

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**

INTERLOCUTORY APPEAL STATEMENT APPENDIX

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The State of New Hampshire

MERRIMACK COUNTY

SUPERIOR COURT

IN THE MATTER OF THE LIQUIDATION OF
THE HOME INSURANCE, CO.

Docket No.: 217-2003-EQ-00106

ORDER

The Insurance Commissioner of the State of New Hampshire, as Liquidator of the Home Insurance Company (the “Home”), moves for the Court to establish a final deadline for the amendment or submission of claims to the Home’s estate (the “Claim Amendment Deadline”). Along with his motion, the Liquidator has filed a Proposed Order specifying a date and procedural requirements for amending claimants to follow. A number of policyholder priority creditors object. These are the Catholic Foreign Mission Soc. of America, Inc. a/k/a the Maryknoll Fathers and Brothers (the “Maryknoll Society”) and three worker’s compensation claimants—Patricia Erway, Edward Crosby, and Howard Campbell (the “Worker’s Compensation Claimants”).¹ In addition, a number of non-policyholders object. These are former Home employee Linda Faye Peeples, David Axinn, in his capacity as Special Deputy Superintendent of the New York Liquidation Bureau (the “NYLB”), and several insurance entities reinsured by the Home (the “AFIA cedents”). The objecting AFIA cedents are: Catalina London, Ltd. and Catalina Worthing Ins. Ltd. (the “Catalina Group”); the German branch of Zurich Ins.,

¹ U.S. Steel Corp. and MW Custom Papers each also initially filed objections to the Liquidator’s Motion for Approval of a Claim Amendment Deadline but have since withdrawn their objections. (See List of Filings that May Be Cited During Hearing at 2 n.3.) During the December 11, 2020 hearing on the Liquidator’s motion, the Court learned that Johnson & Johnson also withdrew its objection.

P.L.C., and Württembergische Versicherung, A.G. (“Zurich and Württembergische”); Indemnity Marine Assurance Co., Nederlande Reassurantie Groep N.V., NRG Victory Reinsurance Ltd., NRG Fenchurch Ins. Co., Ltd., New Zealand Reinsurance Co., Tenecom Ltd., Underwriters at Lloyd’s of London, Winterthur Swiss Ins. Co., and World Auxiliary Corp., Ltd. (“Resolute”); and Nationwide Mutual Ins. Co. (“Nationwide”). The Court held a hearing on this matter on December 11, 2020 and heard oral argument from Ms. Peeples, the Maryknoll Society, and various objecting AFIA cedents. For the following reasons, the Liquidator’s Motion for Approval of a Claim Amendment Deadline is GRANTED and the Court approves the Proposed Order.

I. Background

The Home is a New Hampshire-domiciled insurance company incorporated in 1973. (Liquidator’s Mot. Approval Cl. Am. Deadline (“Liq.’s Mot.”) at 3.) At its height, the Home and its subsidiaries wrote insurance and reinsurance in almost all fifty states, as well as Canada, Bermuda, Hong Kong, and the United Kingdom. (Id.) In the early 1990s, however, following financial difficulties, the Home stopped writing new personal lines of business. (Id.) By 1995, the Home had stopped writing all business, including commercial lines, with the exception of certain personal lines subject to mandatory renewal in a few states. (Id.) The Court found the Home insolvent on June 13, 2003 and appointed the Liquidator to distribute the assets of the Home pursuant to RSA 402-C, the Insurers Rehabilitation and Liquidation Act (the “Act”). (Id. at 1; Order of Liquidation.) The Order of Liquidation established June 13, 2004 as the deadline for filing claims to the Liquidator (the “Claim Filing Deadline”). (Order of Liquidation ¶ (bb).) On June 11, 2003, approximately one year in advance of the Claim Filing Deadline, the

Court issued an order approving notice of the liquidation and of the deadline to file. (Order Approving Notice.) Since 2004, at least 20,785 proofs of claim have been filed with the Liquidator, 19,695 of which had been resolved as of May 31, 2019. (Liq.'s Mot. at 3–4.) These resolved claims represent a total allowed amount of \$3.08 billion. (Id. at 4.)

Before entering liquidation, the Home had an unincorporated branch that operated in the United Kingdom as part of an association of American insurance companies known as the American Foreign Insurance Association (“AFIA”). (Id. at 3; Zurich and Württembergische’s Obj. to Liq.’s Mot. at 7.) In 1984, Cigna bought AFIA and, as part of the transaction, a subsidiary of Cigna, the Insurance Company of North America (the “INA”), assumed the reinsurance obligations of the Home with respect to AFIA by way of an assumption agreement. (Liquidator’s Resp. to AFIA cedents’ Objs. to Liq.’s Mot. (“Liq.’s Resp. AFIA”) at 3.) The assumption agreement contained an insolvency clause requiring the INA to pay obligations directly to the Home or the Liquidator in the event of the Home’s insolvency. (Id.) In 1999, Century Indemnity Company (“CIC”) succeeded to the INA’s obligations. (Id.)

When the Home became insolvent in 2003, the AFIA cedents filed proofs of claim in the liquidation, which were all held to be Class V claims. See In re Liquidation of Home Ins. Co., 154 N.H. 472, 477 (2006) (“The claims of the AFIA Cedents . . . fall into the ‘all other claims’ category of Class V.”); see also RSA § 402-C:44, V (defining a Class V claim). The Liquidator resolved to access the excess reinsurance funds available from CIC to increase the assets of the estate and, therefore, had an incentive to quantify the extent of the AFIA cedents’ claims. (Liq.’s Resp. AFIA at 4.) However,

as the Liquidator determined that no creditors with claims below Class II would receive any proceeds from the Home's estate, the AFIA cedents had no incentive to file and prove their claims. (Id. at 3–4.)

To address the situation, the Liquidator proposed an arrangement, pursued through various agreements and settlements between the Home estate and the AFIA Cedents (“the AFIA Scheme”), whereby AFIA members agreed to cede their claims under the reinsurance contracts they had with the Home while continuing to file and quantify their claims with the Liquidator. (Id. at 4; Resolute's Obj. to Liq.'s Mot. at 5.) In exchange, the AFIA cedents received a share of the reinsurance collected by the Liquidator from CIC. (Liq.'s Resp. AFIA at 4.) On August 6, 2004, the AFIA cedents entered into a Claims Protocol with CIC for the handling of AFIA claims in the liquidation. (Id.) CIC challenged the AFIA Scheme in this jurisdiction, but the scheme was upheld by the New Hampshire Supreme Court, which affirmed that (1) payments of the Liquidator to the AFIA cedents pursuant to the AFIA Scheme constitute Class I payments to distribute assets, (2) the payments are necessary to collect assets, and (3) the scheme is fair and reasonable as it benefits Class II claimants. In re Home, 154 N.H. at 481–490.

