

REDACTED

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-12
Proof of Claim Number: INTL 700616
Claimant Name: Century Indemnity Company

**LIQUIDATOR'S RESPONSE TO CIC'S
SUBMISSION REGARDING RUTTY POOL CLAIM**

In accordance with the Referee's Ruling of March 16, 2006, Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of the Home Insurance Company ("Home"), hereby responds to the submission filed by Century Indemnity Company ("CIC") regarding the claims asserted under proof of claim INTL 700616 ("POC"). CIC's claims should be denied. First, even though the Liquidator has repeatedly raised the question of liability, CIC does not attempt to articulate any legal grounds for its assertion that Home is liable to CIC. It merely assumes liability. However, there are no grounds on which Home could be liable for CIC's claims because Home never received or benefited from the amounts at issue. Second, the submission addresses only CIC's claims for amounts where CIC made payments to Ruddy Pool members on a fronted share basis but liability has now been determined to arise only on a fixed pool share basis. CIC, however, fails to explain how the amounts it claims actually reflect such overpayments (as to Agrippina, Wurtembergische and Nationwide) [REDACTED]

[REDACTED] CIC is estopped from claiming amounts from Nationwide that exceed the net \$1.25 million arbitration award (the subject of 2005-HICIL-11) or amounts from Agrippina and

Wurtembergische that exceed the amounts agreed under the Agrippina and Wurtembergische agreements. Third, where CIC has not established that Home is liable on its claim, it has no setoff rights against Home. [REDACTED]

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

Contested issues:

Of law:

- a. Should CIC's claim be denied because CIC failed to present any legal argument addressing Home's alleged liability in CIC's § 15 submission despite notice that the issue presented was such liability?
- b. Is Home liable to CIC for the payments CIC made directly to members of the Ruddy Pool that were later determined to be overpayments where Home has not received the amounts or the benefit of those amounts from the Ruddy Pool members?

Of fact: The Liquidator is not aware of any contested issues of fact but notes that CIC has not identified the amounts that allegedly constitute overpayments and in particular has not shown that the "miscellaneous" category on the POC concerns overpayments or that the "Home Reinsured Pool Shares" and "Processing Reversals" on its set-off statement concern overpayments. Moreover, CIC cannot claim amounts that exceed the amounts determined by arbitration or agreement with the Ruddy Pool member, and it has not shown that the amounts listed on the setoff statement are limited to the amounts of the Nationwide arbitration award that is the subject of 2005-HICIL-11 or agreed under the Agrippina and Wurtembergische agreements. [REDACTED]

Exhibits relied upon:

- a. The Affidavit of Thomas J. Wamser ("Wamser Aff.") submitted by CIC;

- b. Contract R between Home and Nationwide attached as Exhibit A to the Wamser Affidavit;
- c. The Insurance and Reinsurance Assumption Agreement between Home (as well as other persons selling their interests in AFIA) and Insurance Company of North America (“INA”) dated January 31, 1984 (“Assumption Agreement”) attached as Exhibit B to the Wamser Affidavit;
- d. The Affidavit of Thomas J. Wamser submitted in 2005 HICIL-11 (“Wamser HICIL-11 Aff.”) and attached as Exhibit A hereto;
- e. The July 17, 2003 order of the arbitration panel (“Phase 3 Order”) attached as Exhibit 5 to CIC’s Submission in 2005-HICIL-11 and as Exhibit B hereto as explained in Nationwide Mut. Ins. Co. v. Home Ins. Co., 429 F.3d 640, 642-43 (6th Cir. 2005);
- f. The Agrippina Agreement attached as Exhibit 6 to the CIC Submission;
- g. The Wurttembergische Agreement attached as Exhibit 8 to the CIC Submission;
- h. CIC’s POC attached as Exhibit C hereto;
- i. CIC’s April 1, 2005 letter attached as Exhibit D hereto;
- j. CIC’s November 2005 set-off statement attached as Exhibit 4 to the CIC Submission;
- k. CIC’s April 2006 set-off statement attached as Exhibit E hereto;
- l. The Claims Protocol attached as Exhibit F hereto;
- m. Transcript of March 10, 2006 hearing in 2005-HICIL-12 attached as Exhibit G hereto;
- n. The Affidavit of Jonathan Rosen (“Rosen Aff.”) attached as Exhibit H hereto;
- o. The CIC August 26, 2005 email attached as Exhibit 1 to the Rosen Affidavit; and
- p. CIC’s June 9, 2006 email and letter in 2006-HICIL-18 and 21 attached as Exhibit I hereto.

The Liquidator’s legal brief follows.

Background

1. Contract R. This proceeding concerns CIC's claims arising from payments made regarding Home's reinsurance of members of the Ruddy Pool. Briefly, Home reinsured four members of the Ruddy Pool (Nationwide, Agrippina, Wurttembergische, and FAI) under contracts known as Treaty R or Contract R (individually or collectively, "Contract R"). See Wamser Aff.

¶ 2. The Contract R between Home and Nationwide, which is substantially similar to the Contract R's between Home and Agrippina and Home and Wurttembergische is attached as Exhibit A to the Wamser Affidavit. [REDACTED]

[REDACTED]

[REDACTED] Rosen Aff. ¶ 2.

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

3. The Assumption Agreement also obligated CIC to administer and service the AFIA Liabilities, including Contract R. See Wamser Aff. ¶ 4. Under that agreement, CIC controlled all matters concerning the AFIA Liabilities (as it was ultimately liable for them). The Assumption Agreement provided that "[CIC] shall (1) administer and service the AFIA

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

Liabilities including their investigation, payment, settlement, defense . . . , (2) have all authority to act in the name of [Home] as may be required to perform such administration and service, and (3) bear all costs and expenses related to the AFIA Liabilities and their administration and service.” Assumption Agreement ¶ 3 (emphasis added). “[Home] shall cooperate with INA in the above administration of the AFIA Liabilities taking such actions as INA shall reasonably request in writing including instituting or joining in any action or proceeding related to the AFIA Liabilities. None of the Sellers [including Home] shall make any payment of any AFIA Liabilities without the prior written approval of [CIC] unless under order or a court of competent jurisdiction or an appropriate action of a proper regulatory body.” *Id.* ¶ 5 (emphasis added). By the Assumption Agreement, “[CIC] undertakes to indemnify [Home], not only in form but in fact against the loss or liability arising out of the AFIA Liabilities.” *Id.* ¶ 6.

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

5. The Disputes with Ruddy Pool members. Under the Assumption Agreement, CIC, through AISUK, made payments to the Ruddy Pool members on account of Home’s liabilities under Contract R. See Wamser Aff. ¶ 5. The Wamser Affidavit does not provide the specifics of the claimed overpayments at issue here, but -- as ACE’s counsel acknowledged with respect to Agrippina during the March 10, 2006 hearing -- CIC litigated and arbitrated with Ruddy Pool members Agrippina, Wurttembergische, Nationwide, and FAI over the extent of Home’s obligations to them. Among other things, CIC in Home’s name disputed whether Home’s obligation under Contract R was to pay a “fixed pool share” or a “fronted pool share” of claims and expenses. See 3/10/06 Tr. at 3-4 (Exhibit G); Wamser Aff. ¶ 5; Nationwide Mut. Ins. Co. v.

Home Ins. Co., 429 F.3d 640, 650 (6th Cir. 2005).² In accordance with the Assumption Agreement, CIC administered the arbitration and litigation in Home’s name and controlled Home’s positions. CIC continued to control the arbitration and litigation with Rutty Pool members after appointment of the Liquidator for Home. Rosen Aff. ¶ 5.

6. During the pendency of the litigation and arbitration, CIC, through AISUK, and in Home’s name paid certain claims and expenses asserted by the Rutty Pool members on a fronted pool share basis to avoid potential claims in the event the Rutty Pool members prevailed on their claims that the fronted pool share was applicable. As stated by Mr. Wamser: “CIC determined that it should, for Home’s benefit, pay amounts sufficient to cover Home’s additional liability in the event the Rutty Pool members prevailed. Otherwise Home could be subject to additional damages, including bad faith damages.” Wamser Aff. ¶ 5. In making the payments, CIC acted to protect its own interests, as the party assuming and reinsuring Home’s obligations under Contract R, because any “additional damages” to which Home could be subject would be CIC obligations under the Assumption Agreement. See Assumption Agreement ¶¶ 2, 3, 5, 6.

