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WÜSTENROT & WÜRTTEMBERGISCHE AG
(formerly known as Württembergische Feuerversicherung
AG)

and

THE HOME INSURANCE COMPANY
(in provisional liquidation in England and Wales and in
liquidation in the State of New Hampshire)

SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT

This Agreement (the "Agreement") is made on this 6th day of February 2006

BETWEEN:

1 WÜSTENROT & WÜRTTEMBERGISCHE AG, formerly known as
Württembergische Feuerversicherung AG of Gutenbergstraße 30, 70176
Stuttgart ("Württembergische")

AND

2. THE HOME INSURANCE COMPANY (in provisional liquidation in
England and Wales and in liquidation in the State of New Hampshire) of
286 Commercial Street, Manchester, New Hampshire 03101-1138, USA
("Home")

together referred to as the "Parties"

RECITALS

WHEREAS:

(A) By shareholders' resolution of 13th June 1991 Württembergische
Feuerversicherung AG changed its name to Württembergische AG
Versicherungs-Beteiligungsgesellschaft. The change in name was recorded in
the companies' register on 28th June 1991. By shareholders' resolutions of
27th July 1999/19th August 1999 Württembergische AG Versicherungs-
Beteiligungsgesellschaft merged with Wüstenrot Beteiligungs-AG to form
Wüstenrot & Württembergische AG. The merger was recorded in the
companies' register on 1st September 1999.

(B) Pursuant to the terms of the Agency Agreements Württembergische was a
member of the Ruddy Pool whereby the Ruddy Agency accepted insurance and
reinsurance business in the name of pool members pursuant to the agency
agreements entered into between the pool members and the Ruddy Agency and
in respect of which the Ruddy Agency placed certain reinsurances on behalf of
the Ruddy Pool.

- (C) By an agreement signed on or about 15th April 1977, Württembergische as reassured entered into a reinsurance contract (which is in Appendix 1) with Home as reinsurer in respect of certain of Württembergische's rights and obligations under contracts of insurance and reinsurance which had been accepted by the Ruty Agency pursuant to the Agency Agreements.
- (D) On 28th December 2001 Württembergische commenced arbitration proceedings against Home by which Württembergische sought, inter alia, a declaration that Home is obliged to indemnify Württembergische for the full amount of Württembergische's fronting share in circumstances where Württembergische fronted a Ruty Pool risk for the other pool members.
- (E) On 8th May 2003, Home was placed into provisional liquidation in England and Wales pursuant to the Order of Mr Justice Pumfrey which is in Appendix 2.
- (F) On 11th June 2003, Home was placed into liquidation in the State of New Hampshire, USA. pursuant to the Order dated 13 June 2003 which is in Appendix 3.
- (G) The Parties desire to accomplish a full and final settlement and compromise of the Arbitration Proceedings and all matters in dispute between the parties relating to Treaty R and to agree the basis on which Württembergische's involvement in the Ruty Pool will be administered by Home.
- (H) The Parties desire that their settlement and compromise shall be enforceable upon the terms and conditions of this Agreement following execution by each Party of a copy of this Agreement, even if only separate copies of it are executed.

AGREEMENT

NOW IT IS AGREED AS FOLLOWS:

1 Definitions

In this Agreement, unless the context otherwise requires or otherwise expressly provides the following expressions shall bear the following meanings.

“Agency Agreements” shall mean the following agreements which are in Appendix 4 between Württembergische and the Rutty Agency:

- (a) an agency agreement dated 1st January 1964 and Addendum Number 1 thereto signed by Württembergische on 20th February 1964;
- (b) an agency agreement dated 6th January 1967, Addenda Numbers 1 and 2 thereto signed by Württembergische on 21st July 1967.

“AISUK” shall mean ACE INA Services UK Limited (Company No. 01509033) of Ace Building, 100 Leadenhall Street, London EC3A 3BP.

The “Arbitration Proceedings” means the arbitration proceedings referred to in Recital (D)

“Bank” means Landesbank Baden-Württemberg

“Claims” mean claims asserted by Policyholders against Württembergische under or in connection with Policies.

“Court” shall mean the Superior Court of Merrimack County, State of New Hampshire, USA.

“Coverage Costs” shall mean (a) the professional fees and expenses of legal representatives, experts or other third parties, including arbitrators, appointed by Home or by the leading insurer or reinsurer on behalf of Württembergische in connection with any dispute (including an action for a declaration of rights under a Policy) or potential dispute arising out of a Claim which has been or which may be asserted under a Policy by a Policyholder; and/or (b) London Representative Costs incurred in connection with any such dispute or potential dispute insofar as such costs

are not Policy Liabilities; and/or (c) Württembergische's liability for costs either pursuant to an adverse costs order or award made by a competent court or arbitration panel or pursuant to an agreed settlement in connection with any such dispute.

"Extra Contractual Obligations" shall mean those liabilities or damages which are not covered under a Policy or which are in excess of the limit of a Policy and which are either awarded to a Policyholder by a court or arbitration panel of competent jurisdiction or paid to a Policyholder as an agreed settlement arising from the handling of any Claim covered under a Policy by reason of (a) the failure to settle such Claim within the Policy limit; or (b) actual or alleged negligence, fraud or bad faith with respect to such Claim in rejecting an offer of settlement or in the preparation of a defence in the trial of any action against a Policyholder or in the preparation or prosecution of an appeal consequent upon such action.

"Fixed Pool Share" shall mean Württembergische's 'fixed quota share' percentage participation in the Ruddy Pool from time to time as set out in the Agency Agreements, which are as follows:

- 1.1.1 between 1.1.64 and 31.12.65 (under the First Schedule of the 1964 Agency Agreement signed on behalf of Württembergische on 20th February 1964) 15% any one acceptance;
- 1.1.2 between 1.1.66 and 31.12.66 (by the 1967 Agency Agreement signed on behalf of Württembergische dated 6th January 1967) 15% any one acceptance;
- 1.1.3 between 1.1.67 and 31.12.67 (by Addendum No.1 to the 1967 Agency Agreement signed on behalf of Württembergische on 21st July 1967) 18.75% any one acceptance;

"IBNR Account" shall mean the account specified in Appendix 5.

"ISA" shall mean the Insolvency Shortfall Agreement signed by Württembergische on 26th November 1965 (which is at Appendix 4) and section 18(b) of the Agency Agreement dated 6th January 1967 and the agreements between Ruddy Pool members which arise by virtue thereof.

“LMCS Fee” shall mean a fee paid to the London Market Claims Service (or any successor organisation which may fulfil the same or a similar function) for copies of attorneys’ reports and other materials and information disseminated by that body but not including so-called “London Representative Costs” billed through LMCS relating to services conducted in the USA.

“London Representative Costs” (sometimes referred to as “Service fees”), shall mean those costs such as attorney fees or adjustment expenses which may be incurred for or on behalf of London Market underwriters including Württembergische in relation to Policies typically issued to US domiciled assureds or reassureds.

“Policy” shall mean a Type 1 Policy or Type 2 Policy, as described below:

“Type 1 Policy” shall mean a policy and/or contract of insurance and/or reinsurance written by the Rutty Agency for Württembergische pursuant to the Agency Agreements other than the ISA in favour of an assured or reassured who was not a member of the Rutty Pool at the time such policy inception; and

“Type 2 Policy” shall mean a contract of reinsurance which arose by virtue of the Agency Agreements other than the ISA between (a) Württembergische (as reinsurer) and (b) (as reassured) those Rutty Pool members other than Württembergische who subscribed to agreements similar in form to the Agency Agreements and on whose behalf a policy and/or contract of insurance and/or reinsurance was written by the Rutty Agency in favour of assureds and reassureds who were not members of the Rutty Pool at the time such policy and/or contract and/or reinsurance inception.

“Policyholder” shall mean the assured or reassured and their successors and assigns and each person entitled to claim and/or to the benefit under a Policy.

“Policy Expense” means Coverage Costs and Policyholder’s Expenses.

“Policyholder’s Expense” means Württembergische’s liability with respect to either an adverse costs order or award for costs made by a court or arbitration panel of competent jurisdiction or pursuant to an agreed settlement in connection with a dispute arising out of a claim asserted by a third party against a Policyholder which do not fall within the coverage provided by a Policy.

“Policy Liability” means Württembergische’s liability under the terms of a Policy for amounts due in satisfaction of claims for indemnity and/or for expenses covered by that Policy which are asserted against Württembergische by a Policyholder and as determined by a court or arbitration tribunal of competent jurisdiction or by agreement.

The **“Reimbursement Amount”** means an amount equal to:

- (1) The total of all sums actually paid by or on behalf of Home in excess of Württembergische’s Fixed Pool Share (to the extent that such balances relate to Württembergische’s liabilities under the ISA) that Home has funded on behalf of Württembergische to the extent that Württembergische has not already reimbursed Home in respect of such sums;

PLUS

- (2) Interest at a rate of 5% on the sums in (1) above from the date on which each relevant Claim which gave rise to Home’s payment in (1) above was agreed by or on behalf of Home (and not the date on which the Claim was actually paid) provided that the date on which the Claim was agreed was on or after 28th December 2001 (being the date of the notice of arbitration in the Arbitration Proceedings);

The **“Reimbursement Trust Account”** means a segregated account in the names of Home and Württembergische Versicherung AG set up for the purpose of holding the Reimbursement Amount and designated “Württembergische/Home Reimbursement Trust Account”.

“Rutty Agency” means M E Rutty Underwriting Agency Limited (Company No. 00727046) which was struck off the Companies Register for England and Wales under Sections 652(4) and 652A(5) of the Companies Act 1985 on 15th August 2000 and dissolved by notice in the London Gazette dated 22 August 2000.

“Rutty Pool” means the underwriting pool as underwritten for by the Rutty Agency of which Württembergische was a member for the period from 1st January 1964 to 31st December 1967.

“Scheme Deadline Date” means 31st December 2006

“Treaty R” means the reinsurance contract referred to in Recital (C) above

2 Interpretation

- 2.1 Clause headings are for ease of reference only and shall not affect the interpretation of this Agreement.
- 2.2 In this Agreement, unless inconsistent with the context or expressly otherwise specified:
 - 2.2.1 References to clauses and/or Schedules and/or Appendices are references to clauses and/or Schedules and/or Appendices of this Agreement;
 - 2.2.2 References to (or to any specified provision of) this Agreement shall be construed as references to this Agreement (or that provision) as in force for the time being and as amended in accordance with its terms;
 - 2.2.3 The singular includes the plural, the masculine all genders and vice versa;
 - 2.2.4 References to any statute or statutory provision include the same as amended, re-enacted or consolidated.
- 2.3 The terms of Treaty R (as amended by this Agreement) and of this Agreement shall be construed so as to give meaning and effect to them when read together. However, in the event of any conflicting interpretations of provisions of these documents, then notwithstanding anything to the contrary in Treaty R, as amended by this Agreement, the terms of this Agreement shall prevail.

CONDITION PRECEDENT

- 3 It shall be a condition precedent to the legally binding effect and enforceability of this Agreement that the Court shall have approved its terms by no later than 31 March 2006. In the event that this condition is not so satisfied, this Agreement will, without further formality, be null and void and of no legal effect.

Home Review
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GENERAL

4 The following clauses of Treaty R shall be amended as set out below:

From Article IV, the sentence "The Reinsurers shall bear all expenses of whatever nature which would otherwise have been claimed or requested from the Reassured by the Agent during the run off period." shall be deleted and replaced by "the Reinsurers shall bear all expenses as expressly set out in the Agreement dated the 6th day of February 2006 between the Reinsurers and the Reinsured".

Article VI shall be deleted and replaced by "For the purposes of this agreement Reinsurers shall be deemed to have received notice of all the Reassured's claims which are reinsured hereunder insofar as those losses are notified to the Reinsurers and or their agents. In respect of all other claims which are reinsured hereunder, the Reassured shall notify the Reinsurers and/or their agents of the same promptly upon the Reassured's learning thereof."

The final page of Treaty R in which the Rutty Agency acknowledge and commit themselves to certain obligations shall be deleted and it is understood and agreed by the parties that the provisions set out in this Agreement relating to the administration of Württembergische's share of the Rutty Pool shall apply.

5 The Agency Agreements whether construed alone or together with Treaty R and this Agreement shall give rise to no rights against and no obligations on the part of Home.

6 Nothing in this Agreement is intended or shall be construed to create obligations or duties directly or indirectly from Home to Policyholders.

7 Save as such obligations, duties, rights or causes of action are set out in this Agreement and in Treaty R (as amended by this Agreement) Home and Württembergische

(1) have no obligations and owe no duties whatsoever to the other party; and

(2) have no rights or causes of action whatsoever against the other party,

arising out of or in connection with or under Treaty R (in its original form) or the Agency Agreements or the ISA.

8 Home acknowledges that Treaty R is valid and binding and waives without exception and to the greatest extent allowed by law all rights to avoid Treaty R.

9 In respect of Württembergische's Policy Liability:

9.1 Where the Ruty Agency used a pool underwriting stamp to subscribe Württembergische to a Type 1 Policy and Württembergische's signed line, as a proportion of the aggregate signed lines of the Ruty Pool, is equal to Württembergische's Fixed Pool Share, Home shall indemnify Württembergische pursuant to Treaty R (as amended), in respect of Württembergische's signed line.

9.2 Where the Ruty Agency used a pool underwriting stamp to subscribe Württembergische to a Type 1 Policy but Württembergische's signed line, as a proportion of the aggregate signed lines of the Ruty Pool, differs from Württembergische's Fixed Pool Share (other than by reason of Württembergische acting as a fronter for other Ruty Pool members, in which case Clause 9.3 applies), Home shall indemnify Württembergische pursuant to Treaty R (as amended) in respect of Wurttembergische's signed line as if Württembergische's signed line had been adjusted to be equal to its Fixed Pool Share.

9.3 Where the Ruty Agency subscribed Württembergische to a Type 1 Policy in excess of Württembergische's Fixed Pool Share for Württembergische's own Fixed Pool Share participation and as a fronter for other Ruty Pool members (whether for 100% of the risk or for less than 100% of the risk) Home shall indemnify Württembergische pursuant to Treaty R (as amended) in respect of (and only in respect of) Württembergische's Fixed Pool Share.

9.4 Where a Ruty Pool risk has been fronted for the Ruty Pool (whether for 100% of the risk or for less than 100% of the risk) by a Ruty Pool member(s) other than Württembergische and Württembergische is liable to indemnify that

other Rutty Pool member(s) pursuant to a Type 2 Policy, Home shall indemnify Württembergische pursuant to Treaty R (as amended) in respect of (and only in respect of) Württembergische's Fixed Pool Share.

- 10 Without prejudice to the decision in Württembergische v The Home Insurance Co [1999] Lloyds Rep IR 397 and for the avoidance of doubt it is noted that Home does not reinsure Württembergische and Home has no liability whatsoever, in respect of or arising directly or indirectly out of the insolvency of any member of the Rutty Pool whether under the ISA or otherwise howsoever.
- 11 Home agrees to waive its rights to seek damages against Württembergische (which rights are denied by Württembergische) for the alleged mishandling of the billing and collection of the Rutty Pool reinsurances by the Rutty Agency before 1996 and Württembergische agrees to waive the right to seek damages from Home and AISUK arising from the alleged mishandling (which is denied by Home and AISUK) of the billing and collection of the Rutty Pool reinsurances by Home and/or AISUK since 1996 to the date of this Agreement.

ARRANGEMENTS FOR THE ADMINISTRATION OF WÜRTEMBERGISCHE'S RUTTY POOL INVOLVEMENT

- 12 Fee
 - 12.1 Within 21 days of the date when this Agreement becomes of binding legal effect under Clause 3 hereof Württembergische shall pay £15,000 (in cash without set off or diminution thereof) to Home's account the details of which are in Appendix 6.
 - 12.2 Interest shall accrue in favour of Home at the rate of 5% per annum in respect of any part of the sum due under 12.1 above which remains unpaid at the date upon which it falls due (being the end of the 21 days referred to in clause 12.1).

13 Home Administration of Claims

13.1 In the name and with the authority (which is hereby granted and/or confirmed) of Württembergische, Home shall have the sole right to and will, with reasonable skill and care, either itself or through AISUK (but not through any other party, without the permission of Württembergische, such permission not to be unreasonably withheld) investigate and adjust and admit, refute, compromise or agree liability for Claims.

13.1.1 Where Home in its discretion, exercised prudently, considers it proper to do so and with the authority (which is hereby granted and/or confirmed) of Württembergische, Home will, either itself or through AISUK (but not through any other party, without the permission of Württembergische, such permission not to be unreasonably withheld), have the sole right to and will, with reasonable skill and care, contest Claims and appoint lawyers, adjusters, experts and other third parties in Württembergische's name for the purpose of contesting such Claims.

13.1.2 Home shall ensure that such personnel are made available as are reasonably necessary to perform effectively the management, administration and service obligations required by this Clause 13.1.

13.1.3 For the purposes of this Clause 13.1, in respect of Claims which are the subject of proceedings or threatened proceedings in a US court or US arbitration tribunal of competent jurisdiction and where Württembergische is part of the following market, and without prejudice to the generality of Home's powers to settle and compromise claims or agree liability under 13.1 above, Home may settle the Claims by entering into a buy-back of the Policy where the buy-back is recommended as part of a market settlement of the Claims by the attorneys appointed to represent the following market in respect of the Claims.

13.1.4 For the avoidance of doubt, other than claims made pursuant to the ISA, this Clause 13.1 shall apply to Claims made under Type 2 Policies by a Policyholder which is a Ruddy Pool member other than Württembergische

where the Policy arises by reason of the Policyholder fronting a Ruddy Pool risk (whether for 100% of the risk or for less than 100% of the risk).

- 13.2 In all circumstances other than as provided for by Clause 13.1.3, Home (either itself or through AISUK) and Württembergische will notify the other party before entering into a commutation with a Policyholder and Home and Württembergische will not enter into any commutation without first so notifying the other party. (For the purposes of this Clause 13.2 it is understood that the term "commutation" shall include any commutation, buy-back or similar arrangement.)
- 13.2.1 Should the other party request the same within 28 days of that party receiving such a notification, the parties agree to arrange for a certificate as to the reasonableness of the proposed commutation from an independent actuary (the identity of whom will be agreed by both Home and Württembergische) the cost of which will be shared equally by Home and Württembergische.
- 13.2.2 If the parties cannot agree upon the appointment of an independent actuary, the independent actuary shall be appointed by the President of the Institute of Actuaries (of England and Wales).
- 13.2.3 Home and Württembergische agree to be bound by the independent actuary's findings and for the avoidance of doubt, in such circumstances, neither party will enter into a commutation where it has not obtained a certificate as to the reasonableness of the proposed commutation pursuant to 13.2.1.
- 13.3 Home will be responsible for the usual costs (including internal costs and the costs of AISUK) and salaries associated with its obligations under Clause 13.1.
- 13.4 Provided always that such Policy Expenses do not arise by any litigation caused by delay, failure or omission of Württembergische, and solely in respect of Policy Expenses which arise out of Claims advanced in any jurisdiction other than the USA:

13.4.1 Home will in the first instance advance all Policy Expenses including that part of the Policy Expenses which exceeds Württembergische's Fixed Pool Share of the Policy Expenses in respect of a particular Policy;

13.4.2 Württembergische shall then reimburse to Home that part of the Policy Expenses which exceeds Württembergische's Fixed Pool Share;

13.4.3 Provided that in the event that and to the extent that Home successfully recovers any Policy Expenses from the Policyholder, Home shall (1) deduct from the amount so recovered (a) those Policy Expenses which exceed Württembergische's Fixed Pool Share for which Württembergische has not reimbursed Home, and (b) any and all fees and expenses incurred by Home in obtaining such recovery and (2) pay over a pro rata share of the balance of such recovery to Württembergische (pro rated on the basis of the parties' proportional liabilities for the Policy Expenses calculated in accordance with Württembergische's Fixed Pool Share as against its fronted liability).

13.5 In respect solely of Policy Expenses which arise out of Claims advanced in the USA:

13.5.1 Württembergische will in the first instance pay all such Policy Expenses;

13.5.2 Home shall then reimburse Württembergische in an amount equal to Württembergische's Fixed Pool Share of such Policy Expenses;

13.5.3 Provided that in the event and to the extent that Württembergische successfully recovers the Policy Expenses from the Policyholder, Württembergische shall (1) deduct from the amount recovered any and all fees and expenses incurred by Württembergische in obtaining such recovery and (2) pay over a pro rata share of the balance of such recovery to Home (pro rated on the basis of the parties' proportional liabilities for the Policy Expenses calculated in accordance with Württembergische's Fixed Pool Share as against its fronted liability).

13.6 Württembergische will indemnify Home against any liability for Extra Contractual Obligations and related expenses which arise in connection with

Home's administration of Württembergische's participation in the Ruddy Pool and which arise due to action, inaction, delay, failure or omission of Württembergische or its agents or representatives (which, for the avoidance of doubt, do not include Home or AISUK (or any of their agents)).

- 13.7 Home will indemnify Württembergische against any liability for Extra Contractual Obligations and related expenses which arise due to action, inaction, delay, failure or omission of Home or AISUK or their agents or representatives with respect to Home's obligations under this Agreement.
- 13.8 Home will bear all LMCS Fees payable by Württembergische.
- 13.9 Home agrees that Home's obligations under Clauses 13.2.1, 13.3, 13.4, 13.5, 13.7, 13.8 and 19.2.1 hereof will have administrative expense priority pursuant to the law of New Hampshire, USA. in particular N.H. RSA 402-C:44,I.

14 Provision of Information to Württembergische

- 14.1 Home will, within 21 days of the relevant Claim being adjusted, either itself or through AISUK, advise Württembergische of adjusted claims and will provide Württembergische with pertinent information and documentation to distinguish so far as is possible between Policy Liabilities, Coverage Costs, Policyholders' Expenses, underwriting years and such other information which is necessary;
 - 14.1.1 for Württembergische to administer, account, settle and pay its Policy Liabilities and (in accordance with Clauses 13.4 and 13.5 above) its Policy Expenses, (examples of which appear in Appendix 9) including such information as Home receives from or on behalf of Policyholders which enables Württembergische to maintain and reconcile its accounts with brokers and/or Policyholders and its reserves for notified outstanding losses;
 - 14.1.2 for Württembergische to administer the billing and collection of sums due from other Ruddy Pool members; and
 - 14.1.3 for the determination of claims in Home's estate.

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14.2 Every quarter Home will render Ruddy Pool account reports to Württembergische in the format and containing the information set out in Appendix 7 hereto;

14.3 Every year Home will render a summary annual pool account report to Württembergische in the format and containing the information set out in Appendix 8 hereto.

15 Württembergische's Proof of Claim

15.1 Württembergische agrees that Home's obligations to make any payment to Württembergische pursuant to Clauses 13.2.1, 13.4, 13.5, 13.7, 13.8 and 19.2.1 shall, be deemed to be included within Württembergische's Proof of Claim in Home's estate and Home agrees to do all things necessary to have such obligations admitted into Home's estate for the purposes set forth in 13.9.

15.2 With respect to Claims which, pursuant to 13.1, have been adjusted by AISUK and for which Württembergische's Policy Liability has been established pursuant to 13.1, Württembergische hereby agrees that:

15.2.1 Home acknowledges that AISUK shall effect submission of periodic quarterly accounts to Home on Württembergische's behalf in respect of Home's share of Württembergische's Policy Liabilities for the purposes of the determination and admission of such claims in and to Home's estate;

15.2.2 Upon submission of the quarterly accounts under Clause 15.2.1 above, Home's share of Württembergische's Policy Liabilities within the relevant quarterly account shall automatically be deemed to form part of Württembergische's Proof of Claim submitted in Home's estate and shall immediately be capable of determination and admission in and to such estate.

16 Intra Ruddy Pool Claims

16.1 Württembergische will retain and shall have the sole entitlement and authorisation at its own cost to administer the billing and collection of:

- 16.1.1 Sums due to Württembergische from other Ruddy Pool members in respect of risks where Württembergische has fronted for those Ruddy Pool members' share of the Ruddy Pool risk (whether for 100% of the risk or for less than 100% of the risk); and
- 16.1.2 Sums due to Württembergische from other Ruddy Pool members pursuant to the ISA; and
- 16.2 Württembergische will (and shall have the sole entitlement and authorisation to) at its own cost administer and settle claims made by other Ruddy Pool members pursuant to the ISA.

17 Exceptional Work by Home/AISUK

- 17.1 Württembergische agrees to pay and/or reimburse Home's reasonable costs and expenses for exceptional work undertaken which is outside the services and obligations provided for in Treaty R (as amended) and this Agreement (but such work is only to be undertaken by Home with Württembergische's express written agreement).
- 17.1.1 It is noted (but without creating any obligations hereunder on the part of Home or AISUK) that AISUK will carry out any such exceptional work as referred to in 17.1 and that AISUK will charge upon a reasonable hourly fee basis.

18 Reimbursement of funded balances

- 18.1 In full and final settlement of all claims which Home may have for sums in excess of Württembergische's Fixed Pool Share (to the extent that such balances relate to Württembergische's liabilities under the ISA) that Home has funded on behalf of Württembergische, Württembergische agrees to pay the Reimbursement Amount in accordance with Clauses 18.3 and 18.4.
- 18.2 Promptly upon the condition precedent to this Agreement being fulfilled the Parties shall take all necessary steps to establish the Reimbursement Trust Account. The Reimbursement Trust Account shall be established at the Bank with a mandate to the Bank requiring the signatures of at least one "A" signatory and one "B" signatory for each and every instruction to the Bank.

The "A" signatories shall be between 2 and 5 in number and shall be appointed by Württembergische and may be replaced by Württembergische from time to time by resolution of the Board of Württembergische (copied to the Bank and to Home) and the "B" signatories shall be between 2 and 5 in number and shall be appointed by Home and may be replaced by Home from time to time by notice from either of Jonathan Rosen or Peter Bengelsdorf (copied to the Bank and Württembergische).

- 18.3 Within 21 days of the date when the condition precedent to this Agreement is fulfilled (or, if later, within 7 days of the later of the completion of all formalities for the opening of the Reimbursement Trust Account and the agreement by the Parties of the amount of the Reimbursement Amount), Württembergische shall pay the Reimbursement Amount into the Reimbursement Trust Account. Thereafter, Württembergische shall report to Home no less frequently than every 6 months until termination of the trust in accordance with 18.6 hereof, on the status of the Reimbursement Trust Account, with details of balances, credits, debits, accrued interest and charges if any.
- 18.4 Before paying the Reimbursement Amount into the Reimbursement Trust Account Württembergische shall be entitled to set off against the Reimbursement Amount any Policy Liability which in either case is approved by the Court as due to Württembergische from Home under or in pursuance of this Agreement and Treaty R (as amended by this Agreement) and the amount Württembergische shall pay into the Reimbursement Trust Account shall be reduced accordingly.
- 18.5 All sums from time to time standing to the credit of the Reimbursement Trust Account shall be held on trust for disbursement on the bases set out in this clause 18.5 and the Parties shall take all necessary steps as are reasonably within their power to procure that their respective signatories to the Reimbursement Trust Account shall cooperate to issue appropriate instructions to the Bank so that sums are disbursed from the Reimbursement Trust Account as follows:

- 18.5.1 within 21 days of the end of each calendar quarter, whilst any sum stands to the credit of the Reimbursement Trust Account, all interest standing to the credit of the Reimbursement Trust Account (after deducting any bank charges imposed by the Bank in relation to the running of the Reimbursement Trust Account) shall be dispersed to Home;
- 18.5.2 within 21 days of the end of each calendar quarter whilst any sum stands to the credit of the Reimbursement Trust Account and where Württembergische's claims for Policy Liabilities have been admitted by the Court, Württembergische shall be paid from the Reimbursement Trust Account (to the extent there are funds other than accrued interest in the Reimbursement Trust Account) a sum equivalent to the total of those admitted claims;
- 18.5.3 in accordance with the provisions of Clause 18.6 below upon termination of the trusts set out in this Clause 18.
- 18.6 The trusts of the Reimbursement Trust Account shall end (subject to the remaining funds held to the credit of the Reimbursement Trust Account being dispersed in accordance with the requirements of this clause 18.6) on the first to occur of the following events:
- 18.6.1 the termination of this Agreement in accordance with the provisions of clause 20 below, in which case Württembergische shall be entitled to receive an amount equal to any Policy Liabilities established prior to the date of such termination which have not been reimbursed from the Reimbursement Trust Account at the date of such termination (to the extent there are funds other than accrued interest in the Reimbursement Trust Account) and any balance remaining in the Reimbursement Trust Account after such payment shall be paid to Home;
- 18.6.2 the capital balance standing to the credit of the Reimbursement Trust Account falling to zero in which case any accrued interest shall be paid to Home;
- 18.6.3 Württembergische acknowledging that it no longer has any actual or contingent Policy Liabilities which might fall for reimbursement in accordance with the terms of this Clause 18, in which case the balance standing to the credit of the

Reimbursement Trust Account shall be paid, along with all accrued interest, to Home;

18.6.4 The Home estate being wound up by order of the Court in which case all sums standing to the credit of the Reimbursement Trust Account shall be paid to Württembergische;

18.6.5 Württembergische being dissolved in which case all sums standing to the credit of the Reimbursement Trust Account shall be paid to Home;

18.6.6 The day which falls 15 years from the date of this Agreement in which case all sums standing to the credit of the Reimbursement Trust Account shall be paid to Home.

18.7 Upon disbursement of the balance of the Reimbursement Trust Account in accordance with the provisions of Clause 18.6 the Reimbursement Trust Account shall be closed.

19 Ruddy Pool Reinsurers Collections

19.1 Unless and until Treaty R is terminated (and save as set out in Clause 16 hereof) Württembergische acknowledges that at Home's expense:

19.1.1 Home has the sole entitlement and authorisation in Württembergische's name to bill and collect and retain all sums otherwise due to Württembergische from reinsurers of Ruddy Pool members (whether for "common account" or otherwise) and all other income otherwise due to Württembergische and Home pursuant to Article IV of Treaty R;

19.1.2 Home has the sole entitlement and authorisation in Württembergische's name to sue and defend all forms of legal proceedings brought by or against reinsurers of the members of the Ruddy Pool and (subject to Clause 19.2) to enter into all kinds of arrangements with reinsurers and other debtors of Ruddy Pool members pursuant to Article IV of Treaty R including compromise of claims and compromise or commutations or buy-backs of policies, and to take steps in relation to liquidation proceedings, schemes of arrangement, and

similar proceedings for the purpose of collecting sums from such reinsurers and debtors.

- 19.1.3 Home shall, either itself or through AISUK keep Württembergische fully informed of such steps which it takes outside the normal course of collecting reinsurance assets pursuant to Clause 19.1.2.
- 19.2 Home, either itself or through AISUK, will notify Württembergische before Home enters into a commutation with a reinsurer of the Ruddy Pool and Home will not enter into any commutation without first so notifying Württembergische. (For the purposes of this Clause 19.2 it is understood that the term commutation shall include any commutation, buy-back or other similar arrangement.)
- 19.2.1 Should Württembergische request the same within 28 days of Württembergische receiving such a notification, Home agrees to arrange for a certificate as to the reasonableness of the proposed commutation from an independent actuary (the identity of whom will be agreed by both Home and Württembergische) the cost of which will be shared equally by Home and Württembergische.
- 19.2.2 If the parties cannot agree upon the appointment of an independent actuary, the independent actuary shall be appointed by the President of the Institute of Actuaries (of England and Wales).
- 19.2.3 Home and Württembergische agree to be bound by the independent actuary's findings and for the avoidance of doubt, in such circumstances, Home will not enter into a commutation where it has not obtained a certificate as to the reasonableness of the proposed commutation pursuant to Clause 19.2.1.
- 19.3 Home shall be entitled absolutely to all receipts pursuant to Clause 19.1. Should Home actually receive any cash payments from a Ruddy Pool reinsurer in excess of the paid claims and outstanding loss reserves notified to that reinsurer, as part of a commutation agreement or scheme of arrangement or other settlement, then in respect of such cash payment which is in excess of the paid claims and notified outstanding loss reserves:

- 19.3.1 Home will notify Württembergische of such receipt; and
- 19.3.2 Home shall have the right to deduct and retain from that amount a 5% service fee by way of remuneration for Home's obligations hereunder; and
- 19.3.3 Home shall pay the remaining 95% of such receipt into the IBNR Account.
- 19.3.4 Home shall keep a record of the claims which would, but for the commutation agreement, or scheme of arrangement of other settlement, have been billed to the relevant reinsurer, and once the total of such claims exceeds the balance of the amounts paid to Home pursuant to Clause 19.1 hereof which is not paid into the IBNR Account, then provided that Württembergische has submitted the corresponding claims under Treaty R to Home and Home admits liability to Württembergische in respect thereof, Home shall be entitled to withdraw the corresponding reinsurance sum from the IBNR Account (until it is exhausted) and Württembergische will forthwith supply all instruments and consents necessary to effect such a transaction.
- 19.3.5 For the purposes of calculating the claims which would, but for the commutation agreement, have been billed to the commuting reinsurer under Clause 19.3.4, the Parties shall treat all such amounts paid to Policyholders (by way of commutation, policy buy-back or otherwise) as if they were paid claims pursuant to the terms of the relevant Policy.
- 19.3.6 Notwithstanding the provisions of Clause 19.3.4 and Clause 19.3.5, in the event that (a) Württembergische relinquishes in writing its claim to the proceeds then remaining in the IBNR Account; or (b) Württembergische notifies Home in writing that it has elected not to terminate Treaty R, or (c) Württembergische is no longer entitled to terminate Treaty R pursuant to Clause 20, then Home shall be entitled to withdraw and retain in full the balance in the IBNR Account and Württembergische will forthwith supply all instruments and consents necessary to effect such a transaction.
- 19.4 Should Home effect a recovery of any sum from a reinsurer of the Ruddy Pool which has been subject to a setoff relating to an undisputed claim by that reinsurer against Württembergische then Home will notify Württembergische of

this whereupon Württembergische will pay Home without diminution, set off or other deduction the cash equivalent of the amount which was subject to such setoff and will notify AISUK, on behalf of Home, of such payment. For the purposes of Clause 19.3 any sums received by Home from Württembergische pursuant to this Clause 19.4 shall be deemed to have been received from the Ruddy Pool reinsurer in question and the sum shall be treated in accordance with Clause 19.3.

19.5 Alternatively, where Home fails to recover any sum due from a reinsurer of the Ruddy Pool because of a valid setoff by the reinsurer against a claim against Home then Home will recognise a corresponding claim against its estate, equal to the amount by which the setoff reduces the IBNR portion of that sum due from the reinsurer of the Ruddy Pool and Home will pay that amount into the IBNR Account whereupon it will be treated in accordance with Clause 19.3 hereof.

19.5.1 If such a reinsurer should attempt to effect an invalid set off, Home will either (at its own expense) contest such a purported set off to determine, either judicially or through arbitration, its invalidity (with such determination being final and binding upon the Parties) or, alternatively, at its election, will accede to such a purported set off and will pay into the IBNR Account an amount equal to the sum which was allegedly invalidly set off.

20 Termination of Treaty R and this Agreement

20.1 It is agreed that Württembergische may terminate Treaty R (as amended) and this Agreement and withdraw its proof of claim filings within 90 days (or, in the case of Clause 20.1.2, Württembergische becoming aware) of either of the following circumstances:

20.1.1 A scheme of arrangement in respect of the Home's AFIA business is not implemented by the Scheme Deadline Date; or

20.1.2 A scheme of arrangement implemented in respect of Home's AFIA business before the Scheme Deadline Date is required to be unwound by reason of the

scheme of arrangement being refused final approval by a court of competent jurisdiction.

- 20.2 At any time prior to the Scheme Deadline Date (including where Württembergische has previously changed the Scheme Deadline Date pursuant to this clause), Württembergische may change the Scheme Deadline Date to a later date by giving written notice to Home.
- 20.3 In the event that Treaty R (as amended) and this Agreement are terminated, including pursuant to Clause 20.1:
- 20.3.1 Württembergische shall be entitled to all sums remaining in the IBNR Account, including any accrued interest thereon, which are not otherwise due to Home. The sums remaining in the Reimbursement Trust Account shall be dealt with in accordance with Clause 18.6.1 above.
- 20.3.2 Home's accrued entitlement to sums due to it, including under Clauses 12, 13.4, 13.5, 13.6, 17.1 of this Agreement at the time that termination of Treaty R and this Agreement is effective shall survive and Württembergische shall be liable in respect thereof.
- 20.3.3 Württembergische's accrued entitlement to sums due to it including under Clauses 13.3, 13.4, 13.5, 13.7, 13.8 of this Agreement at the time that termination of Treaty R and this Agreement is effective shall survive and Home shall be liable in respect thereof.
- 20.3.4 Notwithstanding the termination of Treaty R and this Agreement, the rights and obligations of the parties as set out in Clauses 18, 20-32 of this Agreement shall survive.
- 20.3.5 At the time that termination of Treaty R and this Agreement is effective Clause 15 of this Agreement shall be of no further force or effect.

21 **Inspection Provision**

- 21.1 Each Party shall to the extent reasonable, and upon giving no less than 14 days notice, be entitled to inspect (and at that Party's own expense take copies of)

the books, records, and correspondence of the other Party (including, for the avoidance of doubt the books, records and correspondence held by the agents of that Party (which in the case of Home shall include AISUK)) relating to their management of the run-off of the M. E. Ruddy Underwriting Agency Ltd book of business insofar as they relate to Württembergische's participations in Policies or reinsurances of Württembergische. The rights set forth in this 21.1 shall survive termination of Treaty R and/or this Agreement.

DISCONTINUANCE OF THE ARBITRATION PROCEEDINGS

- 22 In furtherance of this Agreement and in full and final settlement of the Arbitration Proceedings, it is agreed that:
- 22.1 Each party shall withdraw and abandon all its claims in the Arbitration Proceedings;
- 22.2 Each party shall bear its own costs of the arbitration and the costs of its appointed arbitrator; and
- 22.3 The Parties shall cooperate to discontinue the Arbitration Proceedings, with no order as to costs.

MISCELLANEOUS PROVISIONS

- 23 Home agrees that pending the implementation of any scheme of arrangement, any sums recovered from the AFIA Reinsurers or the Guarantor (as those terms are defined in the proposed draft scheme of arrangement for Home's AFIA business dated 23 July, 2004) that would otherwise fall to constitute a part of and be paid into the proposed scheme of arrangement in respect of Home's AFIA business shall be held by Home's provisional liquidators in England and Wales and Home agrees that, pending the implementation of any scheme of arrangement, the sums so recovered will not fall for distribution as part of the liquidation of Home in New Hampshire, USA.
- 24 This Agreement shall be binding upon and shall benefit the Parties as well as their successors, subsidiaries and assigns. The Parties do not intend that any term of this Agreement should be enforceable by any person who is not a party

to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

25 It is acknowledged that the liquidator and provisional liquidators of Home and their respective advisers, servants, employees and agents shall incur no personal liability whatsoever under this Agreement nor any document entered into pursuant to or in connection with it.

26 This Agreement and Treaty R (as amended by this Agreement) shall constitute the entire agreement between the Parties relating to the subject matter hereof and this Agreement and Treaty R (as amended by this Agreement) may not be amended, except by written amendment executed by each of the Parties.

27 The Parties to this Agreement shall not attempt to re-open or set it aside in the future on the grounds that it becomes aware of any mistake of law (including any such mistake arising out of a subsequent change of law) or mistake of fact relating to this Agreement or the subject matter hereof.

28 The validity of this Agreement shall be in no way conditional upon the entering into or (other than Treaty R) the validity of any other agreement by the Parties hereto.

29 Each of the Parties represents that it has had full opportunity to consult its respective legal advisers in connection with the review of this Agreement, that it has carefully read and understands the scope and effect of each provision contained in this Agreement, and that it is not relying upon any representations made by any of the Parties, their legal advisors or any other representative.

30 The terms of this Agreement shall be confidential to the Parties, save for:

30.1 Disclosure as a result of any court order, legal obligation, regulation or accounting procedure or lawful discovery procedure; and/or

30.2 Disclosure to legal representatives, auditors, shareholders, governmental authorities, regulators and retrocessionaires; and/or

- 30.3 Disclosure to any other person with the prior written consent of the other party, such consent not to be unreasonably withheld; and/or
- 30.4 Disclosure to a court of competent jurisdiction (including, for the avoidance of doubt, the Court).
- 31 The Parties represent and warrant that they have the necessary power and specific authority to enter into this Agreement.

JURISDICTION AND CHOICE OF LAW

- 32 Should any further dispute arise relating to Treaty R (as amended) or this Agreement it shall be subject to the jurisdiction of the High Court of Justice in London and will be subject to English law.

Stuttgart, 26. Jan. 2006

SIGNED BY EACH OF THE PARTIES as of the date of this Agreement by their
 duly authorized representatives

Württembergische Versicherung AG
 im Auftrag der
 Wüstenrot & Württembergische AG

For and on behalf of WÜSTENROT & WÜRTEMBERGISCHE AG

By: *MC*

By: *i. V. A. Danyi*

Name: *Michael Gollhofer*

Name: *Alexander Danyi*

Position: *Abteilungsleiter*

Position: *Handlungsbewollmächtigter*

For and on behalf of THE HOME INSURANCE COMPANY (in provisional liquidation in England and Wales and in liquidation in the State of New Hampshire)

By: *Gareth Hughes*

By: *Peter Beugelsdorf*

Name: *GARETH HOWARD HUGHES*

Name: *Peter Beugelsdorf*

Position: *JOINT PROVISIONAL LIQUIDATOR*

Position: *Special Deputy Liquidator*

HFWLDN\3013602-2

**WÜSTENROT & WÜRTTEMBERGISCHE
AG**

v.

THE HOME INSURANCE COMPANY

**APPENDIX 1
TO SETTLEMENT AGREEMENT**

HFWLDN\3013306-1

NICHTIG

Original on
H. Harzog
(Rutty)
abgeleitet

12

REINSURANCE CONTRACT NO. R

made between

WÜRTTEMBERGISCHE FEUERVERSICHERUNG A.G. of
Johannesstrasse 1 - 7, Stuttgart, West Germany
(hereinafter referred to as the "Reassured")

As underwritten for Württembergische Feuerversicherung A.G. by

M. E. RUTTY UNDERWRITING AGENCIES LTD. of

5 - 7 Ireland Yard, London EC4

(hereinafter referred to as the "Agent")

and

HOME INSURANCE COMPANY of New York

acting through its branch office at

26/28 Fenchurch Street, London, EC3

(hereinafter referred to as the "Reinsurers")

RECITALS

- (1) Whereas under agreements dated 1st January 1964 and 6th January 1967, between the Agent and the Reassured, the Agent accepted insurance and reinsurance business on behalf of the Reassured for the underwriting years 1964, 1965, 1966 and 1967 and
- (2) WHEREAS the Agents ceased to write new business after 31st January 1967
- (3) WHEREAS the Reassured desire to effect reinsurance in respect of their liability under any and/or all policies and/or contracts of insurance and/or reinsurance written by the Agent on their behalf (hereinafter referred to as the "Original Policies") and
- (4) WHEREAS the Reinsurers having had full disclosure and inspection of the Agent's records and accounts relating to the Original Policies and all claims and outstanding matters thereunder have agreed to afford such reinsurance to the Reassured in accordance with the terms and conditions of this Contract, NOW it is hereby agreed as

22.11.67
A. Rutty
abgeleitet

ARTICLE I

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

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

ARTICLE II

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

ARTICLE III

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

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

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

1) NUCLEAR INCIDENT EXCLUSION CLAUSES - LIABILITY -
REINSURANCE - U.S.A./CANADA.

11) NUCLEAR INCIDENT EXCLUSION CLAUSES - PHYSICAL DAMAGE -
REINSURANCE - U.S.A./CANADA.

b) Life, Financial Guarantee and Insolvency Risks.

c) Furthermore, it is understood and agreed that:

1) As regards Non-Marine business accepted by the Reassured
this Contract shall exclude loss or damage directly caused
by War and/or Civil War but this exclusion shall not
apply to such business which is permitted under the terms
of the United Kingdom Market War and/or Civil War Risks
Exclusion Agreement.

11) As regards Marine and Aviation business accepted by the
Reassured this Contract shall include loss, damage, liability
or expense caused by or resulting from the risks of War or
similar risks written by war risk Underwriters, as covered
in the Original Policy(ies) provided that such loss,
damage, liability or expense would be recoverable under the
terms and conditions of the relevant Institute War and
Strikes Clauses or War sections of the relevant Institute
War and Strikes Clauses or relevant London Aviation Clause
~~in current use~~ at the inception of this Contract or at the
time when the War Risks cover would have commenced under
the original Insurance or Reinsurance within the terms of
clauses, whichever is the earlier; except that if the risks
of War are covered in the Original Policy(ies) under other

approved by the London Hull War Risks Joint Sub-Committee,
or in respect of Cargo interest under the Standard War
Risks Clause of any country which complies with the
limitation of the United Kingdom Waterborne Agreement,
the foregoing proviso shall not apply.

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

ARTICLE IV

The Consideration to be paid by the Reassured to the Reinsurers for
this Contract shall be £114,782.00 plus U.S.\$362,197 plus Can\$6,648.00,
payable at inception.

to be sitting and revolving fund
£ 6,994 \$ 64,602

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

ARTICLE V

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

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

ARTICLE VI

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

ARTICLE VII

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

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

ARTICLE VIII

The Reinsurers and/or their nominees shall at all reasonable times be entitled to inspect all books, relevant records, correspondence, documents and vouchers in the possession of or accessible to the Agent, and in all

any connected with the settlement of a loss applying to this Agreement, it being understood that the Agent or the Reassured, cannot be called upon to supply documentary evidence other than that which they themselves have received.

ARTICLE IX

Should the Reinsurers

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

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

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

ARTICLE X

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

ARTICLE XI

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

ARTICLE XII

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

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

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

ARTICLE XIII

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

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

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

(4) Unless the parties otherwise agree, the arbitration tribunal shall consist of persons employed or engaged in a senior position in insurance or reinsurance underwriting.

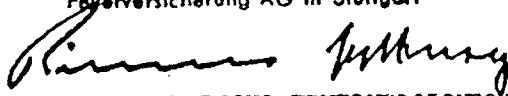
(5) The arbitration tribunal shall have power to fix all procedural rules for the holding of the arbitration including discretionary power to make orders as to any matters which it may consider proper in the circumstances of the case with regard to pleadings, discovery, inspection of documents, examination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

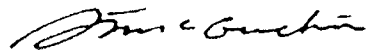
for the time being of Lloyd's or the Institute of London Underwriters.

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

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

Württembergische
Feuerversicherung AG in Stuttgart

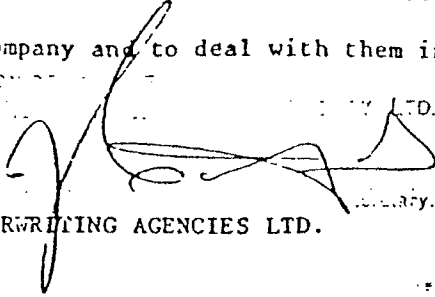

Signed: WURTTENBERGISCHE FEUERVERSICHERUNG A.G. Stuttgart, 15th April, 1977



HOME INSURANCE COMPANY

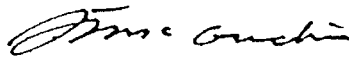
We acknowledge that we are fully aware of and (having been so requested by the Reassured and the Reinsurers) consent to the arrangements proposed in this Contract. We undertake to carry out the obligations under this ~~Contract~~ which fall on ourselves and to send accounts to the Home Insurance Company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

[Faint, illegible text]
M. E. RUTTY UNDERWRITING AGENCIES LTD.



Signed: M.E. RUTTY UNDERWRITING AGENCIES LTD.

We will from now on deal only with M.E. RUTTY UNDERWRITING AGENCIES LTD.



Signed: HOME INSURANCE COMPANY

**WÜSTENROT & WÜRTEMBERGISCHE
AG**

v.

THE HOME INSURANCE COMPANY

**APPENDIX 2
TO SETTLEMENT AGREEMENT**

HFWLDN\3013306-1

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

MR JUSTICE PUMFREY

The 8th day of May 2003



IN THE MATTER OF THE HOME INSURANCE COMPANY

AND

IN THE MATTER OF THE INSOLVENCY ACT 1986

MINUTE OF ORDER

UPON the Application of The Home Insurance Company ("the Company") acting by its Rehabilitator Paula Taft Rogers, as appointed by the Superior Court of the State of New Hampshire on 5 March 2003 ("the Applicant")

AND UPON HEARING Counsel for the Applicant

AND UPON READING a copy of a Petition to wind-up the Company ("the Petition") and the witness statement of Paula Taft Rogers dated 7 May 2003



AND UPON the Applicant through its Counsel undertaking *as soon as practicable*

- (i) to present the Petition for the winding-up of the Company before the Court;
- (ii) to have filed the witness statement of Paula Taft Rogers; and
- (iii) to ~~forthwith~~ issue an Ordinary Application in the form of a draft Ordinary Application presented to the Court

IT IS ORDERED THAT Gareth Howard Hughes and Margaret Elizabeth Mills both Chartered Accountants and Licensed Insolvency Practitioners of Ernst & Young LLP of Becket House, 1 Lambeth Palace Road, London SE1 7EU be appointed joint provisional liquidators of the Company (the "Joint Provisional Liquidators") and that any act required or authorised to be done by a provisional liquidator be done by either or both of the above mentioned Joint Provisional Liquidators



December 12, 2011

To the AFIA Scheme Creditors:

In September 2011, ACE approached the Liquidator expressing an interest in commuting its AFIA-related obligations to Home. The seriousness of that interest has been reinforced in subsequent conversations with ACE, leading the Liquidator to conclude that it is desirable and in the best interests of the Home estate and the Scheme Creditors to engage with ACE in its commutation initiative.

Pursuant to the Scheme, Home may enter into a commutation with ACE, "provided that, prior to such commutation" Home through its Liquidator and/or the JPLs "shall first":

- (a) "use reasonable efforts to obtain from Scheme Creditors up-to-date information" concerning the likely ultimate value of their Scheme Claims (including outstanding losses and IBNR);
- (b) "promptly consult the Scheme Administrators and the Creditors' Committee as to any such proposed commutation";
- (c) make available "all relevant documentation to the Creditors' Committee at least 5 Business Days (where practicable) prior to such consultation" and
- (d) provide notice to the Creditors' Committee in advance of any application to the New Hampshire Court to approve any such proposed commutation.

As set forth in the Explanatory Statement, "[t]he Scheme provides that, prior to entering any such arrangement, the Company must consult with the Scheme Administrators and the Creditors' Committee as to any proposed commutation and provide the Creditors' Committee with all documentation relevant to the proposed commutation."

For purposes of commencing negotiations, ACE has agreed to provide the Liquidator with its commutation proposal shortly after the close of the first quarter 2012. Consistent with the Scheme, and in order for the Liquidator to effectively assess ACE's expected commutation proposal, each Scheme Creditor is asked to provide a substantiated ultimate valuation analysis. In order to be able to timely respond to ACE's proposal, those ultimate valuation analyses are needed by no later than March 31, 2012. Please note that the valuation analyses submitted by Scheme Creditors will serve as the basis for the commutation negotiation with ACE and, as such, are likely to have a direct impact on the level at which any commutation (if agreed) is ultimately set. This will, in turn, impact the proceeds available

to make distributions to the Scheme Creditors. Accordingly, Scheme Creditors are asked to provide substantiated information at the level that would be required to prove their claim in the Scheme. The Liquidator and JPLs may request further substantiation if deemed necessary.

If Scheme Creditors provide substantiated information about their claims in the form described below by the specified deadline of March 31, 2012, it will have the added advantage of making the subsequent formal Scheme Claim submission process much easier for Scheme Creditors.

In furtherance of the above, the Liquidator seeks the following information from each Scheme Creditor:

1) **Paid/Billed Losses**

The amount of all reinsured claims in respect of which the Scheme Creditor has agreed the underlying claim with its insured or reinsured, including particulars of the claims in supporting schedule, together with an abstract indicating:

- Total Paid Losses
- Total NOD Amounts to date
- Amount of Billed Losses for which AISUK has issued Inquires
 - Amount of Time-Barred Inquiries
 - Amount of London Pollution (event-based language) Inquiries
- Amount of Paid Losses Awaiting Submission to AISUK
 - Reason, if any, for non-submission
- Total Amount of London Market Fees

2) **Case Reserves**

The undiscounted estimated amount of any claim or (where there is more than one claim) the aggregate estimated amount of any claims arising under each reinsurance contract that has been reported but not yet established (i.e. precautionary reserves), including particulars of estimates in a supporting schedule, together with an abstract indicating:

- Total of Reserves Submitted to AISUK
- Total of Reserves Not Yet Submitted to AISUK
- Reserves by Loss Type/Line of Business with breakout of submitted and non-submitted reserves, including
 - Asbestos Reserves
 - Pollution Reserves
 - Other Mass Torts
 - General Casualty Business

3) **IBNR**

The undiscounted estimated amount of IBNR arising under each reinsurance contract that is considered to have been incurred but not yet reported, including details for this estimate in a schedule, an accompanying narrative and any supporting documentation.

The Liquidator recognizes that each Scheme Creditor will support its IBNR estimate in its own way, based on the particulars of its informational resources and the ways in which it utilizes that information for its routine business needs. Nonetheless, certain maxims will increase the credibility of the IBNR presentation:

- (i) Ground-up analysis of individual asbestos and mass tort accounts is preferable to an analysis which lumps all accounts together (ground-up analysis should include details on the projection of the ultimate loss for the account, then mapped down to the Scheme Creditor's share and then mapped down to Home's share);
- (ii) Loss development factors and other actuarial parameters selected in light of the Scheme Creditor's documented experience are preferable to loss development factors simply cited from an external source, even if the actual selection is also made in light of such sources;
- (iii) It is preferable to show IBNR indications from a variety of methods, rather than relying on only one method, even if the selected IBNR is based solely on a preferred method;
- (iv) It is highly desirable to show the result of simple benchmark methods where available; in such cases it is useful to cite the source of the benchmark factors selected;
- (v) Where possible, it would significantly increase the credibility of an estimate to compare the resulting IBNR for each line of business (as a ratio to case reserves, interval paid losses, cumulative paid losses, etc.) to the analogous ratios (for similarly aged claims) for the Scheme Creditor's entire book of business, as included in published, audited financial statements;

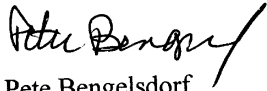
Except for asbestos, mass tort, and environmental claims, presentations based on accident year or policy year data configurations are preferable to simple calendar year data.

4) **Discount Rate Applied to Case and IBNR**

Set forth the proposed amount to be deducted from case reserves and IBNR as a discount to give a value as of March 30, 2012. The discount rate applied should be accompanied by a narrative substantiating the percentage used, the methodology employed and the survival rate utilized for each discounted line of business.

We look forward to receipt of the requested information and documentation as well as working with the Scheme Creditors in this endeavor that could be of significant economic benefit to us all.

Sincerely,



Pete Bengelsdorf
Special Deputy Liquidator

Wüstenrot & Württembergische AG, 70163 Stuttgart

Peter A. Bengelsdorf
Special Deputy Liquidator
The Home Insurance Co. i.L.
61 Broadway, 6th Floor
New York, N.Y. 10006

USA

Ihr Gesprächspartner:

Robert Bühler
TB-Rückversicherung
Telefon: +49 (0)711 662-721171
Telefax: +49 (0)711 662-821171
E-Mail: robert.buehler@ww-ag.com

13.04.2012

SUBJECT TO CONFIDENTIALITY PROVISION

**Re: The Home Scheme of Arrangement
Letter to AFIA Scheme Creditors of 12 December 2011**

Dear Pete:

This letter is in response to your request of 12 December 2011 for a substantiated ultimate valuation analysis of W&W's claims against The Home. We understand that our evaluation analysis will serve as the basis for The Home's commutation negotiation with their reinsurer ACE and that it will be treated as confidential and shared with representatives of ACE only. **Any disclosure to third parties, including other AFIA cedants, requires the prior written approval by W&W.**

Per your request, we have divided the evaluation analysis of W&W's reinsurance claims into four parts, (1.) Paid/Billed Losses, (2.) Case Reserves, (3.) IBNR load, (4.) Discount Rate Applied to Case and IBNR, and (5.) Other Assets to consider.

Please note

- That pursuant to both Reinsurance Contract "R" between The Home and W&W of 15th April 1977 and the Settlement Agreement between The Home and W&W dated 26th January 2006 The Home shall not only be liable to indemnify W&W for the fixed pool share of W&W's Ruty policy liabilities but also shall bear certain administration responsibilities of W&W as further described in said Settlement Agreement;
- That, as a result, W&W's Ruty related inwards and outwards claims are being processed (denied/calculated/admitted) by The Home with the assistance of ACE;

Besucheranschrift:
Gutenbergstraße 30
70176 Stuttgart

Vorstand: Dr. Alexander Erdland (Vors.)
Klaus Peter Frohmüller
Dr. Michael Gutjahr, Dr. Jan Martin Wicke

Sitz der Gesellschaft:
Stuttgart
AG Stuttgart HRB 20203

Internet:
www.ww-ag.de

Aufsichtsratsvorsitzender:
Hans Dietmar Sauer

Steuernummer:
99016/08199

Bankverbindung:
Landesbank Baden-Württemberg, Stuttgart
BLZ 600 501 01
Konto 7 871 502 668
IBAN DE46 6005 0101 7871 5026 68
BIC SOLA DE ST

- That, as a result, W&W's Rutty related reserves are being maintained by The Home with the assistance of ACE;
- That, because of limited access to more current data, W&W has decided to base the following analysis on the data provided by ACE as per 31 March 2012;
- That it is W&W's understanding and belief that those reserves maintained by ACE/ The Home are appropriate and do require neither downwards adjustments because of redundancies nor upwards adjustments because of known but undocumented risks, except where otherwise expressly indicated;
- That W&W's information regarding their pool share where the other Rutty Pool member Nationwide fronted is limited which is why that portion of the claim requires an upwards risk adjustment;
- That such upwards risk adjustments for unknown pool share claims of W&W where Nationwide fronted have been incorporated in and made part of the IBNR evaluation;
- That the following information on losses, reserves and IBNR is on the basis of W&W's pool share (and not at Rutty Pool level);
- That, due to the poor quality of the Rutty Pool records and W&W's limited access to such records, the IBNR calculations are on the basis of a simple benchmark method;
- That for all of W&W's Rutty Pool participations from 1964 and 1967, the same benchmark IBNR loading assumptions have been applied;
- That the Benchmark IBNR load assumptions are as follows:

Asbestos:		
	Direct	250%
	Treaty (Proportional)	350%
	Facultative	250%
	Excess of Loss (Non LMX)	350%
	Excess of Loss (True LMX)	500%
Pollution:		
	Direct	100%
	Treaty (Proportional)	100%
	Facultative	100%
	Excess of Loss (Non LMX)	100%
	Excess of Loss (True LMX)	0%
Health:		
	Direct	100%
	Treaty (Proportional)	100%
	Facultative	100%
	Excess of Loss (Non LMX)	100%
	Excess of Loss (True LMX)	100%
Attritional:		
	Direct	50%
	Treaty (Proportional)	50%
	Facultative	50%
	Excess of Loss (Non LMX)	50%
	Excess of Loss (True LMX)	50%

- That inflation risks and other unknown risks have already been considered and incorporated into the IBNR loads;
- That it is W&W's understanding that, upon commutation between The Home and ACE, The Home will return to W&W all rights and obligations owed by and among both parties pursuant to Reinsurance Contract "R";
- That the value of reinsurance assets not already collected by ACE and to be reassigned by The Home/ACE to W&W on the one hand and W&W's costs for continuing the pool administration on the other hand (including expenses for declaratory judgment and service fees) are difficult to ascertain in advance and that they could turn out to reach, more or less, the same (cost) value;
- That the foregoing cost and value analysis is on the basis that W&W would get substantial time and support as well as all documentation and electronic data which will be necessary to continue with the administration of W&W's pool responsibilities in a timely and cost effective manner;
- That W&W's rough estimate of necessary time to run-off its participation in the Ruddy Pool is seven (7) years from the time of full return of the administration responsibilities by The Home to W&W;
- That W&W's expectations regarding value of returned reinsurance assets, future costs of administration and The Home's as well as ACE's support in the taking-over of the pool administration by W&W have been made part of and included in the IBNR calculations; and
- That, regarding unpaid items "pre 2003", W&W applied the following currency exchange rates to convert foreign currencies into USD:

CAD -> USD 1,00
 GBP -> USD 1,50

In consideration of the foregoing, W&W's claim valuation analysis is as follows:

1. Paid/Billed losses

1.1. Total Paid losses

	GBP	USD	CAD
Total NOD Amounts, incl. NOD#31		2.933.901,48	
Plus Unpaid Items "Pre 2003"		178.206,45	
Reduced by set-offs	12.097,23	1.243.074,27	311,31
Total amount	-12.097,23	1.869.033,66	-311,31

Regarding the paid losses, please find attached copy of following document for your further information:

- M.E.Ruddy Pool Summary Statement of Paid Losses 1962-1967 u/w yrs 4th Qtr 1996 to 4th Qtr 2002 – Net Settled Balances (which should actually say "Agreed but Unsettled Balances")

The agreed but unsettled balances for the period up to yearend 2002 will be subject to an upcoming claims submission by W&W to The Home. It is W&W's understanding that unpaid items may be subject to time bar defenses by The Home which is why the total amount of paid losses has been provisionally adjusted downwards to

USD 1.8 Mio.

1.2. Amount of Billed Losses for which AISUK has issued inquiries

Unknown

1.3. Amount of Paid Losses awaiting Submission to AISUK

Unknown

1.4. Total Amount of London Market Fees

Unknown

2. Case Reserves

2.1. Total of Reserves maintained by The Home and ACE on behalf of W&W

	GBP	USD	CAD	AUD
Case Reserves 1st Quarter 2012	112.862	8.537.002	28.772	39.970

2.2. Other Reserves not yet submitted to AISUK

Unknown

2.3. Reserves by Loss/Type Line of Business with breakout of submitted and non-submitted reserves

	GBP	USD	CAD	AUD
2.3.1 Asbestos Reserves	72.130	4.543.637	28.747	-
2.3.2 Pollution Reserves	22.643	3.315.145	-	0
2.3.3 Health	3.520	344.687	-	-
2.3.4 Attritional	14.569	333.534	26	39.970
Total for Case Reserves	112.862	8.537.002	28.772	39.970

3. IBNR (Best Case – Average)

	GBP	USD	CAD	AUD
3.1.1 Asbestos Reserves (389%)	280.585	17.674.746	111.824	-
3.1.2 Pollution Reserves (73%)	16.529	2.420.056	-	2
3.1.3 Health (100%)	3.520	344.687	-	-
3.1.4 Attritional (50%)	7.284	166.767	13	19.985
Total IBNR loadings	307.918	20.606.256	111.837	19.987
Total Reserves & IBNR	420.780	29.143.258	140.609	59.960

4. Discount Rate Applied to Case and IBNR

As discount rate, W&W proposes a flat percentage of 1,24 (%) which is the current rate for investments in German treasury bonds. This flat percentage is without adjustments for payments to creditors/cedants within the 7-year-period. Based on the proposed discount rate, case reserves and IBNR have been multiplied by a factor of 0.91735 for purposes of calculating W&W's claims.

	GBP	USD	CAD	AUD
Discount on Reserves & IBNR	- 34.778	- 2.408.692	- 11.621	- 4.956

5. Other Assets to consider

5.1. Realised commutation on non Ruty-Pool business

An amount of USD 13.000 has to be considered in favour of The Home following an executed commutation agreement in year 2010 on Non-Ruty-Pool inwards Reinsurance contracts.

Please do not hesitate to contact us if you have any questions. Best wishes for the commutation negotiations.

Very truly yours,

Württembergische Versicherung AG
im Auftrag der
Wüstenrot & Württembergische AG


ppa. Daniel Männle

Head of Department Reinsurance



i.A. Robert Bühler

Run-off Manager

M.E. Rutty Pool
 Summary Statement of Paid Losses - 1992 - 1997, in the yrs
 4th Qtr 1998 to 4th Qtr 2002 - Net Settled Balances

Section 1		Wurttembergische	Agrippina	Nationwide	FAI	AFG	North Atlantic	Totals
Fronted Values	€	-880.30	17,434.80	8,217.91	826.88	0.00	0.00	23,699.27
	US\$	305,868.32	350,719.48	297,557.51	7,572.03	0.00	0.00	951,715.32
	CAN\$	-10.38	-17.30	-2,414.22	0.00	0.00	0.00	-2,441.60
Section 2								
Wurttembergische	€	-138.79	2,426.04	677.06	0.00	0.00	0.00	2,960.31
	US\$	49,878.61	88,709.01	36,281.82	14.45	0.00	0.00	174,184.88
	CAN\$	-1.85	-3.24	-452.67	0.00	0.00	0.00	-457.88
Agrippina	€	-205.18	3,942.59	1,441.91	231.72	0.00	0.00	5,411.03
	US\$	75,169.69	142,848.00	70,706.56	1,883.66	0.00	0.00	260,806.29
	CAN\$	-2.62	-4.66	-678.88	0.00	0.00	0.00	-686.65
Nationwide	€	-94.22	2,476.86	1,161.59	324.40	0.00	0.00	3,868.61
	US\$	30,168.55	24,775.52	84,704.21	2,727.42	0.00	0.00	122,373.70
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FAI	€	-113.06	2,704.40	1,017.61	185.37	0.00	0.00	3,784.33
	US\$	30,681.31	159,400.00	44,157.31	1,548.89	0.00	0.00	76,228.12
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	0.00
AFG	€	-103.07	1,599.15	450.98	0.00	0.00	0.00	1,947.08
	US\$	39,994.98	36,211.87	15,826.27	-62.53	0.00	0.00	92,070.60
	CAN\$	-2.27	-3.79	-528.23	0.00	0.00	0.00	-534.28
North Atlantic	€	-227.99	4,285.75	1,468.78	185.37	0.00	0.00	5,711.92
	US\$	80,174.18	58,838.45	65,781.33	1,459.88	0.00	0.00	206,251.81
	CAN\$	-3.24	-5.41	-754.44	0.00	0.00	0.00	-763.09
Total	€	-880.30	17,434.80	8,217.91	826.88	0.00	0.00	23,699.27
	US\$	305,868.32	350,719.48	297,557.51	7,572.03	0.00	0.00	951,715.32
	CAN\$	-10.38	-17.30	-2,414.22	0.00	0.00	0.00	-2,441.60
Section 3								
Reallocation of North Atlantic Share								
Wurttembergische	€	1,639.85	2,459.42	45.10	304.31	1,765.51	-4,431.73	-218.55
	US\$	252,022.44	381,176.21	5,169.71	101,072.87	194,733.55	-1,078,823.31	-144,446.53
	CAN\$	24.84	38.96	38.27	23.50	0.19	-129.22	-5.65
Agrippina	€	1,850.12	11,547.04	64.55	3,005.37	6,459.97	-32,288.27	-6,532.22
	US\$	102,398.84	1,344,942.21	151.52	489,615.90	548,896.44	-3,970,522.97	-1,484,640.65
	CAN\$	58.78	188.19	113.97	132.08	0.23	-627.58	-134.65
Nationwide	€	925.37	5,708.07	903.42	3,819.78	785.64	-19,078.68	-8,938.39
	US\$	125,781.77	978,860.85	165,382.82	620,858.23	172,870.01	-3,283,037.88	-1,200,304.37
	CAN\$	-152.28	2,220.63	-23.91	1,488.72	-582.20	-7,400.38	-4,459.40
FAI	€	0.00	88.19	0.00	45.92	3.08	-185.88	-76.76
	US\$	203.91	5,563.65	216.86	2,748.75	1,513.35	-16,581.88	-8,335.44
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	€	4,125.34	18,772.72	1,014.07	7,170.37	9,012.10	-57,862.52	-16,851.91
	US\$	480,384.97	2,708,544.72	171,000.72	1,214,295.75	918,013.35	-8,328,785.89	-2,835,626.40
	CAN\$	-68.88	2,445.77	128.03	1,844.30	-591.77	-4,157.17	-4,599.70
North Atlantic Share	€	-227.99	4,285.75	1,468.78	185.37	0.00	0.00	5,711.92
	US\$	80,174.18	58,838.45	65,781.33	1,459.88	0.00	0.00	206,251.81
	CAN\$	-3.24	-5.41	-754.44	0.00	0.00	0.00	-763.09
Section 4								
Revision of North Atlantic Share (Including reallocation of FAI's Share of ISA)								
Wurttembergische	€	1,715.18	2,572.39	45.09	304.31	1,639.62	-4,431.73	-288.47
	US\$	276,202.16	418,130.28	6,360.47	101,072.87	204,675.43	-1,078,823.31	-173,034.99
	CAN\$	30.08	45.12	38.27	23.50	0.34	-129.22	-15.42
Agrippina	€	2,292.07	12,671.69	64.55	3,005.37	6,459.97	-32,288.27	-10,318.18
	US\$	209,644.93	1,526,604.74	167.67	597,212.78	597,212.78	-3,970,522.97	-1,638,892.84
	CAN\$	72.82	239.15	113.88	132.08	0.44	-627.58	-201.52
Nationwide	€	1,853.42	7,138.43	1,777.85	3,819.78	1,372.78	-19,078.68	-8,938.39
	US\$	284,047.95	1,206,373.98	359,334.58	620,858.23	232,978.88	-3,283,037.88	-1,200,304.37
	CAN\$	191.15	2,781.11	348.04	1,488.72	-377.34	-7,400.38	-4,459.40
FAI	€	0.13	77.79	-0.01	45.92	4.48	-185.88	-107.48
	US\$	342.35	6,672.14	285.69	2,748.75	1,530.81	-16,581.88	-7,750.87
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	€	5,890.79	22,480.59	1,888.28	0.00	10,106.35	-57,862.52	-17,645.50
	US\$	750,237.39	3,157,781.12	386,168.81	0.00	1,038,695.70	-8,328,785.89	-3,017,882.87
	CAN\$	284.05	3,055.38	497.68	0.00	-378.58	-4,157.17	-4,676.33
North Atlantic Share	€	-227.99	4,285.75	1,468.78	185.37	0.00	0.00	5,711.92
	US\$	80,174.18	58,838.45	65,781.33	1,459.88	0.00	0.00	206,251.81
	CAN\$	-3.24	-5.41	-754.44	0.00	0.00	0.00	-763.09

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

2004 APR - 4 P 3: 18
SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of
The Home Insurance Company

AFFIDAVIT OF JONATHAN ROSEN

I, Jonathan Rosen, hereby depose and say:

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

2. The Liquidator of Home has filed the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents ("Motion"). Four members of the ACE group of companies, Century Indemnity Company ("Century"), ACE Property and Casualty Insurance Company ("ACE P&C"), ACE American Reinsurance Company ("AARe"), and Pacific Employers Insurance Company ("PEIC") (collectively, "ACE Companies") have submitted an objection to the Motion ("ACE Objection"). In their papers, the ACE Companies assert that they possess claims against Home for paid losses, reserves and incurred but not reported losses. However, Home also has claims (for paid losses, reserves and incurred but not reported losses) against three of the four ACE Companies, Century, ACE P&C and AARe.

3. The amounts of Home's claims against Century, ACE P&C and AARe vastly exceed the amounts of those companies' asserted claims against Home, leaving Century, ACE P&C and AARe, on any analysis, as net debtors to Home. Broken down by individual company, the claims are as follows:

	<u>Home's claims*</u>	<u>ACE asserted claims</u>	<u>Net debt to Home</u>
Century	\$234 million	\$11.9 million	\$222.1 million
AARe	\$29 million	\$233,000	\$28.77 million
ACE P&C	\$18 million	\$1.3 million	\$16.7 million

Home does not appear to have claims against PEIC, which is alleged to have claims against Home of approximately \$25,000.

4. The claims of Home against Century noted above include \$231 million of claims under the Insurance and Reinsurance Assumption Agreement entered between Home, Insurance Company of North America (“INA”) and others and dated January 31, 1984 (the “INA Agreement”). Century has succeeded to INA’s obligations under the INA Agreement, including obligations to handle claims against Home under treaties entered into by Home in connection with the American Foreign Insurance Association (“AFIA” and the “AFIA Treaties”) with entities that ceded liabilities to Home under the AFIA Treaties (the “AFIA Cedents”). The \$231 million amount is the latest reported to Home’s United Kingdom regulatory authorities by ACE INA Services U.K. Limited, a member of the ACE group of companies, which serves as the United Kingdom representative for Home’s United Kingdom Branch with respect to the AFIA Treaties by reason of the INA Agreement. Based on information provided by certain of the AFIA Cedents, however, Home believes that the \$231 million amount is significantly understated. Furthermore, the \$231 million amount (whether correct or not) is predicated on the assumption that the AFIA Cedents will assert and pursue their claims under the AFIA Treaties.

5. The INA Agreement contains an “insolvency clause,” which is included within paragraph 6 of that agreement. That clause requires INA (now Century) to pay obligations under the INA Agreement directly to Home or its Liquidator in the event of Home’s insolvency, on the basis of Home’s liability without diminution because of the insolvency or because Home’s Liquidator has failed to pay all or a portion of any claim. However, to the extent that the AFIA

* These figures include estimated case reserves and incurred but not reported losses (“IBNR”) as well as paid losses, although Home’s reserving methodology and the actuarial assumptions for the determination of IBNR is in the process of being updated and refined and the amount of Home’s claims is expected to increase.

Cedents do not file and pursue their claims under the AFIA Treaties the amounts Century will be obligated to pay to Home's Liquidator will be reduced accordingly.

6. During the summer and fall of 2003, I met with representatives of a number of the AFIA Cedents or their successors. During the meetings, certain of those representatives, including Equitas Limited ("Equitas") and Agrippina AG ("Agrippina"), informed me that they would not file or expend resources in pursuing claims in the Home liquidation where they were unlikely to receive a distribution on those claims, except to the extent they would be able to use the claims as offsets in relation to reinsurance claims Home has against them under agreements separate and distinct from Home's AFIA business. The potentially offsetting claims of the AFIA Cedents as a whole, however, constitute a relatively small percentage (presently estimated at approximately 25%) of their ultimate claims which, as noted above, have been valued in an amount of at least \$231 million.

7. During the course of my meetings, certain of the AFIA Cedent representatives, including Equitas and Agrippina, also informed me that they were considering attempting to "cut through" and deal directly with ACE in an effort to seek payment on their claims under the AFIA Treaties by going around Home's Liquidator. In particular, they said that they were exploring whether they could obtain direct rights against ACE (i.e., Century) under the INA Agreement because that agreement had contemplated that INA would assume the obligations under the AFIA Treaties through a novation, and that Home would be bypassed in the process.

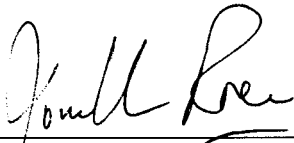
8. On September 26, 2003, Home's Liquidator and Joint Provisional Liquidators wrote to Century to express concern that attempts might be made to conduct dealings directly between Century and AFIA Cedents and advise that the Liquidator and Joint Provisional Liquidators viewed such efforts as unlawful. A copy of that letter is attached hereto as Exhibit A.

9. During the course of my meetings with AFIA Cedent representatives, including Equitas and Agrippina, they also expressed the view that assets of Home in the United Kingdom should be "walled off" for the exclusive benefit of United Kingdom creditors, such as the AFIA Cedents. While many of the AFIA Cedents are companies domiciled or with operations outside of the United Kingdom, the AFIA Treaties were, in the main, written in the United Kingdom and

are governed by English law. While Home's Liquidator and Joint Provisional Liquidators believe this position had no merit, there are Home assets in the United Kingdom. Specifically, there are reinsurance agreements entered into in the United Kingdom between Home and BAFCO Reinsurance Company Limited of Bermuda ("BAFCO") covering Home's AFIA business. BAFCO is now a member of the ACE group of companies and is presently known as Century International Reinsurance Company Limited.

10. Under the INA Agreement, Century has certain rights to participate in the determination of claims under the AFIA Treaties by Home's Liquidator. The Liquidator intends to respect those rights, and on March 5, 2004, I sent a draft letter to Thomas J. Wamser, Esq., Assistant General Counsel of ACE USA, who is an attorney responsible for the legal aspects of the ACE group's involvement in AFIA, outlining how Home's Liquidator proposes that Century participate in the claim determination process. A copy of that letter and my accompanying email is attached hereto as Exhibit B. I am awaiting a response to that letter, which Mr. Wamser has assured me is imminent.

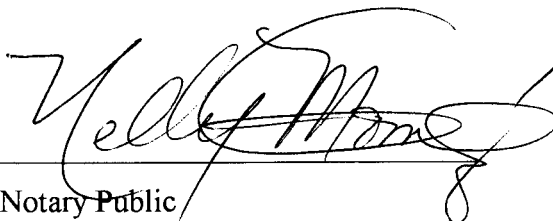
Signed under the penalties of perjury this 26th day of March, 2004.



Jonathan Rosen

STATE OF NEW YORK
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 26th day of March, 2004



Notary Public

NELLY M. GOMEZ
Notary Public, State of New York
Notice: 5005271
Qualified in Brow County
Certificate Filed in NY County
Commission Expires December 7, 2006

THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION

If you are in any doubt as to what action you should take, you should consult your insurance broker or other professional adviser without delay.

In an endeavour to ensure that insurance brokers are in a position to advise their clients, a copy of this document has been sent to all brokers known to have placed business with or on behalf of The Home Insurance Company, in respect of its participation in the American Foreign Insurance Association (AFIA).

Further copies of this document and the enclosed voting form can be obtained from Ernst & Young LLP or The Home Insurance Company at the addresses listed on page 33.

