

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

2004 APR -2 P 3:19  
SUPERIOR COURT  
MERRIMACK COUNTY  
MERRIMACK, NH

Docket No 03 - E - 0106

In the matter of the Liquidation of The Home Insurance Company

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AFFIDAVIT OF  
GERNOT WARMUTH

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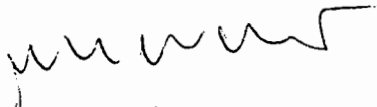
I, GERNOT WARMUTH, of Kennedy Allee 97, 6056 Frankfurt am Main, Germany, MAKE OATH AND SAY AS FOLLOWS:

1. I am a lawyer qualified to practise in Germany and in California, United States of America. A substantial part of my practice relates to insolvency matters. I am of counsel to the firm Scheiber & Partner of the above address. I make this affidavit on the instruction of my client, Zurich Versicherung AG (Deutschland) (legal successor in interest to Agrippina Versicherung AG) of Solmsstrasse 37-47, 60486 Frankfurt, Germany ('Zurich')
2. I make this affidavit on the basis of information and documents which are within my personal knowledge and/or which have been supplied to me. To the extent that the matters to which I depose herein derive from my personal knowledge they are true and to the extent that they derive from information and documents supplied to me they are true to the best of my knowledge and belief. Save where the context otherwise requires, any defined terms used in this affidavit shall have the same meaning as when those defined terms are used in the Objections and Response dated 19 March 2004 filed by the ACE Companies.
3. I am instructed to make this affidavit by my client Zurich, which is an insurance company.
4. Zurich is a substantial creditor of The Home Insurance Company ('Home'), through its AFIA pool participations, whereunder Home reinsured Zurich, pursuant to a so-called Reinsurance Contact R ('Treaty R'), in respect of Zurich's liabilities incurred under policies of insurance and reinsurance underwritten on behalf of Zurich by M.E. Ruty Underwriting Agencies Limited of London. There is now produced and shown to me and exhibited hereto marked 'GW1' a copy of the said reinsurance contract between Home and Zurich.

5. I understand that the ACE Group (as run-off manager for Home's AFIA business) estimates Zurich's outstanding claims against Home under Treaty R to be at least US\$18 million as at year end 2003. I should stress that these figures do not include incurred but not reported items (IBNR). Zurich has not yet filed a proof of claim in the Home liquidation proceeding. Zurich is a member of the Informal Creditors Committee established by the Joint Provisional Liquidators of Home following their appointment in May 2003.
6. I would draw this court's attention to Article IX of Treaty R which provides that, in the event of Home becoming insolvent and in certain other circumstances, Zurich has the right to terminate its participation in Treaty R. The nature and ambit of Zurich's termination rights under this Article have been the subject of discussions between Zurich and Home's liquidation team and it is fair to say that Zurich and Home have not reached any agreed view on how those termination provisions would operate. However, both sides have reserved their rights on this issue. Hitherto Zurich has not purported to exercise its termination rights under Article IX, although it has reserved its right to do so in certain circumstances.
7. The Liquidator has provided me with copies of the papers filed by the ACE Companies in support of their objection to the Liquidator's Motion seeking approval of the Agreement and compromise with AFIA Cedents. I wish to contradict certain assertions made by the ACE Companies in their papers.
8. In paragraph 12 of their Objection and Response, the ACE Companies assert that, even without the Agreement and the proposed scheme of arrangement, the AFIA Cedents would be likely to file proofs of claim in the liquidation of Home. I disagree strongly with that assertion. Assuming that the Liquidator's position that AFIA Cedents are Class V creditors in the Home estate is correct - i.e. that reassured creditors of Home rank behind direct insureds and other priority creditors - I do not believe that Zurich would expend any time or effort in filing claims in the Home liquidation, unless the proposed scheme of arrangement (as envisaged in the Agreement) were likely to proceed. Since Zurich would stand to receive no distribution from the Liquidator, I am mystified as to why the ACE Companies believe that an AFIA Cedent like Zurich would wish to incur the time and expense of pursuing a proof of claim in the absence of the proposed scheme. It is important to bear in mind that there is much more to pursuing a claim against Home than simply filing a proof of claim; that is merely the first step. The individual items of claim must then be agreed with whoever is administering the run-off of the AFIA business on the Liquidator's behalf (presumably the ACE Group). My personal experience in advising creditors (especially insurance companies) in insolvency situations is that this can be a slow, cumbersome and expensive process, frequently involving recourse to litigation.
9. In paragraph 13 of their Objection and Response, the ACE Companies assert that the Liquidator has adduced no evidence to substantiate his belief that the AFIA Cedents would look to the possibility of 'walling off' the AFIA assets in a separate English liquidation of Home or negotiating side agreements with the ACE Group reinsurers of Home on the AFIA business or of seeking some other similar remedy. I can certainly confirm that Zurich has already given a lot of thought to the possible alternative

