



Philip.Hertz@CliffordChance.com

15/12/2003 20:10

To: Richard.Leedham@addleshawgoddard.com
 cc: rhydian.williams@equitas.co.uk, ghughes@uk.ey.com,
 sellis@uk.ey.com, mharrison1@uk.ey.com,
 pabinsconsult@aol.com, jonathan.rosen@homeinsco.com,
 Subject: The Home/AFIA cedents- Without prejudice/Subject to Contract
 [Virus checked]

Dear Richard,

Further to our telephone conversation earlier this evening, I attach for your attention a revised version of the AFIA letter (clean and blacklined to show the changes from the previous draft).

The attached draft remains subject to any further comments that the New Hampshire liquidator or UK provisional liquidators may have.

Please call either David or me if you wish to discuss the attached draft further.

We look forward to receiving any final comments the ICC may have.

Best regards

Philip

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

From: Leedham, Richard [mailto:Richard.Leedham@addleshawgoddard.com]

Sent: 12 December 2003 16:50

To: David Steinberg (E-mail); Philip Hertz (E-mail); Gareth Hughes (E-mail); Sarah Ellis (E-mail); Matt Harrison (E-mail); Peter Bengelsdorf (E-mail); Jonathan Rosen (E-mail); David Leslie (E-mail)
 Cc: 'Rhydian Williams (E-mail)'; 'Robert Fleming (E-mail)'; 'Tammy Lewis (E-mail)'; 'Jerry Dowlen (E-mail)'; 'Jim Tyson (E-mail)'; 'Lorna Hemsley (E-mail)'; 'Gernot Warmuth (E-mail)'; 'Guido Aulbach (E-mail)'; 'Richard Ferris (E-mail)'; 'Trevor Rawlings (E-mail)'; 'Andrew Brannon (E-mail)'; 'Steve Goodlud (E-mail)'; 'mark.bannister@rsml.co.uk'; 'Simon.G.Merrett@equitas.co.uk'; 'Guy.Heath@Equitas.co.uk'; 'DavidKendall@kendallfreeman.com'; 'Gary.Hendries (E-mail)'; 'alistair.gunn@stpaul.com'

Subject: The Home/AFIA cedents- Without prejudice/Subject to Contract
 Importance: High

Dear All

Following recent meetings/telephone discussions between certain members of the ICC on the one hand and Ernst & Young, Clifford Chance and the Home on the other, I attach a marked up draft of the 21/11 draft E & Y proposal for your comments.

This comes with the following caveat. Whilst, as requested, the views of all members of the ICC have been sought on the proposal, in the time frame available it has not been possible to obtain views from all, and there may be individual creditors who have issues they still wish to raise, for example issues pertinent to their own particular relationship with the Home.

However, as far as I can gauge, there have been no contrary views expressed to the key amendments in the attached, and there is no doubt that the majority of the ICC is keen to move the process forward, accepting that there still may be some drafting to be done.

I trust that the suggested amendments will be self explanatory, at least to David and Philip, who helpfully allowed us to clarify some issues yesterday,

and we trust that the appropriate consideration will be given to the realistic way in which the ICC have approached the contentious issues.

Please contact in the first instance, Rhydian or myself, if you have any questions on the attached. In the meantime the ICC await your comments.

Kind regards

Richard

<<193646_1.rtf>>

Richard Leedham
Partner
Addleshaw Goddard
25 Cannon St
London EC4M 5TB

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Home ICC Letter(v13).DOC Home ICC Letter(vrtf).DOC

H01301

[Headed notepaper of E&Y]

[21] November 15]

December 2003

AFIA Cedent

Dear Ladies and Gentlemen,

Re: ~~Reinsurance Treaties underwritten by AFIA on behalf of The Home Insurance Company U.K. Branch~~ in the Home's treaty account. (the "AFIA Treaties")

1. ACE Group proceeds

1.1 In compromise of disputed positions respecting the non-novated AFIA reinsurance treaties underwritten by or on behalf of The Home Insurance Company ("Home") through the Home's UK Branch (the "AFIA Treaties"), we agree that, as soon as reasonably practicable following the agreement of ~~not less than 75% in a~~ number of Informal Creditors' Committee members ~~(whose identities are set out on schedule 1 attached)~~ to sufficient to give adequate assurance to Home that the arrangement reflected Scheme (as defined in sub-paragraph 1.1.2 below) will be approved by the proposals set out requisite majorities of AFIA Cedents (as defined in this letter agreements sub-paragraph 1.1.2 below), we will take the following steps:

1.1.1 notify members of the Informal Creditors' Committee that a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) have agreed to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us;

1.1.2 seek the approval of the supervising New Hampshire Court ("New Hampshire Order") to a compromise involving the implementation of a scheme of arrangement pursuant to section 425 of the Companies Act 1985 ("Scheme") between Home and cedents of Home in respect of the AFIA Treaties ("AFIA Cedents"), the purpose of which will be to effect the distribution of the "Net Recoveries" (as defined in sub-paragraph 1.2 below) to all AFIA Cedents pari passu according to the value of their claims against Home under the AFIA Treaties as agreed or adjudicated (net of any applicable set-off) in the New Hampshire

liquidation of Home (as described in more detail at sub-paragraph 1.9 below), such New Hampshire Order to be on terms that it is conditional upon:

- (1) the sanction of the English Court in respect of the Scheme;
- (2) an order of the English Court approving the remission of the Home's assets situated in England and Wales (other than the "Net Recoveries" (as defined in sub-paragraph 1.2 below)) to the New Hampshire liquidator for administration and distribution as part of the New Hampshire liquidation ("**Global Liquidation Order**"); and
- (3) the approval, or "non-objection", of the Financial Services Authority to the making of the Global Liquidation Order ("**FSA Approval**"); and

1.1.3 ~~1.1.2~~ as soon as reasonably practicable after the making of the New Hampshire Order:

- (1) make an application to the English Court for permission to convene a meeting of AFIA cedents to approve the Scheme; and
- (2) following the approval of the Scheme by the requisite majorities of AFIA Cedents, seek the sanction of the English Court in respect of the Scheme,

provided that the Scheme shall not become effective on its terms until after the making of the Global Liquidation Order and the granting of FSA Approval,

the New Hampshire Order and the Scheme to be upon such terms as may be approved by the New Hampshire Court and English Court.

1.2 "Net Recoveries" means 50[1] % of the "Proceeds" (as defined in ~~sub-paragraph~~sub-paragraph 1.3 below).

1.3 "Proceeds" means the proceeds received by Home from the ACE Group or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) (after deducting amounts offset between Home and either the relevant ACE Group, company concerned or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) in relation to AFIA business and, to extent that judicial or quasi-judicial proceedings ensue between Home and the relevant ACE Group company concerned or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) in relation to that company's indemnity and/or reinsurance obligations to Home with respect to the AFIA Treaties, after having taken all reasonably available defences to assertions by the ACE Group as regards such off-set) with respect to the AFIA Treaties (whether such proceeds are derived through an ongoing resolution process with the ACE Group or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) or through a commutation or similar compromise arrangement with any ACE Group company or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) relating to that company's indemnity and/or reinsurance obligations to Home) net of:

- 1.3.1 the costs of the UK provisional liquidation;
- 1.3.2 any collection costs;
- 1.3.3 costs incurred in our seeking the orders of the New Hampshire and English Courts set out in sub-paragraphs 1.1.1 and 1.1.2 above (including, without prejudice to the generality of the foregoing, the costs of any legal and other professional advisors in obtaining and implementing such approvals); and

~~on the basis that all such costs have been reasonably incurred~~

- 1.3.4 the portion of any proceeds received by Home from the ACE Group or any other third party reinsurer "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) with respect to those inwards liabilities of Home under the AFIA Treaties which are, or will upon final adjudication be, settled by way of offset as between Home and the relevant AFIA Cedent concerned (whether such offset right derives from contract or statute).

~~In the event that we enter into a commutation or similar compromise agreement with any ACE Group company or any other third party reinsurer, whether during the Standstill Period or thereafter provided that the Scheme has then been sanctioned, we agree to apply a multiplier of 150% to actual cash received as the proceeds of such commutation or similar compromise agreement, net of amounts attributable to overdue paid losses and loss adjustment expenses then due and payable, for purposes of computing the cumulative Relevant Percentage.~~

- 1.4 We also agree that during the "Standstill Period" (as defined in paragraph ~~4.71.6~~ below) we will not enter into a commutation or similar compromise arrangement with any ACE Group company or any other third party reinsurer "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) relating to that company's indemnity and/or reinsurance obligations to Home in respect of the AFIA Treaties without first obtaining the prior consent of 75% by value of the Informal Creditors' Committee to such commutation, such consent not be unreasonably withheld; to consult with the Informal Creditors' Committee as to any such proposed commutation; and to provide all relevant documentation to the Informal Creditors' Committee prior to such consultation;

- (1) consulting with the Informal Creditors' Committee as to any such proposed commutation;
- (2) providing all relevant documentation to the Informal Creditors' Committee prior to such consultation (and to this end, members of the Informal Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the Liquidator pursuant to paragraph 3 of the Order Establishing Procedures for Review of Reinsurance Commutation Agreements entered by the New Hampshire Court on July 23, 2003); and
- (3) providing notice to members of the Informal Creditors' Committee of any application to the supervising New Hampshire Court to approve the terms of any such proposed commutation.