**PROPOSAL IN RELATION TO
A SCHEME OF ARRANGEMENT**

between

THE HOME INSURANCE COMPANY

and its

SCHEME CREDITORS

(as defined in the Scheme)

The meeting of Scheme Creditors to consider the Scheme will be held on 8 September 2004 commencing at 10.30 a.m. at the offices of Clifford Chance Limited Liability Partnership, 10 Upper Bank Street, London E14 5JJ. Notice of the meetings is set out on page 82.

The action required to be taken by you is set out on pages 8 to 9. Whether or not Scheme Creditors intend to be present at the meeting, they are requested to complete and return the voting form enclosed with this document as soon as possible.

23 July 2004

PART I
EXPLANATORY STATEMENT

IMPORTANT NOTICE

This document has been prepared in connection with a proposed Scheme pursuant to section 425 of the Companies Act 1985 between The Home Insurance Company (the “Company”) and its Scheme Creditors (as defined in the Scheme).

The information contained in this document has been prepared by the Company based upon information available to it.

The statements, opinions and information contained in this document are made, held or given respectively as at the date of this document unless another time is specified and such statements, opinions and information are made, held or given solely by or on behalf of the Company unless expressly attributed to another party. Service of this document shall not give rise to any implication that there has been no change in facts set out in it since such date.

Nothing contained in this document constitutes an admission of any fact or liability on the part of the Company or any other person in respect of any asset to which they may be entitled or any claim against them. No estimate of the amount of any claim against the Company specified in the voting form returned to the Company, or otherwise provided for voting purposes, shall be admissible against the Company or any other party, or shall be taken into account in calculating payments under the Scheme or in the New Hampshire Liquidation. Any such estimate shall only be used for voting purposes at the meeting of Scheme Creditors to consider the Scheme.

The summary of the principal provisions of the Scheme and related matters contained herein is qualified in its entirety by reference to the Scheme itself, the full text of which is set out on pages 35 to 81. Scheme Creditors are advised to read and consider carefully the text of the Scheme.

The Company has not authorised any person to make any representation, whether oral, written, express or implied, concerning the proposed Scheme which is inconsistent with the statements made in this document. Consequently, if such representations are made, they should not be relied upon.

The Informal Creditors’ Committee is not responsible for the information contained in this document.

No Scheme Creditor shall construe the contents of this document as legal, tax, financial or other professional advice. Each Scheme Creditor should consult his own professional advisers as to the legal, tax, financial or other matters relevant to the action he should take in connection with the Scheme.

PART I
EXPLANATORY STATEMENT

OFFICEHOLDERS

**Joint Provisional Liquidators and
Proposed Scheme Administrators**

Gareth Howard Hughes
Margaret Elizabeth Mills
Ernst & Young LLP
1 More London Place
London SE1 2AF

New Hampshire Liquidator

Roger Sevigny
The State of New Hampshire Insurance Department
56 Old Suncook Road
Concord, New Hampshire 03301-5151

ADVISERS

Office of the Attorney General

Department of Justice
Office of the Attorney General
33 Capitol Street
Concord N.H. 03301

Legal Advisers (US)

Rackemann, Sawyer & Brewster
One Financial Center
Boston, MA 02111

Legal Advisers (UK)

Clifford Chance LLP
10 Upper Bank Street
London E14 5JJ

PART I
EXPLANATORY STATEMENT

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**PART I
EXPLANATORY STATEMENT**

PROVISIONAL TIMETABLE

- Scheme Creditors' meeting 8 September 2004
- Court hearing to sanction the Scheme and make the Global Liquidation Order October 2004
- Scheme becomes effective October 2004

The above dates, other than that of the Scheme Creditors' meeting, are tentative only since the date of the Court hearing will only be confirmed if the Scheme is approved at the Scheme Creditors' meeting.

PART I
EXPLANATORY STATEMENT
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KEY DEFINITIONS

The Explanatory Statement is intended to explain the main provisions of the Scheme. The definitions will apply throughout the Explanatory Statement. They correspond to defined words and phrases in the Scheme and are in some instances summaries of longer definitions. They are not intended to be comprehensive and, if there is any inconsistency with the terms as used in the Scheme, the Scheme prevails over them. The full definitions are those which appear in the Scheme on pages 38 to 44.

“**ACE-INA**” means ACE-INA Services UK Limited;

“**ACE Group**” means ACE Limited (based in Bermuda) and its subsidiaries;

“**AFIA**” means the American Foreign Insurance Association;

“**AFIA Creditors**” means the creditors of the Company in respect of the AFIA Treaties;

“**AFIA Reinsurers**” has the meaning given to that term in the Scheme;

“**AFIA Treaties**” has the meaning given to that term in Section C: paragraph 2.3;

“**BAFCO**” has the meaning given to that term in Section C: paragraph 4.1;

“**BAFCO 1**” has the meaning given to that term in Section C: paragraph 4.2;

“**BAFCO 2**” has the meaning given to that term in Section C: paragraph 4.3;

“**BAFCO 3**” has the meaning given to that term in Section C : paragraph 4.2;

“**CIC**” means Century Indemnity Company;

“**CIRC**” means Century International Reinsurance Company Limited;

“**CIGNA**” means CIGNA Corporation;

“**City**” means City Insurance Company – UK branch;

“**Claims Procedure Order**” means the order of the New Hampshire Court dated 19 December 2003, as amended, establishing procedures regarding claims filed with the Company;

“**Company**” means The Home Insurance Company (in liquidation);

“**Creditors’ Committee**” means the committee established in accordance with the provisions of the Scheme;

“**Driver**” means C.R. Driver & Company;

“**Effective Date**” means, following the date on which an office copy of the order of the English Court sanctioning the Scheme is delivered to the Registrar of Companies in England for registration, the first date on which all of the conditions described in Section E: paragraph 14 have been satisfied;

“**English Court**” means the High Court of Justice of England and Wales;

“**Established Scheme Liability**” means a Scheme Claim which has become established in accordance with the Scheme;

“**FSA**” means the Financial Services Authority;

“**Global Liquidation Order**” has the meaning given to that term in Section E: paragraph 14;

“**Gross Proceeds**” means all proceeds received from an AFIA Reinsurer and/or the Guarantor as the same relate to the reinsurance, indemnification or the guarantee of the Company’s obligations under the AFIA Treaties, net of set-off;

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“**Guarantee**” means the guarantee described in Section C: paragraph 4.5

“**Guarantor**” means CIGNA, or its successors in title, as guarantor and/or indemnitor under the Guarantee;

“**INA**” has the meaning given to that term in Section C: paragraph 2.2;

“**Indemnitees**” has the meaning given to that term in Section C: paragraph 4.7;

“**Informal Creditors’ Committee**” means the informal committee of AFIA Creditors, whose members will become the first members of the Creditors’ Committee to be established under the Scheme (as listed in Section H: Appendix 1);

“**Insurance and Reinsurance Assumption Agreement**” means the agreement described in Section C: paragraph 4.4;

“**Joint Provisional Liquidators**” means Gareth Howard Hughes and Margaret Elizabeth Mills, partners in the United Kingdom firm of Ernst & Young LLP, acting in their capacity as joint provisional liquidators of the Company or such other person as may be appointed as joint provisional liquidator from time to time in addition or succession thereto;

“**Net Proceeds**” has the meaning given to that term in Section E: paragraph 1.1;

“**New Hampshire Approval Order**” means an order of the New Hampshire Court approving the proposal for the implementation of the Scheme;

“**New Hampshire Court**” means the Merrimack County Superior Court of the State of New Hampshire;

“**New Hampshire Liquidation**” means the liquidation being conducted in respect of the Company pursuant to the order of the New Hampshire Court dated 13 June 2003;

“**New Hampshire Liquidator**” means the Commissioner of Insurance for the State of New Hampshire, being, as at the date of this explanatory statement, Roger Sevigny, and his successors in office, solely in his capacity as the liquidator of the Company;

“**Notice of Determination**” has the meaning given to that term in Section F: paragraph 3.1;

“**Order**” means the order of the English Court dated 8 May 2003 under which the Joint Provisional Liquidators were appointed, as amended from time to time;

“**Payment Percentage**” means the percentage of an Established Scheme Liability that the Scheme Administrators determine from time to time should be paid to Scheme Creditors in accordance with the provisions of the Scheme;

“**Purchase Agreement**” has the meaning given to that term in Section C: paragraph 4.4;

“**Quota Share**” has the meaning given to that term in Section C: paragraph 4.7;

“**Record Date**” means the date of the Scheme;

“**Rehabilitator**” has the meaning given to that term in Section B: paragraph 1.3;

“**Review Date**” has the meaning given to that term in Section E; paragraph 5.1;

“**Scheme**” means the scheme of arrangement pursuant to section 425 of the Companies Act 1985 as set out on pages 35 to 81 of this document in its present form or as modified;

“**Scheme Assets**” means those assets transferred by the Company to, and held by, the Scheme Administrators in accordance with the terms of the Scheme;

“**Scheme Claim**” means a liability of the Company under or arising out of any of the AFIA Treaties;

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“**Scheme Creditor**” means a creditor of the Company in respect of a Scheme Claim;

“**Scheme Administrators**” means Gareth Howard Hughes and Margaret Elizabeth Mills, acting in their capacity as Scheme Administrators, or such other persons as may be appointed as Scheme Administrators from time to time in accordance with the terms of the Scheme;

“**Special Resolution**” has the meaning given to that term in Section E; paragraph 11.1;

“**Weavers**” has the meaning given to that term in Section B: paragraph 1.2.2.

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SUMMARY

1. INTRODUCTION

- 1.1 The Company was incorporated on 15 March 1973 under the laws of the State of New Hampshire, although its predecessor corporations were established as long ago as 1853 under the laws of the State of New York. The Company and its subsidiaries wrote insurance and reinsurance business in almost all states and territories in the United States, as well as in Canada, United Kingdom, Bermuda and Hong Kong.
- 1.2 The business of the Company's UK branch principally comprised two portfolios, both of which are in run-off, namely;
- 1.2.1 assumed reinsurance business underwritten through AFIA; and
- 1.2.2 business underwritten by City Insurance Company – UK branch (“City”) through the agency of HS Weavers (Underwriting) Agencies Ltd (“Weavers”) between 1970 and 1977 on the Weavers stamp and also through the agency of C.R Driver & Company (“Driver”). The Company and City were merged in 1995.
- 1.3 On 3 March 1997 the New Hampshire Insurance Department placed the Company and its insurance subsidiaries under its supervision pursuant to an Order of Supervision made by the New Hampshire Court. On 5 March 2003, the New Hampshire Court appointed Ms Paula Taft Rogers as Rehabilitator (the “Rehabilitator”) of the Company.
- 1.4 In or around May 2003, the Rehabilitator concluded that the Company was insolvent in accordance with the laws of the State of New Hampshire in that its assets were exceeded by its liabilities. The Rehabilitator also concluded that further attempts to rehabilitate the Company would be futile. As a result, on 8 May 2003 the Rehabilitator filed a petition with the New Hampshire Court for an order directing her to liquidate the Company and appointing her as the New Hampshire Liquidator of the Company. That order was granted on 11 June 2003 and was superseded by an order dated 13 June 2003. On 13 August 2003, Ms Rogers' tenure as the Commissioner of Insurance for the State of New Hampshire expired and the Governor of New Hampshire appointed Mr Roger Sevigny as her successor. As a consequence, Mr Sevigny became the New Hampshire Liquidator on the same date.
- 1.5 On 8 May 2003, the Company, acting by the Rehabilitator, presented a winding up petition to the English Court. On the same day, pursuant to an application by the Rehabilitator, Gareth Hughes and Margaret Mills, partners in the firm of Ernst & Young LLP, were appointed Joint Provisional Liquidators of the Company in order to safe-guard and protect the assets of the Company located in England and Wales.

2. WHY HAVE YOU BEEN SENT THIS DOCUMENT?

- 2.1 This document contains a proposal for a Scheme (under section 425 of the Companies Act 1985) between the Company and its AFIA Creditors. This proposal is made by the Joint Provisional Liquidators with the support of the New Hampshire Liquidator. The proposed Scheme will only apply to the creditors of the Company in respect of treaty reinsurance business underwritten by the Company's UK branch through AFIA. As such, this document has been sent to those parties who the Company's records indicate might be AFIA Creditors. However, receipt of this document does not mean that you are an AFIA Creditor or that you will be affected by the Scheme. Where appropriate, you may wish to ask your insurance broker, who should have received a copy of this document, for further details of your involvement with the Company.

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- 2.2 For the avoidance of doubt, this proposal is not directed to parties who are creditors of the Company solely in respect of business underwritten through the Weavers or Driver agencies.

3. WHAT IS A SCHEME OF ARRANGEMENT AND HOW DOES IT BECOME BINDING?

A scheme of arrangement, such as that which is proposed here, is an arrangement between a company and its creditors or any class of them as prescribed by section 425 of the Companies Act 1985. It becomes legally binding on a company and its affected creditors if:

- 3.1.1 a majority in number representing not less than 75% in value of the affected creditors, present and voting in person or by proxy, vote in favour of the scheme at a specially convened meeting;
- 3.1.2 the English Court subsequently makes an order approving the scheme; and
- 3.1.3 an office copy of that order is delivered to the Registrar of Companies in England.

Please note that even when the steps referred to in this paragraph 3 have been taken, this Scheme will not become effective until the conditions described in Section E paragraph 14 have been fulfilled. If the Scheme becomes effective, it will bind all AFIA Creditors, whether or not any particular AFIA Creditor was notified of the Scheme and whether or not such AFIA Creditor voted for the Scheme.

4. WHY HAS THE SCHEME BEEN PROPOSED?

- 4.1 When the Rehabilitator applied for the appointment of Joint Provisional Liquidators in respect of the Company it was recognised that, since the Company's place of incorporation was in the United States, the New Hampshire Liquidation should be the primary insolvency proceeding in respect of the Company. As a result, it was proposed (and accepted by the English Court) that the English winding up proceedings should be ancillary to the New Hampshire Liquidation.
- 4.2 Consistent with this, the order of the English Court appointing the Joint Provisional Liquidators contemplates that, following the appointment of the New Hampshire Liquidator, the Joint Provisional Liquidators should exercise their powers as requested and approved by the New Hampshire Liquidator, save where the English Court otherwise directs and save where to do so would cause them to contravene English law. At the hearing of the Rehabilitator's application to appoint Joint Provisional Liquidators, the English Court was not at that stage invited to allow assets situated within England and Wales to leave England. The English Court was informed that a further application (if appropriate) would be made if it was decided to seek the remission of such assets to New Hampshire for administration and distribution as part of the New Hampshire Liquidation. In addition, at a separate meeting with the FSA, the Joint Provisional Liquidators undertook to notify and consult with the FSA prior to any such application to the English Court.
- 4.3 Given that the Company is a New Hampshire – incorporated and domiciled insurance company subject to primary insolvency proceedings in New Hampshire, the administration and distribution of the estate under a single legal system would necessarily entail the application of New Hampshire insurance insolvency law and practice. Certainly, the English Court would expect English-situs assets to be remitted

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to New Hampshire in order to be distributed under New Hampshire insolvency law and practice unless creditors as a whole were likely to suffer any material substantive disadvantage as a result of such remission.

- 4.4 As a result, the New Hampshire Liquidator and the Joint Provisional Liquidators conducted a review of the comparative advantages and disadvantages of, on the one hand, a single administration of the Company's assets worldwide in accordance with New Hampshire insolvency law and practice and, on the other hand, a dual New Hampshire and English based administration (under which English-situs assets would be dealt with under an English procedure) in order to ascertain whether or not creditors as a whole were likely to suffer any material substantive disadvantage by reason of English assets being remitted to New Hampshire.
- 4.5 In short, having taken New Hampshire and English legal advice (including advice from English leading counsel), the New Hampshire Liquidator and the Joint Provisional Liquidators concluded that there were no material differences between the insolvency law applicable to an insurer like the Company in New Hampshire and that applicable in England and Wales, that creditors of the Company as a whole would not suffer any material substantive disadvantage if the liquidation of the Company were to be carried out in New Hampshire and that, therefore, there was no justification for a separate English insolvency proceeding to deal with the English-situs assets.
- 4.6 One significant common feature of New Hampshire and English insolvency law applicable to insurance companies is that in the liquidation of an insurance company holders of "insurance claims" – i.e. direct policyholders worldwide – rank ahead of reinsurance creditors in order of priority of payments from the insolvent estate. In England and Wales this priority is imposed by means of the Insurers (Reorganisation and Winding up) Regulations 2004 which implements Directive 2001/17/EC of the European Parliament on the reorganisation and winding up of insurance undertakings. Whilst the ultimate deficiency of assets to pay the Company's liabilities is not yet known to either the New Hampshire Liquidator or the Joint Provisional Liquidators, it seems unlikely that reinsurance creditors of the Company (which would include the vast majority, if not all, of the AFIA Creditors) will receive anything by way of distribution from the liquidation of the Company, either in New Hampshire or in England.
- 4.7 Due to the junior ranking afforded to reinsurance creditors under New Hampshire insolvency law, AFIA Creditors presently have an economic disincentive to prosecute their claims against the Company for agreement in the New Hampshire Liquidation. The direct consequence of this disincentive to prosecute claims would be that the Company, in turn, would have no right to seek an indemnity from Century Indemnity Company ("CIC") and/or Century International Reinsurance Company Limited ("CIRC") pursuant to the respective indemnity/reinsurance arrangements between the Company and those parties (which are described in more detail in Section C; paragraphs 4 to 6 below), notwithstanding that the AFIA Creditors will inevitably have suffered insured losses which in the ordinary course would have been submitted to the Company for payment. Thus, the AFIA Creditors suffer because they are incurring losses on their own inwards exposures without receiving any reinsurance payments from the Company under the AFIA Treaties, whilst the generality of creditors of the Company likewise suffer because of the absence of indemnity/reinsurance receipts from CIC and/or CIRC (which would otherwise swell the assets available for distribution to the generality of the Company's creditors). Indeed, the only parties which benefit from this state of affairs would be CIC and CIRC themselves, who would gain a windfall advantage. The purpose of the proposed

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Scheme – which has been developed following consultation with the Informal Creditors’ Committee and the FSA – is to redress this imbalance by providing that any indemnity/reinsurance recoveries received by the Company in respect of its liabilities under the AFIA Treaties will be shared (subject to certain deductions) on a 50:50 basis with the AFIA Creditors. This “sharing” arrangement should at least partially remove the AFIA Creditors’ disincentive to prosecute valid claims against the Company caused by the Company’s insolvency (and the junior ranking therein of reinsurance creditors), whilst preserving the integrity of the indemnity/reinsurance arrangements between the Company and CIC/CIRC, because valid and properly adjusted claims against the Company can trigger recovery from CIC/CIRC under the indemnity/reinsurance arrangements between those entities and the Company.

- 4.8 Following consultation between the New Hampshire Liquidator and the principal creditors of the Company in the New Hampshire Liquidation, the New Hampshire Liquidator filed a motion seeking the New Hampshire Court’s approval of the proposed “sharing” arrangement. Two objections to this motion were filed by parties who assert that they are creditors of the Company (the “**Objecting Parties**”). The New Hampshire Court rejected such objections and issued an order granting the New Hampshire Liquidator’s motion (the “**New Hampshire Approval Order**”). The Objecting Parties are currently appealing against the New Hampshire Approval Order.

5. WHAT DOES THE SCHEME PROVIDE?

- 5.1 The purpose of the Scheme is, firstly, to set aside as a separate ring-fenced ‘fund’ (to be known as the “**Scheme Assets**”) the 50% share of the indemnity/reinsurance proceeds as described in paragraph 4.7 above and, secondly, to distribute those Scheme Assets to the AFIA Creditors in accordance with the rules of the Scheme. In particular, the Scheme provides that:

5.1.1 AFIA Creditors’ claims shall be established in the New Hampshire Liquidation in accordance with the Claims Procedure Order;

5.1.2 the Scheme Administrators shall pay distributions out of the Scheme Assets to AFIA Creditors with established claims by reference to a Payment Percentage fixed by the Scheme Administrators in consultation with the Creditors’ Committee;

5.1.3 in fixing the Payment Percentage the Scheme Administrators must consider that there will be sufficient funds available when needed to pay the same Payment Percentage to AFIA Creditors whose claims are established in the future. The Scheme permits the Scheme Administrators to make certain assumptions about future cashflows when making this assessment.

- 5.2 In addition, the Scheme provides a mechanism for accelerating the payment of distributions to AFIA Creditors out of Scheme Assets and effecting an early closure of the Scheme.

6. RISK FACTORS

- 6.1 AFIA Creditors should bear in mind, without limitation, the following risk factors:

Impact upon reinsurance/indemnity contracts protecting the AFIA Treaties

- 6.2 The New Hampshire Liquidator and the Joint Provisional Liquidators have taken legal advice on the impact of the Scheme upon the indemnity and reinsurance contracts which protect the AFIA Treaties (which are described in more detail in Section C:

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paragraphs 4.4 and 4.6 below) and are satisfied that the Scheme does not prejudice the validity or value of those contracts. However, the Company cannot give any assurance that the counterparties to those contracts will not assert that the Scheme or its operation entitles them to deny liability (in whole or in part) for losses ceded to them by the Company under those contracts.

Performance of the Company's reinsurers/indemnitors

- 6.3 The timing and quantum of distributions under the Scheme will be entirely dependent upon the Company making collections from its indemnitors/reinsurers or, where applicable, from their guarantor. The Company cannot give any assurance as to what defences those parties may raise as grounds upon which to refuse to make payments, nor as to the ultimate solvency of any of those parties.

Setting of the Payment Percentage

- 6.4 Whilst the key principle underlying the scheme is essentially to distribute the Scheme Assets *pro rata* amongst all AFIA Creditors as and when their claims are established, the provisions of the Scheme controlling the fixing of the Payment Percentage entail a risk that the assumptions which the Scheme Administrators make when fixing the Payment Percentage (in particular, with respect to likely ultimate liabilities and to likely cash recoveries from the Company's reinsurers/indemnitors/guarantor) may turn out to be incorrect, with the result that too much money may be paid out too soon to certain AFIA Creditors. Whilst the Scheme contains certain provisions which ameliorate this risk, the Scheme nevertheless carries with it the risk that ultimately the Scheme Assets will not be distributed strictly *pro rata* amongst all AFIA Creditors.

7. RECOMMENDATION

- 7.1 The proposed Scheme offers to AFIA Creditors the real prospect of receiving a (possibly material) payment from the Company in respect of their claims. If the proposed Scheme is not approved, AFIA Creditors will rank as junior creditors in the New Hampshire Liquidation behind direct insureds and will most likely receive no distribution from the insolvent estate.
- 7.2 The Joint Provisional Liquidators, Gareth Hughes and Margaret Mills, as prospective Scheme Administrators, as well as Roger Sevigny, the New Hampshire Liquidator, have satisfied themselves that the Scheme is in the best interests not only of the AFIA Creditors but also of the generality of ordinary creditors of the Company and accordingly recommend that AFIA Creditors who are entitled to do so vote for the Scheme.
- 7.3 The members of the Informal Creditors' Committee have considered the advantages of the Scheme and, on the basis of the information contained in this document, have confirmed to the proposed Scheme Administrators that they intend to vote in favour of the Scheme.

8. WHAT ARE YOU REQUIRED TO DO?

- 8.1 All Scheme Creditors with agreed, outstanding or IBNR claims are entitled to vote on the Scheme.
- 8.2 Enclosed with the document you will find a voting form (consisting of a form of proxy and claims table) for voting at the Scheme Creditors' meeting. An explanation of how your claim against the Company is to be valued for voting purposes and guidance notes and instructions for completion of the voting form are set out on pages 84 to 95.

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- 8.3 If you are a Scheme Creditor, you are entitled to vote at the Scheme Creditors' meeting either in person (or, in the case of corporations, by a duly authorised representative) or by proxy. If you wish to appoint a proxy, please complete the form of proxy in the voting form where appropriate. This will not prevent you from attending in person at the Scheme Creditors' meeting.
- 8.4 The voting form should be returned to the Company at:
- Ernst & Young LLP
1 More London Place
London SE1 2AF
- for the attention of: Gareth Hughes/Sarah Ellis
- Facsimile: +44 20 7951 9002
- 8.5 In order to have your vote counted, the voting form (or a faxed copy) must be submitted to the above address by 5.00 p.m. on 6 September 2004 or at the start of the Scheme Creditors' meeting. However, it would be appreciated if you were to return the voting form in advance. Please also be aware that, if the original of a faxed voting form is not received within 7 days of the Scheme Creditors' meeting, it may not be counted.
- 8.6 You are required to estimate the amount of your present and future claims, if any, against the Company for voting purposes only. Claims will be admitted at the agreed amount or at an estimated amount in the case of claims which have been reported but not established or incurred but not reported, less the amount of any known letters of credit, trusts, mortgages, charges, liens, other security interests or set-off.
- 8.7 You will need to provide particulars of any estimated claim and include details of the basis upon which the figure has been calculated. In this respect you may wish to discuss with your insurance broker or other professional adviser the estimate of any claim. The chairman of the Scheme Creditors' meeting (who is to be one of the Joint Provisional Liquidators) will review these claims and will determine whether or not any estimates are fair and reasonable before they are counted for voting purposes. It is your responsibility to provide sufficient information to enable the chairman of the Scheme Creditors' meeting to judge whether and to what extent, your estimate of each claim can be accepted for voting purposes.
- 8.8 **These estimates will not be relevant for the purpose of establishing or settling claims under the Scheme or the New Hampshire Liquidation; they are for voting purposes only.** Even if you are currently in dispute with the Company with regard to any claim you will still be eligible to vote at the Scheme Creditors' meeting. Acceptance of a Scheme Creditor's estimate of any claim for voting purposes will not prejudice either party's rights to dispute the claim for any other purpose.
- 8.9 Particulars as to estimates of the amount of any future claims furnished by a Scheme Creditor for voting purposes may not be protected by privilege under English law (or any other relevant laws) and may be discoverable at the instance of a third party with a claim against the Scheme Creditor in any action or proceedings to which the Scheme Creditor may be party. **You should consult your own legal adviser as to the consequences for you or furnishing such particulars in the event you may be, or may become, involved in any litigation.**

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9. THE SCHEME CREDITORS' MEETING

The Scheme Creditors' meeting will be held on 8 September 2004 commencing at 10.30 a.m. at the offices of Clifford Chance Limited Liability Partnership, 10 Upper Bank Street, London E14 5JJ.

10. AFTER THE SCHEME CREDITORS' MEETING

After the Scheme Creditors' meeting the votes must be checked and verified. This process may take several days depending on the number of votes cast.

11. SANCTION BY THE ENGLISH COURT

11.1 If approved by the requisite majority of Scheme Creditors, the English Court's sanction of the Scheme is then required. The order of the Court sanctioning the Scheme will be delivered to the Registrar of Companies in England. The Scheme will not, however, become effective until the conditions described in Section E: paragraph 14 have been fulfilled.

11.2 Notification of the Effective Date of the Scheme will appear in the Financial Times (all editions), Times (UK national edition), New York Times (USA national edition), Wall Street Journal (international edition), Business Insurance, Insurance Day (London) and Lloyd's List (London).

12. EFFECTIVE DATE OF THE SCHEME

It is anticipated that if the English Court sanctions the Scheme, it will become effective in October 2004.

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HISTORY OF THE UK BRANCH BUSINESS

1. THE UK BRANCH BUSINESS

As already explained in Section B: paragraph 1.2 above, the business of the Company's UK branch principally consisted of two portfolios both of which were in run-off:

1.1.1 assumed reinsurance business underwritten through AFIA; and

1.1.2 business underwritten through Weavers and Driver by City prior to the merger of City with the Company in 1995.

2. AFIA

2.1 AFIA business in the UK was written in the names of the Company and St Paul Fire & Marine Insurance Company Limited, these being the only members of AFIA who were authorised to write insurance business in the UK. The Company effectively acted as a fronting company for the other AFIA members on the basis that it assumed the primary liability on AFIA business and reinsured that risk with the other AFIA members in accordance with Article XI of the AFIA Constitution. Three types of business were written by the Company as a front for AFIA – direct, marine & aviation and treaty reinsurance.

2.2 On 31 January 1984, pursuant to a purchase agreement, subsidiaries of CIGNA Corporation (“CIGNA”) acquired AFIA. It was one of the terms of the purchase agreement that CIGNA would use its best endeavours to procure a formal transfer by novation of the underlying business (i.e. the direct, marine & aviation and treaty reinsurance business) to Insurance Company of North America (“INA”) as soon as practicable but in any event no later than 31 January 1989. As matters transpired, only the direct and marine & aviation businesses were transferred by statutory novation pursuant to section 51 of the Insurance Companies Act 1982 to another CIGNA entity (in July 1986).

2.3 The AFIA treaty reinsurance business (“AFIA Treaties”) was not transferred and the Company remains primarily liable in respect of this business. Around 30% of this business appears to relate to the Ruddy Pool. The Company provides reinsurance cover for four of the six Ruddy Pool members in four separate contracts known as “Treaty R Contracts”. The operation and the structure of the business is explained in more detail in paragraph 4 below.

3. WEAVERS AND DRIVER AGENCIES

3.1 City wrote business through two pools managed by Weavers and Driver.

3.2 City participated on the Weavers stamp for the underwriting years 1972 through 1977. During this time Weavers arranged proportional reinsurance with a number of parties and non-proportional reinsurance with Lloyd's, the London market and overseas companies. Approximately 48% of the reinsurers to whom City had ceded reinsurance in respect of its Weavers exposure are currently either subject to insolvency proceedings or have commuted their contracts with the Company.

3.3 City participated in the Driver pool from 1971 to 1973, writing excess of loss reinsurance in the London market.

3.4 For the avoidance of doubt, the Scheme is not directed to parties who are creditors of the Company solely in respect of business underwritten through the Weavers or Driver agencies.

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4. **AFIA – THE STRUCTURE**

Before the 1984 transfer of AFIA to INA

- 4.1 The treaty business faced serious potential losses in the early 1980s. As a result, the Company entered into excess of loss arrangements with BAFCO Reinsurance Company Limited of Bermuda (“BAFCO”). BAFCO was one of many separate corporations owned worldwide by the members of AFIA (through a holding vehicle called AFIA Finance Corporation).
- 4.2 Under the first excess of loss reinsurance agreement (“BAFCO 1”) dated 23 December 1982, BAFCO agreed to indemnify Home for 100% of losses arising on or after May 1981 in respect of the Company’s liability arising from its acceptance of six specific treaty business contracts. By a first supplemental excess of loss agreement dated in February 1985 (“BAFCO 3”), BAFCO 1 was deemed to have been effective on and from 1 January 1981.
- 4.3 The second excess of loss reinsurance agreement (“BAFCO 2”) dated 23 December 1982 covered the Company for its entire inwards treaty reinsurance account for all underwriting years up to and including 1982. The cover written was in respect of net losses exceeding \$95 million in the aggregate, up to a limit of \$100 million. Net loss is defined as loss less claims on reinsurance actually recovered.

The INA Purchase and subsequent changes to the AFIA structure

- 4.4 INA acquired AFIA under purchase agreements dated 30 December 1983. This transaction included the AFIA Treaties. The purchases were completed on 31 January 1984 in a variety of documents. The three key documents were the “**Insurance and Reinsurance Assumption Agreement**”, the “**Purchase Agreement**” and the “**Reinsurance Treaty and Management Agreement**”, pursuant to which, amongst other matters:
- 4.4.1 certain of AFIA’s business and rights were assigned by AFIA to INA;
- 4.4.2 INA agreed to assume responsibility for the AFIA liabilities of the Company (and other AFIA members);
- 4.4.3 the Company (and other AFIA members) agreed to reinsure INA and others in relation to certain exposures;
- 4.4.4 INA took responsibility for the administration of the run-off of the Company’s AFIA business; and
- 4.4.5 INA was given authority to write new business in the name of the Company and was made responsible for managing the portfolio of new business being written by it in the Company’s name.
- 4.5 As party to the Purchase Agreement, CIGNA agreed to guarantee the performance by INA of, amongst other things, its obligations under the Purchase Agreement and the Insurance and Reinsurance Assumption Agreement.
- 4.6 As noted above, the structure of the Company’s reinsurance protection changed in the wake of the sale. Under the Insurance and Reinsurance Assumption Agreement, INA assumed responsibility for the business which the Company fronted for the AFIA pool, prior to December 1983. As long as the Company remained solvent, INA paid claims direct to the parties insured or reinsured by the Company. In the event of the Company’s insolvency, however, the Insurance and Reinsurance Assumption Agreement expressly provided that INA must make payments direct to the Company or to its liquidator.

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- 4.7 Two new reinsurance covers were put in place under a single quota share reinsurance agreement (the “**Quota Share**”). Under the Quota Share, the Company and the other AFIA members reinsured INA and certain of INA’s associates (the “**Indemnitees**”):
- 4.7.1 in relation to “**London Losses**” (i.e. losses on the reinsurance treaty business fronted by the Company in London). Under this the AFIA members provide reinsurance to INA in relation to adverse experience on the reinsurance treaty business fronted by the Company. The cover is 90% of losses between \$335 million and \$600 million. The Company’s share of this is 24.39%. This is net of “**London Outward Reinsurance**” (being certain external third party reinsurances which historically had protected the AFIA Treaties – see further below);
- 4.7.2 in relation to “**non-recoverable reinsurance**”. This covers the Indemnitees against inability to recover money on the London Outward Reinsurance in respect of London Losses. The Company and the other AFIA members cover the Indemnitees to the extent that such non-recoverable losses exceed \$45.9 million. The Company’s share of the excess above \$45.9 million is 15.12277% (and the total share of all AFIA companies is 50% – i.e. only 50% of the Indemnitees’ shortfall is covered).
- 4.8 By BAFCO 3, the Company, St Paul Fire & Marine Insurance Company Limited and BAFCO agreed to amend BAFCO 1 and BAFCO 2 in certain respects, including the definition of “net loss” and the provision of no aggregate limits of liability with respect to those covers.
- 5. INA’S RESPONSIBILITY FOR RUNNING OFF THE COMPANY’S AFIA BUSINESS**
- 5.1 The obligations of INA to run off the Company’s AFIA business as a result of the January 1984 purchase, in summary, include:
- 5.1.1 administration of the run-off of the AFIA Treaties written before June 1983, including settling, defending and paying claims (including Rutty pool exposures);
- 5.1.2 payment of all costs and expenses of running off the AFIA Treaties written before June 1983;
- 5.1.3 making appropriate reinsurance recoveries (e.g. on BAFCO and London Outward Reinsurance); and
- 5.1.4 management of the portfolio of new business written after June 1983 by the Company through the agency of INA and meeting all costs and expenses of doing so.
- 6. THE SUCCESSION OF CIC AND CIRC**
- 6.1 BAFCO’s reinsurance obligations were assumed by CIGNA International Reinsurance Company Limited when BAFCO merged with that company in December 1992. CIGNA International Reinsurance Company Limited later changed its name to CIRC in 1999.
- 6.2 With effect from 31 December 1995, INA was divided into two separate corporations, INA and CCI Insurance Company (“**CCI**”). Pursuant to this restructuring, INA was allocated, amongst other things, the name and licenses of the former INA, in-force policies and all but one subsidiary of INA. CCI was allocated, amongst other things, all of the run-off operations of INA. CCI and CIGNA Specialty Insurance Company were then merged into CIC.

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7. THE CONTINUING LIABILITIES OF THE COMPANY

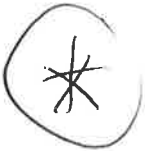
The Company remains exposed to two main liabilities in relation to AFIA:

- 7.1.1 to the AFIA Creditors on the AFIA Treaties (which were not part of the statutory novation to INA in 1986); and
- 7.1.2 to the Indemnitees under the Quota Share.

8. THE CONTINUING ASSETS OF THE COMPANY

The Company's most valuable assets in relation to AFIA are its rights of indemnity and/or reinsurance in respect of its liabilities to the AFIA Creditors on the AFIA Treaties, being:

- 8.1.1 its cover from INA under the Insurance and Reinsurance Assumption Agreement (and the corresponding Guarantee from CIGNA); and
- 8.1.2 its cover from BAFCO under the BAFCO reinsurance. However, CIC, as successor to INA, does not accept that the BAFCO reinsurance is the Company's asset. CIC asserts that this reinsurance was assigned to INA in 1984. This remains an open issue.



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**IMPLICATIONS OF THE INSOLVENCY OF THE COMPANY FOR AFIA
CREDITORS AND DEVELOPMENT OF THE SCHEME PROPOSAL**

1. **The insolvency of the Company has several significant implications for the Company's creditors (including the AFIA Creditors) under New Hampshire law**
 - 1.1 Claims against the Company must be filed with the New Hampshire Liquidator. Accordingly, AFIA Creditors' claims under the AFIA Treaties must be filed with the New Hampshire Liquidator, whereas previously AFIA Creditors only submitted their claims to the ACE Group (as current owners of CIC and CIRC) who would make direct payment to the AFIA Creditors (albeit as agents for and on behalf of the Company pursuant to the authority given to them by the Company under the Insurance and Reinsurance Assumption Agreement).
 - 1.2 The Company's assets must be paid or turned over to the responsible insolvency practitioner (whether the New Hampshire Liquidator or the Joint Provisional Liquidators), vested with the power to collect in the Company's assets. CIC/CIRC must thus make payments under, respectively, the Insurance and Reinsurance Assumption Agreement and the BAFCO reinsurances to such officeholder and not to the AFIA Creditors. In addition, the Insurance and Reinsurance Assumption Agreement contains an insolvency clause specifically requiring that:

"in the event of the insolvency of [the Company], this reinsurance shall be payable directly to [the Company], or to its Liquidator, ... on the basis of the liability of [the Company] without diminution because of the insolvency of [the Company] or because the Liquidator ... failed to pay all or a portion of any claim";
 - 1.3 The availability and amounts of any payments on allowed claims against the Company will depend on the available assets of the estate and the statutory priorities, which require that all claims in each successive priority class be paid in full (or adequate funds retained for payment) before any distribution to the next class. The New Hampshire Liquidator considers that the claims of the AFIA Creditors fall into the residual priority class, Class V – significantly, ranking junior to direct insureds in terms of priority. Whilst the ultimate assets of the Company and the total allowed claims in each class are not yet known, it appears unlikely that there will be sufficient assets for the Company to make a significant (or possibly any) distribution to this class. Thus, the AFIA Creditors are unlikely to receive any payment on their claims through distributions from the New Hampshire Liquidation.
2. **These changes to the pre-liquidation arrangements have created disputes and uncertainty over the filing, handling and payment of AFIA Creditors' claims and payment of amounts due under the Insurance and Reinsurance Assumption Agreement and the BAFCO reinsurances**
 - 2.1 AFIA Creditors have so far expressed reluctance to prosecute claims in the New Hampshire Liquidation on the basis that, since the New Hampshire Liquidator considers that they are Class V claimants who are unlikely to receive any distribution from the estate, there is little purpose in their doing so. The New Hampshire Liquidator and the Joint Provisional Liquidators have taken the position that the ability of AFIA Creditors to receive payments directly from CIC or from CIRC is precluded by virtue of the factors described in paragraph 1 above.
 - 2.2 Certain of the AFIA Creditors had been exploring alternative means of realising recovery with respect to the business protected by the AFIA Treaties, including possible circumvention of the Company by entering into side arrangements with the ACE Group (as current owners of CIC and CIRC). The New Hampshire Liquidator and the Joint Provisional Liquidators advised the ACE Group and the AFIA Creditors

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concerned that any such side arrangements would not be countenanced, would be subject to legal challenge and could lead to potential duplicative liability on the parts of the ACE Group.

- 2.3 Certain AFIA Creditors have questioned the application of New Hampshire claims and distribution procedures to claims and assets located in the United Kingdom, thereby raising the potential for complex international conflict of law questions.

3. AFIA Proposal

- 3.1 Resolution of these and other issues could require complex, protracted and costly litigation in both the United States and England. In the circumstances, the Joint Provisional Liquidators, supported by the New Hampshire Liquidator, sought to negotiate a compromise settlement to avoid competing claims to proceeds under the Insurance and Reinsurance Assumption Agreement and its BAFCO reinsurances and to facilitate a global liquidation. Thus, the New Hampshire Liquidator and the Joint Provisional Liquidators conducted discussions with members of the Informal Creditors' Committee established pursuant to the English Court's Order. The Informal Creditors' Committee includes most of the principal AFIA Creditors. These discussions culminated in a series of agreements entered into between the Joint Provisional Liquidators and the members of the Informal Creditors' Committee. These agreements serve in essence as a term sheet for the proposed Scheme. Copies of the signed agreements are available for inspection as provided in Section H: Appendix 3.

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OPERATION OF THE SCHEME

1. DISPOSITION OF GROSS PROCEEDS

- 1.1 All cash recoveries received from the AFIA Reinsurers (or from the Guarantor) will be subject to the following deductions; (i) the costs of the English provisional liquidation; (ii) the costs of collecting the Gross Proceeds; (iii) the costs of negotiating, implementing and carrying out the Scheme, including the costs of obtaining approvals for the Scheme proposal from the New Hampshire Court and the English Court, as well as from the FSA; (iv) the remuneration and expenses of the Scheme Administrators; (v) costs incurred by the Company in handling and managing claims; and (vi) payment to the Company of a sum equivalent in value to that element of the Gross Proceeds which have been generated by the claims of Scheme Creditors which will themselves be settled by way of off-set (between the Scheme Creditor concerned and the Company) against the obligation of the Scheme Creditor concerned to make a payment to the Company (for example, under a separate contract pursuant to which the AFIA Creditor agreed to reinsure the Company). The sums left after making these deductions shall be known as the “**Net Proceeds**”.
- 1.2 To the extent that there are insufficient Gross Proceeds from which to make the deductions referred to in paragraph 1.1 above, the Company will pay such costs as an administrative expense of the New Hampshire Liquidation. The Company shall provide the Creditors’ Committee with a periodical statement of all deductions made from Gross Proceeds.

2. DISPOSITION OF NET PROCEEDS

The Company shall deduct from Net Proceeds any amounts which are payable by it under the Scheme in respect of the indemnities given to the Scheme Administrators and the Creditors’ Committee. 50% of the proceeds remaining after this deduction has been made shall be transferred to or retained by the New Hampshire Liquidator, who will aggregate those funds with the rest of the estate under his control for the purpose of making distributions in accordance with the New Hampshire Liquidation. The other 50% – which will form the principal part of the Scheme Assets – shall be transferred to the Scheme Administrators, who will distribute them essentially on a *pari passu* basis (as far as reasonably practicable) to the Scheme Creditors according to the value of their Scheme Claims against the Company, as those claims are determined in the New Hampshire Liquidation. In addition, any adverse costs proceeds received from an AFIA Reinsurer or the Guarantor will be credited to the Scheme Assets for payment direct to the Scheme Creditor concerned – see further paragraph 3 below.

3. ADVERSE COSTS PROCEEDS

Where a Scheme Creditor has, in the context of either a disputed claim proceeding in the New Hampshire Liquidation or another dispute resolution proceeding permitted under the Scheme, obtained an adverse costs order against the Company, that adverse costs order shall not rank as an administrative expense in the New Hampshire Liquidation. Rather, the Scheme Creditor shall only be paid such adverse costs as are payable under that order to the extent that the Company recovers any cash from an AFIA Reinsurer or the Guarantor with respect to such adverse costs. Any amount so recovered by the Company will be credited to the Scheme Assets and paid in full (in the same currency in which it was received from the AFIA Reinsurer or Guarantor concerned) to the relevant Scheme Creditor in priority to any distribution of Scheme Assets to Scheme Creditors.

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4. ESTABLISHMENT OF LIABILITIES

- 4.1 Once a Payment Percentage has been set, a Scheme Creditor shall only become entitled to a distribution out of Scheme Assets if and to the extent that his Scheme Claim has become an Established Scheme Liability. Pursuant to the terms of the Scheme, a Scheme Creditor is required to have submitted a proof of claim in respect of his Scheme Claim in the New Hampshire Liquidation by 13 June 2004. Proofs of claim received after this filing deadline may be accepted by the New Hampshire Liquidator in certain circumstances. If, however, such a proof of claim is excluded by the New Hampshire Liquidator, it would then be ineligible for participation in the Scheme. For further information regarding the administration and adjudication of Scheme Claims, please refer to Section F.
- 4.2 Once admitted in the New Hampshire Liquidation, the Scheme Claim shall become an Established Scheme Liability under the Scheme, after account has been taken of (i) any security over the Company's property which the Scheme Creditor is entitled to enforce as a matter of New Hampshire law; (ii) any letter of credit issued by, or trust created in respect of, the Company of which the Scheme Creditor is a beneficiary; (iii) any right of set-off which may be taken into account as a matter of New Hampshire law and (iv) any recoveries made by the Scheme Creditor in respect of such Scheme Claim in the New Hampshire Liquidation.

5. SETTING THE PAYMENT PERCENTAGE

- 5.1 On the Effective Date and thereafter on 31 December each year (unless the Scheme Administrators, in consultation with the Creditors' Committee, determine otherwise) (the "Review Date"), the Scheme Administrators must consider whether it is appropriate to set a Payment Percentage or revise a previously set Payment Percentage.
- 5.2 In setting a Payment Percentage, the Scheme Administrators will seek to ensure that they will have sufficient Scheme Assets to pay to all Scheme Creditors whose Scheme Claims become Established Scheme Liabilities during the existence of the Scheme the same Payment Percentage, even if some Scheme Claims have not been established as at the date on which the relevant Payment Percentage is set. In order to make a determination as to the level at which to set the Payment Percentage, the Scheme Administrators are entitled to take into account the Scheme Assets currently in their possession as well as the Scheme Assets which they consider are likely to be received by them in the future.
- 5.3 In setting the Payment Percentage, the Scheme Administrators are also entitled to assume, if such assumption is approved by the Creditors' Committee and is not manifestly unreasonable, that the ratio of cash recoveries received from any AFIA Reinsurer and/or the Guarantor to Scheme Claims established in the period commencing with the last Review Date and ending on the Review Date concerned will remain consistent in future years, after making due allowance for any set-off. An example of when this assumption may become "manifestly unreasonable" is where an AFIA Reinsurer and/or the Guarantor become or appear likely to become insolvent.
- 5.4 The Scheme Administrators are entitled to reduce the level of the Payment Percentage if they consider that there will not be sufficient Scheme Assets to pay the same Payment Percentage to all Scheme Creditors whose Scheme Claims eventually become Established Scheme Liabilities. If the Scheme Administrators do reduce the Payment Percentage, a Scheme Creditor who has received the higher Payment Percentage will not be required to make a repayment to the Scheme Administrators. However, such a Scheme Creditor will not be entitled to receive any further payments if a further

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payment would mean that the total amount paid to him would be greater than the then current Payment Percentage in respect of his Established Scheme Liability. If information comes to light concerning the financial position of the Company as a result of which the Scheme Administrators are required to consider whether or not to set a reduced Payment Percentage, the Scheme Administrators may suspend payments to Scheme Creditors for up to six months to allow them to reassess the Company's financial position and the level of the Payment Percentage.

6. PAYMENTS TO SCHEME CREDITORS

- 6.1 Once the initial Payment Percentage has been set, Scheme Creditors with Established Scheme Liabilities as at that date will be paid the initial Payment Percentage out of the Scheme Assets as soon as possible but in any event within 90 days. If the Payment Percentage is subsequently increased, Scheme Creditors with Established Scheme Liabilities will be paid an additional amount so that the amount received in respect of their total Established Scheme Liability will be equal to the then current Payment Percentage.
- 6.2 Scheme Creditors whose Scheme Claims become Established Scheme Liabilities after the date upon which a Payment Percentage is initially set or increased shall be paid the current Payment Percentage as soon as possible, but in any event within 90 days of the date on which their Scheme Claim becomes an Established Scheme Liability.
- 6.3 Scheme Creditors should be aware that amounts payable to a Scheme Creditor of less than US\$100 in aggregate will not be paid until the Scheme terminates, unless the Scheme Creditor requests such payment.

7. CURRENCY OF PAYMENT AND CALCULATION

Subject to the payment of adverse costs proceeds as described in Section E, paragraph 3 above, Scheme Creditors will be entitled to receive payments under the Scheme in US dollars. An Established Scheme Liability which was incurred in a currency other than US dollars will be converted at the rate prevailing for the relevant currency on 8 May 2003, as published in the United States national edition of the Wall Street Journal on 9 May 2003. Any amounts to be deducted by way of set-off from an Established Scheme Liability shall, if denominated in a currency other than US dollars, be converted to US dollars as at the rate prevailing on 8 May 2003.

8. ENFORCEMENT OF RIGHTS OUTSIDE THE SCHEME

- 8.1 Scheme Creditors are prohibited from attempting to make any arrangement with an AFIA Reinsurer (in its capacity as a reinsurer and/or indemnitor of the Company in respect of the AFIA Treaties) and/or the Guarantor (in its capacity as the guarantor and/or indemnitor under the Guarantee), under which they seek to receive, whether directly or indirectly, any payment from that AFIA Reinsurer and/or the Guarantor in respect of their Scheme Claim.
- 8.2 Scheme Creditors are also prohibited from taking any proceedings against the Company for the purpose of establishing or enforcing the payment of a Scheme Claim, unless (i) the Scheme Creditor has obtained the consent of the Company to take such proceedings or (ii) the Scheme Creditor's action is by way of a counterclaim to proceedings commenced or continued by the Company (provided that the Scheme Claim arises out of the same transaction as that which is the subject of the Company's claim and the Scheme Claim does not require for its adjudication the presence of third parties over whom the court or tribunal does not have jurisdiction).

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8.3 If a Scheme Creditor does take any proceeding prohibited by the Scheme and as a result obtains any money, property or advantage at the expense of the Company, then without prejudice to any other remedy which the Company may have, the Scheme Creditor will be treated as having received an advance payment under the Scheme equal to the amount of any money, property or advantage obtained by the Scheme Creditor at the expense of the Company and the extent, if any, to which the Scheme Creditor is entitled to be paid a Payment Percentage under the Scheme will be reduced.

9. RIGHTS IN RELATION TO SECURITY INTERESTS, TRUSTS, LETTERS OF CREDIT AND SET-OFF

9.1 If a person has a security interest or is the beneficiary of a letter of credit or trust which can be enforced as a matter of New Hampshire law, nothing in the Scheme affects the proper enforcement of the letter of credit, trust or other security interest.

9.2 A Scheme Creditor who is under any liability to the Company may rely on any set-off upon which he could have relied as a matter of New Hampshire law. The way in which the New Hampshire Liquidator intends to apply set-off is discussed further in Section F: paragraph 4.

10. COMMUTATIONS AND OTHER ARRANGEMENTS

10.1 The Scheme recognises that the Company may enter into a commutation with an AFIA Reinsurer and/or the Guarantor whereby all or part of the liability of the AFIA Reinsurer or the Guarantor to the Company is discharged in full in consideration for a payment (in full or in part) by such AFIA Reinsurer or the Guarantor (or on their behalf) to the Company.

10.2 The Scheme provides that, prior to entering any such arrangement, the Company must consult with the Scheme Administrators and the Creditors' Committee as to any proposed commutation and provide the Creditors' Committee with all documentation relevant to the proposed commutation. In addition the Company must provide notice of any application to the New Hampshire Court to approve the terms of the proposed commutation.

10.3 The Company must advise the Scheme Administrators of any commutation agreement or similar compromise arrangement which is agreed with all or substantially all (by value) of the AFIA Reinsurers and/or the Guarantor. The Scheme Administrators, if requested by the Creditors' Committee, will then be required to call a Scheme Creditors' meeting for the purpose of passing a special resolution.

11. SPECIAL RESOLUTION PROCEDURE

11.1 If the Scheme Administrators call a meeting in accordance with paragraph 10.3, the Scheme Creditors may pass a special resolution (the "**Special Resolution**") which will trigger an accelerated claims valuation procedure under the Scheme. Under this procedure, Scheme Creditors' unliquidated Scheme Claims (including outstanding losses and IBNR items) will be subjected to a once-and-for-all valuation in order to produce a crystallised claim against the Company. In the first instance, the Scheme Administrators will seek to agree the existence and amount of a Scheme Creditor's Scheme Claim with the Scheme Creditor concerned. If no agreement is reached between the Scheme Administrators and the Scheme Creditor, the Scheme Administrators may refer the disputed Scheme Claim to an adjudicator appointed for the purpose.

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- 11.2 Once all Scheme Creditors' claims have been crystallised in this manner, the Scheme Administrators will distribute the remaining Scheme Assets to the Scheme Creditors on the basis of those crystallised figures. This valuation procedure would be implemented solely for the purpose of distributing the Scheme Assets and would not bind the New Hampshire Liquidator for the purposes of the New Hampshire Liquidation.
- 11.3 After the passing of a Special Resolution, all costs incurred in implementing the Scheme will be deducted from Scheme Assets, rather than from Gross Proceeds or Net Proceeds.

12. INTEREST ON SCHEME CLAIMS

Scheme Creditors will only receive payments in respect of interest as part of an Established Scheme Liability where, as a matter of New Hampshire law, that Scheme Creditor is entitled to interest in the New Hampshire Liquidation.

13. INVESTMENT POLICY

The Scheme Administrators have the power to invest all or any of the Scheme Assets in their possession, as they consider prudent from time to time. However, they shall invest the Scheme Assets in accordance with the investment policy to be formulated by the Scheme Administrators from time to time in consultation with the Creditors' Committee. In the absence of such a policy, the Scheme Administrators are required to invest any Scheme Assets held by them in accordance with prescribed provisions of the Trustee Investments Act 1961.

14. CONDITIONALITY OF THE SCHEME

The effectiveness of the Scheme will be conditional upon (i) the making of the New Hampshire Approval Order (in respect of which, see Section B, paragraph 4.8); (ii) the making of an order by the English Court (whereunder the English Court approves the remission of the Company's assets (save for the Scheme Assets) to the New Hampshire Liquidator for administration and distribution as part of the New Hampshire Liquidation) (the "Global Liquidation Order"); and (iii) the approval (or non-objection) of the FSA.

15. DURATION OF THE SCHEME

- 15.1 The duration of the Scheme will be dependent on (i) the extent to which it is possible to reach an agreement for the commutation of all or substantially all (by value) of the liabilities of the AFIA Reinsurers and/or the Guarantor and (ii) to the extent that no commutation agreement is reached, the length of time it takes for Scheme Claims to become crystallised and established. As a result, it is not currently possible to estimate how long the Scheme will last.
- 15.2 However, the Scheme will terminate if:
- (a) all the liabilities of the Company to the Scheme Creditors have been discharged in full; or
 - (b) the Scheme Administrators, with the agreement of the Creditors' Committee and the New Hampshire Liquidator, conclude that the Scheme is no longer in the interests of the Scheme Creditors as a whole;
 - (c) a resolution that the Scheme should be terminated is passed at a meeting of the Scheme Creditors, subject to the agreement of the New Hampshire Liquidator;
- or

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- (d) the New Hampshire Liquidator determines in his sole discretion (following consultation with the Scheme Administrators and Creditors' Committee) that the Scheme should terminate in the event that the New Hampshire Supreme Court enters a decision which has the effect of disapproving the proposal for the implementation of the Scheme.

The New Hampshire Liquidator, in deciding whether or not to agree to the Scheme's termination in the circumstances described in sub-paragraphs (b) and (c) above, would consider whether termination would be in the interests of the Company's creditors as a whole.

16. TAXATION

Each Scheme Creditor who receives this document is strongly advised to consult his professional advisers as to his own tax position.

The issue of taxation under the Scheme arises in two contexts; namely, the position of the Company and the position of the Scheme Creditors.

The position of the Company

- 16.1 Under the Scheme, none of the Company's liabilities to Scheme Creditors will be released or waived. The Joint Provisional Liquidators have been advised that, as no Scheme liabilities will be released or waived, the Scheme will not give rise to taxable trading receipts (arising out of such Scheme liabilities) by the Company under current United Kingdom tax legislation.
- 16.2 The Inland Revenue have required the UK branch of the Company to file a consolidated tax return with St Paul Fire & Marine Insurance Company under the name of "AFIA UK Branch". The AFIA UK Branch has significant past tax losses. We are advised by ACE-INA that historically the Inland Revenue has not permitted the AFIA UK Branch to utilise tax losses to offset any taxation suffered on investment income.

The position of Scheme Creditors

- 16.3 The Joint Provisional Liquidators are aware that certain creditors may wish to make deductions in respect of the debts due to them from the Company for United Kingdom tax purposes. In either case the Joint Provisional Liquidators have been advised that there is no difference in principle between tax relief for bad debts available in a liquidation and that available under the Scheme.
- 16.4 It is understood that the majority of Scheme Creditors are resident in the United Kingdom. For United Kingdom tax purposes, Scheme Creditors for whom amounts due from the Company are trading debts should be entitled to a tax deduction for the difference between the amount of the Scheme Claim and the amount of payments expected to be received under the Scheme. Any subsequent payments received under the Scheme in excess of the expected payments would generally be taxable for the Scheme Creditor. It should be noted however, that the amount and timing of taxation of payments received under the Scheme and of any available bad debt relief will depend upon all the particular facts and circumstances as they affect each creditor.

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**ADMINISTRATION AND ADJUDICATION OF SCHEME CREDITORS'
CLAIMS AGAINST THE COMPANY**

All claims against the Company (including those of Scheme Creditors) must be submitted to the New Hampshire Liquidator, whereupon they will be administered in accordance with the terms of the Claims Procedure Order made by the New Hampshire Court. The full text of the Claims Procedure Order is available for inspection at the address cited in Section H: Appendix 3 and can also be accessed at the following website: www.state.nh.us/insurance. However, Scheme Creditors must bear in mind the following key features of the claims administration process.

1. PROOFS OF CLAIM – FILING AND AMENDMENT

- 1.1 In order to qualify for a distribution under the Scheme, a Scheme Creditor's claim must first be established in the New Hampshire Liquidation in accordance with the Claims Procedure Order. To this end, Scheme Creditors should have filed a proof of claim (the form of which is prescribed in the Order Approving Notice entered June 11 2003) in the New Hampshire Liquidation by no later than the claims filing deadline of **13 June 2004**. Proofs of claim received after this filing deadline may, by statute, be accepted by the New Hampshire Liquidator in certain circumstances. If however proofs of claim are excluded by the New Hampshire Liquidator they would then be ineligible for participation in the Scheme. It is important that Scheme Creditors include details of both liquidated and unliquidated items in their proof of claim (i.e. paid losses, outstanding losses and IBNR items).
- 1.2 Once the initial proof of claim has been submitted, it is possible for Scheme Creditors to amend or supplement their proofs of claim by making supplemental filings as and when individual items mature. The supplemental filings may be made after the claims filing deadline of 13 June 2004 but only if the initial proof of claim has been filed before that date. Where the initial proof of claim is filed late and accepted by the New Hampshire Liquidator, supplemental filings with respect thereto may be made after the date upon which such proof of claim is accepted. Forms of proof of claim can be obtained from the website described above.
- 1.3 There is a mandatory stay on proceedings against the Company as a result of the New Hampshire Liquidation. Thus, resolution of disputed claims must generally be carried out pursuant to the procedures laid down in the Claims Procedure Order and Scheme Creditors' pre-liquidation dispute resolution remedies (including contractual arbitration) will be extinguished, subject to Clause 2.4.1 of the Scheme.

2. ADMINISTRATION OF SCHEME CREDITORS' CLAIMS

- 2.1 Notwithstanding the liquidation of the Company, CIC remains obliged to administer the run-off of the AFIA Treaties and CIC is entitled to participate in the claims administration and adjudication procedures set out in the Claims Procedure Order. This includes the right for CIC to interpose defences to Scheme Creditors' claims, if it sees fit. The Company is currently seeking to agree detailed arrangements with CIC with respect to CIC's operational role in the claims administration and adjudication process. It is certainly the New Hampshire Liquidator's firm intention to ensure that, as far as reasonably practicable, CIC will carry out the day-to-day management and administration of claims arising under the AFIA Treaties. With this end in mind, the New Hampshire Liquidator and the Joint Provisional Liquidators envisage that Scheme Creditors' claims will be administered as set out below. Once discussions have been concluded, the Company will circulate to Scheme Creditors an update as appropriate.

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- 2.2 Scheme Creditors should have submitted proofs of claim (as per paragraph 1 above) to the New Hampshire Liquidator at The Home Insurance Company in Liquidation, PO Box 1720, Manchester, New Hampshire 03105-1720 by the claims filing deadline of 13 June 2004. Proofs of claim received after this date may, by statute, be accepted by the New Hampshire Liquidator in certain circumstances. If, however, proofs of claim are excluded by the New Hampshire Liquidator, they would then be ineligible for participation in the Scheme. Scheme Creditors may send a copy of their proofs of claim to ACE-INA Services UK Limited (“ACE-INA”), the agent of CIC, at Kent House, Romney Place, Maidstone, England marked for the attention of M. Durkin Esq. ACE-INA will then adjust the claims submitted.
- 2.3 ACE-INA will not have authority to agree Scheme Creditors’ claims on behalf of the Company. Rather, ACE-INA will make recommendations to the New Hampshire Liquidator with respect to the agreement (or otherwise) of Scheme Creditors’ claims. In practice, the New Hampshire Liquidator is likely in most cases simply to follow the recommendation of ACE-INA with respect to the agreement or rejection of individual claims.
- 2.4 If a Scheme Creditor’s claim is agreed (in whole or in part) by the New Hampshire Liquidator, the New Hampshire Liquidator will issue a notice (“**Notice of Determination**”) to this effect. It will then (after taking account of any applicable set-off and the other items referred to in Section E: paragraph 4.2) become “established” for the purposes of the Scheme and will rank for a distribution (at the then current Payment Percentage level) from the Scheme Assets.

3. REJECTION OF SCHEME CREDITORS’ CLAIMS AND APPEALS

- 3.1 If the New Hampshire Liquidator rejects (in whole or in part) a Scheme Creditor’s claim, the New Hampshire Liquidator shall issue a Notice of Determination to the Scheme Creditor to this effect. Upon receipt of such rejection, the Scheme Creditor may:
- 3.1.1 within 30 days of issue of the Notice of Determination, submit a request (“**Request for Review**”) to the New Hampshire Liquidator, inviting the New Hampshire Liquidator to review his decision. The New Hampshire Liquidator will then issue a notice (“**Notice of Redetermination**”) to the Scheme Creditor in which he will either reconfirm his original determination or amend that determination; and/or
- 3.1.2 within 60 days of issue of the Notice of Determination (or Redetermination), file an objection with the New Hampshire Court. In this event, the Liquidator’s Clerk appointed by the New Hampshire Court will send a Notice of Disputed Claim to the Scheme Creditor concerned, initiating a disputed claim proceeding, which shall be conducted in accordance with the Claims Procedure Order. The resolution of disputed claims will be carried out by the Referee appointed by the New Hampshire Court. Once the Referee issues a decision, a dissatisfied party may appeal to the New Hampshire Court by filing a Motion to Recommit within 15 days in accordance with the Claims Procedure Order. Ultimately, Scheme Creditors will have a right to appeal determinations to the New Hampshire Supreme Court.
- 3.2 The New Hampshire Liquidator wishes to provide a stream-lined process to determine disputed claims by Scheme Creditors and will seek (and, in one instance, has already sought) the approval of amendments to the Claims Procedure Order to accomplish this end once the attributes of these claims are better understood. Therefore, the New

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Hampshire Liquidator will seek approval for amendments to the Claims procedure Order so that, for instance, small claims (those under \$50,000) may be heard at one hearing, without briefing and conferences and scheduling matters may be heard by telephone. The New Hampshire Liquidator will also recommend that hearings in respect of Scheme Claims will be held in England, should the Scheme Creditor concerned so desire. In addition to this, the New Hampshire Liquidator has already obtained the New Hampshire Court's approval to amendments to the Claims Procedure Order to provide that, where the reinsurance contract under which the Scheme Creditor's claim arises contemplates arbitration or other dispute resolution procedures with more limited discovery than that permitted under the Claims Procedure 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. The New Hampshire Liquidator does not intend to apply to the New Hampshire Court to change this particular provision in the future.

- 3.3 The New Hampshire Liquidator will liaise with ACE-INA at each of the steps outlined above with a view to procuring ACE-INA's active involvement in the processes described therein.

4. SET-OFF

- 4.1 Scheme Creditors' set-off rights under the Scheme will be those which apply under New Hampshire insolvency law, which provides, in summary, that set-off of mutual debts and mutual credits between the insolvent insurer and another party are generally permissible, subject to certain specific exceptions. Whilst it is difficult to state with precision how set-off would operate between the Company and a Scheme Creditor in a particular set of circumstances, the New Hampshire Liquidator and the Joint Provisional Liquidators (as prospective Scheme Administrators) recognise that the impact which set-off is likely to have upon payment flows under the Scheme is of significant importance to Scheme Creditors. Therefore, for the purpose of establishing claims under the Scheme and for making distributions thereunder, as well as for the purpose of seeking to collect outstanding reinsurances due to the Company from Scheme Creditors on the Company's ceded business (i.e. where Scheme Creditors have reinsured the Company), the New Hampshire Liquidator and the Joint Provisional Liquidators (as prospective Scheme Administrators) intend to adopt the approach set out below.

- 4.2 **Set-off of the Company's unquantified inwards liabilities against the Company's quantified outwards reinsurance claims** (i.e. where an Scheme Creditor owes a liquidated balance to the Company on the Company's outwards reinsurance): the New Hampshire Liquidator recognises that the Scheme Creditor will wish to seek to off-set its unliquidated claim against the Company against its liquidated reinsurance debt owed to the Company. The New Hampshire Liquidator's likely approach will be, first, to seek to test the robustness of the alleged unquantified inwards liability and, subject to that, to seek to negotiate an agreement with the Scheme Creditor concerned. Under such an agreement, either payment of the liquidated debt will be deferred pending crystallisation of the inwards liability or a cash payment will be made by the Scheme Creditor in respect of its liquidated reinsurance obligation but subject to the establishment of appropriate escrow or similar "claw-back" arrangements to ensure that the Scheme Creditor is permitted to bring into the set-off account its hitherto unliquidated claim against the Company, as and when it is ultimately established.

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- 4.3 **Set-off of the Company's quantified inwards liability against the Company's unquantified outwards reinsurance claim:** if it appears likely that the Scheme Creditor concerned will ultimately be a net Scheme Creditor, the Scheme Administrators will endeavour to negotiate an agreement with the Scheme Creditor concerned whereunder an interim distribution is paid to that Scheme Creditor under the Scheme, possibly subject to an adjustment or escrow mechanism designed to ensure that the Company can ultimately bring its established outwards balances into the set-off account. However, if it is not yet clear whether or not the Scheme Creditor concerned will ultimately be a net Scheme Creditor, or if it appears likely that the Scheme Creditor concerned will ultimately be a net debtor of the Company, the Scheme Administrators are very unlikely to pay any interim distributions to the Scheme Creditor concerned until the position has been clarified.

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CORPORATE GOVERNANCE

1. THE SCHEME ADMINISTRATORS

- 1.1 A Scheme Administrator must be an individual qualified to act as an insolvency practitioner and whose appointment has been approved by the New Hampshire Liquidator. It is proposed that Gareth Howard Hughes and Margaret Elizabeth Mills, partners in the United Kingdom firm of Ernst & Young LLP, be appointed to act as the first Scheme Administrators, such appointment having been approved by the New Hampshire Liquidator. Their curricula vitae are set out in Section H: Appendix 2.
- 1.2 The Scheme Administrators will be responsible for the control of the Scheme Assets and for administering the Scheme. The Scheme grants wide powers to the Scheme Administrators in order to enable them to give effect to the Scheme. One of the main functions of the Scheme Administrators is to set the Payment Percentage.
- 1.3 In carrying out their functions under the Scheme, the Scheme Administrators must act *bona fide* and with reasonable care in the interests of Scheme Creditors as a whole.
- 1.4 A Scheme Administrator may resign his appointment by giving not less than six months' notice in writing to the New Hampshire Liquidator and to the Creditors' Committee, or such shorter period as he may agree with the Creditors' Committee.
- 1.5 The Scheme Administrators may be removed from office by a resolution passed at a Scheme Creditors' meeting. If any of the Scheme Administrators are so removed, the Scheme Creditors are entitled to appoint at the same meeting one or more (as applicable) new Scheme Administrators, provided that the persons to be appointed are (i) qualified to act in such capacity and (ii) have been approved by the New Hampshire Liquidator. If the Scheme Creditors do not appoint new Scheme Administrators and in any other case where the office of Scheme Administrator is vacated for one of the reasons set out in the Scheme, the Creditors' Committee will be able to appoint persons who are qualified to act in such capacity and who have been approved by the New Hampshire Liquidator as new Scheme Administrators.
- 1.6 The Scheme Administrators' remuneration must be approved by the Creditors' Committee.

2. RESPONSIBILITY AND INDEMNITY OF THE SCHEME ADMINISTRATORS

- 2.1 The Scheme provides that acts done or omitted to be done in good faith and with reasonable care by the Scheme Administrators, their respective employees and agents in carrying out their duties or exercising their powers under the Scheme may not be challenged by any Scheme Creditor, and that no such person will be liable for any loss, unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty. In addition, no Scheme Creditor is entitled to challenge the validity of any act done or the exercise of any power (conferred by the Scheme on the Scheme Administrators) in good faith by the Scheme Administrators (or any employee or delegate) in respect of the setting of a Payment Percentage. No such person is liable for any loss arising out of any act or omission relating to his powers in this regard unless such loss is attributable to his own fraud or dishonesty.
- 2.2 The Scheme Administrators, their employees and delegates are entitled to an indemnity out of the Net Proceeds (or, after the passing of a Special Resolution, the Scheme Assets) against all actions, claims, proceedings and demands brought or made against them in respect of any acts done or omitted to be done by them in good faith and, where applicable, with reasonable care in the course of carrying out their duties or exercising their powers under the Scheme.

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3. THE CREDITORS' COMMITTEE

- 3.1 The main functions of the Creditors' Committee are to supervise the Scheme Administrators in the carrying out of their functions under the Scheme and to provide the Scheme Administrators with its views on important issues relating to the Scheme. The key instances in which the views of the Creditors' Committee will be sought by the Scheme Administrators will be:
- (a) when the Scheme Administrators are considering at what level to set a Payment Percentage. In particular, the Scheme Administrators will not be entitled to rely upon the assumptions described in Section E: paragraph 5.3 without the express approval of the Creditors' Committee. The Scheme Administrator is also required to consult with the Creditors' Committee (and the New Hampshire Liquidator) with regard to determining whether it is appropriate to obtain financial or other actuarial advice in order to set the Payment Percentage; and
 - (b) where the Company is seeking to enter into a commutation with all or substantially all (by value) of the AFIA Reinsurers and/or the Guarantor.
- 3.2 The Creditors' Committee must act *bona fide* and in the interests of Scheme Creditors as a whole.
- 3.3 The Creditors' Committee may convene, adjourn and otherwise regulate its meetings as it considers appropriate in order to carry out its functions under the Scheme. It is, however, required to meet for the purposes of receiving a report from the Scheme Administrators on the progress of the Scheme, which report is to be delivered on an approximately annual basis.
- 3.4 The Creditors' Committee has the power to request from the Scheme Administrators specific information concerning the operation of the Scheme. The Scheme Administrators are obliged to give to the Creditors' Committee reasonable information concerning the affairs of the Company and the operation of the Scheme, except where they determine that to divulge such information would be detrimental to the Company or to Scheme Creditors as a whole. The Creditors' Committee must keep information which is provided to them concerning the Scheme strictly private and confidential, unless they have received the prior written consent of the Scheme Administrators.
- 3.5 The Creditors' Committee may consist of between three and nine members (inclusive). The members of the initial Creditors' Committee are listed in Section H: Appendix 1. Subject to certain prescribed exceptions, any individual, company or partnership who is or which is a Scheme Creditor is eligible for appointment as a member of the Creditors' Committee.
- 3.6 When filling any vacancy and appointing additional Creditors' Committee members, the Creditors' Committee must ensure that the composition of the Creditors' Committee is such as to secure a proper balance of the interests of Scheme Creditors as a whole.
- 3.7 Provided that there are vacancies on the Creditors' Committee, an eligible person may be appointed to be a member of the Creditors' Committee by either (i) a resolution passed by at least two-thirds of the Creditors' Committee (but subject always to the consent of the Scheme Administrators and a resolution ratifying that appointment being passed by the Scheme Creditors at the next Scheme Creditors' meeting) or (ii) by a resolution of the Scheme Creditors. The Scheme Creditors may also pass a resolution

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to remove an existing member from the Creditors' Committee, provided that this does not result in the Creditors' Committee having less than the minimum number of members required under the Scheme.

- 3.8 Each member of the Creditors' Committee will be entitled to reimbursement by the Company out of Net Proceeds of its reasonable expenses in attending Creditors' Committee meetings.

4. RESPONSIBILITY AND INDEMNITY OF THE CREDITORS' COMMITTEE

- 4.1 The Scheme provides that acts done or omitted to be done in good faith by any member of the Creditors' Committee (or its nominated representative or alternate) in carrying out their duties or exercising their powers under the Scheme may not be challenged by any Scheme Creditor, and that no such person will be liable for any loss, unless such loss is attributable to his own wilful default, fraud, dishonesty or wilful breach of duty or trust.

- 4.2 In addition, no Scheme Creditor is entitled to challenge the validity of any act done or omitted to be done or the exercise of any power conferred upon the Creditors' Committee in good faith by any member of the Creditors' Committee (including a nominated representative or an alternate) in respect of its powers of approval and consultation with the Scheme Administrators in relation to the setting of the Payment Percentage. No member of the Creditors' Committee (nor its nominated representative nor its alternate) is liable for any loss arising out of any such act, omission or exercise of power, unless such loss is attributable to his own fraud or dishonesty.

- 4.3 The Creditors' Committee (their nominated representatives and alternates) are entitled to an indemnity out of the Net Proceeds (or, after the passing of a Special Resolution, the Scheme Assets) against all actions, claims, proceedings and demands brought or made against them in respect of any acts done or omitted to be done by them in good faith in the course of carrying out their duties or exercising their powers under the Scheme.

5. THE NEW HAMPSHIRE LIQUIDATOR AND THE JOINT PROVISIONAL LIQUIDATORS

- 5.1 The Scheme recognises that the New Hampshire Liquidator and the Joint Provisional Liquidators are entitled to act on behalf of the Company in collecting Gross Proceeds. The Scheme provides that they will then make the deductions described in the Scheme from Gross Proceeds and Net Proceeds (see further Section E: paragraph 1). After the relevant deductions have been made, the New Hampshire Liquidator and/or the Joint Provisional Liquidator, as appropriate, will transfer 50% of the remaining proceeds to the Scheme Administrators to hold as Scheme Assets. The remaining 50% of the proceeds will be remitted to the New Hampshire Liquidation estate to be applied in accordance with the New Hampshire Liquidation.

- 5.2 The New Hampshire Liquidator has certain rights of approval and consultation under the Scheme. In particular, the New Hampshire Liquidator has the right to approve (i) the appointment or removal of any person who is, or is to be, appointed as a Scheme Administrator (ii) any proposed amendments to the Scheme; and (iii) a proposal of the Scheme Administrators or the Scheme Creditors to terminate the Scheme.

- 5.3 Neither the New Hampshire Liquidator nor the Joint Provisional Liquidators, nor certain prescribed persons working with them or on their behalf, have any liability under the Scheme. Any claim which a Scheme Creditor seeks to bring against the New Hampshire Liquidator must be brought in the New Hampshire Court.

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6. MEETINGS OF SCHEME CREDITORS

- 6.1 The Scheme provides for meetings of Scheme Creditors to be held. Meetings will be held when convened by the Scheme Administrators, the Creditors' Committee or when either twenty Scheme Creditors or any ten Scheme Creditors owed liabilities of not less than 10% in value of all Scheme Claims request that meetings be held.
- 6.2 The voting procedure provides the value to be placed on a Scheme Creditor's claim for voting purposes will be the amount of the Established Scheme Liability, less any amounts paid and, in the case of any other Scheme Claim, and for the purposes of that meeting only, the amount reasonably estimated by the Scheme Administrators as being the value of the Scheme Claim.
- 6.3 A resolution may only be passed at a meeting of Scheme Creditors if it is passed by a majority in number representing not less than 75% in value of Scheme Creditors who, being entitled so to do, vote in person or by proxy at that meeting.
- 6.4 The Scheme Administrators must convene a meeting of Scheme Creditors in circumstances where the Company has entered into a commutation with all (or substantially all) by value of the AFIA Reinsurers and/or the Guarantor and the Creditors' Committee have requested that the Scheme Administrators convene a meeting for the purpose of considering a Special Resolution (as further described in Section E: paragraph 11).

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APPENDIX 1

1. INITIAL CREDITORS' COMMITTEE

The initial members of the Creditors' Committee are as follows:

- (a) Continental Insurance Company New York;
- (b) English and American Insurance Company Limited;
- (c) Equitas Limited;
- (d) Excess Insurance Company Limited;
- (e) KMS/KMSIS (as agent for and on behalf of the KWELM companies and The Bermuda Fire & Marine Insurance Company Limited);
- (f) Mentor UK Limited;
- (g) Riverstone Management Limited (as agent, for and on behalf of Sphere Drake);
- (h) Unionamerica Insurance Company Limited; and
- (i) Zurich Versicherung AG (Deutschland).

