

## 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**RESPONDENTS ACE COMPANIES' FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS BY GERNOT WARMUTH  
AND ZURICH VERSICHERUNG AG**

Respondents Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company (collectively, the "ACE Companies") hereby request, pursuant to Rule 35 of the Rules of the Superior Court of the State of New Hampshire and the Order Establishing Procedures Regarding Claims Filed with the Home Insurance Company entered on December 19, 2003 (as amended), that Gernot Warmuth, individually and on behalf of his client, Zurich Versicherung AG, for itself and as successor in interest to Agrippina Versicherung AG, produce and permit them to inspect and copy, within thirty (30) days after the service of this request, or within any other period ordered by the Court or agreed by the parties, the documents listed below in accordance with the following definitions and instructions.

**Definitions**

A. "Communications" shall mean the transmittal of information, whether written or oral, in the form of facts, ideas, inquiries or otherwise.

B. The terms "concerning," "relating to," "refer to," "containing" and "regarding" are used in their broadest sense consistent with applicable law and shall include in their meaning each such terms as well as constituting, embodying, comprising, stating, dealing with,

summarizing, recording, noting, mentioning, studying, setting forth, discussing, evaluating, commenting on, responding to, describing, analyzing, containing information concerning, and containing information that is in any way pertinent to the subject matter, directly or indirectly, including, but not limited to, documents concerning the presentation of other documents.

C. The term "document" or "documents" is used in the broadest possible sense consistent with applicable law and shall mean, without limitation, any written, typed, printed, recorded, computer-stored, visual or graphic material, however produced, reproduced, copied or stored (including, but not limited to, any audio tapes, video tapes or magnetic recording tapes, microfilm, microfiche, computer hard drives, recording discs, computer disks or any other computer storage mechanisms whether temporary or permanent, or computer back-up storage media and/or mechanisms), of any type or description, whether in draft or final form, and each non-identical copy or otherwise, regardless of origin or location, in your actual or constructive possession, custody or control, and includes, without limitation, all electronic data (as the term is defined herein), correspondence, communications, notes, drafts, records, notebooks, plans, minutes, agendas, lists, summaries, expressions, statements, opinions, instruments, accounts, invoices, ledgers, logs, accounting records, worksheets, estimating sheets, computation sheets, forms, tables, charts, analyses, graphs, forecasts, statistical statements, photographs, slides, recordings, schedules, reports, memoranda, lists, outlines, instructions, notes, calendars, diaries, telexes, telegrams, facsimile transmissions, electronic mail (e-mail), instant computer messaging, voice mail messages and other messages (including, but not limited to, reports, summaries or other records of telephone conversations and conferences), studies, books, periodicals, magazines, booklets, circulars, brochures, pamphlets, press releases, bulletins (including, but not limited to, inter- and intra-office communications), questionnaires, contracts, agreements, reports

and/or summaries of investigations, reports and/or summaries of interviews, expressions or statements of policy, records, reports or summaries of negotiations, agendas for meetings or conferences, minutes of records of meetings or conferences, lists of persons attending any meetings or conferences, opinions or reports of consultants, and drafts and revisions of drafts of any documents, and all other instruments conveying information by written, pictorial, mechanical, electronic or other means. If a document has been prepared in several copies, or additional copies have been made, or copies are not identical (or, because of subsequent modifications or addition of notations or other marginalia, are no longer identical), each non-identical copy is a separate document. The term "document" also includes and refers to the file or any container holding, or which once held, any documents and any writing or printing which might appear on such file or container.

D. "Computer" shall mean microchips, microcomputers (commonly referred to as "personal computer" or "PCs"), laptop computers, notebook computers, portable computers, palmtop computers (commonly referred to as "personal digital assistants" or "PDAs"), minicomputers and mainframe computers.

E. "Electronic data" shall mean the electronic original (which includes the raw data, the code necessary to make use of that data, and all header, footer and other machine-readable information related to the electronic original), the identical duplicate when the electronic original is not available, and any non-identical copies (whether non-identical because of attached comments, hidden text, annotations, marks, transmission information or alteration of any kind) of information of any kind stored in electronic, magnetic, optical, magneto-optical, or digital form. Electronic data is used consistently with applicable law and includes, but is not limited to, electronic originals and all copies of electronic mail (e-mail), activity listings and/or logs of

electronic mail receipts and/or transmittals, voicemail, audio or video recordings of any kind, output resulting from the use of any software product, including word processing documents, spreadsheets, database files, charts, graphs and outlines, PDF files, batch files, ASCII files, script files, and all miscellaneous electronic files and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, archival file, deleted file or file fragment, as those terms are defined herein. Electronic data includes any and all information stored on electronic media as that term is defined herein.