- 1.5 You agree that:
- 1.5.1 during the Standstill Period you shall not seek to reach any agreement or arrangement with any member of the ACE Group or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) whereunder you receive payment from any such entity in respect of the AFIA Treaties; and
- 1.5.2 in determining your entitlement (if any) to receive any distribution payable to you in your capacity as a creditor in Home's New Hampshire liquidation you will bring into account, and give credit for, any payments received by you pursuant to the arrangements described in this paragraph 1.
- 1.6 "Standstill Period" shall mean the period commencing upon the date on which you agree to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us and ending on the "Standstill Termination Date" (as defined in paragraph ~~1.8~~ 1.7 below).
- 1.7 "Standstill Termination Date" shall mean the earlier of:
- 1.7.1 ~~31 December 2003, if 75% in Home notifies members of the Informal Creditors' Committee that an insufficient~~ number of Informal Creditors' Committee members ~~do not~~ (as described in paragraph 1.1 above) have failed to agree to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us by that date;
- 1.7.2 the date upon which the New Hampshire Court denies the New Hampshire liquidator's motion for the approval of the New Hampshire Order in substantially similar terms to those described in paragraph 1.1 above;
- 1.7.3 the date upon which the English Court refuses to grant permission to convene a meeting of AFIA Cedents to approve the Scheme in substantially similar terms to those described in paragraph 1.1 above;
- 1.7.4 the date upon which a majority in number representing 75% in value of the AFIA Cedents do not approve the Scheme at the meeting specially convened for this purpose (or at any adjournment thereof) in substantially similar terms to those described in paragraph 1.1 above;
- 1.7.5 the date upon which the English Court refuses to sanction the Scheme in substantially similar terms to those described in paragraph 1.1 above;
- 1.7.6 the date upon which the English Court refuses to make the Global Liquidation Order;
- 1.7.7 the date upon which the Financial Services Authority notifies Home that it will not grant the FSA Approval; or
- 1.7.8 1 June 2004 (or such other date as Home and ~~at least 75% in value a sufficient~~ number of Informal Creditors' Committee members (as described in paragraph 1.1 above) shall agree from time to time), if the English Court has not by that date

sanctioned the Scheme under section 425 of the Companies Act 1985 as envisaged in paragraph 1.1.2 above.

~~1.9 The Scheme will include the following provisions:~~

~~1.9.1 The Net Recoveries will be distributed to all AFIA Cedents pari passu according to the value of their claims against Home under the AFIA Treaties. Distribution of a percentage of the Net Recoveries will be made annually to AFIA Cedents in respect of claims agreed by the~~

~~1.8 "Third Party Reinsurer" shall mean a reinsurer (other than an ACE Group or company), which has underwritten reinsurance in relation to AFIA business directly in respect of which the ACE Group has been adjudicated liable (after deduction of set off), the percentage being calculated by reference to the proportion of paid claims to all claims (including IBNR) on a reserving basis;~~

~~1.9.2 The Net Recoveries are to be held and invested by the Scheme Administrators for the benefit of the AFIA Cedents;~~

~~1.9.3 A Creditors Committee will be established under the Scheme with the right to be consulted by the Scheme Administrators on any significant transaction or litigation affecting Net Recoveries including any commutation with the ACE Group, and to be provided with relevant documentation prior to such consultation;~~

~~1.9.4 A cut off scheme is to be introduced if approved by 75% by value of AFIA Cedents in the event of a commutation with the ACE Group;~~

~~1.9.5 Set off is to be on a running account basis, favour of Home as reassured.~~

2. Information

2.1 You agree that:

2.1.1 within 37 days following notice from us that the New Hampshire Court has made the New Hampshire Order (enclosing a certified copy of the New Hampshire Order) and provided that ~~that~~ the New Hampshire Order is final, you will provide us with your most up-to-date information concerning paid losses, outstanding losses (case reserves) and IBNR on the business which you have ceded to Home pursuant to the AFIA Treaties; and

2.1.2 you will also provide us with any additional information and any supporting documentation as we reasonably request,

(the information to be provided in accordance with paragraphs 2.1.1 and 2.1.2 above being hereinafter referred to as the "**Information**").

2.2 Subject to Clause 3.2 below, we hereby confirm that we shall use the Information only for the purposes of (a) updating Home's own records with respect to the AFIA Treaties; (b) seeking to reconcile the Information with the data relating to the AFIA Treaties contained in the books and records held by companies within the ACE Group (or, to the extent relevant, any ~~other third party reinsurer~~ Third Party Reinsurer); (c) providing the

same to the ACE Group (or, to the extent relevant, any other ~~third party reinsurer~~ Third Party Reinsurer) in order to assist in such reconciliation; (d) seeking to reach agreement with the ACE Group (or, to the extent relevant, any other ~~third party reinsurer~~ Third Party Reinsurer) on the accuracy and/or adequacy of their books and records as aforesaid; (e) attempting, subject to paragraph 1 above, to reach a commercial resolution as to the value of the obligations of the ACE Group (or, to the extent relevant, any other ~~third party reinsurer~~ Third Party Reinsurer) relative to the AFIA Treaties; (f) in the absence of any such commercial resolution, seeking, if appropriate, a judicial or quasi-judicial determination of such obligations; and (g) determining the value of any potential offsets that may apply with respect to claims that may be asserted by you under the AFIA Treaties.

~~2.3 If the Scheme is not approved for any reason on or before the Standstill Information Date, all information supplied by an AFIA Cedent will be returned to that cedent and no copies shall be retained by Home or the ACE Group.~~

3. Proof of Claim in Home's liquidation proceeding

3.1 Subject to Clause 3.2 below, we acknowledge that, by providing the Information to us pursuant to paragraph 2 of this letter, you shall not be deemed to be submitting a proof of claim or similar formal claim against Home, either in the New Hampshire liquidation proceeding or in any English proceeding. We acknowledge that, by providing us with the Information pursuant to this letter, you thereby reserve all your rights in that regard.

3.2 You agree that upon the Scheme becoming effective in accordance with its terms, the Information provided to us pursuant to paragraph 2 of this letter shall thereafter be deemed to constitute, without further action on your behalf, your proof of claim in Home's New Hampshire liquidation (subject to your right to supplement or modify such proof of claim prior to 13 June 2004, the proof of claims filing deadline in the New Hampshire liquidation).

4. Confidentiality and Non-Disclosure

Save as provided above, we agree that we shall not, without your prior agreement, disclose any of the Information to any third party (save where required so to do so by law) with the exception of (a) our legal, accounting and actuarial advisers; (b) our reinsurers; (c) any applicable regulator; and (d) courts of competent jurisdiction for purposes of seeking judicial approval of the arrangement proposed herein.

We furthermore reaffirm that this letter and its contents constitute "Confidential Information" within the meaning of the Confidentiality Undertaking executed by you.

5. Authorisation

The New Hampshire Insurance Commissioner, Roger A. Sevigny, in his capacity as Liquidator of Home, has approved this proposal and authorised its circulation by the provisional liquidators to members of the Informal Creditors' Committee.

6. **Acceptance by Informal Creditors' Committee members**

If this proposal is acceptable to you, please indicate your acceptance to its terms by ~~no later than~~
~~December 5, 2003~~, by signing one copy of this letter agreement where indicated below and
returning such copy, duly signed, to us as soon as possible.

.....
Signed by [AFIA Cedent]

.....
Signed by G. H. Hughes/E. Mills
Joint Provisional Liquidators of the Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

.....
Signed by [AFIA Cedent]

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Document 2	pdocs://london-3/1205485/13
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Deletion	
Moved from	
<u>Moved to</u>	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	58
Deletions	61
Moved from	0
Moved to	0
Format changed	0
Total changes	119

Sarah Ellis
31/12/2003 16:06

To: Gareth Hughes/40235P/CR/London/ErnstYoung/GB,
PABINCONSULT@aol.com, jonathan.rosen@homeinsco.com
cc: Philip.Hertz@CliffordChance.com, JDL@Rackemann.com,
Matthew Harrison/63719D/FSO/London/ErnstYoung/GB@EYGB,
Benjamin Cairns/17698B/CFAS/London/ErnstYoung/GB@EYGB,
Subject: Unionamerica Draft Proposal Letter [Virus checked]

Dear All

[REDACTED]

Happy New Year!

Best regards

Sarah

Sarah Ellis
Assistant Director
Tel 0207 951 9955
Mobile 07979 707742

REDACTED

— Forwarded by Sarah Ellis/19121P/CFAS/London/ErnstYoung/GB on 31/12/2003 15:44 —



Tammy.Lewis@stpaul.com
om
31/12/2003 14:58

To: sellis@uk.ey.com
cc: Alistair.Gunn@stpaul.com, davidkendall@kendallfreeman.com
Subject: Unionamerica Draft Proposal Letter [Virus checked]

Sarah,

As discussed, please find attached Unionamerica's draft letter regarding the scheme of arrangement proposal. I will be in the office Friday in the event you or Gareth wish to discuss the draft letter further.

Regards

Tammy Lewis

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Draft: WITHOUT PREJUDICE AND FOR SETTLEMENT PURPOSES ONLY

[Headed notepaper of St. Paul Specialist Services Ltd]

Gareth Hughes and Margaret Mills

Ernst & Young

Dear Sir and Madam

The Home Insurance Company (in provisional liquidation)

We refer to your letter of [] (the **Proposal Letter**) concerning the proposed scheme of arrangement for The Home Insurance Company under section 425 of the Companies Act 1985. The defined terms in the Proposal Letter shall have the same meaning in this letter.

For the reasons that we have discussed with you, Unionamerica Insurance Company Limited (**UAIC**) is not prepared to agree to the specific terms of the Proposal Letter as currently drafted. However, based on the information you have provided and its present understanding of the position, UAIC does consider that a Scheme is likely to be in the best interests of the AFIA Cedents generally and would be willing to support a Scheme (and certainly will not vote against it), if it has the following features:

1. "Net Recoveries" will be distributed pari passu to all AFIA Cedents according to the value of their unsatisfied due claims against Home under the AFIA Treaties. Distribution of a percentage of the Net Recoveries will be made annually to AFIA Cedents in respect of claims agreed by the ACE Group or Third Party Reinsurers or in respect of which the ACE Group or Third Party Reinsurers have been adjudicated liable (after deduction of set-off) (**ACE Paid Claims**), the percentage being calculated so as to ensure that all AFIA Cedents receive the same proportion of each of their ACE Paid Claims;
2. Net Recoveries will be held in trust by the Scheme Administrators for the benefit of the AFIA Cedents, with investment income and gain accruing to the AFIA Cedents' benefit from the time of receipt until annual distribution as provided above;
3. A Creditors' Committee will be established with the right to be consulted by the Scheme Administrators on any significant transaction or litigation affecting Net Recoveries;

4. Any proposal to commute the Insurance and Reinsurance Assumption Agreement with the ACE Group will be subject to the approval of 75% by value of the AFIA Cedents. In the event of a commutation with the ACE Group, the Scheme Administrators will propose a cut-off scheme which will be effective if approved by 75% by value of the AFIA Cedents;
5. Set-off to be on a running account basis;
6. The costs referred to in sub-paragraph 1.3 of the Proposal Letter are to be recovered out of the Proceeds as incurred.