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APPENDIX 2

2. CURRICULA VITAE

GARETH HOWARD HUGHES

Gareth Hughes has been a partner in Ernst & Young LLP since 1988. He heads up the Financial Services Restructuring team in London. His formal insolvency assignments in the insurance sector include Mentor Insurance, Municipal Mutual Insurance, Pine Top Insurance, Scan Re Insurance, Ocean Mutual Marine Insurance, The New Cap Re Group, Carolina Re, Taisei Fire & Marine and The Home Insurance Company. Gareth is a Fellow of the Institute of Chartered Accountants in England & Wales and a licensed insolvency practitioner in the UK. He is President of R3, the Association of Business Recovery Professionals in the UK.

MARGARET ELIZABETH MILLS

Margaret Mills is a corporate restructuring partner at Ernst & Young LLP, who has been involved in a broad range of industries involving extensive cross border restructuring experience since 1979. She is currently the Global Coordinating partner for the firm's restructuring practices. Her formal insolvency assignments in the insurance sector include acting as joint provisional liquidator of Taisei Fire & Marine Insurance Company and The Home Insurance Company and acting as joint liquidator of Bradstocks Insurance Brokers, Telesure Ltd, P J Mosse & Partners Ltd and Durham Hadley Cannon Ltd, all insurance brokers.

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APPENDIX 3

3. LIST OF DOCUMENTS AVAILABLE FOR INSPECTION

- (a) Claims Procedure Order;
- (b) The letter from the Company to AFIA Creditors dated 22 January 2004
- (c) The letter from the Company to AFIA Creditors dated 25 May 2004, and
- (d) New Hampshire Approval Order.

The above documents or copy documents will be available for inspection on the following website:

www.state.nh.us/insurance

and, on reasonable notice, at the following locations during ordinary business hours on business days:

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

Reference: Gareth Hughes/Sarah Ellis

The Home Insurance Company
59 Maiden Lane
New York, New York
10038

Reference: Jonathan Rosen

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PART II
THE SCHEME

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
IN THE MATTER OF

No 4138 of 2004

THE HOME INSURANCE COMPANY

and

IN THE MATTER OF THE COMPANIES ACT 1985

SCHEME OF ARRANGEMENT

(pursuant to section 425 of the Companies Act 1985)

between

THE HOME INSURANCE COMPANY

and its

SCHEME CREDITORS

(as defined in the Scheme of Arrangement)

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PART II
THE SCHEME

1. PART 1 – PRELIMINARY

1.1 Definitions

1.1.1 In the Scheme, unless the context otherwise requires or otherwise expressly provides, the following expressions shall bear the meanings set opposite them:

- “ACE Group Company”** (i) BAFCO Reinsurance Company Limited of Bermuda;
(ii) CCI Insurance Company;
(iii) Century Indemnity Company;
(iv) Century International Reinsurance Company Limited;
(v) Insurance Company of North America;
(vi) ACE Limited;
(vii) any Subsidiary of ACE Limited,
and/or any of their predecessors or successors in title;
- “Adverse Costs Proceeds”** shall have the meaning given to such expression in Clause 3.3;
- “AFIA”** the American Foreign Insurance Association;
- “AFIA Reinsurer”** (i) any ACE Group Company which has underwritten reinsurance or granted indemnities in relation to AFIA business directly in favour of the Company as the reassured or, as appropriate, the indemnified party; and/or
(ii) a reinsurer (other than an ACE Group Company) which has underwritten reinsurance in relation to AFIA business directly in favour of the Home as the reassured;
- “AFIA Treaties”** any treaty or contract of reinsurance of any kind whatsoever underwritten by or on behalf of the Company through the Company’s UK branch as part of its AFIA business, the obligations under which have not been novated or otherwise transferred to any other entity;
- “Business Day”** a day (other than a Saturday or Sunday or a New Hampshire State holiday) on which the relevant financial markets are open for dealings between the banks in London and Concord, New Hampshire;
- “Claims Submission Period”** shall have the meaning set out in Appendix 1;
- “Claims Procedure Order”** the order establishing procedures regarding claims filed with the Company, entered by the New Hampshire Court on 19 December 2003 (as the same may be amended, varied, supplemented or replaced from time to time);

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“Collection Costs”	all costs, charges, expenses and disbursements incurred by the Company in the collection and calculation of the Gross Proceeds and Net Proceeds;
“Commutations Order”	the order establishing procedures for review of reinsurance commutation agreements entered by the New Hampshire Court on 23 July 2003 (as the same may be amended, varied, supplemented or replaced from time to time);
“Companies Act”	the Companies Act 1985 of England and Wales;
“Company”	The Home Insurance Company (incorporated under the laws of the State of New Hampshire and presently in liquidation);
“Costs”	Pre-Scheme Costs and Other Costs;
“Creditors’ Committee”	the committee established pursuant to Part 5;
“Delegate”	any person to whom a Scheme Administrator may delegate any of his functions and powers under Clause 4.2.2(m);
“Designated Representative”	shall have the meaning given to that term in Clause 5.1.4;
“Effective Date”	the first date on which all of the conditions set out in Clause 8.3 shall have been satisfied;
“Employee”	any partner in the same firm as the Scheme Administrators, or any individual employed, whether under a contract of service or a contract for services, by that firm or by any company owned by that firm, who is employed by the Scheme Administrators in accordance with Clause 4.2.2(f) in connection with the conduct of their functions and powers under the Scheme;
“English Court”	the High Court of Justice in England;
“English Court Orders”	(i) the Global Liquidation Order; and (ii) the Sanction Order;
“Established Scheme Liability”	a liability of the Company which has become an Established Scheme Liability in accordance with: (i) Clause 2.8.1; or (ii) (following the passing of a Special Resolution) the claims adjudication process set out in that Special Resolution;
“Explanatory Statement”	the statement of even date herewith (and the appendices thereto) explaining the effect of the Scheme, in compliance with section 426 of the Companies Act;

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“Extension Letter”	the letter dated 25 May 2004 from the Joint Provisional Liquidators to Scheme Creditors, copies of which are available for inspection as provided in Appendix 3 of the Explanatory Statement;
“FSA”	the Financial Services Authority;
“FSA Approval”	a notice of approval or “non-objection” from the FSA confirming that the FSA has approved or has no objection to the implementation of the Scheme and the making of the Global Liquidation Order;
“Global Liquidation Order”	an order of the English Court approving the remission of the Company’s assets situated in England and Wales (save for the Scheme Assets) to the New Hampshire Liquidator for administration and distribution as part of the New Hampshire Liquidation;
“Gross Proceeds”	all cash payments received by the Company from: (i) an AFIA Reinsurer relating to that company’s reinsurance and/or indemnity obligations to the Company with respect to the AFIA Treaties; and/or (ii) the Guarantor under or pursuant to the Guarantee, as it relates to the AFIA Treaties, after deducting or taking into account, where applicable and/or appropriate, amounts offset or to be offset between the Company and such AFIA Reinsurer and/or the Guarantor;
“Guarantee”	means the guaranty granted by the Guarantor in section 12 of the Purchase Agreement No.1 dated and entered into on 30 December 1983 between the Company, the Guarantor, CIGNA International Corporation, Insurance Company of North America, AFIA, AFIA Finance Corporation, Hartford Fire Insurance Company and Aetna Insurance Company;
“Guarantor”	CIGNA Corporation, or its successors in title, as guarantor and/or indemnitor under the Guarantee;
“Indemnity Costs”	means all sums which the Company is obliged to pay by reason of the obligations imposed on it by Clauses 4.3.6, 4.3.7, 4.3.8, 5.6.3, 5.6.4, 5.6.5 and 5.8;
“Informal Creditors’ Committee”	means the informal creditors’ committee established by the Joint Provisional Liquidators, the members of which are listed at Appendix 1 to the Explanatory Statement;

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“Insolvency Act”	the Insolvency Act 1986 of England, Scotland and Wales;
“Insolvency Rules”	the Insolvency Rules 1986 of England, Scotland and Wales;
“Insurer”	any insurer or reinsurer (apart from the Company);
“Interim Appointees”	shall have the meaning given to that term in Clause 5.9.1;
“Joint Provisional Liquidators”	means Gareth Howard Hughes and Margaret Elizabeth Mills, partners in the United Kingdom firm of Ernst & Young LLP, acting in their capacity as joint provisional liquidators in respect of the affairs of the Company in this jurisdiction and such person as may be appointed from time to time in addition or succession thereto;
“JPL Costs”	all costs, charges, expenses and disbursements properly incurred by, and the remuneration of, the Joint Provisional Liquidators (acting in their capacity as such), whether incurred or arising pursuant to the Scheme or otherwise;
“Letter”	the letter dated 22 January 2004 from the Joint Provisional Liquidators to members of the Informal Creditors’ Committee (as amended by the Extension Letter and as further amended from time to time), copies of which are available for inspection as provided in Appendix 3 of the Explanatory Statement;
“liability”	any liability of a person, whether it is present, future, prospective or contingent, whether or not its amount is fixed or unliquidated, whether or not it involves the payment of money and whether it arises at common law, in equity or by statute, in any jurisdiction, or in any other manner whatsoever, but such expression does not include any liability which is barred by statute or otherwise unenforceable or which would be inadmissible in the New Hampshire Liquidation of the Company; and, for the avoidance of doubt, a person who does not have a legal liability under a contract or policy because such contract or policy is void or, being voidable, has been duly avoided will not have a liability for the purposes of the Scheme;
“Net Proceeds”	Gross Proceeds net of: <ul style="list-style-type: none">(i) Pre-Scheme Costs;(ii) Other Costs;

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- (iii) the proceeds received by the Company from an AFIA Reinsurer with respect to those inwards liabilities of the Company under the AFIA Treaties which are, or will upon final adjudication be, settled by way of offset as between the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) and the relevant Scheme Creditor concerned (whether such offset right derives from contract or statute); and
 - (iv) Adverse Costs Proceeds (which shall be dealt with in accordance with Clause 3.3);
- “New Hampshire Approval Order”** an order of the New Hampshire Court approving in principle the Proposal;
- “New Hampshire Court”** the Merrimack County Superior Court of the State of New Hampshire;
- “New Hampshire Liquidation”** the liquidation being conducted in respect of the Company pursuant to the order of the New Hampshire Court dated 13 June 2003;
- “New Hampshire Liquidation Date”** 11 June 2003;
- “New Hampshire Liquidator”** the Commissioner of Insurance for the State of New Hampshire, and his successors in office, solely in his capacity as liquidator of the Company pursuant to his appointment by order of the New Hampshire Court;
- “New Hampshire RSA”** the Revised Statutes Annotated of the State of New Hampshire;
- “Nominated Representative”** shall have the meaning given to that term in Clause 5.1.5;
- “Operative Date”** the date on which a Special Resolution is passed in accordance with the terms of the Scheme;
- “Other Costs”** all such costs, charges, expenses, disbursements and remuneration as are referred to in Clause 8.2.2 (excluding, for the avoidance of any doubt, Indemnity Costs);
- “Payment Percentage”** in relation to an Established Scheme Liability, the percentage of such Established Scheme Liability which is payable by the Company (acting by the Scheme Administrators) from Scheme Assets from time to time under the Scheme, as the same is set from time to time under Clause 3.2;
- “Pre-Scheme Costs”** all such costs, charges, expenses, disbursements and remuneration as are referred to in Clause 8.2.1;

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“Proceeding”	any action or other legal proceeding including, for the avoidance of doubt, (i) arbitration (insofar as the same is provided for under the terms of a contract giving rise to a Scheme Claim) and (ii) any judicial action or proceeding;
“Proposal”	the proposal for the implementation of a scheme, which proposal was set out in the Letter;
“Recovery”	shall have the meaning given to that term in a Special Resolution;
“Referee”	a referee appointed by the New Hampshire Court upon motion of the New Hampshire Liquidator pursuant to the Claims Procedure Order;
“Relevant Rate of Exchange”	the rate of exchange, for the conversion of one currency into another, prevailing at the close of business New York time on 8 May 2003, being the date of the filing of the petition for the liquidation of the Company, as published in the United States national edition of the Wall Street Journal on 9 May 2003;
“Review Date”	the Effective Date and 31 December of each year or such other date as the Scheme Administrators may from time to time, in consultation with the Creditors’ Committee but otherwise in their absolute discretion, decide;
“Sanction Order”	the order of the English Court sanctioning the Scheme;
“Scheme”	this scheme of arrangement in its present form subject to any modification, term or condition which the English Court may think fit to approve or impose in accordance with Clause 8.4;
“Scheme Administrators”	in the first instance, Gareth Howard Hughes and Margaret Elizabeth Mills, or such other persons as may be appointed as scheme administrators in accordance with Clause 4.1.1(a) of this Scheme from time to time;
“Scheme Assets”	Subject to Clause 3.2.8: (i) 50% of Net Proceeds (net of Indemnity Costs); and (ii) Adverse Costs Proceeds (which shall be dealt with in accordance with Clause 3.3); and (iii) where a Special Resolution has been duly passed, any Recovery made in accordance with that Special Resolution; and (iv) any interest, dividends and/or other amounts (net of any applicable taxes) received or receivable

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by the Company (acting by the Scheme Administrators) pursuant to any investment of Scheme Assets made by the Scheme Administrators in accordance with Clause 2.13 of the Scheme or otherwise;

“Scheme Claim”

any claim against the Company under or arising out of any AFIA Treaty and being a liability to which the Company is subject at the New Hampshire Liquidation Date or to which the Company may become subject after the New Hampshire Liquidation Date by reason of an obligation incurred before that date;

“Scheme Creditor”

a creditor of the Company in respect of a Scheme Claim (and such expression shall include any assignee or other person entitled to claim in succession to or in substitution for any such Scheme Creditor in respect of such Scheme Claim);

“Special Meeting”

a meeting of Scheme Creditors convened by the Scheme Administrators in accordance with Clause 6.5 to consider and, if thought fit, to pass a Special Resolution;

“Special Resolution”

a resolution in substantially the form set out in Appendix 1 to the Scheme (but with such amendments and modifications as the New Hampshire Liquidator, the Scheme Administrators and the Creditors’ Committee shall deem appropriate in the light of the circumstances prevailing at the time when the Special Meeting is convened) which is passed by a majority in number representing at least three-fourths in value of the Scheme Creditors who, being entitled to do so, vote in person or by proxy at a Special Meeting;

“Subsidiary”

shall be construed as a reference to any company or corporation which is a “subsidiary undertaking” according to the construction of such expression in section 258 of the Companies Act;

“US Dollars”

the lawful currency of the United States of America.

1.1.2 Clause and part headings and the index to the Scheme are inserted for convenience of reference only and shall be ignored in the interpretation of the Scheme.

1.1.3 In the Scheme, unless the context otherwise requires or otherwise is expressly provided:

- (a) references to clauses and parts are to be construed as references to the clauses and the parts of the Scheme;

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- (b) references to the Scheme or to any specified provision thereof shall be construed as references to the Scheme or that provision as in force for the time being and as modified in accordance with the terms of the Scheme;
- (c) words importing the plural shall include the singular and *vice versa* and words importing one gender shall include all genders;
- (d) references to a person shall be construed as including references to an individual, firm, partnership, company, corporation, unincorporated body of persons, state or state agency;
- (e) references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended.

1.2 The Company

- 1.2.1 The entity which originally underwrote insurance business as “The Home Insurance Company” was incorporated on 3 March 1853 under the laws of the State of New York and commenced trading on 13 April 1853.
- 1.2.2 The Company was incorporated under the name of “The Home Insurance Company, Inc.” on 15 March 1973 under the laws of the State of New Hampshire to act as a vehicle for the transfer of the corporate domicile of The Home Insurance Company from New York to New Hampshire. The Company’s name was changed to its current name “The Home Insurance Company” on 30 June 1973.

1.3 Parties other than the Company and the Scheme Creditors

- 1.3.1 Gareth Howard Hughes and Margaret Elizabeth Mills have each given and not withdrawn their consent to act as the initial Scheme Administrators under the Scheme from the Effective Date.
- 1.3.2 The membership of the Creditors’ Committee shall be established pursuant to Part 5.

1.4 Purpose of the Scheme

The purpose of the Scheme is to distribute the Scheme Assets to the Scheme Creditors in accordance with the terms of this Scheme. In particular, the Scheme seeks to ensure that:

- (a) subject to the passing of a Special Resolution, the liabilities of the Company in respect of Scheme Claims shall be established and ascertained in accordance with the Claims Procedure Order; and
- (b) in accordance with Clause 3.2, distributions are paid by the Company (acting by the Scheme Administrators) out of Scheme Assets to those of its Scheme Creditors whose Scheme Claims have from time to time become Established Scheme Liabilities.

In addition, the Scheme provides a mechanism for accelerating the payment of dividends to Scheme Creditors out of Scheme Assets and effecting an early closure of the Scheme.

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2. PART 2 – THE SCHEME

2.1 Application of the Scheme

The Scheme shall apply to all liabilities of the Company in respect of Scheme Claims including all liabilities which have been established before or may be established after the New Hampshire Liquidation Date in respect of obligations incurred before that date.

2.2 Collection of Gross Proceeds

2.2.1 With effect from the Effective Date, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) shall procure that:

- (a) it uses all reasonable endeavours to collect in and realise the sums due and owing from time to time by the AFIA Reinsurers with respect to the AFIA Treaties; and
- (b) in determining what amounts an AFIA Reinsurer may set-off against the sums due and owing to the Company as aforesaid, for the purposes of calculating Gross Proceeds, the Company (acting by the New Hampshire Liquidators and/or the Joint Provisional Liquidators) shall assert all reasonable arguments and/or defences as regards the validity of such off-set, whether in the context of a claims agreement process, a commutation or similar compromise arrangement or a dispute resolution process.

2.2.2 With effect from the Effective Date, the Company (acting by the New Hampshire Liquidator) may, at its sole discretion, seek to enforce the Guarantee.

2.3 Determination and application of Net Proceeds and Scheme Assets

2.3.1 The Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) shall:

- (a) (in consultation with the Scheme Administrators and the Creditors' Committee) determine the quantum of Net Proceeds and Scheme Assets to be applied in accordance with the terms of the Scheme;
- (b) make such payments out of Gross Proceeds as are required by Clauses 7.1.2 and 8.2 of this Scheme;
- (c) make such payments out of Net Proceeds as are required by Clauses 4.3.6, 4.3.7, 4.3.8, 5.6.3, 5.6.4, 5.6.5 and 5.8 of this Scheme;
- (d) procure that 50% of the Net Proceeds (net of Indemnity Costs) are remitted to and/or retained by the New Hampshire Liquidator in accordance with the terms of the Global Liquidation Order;
- (e) procure that 50% of the Net Proceeds (net of Indemnity Costs) and all Adverse Costs Proceeds are transferred to the Scheme Administrators to be held as Scheme Assets; and
- (f) provide such information as the Scheme Administrators may reasonably require, including, but not limited to, information concerning the likely recoveries from the AFIA Reinsurers and/or the likely level of Scheme Claims that shall become established in accordance with Clause 2.8.

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2.4 Stay of Proceedings

- 2.4.1 Save where the Company (acting by the New Hampshire Liquidator) consents, no Scheme Creditor shall institute or continue any Proceeding or other judicial, quasi-judicial, administrative or regulatory process whatsoever against the Company (in the English Court, the New Hampshire Court or otherwise) to establish the existence or amount of a Scheme Claim or to seek any remedy with respect thereto otherwise than in accordance with the terms of the Claims Procedure Order and/or the Scheme.
- 2.4.2 If and to the extent that a Scheme Creditor obtains against the Company in relation to a Scheme Claim an order, judgment, decision or award of a court or tribunal in contravention of Clause 2.4.1, such order, judgment, decision or award shall not give rise to an Established Scheme Liability in respect of the Scheme Claim and shall be disregarded when determining the liability of the Company in respect of the Scheme Claim.
- 2.4.3 Nothing in the Scheme shall preclude the Company (whether acting by the New Hampshire Liquidator, the Joint Provisional Liquidators and/or the Scheme Administrators) from either:
- (a) commencing or continuing any Proceeding against a Scheme Creditor; or
 - (b) seeking to be joined into any subsisting Proceeding between a Scheme Creditor and an Insurer as an additional party thereto.
- 2.4.4 Where the Company commences, continues or is joined into any Proceeding against a Scheme Creditor as aforesaid, nothing in the Scheme shall preclude the Scheme Creditor from asserting and prosecuting against the Company in the Proceeding a Scheme Claim so long as:
- (a) the Scheme Claim arises out of the same transaction or occurrence that is the subject matter of the Company's claim in that Proceeding; and
 - (b) the Scheme Claim does not require for its adjudication the presence of third parties over whom the court or tribunal in question cannot acquire jurisdiction. For the purposes of this Clause 2.4.4, the Company shall not be deemed to be continuing any Proceedings which commenced prior to the New Hampshire Liquidation Date and in which the Company is not actively prosecuting its claims.

2.5 Enforcement of Scheme Claims

- 2.5.1 Except to the extent that the Company (acting by the Scheme Administrators) has failed to perform any obligation to make a payment to a Scheme Creditor under the provisions of the Scheme and subject to the rights of Scheme Creditors under Clauses 2.6 and 2.7 and subject to the limitations specified in Clause 3.4.4, no Scheme Creditor shall be entitled to take any proceeding or step (whether by way of demand, legal proceedings, execution of judgment, arbitration proceedings or otherwise howsoever) against the Company or its property in any jurisdiction whatsoever for the purpose of enforcing payment of any Scheme Claim or any part thereof.
- 2.5.2 If any Scheme Creditor takes any such action as is prohibited by Clause 2.5.1, it shall be treated as having received, on account of its Scheme Claim, an advance payment under Clause 3.4 equal to the amount or gross value of any money, property, benefit or advantage obtained by it at the expense of the

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Company as the result of such action; and the extent, if any, to which it is entitled to any payment under Clause 3.4.1 shall be reduced accordingly. For this purpose, the gross value of any such property, benefit or advantage shall be conclusively determined by the Scheme Administrators and, without limitation, may include such amount as the Scheme Administrators may consider to be appropriate by way of interest or costs, charges or expenses incurred by the Company as a consequence thereof.

2.6 Security, letters of credit and trusts

2.6.1 Nothing in the Scheme shall affect the right of any person to take any appropriate action to enforce:

- (a) any security over the property of the Company which can be enforced pursuant to New Hampshire law; or
- (b) any letter of credit issued or trust created (expressly, by implication or by operation of law) in respect of the Company and of which it is a beneficiary which can be enforced pursuant to New Hampshire law.

2.6.2 Nothing in the Scheme shall affect the rights of the Company against any person in respect of any wrongful drawdown or enforcement of any security, letter of credit issued or trust created in respect of the Company.

2.7 Set-off

A Scheme Creditor and the Company may rely on any right of set-off of mutual debts or credits which either of them may have under New Hampshire RSA 402-C:34.

2.8 Established Scheme Liabilities

2.8.1 Subject to Clauses 2.4, 2.5, 2.8.2, 2.9 and any claims adjudication process established pursuant to a duly passed Special Resolution, a liability of the Company in respect of a Scheme Claim shall be an “**Established Scheme Liability**” when a proof in respect of such Scheme Claim has been first lodged in the New Hampshire Liquidation in accordance with the terms of the Claims Procedure Order and there has been finally and conclusively established in accordance with the Claims Procedure Order (whether by agreement with the New Hampshire Liquidator or otherwise) a present obligation of the Company to pay an ascertained sum of money, after account has been taken of:

- (a) any security over the property of the Company which the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with Clause 2.6.1(a); and
- (b) any letter of credit issued or trust created in respect of the Company which the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with Clause 2.6.1(b); and
- (c) any set-off which may be taken into account in accordance with Clause 2.7; and
- (d) recoveries (net of the costs of recovery) made by the Scheme Creditor in respect of such Scheme Claim, from the Company in the New Hampshire Liquidation.

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2.8.2 For the purposes of the Scheme, the amount of an Established Scheme Liability shall be the amount at which it was established in accordance with either (i) Clause 2.8.1 or (ii) (following the passing of a Special Resolution in accordance with the provisions of this Scheme) any claims adjudication process set out in such Special Resolution, notwithstanding any payment which has been made (or is treated as having been made) under the Scheme.

2.9 Interest

For the purpose of paying or providing for payments under the Scheme and subject to any claims adjudication process established pursuant to a Special Resolution, there shall not be included as part of an Established Scheme Liability any interest liability of the Company except interest to which a Scheme Creditor is entitled pursuant to New Hampshire law in the New Hampshire Liquidation (“**Admissible Interest**”). No payment shall be made under the Scheme in respect of any part of a Scheme Claim which represents interest which is not Admissible Interest. For the avoidance of doubt, this clause does not affect a Scheme Creditor’s entitlement (if any) to assert a Scheme Claim in respect of that Scheme Creditor’s liability for interest to a third party.

2.10 Currency of payment

2.10.1 Any amount payable to a Scheme Creditor under the Scheme, other than an amount payable in accordance with Clause 3.3, shall be paid in US Dollars. A Scheme Claim of a Scheme Creditor which was incurred in a currency other than US Dollars shall be converted into US Dollars at the Relevant Rate of Exchange.

2.10.2 For the purpose of applying any set-off pursuant to the provisions of the Scheme, where the sum being applied in set-off is expressed in a currency other than US Dollars, such sum shall be converted into US Dollars at the Relevant Rate of Exchange.

2.11 Method of payment

2.11.1 Payments to a Scheme Creditor under the Scheme may be made, in the absolute discretion of the Scheme Administrators:

- (a) by cheque in favour of the Scheme Creditor concerned or as such Scheme Creditor may direct and sent through the post, at the risk of such Scheme Creditor, to the last known address of such Scheme Creditor or to such other address as such Scheme Creditor may from time to time notify the Scheme Administrators;
- (b) by telegraphic transfer to such bank account as the Scheme Creditor concerned may from time to time notify the Scheme Administrators; or
- (c) in such other manner or in favour of such other person (including any third party) as the Scheme Administrators may from time to time in their absolute discretion determine, following a request from the Scheme Creditor concerned, and the cost of using any such payment method in a particular case shall be an expense of the Scheme Creditor concerned,

provided however, that any payment to a Scheme Creditor located outside the United Kingdom shall only be paid in accordance with the method set out in sub-paragraph (b) above, unless otherwise requested by the Scheme Creditor concerned.

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- 2.11.2 Payment under or pursuant to the Scheme shall be deemed to have been made on the day that the cheque is posted or telegraphic transfer instruction given to the relevant bank (as the case may be). Payment of any such cheque by the banker on whom it is drawn shall be satisfaction of the monies in respect of which it was drawn; and receipt of the amount of such telegraphic transfer into such account shall be satisfaction of the monies in respect of which it was paid.
- 2.11.3 In the event that any payment is made under the Scheme to a Scheme Creditor which is uncashed or otherwise unclaimed after the date on which payment was posted to the Scheme Creditor pursuant to Clause 2.11.1(a) or otherwise made pursuant to Clause 2.11.1(c) then, upon the expiration of six years from the posting of the cheque or the making of the payment pursuant to Clause 2.11.1(a) or 2.11.1(c), the relevant Scheme Creditor's right to such payment shall be extinguished.
- 2.11.4 The Scheme Administrators may determine that any payment under the Scheme of less than 100 US Dollars (or such greater amount as the Scheme Administrators may reasonably determine from time to time) (the "*de minimis amount*") shall not be sent to a Scheme Creditor because of the costs involved in making and/or receiving such payment. Any *de minimis* amount so withheld shall be paid to such Scheme Creditor upon the earlier of (a) demand being made by that Scheme Creditor or (b) such time as the aggregate of sums owed to such Scheme Creditor under the Scheme exceed the *de minimis* amount, or (c) the termination of the Scheme.
- 2.11.5 Without prejudice to Clause 2.11.2, payment by the Company (acting by the Scheme Administrators) in respect of an Established Scheme Liability:
- (a) to a Scheme Creditor; or
 - (b) where two or more persons comprise a Scheme Creditor, to any one such person; or
 - (c) to any person acting on behalf of a Scheme Creditor (whether with actual or ostensible authority); or
 - (d) otherwise pursuant to Clause 2.11.1,
- shall for all purposes constitute a valid discharge of the Company in respect of such Established Scheme Liability to the extent of such payment.

2.12 Commutations, settlements and other agreements

- 2.12.1 Subject to Clause 2.12.2, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) shall be entitled to enter into any transaction or pursue any litigation against an AFIA Reinsurer and/or the Guarantor provided that if any such transaction or litigation is likely to have a material impact upon Gross Proceeds, Net Proceeds or Scheme Assets, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) shall consult with the Scheme Administrators and the Creditors' Committee prior to taking any such action.
- 2.12.2 The Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) may enter into any commutation or similar compromise arrangement with any AFIA Reinsurer and/or the Guarantor relating to that company's reinsurance and/or indemnity and/or guarantee obligations to the

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Company in respect of the AFIA Treaties provided that, prior to such commutation or similar compromise arrangement, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) shall first:

- (a) use reasonable efforts to obtain from the Scheme Creditors up-to-date information concerning the likely ultimate value of their Scheme Claims (including, without limitation, details of outstanding losses and IBNR items);
- (b) promptly consult the Scheme Administrators and the Creditors' Committee as to any such proposed commutation;
- (c) make available all relevant documentation to the Creditors' Committee at least 5 Business Days (where practicable) prior to such consultation (and to this end the members of the Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the New Hampshire Liquidator pursuant to paragraph 3 of the Commutations Order); and
- (d) provide notice to the Creditors' Committee in advance of any application to the New Hampshire Court to approve the terms of any such proposed commutation, in accordance with the provisions of the Commutations Order.

2.12.3 To the extent that it is not practicable for the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) to comply with the 5 Business Day period referred to in Clause 2.12.2(c) above, the Company (acting as aforesaid) shall only be required to make all reasonable efforts to provide as much notice as is practicable in the circumstances.

2.12.4 Within 10 Business Days of the New Hampshire Court having approved a commutation agreement and/or similar compromise arrangement as referred to in Clause 2.12.1 with all or substantially all (by value) of the AFIA Reinsurers and/or the Guarantor, the Company (acting as aforesaid) shall notify the Scheme Administrators of the same and the Scheme Administrators shall convene a Special Meeting in accordance with the provisions of Clause 6.5.1, if requested to do so by the Creditors' Committee.

2.13 Investment

2.13.1 Subject to Clause 2.13.2, the Scheme Administrators shall have power to invest all or any of the Scheme Assets in their possession in such manner as they consider prudent from time to time, with full power from time to time to vary, alter and transpose any such investments into others of any nature.

2.13.2 The Scheme Administrators shall invest any monies held by the Scheme Administrators which constitute Scheme Assets in accordance with the investment policy to be formulated by the Scheme Administrators from time to time in consultation with the Creditors' Committee. In the absence of such a policy, the Scheme Administrators shall not invest any Scheme Assets held by them other than in the manner specified in Parts I or II of the First Schedule of the Trustee Investments Act 1961.

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2.14 Scheme Creditors to assist the Company

Without prejudice to the rights of Scheme Creditors under the Extension Letter, the Scheme Creditors shall provide to the Company (acting by the New Hampshire Liquidator, the Joint Provisional Liquidators and/or the Scheme Administrators) all reasonable assistance required by the Company (acting as aforesaid) in connection with the Scheme and shall provide such assistance as the Company (acting as aforesaid) may reasonably require in connection with the recovery of any Gross Proceeds, Net Proceeds or Scheme Assets or the enforcement of obligations or liabilities which are or may become owed to the Company. After consultation with the Company, any reasonable cost or expense incurred by a Scheme Creditor in providing such assistance shall be reimbursed to it by the Company out of Gross Proceeds and, for this purpose, shall constitute a cost within the scope of Clause 8.2.2(a).

2.15 Scheme Creditors: Further Obligations

2.15.1 No Scheme Creditor shall ever seek directly or indirectly to make or make any agreement or arrangement with an AFIA Reinsurer (in its capacity as a reinsurer and/or indemnitor of the Company in respect of the AFIA Treaties) and/or the Guarantor (in its capacity as the guarantor and/or indemnitor under the Guarantee) whereunder it receives payment directly or indirectly from such reinsurer or the Guarantor in respect of a Scheme Claim.

2.15.2 In determining its entitlement (if any) to receive any distribution payable to it in its capacity as a creditor in the New Hampshire Liquidation, each Scheme Creditor will bring into account, and give credit for, payments received by it, or deemed to have been received by it, under the Scheme.

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3. PART 3 – PAYMENTS TO SCHEME CREDITORS

3.1 Application of assets of the Company

On and from the Effective Date, the Scheme Assets shall be placed under the control of the Scheme Administrators and shall be applied for the benefit of Scheme Creditors in accordance with the provisions of the Scheme.

3.2 Computation of the Payment Percentage

3.2.1 Subject as hereinafter provided in this Part 3, the Scheme Administrators shall from time to time:

- (a) set the Payment Percentage; and
- (b) revise a Payment Percentage previously set by setting a new Payment Percentage of a greater or lesser amount.

3.2.2 As soon as practicable after each Review Date, before an initial Payment Percentage has been set, the Scheme Administrators shall consider, in the light of Clauses 3.2.4 and 3.2.5 and in consultation with the Creditors' Committee, whether an initial Payment Percentage should be set.

3.2.3 After the initial Payment Percentage has been set, the Scheme Administrators shall review the Payment Percentage as soon as practicable after each Review Date and consider, in the light of Clauses 3.2.4 and 3.2.5 and in consultation with the Creditors' Committee, whether it should be revised.

3.2.4 The Scheme Administrators shall not set a Payment Percentage unless they consider, on the basis of the information, advice and assumptions referred to in Clause 3.2.7, that after the Company (acting by the Scheme Administrators) has, by reference to a Payment Percentage at that rate, complied with the provisions of Clause 3.4 in relation to all Established Scheme Liabilities owed by it as at the Review Date concerned, the Company (acting by the Scheme Administrators) will have sufficient Scheme Assets to enable it to comply with the provisions of Clause 3.4 (by reference to a Payment Percentage at that rate) in relation to all liabilities of the Company in respect of Scheme Claims which the Scheme Administrators consider may become Established Scheme Liabilities after the Review Date concerned.

3.2.5 Subject to Clause 3.2.4, for the purposes of Clauses 3.2.2 or 3.2.3, the Payment Percentage, if set, shall be set at, or increased to, such rate as the Scheme Administrators consider will ensure that all the Scheme Assets of the Company remaining after the Company (acting by the Scheme Administrators) has retained sufficient Scheme Assets to enable it to comply with the provisions of Clause 3.4 (by reference to a Payment Percentage at that rate and in relation to all liabilities of the Company in respect of Scheme Claims which have become, or which the Scheme Administrators consider may become, Established Scheme Liabilities after the Review Date concerned) are distributed proportionately in respect of all the Established Scheme Liabilities owed by the Company as at the Review Date concerned.

3.2.6 If on considering the current Payment Percentage pursuant to Clause 3.2.3 the Scheme Administrators consider that there are not sufficient Scheme Assets for such Payment Percentage to be maintained at that level and for the provisions of Clauses 3.2.4 and 3.2.5 to be complied with, they shall reduce such Payment Percentage to such level as they consider appropriate. Any such reduction in the

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Payment Percentage shall not give rise to any obligation on the part of a Scheme Creditor to repay the difference between the amount which would be payable in respect of an Established Scheme Liability of such Scheme Creditor in accordance with such revised Payment Percentage and the amount actually paid to such Scheme Creditor in respect of such Established Scheme Liability under a previously existing Payment Percentage.

3.2.7 For the purpose of setting the Payment Percentage as at a particular Review Date, the Scheme Administrators shall:

- (a) obtain and consider such financial and/or actuarial information and advice as the Scheme Administrators, following consultation with the Creditors' Committee and the New Hampshire Liquidator with respect to such information and advice, shall consider appropriate; and
- (b) be entitled (with the approval of the Creditors' Committee) to assume (after making due allowance for any set-off) that the ratio of cash recoveries received from any AFIA Reinsurer and/or the Guarantor to Established Scheme Liabilities established in the period commencing with the last Review Date and ending on the Review Date concerned will remain the same in future years save to the extent that, based upon information actually in the possession of the Scheme Administrators at that time, such an assumption would be manifestly unreasonable.

3.2.8 For the purpose of this Clause 3.2, Scheme Assets may include sums which the Scheme Administrators consider are likely to be received by them in the future, following a transfer of Net Proceeds (net of any Indemnity Costs) pursuant to Clause 2.3.1(e), as well as sums already received and held by them.

3.3 Adverse Costs Proceeds

In circumstances where:

- (a) a claim is denied in the New Hampshire Liquidation and a disputed claim proceeding ensues (in accordance with the Claims Procedure Order); or
- (b) a Scheme Creditor commences or continues any Proceeding against the Company with the consent of the New Hampshire Liquidator as described in Clause 2.4.1 or asserts and prosecutes a Scheme Claim against the Company in the circumstances described in Clause 2.4.4,

nothing in the Scheme shall preclude a Scheme Creditor from seeking an adverse costs order (whether pursuant to New Hampshire RSA 402-C:6 or otherwise) in such proceeding. However, any Scheme Creditor successfully pursuing such an adverse costs order shall not be entitled to enforce payment by the Company of that order as an administrative expense in the New Hampshire Liquidation. Instead the Scheme Creditor shall be entitled to reimbursement to the extent, and in the currency, of any cash recovered by the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) with respect thereto from an AFIA Reinsurer (the "**Adverse Costs Proceeds**"), which cash shall be credited directly to Scheme Assets and shall be payable in full to the Scheme Creditor concerned from Scheme Assets in priority to any distribution of Scheme Assets to Scheme Creditors.

3.4 Payments to Scheme Creditors

3.4.1 In respect of an Established Scheme Liability, the Company (acting by the Scheme Administrators) shall, subject to Clause 2.5.2:

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- (a) as soon as reasonably practicable but, in any event, within ninety days following the later of the date on which it becomes an Established Scheme Liability or the date on which the initial Payment Percentage is set, pay to the Scheme Creditor concerned an amount equal to the initial Payment Percentage of such Established Scheme Liability; and
 - (b) as soon as reasonably practicable, but in any event within ninety days following an increase in the Payment Percentage under Clause 3.2.5, pay to the Scheme Creditor concerned (whether or not the same person who received payment under Clause 3.4.1(a)) a further amount equal to the difference between (A) the amount equal to the Payment Percentage (as increased) of such Established Scheme Liability and (B) the amount of such Established Scheme Liability which has previously been discharged by the Company or is treated as having been discharged under Clause 2.5.2.
- 3.4.2 The Company shall not be liable to make any payment to a Scheme Creditor hereunder in respect of any Established Scheme Liability to the extent that such payment would, when aggregated with:
- (a) all payments previously made to that Scheme Creditor under Clause 3.4.1; and
 - (b) all amounts received in contravention of Clause 2.5,
- in respect of that Established Scheme Liability, exceed the lesser of the amount of that Established Scheme Liability of that Scheme Creditor and the amount equal to the then current Payment Percentage of that Established Scheme Liability.
- 3.4.3 The Scheme Administrators shall suspend payments under Clause 3.4.1 for such period (not exceeding six months) as they consider appropriate if information becomes available to them concerning the quantum of the Net Proceeds as a result of which they are required to consider whether or not to set a reduced Payment Percentage. As soon as practicable during, and in any event at the end of, such period, the Scheme Administrators shall set a reduced Payment Percentage or conclude that the Payment Percentage need not be reduced, and thereupon the suspension of payments shall be lifted.
- 3.4.4 The obligation of the Company to make any payment to Scheme Creditors in accordance with the terms of this Scheme and the recourse under this Scheme of Scheme Creditors against the Company shall be absolutely limited to the Scheme Assets.

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4. PART 4 – THE SCHEME ADMINISTRATORS

4.1 Appointment of Scheme Administrators

- 4.1.1 (a) A Scheme Administrator shall be an individual:
- (i) qualified to act as an insolvency practitioner within the meaning of section 390 of the Insolvency Act; and
 - (ii) approved by the New Hampshire Liquidator (which approval shall not be unreasonably withheld, as such is determined in accordance with the standards set forth in New Hampshire RSA 541:13).
- (b) The initial Scheme Administrators shall be Gareth Howard Hughes and Margaret Elizabeth Mills.
- 4.1.2 A Scheme Administrator may resign his appointment at any time by giving not less than six months' notice (or such shorter notice period as the Creditors' Committee may agree) in writing to the Creditors' Committee and the New Hampshire Liquidator.
- 4.1.3 The Creditors' Committee shall be entitled:
- (a) by a resolution passed by at least three-quarters of all the members of the Creditors' Committee for the time being, at any time to call upon a Scheme Administrator to resign, provided that:
 - (i) the New Hampshire Liquidator has expressly consented in writing (which consent shall not be unreasonably withheld, as such is determined in accordance with the standards set forth in New Hampshire RSA 541:13) to the proposed resolution; and
 - (ii) such Scheme Administrator has been given (x) at least twenty-eight days' notice of the proposed resolution and the reasons why the resolution is to be put to the Creditors' Committee and (y) a reasonable opportunity to make representations at the meeting at which the resolution is proposed (and if such Scheme Administrator declines to resign, a resolution requiring his removal shall be put before the next meeting of Scheme Creditors); and
 - (b) upon removal of a Scheme Administrator or if a Scheme Administrator ceases to hold office for any other reason, to appoint any person satisfying the conditions set out in Clause 4.1.1(a) to be a Scheme Administrator in his place (and a resolution requiring ratification of such appointment shall be put before the next meeting of Scheme Creditors pending which the appointee shall have full power to act as a Scheme Administrator save that if a resolution is passed at a meeting of Scheme Creditors requiring the removal of a Scheme Administrator pursuant to sub-clause (a), such appointment may be made by the Scheme Creditors at such meeting).
- 4.1.4 Subject to Clause 4.1.1, where more than one person has been appointed as a Scheme Administrator, the functions, powers and duties of the Scheme Administrators under the Scheme may be performed and exercised jointly or severally and any act required to be done by a Scheme Administrator pursuant to the Scheme may be done by all or any one or more of them.

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4.2 Functions, powers and duties of the Scheme Administrators

4.2.1 With immediate effect from the Effective Date, the Scheme Administrators shall be empowered to and shall supervise and ensure the carrying out of the Scheme, and for these purposes shall:

- (a) have the power to take possession of such Net Proceeds as are transferred to them by the Joint Provisional Liquidators and/or the New Hampshire Liquidator in accordance with Clause 2.3.1(e) and any other Scheme Assets (as are transferred to, or held by, them); and
- (b) apply the Scheme Assets in their possession for the benefit of Scheme Creditors in accordance with the terms of this Scheme.

4.2.2 Without prejudice to the generality of Clause 4.2.1, in carrying out their functions and powers under the Scheme, the Scheme Administrators shall:

- (a) be entitled to exercise all rights, powers and duties in this Scheme of the Company (to the extent that the Scheme expressly provides that such rights, powers and duties may be exercised by the Company acting by the Scheme Administrators) and/or the Scheme Administrators;
- (b) have full access at all reasonable times to all books, papers and other documents of the Company and receive all such information in relation to the Company as they may require or consider reasonably desirable in order to discharge and/or exercise their duties, functions and powers under the Scheme;
- (c) do all things which may be necessary or expedient for the protection of Scheme Assets;
- (d) be entitled to bring or defend any action or other legal proceedings in the name and on behalf of the Company in respect of the Scheme Assets;
- (e) be entitled to do all acts and to execute in the name and on behalf of the Company any deed, receipt or other document and to use the Company's seal in order to discharge and/or exercise their duties, functions and powers under the Scheme;
- (f) employ and remunerate accountants, actuaries, lawyers and other professional advisers or agents in any jurisdiction provided such employment is necessary or reasonably desirable for the purpose of performing their functions and powers under the Scheme;
- (g) be entitled to borrow (but only with the consent of the Creditors' Committee and the New Hampshire Liquidator) and to make any payment which is necessary or incidental to the performance of their functions and to give a valid discharge for amounts received by the Company;
- (h) to the extent that the English Court has jurisdiction, and subject to Clause 8.7.2, be entitled to apply, or to cause the Company to apply, to the English Court (as the case may be) in relation to any particular matter arising in the course of the Scheme;
- (i) subject to the agreement of the Creditors' Committee and the New Hampshire Liquidator, be entitled to propose, where they consider it to be in the interests of Scheme Creditors as a whole, a further scheme of

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arrangement under section 425 of the Companies Act, with a view either to amending the provisions of the Scheme or to implementing a new scheme of arrangement between the Company and the Scheme Creditors (or any class of them);

- (j) be entitled to attend meetings of the Creditors' Committee (subject to the provisions of Clause 5.3.4);
- (k) be entitled to consult with the New Hampshire Liquidator;
- (l) be remunerated in accordance with Clause 5.4.3 for the carrying out of their functions and powers under the Scheme and to be reimbursed for all expenses reasonably and properly incurred by them in connection therewith;
- (m) be entitled to delegate to any person (being a partner in the same firm as the Scheme Administrators and approved for the time being by the Creditors' Committee for the purposes of this Clause 4.2.2(m) (a "Delegate")), all or any of the functions, powers, rights, authorities and discretions conferred upon the Scheme Administrators under the Scheme and from time to time to revoke any such delegation, provided that the Scheme Administrators shall be personally responsible for any act or omission of any such Delegate to the same extent as if he had expressly authorised it; and
- (n) cooperate with any other Scheme Administrator appointed in accordance with Clause 4.1.1(a) (whether appointed in place of an existing Scheme Administrator or otherwise) and provide full access at all reasonable times to all books, papers and other documents of the Company as they have in their possession and as such newly appointed Scheme Administrator may require or consider reasonably desirable in order to discharge and/or exercise his duties, functions and powers under the Scheme;
- (o) be entitled to do all other things incidental to the exercise of the functions and powers referred to in this Clause 4.2.2 and in Clause 4.2.1.

4.2.3 In carrying out their functions and exercising their powers and duties under the Scheme, the Scheme Administrators shall consult with and consider the views expressed by the Creditors' Committee on any matter material to the Scheme, which for the avoidance of doubt shall include, without limitation, the setting of and revisions to a Payment Percentage pursuant to Clause 3.2.

4.3 Responsibility and Indemnity

4.3.1 In carrying out their functions and exercising their powers and duties under the Scheme, the Scheme Administrators shall act *bona fide* and with due care and diligence in the interests of Scheme Creditors as a whole and shall use their powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms.

4.3.2 Subject to Clause 4.3.5, no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by the Scheme Administrators in accordance with, and to implement the provisions of, the Scheme or the exercise by the Scheme Administrators in good faith and with due care of any power conferred upon them for the purposes of

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the Scheme if exercised in accordance with, and to implement the provisions of, the Scheme. A Scheme Administrator shall not be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee or Delegate).

- 4.3.3 Subject to Clause 4.3.5, no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Employee in accordance with and to implement the provisions of the Scheme if the act or omission is in accordance with, and to implement the provisions of, the Scheme and no Employee shall be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty.
- 4.3.4 Subject to Clause 4.3.5, and without prejudice to Clause 4.3.2 or the proviso in Clause 4.2.2(m), no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Delegate in accordance with, and to implement the provisions of, the Scheme or the exercise by such Delegate in good faith and with due care of any power conferred upon the Scheme Administrators for the purposes of the Scheme if exercised in accordance with, and to implement the provisions of, the Scheme and no Delegate shall be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee).
- 4.3.5 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done or the exercise of any power conferred upon the Scheme Administrators in good faith by the Scheme Administrators or any Employee or Delegate pursuant to Clause 3.2 and no Scheme Administrator, Employee or Delegate shall be liable for any loss arising out of any such act, omission or exercise of power unless such loss is attributable to his own fraud or dishonesty (or to that of any Employee or Delegate, as the case may be).
- 4.3.6 Subject to the Companies Act (to the extent applicable), the Scheme Administrators (in their capacity as such) (and each Employee and Delegate) shall be entitled to an indemnity (payable by the Company acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators out of the Net Proceeds, but subject always to Clause 8.2.4) against:
- (a) all actions, claims, proceedings and demands brought or made against the Scheme Administrators (or Employee or Delegate) in respect of any act done or omitted to be done by the Scheme Administrators (or Employee or Delegate) in good faith without negligence, default, breach of duty, breach of trust, fraud or dishonesty in the course of implementing the Scheme in accordance with its terms; and
 - (b) all expenses and liabilities properly incurred by the Scheme Administrators (or Employees or Delegates) in carrying out their functions and powers (or the functions for which such Employee is employed by the Scheme Administrators or any Delegate) in the course of implementing the Scheme in accordance with its terms.
- 4.3.7 Without prejudice to the generality of Clause 4.3.6, each such person as is expressed to be entitled to an indemnity in accordance with that clause (in the capacity in which he is entitled to such an indemnity) shall be entitled to an

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indemnity (payable by the Company acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators out of the Net Proceeds, but always subject to Clause 8.2.4):

- (a) against any liability incurred by him in defending any proceedings, whether civil or criminal, in respect of any negligence, default, breach of duty, breach of trust, fraud or dishonesty in which judgment is given in his favour or in which he is acquitted; or
- (b) in connection with any application in any such proceedings in which relief is granted to him by a court from liability for negligence, default, breach of duty, breach of trust, fraud or dishonesty in relation to the affairs of the Company.

4.3.8 Subject to Clause 4.3.9, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) may, with the approval of the Creditors' Committee (such approval not to be unreasonably withheld or delayed):

- (a) purchase out of Net Proceeds and maintain for any such person as is referred to in Clause 4.3.6 insurance against any liability in respect of which the Company would be obliged to indemnify that person in accordance with Clauses 4.3.6 and 4.3.7; and
- (b) pay out of Net Proceeds costs incurred by any such person as is referred to in Clause 4.3.7 in defending proceedings of the nature described in Clause 4.3.7 provided that the Company obtains from such person an obligation to reimburse the Company (with interest) in respect of any sum which would not, in the event, have been payable by the Company under Clause 4.3.7 and any such sums if reimbursed shall be deemed to be Net Proceeds.

4.3.9 To the extent that a Special Resolution has been duly passed in accordance with the provisions of this Scheme, the provisions of Clause 8.2.4 shall apply in respect of any costs incurred in purchasing and/or maintaining the insurances referred to in Clause 4.3.8(a) and/or in respect of Clause 4.3.8(b).

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5. PART 5 – THE CREDITORS’ COMMITTEE

5.1 Constitution of the Creditors’ Committee

- 5.1.1 There shall be a Creditors’ Committee under the Scheme.
- 5.1.2 The Creditors’ Committee shall consist of not less than three nor more than nine Scheme Creditors (or their Designated Representatives) unless the Scheme Administrators (in consultation with the Creditors’ Committee) determine otherwise.
- 5.1.3 Any individual, body corporate or partnership who or which is a Scheme Creditor shall be eligible for appointment as a member of the Creditors’ Committee. If a partnership is appointed as a member, the appointment shall be treated as though the partnership were a body corporate and no person shall be entitled to act as a member of the Creditors’ Committee on behalf of (or by reason of being a partner in) such partnership except a person appointed by such partnership to represent it in accordance with Clause 5.1.5 or a person appointed as the alternate of such person in accordance with that clause.
- 5.1.4 Any body corporate or partnership (which may, but need not, be a Scheme Creditor) designated by notice in writing to the Creditors’ Committee by any two or more Scheme Creditors to act as a member of the Creditors’ Committee as their designated representative (a “**Designated Representative**”) shall be eligible for appointment as a member of the Creditors’ Committee.
- 5.1.5 Each member of the Creditors’ Committee which is a body corporate or a partnership may, by notice in writing to the Creditors’ Committee, appoint a director, senior executive, partner, professional adviser (including in-house counsel) or any other person duly authorised by the member concerned as its Nominated Representative to represent that member at meetings of the Creditors’ Committee (a “**Nominated Representative**”). Each Nominated Representative may, by notice in writing to the Creditors’ Committee, appoint any person qualified to act as a Nominated Representative as his alternate to attend and vote at any meeting of the Creditors’ Committee in his place. Any such alternate shall have the powers and shall be subject to the same duties and limitations as the Nominated Representative who has appointed him. Any person entitled to appoint a Nominated Representative or an alternate may from time to time revoke that appointment and appoint another person qualified to act as a Nominated Representative as a replacement, by notice in writing to the Creditors’ Committee.

5.2 Membership of the Creditors’ Committee

- 5.2.1 The initial Creditors’ Committee shall consist of the Informal Creditors’ Committee, the members of which are listed at Appendix 1 to the Explanatory Statement.
- 5.2.2 The Creditors’ Committee may, with the agreement of the Scheme Administrators (which agreement shall not be unreasonably withheld or delayed), resolve, by at least two-thirds of the members present, to appoint any eligible person to be a member, either to fill a vacancy or as an additional member, subject to (a) the maximum number of members provided for in Clause 5.1.2 and (b) a resolution requiring ratification of such appointment

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being put before the next meeting of the Scheme Creditors, pending which the appointee shall have full power to act as a member of the Creditors' Committee.

- 5.2.3 The Scheme Creditors in a meeting may, with the agreement of the Scheme Administrators (which agreement shall not be unreasonably withheld or delayed), resolve to remove any member of the Creditors' Committee from office and/or appoint any eligible Scheme Creditor as a member of the Creditors' Committee, subject to the limitations as to the minimum and maximum number of members of the Creditors' Committee as provided for in Clause 5.1.2.
- 5.2.4 An individual shall cease to be a member of the Creditors' Committee upon the occurrence of any of the following events:
- (a) if he ceases to be, or is found never to have been, a Scheme Creditor;
 - (b) if he resigns by notice in writing addressed to the Creditors' Committee;
 - (c) if he dies or becomes bankrupt or mentally disordered or becomes disqualified from acting as a director under the laws of England and Wales or New Hampshire;
 - (d) if he fails to attend three consecutive meetings of the Creditors' Committee and the Creditors' Committee resolves, by a majority of at least two-thirds of the members present, that he be removed; or
 - (e) if he is removed from office pursuant to Clause 5.2.3.
- 5.2.5 A body corporate or partnership shall cease to be a member of the Creditors' Committee upon the occurrence of any of the following events:
- (a) (other than in the case of a member which is a Designated Representative) if it ceases to be, or is found never to have been, a Scheme Creditor;
 - (b) if it is a Designated Representative of two or more Scheme Creditors, and it ceases to represent at least two Scheme Creditors as a result of persons it represents ceasing to be, or being found never to have been, Scheme Creditors and/or as a result of persons it represents notifying the Creditors' Committee in writing that such member has ceased to be their Designated Representative;
 - (c) if it resigns by notice in writing addressed to the Creditors' Committee;
 - (d) if it is dissolved;
 - (e) if it fails to attend (by its duly appointed Nominated Representative or his alternate) three consecutive meetings of the Creditors' Committee and the Creditors' Committee resolves, by a majority of at least two-thirds of the members present, that it be removed; or
 - (f) if it is removed from office pursuant to Clause 5.2.3.
- 5.2.6 The appointment of a Nominated Representative or his alternate shall terminate automatically upon the occurrence of any of the following events:
- (a) if the person whom that Nominated Representative represents ceases to be a member of the Creditors' Committee;

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- (b) if he ceases to be a director, senior executive, partner of or a professional adviser (including in-house counsel) to the member of the Creditors' Committee whom he represents or he otherwise ceases to be authorised by the member concerned;
- (c) if he dies or becomes bankrupt or mentally disordered or becomes disqualified from acting as a director under the laws of England and Wales or New Hampshire;
- (d) if his appointment is revoked by his appointor;
- (e) if the Creditors' Committee resolves, by a majority of at least two-thirds of all the members of the Creditors' Committee for the time being (excluding the member who has appointed such Nominated Representative or whose Nominated Representative has appointed such alternate), that such appointment shall terminate; or
- (f) in the case of an alternate, upon termination of the appointment of the Nominated Representative who appointed him.

5.2.7 Whenever there is a proposed change in the composition of the Creditors' Committee, the Creditors' Committee in consultation with the Scheme Administrators shall endeavour to ensure that the composition of the Creditors' Committee is such as to secure a proper balance of the interests of the Scheme Creditors in relation to the Company as between the members of the Creditors' Committee.

5.3 Proceedings of the Creditors' Committee

- 5.3.1 Save as otherwise specifically provided in the Scheme, the Creditors' Committee may convene, adjourn and otherwise regulate its meetings in such manner as it shall consider appropriate. The quorum at any meeting of the Creditors' Committee shall be at least two-thirds of the members, provided that if a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be determined by the majority of the members present (who shall inform the members of the Creditors' Committee of the date and time of the adjourned meeting) and the members present at any such adjourned meeting shall constitute a quorum. Each member of the Creditors' Committee shall have one vote and, except as otherwise provided in the Scheme, matters arising at a meeting shall be decided by a majority of votes cast at the meeting.
- 5.3.2 The Creditors' Committee shall meet for the purposes of receiving a report from the Scheme Administrators on the progress of the Scheme referred to in Clause 5.4.2(a) and shall hold such further meetings in accordance with 5.3.3 and 5.3.4 as it shall consider desirable for the purpose of performing its functions under the Scheme.
- 5.3.3 A meeting of the Creditors' Committee shall be called as soon as reasonably practicable if so requested by at least three members of the Creditors' Committee or if the Scheme Administrators otherwise consider it appropriate. Except with the consent of all members of the Creditors' Committee, the Scheme Administrators and the New Hampshire Liquidator, no meeting of the Creditors' Committee may be called upon less than fourteen clear days' notice and no business may be transacted at any such meeting other than that set out

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in the notice of that meeting. Each member of the Creditors' Committee, the Scheme Administrators (or their representative(s)) and the New Hampshire Liquidator (or his representative) shall be entitled to and shall receive notice of all meetings of the Creditors' Committee.

- 5.3.4 The Scheme Administrators (or their representative(s)) and the New Hampshire Liquidator (or his representative) shall be entitled to attend and speak, but not to vote, at all meetings of the Creditors' Committee and, if so requested by the Creditors' Committee, shall attend such meetings. If so requested by the Creditors' Committee, the Scheme Administrators (or their representative(s)) and/or the New Hampshire Liquidator (or his representative) shall absent themselves from such part of a meeting of the Creditors' Committee as the Creditors' Committee may specify.
- 5.3.5 Proper minutes shall be kept of all proceedings of the Creditors' Committee and such minutes shall be open to inspection at all reasonable times (subject to Clause 5.5.2) by any member of the Creditors' Committee. Copies of such minutes shall be sent as soon as practicable after their preparation to the Scheme Administrators.
- 5.3.6 A member of the Creditors' Committee, the New Hampshire Liquidator (or his representative) and the Scheme Administrators (or their representative(s)) may participate in a meeting of the Creditors' Committee through the medium of conference telephone or similar form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person participating in this way is deemed to be present in person at the meeting and, in the case of a member of the Creditors' Committee, is counted in a quorum and entitled to vote. All business transacted in this way by the Creditors' Committee is deemed to be validly and effectively transacted at a meeting of the Creditors' Committee although fewer than two-thirds of the members of the Creditors' Committee are physically present at the same place.
- 5.3.7 Save in respect of any resolution calling upon a Scheme Administrator to resign and subject to Clause 5.3.8, any resolution in writing signed by all members of the Creditors' Committee for the time being (or their Nominated Representatives) shall be as valid and effective as if passed at a meeting of the Creditors' Committee duly convened and held.
- 5.3.8 No written resolution shall take effect unless and until the Creditors' Committee has given each of (a) the Scheme Administrators and (b) the New Hampshire Liquidator at least 5 Business Days' written notice of the proposed resolution.

5.4 Functions

- 5.4.1 Without prejudice to the specific provisions of this Clause 5.4, the Creditors' Committee shall supervise the Scheme Administrators in the exercise of their functions under the Scheme.
- 5.4.2 With effect from the Effective Date:
- (a) on a date not later than the first anniversary of the Effective Date and not later than the end of each 15 month period thereafter, the Scheme Administrators shall submit to the Creditors' Committee and the New Hampshire Liquidator a report on the operation of the Scheme during the period since the last such report was prepared and shall (or shall

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appoint a representative to) attend at any meeting of the Creditors' Committee at which that report is considered for the purpose of giving such explanations and information as the Creditors' Committee may require. A copy of that report, incorporating such amendments (if any) as may be agreed by the Scheme Administrators and the Creditors' Committee, shall be provided to Scheme Creditors free of charge;

- (b) the Creditors' Committee may from time to time resolve what information it is desirable to seek from the Scheme Administrators concerning the affairs of the Company or the operation of the Scheme, and may depute to any one member of the Creditors' Committee to apply in writing to and receive from the Scheme Administrators all such information. The Scheme Administrators shall promptly give to the Creditors' Committee and the New Hampshire Liquidator all such information concerning the affairs of the Scheme Administrators or the operation of the Scheme as the Creditors' Committee shall from time to time reasonably resolve to seek and in respect of which a written request shall have been received by the Scheme Administrators. Each member of the Creditors' Committee shall be entitled at any time to raise questions or to request a meeting with the Scheme Administrators in connection with the performance of his responsibilities as a member of the Creditors' Committee and, subject to their duties under the Scheme, the Scheme Administrators shall use reasonable endeavours to respond to such questions or to comply with any such request for a meeting. Notwithstanding the preceding provisions of this Clause 5.4.2(b), the Scheme Administrators shall not be obliged to disclose any confidential information of the Company to a member of the Creditors' Committee if the information relates to any matter where such member (and, where such member is a Designated Representative, its appointors) has an interest in conflict with the Company (other than a general conflict arising as a result of the status of the members of the Creditors' Committee (or appointors) as creditors of the Company).

5.4.3 The Creditors' Committee shall consider and, if thought fit, approve (such approval not to be unreasonably withheld or delayed), on behalf of the Company, the level and payment of the fees and expenses of the Scheme Administrators from time to time (and such function may, with the prior written consent of the Company (acting by the Scheme Administrators), be delegated to one or more members of the Creditors' Committee) and the Scheme Administrators shall provide all information reasonably requested by the Creditors' Committee in relation thereto.

5.4.4 The Creditors' Committee shall:

- (a) so far as it is able, ensure that there is a Scheme Administrator in office at all times; and
- (b) comply with the conditions set out in Clause 4.1.1(a) in appointing any Scheme Administrator.

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5.5 **Duties**

- 5.5.1 Each member of the Creditors' Committee, each Nominated Representative and their respective alternates shall, in performing their functions as members of the Creditors' Committee in relation to the Company, act *bona fide* in the interests of the Scheme Creditors as a whole.
- 5.5.2 It shall be the duty of each member of the Creditors' Committee who is in any way interested, whether directly or indirectly, or, where such member is a Designated Representative, any of whose appointors is interested, whether directly or indirectly, in a contract or proposed contract with the Company (other than any which arises as a result of the provisions of the Scheme) to declare (or procure that its Nominated Representative shall declare) the nature of his, its or such appointor's interest at a meeting of the Creditors' Committee. For this purpose a general notice given to the Creditors' Committee to the effect that a member or an appointor of a Designated Representative is associated (within the meaning of section 435 of the Insolvency Act) with a specified company or firm and is to be regarded as interested in any contract with that company or firm is deemed a sufficient declaration of interest in relation to any such contract. If the Scheme Administrators (or, if there is no Scheme Administrator in attendance at the relevant meeting, a simple majority of Creditors' Committee members present at that meeting) reasonably conclude that the nature of the interest of the Creditors' Committee member concerned gives rise to a conflict of interest in any particular case, then, such member of the Creditors' Committee shall not be counted in the quorum, shall not be entitled to vote in relation to any matter relating specifically to any such contract, shall retire from the meeting for so long as the matter is discussed and voted upon and shall not receive any information, nor be entitled to inspect any part of the minutes of a meeting of the Creditors' Committee, relating thereto.
- 5.5.3 Each Nominated Representative shall be entitled to report to the member appointing him, and each Designated Representative shall be entitled to report to the Scheme Creditors appointing it, on the proceedings of the Creditors' Committee and, so far as necessary for that purpose, to disclose confidential information of the Company to those officers, employees and professional advisers of that member or appointor who need to know it in connection with (where a Nominated Representative is disclosing information) the performance of its responsibilities as a member of the Creditors' Committee or (where a Designated Representative is disclosing information) the performance of the Designated Representative's responsibilities as a member of the Creditors' Committee, provided that such information does not to his or its knowledge (after due enquiry) relate to any matter where any such appointor has an interest in conflict with the Company (other than a general conflict arising as the result of the status of the members of the Creditors' Committee or the appointors of a Designated Representative as creditors of the Company). Each member of the Creditors' Committee shall procure that its Nominated Representative and its officers, employees and professional advisers shall, and where such member is a Designated Representative shall procure that its appointors and their officers, employees and professional advisers shall, preserve the confidentiality of such information and shall use such information only for the purposes of performing their responsibilities and functions (or their Designated Representative's responsibilities and functions) in relation to the Creditors' Committee. Each member of the Creditors' Committee shall be

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entitled to share information with any third party that it was entitled to share confidential information with as a member of the Informal Creditors' Committee.

5.6 Responsibilities and indemnity

- 5.6.1 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith by any member of the Creditors' Committee (or Nominated Representative or alternate) in accordance with and to implement the provisions of the Scheme or the exercise by any such person in good faith of any power conferred upon it or him for the purposes of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and no such person shall be liable for any loss unless such loss is attributable to its or his own wilful default, fraud, dishonesty or wilful breach of duty or trust.
- 5.6.2 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done or the exercise of any power conferred upon the Creditors' Committee, in good faith by any member of the Creditors' Committee (or Nominated Representative or alternate) pursuant to Clause 3.2 and no member of the Creditors' Committee, Nominated Representative or alternate shall be liable for any loss arising out of any such act, omission or exercise of power unless such loss is attributable to its or his own fraud or dishonesty.
- 5.6.3 Subject to the Companies Act (to the extent applicable), each member of the Creditors' Committee (and each Nominated Representative and alternate) (in each case in their capacity as such) shall be entitled to an indemnity (payable by the Company, acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators out of the Net Proceeds, but subject always to Clause 8.2.4) against all actions, claims, proceedings and demands brought or made against it or him in respect of any act done or omitted to be done in relation to the Company in good faith by such person in the course of implementing the Scheme in accordance with its terms; such indemnity shall include the costs of defending any such actions, claims, proceedings and demands.
- 5.6.4 Without prejudice to the generality of Clause 5.6.3, each such person as is expressed to be entitled to an indemnity in accordance with that clause (in the capacity in which it or he is entitled to such an indemnity) shall be entitled to an indemnity (payable by the Company, acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators, out of the Net Proceeds, but subject always to Clause 8.2.4):
- (a) against any liability incurred by it or him in defending any proceedings, whether civil or criminal, in respect of any wilful default, fraud, dishonesty or wilful breach of duty or trust in relation to the Company in which judgment is given in its or his favour or in which it or he is acquitted; or
 - (b) in connection with any application in any such proceedings in which relief is granted to it or him by a court from liability for wilful default, fraud, dishonesty or wilful breach of duty or trust in relation to the affairs of the Company.

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5.6.5 Subject to Clause 5.6.6 below, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) may, with the approval of the Creditors' Committee (such approval not to be unreasonably withheld or delayed):

- (a) purchase out of the Net Proceeds and maintain for any such person as is referred to in Clause 5.6.3 insurance against any liability in respect of which the Company would be obliged to indemnify that person in accordance with Clauses 5.6.3 and 5.6.4; and
- (b) pay out of the Net Proceeds costs incurred by any such person as is referred to in Clause 5.6.3 in defending any actions, claims, proceedings and demands of the nature described in Clauses 5.6.3 and 5.6.4 which relate to the Company provided that the Company obtains from such person (or, where such person is a Nominated Representative or an alternate, the member of the Creditors' Committee which such person represents) an obligation to reimburse the Company (with interest) in respect of any sum which would not, in the event, have been payable by the Company under those clauses.

5.6.6 To the extent that a Special Resolution has been duly passed in accordance with the provisions of this Scheme, the provisions of Clause 8.2.4 shall apply in respect of any costs incurred in purchasing and/or maintaining the insurances referred to in Clause 5.6.5(a) and/or in respect of Clause 5.6.5(b).

5.7 Validation of acts

All acts done by the Creditors' Committee, any meeting of the Creditors' Committee or any person acting as a member of the Creditors' Committee or as a Nominated Representative or alternate shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a member of the Creditors' Committee or person acting as aforesaid, or that any of them were disqualified, be valid as if every such person had been duly appointed and qualified.

5.8 Expenses

Each member of the Creditors' Committee, each Nominated Representative and their respective alternates shall be entitled to be reimbursed by the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators, out of Net Proceeds, but subject always to Clause 8.2.4) for their reasonable expenses (excluding, for the avoidance of doubt, legal expenses) in attending meetings of the Creditors' Committee, provided that such meetings are held in London or in such other place as the Scheme Administrators may from time to time agree with the Creditors' Committee.

5.9 No Creditors' Committee

5.9.1 If at any time there are less than the minimum number of Creditors' Committee members required by Clause 5.1.2, the Creditors' Committee may continue to exercise all its functions under the Scheme (other than those provided for in Clauses 4.1.3(a), 6.1.1(b), and 7.1.1(b)) for a period of twenty-eight days, during which time such members of the Creditors' Committee shall endeavour to fill the vacancies on the Creditors' Committee. If they shall fail to do so within such period, the Scheme Administrators shall, within a further fourteen days, appoint such additional Scheme Creditors ("**Interim Appointees**") as are required

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to fill such vacancies. In appointing any such Interim Appointees, the Scheme Administrators shall endeavour to ensure that the composition of the Creditors' Committee including such Interim Appointees is such as to secure a proper balance of the interests of the Scheme Creditors as between themselves and in relation to the Company. In the event of such vacancies being filled, whether by appointees of the Creditors' Committee or by Interim Appointees, the full powers and functions of the Creditors' Committee under the Scheme will be restored, provided that no Interim Appointee shall be entitled to vote in relation to any resolution to appoint an additional member of the Creditors' Committee. Any Interim Appointee will be liable to be removed as a member of the Creditors' Committee at any time without notice if the Creditors' Committee (excluding any Interim Appointees) appoints a Scheme Creditor to fill the vacancy which had been filled by such Interim Appointee (and the members of the Creditors' Committee (excluding any Interim Appointees) shall use their reasonable endeavours to fill any such vacancy accordingly as soon as possible).

- 5.9.2 If, following the procedure set out in Clause 5.9.1, there are less than the minimum number of Creditors' Committee members required in Clause 5.1.2 (including Interim Appointees appointed under Clause 5.9.1) then, for so long as that is the case, the Creditors' Committee shall not exercise any functions or have any powers under the Scheme and the following provisions shall apply:
- (a) the Scheme Administrators shall use all reasonable endeavours to find additional members of the Creditors' Committee to enable it to function;
 - (b) subject to obtaining the approval of the New Hampshire Liquidator (which approval shall not be unreasonably withheld, as such is determined in accordance with the standards set forth in New Hampshire RSA 541:13), a Scheme Administrator may be removed, and a new Scheme Administrator (who qualifies with the conditions set out in Clause 4.1.1(a)) may be appointed in his place, only at a meeting of the Scheme Creditors pursuant to a resolution proposed by any ten Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent. of all Scheme Claims or any twenty Scheme Creditors;
 - (c) the remuneration of the Scheme Administrators shall be payable at the same rate at which it had last been set by the Creditors' Committee unless and until varied by the Scheme Creditors; and
 - (d) the requirements for obtaining the consent, approval or agreement of and for consulting with or notifying the Creditors' Committee contained in Clauses 2.13.2, 3.2.2, 3.2.3, 3.2.7, 4.2.2(g), 4.2.2(i), 4.2.2(m), 4.2.3, 4.3.8, 5.1.2, 5.3.3, 5.4.2(b), 5.4.3, 5.6.5, 6.3.3, 7.1.1(b), and for submitting a report to the Creditors' Committee pursuant to Clause 5.4.2(a) shall be suspended.

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6. PART 6 – MEETINGS OF SCHEME CREDITORS

6.1 Convening of meetings

6.1.1 Meetings of Scheme Creditors are to be convened as follows:

- (a) the Scheme Administrators may at any time convene a meeting of the Scheme Creditors for such purpose as they think fit;
- (b) the Creditors' Committee may convene a meeting of Scheme Creditors to consider resolutions for such purpose as it thinks fit;
- (c) any ten Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent of all Scheme Claims or any twenty Scheme Creditors may, by notice in writing signed by them or on their behalf and delivered to the Scheme Administrators, require the Scheme Administrators to convene a meeting of Scheme Creditors for such purpose as they think fit. The notice must specify the purpose for which the meeting is required and it shall be the duty of the Scheme Administrators forthwith to summon a meeting of Scheme Creditors for that purpose and to give such notice of the meeting as is necessary to enable such purpose to be carried out effectively in accordance with the provisions of the Scheme.

6.1.2 At least twenty-eight days' notice shall be given of a meeting of Scheme Creditors. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place and time of the meeting (and where a meeting of Scheme Creditors is being convened to discuss the report referred to in Clause 5.4.2(a) the place from which a copy of the report referred to in Clause 5.4.2(a) can be obtained by Scheme Creditors free of charge prior to the meeting).

6.1.3 Notice of a meeting of Scheme Creditors shall be given:

- (a) to each Scheme Creditor to whom the Company owes an Established Scheme Liability, and to any other Scheme Creditor who has applied in writing to the Scheme Administrators to receive notice of such meeting, by sending notice by pre-paid post to such Scheme Creditor at his last known address; and
- (b) to all other Scheme Creditors by placing advertisements containing the requisite information in such newspaper or newspapers as the Scheme Administrators shall consider appropriate; and
- (c) to the Creditors' Committee, the New Hampshire Liquidator and the Scheme Administrators.

Any such notice shall be deemed to have been served on the date on which it is posted or as the case may be, the latest date on which the advertisement appears.

6.1.4 The accidental failure to give notice of a meeting of Scheme Creditors to, or the non-receipt of notice of such a meeting by, any Scheme Creditor entitled to receive notice shall not invalidate the proceedings at that meeting.

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6.2 Resolutions

- 6.2.1 If a meeting of Scheme Creditors is convened at a time when a resolution is to be put to the next meeting of Scheme Creditors pursuant to Clauses 4.1.3, 5.2.2 or 5.2.3, the business of the meeting shall include the resolution concerned and in the case of a resolution to remove a Scheme Administrator pursuant to Clause 4.1.3(a) which, if passed, would result in there being no Scheme Administrators in office, shall also include a resolution that a named person (i) who satisfies the conditions set out in Clause 4.1.1(a) and (ii) willing to be appointed as a Scheme Administrator be appointed in his place.
- 6.2.2 No meeting shall be convened unless the notice of the meeting sets out the text of each resolution which is to be proposed at the meeting, or an adequate summary thereof, or, if no resolution is to be proposed at the meeting, the nature of the business to be discussed thereat, and (in the case of a notice which is sent by post) is accompanied by a letter explaining in relation to each resolution why the meeting is being convened.

6.3 Voting

- 6.3.1 A resolution put to a meeting of Scheme Creditors shall be effective only if it is approved by a majority in number and three-quarters in value of the Scheme Creditors present and voting either in person or by proxy at the meeting.
- 6.3.2 Every Scheme Creditor entitled to vote shall have the right to appoint any person as his proxy to attend and vote instead of him. The instrument appointing a proxy may be in any form which the Company (acting through the Scheme Administrators) may approve and must be lodged at the place specified in the notice of the meeting for the lodging of proxies not less than forty-eight hours before the meeting (or adjourned meeting) at which it is to be used.
- 6.3.3 No business shall be transacted at any meeting of Scheme Creditors unless a quorum is present when the meeting proceeds to business. Twenty Scheme Creditors present in person or by proxy and having the right to vote at the meeting shall be a quorum, unless the Scheme Administrators and the Creditors' Committee agree a smaller number. All resolutions put to the vote of any meeting shall be decided on a show of hands, unless the Scheme Administrators determine in their absolute discretion that a poll should be taken.
- 6.3.4 A Scheme Administrator shall preside (or shall nominate a representative to preside) at each meeting of the Scheme Creditors (other than a meeting at which a resolution to remove a Scheme Administrator is proposed, when a member of the Creditors' Committee shall preside), but if such Scheme Administrator (or his nominated representative), or if relevant, the member of the Creditors' Committee is not present within thirty minutes after the time appointed for opening the meeting or is unwilling to preside, the Scheme Creditors present in person or by proxy shall choose one of themselves, to be chairman of the meeting. If no person is willing to preside as chairman of the meeting, the meeting shall be adjourned for seven days, and, if no person is willing to preside as chairman of the adjourned meeting, the meeting shall be dissolved.

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6.4 Valuation of Scheme Claims for the purposes of meetings

- 6.4.1 For the purposes of valuing any Scheme Claim for any of the purposes referred to in Clauses 5.9.2(b), 6.1.1(c) and 6.3.1 the value of the Scheme Claim shall, in the case of a Scheme Claim which has become an Established Scheme Liability, be the amount of the liability so established (less the amount of any payments paid, or treated as having been paid, by the Company under the Scheme in respect thereof), and, in the case of any other Scheme Claim, be such amount as may, for the purposes of such meeting only, be reasonably estimated as the value of such Scheme Claim by the Scheme Administrators.
- 6.4.2 In the event that a Scheme Creditor disputes the value which has been put on its Scheme Claim pursuant to Clause 6.4.1 or otherwise the amount for which its vote should be counted, the dispute shall be referred to the president for the time being of the Institute of Chartered Accountants in England and Wales (or any successor thereto) or, if the Scheme Administrator (or any of his partners) at such time occupies such office, the president at that time of the Law Society of England and Wales, or such other individual as he may nominate who shall consult with such relevant experts as he thinks appropriate and who shall act as an expert not an arbitrator and whose decision (including as to who should bear the costs of such referral) shall be final (but only as regards the convening of the meeting or the vote on that occasion).
- 6.4.3 For the purposes of ascertaining whether or not the requisite percentage for the convening of any meeting of Scheme Creditors or the requisite majority at any meeting of Scheme Creditors has been obtained, the amount of each Scheme Claim which is denominated in a currency other than US Dollars shall be converted into US Dollars at the Relevant Rate of Exchange.