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

² The disputes with Agrippina and Wurttembergische are also summarized in the Liquidator’s motion for approval of the Agrippina Agreement (at ¶¶ 6-8) and the Affidavit of Jonathan Rosen submitted in support of the Liquidator’s motion for approval of the Wurttembergische Agreement (at ¶¶ 7-9). See CIC Submission Ex. 7 and 9.

Home continued to cover Nationwide on a fronted pool share basis under a reservation of rights. See id.

8. The Nationwide arbitration determined that Home is liable to Nationwide under its Contract R on a fixed pool share basis. The panel's December 4, 1998 order ("Phase 2 Order") is not included in CIC's submission, but it is summarized in the Wamser HICIL-11 Affidavit as follows:

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

Wamser HICIL-11 Aff. ¶ 6 (Exhibit A). This assumes that Home advances such administration costs and then recovers 50% of those costs from Nationwide. The award was confirmed. See Nationwide Mut. Ins. Co. v. Home Ins. Co., 90 F. Supp. 2d 893, 897 (S.D. Ohio 2000), aff'd, 278 F.3d 621 (6th Cir. 2002).

9. The panel's July 17, 2003 order ("Phase 3 Order") awarded a net amount of \$1.25 million to Home. Wamser HICIL-11 Aff. ¶ 7 (Exhibit A). The net award of \$1.25 million in the Phase 3 Order consists of awards to Home of \$1,250,000 in fronting share administrative costs and interest plus \$1,250,000 in arbitration costs minus the awards to Nationwide of \$750,000 for Home's breaches of duty under Contract R and \$500,000 in arbitration costs. Phase 3 Order ¶¶ 8-11 (Exhibit B). The award was confirmed by the district court, and the Sixth Circuit affirmed. Nationwide v. Home, 429 F.3d 640.

10. In the arbitration, Home counterclaimed for administration costs and interest incurred in paying amounts based on Nationwide's fronted share, and the Phase 3 Order states that "Home is awarded the sum of \$1,250,000 in respect of its counterclaims for administrative costs and interest." Phase 3 Order ¶ 9. The Sixth Circuit explained that paragraph 9 of the Phase

3 Order granted “Home’s request for recovery of its ‘fronting share administrative costs’ (FSAC).” Nationwide v. Home, 429 F.3d at 640. The panel “awarded Home the FSAC costs it incurred on Nationwide’s behalf when it was under no obligation to do so.” Id. at 650. The decision makes clear that the panel did not award Home the entire amount it had claimed as fronting costs. “Home filed counterclaims seeking approximately \$1,700,000 for costs incurred in administering Nationwide’s fronted liability and \$370,000 in interest on balances Home advanced on Nationwide’s behalf for payments Home made to Nationwide’s cedents on contracts Nationwide fronted for the pool.” Id. at 650 n.13. The Home’s claims on this point thus totaled \$2,070,000. Id. The panel awarded \$1,250,000. Panel 3 Order ¶ 9.

11. After specifying the four elements of its award in paragraph 8-11 of the Phase 3 Order, the arbitration panel stated that “[a]ll other claims and counterclaims between the parties are dismissed.” Phase 3 Order ¶ 12 (emphasis added). The award thus expressly resolves all matters at issue between Home and Nationwide. Home is accordingly precluded from asserting other or additional claims under Contract R against Nationwide, and CIC – which controlled Home’s positions in the arbitration – is estopped from asserting claims arising from purported obligations of Nationwide to Home except as they have been established by the Phase 3 Order. (CIC’s claims arising from the Phase 3 Order are the subject of 2005-HICIL-11.) To the Liquidator’s knowledge, Home (by CIC/AISUK or through the Liquidator) and Nationwide have not otherwise agreed on any amount due from Nationwide. Nor has Nationwide paid any funds to Home or acknowledged liability for any other amounts. Rosen Aff. [Second] ¶ 6.

12. Agrippina. During 2004, Agrippina and Home entered the Agrippina Agreement

[REDACTED]

[REDACTED] Both CIC and AISUK were extensively

involved in the negotiation of the Agrippina Agreement, and they agreed to its terms. The Liquidator moved for approval of the Agrippina Agreement by the Court, and CIC did not object. The Court approved the Agrippina Agreement on February 17, 2005. Rosen Aff. ¶ 7.

13.

[REDACTED]

14.

[REDACTED]

3

[REDACTED]

15. Wurtembergische. During 2006, Wurtembergische and Home entered the Wurtembergische Agreement [REDACTED]

[REDACTED]

[REDACTED] Both CIC and AISUK were extensively involved in the negotiation of the Wurtembergische Agreement, and they agreed to its terms. The Liquidator moved for approval of the Wurtembergische Agreement, and CIC did not object. The Court approved the Wurtembergische Agreement on March 21, 2006. Rosen Aff. ¶ 9.

16. [REDACTED]

[REDACTED]

17.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4 [REDACTED]

5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. FAI. According to information from CIC, FAI instituted proceedings in the United Kingdom against Home regarding Contract R in 1993. Pursuant to the Assumption Agreement, CIC defended those proceedings and counterclaimed against FAI in Home's name.

[REDACTED]

19. The payments made by CIC, through AISUK, to Ruddy Pool members benefited CIC to the same extent as they benefited Home because under the Assumption Agreement Home's obligations are CIC's obligations. See Assumption Agreement ¶¶ 2, 3, 5, 6. CIC, through AISUK, dealt directly with the Ruddy Pool members over their claims, and it controlled the litigation or arbitration with the Ruddy Pool members. In making the payments on a fronted basis, CIC thus acted in Home's name but to protect its own interests.

20. CIC's Claim. By the POC, AISUK (for CIC) asserted claims against Home for "balances funded to Ruddy Pool on behalf of Home on a WP/ROR basis," consisting of "Nationwide Trust Fund", "Nationwide ISA/Agrippina ISA/Wurtembergische ISA", and "Miscellaneous". See Proof of Claim (Exhibit C) at 1, 3. AISUK later provided some explanation of these components. See AISUK's April 1, 2005 letter (Exhibit D). According to the April 1, 2005 letter, the overpayments to Agrippina based on the payments on a fronted pool share basis are "included in" the "Agrippina ISA" amount. *Id* at 1. The Liquidator infers that the claimed overpayments to Wurtembergische are included in the "Wurtembergische ISA" amount, while those to Nationwide are included in the "Nationwide ISA" amount and potentially in the "Nationwide Trust Fund" amount as well. CIC has not identified any ground for claiming that payments were overpayments other than the fronted/fixed pool share issue.

21. In its submission, CIC makes no attempt to more specifically link the various amounts claimed on the proof of claim to the fixed/fronted pool share issue. All that is known is that CIC asserts that the claimed overpayments due to the fixed/fronted pool share issue are "included in" the amounts listed on the proof of claim.

22. In an effort to understand CIC's claim, the Liquidator has reviewed the most recent set-off statement provided by CIC under the Claims Protocol, that for April 2006

(Exhibit E).⁶ That statement lists under “Rutty” in the middle of page 1 the elements that CIC is claiming are present offsets based on this proof of claim. (The exception is the \$1.25 million listed as “Arbitration Award” under Nationwide. That arbitration award is the subject to 2005-HICIL-11.) The setoff statement identifies the elements of the Rutty Pool claim as “Indemnity”, “Interest”, “Suspense”, “Home Reinsured Pool Shares”, and “Processing Reversals”. CIC has not explained how, if at all, those elements are linked to amounts claimed to be overpayments based on the fixed/fronted pool share issue. [REDACTED]

[REDACTED]
[REDACTED] CIC does not appear to have previously sought to recover the “Home Reinsured Pool Shares” or “Processing Reversals” amounts from Rutty Pool members. Moreover, the Processing Reversals appear from the associated notes to be data entry reversals that removed entries for claims that were some part of the calculation of an amount paid to the Joint Provisional Liquidators in January 2004. That entire amount appears as the second entry on the set-off statement (“Less previously paid WP/ROR in January 2004”). CIC has already received setoff credit for the amount of the Processing Reversal under that entry, and it would be a double credit to include them under Rutty as well.