In addition, although we are willing to consider any cost effective and efficient proposals that you or Mr Sevigny and his staff may have to make concerning claims handling and dispute resolution, we suggest that each AFIA Cedent should be responsible for adjusting its claims with the ACE Group and for the conduct of disputes against the ACE Group in respect of those claims in full co-operation with the Scheme Administrators with venue and applicable law as provided by that AFIA Cedant's treaties with Home (and with the right to use the Home's name where necessary). The AFIA Cedant's unrecovered costs associated with such proceedings to be payable out of the Proceeds in the event that the ACE Group's liability is established (but not otherwise).

To the extent necessary for you to be able to prepare the Scheme and obtain approvals for it, UAIC would be willing to provide you with information concerning its claims under the AFIA Treaties, although that would be on terms that the information may not be used for the purposes of obtaining payment from the ACE Group until the Scheme is in place.

UAIC agrees that it will not enter into a commutation or similar compromise arrangement with any ACE Group Company or Third Party Reinsurer in relation to UAIC's claims under applicable AFIA Treaties during the Standstill Period. UAIC's approval of any Scheme would be on terms that it will not affect UAIC's rights as against any other party in respect of the unrecovered portion of any of their claims.



sellis@UK.EY.COM
01/07/2004 07:19 AM

To: JDL@Rackemann.com, PABINSCONSULT@aol.com,
ghhughes@UK.EY.COM, jonathan.rosen@homeinsco.com
cc:
Subject: [Virus checked]

FYI, regards, Sarah

Sarah Ellis
Assistant Director
Tel 0207 951 9955
Mobile 07979 707742

----- Forwarded by Sarah Ellis/19121P/CFAS/London/ErnstYoung/GB on
07/01/2004 12:17 -----

Tammy.Lewis@stpau
l.com

To: sellis@uk.ey.com
cc:

david.steinberg@cliffordchance.com, davidkendall@kendallfreeman.com,
07/01/2004 10:52

vivien.tyrell@kendallfreeman.com, Alistair.Gunn@stpaul.com,

rhydian.williams@equitas.co.uk, richard.leedham@addleshawgoodard.com

Subject: [Virus checked]

Sarah,

Attached is a draft proposal for your consideration prior to our meeting
today. I have attached both a redlined and clean copy.

Best regards

Tammy Lewis

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***** (See attached file:
Draft proposal letter redlined7.1.04.doc) (See attached file: Draft proposal
letter clean copy 7.1.04.DOC)

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Draft proposal letter clean copy 7.1.04.DOC

[Headed notepaper of E&Y]

[15] December 2003

[7] January 2004

AFIA Cedent

Dear Ladies and Gentlemen,

1. **ACE Group proceeds**

1.1 In compromise of disputed positions respecting the non-novated AFIA reinsurance treaties underwritten by or on behalf of The Home Insurance Company ("**Home**") through the Home's UK Branch (the "**AFIA Treaties**"), we agree that, as soon as reasonably practicable following the agreement of a number of Informal Creditors' Committee members sufficient to give adequate assurance to Home that the Scheme (as defined in sub-paragraph 1.1.2 below) will be approved by the requisite majorities of AFIA Cedents (as defined in sub-paragraph 1.1.2 below), we will take the following steps:

1.1.1 notify members of the Informal Creditors' Committee that a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) have agreed to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us;

1.1.2 seek the approval of the supervising New Hampshire Court ("**New Hampshire Order**") to a compromise involving the implementation of a scheme of arrangement pursuant to section 425 of the Companies Act 1985 ("**Scheme**") between Home and cedents of Home in respect of the AFIA Treaties ("**AFIA Cedents**"), the ~~purpose~~main features of which will be to effect the distribution of the "**Net Recoveries**" (as defined are described in sub-paragraph ~~4.21.9~~ below) to all AFIA Cedents pari passu according to the value of their claims against Home under the AFIA Treaties as agreed or adjudicated (net of any applicable set-off) in the

H02323

New Hampshire liquidation of Home, such New Hampshire Order to be on terms that it is conditional upon:

- (1) the sanction of the English Court in respect of the Scheme;
- (2) an order of the English Court approving the remission of the Home's assets situated in England and Wales (other than the "Net Recoveries" (as defined in sub-paragraph 1.2 below)) to the New Hampshire liquidator for administration and distribution as part of the New Hampshire liquidation ("**Global Liquidation Order**"); and
- (3) the approval, or "non-objection", of the Financial Services Authority to the Scheme and to the making of the Global Liquidation Order ("**FSA Approval**"); and

1.1.3 as soon as reasonably practicable after the making of the New Hampshire Order:

- (1) make an application to the English Court for permission to convene a meeting of AFIA cedents to approve the Scheme; and
- (2) following the approval of the Scheme by the requisite majorities of AFIA Cedents, seek the sanction of the English Court in respect of the Scheme,

provided that the Scheme shall not become effective on its terms until after the making of the Global Liquidation Order and the granting of FSA Approval,

the New Hampshire Order and the Scheme to be upon such terms as may be approved by the New Hampshire Court and English Court.

1.2 "**Net Recoveries**" means ~~†~~50% of the "Proceeds" (as defined in sub-paragraph 1.3 below).

1.3 "**Proceeds**" means the proceeds received by Home from the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) (after deducting amounts offset between Home and either the relevant ACE Group company concerned or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) in relation to AFIA business and, to extent that judicial or quasi-judicial proceedings ensue between Home and the relevant ACE Group company concerned or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) in relation to that company's indemnity and/or reinsurance obligations to Home with respect to the AFIA Treaties, after having taken all reasonably available arguments and/or defences to assertions by the ACE Group as regards the validity of such off-set) with respect to the AFIA Treaties (whether such proceeds are derived through an ongoing resolution process with the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) or through a commutation or similar compromise arrangement with any ACE Group company or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) relating to that company's indemnity and/or reinsurance obligations to Home) net of:

- 1.3.1 the costs of the UK provisional liquidation;
 - 1.3.2 any collection costs;
 - 1.3.3 costs incurred in our seeking the orders of the New Hampshire and English Courts set out in sub-paragraphs 1.1.1 and 1.1.2 above (including, without prejudice to the generality of the foregoing, the costs of any legal and other professional advisors in obtaining and implementing such approvals); and
 - 1.3.4 the portion of any proceeds received by Home from the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) with respect to those inwards liabilities of Home under the AFIA Treaties which are, or will upon final adjudication be, settled by way of offset as between Home and the relevant AFIA Cedent concerned (whether such offset right derives from contract or statute).
- 1.4 We also agree that during the "Standstill Period" (as defined in paragraph 1.6 below) we will not enter into a commutation or similar compromise arrangement with any ACE Group company or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) relating to that company's indemnity and/or reinsurance obligations to Home in respect of the AFIA Treaties without first:
- (1) consulting with and obtaining the approval of the Informal Creditors' Committee as to any such proposed commutation;
 - (2) providing all relevant documentation to the Informal Creditors' Committee prior to such consultation (and to this end, members of the Informal Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the Liquidator pursuant to paragraph 3 of the Order Establishing Procedures for Review of Reinsurance Commutation Agreements entered by the New Hampshire Court on July 23, 2003 in terms identical to the current confidentiality undertakings of each member of the Informal Creditors' Committee); and
 - (3) providing notice to members of the Informal Creditors' Committee of any application to the supervising New Hampshire Court to approve the terms of any such proposed commutation.
- 1.5 You agree that:
- 1.5.1 during the Standstill Period you shall not seek to reach any agreement or arrangement with any member of the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) whereunder you receive payment from any such entity in respect of the AFIA Treaties; and
 - 1.5.2 in determining your entitlement (if any) to receive any distribution payable to you in your capacity as a creditor in Home's New Hampshire liquidation you will bring into account, and give credit for, any payments received by you pursuant to the arrangements described in this paragraph 1.

- 1.6 **"Standstill Period"** shall mean the period commencing upon the date on which you agree to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us and ending on the "Standstill Termination Date" (as defined in paragraph 1.7 below).
- 1.7 **"Standstill Termination Date"** shall mean the earlier of:
- 1.7.1 ~~31 December 2003, 15 January 2004, if by that date Home notifies~~has not notified members of the Informal Creditors' Committee that ~~an~~insufficient~~sufficient~~ number of Informal Creditors' Committee members (as described in paragraph 1.1 above) have ~~failed to agree~~agreed to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us by that date;
 - 1.7.2 the date upon which the New Hampshire Court denies the New Hampshire liquidator's motion for the approval of the New Hampshire Order in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.3 the date upon which the English Court refuses to grant permission to convene a meeting of AFIA Cedents to approve the Scheme in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.4 the date upon which a majority in number representing 75% in value of the AFIA Cedents do not approve the Scheme at the meeting specially convened for this purpose (or at any adjournment thereof) in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.5 the date upon which the English Court refuses to sanction the Scheme in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.6 the date upon which the English Court refuses to make the Global Liquidation Order;
 - 1.7.7 the date upon which the Financial Services Authority notifies Home that it will not grant the FSA Approval; or
 - 1.7.8 1 June 2004 (or such other date as Home and a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) shall agree from time to time), if the English Court has not by that date sanctioned the Scheme under section 425 of the Companies Act 1985 as envisaged in paragraph 1.1.2 above.
- 1.8 **"Third Party Reinsurer"** shall mean a reinsurer (other than an ACE Group company), which has underwritten reinsurance in relation to AFIA business directly in favour of Home as reassured.
- 1.9 It is intended that the Scheme will have the following features:
- 1.9.1 Net Recoveries will be distributed pari passu to all AFIA Cedents according to the value of their unsatisfied due claims against Home under the AFIA Treaties. Distribution of a percentage of the Net Recoveries will be made annually to AFIA

Cedents in respect of claims agreed by the ACE Group or Third Party Reinsurers or in respect of which the ACE Group or Third Party Reinsurers have been adjudicated liable (after deduction of set-off) ("ACE Paid Claims"), the percentage being calculated so as to ensure that all AFIA Cedents receive the same proportion of each of their ACE Paid Claims;

1.9.2 Net Recoveries will be held in trust by the Scheme Administrators for the benefit of the AFIA Cedents, with investment income and gain accruing to the AFIA Cedents' benefit from the time of receipt until distribution as provided above;

1.9.3 A Creditors' Committee will be established with the right to be consulted by the Scheme Administrators on any significant transaction or litigation affecting Net Recoveries;

1.9.4 Any proposal to commute the Insurance and Reinsurance Assumption Agreement with the ACE Group will be subject to the approval of 75% by value of the AFIA Cedents. In the event of a commutation with the ACE Group, the Scheme Administrators will propose a cut-off scheme which will be effective if approved by 75% by value of the AFIA Cedents;

1.9.5 Set-off to be on a running account basis;

1.9.6 The costs referred to in sub-paragraph 1.3 above are to be recovered out of the Proceeds as incurred.

1.9.7 Approval of the Scheme by an AFIA Cedent will not affect any rights that cedent may have against any other party in respect of the AFIA Treaties.

