

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

**ACE COMPANIES' OBJECTIONS AND RESPONSE  
TO LIQUIDATOR'S REQUEST FOR ADMISSIONS**

Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company and ACE American Reinsurance Company (collectively, the "ACE Group"), hereby respond to the "Liquidator's Request for Admissions To The ACE Companies," dated May 9, 2005 (the "Request") served on behalf of Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as liquidator (the "Liquidator") of The Home Insurance Company ("Home"), pursuant to Superior Court Rule 54.

**GENERAL OBJECTIONS**

1. The ACE Group objects to any Request to the extent it is a request for information which is not relevant to the fairness and reasonableness of the Liquidator's motion (the "Liquidator's Motion") for approval of the Liquidator's proposed compromise with the AFIA Cedents (the "Proposed Agreement") and the ACE Group's objection thereto. By Order dated September 13, 2004, the New Hampshire Supreme Court remanded the proceedings with respect to the Proposed Agreement, indicating that there was a lack of "a sufficient evidentiary record" on the fairness and reasonableness of the Proposed Agreement.

2. The ACE Group objects to any Request to the extent it is a request to admit facts which the Liquidator has reason to believe are likely to be in dispute and, thus, not a proper request for admissions under Rule 54.

3. The ACE Group objects to any Request to the extent it is a request for admission

of facts which are not in the possession or control of the ACE Group and as to which the ACE Companies are without sufficient knowledge to respond.

4. The ACE Group objects to any Request to the extent that it is a request for admission or authentication of court filings and proceedings which are a matter of public record and as to which the Court may take judicial notice.

5. The ACE Group objects to any Request to the extent it requests an admission with respect to a matter of law.

6. The ACE Group objects to any Request to the extent it requests information regarding discussions or materials which were generated or exchanged in the context of discussions to compromise or settle a claim or potential claim, in violation of Rule of Evidence 408.

7. The ACE Group objects to any Request to the extent it is vague, over broad, unduly burdensome, or not tailored to derive admissible evidence.

8. The ACE Group objects to any Request to the extent it seeks to characterize the terms of a document or agreement whose contents speak for themselves.

The foregoing General Objections are hereby incorporated into each and every one of the ACE Group's responses to the Requests. Without waiving said objections, the ACE Group responds as follows:

#### **RESPONSES TO REQUEST FOR ADMISSIONS**

**Request No. 1.** Home is a New Hampshire domiciled insurance company licensed and subject to regulation by the New Hampshire Insurance Department.

**Response No. 1** See General Objections 3 and 4 above.

**Request No. 2.** Home was incorporated in New Hampshire in 1973, and its predecessor insurance companies were established as long ago as 1853.

**Response No. 2.** See General Objection 3 and 4 above.

**Request No. 3.** Home and its subsidiaries wrote property and casualty insurance and reinsurance in the United States and in certain other countries, including the United Kingdom (“UK”).

**Response No. 3.** See General Objection 3 above.

**Request No. 4.** Home did business in the UK through its unincorporated UK branch (“Home UK Branch”), which was authorized to do business in the UK and regulated by the Financial Services Authority (“FSA”) and its predecessor regulators in the UK.

**Response No. 4.** Denied as stated; but admit that the Home did business through AFIA, which used the Home stamp and the St Paul Fire & Marine Insurance Company (St Paul) stamp in the UK.

**Request No. 5.** On March 5, 2003, the Superior Court for Merrimack County, New Hampshire (“New Hampshire Court”) entered an Order of Rehabilitation for Home that appointed the Commissioner as Home’s Rehabilitator.

**Response No. 5.** See General Objection 4 above.

**Request No. 6.** On June 13, 2003, the New Hampshire Court entered an Order of Liquidation for Home. A copy of the Order of Liquidation is attached as Exhibit 1. The Order of Liquidation declared that Home was insolvent and appointed the Commissioner as liquidator of Home. Among other things, the Order of Liquidation enjoined, to the full extent of the New Hampshire Court’s jurisdiction and principles of comity, the assertion of claims against Home except by the filing of proofs of claim with the Liquidator. The Order of Liquidation also set the last day for the filing of claims against Home as one year from the date of the order, i.e., June 13, 2004.

**Response No. 6.** See General Objections 4, 5 and 8 above. Subject to such objections, the ACE Group admits that Exhibit 1 appears to be a copy of the Order of Liquidation of this Court. The ACE Group neither admits nor denies the characterization of the contents of the Order of Liquidation, which contents speak for themselves.

**Request No. 7.** On May 8, 2003, the Commissioner (as Rehabilitator of Home) petitioned the High Court of Justice in London (“English Court”) to appoint joint provisional liquidators for the Home UK Branch under English law.

**Response No. 7.** See General Objection 4 above.

**Request No. 8.** On May 8, 2003, the English Court appointed Gareth Hughes and Margaret Mills, licensed insolvency practitioners and partners of Ernst & Young LLP (“E&Y”), as joint provisional liquidators (“Joint Provisional Liquidators”) in a provisional liquidation proceeding for Home’s UK Branch. A copy of the English Court’s order of May 8, 2003 is attached as Exhibit 2.