Under the Claims Protocol, the CIC, through its agent, ACE-INA UK Services Ltd. (“ACE-INA”), would review claims and make recommendations to the Liquidator. (Liq.'s Resp. AFIA at 4.) ACE-INA's successor, Chubb International Services UK Ltd. (“Chubb”), exercises this role today. (Id. 4–5.) If the Liquidator agrees with a recommendation, a notice of determination is issued to the claimant pursuant to the Court's Claims Procedure Order. (Id. at 5.) If the claimant agrees with the

determination, the determination is presented to the Court in a Liquidator's report of claims and recommendations. (Id. at 5.) Once the determination is approved, CIC applies any offsets it may have and makes payment to the Liquidator. (Id. at 5.) Historically, claims by the AFIA cedents have significantly contributed to the estate and, therefore, to the funds available for distribution to Class II claimants. (See id. at 13.) The extent of recovery available from any future claims, however, is disputed by the parties. (Id. at 12.) The Liquidator's motion for a Claim Amendment Deadline would foreclose future claims made pursuant to the AFIA Scheme. (See id. at 14.)

II. Analysis

The Liquidator seeks to impose a Claim Amendment Deadline to ensure Class II creditors receive the full extent of available distributions in a timely fashion. The New Hampshire Legislature directs the Court to "liberally construe[]" the Act so as to protect the "interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors." RSA 402-C:1, III-IV. The Act enumerates a series of avenues to ensure the fulfillment of this statutory purpose, including enhancing the "efficiency and economy of liquidation" and ensuring the "[e]quitable apportionment of any unavoidable loss." Gonya v. Comm'r, N.H. Ins. Dep't, 153 N.H. 521, 524 (2006) (citing RSA 402-C:1, IV(c)-(d)). When appointing a liquidator to administer the business of a domestic insurer, the Court transfers to such liquidator "the title to all of the property, contracts and rights of action and all of the books and records of the insurer" subject to liquidation. 402-C:21, I. Subject to the Court's control, the liquidator is empowered to take extraordinary steps to achieve the Act's statutory purposes, including to "[e]nter into such contracts as are necessary to carry out the

order to liquidate,” to “affirm or disavow any contracts to which the insurer is a party,” and to “[e]xercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member.” 402-C:25, XVIII, XI. Thus, the Act “grants the liquidator broad authority to administer liquidation proceedings.” In re Home, 154 N.H. at 482.

The Act provides an enumerated order of distribution for the apportionment of estate assets, which divides claimants into separate priority “classes,” numbered I–X in order of decreasing priority. See RSA 402-C:44. In general terms, Class I consists of the “administrative costs” of liquidating the estate, Class II of claims made by policyholders of the insurer, Class III of claims by the federal government, Class IV of employee wages, Class V of “residual claims,” including those of state or local governments, Class VI of judicial judgments, Class VII of interest on claims already paid, Class VIII of miscellaneous subordinated claims, Class IX of preferred ownership claims, and Class X of shareholder and other “proprietary claims.” Id. “Every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment,” and “[n]o subclasses” shall be established. In re Home, 154 N.H. at 475 (citing RSA 402-C:44).

A. Objections of Class II Policyholders

The Court first turns to objections filed by Class II policyholders. Only four Class II policyholders have current objections to the Liquidator’s proposed Claim Amendment Deadline and, of those four, only one—the Maryknoll Society—presented oral argument during the December 11, 2020 hearing. The Liquidator contends that the imposition of a Claim Amendment Deadline would directly benefit Class II policyholders and argues

that the interests of individual objectors in maintaining the estate open do not outweigh the interest of Class II claimants as a whole. During oral argument, he argued that the absence of additional Class II claimant objections, especially in view of the sophistication of the Home's Class II creditors, suggests Class II policyholders recognize a Claim Amendment Deadline is in their interest.

i. The Maryknoll Society's Objection

The Maryknoll Society has a valid policy with the Home that provides coverage for the period of 1970–1973. (The Maryknoll Society's Obj. to Mot. Approval Cl. Am. Deadline re The Home at 2.) Over the years, the Maryknoll Society has submitted several claims to the Home to cover civil litigation expenses regarding alleged instances of sexual abuse by Maryknoll Society personnel in Hawaii. (Id.) The Maryknoll Society contends that, as the Hawaii Legislature has consistently extended the statute of limitations for the filing of such claims, it risks losing coverage for litigation expenses incurred in the event that the statute of limitations is further extended. (Id.) The Maryknoll Society also argues that it has upheld its end of the bargain by paying all premiums for the policy issued by the Home, and it is therefore entitled to seek coverage in the event that an extension of the Hawaii statute of limitations for sexual abuse results in further litigation expenses. (Id.)

The Court concludes that the effect of a potential extension of the applicable Hawaii statute of limitations on the Maryknoll Society is far too speculative a concern to outweigh the interests of other Class II creditors in securing final distributions. Pursuant to the Act, the Liquidator has broad authority to “[e]xercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member.” 402-C:25,

XVIII. The Liquidator's motion to impose a Claim Amendment Deadline is an effort to exercise such authority to protect the rights of Class II priority creditors to a timely disbursement of as large a portion of their insurance claim as possible. Without a Claim Amendment Deadline, the Liquidator will be unable to distribute substantial estate assets to Class II creditors for the foreseeable future, as he will not know the full amount of the Home's liabilities and a reserve will be necessary for the continued administration of the estate. (Mot. Approval Cl. Am. Deadline at 9.) The Liquidator's interests in protecting the rights of Class II creditors should not yield to the Maryknoll Society's individual interest in covering litigation expenses in the event of a change in the law. The current Hawaii statute of limitations for sexual offenses during the relevant coverage period expired on April 24, 2020. See Hawaii Rev. Stat. Ann. § 657-1.8(b) ("For a period of eight years after April 24, 2012, a victim of child sexual abuse" previously barred from initiating an action by expiration of the then-current statute of limitations "may file a claim in a circuit court of this State against the person who committed the act of sexual abuse.") The Court has no way to know whether the Hawaii Legislature will choose to extend the statute of limitations at some point after a Claim Amendment Deadline is imposed. The Court does know, however, that Class II creditors will not receive a final disbursement until the Liquidator can set a Claim Amendment Deadline. Though the Maryknoll Society upheld its end of the bargain by paying all premiums for the policy issued by the Home, so did all other Class II creditors entitled to recovery in this liquidation. Accordingly, the Court is not persuaded by the Maryknoll Society's objection to the imposition of a Claim Amendment Deadline.