23. The setoff statement makes clear that CIC is attempting to use as setoffs amounts that go beyond the amounts determined to be liabilities of Rutty Pool members by arbitration or agreement. The Nationwide arbitration panel awarded Home a net \$1.25 million in the Phase 3 Order that is the subject of 2005-HICIL-11. The award specifically addressed the fixed/fronted pool share issue. It included an express award to Home on claims for fronting share

⁶ CIC attached the November 2005 set-off statement attached as Exhibit 4 to its Submission.

administration costs and interest, and the panel dismissed “all other claims and counterclaims” between the parties. Phase 3 Order ¶¶ 9, 12. Home is thus precluded from seeking additional amounts from Nationwide, and CIC – which controlled Home’s arbitration positions – is estopped from claiming that Nationwide’s liability to Home exceeds the \$1.25 million awarded to Home in the Phase 3 Order. The setoff statement, however, includes \$686,000 in addition to the \$1.25 million at issue in 2005-HICIL-11.

24. CIC similarly fails to support the amounts it apparently seeks with respect to Agrippina and Wurttembergische. [REDACTED]

[REDACTED]

25. CIC finally fails to provide any information concerning the amounts it claims with respect to FAI. [REDACTED]

[REDACTED]

ARGUMENT

HOME IS NOT LIABLE TO CIC FOR CIC’S OVERPAYMENTS TO RUTTY POOL MEMBERS.

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

26. The Liquidator has repeatedly pointed out that the principal issue in this disputed claim proceeding is “whether the Home is liable to [CIC] with respect to these obligations.”

3/10/06 Tr. at 7 (Exhibit G). See *id.* at 9 (The Liquidator “denied HICIL-11 and HICIL-12

because [CIC] did not provide us a credible legal argument as to why the Home was liable.”), 12 (“The disputed claim is whether Home is legally liable to [CIC] with respect to these numbers.”). The Liquidator also made this point in denying the claim, in denying reconsideration, and in the objection to CIC’s request for evidentiary hearing, where the Liquidator stated that “[t]o date, [CIC] has not articulated any ground for holding Home liable to it, but the issue appears to be a legal one based upon the Assumption Agreement. The issue is thus whether the Assumption Agreement (or some other legal ground) makes Home liable to [CIC] for the overpayments to the Ruty Pool members.” Objection ¶ 4.

27. Despite this, CIC fails to offer any legal basis for Home’s asserted liability in its submission. The only elements of CIC’s claim addressed in the submission (and only at a high level without specifics) are overpayments to Ruty Pool members based on the fronted/fixed pool share issue. (The CIC submission and Wamser Affidavit are not specific on this, but it can be inferred from the inclusion of the Agrippina and Wurttembergische agreements as exhibits to CIC’s submission.) As to those overpayments, CIC simply assumes that Home is liable. It does not articulate any legal theory under which this might be the case. In its submission, CIC only briefs setoff issues. However, its setoff arguments are all premised upon liability (i.e., the existence of a mutual debt, see RSA 402-C:34), and they fail because CIC has not demonstrated any legal basis for that assumption. Absent liability, there is no debt owed by Home to CIC.

28. Although CIC offers no basis other than the fixed/fronted pool share overpayment issue as a ground for its claim, it has not identified the amount of its claim that comprises such overpayments. Its explanatory letter merely says that such amounts are “included in” the “Agrippina ISA” category on the proof. Exhibit D. CIC does not explain how the large “miscellaneous” category relates to its overpayment claim, see Exhibit C at 3, and review of the

elements of the Ruty Pool claim on the set-off statement indicates that at least the Home Reinsured Pool Shares and Processing Reversals categories have no relationship to alleged overpayments. See Exhibit E at 2. Most importantly, CIC's set-off statement shows that it is claiming amounts that exceed the liabilities of Nationwide (as determined in arbitration) and Agrippina and Wurttembergische [REDACTED]. CIC is estopped to seek more alleged overpayments from Home than have been determined to be overpayments to the Ruty Pool members. [REDACTED]

29. CIC should have addressed these issues regarding the basis for its claim and the calculation of the amounts allegedly due in its mandatory disclosures under Claims Procedures Order ¶ 14(b) or, at the least, in its § 15 submission. CIC's disclosures, however, merely states that CIC paid amounts to Ruty Pool members that were in excess of Home's actual liability and that Home is liable because the payments were "applied for Home's benefit." CIC Mandatory Disclosures ¶ 1. CIC then "asserts the initial amount due from Home (and sought in the Claim) is approximately \$6.2 million," although the amount "may be adjusted," *id.* ¶ 6 & n.2, and merely refers to the Assumption Agreement and four categories of other documentation (4000 pages provided to Home, "[o]ther documentation regarding AISUK's administration of the Ruty Pool business," the case file, and "[a]ll other evidence developed during discovery or any evidentiary hearing in this matter"). *Id.* ¶ 9. CIC provides no explanation of how the claimed amount was calculated or what elements are included, why the amount represents overpayments, how it relates to individual Ruty Pool members, or why Home is allegedly liable for it. CIC's § 15 Submission adds no more than a high-level, non-specific affidavit and copies of the Agrippina and Wurttembergische agreements.

30. This presentation contrasts sharply with CIC's position on what other claimants should provide. In 2006-HICIL-18 & 21, CIC asserted that the claimant "must still set forth the bases for its objection, how it contends [certain fees] are covered by the applicable policies, how it may have allocated such fees to specific claims, and related matters," all to provide "a baseline understanding of the factual and legal issues involved." CIC June 9, 2006 email to the Referee (Exhibit I) (emphasis added). CIC then argued that the claimant's objection should be dismissed for failure to provide mandatory disclosures. *Id.* See CIC June 9, 2006 letter (also Exhibit I).

31. CIC's continued efforts to shift the burden of presenting the claim and supporting legal and factual analysis to the Liquidator should not be rewarded. The claimant bears the burden of substantiating its claim, both legally and factually. See RSA 402-C:38, I (claimant is to supply a "verified statement" including "[t]he particulars of the claim" and [a] copy of any written instrument which is the foundation of the claim"), II (Liquidator may request claimant "to present information or evidence supplementary to that required under paragraph I, and may take testimony under oath, require production of affidavits or depositions or otherwise obtain additional evidence"); Claims Procedures Order §§ 5(b)-(d), 6(a). Section 15 of the Claims Procedures Order requires a "legal brief" to address the identified contested issues of law as well as fact. CIC was on notice that the issue to be decided by the Referee is whether Home is liable for its claims. Since it has chosen not to provide any argument on liability despite being aware that this was the principle issue for the § 15 submission, CIC's claim should be denied.

32. The Liquidator notes that this would not mean that CIC will not receive the economic benefit of amounts determined to represent overpayments [REDACTED]

[REDACTED] At that time, the funds will have

been used to satisfy a Home liability, which is also a CIC liability, and it would be appropriate for CIC to take credit against its liability.

B. Home Is Not Liable To CIC In Contract Or Under Principles of Unjust Enrichment.

33. The Assumption Agreement does not contain any provision that would make Home liable for a payment by CIC to a Ruddy Pool member in connection with a dispute over the extent of Home's liability to the member that is later determined to be an overpayment. Under the Assumption Agreement, CIC assumed "as its direct obligation" and agreed to pay on Home's behalf Home's obligations for the AFIA Liabilities, such as Contract R, directly to the insureds, such as the Ruddy Pool members. Assumption Agreement ¶¶ 2, 6. CIC agreed to administer and service the AFIA Liabilities and bear all costs and expenses related to the liabilities and their administration and service. *Id.* ¶ 3. It also acquired the authority to act in Home's name in the administration and service of the liabilities, while Home was obligated to cooperate with CIC (including instituting actions or proceedings) and could not make payment without CIC approval except by court or regulatory direction. *Id.* ¶¶ 3, 5. Nothing in the Assumption Agreement makes Home liable to CIC for payments CIC chose to make directly to Ruddy Pool members in connection with the administration and servicing of the AFIA Liabilities. Home could only have any obligation to pay those amounts to CIC if it obtains them from the Ruddy Pool member. That has not happened here.