**Response No. 8.** See General Objection 4 and 8 above. The ACE Group denies that the joint provisional liquidators were appointed for the Home UK Branch, denies that the Home UK Branch is a recognizable entity separate from the Home, and submits such liquidators were appointed for all assets, if any, of the Home situated in the UK. Subject to such objection and denial, the ACE Group admits that Exhibit 2 appears to be a copy of the English Court’s order of May 8, 2003, the provisions of which speak for themselves.

**Request No. 9.** On December 19, 2003, the New Hampshire Court entered an Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation (“Claim Procedures Order”). The Claim Procedures Order governs the practice and procedures in proceedings before the Liquidator, any New Hampshire Court-appointed Referee and the New Hampshire Court to provide for the orderly presentation and determination of

claims against Home, The Claims Procedures Order was amended on June 9, 2004. A Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation entered January 19, 2005.

**Response No. 9.** See General Objections 4 and 8 above.

**Request No. 10.** Home (through the Home UK Branch) wrote insurance and reinsurance business in the UK as a participating member of the American Foreign Insurance Association, an unincorporated association of American insurers (“AFIA”).

**Response No. 10.** Denied, as stated. See Response No. 4 above.

**Request No. 11.** As a participating member of AFIA, Home entered insurance contracts with policyholders and cedents in the UK, and Home reinsured that business with AFIA as well as a number of other reinsurers.

**Response No. 11.** See Response No. 10. The Request is vague and the ACE Group denies knowledge sufficient to respond as to the referenced "number of other reinsurers."

**Request No. 12.** Among other things, Home entered certain reinsurance treaties (the “AFIA Treaties”) under which a number of insurers (the “AFIA Cedents”) ceded and Home assumed insurance risk through the Home UK Branch.

**Response No. 12.** See Response No. 10. The ACE Group objects to the vagueness of the definitions of AFIA Treaties and AFIA Cedents, and this objection applies to each Request using such terms. The ACE Group admits that AFIA entered certain reinsurance treaties which reinsured business written using the Home stamp, and submits that the provisions of such treaties speak for themselves.

**Request No. 13.** Pursuant to certain agreements dated December 30, 1983, entitled Purchase Agreement No. 1 and Purchase Agreement No. 2, CIGNA Corporation (“CIGNA”) and certain of its subsidiaries purchased AFIA.

**Response No. 13.** See General Objection 8 above.

**Request No. 14.** As part of that transaction, one of the CIGNA subsidiaries, Insurance Company of North America (“INA”), entered an Insurance and Reinsurance Assumption Agreement dated January 31, 1984 (the “Assumption Agreement”) with Home and other companies. A copy of the Assumption Agreement is attached as Exhibit 3.

**Response No. 14.** See General Objection 8 above.

**Request No. 15.** Under the Assumption Agreement, INA agreed among other things to assume the insurance and reinsurance liabilities of the Home UK Branch business, administer that business, and bear the related costs and expenses. INA’s obligations included responsibility to adjust claims and indemnify Home through payment of Home’s losses under the AFIA Treaties.

**Response No. 15.** Deny characterization of the Assumption Agreement, and submit the contents thereof speak for themselves.

**Request No. 16.** With the exception of the AFIA Treaties, the Home UK Branch’s AFIA insurance and reinsurance business (consisting of general direct and marine and aviation business) was formally transferred to a CIGNA subsidiary under English law in 1986, as contemplated by the Assumption Agreement. This effected a novation such that the transferred business became a direct obligation of the CIGNA subsidiary, and Home had no further involvement with that business.

**Response No. 16.** Deny that the referenced transfer was "contemplated by the Assumption Agreement." Objection to second sentence as a request for a legal conclusion. See Response No. 12 above.

**Request No. 17.** The AFIA Treaties were not formally transferred under English law and accordingly remain an obligation of Home, through the Home UK Branch, subject to the Assumption Agreement.

**Response No. 17.** Admit, except deny that the Home UK Branch is a separate legal entity from the Home, and submit contents of the Assumption Agreement speak for themselves.

**Request No. 18.** The Assumption Agreement contains an “insolvency clause,” which is included as the second unnumbered paragraph within paragraph 6 of the agreement.

**Response No. 18.** The ACE Group submits the contents of the Assumption Agreement speak for themselves and denies that there is a clause entitled “insolvency clause.”

**Request No. 19.** The insolvency clause requires INA to pay obligations under the Assumption Agreement directly to Home or Home’s liquidator in the event of Home’s insolvency. The claims are to be paid on the basis of Home’s liability on the claims, without diminution because of Home’s insolvency or because Home’s liquidator has failed to pay all or part of a claim. The insolvency clause also permits INA to interpose a defense in the determination of claims in the applicable proceeding.

