence on the Case File). This Written Submission is submitted in accordance with Section 14b of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation.

This Written Submission is not the written brief of Unione Italiana in this matter and Unione Italiana reserves its right to submit further documentation and to make further legal arguments in support of its claim later in the process of this Disputed Claim Proceeding.

Summary

As stated in its Acknowledgement of Receipt of Notice of Re-determination of NOD 16 and its objection to Notice of Re-determination of NOD 16, Unione Italiana objects to the Re-determination of NOD 16 on the following bases:

1. Unione Italiana has demonstrated its claim in the sum of \$236,740.60 and the obligation of The Home to pay it, as agreed in the contract between Unione Italiana and The Home.

2. The Home's agreement to pay is further embodied in an Order of the English High Court dated 1 July 1988 and The Home is obliged to pay the claim in accordance with the Order.
3. In any event, Unione Italiana has fulfilled such burden of proof on it in respect of the claim as there is under English Law, in relation to the contract and in light of the Order.

Unione Italiana therefore seeks (i) a reversal of the Determination that there is an offset due to The Home against Unione Italiana in the sum of \$236,740.60; and (ii) a reinstatement of the original Determination of the claim in the sum of \$236,740.60.

Unione Italiana refers to and relies on the documents attached to this Written Submission as set out in the Index. As stated above, Unione Italiana reserves the right to submit further documentation in support of its claim later in the process of this Disputed Claim Proceeding.

1. **Preliminary Point**

Unione Italiana submitted a Collection Note on 3 November 2006 to ACE for the 3rd Quarter 2006 (Document 1) in relation to the contract in dispute (Document 12). The Home duly issued a Notice of Determination (NOD 15) in relation to the amount in the Collection Note, namely \$556,758, on 21 December 2006 (Document 2). Unione Italiana sent an Acknowledgement of Receipt in respect of NOD 15 to The Home on 2 January 2007 (Document 3) and the full claim of \$556,758 was approved by the Liquidation Court in March 2007. As ACE state in their letter to Unione Italiana dated 18 April 2007 (Document 19), "We would like to clarify that we have already agreed the 3Q06 claims, which were approved by the Liquidation Court in March of this year, so they are not presently at issue."

It is, however, a part of that sum, namely \$236,740.60 of \$556,758, that is the subject of this Disputed Claim Proceeding. In short, The Home wrongly has re-opened its previous determination under NOD 15 (subsequently approved by the Liquidation Court), by a process that is described as "off-setting", the sum of \$236,740.60, being part of the sum originally determined in NOD 15. That sum has been "off-set" against a wholly separate sum (i) claimed in the Collection Note for the 4th Quarter 2006 dated 5 March 2007 (Document 4) and (ii) positively determined (ie agreed) in full by The Home in NOD 16 (Document 5) in respect of entirely different claims in the sum of \$216,429.60 (ie a full "off-set" leaving, on The Home's asserted position, a credit due to The Home in the sum of \$20,311.00).

No basis for this alleged entitlement to "off-set" has been stated. Indeed the letter from The Home to Unione Italiana dated 13 August 2007 (Document 5(i)) attaching NOD 16 (Document 5) refers to a letter from ACE to Unione Italiana dated 19 July 2007

(Document 5(iii)) as a letter which sets out the reasons for the "off-set". However that letter contains no justification for the entitlement to "off-set" and, in fact, clearly misstates the English Law position at the heart of the issue of law raised by ACE. The fact that ACE misstates the law is tacitly acknowledged in that, in a letter from Morrison Foerster to The Home dated 21 September 2007 (Document 8(i)), there is an abandonment of reliance on the case, in respect of which ACE misrepresents the judgment.

2. Amounts due and method of calculation of the amounts owed

The amount due is \$236,740.60 being part of the claims comprising the total balance of \$556,758 in the Collection Note for the 3rd Quarter 2006.

As stated above, Unione Italiana submitted the Collection Note to ACE on 3 November 2006. On the same day, by email, Unione Italiana sent to ACE the incurred claims data for the 3rd Quarter 2006.

The figure of \$556,758 results from the subtraction of the cumulative claims data for the 2nd Quarter 2006 for the accident account in the sum of \$686,931.55 (Document 10(i)) from the cumulative claims data for the accident account for the 3rd Quarter 2006 (Document 10(ii)) in the sum of \$1,460,931. This gives a movement figure in the sum of \$774,000 from which a further reduction is made in respect of the Asic Retro for 1968 (a retrocession of Anglo Saxon Insurance Company (Asic), the previous name of Unione Italiana, being a retrocession which also inures to the benefit of The Home) in the sum of \$78,053 giving a net movement in the sum of \$695,947. Under the contract between Unione Italiana and The Home, The Home is obliged to pay 80% of this net movement ie \$556,758.

The amount due in the sum of \$236,740.60, being part of the \$556,758, is a loss settlement arising from a commutation between Unione Italiana (and others) and Liberty Mutual (Document 14). The share of Unione Italiana of the commutation amount (in the gross sum of \$16 million) was \$1.25 million (before application of reinsurance also inuring to the benefit of The Home). The net share of Unione Italiana of the commutation amount was \$254,151 (less the Asic Retro in the sum of \$7,708) resulting in the net sum due of \$246,443. As the sum of \$353 appeared in the billing for the 2nd Quarter 2006 (and the net amount pre application of the Asic Retro in the 3rd Quarter 2006 billing was \$253,798), the net movement in the billing for the 3rd Quarter 2006 was \$246,090.