ii. The Workers Compensation Claimants' Objection

Each of the Workers Compensation Claimants filed a proof of claim with the Liquidator more than a decade ago regarding particular injuries each suffered while employed by the Home. (Liquidator's Resp. First Group Objs. Mot. Approval Cl. Am. Deadline ("Resp. First Group").) Ms. Erway's claim was transferred to a guaranty association in Michigan pursuant to Michigan's Property and Casualty Guaranty Association Act, Mich. Comp. Laws Ann. § 500.7901 et seq. (Id., Ex. A.) Mr. Crosby's claim was transferred to a guaranty association in Texas pursuant to chapter 462 of the Texas Property and Casualty Insurance Guaranty Act, Tex. Code Ann. § 462.001. (Id., Ex. B.) Mr. Campbell's claim was transferred to the NYLB in New York pursuant to N.Y. Ins. Law § 7405. (Id., Ex. C.) Each of these guaranty associations has a duty to pay certain obligations of an insolvent insurer that come within their respective acts' definition of covered claims. The Liquidator denied Ms. Erway's claim in 2007, Mr. Campbell's in 2008, and Mr. Crosby's in 2009, each time citing the claimant's ability to pursue a remedy from the respective guaranty association instead of the Home's estate. (Id., Exs. A–C.)

Each of the objections of the Worker's Compensation Claimants is properly addressed by the out-of-state guaranty associations handling their claims. Pursuant to RSA 404-B:11, the Liquidator "shall be bound by settlements of covered claims by [an] association or a similar organization in another state." RSA 404-B:11, II (emphasis added). Because all three Guaranty Association Claimants have open claims before guaranty associations in other jurisdictions, the Liquidator may not review any unfavorable settlements of covered claims or provide an alternative venue to secure

relief for the injuries each suffered in the Home's employ. Id. To the extent any of the Worker's Compensation Claimants fears that a guaranty association will decline to adjudicate his or her claim, a Claim Amendment Deadline will not affect the availability of alternative relief from the Home liquidation. The Liquidator expressly states that the sought Claim Amendment Deadline does not bar known claims, such that the Worker's Compensation Claimants remain free to file proof of claims before any deadline to preserve whatever rights they may have against the Home. (Resp. First Group ¶¶ 4–5.) The Court is not persuaded, therefore, that the imposition of a Claim Amendment Deadline would prejudice the rights of the Worker's Compensation Claimants, especially to such an extent as would require a denial of the instant motion.

B. Objections of Non-Class II Policyholders

The Court now turns to the objections of non-Class II claimants. A number of these objections were filed by Class V Claimants who provided oral argument during the December 11, 2020 hearing. These include the objections of Ms. Peeples and of various AFIA cedents. The NYLB, a non-claimant, has also filed an objection to the Liquidator's motion. The Liquidator has submitted written pleadings in response to each of these objections and highlighted them to the Court in advance of the hearing. (See List of Filings that May Be Cited During Hearing at 1–5.)

i. Ms. Peeples' Objection

Ms. Peeples was continuously employed by the Home from September 1986 to November 1990. (Ms. Peeples' Obj. dated Apr. 1, 2010; Referee Case File of Linda Faye Peeples ("Peeples Case File"), Ex. A.) Beginning in 1986, she invested six percent of her earnings in a health insurance plan with the Home that, after several

modifications, became a Section 401(k) plan. (Id.; Resp. First Group, Ex. E. at 1, n.1.)

On May 5, 2010, nearly six years after the 2004 filing deadline, Ms. Peeples filed a proof of claim with the Liquidator, contending that the Home invested her 401(k) funds in junk bonds and never paid her for her contributions. (Peeples Case File, Ex. A.) Ms. Peeples' late filing was excused on account of her not being on notice of the Claim Filing Deadline. (See id., Exs. C–D.) After considering her claim, the Liquidator issued Ms. Peeples a notice that her claim was given Class V priority status and that a determination of the amount of her claim would be made “only if it [was] later concluded that there will be sufficient assets to permit a distribution to Class V claimants.” (Id., Ex. D at 1.) Ms. Peeples disputed the determination, and later a redetermination, that her claim was a Class V priority claim, insisting she was entitled to Class II priority. (Id., Exs. E–G.) Ultimately, on March 15, 2013, Ms. Peeples was granted a telephonic hearing before Court-appointed Referee Melinda Gehris, who affirmed the Liquidator's determination that her claim for 401(k) distributions is not a policy related claim and is only entitled to Class V priority. (Resp. First Group, Ex. E at 3.) Ms. Peeples did not initially seek review of the Referee's determination in this Court.

Ms. Peeples' first objection in this Court was filed on November 15, 2019, in response to the Liquidator's Motion for Approval of a Claim Amendment Deadline. (Ms. Peeples' Obj. dated Nov 15, 2019.) She asks the Court to “re-examine [her] claim” on the ground that, as a former employee of the Home who placed her trust in the company by investing in the Home's 401(k) plan, she is entitled to Class II priority. (Id.) She seeks \$1,500,000 in contractual damages, alleging she made contributions to the 401(k) plan in consideration for the Home's promises that she would be rewarded in

retirement. (Id.) Following a status conference on February 28, 2020, Ms. Peeples filed a further objection, reiterating her position and contending that the Liquidator's reports "support that there [are] sufficient . . . funds to settle" her claim. (Ms. Peeples's Obj. dated Apr. 1, 2010.)

The Court concludes the substance of Ms. Peeples' objection was properly addressed by Referee Gheris in 2013 and her opposition to the instant motion is unavailing, as the approval or denial of a Claim Amendment Deadline has no bearing on the availability of distributions to Class V priority claimants. Following notice of Referee Gheris' determination in 2013, Ms. Peeples had "60 days" to seek review of the Referee's determination in this Court. RSA 402-C:41, I; (Claims Procedure Order § 8.) While the Court sympathizes with Ms. Peeples' plight, Ms. Peeples' objection is untimely, as it has been in excess of seven years since the deadline to seek review of the Referee's determination. Moreover, even if Ms. Peeples' objection was timely, the instant motion does not concern whether final, properly determined claims may be reviewed by the Court, nor whether the Liquidator properly determined that there are no available funds for claimants below Class II. The Liquidator merely seeks to impose a deadline for the amendment of open claims. This is neither the time nor the occasion to have Ms. Peeples' objections to the class assigned to her claim reexamined. Therefore, to the extent Ms. Peeples objects not to her status as a Class V Claimant but to the imposition of the Liquidator's proposed Claim Amendment Deadline, the Court is not persuaded that Ms. Peeples' concerns justify denying the Liquidator's motion to the detriment of higher priority creditors.