**Response No. 19.** See General Objection 8 above.

**Request No. 20.** In 1996, INA was part of a corporate restructuring pursuant to which INA’s rights and obligations under the Assumption Agreement with respect to the AFIA Treaties were transferred to INA’s successor, Century Indemnity Company (“Century”).

**Response No. 20.** Admit only that Century Indemnity Company became successor to INA with respect to INA’s rights and obligations under the Assumption Agreement as part of a corporate restructuring.

**Request No. 21.** The transfer of these AFIA liabilities to Century was confirmed in a letter from Thomas J. Wamser of ACE to Jonathan Rosen of Home dated February 1, 2001. A copy of the letter is attached as Exhibit 4.

**Response No. 21.** See General Objection 8 above.

**Request No. 22.** On July 2, 1999, CIGNA sold INA Corporation and its subsidiaries, including Century, to ACE INA Holdings, Inc., a subsidiary of ACE Limited.

**Response No. 22.** Admit.

**Request No. 23.** This transaction is confirmed in Note 21(C) to the Notes to Financial Statements forming part of Century's 2004 Annual Statement. A copy of Note 21(C) is attached as Exhibit 5.

**Response No. 23.** Admit. The ACE Group submits that Exhibit 5 speaks for itself and is not a complete document.

**Request No. 24.** Under the transaction, Century became part of the ACE group of companies ("ACE").

**Response No. 24.** Admit.

**Request No. 25.** The ACE group of companies also includes ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company.

**Response No. 25.** Admit only that the referenced companies are direct or indirect subsidiaries of ACE Limited.

**Request No. 26.** The ACE group of companies also includes ACE-INA Services U.K. Limited ("ACE INA Services").

**Response No. 26.** Admit.



**Request No. 27.** ACE INA Services provided claim administration services and, through certain of its designated personnel, served as the UK representative for the Home UK Branch with respect to the AFIA Treaties pursuant to the Assumption Agreement.

**Response No. 27.** Denied as to the period prior to in or about 1993. The ACE Group repeats its objection to any reference to the Home UK Branch as an entity separate from the Home.

**Request No. 28.** Schedule Y to Century's 2004 Annual Statement reflects the composition of the ACE group of companies. A copy of Schedule Y is attached as Exhibit 6.

**Response No. 28.** Admit only that Exhibit 6 is the Organization Chart for the ACE Limited Group of Companies as of December 31, 2004.

**Request No. 29.** From 1984 to the commencement of Home's liquidation, claims submitted by the AFIA Cedents under the AFIA Treaties have been handled on Home's behalf by INA and its successor, Century, and their agents, including ACE INA Services, at INA's and Century's own expense pursuant to the Assumption Agreement.

**Response No. 29.** Denied, except admit that the statement is true as regards ACE INA Services from in or about 1993.

**Request No. 30.** From 1984 to the commencement of Home's liquidation, the AFIA Cedents submitted claims under the AFIA Treaties directly to ACE INA Services (or its predecessors), acting for INA and then Century, in London.

**Response No. 30.** Denied. ACE-INA Services, from in or about 1993, and, upon information and belief, its predecessors in interest, dealt with AFIA Cedents on behalf of the Home.

**Request No. 31.** ACE INA Services prepared financial statements for the Home 13K Branch to be filed with the FSA.

**Response No. 31.** Objection as vague for failure to indicate a time period; repeat the

objection to any reference to the Home UK Branch as an entity separate from the Home. Denied as to the period prior to in or about 1993.

**Request No. 32.** ACE INA Services prepared financial statements as of December 31, 2002 for the Home UK Branch to be filed with the FSA. A copy of certain pages from the 2002 Home UK Branch statement prepared by ACE INA Services is attached as Exhibit 7.

**Response No. 32.** Admit.

**Request No. 33.** The December 31, 2002 financial statements prepared by ACE INA Services reported that the expected claims under the AFIA Treaties as of December 31, 2002, totaled approximately £143 million (or approximately \$231 million).

**Response No. 33.** See General Objection 8 above. The Request is vague as to the exchange rates used for conversion to US dollars. The number represents the gross reserve.

**Request No. 34.** This figure also represented Century's expected obligations for the AFIA Treaties under the Assumption Agreement.

**Response No. 34.** See General Objection 8 above.

**Request No. 35.** Home was also reinsured with respect to its liabilities under the AFIA Treaties under reinsurance contracts with BAFCO Reinsurance Company of Bermuda Limited ("BAFCO"), a Bermudan company.

**Response No. 35.** See General Objection 8 above.

**Request No. 36.** These reinsurance contracts consisted of an Excess of Loss Reinsurance Agreement signed December 23, 1982, a Second Excess of Loss Reinsurance Agreement also signed December 23, 1982 and a First Supplemental Excess of Loss Reinsurance Agreement signed February 1, 1985 (as amended, the "BAFCO Agreements"). Copies of the BAFCO Agreements are attached as Exhibit 8.