6.5 Special Meetings

- 6.5.1 If requested to do so by the Creditors' Committee, the Scheme Administrators shall, as soon as reasonably practicable following notification in accordance with Clause 2.12.4 that the Company has entered into a commutation or similar compromise arrangement with all, or substantially all (by value), AFIA Reinsurers and/or the Guarantor as described in Clause 2.12.2, convene a Special Meeting of the Scheme Creditors.
- 6.5.2 The Scheme Administrators shall give notice of a Special Meeting in accordance with the provisions of Clause 6.1.
- 6.5.3 Clauses 6.1.4, 6.3, and 6.4 shall apply *mutatis mutandis* to a Special Meeting.
- 6.5.4 The provisions of a Special Resolution shall take effect forthwith upon its being duly passed in accordance with the provisions of the Scheme.

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7. PART 7 – DURATION OF THE SCHEME

7.1 Termination events

7.1.1 Subject to Clause 7.1.2 (which shall survive such termination), the Scheme shall terminate if:

- (a) all the liabilities of the Company to the Scheme Creditors have been discharged in full; or
- (b) the Scheme Administrators, with the agreement of the Creditors' Committee and the New Hampshire Liquidator, have concluded after due enquiry that the Scheme is no longer in the interests of the Scheme Creditors (as a whole); or
- (c) a resolution that the Scheme should be terminated is passed at a meeting of the Scheme Creditors, with the agreement of the New Hampshire Liquidator; or
- (d) the New Hampshire Liquidator determines in his sole discretion (following consultation with the Scheme Administrator and the Creditors' Committee) that the Scheme should terminate in the event that the New Hampshire Supreme Court enters a decision which has the effect of disapproving the Proposal.

7.1.2 If the Scheme terminates the following provisions shall apply:

- (a) termination of the Scheme shall be without prejudice to any right or obligation which shall have arisen under the Scheme as a result of any act or omission which took place prior to the termination of the Scheme including, without limitation, any right to an indemnity as a result of an act or omission which took place, or as a result of liabilities or expenses which were incurred, prior to the termination of the Scheme;
- (b) the provisions of Clauses 7.1.2, 8.2.3 and 8.2.4 shall continue in full force and effect; and
- (c) as soon as practicable following termination, the Scheme Administrators shall cause notices stating that the Scheme has terminated to be placed in such newspaper as the Scheme Administrators consider appropriate for one day a week for three consecutive weeks following such termination.

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8. PART 8 – GENERAL SCHEME PROVISIONS

8.1 Effective Date

The Scheme shall become effective on the Effective Date.

8.2 Pre-Scheme Costs and Other Costs

8.2.1 Subject to Clauses 8.2.3 and 8.2.4, as soon as practicable after the Effective Date there shall be paid by the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) (to the extent not already paid) out of the Gross Proceeds (to the extent available):

- (a) all outstanding costs, charges, expenses and disbursements reasonably incurred by the Company prior to the Effective Date, in connection with:
 - (i) the negotiation, preparation and implementation of the Scheme, including the costs of holding the meeting of its Scheme Creditors convened to consider the Scheme; and
 - (ii) insofar as they do not fall within 8.2.1(a)(i) the costs of obtaining the New Hampshire Approval Order, the English Court Orders and the FSA Approval,

including, without prejudice to the generality of the foregoing, the costs of any legal and other professional advisors; and

- (b) insofar as they do not fall within 8.2.1(a), JPL Costs reasonably incurred prior to the Effective Date which are payable by the Company.

8.2.2 Subject to Clauses 8.2.3 and 8.2.4, so long as the Scheme remains in force (but subject to clause (f)) there shall be paid by the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) in full out of the Gross Proceeds (to the extent available):

- (a) all costs, charges, expenses and disbursements incurred by the Company (whether acting by the New Hampshire Liquidator, the Joint Provisional Liquidators and/or the Scheme Administrators) in the course of carrying out the Scheme and of complying with the provisions of the Companies Act;
- (b) insofar as they do not fall within Clause 8.2.2(a), and without prejudice to the provisions of Clause 5.4.3, all costs, charges, expenses, and disbursements incurred by, and the remuneration of the Scheme Administrators and/or similar officeholder appointed to the Company in the discharge and/or exercise of their duties, functions and powers under the Scheme; and
- (c) insofar as they do not fall within Clauses 8.2.2(a) or 8.2.2(b), all Collection Costs; and
- (d) insofar as they do not fall within Clauses 8.2.2(a) to 8.2.2(c), all JPL Costs;
- (e) insofar as they do not fall within Clauses 8.2.2(a) to 8.2.2(d), all costs, charges, expenses and disbursements incurred by the Company in respect of the handling and/or management of claims insofar as the same relate to Scheme Claims; and

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(f) notwithstanding that the Scheme shall have terminated in relation to the Company, the costs of placing the notices required by Clause 7.1.2(c).

8.2.3 Subject to Clause 8.2.4, where there are insufficient Gross Proceeds available to pay Costs, such Costs shall be paid by the Company (acting by the New Hampshire Liquidator) as an administration expense of the New Hampshire Liquidation, provided that, as and when Gross Proceeds do become available, (or as soon as reasonably practicable thereafter), any Costs so paid shall be reimbursed from such Gross Proceeds.

8.2.4 Following the passing of the Special Resolution, any Other Costs and Indemnity Costs incurred from and including the Operative Date shall be paid by the Company (acting by the Scheme Administrators) from the Scheme Assets.

8.3 Conditionality of the Scheme

The provisions of this Scheme shall only apply from the Effective Date. The Scheme shall only become effective when a copy of the Sanction Order has been delivered for registration to the registrar of companies in England and Wales as required by section 425(3) of the Companies Act and the first day on which all of the following conditions have been met:

8.3.1 the New Hampshire Approval Order has been obtained from the New Hampshire Court; and

8.3.2 the Global Liquidation Order has been obtained from the English Court; and

8.3.3 the FSA Approval has been obtained.

8.4 Modification of the Scheme

The Company (acting by the Joint Provisional Liquidators with the express approval of the New Hampshire Liquidator) may, at any hearing to sanction the Scheme, consent on behalf of all those concerned to any modification of the Scheme or any terms or conditions which the English Court may think fit to approve or impose and which would not directly or indirectly have a materially adverse effect on the interests of any Scheme Creditor under the Scheme.

8.5 Notice

Any notice to be given to the Company and/or the Scheme Administrators under or in relation to this Scheme shall be given in writing and shall be deemed to have been duly given if it is delivered by hand or sent by pre-paid first class post, and by air mail where it is addressed to a different country from that in which it is posted, to the Company, c/o Ernst & Young LLP and marked for the attention of Gareth Hughes or Margaret Mills at 1 More London Place, London SE1 2AF (or such other person as may have been appointed as a Scheme Administrator in accordance with Clause 4.1.1(a) of this Scheme or at such other address as the Scheme Administrators may notify to Scheme Creditors for the purpose of this Clause 8.5 in such newspaper as the Scheme Administrators consider appropriate for one day a week for three consecutive weeks), and any notice posted as aforesaid shall be deemed to have been given on the seventh (or, if by airmail, the fourteenth) day following the date on which it is posted. The Scheme Administrators shall maintain at all times an office address in London for the purposes of giving notice to them and to the Company under this Scheme.

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8.6 No Liability

Neither the New Hampshire Liquidator (nor the New Hampshire Liquidator's special deputy, the employees of the Company, the Commissioner of Insurance for the State of New Hampshire, employees of the New Hampshire Insurance Department, the Attorney General of the State of New Hampshire nor employees of the New Hampshire Office of the Attorney General) nor the Joint Provisional Liquidators (nor the Joint Provisional Liquidators' firm, partners and/or employees) shall incur any liability in any capacity, under, or by virtue of, this Scheme, nor in relation to any related matter or claim howsoever, whenever and wherever arising, and whether such claim is formulated in contract and/or tort or by reference to any other remedy or right, and in whatever jurisdiction or forum.

8.7 Governing law and jurisdiction

8.7.1 Subject to Clause 8.7.2 below, the Scheme shall be governed by, and construed in accordance with, English law and the Scheme Creditors, the Company and the Scheme Administrators hereby agree that the English Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of the Explanatory Statement or any provision of the Scheme, or out of any action taken or omitted to be taken under the Scheme or in connection with the administration of the Scheme, and, for such purposes, the Scheme Creditors, the Company and the Scheme Administrators irrevocably submit to the jurisdiction of the English Court provided, however, that nothing in this Clause 8.7 shall affect the validity of other provisions determining governing law and jurisdiction as between the Company and any Scheme Creditor, whether contained in any contract or otherwise.

8.7.2 The New Hampshire Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which a Scheme Creditor seeks to bring against the New Hampshire Liquidator, whether arising (i) out of the Explanatory Statement (ii) out of any provision of the Scheme (iii) out of any action taken or omitted to be taken under the Scheme by the Company (acting by the New Hampshire Liquidator) (iv) in connection with the administration of the Scheme or (v) otherwise, and, for such purposes, the Scheme Creditors irrevocably submit to the jurisdiction of the New Hampshire Court.

Dated 23 July 2004

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APPENDIX 1

DRAFT SPECIAL RESOLUTION

THAT the Company, acting by the Scheme Administrators, shall, in accordance with the procedures set out in the Annex hereto, seek to agree or have adjudicated the values of Notifiable Claims (as defined in the Annex) which, as at the date of the passing of this Special Resolution (the “**Operative Date**”), by reason of their being subject to any contingency or for any other reason, do not bear a certain value, on the basis that such values (when agreed or adjudicated and all relevant appeal periods having expired) shall become Established Scheme Liabilities for the sole purpose of determining a Scheme Creditor’s entitlement to a distribution of Scheme Assets under the Scheme.

ANNEX

1. Notification of claims

- 1.1 Upon this Resolution being duly passed at the Special Meeting and subject to paragraph 2, no Scheme Creditor shall be entitled to receive any Payment Percentage payable under the Scheme in respect of any Scheme Claim which is not at the date of the Special Meeting an Established Scheme Liability unless prior to the expiration of the period of six calendar months from the Operative Date (“**Claims Submission Period**”) written notice of such Scheme Claim (“**Notifiable Claim**”) shall have been received by the Scheme Administrators from or on behalf of the Scheme Creditor concerned, such written notice to be given in the form and manner required by the Scheme Administrators on a form (a “**Claim Form**”) to be provided by the Scheme Administrators for such purpose.
- 1.2 Within 21 days after the Operative Date, the Scheme Administrators shall give notice to every Scheme Creditor to whom notice was given of the Special Meeting, and to any other person whom the Scheme Administrators believe to be a Scheme Creditor, at his last known address, that this Special Resolution has been passed, the action(s) to be taken and enclosing a Claim Form for use in respect of any claims of such Scheme Creditor.
- 1.3 The Scheme Administrators may, with the consent of the Creditors’ Committee but otherwise in their absolute discretion, and either generally or in respect of any particular Notifiable Claim, extend (by not more than 6 months and not on more than one occasion in relation to any claim) the time within which notice of a Notifiable Claim is to be received in accordance with paragraph 1.1.
- 1.4 Notifiable Claims notified in accordance with this paragraph 1 are referred to below as “**Notified Scheme Claims**”. For the avoidance of doubt, Notified Scheme Claims may be outstanding claims or estimates placed by Scheme Creditors on the value of a contract of reinsurance in respect of which there are currently no outstanding claims.

2. Appointment of the Adjudicator

- 2.1 There shall be an Adjudicator (the “**Adjudicator**”) appointed for the purposes mentioned in this Resolution. The Adjudicator may not be any of the New Hampshire Liquidator, the Joint Provisional Liquidators or the Scheme Administrators.
- 2.2 The first Adjudicator shall be [●].

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- 2.3 The Adjudicator may resign his appointment at any time by giving not less than one month's notice in writing to the Scheme Administrators and the Creditors' Committee.
- 2.4 The Creditors' Committee shall be entitled:
- 2.4.1 by a resolution passed by at least three-quarters of all the members of the Creditors' Committee for the time being at any time to call upon the Adjudicator to resign, provided that:
- (i) the Scheme Administrators' have expressly consented in writing to the proposed resolution; and
 - (ii) the Adjudicator has been given (x) at least twenty-eight days' notice of the proposed resolution and of the reasons why the resolution is to be put to the Creditors' Committee and (y) a reasonable opportunity to make representations at the meeting at which the resolution is proposed (and, if the Adjudicator declines to resign, a resolution requiring his removal shall be put before the next meeting of Scheme Creditors); and
- 2.4.2 upon removal of the Adjudicator or if the Adjudicator ceases to hold office for any other reason, to appoint any person qualified to act and approved by the Scheme Administrators to be the Adjudicator in his place (and a resolution requiring ratification of such appointment shall be put before the next meeting of Scheme Creditors pending which the appointee shall have full power to act as the Adjudicator) save that if a resolution is passed at a meeting of Scheme Creditors requiring the removal of the Adjudicator pursuant to paragraph 2.4.1, such appointment may be made by the Scheme Creditors at such meeting.
- 2.5 In the event that there is a vacancy in the office of the Adjudicator (otherwise than by reason of his removal from office at a meeting of Scheme Creditors at which another individual is appointed in his place) the Scheme Administrators may, with the consent of the Creditors' Committee, fill the vacated office by appointing another person as Adjudicator.

3. Determination of Notified Scheme Claims

- 3.1 Subject to the following provisions of this paragraph, in relation to each Notified Scheme Claim, the Scheme Administrators shall use their reasonable endeavours to reach agreement with the Scheme Creditor concerned, before the expiration of six months from the date on which a duly completed Claim Form has been received by the Scheme Administrator, as to the admissible amount in respect of such Notified Scheme Claim after taking into account:
- (a) any security over the property of the Company or any letters of credit or trust issued or created in respect of the Company which the Scheme Creditor is entitled to enforce in accordance with Clause 2.6 of the Scheme;
 - (b) any right of set-off upon which the Scheme Creditor is entitled to rely in accordance with Clause 2.7 of the Scheme;
 - (c) the valuation of any contingent or prospective debts owed by the Scheme Creditor to the Company (such valuation to be agreed between the Scheme Administrators and the Scheme Creditor or, absent such agreement, determined by the Adjudicator),

and upon agreement being reached, the Notified Scheme Claim shall be deemed to be an Established Scheme Liability of an amount equal to the amount so agreed.

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- 3.2 Any Notified Scheme Claim in respect of which such agreement has not been reached before the expiration of six months (or such longer period as may be provided under paragraph 3.3 below) after the end of the Claims Submission Period shall be referred immediately thereafter by the Scheme Administrators to the Adjudicator for determination by him in accordance with paragraph 4.
- 3.3 The Scheme Administrators may, with the consent of the Creditors' Committee, and either generally or in respect of any particular Notified Scheme Claim, extend the time after which the Scheme Administrators are required to refer claims to the Adjudicator pursuant to paragraph 3.2.

4. Determination of Notified Scheme Claims by the Adjudicator

- 4.1 On any Notified Scheme Claim being referred to the Adjudicator for determination by him in accordance with this paragraph, the Adjudicator shall, before the expiration of six months from the date on which such claim was referred to him by the Scheme Administrators, certify in writing to the Scheme Administrators and to the Scheme Creditor concerned what he considers, subject to paragraph 3.1, to be the value of such Notified Scheme Claim and where applicable, of any debts owed to the Company under paragraph 3.1(c), and upon such certificate being given, the Scheme Claim concerned shall be deemed to be an Established Scheme Liability of an amount equal to the amount so certified.
- 4.2 The Adjudicator shall be entitled to lay down such reasonable provisions and prescribe such reasonable procedures as in his absolute discretion he may consider appropriate for the purpose of assisting him in reaching his decision and shall be entitled for such purpose to call for such information in relation to the relevant Notified Scheme Claim concerned as he may require.
- 4.3 At the time of the giving of any such certificate as is referred to in paragraph 4.1 in relation to a Notified Scheme Claim, the Adjudicator may make such directions as he thinks fit as to the payment by the Scheme Creditor and/or the Company (acting by the Scheme Administrators) of his remuneration and the costs, charges and expenses incurred by him.
- 4.4 If the Adjudicator shall direct that any such remuneration, costs, charges and expenses be paid by the Company (acting by the Scheme Administrators), the same shall forthwith be paid in full by the Company (acting by the Scheme Administrators) from Scheme Assets.
- 4.5 If the Adjudicator shall direct any such remuneration, costs, charges and expenses be payable by a Scheme Creditor and the Scheme Creditor does not pay the same in full within one month after such direction, the Company (acting by the Scheme Administrators) may pay any unpaid balance in full out of the Scheme Assets. In any such case, for the purposes of determining whether such Scheme Creditor is entitled to receive any payments pursuant to paragraph 6, he shall be treated as having received on account of all Scheme Claims in respect of which he is entitled an amount equal to the unpaid balance so paid by the Company (acting by the Scheme Administrators) and the extent, if any, to which he is entitled to any payment pursuant to paragraph 6 shall be reduced accordingly. The Company, acting by the Scheme Administrators, shall be entitled to pursue the Scheme Creditor for such unpaid costs.

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- 4.6 If and to the extent that the Scheme Administrators make a cash recovery from a Scheme Creditor (a “**Recovery**”) in relation to a payment obligation imposed upon that Scheme Creditor pursuant to paragraph 4.5, the amount of such Recovery shall be added to Scheme Assets.
- 4.7 Except as required by law, a certificate given by the Adjudicator in relation to a Notified Scheme Claim shall be final and neither the Company nor any Scheme Creditor shall have any right to appeal therefrom or any claim against the Adjudicator in respect thereof.
- 4.8 The Scheme Administrators may, with the consent of the Creditors’ Committee, but otherwise in their sole discretion, and either generally or in respect of any particular Notified Scheme Claim, extend the time within which the Adjudicator is to provide his certificate pursuant to paragraph 4.1.

5. Costs, charges and expenses

Subject to paragraph 4.3, the Company (acting by the Scheme Administrators) shall pay out of the Scheme Assets all costs, charges and expenses incurred by the Adjudicator in the course of exercising and performing his powers, duties and functions under the Scheme and shall pay such remuneration to the Adjudicator for the exercise of his performance, duties and functions as may be agreed between the Adjudicator and the Scheme Administrators and approved by the Creditors’ Committee. The terms of the indemnity provided for the Scheme Administrators in Clause 4.3 of the Scheme shall apply *mutatis mutandis* to the Adjudicator and such indemnity shall be paid by the Company (acting by the Scheme Administrators) from Scheme Assets.

6. Payment to Scheme Creditors

- 6.1 Upon each Notified Scheme Claim becoming an Established Scheme Liability the provisions of part 3 of the Scheme shall take effect in relation to each such Established Scheme Liability.
- 6.2 For the avoidance of doubt, Scheme Claims which become Established Scheme Liabilities in accordance with the provisions of paragraphs 3 or 4 hereof, shall not be eligible for any distribution in the New Hampshire Liquidation (it being expressly agreed that the only purpose of the procedure set out in this Special Resolution is the distribution of the Scheme Assets to Scheme Creditors). Any claim in the New Hampshire Liquidation shall continue to be submitted in accordance with the Claims Procedure Order or in such other manner as the New Hampshire Liquidator shall direct. Furthermore, any valuation by the Scheme Administrators or the Adjudicator of any amount owed by the Scheme Creditors to the Company pursuant to paragraphs 3.1(c) or 4.1 shall not be binding upon the New Hampshire Liquidator.
- 6.3 Subject to paragraph 4, Scheme Claims which at the date of the Special Meeting are Established Scheme Liabilities shall continue to be eligible to receive the relevant Payment Percentage and otherwise dealt with under the Scheme, without being affected by the preceding provisions of this Special Resolution.

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7. Effect on Scheme Claims

Any Scheme Claim which is neither an Established Scheme Liability at the date of the Special Meeting nor becomes an Established Scheme Liability in accordance with the provisions of paragraphs 1 to 4 shall for all purposes cease to be, or to be capable of becoming, a liability of or enforceable against the Company for the purposes of a distribution of Scheme Assets.

8. Interpretation

- 8.1 References in this Special Resolution to paragraph numbers shall, unless the contrary intention appears, be construed as references to paragraphs of this Special Resolution.
- 8.2 Terms used but not defined in this Special Resolution that are defined in the Scheme shall, in this Special Resolution, have the meanings ascribed to them in the Scheme.
- 8.3 If there is any inconsistency between the provisions of this Special Resolution and the terms of the Scheme, the provisions of this Special Resolution shall prevail.

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

LIQUIDATOR'S SEVENTY-FOURTH REPORT

I, John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby submit this Seventy-Fourth Report on the liquidation of Home, as of September 9, 2019 in accordance with RSA 402-C:25 and the Order Concerning Liquidator's Reports issued January 19, 2005.

The Home Insurance Company

1. Home's background. Home, domiciled in New Hampshire, was declared insolvent on June 11, 2003, and is one of the largest property-casualty insurer insolvencies in United States history. The Company and its predecessors began operations in 1853. The Court entered the operative Order of Liquidation on June 13, 2003. The Liquidator has created a stand-alone liquidation operation which presently consists of 39 full and part time employees with offices in New York City (Home's former corporate headquarters) and Bedford, New Hampshire. From the start in 2003, the Liquidator has been engaged in marshalling assets, principally reinsurance, and determining claims.

2. Home's assets. Home's unrestricted liquid assets as of June 30, 2019 total approximately \$812 million as set forth on the June 30, 2019 financial statement attached as Exhibit A. This figure does not include the \$621.3 million of net interim distributions

paid to non-guaranty association claimants on allowed Class II claims or the net \$256 million paid to insurance guaranty associations in early access distributions through June 30, 2019. These amounts are discussed in greater detail below. As of September 1, 2019, the Liquidator has marshalled approximately \$1.83 billion in assets net of the expenses of the liquidation and Class I distributions. This total includes the interim distribution amounts paid to non-guaranty association claimants, the early access distributions amounts paid to guaranty associations, and special deposits held by states.

3. Coordination with guaranty associations. The Liquidator works closely with the state insurance guaranty associations established in every state to handle and pay certain claims under policies issued by insolvent insurers subject to statutory limitations as provided in the associations' respective statutes. See, e.g., RSA 404-B. The New Hampshire Insurers Rehabilitation and Liquidation Act ("Act") provides for so-called "early access" distribution to guaranty associations. See RSA 402-C:29, III. Through September 1, 2019, the Liquidator has made, with the Court's approval, early access net distributions totaling \$256 million. (See Section 11 below.)

As a condition for receiving early access distributions, the guaranty associations entered into "claw back" agreements with the Liquidator requiring the return of any amounts advanced that exceed the eventual distribution percentage for their creditor class. In accordance with paragraph 4 of the Orders approving the interim distributions, a portion of early access distributions have become permanent and are no longer subject to claw back by the Liquidator. The Liquidator has calculated the amount of early access distributions no longer subject to claw back to date, and has sent letters to the affected guaranty associations to apprise them of the amount of the early access distribution which is now

deemed to be permanent. The Liquidator has also sent letters to those guaranty associations which have received reimbursement from special deposits in excess of the interim distribution percentage to advise them that previously paid early access distributions will not become permanent. (See Section 12 below.)

4. Proofs of claim. The claim filing deadline in the Home liquidation was June 13, 2004. The Liquidator received nine new proofs of claim between the last Liquidator's report and September 1, 2019. The proofs of claim submitted now total 20,794. The proof of claim count includes as a single proof of claim (a) multiple proofs received from a claimant that appear to assert the same claim, and (b) claims filed on behalf of mass tort claimants against a single insured. It is difficult to summarize the proofs of claim in advance of the claim determination process because (a) those proofs of claim that quantify the claim may be overstated or understated, (b) most proofs of claim do not quantify the amount claimed, and (c) an individual proof of claim may involve many different claims and claimants.

5. Claim amendment deadline motion. The Liquidator has concluded that to move this proceeding toward closure and protect the interests of the creditors with allowed Class II claims it is now necessary to establish a deadline by which claimants with open proofs of claim must finally amend their claims. The Liquidator accordingly filed a Motion for Approval of Claim Amendment Deadline on August 1, 2019 seeking to establish a deadline for the amendment of claims. As described in that motion, claims filed after the claim amendment deadline and potential claims (claims that cannot be specifically identified by the deadline) will be barred if the Motion for Approval of Claim Amendment Deadline is granted. Copies of the motion papers -- consisting of a motion for order of

notice, the proposed order of notice, the motion for approval of claim amendment deadline, the supporting affidavit, and the proposed order approving claim amendment deadline -- may be found on the liquidation's website, www.hicilclerk.org.

On August 23, 2019, the Liquidator received the Court's Order of Notice Regarding Liquidator's Motion for Approval of Claim Amendment Deadline dated August 19, 2019. Pursuant to that order, the deadline for filing objections to the Motion for Approval of Claim Amendment Deadline is November 18, 2019. The Liquidator will complete mailing notice of the motion and objection deadline pursuant to the order of notice on or before September 20, 2019. A copy of the notice will be posted to the website.

6. Claim determinations and reports. The process of determining proofs of claim continues. Since the last Liquidator's report, the Liquidator has issued partial or final notices of determination addressing 74 proofs of claim pursuant to the Restated and Revised Order Establishing Procedures Regarding Claims entered January 19, 2005 ("Claims Procedures Order"). As of September 1, 2019, for all priority classes, the following table outlines activity from inception of the Liquidation:

	<u>12/01/14</u>	<u>12/01/15</u>	<u>12/05/16</u>	<u>12/01/17</u>	<u>12/1/18</u>	<u>9/1/19</u>
Proofs of Claim Filed:	20,672	20,704.	20,733	20,768	20,775	20,794
POCs Resolved (Court App'd) ⁽¹⁾⁻⁽²⁾:	15,729	17,494	18,337	18,839	19,570	19,744
Total \$ Court App'd Determinations:	\$2.18b	\$2.43b	\$2.73b	\$2.8 b	\$3.0 b	\$3.1b ⁽³⁾
Total \$ Class II Court App'd Det:	\$1.94b	\$2.13b	\$2.41b	\$2.49b	\$2.6 b	\$2.73b ⁽³⁾
Total Remaining Open POCs ⁽⁴⁾	4,225	3,210	2,396	1,929	1,242	1,050

Breakdown of Open POC Count as of 12/05/16, 12/01/17, 12/01/18 & 9/1/19 ⁽⁴⁾

		<u>12/05/16</u>	<u>12/01/17</u>	<u>12/01/18</u>	<u>9/1/19</u>
i.	Insureds ⁽⁷⁾ and Claimants	2,097	1,668	979	789
ii.	Contribution Claims	43	6	12	13 ⁽⁵⁾
iii.	Guaranty Associations	60	60	60	59
iv.	Insurer	189	186	182	180
v.	Government/other	7	9 ⁽⁶⁾	9	9
vi.	<u>Total</u>	<u>2,396</u>	<u>1,929</u>	<u>1,242</u>	<u>1,050</u>

(1) POC counts include single POCs that may encompass multiple underlying claims and multiple POCs that may concern single underlying claims. Multiple determinations may be issued for individual POCs.

(2) The number of POCs resolved includes POCs determined and approved by the Court as Class V determinations that are deferred as to amount. The number of deferred Class V determinations can change if a final determination as to amount is issued.

(3) The allowance total was adjusted to reflect credits for offsets.

(4) The number of open POCs excludes 304 POCs at 9/1/19 determined and approved by the Court as Class V determinations that are deferred as to amount. POCs with a filed Request for Review are considered open until the NODs are resolved.

(5) The number of open contribution POCs increased due to issuance of NODs on POCs that had not been counted as open in light of previous court-approved final determinations as to priority class only.

(6) In the course of a review of the open POCs, two records were moved from another category to this category.

(7) As of 9/1/19, the number of insureds with open POCs totaled 224. All entities falling within the coverage of the policy including the named insured, additional named insured and their successors are counted as one insured if they filed a consolidated POC or POCs. Where the insured, the additional named insured and/or the successors filed separate POCs, each of the entities is counted separately.

The Liquidator continues to file reports of claims and recommendations when a sufficient number of claim determinations have passed the 60-day period for objections under RSA 402-C:41, I. Since June 1, 2019, the Liquidator has submitted two reports of claims and recommendations to the Court reflecting a total of approximately \$1.9 million in determinations for all classifications. In addition, the Court has approved one Class II settlement agreement reflecting total allowances of \$9.5 million.

7. Late-filed claims. The Order of Liquidation established June 13, 2004 as the deadline for filing claims in Home's liquidation proceeding. Pursuant to the Act, claims filed after the claim filing deadline are allowed to participate in distributions of the estate provided the late filing of the claim is "excused" for good cause shown. See RSA 402-C:37, II. The Act provides a non-exclusive list of five examples of "good cause" for late filing to be excused, including that the "existence of a claim was not known to the claimant and that he filed within 30 days after he learned of it." Id. "Unexcused" late filed claims are not permitted to receive the first distribution from the estate, but may receive subsequent distributions. RSA 402-C:37, III. (In both cases, payment is permitted only if it will not "prejudice the orderly administration of the liquidation." RSA 402-C:37, II, III.)

All proofs of claim received by the Liquidator are reviewed to determine whether the claim is timely filed or, if late, whether the late filing of the claim is to be "excused." Claimants with late filed claims which are found to be "unexcused" are informed of that determination and that they will not receive the first distribution in the Liquidator's notice of claim determination.

8. Requests for review and objections. A notice of determination is sent to a claimant when the Liquidator determines a claim. Each notice of determination includes

instructions on how to dispute the determination under the New Hampshire statutes and the Claim Procedures Order. Since inception, 1010 claimants have filed requests for review; 909 of these have been sent notices of redetermination or have withdrawn the request for review. Claimants have filed 60 objections with the Court to commence disputed claim proceedings. As of September 5, 2019, there are two disputed claim proceedings before the Referee. The Claims Procedures Order provides for review of the Referee's reports by motion to recommit. One such motion was stayed pending the Court's ruling on a motion for approval of a settlement with the claimant. The approval was given by order dated August 27, 2019, and the order deemed the motion to recommit withdrawn.

9. Financial reports. The unaudited June 30, 2019 financial statements are attached as Exhibit A to this report. The June 30, 2019 statements reflect \$811,248,037 in assets under the Liquidator's direct control and \$19,747,582 in reinsurance collections, net investment income, and other receipts, and \$8,671,852 in operating disbursements from January 1 through June 30, 2019.

10. 2019 Budget. A comparison of the actual and budgeted general and administrative expenses of the Home liquidation, on an incurred basis, through June 30, 2019 is attached as Exhibit B. As of June 30, 2019, actual expenses were below budget by \$490,209 or 7.2% with favorable variances in most categories. Below is a comparison of the annual budgeted and actual operating expenses (in millions) beginning January 1, 2004:

Year	Budget	Actual
2004	\$33.8	\$26.9
2005	\$26.8	\$26.2
2006	\$25.6	\$23.5
2007	\$22.8	\$21.5
2008	\$21.4	\$20.6
2009	\$20.6	\$20.0
2010	\$19.9	\$20.3
2011	\$18.9	\$18.2
2012	\$18.6	\$18.2
2013	\$18.4	\$17.7
2014	\$17.6	\$17.0
2015	\$17.2	\$16.2
2016	\$15.7	\$14.6
2017	\$14.5	\$13.7
2018	\$14.0	\$12.8
2019	\$13.5	

The Liquidator filed a copy of the 2019 Budget on October 15, 2018 as Exhibit 7 to the Liquidator's Filing Regarding Status Report. As of September 1, 2019, the liquidation staff is 39 in number, which includes seven part time employees. In addition, there are five Information Technology consultants, and other consultants who periodically work for the estate.

11. Investment update. The Liquidator invests Home's assets in accordance with the Fourth Revised Investment Guidelines approved December 10, 2012. A summary of Home's holdings of bonds and short-term investments as of June 30, 2019 is attached as Exhibit C, and a report listing the individual holdings of Home as of that date is attached as Exhibit D (the groupings on Exhibit B differ from those on Exhibit D). The book value of Home's bonds and short-term investments managed by Conning Asset Management ("Conning") at June 30, 2019, was approximately \$790.6 million compared to their market value of \$797.7 million. This represented an unrealized gain (book value above market value) of approximately \$7.1 million. Short-term holdings in the Conning-managed

portfolio at June 30, 2019 were \$9 million at market value. The portfolio has generated approximately \$11.6 million of cash from net investment income through June 30, 2019 and is expected to generate \$21.9 million in 2019.

The average credit rating for the Conning-managed portfolio holdings is Aa3 by Moody's and AA- by S&P. The Liquidator continues to maintain, outside of Conning's control, investments in US Treasury bills. As of June 30, 2019, such investments for Home had a market value of approximately \$9.7 million. These assets, along with sweep bank accounts, will be used to fund operating requirements.

As of September 1, 2019, the Conning-managed portfolio had an unrealized gain of \$10.2 million, a \$3.2 million change in the unrealized gain and loss from June 30, 2019 due to a decrease in bond yields influenced by concerns about economic growth and the Federal Reserve's rate reduction of .25% in July, 2019. A market value sensitivity analysis performed by Conning indicated that market values of the portfolio could potentially fluctuate \$22 million downwards and \$23 million upwards if interest rates increased or decreased 100 basis points, respectively, based on the portfolio values as of June 30, 2019. Consistent with the investment guidelines, the Liquidator and Conning continue to focus on (a) preservation of capital on investments, (b) maintaining a high quality portfolio, and (c) consistent with objectives (a) and (b), maximizing current income. As of September 1, 2019, the Liquidator and Conning believe that all securities in the portfolio will pay full amounts of principal in spite of fluctuating market values.

12. Early access distributions to guaranty associations. The Liquidator made early access distributions to a total of 55 insurance guaranty associations from 2005 through 2016. The Liquidator makes an early access distribution only after obtaining

approval from the Court and “claw back” agreements with the guaranty associations requiring the return of any amounts advanced that are necessary to make distributions to creditors whose claims fall in the same or a higher priority class. See RSA 402-C:29, III.

Early access distributions are generally subject to deductions for deposits, deductible reimbursements, recoveries from guaranty association statutory net worth insureds, amounts ascribed Class I and Class V priority, questioned claim items, and an early access distribution cap of 40% of the association’s paid loss and expense and case reserves. Given the large number of guaranty associations affected by the cap and the decreasing association claim volume over the last few years, the tenth and eleventh early access distributions also reflected an additional cap of 75% of the association’s cumulative paid claims in accordance with the Court’s approval orders. The eleventh early access distribution also reflected a \$25,000 minimum payment threshold. A net total of \$256 million has been paid to guaranty associations in early access through June 30, 2019.

13. Interim Distributions. By Order dated March 13, 2012 (as amended July 2, 2012), the Court approved the first interim distribution of 15% to claimants with allowed Class II claims. The interim distribution was subject to receipt of a waiver of federal priority claims from the United States Department of Justice (“US DOJ”), which was received on November 5, 2014. By Order dated November 16, 2015 (as amended March 7, 2016), the Court approved the second interim distribution of 10% to claimants with allowed Class II claims (for a cumulative interim distribution percentage of 25%). The second interim distribution was also subject to receipt of a waiver of federal priority claims from the US DOJ, which was received on July 18, 2016.

The Liquidator paid first interim distributions totaling \$258.3 million to creditors with allowed Class II claims on December 5, 2014 and thereafter through July 31, 2016. In August 2016, the Liquidator paid second interim distributions totaling \$183.3 million to creditors with allowed Class II claims. It also included 25% first and second distribution amounts for those recent Class II claimant-creditors who had not previously received the first interim distribution.

By Order dated October 18, 2018, the Court approved the third interim distribution of 5% to claimants with allowed Class II claims (for a cumulative interim distribution percentage of 30%). The third interim distribution was also subject to receipt of a waiver of federal priority claims from the US DOJ. The Liquidator entered a Release Agreement with the United States in conjunction with a Settlement Agreement between the Federal Claimants and the Liquidator. The two agreements were subject to Court approval, which was given by Order dated March 26, 2019, and other conditions which were satisfied on April 10, 2019, thereby making the Settlement Agreement and the Release Agreement effective. The Release Agreement provided the necessary waiver of federal priority claims allowing the third interim distribution to proceed.

In April 2019, the Liquidator paid the third interim distribution totaling \$119.0 million to creditors with allowed Class II claims. This included the 30% distribution in the amount of \$8,113,243.80 on allowed United States claims which was paid to the United States on April 10, 2019 in accordance with the terms of the Settlement Agreement. It also included 30% distribution amounts for other recent Class II claimant-creditors who had not previously received the first and second interim distributions. As part of the interim distribution process, the Liquidator periodically issues distribution

checks to claimants with newly allowed Class II claims after each December 31 and June 30 as provided in the interim distribution approval orders.

The net cumulative interim distributions to non-guaranty association Class II creditors total \$621.3 million through September 1, 2019 (excluding distribution checks outstanding of \$0.3 million). This total does not include the amounts of prior early access distributions to guaranty associations that are deemed interim distributions no longer subject to claw back pursuant to the interim distribution approval orders (which are included in the early access total in paragraph 11). Certain guaranty associations have had claims satisfied from special deposits and, accordingly, have not received interim distributions from the Home estate.

14. Milliman reserve study. The Liquidator engaged the actuarial firm Milliman, Inc. to estimate Home's unpaid direct liabilities as of December 31, 2010, December 31, 2012, and December 31, 2014. Milliman's report concerning unpaid loss and allocated loss adjustment expense ("ALAE") as of December 31, 2010, was used in the Liquidator's Motion for Approval of Interim Distribution to Claimants with Allowed Class II Claims filed February 13, 2012, and the executive summary was included in the motion papers. A copy of the executive summary of the Milliman report concerning unpaid loss and ALAE as of December 31, 2012 was attached as an exhibit to the Liquidator's Fifty-First Report. A copy of the executive summary of the Milliman report dated June 18, 2015 concerning unpaid loss and ALAE as of December 31, 2014 was attached as an exhibit to the Liquidator's Fifty-Seventh report.

Milliman's actuarial central estimate of ultimate Class II unpaid loss and ALAE as of December 31, 2010 was \$4.112 billion, and the estimate at the 95% confidence level

was \$6.584 billion. Milliman's actuarial central estimate of ultimate Class II unpaid loss and ALAE as of December 31, 2012 was \$4.372 billion, and the estimate at the 95% confidence level was \$6.602 billion. Milliman's actuarial central estimate of ultimate Class II unpaid loss and ALAE as of December 31, 2014 was \$4.034 billion, and the estimate at the 95% and 90% confidence levels was \$5.406 billion and \$4.970 billion respectively.

15. Multiple claims. RSA 402-C:40, IV provides that in the event several claims founded on one policy are filed, and the aggregate allowed amount of all claims to which the same limit of liability in the policy is applicable exceeds that limit, then each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. This presents a potential risk for allowed claims under such policies in the event that other claims subject to the same policy limit are allowed, as the allowances subject to the same limit would need to be reduced on a pro rata basis to adjust the total of such allowances to the applicable policy limit. Distributions will be based on the reduced allowances. The Liquidator will be unable to finally determine the extent to which a claim allowance may be subject to proration until all claims against the policy have been determined. The Liquidator is tracking claims against policies and will further address this issue, if warranted, in any future application to increase the interim distribution percentage. If at the time of a distribution there are allowed claims subject to the same limit that are required to be reduced pursuant to RSA 402-C:40, IV, the Liquidator will make the reductions and advise the claimants of the reasons for them.

16. Reinsurance. The collection of reinsurance is the principal remaining asset-marshaling task of the Liquidator. The Liquidator has billed and collected reinsurance

throughout the liquidation, and he has entered into commutations with certain reinsurers of Home to resolve relationships with those reinsurers for agreed payments.

The Liquidator reports, in accordance with the Court's December 23, 2004 order, that since the last report, the Liquidator has completed and moved for approval of a ceded and assumed commutation with National Casualty Co.

17. Distributions to Class I Creditors. In his reports and recommendations regarding claims, the Liquidator has recommended that the Court approve certain claims by guaranty associations for expenses which are Class I claims under RSA 402-C:44 pursuant to RSA 404-B:11, II, certain other Class I claims, and the 10% part of allowed guaranty fund defense expense payments assigned to Class I under the Settlement Agreement with 56 guaranty associations approved on July 15, 2013. The Court has approved the claim reports, and the Liquidator accordingly has at various times made distributions to the Class I creditors. Most recently, a Class I distribution totaling \$5.4 million was issued to guaranty associations in September and October 2018, which brought total Class I distributions to \$86.0 million (after deduction of setoffs).

18. Asset dispositions (including compromises) and assumptions of obligations. In accordance with paragraph 5 of the Order Establishing Procedures for Review of Certain Agreements to Assume Obligations or Dispose of Assets entered April 29, 2004, and paragraph 5 of the Liquidator's Eleventh Report, the Liquidator submits a confidential schedule of asset dispositions (including compromises) and obligation assumptions since the last report which is filed under seal as an appendix to this report.

19. New York Office Surrender of Space; Manchester Office Lease Termination. Pursuant to the terms of the Lease Agreement for office space located at 61

Broadway in New York City, the Liquidator had a unilateral contraction option to surrender 7,500 square feet or approximately one-third of the Premises effective as of January 1, 2018. The Liquidator exercised the option and vacated the space on December 31, 2017. The Lease Agreement provides the Liquidator with a second unilateral contraction option for approximately half of the remaining space which option may be exercised at any time between January 1, 2021 and January 1, 2023. While the Lease expires by its terms on January 31, 2026, the Liquidator has an option to cancel the Lease as of January 1, 2021, as well as an option to extend the term of the Lease another five years until January 31, 2031. Both options to be effective require 12 months prior written notice.

The Lease Agreement for office space in Manchester, New Hampshire has been terminated effective as of August 31, 2019, and the Liquidator has vacated the space. The office has been relocated to new quarters in Bedford, New Hampshire which space has been let on a month to month basis.

20. Mailing Address Change: In view of the closure of Home's Manchester office, and as reflected on the liquidation's website (www.hicilclerk.org), the mailing address for all Proofs of Claim has been changed to the following:

The Home Insurance Company in Liquidation
61 Broadway, 6th Floor
New York, New York 10006

21. Document Storage. The contract with Iron Mountain regarding storage of Home's records housed at Iron Mountain facilities as approved by the Court on November 2, 2016 extends until November 30, 2021, and provides for a further five year extension at the Liquidator's option. As of September 1, 2019, there are approximately 69,290 boxes

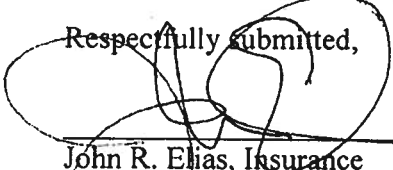
of documents in storage at Iron Mountain, down from a high of 167,000 in 2004 when the record review process was commenced, resulting in considerable savings to Home's estate. Record destruction efforts remain ongoing so as to eliminate records which are no longer useful to the estate.

22. Ancillary proceedings in the United States and United Kingdom. Ancillary receiverships for Home remain pending in Oregon, New York, and Massachusetts. In addition, a provisional liquidation proceeding concerning Home's unincorporated branch in the United Kingdom ("UK Branch") remains pending. The Home's UK Branch wrote insurance and reinsurance as a participating member of the American Foreign Insurance Association ("AFIA"), and a Scheme of Arrangement with AFIA creditors was approved by the UK court in November 2005. Members of Ernst & Young in London act as Provisional Liquidators and Scheme Administrators.

23. Discontinuance of OLC List Service Updates Notification. The OLC List Service was created to allow individuals to be notified by e-mail message of a posting to the liquidation's website (www.hicilclerk.org) rather having to visit the site to see if there have been any additions. However, maintaining this service has grown burdensome. It now requires frequent and significant reprogramming of certain older programs by liquidation staff when there are updates to computer operating system hardware and software. In addition, significant manual intervention is necessary to restart the notification system after any type of data center outage. The Liquidator has evaluated the ongoing cost and effort required to maintain this feature and has concluded that it has become excessive. As a result, the Liquidator anticipates that the OLC List Service will be discontinued effective September 30, 2019. A notice will be posted as that date approaches. All filings

and orders in the liquidation proceeding will continue to be posted and may be viewed on the liquidation's website, www.hicilclerk.org, which serves as a resource for those who wish to monitor the activity of the estate.

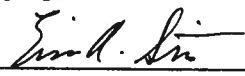
Respectfully submitted,


John R. Elias, Insurance
Commissioner of the State of
New Hampshire, as Liquidator
of The Home Insurance Company

Dated: September 17, 2019

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2019, a copy of the Liquidator's Seventy-Fourth Report, without the confidential appendix, was served upon the persons named on the attached Service List, by first class mail, postage prepaid.


Eric A. Smith
NH Bar ID No. 16952

Exhibits:

- A – Unaudited Financial Statement as of 6/30/19
- B – Comparison of actual and budgeted general and administrative expenses through 6/30/19
- C – Holdings of bonds and short-term investments as of 6/30/19
- D – Individual holdings report as of 6/30/19

Confidential Appendix

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106

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THE HOME INSURANCE COMPANY IN LIQUIDATION

Financial Statements (Modified Cash Basis)

**June 30, 2019 and December 31, 2018
(Unaudited)**

The Home Insurance Company In Liquidation

Statement of Restricted and Unrestricted Net Assets Excluding Certain Amounts (Modified-Cash Basis) (Unaudited)

	<u>June 30, 2019</u>	<u>December 31, 2018</u>
Assets		
Unrestricted fixed-income securities, short-term investments, and cash and cash equivalents, at cost:		
Fixed-income securities (Note 2)	\$ 786,552,142	\$ 749,762,900
Short-term investments	9,711,087	134,142,344
Cash and cash equivalents	<u>10,779,523</u>	<u>20,635,841</u>
Total unrestricted fixed-income, short-term investments, and cash and cash equivalents, at cost	\$ 807,042,752	\$ 904,541,085
Unrestricted liquid assets:		
Interest income due and accrued	4,794,773	4,296,062
Other liquid assets	<u>2</u>	<u>2</u>
Total unrestricted liquid assets	\$ 811,837,527	\$ 908,837,149
Unrestricted illiquid assets: (Note 1)		
Limited partnership interests	<u>592,358</u>	<u>592,358</u>
Total unrestricted illiquid assets (Note 1)	\$ 592,358	\$ 592,358
Restricted liquid assets: (Note 4)		
Cash	<u>195,667</u>	<u>195,667</u>
Total restricted liquid assets (Note 4)	\$ 195,667	\$ 195,667
Total restricted and unrestricted assets, excluding certain amounts	\$ 812,625,552	\$ 909,625,173
Liabilities		
Incurred but unpaid administrative expenses and investment expenses (Note 3)	1,113,304	1,790,276
Class I distribution checks outstanding (Note 8)	-	9,301
Class II distribution checks outstanding (Note 9)	<u>264,212</u>	<u>127,199</u>
Total liabilities	\$ 1,377,516	\$ 1,926,776
Restricted and unrestricted net assets, excluding certain amounts	\$ 811,248,037	\$ 907,698,396

See accompanying notes.

The Home Insurance Company in Liquidation

Statement of Restricted and Unrestricted Cash Receipts and Disbursements
(Modified-Cash Basis)
(Unaudited)

	January 1, 2019 To <u>June 30, 2019</u>	January 1, 2018 To <u>December 31, 2018</u>
Cash and marketable securities received:		
Net investment income	\$ 11,526,978	\$ 21,369,678
Reinsurance collections - unrestricted	7,205,442	18,530,389
Agents' balances	515,526	2,632,501
Salvage, subrogation and other claim recoveries	132,039	304,797
Realized capital gains on sale of fixed-income securities (Note 1)	103,544	203,535
Miscellaneous income	199,138	16,426
All other	64,915	957,654
Total cash receipts	\$ 19,747,582	\$ 44,014,980
Cash operating disbursements:		
Human resources costs (Note 3)	4,475,792	7,250,789
Realized capital losses on sale of fixed-income securities (Note 1)	466,651	1,538,378
Consultant and outside service fees	1,248,194	2,119,665
General office and rent expense	609,384	1,234,118
Legal and audit fees	460,600	1,061,982
Investment expenses	368,989	738,890
Computers and equipment cost	91,557	183,485
Administration costs	85,151	191,348
Loss expenses paid (Note 1)	45,325	131,840
Capital contribution	4,100	38,475
All other	816,109	3,666
Total cash operating disbursements	\$ 8,671,852	\$ 14,492,636
Excess of receipts over operating disbursements	\$ 11,075,730	\$ 29,522,344
Deductible reimbursements (Note 7)	338,600	398,185
Class I Distributions (Note 8)	9,301	5,433,359
Class II Distributions (Note 9)	128,851,138	30,139,875
Escrow Recovery (Note 9)	<u>(20,624,976)</u>	<u>(528,166)</u>
Cash disbursements and distributions in excess of receipts	\$ (97,498,333)	\$ (5,920,909)
Beginning restricted and unrestricted fixed-income securities, short-term investments, and cash and cash equivalents, at cost	<u>904,736,752</u>	<u>910,657,661</u>
Ending restricted and unrestricted fixed-income securities, short-term investments, and cash and cash equivalents, at cost	\$ <u>807,238,419</u>	\$ <u>904,736,752</u>

See accompanying notes.

The Home Insurance Company in Liquidation

Statement of Changes in Restricted and Unrestricted Net Assets Excluding Certain Amounts (Modified-Cash Basis) (Unaudited)

	<u>January 1, 2019</u> To <u>June 30, 2019</u>	<u>January 1, 2018</u> To <u>December 31, 2018</u>
Restricted and unrestricted net assets, excluding certain amounts, beginning of year	\$ 907,698,397	\$ 915,176,237
Cash operating disbursements in excess of unrestricted and restricted cash receipts	(97,498,333)	(5,920,909)
Other changes in restricted and unrestricted net assets:		
Limited partnership interests, illiquid	-	(62,427)
Prepaid expenses	-	(837,350)
Interest income due and accrued	498,712	(711,752)
Incurred but unpaid administrative and investment expenses (Note 3)	676,972	49,959
Class I distribution checks outstanding (Note 8)	9,301	(9,301)
Class II distribution checks outstanding (Note 9)	(137,012)	13,940
	<u>\$ 811,248,037</u>	<u>\$ 907,698,397</u>
Restricted and unrestricted net assets, excluding certain amounts, end of year	\$ 811,248,037	\$ 907,698,397

See accompanying notes.

The Home Insurance Company in Liquidation ("Home")

Notes to Financial Statements

(Modified-Cash Basis)

(Unaudited)

June 30, 2019

1) Basis of Accounting

These financial statements are prepared using the modified cash basis of accounting which differs from accounting principles generally accepted in the United States. Only those assets that are within the possession of the Liquidator and other known amounts for which ultimate realization is expected to occur, primarily investments and cash and cash equivalents, and certain receivables, are recorded. Liabilities that have been acknowledged by the Liquidator are prioritized into creditor classes in accordance with the New Hampshire Statute establishing creditor classes in insurer insolvencies, RSA 402-C: 44. Only incurred but unpaid Class I (Administration Costs) liabilities, which are in a creditor class superior to all other classes, are presented in these financial statements.

These financial statements do not record the amounts of certain assets such as outstanding receivables, reinsurance recoverables, securities on deposit with various states and the federal government, early access distributions, funds held and claims against others, and certain liabilities, including insurance claims, as such amounts have not been settled and agreed to with third parties.

The amount shown for loss expenses paid primarily represents (1) loss expenses accorded administrative expense priority by the rehabilitation order and liquidation order, and (2) expenses relating to obtaining claim recoveries which also are entitled to administrative expense priority. Checks issued for such loss expenses that are not cashed are reflected as liabilities.

Unrestricted illiquid assets represent investments in common stock and limited partnership interests which are not liquid since these are not publicly traded.

Realized capital gains and losses on sale of bonds are calculated based on original cost of the bonds. Proceeds received above or below cost on maturity of bonds are included as part of net investment income.

Proceeds received above or below original cost are treated as a gain or loss upon disposition of common stock.

This statement does not include any assets of Home's branches outside of the United States.

The Home Insurance Company in Liquidation ("Home")

Notes to Financial Statements (continued)
(Modified-Cash Basis)
(Unaudited)

2) Investments

The cost and estimated fair values of unrestricted fixed-income securities and common stock by major category are summarized as follows:

	<u>June 30, 2019</u>			
	Gross	Gross	Unrealized Losses	Fair Value
	Cost	Unrealized Gains		
Fixed-income securities:				
U.S. Treasury notes	\$ 55,702,676	\$ 283,398	\$ (281,855)	\$ 55,704,219
Government agencies	28,266,259	415,837	-	28,682,096
Corporate	499,362,694	4,869,056	(3,995,731)	500,236,019
Mortgage-backed	141,924,868	1,891,524	(1,037,433)	142,778,959
Asset-backed	61,295,644	272,903	(281,101)	61,287,446
Total	<u>\$ 786,552,142</u>	<u>\$ 7,732,718</u>	<u>\$ (5,596,121)</u>	<u>\$788,688,739</u>
Total Common Stock	\$ 1,628,052	\$ -	\$ (1,628,050)	\$ 2

The amortized cost of unrestricted fixed-income securities is \$781,540,563 at June 30, 2019. Based on such amortized cost, gross unrealized gains are \$8,238,007 and gross unrealized losses are \$1,089,831.

	<u>December 31, 2018</u>			
	Gross	Gross	Unrealized Losses	Fair Value
	Cost	Unrealized Gains		
Fixed-income securities:				
U.S. Treasury notes	\$ 37,840,918	\$ -	\$ (702,715)	\$ 37,138,203
Government agencies	8,037,440	-	(157,960)	7,879,480
Corporate	486,230,691	115,613	(17,469,131)	468,877,174
Mortgage-backed	152,312,907	460,995	(4,604,942)	148,168,959
Asset-backed	65,340,944	156,109	(907,239)	64,589,815
Total	<u>\$ 749,762,900</u>	<u>\$ 732,717</u>	<u>\$ (23,841,986)</u>	<u>\$726,653,631</u>
Total Common Stock	\$ 1,628,052	\$ -	\$ (1,628,050)	\$ 2

The amortized cost of unrestricted fixed-income securities is \$745,146,469 at December 31, 2018. Based on such amortized cost, gross unrealized gains are \$586,200 and gross unrealized losses are \$19,079,038.

The Home Insurance Company in Liquidation ("Home")

Notes to Financial Statements (continued)
(Modified-Cash Basis)
(Unaudited)

2) Investments (continued)

The cost and fair values of unrestricted fixed-income securities by contractual maturity are as follows:

	<u>Unrestricted fixed-income securities</u>	
	<u>Cost</u>	<u>Fair Value</u>
June 30, 2019		
One year or less	\$ 68,471,667	\$ 67,839,586
Over one year through Five years	398,834,947	398,137,129
Over five years through twenty years	116,025,014	118,645,619
Mortgage-backed	141,924,868	142,778,959
Asset-backed	<u>61,295,644</u>	<u>61,287,446</u>
 Total	 <u>\$ 786,552,142</u>	 <u>\$ 788,688,739</u>

	<u>Unrestricted fixed-income securities</u>	
	<u>Cost</u>	<u>Fair Value</u>
December 31, 2018		
One year or less	\$ 80,469,272	\$ 79,537,400
Over one year through Five years	323,019,085	312,436,091
Over five years through twenty years	128,620,692	121,921,364
Mortgage-backed	152,312,907	148,168,959
Asset-backed	<u>65,340,944</u>	<u>64,589,816</u>
 Total	 <u>\$ 749,762,900</u>	 <u>\$ 726,653,631</u>

The Home Insurance Company in Liquidation ("Home")

Notes to Financial Statements (continued)
(Modified-Cash Basis)
(Unaudited)

3) Incurred But Unpaid Administrative Expenses and Investment Expenses

Accrued expenses incurred in the normal course of Home's liquidation, but unpaid as of June 30, 2019, are as follows:

Human resources costs	\$ 510,601
Consultant and outside service fees	236,728
Legal and auditing fees	56,570
Other administration costs	53,853
General office and rent expense	<u>78,167</u>
Total accrued administrative expenses	<u>935,919</u>
Accrued investment expenses	<u>177,385</u>
Total accrued expenses	<u>\$ 1,113,304</u>

The amount of accrued expenses at December 31, 2018 was \$1,790,276 and net assets for 2019 increased by \$676,972 due to the decrease in the accrual.

Various full-time employees of Home are covered by employee incentive plans, which were approved by the Liquidation Court on December 7, 2018. The costs of these plans are primarily payable in 2019, but are based on 2018 service and are being accrued over the service period in 2019. Accrued administrative expense includes \$510,000 of incentive plan costs.

4) Restricted Funds

The Liquidator has drawn down on letters of credit (LOC) upon receiving notices of cancellation or notices of non-renewal from the issuing bank. Such LOC drawdowns relate to insurance losses not yet proven and/or settled and are recognized as restricted cash receipts. Restricted funds will be recognized as unrestricted reinsurance recoveries when such balances are proven and/or settled between the beneficial owner and the Liquidator. Restricted funds related to reinsurance recoveries total \$195,667 at June 30, 2019 and December 31, 2018.

The Home Insurance Company in Liquidation (“Home”)

Notes to Financial Statements (continued)
(Modified-Cash Basis)
(Unaudited)

5) Securities on Deposit

Investments on deposit at the original cost with various states and the federal government were \$765,400, \$768,672 and \$73,947,287 at June 30, 2019, December 31, 2018 and June 13, 2003, respectively. The federal deposit is the only deposit still held at June 30, 2019, and as described in Note 1, the Liquidator does not record the amount of this asset as such amount has not been settled and agreed to with the federal government.

Various states have withdrawn such deposits and related interest for use by the related state guaranty associations. The market value of these withdrawals in the amount of \$55,744,793 may be offset against future distributions to such guaranty associations.

6) Early Access Distribution

On November 2, 2016, the Liquidation Court approved the eleventh early access distribution to insurance guaranty associations based on guaranty association payments through July 30, 2016. The Liquidator paid \$14.7 million for the eleventh early access distribution through December 31, 2016. The total of all early access payments through June 30, 2019 was \$252.9 million.

As a condition for receiving early access distributions, the guaranty associations entered into “claw back” agreements with the Liquidator requiring the return of any amounts advanced that exceed the eventual distribution percentage for their creditor class. Pursuant to the “claw back” agreements, the Liquidator requested and received the return of \$5.9 million for the eleventh early access advance as of December 31, 2017. Such returns of “claw back” amounts are netted against the related early access advances in the financial statements. The distribution caps are (1) an amount equal to 40% of the total incurred costs projected by each guaranty association, and (2) an amount equal to 75% of each guaranty association’s cumulative paid claims.

The Liquidator may periodically make additional early access distributions in the future, subject to the Liquidation Court’s approval. Early access distributions and related advances are not recorded as assets in the accompanying statements of restricted and unrestricted net assets, excluding certain amounts, although they represent payments in advance of distributions to other claimants. Early access distributions and related advances will ultimately be credited against amounts payable to Guaranty Associations to ensure pro rata distributions among members of the same class of creditor of the Liquidating Company.

The Home Insurance Company in Liquidation (“Home”)

Notes to Financial Statements (continued)
(Modified-Cash Basis)
(Unaudited)

6) Early Access Distribution (continued)

The following summary represents early access distributions and related advances that are not reflected in the Statement of Net Assets.

Early Access Distributions paid in cash	\$ 252,942,104
Assets withdrawn from special deposits held by states to pay Home claims (market value, see note 5)	55,744,793
Other deemed Early Access advances paid in cash	<u>3,148,212</u>
Total	<u>\$ 311,835,109</u>

7) Home Deductible Policies - Reimbursement

On April 6, 2011, the Liquidation Court approved an agreement between the Liquidator and the Guaranty Associations regarding Home Deductible policies (the Deductible Agreement). The Deductible Agreement provides that the Liquidator will reimburse the signatory Guaranty Associations for deductible amounts collected during liquidation. The Liquidator also charges a fee of 7.5% as reimbursement of the Home’s expenses incurred in the collection process. Forty-six Guaranty Associations have signed the Deductible Agreement to date. On March 6, 2019 and March 6, 2018, the Liquidator paid \$338,600 and \$398,185 respectively, after netting of the fee.

8) Allowed Claims

As of June 30, 2019, the Liquidator has allowed, and the Liquidation Court has approved, \$94,963,311 of Class I claims, \$2,820,924,367 of Class II claims, \$2,672,527 of Class III claims, \$327,496,493 of Class V claims and \$53,887 of Class VIII claims. Class I claims paid in 2019 were \$9,301 and in 2018 were \$5,433,359 for the seventh distribution of Guaranty Associations’ administrative costs. It is management’s judgment that there will not be sufficient assets to make distributions on allowed claims below the Class II priority. Distributions on allowed claims will depend on the amount of assets available for distribution and allowed claims in each successive priority class under New Hampshire RSA 402-C: 44.

The Home Insurance Company in Liquidation (“Home”)

Notes to Financial Statements (continued)
(Modified-Cash Basis)
(Unaudited)

9) Interim Distribution

On February 10, 2012, the Liquidator submitted a motion to the Liquidation Court seeking approval for a 15% interim distribution on allowed Class II claims. The interim distribution was approved by order of the Liquidation Court on March 13, 2012 (as amended July 2, 2012), and was subject to receipt of a waiver of federal priority claims from the United States Department of Justice. The waiver was received on November 5, 2014.

Additionally, on September 28, 2015, the Liquidator submitted a motion to the Liquidation Court seeking approval for a second interim distribution of 10% on allowed Class II claims. The Liquidation Court issued an order approving the motion on November 16, 2015 (the Order). On March 7, 2016, the Order was amended so that claimants who had not received the first interim distribution would be paid the second interim distribution coincident with the first interim distribution. The second interim distribution was subject to a waiver from the United States Department of Justice. The waiver was received on July 18, 2016.

On September 28, 2018, the Liquidator submitted a motion to the Liquidating Court seeking approval for a third interim distribution of 5% on allowed Class II claims. The Liquidation Court issued an order approving the motion on October 18, 2018 subject to a waiver from the United States Department of Justice.

As of June 30, 2019, cash paid relating to the interim distributions in 2019 and 2018 totaled \$128,851,136 and \$30,139,875 respectively, and \$264,212 and \$127,200 remains outstanding as a payable for outstanding checks issued in 2019 and in 2018 respectively. The total of all class II payments through June 30, 2019 was \$582,238,405. As of December 31, 2018, interim distributions to a creditor totaling \$59,962,476 had been transferred into escrow pursuant to an approved settlement agreement and approved escrow agreement. The escrow amount is net of a return payment to the Liquidator of \$528,166 based on an adjustment to the escrow calculation in 2018. The funds held by the escrow agent were subject to the jurisdiction of the Liquidation Court but were no longer under control of the Liquidation and were therefore not reflected on the Statement of the Restricted and Unrestricted Net Assets. In January 2019, the escrow was terminated and the funds were distributed to the creditor and to the Liquidator. The Liquidator received \$20.8 million from the escrow.

The Home Insurance Company in Liquidation
 G&A Expenses (Actual vs Budget)
 June 30, 2019

	YTD				Full Year	
	Actual	Budget	Variance	Budget	Budget	
	2019	2019	2019	2019		
General & Administrative Expense						
Salary and Benefits	3,892,005	3,898,432	(6,427)	7,747,784		
Travel	3,877	18,960	(15,083)	40,070		
Rent	529,609	563,606	(33,997)	1,127,212		
Equipment	89,550	123,000	(33,450)	246,000		
Printing and Stationery	12,408	19,520	(7,112)	38,090		
Postage	6,379	6,550	(171)	13,100		
Telephone	59,704	94,800	(35,096)	189,600		
Outside Services, including Special Deputy	1,157,583	1,255,650	(98,067)	2,510,050		
Legal and Auditing	410,452	730,500	(320,048)	1,336,250		
Bank Fees	77,531	78,000	(470)	156,000		
Corporate Insurance	59,753	500	59,253	77,576		
Miscellaneous Income/Expenses	1,258	800	458	1,600		
Total Expenses Incurred	6,300,109	6,790,318	(490,209)	13,483,332		

The Home Insurance Company in Liquidation
 Portfolio Summary Report- Bonds and Short Term Investments
 Securities Held as of June 30, 2019
 (000's)

Conning Managed:

% of BV Fixed Income	Short Term	Book Value	Market Value	Unrealized Gain (Loss)	Eff Mat (Years)	Book Yield	Average Credit Quality	Earned Income 6/30/19
1.1%	Agency	9,030	9,030	-	0.05	2.37	Aaa	681
4.1%	Government	32,281	32,718	437	2.80	2.60	Aa2	99
7.0%	Corporate	55,419	55,704	285	1.70	2.18	Aaa	675
62.2%	Mortgage Backed	491,535	496,200	4,665	3.19	2.67	A2	6,524
13.7%	Asset Backed	107,922	108,785	863	3.86	2.65	Aaa	1,498
7.8%	CMBS	61,311	61,287	(24)	0.98	2.01	Aaa	644
4.2%		33,072	33,994	922	7.98	3.07	Aaa	505
100.0%	Total	790,570	797,718	7,148	3.14	2.60	Aa3	10,627

Other investments- Home Insurance
 100% US Treasury Bills and Notes

Book Value	9,762	Market Value	9,762	Unrealized Gain (Loss)	-	Eff Mat (Years)	0.22	Book Yield	2.11	Average Credit Quality	Aaa	Earned Income 6/30/19	64
Total Home Insurance (1)	800,332		807,480	7,148			3.11	2.60		Aa3		10,691	(2)

(1) Investment balances do not include cash amounts invested in sweep accounts of Citizens Bank and investments in common stocks and limited partnerships.
 (2) On an annualized basis, the total estimated income generated by the portfolio, calculated based on holdings as of June 30, 2019, would be \$21.6 million over the next 12 months.

**THE HOME INSURANCE COMPANY IN LIQUIDATION
HOLDINGS REPORT
AS OF JUNE 30, 2019**

CUSIP	DESCRIPTION	CPN MATURITY	QUANTITY	BOOK VALUE	MARKET VALUE
31428GUA9	FED CAISSES DESJARDINS	0.000 07/10/2019	4,010,000.00	4,007,553.90	4,007,553.90
86563HV72	SUMITOMO MITSUI TRUST NY	0.000 08/07/2019	1,850,000.00	1,845,398.64	1,845,398.64
262006208	DREYFUS GOVERN CASH MGMT-INS	2.250 07/15/2019	3,176,806.40	3,176,806.40	3,176,806.40
TOTAL CASH EQUIVALENTS			9,036,806.40	9,029,758.94	9,029,758.94
SHORT TERM (OVER 90 DAYS)					
912796SJ9	US TREASURY BILL	0.000 09/19/2019	9,807,000.00	9,761,831.76	9,761,691.66
912796SB6	US TREASURY BILL	08/01/2019	775,000.00	773,312.22	773,312.22
TOTAL SHORT TERM			10,582,000.00	10,535,143.98	10,535,003.88
U S TREASURY					
912828B5	US TREASURY N/B	0.750 08/15/2019	3,000,000.00	2,993,798.43	2,994,375.00
912828T6	US TREASURY N/B	1.250 08/31/2019	3,000,000.00	2,993,930.58	2,994,375.00
912828A83	US TREASURY N/B	2.375 12/31/2020	20,000,000.00	20,106,570.40	20,159,375.00
912828B58	US TREASURY N/B	2.125 01/31/2021	4,000,000.00	3,970,910.92	4,018,125.00
912828J50	US TREASURY N/B	1.375 02/29/2020	8,000,000.00	7,943,274.64	7,963,750.00
912828K74	US TREASURY N/B	2.000 08/15/2025	6,000,000.00	5,905,202.39	6,056,250.00
912828VZ0	US TREASURY N/B	2.000 09/30/2020	11,500,000.00	11,505,474.46	11,517,968.75
TOTAL U S TREASURY			55,500,000.00	55,419,161.82	55,704,218.75
TOTAL GOVERNMENT & AGENCIES			55,500,000.00	55,419,161.82	55,704,218.75
PROVINCIAL					
01306GAB9	PROVINCE OF ALBERTA	1.750 08/26/2020	4,000,000.00	3,965,929.72	3,984,816.00
563469UH6	MANITOBA (PROVINCE OF)	2.050 11/30/2020	4,000,000.00	3,973,774.24	3,999,696.00
68323AES9	ONTARIO (PROVINCE OF)	2.550 02/12/2021	4,000,000.00	4,007,859.48	4,035,080.00
748148RU9	PROVINCE OF QUEBEC	3.500 07/29/2020	5,000,000.00	5,053,130.00	5,074,770.00
TOTAL PROVINCIAL			17,000,000.00	17,000,693.44	17,094,362.00
TAX MUNICIPAL					
20772KKG9	CONNECTICUT ST	3.500 04/15/2021	3,175,000.00	3,219,310.74	3,244,373.75
798170AH9	SAN JOSE CA REDEV AGY SUCCESSO	3.076 08/01/2025	4,000,000.00	4,000,000.00	4,187,920.00
91412GU94	UNIV OF CALIFORNIA CA REVENUES	3.063 07/01/2025	4,000,000.00	4,028,770.28	4,155,440.00
TOTAL TAX MUNICIPAL			11,175,000.00	11,248,081.02	11,587,733.75
CORPORATE					
00206RCN0	AT&T INC	3.400 05/15/2025	3,000,000.00	2,943,255.84	3,080,916.00
00440EAU1	CHUBB INA HOLDINGS INC	2.875 11/03/2022	8,000,000.00	8,170,643.45	8,149,392.00
023135AW6	AMAZON.COM INC	2.400 02/22/2023	1,925,000.00	1,923,359.19	1,943,764.80
0258M0EG0	AMERICAN EXPRESS CREDIT	2.700 03/03/2022	5,000,000.00	4,993,853.70	5,057,080.00
02665WAZ4	AMERICAN HONDA FINANCE	2.450 09/24/2020	3,000,000.00	2,992,110.18	3,005,313.00
035242AL0	ANHEUSER-BUSCH INBEV FIN	3.300 02/01/2023	2,696,000.00	2,751,954.11	2,781,444.33
036752AC7	ANTHEM INC	3.350 12/01/2024	1,340,000.00	1,339,669.41	1,386,329.16
037833AR1	APPLE INC	2.850 05/06/2021	7,000,000.00	7,019,036.64	7,105,966.00
037833BU3	APPLE INC	2.850 02/23/2023	5,000,000.00	5,091,315.45	5,120,130.00
037833CM0	APPLE INC	2.500 02/09/2022	3,000,000.00	2,999,919.54	3,030,993.00
038222AF2	APPLIED MATERIALS INC	4.300 06/15/2021	4,000,000.00	4,129,521.08	4,166,784.00
046353AF5	ASTRAZENECA PLC	1.950 09/18/2019	2,500,000.00	2,501,686.88	2,496,667.50
04685A2B6	ATHENE GLOBAL FUNDING	4.000 01/25/2022	4,050,000.00	4,049,324.58	4,186,873.80
04685A2C4	ATHENE GLOBAL FUNDING	2.750 04/20/2020	5,000,000.00	4,997,478.50	5,014,590.00
05348EBC2	AVALONBAY COMMUNITIES	3.200 01/15/2028	2,225,000.00	2,217,263.07	2,300,707.85
05531FAX1	BB&T CORPORATION	2.750 04/01/2022	7,000,000.00	6,992,638.94	7,077,987.00

**THE HOME INSURANCE COMPANY IN LIQUIDATION
HOLDINGS REPORT
AS OF JUNE 30, 2019**

CUSIP	DESCRIPTION	CPN	MATURITY	QUANTITY	BOOK VALUE	MARKET VALUE
05565QBU1	BP CAPITAL MARKETS PLC	3.561	11/01/2021	8,550,000.00	8,718,250.49	8,820,111.60
05578AAA6	BPCE SA	2.750	01/11/2023	4,000,000.00	3,975,359.08	4,020,532.00
06051GGA1	BANK OF AMERICA CORP	3.248	10/21/2027	2,300,000.00	2,270,799.84	2,351,306.10
06051GGT0	BANK OF AMERICA CORP	3.093	10/01/2025	4,000,000.00	3,994,013.53	4,096,712.00
06051GGZ6	BANK OF AMERICA CORP	3.366	01/23/2026	3,000,000.00	3,000,000.00	3,091,488.00
06406RAA5	BANK OF NY MELLON CORP	2.600	02/07/2022	5,000,000.00	4,994,261.85	5,051,555.00
06406RAC1	BANK OF NY MELLON CORP	2.661	05/16/2023	2,605,000.00	2,605,000.00	2,624,576.58
084659AK7	BERKSHIRE HATHAWAY ENERG	2.800	01/15/2023	3,125,000.00	3,125,000.00	3,187,262.50
084670BR8	BERKSHIRE HATHAWAY INC	2.750	03/15/2023	5,000,000.00	5,105,193.65	5,080,975.00
09256BAJ6	BLACKSTONE HOLDINGS FINA	3.150	10/02/2027	2,050,000.00	2,042,913.60	2,057,697.75
097014AL8	BOEING CAPITAL CORP	4.700	10/27/2019	4,000,000.00	4,028,623.04	4,026,988.00
097023BQ7	BOEING CO	1.875	06/15/2023	3,000,000.00	2,999,869.47	2,942,790.00
12189LAQ4	BURLINGTN NORTH SANTA FE	3.850	09/01/2023	5,000,000.00	5,293,965.45	5,280,535.00
126650CW8	CVS HEALTH CORP	4.100	03/25/2025	1,760,000.00	1,745,634.39	1,856,683.84
14040HBY0	CAPITAL ONE FINANCIAL CO	3.450	04/30/2021	3,000,000.00	3,035,790.96	3,053,613.00
14912L6C0	CATERPILLAR FINANCIAL SE	3.300	06/09/2024	4,000,000.00	4,101,563.76	4,173,096.00
14913Q2W8	CATERPILLAR FINL SERVICE	2.650	05/17/2021	2,500,000.00	2,498,871.88	2,521,962.50
166764AB6	CHEVRON CORP	2.355	12/05/2022	3,500,000.00	3,500,000.00	3,528,686.00
17275RBD3	CISCO SYSTEMS INC	2.200	02/28/2021	7,500,000.00	7,439,820.98	7,507,852.50
17296FT3	CITIGROUP INC	4.500	01/14/2022	4,000,000.00	4,136,647.04	4,205,104.00
191216BY5	COCA-COLA CO/THE	1.550	09/01/2021	5,000,000.00	4,961,147.35	4,947,690.00
20030NBY6	COMCAST CORP	3.300	02/01/2027	5,000,000.00	5,059,696.55	5,172,160.00
22160KAF2	COSTCO WHOLESALE CORP	1.700	12/15/2019	8,040,000.00	8,038,765.70	8,017,391.52
22546QAR8	CREDIT SUISSE NEW YORK	3.000	10/29/2021	2,000,000.00	2,008,182.36	2,029,616.00
233651BW3	DAIMLER FINANCE NA LLC	3.300	05/19/2025	3,000,000.00	3,033,330.90	3,063,960.00
24422FTG4	JOHN DFRF CAPITAL CORP	2.800	03/06/2023	7,000,000.00	7,123,927.79	7,164,682.00
25243YAX7	DIAGEO CAPITAL PLC	3.000	05/18/2020	4,000,000.00	4,011,379.20	4,019,792.00
260543CH4	DOW CHEMICAL CO/THE	3.000	11/15/2022	3,600,000.00	3,586,839.80	3,648,682.80
26875PAK7	EOG RESOURCES INC	2.625	03/15/2023	4,000,000.00	3,976,775.12	4,044,888.00
26884AA9	ERP OPERATING LP	4.750	07/15/2020	3,185,000.00	3,235,807.22	3,243,600.82
27864AE3	EBAY INC	2.600	07/15/2022	3,600,000.00	3,546,231.84	3,609,410.40
30231GAF9	EXXON MOBIL CORPORATION	2.709	03/06/2025	5,000,000.00	5,016,691.90	5,107,240.00
31677QBG3	FIFTH THIRD BANK	2.250	06/14/2021	1,283,000.00	1,258,538.41	1,282,304.61
341099CP2	DUKE ENERGY FLORIDA INC	3.100	08/15/2021	4,000,000.00	4,075,669.96	4,060,904.00
345397YT4	FORD MOTOR CREDIT CO LLC	3.815	11/02/2027	2,500,000.00	2,500,000.00	2,382,097.50
36164Q8M5	GE CAPITAL INTL FUNDING	3.373	11/15/2025	5,000,000.00	5,138,106.40	5,057,665.00
36164QMS4	GE CAPITAL INTL FUNDING	2.342	11/15/2020	3,683,000.00	3,688,550.91	3,662,743.50
369550AZ1	GENERAL DYNAMICS CORP	2.625	11/15/2027	3,500,000.00	3,436,079.43	3,508,088.50
369550BE7	GENERAL DYNAMICS CORP	3.000	05/11/2021	2,600,000.00	2,594,355.58	2,642,790.80
36962G6P4	GENERAL ELEC CAP CORP	2.100	12/11/2019	1,725,000.00	1,724,908.54	1,723,433.70
370334CF9	GENERAL MILLS INC	4.000	04/17/2025	2,250,000.00	2,248,151.76	2,393,894.25
38141GWQ3	GOLDMAN SACHS GROUP INC	3.272	09/29/2025	4,000,000.00	3,995,397.88	4,081,264.00
3814267X7	GOLDMAN SACHS BANK USA	3.010	05/24/2021	5,000,000.00	5,000,000.00	5,004,890.00
40573LAG1	HALFMOON PARENT INC	3.400	09/17/2021	1,425,000.00	1,425,000.00	1,452,535.28
41283LAF2	HARLEY-DAVIDSON FINL SER	2.150	02/26/2020	5,000,000.00	5,003,589.45	4,981,065.00
428236BX0	HEWLETT-PACKARD CO	4.050	09/15/2022	1,500,000.00	1,528,909.01	1,567,986.00
437076BL5	HOME DEPOT INC	2.000	04/01/2021	7,500,000.00	7,421,243.78	7,496,407.50
44328MAC8	HSBC BANK PLC	4.125	08/12/2020	3,000,000.00	3,048,528.63	3,058,263.00
45814OAM2	INTEL CORP	2.700	12/15/2022	5,000,000.00	5,117,137.90	5,095,310.00
459200JW2	IBM CORP	2.800	05/13/2021	2,325,000.00	2,324,868.78	2,352,239.70
46625HHU7	JPMORGAN CHASE & CO	4.250	10/15/2020	5,000,000.00	5,089,635.90	5,123,095.00
46625HQJ2	JPMORGAN CHASE & CO	2.550	03/01/2021	2,500,000.00	2,475,021.50	2,504,980.00
46849LSW2	JACKSON NATL LIFE GLOBAL	2.500	06/27/2022	4,000,000.00	3,992,570.24	4,016,236.00
49327M2F0	KEY BANK NA	2.500	12/15/2019	3,200,000.00	3,191,793.31	3,200,348.80
53227JAA2	LIFE STORAGE LP	3.875	12/15/2027	2,305,000.00	2,295,471.54	2,349,131.53
539439AP4	LLOYDS BANKING GROUP PLC	2.907	11/07/2023	3,000,000.00	3,000,000.00	2,992,383.00
55279HAL4	MANUF & TRADERS TRUST CO	2.500	05/18/2022	5,000,000.00	4,995,860.95	5,029,360.00
57629WCC2	MASSMUTUAL GLOBAL FUNDIN	1.550	10/11/2019	5,000,000.00	4,999,740.35	4,991,410.00
57629WCG3	MASSMUTUAL GLOBAL FUNDIN	2.950	01/11/2025	5,000,000.00	4,991,894.60	5,109,415.00
57636QAB0	MASTERCARD INC	3.375	04/01/2024	2,000,000.00	2,064,485.36	2,107,648.00