We undertake to consider and incorporate in the Scheme the most cost effective and efficient methods of claims handling and dispute resolution, and in particular will evaluate the proposal that each AFIA Cedent should be responsible for adjusting its claims with the ACE Group and for the conduct of disputes against the ACE Group in respect of those claims in full co-operation with the Scheme Administrators with venue and applicable law as provided by that AFIA Cedent's treaties with Home (and with the right to use the Home's name where necessary), the AFIA Cedent's reasonable unrecovered costs associated with such proceedings to be payable out of the Proceeds in the event that the ACE Group's liability is established (but not otherwise).

2. Information

2.1 You agree that: to the extent necessary for us to be able to prepare the Scheme and obtain the necessary approvals for it, you will provide us with information concerning your claims under the AFIA Treaties, but we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

2.1.1 ~~within 37 days following notice from us that the New Hampshire Court has made the New Hampshire Order (enclosing a certified copy of the New Hampshire Order) and provided that the New Hampshire Order is final, you will provide us~~

~~with your most up-to-date information concerning paid losses, outstanding losses (case reserves) and IBNR on the business which you have ceded to Home pursuant to the AFIA Treaties; and~~

~~2.1.2 you will also provide us with any additional information and any supporting documentation as we reasonably request;~~

~~(the information to be provided in accordance with paragraphs 2.1.1 and 2.1.2 above being hereinafter referred to as the "Information").~~

~~2.2 Subject to Clause 3.2 below, we hereby confirm that we shall use the Information only for the purposes of (a) updating Home's own records with respect to the AFIA Treaties; (b) seeking to reconcile the Information with the data relating to the AFIA Treaties contained in the books and records held by companies within the ACE Group (or, to the extent relevant, any Third Party Reinsurer); (c) providing the same to the ACE Group (or, to the extent relevant, any Third Party Reinsurer) in order to assist in such reconciliation; (d) seeking to reach agreement with the ACE Group (or, to the extent relevant, any Third Party Reinsurer) on the accuracy and/or adequacy of their books and records as aforesaid; (e) attempting, subject to paragraph 1 above, to reach a commercial resolution as to the value of the obligations of the ACE Group (or, to the extent relevant, any Third Party Reinsurer) relative to the AFIA Treaties; (f) in the absence of any such commercial resolution, seeking, if appropriate, a judicial or quasi-judicial determination of such obligations; and (g) determining the value of any potential offsets that may apply with respect to claims that may be asserted by you under the AFIA Treaties.~~

3. **Proof of Claim in Home's liquidation proceeding**

3.1 Subject to Clause 3.2 below, we acknowledge that, by providing the ~~Information~~information to us pursuant to paragraph 2 of this letter, you shall not be deemed to be submitting a proof of claim or similar formal claim against Home, either in the New Hampshire liquidation proceeding or in any English proceeding. We acknowledge that, by providing us with the ~~Information~~said information pursuant to this letter, you thereby reserve all your rights in that regard.

3.2 You agree that upon the Scheme becoming effective in accordance with its terms, the ~~Information~~information provided to us pursuant to paragraph 2 of this letter shall at your request at any time thereafter be deemed to constitute, without further action on your behalf, your proof of claim in Home's New Hampshire liquidation (subject always to your right to supplement or modify such proof of claim ~~prior to 13 June 2004, the proof of claims filing deadline in the New Hampshire liquidation~~).

4. **Confidentiality and Non-Disclosure**

Save as provided above, we agree that we shall not, without your prior agreement, disclose any of the ~~Information~~information to any third party (save where required so to do so by law) with the exception of (a) our legal, accounting and actuarial advisers; (b) our reinsurers; (c) any applicable regulator; and (d) courts of competent jurisdiction for purposes of seeking judicial approval of the arrangement proposed herein.

We furthermore reaffirm that this letter and its contents constitute "Confidential Information" within the meaning of the Confidentiality Undertaking executed by you.

5. Authorisation

The New Hampshire Insurance Commissioner, Roger A. Sevigny, in his capacity as Liquidator of Home, has approved this proposal and authorised its circulation by the provisional liquidators to members of the Informal Creditors' Committee.

6. Acceptance by Informal Creditors' Committee members

If this proposal is acceptable to you, please indicate your acceptance to its terms by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.

.....

Signed by G. H. Hughes
Joint Provisional Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

.....

Signed by [AFIA Cedent]

Document comparison done by DeltaView on Tuesday, January 06, 2004
12:49:24

Input:	
Document 1	pcdocs://pcl2/1136472/1
Document 2	pcdocs://pcl2/1136472/2
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	45
Deletions	34
Moved from	2
Moved to	2
Format changed	0
Total changes	83



David.Steinberg@Cliff
ordChance.com

01/15/2004 11:59 AM

To: rhydian.williams@equitas.co.uk
cc: Philip.Hertz@CliffordChance.com, bcairns@uk.ey.com,
jdl@rackemann.com, ghughes@uk.ey.com,
jonathan.rosen@homeinsco.com, mharrison1@uk.ey.com,
pabinsconsult@aol.com, peter.roth@doj.nh.gov, sellis@uk.ey.com
Subject: FW: Home: AFIA letter

Rhydian,
I attach the final draft of this letter, marked up against the last version
seen by the ICC.
Clean copy to follow

David Steinberg
Partner - Insolvency
Clifford Chance LLP
10 Upper Bank Street
London, E14 5JJ
Direct Dial - 020 7006 1621
Fax - 020 7006 5555

>
>
> <<E&Y Letter January 2004(vRTF).DOC>>
>
>

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E&Y Letter January 2004(vRTF).DOC

[Headed notepaper of E&Y]

[21] November 2003

AFIA Cedent

January 2004

AFIA Cedent

Dear Ladies and Gentlemen,

Re: ~~AFIA Treaties underwritten by The Home Insurance Company U.K. Branch~~

~~(the "AFIA Treaties")~~

1. ~~ACE Group proceeds~~ **GROUP PROCEEDS**

1.1 In compromise of disputed positions respecting the non-novated AFIA reinsurance treaties underwritten by or on behalf of The Home Insurance Company ("Home") through the Home's UK Branch (the "AFIA Treaties"), we agree that, as soon as reasonably practicable following the agreement of ~~75% in a~~ sufficient to give adequate assurance to Home that the arrangement reflected Scheme (as defined in sub-paragraph 1.1.2 below) will be approved by the proposals set out requisite majorities of AFIA Cedents (as defined in this letter agreements sub-paragraph 1.1.2 below), we will take the following steps:

1.1.1 notify members of the Informal Creditors' Committee that a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1

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above) have agreed to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us:

1.1.2 ~~1.1.1~~ seek the approval of the supervising New Hampshire Court ("New Hampshire Order") to a compromise involving the implementation of a scheme of arrangement pursuant to section 425 of the Companies Act 1985 ("Scheme") between Home and cedents of Home in respect of the AFIA Treaties ("AFIA Cedents"), the purpose of which will be to effect the distribution of the "Net Recoveries" (as defined main features of which are described in sub-paragraph 1.21.9 below) to all AFIA Cedents pari passu according to the value of their claims against Home under the AFIA Treaties as agreed or adjudicated (net of any applicable set off) in the New Hampshire liquidation of Home, such New Hampshire Order to be on terms that it is conditional upon:

- (1) the sanction of the English Court in respect of the Scheme;
- (2) an order of the English Court approving the remission of the Home's assets situated in England and Wales (other than the "Net Recoveries" (as defined in sub-paragraph 1.2 below)) to the New Hampshire liquidator for administration and distribution as part of the New Hampshire liquidation ("Global Liquidation Order"); and
- (3) the approval, or "non-objection", of the Financial Services Authority to the Scheme and to the making of the Global Liquidation Order ("FSA Approval"); and

1.1.3 ~~1.1.2~~ as soon as reasonably practicable after the making of the New Hampshire Order:

- (1) make an application to the English Court for permission to convene a meeting of AFIA cedents to approve the Scheme; and
- (2) following the approval of the Scheme by the requisite majorityies of AFIA Cedents, seek the sanction of the English Court in respect of the Scheme,

provided that the Scheme shall not become effective on its terms until after the making of the Global Liquidation Order and the granting of FSA Approval,

the New Hampshire Order and the Scheme to be upon such terms as may be approved by the New Hampshire Court and English Court; and

1.1.4 in order to reduce the costs of disputed claim proceedings to the Home estate, the Liquidator will recommend to the New Hampshire Court that in the resolution of reinsurance claims against Home under the AFIA Treaties, where the reinsurance contract under which the claim arises contemplates arbitration or other dispute resolution procedures with more limited discovery than that permitted under the Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation entered by the New Hampshire

Court on December 19 2003 or such amended order as appropriate ("the Claims Procedures Order"), discovery in the disputed claim proceeding (including, without limiting the generality of the foregoing, requests for documents, interrogatories, requests for admissions, or evidence depositions) shall be limited to that available under the contractually contemplated procedures.

1.2 "Net Recoveries" means the "Relevant Percentage" (as defined in paragraph 1.4) 50% of the "Proceeds" (as defined in sub-paragraph 1.3 below), plus 100% of those proceeds described in sub-paragraph 1.3.5 below.

1.3 "Proceeds" means the proceeds received by Home from the ACE Group or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) (after deducting amounts offset between Home and either the relevant ACE Group company concerned or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) in relation to AFIA business and after having taken all reasonable arguments and/or defences as regards the validity of such off-set) with respect to the AFIA Treaties (whether such proceeds are derived through an ongoing resolution process with the ACE Group or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) or through a commutation or similar compromise arrangement with any ACE Group company or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) relating to that company's indemnity and/or reinsurance obligations to Home) net of:

1.3.1 the costs of the UK provisional liquidation;

1.3.2 any collection costs;

1.3.3 costs incurred in our seeking the orders of the New Hampshire and English Courts set out in sub-paragraphs 1.1.1 and 1.1.2 above (including, without prejudice to the generality of the foregoing, the costs of any legal and other professional advisors in obtaining and implementing such approvals); ~~and~~

1.3.4 ~~the portion of any~~ proceeds received by Home from the ACE Group or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) with respect to those inwards liabilities of Home under the AFIA Treaties which are, or will upon final adjudication be, settled by way of offset as between Home and the relevant AFIA Cedent concerned (whether such offset right derives from contract or statute); and

1.4 ~~"Relevant Percentage"~~ means

1.3.5 the percentage specified in column 2 below in respect of the Proceeds specified in column 1 below[†].