**Response No. 36.** See General Objection 8 above.

**Request No. 37.** The BAFCO Agreements provide that they are subject to English law and that disputes will be resolved by arbitration in England. They provide coverage to Home for net losses exceeding \$95 million in the aggregate.

**Response No. 37.** See General Objection 8 above.

**Request No. 38.** BAFCO's obligations under the BAFCO Agreements have been assumed by another member of the ACE group of companies, Century Indemnity Reinsurance Company ("CIRC").

**Response No. 38.** Denied, but admit that CIRC (which is Century International Reinsurance Company Limited) is the successor in interest to BAFCO under the BAFCO Agreements.

**Request No. 39.** From 1984 to the commencement of Home's liquidation, claims submitted by the AFIA Cedents under the AFIA Treaties have been paid on Home's behalf by Century and its predecessors under the Assumption Agreement and/or CIRC and its predecessors under the BAFCO Agreements.

**Response No. 39.** Admit only that from in or about 1993 the claims submitted by AFIA Cedents under the AFIA Treaties have been paid by a combination of the receipt of reinsurance proceeds (including commutation receipts from third party reinsurers), proceeds of receipts from AFIA sellers under the Quota Share agreement and payments from CIRC for and on behalf of Century.

**Request No. 40.** Historically, the BAFCO Agreements were used to pay the net claims of AFIA Cedents. The net claims represented Home's gross assumed claims payable, less third party reinsurance.

**Response No. 40.** Denied. See Response No. 39. Objection as to vagueness of term "net claims."

**Request No. 41.** ACE INA Services prepared documents entitled June 5, 2003 AFIA (Reinsurance Operations London) Background to Bank Balances Per Cashbooks (G.L.), and a AFIA London CIRC (BAFCO) Outstanding Balances May 2003. ACE INA Services provided these documents to the Joint Provisional Liquidators. Copies are attached as Exhibit 9.

**Response No. 41.** Admit.

**Request No. 42.** In a letter dated October 28, 1985, from S.D.I. White, General Manager of AFIA Worldwide Insurance, to G.R. Wilson, UK Department of Trade & Industry, it was noted that the reinsurance afforded by BAFCO “provide high quality protection for the United Kingdom Treaty Department of Home.” A copy of the letter is attached as Exhibit 10.

**Response No. 42.** See General Objection 8 above, and objection as to relevancy.

**Request No. 43.** As a result of Home’s liquidation, the AFIA Cedents’ claims under the AFIA Treaties must be filed with and determined by the Liquidator, subject to review and approval by the New Hampshire Court.

**Response No. 43.** See General Objection 5 above.

**Request No. 44.** Under RSA 402-C:37 and RSA 402-C:57, claims against an insurer in liquidation proceedings must be submitted to the insurer’s liquidator through the proof of claim process. The Order of Liquidation enjoins (to the full extent of the New Hampshire Court’s jurisdiction and principles of comity) other means of asserting claims against Home.

**Response No. 44.** See General Objections 5 and 8 above.

**Request No. 45.** Under RS4402-C:41 and R8A402-C:45, the liquidator of the insolvent insurer must investigate and determine claims, issue notices of determination (which are subject to objection by the claimant and review by a referee or the New Hampshire Court) and make recommendations with respect to the allowance of claims (which are subject to approval by the

New Hampshire Court). The applicable claims procedures order provides procedures for the determination of claims against Home.

**Response No. 45.** See General Objection 5 above.

**Request No. 46.** As a result of Home's liquidation, Century must make any payments due under the Assumption Agreement and/or CRC must make any payments due under the BAFCO Agreements with respect to determined claims under the AFIA Treaties to the Liquidator (or the Joint Provisional Liquidators, as appropriate), not the AFIA Cedents.

**Response No. 46.** See General Objection 5 above.

**Request No. 47.** As a result of Home's liquidation, Home's assets, including reinsurance/indemnity recoverables, are required to be paid or turned over to the Liquidator.

**Response No. 47.** See General Objection 5 above.

**Request No. 48.** The Liquidator is vested with title to and charged with collecting Home's assets.

**Response No. 48.** See General Objection 5 above.

**Request No. 49.** Under RSA 402-C:2 1, 1; RSA 402-C:25, VI, a liquidator of an insolvent insurer is vested with title to and charged with collecting the insolvent insurer's assets. The Order of Liquidation directs that Home's assets be paid to the Liquidator.

**Response No. 49.** See General Objection 5 above.

**Request No. 50.** The insolvency clause in the Assumption Agreement provides for payments directly to the liquidator of a seller (such as Home), in the event a seller becomes insolvent, based on claims allowed in the estate and without diminution because of the insolvency.

**Response No. 50.** See Response No. 18 and General Objection 8 above.

**Request No. 51.** As a result of Home's liquidation, AFIA Cedents will receive a distribution respecting their claims from the Home estate only if assets are sufficient to reach the priority class to which their claims are assigned.