**THE HOME INSURANCE COMPANY IN LIQUIDATION
HOLDINGS REPORT
AS OF JUNE 30, 2019**

CUSIP	DESCRIPTION	CPN	MATURITY	QUANTITY	BOOK VALUE	MARKET VALUE
585055BR6	MEDTRONIC INC	3.150	03/15/2022	5,000,000.00	5,074,650.85	5,139,335.00
58933YAQ8	MERCK & CO INC	2.350	02/10/2022	5,000,000.00	4,973,431.65	5,040,665.00
59217GCD9	MET LIFE GLOB FUNDING I	2.650	04/08/2022	5,000,000.00	4,998,941.70	5,063,045.00
59217GCK3	MET LIFE GLOB FUNDING I	3.000	09/19/2027	4,000,000.00	3,993,358.44	4,089,300.00
594918BP8	MICROSOFT CORP	1.550	08/08/2021	4,000,000.00	3,950,717.32	3,965,952.00
6174468C6	MORGAN STANLEY	4.000	07/23/2025	4,000,000.00	4,140,398.40	4,280,104.00
63254AAY4	NATIONAL AUSTRALIA BK/NY	2.875	04/12/2023	4,000,000.00	3,991,483.76	4,055,608.00
637071AJ0	NATIONAL OILWELL VARCO I	2.600	12/01/2022	5,925,000.00	5,917,109.09	5,908,510.73
637417AK2	NATIONAL RETAIL PROP INC	3.500	10/15/2027	3,500,000.00	3,488,029.79	3,568,113.50
637432NB7	NATIONAL RURAL UTIL COOP	2.300	11/15/2019	3,400,000.00	3,403,478.81	3,398,538.00
63859UBD4	NATIONWIDE BLDG SOCIETY	2.450	07/27/2021	4,000,000.00	3,996,942.56	3,995,428.00
64952WCS0	NEW YORK LIFE GLOBAL FDG	2.300	06/10/2022	3,050,000.00	3,046,375.84	3,056,331.80
666807BM3	NORTHROP GRUMMAN CORP	2.930	01/15/2025	3,500,000.00	3,499,810.90	3,566,531.50
674599CE3	OCCIDENTAL PETROLEUM COR	2.700	02/15/2023	4,000,000.00	4,012,009.36	4,021,032.00
68389XBA2	ORACLE CORP	2.800	07/08/2021	9,000,000.00	9,001,919.07	9,120,906.00
69353RFM5	PNC BANK NA	2.786	03/12/2021	3,000,000.00	3,000,000.00	3,001,932.00
69371RM94	PACCAR FINANCIAL CORP	2.250	02/25/2021	5,550,000.00	5,601,265.02	5,557,786.65
713448BY3	PEPSICO INC	2.750	03/05/2022	7,000,000.00	7,025,363.73	7,148,715.00
74256LAY5	PRINCIPAL LFE GLB FND II	2.150	01/10/2020	5,000,000.00	4,998,750.90	4,994,850.00
74368CAK0	PROTECTIVE LIFE GLOBAL	3.397	06/28/2021	3,000,000.00	3,000,000.00	3,055,497.00
74456QBH8	PUBLIC SERVICE ELECTRIC	3.150	08/15/2024	5,000,000.00	5,195,609.95	5,175,510.00
74460DAC3	PUBLIC STORAGE	3.094	09/15/2027	1,875,000.00	1,875,000.00	1,916,491.88
747525AE3	QUALCOMM INC	3.000	05/20/2022	5,000,000.00	5,099,998.15	5,087,845.00
747525AR4	QUALCOMM INC	2.600	01/30/2023	2,285,000.00	2,282,676.91	2,289,126.71
756109AU8	REALTY INCOME CORP	3.650	01/15/2028	2,500,000.00	2,495,277.08	2,619,642.50
771196BB7	ROCHE HOLDING INC	2.875	09/29/2021	7,000,000.00	7,093,408.56	7,098,770.00
797440BN3	SAN DIEGO G & E	3.000	08/15/2021	4,450,000.00	4,520,993.52	4,504,828.45
806851AG6	SCHLUMBERGER HLDGS CORP	4.000	12/21/2025	3,000,000.00	3,118,388.94	3,175,818.00
822582AS1	SHELL INTERNATIONAL FIN	2.375	08/21/2022	5,000,000.00	4,972,859.35	5,025,320.00
828807CN5	SIMON PROPERTY GROUP LP	2.750	02/01/2023	5,000,000.00	5,056,307.90	5,053,370.00
828807CY1	SIMON PROPERTY GROUP LP	3.250	11/30/2026	3,000,000.00	3,023,210.25	3,091,779.00
854502AD3	STANLEY BLACK & DECKER I	2.900	11/01/2022	4,000,000.00	4,000,756.96	4,065,416.00
85771PAG7	EQUINOR ASA	2.450	01/17/2023	4,000,000.00	4,031,864.64	4,035,704.00
86787EAU1	SUNTRUST BANK	2.590	01/29/2021	4,000,000.00	3,978,210.53	4,002,912.00
87238YAE8	TD AMERITRADE HOLDING CO	2.950	04/01/2022	3,000,000.00	3,059,502.18	3,048,012.00
88579YAY7	3M COMPANY	2.875	10/15/2027	5,000,000.00	4,974,054.60	5,096,525.00
89114QAS7	TORONTO-DOMINION BANK	2.125	07/02/2019	4,000,000.00	3,999,997.12	3,999,964.00
89114QBX5	TORONTO-DOMINION BANK	2.550	01/25/2021	2,500,000.00	2,489,402.03	2,511,997.50
89153VAP4	TOTAL CAPITAL INTL SA	2.750	06/19/2021	5,000,000.00	5,035,149.05	5,058,660.00
893526DK6	TRANS-CANADA PIPELINES	3.800	10/01/2020	3,000,000.00	3,048,084.60	3,041,037.00
913017BV0	UNITED TECHNOLOGIES CORP	3.100	06/01/2022	3,600,000.00	3,648,823.52	3,681,630.00
92343VDD3	VERIZON COMMUNICATIONS	2.625	08/15/2026	3,000,000.00	2,793,330.33	2,975,862.00
92826CAC6	VISA INC	2.800	12/14/2022	7,000,000.00	7,142,405.50	7,168,497.00
929043AJ6	VORNADO REALTY LP	3.500	01/15/2025	3,500,000.00	3,488,649.29	3,591,042.00
931142EG4	WALMART INC	2.850	06/23/2020	3,000,000.00	3,003,443.16	3,022,047.00
94974BGR5	WELLS FARGO & COMPANY	2.550	12/07/2020	1,546,000.00	1,536,748.78	1,549,238.87
981214CV3	WESTPAC BANKING CORP	2.100	05/13/2021	5,000,000.00	4,945,111.75	4,986,790.00
96145DAB1	WRKCO INC	3.000	09/15/2024	2,600,000.00	2,594,567.30	2,652,533.00
TOTAL CORPORATE				493,128,000.00	495,566,764.61	500,236,019.21
MORTGAGE BACKED						
06650AAE7	BANK 2017-BNK8 A4	3.488	11/15/2050	2,000,000.00	2,050,747.58	2,116,580.00
125039AF4	CD 2017-CD6 A5	3.456	11/15/2050	4,000,000.00	4,109,672.92	4,217,240.00
12595EAD7	COMM 2017-COR2 A3	3.51	09/10/2050	4,000,000.00	4,100,104.28	4,222,360.00
17326FAD9	CGCMT 2017-C4 A4	3.471	10/17/2050	2,000,000.00	2,050,667.40	2,110,960.00
3128L0DF6	FHLMC POOL A68202	6.000	11/01/2037	109,869.00	112,499.88	124,975.94
3128L0EF5	FHLMC POOL A68234	6.000	11/01/2037	144,962.70	146,157.51	158,136.17
3128ME4A6	FHLMC POOL G16017	3.000	12/01/2031	9,537,098.55	9,770,565.86	9,758,974.57

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3128ME4T5	FHLMC POOL G16034	2.500 01/01/2032	9,878,980.12	9,893,709.58	9,972,226.33
3128MJAD2	FHLMC POOL G08003	6.000 07/01/2034	247,066.70	253,159.19	273,602.68
3128MJMC1	FHLMC POOL G08354	5.000 07/01/2039	1,350,521.85	1,366,546.85	1,475,714.13
3128MMVZ3	FHLMC POOL G18631	2.500 01/01/2032	10,074,602.50	10,086,242.29	10,155,228.94
3128PYU36	FHLMC POOL J18702	3.000 03/01/2027	4,058,175.40	4,162,040.67	4,150,055.98
31292JBR0	FHLMC POOL C01848	6.000 06/01/2034	320,869.89	332,039.87	355,253.00
312944AF8	FHLMC POOL A95406	4.000 12/01/2040	2,113,516.20	2,140,139.55	2,205,465.65
31297ECP9	FHLMC POOL A2-6378	6.000 09/01/2034	222,157.80	229,260.52	240,226.65
31307AEK4	FHLMC POOL J21938	2.500 01/01/2028	7,116,334.80	7,291,386.25	7,194,742.58
31307FJM4	FHLMC POOL J26568	3.500 12/01/2028	3,693,077.13	3,839,430.23	3,813,752.64
31307GTQ2	FHLMC POOL J27759	3.000 03/01/2029	6,911,521.12	7,071,981.21	7,078,228.46
3132GDMF6	FHLMC POOL Q00358	4.500 04/01/2041	3,695,206.50	3,878,405.42	3,920,461.15
3132GFXD4	FHLMC POOL Q02476	4.500 08/01/2041	2,228,384.00	2,339,362.14	2,363,796.72
31335H5U3	FHLMC POOL C90859	5.500 10/01/2024	243,319.70	247,664.14	259,624.64
3136AX7E9	FNA 2017-M12 A2	3.081 08/25/2027	3,425,000.00	3,483,314.84	3,568,713.00
31371PC57	FNMA POOL 257592	5.000 03/01/2039	510,221.27	515,993.57	557,288.45
31376KEL6	FNMA POOL 357539	5.500 04/01/2034	328,412.80	328,412.80	365,047.67
3137FBU79	FHMS K069 A2	3.187 09/25/2027	2,400,000.00	2,460,638.90	2,527,464.00
3138A8KG0	FNMA POOL AH6594	3.500 03/01/2026	2,861,528.82	2,953,008.63	2,956,390.62
3138EM3Y5	FN AL5314	3.500 03/01/2027	2,446,789.25	2,491,957.57	2,528,312.06
3138NXE37	FNMA POOL AR1053	2.500 01/01/2028	5,100,571.98	5,227,707.10	5,155,639.34
3138YEPP6	FNMA POOL AY1329	3.000 03/01/2030	7,259,000.25	7,527,920.22	7,400,619.79
3140J5GH6	FNMA POOL BM1099	3.000 03/01/2032	5,571,051.68	5,734,436.20	5,679,907.52
31413FGK2	FNMA POOL 944002	6.000 08/01/2037	431,436.33	428,624.95	485,492.09
31415Q4B9	FNMA POOL 986518	5.000 06/01/2038	115,754.27	116,882.41	124,630.51
31416XELO	FNMA POOL AB1938	3.500 12/01/2025	4,107,336.01	4,210,168.84	4,242,183.10
31416YTY4	FNMA POOL AB3266	4.000 07/01/2041	2,881,177.50	2,945,578.56	3,021,838.40
31416YU89	FNMA POOL AB3306	4.000 07/01/2041	2,477,199.15	2,539,711.34	2,598,297.55
31419LD42	FNMA POOL AE9122	3.500 12/01/2025	1,143,791.20	1,161,389.22	1,181,343.09
31419LYR8	FNMA POOL AE9719	4.500 12/01/2040	5,783,221.60	5,976,194.46	6,212,316.69
36202D5C1	GNMA 2M POOL 3543	5.000 04/20/2034	440,523.30	439,991.47	464,941.52
36202EAK5	GNMA 2M POOL 3610	5.500 09/20/2034	383,209.90	391,626.05	407,952.18
36202EUT4	GNMA 2M POOL 4194	5.500 07/20/2038	581,289.90	582,561.47	616,902.47
36202EUU1	GNMA 2M POOL 4195	6.000 07/20/2038	511,813.25	521,685.64	555,206.15
36202EVN6	GNMA 2M POOL 4221	5.500 08/20/2038	385,408.00	382,397.00	409,008.80
36202EVP1	GNMA 2M POOL 4222	6.000 08/20/2038	282,015.50	285,452.56	321,493.76
46648KAU0	JPMD B 2017-C7 A5	3.409 10/17/2050	4,000,000.00	4,101,189.80	4,208,160.00
61767EAE4	MSBAM 2017-C34 A4	3.536 10/15/2026	2,450,000.00	2,511,663.00	2,595,064.50
90276TAG9	UBSCM 2017-C5 A5	3.474 11/18/2050	4,000,000.00	4,101,813.72	4,210,560.00
95001ABD7	WFCM 2017-C41 A4	3.472 11/18/2050	4,000,000.00	4,102,300.96	4,216,600.00
TOTAL MORTGAGE BACKED			137,822,215.92	140,994,404.62	142,778,959.49

ASSET BACKED

02587AAJ3	AMXCA 2017-1 A	1.930 09/15/2022	2,670,000.00	2,669,875.23	2,663,861.56
05522RCWE	BACCT 2017-A1 A1	1.950 08/15/2022	5,365,000.00	5,364,646.55	5,353,345.30
06742LAE3	DROCK 2014-3 A	2.410 07/15/2022	7,235,000.00	7,234,941.90	7,233,593.27
14041NFF3	COMET 2016-A4 A4	1.330 08/15/2022	4,585,000.00	4,584,956.86	4,578,898.83
14041NFM8	COMET 2017-A3 A3	2.430 01/15/2025	4,465,000.00	4,463,928.67	4,508,724.14
14312QAD8	CARMX 2016-4 A4	1.600 06/15/2022	5,000,000.00	4,970,864.90	4,962,940.46
161571FK5	CHAIT 2012-A4 A4	1.580 08/16/2021	5,056,000.00	5,051,719.08	5,050,658.69
17305EFM2	CCCIT 2014-A1 A1	2.880 01/23/2023	5,000,000.00	5,059,442.75	5,060,520.52
17305EFR1	CCCIT 2014-A5 A5	2.680 06/07/2023	8,000,000.00	8,061,523.84	8,091,158.01
17305EGB5	CCCIT 2017-A3 A3	1.920 04/07/2022	5,000,000.00	5,003,999.95	4,989,258.67
29366AAA2	ELL 2011-A A1	2.040 09/01/2023	1,344,405.96	1,369,767.13	1,340,548.29
43814TAC6	HAROT 2017-1 A3	1.720 07/21/2021	1,273,031.38	1,274,113.86	1,269,054.23
654747AD6	NAROT 2017-A A3	1.740 08/16/2021	1,902,783.82	1,903,280.73	1,897,215.24
92347XAA4	VZOT 2016-1A A	1.420 01/20/2021	106,778.71	106,778.71	106,670.72
92348MAA7	VZOT 2016-2A A	1.680 05/20/2021	1,115,179.91	1,116,695.32	1,113,091.12

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92348PAA0	VZOT 2017-2A A	1.920 12/20/2021	3,075,000.00	3,074,921.86	3,067,908.62
TOTAL ASSET BACKED			61,193,179.78	61,311,457.34	61,287,445.67
TOTAL MARKETABLE SECURITIES			786,400,395.70	792,075,706.83	799,223,742.75
TOTAL MARKETABLE AND C/E			795,437,202.10	801,105,465.77	808,253,501.89
COMMON					
34958N100	FORTICELL BIOSCIENCE, INC		1,926.00	1,627,706.00	1.93
	RIMCO ROYALTY MANAGEMENT, INC		346,302.00	346.30	0.00
TOTAL COMMON			348,228.00	1,628,052.30	1.93
TOTAL MARKETABLE , CASH, C/E AND COMMON			795,785,430.10	802,733,518.07	808,253,503.62
EQUITY SECURITIES					
910585406	UNITED MERCHANTS & MFR		214,166.00	25,800.00	0.00
910858414	UNITED MERCHANTS & MFR - WTS		53,542.00	0.00	0.00
178789103	CITIVEST INTERNATIONAL LTD		12,000.00	646,763.50	553,141.50
COMMON STOCKS			279,708.00	672,563.50	553,141.50
RIMCO ROYALTY PARTNERS, L.P.			346,302.00	3,199,497.00	592,358.00
LIMITED PARTNERS			346,302.00	3,199,497.00	592,358.00
TOTAL EQUITY SECURITIES			626,010.00	3,872,060.50	1,145,499.50
TOTAL			796,411,440.10	806,605,578.57	809,399,003.12

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Mary Cannon Veed^{al}

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CUTTING THE GORDIAN KNOT: LONG-TAIL CLAIMS IN INSURANCE INSOLVENCIES

The collapse of an insurer can be disastrous for its policyholders and others who rely on its promises. This article suggests, however, that the effects of insurer insolvency have been exacerbated in recent years by a misinterpretation of applicable law and a reluctance to employ technology widely in use in the solvent industry.

I. THE LIQUIDATOR'S DILEMMA

In 1984 when the first of what would prove to be a deluge of major insurance failures became apparent, few would have predicted that the liquidations of these companies would still be under way fifteen years later, and that the policyholders and claimants would not only be unpaid but unable even to predict when and how much they would be paid. Yet that is the case. Today, as the liquidations of Mission, Integrity, Pine Top, Ideal Mutual, Union Indemnity, Holland-America, and Transit approach their fifteenth anniversaries, only Transit has actually paid a dividend to policyholder creditors, and that is a partial one.¹ The insurance insolvencies of the middle 1980s were unusually large and complex, but in truth their longevity is not unusual. A twenty-year lifespan for the liquidation of a property/casualty insurer is not uncommon.²

***168** The principal legitimate reason for the longevity of insurance receiverships is the nature of the companies' obligations and assets. IBNR liability, the company's predictable liability for claims that have been incurred but not yet reported, or whose severity is insufficiently known, is increasingly recognized as a significant component of a property/casualty insurer's financial prospects. The development of some elegant statistical techniques, together with the assembly of increasingly massive databases of loss development statistics, have permitted regulatory and accounting authorities to demand that all insurers make provision for the probable development of unidentified, but nevertheless real, future liabilities.³

Chart 1 shows the payment pattern for a typical block of automobile liability insurance. This type of coverage is considered to possess a relatively short "tail," the time lag between the expiration of a policy and the date by which all claims can be expected to be concluded. Although, by a year after expiration, most potential losses have been identified and reserved for, less than half have been settled. Thirty percent of losses typically remain unsettled at the two-year mark, and almost 5 percent are still outstanding at five years.⁴

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

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***169** Chart 2 contains similar information for medical malpractice insurance, which possesses a longer "tail." Only 20 percent of ultimate liability on such policies is recognized by the first year; a minuscule amount of liability is settled by that time. Although half of the ultimate liability has been reserved for by the end of the second year, only about 10 percent of it has been paid. At the five-year mark, the figures are 85 percent and 66 percent, respectively. Even at ten years, a small fraction of ultimate liability is completely unrecognized by the insurer's reserves, and 10 percent has still not yet been settled.

Commercial general liability, product liability, and excess of loss insurance possess even longer “tails,” in which as much as half of ultimate liability remains unrecognized at the fifteen-year point and unpaid at twenty years. The extraordinary circumstances created by long-simmering latent product defect, asbestos, and pollution claims mean that commercial liability policies written before 1979 may have tails that are fifty years long or even longer.

Historically, insurance liquidation orders have required claimants against the company to file their claims with the liquidator within a year or eighteen months after the order is entered. Many such orders require that the claim filing contain all evidence necessary to establish the insurer's liability. Not so long ago, it was possible to contend that any claimant who could not liquidate his claim in that time must have slept on his rights. However, the IBNR statistics demonstrate that *170 such a contention is too harsh. Significant, and sometimes very significant, portions of an insolvent insurer's ultimate liabilities are owing to policyholders who cannot, by any form of diligence, quantify their claims in the traditionally allotted time.

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The problem of the “tail” is not limited to the liability side of the liquidation balance sheet. Many insurers purchase reinsurance, which obliges a reinsurer to reimburse the insurer for specified losses. Because longer-tail, higher-limits claims tend to be more heavily reinsured, potential reinsurance recoveries often make up a substantial component of an insolvent insurer's potential assets. Such recoveries are general assets of the estate; they are not traceable by the claimants whose claims produced them. Depending on the reinsurance and the amount of other assets available for distribution, it is entirely possible that the allowance of a late-developing claim may bring in more assets to the estate in the form of reinsurance recoveries than it costs in additional dividends. Thus, a premature claims cutoff not only deprives policyholders of valuable rights and allows windfall release from liability to reinsurers, it may actually reduce the pro rata share of all claimants, early and late alike.

On the other hand, lengthy extensions of the claims bar date are not a much better idea. It is dangerous to commence the distribution of estate assets until all claimants are identified and all amounts fixed. Nevertheless, claimants with pressing, already liquidated claims assert with perfect justice that they should not be required to wait indefinitely to protect the interests of nameless future claimants. Moreover, holding an estate open to accommodate long-tail claims causes increased administrative costs as well.

A principal objective of any insolvency proceeding is to allocate the insufficient assets of the insolvent entity ratably among its creditors, while causing as little collateral damage as possible. Applying this concept to the specific case of insurer insolvency, the objective of the insurance liquidator ought to be to collect and distribute the assets of the insolvent company in a way that preserves as much as possible of the economic and noneconomic features of the insurance promise. Key features of that promise include not only the obligation to pay the amount promised, but to pay it at the right time. Perhaps the most poignant of the problems exposed by recent insurance liquidation history is the inconsistent and unproductive way in which the law has dealt with contingency and delayed claims development. It is less clear, but worth considering, just how we could have done better to solve this liquidator's dilemma.

II. TYPES OF UNCERTAINTY IN INSURANCE CLAIMS

The handling of claims whose value is unsettled is a common feature of most insolvency procedures,⁵ but it is particularly important in insurance insolvencies *171 because protection against uncertainty is the essence of the insurance promise, and thus, claims subject to some sort of contingency are the largest category of an insolvent insurer's liabilities.

Contingency suffers from difficulties in definition. An insurance company faces many different levels of contingency. For instance, on the day it sold an insurance policy against liability and collected a year's premium, it would incur a noncontingent obligation to provide “coverage,” but would expose itself to considerable uncertainty nonetheless. If, the next day, it repudiated

that obligation, the policyholder would have no difficulty bringing an action for breach of contract, but damages would be problematical, because while the policy is not contingent, it would at that stage be uncertain whether an event leading to an insured loss would have occurred. Unless the disappointed policyholder could point to specific losses incurred during the erstwhile policy period, recovery would probably be for “cover,” the cost of obtaining similar protection elsewhere. Alternatively, however, the policyholder might wait until the end of the policy period and use evidence of what losses actually occurred during that period as evidence of the value of the coverage promise. Once a breach is established, the choice of damage measures in conventional contract cases is usually up to the plaintiff to make.⁶

At the end of the policy term, a liability insurance policy written on an occurrence basis still has value to the policyholder in two instances. The first is when there were claims made during the policy period that have not yet been resolved. The events giving rise to liability (e.g., the policyholder's ostensibly tortious acts) have occurred, but the consequences of those events are in dispute. The insurer, likewise, may be uncertain whether it will have to pay a claim, although the facts on which the claim is based are amenable to determination. It is sometimes said that the insurer's liability is “contingent” at this stage, but this assumes that the qualification of liability through verdict or settlement is fortuitous. In fact, the liability of the insurer like the liability of the insured is unliquidated but not contingent from the date the events giving rise to liability occur.

The second instance is where it is possible that claims will be made after the expiration date based on events that occurred before it. The policyholder's right to protection against these unknown claims and his or her right to damages if they are denied are not “contingent” either, but they are distinctly unliquidated.

III. STATUTORY AND LEGAL FRAMEWORK FOR VALUATION OF CLAIMS

At least as long ago as the middle of the last century courts recognized that the owners of policies issued by insolvent insurers possessed cognizable claims against their assets even though, at the date of liquidation, some uncertainty attached to *172 them.⁷ The liability of the insurer commences when it obligates itself on the insurance policy, not when a claim becomes payable. As a result, policyholders possess noncontingent rights against the company. In normal course, the terms of their policy would control when any particular claim became payable. Thus, for instance, a claim against a surety could not be maintained until the principal debtor had defaulted, and a claim on a life insurance policy until the insured had died. But by becoming insolvent and going into liquidation, an insurer unilaterally terminates its obligations and breaches its contracts, and its policyholders immediately become entitled to damages for its breach of contract.⁸ No less an authority than the U.S. Supreme Court has ruled that

[By going into liquidation] the company becomes *civiliter mortuus*, its business is brought to an absolute end, and the policy-holders become creditors to an amount equal to the equitable value of their respective policies, and entitled to participate *pro rata* in its assets....⁹

That a liquidating court cannot do equity among the parties at interest without recognizing the immature claims of policyholders was explained in *Commissioner of Insurance v. Massachusetts Accident Company*:¹⁰

[I]t would seem that a large, if not the largest, interest in almost any insurance company must be that of policyholders who have not yet suffered loss, and that the solvency of the company and whether it should be allowed to continue in business should depend upon its probable ability to meet the future claims of such policyholders. It would be an anomaly if an adjudication of insolvency should itself have the effect of restoring the company to a sort of solvency through the immediate elimination of one of the principal blocks of its business.

Having recognized the rule, courts have not always been successful in applying it in ways that preserved the policyholder's economic interest. For instance, in *Newman v. Hatfield Wire & Cable*,¹¹ the New Jersey court, after explaining that “the uniform current of authority ... is to the effect that, as unmatured claims are provable against the bankrupt's estate, they are necessarily the subject of setoff,” refused to allow a policyholder to set off against the liquidator's demand for workers' compensation premium his probable loss on pending workers' compensation claims, because they were “incapable of being ascertained definitely by arithmetical calculation.” *173 *Kipp v. Fidelity Title & Mortgage Guaranty Co.*¹² is another example. In that case, the court, having dealt easily with the allowance of claims that were immature at the date of liquidation if they had been established by the distribution date, punted on the claims of policyholders whose rights remained stubbornly unliquidated. Two reasons are implied: the assumption that those claimants had delayed acting on their rights (“[t]here has been ample time for contingent creditors to establish their claims”) and the lack of any plausible alternative (“[t]he holder of a contingent claim cannot demand that the liquidation of the estate be delayed for his benefit, merely because of his possible future debt”).

On the other hand, when courts were presented with viable alternatives, they rarely had difficulty allocating a share of the assets of the insolvent company's assets to owners of “possible future claims.” For instance, courts given sufficient information to permit them to assign a value to immature insurance rights have readily accepted valuations based on the cost of replacement insurance coverage.¹³

In interpreting these cases, it is important to keep track of a distinction that the courts themselves frequently apply but rarely recognize: it is one thing to recognize a value that is ascertainable when the liquidation occurs, such as the cost of hypothetical replacement coverage; it is another to apply a value that takes into account evidence that can only be acquired after the date of liquidation, such as the amount of the policyholder's actual loss on a liability claim. Courts that recognize that policyholders own noncontingent rights against the company are invariably thinking in terms of valuation techniques that can be applied at liquidation or within a definite period thereafter. Courts that balk at allowing “contingent” or “speculative” claims have usually been presented with the policyholder's demand that the distribution of the assets of the estate be delayed so that the policyholder can finally ascertain the amount of anticipated losses.

It will be noted that the cases cited in this article predate the development of specialized statutes governing the liquidation of insurers. Cases decided under these specialized statutes require special consideration. In general, the components of a “modern” liquidation statute are three:

- (1) a statement that the rights and liabilities of the insolvent company and its creditors are “fixed” as of the date of the liquidation order;
- (2) a provision for a “bar date” by which claims must be filed in order to fully share in the assets of the estate; and
- (3) frequently, although not universally, a “contingent claims” provision that often has two pieces: (a) a statement that, in order to share in the assets of the estate, “contingent” claims must be “determined” by a certain date, and (b) a provision permitting persons having claims against insured individuals (referred to as “contingent claims” in many statutes) to submit their claims directly to the *174 liquidator, who is to allow them if it appears likely that the insured would otherwise suffer an insured-against loss on them.

The Wisconsin Insurers Liquidation Act, which was the basis of the NAIC Insurers Rehabilitation and Liquidation Model Act and thus of the liquidation laws in effect in most states, contains annotations by Spencer Kimball, who was largely responsible for its drafting. The annotation to section 645.63 is especially interesting:

This section handles the traditionally difficult and mishandled problem of contingent claims....

The word “contingent” is often misused in the statutes. A true “contingent” claim is one where the event on which liability would arise has not yet occurred. An illustration is a possible future claim on a fire policy where there has not yet been a fire.... Many states bar all contingent claims. There is little justification for excluding them altogether, though there is reason to give them less favorable treatment, since they are not even claims at the time the rights of the parties are fixed. However, such claims rest on promises made by the insurer or its agents and should rank ahead of ownership claims, if the insurer has a surplus.

Several categories of claims occasionally referred to as contingent claims deserve even better treatment. First, the claim of a third party who has not reduced his claim against the policyholder to judgment is only technically and superficially contingent, if contingent at all, and should be treated as if it were an ordinary claim. This technical contingency conceals the underlying reality of present insurer liability.... Second, unliquidated or undetermined claims are often miscalled “contingent” claims in the statutes, and either denied or relegated to an inferior place in the hierarchy of claims. This is unjustified, and perhaps has its historical origin in the misnaming of such claims as contingent. Unliquidated and undetermined claims should be regarded as absolute and unqualified claims.¹⁴

“Liquidation” or “determination” under the Wisconsin plan does not necessarily contemplate a proceeding outside the insolvency court. Insured and third-party claims, for instance, are “determined” when the liquidator recommends their fair value to the court.¹⁵ Claims for the investment value of life insurance policies, or for unearned premiums, are “determined” even without the filing of claims when they are listed in the same court.¹⁶

Although the Wisconsin law became the template for the NAIC Model Act and, in turn, the liquidation laws of many states, the application of those statutes has been anomalous. In recent years conventional wisdom¹⁷ has held that claims of insureds that have not yet been reduced to judgment or settled by agreement *175 with the liquidator are “contingent.” Contingent claims that are not liquidated within the prescribed time take no share of the insolvent estate. There is no room at all in this hierarchy for claims for the policyholder's “equitable value.” This confluence of circumstances can leave the policyholder claimant in no-man's land and the estate in gridlock. Not surprisingly, the result predicted by the *Massachusetts Accident* court has begun to occur: companies are rendered ostensibly “solvent” in spite of earlier estimates of massive insolvency because a large component of their liabilities has been eliminated.¹⁸ This apparent victory for the company is a defeat for the liquidation process and not coincidentally a windfall for any reinsurers exposed on the eliminated claims.

In an effort to avoid this unsatisfactory outcome while still concluding the liquidation in a reasonable amount of time, a number of liquidators have proposed schemes for the resolution of claims subject to uncertainty. They have been inconsistent in their approaches to the problem of contingency, and inconsistently successful as well.

IV. CLAIM VALUATION STRATEGIES

A. Justice Bradley's Model and the “Gap”

In 1889, Justice Bradley explained in *Carr v. Hamilton*¹⁹ that: Every person's interest in a life insurance is capable of instant and present valuation, almost as certain and determinate as the discount of a note or bill payable in the future.... The value of each was easy of calculation by any competent actuary.

Bradley was dealing with life insurance policies, whose elements of uncertainty do not seem so daunting. Lesser minds than Bradley's, however, have not found this model so simple to apply. Although it is easy to accept the principle that any broken

contract ought to have an “equitable value” that would be the measure of damages for its breach, not all such values are “capable of instant and present valuation,” and that it is especially true when the contract is one for liability insurance.

Aside from the problems of measurement, however, Bradley's approach glosses over other difficult issues. The most vexing is the fact that, inevitably, there will be a lapse of time between the date as of which claims are measured and the date when the measurement is calculated. At what point is the liquidator entitled to cease processing new information? This problem is exemplified by *MacFarlane*, an English case.²⁰ The liquidators had established claim values based on returns of unearned premium as of the date of winding up. Since the company's policies *176 chiefly covered property risks, that was a rough approximation of IBNR at the date of liquidation. Mrs. MacFarlane lost her house to fire during the time after the winding-up order and before her claim was evaluated, the “gap” period. She urged that her claim be allowed for the full value of her house, rather than merely for the unearned premium associated with her policy at the relevant date. The English court engaged in statistical wishful thinking, holding that the liquidator must take into account, in evaluating her policy, known events taking place after the claims bar date. Since claimants are unlikely to object to a valuation method that overstates their claims, the *MacFarlane* court's approach is virtually certain to inflate the total value of claims. The proprietors of English Schemes of Arrangement have been winking at the practical ramifications of this decision ever since, because it appears to say that it is never too late to submit additional information about such claims.²¹

It is submitted that the common sense approach to which both the *Carr* and *MacFarlane* courts were straining is this: a policyholder possesses a claim against the insolvent insurer on a simple breach of contract basis from the date it is liquidated, regardless of what happens next. But, as we have seen, the quantum of his or her claim is problematical. Conventional breach of contract damages would allow the policyholder to elect whether to pursue a replacement cost approach or to wait and see whether insured losses materialized. Insurance insolvency claimants expect the same right, but because it can take so long for insured claims to develop, the right cannot be unlimited. It is perfectly appropriate that actual loss development provide an alternative to replacement cost as a measure of damage, but it is equally appropriate to insist that after a certain date no further loss development information be considered, or else the liquidation will never finish. A claimant who is unable to “liquidate” his or her claim will nevertheless have a noncontingent claim for the equitable value of his or her policy, but the claimant must prove it on the basis of information available to the liquidator at the time of the bar date. Once the cutoff date is reached, the claimant cannot hold up the resolution of the rights of others to try to demonstrate that his or her own loss is greater than that predicted by actuarial estimates, nor may others try to prove the contrary.

B. Replacement of Coverage Model

Life insurance insolvencies have customarily been resolved by having solvent competitors assume both the assets and the liabilities of the troubled company, trusting to good management, the inherent conservatism of life reserving, and sometimes guaranty association support to eliminate the apparent shortfall. This is so obviously a beneficial arrangement for all concerned that, whenever it can be practically *177 accomplished, it meets with little opposition. As a result, however, the legal grounds for these transactions are rarely analyzed.

A rescuing company assuming 100 percent of the insolvent's policies in exchange for all of its assets implicitly values the policies at an amount equal to or greater than the assets received. As long as all of the policies are assumed, there is not always a need to decide how much greater than the assets the policy values are. The equation becomes considerably more complicated, however, when not all of the policies are being assumed, or when only partial guaranty organization coverage is in effect.

An example of a replacement of coverage model is the plan put into place for Executive Life Insurance Co. (ELIC) in California. The plan employed the assets of the former company and additional contributions made by the affected insurance guaranty associations to fund replacement coverage offered by a new company. Policyholders who were not entitled to guaranty association coverage received a policy that provided a portion of the coverage promised by ELIC equivalent to the pro rata dividend that they would have received if the company had been liquidated conventionally. The legal sufficiency of the implicit

assumption that policyholders whose policies had not as of liquidation matured into present claims nevertheless had cognizable, noncontingent interests equal to the present value of their future claims was simply taken for granted in the extensive debate and litigation that surrounded the ELIC plan. In assessing the sufficiency of the valuations in controversy, however, the California Supreme Court seems to have assumed that what the policyholders could have obtained in liquidation was equivalent to the fair economic value of the policies and devoted its attention to whether the valuation techniques employed produced fair economic value.²²

C. Contract Damages Model

The loss suffered by the owner of a policy issued by an insolvent insurer is essentially a loss caused by breach of contract, and it is quite feasible to apply a contract damages approach to claim valuation. If, for example, an insurer simply repudiated a particular policy (without becoming insolvent or subjecting itself to regulatory control), the policyholder could sue to recover damages. Those damages would be measured, as in any case of anticipatory breach of contract, by the present value of what the contract promised less the present value of what the policyholder would have to pay to obtain it, or, alternatively, the cost of obtaining the same benefit elsewhere.²³

*178 In the liquidation of Inter-American Insurance Co. in Illinois, the liquidator proposed a valuation scheme premised on a present value calculation that employed an adjusted version of the company's own statutory reserve as a surrogate for present value. Reinsurance was a factor in Inter-American, and certain reinsurers did object to the proposed claim valuation. Their objections were overruled, and no appeal has (yet) been taken on the point.

D. Cambridge Model

The Bermuda liquidators of Cambridge Reinsurance undertook an early form of property casualty claims estimation. Cambridge presented an especially acute case of the liquidator's dilemma: it had written nothing but reinsurance; the majority of its assets consisted of reinsurance balances not yet owing; the plurality of its retrocessionaires had also ceded to it; retrocessionaires were reluctant to pay even presently due claims until they were assured that their own claims would be paid either in offset or in kind; and neither the ceded nor the assumed claims were expected to mature for twenty or thirty years. Cambridge's liquidator developed IBNR for each cedent based on a set of consistently applied standards. Reported reserves plus the developed IBNR were added to conventionally reported paid claims to produce a figure that was allowed by the liquidator in place of the claim each cedent would otherwise have. Retrocessions implied by the estimated claims were offset against the claims of each cedent, and dividends paid on the net amount. Retrocessionaires, in general, responded favorably to this treatment, and a considerable sum was collected in retrocessions. The estate was recently closed, having paid dividends well in excess of its initial estimate.

Cambridge makes a tantalizing model for property and casualty insurer liquidations, but it should be recognized that it benefitted from several unique advantages. It was entirely a reinsurance company. In contrast to claimants under direct property or casualty policies, the law of large numbers applied to Cambridge's claimants, each of which was virtually certain to have claims of some size, and could employ the same actuarial techniques as the liquidator to estimate their magnitude. Many of its reinsurers were also its creditors, and thus shared the interest of other creditors in salvaging whatever could be had from Cambridge's estate. The liquidators were unencumbered by restrictive legislation. Bermuda's law on the subject was vague enough to encompass almost any fair-minded scheme, especially with the approval of the creditors of the estate and its Committee of Inspection. Last, but not least, Cambridge's insolvency was so severe that claimants risked very little in accepting the estimation plan. By comparison to the prospect of receiving a small dividend far in the future, almost any solution looked attractive.

Pine Top, an Illinois company, is in the midst of a procedure along similar lines. Its liquidator has adopted a procedure for the estimation of assumed reinsurance claims that has survived test applications and is expected shortly to result in the allowance of specific assumed reinsurance claims. The Pine Top approach is based on claimants' own estimates of ultimate loss development (i.e., including not only *179 case reserves but IBNR), evaluated on a case-by-case basis by the liquidator. Since most claims

are eventually agreed to, the result strongly resembles a commutation value. Pine Top has also substantial direct policyholder claims that have first priority against the assets of the estate, but it is thought that reasonable success in reinsurance collections will permit a significant dividend at the assumed reinsurance level as well. A single retrocessionaire unsuccessfully objected to the estimation procedure. How other retrocessionaires will respond to the impending cession of estimated claims remains to be seen.

Although it is attractively simple, the Cambridge/Pine Top model is difficult to defend when applied to individual insurance policies. Whereas the losses of reinsurance cedents are generally numerous, those of individual policyholders are usually not. As a result, most reinsurance cedents would have had at least some claims had their reinsurance continued to expiration; most policyholders would not have. Many policies will suffer no claims at all; an estimation plan like Cambridge's would pay them more money than they needed to pay claims. A few policyholders will suffer large claims; their dividend will be much too small to cover them. But a Cambridge-style dividend would still meet policyholder needs if it were paid quite soon after it was calculated (to minimize the "gap"), and if it were expended on the purchase of a further insurance policy covering, retroactively, all or part of what should have been covered by the insolvent company. Such an early resolution would be formidably difficult to accomplish, but if it opened the door to economical partial replacement coverage, it would be far and away the least costly and most effective means of protecting the policyholders' expectations.

E. Rolling Dividends Model

One way to avoid the issue of claim estimations while partially defeating the liquidator's dilemma was employed in the United States in American Mutual Reinsurance Co (AmReCo), and in the United Kingdom in the KWELM (Weavers)²⁴ insolvency. AmReCo has processed claims almost as if it were a solvent insurer, but has paid them partly in cash and partly with promissory notes payable only from the assets of the estate. The notes are paid as funds become available and the plan contains protective provisions should unexpected late claims development result in a determination that early noteholders had received more than their pro rata share of the eventual assets of the estate.

KWELM applied a similar approach to a creditor's book containing a substantial number of direct claims. Like AmReCo, it has employed estimates of ultimate claims divided by cash in hand to determine what could be paid on claims as they mature. As additional assets are recovered, owners of allowed claims are receiving *180 additional dividends. Reinsurance is a significant factor for KWELM, and this approach minimizes the potential defenses that reinsurers might have to its ultimate claims. As with ELIC and Inter-American, KWELM has integrated guaranty organizations (the Policyholder's Protection Board (PPB)) into the process, and some claims can expect 90 percent payment more or less promptly after claim allowance. As in AmReCo, however, the dividend payment stream for nonguaranteed claims (and for the PPB) promises to be very long unless some further acceleration is attempted.

Although policyholder reaction to the KWELM scheme was largely favorable or passive, the scheme does illustrate some of the inevitable disadvantages of any insolvency plan that depends on the occurrence of actual third-party claims for claim valuation. Liability insurance usually promises not so much payment of claims after the policyholder has paid them as the assurance that, to the extent of the policy limits, the policyholder will not have to pay them or the costs of his or her legal defense at all. The promise of "cash on the barrel head" made available by an insurer is a strong settlement incentive, and the fact that the policyholder need not advance the money or suffer judgment for it is a good reason for him or her to buy more insurance. The KWELM scheme does little to protect these elements of economic value. Fortunately, most of the KWELM policies were coinsured with other, often solvent, carriers. To protect their own interests, these carriers have often financed defenses and negotiated settlements that the KWELM administrator will follow, reducing the instances of settlement gridlock that would otherwise occur.²⁵

Another disadvantage inherent in the rolling dividend approaches like KWELM is caused by the inherent conservatism of fiduciaries. Even though all of these plans immunize the receiver against any surcharge should early distributions turn out to be excessive (and there is no real suggestion that such immunity would not be effective), receivers are reluctant to take any

chances with excess distribution. KWELM's administrators, for instance, set the dividend percentage at any given date on the basis of funds actually in hand, divide by claims ultimately expected to develop, and then build in a substantial "special margin" in case the claims exceed estimates. In effect, they are assuming that they will be unable to collect any reinsurance at all, but that claims will exceed estimates by a factor of 50 percent. As a result, the largest share of the money set aside to pay dividends in the last three years is still in the coffers of the estate.²⁶

*181 F. *Cutoff Model--Delta America Reinsurance*

The simplest approach to long-tail liability claims in liquidation is probably the most common: to ignore any that arrive inconveniently late. An example is the closure plan for Delta America Reinsurance, which set a final, once-and-for-all bar date for the liquidation of claims and set out to distribute assets on those claims that met the deadline. There are certainly instances where this is an appropriate approach, in spite of the apparent violence to the rights of long-tail policyholders. For instance, Delta's policyholders were large ones and tended to have both known and IBNR exposures. Facing a limited pot of assets, they might well have concluded that their allocated share of assets would not improve if they, along with all other policyholders, were permitted to submit further loss development.

G. *Actuarial Estimation of Direct Claims*

Three recent opinions in the United States have dealt with plans to allow claims or to quantify reinsurance recoveries on the basis of actuarial estimates of ultimate loss development. The plans differed, as did judicial responses to them. None are completed. Unlike some of the other schemes described in this article, they have provoked organized reinsurer opposition, which continues.

1. *Mission Insurance Company*

In *Quackenbush v. Mission Insurance Co.*,²⁷ the California liquidator of Mission proposed a claims estimation plan "permitting him to estimate future IBNR losses for which Mission's reinsurers would be liable, although liability for, and the exact amount of, such losses remained undetermined." Mission's plan was curious in that it appears to have been the liquidator's intention to estimate claims, for reinsurance collection purposes, without actually allowing those same claimants to collect dividends based on their estimated claims. Citing statutory restrictions on allowance of "contingent" claims (that are not entirely on point), the California Court of Appeal rejected the plan.

This case has been described as holding that California law does not permit estimation. That is not quite true. A different result occurred when the liquidator proposed to actually allow policyholder claims and rank them for dividend by accelerated means.²⁸ There is no inherent reason why the "determination" of an uncertain claim must await the final resolution of the underlying litigation. On the contrary, both insurers and liquidators routinely settle claims by agreement, even though they are subject to some form of doubt, and there is no principled reason why a liquidator under the supervision of the liquidation court could not apply an estimation methodology that accomplished the same thing on a larger scale. The key flaw in the Mission liquidation plan was its insistence on creating reinsurance claims when the underlying insurance claim remained "undetermined."

*182 2. *Holland-America*

The estimation plan approved for Holland-America Insurance, a Mission affiliate domiciled in Missouri, shows the impact of the actual allowance of claims on the estimation argument.²⁹ It was also influenced, however, by a different statutory regimen and a rather different judicial approach. In 1990, the Holland-America court had declared that "IBNR" claims would be provable in the liquidation if they were "readily ascertainable." A 1992 revision took advantage of the intervening adoption of a statute specifically allowing IBNR claims calculated by actuarial or other methods affording "reasonable certainty." A 1995 "final

dividend approach” employed claims constructed to include IBNR and contemplated collection of reinsurance on the IBNR claims. Reinsurers objected, somewhat belatedly, that IBNR claims were too “speculative” and thus should not be allowed. The Missouri court held that the necessary estimation was clearly within the implicit and statutory authority of the liquidator. Litigation continues over just how the estimation ought to be accomplished.

3. Integrity

The Missouri court had the advantage of a strong, albeit retroactively adopted, statutory framework. The scheme approved by the New Jersey court for the final distribution of Integrity Insurance Company's estate had to deal with an inflexible, if not hostile, statutory scheme.³⁰ New Jersey law allowed as fourth priority “claims by policyholders, beneficiaries and insurers arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company....” However, it also provided that “no contingent claim shall share in a distribution of the assets of an insurer ... except that such claims shall be considered, if properly presented, and may be allowed to share where ... such claims become absolute against the insurer on or before the last day fixed for filing of proofs of claim.”³¹ A second provision established a separate procedure when a claim against an insured was presented by a third party.³² Integrity's liquidation order had expressly preserved the rights of policyholders to file contingent and unliquidated claims, and numerous policyholders had done so. Since neither provision seemed to provide a means of disposing of these claims, the liquidator proposed instead to present claims *on behalf of* the unknown future claimants and to permit those claimants to share in the ultimate dividend paid.

Reinsurers, objecting to the proposed plan, asserted that “historically virtually all insurer insolvencies have been resolved on the basis of specific, individual claims for known, verifiable losses,” and that such an approach was compelled by the New Jersey statute.³³ The trial court pointed out that the reinsurers' historical *183 analysis was shortsighted, since there was in fact New Jersey precedent for the allowance of claims against insolvent insurers based on the replacement value of the lost coverages.³⁴ It also pointed to extensive Bankruptcy Code precedent encouraging the estimation of unliquidated claims.³⁵ In spite of the title company cases, which point out the noncontingent character of the policyholders' rights, the trial court seems to have maintained the assumption that what it was evaluating was a package of “contingent” claims. Lacking explicit statutory authority, the court relied on its “broad equitable power” to afford the “broadest possible protection” to the public and the various claimants and beneficiaries of the Integrity estate.

The trial court's analysis can be questioned. If the claims in question are, indeed, “contingent” within the meaning of New Jersey Revised Statutes § 17:30C-282, the statute would appear to require that they be made “absolute against the insurer.” Just how that is supposed to happen when no individual claimant has been identified is hard to conceive.

Soon after this ruling, however, and from a quite unexpected direction, the New Jersey Supreme Court in *Credit Lyonnais* recently provided what may be the solution to this conundrum.³⁶ One of Integrity's liabilities was a credit guaranty policy securing the payment of certain bonds. The principal obligors had defaulted before liquidation, but the policy required only that Integrity pay each installment as it became due. The creditor insisted that the losses were “incurred” when it became clear that the debtor's default was permanent. On its face, this dispute has very little to do with the subject of this article. The New Jersey Supreme Court, however, undertook an analysis that cut the parties' Gordian knot, and at the same time opened the door to a resolution of the whole problem of unliquidated claims in insurance liquidation.³⁷

The court ruled that on the date of liquidation Integrity breached its contract with every policyholder. As a result every policyholder owned a cause of action for damages, and each policyholder's damages were the cost of replacement insurance.³⁸ Where, as in *Caminetti v. Manierre*, the likelihood of loss was so high that the policyholder could obtain no replacement insurance, then the proper measure of damage was the present value of the expected loss. Nowhere in the entire opinion does the court discuss section 28a or 28b, apparently considering them irrelevant to the determination of a claim that was not, by its standards, “contingent,” but merely unliquidated.

*184 The *Credit Lyonnais* court unfortunately did not have to address the much more befuddling problems of long-tail liability claims, and it did not have to confront the probability that its approach would result in payment to people who had no claims and insufficient payment to people who did. It is impossible to read the *Credit Lyonnais* opinion, however, without being convinced that the court was thinking not just about the relatively simple case sub judice but also about the much more complex problems looming ahead of it.

V. REINSURANCE

At first blush, allowing ceded reinsurance concerns to dominate plans for the handling of claims is incongruous. The liquidator's first obligation is undoubtedly to creditors, and especially policyholders. At the same time, however, he or she succeeds to the cedent's obligation to treat reinsurers' interests in utmost good faith. In spite of the potential for abuse offered by the possibility of "liquidation leverage," the liquidators must not tolerate procedures that artificially inflate reinsurance claims. But it is their marshal assets, and since reinsurance can be a substantial asset, the liquidators should also not tolerate their artificial or accidental suppression. If reinsurance exists in a liquidation estate, there is no reinsurance-neutral liquidation scheme, and there is no choice of liquidation approaches in which reinsurance is not a factor.

It is commonly observed that liquidation both delays and deters claims substantiation and settlement. Even if it were not for the hostile and unfamiliar procedures, the liquidator's refusal or inability to participate in settlement and trial, and the disappearance of the insurance policy's ready cash flow, the simple fact that the policy now offers reduced payments and uncertain delivery would cause many rational insureds to decide to forgo claims. These forfeited claims are part of the invisible cost of insurer insolvency; each one represents an irretrievable failure of the insurance industry to keep its promises, but also a windfall to the reinsurers that might otherwise be charged with their claims.

Claims liquidation bar dates have one obvious effect on claims (the elimination of a whole class of them) and a less obvious one if liquidation leverage would have fattened the dividends of short-tail claimants with long-tail reinsurance recoveries. The reverse (that cutoff prevents dilution of the dividends received by early liquidated claimants) seems to be rare in practice. Either way, the effect on reinsurers is simple: liabilities decrease.

A claims estimation, however, could create an even bigger windfall for reinsurers if it were determined that the liquidator could not collect from reinsurers when claims were estimated that would otherwise have matured naturally. An accidental loss of reinsurance coverage is a prospect that rightly deters many liquidators from estimations. Reinsurers of integrity are loath to profit from their cedent's misfortune. Reinsurers of lesser mettle are not so foolish as to admit their motives.

Reinsurers have argued that one of the economic benefits of assuming risk is *185 the chance that today's estimates of investment income and ultimate loss will prove pessimistic. They have the contractual right, they say, to play out the bet that they made that losses will not be as large as estimates, or that investment income will be greater. Whether the estimates are right or wrong, they have the right to use their claims money in the meantime. To alter the timing of their obligation would tip the balance of risk and burden that is the heart of reinsurance.

The argument begs a large question: Is unexpectedly early payment within or outside the range of outcomes whose risk the reinsurer assumed when it initialed the slip? Failing more pointed authority, we look to general principles of reinsurance and seek analogies in other situations.

The reinsurer's obligation to "follow the fortunes" of a cedent in dealing with reinsured claims is surprisingly difficult to pin down, although it seems to be at the heart of the reinsurance relationship. At least where the contract contains loss settlement language, and often when it does not, it is common ground that a reinsurer may not retry issues of fact or law incorporated in a good faith decision to settle a covered claim.³⁹ At the other extreme, there are payments made by cedents to which a reinsurer

need not contribute such as extracontractual obligations and payments made to settle other insurance obligations.⁴⁰ Of course, the parties can and do agree to other limits by outright exclusions or through procedural filters such as notice requirements.

In contrast, reinsurance of settled coverage disputes vexes the courts that consider it. The argument that the reinsurer agreed to pay for claims the policy covers, but not for those it does not cover, has had a seductive attraction to judges and courts. American thinking tends to be influenced by a quotation from Justice Story in *New York State Marine Insurance Co. v. Protection Insurance Co.*:

The consequence would seem to be, that, as no voluntary payment by the original insurers would be binding or obligatory upon the reassurers, they are compellable to resist the payment, and to require the proper proofs of loss from the assured in a regular suit against them, so as to protect themselves by a bona fide judgment to the amount of the recovery against them under their reinsurance. It was to avoid this inconvenience and delay, as well as peril, that the French policies of reinsurance . . . usually contain a clause, allowing and authorizing the original insurers to make, *bona fide*, a voluntary settlement and adjustment of the loss, which shall be binding on the reassurers. This, of course, puts the whole matter within the exercise of the sound discretion of the party reassured, whether to contest, or to admit the claim of the first assured. But, independently of such a clause, it is clear, by the French law, that the original assurers must, in a suit brought by the reassurers, establish the same facts, as would entitle the assured to recover upon the original policy.⁴¹

*186 Appleman reads *New York State Marine* to stand for the proposition that “a reinsurer may make the same objections and raise the same defenses that the reinsured could in a suit on the primitive policy” and implies that the “French” clause and Story’s 1841 reference to it support a view that, before being liable to the cedent, the reinsurer may demand that the cedent prove the insured’s claim.⁴² The actual language in use in the case before Story is not clear, but a survey of the historical context of his decision strongly suggests that what he referred to as the “French” approach is in fact the one in common use today so Story’s opinion actually supports the opposite view.

The development of standard language in English and after *New York State Marine* is chronicled by a series of English cases that represent a determined effort in the London markets to find language that would adequately convey their intention to be bound to pay claims settled in good faith, giving up to one degree or another their right to second-guess claims judgments integral to their settlement with the original insured. In *Chippendale v. Holt*,⁴³ the Commercial Court held that the phrase “subject to the same terms and conditions as the original policy and to pay as may be paid thereof” was not “meant to create a liability outside the limits of the original policy.”

A few years later, the term “pay as may be paid” was interpreted

to require the reassured first to show that a loss of the kind reinsured has in fact happened; and, second, that the reassured has taken all proper and businesslike steps to have the amount of it fairly and carefully ascertained. So long as liability exists, the mere fact of some honest mistake having occurred in fixing the exact amount of it would afford no excuse for not paying.⁴⁴

In other words, determining the extent of the loss was within the discretion of the insurer, while the existence of the insurer’s liability itself could be challenged. But this, apparently, was not what the market wanted to hear. The trouble was that it prevented the cedent from dealing effectively with disputed questions of coverage. Participants kept trying new formulations of the reinsurer’s liability in an attempt to make the contracts perform in court as the parties meant them to. What seemed to best express their intent was a clause requiring the reinsurer to “follow the [cedent’s] settlements.”

In *Excess Insurance Co., Ltd. v. Mathews*, Mr. Justice Branson effected a full retreat from *Chippendale* when a “follow settlements” clause was in effect:

It was decided in *Chippendale v. Holt* that the words “to pay as may be paid” do not compel the reinsurers to pay where there was in fact no liability on the original policy.... The plaintiffs contend that the words “to follow their settlements” should be construed so as to carry the matter a step further and to bind the reinsurer by a *187 compromise of the question of liability as he was already bound by a compromise of amount.... In my view the construction of the plaintiffs is correct.⁴⁵

As Lord Justice Scutton explained in *Gurney v. Grimm*,⁴⁶ what underwriters were trying to accomplish was this:

“We desire to reestablish the position which was accepted by a large number of people in the insurance world before the decision of *Chippendale v. Holt*, and we desire to have an insurance by which if we are satisfied that we ought either to compromise or to arrange ... you the reinsurers agree to relieve us of the responsibility of proving that there has been the loss mentioned in the original policy”.... I think the original insurers were seeking, and the reinsuring companies knew they were seeking, a protection which would be available to them if they *bona fide*, in the first instance, resisted the claim ... and then were persuaded that it was right....

On closer inspection, the “French” language referred to by Story must have been the “follow settlements” language construed by the English courts and that now appears, with significant variations, in U.S. reinsurance treaties of every description. It is now so common in U.S. practice that it nearly caused the Ninth Circuit to forget the difference between fact and law.⁴⁷

As the Ninth Circuit learned, however, reinsurance remains a fundamentally consensual business, and although many of its practices benefit from long-standing convention, they are not obligatory. Against the background of traditional, tested terminology, parties continue to tailor their undertakings to accommodate their own prejudices, habits, and needs. As the traditionally informal partnership between underwriter and reinsured has become more formalistic and sometimes hostile, reinsurers are not always prepared to bind themselves to follow the reinsured's settlements.

The House of Lords recently considered another approach. In *Hill v. M&G Reinsurance Co.*,⁴⁸ the follow settlements clause contained provisos that the settlements be “within the terms and conditions of the original policies ... and within the terms and conditions of this Reinsurance.” The underlying insurance covered Kuwait Air Lines's airplanes for up to \$300 million for “any one occurrence” during 1990 and 1991. The reinsurance was excess of loss reinsurance; moreover, it only applied to losses in 1990. Iraq appropriated seven KAC aircraft in 1990; in 1991 they were destroyed. The underlying claim was settled for \$300 million, on the basis that there was one “occurrence” involving seven planes and that it occurred in 1990. A colorable argument could have been made that there were seven occurrences, none reaching the reinsurers' attachment point, and that they occurred in 1991. Having first pointed out that neither of these issues had to be *188 determined to establish the underlying insurers' liability to KAC,⁴⁹ Lord Mustill went to the heart of the matter:

There are only two rules, both obvious. First, that the reinsurer cannot be held liable unless the loss falls within the cover of the policy reinsured and within the cover created by the reinsurance. Second, that the parties are free to agree on ways of proving whether these requirements are satisfied.⁵⁰

Turning to the follow settlements clause, Mustill interpreted it as drawing a distinction between determinations of facts necessary to a determination of the underlying claims and legal conclusions regarding the extent of the coverage. The reinsurer was bound to follow the reinsured's settlements, except "where the settlement would bind the reinsurer to a definition of cover different from that which he has contracted to accept."⁵¹ This contrasts sharply with Lord Justice Scutton's application of a follow settlements clause without the provisos in *Gurney v. Grimm*.⁵² As Lord Mustill pointed out, one of the obvious rules is that "the parties are free to agree on ways of proving whether these requirements are satisfied."⁵³ The difference in outcomes between *Hill* and *Gurney* is simply a result of different agreements.

Hill is sometimes cited as a rejection of the follow the fortunes doctrine, but it is rather evidently no such thing. It does, however, affirm the right of the parties to a reinsurance contract to define which fortunes they will follow.

The furor over follow settlements clauses, however, masks some even more important common ground. When we speak of the reinsurer's agreement to "follow the fortunes," we are often referring to two discrete problems. On the one hand, we are talking about an obligation of the reinsurer to share the experience of the cedent when it makes what hindsight identifies as a "bad" settlement decision, as well as when it makes a fortuitously "good" one. That really is what "following settlements" is about, and the gravamen of the clause is that the actions in question are more or less voluntary.

But "follow the fortunes" has a second implication that is of considerably greater importance in ascertaining coverage of estimated claims in liquidations, and that does not appear to be open to debate. The "original risk principle" applies, as a matter of law, to any reinsurance, regardless of contract language, purely as an incident of the basic obligation of indemnity.

The *original risk principle* includes neither thereinsured's commercial or investment risks nor post-loss claims adjustment actions. Rather, it is confined to the underwriting risk. It binds the reinsurer by the "fate" or "destiny" or "fortune" of the reinsured as regards the entirety of the fortuitous original risk of loss insured insofar as that risk *189 has been reinsured. The reinsurer is thus bound along with its reinsured by whatever additional and unforeseen duties that a fortuitous pre-loss change-- e.g. in the risk, in the object insured, or in law as a result of judicial interpretation or legislative amendment--may impose upon the reinsured without the reinsured having done anything to bring about the change.⁵⁴

In plain English, if an insurer insures against fortuitous events and a reinsurer undertakes to indemnify him or her against losses so incurred, the reinsurer is not entitled to refuse payment just because the loss that occurs is unexpected. Any number of surprising outcomes for the cedent are still reinsured. Utter bungling by the cedent leading to losses that "should not have happened," misguided settlements, legal malpractice, unprovable dishonesty by claimants, or cases of first impression are not excuses for nonpayment.

One of the most practical settlements of a serious coverage dispute is a policy buydown, but the transaction also pushes the envelope of a reinsurer's liability for payment. Unquestionably a reinsurer should participate in a return of premium when a policy is canceled by agreement. Must it also participate in a payment in lieu of disputed defense and indemnity costs? Case law exists on settlements made in bad faith or without required notice, and on unfair allocations of settlement costs that mistreat the reinsurer or overextend its exposure, but the pure issue seems rarely to have been raised in published case law. Arbitration history, necessarily incomplete, is no better. The issue is frequently threatened but rarely, if ever, raised. It can be seen from the previous discussion that the answer will depend to some extent on how the parties defined their obligations to each other. However, under the simple follow settlements clauses in common use before 1990, Lord Justice Scutton's working hypothesis still holds 100 years later: the reinsurer is obliged to pay "if the original insurer genuinely settles a genuine claim." If the cedent's business judgment or obligations demand settlement at an early stage, the reinsurer may not complain that the timing does not suit. But different language may compel a different result for voluntary settlement of a claim.

A claims estimation in liquidation shares characteristics of a policy buydown, but differs in one important feature: it is not a voluntary concession of liability, but a means of determining and liquidating a liability that, as we have seen, is already absolute as a matter of law. It is, in fact, a development of the “original risk” insured by the cedent, which the reinsurer is bound to follow. It may well be that the reinsurer's legitimate expectations regarding the timing and speculative character of future losses are frustrated by its cedent's insolvency, but the same misfortune has also occurred to the cedent, and indeed, to its policyholders. Protection against unforeseen developments is what indemnity is for.

*190 VI. CONCLUSION

It is submitted that, in light of the high utility of early estate resolution, an estimation program that compelled distributions to policyholders unlikely to ever have claims would still be worth the attempt. But the New Jersey court's analysis suggests a better solution. If it is the economic value of the policy that the policyholder has lost, then a dividend based on that value is perfectly fair.

The predicament of the liquidator confronted by long-tail claims and slowly maturing reinsurance is, in fact, recent and largely self-inflicted. Although statutes can, and undoubtedly should, be amended to clarify and improve the remedies available, law currently on the books clearly demands that the economic value of insurance policies be recognized in liquidation. Claims payment schemes that depend on such a recognition should not impair the collectibility of the insolvent company's reinsurance. It is submitted that it is the affirmative duty of the liquidator of any insurer seriously affected by long-tail claims to either initiate or accept determination of these unliquidated claims by actuarial or other methods offering a reasonable degree of certainty and accuracy.

Footnotes

^{a1} *Mary Cannon Veed is a partner at the firm of Peterson & Ross in Chicago.*

¹ As of February 1996, Transit had distributed \$120 million to creditors, whose claims are thought to total more than \$4 billion. But its collected assets already total over \$600 million. The remainder is being held to pay claims not yet settled. 7 MEALEY'S LITIG. REP.: INS. INSOLVENCY 17, at 11.

² Illinois, which maintains an efficient and energetic receivership system, recently closed the estate of Market Insurance after sixteen years; it projects the closure of American Reserve, a major liquidation that commenced in 1979, this year. Pacific Mutual Life Insurance, which collapsed in California during the 1930s, was still in the courts in 1956. *Pac. Mut. Life Ins. Co. v. McConnell*, 44 Cal.2d 715, 285 P.2d 636 (1955).

³ Financial Accounting Standards Board FAS 60; National Association of Insurance Commissioners SSAP 45.

⁴ The source of the figures shown in this chart and the following one is an unpublished analysis, prepared by Milliman & Robertson, Inc., of the experience of principal underwriters in specific types of businesses, and is intended to be representative of the general experience of the industry.

⁵ See, e.g., the handling of “contingent” claims estimation in the Bankruptcy Code, 11 U.S.C. § 502(c), and under previous law in *First Empire Bank v. FDIC*, 572 F.2d 1361 (9th Cir. 1978) and *Maynard v. Elliott*, 283 U.S. 273 (1931).

⁶ See U.C.C. §§ 2-712, 2-714.

⁷ *Ingersoll v. Missouri Valley Life Ins. Co.*, 37 P.530 (D. Kan. 1889); *Commonwealth v. Richardson*, 94 S.W. 639 (Ky. 1906); *Hoyt v. Hampe*, 214 N.W. 718 (Iowa 1927); *McDonnell v. Alabama Gold Life Ins. Co.*, 5 So. 120 (Ala. 1888); *Evans v. Illinois Sur. Co.*, 298 Ill. 101, 131 N.E. 262; *In re Empire State Sur. Co.*, 214 N.Y. 553, 108 N.E. 825; *Newman v. Hatfield Wire & Cable*, 174 A. 491 (N.J. 1934); *Caminetti v. Manierre*, 142 P.2d 741 (Cal. 1943).

- 8 Smith v. National Credit Ins. Co., 68 N.W. 28 (Minn. 1896); *In re Empire State Sur.*, 214 N.Y. 553, 108 N.E. 825; *Boyd v. Wright*, 96 S.E. 338 (Ga. 1918).
- 9 Carr v. Hamilton, 129 U.S. 252 (1889).
- 10 50 N.E.2d 801 (Mass. 1945).
- 11 174 A. 491 (N.J. 1934).
- 12 174 A. 229 (N.J. 1934).
- 13 American Lead Pencil Co. v. N.J. Title Guar. & Trust Co., 130 N.J. Eq. 148, 151 (Ch. 1941); *Davis v. Amro Grotto M.O.V.P.E.R., Inc.*, 89 S.W.2d 754 (Tenn. 1936); *Caminetti v. Manierre*, 142 P.2d 741 (Cal. 1943); *Universal Life Ins. Co. v. Binford*, 76 Va. 103 (1882).
- 14 WISC. STAT. § 645.63, “Special Claims.”
- 15 WISC. STAT. § 645.64(3).
- 16 WISC. STAT. § 645.71.
- 17 The term is used advisedly. There is little, if any, actual case law that directly supports the contention that policyholders who assert breach of contract-type claims for the equitable value of their policies are excluded from either the estate or from policyholder priority status. As explained here, those cases that appear to hold that so-called contingent claims are not allowable in fact turn on failures of proof.
- 18 Mutual Fire Marine and Inland Insurance Co. recently emerged from rehabilitation proceedings having paid all claims allowed against it. Unfortunately, the rehabilitation plan that made this possible eliminated many valid claims and discouraged the prosecution of others. 8 MEALEY’S LITIG. REP.: INS. INSOLVENCY 15, at 5.
- 19 129 U.S. 252 (1889).
- 20 *In re Northern Counties of England Fire Ins. Co., MacFarlane’s Claim*, 17 Ch.D. 337 (1880).
- 21 Actually, the English law is considerably more nuanced, or at least inconsistent. *See Ellis & Co.’s Trustee v. Dixon-Johnson*, 1924(1) Ch.D. 342 at 357, and *In re The Albert Life Insurance Co.* 9 L.R.Eq. 716 (1870).
- 22 Commercial Nat’l Bank in *Schreveport v. Superior Court*, 17 Cal. Rptr. 2d 884 (Cal. App. 1993).
- 23 In addition, a breach of contract claimant might obtain consequential or even punitive damages, but if the claimant is entitled to such damages against an insolvent insurer, he or she probably is not entitled to receive the same priority of payment for them as if they were claims directly under the policy. Payment of general creditor claims in an insurance liquidation is sufficiently rare that few insureds bother with consequential damage claims.
- 24 KWELM is a proceeding for a “scheme of arrangement,” akin to a U.S. Chapter 11 plan, for a cluster of companies that jointly underwrote insurance in the London Companies Market as part of what was known as the H.S. Weavers line slip. They are Walbrook Insurance Co., Kingscroft Insurance Co., El Paso Insurance Co., Lime Street Insurance Co. of the United Kingdom, and Mutual Reinsurance Co. of Bermuda.
- 25 A related disadvantage is the inability of the erstwhile insured to purchase replacement coverage. KWELM policyholders are neither insured nor uninsured, but caught in a curious limbo.
- 26 This phenomenon also accounts for the fact that roughly two-thirds of the money set aside for dividends in Transit is still unpaid. The Interstate Insurance Receivership Compact’s proposed Uniform Receivership Law explicitly immunizes receivers that pay what turn out to be improvident early dividends against liability to later claimants, but whether that will induce greater daring in distribution of assets remains to be seen.
- 27 54 Cal. Rptr. 2d 112 (Cal. App. 1996).

- 28 73 Cal. Rptr. 2d 95 (Cal. App. 1998).
- 29 8 MEALEY'S LITIG. REP.: INS. INSOLVENCY 12 (Nov. 13, 1996).
- 30 8 MEALEY'S LITIG. REP.: INS. INSOLVENCY 13, at 4 (Dec. 2, 1996).
- 31 N.J. STAT. ANN. § 17:30C-28a (West 19____).
- 32 N.J. REV. STAT. § 17:30C-28b (19____).
- 33 N.J. REV. STAT. § 17:30C-28a (19____).
- 34 *In re Citizens Title & Mortgage Co.*, 127 N.J. Eq. 551 (Ch. 1940); *American Lead Pencil Co. v. N.J. Title Guar. & Trust Co.*, 130 N.J. Eq. 148 (Ch. 1941).
- 35 *In re Ford*, 967 F.2d 1047 (5th Cir. 1992).
- 36 *In re Liquidation of Integrity Ins. Co. (Credit Lyonnais)*, 657 A.2d 902 (N.J. Super. 1995).
- 37 The decision is somewhat remarkable because the approach taken is sua sponte. The court's approach is entirely independent from the arguments of the parties, and is only suggested by the decision of the court below.
- 38 *Citing Caminetti v. Manierre*, 142 P.2d 741 (Cal. 1943); *Carr v. Hamilton*, 129 U.S. 252 (1889); and *Commissioner of Insurance v. Massachusetts Accident Co.*, 50 N.E.2d 801 (Mass. 1945).
- 39 *Royal Ins. Co. v. Caledonian Ins. Co.*, 187 P. 748 (Cal. 1920).
- 40 *Independence Ins. Co. v. Republic Nat'l Life Ins. Co.*, 447 S.W.2d 462 (Tex. 1969); *Michigan Millers Mut. Ins. Co. v. North Am. Reins. Corp.*, 452 N.W.2d 841 (Mich. App. 1990); *American Ins. Co. v. North Am. Co. for Property and Cas. Ins.*, 697 F.2d 79 (2d Cir. 1982).
- 41 *New York State Marine Ins. Co. v. Protection Ins. Co.*, 18 Fed. Cas. 161 (D. Mass. 1841).
- 42 13A JOHN A. APPLEMAN, INSURANCE LAW AND PRACTICE § 7693 (1976).
- 43 1 Com. Cas. 197 (1895).
- 44 *Western Assurance Co. of Toronto v. Poole*, 1 KB 376 (1903).
- 45 23 Lloyd's Rep. 71, 65-76 (1925).
- 46 44 Lloyd's Rep. 189 (1932).
- 47 *National Am. Ins. Co. of Cal. v. Certain Underwriters at Lloyd's*, 93 F.3d 529 (9th Cir. 1996).
- 48 3 All E.R. 865 (1996).
- 49 *Id.* at 871.
- 50 *Id.* at 878.
- 51 *Id.* at 880.
- 52 44 Lloyd's Rep. 189 (1932).
- 53 3 All E.R. 865, 878 (1996).
- 54 William Hoffman, *Common Law of Reinsurance Loss Settlement Clauses: A Comparative Analysis of the Judicial Rule Enforcing the Reinsurer's Contractual Obligation to Indemnify the Reinsured for Settlements*, 28 TORT & INS. L.J. 659, 666 n.25 (1993).

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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

**MOTION FOR APPROVAL OF REINSURANCE
COMMUTATION AGREEMENT WITH USF&G**

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), hereby moves that the Court enter an order in the form submitted herewith approving the Reinsurance Commutation, Settlement and Release Agreement (the “Agreement”) between the Liquidator and United States Fidelity and Guaranty Company (“USF&G”). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Agreement between the Liquidator and USF&G. A redacted copy of the Agreement (with economic terms other than the recommended allowance removed) is attached as Exhibit 1. A complete copy of the Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Reinsurance Commutation Agreement with USF&G (“Bengelsdorf Confidential Affidavit”) submitted herewith under seal. The Agreement was negotiated under the direction of the Special Deputy Liquidator. It is subject to approval by the Court. Agreement ¶ 2.

Bengelsdorf Confidential Affidavit ¶ 2.

2. As a part of its business, Home entered into reinsurance agreements with numerous reinsurers under which Home ceded and the reinsurers assumed a portion of Home’s

obligations. Collection of reinsurance is the principal asset marshalling task of the Home liquidation. Bengelsdorf Confidential Affidavit ¶ 3.

3. USF&G is a subsidiary of The St. Paul Companies, whose ultimate parent is The Travelers Companies, Inc. Bengelsdorf Confidential Affidavit ¶ 4.

4. Home and USF&G entered into reinsurance agreements, including both reinsurance agreements under which Home was reinsured by USF&G and reinsurance agreements under which USF&G was reinsured by Home. Agreement, first and second whereas clauses. These agreements included ceded and assumed reinsurance directly between Home and USF&G as well as ceded and assumed reinsurance through the Excess Casualty Reinsurance Association (“ECRA”) Pool. *Id.* USF&G also ceded and Home assumed obligations through the United States Aircraft Insurance Group (“USAIG”) Pool. *Id.*, second whereas clause. Bengelsdorf Confidential Affidavit ¶ 5.

5. USF&G filed proofs of claim in the Home liquidation asserting reinsurance claims. Agreement, fifth whereas clause. USF&G also filed proofs of claim asserting contribution claims against Home based on USF&G payments to insureds also insured by Home where there was a cost-sharing agreement between the insurers prior to Home’s liquidation, contending that it paid additional amounts that would have been paid by Home under the cost-sharing agreements. See Agreement, eighth whereas clause. Bengelsdorf Confidential Affidavit ¶ 6.

6. The Liquidator sought to recover from USF&G the value of all of Home’s ceded business to USF&G. USF&G sought to use the value of its ceded business to Home and its contribution claims as offsets against its obligations to Home pursuant to RSA 402-C:34 and to obtain an allowance to the extent that its claims against Home exceeded Home’s claims against

it. The Liquidator and USF&G negotiated the Agreement to resolve these issues. Bengelsdorf Confidential Affidavit ¶ 7.

7. The Agreement provides for the commutation of all of Home's ceded business to USF&G, which consist principally of ECRA Pool and some treaty business, and all of USF&G's ceded business to Home, which consists of treaty, facultative and Pool business relationships. Agreement, first, second and eleventh whereas clauses, ¶ 10. The Agreement also resolves USF&G's contribution claims against Home to the extent that they are based on payments made by USF&G as of December 2017. Agreement, eighth and tenth whereas clauses, ¶ 10. "Future Claims" (contribution claims arising from amounts paid by USF&G after December 2017) are not included in the Agreement. USF&G reserves the right to present those claims for determination as Class V claims in the future. Agreement, tenth whereas clause. Bengelsdorf Confidential Affidavit ¶ 8.

8. The Agreement provides for the commutation of all reinsurance business between Home and USF&G and the resolution of USF&G's contribution claims (as of December 2017) for a Class V allowance in the net amount of \$1,320,574. Agreement ¶ 3. Once the commutation and the allowance are approved, Home will have concluded its reinsurance relationships with USF&G and resolved the present contribution claims. Bengelsdorf Confidential Affidavit ¶ 9.