[†]The percentages set out in this paragraph 1.4 of the letter will apply on a marginal basis such that in the event that Proceeds amount to US\$200,000,000, Net Recoveries will equal US\$55,000,000, calculated as follows:
~~(25% x US\$149,999,999) + (35% x (US\$200,000,000 - US\$149,999,999))~~

Column 1	Column 2
Proceeds	%
Up to US\$ 149,999,999	25%
Between US\$ 150,000,000 and US\$ 249,999,999	35%
Between US\$ 250,000,000 and US\$ 349,999,999	45%
More than US\$ 350,000,000	50%

proceeds received by Home from the ACE Group or any Third Party Reinsurer with respect to Home's liability under an adverse costs order as described in sub-paragraph 1.9.7 below (which amount shall be credited direct to Net Recoveries, as provided in that sub-paragraph).

1.4 ~~1.5~~ We also agree that during the "Standstill Period" (as defined in paragraph ~~1.7~~ 1.6 below) we will not enter into a commutation or similar compromise arrangement with any ACE Group company or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 hereof) relating to that company's indemnity and/or reinsurance obligations to Home in respect of the AFIA Treaties without first consulting the ~~Informal Creditors' Committee~~;

- (1) promptly consulting with the Informal Creditors' Committee as to any such proposed commutation;
- (2) providing all relevant documentation to the Informal Creditors' Committee at least 5 working days (where practicable) prior to such consultation (and to this end, members of the Informal Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the Liquidator pursuant to paragraph 3 of the Order Establishing Procedures for Review of Reinsurance Commutation Agreements entered by the New Hampshire Court on July 23, 2003 or any such amended order as appropriate ("the Commutations Order")). If it is not practicable for Home to comply with this 5 working days notice period, Home shall make all reasonable efforts to provide as much notice as is possible in the circumstances; and
- (3) providing notice to the Informal Creditors' Committee in advance of any application to the supervising New Hampshire Court to approve the terms of any such proposed commutation, in accordance with the provisions of the Commutations Order.

1.5 ~~1.6~~ You agree that:

1.5.1 ~~1.6.1~~ during the Standstill Period you shall not seek to reach any agreement or arrangement with any member of the ACE Group or any other ~~third party reinsurer~~ "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below)

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whereunder you receive payment from any such entity in respect of the AFIA Treaties; and

1.5.2 ~~1.6.2~~ in determining your entitlement (if any) to receive any distribution payable to you in your capacity as a ~~Class 5~~ creditor in Home's New Hampshire liquidation you will bring into account, and give credit for, any payments received by you pursuant to the arrangements described in this paragraph 1.

1.6 ~~1.7~~ "Standstill Period" shall mean the period commencing upon the date on which you agree to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us and ending on the "Standstill Termination Date" (as defined in paragraph ~~1.8~~1.7 below).

1.7 ~~1.8~~ "Standstill Termination Date" shall mean the earlier of:

1.7.1 ~~1.8.1~~ 31 December 2003, if 75% in 27 February 2004, if by that date Home has not notified members of the Informal Creditors' Committee that it has determined that a sufficient number of Informal Creditors' Committee members do not agree (as described in paragraph 1.1 above) have agreed to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us by that date;

1.7.2 ~~1.8.2~~ the date upon which the New Hampshire Court denies the New Hampshire liquidator's motion for the approval of the New Hampshire Order in substantially similar terms to those described in paragraph 1.1 above;

1.7.3 ~~1.8.3~~ the date upon which the English Court refuses to grant permission to convene a meeting of AFIA Cedents to approve the Scheme in substantially similar terms to those described in paragraph 1.1 above;

1.7.4 ~~1.8.4~~ the date upon which a majority in number representing 75% in value of the AFIA Cedents do not approve the Scheme at the meeting specially convened for this purpose (or at any adjournment thereof) in substantially similar terms to those described in paragraph 1.1 above;

1.7.5 ~~1.8.5~~ the date upon which the English Court refuses to sanction the Scheme in substantially similar terms to those described in paragraph 1.1 above;

1.7.6 ~~1.8.6~~ the date upon which the English Court refuses to make the Global Liquidation Order;

1.7.7 ~~1.8.7~~ the date upon which the Financial Services Authority notifies Home that it will not grant the FSA Approval; or

1.7.8 ~~1.8.8~~ 1 June 2004 (or such other date as Home and ~~75% in a~~ sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) shall agree from time to time), if the English Court has not by that date sanctioned the Scheme under section 425 of the Companies Act 1985 as envisaged in paragraph 1.1.2 above.

1.8 "Third Party Reinsurer" shall mean a reinsurer (other than an ACE Group company), which has underwritten reinsurance in relation to AFIA business directly in favour of Home as reassured.

1.9 It is intended that the Scheme will have the following main features:

1.9.1 subject to sub-paragraph 1.9.7 below, Net Recoveries will be distributed pari passu (as far as reasonably practicable) to all AFIA Cedents according to the value of their claims against Home under the AFIA Treaties as agreed or adjudicated (net of any applicable set-off) in the New Hampshire liquidation of Home;

1.9.2 Net Recoveries (together with all investment income and gain accruing thereon) will be held on a segregated basis by the Scheme Administrators for application in accordance with the Scheme;

1.9.3 a Creditors' Committee will be established with the right to be consulted by the Scheme Administrators on any transaction or litigation as between Home and any ACE Group company which is likely to have a material impact upon Net Recoveries;

1.9.4 Home will not enter into a commutation or similar compromise arrangement with any ACE Group company or any Third Party Reinsurer relating to that company's indemnity and/or reinsurance obligations to Home in respect of the AFIA Treaties without first:

(1) promptly consulting with the Creditors' Committee as to any such proposed commutation;

(2) providing all relevant documentation to the Creditors' Committee at least 5 working days (where practicable) prior to such consultation (and to this end, members of the Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the Liquidator pursuant to paragraph 3 of the Commutations Order). If it is not practicable for Home to comply with this 5 working days notice period, Home shall make all reasonable efforts to provide as much notice as is possible in the circumstances; and

(3) providing notice to the Creditors' Committee in advance of any application to the supervising New Hampshire Court to approve the terms of any such proposed commutation or arrangement, in accordance with the provisions of the Commutations Order;

1.9.5 in the event of a commutation with the ACE Group, the Scheme Administrators will propose to AFIA Cedents a cut-off mechanism;

1.9.6 the costs referred to in sub-paragraph 1.3 above are to be recovered out of the Proceeds on an incurred basis; and

1.9.7 should a claim be denied in the Home liquidation and a disputed claim proceeding ensue, nothing in the Scheme shall preclude an AFIA Cedent, pursuant to RSA 402-C:6, from seeking an adverse cost order against Home in such proceeding, although under the Scheme the AFIA Cedent concerned will not be permitted to enforce payment by Home of any adverse cost order that may be forthcoming as an administrative expense in the Home liquidation, but shall rather be entitled to reimbursement to the extent of any cash recovered with respect thereto from an ACE Group company or from a Third Party Reinsurer, which cash recovery shall be credited directly to the Net Recoveries and shall be payable in full to the AFIA Cedent concerned from the Net Recoveries in priority to any distribution of the Net Recoveries to AFIA Cedents pursuant to paragraph 1.9.1 hereof.

2. ~~Information~~INFORMATION

~~2.1~~ You agree that:

~~2.1.1~~ within 7 days following notice from us You agree that the New Hampshire Court has made the New Hampshire Order (enclosing a certified copy of the New Hampshire Order); you will provide us with your most up-to-date to us by 13 February 2004 sufficient information concerning your claims under the AFIA Treaties (including reasonable details of paid losses, outstanding losses (ease reserves) and IBNR on the business which you have ceded) only to Home pursuant enable us to the AFIA Treaties; make the determination referred to in paragraph 1.7.1 hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

~~2.1.2~~ you will also provide us with any additional information and any supporting documentation as we reasonably request;

(the information to be provided in accordance with paragraphs 2.1.1 and 2.1.2 above being hereinafter referred to as the "**Information**").

~~2.2~~ Subject to Clause 3.2 below, we hereby confirm that we shall use the Information only for the purposes of (a) updating Home's own records with respect to the AFIA Treaties; (b) seeking to reconcile the Information with the data relating to the AFIA Treaties contained in the books and records held by companies within the ACE Group (or, to the extent relevant, any other third party reinsurer); (c) providing the same to the ACE Group (or, to the extent relevant, any other third party reinsurer) in order to assist in such reconciliation; (d) seeking to reach agreement with the ACE Group (or, to the extent relevant, any other third party reinsurer) on the accuracy and/or adequacy of their books and records as aforesaid; (e) attempting, subject to paragraph 1 above, to reach a commercial resolution as to the value of the obligations of the ACE Group (or, to the extent relevant, any other third party reinsurer) relative to the AFIA Treaties; (f) in the absence of any such commercial resolution, seeking, if appropriate, a judicial or quasi-judicial determination of such obligations; and (g) determining the value of any potential offsets that may apply with respect to claims that may be asserted by you under the AFIA Treaties.

3. ~~Proof of Claim in Home's liquidation proceeding~~**PROOF OF CLAIM IN HOME'S LIQUIDATION PROCEEDING**

~~3.1~~— Subject to ~~Clause 3.2~~ below, ~~we~~We acknowledge that, by providing the ~~Information~~information to us pursuant to paragraph 2 of this letter, you shall not be deemed to be submitting a proof of claim or similar formal claim against Home, either in the New Hampshire liquidation proceeding or in any English proceeding. We acknowledge that, by providing us with the ~~Information~~said information pursuant to this letter, you thereby reserve all your rights in that regard.