**Response No. 51.** See General Objection 5 above.

**Request No. 52.** Distributions of assets on claims that have been allowed by the New Hampshire Court under RSA 402-C:45, II, will depend on the assets that are ultimately marshaled by the Liquidator and the total allowed claims in higher and the same priority class under RSA 402-C:44.

**Response No. 52.** See General Objection 5 above.

**Request No. 53.** Claims of the AFIA Cedents fall in the Class V "residual priority" class under RSA 402-C:44, V.

**Response No. 53.** See General Objection 5 above.

**Request No. 54.** Under RSA 402-C:34, a claimant is able to use its claims against Home as offsets against claims by the Liquidator against the claimant.

**Response No. 54.** See General Objection 5 above.

**Request No. 55.** One AFIA Cedent, Unionamerica Insurance Company ("Unionamerica"), withdrew its claims against Home after Home's liquidation.

**Response No. 55.** Denied; incomplete statement. The ACE Group submits the contents of Exhibit 11 speak for themselves.

**Request No. 56.** Unionamerica sent letters concerning that withdrawal and expressing its uncertainty over whether it would pursue claims under the AFIA Treaties. It sent (a) a letter from Tammy Lewis, St. Paul Specialist Services Limited ("St. Paul"), writing for Unionamerica, to Gareth Hughes dated August 29, 2003, (b) a letter from T.P. Open, St. Paul, writing for

Unionamerica, to B. Nowak of ACE INA Services dated August 1, 2003, and (c) a letter from T.P. Open, St. Paul, writing for Unionamerica, to B. Nowak of ACE I Services dated August 1, 2003. Copies of these letters are attached as Exhibit 11.

**Response No. 56.** See General Objection 8 above, admit the receipt of the letters to B. Nowak referenced in Request No. 56.

**Request No. 57.** A meeting was held on September 17, 2003, between representatives of Unionamerica (Tammy Lewis and Alistair Gunn), ACE INA Services (Barbara Nowak), the Joint Provisional Liquidators (Sarah Ellis of E&Y), and the Liquidator (Mr. Rosen, Chief Operating Officer of Home).

**Response No. 57.** Admit.

**Request No. 58.** At that meeting, Mr. Rosen asked why Unionamerica had withdrawn its claims, and Unionamerica refused to explain beyond saying that it would reserve Unionamerica's rights.

**Response No. 58.** See General Objection 6 above. Denied.

**Request No. 59.** Ms. Nowak in discussions with Mr. Rosen about Unionamerica's intentions indicated that Unionamerica might seek to ignore Home in the claims submission process and attempt to deal directly with ACE.

**Response No. 59.** See General Objection 6 above. Denied.

**Request No. 60.** In several September 2003 discussions with Michael Durkin of ACE INA Services Mr. Rosen and Gareth Hughes expressed concern over potential direct dealings between ACE and AFIA Cedents to circumvent the liquidation.

**Response No. 60.** See General Objection 6 above. Admit.

**Request No. 61.** During one conversation with Mr. Rosen, Mr. Durkin raised the possibility that ACE could deal directly with AFIA Cedents that were members of the Ruddy Pool and

suggested that this would benefit the cedents (by giving them a larger recovery than a distribution from the Home estate would) and ACE (which would pay less than 100% of its obligations on Home's liabilities).

**Response No. 61.** See General Objection 6 above. Denied.

**Request No. 62.** Mr. Durkin provided Mr. Rosen with an email from Mr. Denbin of ACE to John Cashin of Strook, ACE's counsel, dated September 12, 2003 that referred to these issues. A copy of the email is attached as Exhibit 13.

**Response No. 62.** Denied.

**Request No. 63.** Mr. Rosen met with Mr. Durkin and Michael Smith of ACE INA Services on September 16, 2003. During that meeting, Mr. Rosen stated that it would be legally inappropriate for ACE to entertain entering side deals with AFIA Cedents and attempt to circumvent Home. Mr. Durkin refused to address ACE's intentions.

**Response No. 63.** See General Objection 6 above. The last sentence is denied.

**Request No. 64.** On September 16, 2003, Lovells, counsel for ACE, sent a letter to Clifford Chance, counsel for the Joint Provisional Liquidators, alleging that Mr. Rosen had been interfering in the administration of various UK matters affecting ACE's obligations for the AFIA Treaties under the Assumption Agreement.

**Response No. 64.** Admit the letter was sent and submit the contents of Exhibit 15 speak for themselves.

**Request No. 65.** The letter was also sent to Alexander Feldvebel, the Deputy Commissioner of the New Hampshire Insurance Department. The letter from John Cashin, Strook, to Alexander Feldvebel, New Hampshire Insurance Department, dated September 17, 2003, and its enclosure, the letter from Lovells to Clifford Chance dated September 16, 2003 are attached as Exhibit 15.