solutions which might be available to it to counteract the detrimental effect of reassureds' subordinated status under New Hampshire liquidation law. In common with the other Informal Creditors Committee members, we also wanted to consider the possibility of establishing a separate English liquidation for Home, under which the assets of the UK branch would be "ring-fenced" for the benefit of UK branch creditors. In addition, Zurich has considered whether it could negotiate a cut-through agreement with the ACE Group, which might enable ACE group companies to make direct payments to Zurich as the 'price' for Zurich committing itself to refrain from making claims against the Home estate in liquidation. The most attractive line of argument would be for Zurich to assert that the ACE Group reinsurers are in fact directly obliged to Zurich for losses arising on Treaty R anyway, given that INA, BAFCO and their successors in title have apparently been paying AFIA Cedents' claims direct since 1984 and thus could be said to have voluntarily assumed a novation of those liabilities, or that the ACE Group companies are effectively obliged to accept such a novation as a result of the commitments which the CIGNA group gave to accept such a novation at the time of the AFIA business transfer in 1984. However, the most likely outcome would be that Zurich would seek to negotiate a direct compromise agreement with the ACE Group which would probably involve termination of Treaty R and the collection by Zurich of Ruddy pool common account reinsurances.

10. I have been quite open in my discussions with the Liquidator's staff about the fact that Zurich has been looking at these alternatives and would continue to do so unless a satisfactory solution could be found. I recall that I told Jonathan Rosen, Chief Operating Officer of Home, that Zurich would not bother to file claims in the liquidation and that it would look at negotiating a compromise agreement with ACE of the type described in the final sentence of paragraph 9 above. If the proposed scheme founders, Zurich would look very seriously at these options.



Sworn this 31st day of May 2004 )

At : )

Before : )

**Notary Public**

**Nummer 149 der Urkundenrolle für 2004**

Die umstehende Unterschrift des Rechtsanwalts Gernot A. Warmuth, geschäftsansässig Kennedyallee 10, 60596 Frankfurt am Main, der mir von Person bekannt ist und mir auf meine Fragen erklärte, daß eine Vorbefassung im Sinne von § 3 Abs. 1 Nr. 1 StGB nicht vorliege, wurde vor mir vollzogen.

Frankfurt am Main, 31. März 2004

Kosten: GEBÜHR  
**Geschäftswert: € 3.000,00**

Gebühr § 45 KostO  
zuzüglich 16% MWSt.

€ 10,00

  
(Birr)  
Notar



THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

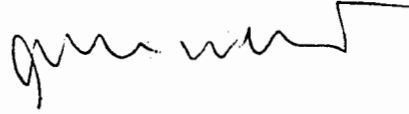
SUPERIOR COURT

Docket No 03 - E - 0106

In the matter of the Liquidation of The Home Insurance Company

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EXHIBIT "GW1" TO THE AFFIDAVIT  
OF GERNOT WARMUTH  
\_\_\_\_\_

This is the exhibit "GW1" referred to in the Affidavit of GERNOT WARMUTH  
sworn the 31st day of March 2004.



Before me,

Notary Public

Nummer 148 der Urkundenrolle für 2004

Die umstehende Unterschrift des Rechtsanwalts Gernot A. Wagner, Geschäftssansässig Kennedyallee 10, 60528 Frankfurt am Main, der mir von Person bekannt ist und mir abgelesen wurde, erklärt, daß eine Verfassung im Sinne von § 3 Abs. 1 Nr. 1 des Grundgesetzes vorliegt, wurde vollzogen.

Frankfurt am Main, 31. März 2004

Kosten:  
Geschäftskosten € 10,00

Gebühren und Kosten  
zusätzlich 46% MWSt.

€ 10,00

(Birma)  
Notar



made between

AGRIPPINA VERSICHERUNG A.G. of  
RIEHLER STRASSE 90, 5 KOLN 1, WEST GERMANY  
(hereinafter referred to as the "Reassured")

As underwritten for Agrippina Versicherung A.G. by

M.E. RUTTY UNDERWRITING AGENCIES LIMITED of  
5-7 Ireland Yard, London, E.C.4.  
(hereinafter referred to as the "Agent")

and

HOME INSURANCE COMPANY OF NEW YORK

acting through its branch office at

26/28 Fenchurch Street, London, E.C.3.