The calculations above derive from Documents 1, 10(i) and 10(ii) and are summarised and set out in a document entitled "Unione Italiana : The Home, Third Quarter 2006 calculation and Liberty Mutual calculation" (Document 11).

3. **The obligation of The Home to pay the amounts due, as agreed in the Contract between Unione Italiana and The Home**

Attached to this Written Submission at Document 12 is the contract on which the claims which are the subject of this Disputed Claim Proceeding were made ie a Reinsurance contract (ref AMR 4109/3) between Unione Italiana (at the time known as Anglo Saxon) and The Home. Under the contract, The Home agreed to pay "the amount of all losses which exceed the aggregate total of outstanding loss reserves at 30th June 1974" [a figure which has long since been exceeded] with "settlements to follow original" and "to pay as paid". In short, The Home is contractually bound to follow the settlements of Unione Italiana and to pay them.

4. **The Home's Agreement to pay claims in an Order of the English High Court dated 1 July 1988 (the Order)**

Attached to this Written Submission at Document 13 is an Order of the English High Court in Action 1988 Folio 1289: Unione Italiana v The Home which was the culmination of an Action by Unione Italiana against The Home for payment of unpaid claims.

In the Order, it is stated that:

"3. The Defendants declare that it is bound by the contracts of insurance contained in and evidenced by policies of insurance numbered AMR4109/1, AMR4109/2 and AMR4109/3 and that the Defendants accept the submission by the Plaintiffs of the quarterly accounts prepared by B.D. Cooke and Partners Limited (or their successors) as being sufficient proof of the sums due to the Plaintiffs from the Defendants under the terms of the above mentioned contracts.

4. The Defendants declare that it will pay to the Plaintiffs the sums due under the terms of the above mentioned contracts within 30 days of receipt of the quarterly accounts referred to in clause 3 above.

5. If in future the Defendants are able to demonstrate a need for additional information regarding specific claims identified by them the Plaintiffs will endeavour to obtain the information from B D Cooke and Partners Limited. The production of the information requested is not to affect in any way the Defendants liability to pay or the payment of all sums due to the Plaintiffs under the terms of the settlement of the action and under the terms of the policies of insurance specified in clause 3 above."

In short, (i) The Home is bound by an Order of the English High Court to accept the submission by Unione Italiana of the quarterly accounts prepared by BD Cooke (such as the Collection Note dated 3 November 2006 and its supporting data) as being sufficient proof of the sums due to Unione Italiana under the contract on which the claims which are the subject of this Disputed Claim Proceeding were made ie contract ref AMR 4109/3 and (ii) The Home is bound to pay those claims within 30 days of receipt of the quarterly accounts.

5. **ACE's incorrect analysis of the quantum of the amount of claims which are the subject of this Disputed Claim Proceeding**

In ACE's letter to Unione Italiana dated 19 July 2007 (Document 5(iii)), to which reference is made above (in relation to ACE's misstatement of the English law position), ACE sets out its quantum analysis of the Liberty Mutual commutation which leads to the conclusion that \$236,740.60 is the amount in dispute. However, ACE has not only effected the calculation from the incorrect net figure of \$247,065 (as opposed to \$246,090, as stated in paragraph 2 above), but has also failed to recognise that The Home is only responsible for payment of 80% of the net amount. Therefore, on the correct basis (ie the net amount of \$246,090), the amount in dispute, after allowing the claims that even ACE accepts should be allowed in the sum of \$10,324, amounts to 80% of \$235,766 ie \$188,613. Alternatively, on the basis put forward, incorrectly, by ACE of the net movement of \$247,065, after reducing the amount by reference to the claims which ACE accepts in the sum of \$10,324, the net amount equates to 80% of \$236,741 ie \$189,393.

The calculations above derive from Documents 1, 10(i) and 10(ii) and are summarised and set out in a document entitled "Unione Italiana : The Home, Third Quarter 2006 calculation and Liberty Mutual calculation" (Document 11).

6. **Conclusion: Unione Italiana has fulfilled such burden of proof on it in respect of the claim as there is under English Law, in relation to the Contract and in light of the Order**

It is the position of Unione Italiana (i) that The Home is not entitled to re-open NOD 15 and the approval of the Liquidation Court of the claim detailed in the Collection Note for the 3rd Quarter 2006; and (ii) that Unione Italiana has fulfilled, by the provision of the Collection Note for the 3rd Quarter 2006, its obligations under the Contract and in light of the Order such that The Home is obligated to pay the total sum of \$556,758, including the sum of \$236,740.60 which is the subject of this Disputed Claim Proceeding.

As stated above, Unione Italiana reserves its rights to submit further documentation and to make further legal arguments in support of its claim later in the process of this Disputed Claim Proceeding.

In light of the issues raised in this Written Submission, Unione Italiana believes that it would be expedient and appropriate for the issues raised in this Written Submission to be addressed and determined in the first instance. Any consequential or further issues (in respect of which Unione Italiana reserves its rights to submit further documentation and make further legal arguments), insofar as it is necessary for them to be determined, should be deferred because a favourable determination for Unione Italiana in relation to one or more of the issues raised in this Written Submission will dispose of the totality of the claim in this Disputed Claim Proceeding.

Served 11 January 2008

Edwards Angell Palmer & Dodge UK LLP

**Edwards Angell Palmer & Dodge UK LLP,
Solicitors for the Claimant**