9. The commutation and allowance is appropriate. The recommended allowance represents the difference between (a) the agreed total of USF&G claims consisting of (i) the agreed present value total of USF&G's outstanding ceded paid amounts, case reserves and incurred but not reported ("IBNR") reserves and (ii) the agreed value of USF&G's contribution claims based on paid amounts as of December 2017 and (b) the agreed present value total of

Home's outstanding ceded paid amounts, case reserves and IBNR reserves under the reinsurance contracts. See Agreement, sixth, seventh and ninth whereas clauses. Bengelsdorf Confidential Affidavit ¶ 10.

10. Offset of mutual debts or credits is authorized by RSA 402-C:34. Because netting the agreed ultimate values of the reinsurance obligations and value of the contribution claims produces a balance in USF&G's favor, an allowance to USF&G is proper. Reinsurance and contribution claims fall within the residual Class V priority under RSA 402-C:44, so the allowance to USF&G should be in that priority class. Bengelsdorf Confidential Affidavit ¶ 11.

11. The ceded and assumed reinsurance claims were valued on a comparable basis, and liquidation staff carefully evaluated the reinsurance claims and the contribution claims. Home is a net debtor to USF&G by \$1,320,574, which is the difference between USF&G's reinsurance and present contribution claims and Home's reinsurance claims. Bengelsdorf Confidential Affidavit ¶ 12.

12. The Agreement provides for the Class V allowance of the net \$1,320,574 amount to resolve the reinsurance relationships between Home and USF&G and close USF&G's contribution claims as of December 2017. Agreement ¶ 3. The Agreement fully and finally resolves USF&G's reinsurance claims and its contribution claims (other than Future Claims) as well as the Liquidator's reinsurance claims. Agreement ¶¶ 4, 5. The other provisions of the Agreement, including mutual releases by the Liquidator and USF&G (Agreement ¶¶ 6, 7), are set forth in the Agreement. The releases do not include future contribution claims. Bengelsdorf Confidential Affidavit ¶ 14.

13. The Agreement and certain supporting materials have been provided to members of the National Conference of Insurance Guaranty Funds' Subcommittee on The Home Insurance

Company in Liquidation (“NCIGF Subcommittee”), who have entered confidentiality agreements. The NCIGF Subcommittee has advised the Liquidator that it has no objection to the Agreement. Bengelsdorf Confidential Affidavit ¶ 15.

14. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Agreement. Bengelsdorf Confidential Affidavit ¶¶ 8-15. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Agreement is fair and reasonable and in the best interests of the policyholders and other creditors of Home. The Agreement will appropriately resolve a complex set of reinsurance relationships as well as contribution claims as of December 2017. The Liquidator recommends that the Agreement be approved and that USF&G’s proofs of claim be allowed as a Class V claim in accordance with RSA 402-C:45 and RSA 402-C:44 in the net aggregate amount of \$1,320,574 (not including Future Claims as defined in the Agreement). See Bengelsdorf Confidential Affidavit ¶ 16.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with USF&G;
- B. Enter an Order in the form submitted herewith approving the Agreement and allowing USF&G’s claims as a Class V claim in the net amount of \$1,320,574 (not including Future Claims as defined in the Agreement); and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

JOHN R. ELIAS, INSURANCE
COMMISSIONER OF THE STATE OF
NEW HAMPSHIRE, SOLELY AS
LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

By his attorneys,

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February 25, 2019

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with USF&G and the Proposed Order Approving Reinsurance Commutation Agreement with USF&G were sent, this 25th day of February, 2019, by first class mail, postage prepaid to all persons on the attached service list. The Confidential Affidavit being filed under seal was not so served.



Eric A. Smith
NH Bar ID No. 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106

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REDACTED

**REINSURANCE COMMUTATION, SETTLEMENT
AND RELEASE AGREEMENT**

THIS REINSURANCE COMMUTATION SETTLEMENT AND RELEASE AGREEMENT (the "Agreement") is made and entered into by and between John R. Elias, the New Hampshire Insurance Commissioner, solely in his capacity as court appointed liquidator (the "Liquidator") of The Home Insurance Company ("Home") and United States Fidelity and Guaranty Company ("USF&G"). The Liquidator, Home and USF&G are referred to herein individually by name or as "Party" and collectively herein as the "Parties."

WITNESSETH:

WHEREAS, Home and USF&G entered into certain reinsurance agreements (the "Home Ceded Reinsurance Agreements"), pursuant to which Home ceded to USF&G, and USF&G accepted from Home, a certain share of Home's liabilities as more fully reflected in the percentages of participation and periods for each of the respective Home Ceded Reinsurance Agreements. For the avoidance of doubt, Home Ceded Reinsurance Agreements includes any and all reinsurance agreements pursuant to which Home is the cedent and USF&G is the reinsurer, including those reinsurance arrangements pursuant to which Home ceded to USF&G through the Excess Casualty Reinsurance Association ("ECRA");

WHEREAS, USF&G entered into certain reinsurance agreements (the "USF&G Ceded Reinsurance Agreements"), pursuant to which USF&G ceded to Home, and Home accepted from USF&G, a certain share of USF&G's liabilities as more fully reflected in the percentages of participation and periods for each of the respective USF&G Ceded Reinsurance Agreements. For the avoidance of doubt, USF&G Ceded Reinsurance Agreements includes any and all reinsurance agreements pursuant to which USF&G is the cedent and Home is the reinsurer, including those reinsurance arrangements pursuant to which USF&G ceded to Home through ECRA and the United States Aircraft Insurance Group ("USAIG");

WHEREAS, the Home Ceded Reinsurance Agreements and the USF&G Ceded Reinsurance Agreements shall be defined herein as the "Settled Reinsurance Agreements";

WHEREAS, Home was placed into liquidation by the June 13, 2003 Order of the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the liquidator of Home (the liquidation proceedings referred to herein as the "Home Liquidation");

WHEREAS, in accordance with the procedures prescribed by the Liquidation Court, USF&G submitted proofs of claim in the Home estate ("USF&G POC");

WHEREAS, the Parties agree that the value of the Home Ceded Reinsurance Agreements is [REDACTED]

WHEREAS, the Parties agree that the value of the USF&G Ceded Reinsurance Agreements is [REDACTED]

WHEREAS, USF&G has asserted, in the Home Liquidation, a right to recover amounts it has paid, as of December 2017, on behalf of Home for insurance contribution claims arising from certain cost-sharing agreements entered prior to Home's insolvency (the "Contribution Claims");

WHEREAS, the Contribution Claims shall be given Class V residual priority classification in the Home estate, pursuant to under N.H. RSA 402-C:44, in the amount of [REDACTED]

WHEREAS, for the avoidance of doubt, the Contribution Claims are valued as of December 2017 and specifically exclude future payments USF&G may pay on behalf of Home for insurance contribution claims arising from certain cost-sharing arrangements, with USF&G being entitled to present these payments for determination in the Home Liquidation as Class V residual claims (hereinafter the "Future Claims");

WHEREAS, the Parties agree that it is mutually in their best interests to fully and finally settle and commute their respective past, present and future rights, obligations and liabilities (whether known or unknown) under the Settled Reinsurance Agreements and the past and present rights of USF&G regarding the Contribution Claims with immediate effect in order to resolve any and all pending outstanding issues between the Parties and eliminate the uncertainty of contingent liabilities for presently unresolved and/or unasserted claims with respect to the Settled Reinsurance Agreements and the Contribution Claims and, in consequence thereof, to enter into mutual releases relating thereto, all in accordance with the terms and conditions hereinafter contained; and

WHEREAS, this Agreement is the product of arms-length negotiations resulting in a compromise freely entered into by the Parties (following advice from their legal and other professional advisors) for their mutual benefit and in good faith, with the intend and effect of releasing them from USF&G's and Home's respective obligations under the Settled Reinsurance Agreements.

NOW THEREFORE, intending to be legally bound, in consideration of the promises, covenants, representations, warranties, payments, agreements and other good and valuable consideration recited and set forth herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. The recitals contained above are hereby incorporated by reference as though fully set forth herein.
2. This Agreement shall only become effective on the date that this Agreement is approved by the Liquidation Court ("Court Approval"). This Agreement is conditioned upon approval by the Liquidation Court and in the event that the Liquidation Court does not approve this Agreement, it shall be deemed null and void *ab initio* and of no force or effect. Home and the Liquidator will use their best efforts to have this Agreement approved by the Liquidation Court as soon as possible.
3. No payment is required from USF&G to the Liquidator or from the Liquidator to USF&G in connection with the settlement and commutation of the liabilities

arising under the Settled Reinsurance Agreements. The Parties agree that the balances due from Home under the USF&G Ceded Reinsurance Agreements combined with the amounts due pursuant to the Contribution Claims equal or exceed the balances due from USF&G under the Home Ceded Reinsurance Agreements. Upon Court Approval, the Liquidator shall be deemed to have issued and USF&G shall be deemed to have accepted a Notice of Determination with respect to the USF&G POC, assigning a Class V residual classification in the amount of US\$1,320,574.00, to reflect the value of the USF&G Ceded Reinsurance Agreements plus the Contribution Claims, but not the Future Claims, less the value of the Home Ceded Reinsurance Agreements.

4. This Agreement shall fully and finally resolve the USF&G POC filed in the Home Liquidation with respect to the USF&G Ceded Reinsurance Agreements and the Contribution Claims and USF&G shall waive and forever be barred from bringing or asserting any subsequent claim in the Home Liquidation with respect to the USF&G Ceded Reinsurance Agreements and Contribution Claims. For the avoidance of doubt, this Agreement does not apply to the Future Claims.

5. This Agreement shall fully and finally resolve any claims that Home (and the Liquidator) has, or may have in the future, against USF&G with respect to the Home Ceded Reinsurance Agreements and Home (and the Liquidator) shall waive and forever be barred from bringing or asserting any claims against USF&G with respect to the Home Ceded Reinsurance Agreements.

6. Upon the Court Approval and subject to the terms of this Agreement, the Liquidator on behalf of Home, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns, irrevocably and unconditionally releases and discharges USF&G, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, representatives, liquidators, receivers and rehabilitators and their respective predecessors, successors and assigns to the extent permitted by applicable law from any and all liabilities, adjustments, obligations, offsets, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, premiums, returned premiums, unearned premiums, losses, salvage, commissions,

variances, expenses, acts, omissions, executions, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, claims and demands whatsoever, all whether known or unknown to one of both parties, suspected or unsuspected, fixed or contingent in law or in equity, which the Liquidator or Home ever had, now has, or hereafter may have against USF&G by reason of any matter whatsoever arising out of or in connection with or in relation to the Settled Reinsurance Agreements and the Contribution Claims. For the avoidance of doubt, the releases contained in this Paragraph 6 do not include the Future Claims. Additionally, the Liquidator fully understands and expressly waives Home's rights and benefits with respect to the Settled Reinsurance Agreements and the Contribution Claims under any provision of law which substantially provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

7. Upon Court Approval and subject to the terms and conditions of this Agreement and in consideration of the release of USF&G pursuant to Paragraph 4 above, USF&G on behalf of itself, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, pool members and their successors and assigns (including any liquidator or statutory successor), irrevocably and unconditionally releases and discharges the Liquidator and Home and their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and/or demands arising from or related to the Settled Reinsurance Agreements and the Contribution Claims, in law, admiralty or equity, which USF&G ever had, now has or hereafter may have against Liquidator and/or Home or its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity,

arising from or related to the Settled Reinsurance Agreements and the Contribution Claims. For the avoidance of doubt, the releases contained in this Paragraph 7 do not include the Future Claims. Additionally, USF&G fully understands and expressly waives its rights and benefits with respect to the Settled Reinsurance Agreements and the Contribution Claims under any provision of law which substantially provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

8. This Agreement embodies the final, complete and entire agreement between the Parties as respects the Settled Reinsurance Agreements and the Contribution Claims and is the product of their own independent legal advice and analysis. This Agreement supersedes all other prior negotiations, commitments, agreements and understandings, both oral and written, between the Parties with respect to the Settled Reinsurance Agreements and the Contribution Claims, and all such prior negotiations, commitments, agreements and understandings are merged into this Agreement. No other representations, understandings or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth or referred to herein.

9. If any provision of this Agreement, other than Paragraph 3, 6 or 7, is determined to be invalid, unenforceable or illegal under the law of any jurisdiction, such provision shall be deemed severable from the balance of this Agreement, and the validity and enforceability of the remaining provisions of this Agreement, and the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby. In the event that Paragraph 3, 6 and/or 7 is determined to be invalid, unenforceable or illegal under the law of any jurisdiction, each Party shall be restored to the position it was in just prior to entering into this Agreement. In the event of such invalidity, enforceability or illegality, the Parties shall negotiate in good faith to amend this Agreement through the insertion of additional provisions which are valid, enforceable and legal and which reflect, to the extent possible, the economic and other purposes contained in the invalid, unenforceable or illegal provision.

10. This Agreement shall take precedence over and supersede the Settled Reinsurance Agreements and the Contribution Claims and that notwithstanding anything to the contrary contained therein, this Agreement shall operate as a full and final settlement, commutation and release of the respective rights, obligations and liabilities of the Parties under the Settled Reinsurance Agreements and the Contribution Claims. In addition, the Parties and their respective successors and assigns absolutely and unconditionally covenant and agree that upon consummation of the transactions contemplated by this Agreement, neither will demand, claim or file suit or initiate arbitration proceedings against the other with respect to any matters relating to or arising out of the Settled Reinsurance Agreements and the Contribution Claims. For the avoidance of doubt, this Paragraph 10 does not include the Future Claims

11. The failure of any Party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Agreement, or any part hereof, or the rights of such Party to thereafter enforce each and every such provision.

12. The Parties agree and acknowledge that this Agreement is being entered into solely as a commercial accommodation, without regard to the respective positions of the Parties regarding their rights and obligations under and in terms of the Settled Reinsurance Agreements and the Contribution Claims. As such, the Parties agree that this Agreement shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any party hereto regarding any aspect of the Settled Reinsurance Agreements and the Contribution Claims, other than with respect to the terms and conditions herein contained.

13. (A) USF&G represents that it is duly authorized to enter into this Agreement and the transactions contemplated herein, and that the representative signing this Agreement is fully authorized to execute this Agreement on its behalf; that all requisite and necessary approvals have been obtained to consummate the transactions contemplated by this Agreement; that no other agreement, undertaking, contract or matter is known to exist that might render this Agreement void, voidable or unenforceable; and that it has read this

Agreement, that it understands its contents and that it is being executed freely and voluntarily with an intent for it to collectively be bound by its terms; and (B) the Liquidator represents and warrants that he is duly authorized to enter into this Agreement and the transactions contemplated herein on behalf of Home; that no other agreement, undertaking, contract or matter is known to exist that might render this Agreement void, voidable or unenforceable; that he has read this Agreement, understands its contents, and that the person signing this Agreement on behalf of the Liquidator is fully authorized to execute this Agreement freely and voluntarily on his behalf with an intent for Home and the Liquidator to be bound by its terms.

14. This Agreement shall inure to the benefit of and bind the Parties and their respective predecessors, parents, affiliates, subsidiaries, successors and assigns (including their rehabilitators, liquidators or other statutory successors) to the maximum extent permitted by applicable law.

15. No supplement, amendment, variation, modification, waiver or termination of this Agreement shall be effective unless in writing and signed by the Parties.

16. It is hereby agreed that the Parties, including but not limited to their attorneys, agents, representatives and affiliates, will not disclose the terms of this Agreement to anyone other than is necessary to effectuate the terms of this Agreement; except that the Parties may disclose the terms of this Agreement to and through their attorneys, accountants, reinsurers, retrocessionaires and auditors for a legitimate business purpose where a specific need for such disclosure arises in the judgment of such attorneys, accountants, reinsurer and auditors, or in response to lawful process. Notwithstanding the foregoing, nothing in this provision shall restrict the ability of the Parties to disclose the terms of this Agreement to regulatory entities or in connection with reports and statements that they may be required from time to time to file or submit to government agencies, or in support of a motion for approval by any court.

17. The Parties represent and agree that the consideration for this Agreement, provided in exchange for the Parties' mutual promises made herein, is fair and reasonable. The Parties further agree to provide each other with an appropriate affidavit to this effect

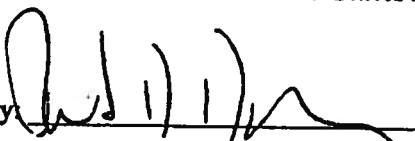
if such an affidavit becomes necessary to uphold or enforce the legitimacy of this Agreement.

18. This Agreement may be executed in multiple counterparts, each of which, when so delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail to the other Party shall have the same force and effect as an original signature. This Agreement shall be of no force and effect until executed by all of the Parties.

19. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the conflicts of law provisions thereof. The Parties agree that the Liquidation Court shall be the exclusive venue for any dispute between the Parties arising out of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective authorized officers.

For and on behalf of United States Fidelity and Guaranty Company

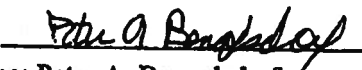
By: 

Date: February 1, 2019

Name: Richard D. Dupree

Title: Vice President of Reinsurance Operations

For and on behalf of John R. Elias, the New Hampshire Commissioner of Insurance, solely in his capacity as Liquidator of The Home Insurance Company

By: 

Date: February 1, 2019

Name: Peter A. Bengelsdorf

Title: Special Deputy Liquidator of The Home Insurance Company in Liquidation

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

**MOTION FOR APPROVAL OF REINSURANCE
COMMUTATION AGREEMENT WITH NATIONAL CASUALTY CO.**

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), hereby moves that the Court enter an order in the form submitted herewith approving the Reinsurance Commutation Agreement, Settlement and Release (the “Agreement”) between the Liquidator and National Casualty Co. (“NCC”). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Agreement between the Liquidator and NCC. A redacted copy of the Agreement (with economic terms other than a recommended allowance removed) is attached as Exhibit 1. A complete copy of the Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Reinsurance Commutation Agreement with National Casualty Co. (“Bengelsdorf Confidential Aff.”) submitted herewith under seal. The Agreement was negotiated under the direction of the Special Deputy Liquidator. It is subject to approval by the Court. Agreement ¶ 2. Bengelsdorf Confidential Aff. ¶ 2.

2. As a part of its business, Home entered into reinsurance agreements with numerous reinsurers under which Home ceded and the reinsurers assumed a portion of Home’s

obligations. Collection of reinsurance is the principal asset marshalling task of the Home liquidation. Bengelsdorf Confidential Aff. ¶ 3.

3. NCC is a property and casualty insurer and reinsurer that no longer writes business and is in run-off. NCC is a wholly-owned subsidiary of Nationwide Insurance Group. Bengelsdorf Confidential Aff. ¶ 4.

4. Prior to 1982, Home and NCC entered into various reinsurance agreements, including both reinsurance agreements under which Home ceded liabilities to and was reinsured by NCC and reinsurance agreements under which NCC ceded liabilities to and was reinsured by Home (the “Direct Reinsurance Agreements”). Agreement, first whereas clause. Home, through its United Kingdom Branch, participated in the American Foreign Insurance Association (“AFIA”), through which it entered certain reinsurance agreements under which NCC ceded to Home certain shares of NCC liabilities as reflected in those agreements (the “NCC-AFIA Reinsurance Agreements”). Id., second whereas clause. The Direct Reinsurance Agreements and the NCC-AFIA Reinsurance Agreements together constitute the “Reinsurance Agreements.” Id., third whereas clause. Bengelsdorf Confidential Affidavit ¶ 5.

5. NCC filed proofs of claim in the Home liquidation asserting reinsurance claims under the NCC-AFIA Reinsurance Agreements (“NCC-AFIA Proofs of Claim”) and also under certain of the Direct Reinsurance Agreements concerning the H.S. Weavers Pool (together with the NCC-AFIA Proofs of Claim, the “NCC Proofs of Claim”). Agreement, fifth, sixth and seventh whereas clauses. Bengelsdorf Confidential Aff. ¶ 6.

6. Century Indemnity Company (“CIC”) reinsures Home for AFIA obligations, and through Chubb Insurance Services UK Limited (“CISUK”) handles AFIA claims in accordance

with the claims protocol approved by the Court on November 12, 2004. See Agreement, eighth whereas clause. Bengelsdorf Confidential Aff. ¶ 7.

7. The Liquidator, NCC and CIC have agreed that the value of NCC's claims under the NCC-AFIA Reinsurance Agreements is \$100,000 to be reflected in a Class V allowance of that amount. Agreement, ninth whereas clause. Bengelsdorf Confidential Aff. ¶ 8.

8. The Liquidator sought to recover from NCC the value of all of Home's ceded business to NCC. NCC sought to use the value of its ceded business to Home, including its claims under the NCC-AFIA Reinsurance Agreements, as offsets against its obligations to Home pursuant to RSA 402-C:34. The Liquidator and NCC negotiated the Agreement to resolve these issues. Bengelsdorf Confidential Aff. ¶ 9.

9. The Agreement provides for the commutation of all of Home's ceded business to NCC and all of NCC's ceded business to Home for a payment to Home of a net sum certain. Agreement, tenth and eleventh whereas clauses, ¶¶ 4, 11. As part of the commutation, the Agreement provides for the approval of NCC's claims under the NCC-AFIA Reinsurance Agreements in proof of claim INTL 277996 as a Class V allowance in the amount of \$100,000. Id., ¶ 3. NCC's proofs of claim are otherwise deemed resolved with prejudice. Id. The allowance is satisfied by applying the allowed amount as an offset against NCC obligations to Home under the Direct Reinsurance Agreements in arriving at the net commutation amount. Id., ¶ 4. Once the commutation is approved and the payment made, Home will have concluded its reinsurance relationships with NCC. Bengelsdorf Confidential Aff. ¶ 10.

10. The commutation and allowance are reasonable and appropriate. The net payment to Home under Agreement ¶ 4 represents the difference between agreed present value totals of Home claims against NCC (paid, case reserves and incurred but not reported ("IBNR"))

reserves) and of NCC claims against Home (paid, case reserves and IBNR reserves) under the Reinsurance Agreements. The NCC numbers include the \$100,000 value of NCC's AFIA claims as agreed by CIC. See Agreement, ninth whereas clause, ¶¶ 3, 4. Bengelsdorf Confidential Aff. ¶ 11.

11. The Agreement fully and finally resolves NCC's reinsurance claims against Home and the Liquidator's reinsurance claims against NCC. Agreement ¶¶ 3, 4. The other provisions of the Agreement are set forth in the Agreement. Those provisions include mutual releases by the Liquidator and NCC that use broad definitions to ensure that the relationships between Home and NCC are resolved. See *id.* ¶¶ 1, 6, 7. Relationships with Nationwide Indemnity Company are excluded. *Id.*, ¶ 1(b). Bengelsdorf Confidential Aff. ¶ 15.

12. The Agreement and certain supporting materials have been provided to members of the National Conference of Insurance Guaranty Funds' Subcommittee on The Home Insurance Company in Liquidation ("NCIGF Subcommittee"), who have entered confidentiality agreements. The NCIGF Subcommittee has advised the Liquidator that it has no objection to the Agreement. Bengelsdorf Confidential Aff. ¶ 16.

13. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Agreement. Bengelsdorf Confidential Affidavit ¶¶ 10-16. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Agreement is fair and reasonable and in the best interests of the policyholders and other creditors of Home. The Agreement will appropriately resolve a complex set of reinsurance relationships. The Liquidator accordingly recommends that the Agreement be approved and that NCC's NCC-AFIA Proofs of Claim be allowed as a Class V claim in accordance with RSA 402-C:45 and RSA

402-C:44 in the amount of \$100,000. The allowance has been satisfied by setoff. See Bengelsdorf Confidential Aff. ¶ 17.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with National Casualty Co.;
- B. Enter an Order in the form submitted herewith approving the Agreement and allowing NCC's NCC-AFIA claims as a Class V claim in the amount of \$100,000, which has been satisfied by offset; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

JOHN R. ELIAS, INSURANCE
COMMISSIONER OF THE STATE OF
NEW HAMPSHIRE, SOLELY AS
LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

By his attorneys,

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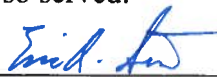


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August 22, 2019

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with National Casualty Co. and the Proposed Order Approving Reinsurance Commutation Agreement with National Casualty Co. were sent, this 2nd day of August, 2019, by first class mail, postage prepaid to all persons on the attached service list. The Confidential Affidavit being filed under seal was not so served.



Eric A. Smith
NH Bar ID No. 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106

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**REINSURANCE COMMUTATION
AGREEMENT, SETTLEMENT AND RELEASE**

THIS REINSURANCE COMMUTATION AGREEMENT, SETTLEMENT AND RELEASE (the "Agreement") is made and entered into by and between John R. Elias, New Hampshire Insurance Commissioner, solely in his capacity as Liquidator (the "Liquidator") of The Home Insurance Company ("Home"), and National Casualty Co. ("NCC"). The Liquidator and NCC are referred to collectively herein as the "Parties."

WITNESSETH:

WHEREAS, prior to January 1, 1982, Home and NCC entered into various reinsurance, pooling, agency and association agreements pursuant to which either Home ceded liabilities to NCC that NCC assumed or NCC ceded liabilities to Home that Home assumed, all in accordance with the terms and conditions therein contained (the "Direct Reinsurance Agreements");

WHEREAS, Home, through its United Kingdom Branch ("Home U.K."), participated in the American Foreign Insurance Association ("AFIA"), in which capacity it entered into certain reinsurance agreements with NCC, pursuant to which NCC ceded to Home, and Home accepted from NCC, a certain share of NCC's liabilities as more fully reflected in the percentages of participation and periods for each respective reinsurance agreement (the "NCC-AFIA Reinsurance Agreements");

WHEREAS, the Direct Reinsurance Agreements and the NCC-AFIA Reinsurance Agreements are defined collectively herein as the "Reinsurance Agreements;"

WHEREAS, Home is in liquidation pursuant to the June 13, 2003 Order of Liquidation issued by the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home;

WHEREAS, NCC seeks recovery from Home under the NCC-AFIA Reinsurance Agreements, in relation to which NCC has submitted a proof of claim in the Home estate, which has been assigned Proof of Claim No. INTL 277996, and which together with any other proof of

claim that NCC may have otherwise filed or could subsequently seek to file in the Home estate with respect to NCC-AFIA Reinsurance Agreements are hereby defined as the “NCC-AFIA Proofs of Claim;”

WHEREAS, NCC also submitted a Proof of Claim, denominated RCED700767, seeking recovery under reinsurance agreements from Home for amounts due under the H.S. Weavers Pool (the “Weavers Proof of Claim”);

WHEREAS, the “NCC-AFIA Proofs of Claim” and the “Weavers Proof of Claim” are defined herein as the “NCC Proofs of Claim”;

WHEREAS, Century Indemnity Company (“CIC”) acts as Home’s reinsurer for Home’s AFIA liabilities and manages CIC’s AFIA-related obligations through Chubb Insurance Services UK Limited (“CISUK”);

WHEREAS, after negotiations with CISUK (acting for CIC, which approves of this Commutation as it pertains to the NCC-AFIA Reinsurance Agreements), the Parties have agreed that subject to the terms of this Agreement, the value of NCC’s claim in the Home estate under the NCC-AFIA Reinsurance Agreements shall be fully and finally established by a Class V allowance in the amount of \$100,000.00 (the “Recommended Allowance”);

WHEREAS, in addition to their past and present obligations under the Reinsurance Agreements, Home and NCC recognize and understand that a portion of their respective obligations thereunder may become due in the future; that these future obligations and liabilities cannot be determined in an amount certain at this time; and that a commutation of these future and uncertain obligations and the Parties’ past and present obligations will resolve all pending and outstanding issues between the Parties and will eliminate the uncertainty of contingent liabilities for presently unresolved and/or unasserted claims with respect to the Reinsurance Agreements; and

WHEREAS, the Parties agree that it is mutually in their best interests to fully and finally settle and commute their respective past, present and future rights, obligations and liabilities (whether known or unknown) under the Reinsurance Agreements and enter into mutual releases relating thereto, all in accordance with the terms and conditions hereinafter contained.

NOW THEREFORE, intending to be legally bound, in consideration of the foregoing Recitals that are made part of this Agreement and promises, covenants, representations, warranties, payments, agreements and other good and valuable consideration recited and set forth herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Definitions. Each of the following terms, as defined, whose initial letter is capitalized, pertains to the definitions of 'Direct Reinsurance Agreements', 'NCC-AFIA Reinsurance Agreements', and 'Reinsurance Agreements' and the releases of paragraphs 6 and 7."

a. "Home" means The Home Insurance Company including, without limitation, City Insurance Company; City Insurance U.K. Branch; City Insurance Company (U.K.) Limited, City (U.K.) Insurance Company Limited; Home U.K. Branch; Cityvest International, Limited; Cityvest Reinsurance Limited; The Home Indemnity Company; The Home Insurance Company of Illinois; The Home Insurance Company of Indiana; The Home Insurance Company of Wisconsin; Home Lloyd's Insurance Company of Texas; U.S. International Reinsurance Company; U.S. International Re, Inc.; The Home Re Syndicate, Inc.; The Home Reinsurance Company; Rolfe Group Limited; Reandex Home International Limited; and Commonwealth Insurance Company.

b. "NCC" means National Casualty Company including National Casualty Company of America, Ltd. but specifically excluding Nationwide Indemnity Company.

2. This Agreement shall only become effective on the date that this Agreement, and the Recommended Allowance, are approved by the Liquidation Court (the "Effective Date"). This Agreement is conditioned upon such approval, failing which this Agreement shall be deemed null and void *ab initio* and of no force or effect, with this Agreement being inadmissible for any purpose in any dispute between the Parties.

3. Approval of this Agreement by the Liquidation Court shall constitute approval of the Recommended Allowance of \$100,000.00 into the Home estate as a Class V priority claim under N.H. RSA 402-C:44 in favor of NCC (the "Allowance"). The Parties agree that the Allowance shall constitute a full and final settlement of any and all past, present and future liabilities due or potentially due under the NCC-AFIA Reinsurance Agreements and that the Allowance fully and finally extinguishes the NCC Proofs of Claim, which shall be deemed resolved with prejudice and NCC hereby agrees that it shall be forever barred and precluded from filing any subsequent NCC Proof of Claim in the Home estate.

4. Within fourteen (14) days after the Effective Date, NCC will pay to the Liquidator the sum of [REDACTED] (the "Net Settlement Sum"), in full and final settlement of any and all past, present and future obligations and liabilities due or potentially due from Home and NCC to each other under the Direct Reinsurance Agreements, with time being of the essence in the performance by NCC in effecting such payment. Payment of the Net Settlement Sum shall be effected by transmittal by wire transfer as follows:

Citizens Bank, Manchester, NH, USA
ABA No. [REDACTED]
For the Account of The Home Insurance Company in Liquidation
Account No. [REDACTED]
Attention: Jamie Archibald

The Net Settlement Sum shall be transferred free and clear of and without any deduction for or on account of any set-off or counterclaim whatsoever, whether arising out of or relating to the Direct Reinsurance Agreements or otherwise. In addition, NCC acknowledges and agrees that the Allowance has been satisfied by offset of the Allowance against NCC obligations to Home under the Direct Reinsurance Agreements in arriving at the Net Settlement Sum and that NCC has no further claim to the amount set forth in the Allowance.

5. If NCC fails to pay any portion of the Net Settlement Sum within fourteen (14) days after the Effective Date, NCC shall pay (1) interest on any unpaid amounts [REDACTED] [REDACTED] calculated from the Effective Date; and (2) any and all costs, including reasonable attorneys' fees, incurred by Home in recovering the Net Settlement Sum in full (the "Collection Costs"). The acceptance by Home of the Net Settlement Sum together with all interest and Collection Costs due in respect of late payment as determined and calculated as aforesaid shall (subject to the terms of this Agreement) constitute a full and final settlement and release by Home hereunder as if payment of the Net Settlement Sum had been made in full within fourteen (14) days after the Effective Date.

6. Subject to the terms and conditions of this Agreement, and to the timely payment in full by NCC of the Net Settlement Sum, the Liquidator on behalf of Home, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors and assigns, irrevocably and unconditionally releases and discharges NCC, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates,

shareholders, parents, and their respective predecessors, successors and assigns to the extent permitted by applicable law from any and all liabilities, adjustments, obligations, offsets, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, premiums, returned premiums, unearned premiums, losses, salvage, specialties, commissions, variances, expenses, acts, omissions, bonds, bills, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, all whether known or unknown to one or both parties, suspected or unsuspected, fixed or contingent, in law admiralty or equity, which the Liquidator or Home ever had, now has, or hereafter may have against NCC under the Reinsurance Agreements. Additionally, the Liquidator fully understands and expressly waives Home's rights and benefits with respect to the Settled Agreements under any provision of law which substantially provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

7. Subject to approval by the Liquidation Court and in consideration of the release of NCC pursuant to Paragraph 6 above, NCC on behalf of itself, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors and assigns, irrevocably and unconditionally releases and discharges the Liquidator and Home and their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors and assigns to the extent permitted by applicable law from any and all liabilities, adjustments, obligations, offsets, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, premiums, returned premiums, unearned premiums, losses, salvage, specialties, commissions, variances, expenses, acts, omissions, bonds, bills, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, all whether known or unknown to one or both parties, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, which NCC ever had, now has, or hereafter may have against the Liquidator and/or Home under the Reinsurance Agreements. Additionally, NCC fully understands and expressly waives its rights and benefits with respect to the Settled Agreements under any provision of law which substantially provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

8. This Agreement shall, subject to its approval by the Liquidation Court, inure to the benefit of and bind the Parties and their respective predecessors, parents, affiliates, subsidiaries, successors and assigns (including their rehabilitators, liquidators or other statutory successors) to the maximum extent permitted by applicable law. The Parties each represent and warrant that they have not prior hereto assigned or otherwise transferred to any other entity any of the rights, entitlements or interests in or to the Reinsurance Agreements commuted and released hereunder.

9. This Agreement embodies the final, complete and entire agreement between the Parties. The Parties acknowledge that they have entered into this Agreement in reliance on their own independent investigation and analysis of the matters forming the subject of this Agreement and their rights and obligations with respect thereto. No other representations, understandings or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth or referred to herein.

10. If any provision of this Agreement is invalid, unenforceable or illegal under the law of any applicable jurisdiction, such provision shall be deemed severable from the balance of this Agreement, and the validity and enforceability of the remaining provisions of this Agreement, and the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby. In the event of such invalidity, enforceability or illegality, the Parties shall negotiate in good faith to amend this Agreement through the insertion of additional provisions which are valid, enforceable and legal and which reflect, to the extent possible, the economic and other purposes contained in the invalid, unenforceable or illegal provision.

11. Subject to the provisions of Paragraph 2, the Parties hereby agree that this Agreement shall take precedence over and supersede the Reinsurance Agreements and that notwithstanding anything to the contrary contained therein, this Agreement shall operate as a full and final settlement, commutation and release of the respective rights, obligations and liabilities of the Parties under the Reinsurance Agreements. In addition, the Parties and their respective

successors and assigns absolutely and unconditionally covenant and agree that upon consummation of the transactions contemplated by this Agreement, neither will demand, claim or file suit or initiate arbitration proceedings against the other with respect to any matters relating to or arising out of the Reinsurance Agreements.

12. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Agreement, or any part hereof, or the rights of such party to thereafter enforce each and every such provision.

13. The Parties agree and acknowledge that this Agreement is being entered into solely as a commercial accommodation, without regard to the respective positions of the Parties regarding their rights and obligations under and in terms of the Reinsurance Agreements. As such, the Parties agree that this Agreement shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any party hereto regarding any aspect of the Reinsurance Agreements, other than with respect to the terms and conditions herein contained.

14. (a) NCC represents and warrants that it is a legally constituted entity in good standing; that it is not insolvent; that it is duly authorized to enter into this Agreement and the transactions contemplated herein; that the person signing this Agreement is fully authorized to execute this Agreement on its behalf; that all requisite and necessary approvals have been obtained to consummate the transactions contemplated by this Agreement; that no other agreement, undertaking, contract or matter is known to exist that might render this Agreement void, voidable or unenforceable; and that it has read this Agreement, that it understands its contents and that it is being executed freely and voluntarily with an intent for it to be bound by its terms; and (b) the Liquidator represents and warrants that, subject to the Liquidation Court's approval, he is duly authorized to enter into this Agreement and the transactions contemplated herein; that no other agreement, undertaking, contract or matter is known to exist that might render this Agreement void, voidable or unenforceable; that he has read this Agreement, understands its contents, and that the person signing this Agreement is fully authorized to

execute this Agreement freely and voluntarily on his behalf with an intent for Home to be bound by its terms.

15. No supplement, amendment, variation, modification, waiver or termination of this Agreement shall be effective unless in writing and signed by the Parties.

16. The Parties, including but not limited to their attorneys, agents, representatives and affiliates, will not disclose the economic terms of this Agreement (other than the Allowance) to anyone other than is necessary to effectuate the terms of this Agreement; except that the Parties may disclose the economic terms of this Agreement to and through their attorneys, accountants, reinsurers, retrocessionaires and auditors for a legitimate business purpose where a specific need for such disclosure arises in the judgment of such attorneys, accountants, reinsurer and auditors, or in response to lawful process. Notwithstanding the foregoing, nothing in this provision shall restrict the ability of the Parties to disclose the terms of this Agreement to regulatory entities or in connection with reports and statements that they may be required from time to time to file or submit to government agencies, or in support of a motion for approval by the Liquidation Court.

17. The Parties represent that the consideration for this Agreement, provided in exchange for the Parties' mutual promises made herein, is fair and reasonable. The Parties shall provide each other with an appropriate affidavit to this effect if such an affidavit becomes necessary to uphold or enforce the legitimacy of this Agreement.

18. This Agreement may be executed in multiple counterparts, each of which, when so delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail to the other Party shall have the same force and effect as an original signature. This Agreement shall be of no force and effect until executed by the Parties.

19. All notices under this Agreement shall be in writing, as follows:

If to NCC:

Nationwide Indemnity Company
600 Westwood Drive
Wausau, WI 64402-8067
Attention: Frederick C. Schaefer

If to the Liquidator:

The Home Insurance Company
in Liquidation
61 Broadway
New York, NY 10006

Attention: Russell G. Bogin

- and -

Rackemann, Sawyer & Brewster
160 Federal Street
Boston, MA 02110-1700
Attention: Eric A. Smith

NH Department of Justice
33 Capitol Street
Concord, NH 03301-6397
Attention: J. Christopher Marshall

or to such other address(es) as notified in writing by either Party to the other.

20. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the conflicts of law provisions thereof. The Parties agree that the Liquidation Court shall be the exclusive venue for any dispute between the Parties arising out of this Agreement and the Parties agree to submit to the jurisdiction of the Liquidation Court for such purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective authorized officers.

**John R. Elias, New Hampshire Insurance Commissioner,
solely in his capacity as Liquidator of The Home Insurance Company**

By: Peter A Bengelsdorf Date: August 7, 2019
Name: Peter A. Bengelsdorf
Title: Special Deputy Liquidator of The Home Insurance Company

National Casualty Co.

By: John A. Tevco, Jr Date: August 7, 2019
Name: John A. Tevco, Jr
Title: AVP Reinsurance

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

**ZURICH INSURANCE PLC, GERMAN BRANCH AND
WÜRTTEMBERGISCHE VERSICHERUNG AG'S
MOTION FOR APPROVAL TO FILE SUR-REPLY IN SUPPORT OF OBJECTION TO
LIQUIDATOR'S MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE**

Zurich Insurance plc, German Branch and Württembergische Versicherung AG (hereinafter, "Objecting Creditors"), by and through their attorneys, McLane Middleton, Professional Association and Freeborn & Peters, LLP, submit this motion to permit the filing a sur-reply to the Liquidator's response to their objection to the Liquidator's motion for approval of claims amendment deadline ("Objection"). In support of this motion, Objecting Creditors state as follows:

1. Objecting Creditors submit this motion to allow the filing of the Sur-Reply attached as Exhibit A to this motion.
2. Counsel for the Objecting Creditors has spoken with counsel for the Liquidator about the Sur-Reply. The Liquidator does not object to the filing of the Sur-Reply as long as the Liquidator has the opportunity to respond to the Sur-Reply. The Objecting Creditors will not object to the Liquidator's opportunity to respond to their Sur-Reply.
3. The Sur-Reply attached as Exhibit A will help to clarify the specific issues in dispute between and among the Objecting Creditors and the Liquidator's position about the amendment to the claim deadline.

4. The Objecting Creditors do not submit a memorandum of law in support of this motion as the decision to grant the motion rests on the sound discretion of the court.

WHEREFORE, the Objecting Creditors request this court:

- A. Grant this Motion to Allow Filing of Sur-Reply;
- B. Accept as Sur-Reply the document attached as Exhibit A; and
- C. Grant such other and further relief as the court deems just and necessary.

Respectfully submitted,

ZURICH INSURANCE PLC GERMAN BRANCH AND
WÜRTTEMBERGISCHE VERSICHERUNG AG,

By their Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: 2/27/20

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Date: 2/27/20

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**Pro Hac Vice Pending*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Zurich Insurance plc German Branch's and Württembergische Versicherung AG's Motion for Approval to Submit Sur-Reply in Support of the Objection to Liquidator's Motion for Approval of Claim Amendment Deadline was sent this 27th day of February 2020 by first class mail, postage prepaid to all persons on the attached service list.



Mark C. Rouvalis

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106**

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Manchester, New Hampshire 03861

EXHIBIT A

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

**ZURICH INSURANCE PLC, GERMAN BRANCH AND
WÜRTTEMBERGISCHE VERSICHERUNG AG'S
SUR-REPLY IN SUPPORT OF THEIR OBJECTION TO THE
LIQUIDATOR'S MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE**

[ORAL ARGUMENT REQUESTED]

Zurich Insurance plc, German Branch and Württembergische Versicherung AG (hereinafter, "Objecting Creditors"), by and through their attorneys, McLane Middleton, Professional Association and Freeborn & Peters, LLP, submit the following sur-reply ("Sur-Reply") to the Liquidator's Response ("Response" or "Resp.") to their Objection to The Liquidator's Motion for Approval of Claim Amendment Deadline ("Objection" or "Obj.").

INTRODUCTION

The Liquidator's Motion for Approval of Claim Amendment Deadline ("Motion" or "Mot.") seeks to prematurely end The Home's liquidation proceeding far earlier than other large insurance company liquidation proceedings and thereby: 1) forfeit reinsurance recoveries that would benefit priority creditors of the Estate and 2) bar claims by The Home's policyholders that will become ripe for filing over the next several years for losses arising from talc, child sexual abuse, and other long-tail liabilities of The Home. The Liquidator's Response fails to address the fact that the Scheme of Arrangement and the process approved by the New Hampshire Supreme Court bestows Class I status on amounts due the AFIA Cedents. Furthermore, the Liquidator has failed to advise this Court of the estimated amount of future claims (IBNR) he

seeks to cut off and the estimated amount of reinsurance recoveries on those claims that he seeks to surrender. In fact, he admits that he does not know the amount of IBNR his Motion would bar and the amount of reinsurance recoverables that would be lost.

By depriving priority creditors of the opportunity to file their claims in the Estate over the next several years, and thereby forfeiting the Estate's largest asset, the Motion is contrary to the best interests of priority creditors of The Home Estate. As the Liquidator admits, there are insufficient assets to pay all Class II creditors claims in full (Resp. at 9), and yet he is asking this Court for approval to squander the opportunity to increase substantially the assets of the Estate and pay more to Class II claimants. The primary beneficiaries of the Motion are the reinsurance debtors of The Home, which would reap an enormous windfall by being relieved of their obligations under their reinsurance contracts to pay the long-tail claims of The Home.

ARGUMENT

In his Response, the Liquidator makes five arguments against the Objection filed by the Objecting Creditors, which this Sur-Reply addresses in turn below.

I. At the Liquidator's Request, the New Hampshire Supreme Court Bestowed on AFIA Cedents Class I Creditor Priority Status, and Their Interests Are Aligned with the Interests of Class II Policyholder Creditors

The Liquidator attempts to make a false distinction between the interests of the Objecting Creditors and other AFIA Cedents, on the one hand, and the Class II creditors of The Home, asserting that New Hampshire law only seeks to protect insureds and not reinsureds. Resp. at 7-8. Thus, the Liquidator contends that the opposition of the Objecting Creditors and other AFIA Cedents should effectively be ignored.

This argument of the Liquidator does not stand up to scrutiny, as it ignores the fact that 50 percent of the claims of AFIA Cedents are accorded Class I priority status by order of the

New Hampshire Supreme Court, a status that the Liquidator himself petitioned the Court to bestow. Moreover, the claims of the AFIA Cedents, which the Liquidator petitions this Court to cut off prematurely, directly benefit Class II policyholder creditors. Under the Settlement Agreements between the AFIA Cedents (including the Objecting Creditors) and The Home Estate, The Home Estate committed itself to investigate, adjust and admit or refute liability for all claims brought by policyholders insured and cedent insurance companies reinsured by the AFIA Cedents. *See* Ex. A to Objection at ¶ 7; Ex. B to Objection at ¶ 7. In exchange for the filing of these claims by the Objecting Creditors (and other AFIA Cedents), The Home Estate benefits from reinsurance recoveries on these claims, which it would otherwise have not received if the AFIA Cedents never submitted claims. Those reinsurance recoveries are distributed to the Estate's priority creditors, with 50% going to pay Class II policyholder priority creditors of The Home (the vast majority of whom are probably unaware of this asset of The Home Estate).¹ The remaining 50% would be paid to the Objecting Creditors as costs and expenses of administering The Home Estate, which are given *Class I priority status*.

In *In re: the Liquidation of the Home Insurance Company*, 154 N.H. 472 (2006), the New Hampshire Supreme Court affirmed the Superior Court's ruling that payments to the Objecting Creditors and other AFIA Cedents are Class I administrative costs because they constitute the "actual and necessary costs of preserving or recovering the assets of the insurer under RSA 402-C:44, I" and that "proposed payments to the AFIA Cedents are necessary to collect and preserve assets of Home's estate." *Id.* at 478, 488. The Court further stated that the agreement between The Home Estate and AFIA Cedents "benefits the Class II claimants to Home's estate since it

¹ Thus, contrary to the argument advanced by the Liquidator (*see* p. 2 of Resp.), the fact that other Class II creditors did not mention in objections the effect of the Claim Amendment Deadline on reinsurance recoveries should not be considered determinative of how those creditors would react if they knew that the Liquidator proposes to forfeit the collection of the largest asset of The Home Estate.

increases the likelihood that their claims will be paid” and that the agreement was necessary “to assure that the largest single asset of the estate was not lost.” *Id.* at 490. By making claims to The Home Estate, the AFIA Cedents have provided an enormous benefit to Class II creditors by enabling The Home Estate to gather assets that would otherwise not been available. This valuable assistance – recognized by the New Hampshire Supreme Court – effectively entitles the Objecting Creditors to priority status as recipients of Class I payments in the amount of 50 percent of their underlying claims, with the other 50 percent benefitting policyholder creditors. This is the deal the Liquidator successfully petitioned the New Hampshire Supreme Court to endorse.

The Liquidator’s citations of New Hampshire law and precedent making the protection of preferred creditors’ interests paramount (*see* Resp. at 7) actually makes the Objecting Creditors’ case. The establishment of a claim amendment deadline would (1) deprive the AFIA Cedents as Class I creditors and policyholders as Class II creditors of their right to submit and recover on their IBNR claims and (2) substantially reduce the reinsurance recoveries and, ultimately, payments to priority creditors. Such an outcome is contrary to the stated goals of New Hampshire law.

II. The *Ambassador* Decision Provides a Framework with Which to Consider the Motion

The Liquidator next argues that the Court should ignore the Vermont Supreme Court’s recent decision in *In re Ambassador Ins. Co.*, 198 Vt. 341, 114 A.3d 492 (2015) as irrelevant to the situation presented here. The Liquidator relies on the fact that, in *Ambassador*, the estate had sufficient assets to pay all allowed policy-level claims made to date. Resp. at 8-9. Of course, if that were the only critical fact, the Vermont Supreme Court would not have proceeded to engage in a 4-factor test to determine whether a claims deadline should be established.

The Liquidator does not address the fact that the Vermont Supreme Court determined that establishment of an early final claim amendment deadline in the Ambassador liquidation failed to strike a “reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims.” *Ambassador*, 114 A.3d at 500. With regard to The Home, there are both unliquidated claims yet to be made, but also reinsurance recoveries to be collected that will increase The Home Estate’s assets and with it the amount of funds to be distributed to Class II policyholder creditors. An early claim amendment deadline would cut off long-tail claims arising from asbestos, talc, and child sex abuse litigation (among other kinds of claims that may be brought by policyholders) even though The Home Estate currently possesses over \$800 million in assets to pay a portion of those claims even before additional reinsurance recoveries are collected.

Meanwhile, the annual budget of The Home Estate’s administration costs have decreased by 50% over the last 15 years (*see* Mot. at 7), and likely will continue to decrease further. Those administrative costs constitute only 1.6% of the \$808.4 million in currently remaining assets of The Home Estate. Thus, there are ample assets to cover The Home Estate’s operating costs while additional claims are made against The Home Estate and additional reinsurance recoveries accumulate to pay those costs.

Moreover, given the billions in distributions already made to Class II policyholders, priority creditors have not had to wait to receive partial payments. The Liquidator concedes that additional interim distributions can be made on approved claims while the Liquidation remains open. Mot. at 2. Thus, priority creditors will not be disadvantaged by keeping The Home Estate open; in fact, they will benefit from The Home Estate’s reinsurance recoveries and will be able to submit additional claims for which The Home is liable.

Therefore, when searching for a reasonable balance between The Home Estate's assets, future liabilities, administrative costs, and ability to pay the currently filed and future claims of creditors, the weight of all the *Ambassador* factors demonstrates that it would be premature to set a claim amendment deadline now. The only way to maximize distributions to priority creditors and permit deserving creditors to submit more of their covered claims is to postpone the closing of the Estate. The Liquidator also ignores the fact that, due to the nature of long-tail claims, it is common for insurance liquidation proceedings of large property/casualty insurers such as The Home to last multiple decades. In their Objection, the Objecting Creditors listed eight such proceedings that lasted from 21 to 32+ years (and counting). Obj. at 24. Keeping this proceeding open without establishment of a claim amendment deadline at this time is in keeping with these precedents, particularly with the potential for IBNR claims to be made. Therefore, in order to effect a reasonable balance between the expeditious completion of the liquidation and the protection of future unliquidated and undetermined claims, the establishment of a claim amendment deadline at this time would be premature.

III. The Liquidator Acknowledges That He Has Not Calculated the Amount of Future Claims His Motion Would Bar or the Amount of Reinsurance Recoveries He Is Seeking to Forfeit

Next, the Liquidator concedes that the remaining value of reinsurance recoveries is uncertain. In so doing, the Liquidator also implicitly acknowledges that he has provided no analysis to this Court of not just the reinsurance recoveries The Home Estate will sacrifice by virtue of a premature claim amendment deadline, but also the amount of IBNR claims that all creditors of The Home Estate will be barred from filing.

The Liquidator is asking this Court to approve a claims amendment deadline with no information before the Court about the amount of future claims that will be forever barred.

These future claims represent liabilities for which policyholders of The Home paid premium for coverage, and which, by virtue of a premature claim amendment deadline, would have to be borne in their entirety by policyholders such as Johnson & Johnson, the Maryknoll Brothers, and many others.

The Liquidator faults the Objecting Creditors for failing to quantify their remaining IBNR. Resp. at 12. However, as the Objecting Creditors also explained in their Objection, the data they need to estimate those IBNR liabilities is in the hands of the Liquidator and The Home's major reinsurer, ACE/Chubb, which is also the party that stands to gain the most if a premature claim amendment deadline is imposed (because it will not have to pay reinsurance recoveries to The Home Estate). *See* Obj. at 28-30.²

Rather than imposing an early, premature claim amendment deadline, the Court should order the Liquidator to devise and come forward with a procedure for estimating the IBNR of the AFIA Cedents and policyholders with long-tail claims and use an independent actuary to set the IBNR. Rather than putting ACE/Chubb in charge of estimating the amount of IBNR the AFIA Cedents may claim, the Liquidator should have an entity without a conflict of interest provide that estimate. IBNR claims should then be settled prior to establishment of a claim amendment deadline and closure of The Home Estate. As it currently stands, ACE/Chubb has little incentive to negotiate a commutation with a claim amendment deadline potentially about to be established. It knows that if it waits for the implementation of a claim amendment deadline, it will not have to pay any amount of future claims. But if this Court sees to it that the Liquidator and ACE/Chubb settle future claims now – and then close The Home Estate – all creditors will benefit from the reinsurance recoveries that will follow.

² As stated at page 30 of the Objection, the Objecting Creditors request IBNR information from the Liquidator and/or ACE/Chubb. Pursuant to its rights under its settlement agreement with The Home, Zurich has also requested that information via correspondence dated today.

Meanwhile, as this Court has seen in the objections lodged against the Motion, there exist not just the potential long-tail claims to be brought by AFIA Cedents, but new claims related to the use of talc are also being brought against insured party Johnson & Johnson. And while the Liquidator tries to dispense with the objections raised by the New York Liquidation Bureau and the Maryknoll Brothers because the statute of limitation revival periods in New York and Hawaii for sexual misconduct will end later this year, additional statute of limitations revivals for sexual misconduct are being instituted across the nation.³ For example, since the time for submitting objections ended,⁴ New Jersey opened a two-year revival period on December 1, 2019 and California opened a three-year revival period on January 1, 2020. Other states are certain to follow in the years ahead as public pressure builds to ensure that survivors of sexual abuse are compensated for their claims.⁵ If a premature claim amendment deadline is imposed, however, policyholders will be left holding the proverbial bag for these claims, and victims might not receive as much compensation as they would if The Home Estate would contribute.

The Liquidator places great weight on bald factual assertions in his Response that reinsurance recoveries to The Home Estate from AFIA Cedents' claims averaged \$900,000 for each of the last five years, while the estate's administration costs (few of which are likely incurred in the process of collecting reinsurance) are currently \$13 million a year.⁶ The

³ For a regularly updated compendium of the rapidly changing developments on such revival laws in various states, see <https://www.childusa.org/sol>.

⁴ Policyholders with potential claims in any state where such a revival law may be passed in the future may be unaware of the risk associated with the establishment of a claim amendment deadline in this proceeding and thus did not object prior to the deadline here.

⁵ For example, a bill to revive the statute of limitations period for sexual misconduct in another major state, Florida, was introduced in late 2019. <https://cbs12.com/news/cbs12-news-i-team/look-back-law-could-revive-thousands-of-florida-child-sex-abuse-cases>.

⁶ The Liquidator also claims this amount will be reduced by offsets ACE/Chubb can make in the future, though the Liquidator acknowledges that it has been able to successfully challenge some of these asserted offsets in the past. Resp. at 13, n. 7. And the Liquidator does not acknowledge that there may be other reinsurance that The Home

Liquidator cites to no factual evidence supporting his figures. In addition, that \$900,000 average annual amount expressly *excludes* reinsurance recoveries following the \$14.3 million commutation with AFIA Cedent Enstar, which the Liquidator acknowledges included amounts for Enstar's IBNR claims, and for which The Home Estate collected reinsurance recoveries from ACE/Chubb. Resp. at 13, n.8. If the other AFIA Cedents, including the Objecting Creditors, are afforded time and the opportunity to commute their IBNR claims against the Estate as Enstar already has done, then the amount of reinsurance recoveries for the benefit of priority creditors would be even greater. Indeed, in their Objection, the Objecting Creditors pointed to the Liquidator's 2002 statement that it would be able to collect a total of \$231 million in future reinsurance recoverables arising from the claims of AFIA Cedents. Obj. at 7-8. And while the Liquidator now seeks to minimize that 2002 calculation as a mere "illustration," surely the Liquidator intended the New Hampshire Supreme Court to rely on that represented fact which was expressly cited in the New Hampshire Supreme Court's opinion. *In re Liquidation of Home Ins. Co.*, 154 N.H. at 477.

In any event, the allowance and settlement of known claims as well as IBNR (and the pace of that activity) is within the control of the Liquidator and ACE/Chubb. And if the Liquidator is concerned about the size of the Estate's administrative costs, then the appropriate action to bring those costs to an end, while benefitting The Home's creditors, is to adopt a procedure to facilitate commutations, obtain reinsurance recoveries on those commutations, and only thereafter close The Home Estate.

Estate can collect. For example, The Home has reinsurance contracts with BAFCO (now CIRC) which cover the business in question and are recognised by the Explanatory Statement accompanying the Scheme of Arrangement as "most valuable."

IV. The Home Estate Does Not Need to Be Kept Open Indefinitely, but the Process Must Recognize and Account for the Existence of Future Claims

For its fourth argument, the Liquidator alleges that the Objecting Creditors are essentially proposing to keep The Home Estate open indefinitely and it raises several related points to further this argument.

First, the Liquidator writes that IBNR cannot properly be estimated and allowed. As an initial point, IBNR can certainly be estimated, despite the Liquidator's failure to do so here. The Liquidator can settle with claimants for future claims, just as it already has with USF&G, Enstar, and Nationwide. *See* Obj. at 32. And the Liquidator can then recover on its reinsurance from ACE/Chubb *on future claims* to the benefit of all creditors. After all, ACE/Chubb has already paid reinsurance on future claims from other AFIA Cedents. Indeed, this eventuality was the very purpose of section 2.12 of the Scheme, which allows the Liquidator to enter into compromises with reinsurers of The Home, including ACE/Chubb for amounts including IBNR. Ex. E to Obj.

Second, the Liquidator writes that the Objecting Creditors are arguing for their claims to extend longer than others. While the Objecting Creditors are arguing that the deadline should not be imposed upon them, it is also arguing that the deadline not be imposed on other creditors. In any case, the reality is that, as discussed above, payments to the Objecting Creditors are Class I administrative costs. Because the Objecting Creditors receive payment for administrative costs (as opposed to payment for claims), there is actually no circumstance in which the Objecting Creditors will receive claim payments after any deadline for any creditor passes.

Third, the Liquidator insists that ACE/Chubb must be a part of any commutation discussion and ACE/Chubb cannot be compelled to commute. As described in the Objection, prior to the filing of the Motion, the Objecting Creditors believed that the Liquidator was

endeavoring to obtain such a commutation with ACE/Chubb in accord with the Scheme. Ex. A to Obj. at ¶¶ 12-13; Ex. B to Obj. at ¶¶ 12-13. While the Scheme authorizes the Liquidator to enter into commutations with The Home's reinsurers, unbeknownst to the Objecting Creditors, the Liquidator ceased pursuing a commutation with ACE/Chubb. Though the Liquidator claims that the Objecting Creditors should have known as of 2015 that fellow AFIA Cedent Enstar was settling with ACE/Chubb, the circumstances of that may have been particular to Enstar (for example, it could hypothetically have been part of a broader deal between Enstar and ACE/Chubb) and the Objecting Creditors had no cause to believe the Liquidator was ceasing all efforts of its own.⁷

Currently, ACE/Chubb benefits from being the repository of knowledge on IBNR *and* the party that the Liquidator insists with which the AFIA Cedents must settle. Fundamentally, ACE/Chubb has no incentive to commute when it knows a claim amendment deadline is being established. By seeking to establish such a deadline without alerting the Objecting Creditors and other AFIA Cedents, the Motion actively works against the interests of the Objecting Creditors, and thus against the interests of all Class II creditors who will not benefit from the potential reinsurance recovery. If the Court denies the Motion and no claim amendment deadline is set, the Objecting Creditors expect that ACE/Chubb will be far more interested in settling future claims, which will then benefit The Home Estate.

Fourth, the Liquidator explains its settlement of some future claims with some policyholders as appropriate voluntary compromises. That, of course, is acceptable, but the rule of equality requires similarly situated creditors to be treated equally. Obj. at 33. By settling with some other AFIA Cedents and then announcing a claim amendment deadline with no

⁷ Indeed, as the Response points out, the AFIA Agreement prohibits AFIA Cedents from bypassing the Liquidator and pursuing cut-through agreements to recover directly from ACE/Chubb. *See* Resp. at 4, n. 2.

forewarning, the Objecting Creditors are suddenly unable to settle the same IBNR claims that similarly situated parties have commuted.

V. The Proposed Deadline Is Contrary to the Purpose of the Scheme

The Liquidator's final argument in response to the Objection is that the Scheme of Arrangement was not meant to keep this liquidation proceeding open indefinitely. This is a misstatement of the Objecting Creditors' position. As described in the Objection, the purpose of the Scheme of Arrangement (and the New Hampshire Supreme Court's 2006 ruling) is to allow the Liquidator to collect claims – including IBNR – from The Home's reinsurers. Obj. at 4, 9-10. The Scheme does not terminate until the liabilities of the Objecting Creditors and the other AFIA Cedents are discharged in full (which would maximize reinsurance recoveries for The Home Estate) or unless the Scheme Creditors and the Liquidator conclude that the Scheme is no longer in the interests of the Scheme Creditors. Ex. E to Obj. at ¶ 7.1.1.

By seeking to establish a claims amendment deadline without agreement of the Objecting Creditors, and without advising them that they (and not the Liquidator, pursuant to ¶ 2.12 of the Scheme) needed to negotiate a commutation with ACE/Chubb, the Liquidator seeks to unilaterally and effectively bring the Scheme to an end while future liabilities still exist. Contrary to the Liquidator's final argument, the Objecting Creditors are not arguing that The Home liquidation proceeding must remain open indefinitely. Rather, the Objecting Creditors seek the denial of the Motion, the opportunity and time to commute with The Home Estate, and then the orderly conclusion of this liquidation proceeding once all reinsurance recoveries are made available for the benefit of all priority creditors of The Home Estate and Class I administrative payments made to the Objecting Creditors and other AFIA Cedents.

CONCLUSION

Wherefore, for the reasons contained herein, the Objecting Creditors respectfully request that the Court deny the Liquidator's Motion and refuse to enter a final claims amendment deadline at this time. Oral argument on this Objection is also requested.

Respectfully submitted,

ZURICH INSURANCE PLC GERMAN BRANCH AND
WÜRTTEMBERGISCHE VERSICHERUNG AG,

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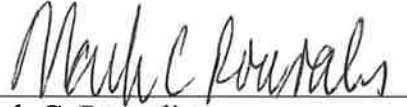
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Zurich Insurance plc German Branch's and Württembergische Versicherung AG's Sur-Reply in Support of the Objection to Liquidator's Motion for Approval of Claim Amendment Deadline was sent this 27th day of February 2020 by first class mail, postage prepaid to all persons on the attached service list.



Mark C. Rouvalis

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106

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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

LIQUIDATOR'S SEVENTY-EIGHTH REPORT

I, Christopher R. Nicolopoulos, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby submit this Seventy-Eighth Report on the liquidation of Home, as of September 11, 2020 in accordance with RSA 402-C:25 and the Order Concerning Liquidator's Reports issued January 19, 2005.

The Home Insurance Company

1. Home's background. Home, domiciled in New Hampshire, was declared insolvent on June 11, 2003, and is one of the largest property-casualty insurer insolvencies in United States history. The Company and its predecessors began operations in 1853. The Court entered the operative Order of Liquidation on June 13, 2003. The Liquidator has created a stand-alone liquidation operation which presently consists of 33 full and part time employees with offices in New York City (Home's former corporate headquarters) and Bedford, New Hampshire. From the start in 2003, the Liquidator has been engaged in marshalling assets, principally reinsurance, and determining claims.

In light of the coronavirus outbreak and applicable orders, liquidation staff have been working remotely and communicating principally by email and telephone. Despite this shift, liquidation operations have continued without interruption.

2. Home's assets. Home's unrestricted liquid assets as of June 30, 2020 total approximately \$812 million as set forth on the June 30, 2020 financial statement attached as Exhibit A. This figure does not include the \$639.8 million of net interim distributions paid to Class II claimants or the net \$256 million paid to insurance guaranty associations in early access distributions through June 30, 2020. These amounts are discussed in greater detail below. As of June 30, 2020, the Liquidator has marshalled approximately \$1.77 billion in assets net of the expenses of the liquidation and Class I distributions. This total includes the interim distribution amounts paid to non-guaranty association claimants, the early access distribution amounts paid to guaranty associations, and special deposits held by states.

3. Coordination with guaranty associations. The Liquidator works closely with the state insurance guaranty associations established in every state to handle and pay certain claims under policies issued by insolvent insurers subject to statutory limitations as provided in the associations' respective statutes. See, e.g., RSA 404-B. The New Hampshire Insurers Rehabilitation and Liquidation Act ("Act") provides for so-called "early access" distribution to guaranty associations. See RSA 402-C:29, III. Through September 1, 2020, the Liquidator has made, with the Court's approval, early access net distributions totaling \$256 million. (See Section 11 below.)

As a condition for receiving early access distributions, the guaranty associations entered into "claw back" agreements with the Liquidator requiring the return of any amounts advanced that exceed the eventual distribution percentage for their creditor class. In accordance with paragraph 4 of the Orders approving the interim distributions, a portion of early access distributions have become permanent and are no longer subject to claw back

by the Liquidator. The Liquidator has calculated the amount of early access distributions no longer subject to claw back to date, and has sent letters to the affected guaranty associations to apprise them of the amount of the early access distribution which is now deemed to be permanent. The Liquidator has also sent letters to those guaranty associations which have received reimbursement from special deposits in excess of the interim distribution percentage to advise them that previously paid early access distributions will not become permanent. (See Section 12 below.)

4. Proofs of claim. The claim filing deadline in the Home liquidation was June 13, 2004. The Liquidator received five new proofs of claim between the last Liquidator's report and September 1, 2020. The proofs of claim submitted now total 20,819. The proof of claim count includes as a single proof of claim (a) multiple proofs received from a claimant that appear to assert the same claim, and (b) claims filed on behalf of mass tort claimants against a single insured. It is difficult to summarize the proofs of claim in advance of the claim determination process because (a) those proofs of claim that quantify the claim may be overstated or understated, (b) most proofs of claim do not quantify the amount claimed, and (c) an individual proof of claim may involve many different claims and claimants.

5. Claim amendment deadline motion. The Liquidator has concluded that to move this proceeding toward closure and protect the interests of the creditors with allowed Class II claims it is now necessary to establish a deadline by which claimants with open proofs of claim must finally amend their claims. The Liquidator accordingly filed a Motion for Approval of Claim Amendment Deadline ("Motion") on August 1, 2019 seeking to establish a deadline for the amendment of claims. As described in that motion,

claims filed after the claim amendment deadline and potential claims (claims that cannot be specifically identified by the deadline) will be barred if the Motion is granted.

By the order of notice dated August 19, 2019, the Court set a November 18, 2019 deadline for filing objections to the Motion. The Liquidator gave notice in accordance with the order of notice. Twelve objections were timely filed, and a late objection was filed December 24, 2019. The Liquidator submitted filings responding to the objections on December 13, 2019 and December 30, 2019. Two objections, those of U.S. Steel Corporation and MW Custom Papers LLC, have been withdrawn

By Order dated February 28, 2020, the Court gave those who had already submitted objections until April 1, 2020 to file further memoranda and the Liquidator until May 1, 2020 to file a response. Certain objectors submitted additional filings, and on April 30, 2020, the Liquidator filed his response, which also summarized the status of all objections.

The Court originally scheduled a hearing on the Motion for June 23, 2020. However, by order dated May 27, 2020, the Court continued the hearing to be rescheduled as the docket allows after September 1, 2020. On September 11, 2020, the Liquidator filed a Motion to Schedule Hearing on Motion for Approval of Claim Amendment Deadline by Video or Teleconference.

The Liquidator's motion papers, the objections, orders and further filings may be found on the Liquidation Clerk's website, www.hicilclerk.org.

6. Claim determinations, reports and settlements. The process of determining proofs of claim continues. Since the last Liquidator's report, the Liquidator has issued partial or final notices of determination addressing 29 proofs of claim pursuant to the Restated and Revised Order Establishing Procedures Regarding Claims entered January 19,

2005 (“Claims Procedures Order”). As of September 1, 2020, for all priority classes, the following table outlines activity from inception of the Liquidation:

	<u>12/01/14</u>	<u>12/01/15</u>	<u>12/05/16</u>	<u>12/01/17</u>	<u>12/1/18</u>	<u>12/1/19</u>	<u>9/1/20</u>
Proofs of Claim Filed:	20,672	20,704.	20,733	20,768	20,775	20,802	20,819
POCs Resolved (Court App’d)^{1&2:}	15,729	17,494	18,337	18,839	19,570	19,749	19,984
Total \$ Court App’d Determinations:	\$2.18b	\$2.43b	\$2.73b	\$2.8 b	\$3.0 b	\$3.1b ³	\$3.2b
Total \$ Class II Court App’d Det:	\$1.94b	\$2.13b	\$2.41b	\$2.49b	\$2.6 b	\$2.73b ³	\$2.9 b
Total Remaining Open POCs⁴	4,225	3,210	2,396	1,929	1,242	1,053	835

Breakdown of Open POC Count⁴

	<u>12/05/16</u>	<u>12/01/17</u>	<u>12/01/18</u>	<u>12/1/19</u>	<u>9/1/20</u>
i. Insureds ⁵ and Claimants	2,097	1,668	979	792	597
ii. Contribution Claims	43	6	12	13 ⁶	4
iii. Guaranty Associations	60	60	60	59	59
iv. Insurer	189	186	182	180	167
v. Government/other	7	9 ⁷	9	9	8
Total	2,396	1,929	1,242	1,053	835

1 POC counts include single POCs that may encompass multiple underlying claims and multiple POCs that may concern single underlying claims. Multiple determinations may be issued for individual POCs.

2 The number of POCs resolved includes POCs determined and approved by the Court as Class V determinations that are deferred as to amount. The number of deferred Class V determinations can change if a final determination as to amount is issued.

3 The allowance total was adjusted to reflect credits for offsets.

4 The number of open POCs excludes 304 POCs at 9/1/20 determined and approved by the Court as Class V determinations that are deferred as to amount. POCs with a filed Request for Review are considered open until the RFRs are resolved.

5 As of 9/1/20, the number of insureds with open POCs totaled 200. All entities falling within the coverage of the policy including the named insured, additional named insured and their successors are counted as one insured if they filed a consolidated POC or POCs. Where the insured, the additional named insured and/or the successors filed separate POCs, each of the entities is counted separately.

6 The number of open contribution POCs increased due to issuance of NODs on POCs that had not been counted as open in light of previous court-approved final determinations as to priority only.

7 In a review of open POCs, two were moved from another category to this category.

The Liquidator continues to file reports of claims and recommendations when a sufficient number of claim determinations have passed the 60-day period for objections under RSA 402-C:41, I. Since June 1, 2020, the Liquidator has submitted two reports of claims and recommendations to the Court reflecting a total of approximately \$12.5 million in determinations for all classifications. In addition, the Liquidator has submitted two motions for approval of Class II settlement agreements reflecting total allowances of \$15.2 million.

7. Late-filed claims. The Order of Liquidation established June 13, 2004 as the deadline for filing claims in Home's liquidation proceeding. Pursuant to the Act, claims filed after the claim filing deadline are allowed to participate in distributions of the estate provided the late filing of the claim is "excused" for good cause shown. See RSA 402-C:37, II. The Act provides a non-exclusive list of five examples of "good cause" for late filing to be excused, including that the "existence of a claim was not known to the claimant and that he filed within 30 days after he learned of it." Id. "Unexcused" late filed claims are not permitted to receive the first distribution from the estate, but may receive subsequent distributions. RSA 402-C:37, III. (In both cases, payment is permitted only if it will not "prejudice the orderly administration of the liquidation." RSA 402-C:37, II, III.)

All proofs of claim received by the Liquidator are reviewed to determine whether the claim is timely filed or, if late, whether the late filing of the claim is to be "excused." Claimants with late filed claims which are found to be "unexcused" are informed of that determination and that they will not receive the first distribution in the Liquidator's notice of claim determination.

8. Requests for review and objections. A notice of determination is sent to a claimant when the Liquidator determines a claim. Each notice of determination includes instructions on how to dispute the determination under the New Hampshire statutes and the Claim Procedures Order. Since inception, 1,012⁸ claimants have filed requests for review; 929 of these have been sent notices of redetermination or have withdrawn the request for review. Claimants have filed 61 objections with the Court to commence disputed claim proceedings. As of September 1, 2020, there is one disputed claim proceeding before the Referee which is presently inactive. The Claims Procedures Order provides for review of the Referee's reports by motion to recommit.

9. Financial reports. The unaudited June 30, 2020 financial statements are attached as Exhibit A to this report. The June 30, 2020 statements reflect \$811,092,653 in net assets under the Liquidator's direct control and \$17,661,490 in reinsurance collections, net investment income, and other receipts, and \$7,993,775 in operating disbursements from January 1 through June 30, 2020.

10. 2020 Budget. A comparison of the actual and budgeted general and administrative expenses of the Home liquidation, on an incurred basis, through June 30, 2020 is attached as Exhibit B. As of June 30, 2020, actual expenses were below budget by \$587,471 or 8.9% with favorable variances in most categories. Below is a comparison of the annual budgeted and actual operating expenses (in millions) beginning January 1, 2004:

⁸ In reviewing the pending requests for review, it was determined that one had been coded incorrectly and it was removed from the total number of open requests for review.

Year	Budget	Actual
2004	\$33.8	\$26.9
2005	\$26.8	\$26.2
2006	\$25.6	\$23.5
2007	\$22.8	\$21.5
2008	\$21.4	\$20.6
2009	\$20.6	\$20.0
2010	\$19.9	\$20.3
2011	\$18.9	\$18.2
2012	\$18.6	\$18.2
2013	\$18.4	\$17.7
2014	\$17.6	\$17.0
2015	\$17.2	\$16.2
2016	\$15.7	\$14.6
2017	\$14.5	\$13.7
2018	\$14.0	\$12.8
2019	\$13.5	\$12.7
2020	\$13.2	

The Liquidator filed a copy of the 2020 Budget on November 14, 2019 as Exhibit 6 to the Liquidator's Filing Regarding Status Report. As of September 1, 2020, the liquidation staff is 33 in number, which includes five part time employees. In addition, there are five Information Technology consultants, and other consultants who periodically work for the estate.

11. Investment update. The Liquidator invests Home's assets in accordance with the Fourth Revised Investment Guidelines approved December 10, 2012. A summary of Home's holdings of bonds and short-term investments as of June 30, 2020 is attached as Exhibit C, and a report listing the individual holdings of Home as of that date is attached as Exhibit D (the groupings on Exhibit C differ from those on Exhibit D). The book value of Home's bonds and short-term investments managed by Conning Asset Management ("Conning") at June 30, 2020, was approximately \$789.0 million compared to their market value of \$813.5 million. This represented an unrealized gain (market value above book

value) of approximately \$24.5 million. Short-term holdings in the Conning-managed portfolio at June 30, 2020 were \$49.7 million at market value. The portfolio earned approximately \$9.6 million in net investment income through the second quarter of 2020 and is expected to earn approximately \$18.7 million in 2020 based on holdings at June 30, 2020.

The average credit rating for the Conning-managed portfolio holdings is Aa3 by Moody's and AA- by S&P. The Liquidator continues to maintain, outside of Conning's control, investments in US Treasury securities. As of June 30, 2020, such investments for Home had a market value of approximately \$9.8 million. These assets, along with sweep bank accounts, will be used to fund operating requirements.

As of September 1, 2020, the Conning-managed portfolio had an unrealized gain of \$25.1 million, a \$0.6 million increase in the unrealized gain from June 30, 2020 as bond yields remain low due to concerns about economic growth, the impact of the coronavirus outbreak, and the Federal Reserve's decision to continue holding interest rates to near zero. A market value sensitivity analysis performed by Conning indicated that market values of the portfolio could potentially fluctuate \$15 million downwards and \$15 million upwards if interest rates increased or decreased 100 basis points, respectively, based on the portfolio values as of June 30, 2020. Consistent with the investment guidelines, the Liquidator and Conning continue to focus on (a) preservation of capital on investments, (b) maintaining a high quality portfolio, and (c) consistent with objectives (a) and (b), maximizing current income. As of September 1, 2020, the Liquidator and Conning believe that all securities in the portfolio will pay full amounts of principal in spite of fluctuating market values.

12. Early access distributions to guaranty associations. The Liquidator made early access distributions to a total of 55 insurance guaranty associations from 2005 through 2016. The Liquidator makes an early access distribution only after obtaining approval from the Court and “claw back” agreements with the guaranty associations requiring the return of any amounts advanced that are necessary to make distributions to creditors whose claims fall in the same or a higher priority class. See RSA 402-C:29, III.

Early access distributions are generally subject to deductions for deposits, deductible reimbursements, recoveries from guaranty association statutory net worth insureds, amounts ascribed Class I and Class V priority, questioned claim items, and an early access distribution cap of 40% of the association’s paid loss and expense and case reserves. Given the large number of guaranty associations affected by the cap and the decreasing association claim volume over the last few years, the tenth and eleventh early access distributions also reflected an additional cap of 75% of the association’s cumulative paid claims in accordance with the Court’s approval orders. The eleventh early access distribution also applied a \$25,000 minimum payment threshold. A net total of \$256 million has been paid to guaranty associations in early access through June 30, 2020.

13. Interim Distributions. By Order dated March 13, 2012 (as amended July 2, 2012), the Court approved the first interim distribution of 15% to claimants with allowed Class II claims. The interim distribution was subject to receipt of a waiver of federal priority claims from the United States Department of Justice (“US DOJ”), which was received on November 5, 2014. By Order dated November 16, 2015 (as amended March 7, 2016), the Court approved the second interim distribution of 10% to claimants with allowed Class II claims (for a cumulative interim distribution percentage of 25%). The

second interim distribution was also subject to receipt of a waiver of federal priority claims from the US DOJ, which was received on July 18, 2016.