ii. The AFIA Cedents' Objections

The AFIA cedents contend that the proposed Claim Amendment Deadline is contrary to prior agreements reached with the Liquidator as part of the AFIA Scheme, premature, and not in the best interests of Class II creditors, whose recoveries may ultimately be lower if the Liquidator's motion is granted. (Zurich and Württembergische's Obj. to Liq.'s Mot. at 1; Resolute's Obj. to Liq.'s Mot. at 5.) In particular, they argue that the proposed Claim Amendment Deadline does not strike a "reasonable balance" between the expeditious completion of the liquidation and the protection of incurred but not reported ("IBNR") claims. (Nationwide's Obj. to Liq.'s Mot. at 4–7; Zurich and Württembergische's Obj. to Liq.'s Mot. at 1.) They point to the potential benefit to priority claimants of IBNR recoveries pursuant to the AFIA Scheme, as well as to the potential for Class II claimants to pursue their own IBNR claims in the future. (Nationwide's Obj. to Liq.'s Mot. at 2–3; Zurich and Württembergische's Obj. to Liq.'s Mot. at 2.) In addition, the AFIA cedents argue that approval of a Claim Amendment Deadline at this time would prejudice their ability to value claims pursuant to the AFIA Scheme and place them in a weak negotiating position with Chubb and the Liquidator. (Nationwide's Obj. to Liq.'s Mot. at 5–6; Zurich and Württembergische's Obj. to Liq.'s Mot. at 26–28.) Finally, a number of the AFIA cedents urge the Court to adopt the framework employed by the Vermont Supreme Court in In re Ambassador Insurance Co., 114 A.3d 492, 498–502 (2015), which they cite as support for the denial of the Liquidator's motion or, in the alternative, for an exception to be provided for future IBNR recoveries. (Zurich and Württembergische's Obj. to Liq.'s Mot. at 2; Resolute's Obj. to Liq.'s Mot. at 5–7.)

As a preliminary matter, the Liquidator has the power to terminate any of his

duties under the AFIA Scheme to impose a Claim Amendment Deadline. The Act delegates broad powers to the Liquidator, including the power to “disavow any contracts to which the insurer is a party.” RSA 402-C:25, XI. Damages asserted for the alleged breach of any settlements or contracts entered into as part of the AFIA Scheme are claims below Class II priority status and therefore unrecoverable, as they can only be pursued as Class VI judicial judgments. RSA 402-C:44, VI. The Court need not, therefore, further address any of the AFIA cedents’ claims for breach of contract or any settlement agreements. (See e.g., Zurich and Württembergische’s Obj. to Liq.’s Mot. at 25–28.)

Rather, the Court concludes that the proposed Claim Amendment Deadline strikes a “reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims.” RSA 402-C:46, I; see RSA 402-C:40, II (Delay in the filing of an insured’s claim “shall not be a reason for unreasonable delay.”) The Home has been in liquidation since June 2003, more than seventeen years ago. (Order of Liquidation.) The only recoverable non-administrative claims that remain are those of Class II policyholders, whose claims have had at least twenty-three years to develop since the Home stopped providing material coverage in 1997. (Aff. Bengelsdorf in Supp. Liq’s Mot. ¶ 18.) The Liquidator does not owe a duty under the Act to protect the undetermined claims of creditors below Class II, including those of the AFIA cedents, as the Home estate lacks assets sufficient to make distributions to Class II claimants. RSA C:44 (“Every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment.”) Consequently, the AFIA cedents’ IBNR claims are not relevant

to the “reasonable balance” analysis imposed by the Act. RSA 402-C:46, I.² The Court recognizes that observance of the AFIA Scheme may result in additional recoveries to Class II claimants. However, given the length of time since the Home entered liquidation and the uncertain nature of future recoveries versus administration costs, it was reasonable for the Liquidator to conclude that such additional recoveries do not justify delaying final distributions to priority creditors. RSA 402-C:48, I.

The Court declines to apply the multi-factor test employed by the Vermont Supreme Court in In re Ambassador to the facts of this case. 114 A.3d 492. In In re Ambassador, the Vermont Supreme Court reversed a trial court order approving imposition of a deadline to “file final proofs of claim” where the estate in liquidation had already paid all allowed policyholder claims “in full, with interest,” and had an additional \$92 million remaining to address future and lower priority claims. Id. 493–494. The Vermont Supreme Court concluded that given the “unique circumstances” before it, the proposed deadline to file did not strike a “reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims.” Id. at 500. In doing so, the Court examined the following nonexclusive factors: (1) the company's remaining assets; (2) the nature and amount of its remaining liabilities; (3) the administration costs of the estate; and (4) the extent to which delay in termination of the liquidation proceedings results in a delay of full payment to priority claim holders. Id.

² It is entirely unclear whether any “unliquidated and undetermined” claims are likely to be filed by Class II priority claimants. The only Class II claimant that presently expresses concern regarding its ability to file IBNR claims is the Maryknoll Society. Because the Court is not persuaded by the Maryknoll Society’s objections on other grounds, see supra, § (II)(A)(i), the Court need not address whether IBNR claims constitute “unliquidated and undetermined” claims under the Act.

The facts before the Court are not comparable to In re Ambassador in key respects. Unlike the liquidator in In re Ambassador, the Liquidator before this Court seeks the imposition of a claim amendment deadline—a claim filing deadline went into effect in June 2004, more than sixteen years ago. In addition, the Home is unable to pay all policyholder claimants in full, and it will be unable to issue final disbursements to policyholder claimants until a claim amendment deadline is approved.