~~3.2~~— You agree that upon the Scheme becoming effective in accordance with its terms, the ~~Information~~ provided to us pursuant to paragraph 2 of this letter shall thereafter be deemed to constitute, without further action on your behalf, your proof of claim in Home's New Hampshire liquidation (subject to your right to supplement or modify such proof of claim prior to 13 June 2004, the proof of claims filing deadline in the New Hampshire liquidation).

4. ~~Confidentiality and Non-Disclosure~~**CONFIDENTIALITY AND NON-DISCLOSURE**

Save as provided above, we agree that we shall not, without your prior agreement, disclose any of the ~~Information~~information provided under paragraph 2 above to any third party (save where required so to do so by law) with the exception of (a) our legal, accounting and actuarial advisers; (b) our reinsurers; (c) any applicable regulator; and (d) courts of competent jurisdiction for purposes of seeking judicial approval of the arrangement proposed herein.

We furthermore reaffirm that this letter and its contents constitute "Confidential Information" within the meaning of the Confidentiality Undertaking executed by you.

5. ~~Authorisation~~**AUTHORISATION**

The New Hampshire Insurance Commissioner, Roger A. Sevigny, in his capacity as Liquidator of Home, has approved this proposal and authorised its circulation by the provisional liquidators to members of the Informal Creditors' Committee.

6. ~~Acceptance by Informal Creditors' Committee members~~**ACCEPTANCE BY INFORMAL CREDITORS' COMMITTEE MEMBERS**

If this proposal is acceptable to you, please indicate your acceptance to its terms by ~~no later than December 5, 2003~~, by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.

.....
Signed by G. H. Hughes
Joint Provisional Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

.....
Signed by [AFLA Cedent]

Document comparison done by DeltaView on Thursday, January 15, 2004
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Document 1	pdocs://london-3/1205485/11
Document 2	pdocs://london-2/1554668/5
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Statistics:	
	Count
Insertions	115
Deletions	95
Moved from	0
Moved to	0
Format changed	0
Total changes	210

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

PETER W. HEED
ATTORNEY GENERAL



KELLY A. AYOTTE
DEPUTY ATTORNEY GENERAL

January 20, 2004

To: Members of the Informal Creditors' Committee
The Home Insurance Company in Liquidation

Re: The Home Insurance Company ("The Home")
Procedures for handling proofs of claims by AFIA cedents

Dear Informal Creditors' Committee Member:

This letter will outline the procedures which the Liquidator proposes to follow in connection with any proofs of claim submitted by AFIA cedents. As these procedures contemplate ACE acting as an agent of the Liquidator and in some respects vary from the existing Claim Procedures approved by the Merrimack County Superior Court ("Court") in December 2003, they are subject to discussions with ACE and approval by the Court.

The cedent will file a Proof of Claim ("POC") with the Liquidator by the June 13, 2004 claim filing deadline and provide a copy to ACE. Over time, the cedent may supplement the POC by further submissions.

We expect that ACE, as agent of the Liquidator, will review claims based on the POC or a supplement in accordance with ACE's past claim review practices. Similarly, ACE would then advise the Liquidator whether it agrees the claim in whole or part and of its reasons for disagreement with any portion not agreed. The Liquidator may also negotiate POCs with the cedent, with potential input from ACE. The Liquidator will issue a Notice of Determination to the cedent pursuant to the Claim Procedures.¹ In the case of claims agreed by ACE, the Liquidator will in all likelihood allow the claims.

If the cedent disagrees with a denial in the Notice of Determination or Redetermination, the cedent must file an Objection with the Court within 60 days in accordance with the Claims Procedures. The Liquidation Clerk will then issue a Notice of Disputed Claim to the cedent to initiate a disputed claims proceeding before the Referee appointed by the Court. The Liquidator will advise ACE of the disputed claim proceedings so ACE may participate by filing a Motion to Participate in accordance with the Claim Procedures. (The Liquidator desires that ACE

¹ The cedent may submit an optional Request for Review to the Liquidator within 30 days in accordance with the Claim Procedures. If such a request is made, the Liquidator will review it, request input from ACE, and issue a Notice of Redetermination as appropriate to the cedent.

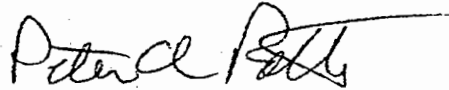
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participate in these proceedings as provided in the Insurance and Reinsurance Assumption Agreement, and a separate motion may not be necessary.)

The disputed claim will then be determined by the Referee in accordance with the Claim Procedures. The Liquidator will seek to provide a streamlined process to determine disputed claims by AFIA cedents and may seek approval of amendments to the Claim Procedures to accomplish this end once the attributes of these claims are better understood. For instance, small claims (those under \$50,000) may be heard at one hearing, without briefing. Conferences and scheduling matters may be heard by telephone. The Liquidator will recommend that hearings be held in England. Once the Referee issues a decision, a dissatisfied party may appeal to the Court by filing a Motion to Recommit within 15 days in accordance with the Claims Procedures. Cedents will have a right to appeal determinations to the New Hampshire Supreme Court.

Please let me know if you have any comments or questions.

Very truly yours,



Peter C.L. Roth
Senior Assistant Attorney General
(603) 271-3679

cc: Hon. Roger A. Sevigny, Commissioner
New Hampshire Insurance Department

Gareth Howard Hughes
Provisional Liquidator

Peter A. Bengelsdorf,
Special Deputy Liquidator

J. David Leslie, Esq.

David Steinberg, Esq.

TOLLING AGREEMENT

This Tolling Agreement is entered as of this 23rd day of January, 2004 by and among Roger A. Seigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), Gareth Hughes, as a Joint Provisional Liquidator ("Joint Provisional Liquidator") of Home's UK Branch, and the below indicated subscribing members of the Informal Creditors' Committee ("Committee") established with respect to the liquidation of Home's UK Branch, for the benefit of all cedents to the AFIA Pool.

WHEREAS, the Liquidator, Joint Provisional Liquidator and the Committee are engaged in discussions concerning a potential commercial resolution of issues concerning claims with respect to the AFIA Pool;

WHEREAS, certain members of the Committee have expressed concern that the passage of time during discussions may prejudice cedents to the AFIA Pool in light of the possible application of statutes of limitations; and

WHEREAS, in light of uncertainty over the application of statutes of limitations, the parties wish to address this concern and provide for the continuance of discussions;

NOW THEREFORE, the parties agree as follows:

1. Subject to Paragraph 3 below, any statute of limitations applicable to claims of the AFIA cedents against Home shall be tolled from May 8, 2003, the date the petition for liquidation of Home was filed with the Superior Court for Merrimack County, New Hampshire, until the date 30 days after any party gives written notice of the termination of this agreement pursuant to Paragraph 2 below. The period of tolling shall not be considered in the application of any statute of limitations to the claims of the cedents to the AFIA Pool against Home.

2. Any party may give notice of the termination of this agreement by written notice to all other parties as follows:

To the Liquidator: Roger A. Seigny
c/o Peter Bengelsdorf, Special Deputy Liquidator
The Home Insurance Company in Liquidation
59 Maiden Lane
New York, NY 10038
001-212- 530-6143 (FAX)

To the Joint Provisional Liquidators: Gareth Hughes
Provisional Liquidator of Home Insurance
Ernst & Young LLP
Becket House
1 Lambeth Palace Road
London SE1 7EU
020-7951-0839

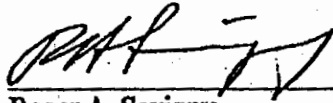
To the Committee: To the individual signatories at the addresses indicated below.

Notice shall be effective upon (i) the transmitter's confirmation of a receipt of a facsimile transmission (ii) confirmed delivery by a standard overnight carrier, or (iii) receipted personal delivery.

3. This agreement shall have no effect on and shall not preclude the application of the June 13, 2004 claim filing deadline established in the Order of Liquidation to claims of the cedents to the AFIA Pool. Nothing in this agreement shall be construed to revive any claim barred by the applicable statute of limitations before May 8, 2003.

4. This agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire (regardless of the law or laws that might otherwise apply under applicable principles of conflicts law).

The Liquidator:



Roger A. Sevigny
Insurance Commissioner
Insurance Department
State of New Hampshire

For the Joint Provisional Liquidator



Title:

**Subscribing Members of the Informal Creditors Committee,
For the benefit of all cedents to the AFIA Pool**

By: _____
Name: _____
Title: _____
Address: _____

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Ernst & Young LLP
1 More London Place
London SE1 2AF

Phone: 020 7951 2000
Fax: 020 7951 1345
CDE & LDE Box 241
www.ey.com/uk

WITHOUT PREJUDICE AND FOR SETTLEMENT PURPOSES ONLY

Equitas Limited
33 St Mary Axe
London
EC3A 8LL

22 January 2004

For Attention of : Rhydian Williams

Dear Sirs

1. ACE Group proceeds

1.1 In compromise of disputed positions respecting the non-novated AFIA reinsurance treaties underwritten by or on behalf of The Home Insurance Company ("Home") through the Home's UK Branch (the "AFIA Treaties"), we agree that, as soon as reasonably practicable following the agreement of a number of Informal Creditors' Committee members sufficient to give adequate assurance to Home that the Scheme (as defined in sub-paragraph 1.1.2 below) will be approved by the requisite majorities of AFIA Cedents (as defined in sub-paragraph 1.1.2 below), we will take the following steps:

1.1.1 notify members of the Informal Creditors' Committee that a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) have agreed to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us;

1.1.2 seek the approval of the supervising New Hampshire Court ("New Hampshire Order") to a compromise involving the implementation of a scheme of arrangement pursuant to section 425 of the Companies Act 1985 ("Scheme") between Home and cedents of Home in respect of the AFIA Treaties ("AFIA Cedents"), the main features of which are described in sub-paragraph 1.9 below, such New Hampshire Order to be on terms that it is conditional upon:

- (1) the sanction of the English Court in respect of the Scheme;
- (2) an order of the English Court approving the remission of the Home's assets situated in England and Wales (other than the "Net Recoveries" (as defined in sub-paragraph 1.2 below)) to the New Hampshire liquidator for administration and distribution as part of the New Hampshire liquidation ("Global Liquidation Order"); and
- (3) the approval, or "non-objection", of the Financial Services Authority to the Scheme and to the making of the Global Liquidation Order ("FSA Approval");

■ The UK firm Ernst & Young LLP is a limited liability partnership registered in England and Wales with registered number OC300001 and is a member practice of Ernst & Young Global. A list of members' names is available for inspection at the above address which is the firm's principal place of business and its registered office.