34. That overpayments (to the extent they have been determined to exist) have not been actually collected cannot be held against Home because CIC controls such matters under the Assumption Agreement. See Assumption Agreement ¶ 5. CIC has controlled the arbitration and litigation against Ruddy Pool members. It agreed to the terms of the Agrippina and Wurttembergische agreements, and thus cannot be heard to complain [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As to Nationwide, CIC could bring proceedings against Nationwide in Home's name to collect on the arbitration award or pursue any overpayments outside that award if it chose. [REDACTED]

[REDACTED]

35. New York law governs the Assumption Agreement, Assumption Agreement § 10, so the Liquidator has considered whether there is an implied or extra-contractual basis for Home's alleged liability to CIC on a theory of unjust enrichment under New York law. There is no basis for CIC to assert such a claim. "To prevail on a claim of unjust enrichment, a plaintiff must show that (1) defendant was enriched (2) at plaintiff's expense, and (3) that 'it is against equity and good conscience to permit . . . defendant to retain what is sought to be recovered.'" Clark v. Daby, 300 A.D.2d 732, 732 (2d Dep't 2002), quoting Lake Minnewaska Mountain Houses, Inc. v. Rekis, 259 A.D.2d 797, 798 (3d Dep't 1999), quoting Paramount Film Distributing Corp. v. State of New York, 30 N.Y.2d 415, 421 (1972), cert. denied, 414 U.S. 829 (1973).⁷

36. None of the required elements are present here. First, Home has not been enriched by the payments. It did not receive the amount at issue from CIC. Instead, the amounts

⁷ Similarly, under New Hampshire law, "[t]he doctrine of unjust enrichment is that one shall not be allowed to profit or enrich himself at the expense of another contrary to equity. . . . [A] trial court may require an individual to make restitution for unjust enrichment if he has received a benefit that would be unconscionable to retain." Pella Windows & Doors, Inc. v. Faraci, 133 N.H. 585, 586 (1990) (citations and quotations omitted). To be entitled to restitution for unjust enrichment, the party must demonstrate both the unjust enrichment and that "the person sought to be charged must have wrongfully secured a benefit, or passively received on which it would be unconscionable to retain." In re Haller, 150 NH 427, 430 (2003) (quoting 66 Am. Jur. 2d Restitution and Implied Contract, § 10).

were paid by CIC, through AISUK, directly to the Ruddy Pool member involved. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Home is not liable to CIC for restitution of amounts it never received. See Geller v. County Line Auto Sales, Inc., 86 F.3d 18, 22 (2d Cir. 1995) (no unjust enrichment where “Kleppner, not the defendants, received the health care benefits”).⁸ While the payments may have served to avoid any argument that Home (and thus CIC) was not complying with obligations under Contract R (and thus the Assumption Agreement), this “benefit” is quite separate from the monies themselves. It does not support making Home liable for what have now been determined to be overpayments but which Home never received.

37. Second, even if the avoidance of potential liability were a benefit that supported a claim to the overpayments, Home was not thereby enriched “at plaintiff’s expense.” See Clark, 300 A.D.2d at 732; City of Syracuse v. R.A.C. Holdings, Inc., 258 A.D.2d 905, 906 (4th Dep’t 1999). This is because the overpayments benefited CIC itself. Since under the Assumption Agreement CIC reinsured 100% of Home’s obligations under Contract R, the avoidance of potential liability for non-compliance with Contract R benefited CIC. CIC was protecting its own interests, and only nominally those of Home, in making the payments. It is the plaintiff’s burden to demonstrate that payments were made or services performed for the defendant

⁸ In Heller, the plaintiff sought restitution of child support payments he made to the Division of Child Support Services after it was determined that the plaintiff was not in fact the father of the child in question. 150 N.H. at 428. The court rejected the plaintiff’s claim for restitution because the money did not enrich the Division, as it was used to finance assistance given to the child’s mother. “[T]he division did not wrongfully receive payments, nor was it unjustly enriched; rather, payments were made according to Haller’s legally imposed support obligation.” Id. at 430.

resulting in unjust enrichment, and “the mere fact that the plaintiff’s activities bestowed a benefit on the defendant is insufficient to establish a cause of action for unjust enrichment.” Clark, 300 A.D.2d at 732. In Clark, the New York Appellate Division rejected plaintiffs’ claim for unjust enrichment based upon a payment of property taxes to redeem disputed property from an impending tax sale. After the property was determined to belong to the defendant, the plaintiffs attempted to recover the tax payment. The court rejected the claim. “Although there can be no question that plaintiffs’ payment of real property taxes on the property worked to the defendant’s benefit by relieving him of that burden, it is equally clear that the plaintiffs operated under no mistake of fact or law but, rather, their sole motivation in making the payment was to protect their own interests.” Id. at 732. The payments at issue here similarly protected CIC’s interests because CIC was both handling the Ruddy Pool claims and reinsured them 100%. The benefit to Home was merely nominal, and does not make it liable for payments made “on its behalf” to others.⁹

38. Third, the circumstances here do not meet the “equity and good conscience” standard required for any unjust enrichment claim. As stated in the leading case of Paramount Film Distributing, 30 N.Y.2d at 421, the “essential inquiry in any action for unjust enrichment or restitution is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered. . . . Generally, courts will look to see if a benefit has been conferred on the defendant under mistake of fact or law, if the benefit still remains with the defendant, if there has been otherwise a change of position by the defendant, and whether the defendant’s conduct was tortious or fraudulent.” Id. See Lake Minnewaska Mountain Houses, 259 A.D.2d at 799 (“[P]rinciples of equity mandate consideration of the totality of the

⁹ “[W]hen a court assesses damages in an unjust enrichment case, the focus is not upon the cost to the plaintiff, but rather it is upon the value of what was actually received by the defendants.” Iacomini v. Liberty Mutual Ins. Co., 127 N.H. 73, 78 (1985) (quoting R. Zoppo Co., Inc. v. City of Manchester, 122 N.H. 1109, 1113 (1982)).

circumstances.”); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Chipetine, 221 A.D.2d 284, 286 (1st Dep’t 1995) (“In so doing, courts will consider whether the benefit remained with the defendant, and whether defendant’s conduct was tortious or fraudulent.”).

39. These factors weigh heavily against any finding of unjust enrichment here. CIC made the payments to protect itself, and it made the payments in light of disputed positions in litigation and arbitration it was managing, not under any mistake of fact or law. CIC made the payments to the Ruddy Pool members. Home did not receive them [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Home thus never had the funds now sought by CIC. CIC cannot complain about the terms of the settlements, as it agreed to them and did not object to the Agreement when they were presented to the Court for approval. Home certainly has not engaged in any tortious or fraudulent conduct.¹⁰

40. Further, allowing the claim against Home would result in a net loss to Home because CIC would immediately offset the amounts against its obligations to Home while Home has not received the amounts. “Generally, if a plaintiff’s recovery will lead to an undue net loss to a defendant by reason of a changed position, as will often be the case when the funds have been disbursed, then the parties being equally innocent, recovery may be denied.” Paramount Film Distributing, 30 N.Y.2d at 422 (denying recovery where fees had been “disbursed long ago”). This is particularly true where the defendant did not receive the funds at issue. See Geller, 86 F.3d at 22 (no unjust enrichment where payments made to another, not defendants).

¹⁰ See Concrete Constructors, Inc. v. Harry Shapiro & Sons, Inc., 121 N.H. 888, 891 (1981) (rejecting a claim of unjust enrichment because the defendants were not “holding any sums not expended, and neither defendant profited or became enriched at the expense of the plaintiff”).

In the circumstances, equity does not impose liability on Home for the overpayments. This is not unfair to CIC, which both determined to pay the amounts and agreed to the terms [REDACTED]

[REDACTED]

41. Moreover, contrary to CIC's suggestion (CIC Submission ¶ 3), the Liquidator does not control the timing of assertion of claims by the Ruty Pool members. The Pool members determine when to assert claims [REDACTED]

[REDACTED]

[REDACTED] CIC, of course, handles such claims and makes recommendations to the Liquidator under the Claims Protocol.¹¹ Rosen Aff. ¶ 12.