Even if the Court were to limit its analysis of RSA 402-C:46, I in this case to the four factors considered in In re Ambassador, three of the four factors weigh in favor of granting the Liquidator's motion. First, the Home's remaining assets to pay Class II creditors are limited and Class II claimants will not receive a full disbursement, such that a reasonable balance struck between an expeditious completion of the liquidation and foreclosure of undetermined claims may reasonably weigh in favor of disbursing what funds remain for priority creditors, seventeen years since the Home entered liquidation, in a timely fashion. Id. Second, the claims of Class II priority creditors constitute in themselves "the nature and amount" of the Home's remaining recoverable liabilities, such that any reasonable determination must place their interests above the interests of lower priority creditors, including the AFIA cedents. Id. Third, the continued administration of the estate, while likely offset in cost by recoveries pursuant to the AFIA Scheme, prevents a calculation of final liabilities and, consequently, the timely, expeditious disbursement of final payments to Class II claimants. Id.

iii. The NYLB's Objection

The NYLB fulfills the role of a guaranty association in the State of New York. (NYLB Obj. ¶ 3.) It administers the Property/Casualty Insurance Security Fund under

New York Insurance Law, Article 76. (Id.) The NYLB is concerned that previously time-barred sexual abuse claims may be asserted against Class II policy holders in New York, citing the enactment of New York's Child Victims Act, N.Y. C.P.L.R. § 214-g ("the CVA"), which took effect in February 2019. (Id.) The statute provides that previously time-barred claims for sexual abuse against a child of less than 18 years of age are "revived, and action thereon may be commenced not earlier than six months after, and not later than one year and six months after the effective date" of the statute. N.Y. C.P.L.R. § 214-g. The revival period of the CVA, therefore, last expired in August 2020. Id.

The Court is not persuaded that the rights of existing Class II creditors to final distributions should yield to the interests of potential future claimants merely in case of a potential change in New York law. As with the Hawaii Legislature, the Court has no way to ascertain whether the New York Legislature will choose to extend the statute of limitations for sexual abuse, nor even whether a potential extension would result in the filing of additional Class II proofs of claim. To prevent the distribution of disbursements to known Class II claimants across the country on account of speculation regarding amendments to a New York statute, more than sixteen years since the expiration of the Claim Filing Deadline, would frustrate the Liquidator's authority to "[e]xercise and enforce all the rights, remedies and powers" of existing Class II creditors. 402-C:25, XVIII, XI; In re Home, 154 N.H. at 482 (the Liquidator has "broad authority to administer liquidation proceedings.") The Court, therefore, is not persuaded that the NYLB's objections warrant a denial of the Liquidator's motion for approval of a Claim Amendment Deadline.

III. Conclusion

For the foregoing reasons, the Liquidator's Motion for Approval of a Claim Amendment Deadline is GRANTED, with no exceptions made as to any objector. The Court also issues a separate order specifying the procedures to follow for claimants to seek amendments to existing claims.

SO ORDERED.

1/28/21
Date



John C. Kissinger, Jr.
Presiding Justice

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Merrimack Superior Court
5 Court Street
Concord NH 03301

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

Mark C. Rouvalis, ESQ
McLane Middleton Professional Association
900 Elm Street
PO Box 326
Manchester NH 03105-0326

Case Name: **In the Matter of Rehabilitation of The Home Insurance Company**
Case Number: **217-2003-EQ-00106**

Enclosed please find a copy of the court's order of January 28, 2021 relative to:

Order Approving Claim Amendment Deadline; Court Order Regarding Claim Amendment Deadline

February 01, 2021

Catherine J. Ruffle
Clerk of Court

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C: John F O'Connor, ESQ; Carey Almond, ESQ; Lawrence J Eisenstein, ESQ; Melinda S Gehris, ESQ; John A Hubbard; Richard Mancino, ESQ; Joseph G Davis, ESQ; Albert P Bedecarre, ESQ; Marc E Rosenthal; Eric A Smith, ESQ; J. David Leslie, ESQ; David H Simmons, ESQ; Peter Bengelsdorf; J. Christopher Marshall, ESQ; Peter C.L. Roth, ESQ; Century Indemnity Company; Harry L. Bowles; Daniel J. O'Malley, ESQ; Lisa Snow Wade, ESQ; Jeffrey W. Moss, ESQ; Linda Faye Peeples; Gregory T. LoCasale, ESQ; William F. Wills; Joseph C. Tanski, ESQ; John S. Stadler, ESQ; Steven J. Lauwers, ESQ; Michael S. Lewis, ESQ; Michael J. Tierney, ESQ; Mark J. Andreini, ESQ; Paul A. Zevnik, ESQ; Michael Y. Horton, ESQ; Central National Insurance Company; Keith Dotseth, ESQ; Samantha D. Elliott, ESQ; Stephanie V. Corrao, ESQ; Harry P. Cohen, ESQ; Justin N. Leonelli, ESQ; Joseph A. Carroll, ESQ; J. Chase Johnson, ESQ; Doreen F. Connor, ESQ; Terri L. Pastori, ESQ; Kimberly Beth Mason, ESQ; Michael P. Mullins, ESQ; Peter B. Steffen, ESQ; Joseph T. McCullough IV, ESQ; Margaret A. Capp, ESQ; David Himelfarb, ESQ; Christopher J. Valente, ESQ; Thomas W. Ladd; Jessica L.G. Moran; Joseph C. Safar; Bekir Yilmaz

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

~~PROPOSED~~

ORDER APPROVING CLAIM AMENDMENT DEADLINE

On consideration of the motion of John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), requesting an order approving a claim amendment deadline for the final submission of amendments to proofs of claim and proofs of claim in the Home liquidation, notice of the motion and the deadline for filing of objections having been given as directed in the order of notice, ~~and no objections having been timely filed~~ and after consideration of timely filed objections, the Court hereby ORDERS as follows:

1. Establishment of the requested claim amendment deadline is fair and reasonable and in the best interest of the Home liquidation and Home's creditors as it will facilitate the resolution of claims and advance the distribution of the estate's assets and the closure of this proceeding without unnecessary administrative expense. It represents a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims, in accordance with RSA 402-C:46.
2. The Liquidator's Motion for Approval of Claim Amendment Deadline is granted.
3. The date 150 days from the date of this Order, or if such date is a Saturday, Sunday or holiday, the next business day, is hereby established as the Claim Amendment Deadline for the final submission of amendments (including supplements or any other

enlargements) to proofs of claim and new proofs of claim in the Home liquidation. Amendments to previously filed proofs of claim and any new proofs of claim must be filed by an amendment or completed proof of claim form that is received by the Liquidator on or before the Claim Amendment Deadline or that is mailed to the Liquidator by U.S. mail and bears a legible postmark showing mailing by U.S. mail on or before the Claim Amendment Deadline. Any amendments to previously filed proofs of claim or new proofs of claim received by the Liquidator after the Claim Amendment Deadline (unless mailed on or before the Claim Amendment Deadline as specified above) shall not be considered. Amendments to proofs of claim and proofs of claim shall be sent to:

The Home Insurance Company, in Liquidation
61 Broadway, Sixth Floor
New York, NY 10006

4. The June 13, 2004 Claim Filing Deadline established by the June 13, 2003 Order of Liquidation pursuant to RSA 402-C:26 and :37 continues to apply. The Liquidator shall determine whether claims received after the Claim Filing Deadline but on or before the Claim Amendment Deadline are excused or unexcused late-filed claims pursuant to RSA 402-C:37, II and III. The Liquidator shall review and determine all claims filed on or before the Claim Amendment Deadline. Subject to the provisions of this Order, which shall control, the procedures of the Restated And Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation dated January 19, 2005 ("Claims Procedures Order") shall continue to apply to the determination of claims in the Home liquidation.