F. "Electronic media" shall mean any magnetic or other media used for the storage of electronic data as the term is defined herein. Electronic media includes, but is not limited to, hard disks, floppy disks, CD-ROM disks, Bernoulli disks and their equivalents, Zip disks, Click disks, Memory Sticks, compact flash cards, magnetic tapes of all kinds, computer chips (including, but not limited to, EPROM, PROM, RAM and ROM), and any other type of removable storage media.

G. "Active file" shall mean any electronic data file that is readily visible to the operating system and application with which it was created.

H. "Archival file" shall mean any electronic data file that is stored in electronic media for back-up purposes and is not otherwise an active file.

I. "Deleted file" shall mean any electronic data file that has been deleted from the electronic media on which it resides but has not yet been completely written over with new electronic data.

J. "File fragment" shall mean any electronic data file that exists as a subset of an original active file. A file fragment may be part of an active file, archival file or deleted file.

K. "Zurich" shall mean Zurich Versicherung AG and its legal predecessor in interest, Agrippina Versicherung AG, and their respective parent, subsidiaries, affiliates, related companies, predecessors or successors, and any of their employees, agents, accountants, advisors, attorneys and any other persons acting or purporting to act on their behalf.

L. "You" or "your" shall mean Gernot Warmuth, individually and in his capacity as counsel for Zurich, the firm of Scheiber & Partner and their employees, consultants, advisors, representatives and those acting or purporting to act on its behalf and on behalf of Zurich, and Zurich.

M. "Affidavit" shall mean the Affidavit submitted by Gernot Warmuth on or about April 2, 2004 in the liquidation of the Home Insurance Company.

N. "Liquidator" shall mean Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator of the Home Insurance Company, and his predecessors, successors, assigns, employees, agents, accountants, advisors, attorneys and any other persons acting or purporting to act:

- i. on his behalf, including, but not limited to, the Special Deputy Liquidator;
- ii. on behalf of Home; and
- iii. on behalf of the Joint Provisional Liquidators (as defined herein).

O. "Liquidation" shall mean the liquidation of Home, which was commenced by the filing of a petition to liquidate on or about May 8, 2003.

P. "Motion" shall mean the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents filed in the Liquidation on or about February 11, 2004.

Q. "Home" or the "Company" shall mean the Home Insurance Company.

R. "Home U.K. Branch" shall mean Home's unincorporated branch operation in the United Kingdom.

S. "INA Agreement" shall mean the Insurance and Reinsurance Assumption Agreement, dated January 31, 1984, which is referred to in paragraph 3 of the Motion.

T. "Agreement" shall mean the Agreement with the AFIA Cedents that is the subject of the Motion, including any and all of its terms.

U. "U.K. Scheme of Arrangement" shall mean the proposed scheme of arrangement referred to in paragraphs 12 through 17 of the Motion.

V. "AFIA" shall mean the American Foreign Insurance Association, an unincorporated association of American insurers, through which the Home UK Branch wrote insurance and reinsurance business in the United Kingdom.

W. "AFIA Cedents" shall mean those insurers, including Zurich, who ceded insurance risk to Home through the Home UK Branch.

X. "AFIA Treaties" shall mean those reinsurance treaties through which certain insurers ceded insurance risk to Home through the Home UK Branch.

Y. "Bengelsdorf" or "Special Deputy Liquidator" shall mean Peter A. Bengelsdorf, as Special Deputy Liquidator of Home, and his predecessors, successors, assigns, employees, agents, accountants, advisors, attorneys and any other persons acting or purporting to act on his behalf.

Z. "English provisional liquidation proceeding" or "English proceeding" shall mean the provisional liquidation proceeding for the Home UK Branch referred to on page 1 and paragraphs 5 and 8 of the Motion.

AA. "Joint Provisional Liquidators" shall mean the Joint Provisional Liquidators appointed by the High Court of Justice in London, on or about May 8, 2003, in the English provisional liquidation proceeding for the Home UK Branch, and any successor(s) thereto.

BB. "Informal Creditors' Committee" or "Committee" shall mean the committee of certain AFIA Cedents, which is described in paragraph 8 of the Motion.