42. Finally, notwithstanding that Home is not liable to CIC for the amounts, CIC will receive the economic benefit of them [REDACTED] (or, in the case of Nationwide, when Nationwide's claims are allowed and the Phase 3 Order is used as an offset as explained in 2005-HICIL-11). [REDACTED]

[REDACTED]

[REDACTED] At the same time, CIC's liability to Home under the Assumption Agreement will be established, and CIC can credit against that liability and obtain the benefit of the monies previously overpaid. In this way, CIC will receive the benefit of the overpayments at the same time as Home does. At present, however, Home is not liable to CIC for those overpayments because it has never received them. Since Home is not liable to CIC, CIC's contention that it should be able to offset the overpayments now is erroneous because there is no

¹¹ While the Liquidator could determine the order in which CIC is to adjust the claims under the Claims Protocol § 2.3, no direction that would delay CIC's consideration of Ruty Pool members' claims has been given.

debt owed from Home to CIC. See RSA 402-C:34 (requiring “mutual debts” for setoff). There is no ground for CIC to assert offset of the overpayments now, and even less basis to offset amounts that go beyond the liabilities of Rutty Pool members established by arbitration or agreement.

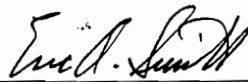
CONCLUSION

For the reasons stated, the Referee should deny CIC’s claim and rule that CIC is not entitled to any setoff for it.

Respectfully submitted,

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

By his attorneys,

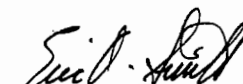


J. David Leslie
Eric A. Smith
Rackemann, Sawyer & Brewster
One Financial Center
Boston, MA 02111
(617) 542-2300

June 19, 2006

Certificate of Service

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



Eric A. Smith

SERVICE LIST

Gary Lee, Esq.
Pieter Van Tol, Esq.
Lovells
16th Floor
900 Third Avenue
New York, New York 10022

Lisa Snow Wade, Esq.
Orr & Reno
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Thomas W. Kober, Esq.
The Home Insurance Company in Liquidation
59 Maiden Lane, 5th Floor
New York, New York 10038

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

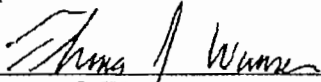
Court of Appeals for the Sixth Circuit affirmed this position in Nationwide Mutual Insurance Co. v. Home Insurance Co., 150 F.3d 545 (6th Cir. 1998), attached as Exhibit C.

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 Rutty 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.

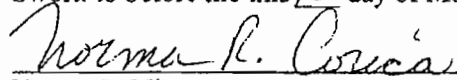
5 . Nationwide instituted arbitration proceedings against Home, alleging that Home violated certain of its duties under Contract R, including its duties as administrator of the Rutty Pool business. The Claim derives from the arbitration panel's rulings in two phases of the arbitration.

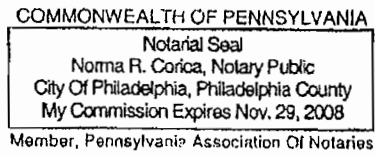
6 . First, in phase two of the Nationwide arbitration, the panel held that Home is only liable for 50% of Nationwide's fixed pool share of the administration costs and that Nationwide is liable for 50% of Home's costs associated with Nationwide's fixed pool share. To the extent that CIC, through AISUK 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 Rutty 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. Warner

Sworn to before me this 15 day of May, 2006


Notary Public



17:28 FROM ACE INA SERVICES TO MIKE DURKIN P.01/03

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

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

ORDER

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

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

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

The Home Insurance Company,

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

Read Carefully Before Completing This Form

Please print or type

DATE PROOF OF CLAIM RECEIVED

JUN 14 2004

HICIL

INTL 700616

Exhibit C

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

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

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

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

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

BALANCES FUNDED TO RUTTY POOL ON BEHALF OF HOME ON
A WP/ROB BASIS - SEE SAMPLE CONTRACT R IN RESPECT
OF AGORIPINA

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

SEE ATTACHED.
\$ _____ (if amount is unknown, write the word "unknown").

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

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

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

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

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

Name: M. DURKIN
Address: AS ABOVE
Phone Number () _____
Email address _____

* The Home Indemnity Company, The Home Insurance Company of Indiana, City Insurance Company, Home Lloyds Insurance Company of Texas, The Home Insurance Company of Illinois, and The Home Insurance Company of Wisconsin.

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

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

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

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

 Claimant's signature Date

15. All claimants must complete the following:

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

MCD
 Claimant's signature June 11, 2004
Date

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

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

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

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

Balances Funded by AISUK on behalf of the Home on a without prejudice / reservation of rights basis.

| | US\$ | GBP | CAN\$ | EUROS |
|-----------------------|----------------------|--------------------|------------------|----------------|
| Nationwide Trust Fund | -137,318.84 | -32.94 | 0.00 | 0.00 |
| Nationwide ISA | -4,922.95 | -519,163.53 | -503.50 | -8.56 |
| Aggrippina ISA | -4,880,222.17 | -43,643.81 | -3,043.30 | -205.45 |
| Wurttembergische ISA | -2,154,439.55 | -19,313.18 | -225.63 | -61.63 |
| Miscellaneous | -2,395,562.27 | -93,772.87 | -1,357.11 | 0.00 |
| Total | -9,572,465.78 | -675,926.33 | -5,129.54 | -275.64 |



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

1 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: Claimant: ACE INA Services U.K. Limited ("ACE INA"),
 on behalf of CIC - POC Number INTL 700616**

This POC relates to payments made by ACE-INA, on behalf of Century Indemnity Company (CIC), in respect of the M.E. Rutty Pool, which arise out of Home's reinsurance of and participation in the Rutty Pool.

As noted in the chart attached to the POC, there are three separate components to ACE-INA/CIC's claim:

- (1) Nationwide Trust Fund — This figure (\$137,318.84) represents payments made by ACE-INA to Rutty pool member Nationwide for fronted claims that exceeded the funds in the designated trust account for such claims (which were typically provided by Nationwide). Nationwide has never reimbursed ACE-INA for those payments.^o
- (2) Nationwide ISA/Agrippina ISA/Wurttembergische ISA — These figures (which total \$7,039,584.67) reflect payments made by ACE-INA for the combined pool and fronted shares of Nationwide, Agrippina and Wurttembergische of liabilities that are not reinsured by Home but are subject to the Insolvency Shortfall Agreement (ISA).
- (3) Miscellaneous — This figure (\$2,395,562.27) represents payments made by ACE-INA to cedents, brokers or attorneys where the original claim was agreed and processed by Rutty. The other part of the miscellaneous category relates to receipts (which are netted against payments) from reinsurers and pool members.

In response to your request for documentation of the above payments, we are gathering the disbursement vouchers, quarterly billing accounts and other related documents, and will be producing those to you within the next few weeks.

Finally, you have asked for additional information and documentation relating to the approximately \$3.5 million offset asserted by CIC with respect to monies advanced to Agrippina on a fronted basis. The offset is included in the "Agrippina ISA" amount discussed above. We will forward to you, along with the other documentation, the documents we have regarding these payments. It is our understanding that the payments were made by ACE-INA on behalf of CIC, as you have acknowledged.

We shall supplement this POC as necessary.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'M.E. Durkin', with a long horizontal flourish extending to the right.

M.E. Durkin.
Vice President.

Exhibit E

| The Home Insurance Company - UK Branch | | | | | |
|---|---|---------------|-------------------|--------------|--|
| Summary of Cash payments to Home PL, NOD's received and reconciled by ACE, and set-off effected by ACE -April, 2006 | | | | | |
| | | GBP | US\$ | CAD\$ | |
| | NOD's received by ACE (see detail on tabs attached) | (91,680) | (17,824,358) | (1,961) | |
| | Less previously paid WP/ROR in January 2004 | 50,000 | 3,232,550 | | |
| | Home Sellers Payable to ACE | | 4,542,651 | | |
| | | (41,680) | (10,049,157) | (1,961) | |
| | Rutty: | | | | |
| | Agrippina (AT06293) (1) - Indemnity | 19,546 | 2,486,962 | 0 | |
| | (2) - Interest | 6,224 | 793,711 | 76 | |
| | (1) - Suspense | 9,511 | 525,344 | 305 | |
| | (4) - Home Reinsured Pool Shares | 1,172 | 365,273 | 99 | |
| | FAI (AT4314) (1) - Indemnity | 216 | 9,662 | 0 | |
| | (2) - Contingent Interest | 0 | 0 | 0 | |
| | (1) - Suspense | 727 | 7,574 | 0 | |
| | (6) - Processing Reversals | 8,526 | 531,464 | 0 | |
| | Nationwide (AT6133) (1) - Indemnity | (117) | 203,184 | 1,645 | |
| | (2) - Contingent Interest | 0 | 0 | 0 | |
| | (1) - Suspense | 15,111 | 234,435 | 461 | |
| | (3) - Arbitration Award (dated 17/07/2003) | 0 | 1,250,000 | 0 | |
| | (4) - Home Reinsured Pool Shares | 5,390 | 248,374 | 112 | |
| | (7) - Processing Reversals | 2,886 | 110,058 | 0 | |
| | Württembergische (AT6134) (1) - Indemnity | 7,893 | 932,088 | 66 | |
| | (2) - Contingent Interest | 1,503 | 184,659 | 31 | |
| | (1) - Suspense | 3,022 | 173,540 | 215 | |
| | (4) - Home Reinsured Pool Shares | 7,283 | 232,434 | 66 | |
| | | 47,213 | (1,760,394) | 1,116 | |
| | OTHER SET-OFF | | | | |
| | (5) CIC | | 10,430,059 | | |
| | (5) ECRA | | 1,850,000 | | |
| | | | | | |
| | Net Due to/(from) ACE | 47,213 | 10,519,665 | 1,116 | |