The Liquidator paid first interim distributions totaling \$258.3 million to creditors with allowed Class II claims on December 5, 2014 and thereafter through July 31, 2016. In August 2016, the Liquidator paid second interim distributions totaling \$183.3 million to creditors with allowed Class II claims. It also included 25% first and second distribution amounts for those recent Class II claimant-creditors who had not previously received the first interim distribution.

By Order dated October 18, 2018, the Court approved the third interim distribution of 5% to claimants with allowed Class II claims (for a cumulative interim distribution percentage of 30%). The third interim distribution was also subject to receipt of a waiver of federal priority claims from the US DOJ. The Liquidator entered a Release Agreement with the United States in conjunction with a Settlement Agreement between the Federal Claimants and the Liquidator. The two agreements were subject to Court approval, which was given by Order dated March 26, 2019, and other conditions which were satisfied on April 10, 2019, thereby making the Settlement Agreement and the Release Agreement effective. The Release Agreement provided the necessary waiver of federal priority claims allowing the third interim distribution to proceed.

In April 2019, the Liquidator paid the third interim distribution totaling \$119 million to creditors with allowed Class II claims. This included the 30% distribution in the amount of \$8,113,243.80 on allowed United States claims which was paid to the United States on April 10, 2019 in accordance with the terms of the Settlement Agreement. It also included 30% distribution amounts for other recent Class II claimant-creditors who

had not previously received the first and second interim distributions. As part of the interim distribution process, the Liquidator periodically issues distribution checks to claimants with newly allowed Class II claims after each December 31 and September 30 as provided in the interim distribution approval orders.

The net cumulative interim distributions to Class II creditors total \$656.96 million through September 1, 2020 (excluding distribution checks outstanding of \$0.683 million). This total does not include the amounts of prior early access distributions to guaranty associations that are deemed interim distributions no longer subject to claw back pursuant to the interim distribution approval orders (which are included in the early access total in section 12). Certain guaranty associations have had claims satisfied from special deposits and, accordingly, have not received interim distributions from the Home estate.

14. Milliman reserve study. The Liquidator engaged the actuarial firm Milliman, Inc. to estimate Home's unpaid direct liabilities as of December 31, 2010, December 31, 2012, and December 31, 2014. Milliman's report concerning unpaid loss and allocated loss adjustment expense ("ALAE") as of December 31, 2010, was used in the Liquidator's Motion for Approval of Interim Distribution to Claimants with Allowed Class II Claims filed February 13, 2012, and the executive summary was included in the motion papers. A copy of the executive summary of the Milliman report concerning unpaid loss and ALAE as of December 31, 2012 was attached as an exhibit to the Liquidator's Fifty-First Report. A copy of the executive summary of the Milliman report dated September 18, 2015 concerning unpaid loss and ALAE as of December 31, 2014 was attached as an exhibit to the Liquidator's Fifty-Seventh report.

Milliman's actuarial central estimate of ultimate Class II unpaid loss and ALAE as of December 31, 2010 was \$4.112 billion, and the estimate at the 95% confidence level was \$6.584 billion. Milliman's actuarial central estimate of ultimate Class II unpaid loss and ALAE as of December 31, 2012 was \$4.372 billion, and the estimate at the 95% confidence level was \$6.602 billion. Milliman's actuarial central estimate of ultimate Class II unpaid loss and ALAE as of December 31, 2014 was \$4.034 billion, and the estimate at the 95% and 90% confidence levels was \$5.406 billion and \$4.970 billion respectively.

15. Multiple claims. RSA 402-C:40, IV provides that in the event several claims founded on one policy are filed, and the aggregate allowed amount of all claims to which the same limit of liability in the policy is applicable exceeds that limit, then each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. This presents a potential risk for allowed claims under such policies in the event that other claims subject to the same policy limit are allowed, as the allowances subject to the same limit would need to be reduced on a pro rata basis to adjust the total of such allowances to the applicable policy limit. Distributions will be based on the reduced allowances. The Liquidator will be unable to finally determine the extent to which a claim allowance may be subject to proration until all claims against the policy have been determined. The Liquidator is tracking claims against policies and will further address this issue, if warranted, in any future application to increase the interim distribution percentage. If at the time of a distribution there are allowed claims subject to the same limit that are required to be reduced pursuant to RSA 402-C:40, IV, the Liquidator will make the reductions and advise the claimants of the reasons for them.

16. Reinsurance. The collection of reinsurance is the principal remaining asset-marshaling task of the Liquidator. The Liquidator has billed and collected reinsurance throughout the liquidation, and he has entered into commutations with many reinsurers of Home to resolve relationships with those reinsurers for agreed payments.

The Liquidator reports, in accordance with the Court's December 23, 2004 order, that there were no commutations since the last report, on June 9, 2020.

17. Distributions to Class I Creditors. In his reports and recommendations regarding claims, the Liquidator has recommended that the Court approve certain claims by guaranty associations for expenses which are Class I claims under RSA 402-C:44 pursuant to RSA 404-B:11, II, certain other Class I claims, and the 10% part of allowed guaranty fund defense expense payments assigned to Class I under the Settlement Agreement with 56 guaranty associations approved on July 15, 2013. The Court has approved the claim reports, and the Liquidator accordingly has at various times made distributions to the Class I creditors. Most recently, a Class I distribution totaling \$8.7 million was issued to guaranty associations in September 2019, which brought total Class I distributions to \$94.7 million (after deduction of setoffs).

18. Asset dispositions (including compromises) and assumptions of obligations. In accordance with paragraph 5 of the Order Establishing Procedures for Review of Certain Agreements to Assume Obligations or Dispose of Assets entered April 29, 2004, and paragraph 5 of the Liquidator's Eleventh Report, the Liquidator usually submits a confidential schedule of asset dispositions (including compromises) and obligation assumptions since the last report which is filed under seal as an appendix to this report. There are no such matters to report, so no confidential appendix accompanies this report.

19. New York Office Surrender of Space; Manchester Office Lease

Termination. Pursuant to the terms of the Lease Agreement for office space located at 61 Broadway in New York City, the Liquidator had a unilateral contraction option to surrender 7,500 square feet or approximately one-third of the Premises effective as of January 1, 2018. The Liquidator exercised the option and vacated the space on December 31, 2017. The Lease Agreement provides the Liquidator with a second unilateral contraction option for approximately half of the remaining space which option may be exercised at any time between January 1, 2021 and January 1, 2023 upon ten months prior written notice. The Lease expires by its terms on January 31, 2026, but it also provides the Liquidator with an option to extend the term of the Lease until January 31, 2031 to be effective upon twelve months prior written notice. The Manchester New Hampshire office has been relocated to new quarters in Bedford, New Hampshire which space has been let on a month to month basis.

20. Mailing Address Change: In view of the relocation of Home's Manchester office to Bedford, and as reflected on the liquidation's website (www.hicilclerk.org), the mailing address for all Proofs of Claim has been changed to the following:

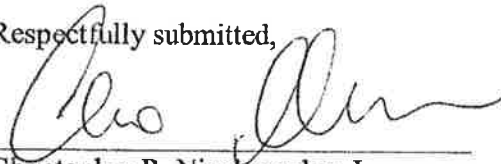
The Home Insurance Company in Liquidation
61 Broadway, 6th Floor
New York, New York 10006

21. Document Storage. The contract with Iron Mountain regarding storage of Home's records housed at Iron Mountain facilities as approved by the Court on November 2, 2016 extends until November 30, 2021, and provides for a further five year extension at the Liquidator's option. As of September 1, 2020, there are approximately 61,319 boxes of documents in storage at Iron Mountain, down from a high of 167,000 in

2004 when the record review process was commenced, resulting in considerable savings to Home's estate. Record destruction efforts remain ongoing so as to eliminate records which are no longer useful to the estate.

22. Ancillary proceedings in the United States and United Kingdom. Ancillary receiverships for Home remain pending in Oregon, New York, and Massachusetts. In addition, a provisional liquidation proceeding concerning Home's unincorporated branch in the United Kingdom ("UK Branch") remains pending. The Home's UK Branch wrote insurance and reinsurance as a participating member of the American Foreign Insurance Association ("AFIA"), and a Scheme of Arrangement with AFIA creditors was approved by the UK court in November 2005.

Respectfully submitted,



Christopher R. Nicolopoulos, Insurance
Commissioner of the State of New
Hampshire, as Liquidator of the Home
Insurance Company

Dated: September 17, 2020

Exhibits:

- A – Unaudited Financial Statement as of 6/30/20
- B – Comparison of actual and budgeted general and administrative expenses through 6/30/20
- C – Holdings of bonds and short-term investments as of 6/30/20
- D – Individual holdings report as of 6/30/20

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2020, a copy of the Liquidator's Seventy-Eighth Report was served upon the persons named on the attached Service List, by first class mail, postage prepaid.

/s/ Eric A. Smith

Eric A. Smith

NH Bar ID No. 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106

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THE HOME INSURANCE COMPANY IN LIQUIDATION

Financial Statements (Modified Cash Basis)

**June 30, 2020 and December 31, 2019
(Unaudited)**

The Home Insurance Company In Liquidation

Statement of Restricted and Unrestricted Net Assets Excluding Certain Amounts (Modified-Cash Basis) (Unaudited)

	<u>June 30, 2020</u>	<u>December 31, 2019</u>
Assets		
Unrestricted fixed-income securities, short-term investments, and cash and cash equivalents, at cost:		
Fixed-income securities (Note 2)	\$ 744,750,702	\$ 715,223,801
Short-term investments	9,881,990	62,464,756
Cash and cash equivalents	<u>52,701,431</u>	<u>34,675,389</u>
Total unrestricted fixed-income, short-term investments, and cash and cash equivalents, at cost	\$ 807,334,123	\$ 812,363,946
Unrestricted liquid assets:		
Interest income due and accrued	4,478,665	4,485,145
Other liquid assets	<u>2</u>	<u>2</u>
Total unrestricted liquid assets	\$ 811,812,790	\$ 816,849,093
Unrestricted illiquid assets: (Note 1)		
Limited partnership interests	<u>475,276</u>	<u>592,358</u>
Total unrestricted illiquid assets	\$ 475,276	\$ 592,358
Restricted liquid assets: (Note 4)		
Cash	<u>195,667</u>	<u>195,667</u>
Total restricted liquid assets	\$ 195,667	\$ 195,667
Total restricted and unrestricted assets, excluding certain amounts	\$ <u>812,483,733</u>	\$ <u>817,637,118</u>
Liabilities		
Incurred but unpaid administrative expenses and investment expenses (Note 3)	947,280	1,568,795
Class I distribution checks outstanding (Note 8)	12,721	12,721
Class II distribution checks outstanding (Note 9)	<u>431,079</u>	<u>157,492</u>
Total liabilities	\$ 1,391,080	\$ 1,739,008
Restricted and unrestricted net assets, excluding certain amounts	\$ <u>\$811,092,653</u>	\$ <u>\$815,898,108</u>

See accompanying notes.

The Home Insurance Company in Liquidation

Statement of Restricted and Unrestricted Cash Receipts and Disbursements
(Modified-Cash Basis)
(Unaudited)

	January 1, 2020 To June 30, 2020	January 1, 2019 To December 31, 2019
Cash and marketable securities received:		
Net investment income	\$ 10,427,642.02	\$ 22,073,252
Reinsurance collections - unrestricted	6,145,561.13	16,708,821
Agents' balances	538,421.95	1,102,506
Salvage, subrogation and other claim recoveries	149,440.55	207,217
Realized capital gains on sale of fixed-income securities (Note 1)	119,230.42	4,098,026
Miscellaneous income	3,371.57	200,217
All other	277,822.39	17,958
Total cash receipts	\$ 17,661,490	\$ 44,407,997
Cash operating disbursements:		
Human resources costs (Note 3)	4,303,007	7,605,447
Realized capital losses on sale of fixed-income securities (Note 1)	666,178	829,191
Consultant and outside service fees	1,081,941	2,502,713
General office and rent expense	575,593	1,294,691
Legal and audit fees	518,018	1,072,149
Investment expenses	346,748	722,197
Computers and equipment cost	100,395	266,525
Administration costs	87,994	168,487
Loss expenses paid (Note 1)	67,761	120,835
Capital contribution	33,680	24,789
All other	152,461	810,251
Total cash operating disbursements	\$ 7,933,775	\$ 15,417,272
Excess of receipts over operating disbursements	\$ 9,727,715	\$ 28,990,726
Deductible reimbursements (Note 7)	212,843	338,600
Class I Distributions (Note 8)	-	8,651,565
Class II Distributions (Note 9)	14,544,694	132,802,678
Escrow Recovery (Note 9)	-	(20,624,976)
Cash disbursements and distributions in excess of receipts	\$ (5,029,822)	\$ (92,177,141)
Beginning restricted and unrestricted fixed-income securities, short-term investments, and cash and cash equivalents, at cost	812,559,611	904,736,752
Ending restricted and unrestricted fixed-income securities, short-term investments, and cash and cash equivalents, at cost	\$ 807,529,789	\$ 812,559,611

See accompanying notes.

The Home Insurance Company in Liquidation

Statement of Changes in Restricted and Unrestricted Net Assets Excluding Certain Amounts (Modified-Cash Basis) (Unaudited)

	<u>January 1, 2020 To June 30, 2020</u>	<u>January 1, 2019 To December 31, 2019</u>
Restricted and unrestricted net assets, excluding certain amounts, beginning of year	\$ 815,898,109	\$ 907,698,397
Cash operating disbursements in excess of unrestricted and restricted cash receipts	(5,029,822)	(92,177,139)
Other changes in restricted and unrestricted net assets:		
Limited partnership interests, illiquid	(117,082)	-
Interest income due and accrued	(6,480)	189,084
Incurred but unpaid administrative and investment expenses (Note 3)	621,515	221,481
Class I distribution checks outstanding (Note 8)	-	(3,420)
Class II distribution checks outstanding (Note 9)	(273,587)	(30,294)
	<u>\$ 811,092,653</u>	<u>\$ 815,898,109</u>
Restricted and unrestricted net assets, excluding certain amounts, end of year	\$ 811,092,653	\$ 815,898,109

See accompanying notes.

The Home Insurance Company in Liquidation (“Home”)

Notes to Financial Statements
(Modified-Cash Basis)
(Unaudited)
June 30, 2020

1) Basis of Accounting

These financial statements are prepared using the modified cash basis of accounting which differs from accounting principles generally accepted in the United States. Only those assets that are within the possession of the Liquidator and other known amounts for which ultimate realization is expected to occur, primarily investments and cash and cash equivalents, and certain receivables, are recorded. Liabilities that have been acknowledged by the Liquidator are prioritized into creditor classes in accordance with the New Hampshire Statute establishing creditor classes in insurer insolvencies, RSA 402-C: 44. Only incurred but unpaid Class I (Administration Costs) liabilities, which are in a creditor class superior to all other classes, are presented in these financial statements.

These financial statements do not record the amounts of certain assets such as outstanding receivables, reinsurance recoverables, securities on deposit with various states and the federal government, early access distributions, funds held and claims against others, and certain liabilities, including insurance claims, as such amounts have not been settled and agreed to with third parties.

The amount shown for loss expenses paid primarily represents (1) loss expenses accorded administrative expense priority by the rehabilitation order and liquidation order, and (2) expenses relating to obtaining claim recoveries which also are entitled to administrative expense priority. Checks issued for such loss expenses that are not cashed are reflected as liabilities.

Unrestricted illiquid assets represent investments in common stock and limited partnership interests which are not liquid since these are not publicly traded.

Realized capital gains and losses on sale of bonds are calculated based on original cost of the bonds. Proceeds received above or below cost on maturity of bonds are included as part of net investment income.

Proceeds received above or below original cost are treated as a gain or loss upon disposition of common stock.

This statement does not include any assets of Home’s branches outside of the United States.

The Home Insurance Company in Liquidation (“Home”)

Notes to Financial Statements (continued)
(Modified-Cash Basis)
(Unaudited)

2) Investments

The cost and estimated fair values of unrestricted fixed-income securities and common stock by major category are summarized as follows:

	<u>June 30, 2020</u>			
	Gross	Gross		Fair
	Cost	Unrealized Gains	Unrealized Losses	
Fixed-income securities:				
U.S. Treasury notes	\$ 38,095,961	\$ 732,045	\$ (214,844)	38,614,062
Government agencies	30,216,259	932,422	(52,960)	31,095,721
Corporate	472,621,062	14,068,020	(1,491,644)	485,197,439
Mortgage-backed	89,969,848	3,816,456	-	93,786,304
Asset-backed	<u>113,847,572</u>	<u>1,435,664</u>	<u>(120,495)</u>	<u>115,162,740</u>
Total	<u>\$ 744,750,701</u>	<u>20,985,508</u>	<u>\$ (1,879,943)</u>	<u>\$763,856,266</u>
Total Common Stock	\$ 1,628,052	\$ -	\$ (1,628,050)	\$ 2

The amortized cost of unrestricted fixed-income securities is \$739,375,878 at June 30, 2020. Based on such amortized cost, gross unrealized gains are \$24,569,895 and gross unrealized losses are \$89,507.

	<u>December 31, 2019</u>			
	Gross	Gross		Fair
	Cost	Unrealized Gains	Unrealized Losses	
Fixed-income securities:				
U.S. Treasury notes	\$ 49,229,336	\$ 328,945	\$ (292,969)	\$ 49,265,312
Government agencies	30,216,259	434,812	(15,065)	30,636,006
Corporate	479,867,905	5,009,282	(2,701,772)	482,175,414
Mortgage-backed	100,656,335	1,690,777	(630,505)	101,716,608
Asset-backed	<u>55,253,966</u>	<u>104,812</u>	<u>(239,355)</u>	<u>55,119,423</u>
Total	<u>\$ 715,223,801</u>	<u>\$ 7,568,628</u>	<u>\$ (3,879,666)</u>	<u>\$718,912,763</u>
Total Common Stock	\$ 1,628,052	\$ -	\$ (1,628,050)	\$ 2

The amortized cost of unrestricted fixed-income securities is \$710,428,469 at December 31, 2019. Based on such amortized cost, gross unrealized gains are \$8,823,354 and gross unrealized losses are \$339,061.

The Home Insurance Company in Liquidation ("Home")

Notes to Financial Statements (continued)
 (Modified-Cash Basis)
 (Unaudited)

2) Investments (continued)

The cost and fair values of unrestricted fixed-income securities by contractual maturity are as follows:

	<u>Unrestricted fixed-income securities</u>	
	<u>Cost</u>	<u>Fair Value</u>
June 30, 2020		
One year or less	\$ 138,202,702	\$ 138,379,832
Over one year through five years	383,526,631	394,651,513
Over five years through twenty years	29,085,939	31,711,010
Mortgage-backed	89,969,848	93,786,304
Asset-backed	<u>113,847,572</u>	<u>115,162,740</u>
Total	<u>\$ 754,632,692</u>	<u>\$ 773,691,400</u>

	<u>Unrestricted fixed-income securities</u>	
	<u>Cost</u>	<u>Fair Value</u>
December 31, 2019		
One year or less	\$ 89,484,818	\$ 88,662,727
Over one year through five years	408,608,141	409,957,367
Over five years through twenty years	61,220,541	63,456,639
Mortgage-backed	100,656,335	101,716,607
Asset-backed	<u>55,253,966</u>	<u>55,119,423</u>
Total	<u>\$ 715,223,801</u>	<u>\$ 718,912,763</u>

The Home Insurance Company in Liquidation ("Home")

Notes to Financial Statements (continued)
(Modified-Cash Basis)
(Unaudited)

3) Incurred But Unpaid Administrative Expenses and Investment Expenses

Accrued expenses incurred in the normal course of Home's liquidation, but unpaid as of June 30, 2020, are as follows:

Human resources costs	\$ 443,325
Consultant and outside service fees	204,256
Legal and auditing fees	24,053
Other administration costs	77,398
General office and rent expense	<u>23,638</u>
Total accrued administrative expenses	<u>772,670</u>
Accrued investment expenses	<u>174,610</u>
Total accrued expenses	<u>\$ 947,280</u>

The amount of accrued expenses at December 31, 2019 was \$1,568,795 and net assets for 2020 increased by \$621,515 due to the decrease in the accrual.

Various full-time employees of Home are covered by employee incentive plans, which were approved by the Liquidation Court on December 7, 2019. The costs of these plans are primarily payable in 2020, but are based on 2019 service and are being accrued over the service period in 2020. Accrued administrative expense includes \$443,325 of incentive plan costs.

4) Restricted Funds

The Liquidator has drawn down on letters of credit (LOC) upon receiving notices of cancellation or notices of non-renewal from the issuing bank. Such LOC drawdowns relate to insurance losses not yet proven and/or settled and are recognized as restricted cash receipts. Restricted funds will be recognized as unrestricted reinsurance recoveries when such balances are proven and/or settled between the beneficial owner and the Liquidator. Restricted funds related to reinsurance recoveries total \$195,667 at June 30, 2020 and December 31, 2019.

The Home Insurance Company in Liquidation (“Home”)

Notes to Financial Statements (continued)
(Modified-Cash Basis)
(Unaudited)

5) Securities on Deposit

Investments on deposit at the original cost with various states and the federal government were \$769,084, \$767,360 and \$73,947,287 at June 30, 2020, December 31, 2019 and June 13, 2003, respectively. The federal deposit is the only deposit still held at June 30, 2020, and as described in Note 1, the Liquidator does not record the amount of this asset as such amount has not been settled and agreed to with the federal government.

Various states have withdrawn such deposits and related interest for use by the related state guaranty associations. The market value of these withdrawals in the amount of \$54,835,498 may be offset against future distributions to such guaranty associations.

6) Early Access Distribution

On November 2, 2016, the Liquidation Court approved the eleventh early access distribution to insurance guaranty associations based on guaranty association payments through July 30, 2016. The Liquidator paid \$14.7 million for the eleventh early access distribution through December 31, 2016. The total of all early access payments through June 30, 2020 was \$256.0 million including other deemed early access payments.

As a condition for receiving early access distributions, the guaranty associations entered into “claw back” agreements with the Liquidator requiring the return of any amounts advanced that exceed the eventual distribution percentage for their creditor class. Pursuant to the “claw back” agreements, the Liquidator requested and received the return of \$5.9 million for the eleventh early access advance. Such returns of “claw back” amounts are netted against the related early access advances in the financial statements. The distribution caps are (1) an amount equal to 40% of the total incurred costs projected by each guaranty association, and (2) an amount equal to 75% of each guaranty association’s cumulative paid claims.

The Liquidator may periodically make additional early access distributions in the future, subject to the Liquidation Court’s approval. Early access distributions and related advances are not recorded as assets in the accompanying statements of restricted and unrestricted net assets, excluding certain amounts, although they represent payments in advance of distributions to other claimants. Early access distributions and related advances will ultimately be credited against amounts payable to Guaranty Associations to ensure pro rata distributions among members of the same class of creditor of the Liquidating Company.

The Home Insurance Company in Liquidation (“Home”)

Notes to Financial Statements (continued)
(Modified-Cash Basis)
(Unaudited)

6) Early Access Distribution (continued)

The following summary represents early access distributions and related advances that are not reflected in the Statement of Net Assets.

Early Access Distributions paid in cash	\$ 252,942,104
Assets withdrawn from special deposits held by states to pay Home claims (market value, see note 5)	54,835,498
Other deemed Early Access advances paid in cash	<u>3,148,212</u>
Total	<u>\$ 310,925,814</u>

7) Home Deductible Policies - Reimbursement

On April 6, 2011, the Liquidation Court approved an agreement between the Liquidator and the Guaranty Associations regarding Home Deductible policies (the Deductible Agreement). The Deductible Agreement provides that the Liquidator will reimburse the signatory Guaranty Associations for deductible amounts collected during liquidation. The Liquidator also charges fee of 7.5% as reimbursement of the Home’s expenses incurred in the collection process. Forty-six Guaranty Associations have signed the Deductible Agreement to date. On May 21, 2020, the Liquidator paid \$212,843 and on March 6, 2019 the Liquidator paid \$338,600, after netting of the fee.

8) Allowed Claims

As of June 30, 2020, the Liquidator has allowed, and the Liquidation Court has approved, \$107,891,372 of Class I claims, \$2,854,553,262 of Class II claims, \$2,672,527 of Class III claims, \$333,864,498 of Class V claims and \$53,887 of Class VIII claims. Class I claims paid in 2019 were \$8,651,565 for the tenth and ninth distribution of Guaranty Associations’ administrative costs. It is management’s judgment that there will not be sufficient assets to make distributions on allowed claims below the Class II priority. Distributions on allowed claims will depend on the amount of assets available for distribution and allowed claims in each successive priority class under New Hampshire RSA 402-C: 44.

The Home Insurance Company in Liquidation ("Home")

Notes to Financial Statements (continued)
(Modified-Cash Basis)
(Unaudited)

9) Interim Distribution

On February 10, 2012, the Liquidator submitted a motion to the Liquidation Court seeking approval for a 15% interim distribution on allowed Class II claims. The interim distribution was approved by order of the Liquidation Court on March 13, 2012 (as amended July 2, 2012), and was subject to receipt of a waiver of federal priority claims from the United States Department of Justice. The waiver was received on November 5, 2014.

Additionally, on September 28, 2015, the Liquidator submitted a motion to the Liquidation Court seeking approval for a second interim distribution of 10% on allowed Class II claims. The Liquidation Court issued an order approving the motion on November 16, 2015 (the Order). On March 7, 2016, the Order was amended so that claimants who had not received the first interim distribution would be paid the second interim distribution coincident with the first interim distribution. The second interim distribution was subject to a waiver from the United States Department of Justice. The waiver was received on July 18, 2016.

On September 28, 2018, the Liquidator submitted a motion to the Liquidating Court seeking approval for a third interim distribution of 5% on allowed Class II claims. The Liquidation Court issued an order approving the motion on October 18, 2018 subject to a waiver from the United States Department of Justice. The waiver was received on April 10, 2019.

As of June 30, 2020, cash paid relating to the interim distributions in 2020 and 2019 totaled \$14,544,694 and \$132,802,678 respectively, and \$431,079 and \$157,492 remains outstanding as a payable for outstanding checks issued in 2020 and in 2019 respectively. The total of all class II payments issued through June 30, 2020 was \$640,233,194.

10) Claim Amendment Deadline Motion

The Liquidator filed a Motion for Approval of a Claim Amendment Deadline on August 1, 2019 seeking to establish a deadline for the amendment of claims. As described in that motion, claims filed after the claim amendment deadline and potential claims (claims that cannot be specifically identified by the deadline) will be barred if the Motion for Approval of Claim Amendment Deadline is granted. Twelve objections were filed by the November 18, 2019 deadline for objections to the motion. An additional objection was filed on December 24, 2019. Two objections have been withdrawn. The Liquidator filed responses in December 2019. A status conference was held on February 28, 2020. In an order dated 2/28/20, the Court gave objectors until 4/1/20 to file further memoranda and the Liquidator until 5/1/20 to file responsive memoranda. The Liquidator filed his response on 4/30/20. A hearing on the motion and objections was set for 6/23/20, but on 5/27/20 the court continued the hearing, which will be rescheduled as the docket allows after 9/1/20. On September 11, 2020, The Liquidator filed a motion requesting that the Court schedule a hearing on the Claim Amendment Deadline by videoconference in the fall.

The Home Insurance Company in Liquidation
G&A Expenses (Actual vs Budget)
June 30, 2020

General & Administrative Expense	YTD			Full Year Budget
	Actual 2020	Budget 2020	Variance 2020	
Salary and Benefits	3,665,466	3,673,120	(7,654)	7,364,604
Travel	7,843	18,224	(10,381)	36,149
Rent	505,417	582,651	(77,233)	1,170,469
Equipment	100,337	100,900	(563)	201,800
Printing and Stationery	9,238	18,325	(9,087)	36,650
Postage	2,687	6,102	(3,415)	12,204
Telephone	45,499	46,600	(1,101)	93,200
Outside Services, including Special Deputy	1,170,268	1,340,355	(170,087)	2,680,710
Legal and Auditing	399,219	717,500	(318,281)	1,305,000
Bank Fees	78,573	79,500	(927)	159,000
Corporate Insurance	60,438	-	60,438	77,000
Miscellaneous Income/Expenses	820	50,000	(49,180)	100,000
Total Expenses Incurred	6,045,806	6,633,277	(587,471)	13,236,786

The Home Insurance Company in Liquidation
Portfolio Summary Report- Bonds and Short Term Investments
Securities Held as of June 30, 2020
(000's)

Conning Managed:

% of BV		Book Value	Market Value	Unrealized Gain (Loss)	Eff Mat (Years)	Book Yield	Average Credit Quality	Earned Income 6/30/20
Fixed Income								
6.3%	Short Term	49,668	49,668	-	0.04	0.09	N/A	247
4.3%	Agency	34,187	35,270	1,083	1.79	2.56	Aa2	434
4.8%	Government	37,745	38,614	869	1.24	2.10	Aaa	438
58.9%	Corporate	464,559	481,023	16,464	2.15	2.51	A2	6,363
10.9%	Mortgage Backed	85,746	89,927	4,181	3.16	2.51	Aaa	1,155
14.4%	Asset Backed	113,665	115,163	1,498	1.36	2.43	Aaa	937
0.4%	CMBS	3,474	3,859	386	5.31	2.86	Aaa	49
100.0%	Total	789,044	813,524	24,480	1.98	2.33	Aa3	9,622

Other investments- Home Insurance

100%	US Treasury Bills and Notes	9,905	9,835	(70)	0.04	2.88	Aaa	86
Total Home Insurance (1)		798,949	823,359	24,410	1.96	2.34	Aa3	9,708 (2)

(1) Investment balances do not include cash amounts invested in sweep accounts of Citizens Bank and investments in common stocks and limited partnerships.

(2) On an annualized basis, the total estimated income generated by the portfolio, calculated based on holdings as of June 30, 2020, would be \$18.7 million over the next 12 months.

**THE HOME INSURANCE COMPANY IN LIQUIDATION
HOLDINGS REPORT
AS OF JUNE 30, 2020**

CUSIP	DESCRIPTION	CPN	MATURITY	QUANTITY	BOOK VALUE	MARKET VALUE
262006208	DREYFUS GOVERN CASH MGMT-INS	0.085	07/15/2020	49,668,226.72	49,668,226.72	49,668,226.72
TOTAL CASH EQUIVALENTS				49,668,226.72	49,668,226.72	49,668,226.72
SHORT TERM (OVER 90 DAYS)						
912828NM8	US TREASURY BILL		07/15/2020	8,363,000.00	9,905,356.09	9,835,133.44
912796TD1	US TREASURY BILL		08/13/2020	775,000.00	773,569.70	773,569.70
TOTAL SHORT TERM				9,138,000.00	10,678,925.78	10,608,703.14
U S TREASURY						
912828A83	US TREASURY N/B	2.375	12/31/2020	20,000,000.00	20,035,748.80	20,218,750.00
912828B58	US TREASURY N/B	2.125	01/31/2021	4,000,000.00	3,989,163.48	4,045,000.00
912828K74	US TREASURY N/B	2.000	08/15/2025	6,000,000.00	5,919,792.06	6,513,750.00
912828V20	US TREASURY N/B	2.000	09/30/2020	7,800,000.00	7,800,745.13	7,836,562.50
TOTAL U S TREASURY				37,800,000.00	37,745,449.47	38,614,062.50
TOTAL GOVERNMENT & AGENCIES				37,800,000.00	37,745,449.47	38,614,062.50
PROVINCIAL						
01306GAB9	PROVINCE OF ALBERTA	1.750	08/26/2020	4,000,000.00	3,995,448.84	4,009,976.00
563469UH6	MANITOBA (PROVINCE OF)	2.050	11/30/2020	4,000,000.00	3,992,232.32	4,024,820.00
68323AE59	ONTARIO (PROVINCE OF)	2.550	02/12/2021	4,000,000.00	4,003,030.76	4,049,896.00
748148RU9	PROVINCE OF QUEBEC	3.500	07/29/2020	5,000,000.00	5,003,864.50	5,012,490.00
TOTAL PROVINCIAL				17,000,000.00	16,994,576.42	17,097,182.00
TAX MUNICIPAL						
20772KGK9	CONNECTICUT ST	3.500	04/15/2021	3,175,000.00	3,194,793.68	3,247,136.00
2350364G2	DALLAS-FORT WORTH TX INTERNATI	1.887	11/01/2021	1,950,000.00	1,950,000.00	1,974,843.00
798170AH9	SAN JOSE CA REDEV AGY SUCCESSO	3.076	08/01/2025	4,000,000.00	4,000,000.00	4,392,400.00
91412GU94	UNIV OF CALIFORNIA CA REVENUES	3.063	07/01/2025	4,000,000.00	4,024,123.68	4,384,160.00
TOTAL TAX MUNICIPAL				13,125,000.00	13,168,917.36	13,998,539.00
CORPORATE						
00206RCN0	AT&T INC	3.400	05/15/2025	3,000,000.00	2,952,064.68	3,286,221.00
00287YBN8	ABBVIE INC	2.545	11/21/2022	3,700,000.00	3,700,000.00	3,711,003.80
00440EAU1	CHUBB INA HOLDINGS INC	2.875	11/03/2022	8,000,000.00	8,118,131.84	8,399,912.00
02209SAN3	ALTRIA GROUP INC	2.850	08/09/2022	2,500,000.00	2,527,996.43	2,604,480.00
023135AW6	AMAZON.COM INC	2.400	02/22/2023	3,925,000.00	3,950,113.89	4,123,813.03
0258M0DX4	AMERICAN EXPRESS CREDIT	2.600	09/14/2020	1,080,000.00	1,078,432.26	1,082,633.04
0258M0EG0	AMERICAN EXPRESS CREDIT	2.700	03/03/2022	5,000,000.00	4,996,102.15	5,168,345.00
02665WAZ4	AMERICAN HONDA FINANCE	2.450	09/24/2020	3,000,000.00	2,998,510.44	3,012,555.00
03027XAH3	AMERICAN TOWER CORP	3.300	02/15/2021	3,500,000.00	3,466,699.64	3,554,050.50
036752AC7	ANTHEM INC	3.350	12/01/2024	1,340,000.00	1,339,726.05	1,470,822.86
037389BD4	AON CORP	2.200	11/15/2022	3,700,000.00	3,699,410.96	3,841,203.10
037833AR1	APPLE INC	2.850	05/06/2021	7,000,000.00	7,008,844.15	7,153,146.00
037833BU3	APPLE INC	2.850	02/23/2023	5,000,000.00	5,065,819.40	5,309,530.00
037833CM0	APPLE INC	2.500	02/09/2022	3,000,000.00	2,999,949.81	3,098,997.00
04685A2B6	ATHENE GLOBAL FUNDING	4.000	01/25/2022	4,050,000.00	4,049,579.65	4,186,189.35
05348EAQ2	AVALONBAY COMMUNITIES	2.950	09/15/2022	1,200,000.00	1,222,982.10	1,252,282.80
05348EAR0	AVALONBAY COMMUNITIES	2.850	03/15/2023	1,000,000.00	1,022,784.65	1,043,584.00

CUSIP	DESCRIPTION	CPN	MATURITY	QUANTITY	BOOK VALUE	MARKET VALUE
05531FAX1	TRUIST FIN CORP	2.750	04/01/2022	5,500,000.00	5,496,269.35	5,699,545.50
05565QBU1	BP CAPITAL MARKETS PLC	3.561	11/01/2021	8,550,000.00	8,647,400.06	8,869,829.85
05578AA6	BPCE SA	2.750	01/11/2023	4,000,000.00	3,982,089.00	4,183,600.00
06051GGT0	BANK OF AMERICA CORP	3.093	10/01/2025	4,000,000.00	3,994,895.29	4,319,224.00
06051GGZ6	BANK OF AMERICA CORP	3.366	01/23/2026	3,000,000.00	3,000,000.00	3,277,452.00
06367WJN4	BANK OF MONTREAL	2.903	03/26/2022	3,250,000.00	3,250,000.00	3,253,828.50
06406RAA5	BANK OF NY MELLON CORP	2.600	02/07/2022	5,000,000.00	4,996,423.00	5,162,055.00
06406RAC1	BANK OF NY MELLON CORP	2.661	05/16/2023	2,605,000.00	2,605,000.00	2,705,581.66
064159QD1	BANK OF NOVA SCOTIA	2.375	01/18/2023	6,000,000.00	6,052,792.39	6,236,646.00
084659AK7	BERKSHIRE HATHAWAY ENERG	2.800	01/15/2023	3,125,000.00	3,125,000.00	3,289,075.00
084670BR8	BERKSHIRE HATHAWAY INC	2.750	03/15/2023	5,000,000.00	5,076,280.50	5,289,185.00
09659W2E3	BNP PARIBAS	3.500	03/01/2023	5,000,000.00	5,135,473.55	5,287,500.00
10112RAU8	BOSTON PROPERTIES LP	3.850	02/01/2023	2,500,000.00	2,607,299.03	2,667,947.50
11135FAA9	BROADCOM INC	3.125	04/15/2021	3,000,000.00	3,019,243.02	3,049,419.00
12189LAQ4	BURLINGTN NORTH SANTA FE	3.850	09/01/2023	5,000,000.00	5,221,387.60	5,472,465.00
125523AE0	CIGNA CORP	3.400	09/17/2021	1,425,000.00	1,425,000.00	1,471,187.10
126650CW8	CVS HEALTH CORP	4.100	03/25/2025	1,760,000.00	1,747,897.24	1,982,842.40
14912L6C0	CATERPILLAR FINANCIAL SE	3.300	06/09/2024	4,000,000.00	4,082,087.92	4,380,228.00
14913Q2W8	CATERPILLAR FINL SERVICE	2.650	05/17/2021	2,500,000.00	2,499,465.85	2,546,807.50
166764AB6	CHEVRON CORP	2.355	12/05/2022	3,500,000.00	3,500,000.00	3,640,234.50
17275RBD3	CISCO SYSTEMS INC	2.200	02/28/2021	7,500,000.00	7,475,834.40	7,591,567.50
172967FT3	CITIGROUP INC	4.500	01/14/2022	4,000,000.00	4,084,025.92	4,230,264.00
191216BY5	COCA-COLA CO/THE	1.550	09/01/2021	5,000,000.00	4,978,910.50	5,068,085.00
225433AT8	CRED SUIS GP FUN LTD	3.800	06/09/2023	2,000,000.00	2,077,847.20	2,149,486.00
22546QAR8	CREDIT SUISSE NEW YORK	3.000	10/29/2021	2,000,000.00	2,004,731.22	2,067,284.00
22550L2B6	CREDIT SUISSE NEW YORK	2.800	04/08/2022	3,900,000.00	3,903,211.32	4,045,789.80
233851BW3	DAIMLER FINANCE NA LLC	3.300	05/19/2025	3,000,000.00	3,028,080.78	3,189,735.00
24422ETG4	JOHN DEERE CAPITAL CORP	2.800	03/06/2023	7,000,000.00	7,091,230.38	7,410,340.00
254687CM6	WALT DISNEY COMPANY/THE	3.000	09/15/2022	3,000,000.00	3,074,631.84	3,164,253.00
26875PAK7	EOG RESOURCES INC	2.625	03/15/2023	4,000,000.00	3,982,811.00	4,190,640.00
278642AE3	EBAY INC	2.600	07/15/2022	3,600,000.00	3,563,371.66	3,717,856.80
30231GAF9	EXXON MOBIL CORPORATION	2.709	03/06/2025	5,000,000.00	5,013,813.10	5,362,880.00
31677QBG3	FIFTH THIRD BANK	2.250	06/14/2021	1,283,000.00	1,270,873.89	1,302,133.38
341099CP2	DUKE ENERGY FLORIDA INC	3.100	08/15/2021	4,000,000.00	4,035,646.96	4,083,256.00
354613AJ0	FRANKLIN RESOURCES INC	2.800	09/15/2022	4,000,000.00	4,080,175.28	4,167,104.00
369550BE7	GENERAL DYNAMICS CORP	3.000	05/11/2021	2,600,000.00	2,597,349.22	2,659,753.20
370334CF9	GENERAL MILLS INC	4.000	04/17/2025	2,250,000.00	2,248,441.18	2,550,728.25
38141GWQ3	GOLDMAN SACHS GROUP INC	3.272	09/29/2025	4,000,000.00	3,996,070.76	4,299,920.00
404280BA6	HSBC HOLDINGS PLC	3.600	05/25/2023	3,000,000.00	3,110,918.28	3,220,248.00
42217KBA3	WELLTOWER INC	3.750	03/15/2023	3,400,000.00	3,523,796.65	3,582,311.40
428236BX0	HEWLETT-PACKARD CO	4.050	09/15/2022	1,500,000.00	1,520,221.61	1,606,032.00
437076BL5	HOME DEPOT INC	2.000	04/01/2021	7,500,000.00	7,465,829.10	7,585,440.00
438516BT2	HONEYWELL INTERNATIONAL	2.150	08/08/2022	4,000,000.00	4,032,972.51	4,138,936.00
44328MAC8	HSBC BANK PLC	4.125	08/12/2020	3,000,000.00	3,005,004.30	3,012,357.00
458140AM2	INTEL CORP	2.700	12/15/2022	5,000,000.00	5,084,059.65	5,289,040.00
46625HHU7	JPMORGAN CHASE & CO	4.250	10/15/2020	5,000,000.00	5,020,326.50	5,056,250.00
46625HQJ2	JPMORGAN CHASE & CO	2.550	03/01/2021	2,500,000.00	2,489,859.15	2,531,192.50
46849LSW2	JACKSON NATL LIFE GLOBAL	2.500	06/27/2022	4,000,000.00	3,994,993.36	4,110,000.00
539439AP4	LLOYDS BANKING GROUP PLC	2.907	11/07/2023	3,000,000.00	3,000,000.00	3,112,500.00
55279HAL4	MANUF & TRADERS TRUST CO	2.500	05/18/2022	5,000,000.00	4,997,264.30	5,170,720.00
57629WCG3	MASSMUTUAL GLOBAL FUNDIN	2.950	01/11/2025	5,000,000.00	4,993,264.45	5,428,630.00
57636QAB0	MASTERCARD INC	3.375	04/01/2024	2,000,000.00	2,051,568.54	2,214,036.00
585055BR6	MEDTRONIC INC	3.150	03/15/2022	5,000,000.00	5,047,651.30	5,224,525.00
58933YAQ8	MERCK & CO INC	2.350	02/10/2022	5,000,000.00	4,983,411.75	5,155,905.00
59217GCD9	MET LIFE GLOB FUNDING I	2.650	04/08/2022	5,000,000.00	4,999,315.05	5,174,655.00
594918BP8	MICROSOFT CORP	1.550	08/08/2021	4,000,000.00	3,973,899.84	4,055,016.00
595112BR3	MICRON TECHNOLOGY INC	2.497	04/24/2023	2,000,000.00	2,000,000.00	2,078,650.00
6174468C6	MORGAN STANLEY	4.000	07/23/2025	4,000,000.00	4,119,138.48	4,524,104.00

CUSIP	DESCRIPTION	CPN	MATURITY	QUANTITY	BOOK VALUE	MARKET VALUE	
63254AAY4	NATIONAL AUSTRALIA BK/NY	2.875	04/12/2023	4,000,000.00	3,993,646.48	4,234,100.00	
637071AJ0	NATIONAL OILWELL VARCO I	2.600	12/01/2022	1,693,000.00	1,691,384.49	1,701,465.00	
63859UBD4	NATIONWIDE BLDG SOCIETY	2.450	07/27/2021	4,000,000.00	3,998,398.72	4,054,560.00	
63859UBE2	NATIONWIDE BLDG SOCIETY	2.000	01/27/2023	1,575,000.00	1,573,033.64	1,621,919.25	
641062AD6	NESTLE HOLDINGS INC	3.350	09/24/2023	2,200,000.00	2,294,194.25	2,383,449.20	
641062AJ3	NESTLE HOLDINGS INC	3.100	09/24/2021	1,325,000.00	1,341,574.16	1,364,612.20	
64952WCS0	NEW YORK LIFE GLOBAL FDG	2.300	06/10/2022	3,050,000.00	3,047,580.22	3,160,202.60	
666807BM3	NORTHROP GRUMMAN CORP	2.930	01/15/2025	3,500,000.00	3,499,842.82	3,780,784.00	
66989HAE8	NOVARTIS CAPITAL CORP	2.400	09/21/2022	3,000,000.00	3,041,560.92	3,125,178.00	
67077MAV0	NUTRIEN LTD	1.900	05/13/2023	3,900,000.00	3,896,642.30	4,011,594.60	
68389XBA2	ORACLE CORP	2.800	07/08/2021	9,000,000.00	9,000,982.17	9,226,638.00	
69349LAM0	PNC BANK NA	3.800	07/25/2023	5,000,000.00	5,252,047.32	5,414,955.00	
69371RM94	PACCAR FINANCIAL CORP	2.250	02/25/2021	5,550,000.00	5,570,356.07	5,618,731.20	
69371RQ74	PACCAR FINANCIAL CORP	2.650	04/06/2023	1,015,000.00	1,014,521.13	1,070,375.36	
713448BY3	PEPSICO INC	2.750	03/05/2022	7,000,000.00	7,016,094.47	7,290,731.00	
717081DZ3	PFIZER INC	2.200	12/15/2021	2,000,000.00	2,009,150.30	2,054,260.00	
717081EN9	PFIZER INC	3.200	09/15/2023	1,459,000.00	1,517,541.37	1,577,244.66	
718172CQ0	PHILIP MORRIS INTL INC	1.125	05/01/2023	3,770,000.00	3,758,061.35	3,825,328.52	
74005PBF0	PRAXAIR INC	2.700	02/21/2023	3,000,000.00	3,059,135.91	3,138,558.00	
741503BB1	BOOKING HOLDINGS INC	2.750	03/05/2022	7,050,000.00	7,254,200.01	7,372,410.60	
742718EU9	PROCTER & GAMBLE CO/THE	2.150	08/11/2022	3,000,000.00	3,016,683.66	3,113,094.00	
74368CAK0	PROTECTIVE LIFE GLOBAL	3.397	06/28/2021	3,000,000.00	3,000,000.00	3,059,754.00	
74456QBH8	PUBLIC SERVICE ELECTRIC	3.150	08/15/2024	5,000,000.00	5,157,235.25	5,357,780.00	
747525AE3	QUALCOMM INC	3.000	05/20/2022	5,000,000.00	5,066,082.25	5,224,660.00	
747525AR4	QUALCOMM INC	2.600	01/30/2023	2,285,000.00	2,283,304.07	2,395,824.79	
776743AE6	ROPER TECHNOLOGIES INC	3.650	09/15/2023	3,500,000.00	3,536,275.33	3,801,273.00	
797440BN3	SAN DIEGO G & E	3.000	08/15/2021	4,450,000.00	4,487,948.27	4,536,948.55	
822582AS1	SHELL INTERNATIONAL FIN	2.375	08/21/2022	5,000,000.00	4,981,274.00	5,189,350.00	
828807CN5	SIMON PROPERTY GROUP LP	2.750	02/01/2023	5,000,000.00	5,039,910.30	5,195,130.00	
854502AD3	STANLEY BLACK & DECKER I	2.900	11/01/2022	4,000,000.00	4,000,537.36	4,217,924.00	
857477BH5	STATE STREET CORP	2.825	03/30/2023	2,700,000.00	2,704,096.81	2,803,050.91	
85771PAG7	EQUINOR ASA	2.450	01/17/2023	4,000,000.00	4,023,124.52	4,174,236.00	
87236YAE8	TD AMERITRADE HOLDING CO	2.950	04/01/2022	3,000,000.00	3,036,873.48	3,119,781.00	
87612EAZ9	TARGET CORP	2.900	01/15/2022	3,000,000.00	3,063,103.50	3,120,252.00	
89114QBX5	TORONTO-DOMINION BANK	2.550	01/25/2021	2,500,000.00	2,496,115.60	2,531,200.00	
89153VAP4	TOTAL CAPITAL INTL SA	2.750	06/19/2021	5,000,000.00	5,017,479.50	5,112,120.00	
89236TGW9	TOYOTA MOTOR CREDIT CORP	2.900	03/30/2023	6,375,000.00	6,374,353.64	6,752,221.50	
893526DK6	TRANS-CANADA PIPELINES	3.800	10/01/2020	3,000,000.00	3,009,712.14	3,007,491.00	
902674YA2	UBS AG LONDON	1.750	04/21/2022	3,475,000.00	3,470,884.35	3,540,587.15	
90327QD48	USAA CAPITAL CORP	1.500	05/01/2023	1,555,000.00	1,553,194.05	1,594,161.12	
90331HPC1	US BANK NA CINCINNATI	2.650	05/23/2022	5,000,000.00	5,065,442.35	5,206,285.00	
911312BC9	UNITED PARCEL SERVICE	2.350	05/16/2022	3,500,000.00	3,524,727.26	3,622,692.50	
91324PBZ4	UNITEDHEALTH GROUP INC	2.750	02/15/2023	3,500,000.00	3,559,013.33	3,674,783.00	
92826CAC6	VISA INC	2.800	12/14/2022	7,000,000.00	7,100,141.35	7,386,176.00	
929043AJ6	VORNADO REALTY LP	3.500	01/15/2025	3,500,000.00	3,490,537.86	3,427,662.00	
94974BGR5	WELLS FARGO & COMPANY	2.550	12/07/2020	1,546,000.00	1,543,163.60	1,559,527.50	
961214CV3	WESTPAC BANKING CORP	2.100	05/13/2021	5,000,000.00	4,974,193.35	5,073,940.00	
96145DAB1	WRKCO INC	3.000	09/15/2024	2,600,000.00	2,595,545.91	2,767,390.60	
TOTAL CORPORATE					465,316,000.00	468,582,604.52	485,197,438.63
MORTGAGE BACKED							
3128L0DF6	FHLMC POOL A68202	6.000	11/01/2037	89,285.82	91,437.42	106,741.87	
3128L0EF5	FHLMC POOL A68234	6.000	11/01/2037	107,607.80	108,483.36	123,537.06	
3128ME4A6	FHLMC POOL G16017	3.000	12/01/2031	7,719,849.39	7,898,350.22	8,126,055.28	
3128ME4T5	FHLMC POOL G16034	2.500	01/01/2032	8,503,295.28	8,514,737.74	8,993,675.64	
3128MJAD2	FHLMC POOL G08003	6.000	07/01/2034	207,540.10	212,572.94	241,492.28	

CUSIP	DESCRIPTION	CPN	MATURITY	QUANTITY	BOOK VALUE	MARKET VALUE
3128MJMC1	FHLMC POOL G08354	5.000	07/01/2039	1,087,570.50	1,100,457.08	1,217,612.13
3128MMVZ3	FHLMC POOLG18631	2.500	01/01/2032	8,411,995.04	8,420,575.36	8,823,461.13
3128PYU36	FHLMC POOL J18702	3.000	03/01/2027	3,096,706.80	3,167,015.45	3,258,431.32
31292JBRO	FHLMC POOL C01848	6.000	06/01/2034	270,035.82	279,227.45	314,212.54
312944AF8	FHLMC POOL A95406	4.000	12/01/2040	1,730,190.00	1,751,853.81	1,895,646.56
31297ECP9	FHLMC POOL A2-6378	6.000	09/01/2034	83,950.30	86,569.47	95,256.37
31307AEK4	FHLMC POOL J21938	2.500	01/01/2028	5,526,906.20	5,648,366.43	5,811,721.22
31307FJM4	FHLMC POOL J26568	3.500	12/01/2028	3,052,807.33	3,164,112.29	3,245,526.14
31307GTQ2	FHLMC POOL J27759	3.000	03/01/2029	5,203,482.72	5,314,105.59	5,530,262.63
3132GDMF6	FHLMC POOL Q00358	4.500	04/01/2041	2,871,364.27	3,013,934.28	3,174,358.50
3132GFXD4	FHLMC POOL Q02476	4.500	08/01/2041	1,649,940.20	1,732,738.87	1,826,170.94
31335H5U3	FHLMC POOL C90859	5.500	10/01/2024	168,012.00	170,467.62	184,682.40
3136AX7E9	FNA 2017-M12 A2	3.181	06/25/2027	3,425,000.00	3,473,611.88	3,859,290.00
31371PC57	FNMA POOL 257592	5.000	03/01/2039	369,499.00	373,645.03	414,017.75
31376KEL6	FNMA POOL 357539	5.500	04/01/2034	264,841.30	264,841.30	303,296.13
3138A8KG0	FNMA POOL AH6594	3.500	03/01/2026	1,964,659.31	2,019,082.85	2,079,213.56
3138EM3Y5	FN AL5314	3.500	03/01/2027	1,798,219.02	1,827,064.77	1,905,630.17
3138NXE37	FNMA POOL AR1053	2.500	01/01/2028	4,119,402.14	4,210,879.19	4,316,592.32
3138YEPP6	FNMA POOL AY1329	3.000	03/01/2030	5,747,934.45	5,945,373.87	6,075,151.08
3140J5GH6	FNMA POOL BM1099	3.000	03/01/2032	4,700,277.76	4,830,035.13	5,007,774.02
31413FGK2	FNMA POOL 944002	6.000	08/01/2037	331,565.58	329,410.69	395,293.09
31415Q4B9	FNMA POOL 986518	5.000	06/01/2038	35,256.87	35,596.60	38,912.53
31416XEL0	FNMA POOL AB1938	3.500	12/01/2025	3,017,176.54	3,081,586.83	3,205,025.02
31416YTY4	FNMA POOL AB3266	4.000	07/01/2041	2,187,611.80	2,236,452.79	2,428,029.13
31416YU89	FNMA POOL AB3306	4.000	07/01/2041	1,819,186.50	1,865,186.87	1,991,684.97
31419LD42	FNMA POOL AE9122	3.500	12/01/2025	847,267.70	858,426.43	896,671.23
31419LYR8	FNMA POOL AE9719	4.500	12/01/2040	4,860,875.80	5,023,196.44	5,376,583.03
36202D5C1	GNMA 2M POOL 3543	5.000	04/20/2034	364,642.70	364,192.40	425,907.33
36202EAK5	GNMA 2M POOL 3610	5.500	09/20/2034	321,971.20	328,980.33	384,899.93
36202EUT4	GNMA 2M POOL 4194	5.500	07/20/2038	481,353.60	482,406.56	570,200.05
36202EUU1	GNMA 2M POOL 4195	6.000	07/20/2038	425,951.70	434,337.62	489,433.25
36202EVN6	GNMA 2M POOL 4221	5.500	08/20/2038	324,318.80	321,785.06	383,240.24
36202EVP1	GNMA 2M POOL 4222	6.000	08/20/2038	235,528.30	238,398.80	270,614.89

TOTAL MORTGAGE BACKED

87,423,079.64 89,219,496.82 93,786,303.73

ASSET BACKED

02529WAA5	ACAR 2020-2 A	1.650	12/13/2023	2,071,796.83	2,071,877.67	2,079,987.26
03065MAG2	AMCAR 2015-4 D	3.720	04/07/2020	847,149.96	847,149.96	847,573.88
05377RBX1	AESOP 2015-1A A	2.500	07/20/2021	66,666.67	66,545.87	66,518.43
05377RCA0	AESOP 2015-2A A	2.630	12/20/2021	3,510,000.00	3,488,578.21	3,502,247.53
12597JAA0	CPS 2020-A A	2.090	05/15/2023	1,395,255.66	1,395,531.50	1,404,225.71
12656CAA3	CPS 2020-B A	1.150	07/17/2023	1,561,742.47	1,561,714.87	1,562,746.98
13645YAB5	CPART 2020-1A A2A	1.770	11/21/2022	1,950,000.00	1,950,000.00	1,968,050.13
14041NFM8	COMET 2017-A3 A3	2.430	01/15/2025	4,465,000.00	4,464,337.80	4,605,528.60
14312QAD8	CARMX 2016-4 A4	1.600	06/15/2022	5,000,000.00	4,990,309.95	5,017,307.34
14315VAD4	CARMX 2020-2 A3	1.700	11/15/2024	1,585,000.00	1,584,841.91	1,621,996.37
17305EFM2	CCCIT 2014-A1 A1	2.880	01/23/2023	5,000,000.00	5,021,763.20	5,070,566.58
17305EFR1	CCCIT 2014-A5 A5	2.680	06/07/2023	8,000,000.00	8,030,696.48	8,169,224.18
22535FAA2	CAALT 2018-2A A	3.470	05/17/2027	3,571,467.84	3,547,138.75	3,616,056.73
23341TAG1	DTAOT 2017-2A D	3.890	01/17/2023	364,319.25	362,664.58	367,251.77
23343RAA6	DTAOT 2020-2A A	1.140	01/16/2024	1,740,000.00	1,739,971.48	1,742,221.63
23344EAC0	DTAOT 2020-1A B	2.160	05/15/2024	1,000,000.00	999,900.27	1,010,129.80
26208JAG8	DRIVE 2018-2 D	4.140	08/15/2024	4,500,000.00	4,569,477.17	4,644,611.51
26208QAF4	DRIVE 2020-1 C	2.360	03/16/2026	1,135,000.00	1,134,846.59	1,142,939.54
26208VAD8	DRIVE 2020-2 A3	0.830	05/15/2024	700,000.00	699,973.94	701,699.25
29366AAA2	ELL 2011-A A1	2.040	09/01/2023	679,024.20	690,528.78	669,146.04
30167YAA9	EART 2020-2A A	1.130	08/15/2023	1,955,000.00	1,954,894.47	1,955,862.02

CUSIP	DESCRIPTION	CPN	MATURITY	QUANTITY	BOOK VALUE	MARKET VALUE	
33844QAA1	FCAT 2020-2 A	1.490	07/15/2024	2,260,046.57	2,259,913.18	2,273,340.39	
34531KAD4	FORDO 2019-C A3	1.870	03/15/2024	3,430,000.00	3,429,860.91	3,512,051.84	
34531MAE8	FORDL 2020-A A4	1.880	05/15/2023	1,390,000.00	1,389,767.43	1,419,760.46	
34533GAD1	FORDO 2020-B A3	0.560	10/15/2024	4,500,000.00	4,499,385.57	4,507,543.15	
35105RAD2	FCRT 2019-1 B	2.780	01/15/2025	3,000,000.00	2,976,409.20	3,062,757.75	
36259KAE7	GMALT 2020-1 A4	1.700	12/20/2023	1,095,000.00	1,094,844.86	1,115,999.93	
43813DAB4	HAROT 2020-2 A2	0.740	11/15/2022	1,485,000.00	1,484,899.78	1,488,765.36	
43813VAC2	HAROT 2019-4 A3	1.830	01/18/2024	3,635,000.00	3,634,508.44	3,730,266.10	
43814TAC6	HAROT 2017-1 A3	1.720	07/21/2021	191,582.20	193,306.56	191,904.03	
44891EAE9	HART 2016-B B	1.820	11/15/2022	265,000.00	260,926.23	266,626.67	
58770FAD4	MBALT 2020-A A4	1.880	09/15/2025	1,325,000.00	1,324,793.59	1,353,603.42	
654747AD6	NAROT 2017-A A3	1.740	08/16/2021	282,022.94	283,392.05	282,341.01	
65479NAE4	NALT 2020-A A4	1.880	04/15/2025	2,000,000.00	1,999,941.20	2,042,946.04	
68267CAD0	ODART 2017-2A D	3.420	10/15/2024	2,600,000.00	2,595,079.73	2,607,288.41	
80285EAH0	SDART 2016-1 E	5.020	06/15/2023	4,000,000.00	4,000,000.00	4,018,638.56	
80286AAF1	SDART 2018-5 C	3.810	12/16/2024	3,849,000.00	3,798,042.32	3,904,104.67	
80286KAD4	SRT 2020-A A4	1.760	03/20/2024	3,000,000.00	2,999,613.42	3,053,078.88	
89239JAD6	TAOT 2019-B A3	2.570	08/15/2023	5,000,000.00	5,043,701.35	5,142,020.56	
90945BAC8	UACST 2020-1 B	1.470	11/10/2022	3,200,000.00	3,199,906.40	3,199,360.00	
92347YAA2	VZOT 2019-A A1A	2.930	09/20/2023	1,031,000.00	1,012,457.44	1,061,393.67	
92348PAA0	VZOT 2017-2A A	1.920	12/20/2021	162,730.94	162,730.94	162,750.15	
92348TAC8	VZOT 2020-A B	1.980	07/22/2024	3,000,000.00	2,999,467.86	3,068,670.00	
92868JAB2	VALET 2020-1 A2A	0.930	12/20/2022	1,875,000.00	1,874,951.93	1,882,792.79	
96042HAJ9	WLAKE 2019-3A C	2.490	10/15/2024	3,250,000.00	3,249,529.60	3,270,993.62	
96042PAD4	WLAKE 2020-2A B	1.320	07/15/2025	1,500,000.00	1,499,989.86	1,503,336.00	
98162HAD2	WOLS 2020-A A4	1.790	06/16/2025	2,725,000.00	2,724,864.49	2,770,929.83	
98163WAC0	WOART 2020-B A3	0.630	05/15/2025	2,500,000.00	2,499,805.50	2,503,585.69	
TOTAL ASSET BACKED					113,648,805.53	113,664,833.29	115,162,740.26
TOTAL MARKETABLE SECURITIES					743,450,885.17	750,054,803.66	774,464,969.26
TOTAL MARKETABLE AND C/E					793,119,111.89	799,723,030.38	824,133,195.98
COMMON							
34958N100	FORTICELL BIOSCIENCE, INC			1,926.00	1,627,706.00	1.93	
	RIMCO ROYALTY MANAGEMENT, INC			346,302.00	346.30	0.00	
TOTAL COMMON					348,228.00	1,628,052.30	1.93
TOTAL MARKETABLE , CASH, C/E AND COMMON					793,467,339.89	801,351,082.68	824,133,197.90
EQUITY SECURITIES							
910585406	UNITED MERCHANTS & MFR			214,166.00	25,800.00	0.00	
910858414	UNITED MERCHANTS & MFR - WTS			53,542.00	0.00	0.00	
178789103	CITIVEST INTERNATIONAL LTD			12,000.00	702,131.00	590,242.00	
COMMON STOCKS					279,708.00	727,931.00	590,242.00
	RIMCO ROYALTY PARTNERS, L.P.			346,302.00	3,199,497.00	475,276.00	
LIMITED PARTNERS					346,302.00	3,199,497.00	475,276.00
TOTAL EQUITY SECURITIES					626,010.00	3,927,428.00	1,065,518.00
TOTAL					794,093,349.89	805,278,510.68	825,198,715.90

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

**LIQUIDATOR'S REPORT OF CLAIMS AND
RECOMMENDATIONS AS OF AUGUST 18, 2020**

Pursuant to Paragraph 4 of the Order Approving Liquidator's Report of Claims and Recommendations entered December 16, 2004, Christopher R. Nicolopoulos, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby submits this report of claims and recommendations. The claims are identified and the Liquidator's recommendations are set forth on the attached Schedule 1. The Liquidator recommends that the Court approve the treatment of the claims as set forth on the schedule pursuant to RSA 402-C:45.

1. The Liquidator has issued notices of determination or redetermination concerning the claims described on Schedule 1 in the amounts and at the priorities set forth on the Schedule.
2. With respect to all claims on Schedule 1, either the claimants have acknowledged that they agree with the claim determinations or more than sixty days have passed from the mailing of the notices of determination or redetermination without any objection being filed with the Court. The claimants accordingly may not object further to the determinations with respect to these claims. See RSA 402-C:41, I; Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation dated January 19, 2005, § 8.


3. Certain Class V claims on Schedule 1 arise under AFIA Treaties. The determinations of these AFIA claims have been agreed by Century Indemnity Company in accordance with the Claims Protocol dated August 6, 2004 approved by the Court on November 12, 2004.

4. In accordance with RSA 402-C:45, I, the Liquidator hereby reports on the claims set forth on Schedule 1 to the Court and recommends that the claims be allowed in the amounts and at the priority classes set forth on the schedule pursuant to RSA 402-C:45, II. The Liquidator has reviewed the claims and submits that the amounts recommended are fair and reasonable and that the priority classes recommended are proper under RSA 402-C:44.

5. In light of the suggestion in the Referee's Ruling on Liquidator's Motion for Clarification in Disputed Claims Docket No. 2005-HICIL-2 (Nov. 14, 2005), the Liquidator notes that there may be potential setoffs regarding certain of the claims. In any such event, those setoffs will be applied before distributions are made.

Respectfully submitted,

CHRISTOPHER R. NICOLOPOULOS, INSURANCE
COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE, SOLELY AS LIQUIDATOR OF THE
HOME INSURANCE COMPANY,


By: Peter A. Bengelsdorf
Special Deputy Liquidator

Date: August 24, 2020

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Report of Claims and Recommendations as of August 18, 2020 and the proposed form of order were sent, this 31st day of August, 2020, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith
NH Bar ID # 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106

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THE HOME INSURANCE CO. IN LIQUIDATION
Liquidator's Report of Claims and Recommendations Dated August 18, 2020 - Pursuant to RSA402-C:45
(Notice of Determination Acknowledged as Agreed or Not Timely Objected To)
Distribution will be subject to set off.

NOD Number	Claimant Name	Address				Brief Description	NOD Amount Recommended	NOD Class
INSU700496-01	MOORHEAD PUBLIC SERVICE	ATTN: JERRY BORMANN 500 CENTER AVE, 2ND FLR	MOOREHEAD	MN	56560	The insured's workers' compensation claim closed with no payment, hence the Proof of Claim is denied. No further claims are asserted against the Home.	0.00	II

Current Recommended Class II Allowances from Claim Report: \$ -
 Prior Total Approved Class II Allowances from Claim Reports: \$ 1,037,142,133.92
 Previously Court Approved Class II Settlement Agreements: \$ 1,833,776,482.23
 Total Recommended and Approved Class II Allowances: \$ 2,870,918,616.15 Class II

RAHM331369-01	ACE PROPERTY & CASUALTY INSURANCE COMPANY	ATTN: KIMBERLY MCDONNELL 510 WALNUT ST., WB12R	PHILADELPHIA	PA	19106	Partial Reinsurance allowance for verified losses ceded to Home Ins Co under various contracts.	3,529,434.00	V
AMBC465578-03	CLEARWATER INS CO	ATTN: KIM BARBER 250 COMMERCIAL STREET	MANCHESTER	NH	03101	Partial Reinsurance allowance for verified losses ceded to Home Ins Co under various contracts.	429,882.74	V
AMBC465579-03	CLEARWATER INS CO	ATTN: KIM BARBER 250 COMMERCIAL STREET	MANCHESTER	NH	03101	Partial Reinsurance allowance for verified losses ceded to Home Ins Co under various contracts.	0.00	V
RAHM700581-20	EXCESS & TREATY MANAGEMENT CORP	TWO LOGAN SQUARE, SUITE 600 ATTN: JAY BURKE	PHILADELPHIA	PA	19103	Partial Reinsurance allowance for verified losses ceded to Home Ins Co under various contracts.	6,142,695.13	V
INTL709590-66	NATIONWIDE INDEMNITY	ATTN: ED MORGANROTH JR CITY SQUARE OFFICE CENTER 500 THIRD STREET FIFTH FLOOR	WAUSAU	WI	54403	Partial Reinsurance allowance for verified losses ceded to Home Ins Co. UK through AFIA under various contracts.	53,967.42	V

THE HOME INSURANCE CO. IN LIQUIDATION
Liquidator's Report of Claims and Recommendations Dated August 18, 2020 - Pursuant to RSA402-C:45
(Notice of Determination Acknowledged as Agreed or Not Timely Objected To)
Distribution will be subject to set off.

NOD Number	Claimant Name	Address		Brief Description	NOD Amount Recommended	NOD Class
INTL700599-65	WUSTENROT WURTTENBERGISCHE	ATTN: ROBERT BUEHLER GUTENBERGSTRASSE 30 70176	STUTTGART GERMANY	Partial Reinsurance allowance for verified losses ceded to Home Ins Co. UK through AFIA under various contracts.	30,466.39	V
INTL277984-69	ZURICH VERSICHERUNG AKTIENGESELLSCHAFT (DEUTSCHLAND)	ATTN: DIRK EICHLER RIEHLER STRASE 90 50657	COLOGNE GERMANY	Partial Reinsurance allowance for verified losses ceded to Home Ins Co. UK through AFIA under various contracts.	46,868.09	V

Current Recommended Class V Allowances from Claim Report: \$ 10,233,313.77
 Prior Total Approved Class V Allowances from Claim Reports: \$ 275,631,987.76
 Previously Court Approved Class V Settlement Agreements: \$ 18,078,202.78
 Total Recommended and Approved Class V Allowances: \$ 303,943,504.31 Class V

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

In the Matter of the Liquidation of
The Home Insurance Company

LIQUIDATOR'S RESPONSE TO AFIA CEDENTS' OBJECTIONS TO
MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), submits this response to objections to the Liquidator's Motion for Approval of Claim Amendment Deadline filed by four insurers or groups of insurers that were reinsured by Home (that is, "ceded" risk to Home) through the American Foreign Insurance Association ("AFIA") in England:

1. Catalina London Limited on its own behalf and as successor to KX Reinsurance Company Limited, Catalina Worthing Insurance Limited as successor to L&E Insurance Company Limited, Catalina Worthing Insurance Limited as successor to Excess Insurance Company Limited (the "Catalina Group");
2. Zurich Insurance plc, German Branch ("Zurich") and Württembergische Versicherung AG ("Württembergische") (collectively "Zurich" for convenience);
3. Indemnity Marine Assurance Co., Nederlande Reassurantie Groep NV, NRG Victory Reinsurance Limited, NRG Fenchurch Insurance Company Ltd., New Zealand Reinsurance Company, Tenecom Limited, Underwriters at Lloyd's of London, Winterthur Swiss Ins. Co., and World Auxiliary Corp. Ltd. (collectively "Resolute"); and
4. Nationwide Mutual Insurance Company ("Nationwide").

Although Nationwide and the Catalina Group do not acknowledge it, these "cedents" are distinct from policyholders, and their claims fall within the residual priority Class V under RSA 402-C:44. The Liquidator is responding separately to the objection of MW Custom Papers LLC, successor to Mead Corporation ("MWCP"), a policyholder.

Introduction

This response addresses the objections of AFIA cedents, so it necessarily focuses on the concerns of this particular group of reinsureds. However, as described in the Liquidator's motion for approval of a claim amendment deadline, the Liquidator requests that the Court approve a final deadline based on the progress of the liquidation and considerations focusing on the interests of Class II creditors, who will receive distributions from the estate. The AFIA cedents do not fall in that class. They stand to receive administrative payments out of the estate because of an agreement entered in 2004 to facilitate the collection of reinsurance for the benefit of Class II creditors. Their desire to keep the estate open is contrary to the interests of the Class II creditors with allowed claims who can only receive the full possible distribution on their claims when the estate is closed. The proposed deadline is a means to that end.

The Class II claimants themselves plainly favor the deadline and closure of the liquidation proceeding. Notice of the Liquidator's motion for approval of the claim amendment deadline was sent to all claimants with open claims, including the 237 policyholders/insureds with open proofs of claim as of May 31, 2019. Only one policyholder (MWCP) filed a general objection by the November 18, 2019 deadline for objections to the motion.¹ Given the lack of Class II opposition, Nationwide's and Zurich's attempts to argue on behalf of Class II claimants should be disregarded. The AFIA cedents' arguments must be considered in the overall context of the Home estate and its Class II creditors. Otherwise, there is a danger of letting the AFIA tail "wag the dog."

¹ The Catholic Foreign Mission Society of American Inc. aka Maryknoll Father and Brothers, a policyholder, and the New York Liquidation Bureau objected based on "revival" statutes for sexual abuse claims in Hawaii and New York. Those objections are likely to become moot. See Liquidator's Response to First Group of Objections (filed December 13, 2019). An additional policyholder, Johnson & Johnson, filed an untimely objection on December 24, 2019, which the Liquidator received on December 26, 2019. All filings and orders in the Home liquidation proceeding referred to in this response may be found on the Liquidation Clerk's website, www.hicilerk.org, in the chronological docket at [http://www.hicilclerk.org/Hicil.nsf/vwCourtFilesDocs?ReadForm&Court+Files\(HICIL\)](http://www.hicilclerk.org/Hicil.nsf/vwCourtFilesDocs?ReadForm&Court+Files(HICIL)).

Background

The AFIA cedent objectors assert claims under reinsurance contracts they entered with Home through AFIA. Their claims accordingly fall in the residual Class V priority class. See In the Matter of Liquidation of Home Ins. Co., 154 N.H. 472, 477 (2006) (“Home I”) (“The claims of the AFIA Cedents based upon their pre-liquidation reinsurance contracts with Home fall into the ‘all other claims’ category of Class V.”). As Class V claimants, the AFIA cedents will not receive any distributions from the Home estate because Home will not have sufficient assets to make any distribution to creditors below the Class II priority. See id.

The AFIA cedents’ interest in the Home estate instead stems from an agreement (the “AFIA Agreement”) entered in 2004 and upheld by the New Hampshire Supreme Court in 2006. Home I, 154 N.H. 472. In light of the AFIA cedents’ present objections, the history and workings of the AFIA Agreement need to be briefly described.

AFIA. As set forth in the Supreme Court’s opinion, Home conducted business in the United Kingdom as a member of AFIA. In 1984, CIGNA purchased AFIA, and as part of the transaction its subsidiary Insurance Company of North America (“INA”) entered into an Assumption Agreement (governed by New York law) under which it assumed the reinsurance obligations of Home with respect to AFIA. Home I, 154 N.H. at 474. The Assumption Agreement contained an insolvency clause requiring INA to pay obligations directly to Home or its liquidator in the event of Home’s insolvency. Id. Century Indemnity Company (“CIC”) succeeded to INA’s obligations in 1999. Id. at 475.

Home’s insolvency in 2003 meant that all claimants, including the AFIA cedents, had to file proofs of claims in the liquidation. Home I, 154 N.H. at 475. As a consequence of Home’s insolvency and the priority scheme, AFIA cedents would not receive any distribution from the

estate and had no incentive to file and prove claims (except to the extent they could be used as setoffs). *Id.* at 477, 486. This would deprive the estate of reinsurance from CIC of the AFIA business, which (based on 2002 financial statements) was estimated to total approximately \$231 million. *Id.*

AFIA Agreement. To address this situation, the Liquidator proposed an arrangement which was ultimately agreed as the AFIA Agreement. Exhibit 1. The AFIA Agreement provided AFIA cedents with an incentive to pursue their claims by providing that a part of the reinsurance collected from CIC on the claims (after certain deductions) would be paid to the AFIA cedents through a Scheme of Arrangement approved by the English courts. See Home I, 154 N.H. at 477.² CIC challenged the AFIA Agreement. The New Hampshire Supreme Court upheld it, concluding that (1) the payments to the AFIA cedents constituted Class I payments to collect assets, not distributions on Class V claims, *id.* at 482-85; (2) the payments were necessary to collect assets, *id.* at 486-88; and (3) the agreement was fair and reasonable as it benefits Class II claimants, *id.* at 489-91. A Scheme of Arrangement implementing the AFIA Agreement was approved by the English court. Zurich Ex. E.

AFIA Claims Post-AFIA Agreement. Since that time, AFIA cedents have submitted paid loss claims in the Home liquidation. CIC was obligated under the 1984 Assumption Agreement to handle AFIA claims and had done so before Home's liquidation, so the Liquidator and CIC agreed on a protocol for the handling of AFIA claims in the liquidation. The Claims Protocol was entered August 6, 2004 and approved by this Court on November 12, 2004. Exhibit 2. Under the Protocol, CIC (through its agent ACE-INA UK Services Limited ("ACE-INA"), now Chubb International Services UK Limited ("CISUK")), reviews the claims and makes

² The AFIA Agreement has other provisions, including a prohibition on AFIA cedents pursuing "cut-through" agreements to recover directly from CIC, by-passing the Liquidator. *Id.* at 477.

recommendations to the Liquidator. See Protocol ¶¶ 2.1-2.3. If the Liquidator agrees, a notice of determination is issued to the claimant pursuant to the Claims Procedures Order. *Id.* ¶ 2.4. If the claimant agrees, the determination is presented to the Court in a Liquidator’s report of claims and recommendations.³ Once the determination is approved, CIC applies any offsets it may have and makes payment to the Liquidator. See Protocol ¶¶ 3.3, 3.4.⁴

Payment from Reinsurance Proceeds. Under the Scheme implementing the AFIA Agreement, the proceeds actually received by the Liquidator from CIC after any applicable CIC offset (“Gross Proceeds”) are subject to certain deductions, principally for (1) proceeds reflecting AFIA cedent claims that were satisfied by offset between the cedent and Home (that is, where the AFIA cedent applied its claim against Home as an offset against its own liability to Home) – these amounts are retained by Home since it satisfied the underlying AFIA liability, and (2) the costs of administering the Scheme and collecting reinsurance from CIC – these costs are paid out of the proceeds. The amounts remaining after the deductions (“Net Proceeds”) are then divided 50/50 between the Home estate and the Scheme. The Home share goes to the estate for the benefit of Class II creditors, while the Scheme share constitutes the “Scheme Assets.” The Scheme Administrators, after consulting with the Scheme Creditors’ Committee, are to distribute the Scheme Assets to AFIA cedents in proportion to their “Established Scheme Liabilities” (which are the cedents’ claims allowed in the liquidation after deduction of claims satisfied by offset). See Zurich Ex. E, Scheme, Cl. 1.1, 2.2, 2.3, 2.8. See generally *id.*, Explanatory Statement, Section E, ¶¶ 1, 2.