CC. "July 15 Oral Argument" refers to the Oral Argument before the Supreme Court of the State of New Hampshire relating to the Matter of the Liquidation of the Home Insurance Company, on July 15, 2004.

DD. "Rosen" shall mean Jonathan Rosen, Chief Operating Officer of the Home Insurance Company in Liquidation, and his predecessors, successors, assigns, employees, agents, accountants, advisors, attorneys and any other persons acting or purporting to act on his behalf.

EE. The terms "all" and "each" shall be construed as all and each.

FF. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the requests below all responses that might otherwise be construed to be outside of its scope.

GG. The use of the singular form of any word includes the plural and vice versa.

#### Instructions

A. These requests call for the production of all responsive documents in your possession, custody or control or available to you, your employees, attorneys, accountants, advisors, auditors or other persons acting on your behalf, in your employment, under your direction and/or control of your agents or representatives.

B. When information with respect to a corporation, partnership, limited liability company or unincorporated association or entity is called for in these requests, such reference

shall be construed to include information with respect to that entity and any and all predecessors and successors in interest, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants and all other persons or entities acting on its behalf or under its control.

C. Where a document is not produced because of a claim of privilege, the following information shall be provided: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document, including, where appropriate, the author of the document, the addressees of the document, any other recipients of the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other.

D. If a document that is responsive to a document request was, but is not now, in your custody or control, provide a statement with the following information:

1. whether the document is still in existence, and if so, the name and business address of each person in whose custody a copy of the document may be found;
2. whether the document has been lost or destroyed, and if destroyed, why and by whom;
3. whether the document has been otherwise disposed of, stating who disposed of it, and the date and manner of disposition; and
4. a description of the contents of the document, the names of the author(s) and addressee(s) of the document, and the date the document was created.

E. If it is otherwise not possible to produce any document called for by the request, or if any part of the request is objected to, the reasons for the objection and/or other failure to produce should be stated with specificity as to all grounds.



F. These requests are continuing and require further and supplemental production as and whenever additional documents are acquired or made or located between the time of the initial production hereunder and the time this matter is concluded.

Document Requests

1. All documents relating to your internal communications with respect to the Agreement, including but not limited to, the negotiation of the Agreement.
2. All documents relating to your communications with any AFIA Cedents regarding the Agreement, including, but not limited to, the negotiation of the Agreement.
3. All documents relating to your communications with the Liquidator regarding the Agreement, including, but not limited to, the negotiation of the Agreement.
4. All documents relating to your communications with the Joint Provisional Liquidators regarding the Agreement, including, but not limited to, the negotiation of the Agreement.
5. All documents in your possession, custody or control reflecting any communication regarding the Agreement with any entity other than those referenced in Request Nos. 2, 3 and 4 above, including, but not limited to, the negotiation of the Agreement.
6. All documents in your possession, custody or control reflecting any communication between and among any AFIA Cedents regarding the Agreement, including, but not limited to, the negotiation of the Agreement.
7. All documents concerning your exploration of any alternative means of realizing recovery with respect to the business protected by the AFIA Treaties, including, but not limited to:

(a) Any possible means of circumventing Home in realizing any such recovery;

(b) Any possible side arrangements between Zurich and the ACE Companies;

(c) Any communication between you and the Liquidator and/or the Joint Provisional Liquidators regarding any alternative means of realizing any such recovery; and

(d) Any communication between you and other AFIA Cedent(s) regarding any alternative means of realizing any such recovery.

8. All documents concerning the application of New Hampshire claims and distribution procedures to any claims and assets relating to Home or Home U.K. Branch located in the United Kingdom, including, but not limited to, any communication between you and the Liquidator and/or the Joint Provisional Liquidators regarding your questioning the application of any such procedures.

9. All documents concerning any suggestion by any AFIA Cedent, including Zurich, that UK assets relating to Home or Home U.K. Branch should be "walled off" from United States creditors and distributed to Home UK Branch creditors, including, but not limited to:

(a) The nature and value of any such UK assets;

(b) All documents concerning any presentations regarding any "walling off" of any such assets; and

(c) Any other communications between and among any AFIA Cedents, the Liquidator, the Joint Provisional Liquidators and any other person or entity regarding any "walling off" of such UK assets.