| | | |
|--|--|--|
| | (1) Items headed under Ruffy include Indemnity & Suspense payments previously funded by C.I.C via A.I.S.U.K. Refer to letters sent to J. Rosen by Lovells dated 25/04/2005 & 13/06/2005 which provide a more comprehensive explanation. | |
| | (2) The interest components relate to payment from Ruffy Pool Members to Home in respect of balances funded by C.I.C. through A.I.S.U.K | |
| | (3) The Nationwide arbitration award relates to the award granted to the Home per the attached. | |
| | (4) This relates to Home Reinsured Pool Share paid by C.I.C. through A.I.S.U.K. on claims booked by Ruffy Management which could not be booked as paid claims by A.I.S.U.K on the Ruffy account to avoid duplicate accounting to both cedants & third party reinsurers. Please refer to Lovells letter dated 13/06/2005 to J. Rosen. | |
| | (5) This relates to C.I.C's contribution and subrogation claims. A.I.S.U.K understand that this amount will likely be several multiples of the amount currently claimed, and we will update this number in due course. | |
| | (6) This relates to FAI's (AT04314) reversal of processing iro 1QTR01 - 3QTR03 which formed part of the payment to E & Y in January 2004 | |
| | (7) This relates to Nationwide's (AT06133) reversal of processing iro 1QTR03 - 3QTR03 which formed part of the payment to E & Y in January 2004 | |

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company

Docket No.: 03-E-0106

**ORDER APPROVING CLAIMS PROTOCOL
WITH CENTURY INDEMNITY COMPANY**

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

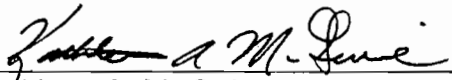
1. The Protocol is reasonable, prudent and in full accordance with the law;
2. The Protocol is in the best interests of the liquidation of Home;
3. The Protocol is entered into in good faith; and
4. The interests of the claimants are well protected.

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

So ordered.

Date

11/12/04


Kathleen A. McGuire
Presiding Justice

**THE HOME
INSURANCE
COMPANY**
In Liquidation



59 Maiden Lane
New York, New York 10038

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

August 6, 2004

VIA COURIER

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

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

Dear Tom:

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

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

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

Thomas J. Wamser, Esq.
August 6, 2004
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This letter, therefore, seeks agreement between HICIL and CIC on the above mechanisms and processes. Following such agreement, as confirmed by signature for CIC below, this letter will be presented to the Court (as defined below) for approval, upon which it will be effective. For the avoidance of doubt, except as may be subsequently agreed by CIC and Home, the terms of this letter will apply solely to paid losses that have been presented pursuant to a POC (as defined below) in the HICIL liquidation and determined in accordance with the Claims Procedures Order (as defined below) and not to any loss reserves (including reserves for losses that are incurred but not reported) that the claimants have established, except as may otherwise be required by law.

1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Submission, Adjustment and Adjudication of AFIA Liabilities

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

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

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

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

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

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

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

3. Reports, Remittances and Inspection of Records

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

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

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

4. Commutations

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

5. Rutty Pool Business

- 5.1 CIC (through ACE-INA) shall, at the sole cost of CIC, to the extent determined through litigation, arbitration or an agreement approved by HICIL with each affected Rutty Pool member (a) administer and service the inwards liabilities of each affected Rutty Pool member, including the investigation, appraisal and adjustment of such liabilities; (b) effect timely notification to each affected Rutty Pool member and HICIL of the results of such investigation, appraisal and adjustment; and (c) pay on HICIL's behalf such unallocated loss adjustment expenses that are determined as the obligations of HICIL related to the inwards liabilities of each affected Rutty Pool member.

6. Role of ACE-INA

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

7. Reservation of Rights

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

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

8. CIRC Reinsurance Recovery

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

9. No variation

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

10. Material Breach

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

11. Notices

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

If to HICIL:

Home Insurance Company in Liquidation

59 Maiden Lane

New York, New York 10038

Attention: Jonathan Rosen

Facsimile Number: (212) 530 3100

If to CIC:

Thomas J. Wamser, Esq.
August 6, 2004
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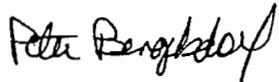
Century Indemnity Company
c/o ACE USA
Law Department
Routing TL35S
1601 Chestnut Street
Philadelphia, Pennsylvania 19101
Attention: Thomas Wamser
Facsimile Number: (215) 640 5571

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

* * *

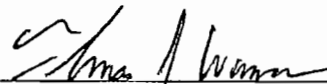
If CIC is in agreement with the foregoing, please have a duly authorized representative confirm same by signing and returning to me a counterpart of this letter. I appreciate your consideration and assistance.

Sincerely,



Pete Bengelsdorf
Special Deputy Liquidator

AGREED AND ACCEPTED
CENTURY INDEMNITY COMPANY

By: 

Title: Assistant General Counsel

Date: 8/10/04

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DIVISION: HICIL

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

In re Liquidator Number: 2005-HICIL-12
Proof of Claim Number: INTL 700616
Claimant Name: Century Indemnity Company

-----X

March 10, 2006

HELD AT: HICIL

BEFORE: HONORABLE
Referee PAULA ROGERS

APPEARANCES: MR. LEE
MR. LESLIE

TRANSCRIBER: TERESA VON REINE

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| <u>WITNESS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>D.</u> | <u>J</u> |

E X H I B I T S

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|-------------------|--------------------|-----------------|
| | | For In |
| <u>PETITIONER</u> | <u>DESCRIPTION</u> | <u>I.D. Ev.</u> |

1 [START TAPE 12]

2 REFEREE ROGERS: Certainly.

3 MR. LEE: [Unintelligible] HICIL-11.

4 I didn't actually explain that the second
5 part of the claim was contingent.

6 REFEREE ROGERS: Yes, you did-

7 MR. LEE: [Interposing] Without—I'm
8 not going to get into any of the issues
9 that we've just described but there is
10 another circuit—there is a Circuit Court
11 of Appeals affirmation of Century's
12 entitlement on an ongoing basis. I think
13 that the distinction between what we just
14 talked about in relation to HICIL-11 and
15 HICIL-12 is that here these relate to
16 indemnity payments and interest payments.
17 In other words these are the amounts that
18 Century paid on behalf of the Home to the
19 Ruddy Pool members in excess of what had
20 been established now as the legal
21 obligations to pay and I believe and I
22 assume the Referee is aware that, for
23 example, in relation to Agrippina there
24 was, and has been, litigation and
25 arbitration and it essentially relates to

1 what Home's obligation is. Whether it's
2 a fixed pool or a front apportion.

3 REFEREE ROGERS: Right.

4 MR. LEE: And those disputes were
5 crystallized by a settlement that the
6 Court has approved.

7 REFEREE ROGERS: I'm aware of that,
8 yes.

9 MR. LEE: What they sort of—if we do
10 the math there's sort of a number of
11 around four, three, four million dollars
12 that effectively relate to the fact that
13 Century made those payments on a fixed
14 rather than a front [unintelligible]
15 share basis. Now it's agreed. It's in
16 front of the Court, it's a front
17 [unintelligible] share basis.