1.1.3 as soon as reasonably practicable after the making of the New Hampshire Order:

- (1) make an application to the English Court for permission to convene a meeting of AFIA cedents to approve the Scheme; and
- (2) following the approval of the Scheme by the requisite majorities of AFIA Cedents, seek the sanction of the English Court in respect of the Scheme,

provided that the Scheme shall not become effective on its terms until after the making of the Global Liquidation Order and the granting of FSA Approval,

the New Hampshire Order and the Scheme to be upon such terms as may be approved by the New Hampshire Court and English Court; and

1.1.4 in order to reduce the costs of disputed claim proceedings to the Home estate, the Liquidator will recommend to the New Hampshire Court that in the resolution of reinsurance claims against Home under the AFIA Treaties, where the reinsurance contract under which the claim arises contemplates arbitration or other dispute resolution procedures with more limited discovery than that permitted under the Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation entered by the New Hampshire Court on December 19 2003 or such amended order as appropriate ("the Claims Procedures Order"), discovery in the disputed claim proceeding (including, without limiting the generality of the foregoing, requests for documents, interrogatories, requests for admissions, or evidence depositions) shall be limited to that available under the contractually contemplated procedures.

1.2 "Net Recoveries" means 50% of the "Proceeds" (as defined in sub-paragraph 1.3 below), plus 100% of those proceeds described in sub-paragraph 1.3.5 below.

1.3 "Proceeds" means the proceeds received by Home from the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) (after deducting amounts offset between Home and either the relevant ACE Group company concerned or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) in relation to AFIA business and after having taken all reasonable arguments and/or defences as regards the validity of such off-set) with respect to the AFIA Treaties (whether such proceeds are derived through an ongoing resolution process with the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) or through a commutation or similar compromise arrangement with any ACE Group company or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) relating to that company's indemnity and/or reinsurance obligations to Home) net of:

1.3.1 the costs of the UK provisional liquidation;

1.3.2 any collection costs;

1.3.3 costs incurred in our seeking the orders of the New Hampshire and English Courts set out in sub-paragraphs 1.1.1 and 1.1.2 above (including, without prejudice to the generality of the foregoing, the costs of any legal and other professional advisors in obtaining and implementing such approvals);

1.3.4 the proceeds received by Home from the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) with respect to those inwards liabilities of

Home under the AFIA Treaties which are, or will upon final adjudication be, settled by way of offset as between Home and the relevant AFIA Cedent concerned (whether such offset right derives from contract or statute); and

1.3.5 the proceeds received by Home from the ACE Group or any Third Party Reinsurer with respect to Home's liability under an adverse costs order as described in sub-paragraph 1.9.7 below (which amount shall be credited direct to Net Recoveries, as provided in that sub-paragraph).

1.4 We also agree that during the "Standstill Period" (as defined in paragraph 1.6 below) we will not enter into a commutation or similar compromise arrangement with any ACE Group company or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 hereof) relating to that company's indemnity and/or reinsurance obligations to Home in respect of the AFIA Treaties without first:

- (1) promptly consulting with the Informal Creditors' Committee as to any such proposed commutation;
- (2) providing all relevant documentation to the Informal Creditors' Committee at least 5 working days (where practicable) prior to such consultation (and to this end, members of the Informal Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the Liquidator pursuant to paragraph 3 of the Order Establishing Procedures for Review of Reinsurance Commutation Agreements entered by the New Hampshire Court on July 23, 2003 or any such amended order as appropriate ("the Commutations Order")). If it is not practicable for Home to comply with this 5 working days notice period, Home shall make all reasonable efforts to provide as much notice as is possible in the circumstances; and
- (3) providing notice to the Informal Creditors' Committee in advance of any application to the supervising New Hampshire Court to approve the terms of any such proposed commutation, in accordance with the provisions of the Commutations Order.

1.5 You agree that:

1.5.1 during the Standstill Period you shall not seek to reach any agreement or arrangement with any member of the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) whereunder you receive payment from any such entity in respect of the AFIA Treaties; and

1.5.2 in determining your entitlement (if any) to receive any distribution payable to you in your capacity as a creditor in Home's New Hampshire liquidation you will bring into account, and give credit for, any payments received by you pursuant to the arrangements described in this paragraph 1.

- 1.6 "Standstill Period" shall mean the period commencing upon the date on which you agree to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us and ending on the "Standstill Termination Date" (as defined in paragraph 1.7 below).
- 1.7 "Standstill Termination Date" shall mean the earlier of:
- 1.7.1 27 February 2004, if by that date Home has not notified members of the Informal Creditors' Committee that it has determined that a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) have agreed to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us by that date;
 - 1.7.2 the date upon which the New Hampshire Court denies the New Hampshire liquidator's motion for the approval of the New Hampshire Order in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.3 the date upon which the English Court refuses to grant permission to convene a meeting of AFIA Cedents to approve the Scheme in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.4 the date upon which a majority in number representing 75% in value of the AFIA Cedents do not approve the Scheme at the meeting specially convened for this purpose (or at any adjournment thereof) in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.5 the date upon which the English Court refuses to sanction the Scheme in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.6 the date upon which the English Court refuses to make the Global Liquidation Order;
 - 1.7.7 the date upon which the Financial Services Authority notifies Home that it will not grant the FSA Approval; or
 - 1.7.8 1 June 2004 (or such other date as Home and a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) shall agree from time to time), if the English Court has not by that date sanctioned the Scheme under section 425 of the Companies Act 1985 as envisaged in paragraph 1.1.2 above.
- 1.8 "Third Party Reinsurer" shall mean a reinsurer (other than an ACE Group company), which has underwritten reinsurance in relation to AFIA business directly in favour of Home as reassured.
- 1.9 It is intended that the Scheme will have the following main features:
- 1.9.1 subject to sub-paragraph 1.9.7 below, Net Recoveries will be distributed *pari passu* (as far as reasonably practicable) to all AFIA Cedents according to the value of their claims against Home under the AFIA Treaties as agreed or adjudicated (net of any applicable set-off) in the New Hampshire liquidation of Home;

- 1.9.2 Net Recoveries (together with all investment income and gain accruing thereon) will be held on a segregated basis by the Scheme Administrators for application in accordance with the Scheme;
- 1.9.3 a Creditors' Committee will be established with the right to be consulted by the Scheme Administrators on any transaction or litigation as between Home and any ACE Group company which is likely to have a material impact upon Net Recoveries;
- 1.9.4 Home will not enter into a commutation or similar compromise arrangement with any ACE Group company or any Third Party Reinsurer relating to that company's indemnity and/or reinsurance obligations to Home in respect of the AFIA Treaties without first:
- (1) promptly consulting with the Creditors' Committee as to any such proposed commutation;
 - (2) providing all relevant documentation to the Creditors' Committee at least 5 working days (where practicable) prior to such consultation (and to this end, members of the Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the Liquidator pursuant to paragraph 3 of the Commutations Order). If it is not practicable for Home to comply with this 5 working days notice period, Home shall make all reasonable efforts to provide as much notice as is possible in the circumstances; and
 - (3) providing notice to the Creditors' Committee in advance of any application to the supervising New Hampshire Court to approve the terms of any such proposed commutation or arrangement, in accordance with the provisions of the Commutations Order;
- 1.9.5 in the event of a commutation with the ACE Group, the Scheme Administrators will propose to AFIA Cedents a cut-off mechanism;
- 1.9.6 the costs referred to in sub-paragraph 1.3 above are to be recovered out of the Proceeds on an incurred basis; and
- 1.9.7 should a claim be denied in the Home liquidation and a disputed claim proceeding ensue, nothing in the Scheme shall preclude an AFIA Cedent, pursuant to RSA 402-C:6, from seeking an adverse cost order against Home in such proceeding, although under the Scheme the AFIA Cedent concerned will not be permitted to enforce payment by Home of any adverse cost order that may be forthcoming as an administrative expense in the Home liquidation, but shall rather be entitled to reimbursement to the extent of any cash recovered with respect thereto from an ACE Group company or from a Third Party Reinsurer, which cash recovery shall be credited directly to the Net Recoveries and shall be payable in full to the AFIA Cedent concerned from the Net Recoveries in priority to any distribution of the Net Recoveries to AFIA Cedents pursuant to paragraph 1.9.1 hereof.

2. Information

You agree that you will provide to us by 13 February 2004 sufficient information concerning your claims under the AFIA Treaties (including reasonable details of paid losses, outstanding losses and IBNR) only to enable us to make the determination referred to in paragraph 1.7.1

hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

3. Proof of Claim in Home's liquidation proceeding

We acknowledge that, by providing information to us pursuant to paragraph 2 of this letter, you shall not be deemed to be submitting a proof of claim or similar formal claim against Home, either in the New Hampshire liquidation proceeding or in any English proceeding. We acknowledge that, by providing us with the said information pursuant to this letter, you thereby reserve all your rights in that regard.

4. Confidentiality and Non-Disclosure

Save as provided above, we agree that we shall not, without your prior agreement, disclose any of the information provided under paragraph 2 above to any third party (save where required so to do so by law) with the exception of (a) our legal, accounting and actuarial advisers; (b) any applicable regulator; and (c) courts of competent jurisdiction for purposes of seeking judicial approval of the arrangement proposed herein.

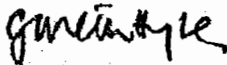
We furthermore reaffirm that this letter and its contents constitute "Confidential Information" within the meaning of the Confidentiality Undertaking executed by you.

5. Authorisation

The New Hampshire Insurance Commissioner, Roger A. Sevigny, in his capacity as Liquidator of Home, has approved this proposal and authorised its circulation by the provisional liquidators to members of the Informal Creditors' Committee.

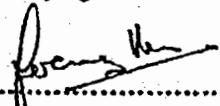
6. Acceptance by Informal Creditors' Committee members

If this proposal is acceptable to you, please indicate your acceptance to its terms by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.



.....
Signed by **G. H. Hughes**
Joint Provisional Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement


.....
Signed by **Equitas Limited**

2.2.04

hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

3. Proof of Claim in Home's liquidation proceeding

We acknowledge that, by providing information to us pursuant to paragraph 2 of this letter, you shall not be deemed to be submitting a proof of claim or similar formal claim against Home, either in the New Hampshire liquidation proceeding or in any English proceeding. We acknowledge that, by providing us with the said information pursuant to this letter, you thereby reserve all your rights in that regard.