5. Claims against Home not filed with the Liquidator on or before the Claim Amendment Deadline by amendment to a previously filed proof of claim form or by a new proof of claim form as provided in paragraph 3 above are barred from any distribution of the assets of

the Home estate. Post-Claim Amendment Claims and Potential Claims (as defined below) are deemed to prejudice the orderly administration of the liquidation within RSA 402-C:37 and are barred from any distribution of the assets of the Home estate:

a. **Post-Claim Amendment Deadline Claims.** A “Post-Claim Amendment Deadline Claim” is any amendment (including supplement or any other enlargement) to any previously filed proof of claim or any new proof of claim that is filed after the Claim Amendment Deadline. Post-Claim Amendment Deadline Claims are deemed to prejudice the orderly administration of the liquidation and shall not be considered, regardless of whether good cause – including but not limited to any reason constituting “good cause” under RSA 402-C:37, II – exists for filing after the Claim Amendment Deadline, and regardless of whether a right to reopen, refile, or supplement a claim was previously reserved. The Liquidator shall reject all Post-Claim Amendment Deadline Claims without consideration of their merits.

b. **Potential Claims.** A “Potential Claim” is any claim intended to be covered by a proof of claim or an amendment to a previously filed proof of claim where a specific claim has not been asserted by a specific claimant against a specific person on or before the Claim Amendment Deadline. These are sometimes referred to as “incurred but not reported” claims. Examples of Potential Claims are set forth in the Liquidator’s motion for approval of claim amendment deadline. Potential Claims are deemed to prejudice the orderly administration of the liquidation and shall not be considered, effective as of the Claim Amendment Deadline. The Liquidator shall reject all Potential Claims, effective as of the Claim Amendment Deadline, without consideration of their merits.

6. Claimants with open proofs of claim seeking coverage under a Home policy or reinsurance contract for Potential Claims must amend their proofs of claim by identifying and providing the particulars of all claims for which coverage is sought. Claims that have not been identified (as a specific claim by a specific claimant against a specific person) on or before the Claim Amendment Deadline shall be barred because, if later identified, they will be Post-Claim Amendment Deadline Claims in accordance with paragraph 5 above.

7. Amendments to proofs of claim must include available supporting information regarding the claims. The Liquidator may request claimants to provide additional information or evidence in support of their proofs of claim and amendments as provided in RSA 402-C:38, II. The Liquidator may consider a claimant's failure to timely provide requested supplementary information as ground to deny a claim, subject to review as provided in the Claims Procedures Order.

8. Claimants issued notices of determination as to Class V priority only, deferring determination as to amount, must amend their proofs of claim on or before the Claim Amendment Deadline and include an explanation of why their proofs of claim should be determined as to amount. In the absence of an amendment, the previous notices of determination shall be considered final determinations, and the Liquidator need not make any further determinations on those proofs of claim.

9. The establishment of the Claim Amendment Deadline does not affect claim determinations, including settlements, previously approved by the Court or made or entered by the Liquidator and not yet approved by the Court as of the Claim Amendment Deadline.

10. The establishment of the Claim Amendment Deadline does not permit the refiling or rearguing of proofs of claim previously determined by the Liquidator. Duplicative

amendments or proofs of claim shall not be submitted. If a proof of claim or amendment duplicates or reasserts a previously determined claim, the Liquidator shall reject the proof of claim or amendment without consideration of its merits.

11. The Claim Amendment Deadline applies to all claims except (a) administration costs within RSA 402-C:44, I, and (b) claims of the United States Government.


12. Within 30 days from receipt of this Order, the Liquidator shall mail notice of the Claim Amendment Deadline in the form attached to this Order by first class mail, postage prepaid, using the latest mailing address provided to the Liquidator by the claimant, to all claimants who have open proofs of claim in the Home liquidation. Open proofs of claim means those on which (a) there has been no determination, (b) there has been only a partial determination or determinations, (c) there has been a determination that has not yet been approved by the Court, (d) there has been a determination as to priority but deferral as to amount, or (e) there has been a determination that provided that the claimant could submit further claims. Where the claimant is represented by counsel, notice shall also be mailed to counsel at the latest address provided to the Liquidator. Notice to claimants or counsel with addresses outside the United States shall be sent by air mail, postage prepaid.

13. The Liquidation Clerk shall promptly post this Order and the notice attached to this Order in the Merrimack County Superior Court Files and the Key Documents Relating to the Liquidations sections of the Home Liquidation Clerk website (www.hicilclerk.org).

SO ORDERED

Dated:

1/28/21


Presiding Justice

**The Home Insurance Company, in Liquidation
61 Broadway, Sixth Floor
New York, NY 10006**

POC No(s): _____

**NOTICE OF CLAIM AMENDMENT DEADLINE
FOR THE HOME INSURANCE COMPANY, IN LIQUIDATION**

To Persons who have open proofs of claim in the liquidation of The Home Insurance Company ("Home") and other persons:

Home is in liquidation proceedings before the Merrimack County Superior Court of the State of New Hampshire (the "Court"), In the Matter of the Liquidation of The Home Insurance Company, Docket No. 217-2003-EQ-00106. John R. Elias, Insurance Commissioner of the State of New Hampshire, is the Liquidator of Home ("Liquidator").

The Court has established _____ [INSERT BUSINESS DATE 150 DAYS FROM DATE OF COURT'S ORDER OR NEXT BUSINESS DAY] as the Claim Amendment Deadline for the final amendment of proofs of claim or submission of proofs of claim in the Home liquidation. Claims against Home must be received by the Liquidator or postmarked by U.S. mail on or before the Claim Amendment Deadline at the address set forth above or they will be barred from sharing in any distribution of assets from the Home estate. "Post Claim Amendment Claims" and "Potential Claims" as defined the Order Approving Claim Amendment Deadline dated _____ are barred and will not be considered. The Order Approving Claim Amendment Deadline is available in the "Key Documents Relating To The Liquidations" section of the Home Liquidation Clerk website, www.hicilclerk.org, at _____ [INSERT LINK].