18 REFEREE ROGERS: I'm aware.

19 MR. LEE: Those are amounts that
20 have been paid. Checks have been paid.

21 REFEREE ROGERS: Correct.

22 MR. LEE: And in the, in the motion
23 and in the affidavits that were filed in
24 connection with the Agrippina settlement
25 it was made very clear to the Court that

1 Century was entitled to the benefit of
2 those overpayments. That is our position.
3 And it is also our position, I think, as
4 it was in relation to HICIL-11 that those
5 overpayments are fungible. Again, why
6 would we want to wait for the cedants to
7 prosecute their claims? It's money we
8 paid out now. It could have been money
9 for stationary that we paid out. It's
10 available for offset today. Again, the
11 reasons for denying the claim are as
12 opaque to us as they were in relation to
13 HICIL-11. A major distinction between
14 this dispute and HICIL-11 is that we now
15 produced well over 4,000 pages of
16 documents to the liquidator establishing
17 that we made the payments—we made the
18 payments in respect—overpayments in
19 respect of specific claims on our fixed
20 pool share basis. So in addition to the
21 letter writing, the mandatory disclosures
22 and the objection here Century has also
23 produced the enormous amount of
24 documentation none of which is in the
25 case file. That's just as an aside.

1 Similarly, the Court is now being
2 asked to approve the Wuertembergische
3 settlement again on the same basis.
4 Again, Century has made, over the course
5 of several years, overpayments. Again we
6 believe that that setoff is entirely
7 fungible and so, I think, fundamentally
8 aside from sort of the additional
9 discovery and the complexity that goes
10 with what the payments were made in
11 relation to, there are also always some
12 similarities with HICIL-11.

13 REFEREE ROGERS: Yes.

14 MR. LEE: Which I think Mr. Leslie
15 agreed with.

16 REFEREE ROGERS: Attorney Leslie.

17 MR. LESLIE: Well, if this claim was
18 denied for exactly the same reason that
19 the Nationwide claim was denied and
20 that's because CIC seeks to assert a
21 liability against the Home with respect
22 to the obligations of others. Be it
23 Nationwide as to the alleged obligations
24 beyond the million 250 or as to the
25 Agrippina and Wuertembergische balances.

1 A few observations.

2 The issues what Mr. Lee refers to as
3 fungibility which I'm not sure I
4 understand here is really not part of
5 this disputed claim proceeding. The
6 question is whether the Home is liable to
7 Century with respect to these
8 obligations. As I represented earlier in
9 the context of Nationwide, I represent
10 again and as we have confirmed in the
11 papers that we filed in response to, in
12 the Superior Court, in response to
13 Century's motion for reconsideration of
14 the Court's allowance of approximately
15 \$750,000 of Agrippina claims. There is
16 the 4,000 pages that Mr. Lee refers to
17 simply are the backup for numbers that
18 are on this page. We really don't
19 disagree with the numbers. The question
20 here is the legal issue of whether Home
21 is liable. Now talking about the numbers
22 there are a number of things on this page
23 which we will dispute as a matter of law.
24 In the case of Nationwide, for example,
25 we have a two-page arbitration award.

1 The arbitrators determined Nationwide's
2 liabilities. They did not agree with
3 what Century is asserting here with
4 respect to other Nationwide obligations.
5 The 234,000, the 248,000 that's on here
6 that they're setting off. We got the
7 arbitration award. It's done. It's
8 decided. It's there and it's
9 appropriately an issue presented to the
10 Referee. So too with Agrippina we have a
11 settlement agreement that Century
12 actively participated in the negotiation
13 of which it did not object to. Which was
14 approved by the Court and which deals
15 with the issue of Agrippina's obligations
16 for overpayment. As I represented
17 earlier and as I don't believe any fair-
18 minded person can disagree Agrippina will
19 have claims against the Home that well
20 exceed these numbers. As those claims
21 are allowed Century may offset them.

22 REFERENCE ROGERS: And isn't that your
23 point Attorney Lee that it's as they're
24 allowed.

25 MR. LEE: Exactly.

1 MR. LESLIE: In order, Madame
2 Referee, in order for these to be
3 obligations that could be offset against
4 the Home, which again, is not the issue
5 that's before the Referee. In order for
6 them to be offset against Home they have
7 to be home liabilities. This—we denied
8 HICIL-11 and HICIL-12 because Century did
9 not provide to us a credible legal
10 argument as to why the Home was liable.
11 This is a legal question. It's
12 appropriately briefed and in any event,
13 just as to HICIL-11, once the Referee
14 receives the benefit of what I'm sure
15 will be my brother's well reasoned legal
16 analysis and the affidavits in support of
17 it you'll be in a much better to evaluate
18 the arguments for an evidentiary hearing.
19 We see nothing lost by moving forward
20 with a Section 15 approach. We strongly
21 believe these are legal questions that
22 are readily resolvable. We do not
23 believe that HICIL-12 presents a level of
24 complexity. It's a legal question of the
25 Home's liability and we think it's

1 readily susceptible of being addressed
2 through a combination of the proof of
3 claim, 'the-in the case of Agrippina and
4 Wuerrtembergische the settlement
5 agreements and then the assumption
6 agreement. Those documents control the
7 legal obligations of the parties. There
8 is no disagreement here over these
9 payments. There's disagreement over
10 whether CIC is entitled to offset them
11 but the numbers are the numbers and
12 they're susceptible to a legal resolution
13 based on briefs and affidavits.

14 REFeree ROGERS: Any final comments.

15 MR. LEE: Just two. An evidentiary
16 hearing without discovery isn't an
17 evidentiary hearing. An evidentiary
18 hearing where the discovery has been
19 entirely one-sided isn't an evidentiary
20 hearing. We heard today for the very
21 first time that the Home disputes some of
22 these numbers. Wuerrtembergische
23 numbers, not the Agrippina numbers. Some
24 elements of the Nationwide numbers, maybe
25 some elements of the Agrippina numbers,

1 maybe some elements of the
2 Wuerrtembergische numbers I don't know. I
3 don't have the first idea what the basis
4 for those disagreements are. I do know
5 that I've given them 4,000 pieces of
6 paper explaining what those payment are.
7 I need to understand before we have any
8 kind of hearing what they disagree with.
9 Under the Section 15 procedure, once
10 again, we will have set out our position
11 as best we can. We would have filed an
12 objection. We would have filed our
13 mandatory disclosures. We would have
14 produced the pieces of paper that we
15 believe demonstrate those are the
16 appropriate amounts. We will have had no
17 chance to cross-examine the Home on why
18 it believes those numbers are wrong.
19 We've have no chance to rebut what we
20 believe their position is because under
21 Section 15 we'll be filing our papers.
22 The Home will have the last word. It will
23 be the first time you'll understand what
24 it is they disagree with once again.

25 MR. LESLIE: Madame Referee.

1 REFEREE ROGERS: I'd like you to
2 respond to that.

3 MR. LESLIE: Sure. My telephone
4 works very well and we receive mail and
5 we're willing to talk. No one has asked
6 us any of these questions, okay. I
7 haven't received--no one's asking us about
8 these sorts of issues. We're willing to
9 consult. We believe consultation is
10 efficient. It saves the Court and the
11 Referee's time and we're more than happy
12 to do that. Two, the question of an
13 unfair evidentiary hearing, first of all,
14 an evidentiary hearing as the Referee
15 ruled in HICIL-2 is not a matter of
16 right. It's a matter of discretion of the
17 Referee based on the issues presented to
18 the Referee in each case. As to HICIL-12
19 the question in our mind is not the
20 numbers that are before you. That is not
21 the disputed claim. The disputed claim
22 is whether the Home is legally liable to
23 Century with respect to these numbers.
24 Now as to the assertion that the
25 liquidator has received one-sided

1 discovery of Century is--here's their
2 Proof of Claim. So-

3 REFERENCE ROGERS: I'm beginning to
4 see that we do have to serve cut to the
5 chase of this issue of whether liability
6 has arisen and getting into the
7 complexities of pieces of paper upon
8 value of claim seems to me premature
9 until that legal analysis is done. And
10 so I'm trying to figure out a way not to
11 totally deny you some access if you need
12 it at some time but I'm thinking that
13 there are some threshold issues that need
14 to be sorted through.