(Hereinafter referred to as the "Reinsurers")

#### RECITALS

- (1) Whereas under agreements dated 1st July, 1962 with addenda No. 1, 2 and 3 and 6th January, 1967 with addenda No. 1 and 2 between the Agent and the Reassured, the Agent accepted Insurance and reinsurance business on behalf of the Reassured for the underwriting years 1962, 1963, 1964, 1965, 1966 and 1967 and
- (2) Whereas the Agent ceased to write new business after 31st December, 1967 and
- (3) Whereas the Reassured desire to effect reinsurance in respect of their liability under any and/or all policies and/or contracts of Insurance and/or reinsurance written by the Agent on their behalf (hereinafter referred to as the "Original Policies") and
- (4) Whereas the Reinsurers having had full disclosure and inspection of the Agent's records and accounts relating to the Original Policies and all claims and outstanding matters thereunder have agreed to afford such reinsurance to the Reassured in accordance with the terms and conditions of this Contract, Now it is hereby agreed as follows:



ARTICLE

This Contract is in respect of all losses which the Reassured may be or may become liable to pay, arising out of risks written for the Reassured by the Agent during 1962, 1963, 1964, 1965, 1966 and 1967 underwriting years of account, excluding however "Stop and Shop" Losses arising from or consequent upon a fire on 5th August, 1969.

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

ARTICLE II

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

ARTICLE III

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

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

Furthermore, the Contract is also subject to the following Nuclear Incident Exclusion Clauses which are attached hereto and shall form an integral part hereof:

- 1) NUCLEAR INCIDENT EXCLUSION CLAUSES -  
LIABILITY - REINSURANCE - U.S.A./CANADA
- 11) NUCLEAR INCIDENT EXCLUSION CLAUSES -  
PHYSICAL DAMAGE - REINSURANCE - U.S.A./  
CANADA
- b) Life, Financial Guarantee and Insolvency Risks.
- c) Furthermore, it is understood and agreed that:
- 1) As regards Non-Marine business accepted by the  
Reassured

this Contract shall exclude loss or damage directly caused by War and/or Civil War but this exclusion shall not apply to such business which is permitted under the terms of the United Kingdom Market War and/or Civil War Risks Exclusion Agreement.

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

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

#### ARTICLE IV

The consideration to be paid by the Reassured to the Reinsurers for this Contract shall be £188,873.00 plus US\$ 568,747.00 plus Can\$ 7,834.00 payable at inception.

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

#### ARTICLE V

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

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

#### ARTICLE VI

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

#### ARTICLE VII

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

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

ARTICLE VIII

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

ARTICLE IX

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Should the Reinsurers

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

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

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

ARTICLE X

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

ARTICLE XI

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

ARTICLE XII

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

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

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

ARTICLE XIII

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(1) All matters in difference between the Reassured and the Reinsurer (hereinafter referred to as "the Parties") in relation to this Agreement, including its formation and validity, and whether arising during or after the period of this Agreement, shall be referred to an Arbitration Tribunal in the manner hereinafter set out.

(2) Unless the parties agree upon a single Arbitrator within thirty days of one receiving a written request from the other for Arbitration, the Claimant (the party requesting Arbitration) shall appoint his Arbitrator and give written notice thereof to the Respondent. Within thirty days of receiving such notice the Respondent shall appoint his Arbitrator and give written notice thereof to the Claimant, failing which the Claimant may apply to the appointer hereinafter named to nominate an Arbitrator on behalf of the Respondent.

(3) Should the Arbitrators fail to agree, then they shall within thirty days of such disagreement appoint an Umpire to whom the matter in difference shall be referred. Should the Arbitrators fail within such period to appoint an Umpire, then either of them or either of the parties may apply to the appointer for the appointment of the Umpire.

(4) Unless the parties otherwise agree, the Arbitration Tribunal shall consist of persons employed or engaged in a senior position in insurance or reinsurance business.

(5) The Arbitration Tribunal shall have power to fix all procedural rules for the holding of the Arbitration including discretionary power to make orders as to any matters which it may consider proper in the circumstances of the case with regard to pleadings, Discovery, Inspection of Documents, examination of witnesses and any other matter whatsoever relating to the conduct of the Arbitration and may receive and act upon such evidence whether oral or written strictly admissible or not as it shall in its discretion think fit.

(6) The appointer shall be the Chairman or Deputy Chairman for the time being of Lloyd's or the Institute of London Underwriters.

(7a) The seat of the Arbitration shall be in LONDON and the Arbitration Tribunal shall apply the laws of ENGLAND as the proper law of this Agreement.

(7b) The Award of the Arbitration Tribunal shall be in writing and binding upon the parties who covenant to carry out any Award and if any party be in default the other may apply for its enforcement to a Court of Competent Jurisdiction in any territory in which the party in default is domiciled or has assets or carries on business.

Signed:

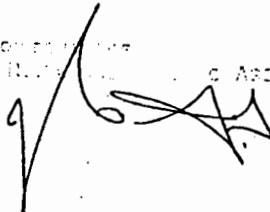
Agrippina Versicherung A.G.

Home Insurance Company



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

FOR AGENCY LIMITED  
M. E. RUTTY UNDERWRITING AGENCY LTD.



Secretary.

Signed:

M. E. RUTTY UNDERWRITING AGENCY LIMITED

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

Signed:

HOME INSURANCE COMPANY



HOME INSURANCE COMPANY LTD.