4. Confidentiality and Non-Disclosure

Save as provided above, we agree that we shall not, without your prior agreement, disclose any of the information provided under paragraph 2 above to any third party (save where required so to do so by law) with the exception of (a) our legal, accounting and actuarial advisers; (b) any applicable regulator; and (c) courts of competent jurisdiction for purposes of seeking judicial approval of the arrangement proposed herein.

We furthermore reaffirm that this letter and its contents constitute "Confidential Information" within the meaning of the Confidentiality Undertaking executed by you.

5. Authorisation

The New Hampshire Insurance Commissioner, Roger A. Sevigny, in his capacity as Liquidator of Home, has approved this proposal and authorised its circulation by the provisional liquidators to members of the Informal Creditors' Committee.

6. Acceptance by Informal Creditors' Committee members

If this proposal is acceptable to you, please indicate your acceptance to its terms by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.

Gareth Hyle

.....
Signed by **G. H. Hughes**
Joint Provisional Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

[Handwritten signature]

.....
Signed by ~~Weavers~~ **JAMES TYSON**
for and on behalf of
THE BERMUDA FIRE & MARINE INSURANCE COMPANY
(IN LIQUIDATION)

hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

3. **Proof of Claim in Home's liquidation proceeding**

We acknowledge that, by providing information to us pursuant to paragraph 2 of this letter, you shall not be deemed to be submitting a proof of claim or similar formal claim against Home, either in the New Hampshire liquidation proceeding or in any English proceeding. We acknowledge that, by providing us with the said information pursuant to this letter, you thereby reserve all your rights in that regard.

4. **Confidentiality and Non-Disclosure**

Save as provided above, we agree that we shall not, without your prior agreement, disclose any of the information provided under paragraph 2 above to any third party (save where required so to do so by law) with the exception of (a) our legal, accounting and actuarial advisers; (b) any applicable regulator; and (c) courts of competent jurisdiction for purposes of seeking judicial approval of the arrangement proposed herein.

We furthermore reaffirm that this letter and its contents constitute "Confidential Information" within the meaning of the Confidentiality Undertaking executed by you.

5. **Authorisation**

The New Hampshire Insurance Commissioner, Roger A. Sevigny, in his capacity as Liquidator of Home, has approved this proposal and authorised its circulation by the provisional liquidators to members of the Informal Creditors' Committee.

6. **Acceptance by Informal Creditors' Committee members**

If this proposal is acceptable to you, please indicate your acceptance to its terms by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.

G.H. Hughes

.....
Signed by G. H. Hughes
Joint Provisional Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

A. Brennan

.....
Signed by Mentor Insurance Company (UK) Ltd

*for and on behalf of
A. Brennan, Director
lcl consulting ltd a duly authorised agent*

hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

3. Proof of Claim in Home's liquidation proceeding

We acknowledge that, by providing information to us pursuant to paragraph 2 of this letter, you shall not be deemed to be submitting a proof of claim or similar formal claim against Home, either in the New Hampshire liquidation proceeding or in any English proceeding. We acknowledge that, by providing us with the said information pursuant to this letter, you thereby reserve all your rights in that regard.

4. Confidentiality and Non-Disclosure

Save as provided above, we agree that we shall not, without your prior agreement, disclose any of the information provided under paragraph 2 above to any third party (save where required so to do so by law) with the exception of (a) our legal, accounting and actuarial advisers; (b) any applicable regulator; and (c) courts of competent jurisdiction for purposes of seeking judicial approval of the arrangement proposed herein.

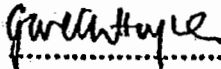
We furthermore reaffirm that this letter and its contents constitute "Confidential Information" within the meaning of the Confidentiality Undertaking executed by you.

5. Authorisation

The New Hampshire Insurance Commissioner, Roger A. Sevigny, in his capacity as Liquidator of Home, has approved this proposal and authorised its circulation by the provisional liquidators to members of the Informal Creditors' Committee.

6. Acceptance by Informal Creditors' Committee members

If this proposal is acceptable to you, please indicate your acceptance to its terms by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.

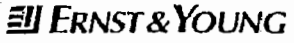


.....
Signed by G. H. Hughes
Joint Provisional Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement



.....
Signed by Unionamerica Insurance Company



22 January 2004 6

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Gareth Hughes
.....

Signed by G. H. Hughes
Joint Provisional Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

[Signature]
.....

Signed by English and America Insurance Co Ltd

H00762

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G. H. Hughes

.....
Signed by G. H. Hughes
Joint Provisional Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

[Signature]
.....
Signed by Excess Insurance Company Ltd

DAVID RUMFEL
MANAGING DIRECTOR

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6. Acceptance by Informal Creditors' Committee members

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Gareth Hughes

Signed by G. H. Hughes
Joint Provisional Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

Jerry M. Dawson

Signed by Continental Insurance Company New York

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G. H. Hughes

.....
Signed by G. H. Hughes
Joint Provisional Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement

John P...

.....
Signed by Riverstone Management Ltd

Exhibit A

Illustration of the Operation of Proposed AFIA Agreement
 (\$ millions)

AFIA Cedents' claims against Home ¹	<u>\$231</u>		
* * *			
Home's claim against Century ²	231		
<u>Less:</u> Century's claims against Home ³	12		
→ How much is received from Century?	<u>\$219</u>		
<u>Less:</u> deductions per Agreement §§ 1.3.1 – 1.3.5			
		<u>Paid to</u>	
		<u>Home</u>	<u>AFIA Cedents</u>
AFIA Cedents' claims settled between cedent and Home by way of offset against Home's claims against cedent ⁴	58	58	
Costs of collection from Century ⁵	10	10	
Costs of entire UK provisional liquidation and costs of seeking approvals of Agreement from New Hampshire and English Courts ⁶	5	5	
Adverse costs awards against Home ⁷	<u>1</u>		1
Total deductions	74		
Remaining amount to be divided with AFIA Cedents	<u>145</u>	72.5	72.5
→ How much do Home and AFIA Cedents receive?	<u>\$219</u>	<u>\$145.5</u>	<u>\$73.5</u>
What percentages are received by Home and AFIA Cedents?		66.4%	33.6%

¹ Based on ACE-INA filing for Home UK Branch as of 12/31/02; see Hughes Aff. ¶ 8, Rosen Aff. ¶ 4.

² Assumes AFIA Cedents' claims are filed, prosecuted and allowed under the claim procedures order. For simplicity, Home's overlapping claims against CIRC under the BAFCO Reinsurances are omitted. See Hughes Aff. ¶ 8.

³ See Durkin Affidavit ¶ 5.

⁴ Home's claims against AFIA Cedents are preliminarily estimated at \$58; see Rosen Aff. ¶ 6.

⁵ Uncertain; assumes \$10.

⁶ Uncertain; assumes \$5.

⁷ Uncertain, if any; assumes \$1.

1985 CHAPTER 6

Exhibit 37

Butterworths UK Statutes
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*** THIS DOCUMENT IS CURRENT THROUGH 18 FEBRUARY, 2005 ***

COMPANIES ACT 1985
1985 CHAPTER 6

PART XIII ARRANGEMENTS AND RECONSTRUCTIONS
Royal Assent [11 March 1985]

Companies Act 1985, Ch. 6, s. 425 (Eng.)

425 Power of company to compromise with creditors and members

(1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the court may on the application of the company or any creditor or member of it, or in the case of a company being wound up [or [in administration], of the liquidator or administrator], order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on all creditors or the class of creditors or on the members or class of members (as the case may be), and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) The court's order under subsection (2) has no effect until an office copy of it has been delivered to the registrar of companies for registration; and a copy of every such order shall be annexed to every copy of the company's memorandum issued after the order has been made or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting the company or defining its constitution.

(4) If a company makes default in complying with subsection (3), the company and every officer of it who is in default is liable to a fine.

(5) An order under subsection (1) pronounced in Scotland by the judge acting as vacation judge in pursuance of section 4 of the Administration of Justice (Scotland) Act 1933 is not subject to review, reduction, suspension or stay of execution.

(6) In this section and the next--

(a) "company" means any company liable to be wound up under this Act, and

(b) "arrangement" includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different

classes, or by both of those methods.

NOTES:**Initial Commencement*****Specified date***

Specified date: 1 July 1985: see s 746.

Derivation

This section derived from the Companies Act 1948, s 206, and the Companies Act 1980, s 80, Sch 2.

Amendment

Sub-s (1): words in square brackets ending with the words "liquidator or administrator" substituted by the Insolvency Act 1985, s 109, Sch 6, para 11.

Sub-s (1): words "in administration" in square brackets substituted by the Enterprise Act 2002, s 248(3), Sch 17, paras 3, 5.

Date in force: 15 September 2003: see SI 2003/2093, art 2(1), Sch 1; for transitional provisions and effect see art 3(1), (2)(a), (3) thereof and the Enterprise Act 2002, s 249, Sch 17, para 1.

Modification

Modified by the Companies Act 1985 (Modifications for Statutory Water Companies) Regulations 1989, SI 1989/1461, reg 2.

Sub-s (6)(a) modified, so that any reference to a company which is liable to be wound up includes a reference to a company which would be so liable but for the Water Industry Act 1991, s 25, by the Water Consolidation (Consequential Provisions) Act 1991, s 2(1), Sch 1, para 40(1).

Direct line: 020 7066 9660
Local fax: 020 7066 9701
Email: paul.taylor@fsa.gov.uk



G Hughes Esq
Joint Provisional Liquidator
The Home Insurance Company (UK branch)
c/o Ernst & Young LLP
1 More London Place
London
SE1 2AF

Our Ref: INSPD/non-life e/202179
AH/15SE20D

Dear Gareth

The Home Insurance Company ("the Home") (in Provisional Liquidation)

I write further to our meetings on 10 December 2003 and 24 February 2004 regarding the proposed approach in relation to the provisional liquidation of the Home's UK branch, including the proposed scheme of arrangement.

We note from our discussions and the scheme as proposed that this course of action envisages a better outcome for creditors compared with the potential availability of assets if a scheme is not approved.

On this basis, the FSA has no objections to the proposed scheme of arrangement.

Yours sincerely



Paul Taylor
Manager: Insurance Firms Division

cc: Philip Hertz (Clifford Chance)