15 MR. LEE: Well I think that if we
16 were to have the opportunity to take
17 discovery of the liquidator on the basis
18 for denying their claim--denying their
19 Century claims, the evaluation process
20 that they went through, and we had an
21 opportunity to depose whoever it was who
22 made that determination then we would
23 basically know what it is they disagree
24 with in full. Then we would be in a
25 position to either have an evidentiary

1 hearing or to submit briefs.

2 REFERENCE ROGERS: I sort of get the
3 sense that once some of these
4 determinations are made by the Referee
5 they may be recommitted to Judge McGuire.
6 I don't know how this will go. It's
7 going to sort some things out and certain
8 log jams that are, you know, in some ways
9 hindering moving ahead on these things
10 are going to be broken one way or another
11 and it's not going to please everybody in
12 the room. It's going to go one direction
13 or another and-but it has to be addressed
14 is the way I'm looking at it. This is
15 the sort of-

16 MR. LESLIE: We are fully supportive
17 of the approach of resolving the question
18 of legal liability is the initial
19 question and reserving as a secondary
20 question the amounts. That's, in our
21 view, an efficient way of dealing with
22 it. Discovery of liquidator as to the
23 reasons why the liquidator has a
24 particular legal opinion about the Home's
25 liability in our view that's simply not

1 worthwhile.

2 REFEREE ROGERS: One of the
3 important things, I think, from a
4 Referee's point of view on these matters
5 which are pretty complex upon which there
6 may be some scanty case law, I don't
7 know. I know I've seen some references
8 to cases out there. I think it's
9 important that whatever rulings are made
10 are consistent and well understood and
11 well developed because they have ongoing
12 implications for how this is going to
13 play out over the years to come. So I'm
14 really very interested in looking at the
15 legal analysis first because the rest of
16 it is sort of background noise until some
17 sort of ruling addresses what is holding
18 things back here. So that's kind of the
19 way I'm looking at it and I'm just sort
20 of getting that as I look at the people
21 talking to me today.

22 MR. LEE: Well we think that, if
23 that's the approach that you want—that
24 the Referee wants to take, again it would
25 be appropriate and proportionate for us

1 to have an opportunity to understand the
2 liquidator's position and an evaluation
3 of the claims and once we understand that
4 then we are going to be in a better
5 position to move forward and address the
6 legal issues.

7 REFeree ROGERS: All right, enough
8 said on 11 and 12. They're sort of the
9 same in many ways. 13, a bit of a
10 different spin on this one, I think.

11 [END TAPE 12]

C E R T I F I C A T E

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

9
10 Signature Teresa Von Reine

11 Date March 20, 2006

12

13

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-12
Proof of Claim Number: INTL 700616
Claimant Name: Century Indemnity Company

AFFIDAVIT OF JONATHAN ROSEN

I, Jonathan Rosen, depose and say:

1. I am the Chief Operating Officer of The Home Insurance Company In Liquidation, a position I have held since shortly after the liquidation commenced. Prior to that, I was Executive Vice President and Reinsurance Counsel of The Home Insurance Company (“Home”) and Executive Vice President of Risk Enterprise Management Limited, a third party administrator that, amongst other things, administered the business of Home. The facts and information set forth below are either within my own knowledge, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information and belief.

2. This proceeding concerns CIC’s claims arising from payments made regarding Home’s reinsurance of members of the M.E. Ruddy Pool (“Ruddy Pool”). Briefly, Home reinsured four members of the Ruddy Pool (Nationwide, Agrippina, Wurttembergische, and FAI) under contracts known as Treaty R or Contract R (individually or collectively, “Contract R”). The Contract R between Home and Nationwide is substantially similar to the Contract R’s between Home and Agrippina and between Home and Wurttembergische. [REDACTED]

[REDACTED]

[REDACTED]

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

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

5. CIC litigated and arbitrated with Ruddy Pool members Agrippina, Wurttembergische, Nationwide, and FAI over the extent of Home’s obligations to them. Among other things, CIC in Home’s name disputed whether Home’s obligation under Contract R was to pay a “fixed pool share” or a “fronted pool share” of claims and expenses. In accordance with the Assumption Agreement, CIC administered the arbitration and litigation in Home’s name and controlled Home’s positions. CIC continued to control the arbitration and litigation with Ruddy Pool members after appointment of the Liquidator for Home.

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

6. The panel's July 17, 2003 order ("Phase 3 Order") in the Nationwide arbitration awarded a net amount of \$1.25 million to Home. To my knowledge, Home (by CIC/AISUK or through the Liquidator) and Nationwide have not otherwise agreed on any amount due from Nationwide. Nor has Nationwide paid any funds to Home or acknowledged liability for any other amounts.

7. The arbitration with Agrippina was resolved by the agreement between Agrippina and Home entered during 2004. Both CIC and AISUK were extensively involved in the negotiation of the Agrippina Agreement, and they agreed to its terms. The Liquidator moved for approval of the Agrippina Agreement by the Court, and CIC did not object. The Court approved the Agrippina Agreement on February 17, 2005.

8. [REDACTED]

9. The Wurttembergische arbitration was resolved by the agreement entered by Wurttembergische and Home in 2006. Both CIC and AISUK were extensively involved in the negotiation of the Wurttembergische Agreement, and they agreed to its terms. The Liquidator moved for approval of the Wurttembergische Agreement, and CIC did not object. The Court approved the Wurttembergische Agreement on March 21, 2006.

10. [REDACTED]

[REDACTED]

11. CIC provided information concerning the FAI situation in an email dated August 26, 2005 attached hereto as Exhibit 1. [REDACTED]

[REDACTED]

12. CIC [REDACTED]

[REDACTED] and it will receive the economic benefit of the Nationwide Phase 3 Order when it is used as an offset as explained in 2005-HICIL-11. The Liquidator does not control the timing of assertion of claims by the Ruddy Pool members. The Pool members determine when to assert claims [REDACTED]

[REDACTED]

[REDACTED] CIC handles such claims and makes recommendations to the Liquidator under the Claims Protocol. While the Liquidator could determine the order in which

CIC is to adjust the claims under the Claims Protocol § 2.3, no direction that would delay CIC's consideration of Ruddy Pool members' claims has been given.

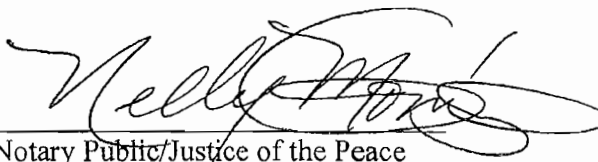
Executed under the penalties of perjury this 19th day of June 2006



Jonathan Rosen

STATE OF NEW YORK
COUNTY OF NEW YORK

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



Notary Public/Justice of the Peace

NELLY M. GOMEZ
Notary Public, State of New York
No. ~~116~~ 5005271
Qualified in ~~NY~~ County
Certificate Filed in ~~N.Y.~~ County
Commission Expires December 7, 2006



"Wamser, Thomas J"
<Thomas.Wamser@ace-ina.com>

08/26/2005 11:43 AM

To: <jonathan.rosen@homeinsco.com>

cc: "Durkin, Mike MMQE" <Mike.Durkin@ace-ina.com>, "Bateman, Darren MMQE" <Darren.Bateman@ace-ina.com>, "Lee, Gary" <Gary.Lee@lovels.com>

Subject: FAI

REDACTED

REDACTED

Thomas J. Wamser, Esq.
Two Liberty Place
1601 Chestnut Street - TL35S
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(215) 640-5571 *fax*

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

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

Confidential

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

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

Thank you for your further consideration.

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

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

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

6/19/2006

Referee Rogers --

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

Best regards.

Brian J. Green
212.912.2755 fax 888.325.9621

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

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June 9, 2006

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Direct fax (212) 909-0660

Our ref NYMPM/103044.1
Matter ref T0718/00023

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

RE: CONSOLIDATED DISPUTED CLAIM PROCEEDINGS HICIL-18 AND 21

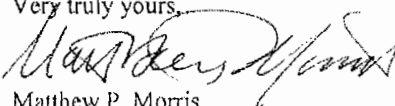
Dear Referee Rogers:

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

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

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

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

Very truly yours,

Matthew P. Morris

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

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

Lawyers (USA): Solicitors Rechtsanwarte Avocats Advocaten Notarissen Avvocati Abogados