10. All documents concerning the UK Scheme of Arrangement, including, but not limited to:

(a) All documents concerning your internal communications relating to the UK Scheme of Arrangement; and

(b) All documents concerning any communications between any AFIA Cedents, the Liquidator, the Joint Provisional Liquidators, or any other person or entity relating to the UK Scheme of Arrangement.

11. All documents concerning any payment contemplated under the Agreement to you or any other AFIA Cedent(s).

12. All documents concerning any estimates, done by you or any other entity, of "Net Recoveries" as defined in Section 1.2 of the Agreement, including, but not limited to, the Liquidator's estimate of \$72.5 million.

13. All documents concerning any determination that, under the Agreement, you or any other AFIA Cedents would receive any amount of the "Net Recoveries," as defined in Section 1.2 of the Agreement.

14. All documents concerning any amount or level of payment necessary to provide an incentive to you or any other AFIA Cedent to file a claim in the Liquidation.

15. All documents concerning any correlation(s) established by you, the Liquidator, the Joint Provisional Liquidator or any other person or entity between the AFIA Cedents receiving any portion of the "Net Recoveries" as defined in Section 1.2 of the Agreement, and the cost to you or any other AFIA Cedent of obtaining and collecting any amount from the Home estate, including, but not limited to, all documents concerning any communications with respect to such correlation(s).

16. All documents concerning any claim filed by Zurich in the Liquidation, including, but not limited to, your personal files concerning the preparation and filing of any such claim.

17. All documents concerning the Affidavit.
18. All documents concerning any instructions to you from Zurich regarding the Affidavit.
19. All documents concerning your belief that Zurich is a "substantial creditor" of Home, as referenced in paragraph 4 of the Affidavit.
20. All documents concerning "Treaty R," as referenced in paragraph 4 of the Affidavit.
21. All documents concerning Zurich's liabilities incurred under policies of insurance and reinsurance underwritten on behalf of Zurich by M.E. Ruddy Underwriting Agencies Limited of London.
22. All documents concerning Zurich's outstanding claims against Home under Treaty R, as referenced in paragraph 5 of the Affidavit.
23. All documents concerning Zurich's claims against Home, as referenced in paragraph 5 of the Affidavit, including, but not limited to:
  - (a) All documents concerning the amount of Zurich's claim(s) against Home;
  - (b) All documents concerning the validity of Zurich's claim(s) against Home;
  - (c) All documents concerning internal communications at Zurich concerning Zurich's claim(s) against Home;
  - (d) All communications between Zurich and Home concerning claim(s) against Home;
  - (e) All communications between you and the Liquidator concerning Zurich's claim(s) against Home;

(f) All communications between you and the Joint Provisional Liquidators concerning Zurich's claim(s) against Home;

(g) All communications between you and any other AFIA Cedent(s) concerning Zurich's claim(s) against Home; and

(h) All communications between you and any other entity concerning Zurich's claim(s) against Home.

24. All communications between you and any other AFIA Cedent(s) concerning the amount and validity of any other AFIA Cedent's claim(s) against Home.

25. All communications between you and any other entity concerning the validity of any other AFIA Cedent's claim(s) against Home.

26. All documents concerning Zurich's right to terminate its participation in Treaty R, as referenced in paragraph 6 of the Affidavit, including, but not limited to, any agreement reached between Zurich and Home regarding the termination provisions of Treaty R.

27. All documents concerning any communication between you and Home's "liquidation team," as referenced in paragraph 6 of the Affidavit.

28. All documents provided to you by the Liquidator, including, but not limited to, those referenced in paragraph 7 of the Affidavit.

29. All documents concerning your disagreement with the ACE Companies' position on the likelihood of the AFIA Cedents' filing claims in the Liquidation, as referenced in paragraph 8 of the Affidavit.

30. All documents concerning the Liquidator's position that AFIA Cedents are Class V creditors in the Liquidation, as referenced in paragraph 8 of the Affidavit, including, but not limited to, any documents concerning your view of that position.

31. All documents concerning your statement in paragraph 8 of the Affidavit whether Zurich would expend any time or effort in filing a claim in the Home liquidation in the absence of the proposed scheme of arrangement as envisaged in the Agreement.

32. All documents concerning your estimate of any time and expense to Zurich in pursuing a claim in the Liquidation, in the absence of the scheme of arrangement, as referenced in paragraph 8 of the Affidavit.

33. All documents concerning your statement in paragraph 8 of the Affidavit of the steps involved for Zurich in pursuing a claim against Home.