If you have an open proof of claim in the Home liquidation, you have until _____ [INSERT SAME DATE] to amend your proof of claim to supplement or update your claim. If you add a claim, you must include an explanation of why the claim was not filed by the June 13, 2004 claim filing deadline with your amendment. If your open proof of claim seeks coverage under a Home policy or reinsurance contract for Potential Claims, you must amend your proof of claim to make it specific by identifying and providing the particulars of all claims for which coverage is sought.

Any new proofs of claim in the Home liquidation must be filed on or before _____ [INSERT SAME DATE]. The proof of claim form and instructions may be obtained by downloading them from the "Key Documents Relating To The Liquidations" section of the website for the liquidation, www.hicilclerk.org, by calling 1-800-347-0014 during regular business hours (Monday-Friday 8-5 ET), or by writing to the address above. You must include an explanation of why your proof of claim was not filed by the June 13, 2004 claim filing deadline with your proof of claim.

If you have been issued a notice of determination as to Class V priority only, deferring determination as to amount, you have until _____ [INSERT SAME DATE] to amend your proof of claim and include an explanation of why your proof of claim should be determined as to amount. In the absence of an amendment, the previous notices of determination shall be considered final determinations, and the Liquidator need not make any further determination on your proof of claim.

Your submission must include available supporting information regarding your claim.

Amendments and proofs of claim must be received by the Liquidator or legibly postmarked by U.S. mail on or before the _____ [INSERT SAME DATE] Claim Amendment Deadline. Amendments and proofs of claim received or postmarked after the Claim Amendment Deadline will not be considered.

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

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Merrimack Superior Court
5 Court Street
Concord NH 03301

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NOTICE OF DECISION

**Mark C. Rouvalis, ESQ
McLane Middleton Professional Association
900 Elm Street
PO Box 326
Manchester NH 03105-0326**

Case Name: **In the Matter of Rehabilitation of The Home Insurance Company**
Case Number: **217-2003-EQ-00106**

Enclosed please find a copy of the court's order of April 22, 2021 relative to:

Court Order

April 22, 2021

Catherine J. Ruffle
Clerk of Court

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C: John F O'Connor, ESQ; Carey Almond, ESQ; Lawrence J Eisenstein, ESQ; Melinda S Gehris, ESQ; John A Hubbard; Richard Mancino, ESQ; Joseph G Davis, ESQ; Albert P Bedecarre, ESQ; Marc E Rosenthal; Eric A Smith, ESQ; J. David Leslie, ESQ; David H Simmons, ESQ; Peter Bengelsdorf; J. Christopher Marshall, ESQ; Peter C.L. Roth, ESQ; Harry L. Bowles; Daniel J. O'Malley, ESQ; Lisa Snow Wade, ESQ; Jeffrey W. Moss, ESQ; Linda Faye Peeples; Gregory T. LoCasale, ESQ; William F. Wills; Joseph C. Tanski, ESQ; John S. Stadler, ESQ; Steven J. Lauwers, ESQ; Michael S. Lewis, ESQ; Michael J. Tierney, ESQ; Mark J. Andreini, ESQ; Paul A. Zevnik, ESQ; Michael Y. Horton, ESQ; Keith Dotseth, ESQ; Samantha D. Elliott, ESQ; Stephanie V. Corrao, ESQ; Harry P. Cohen, ESQ; Justin N. Leonelli, ESQ; Joseph A. Carroll, ESQ; J. Chase Johnson, ESQ; Doreen F. Connor, ESQ; Terri L. Pastori, ESQ; Kimberly Beth Mason, ESQ; Michael P. Mullins, ESQ; Peter B. Steffen, ESQ; Joseph T. McCullough IV, ESQ; Margaret A. Capp, ESQ; David Himelfarb, ESQ; Christopher J. Valente, ESQ; Thomas W. Ladd; Jessica L.G. Moran; Joseph C. Safar; Bekir Yilmaz

The State of New Hampshire

MERRIMACK COUNTY

SUPERIOR COURT

IN THE MATTER OF THE LIQUIDATION OF
THE HOME INSURANCE, CO.

Docket No.: 217-2003-EQ-00106

ORDER

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator of the Home Insurance Company (the "Home"), has moved for the Court to establish a final deadline for the amendment or submission of claims in the Home's liquidation proceedings (the "Claim Amendment Deadline"). The Court granted the Liquidator's motion on January 28, 2021, over the objection of various parties, including several insurance agencies reinsured by the Home (the "AFIA Cedents"). A number of AFIA Cedents (the "Objecting Creditors") now move for the Court to stay and to reconsider portions of its January 28, 2021 Orders granting the Liquidator's motion. These are: the German branch of Zurich Ins., P.L.C., Württembergische Versicherung, A.G. (collectively, "Zurich and Württembergische"), Nationwide Mutual Ins. Co., Indemnity Marine Assurance Co., Nderlande Reassurantie Groep N.V., NRG Victory Reinsurance Ltd., NRG Fenchurch Ins. Co., Ltd., New Zealand Reinsurance Co., Tenecom Ltd., Underwriters at Lloyd's of London, Winterthur Swiss Ins. Co., and World Auxiliary Corp., Ltd. The Liquidator¹ partially objects. For the following reasons, the Objecting Creditors' motion for partial reconsideration of the Court's January 28, 2021

¹ The current Liquidator, and the party bringing the objection, is Christopher R. Nicolopoulos. Mr. Elias has not served as Insurance Commissioner since December 2019.

Orders is DENIED in part, while their motion to stay is GRANTED in part.

A. Motion for Reconsideration

A motion for reconsideration “shall state, with particular clarity, points of law or fact that the [C]ourt has overlooked or misapprehended.” Super. Ct. Civ. R. 12(e). The Objecting Creditors contend the Court overlooked or misapprehended each of the following: (1) the Liquidator does not have the power to disavow post liquidation contracts, (2) the facts before the Vermont Supreme Court in In re Ambassador Insurance Co., 114 A.3d 492 (2015), are the “[s]ame as [p]resented [h]ere” and this Court’s application of the balancing test employed by the In re Ambassador court must account for the Liquidator’s “[f]ailure to [e]stimate” the value of incurred but not reported (“IBNR”) claims, (3) the statute of limitations for claims brought pursuant to New York’s Child Victims Act has been extended to August 2021, and (4) the status of Johnson & Johnson’s settlement is unclear and may bear upon the Court’s consideration of the instant motion. (Zurich and Württembergische’s Mot. Recon. at 1–9.) The Court addresses each argument in turn.