³ If the AFIA cedent disagrees with the determination, then the matter is determined in a disputed claim proceeding before the Referee pursuant to the Claims Procedures Order as supplemented by the protocol. See Protocol ¶ 2.13.

⁴ The Liquidator and CIC have litigated over the propriety of asserted CIC offsets before the Referee and the courts on several occasions, with the result that in many instances CIC’s offsets have been reduced or removed. See, e.g., In the Matter of Liquidation of Home Ins. Co., 158 N.H. 677 (2009).

As a result of this structure, the AFIA cedents are incentivized to file and prove claims beyond those they would prove to obtain a setoff. See Home I, 154 N.H. at 487. Contrary to Zurich's assertions, AFIA cedents are not obligated to submit claims. See Zurich Ex. E, Explanatory Statement, Section F, ¶ 1.2. No claimant is obligated to pursue claims in the liquidation. But if they do not, they will not receive payments out of Scheme Assets. This point is demonstrated by Nationwide, which has not filed any of its own AFIA claims in the liquidation since June 17, 2013, although it receives allowances under an arrangement by which part of certain "Rutty Pool" claims submitted by Zurich and Württembergische that include a Nationwide portion are credited to Nationwide.

Zurich and Württembergische Agreements. In their objection, Zurich and Württembergische confusingly refer to "Settlement Agreements" between themselves and the Liquidator. Those settlements do not concern the incentive for the filing of cedents' claims in the Home estate. That subject was addressed by the AFIA Agreement (to which Zurich became party) approved in Home I. Exhibit 1. The settlement agreements (Zurich Exs. A-2, B-2) were separate agreements approved by this Court on February 17, 2005 as to Zurich (Agrippina) and on March 21, 2006 as to the Württembergische. As explained in the Liquidator's motions, the settlement agreements resolved disputes regarding the "Treaty R" reinsurance contracts between Home and the two cedents including (1) whether Home was obligated to indemnify the cedents for a "fixed pool share" of claims instead of the greater "fronted share", and (2) how Home would address its obligations under Treaty R to administer underlying claims against Zurich and Württembergische that were reinsured through AFIA. See Liquidator's Motion for Approval of Settlement Agreement with Wüstenrot & Württembergische AG (March 1, 2006); Liquidator's Motion for Approval of Settlement Agreement with Agrippina (January 25, 2005).

In the settlement agreements, Zurich and Württembergische agreed that Home was obligated on a “fixed pool share” basis, and the Liquidator agreed on how Home (itself or through AISUK) would administer the underlying claims against Zurich or Württembergische. Zurich and Württembergische also agreed that the underlying claims against them as so adjusted would automatically be deemed part of their proofs of claim so they could be determined and admitted in the Home estate. The settlement agreements say nothing about how long Home’s estate is to remain open, which is a matter outside both the AFIA Agreement and the settlement agreements.

ARGUMENT

I. IN CONSIDERING THE PROPOSED CLAIM AMENDMENT DEADLINE, THE COURT SHOULD FOCUS ON THE INTERESTS OF POLICYHOLDERS, NOT REINSUREDS SUCH AS THE AFIA CEDENTS.

As an initial matter, the interests of concern in evaluating whether and when to establish a claim amendment deadline are those of the policyholders and insureds of Home, and claimants against those policyholders, not reinsureds. In enacting the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C (“Act”), the Legislature sought to protect policyholders, insureds and claimants under insurance policies issued by the insolvent insurer. The Act provides Class II priority (following the Class I priority for administration costs) for “Policy Related Claims,” which are defined as the claims of policyholders, beneficiaries and insureds under policies and claims by third-party claimants against insureds under policies. RSA 402-C:44, II. As the New Hampshire Supreme Court stated:

[T]he purpose of RSA chapter 402-C is to protect preferred creditors by reserving assets for them, including people insured by Home, and people with claims against those insured by Home. See RSA 402-C:1, IV. RSA 402-C:1, III provides that the statute should be ‘liberally construed’ to effectuate this purpose.

Home I, 154 N.H. at 488. Accord, In the Matter of Liquidation of Home Ins. Co., 158 N.H. 677, 681 (2009).

While Nationwide and the Catalina Group do not acknowledge it, the AFIA cedent objectors all assert claims under reinsurance contracts and thus all are Class V claimants. See Home I, 154 NH. at 477. They are not preferred creditors, and will not receive distributions. See id. The Act does not seek to protect the interests of reinsureds over the interests of the Class II policy-related claimants.⁵

In these circumstances, the Liquidator's judgment concerning the balance of interests underlying the proposed claim amendment deadline and the Court's review of the proposed deadline should properly focus on the interests of the Class II policy-level claimants. Those claimants are given priority by the Legislature, and they are the only claimants who will receive a distribution from the Home estate in light of its limited assets.

II. THE AMBASSADOR DECISION HAS NO BEARING HERE BECAUSE HOME'S CLASS II CREDITORS HAVE NOT BEEN PAID IN FULL AND HOLDING THE LIQUIDATION OPEN PREJUDICES THEM BY PREVENTING A GREATER PERCENTAGE DISTRIBUTION.

Zurich and Resolute rely on the Vermont Supreme Court's decision in In re Ambassador Ins. Co., 198 Vt. 341, 114 A.3d 492 (2015). However, that case involved what the Vermont court itself termed "unique circumstances" (114 A.3d at 497), and it is not relevant to the balancing of interests required in Home. The critical fact in Ambassador was that, due to a recovery from the insurer's auditor for professional malpractice, the liquidator had sufficient

⁵ This is a widely shared view. Courts addressing similar statutes in other states have consistently held that the priority for policyholders, beneficiaries, and insureds is intended to protect typical insurance consumers, not insurance companies under reinsurance contracts. See In re Liquidations of Reserve Ins. Co., 122 Ill.2d 555, 524 N.E.2d 538, 541 (1988); Pioneer Annuity Life v. Nat. Equity Life, 159 Ariz. 148, 765 P.2d 550, 554 (Ct. App. 1988); Neff v. Cherokee Ins. Co., 704 S.W.2d 1, 7 (Tenn. 1986); Foremost Life Ins. Co. v. Dep't of Ins., 274 Ind. 181, 409 N.E.2d 1092, 1095-96 (1980).

assets to pay all allowed policy-level claims “in full, with interest.” Id. at 494. After those claims were paid, there was still \$92 million left to address remaining and future claims. Id.

This meant that the policy-related claimants with allowed claims were not prejudiced by keeping the liquidation open. Ambassador, 114 A.3d at 501 (“As of May 2012, all court-approved priority-four [policy priority] claims had been paid in full, plus interest. . . . In this case, no priority-four claimants are currently prejudiced by allowing additional time”). Ambassador had “ample resources” and it was “*not* currently insolvent, although it may become insolvent in the future.” Id. at 500 (emphasis in original). This distinguished Ambassador from other insurer liquidations:

In the typical liquidation, the insurance company is insolvent, meaning it lacks sufficient assets to meet its debts. In such cases, the limited assets relative to the outstanding debt generally force an end to the liquidation proceeding: at some point, the insolvent estate runs out of money, or its assets drop to a point where it becomes uneconomic to continue administering the estate. . . . This factor distinguishes this case from the other long-tail insurance cases noted above.

Id. at 499-500.

Home, by contrast, is insolvent. The presently allowed Class II (policy-related) claims total approximately \$2.73 billion, while the available assets (those held by the Liquidator and those previously distributed as early access distributions or interim distributions) total approximately \$1.75 billion. See Liquidator’s Seventy-Fifth Report (filed December 26, 2019) at pages 2, 5. Class II claimants will only receive a percentage distribution on their claims. Most importantly, so long as claims can still be filed and claims remain undetermined, the Liquidator must hold assets instead of distributing them. As explained in his motions for approval of interim distributions, the Liquidator cannot distribute all available assets but instead must hold a conservative reserve to be able to make equal percentage distributions to Class II claimants whose claims have not yet been determined and to pay for the ongoing costs of the

liquidation. See Liquidator's Motion for Approval of Third Interim Distribution ¶¶ 12-14, 19 (September 28, 2018). To date, the Liquidator has made interim distributions totaling only 30% on the allowed Class II claims, and he is holding undistributed assets of about \$808 million.

This is quite unlike Ambassador, and holding these funds prejudices those with allowed policy-level claims. In Ambassador, policy claimants had been paid in full, with interest, so holding the remaining \$92 million to pay future claims and the costs of the ongoing liquidation did not adversely affect policy claimants. In Home, after 16 years of liquidation, the claimants with allowed policy claims have only received 30% in interim distributions on their claims. The entire \$808 million held by the Liquidator could be paid to those claimants and they would still receive only a percentage of their claims. Further, where the claims will not be paid in full, the estate will not pay interest (as it is assigned to Class VII in RSA 402-C:44) and the value of the allowed claims is eroding. In these circumstances, keeping the liquidation open and holding assets based on the potential for future determinations prejudices the existing creditors who otherwise would stand to receive those funds.

In sum, contrary to Zurich's portrayal, Home is not a case where there are "ample funds" to pay claims so that there is no adverse consequence from holding the estate open. There are insufficient funds to pay even those with presently allowed claims. The interests of those creditors in bringing the liquidation to closure so they may receive the maximum distribution possible must be given weight. There were no such interests implicated in Ambassador.

Zurich's reliance on factors noted in the Ambassador decision (which the Vermont court said should be considered "among other factors," 114 A.3d at 500) is thus misplaced. The Liquidator explained the considerations underlying the proposed claim amendment deadline in the motion. In essence, this proceeding has been ongoing for 16 years, the most recent Home

policies expired 24 years ago, the vast bulk of Class II claims have been determined, and the assets have been collected (except for remaining reinsurance on as-yet-undetermined claims). Holding the proceeding open harms Class II creditors as they cannot obtain the full possible distribution on their claims and involves ongoing expense.

The factors in Ambassador address much the same issues and similarly support a claim amendment deadline. First, as to “the company’s remaining assets,” Home has no excess assets that can be devoted to future claims. Unlike Ambassador, Home is insolvent and cannot pay its policy level claims in full. It does not have “ample resources” to cover future policy-related claims. The Liquidator has collected the assets that can be collected except for reinsurance on not yet allowed claims, and the assets have been distributed except for a necessary reserve that does not cover even the existing allowed claims. Second, as to “the nature and amount of its remaining liabilities,” the Liquidator has determined 95% of the proofs of claim and made great progress in determining the Class II liabilities. To actually determine what the remaining liabilities are, however, a claims deadline needs to be established. Third, as to “the administration costs of the estate,” they are currently \$13 million per year. So long as claims remain open and can be presented, the Liquidator will need to maintain a claims staff and administrative structure to handle the claims, address reinsurance, and make distributions. These costs, while reasonable and necessary, only remain so while a substantial volume of claims is being addressed. Fourth, as to “the extent to which delay in termination of the liquidation proceedings results in a delay of full payment to priority claim holders,” any delay in this proceeding delays making the full possible distribution to policy-related creditors. Unlike Ambassador, the interests of creditors with allowed policy-related claims “would be substantially compromised by continuation of the liquidation.” Ambassador, 114 A.3d at 501. Simply put,

delay in the proceeding delays payment to the policy-related creditors. A claim amendment deadline will expedite the proceeding and reduce that delay, and it should be approved.

III. WHILE THE REMAINING VALUE OF THE AFIA REINSURANCE IS UNCERTAIN, IT DOES NOT WARRANT KEEPING THE HOME ESTATE OPEN.

The objectors suggest that their “incurred but not reported” or “IBNR” claims are large and that cutting them off will deprive the Home estate of reinsurance that will benefit Class II creditors.⁶ However, IBNR values are uncertain, and they should be given limited weight in considering whether to keep the estate open.

As Resolute and Zurich acknowledge, the remaining IBNR associated with AFIA cedents is uncertain. See Resolute Objection at 3 (“The Objectors’ future claims remain uncertain.”); AFIA claims have not developed “to the point where a realistic quantification can be made.”); Zurich Objection at 3 (“Future values [of IBNR] are subject to significant uncertainty and simplistic assumptions that may result in a wide range of possible outcomes.”). See also Ostrager, *supra* note 6, § 1:03 (in the definition of “IBNR”: “As courts have noted, IBNR reserves are extremely conjectural and may need adjustment over time.”).

While the remaining AFIA IBNR value is unclear, it does not warrant keeping the liquidation open. Even assuming AFIA cedents will prove claims over time, the potential benefit to Home’s Class II creditors could only be a fraction of whatever IBNR value is ascribed to the AFIA cedents’ claims. Under the AFIA Agreement and the Scheme, the reinsurance collected on AFIA cedents’ future claims will be reduced by (1) CIC’s offsets of all types, including

⁶ IBNR should be distinguished from “case reserves.” “Incurred-But-Not-Reported Reserves (or ‘IBNR’)” are “reserves set aside before claims are even filed, based upon historical data, including loss experience.” Ostrager & Vyskocil, *Modern Reinsurance Law and Practice*, § 1:03 (3d ed. 2014). Case Reserves, by contrast, are reserves for known claims that have been reported. See *id.* (definition of “Loss Reserves”). The proposed claim amendment deadline would cut-off IBNR but permit case reserves to be valued and allowed.

reinsurance and contribution claims,⁷ and (2) the costs of the UK proceedings and collecting the reinsurance from CIC. The amount that remains will be divided equally between the Home estate and the Scheme.

One practical way of looking at the value of AFIA is to consider the benefit to the Home estate over the past five years. From 2015 through 2019, the AFIA cedents have averaged \$3.05 million in claim allowances per year;⁸ CIC's claims applied as offsets have averaged approximately \$1.15 million per year; and the average annual reinsurance collection from CIC has been approximately \$1.8 million per year. (Due to timing differences in reporting of NODs issued, CIC setoffs, and collection of reinsurance, the numbers within each year do not total.)

The Home Insurance Company in Liquidation						
Dollar Amount of AFIA Notices of Determination Issued During 2015-2019 and From Inception						
	2015	2016	2017	2018	2019	Total From Inception (2004)
Total All AFIA Cedents	\$18,388,577 ⁹	\$2,664,361	\$3,300,648	\$3,214,048	\$1,992,112 ¹⁰	\$133,997,778 ¹¹

Dollar Amount of AFIA NODs over the Past Five Years 2015-2019	
2015	\$4,075,124 – not including Enstar commutation (see note 8)
2016	\$2,664,361
2017	\$3,300,648
2018	\$3,214,048
2019	\$1,992,112 – 11 months
Average	\$3,049,259

⁷ The reinsurance collected from CIC on the \$134 million of allowed claims has been approximately \$87.8 million because CIC is applying setoffs and credits (net of offsets the Liquidator has successfully challenged).

⁸ This average excludes the \$14.3 million Enstar commutation amount. In light of the commutation, there will be no future claims from the Enstar companies, so the value of those claims should not be considered in evaluating the potential benefit to the estate in the future.

⁹ Includes \$14,313,453 commutation for Enstar Client Companies

¹⁰ Includes \$100,000 AFIA part of commutation for National Casualty Co.

¹¹ After setoffs, the total amount collected from CIC on these NODs is \$87,829,406.

CIC Setoffs Asserted During the Past Five Years

2015	(\$723,482) – negative due to removal of Kentile setoff
2016	\$2,249,520
2017	\$1,341,369
2018	\$1,638,104
2019	\$1,281,050 – 11 months
Average	\$1,157,312

Reinsurance Collected on AFIA NODs Over the Past Five Years

2015	\$4,436,813 – does not include Enstar commutation
2016	\$440,834
2017	\$1,820,949
2018	\$1,322,482
2019	\$950,913 – 11 months
Average	\$1,794,398

Even making the unrealistic assumptions that there will be no costs of the UK proceeding and no collection costs to be deducted, the value to the Home estate after the split required by the AFIA Agreement and Scheme is half of that, or about \$900,000 per year.

An annual benefit of approximately \$900,000 does not warrant holding the estate open. To place that number in context, it is worth noting that the cost of administering the liquidation (its budget) was approximately \$13 million in 2019 – several times the benefit from AFIA.

The average AFIA annual allowances of slightly over \$3 million per year since 2015 also indicates that the IBNR numbers Zurich mentions are exaggerated. While Zurich does not offer its own IBNR number, its objection refers to (1) a \$313 million IBNR number reflecting values received from AFIA cedents in 2012, and (2) a \$231 million loss reserve number from 2002. Zurich Objection at 7, 8. The first number comes from values the Liquidator received from AFIA cedents to attempt “global” commutation discussions in 2012. See Zurich Ex. D at 2. (That exhibit is a report subject to Scheme confidentiality, so the Liquidator does not discuss it except to note that CIC responded with a widely different view of the potential value. See *id.* at 3.) The second number comes from a financial statement as of December 31, 2002, prepared for Home’s UK branch by ACE-INA shortly before Home was placed in liquidation. It was used

in an illustration prepared in connection with the Liquidator's motion for approval of the AFIA Agreement, and it was cited in Home I. (The number was not a "representation" by the Liquidator as to the value of the CIC reinsurance. It was a starting point for an "Illustration" of the potential workings of the AFIA Agreement based upon the financial statement number and other assumptions. See Liquidator's Supplemental Reply in Support of Motion for Approval of Agreement with AFIA Cedents (April 16, 2004), Exhibit A (Illustration).)

If the first IBNR number were correct, that implies that the liquidation proceeding would need to last at least 100 years ($\$313 \text{ million in IBNR} \div \$3 \text{ million/year in NODs}$) to determine the claims. If the second number were correct, then after reduction to account for the $\$134 \text{ million in NODs to date}$, that implies that the liquidation would need to last 32 more years ($\$97 \text{ million loss reserves} \div \$3 \text{ million/year in NODs}$).¹²

IV. THE AFIA CEDENTS' ALTERNATIVES ARE ESSENTIALLY PROPOSALS TO KEEP THE ESTATE OPEN INDEFINITELY.

The objectors proposed alternative approaches to address their IBNR claims are not practical and legally feasible, and all would have the effect of prolonging the liquidation to the detriment of those with allowed Class II claims.

A. IBNR Cannot Properly Be "Estimated" And Allowed.

Resolute, Nationwide and Zurich all propose that the Liquidator be required to allow "estimation" of unknown claims (IBNR). This is an unusual position for companies that are themselves reinsurers to take. As discussed below, reinsurers have vigorously opposed estimation of IBNR in insurer liquidations in other states. Not surprisingly, neither Zurich nor Resolute offer statutory or caselaw support for their request that IBNR be allowed, while

¹² According to Zurich, there are presently at least $\$33.7 \text{ million}$ of case reserves. Zurich Objection at 22. Case reserves would be included in the $\$97 \text{ million loss reserve number}$, and they are not proposed to be cut-off by the deadline.

Nationwide cites only to a case depending on a statute not found in New Hampshire. The leading cases reject “estimation” of IBNR as inconsistent with the liquidation statutes, and the Act does not provide for estimation. The Liquidator has accordingly proposed a deadline that “cuts-off” IBNR. The objectors’ approach would take the Liquidator and Court down a path that would involve years of litigation with doubtful prospects.¹³

Reinsurers – through the Reinsurance Association of America (“RAA”) – successfully opposed estimation of IBNR in two large liquidations where it was attempted. In re Liquidation of Integrity Ins. Co., 193 N.J. 86, 935 A.2d 1184 (2007); Quackenbush v. Mission Ins. Co., 46 Cal. App. 4th 458, 54 Cal. Rptr. 2d 112 (1996). In Quackenbush, the RAA challenged a liquidation plan in the Mission proceeding that would have permitted the liquidator to actuarially estimate future IBNR losses. Quackenbush, 54 Cal. Rptr. 2d at 115-16. The California Court of Appeal struck down the plan as in conflict with the California statutes. It concluded that Cal. Ins. Code § 1025 prohibited claimants with future IBNR claims from participating in the liquidation until liability for and the amount of the claims became certain. Id. at 114; see id. at 117. In Integrity, the RAA again attacked a liquidation plan that would have allowed actuarial estimation of IBNR. Integrity, 935 A.2d at 1186. A decade later, the New Jersey Supreme Court ruled that the plan conflicted with the New Jersey statutes. The court held that N.J.S.A. 17:30C-28(a)(1) required that claims be “absolute” to be allowed and that IBNR was not. Id. at 1190-91. “IBNR claims are actuarial estimates and are, therefore, not absolute.” Id. at 1190.

The case cited by Nationwide rested on a liquidation statute that expressly permitted the actuarial estimation of claims. The Missouri Court of Appeals upheld estimation in the Holland-

¹³ See Ambassador, 114 A.3d at 504 (Noting that “Ambassador argues that if estimation is required for remaining claims, Ambassador’s reinsurers will most certainly take the position that they have no obligation to pay based on estimates, and the estate will become involved in long-term, expensive and unnecessary litigation.”).

America liquidation because “[t]he General Assembly specifically endorsed IBNR claims in [Mo. Rev. Stat.] § 375.1212.4.” Angoff v. Holland-America Ins. Co. Trust, 937 S.W.2d 213, 217 (Mo. Ct. App. 1996). That statute expressly provided an arbitration process for determination of IBNR:

The liability of the insurer relating to liabilities incurred, but for which claims relating to such liabilities are not reported, accrued or claimed, shall be determined with reference to the provisions of this subsection. In such an event, the amount of such liabilities shall be calculated, at their present value, by a panel appointed pursuant to this subsection. The liquidator and the claimant shall each appoint one arbitrator, and the court shall appoint a special magistrate who shall preside over all proceedings under this subsection. Thereupon, the panel shall hear and determine the amount of such liabilities

937 S.W.2d at 216 n.9 (quoting § 375.1212.4). The court also referred to Mo. Rev. Stat. § 375.1220.2, providing that:

If the fixing or liquidation of any claim or claims would unduly delay the administration of the liquidation . . . the determination and allowance of such claim or claims may be made by an estimate. Any such estimate shall be based upon an actuarial evaluation made with reasonable actuarial certainty or upon another accepted method of valuing claims with reasonable certainty.

937 S.W.2d at 217. See id. at 215 n. 4 (quoting statute). There are no such provisions in the New Hampshire Act, so the Angoff case offers no guidance here.

If the objectors seriously contend that estimation and allowance of IBNR is permitted by the Act and that reinsurers will in fact pay IBNR based on such allowances, they should explain why.

B. The Claim Amendment Deadline Must Apply Equally To All Claimants.

Resolute and Zurich propose that the claim amendment deadline not apply to AFIA cedents. However, the deadline must apply equally to all claims in the estate.¹⁴ Any exemption

¹⁴ The only “exceptions” in the Proposed Order are for (1) Class I administration costs, which are not pre-liquidation claims at all but costs of the ongoing proceeding, see In the Matter of Liquidation of Home Ins. Co., 158 N.H. 396,

of AFIA claims from the deadline would create a subclass of Class V claimants whose claims will have more time to develop than others. The creation of subclasses within priority classes is inconsistent with RSA 402-C:44 (“No subclasses shall be established within any class.”).¹⁵

Even if the proposed exception were extended to all Class V claims, allowing one priority class more time than others is legally and practically flawed. The Act is intended to produce an “[e]quitable apportionment of unavoidable loss.” RSA 402-C:1, IV(d). It is not equitable to allow one group of claimants more time to submit claims than others, as that would increase their claims in the estate compared to those whose claims are cut-off earlier. Further, different deadlines for different priority classes would result in inconsistent claims for offset purposes. Offsets apply regardless of priority class. That is, a person that has an obligation to Home can apply its own claim against Home as an offset no matter what priority that claim has. See RSA 402-C:34 (allowing setoff of mutual debts). If there were different claim amendment deadlines for different classes, a party could be prejudiced because its claims are cut-off while the other party’s claims continue to emerge.

For instance, many of the Liquidator’s claims for reinsurance are based on policyholders’ Class II claims. Those underlying claims will be cut-off by the claim amendment deadline. If the Liquidator pursued reinsurance on such a claim and Class V claims were not subject to a deadline, the reinsurer could assert offsets based on its Class V reinsurance claims or contribution claims that could continue to grow even through the Liquidator’s claims were fixed.

399 (2009), and (2) claims of the federal government, which cannot be subjected to state filing deadlines due to preemption by the Federal Priority Statute (31 U.S.C. § 3713) and which in any event have been resolved by the Settlement Agreement with Federal Claimants approved by the Court on March 26, 2019. See Liquidator’s Motion at 20-21.

¹⁵ Nationwide’s contention that a claim amendment deadline itself would create subclasses within the priority classes is wrong. The claim amendment deadline determines the claims that can be considered in the liquidation. It does not distinguish between allowed claims in a priority class.

Alternatively, if the Liquidator's claims for reinsurance were based on underlying Class V reinsurance claims that could continue to grow, the reinsurer might contend it was inequitable to have a deadline that cut-off its offsetting Class II subrogation claims. Under the claim amendment deadline as proposed, claims and offsets will be based on a common cut-off date.

A separate claim amendment deadline for a class of claims is neither legal nor practical. It constitutes an invitation to litigation with reinsurers that is likely to complicate and delay closure of the estate.

C. Commutation Of The AFIA Cedents' Claims Serves No Purpose Absent CIC's Agreement On Value, And Their Proposal To Open Negotiation At This Late Date Ignores History.

Zurich and Nationwide contend that they should be allowed to negotiate commutations with the Liquidator. However, such two-party efforts makes no sense. Unlike Class II policyholders who stand to receive a distribution from the Home estate, the AFIA cedents fall in Class V and will not receive any distribution. The only reason to negotiate a commutation is to collect reinsurance. As a practical matter, this requires that the cedent directly negotiate any material commutation value with CIC because a commutation of the AFIA cedent's reinsurance with Home is meaningful only if CIC then commutes its reinsurance by paying the agreed value.¹⁶ Commutations are voluntary business decisions, and CIC cannot be compelled to commute.

To state the obvious, if CIC does not agree with the commutation value, it is unlikely to pay it. Under the 1984 Assumption Agreement, CIC has the right to administer AFIA claims.

¹⁶ See Liquidator's Motion for Approval of Commutation Agreement with Dominion ¶ 2 (Sept. 15, 2010) (commutation negotiated directly between Dominion and CIC); Liquidator's Motion for Approval of Commutation Agreements with Enstar Companies ¶¶ 2, 4 (May 28, 2015) (commutation negotiated directly between Enstar and CIC). Cf. Liquidator's Motion for Approval of Commutation Agreement with National Casualty Co. ¶ 7 (August 23, 2019) (CIC agreed on value of small AFIA part of commutation).

Indeed, it did so without Home involvement from 1984 until Home's liquidation in 2003. In the event Home becomes insolvent, CIC has rights to interpose defenses in the proceeding in which a claim is to be determined. In light of CIC's contractual rights and its familiarity with the AFIA business, the Claims Protocol provides that CIC (through CISUK) is to adjust AFIA claims in the first instance in accordance with its obligations under the 1984 Assumption Agreement, see Claims Protocol ¶ 2, and it specifically contemplates that CIC is to conduct commutation discussions directly with the cedent. Claims Protocol ¶ 4.1.

In these circumstances, "commutation discussions" between an AFIA cedent and the Liquidator without regard to CIC serve no purpose. An agreement by the Liquidator to allow some amount of IBNR as a cedent's claim to which CIC does not agree will yield not reinsurance but litigation.

Nor should the claim amendment deadline be delayed so that Zurich and Württembergische can seek to negotiate with CIC. As the materials included with their objection make clear, Zurich and Württembergische knew that in 2012 the Liquidator attempted to conduct "global" commutation discussions with CIC using values obtained from AFIA cedents. See Zurich Ex. D at 2. The Liquidator and Scheme Administrators reported on the lack of progress in the discussions in later reports to the Scheme Creditors' Committee (of which Zurich and Württembergische are members). Zurich and Württembergische also knew that AFIA cedents within the Enstar Group had conducted commutation negotiations directly with CIC because the Scheme Creditors' Committee was consulted regarding those discussions in 2015, and the commutation was reported to the Scheme Creditors' Committee. This was also described in the Liquidator's Motion for Approval of Commutation Agreement with Enstar Client Companies ¶¶ 2-5 (May 28, 2015), which was granted on June 22, 2015.

Having been aware since at least 2015 that the Liquidator's attempt at a global commutation based on the cedents' values had not been productive, and that another cedent had negotiated a commutation directly with CIC, Zurich and Württembergische cannot appropriately seek to hold the liquidation open on the ground that they would now like a try at negotiation.

D. Settlements With Policyholders Present Different Considerations From Commutations With AFIA Cedents.

Zurich notes that the Liquidator has entered many comprehensive policy release settlements with policyholders to finally resolve their claims in the liquidation, and these settlements may include paid losses, case reserves (known but still outstanding claims), and an element for potential future claims (IBNR).¹⁷ This does not present some inappropriate distinction.

The critical point about these settlements is that, like commutations, they are voluntary compromises. (Also, unlike the claims of AFIA cedents, they have value to the parties without receiving a reinsurer's agreement.) To the extent that they may involve future claims, the policyholder and the Liquidator must come to an agreement. A policyholder cannot compel the Liquidator to allow such claims. See Fuller-Austin Insulation Co. v. Highlands Ins. Co., 135 Cal. App. 4th 958, 38 Cal. Rptr. 3d 716, 742 (2006) ("While calculating the aggregate value of present and future asbestos claims is helpful and often necessary in other contexts, no authority exists for utilizing such a valuation to affix an insurer's indemnity obligation."); see id., 38 Cal. Rptr. 3d at 746. The Liquidator similarly cannot compel a policyholder to agree to a value for them.

¹⁷ The Liquidator has sought and received approval of the Court for such settlements throughout the liquidation proceeding. See, e.g., Motion for Approval of Settlement Agreement with Trane U.S., Inc. (May 13, 2019), granted June 3, 2019; Motion for Approval of Commutation with Northwestern National Insurance Company and Settlement Agreement and Assignment of Distribution with AK Steel Corporation (February 17, 2006), granted March 10, 2006.

In these circumstances, there is no disparity of treatment between Class II policyholders and Class V cedents that is not warranted by their different priority. Policyholders have an opportunity to negotiate over their Class II claims, including some element of future claims. Many have, and others have not. So too, cedents have an opportunity to negotiate over their Class V claims including some element of future claims. However, since they will not receive a distribution, there must be a reason to engage in the effort. Where there is such a reason, some cedents have availed themselves of the possibility, and others have not. But after 16 years the possibility of such resolutions at either class does not warrant holding the estate open given the adverse impact on the Class II claimants with allowed claims.

V. THE AFIA AGREEMENT AND SCHEME AND THE ZURICH AND WÜRTEMBERGISCHE SETTLEMENT AGREEMENTS HAVE NO BEARING ON APPROVAL OF THE CLAIM AMENDMENT DEADLINE.

Zurich contends that a claim amendment deadline is somehow inconsistent with the AFIA Agreement and the Scheme. However, those documents provide AFIA cedents with an incentive to pursue claims in the Home liquidation. They do not provide that the Home estate will remain open for any period of time or at all. Similarly, the settlement agreements with Zurich and Würtembergische determine the basis (fixed pool share) on which claims may be allowed, and they provide that Home will administer underlying inward claims against the two companies.¹⁸ Zurich and Würtembergische further agree that claims against them, when agreed, will in turn be included in their proofs of claim for determination in the Home estate. But the settlement agreements do not provide that the Home liquidation proceeding must be open indefinitely to receive such claims.

¹⁸ The Liquidator recognizes that this obligation presents a Class I expense that will need to be addressed before the liquidation proceeding closes.

The question of a claim deadline and the duration of the liquidation are matters governed by the New Hampshire Act. They are not properly (and were not) the subject of contracts with claimants. Instead, they must be determined based on the balancing of factors required by the Act as described in the Liquidator's motion.

VI. THE PROCESS FOR THE DETERMINATION OF CLAIMS IS SEPARATE FROM APPROVAL OF THE CLAIM AMENDMENT DEADLINE.

The Catalina Group and Resolute express concern that the process for the determination of claims after the claim amendment deadline is not clear and that they are not sure how to submit claims at the deadline. These issues are separate from the question whether to establish a deadline. Claim determinations will depend upon the particular facts and circumstances of the claims. If AFIA cedents are dissatisfied with claim determinations made after the deadline, they may seek review by the Referee and Court at that time.

In any event, as the Liquidator has advised AFIA cedents, the Liquidator intends that CIC (through CISUK) will continue to administer AFIA claims and make recommendations about the determination of the claims after the claim amendment deadline. (CISUK and its predecessor ACE-INA have handled AFIA claims under the Claims Protocol since 2004 with no disputed claim proceedings since 2010.) The Liquidator has asked CIC to administer AFIA claims after the deadline, CIC has expressed conceptual agreement, and the Liquidator has accordingly proposed that the Claim Protocol be amended to provide for CISUK to address case reserve submissions after the deadline.

The Liquidator also recognizes that AFIA cedents seek guidance as to what they will need to submit at the deadline, and the Liquidator has provided AFIA cedents (and CIC) with draft guidelines to that end. A copy of the draft guidelines, on which CIC has no comments, is

attached as Exhibit 3. The essential element in claim submissions by the deadline is the identification of claims. Information concerning the value of the claims can be supplemented afterwards.

The Liquidator will continue to work on these issues so as to provide guidance before the claim amendment deadline and a smoothly functioning determination process afterwards. However, they do not bear on approval of the proposed claim amendment deadline.

CONCLUSION

The Court should overrule the AFIA cedent objections, grant the Liquidator's motion and approve the proposed claim amendment deadline.

Respectfully submitted,

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December 30, 2019

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Response to AFIA Cedents' Objections to Motion for Approval of Claim Amendment Deadline was sent, this 30th day of December, by first class mail, postage prepaid to all persons on the attached service list.



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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106

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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");

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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.

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]
..... **2.2.04**

Signed by **Equitas Limited**

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.

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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

James Tyson

.....
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.

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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

A. Brennan

Signed by Mentor Insurance Company (UK) Ltd

for and on behalf of

A. Brennan, Director

led consulting by 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.

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.....

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

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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

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.

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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 RUBIN
MANAGING DIRECTOR

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

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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 regulatory 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

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6. Acceptance by Informal Creditors' Committee members

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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.

Terry M. Davelen

Signed by Continental Insurance Company New York

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.

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6. Acceptance by Informal Creditors' Committee members

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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 Brown

.....
Signed by **Riverstone Management Ltd**

**THE HOME
INSURANCE
COMPANY**
In Liquidation



59 Maiden Lane
New York, New York 10038

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

August 6, 2004

VIA COURIER

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

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

Dear Tom:

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

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

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

Thomas J. Wamser, Esq.
August 6, 2004
Page 2 of 11

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

1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Submission, Adjustment and Adjudication of AFIA Liabilities

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

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

- shall promptly provide CIC with a copy of the Request for Review and within twenty (20) business days thereafter, CIC shall in writing notify HICIL of its recommendations in relation to that AFIA Liability, together with the reasons for such recommendations.
- 2.10 If the Liquidator concurs with the recommendations of CIC, he shall issue a Notice of Redetermination to the relevant Claimant consistent with those recommendations, with a copy to CIC. CIC shall effect remittance to HICIL in respect of the Claim to the extent allowed on the Notice of Redetermination in accordance with paragraphs 3.3 and 3.4
- 2.11 If the Liquidator disagrees with the recommendations of CIC, he shall notify CIC thereof in writing, and give his reasons for disagreeing. The parties shall thereafter promptly confer to attempt mutual resolution of their disagreement.
- 2.12 If the parties are unable to reach such mutual resolution within ten (10) business days, the matter shall be referred (by either party) to an Arbitrator and the provisions of paragraphs 2.5 to 2.8 inclusive shall apply; provided that in the event that the parties have, pursuant to paragraphs 2.6 or 2.7, as the case may be, already arbitrated specific issues raised in the Request for Review, the parties shall not be entitled to re-arbitrate such issues and the rulings rendered with respect thereto shall have a preclusive effect and shall be and remain binding on the parties.
- 2.13 The parties further acknowledge that, should a Claimant disagree with a Notice of Determination, the Claimant is not obliged to submit a Request for Review but may, at its option, file an Objection with the Court in accordance with the Claims Procedures Order. A Claimant that disagrees with a Notice of Redetermination may also file an Objection with the Court in accordance with the Claims Procedures Order. In either event, the Liquidator shall promptly provide CIC with a copy of the Objection so filed and shall provide CIC with a copy of the Notice of Disputed Claim sent by the Liquidation Clerk to the claimant in response to the filing of the Objection, so as to avail CIC of its right under the Agreements to interpose defenses in the ensuing Disputed Claim proceeding. If CIC elects to interpose defenses in the Disputed Claim proceeding it shall, at its own cost and expense, seek leave to so participate by filing a Motion to Participate with the Referee no later than thirty (30) days after the date of mailing to the claimant of the Notice of Disputed Claim, identifying the contract in question and stating that it has a contractual right to interpose defenses. The Liquidator agrees that CIC has the right to participate in Disputed Claims proceedings and to raise any defense or defenses available to HICIL, and shall assent to CIC's participation.
- 2.14 The Disputed Claim proceedings procedures shall be governed by New Hampshire law. Questions of contractual construction and interpretation with respect to the Disputed Claim shall be governed by applicable law in accordance with the express terms of the contract, without regard to the law of any other legal system. Where the contract is silent as to its governing law and English law may apply, the Referee shall appoint an expert (with the qualifications and in the manner provided for below) and consult with such expert to determine which law is applicable. The Referee's decision on choice of law shall be final and binding on the parties.

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

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

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

3. Reports, Remittances and Inspection of Records

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

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

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

4. Commutations

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

5. Rutty Pool Business

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

6. Role of ACE-INA

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

7. Reservation of Rights

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

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

8. CIRC Reinsurance Recovery

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

9. No variation

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

10. Material Breach

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

11. Notices

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

If to HICIL:

Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 10038
Attention: Jonathan Rosen
Facsimile Number: (212) 530 3100

If to CIC:

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

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


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

Sincerely,



Pete Bengelsdorf
Special Deputy Liquidator

**AGREED AND ACCEPTED
CENTURY INDEMNITY COMPANY**

By: 
Title: Assistant General Counsel
Date: 8/10/04

**Cedent Guidelines Re Amendments to Proofs of Claim
(Proposed Claim Amendment Deadline Submissions)**

Claims in the Home liquidation by cedents to Home under reinsurance or retrocessional contracts involve layers of contractual agreements and often present unusual complexity. The Liquidator accordingly provides the following guidance concerning amendments to proofs of claim that may be submitted by cedents before the proposed claim amendment deadline.

1. A cedent's claim is its assertion of a right to recover under a reinsurance contract for a loss incurred by the cedent with respect to a policyholder or a preceding reinsurer with respect to a policyholder.
2. Cedents should provide the following with respect to a claim:
 - Identification of the cedent, including the company or pool name and, if applicable, the name of the predecessor entity that originally entered into the reinsurance contract
 - Identification of the cedent's reinsurance contract with Home, including the contract number, contract period, attachment point, limits of liability, and the percentage of Home's participation
 - Identification of the reinsured loss, including policyholder name, type of loss (e.g., pollution, asbestos), cedent's claim number, Home's claim number, if known, and, where applicable, names of preceding reinsurers
 - Amount of the loss claimed under the reinsurance contract, including but separately stating both any paid amounts not previously claimed and reserves (if possible identify case reserves as IBNR will not be eligible to be allowed as a claim).
3. The information should be submitted in a form that will facilitate review of the cedent's claim. For instance, the cedent may submit a document identifying the reinsurance contract under which coverage is requested, together with a spreadsheet/bordereau identifying the reinsured losses and the paid and case reserve amounts for each under the contract. The information may be submitted in electronic format (e.g., on a CD or flash drive).
4. Providing the information described in paragraph 2 above to the Liquidator before the claim amendment deadline will be sufficient to preserve a cedent's rights as to its claim for reinsurance of the reinsured losses so identified. However, the Liquidator will review the information, and may request additional or clarifying information, to determine whether an originating loss for which coverage is claimed by the cedent consists of or includes potential claims against the policyholder (i.e., whether the loss is in whole or in part contingent as of the claim amendment deadline), in which case the claim will to that extent be barred by the claim amendment deadline. To the extent that the cedent's case reserves reflect potential claims against the policyholder, they constitute IBNR that is cut off by the claim amendment deadline.
5. The foregoing summary is not limiting. The cedent is encouraged to provide as part of its claim amendment deadline submission whatever additional information it believes will be helpful in reviewing the claim. For instance, the cedent may provide statements providing details of the reinsured loss, describing the case reserving methodology employed, and/or addressing any coverage issues. After preliminary review of the claim, the Liquidator may request such information or any other information to assist in determination of the claim. Subject to paragraph 4, the valuation of the claim, including any coverage issues, will be addressed after the claim amendment deadline. The cedent may submit, and the Liquidator may request, information concerning valuation after the claim amendment deadline.

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

**LIQUIDATOR'S RESPONSE TO OBJECTOR SUPPLEMENTAL FILINGS AND
JOHNSON & JOHNSON'S OBJECTION TO LIQUIDATOR'S MOTION FOR
APPROVAL OF CLAIM AMENDMENT DEADLINE**

In accordance with the schedule set in the February 28, 2020 Scheduling Order, Christopher R. Nicolopoulos, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), submits this memorandum in response to the objection filed by Johnson & Johnson ("J&J") and the supplemental filings by Ms. Peebles and the AFIA Objectors.¹ In order to facilitate addressing the objections overall, the Liquidator also summarizes the status of the other objections.

A. Johnson & Johnson

J&J filed its objection on December 24, 2019, and the Liquidator moved to strike the objection as untimely on January 8, 2020. The Court denied the motion to strike at the February 28, 2020 status conference. The Liquidator accordingly submits this response to J&J's objection.

In its objection, J&J contends that the proposed claim amendment deadline does not strike a "reasonable balance between the expeditious completion of the liquidation and the

¹ In this response, the Liquidator uses terms as defined in the Liquidator's earlier filings: The Liquidator's Response to First Group of Objections to Motion for Approval of Claim Amendment Deadline (filed December 13, 2019 ("Liquidator's First Group Response"), the Liquidator's Response to MWCP's Objection to Motion for Approval of Claim Amendment Deadline (filed December 31, 2019) ("Liquidator's MWCP Response"), and the Liquidator's Response to AFIA Cedents' Objections to Motion for Approval of Claim Amendment Deadline (filed December 31, 2019) ("Liquidator's AFIA Response").

protection of unliquidated and undetermined claims, including third party claims,” as required by RSA 402-C:46. However, J&J does not accurately portray the balance required by the statute, and it disregards the harm suffered by the Class II creditors with allowed claims.

1. As an initial matter, J&J has many claims that will not be affected by the claim amendment deadline. J&J reports that more than 15,000 talc lawsuits are pending against it. J&J Objection at 3. J&J can seek coverage for those known claims in the Home liquidation by identifying them in a filing with the Liquidator. So long as J&J does that before the claim amendment deadline, those claims will not be barred and can be considered for a potential Class II allowance (subject to coverage and valuation issues).

The Liquidator continues to be willing to negotiate with J&J, and is prepared to have settlement discussions including potential future claims until the deadline. However, J&J does not appear to be interested in pursuing settlement. While J&J says that that it is “willing to voluntarily resolve its claim” (J&J Objection at 6), it has not made a settlement demand despite repeated requests by the Liquidator. This may be explained by J&J’s assertion that “the [talc] mass tort is not yet mature” (id.), but where J&J is not willing to even commence settlement negotiations, its complaints that the Liquidator has “unfair” negotiating leverage and that other policyholder claimants have been able to settle their claims ring hollow.

2. J&J’s essential position is that the liquidation should remain open for as long as talc claims might continue to be made, that is, indefinitely. See J&J Objection at 9. However, the proper balancing of interests under the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C (“Act”) calls for a claim amendment deadline now.

The Act provides for the Liquidator to consider “a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined

claims, including third party claims.” RSA 402-C:46, I. As described in the Liquidator’s motion and subsequent filings, including the response to the objection of MW Custom Papers LLC (“MWCP”), the proposed claim amendment deadline reflects a proper balancing of the interests identified by the Legislature.

The phrase “expeditious completion of the liquidation” does not refer to “administrative difficulties” as J&J suggests (J&J Objection at 4). Instead, it requires a focus on the interest of the Class II priority creditors of the liquidation in obtaining the maximum distribution on their claims so that the liquidation can be closed. At this point, 17 years into the proceeding, more than 95% of the proofs of claim (including 95% of Class II proofs of claim) have been determined, and the allowed Class II claims now total \$2.8 billion. Liquidator’s Report of Claims and Recommendations as of March 9, 2020, Schedule 1 at 14 (filed March 16, 2020), approved by order dated April 14, 2020.² However, Class II creditors have received only a 30% distribution on their claims. They cannot receive the fullest possible distribution on their claims until after all other claims are determined, which requires a claim amendment deadline. Holding the liquidation open delays the fullest possible distribution, and (since creditors will not receive interest) the passage of time erodes the value of the allowances and the potential distribution. Depriving the Class II creditors of payment constitutes real and substantial harm. This harm did not exist in the Ambassador case cited by J&J and other objectors. In that case, the assets were sufficient to permit payment of all allowed policy-level claims “in full, plus interest” so that no policyholders were prejudiced by holding the liquidation open. In re Ambassador Ins. Co., 114 A.3d 492, 501 (Vt. 2015).

² The Court may take judicial notice of the Liquidator’s reports, reports of claims and recommendations, and other filings in the liquidation proceeding. See Wellington v. Wellington, 88 N.H. 482 (1937) (court may take judicial notice of its own records for any purpose for which those records may become material).

Against this concrete prejudice to creditors, the Act provides for balancing of “the protection of unliquidated and undetermined claims.” This phrase does not require holding the liquidation open for “as-yet-unfiled mass tort claims.” J&J Objection at 5. The statutory phrase refers to “unliquidated” claims (known claims whose value has not been determined) and “undetermined” claims (known claims filed in the liquidation that have not yet been determined by the Liquidator). It does not address “contingent” claims (claims where liability is uncertain³), let alone unknown claims by potential plaintiffs that may be asserted in the future.

The Act’s omission of contingent and potential claims from RSA 402-C:46, I, is significant. The Legislature was aware that claims may be contingent. See RSA 402-C:3, XVI (referring to any claim “whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent”); RSA 402-C:37, II (e) (referring to a “contingent” claim becoming “absolute”); RSA 402-C:39, I, II (addressing particular “contingent” claims). The Legislature was also aware that unknown claims might become known and could then be filed. See RSA 402-C:37, II(a) (providing for an excused late filing where the “existence of a claim was not known to the claimant and . . . he filed within 30 days after he learned of it”). Nonetheless, the Legislature did not require consideration of contingent or unknown claims in the balancing under RSA 402-C:46, I. The Legislature chose to refer only to “unliquidated and undetermined” claims, and that phrase does not include unknown potential claims. See State v. Mayo, 167 N.H. 443, 452 (2015) (“[T]he expression of one thing in a statute implies the exclusion of another,” and “[t]his principle is strengthened where a thing is provided in one part of the statute and omitted in another”) (quoting State v. Etienne, 163 N.H. 57, 73 (2011)).

³ J&J “denies the allegations [against it] in each of the underlying complaints.” J&J Objection at 3.

The Act calls for a practical (“reasonable”) balance of interests. The Legislature’s provision for a balancing of interests reflects a recognition that some interests cannot be fully protected and must yield to others. Here, the significant progress of the liquidation over 17 years described in the Liquidator’s motion and subsequent filings, and the very real harm to the Class II creditors with \$2.8 billion in claims caused by holding the liquidation open, supports approval of the claim amendment deadline so that the remaining claims can be identified and determined, the assets distributed, and the proceeding closed.

B. MW Custom Papers LLC

The Liquidator responded to MWCP’s objection in the Liquidator’s MWCP Response (filed December 31, 2019). Since that time, the Liquidator and MWCP have negotiated a settlement of MWCP’s claim, and the Liquidator has moved for approval of the Settlement Agreement in the Liquidator’s Motion for Approval of Settlement Agreement with WestRock, LLC and MW Custom Papers, LLC (filed April 16, 2020). In the Settlement Agreement (¶ 10), the parties acknowledge that the settlement will moot MWCP’s objection, and MWCP agrees to withdraw the objection when the settlement is approved.⁴

C. New York Liquidation Bureau and MaryKnoll

The NYLB and Maryknoll filed objections concerning statutes in New York and Hawaii that “revive” previously barred sexual abuse claims. Neither the NYLB nor Maryknoll submitted supplemental memoranda. In the Liquidator’s First Group Response, the Liquidator noted that these objections may become moot, and they now have. Even if the Court entered the Proposed Order at the scheduled hearing on June 23, 2020, the claim amendment deadline would

⁴ MWCP did not file a supplemental memorandum, but it reserves the right to pursue discovery and to seek leave to file a late memorandum if the Settlement Agreement is not approved. The Liquidator objects to discovery but agreed not to object to a motion for leave to file a memorandum late. See Settlement Agreement ¶ 10.

not be until five months later in November 2020. This is after the period for the filing of “revived” claims ends on August 14, 2020 under N.Y. Civ. Prac. Law & Rules § 214-g and April 24, 2020 under Hawaii Rev. Stat. § 657-1.8(b), so any revived claims can be filed in the Home liquidation before the claim amendment deadline.

The Liquidator notes that there are bills pending in New York that, if enacted, would extend the “revival” period for sexual abuse claims in that state for two years and six months after the statute’s effective date. N.Y. Assembly Bill No. 9036; N.Y. Senate Bill No. S07082. However, the possibility that previously time-barred sexual abuse claims might be made against Home insureds in New York if legislation is enacted does not warrant delay of the claim amendment deadline. Holding the liquidation open because of potential legislation is contrary to the interests of the policyholders and claimants with allowed claims, who cannot receive a final distribution until all claims are determined. If the possibility of legislation were enough to require that insurer liquidations remain open, none would ever close.

**D. Patricia Erway, Edward Crosby, and Howard Campbell
(workers’ compensation claimants)**

The Liquidator addressed the letters from three workers’ compensation claimants, Patricia Erway, Edward Crosby, and Howard Campbell, in the Liquidator’s First Group Response filed December 13, 2019. These claimants did not submit any supplemental memoranda. As set forth in the Liquidator’s First Group Response, the objections raised in the letters should be overruled because (1) the three claimants have known claims and can preserve their rights against Home by filing a proof of claim before the claim amendment deadline, and (2) as to Ms. Erway’s argument concerning her claim, the Liquidator does not review positions regarding coverage taken by guaranty associations in handling claims.

E. Linda Faye Peeples (a former employee, Class V claimant)

The Liquidator responded to the letter from Ms. Peeples in the Liquidator's First Group Response. Ms. Peeples submitted a further letter on or about April 1, 2020. Ms. Peeples does not actually object to the claim amendment deadline but requests that the Court re-examine her claim. As set forth in the Liquidator's First Group Response, the Court should overrule Ms. Peeples' objection and decline to re-examine her claim. The assignment of Ms. Peeples' claim to Class V priority was finally determined by the Referee's March 27, 2013 Order on the Merits in 2012-HICIL-55. There will be no distribution to Class V creditors, so there is no reason to address the merits of Ms. Peeples' claim.

F. AFIA Objectors (Zurich (and Württembergische), Resolute, Nationwide and Catalina, Class V claimants)

The Liquidator responded to the AFIA Objectors' objections in the Liquidator's AFIA Response filed December 31, 2019. On February 27, 2020, Resolute and Zurich filed motions for leave to file sur-replies, including their proposed sur-replies. The Court granted those motions on February 28, 2020 and April 2, 2020, respectively. Nationwide filed its sur-reply joining the arguments of Resolute and Zurich on March 27, 2020. Catalina did not file a supplemental memorandum. While the AFIA Objectors guise their argument as for the benefit of Class II claimants, they are Class V priority claimants. The Class II policyholders with open claims were given notice of the Liquidator's motion, and at this point there is only one policyholder – J&J – pursuing an objection. (As described above, MWCP will withdraw its objection when the settlement agreement is approved, and the NYLB and Maryknoll objections are moot). The AFIA Objectors do not speak for Class II.

1. The AFIA Cedents Do Not Have Class I Claims.

As an initial matter, Zurich contends that its claims have Class I priority. Zurich Sur-Reply at 2-3 (“50% of the claims of AFIA Cedents are accorded Class I priority status”). That is incorrect. “The claims of the AFIA Cedents based upon their pre-liquidation reinsurance contracts with Home fall into the ‘all other claims’ category of Class V. See RSA 402-C:44, V.” In the Matter of Liquidation of Home Ins. Co., 154 N.H. 472, 477 (2006) (“Home I”). While the Cedents have a right under the AFIA Agreement to receive certain payments as administration costs, those payments are not payments on the AFIA Cedents’ claims. As the Supreme Court held: “The proposed payments do not arise from the AFIA Cedents’ Class V claims themselves, but rather as an inducement for the AFIA Cedents to file claims in the liquidation in order to bring a net benefit to creditors of the estate.” Home I, 154 N.H. at 484.⁵

The AFIA Cedents are Class V claimants, and their ceded reinsurance claims to Home are properly the subject of the proposed claim amendment deadline. The contractual right to receive (through the Scheme) certain payments if reinsurance is collected (in excess of the deductions) is separate from the Class V claims, although dependent on them, and does not elevate AFIA Cedents’ interests above those of Class II policy creditors. The insurer liquidation statutes are intended to protect the interests of the preferred, policy-level claimants (“people insured by Home, and people with claims against those insured by Home”), Home I, 154 N.H. at

⁵ Zurich is also incorrect in asserting that the payments under the AFIA Agreement equal 50% of cedents’ claims. As set forth in the Liquidator’s AFIA Response at 5, the amount of the payments to the Scheme depends on the amount of reinsurance actually collected in cash (after CIC applies setoffs against amounts due), and is subject to deductions for (i) reinsurance claims that were satisfied by setoff between cedents and Home (since Home has satisfied its obligation to the cedents, it retains the reinsurance) and (ii) expenses of the Liquidator in collecting reinsurance and of the UK proceedings (since the U.S. estate paid the amounts to collect reinsurance and administer the UK proceedings, it is reimbursed). The Liquidator pays 50% of the remaining amount to the Scheme. Depending on the setoffs and the deductions, a cedent’s claim may generate no payment at all to the Scheme.

488, and AFIA Cedents' Class V claims matter only to the extent that they generate reinsurance recoveries for Class II creditors.

Zurich mischaracterizes the Settlement Agreements between Zurich and Württembergische and the Liquidator. Those agreements settled arbitrations. They do not concern AFIA Cedents other than Zurich and Württembergische or have anything to do with incentivizing AFIA Cedents to pursue claims (the AFIA Agreement addresses that). The provisions cited by Zurich's affiants only obligate Home to administer "inwards" claims against Zurich and Württembergische, (that is the claims by others against those two AFIA Cedents), and provide that when such paid claims are agreed as against Zurich or Württembergische they will be automatically deemed part of Zurich's and Württembergische's proofs of claim for determination in the Home estate. See Zurich Settlement Agreement ¶ 6.3; Württembergische Settlement Agreement ¶ 15.2. The automatic inclusion of paid claims against the two companies in their proofs of claim is separate from the question whether those claims can be allowed in the estate and is not an agreement that claims can be submitted in perpetuity.

Similarly, the provision of the Scheme on which Zurich relies, Scheme Cl. 7.7.1, only concerns the termination of the Scheme. It says nothing about generally applicable limitations on claims in the New Hampshire Home liquidation proceeding. Neither the Settlement Agreements nor the Scheme have any bearing on whether the claim amendment deadline should be approved.

2. The Harm to Class II Creditors of Keeping the Liquidation Open Outweighs the Speculative Value of AFIA Cedent IBNR.

The AFIA Objectors fail to recognize the harm to Class II policy creditors in keeping the estate open: those creditors are deprived of payment while the value of their allowances erodes. Zurich, in particular, fails to acknowledge that in the Ambassador case the policy-level claimants

were paid “in full, plus interest” before the liquidator even sought a deadline, so there was no harm to policyholders in prolonging that liquidation. In re Ambassador Ins. Co., 114 A.3d 492, 501 (Vt. 2015). Here, the Class II policy creditors have received only a 30% distribution, will not be paid in full, and will not receive interest. Without a claim amendment deadline requiring claimants to identify and submit their claims so they can be determined, the Home liquidation will remain open and the Class II creditors with \$2.8 billion of allowed claims will be prevented from receiving the fullest possible distribution on their claims.⁶

Zurich and Resolute contend that harm to the Class II policy creditors will be offset by the benefit of additional reinsurance. However, they fail to show either that there are legal mechanisms to estimate and determine IBNR and to collect reinsurance on IBNR, or that remaining IBNR for AFIA claims totals an amount that will yield reinsurance recoveries material to the liquidation.

1. The AFIA Objectors fail to articulate any legal basis for estimating and collecting reinsurance on IBNR. As set forth in the Liquidator’s AFIA Response at 15-17 (and the Liquidator’s MWCP Response at 3-8), the New Hampshire Act does not provide for “estimation” of IBNR as a way to determine claims, and reinsurers would not be obligated to pay an estimate if made.

⁶ Zurich has repeatedly asserted that the Liquidator has distributed “billions” to creditors. Zurich Objection at 3, 23; Zurich Sur-Reply at 5. That is wrong. The Class II creditors have been paid interim distributions totaling 30% on their claims. The Liquidator paid approximately \$640 million in interim distributions to non-guaranty association creditors and \$256 million in early access distributions to guaranty associations for a total of \$896 million. Liquidator’s Seventy-Sixth Report at 10, 12 (March 16, 2020). (The Liquidator is holding approximately \$817 million which can be distributed once all claims have been determined. Id. at 1.) Moreover, the \$13 million cost of the liquidation is not “only 1.6%” of the assets held by the Liquidator. Zurich Sur-Reply at 5. It is an annual cost that will be incurred for each year the liquidation continues. Finally, the Liquidator pointed out that the 16 (now 17) year period from the initial filing deadline to the proposed claim amendment deadline is comparable to the period in other large insurer proceedings, especially as Home stopped writing insurance in 1995. Liquidator’s Motion at 17. Zurich’s sur-reply refers to the longer periods (“multiple decades”) from the inception to the close of the proceedings, which is an irrelevant comparison. Zurich Sur-Reply at 6 (referring to Zurich’s Objection at 24). Like those proceedings, the Home liquidation will necessarily continue for some time after the claim amendment deadline, as the Liquidator will need to determine the remaining claims and then distribute assets.

Since reinsurers have historically vigorously opposed estimation in insurer liquidations, the Liquidator asked Zurich and Resolute to explain and support their position if they actually wanted to pursue it. Liquidator's AFIA Response at 17. Neither Zurich nor Resolute responded. In their sur-replies, they do not attempt to explain on what basis estimation could be permissible or how it could lead to reinsurance collections. Instead, they ask – without citation of authority – the Court to create and mandate a process to have an independent actuary determine an IBNR value, and they then assume – again without citation of authority – that CIC would pay such a value. This is just an invitation to litigation. The New Hampshire Act does not provide for estimation (unlike the Missouri statute at issue in the case on which Zurich and Resolute seem to base their proposal, see Liquidator's AFIA Response at 17). In the absence of a statute providing for estimation and requiring payment based on it, reinsurers (here, CIC) would not be obligated to make a payment for potential future claims that have yet to be asserted (IBNR). The AFIA Objectors' request for an independent actuary to determine IBNR lacks a legal basis and would not result in the collection of reinsurance.

2. Even if there were legal mechanisms for estimation of AFIA Cedents' IBNR and collection of reinsurance on such estimates (which there are not), at this point it is speculative whether any material benefit to Class II creditors would result. The objectors do not offer estimates themselves, but attempt to fault the Liquidator for not quantifying the IBNR that would be cut-off. The AFIA Cedents' arguments overlook three critical points.

First, there can be no definitive IBNR number because IBNR is by definition a projection or estimation of claims that have not yet emerged, making any number just one in a wide range of possible outcomes. Indeed, contrary to their present position, Zurich and Resolute acknowledged this uncertainty in their initial objections. See Resolute Objection at 3;

Zurich Objection at 3. The potential variation in such estimates is demonstrated by the differing views of the AFIA Cedents and CIC when valuations were exchanged in 2012. As reported to the Scheme Creditors' Committee ("SCC"), which included Zurich (Agrippina), Württembergische, and Resolute (Equitas), CIC's overall valuation was 10% of the AFIA Cedents' values. Seventh Report to Scheme Creditors' Committee at 2-3 (December 4, 2012) (SCC Ex. B) (Cited reports to the SCC are attached as exhibits ("SCC Ex.") to the Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, Regarding Reports to Scheme Creditors Committee).⁷

Second, the Liquidator does not have information to estimate IBNR, as it concerns the value of potential future claims against the AFIA Cedents. The AFIA Cedents' claims in the Home liquidation arise from their own obligations to underlying policyholders and cedents, and the IBNR at issue is an estimate of the AFIA Cedents' liability to those underlying policyholders and cedents for potential future claims. AFIA Cedents, and not the Liquidator, have the information concerning the underlying claims and their development, but they are unwilling to provide it. In March 2019, Zurich (implicitly recognizing the need for such information) urged the UK Scheme Administrators to obtain it from AFIA Cedents. Fourteenth Report to Scheme Creditors' Committee at 32 (March 20, 2020) (minutes of March 25, 2019 SCC meeting; Mr. Crabtree for Zurich) (SCC Ex. I). The Scheme Administrators wrote to SCC members twice requesting information but (as Zurich was informed) "the Scheme Administrators did not receive sufficient responses" from the Cedents. Id. at 19, 37 (reporting on "Action 1").⁸

⁷ The point was discussed at the SCC meeting on December 10, 2012, which Zurich (Agrippina), Württembergische, and Resolute (Equitas) attended. See Eighth Report to Scheme Creditors' Committee at 17-18, 19 (December 2, 2013) (minutes of December 10, 2012 meeting) (SCC Ex. C).

⁸ Zurich attempts to put the onus of coming up with an estimate for its claims on CISUK (which is administering underlying inwards claims against Zurich and Württembergische, although not for other AFIA Cedents), but CISUK provides regular reports to Zurich and Württembergische with historical information about their paid losses and case

Third, the annual recoveries on AFIA claims over the past five years show that at this point the AFIA claims have limited value to the liquidation. The annual claims and recoveries over the past five years offer a rough gauge of the practical value of reinsurance recoveries concerning AFIA Cedents' claims to the liquidation. Liquidator's AFIA Response at 13-14. As set forth there, the annual benefit is about \$900,000 per year. Since 2015, the claims by AFIA Cedents have come in at about \$3 million per year resulting, after CIC offsets, in about \$1.8 million per year of reinsurance collections which, after the split between the estate and the Scheme (and disregarding expenses and other deductions), has yielded about \$900,000 per year in benefit to the estate. That is not a material number in the context of an estate with \$2.8 billion of allowed Class II claims and annual operating expenses of approximately \$13 million, and it does not warrant keeping the estate open.⁹

Another way of looking at it is to start with the \$231 million estimate of potential AFIA claims from 2002 cited by Zurich. Zurich Sur-Reply at 9. Deducting the \$134 million in AFIA claim allowances to date leaves \$97 million. Zurich asserts there are \$33.7 million of outstanding losses/case reserves (for the AFIA Cedents in the Ruddy Pool, not for all AFIA Cedents). Zurich Objection at 22. The claim amendment deadline will not cut-off case reserves, so a maximum of approximately \$63 million in IBNR could be affected. The benefit to Class II creditors from that IBNR would only be a fraction of it, since resulting reinsurance would be

reserves pursuant to ¶ 6.8 of the Zurich Settlement Agreement and ¶ 14.2-.3 of the Württembergische Settlement Agreement. The Liquidator pointed this out to Zurich in a March 19, 2020 letter responding to the letter mentioned by Zurich at page 7 n. 2 of its sur-reply. Zurich has not responded.

⁹ Zurich refers to these figures as "bald factual assertions" (Zurich Sur-Reply at 8) but the amounts for AFIA claims are just annual totals of claims reported in Liquidator's reports of claims and recommendations and approved by the Court. Those figures and the amount of reinsurance collected from CIC have been reported to the Scheme Creditors' Committee ("SCC") in the annual reports by the UK Scheme Administrators to which the AFIA Cedents have not objected. The Liquidator is submitting a summary as Exhibit A to this response and as SCC Ex. A. Copies of the relevant Reports to the SCC, including those for the years 2015 through 2019, are included as confidential exhibits E through I attached to the affidavit herewith submitted under seal.

reduced by CIC offsets and the expenses of collection and the UK proceedings and the remainder then shared with the Scheme. That benefit could only be realized over years, during which expenses of the liquidation would continue, the Class II creditors would not receive the fullest possible distribution, and the value of their allowances would be eroded. In the Liquidator's view, that benefit would not be material and does not warrant keeping the liquidation open.

3. The AFIA Objectors posit that CIC would be willing to commute if there were an independent estimate or if there were no claim amendment deadline. However, commutation is a voluntary act by a reinsurer, and CIC cannot be compelled to commute. Zurich and Resolute simply disregard the history of discussions over the past eight years as described in the UK Scheme Administrator's annual reports to the SCC, including Zurich and Resolute:

- In 2012, the Liquidator gathered information from AFIA Cedents and attempted to start "global" commutation discussions. Seventh Report at 2-3 (SCC Ex. B); Eighth Report at 19 (SCC Ex. C).
- After efforts over two years, in 2014 the parties were so far apart that the SCC was advised that the possibility of such a commutation "appears remote." Ninth Report to Scheme Creditors' Committee at 5 (December 1, 2014) (SCC Ex. D). This was discussed at the Scheme Creditors' meeting on December 8, 2014. See Tenth Report to Scheme Creditors' Committee at 17 (February 12, 2016) (minutes of December 8, 2014 SCC meeting attended by Württembergische and Resolute at which Ms. Ellis advised the SCC that "the likelihood of the parties being able to agree a global commutation was now considered to be remote.") (SCC Ex. E).¹⁰
- In 2014, CIC advised (and the SCC was informed) that CIC was "now prepared to consider the commutation of AFIA liabilities with individual cedents." Ninth Report at 6 (SCC Ex. D). This was discussed at the December 8, 2014 SCC meeting which Resolute and Württembergische attended. See Tenth Report at 18 (minutes of December 8, 2014 SCC meeting) (SCC Ex. E).
- Only one cedent of any significance, the Enstar Group, chose to negotiate a commutation with CIC. The SCC was consulted about the Enstar Group commutation in March and April of 2015, and the Liquidator then moved for approval of the commutation, which was approved in July 2015. Tenth Report at 5 (SCC Ex. E). The price was negotiated between Enstar and CIC. Liquidator's

¹⁰ During this period, Resolute (Equitas) and Enstar engaged with CIC on a "reconciliation" process over their claims, as Zurich was aware. See Eighth Report at 19 (minutes of December 10, 2012 SCC meeting which Zurich and Württembergische attended) (SCC Ex. C); Ninth Report at 18 (minutes of December 9, 2013 SCC meeting which Zurich attended) (SCC Ex. D). This process did not produce results for Resolute.

Motion for Approval of Commutation Agreements with Enstar Companies ¶¶ 2, 4 (May 28, 2015).

- There have been no material commutations since. (The NCC commutation included a \$100,000 allowance on AFIA claims. That sum is not material.)

In light of the harm to Class II creditors who will not receive the fullest potential distribution on their allowed claims until the end of the liquidation, only a substantial and demonstrable value could justify holding the liquidation open. However, there is no statutory mechanism to estimate IBNR or compel a reinsurer to pay IBNR, and the remaining benefit from AFIA Cedents' claims is speculative and not material. Any incremental reinsurance benefit that might be obtained by holding the liquidation open is outweighed by the annual cost of the liquidation and the substantial harm of depriving Class II creditors of distributions.

3. The Claim Amendment Deadline Should Apply To All Claimants, Including AFIA Cedents.

Resolute and Zurich contend that the claim amendment deadline should not apply to AFIA Cedents. However, allowing AFIA Cedents to continue filing claims while applying a deadline to all others is not practical, equitable, or legally supported. At a practical level, excepting AFIA Cedents from the claim amendment deadline will result in disputes and potential litigation over set-offs across priority classes as described in the Liquidator's AFIA Response at 18-19. The AFIA Objectors fail to address this issue. It is also likely to delay closure of the liquidation. Giving AFIA Cedents an exception now would push the debate over when to cut-off their claims into the future, when it will still need to be resolved, and will cause additional delay.

An exception would also be contrary to the policy of the Act to promote the interests of preferred Class II policy claimants. See Home I, 154 N.H. at 488. The AFIA Objectors' proposal would cut-off potential future claims of the preferred Class II policyholder claimants while allowing Class V claimants indefinite time to continue to assert claims. The intent of the Act is to protect policyholders, not favor Class V reinsured/cedent claimants.

Finally, Resolute's asserted authority on this point is irrelevant. RSA 402-C:26, II, does not support an exception from a final claim amendment deadline. The statute provides only that a liquidator may specify different initial filing dates for different types of claims. It concerns initial filing deadlines (such as the 2004 deadline), not a final deadline like the claim amendment deadline, and it provides no support for a complete exemption from deadlines as requested here. (The AFIA Cedents do not seek a different filing date but no filing date.) The discussion of "staggered bar dates" at page 246 of the NAIC Receiver's Handbook for Insurance Company Insolvencies (2018) ("Handbook") is similarly inapplicable. The phrase "bar date" in the Handbook also refers to an initial filing deadline, not a final deadline. See Handbook at 244 ("What is a Bar Date? A bar date (in some states called a filing date) is the deadline for filing proofs of claim against the estate."). Cf. id. at 247 (referring to final claims liquidation date). Notably, the objectors fail to cite any examples of insurer insolvencies with "staggered bar dates" even in the context of initial filing deadlines. The Liquidator is not aware of any insurer liquidation that had either a staggered initial deadline or a staggered final deadline.

4. The Claim Amendment Deadline Does Not Present A Subclass Issue.

The AFIA Objectors contend that they have been deprived of the "opportunity" to negotiate commutations, while policyholders have had an opportunity to negotiate settlements, and that this results in a "subclass" prohibited by RSA 402-C:44. The AFIA Objectors have not been deprived of any such opportunity but did not pursue it. As described at page 14 above, they were informed of the efforts toward a global commutation between 2012-2014; that the possibility of such a commutation became remote in 2014; that CIC was open to individual commutations in 2014; and that the Enstar group successfully negotiated such a commutation in 2015. In any event, the "no subclass" provision of the priority statute has no application here. It

requires that allowed claims in each priority class receive the same distribution percentage. It does not address other distinctions among claims.¹¹

The “no subclass” provision is part of the priority statute, RSA 402-C:44, prescribing the priorities of claims in insurer liquidations. The last sentence of the first paragraph of the statute, immediately before the listing of priority classes I to X, provides: “No subclass shall be established within any class.” As shown by its context, this provision is concerned with equality of distributions within a priority class. See Home I, 154 N.H. at 485 (“Payment of Class I administration costs, by definition, do not constitute a ‘distribution’ to a lower priority class, and therefore do not create a subclass of lower priority creditors.”). It prevents claimants from pursuing (and liquidators from making) distributions on allowed claims within a particular priority at different rates and serves to ensure that the legislatively-established priorities are respected. See In re Coronet Ins. Co., 698 N.E.2d 598, 603 (Ill. App. 1998). It does not concern the determination of claims, the application of deadlines or other matters addressed outside the priority statute itself. See In the Matter of Liquidation of Home Ins. Co., No. 2016-0569, 2017 WL 5951591 at *5 (N.H. Oct. 27, 2017) (“We agree that the negotiated deductions in . . . the Settlement Agreement do not create a subclass in violation of RSA 402-C:44. Rather, the deductions to which the parties agreed represent an adjustment to the negotiated Recommended Amount upon which distributions to all Class II creditors will be made.”).

¹¹ If there were a difference in treatment, it is justified. As set forth in the Liquidator’s AFIA Response at 19-22, the claims of Class II policyholders and insureds need to be resolved because they stand to receive a distribution. Settlements provide a method of concluding a policyholder relationship and foreclosing further claims. By contrast, the claims of Class V claimants do not need to be determined because they will receive no distribution on their claims. The only reason for determining or commuting AFIA Cedents’ claims (and making payment under the AFIA Agreement) is to produce a net benefit for Class II creditors from collection of reinsurance. See Home I, 154 N.H. at 484. When that benefit becomes immaterial and speculative, and the interests of Class II creditors are harmed by holding the liquidation open so there is no net benefit, there is no reason to determine or commute AFIA claims.

The claim amendment deadline does not create any differential distribution rates on allowed claims within a priority class, which is the concern of RSA 402-C:44.

CONCLUSION

The Court should overrule the objections, grant the Liquidator's motion and approve the proposed claim amendment deadline.

Respectfully submitted,

CHRISTOPHER R. NICOLOPOULOS, INSURANCE
COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE, AS LIQUIDATOR OF THE HOME
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April 30, 2020

Certificate of Service

I hereby certify that copies of the foregoing Liquidator's Response to Supplemental Filings and Johnson & Johnson's Objection to Motion for Claim Amendment Deadline, and the Affidavit of Peter A. Bengelsdorf (including Exhibit A only), were sent this 30th day of April, 2020, by first class mail, postage prepaid to all persons on the attached service list. The Affidavit of Peter A. Bengelsdorf with Exhibits B-I is being filed under seal and served on counsel for Resolute and Zurich only.



Eric A. Smith
NH Bar ID # 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106

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The Home Insurance Company, in Liquidation						
Dollar Amount of AFIA Cedent Court-Approved Notices of Determination During 2015-2019						
	2015 ¹	2016	2017	2018	2019	5 Year Average
Total All AFIA Cedents	\$4.0M ²	\$2.7M ³	\$3.2M ⁴	\$3.3M ⁵	\$2.0M ⁶	\$3.0M

The Home Insurance Company, in Liquidation						
Dollar Amount Received from CIC Based on AFIA Cedent Notices of Determination During 2015-2019 (after setoffs)						
	2015 ¹	2016	2017	2018	2019	5 Year Average
Total All AFIA Cedents	\$4.4M ²	\$0.4M ³	\$1.8M ⁴	\$1.8M ⁵	\$0.8M ⁶	\$1.8M

¹ 14 month SCC period of 11/1/14 – 12/31/15
² Tenth SCC Report, page 10 (excluding \$14.3 million commutation for Enstar Group, Tenth SCC Report, page 6)
³ Eleventh SCC Report, page 12
⁴ Twelfth SCC Report, page 5
⁵ Thirteenth SCC Report, page 5
⁶ Fourteenth SCC Report, page 5 (includes \$100,000 AFIA part of commutation for National Casualty Co.)

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³ Eleventh SCC Report, page 6
⁴ Twelfth SCC Report, page 5
⁵ Includes funds received in January 2019; Thirteenth SCC Report, page 6
⁶ Includes \$100,000 AFIA part of commutation for National Casualty Co.; Fourteenth SCC Report, page 5

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

**AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY
LIQUIDATOR, REGARDING REPORTS TO SCHEME CREDITORS' COMMITTEE**

I, Peter A. Bengelsdorf, hereby depose and say:

1. I was appointed Special Deputy Liquidator of The Home Insurance Company (“Home”) by the Insurance Commissioner of the State of New Hampshire, as Liquidator (“Liquidator”) of Home. I submit this affidavit in support of the Liquidator’s Motion for Approval of Claim Amendment Deadline. The facts and information set forth are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information, and belief.

2. The chart attached as Exhibit A accurately summarizes the amounts of AFIA Cedent-related notices of determination approved by the Court and reinsurance collected on such approved AFIA-related notices of determination over the periods set forth on the chart and as included in the Reports to the Scheme Creditors’ Committee referred to in paragraph 3 below.¹

3. True and correct copies of the following Reports to the Scheme Creditors’ Committee as distributed to the Scheme Creditors’ Committee are attached as Exhibits B-I:

¹ The charts set forth at pages 13 and 14 of the Liquidator’s Response to AFIA Cedents’ Objections to Motion for Approval of Claim Amendment Deadline (filed December 31, 2019) similarly accurately summarize the amounts allowed on AFIA-related notices of determination issued during the periods set forth on the charts, CIC setoffs asserted during the periods set forth on the charts, and reinsurance collected on approved AFIA-related notices of determination over the periods set forth on the charts.

- B. Seventh Report to Scheme Creditors' Committee (December 4, 2012)
- C. Eighth Report to Scheme Creditors (December 2, 2013)
- D. Ninth Report to Scheme Creditors (December 1, 2014)
- E. Tenth Report to Scheme Creditors (February 12, 2016)
- F. Eleventh Report to Scheme Creditors' Committee (March 10, 2017)
- G. Twelfth Report to Scheme Creditors' Committee (March 1, 2018)
- H. Thirteenth Report to Scheme Creditors' Committee (March 8, 2019)
- I. Fourteenth Report to Scheme Creditors' Committee (March 20, 2020)

Signed under the penalties of perjury this 28 day of April, 2020.

Peter A Bengelsdorf

 Peter A. Bengelsdorf
 Special Deputy Liquidator of The Home Insurance
 Company

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

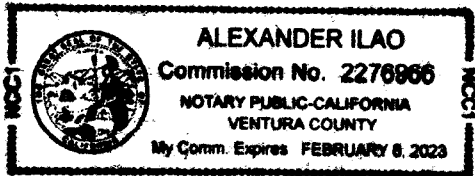
STATE OF CALIFORNIA
 COUNTY OF VENTURA

Alexander Ilao, Notary Public

On April 28, 2020, 2020 before me, ~~Peter A. Bengelsdorf~~,
 personally appeared Peter A. Bengelsdorf, Special Deputy Liquidator of The Home Insurance
 Company, who proved to me on the basis of satisfactory evidence to be the person whose name
 is subscribed to the within instrument and acknowledged to me that he executed the same in his
 authorized capacity, and that by his signature on the instrument the person, or the entity upon
 behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
 the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Alexander Ilao*
 Signature of Notary Public

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