34. All documents concerning any agreement between you and any person or entity administering the run-off of the AFIA business on the Liquidator's behalf, as set forth in paragraph 8 of the Affidavit.

35. All documents concerning your "personal experience" in advising creditors in filing and pursuing claims in insolvency situations, as referenced in paragraph 8 of the Affidavit.

36. All documents concerning Zurich's practices and procedures regarding the filing and prosecution of claims in insolvency situations, including, but not limited to:

(a) All documents concerning any cost to Zurich of filing and prosecuting any such claims;

(b) All documents concerning any time and effort incurred by Zurich in filing and prosecuting any such claims;

(c) All documents concerning any cost to Zurich of filing and prosecuting any claims against Home;

(d) All documents concerning any time and effort incurred to date by Zurich in filing and prosecuting any claims against Home;

(e) All documents reflecting any practices and procedures regarding any claim(s) filed by Zurich in other insolvency cases; and

(f) All documents concerning any time and effort incurred by Zurich with regards to any claims filed in other insolvency cases which constitute your "personal experience" in this regard.

37. All documents concerning any discussions between you and Home, including any of its advisers and representatives, regarding:

(a) The ranking of Zurich as a creditor in the Liquidation; and

(b) Any potential distribution to Zurich in the Liquidation.

38. All documents concerning Zurich's consideration and rejection of any "alternatives" to the Agreement listed in paragraph 9 of the Affidavit, including, but not limited to:

(a) All documents concerning "the possibility of 'walling off' the AFIA assets in a separate English liquidation of Home;"

(b) All documents concerning "the possibility of [...] negotiating side agreements with the ACE Group reinsurers;"

(c) All documents concerning "the possibility [...] of seeking some other similar remedy;" and

(d) All documents concerning your statement in paragraph 9 of the Affidavit regarding "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."

39. All documents concerning Zurich's consideration whether a cut-through agreement with the ACE Companies might enable the ACE Companies to make direct payments

to Zurich as the "price" for Zurich refraining from filing claims in the Liquidation, as set forth in paragraph 9 of the Affidavit.

40. All documents concerning the statement in paragraph 9 of the Affidavit that the ACE Companies are directly obliged to Zurich for losses arising on Treaty R, including but not limited to, all documents concerning:

(a) Any obligation by the ACE Companies to accept a novation of their obligations under any of the AFIA Treaties; and

(b) Any other basis for the ACE Companies to make direct payment to any AFIA Cedent(s).

41. All documents concerning the existence, nature and value of any "AFIA assets," as referenced in paragraph 9 of the Affidavit.

42. All documents concerning Zurich's consideration of a direct compromise agreement with the ACE Companies, including through a termination of Treaty R and the collection by Zurich of Rutty common account reinsurances, as set forth in paragraph 9 of the Affidavit.

43. All documents concerning any commitment given by CIGNA in 1984, as set forth in paragraph 9 of the Affidavit.

44. All documents concerning any other "alternatives" to the Agreement considered by Zurich prior to the execution of the Agreement, as referenced in paragraph 9 of the Affidavit, to "counteract" Zurich's status in the Liquidation, including, but not limited to, Zurich's practices and procedures regarding any such possible alternative solutions.



45. All documents concerning any investigation and due diligence conducted by Zurich regarding any potential benefit to Zurich of entering into the Agreement, including, but not limited to, the alternatives referenced in paragraph 9 of your Affidavit.

46. All documents concerning your discussions with the Liquidator's staff, as referenced in paragraph 10 of the Affidavit.

47. All documents concerning any communications between you and Rosen concerning:

(a) The Liquidation;

(b) The Agreement, including, but not limited to, the negotiation of the Agreement;

(c) Any recovery by Zurich or any other AFIA Cedent under the Agreement;  
and

(d) Any alternatives to the Agreement.

48. All documents concerning the possibility of setting off any claims which Home has or may have against Zurich or any other AFIA Cedent, against any claim(s) Zurich or any other AFIA Cedent has or may have against Home, including, but not limited to, any communications with Rosen regarding any such set-off.

49. All documents regarding any concern you have expressed that claim procedures established by the "Order Establishing Procedures Regarding Claims Filed with the Home Insurance Company" entered December 19, 2003, may provide for broader discovery than is otherwise available under the AFIA Treaties.

Dated December 8, 2004

A handwritten signature in black ink, appearing to read "Ronald Rosen", is written over a horizontal line.

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