**Response No. 65.** Admit the letter was sent and submit the contents of Exhibit 15 speak for themselves.

**Request No. 66.** The Liquidator and Joint Provisional Liquidators sent a letter to Century dated September 26, 2003. A copy of the letter is attached as Exhibit 16.

**Response No. 66.** Admit the letter was received by Century and submit the contents of Exhibit 16 speak for themselves.

**Request No. 67.** The September 26, 2003 letter expressed concern that attempts might be made to deal directly between Century and AFIA Cedents; advise that the Liquidator and Joint Provisional Liquidators viewed such efforts as unlawful; and request confirmation that ACE would not participate in such efforts and would notify the Liquidator and Joint Provisional Liquidators if it was aware of any efforts.

**Response No. 67.** Denied as characterized and submit the contents of Exhibit 16 speak for themselves.

**Request No. 68.** Century (and ACE generally) never responded to the September 26, 2003 letter.

**Response No. 68.** Denied.

**Request No. 69.** Mr. Rosen contacted Mr. Wamser of ACE and arranged for a meeting on September 30, 2003.

**Response No. 69.** Admit.

**Request No. 70.** On September 30, 2003, a "without prejudice" meeting was attended by Mr. Bengelsdorf and Mr. Rosen for the Liquidator, Mt Hughes and Ms. Ellis for the Joint Provisional Liquidators, and Mr. Wamser and Howard Denbin for ACE.

**Response No. 70.** Admit.

**Request No. 71.** At the meeting, Mr. Bengelsdorf suggested the possibility of a three-cornered commutation transaction among Home, ACE and the AFIA Cedents, subject to court approval. A copy of the presentation materials used by Mr. Bengelsdorf during the September 30, 2003 meeting is attached as Exhibit 17.

**Response No. 71.** See General Objections 6 and 8 above.

**Request No. 72.** During the meeting on September 30, 2003, ACE personnel asserted that direct agreements between ACE and AFIA Cedents were permissible under English law, citing the "NEMGIA" decision (National Employers' Mutual General Insurance Association Ltd v. AGF Holding (UK) Ltd [1997] 2 BCLC 191) as authority for this view. A copy of the NEMGIA decision is attached as Exhibit 18.

**Response No. 72.** See General Objections 6 and 8 above. Admit only that the NEMGIA case was mentioned at the meeting and that Exhibit 18 is a copy.

**Request No. 73.** ACE personnel stated at the September 30, 2003 meeting that ACE had the right to make such direct agreements with AFIA Cedents.

**Response No. 73.** See General Objection 6 above. Denied.

**Request No. 74.** ACE personnel stated at the September 30, 2003 meeting that Lovells (UK counsel for ACE) thought there was a strong case for the legality of cut-throughs in the UK.

**Response No. 74.** Denied. See Response No. 72.

**Request No. 75.** ACE personnel stated at the September 30, 2003 meeting that Stroock & Stroock (US counsel for ACE) would provide ACE with an opinion on the issue under US law.

**Response No. 75.** See General Objection 6 above. Admit that Stroock was asked to give advice (rather than a legal opinion) on such US law issue.

**Request No. 76.** Despite follow-up discussions between Mr. Bengelsdorf, Mr. Rosen and ACE personnel concerning the suggestion of a potential comprehensive business resolution

during October 2003, ACE never provided any substantive response and the discussions concerning such a resolution did not meaningfully progress.

**Response No. 76.** See General Objection 6 above. Admit there were follow-up discussions between Mr. Rosen and ACE during October 2003 and that the discussions regarding a resolution did not meaningfully progress, and deny the balance.

**Request No. 77.** Century (and its predecessors, including INA), acting through ACE INA Services, and the AFIA Cedents had dealt directly with each other for almost twenty years before Home's liquidation

**Response No. 77.** Denied. ACE-INA Services, from in or about 1993, and, upon information and belief, its predecessors in interest, dealt with AFIA Cedents on behalf of the Home.

**Request No. 78.** The Assumption Agreement had contemplated that INA would use its best efforts to assume the AFIA Treaties by novation.

**Response No. 78.** Denied. See General Objection 8 above.

**Request No. 79.** If the AFIA Cedents did not file claims until after the June 13, 2004 claim filing deadline, then (other than with respect to offsets asserted by AFIA Cedents) the value of the Liquidator's claims under the Assumption Agreement and/or the BAFCO Agreements would likely be nothing.

**Response No. 79.** See General Objection 5 above. Objection to the Request as vague and speculative.

**Request No. 80.** If the AFIA Cedents did not file claims until after the June 13, 2004 claim filing deadline, then Century would pay less under the Assumption Agreement (and/or CIRC would pay less under the BAFCO Agreements) for Home's obligations under the AFIA Treaties than it would have if Home had not been ordered liquidated.

**Response No. 80.** See General Objection 5 above. Objection to the Request as vague and speculative.

**Request No. 81.** The Liquidator served a motion requesting that the New Hampshire Court approve the Agreement on February 11, 2004. A copy of the Agreement is attached as Exhibit 35.

**Response No. 81.** Admit.

**Request No. 82.** The Agreement provides for a compromise to be implemented by a “scheme of arrangement” between Home and all AFIA Cedents under § 425 of the English Companies Act 1985 (the “Scheme”), the principal elements of which are specified in the Agreement (Exhibit 35).

**Response No. 82.** See General Objections 5 and 8 above.

**Request No. 83.** Pursuant to the Agreement, the Scheme will provide that a portion of the net proceeds received from ACE (or any reinsurer of Home’s AFIA business other than an ACE company) with respect to the AFIA Cedents’ claims will be allocated to the Scheme for distribution to the AFIA Cedents, with the remainder to vest with the Liquidator. Agreement § 1.9 The amount to be allocated to the Scheme for the AFIA Cedents is determined by taking the amounts actually received from ACE with respect to the AFIA Treaties (i.e., the amounts due from Century and/or CRC less the amounts that Century and/or CRC successfully withholds as offsets on account of ACE’s claims against Home) and deducting:

- (i) the costs of the UK provisional liquidation;
- (ii) collection costs;
- (iii) costs of obtaining approvals from the New Hampshire and English Courts;

(iv) amounts received by Home on account of Home AFIA liabilities which will be settled with the AFIA Cedent by way of offset (i.e., amounts for which an AFIA Cedent that also has obligations to Home as a reinsurer will receive a credit against its obligations to Home); and

(v) amounts received by Home on account of any costs orders entered against it in disputed claims proceedings (which otherwise will not be paid by Home).

Agreement § 1.3 (definition of “Proceeds”). Fifty percent of these net “Proceeds” (plus the previously deducted amounts received on costs orders) will be paid to AFIA Cedents as “Net Recoveries,” and the remaining 50% will be retained by Home. Agreement §1.2.

**Response No. 83.** See General Objections 5 and 8 above.

**Request No. 84.** Because of the deductions, the actual portion of the amounts received from ACE that will be allocated to the AFIA Cedents under the Agreement will be less than 50%.

**Response No. 84.** See General Objections 3, 5 and 8 above.

**Request No. 85.** Under the Agreement, the Net Recoveries are to be paid *pari passu* to all AFIA Cedents according to the value of their claims against Home under the AFIA Treaties as determined in the New Hampshire liquidation (except that amounts from any cost orders will be paid to the cedent involved). Agreement § 1.9.1.

**Response No. 85.** See General Objections 5 and 8 above.

**Request No. 86.** The Agreement provides that the compromise reflected in the Agreement is subject to the approval of the New Hampshire Court. Agreement § 1.1.2. It is also subject to the approvals required for a scheme of arrangement under English law.

**Response No. 86.** See General Objections 5 and 8 above.

**Request No. 87.** Under § 425 of the Companies Act, the Scheme is subject to the approval of (a) a majority in number and (b) in value of the AFIA Cedents, and then sanction by the English Court.

**Response No. 87.** See General Objection 5 above.

**Request No. 88.** A true copy of § 425 of the English Companies Act is attached as Exhibit 37.

**Response No. 88.** Denied. Not attached. See General Objection 4 above.

**Request No. 89.** Once the Scheme is approved by the creditors and sanctioned by the English Court and an office copy of the English Court's order sanctioning the Scheme is filed with the English Registrar of Companies, it will be binding on all AFIA Creditors as a matter of English law.

**Response No. 89.** See General Objection 5 above.

**Request No. 90.** The Scheme is also conditioned upon an order by the English Court approving the remission of Home's assets in England and Wales (other than those becoming subject to the Scheme) to the Liquidator to be administered as part of the New Hampshire proceeding (the "Global Liquidation Order"), and the approval or non-objection of the UK insurance regulator, the FSA, to the Scheme and the Global Liquidation Order. Agreement § 1.1.2, 1.1.3.

**Response No. 90.** See General Objections 5 and 8 above.

**Request No. 91.** The Agreement provides for a Standstill Period during which signatory AFIA Cedents will not seek to agree on "cut-through" agreements with ACE. This period ran until the earlier of the date on which a required approval is not obtained or June 1, 2004. Agreement § 1.6, 1.7. It has since been extended to September 30, 2005.

**Response No. 91.** See General Objections 5 and 8 above.

**Request No. 92.** The Assumption Agreement (and/or the BAFCO Agreements) is an asset of the Home estate.

**Response No. 92.** See General Objection 5 above.

**Request No. 93.** In a filing with the FSA, ACE INA Services estimated the value of the AFIA Cedents' claims under the AFIA Treaties as of December 31, 2002 at approximately £143 million (approximately \$231 million), which also represented the estimated value of ACE's obligations to Home with respect to the AFIA Treaties.

**Response No. 93.** Denied. See Response No. 33. The value noted is the gross reserve.

**Request No. 94.** The Liquidator's ability to collect under the Assumption Agreement (and/or the BAFCO Agreements) depended and depends upon the AFIA Cedents filing and proving their claims in Home's liquidation.

**Response No. 94.** See General Objections 5 and 8 above.

**Request No. 95.** Without allowed claims by the AFIA Cedents, the Liquidator would not be able to recover from Century under the Assumption Agreement (and/or CIRC under the BAFCO Agreements).

**Response No. 95.** See General Objections 5 and 8 above.

**Request No. 96.** Century (and/or CIRC) would obtain a windfall because it would not pay amounts that it would have paid absent Home's liquidation.

**Response No. 96.** Denied.

**Request No. 97.** The involvement of Century in the claims determination process has been formalized through the claims protocol with Century approved by the New Hampshire Court on November 12, 2004.

**Response No. 97.** Admit that the claims determination process is set forth in the claims protocol.

**Request No. 98.** Each of the following documents, attached as exhibits to this Request for Admissions (using exhibit numbers that correspond to the Liquidator's Offer of Proof), reproduces an original document which is genuine and authentic, is an accurate reproduction of

the document it purports to reproduce, and may be used in this proceeding to the same extent as might the original of the document:

- (a) The June 13, 2003 Order of Liquidation of the New Hampshire Court (Exhibit 1).
- (b) The May 8, 2003 order of the English Court (Exhibit 2).
- (c) The Assumption Agreement (Exhibit 3).
- (d) The letter from Thomas I Wamser of ACE to Jonathan Rosen of Home dated February 1, 2001 (Exhibit 4).
- (e) Note 21(C) to the Notes to Financial Statements forming part of Century's 2004 Annual Statement (Exhibit 5).
- (f) Schedule Y to Century's 2004 Annual Statement (Exhibit 6).
- (g) Pages from 2002 Home UK Branch statement prepared by ACE INA Services (Exhibit 7).
- (h) The BAFCO Agreements (Exhibit 8).
- (i) (a) June 5, 2003 AFIA (Reinsurance Operations London) Background to Bank Balances Per Cashbooks (GL.), and (b) AFL& London CIRC (BAFCO) Outstanding Balances May 2003 (Exhibit 9).
- (j) The letter dated October 28, 1985 from S.D.I. White, General Manager of AFIA Worldwide Insurance, to GR. Wilson, UK Department of Trade and Industry (Exhibit 10).
- (k) (a) Letter from Tammy Lewis, St. Paul Specialist Services Limited ("St. Paul"), writing for Unionamerica, to Gareth Hughes dated August 29, 2003, (b) letter from T.P. Open, St. Paul, writing for Unionamerica, to B. Nowak of ACE INA Services dated August 1, 2003, and (c) letter from T.P. Open, St. Paul, writing for Unionamerica, to B. Nowak of ACE INA Services dated August 1, 2003 (Exhibit 11).
- (l) The Email from Howard Denbin, ACE, to John Cashin, Stroock (ACE's counsel), dated September 12, 2003 (Exhibit 13).
- (m) (a) Letter from John Cashin, Stroock, to Alexander Feldvebel, New Hampshire Insurance Department, dated September 17, 2003, and its enclosure (b) letter from Lovells to Clifford Chance dated September 16, 2003 (Exhibit 15).
- (n) The letter from the Liquidator and Joint Provisional Liquidator to Michael J. Daley, Century, dated September 26, 2003 (Exhibit 16).
- (o) Presentation materials from the September 30, 2003 meeting (Exhibit 17).



(p) The "NEMGIA" decision (National Employers' Mutual General Insurance Association Ltd v. AGF Holding (UK) Ltd [1997] 2 BCLC 191) (Exhibit 18).

(q) The Agreement (Exhibit 35).

**Response No. 98.** Subject to the Responses and General Objections set forth above, and subject to the ACE Group's rights under the rules of evidence, rules of privilege and other rules applicable to these proceedings, and subject further to the ACE Group's ability to seek authentication of documents (i) which are not alleged to have been created by or received by the ACE Group or its agents, (ii) to which the ACE Group has not admitted it is bound as a party or a successor in interest, or (iii) which are not a matter of public record, the ACE Group admits that the following Exhibits to the Offer of Proof appear to be true copies of the documents or partial documents they purport to represent:

Exhibits 1 through 9, the third letter in Exhibit 11, Exhibits 13, 15, 16, and 18.

Respectfully submitted



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-and-

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Indemnity Company, ACE Property and  
Casualty Insurance Company, Pacific  
Employers Insurance Company, and ACE  
American Reinsurance Company

Dated: June 9, 2005

CERTIFICATE OF SERVICE

I, Ronald L. Snow, hereby certify that on this 9<sup>th</sup> day of June, a copy of the within Objection was hand delivered to Suzanne Gorman, Esq.; Eric A. Smith, Esq. was electronically served, and copies were sent first class mail to all counsel of record.

  
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Ronald L. Snow