First, the Objecting Creditors successfully argue the Court misapprehended the Liquidator’s power to disavow contracts post-liquidation pursuant to RSA 402-C:25, XI. RSA 402-C:25, XI provides, in relevant part, that “[s]ubject to the [C]ourt’s control, [the Liquidator] may . . . affirm or disavow any contracts to which the insurer is a party.” In its January 28, 2021 Order addressing the AFIA Cedents’ objections to the Claim Amendment Deadline (the “Primary Order”), the Court interpreted this provision to grant the Liquidator broad authority to disavow any prior agreements the Liquidator may have reached with the AFIA Cedents once appointed to the liquidation. Upon

reconsideration, such a reading does not comport with the policy goals sought to be advanced by the statute, nor with the New Hampshire Supreme Court's endorsement of binding agreements between the AFIA Cedents and the Liquidator. See In re Liquidation of Home Ins. Co., 154 N.H. 472, 490 (2006) (upholding the AFIA agreements as "fair and reasonable"); 402-C:1, IV ("The purpose of this chapter is," in part, to promote "[i]mproved methods for rehabilitating insurers" and to "[e]nhance[] [the] efficiency and economy of liquidation."). Despite the ostensibly broad language of RSA 402-C:25, XI, courts in other jurisdictions have interpreted similar statutory provisions to apply only in the pre-liquidation context. See, e.g., State ex rel. Wagner v. Kay, 722 N.W.2d 348, 355 (2006) (The "liquidator is not automatically bound by the preappointment contractual obligations of the insurer.") (emphasis added); Benjamin v. Pipoly, 800 N.E.2d 50, 59 (2003) (Ohio Ct. App. 2003) ("Thus, we hold that when a liquidator is appointed by court order, as in the instant case, she is not automatically bound by the pre-appointment contractual obligations of the insurer.") (emphasis added); First Am. Ins. Co. v. Commonwealth Gen. Ins. Co., 954 S.W.2d 460, 469 (Mo. Ct. App. 1997) (The applicable state statute "grants [the liquidator] broad authority to disaffirm pre-liquidation agreements to which the insurer is a party . . .") (emphasis added).

Nevertheless, for the reasons cited in the Primary Order, the Court properly concludes the Claim Amendment Deadline strikes "a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims." See RSA 402-C:46, I. The agreements reached between the Liquidator and the Objecting Creditors, including those common to all AFIA Cedents

and those reached with individual parties, have no bearing on the result reached by the Court. Nothing in the texts of the agreements cited by the Objecting Creditors, nor by any of the AFIA Cedents in this litigation, addresses how long the Liquidator is obligated to accept the filing of proofs of claim, nor purports to set aside generally applicable limitations the Liquidator may ordinarily impose on the filing of such claims. In the absence of any contractual language addressing these matters, or of any other indications that the Liquidator ever manifested an intent to limit his authority to impose a Claim Filing Deadline, the Court cannot read into the parties' various agreements what the parties did not see fit to include. Poland v. Twomey, 156 N.H. 412, 414 (2007) ("A valid, enforceable contract requires . . . a meeting of the minds," which consists of a shared understanding of the "essential terms" of the agreement and a "manifest . . . intention" to be bound by such terms) (emphasis added).

Second, the Court neither overlooked nor misapprehended any issue of fact or law in its treatment of In re Ambassador, 114 A.3d 492. Super. Ct. Civ. R. 12(e). As the Court noted in its Primary Order, the facts before the Vermont Supreme Court in In re Ambassador are not the same as those presently before the Court. In re Ambassador dealt with a claim filing deadline, not a claim amendment deadline. Here, a claim filing deadline was imposed more than sixteen years ago, in June 2004. In addition, unlike the liquidator before the Vermont Supreme Court in In re Ambassador, the Liquidator here does not have sufficient means to pay all policyholder claimants in full. Crucially, the Liquidator is unable to issue final disbursements to policyholder claimants unless and until a claim amendment deadline is imposed. The Court can hardly agree with the Objecting Creditors that the facts before the Vermont Supreme

Court in In re Ambassador are, in practice, the “[s]ame as [those] [p]resented [h]ere.” (Zurich and Württembergische’s Mot. Recon. at 6.) Moreover, the Court committed no error by failing to require the Liquidator to quantify the value of IBNR claims prior to weighing the factors adopted by the In re Ambassador court. No party to this action is in a position to produce a reliable estimate of the value of IBNR claims and, for the reasons laid out in the Court’s Primary Order, there are sufficient facts before the Court for it to conclude the In re Ambassador factors, if applicable, do not compel the Court to require the Liquidator to keep the liquidation open at the expense of ensuring final distributions are disbursed to priority creditors.

Third, the Objecting Creditors successfully argue the Court misapprehended the latest extension of the statute of limitations applicable to New York’s Child Victims Act. See N.Y. C.P.L.R. § 214-g (2020). The statute of limitations pertaining to New York’s Child Victims Act was most recently extended to August 14, 2021, not 2020. Id. (An “action [hereunder] may be commenced not earlier than six months after, and not later than two years and six months after” February 14, 2019, “the effective date of this section.”) (emphasis added). The Court erroneously relied on a prior version of the statute, which instead read “not earlier than six months after, and not later than one year and six months after” the effective date of the statute. Id. (2019) (emphasis added).

Nevertheless, the Court is not persuaded that the interests of those Class II policy holders who may be affected by the statute of limitations’ extension outweigh the interests of other Class II policy holders in securing timely, final distributions on their pending claims. It has now been more than sixteen years since the expiration of the

Claim Filing Deadline, and the Liquidator has a statutory mandate to “[e]xercise and enforce all the rights, remedies and powers” of priority creditors, not individually but as a class. 402-C:25, XVIII, X. The Court committed no error by granting a Claim Amendment Deadline that prioritizes the interests of all Class II creditors over the interests of individual creditors who are or may be affected by limitations extensions to statutes that implicate potential claims. In the absence of the Claim Amendment Deadline, the Liquidator is unable to distribute substantial estate assets to Class II creditors for the foreseeable future, frustrating his statutory obligation to secure an “expeditious completion” of the liquidation that timely distributes to priority creditors as large a portion of their claims as possible. Id.; RSA 402-C:46, I.

Finally, the Court’s January 28, 2021 Orders contain no errors of fact or law with respect to any aspect of Johnson & Johnson’s settlement agreement with the Liquidator. As the Objecting Creditors note, Johnson & Johnson withdrew its objection to the Claim Amendment Deadline prior to the December 11, 2020 hearing on the merits. The status of the settlement agreement has no bearing on the Court’s January 28, 2021 Orders and the Court was under no obligation to consider any of Johnson & Johnson’s former objections once those objections were withdrawn. Accordingly, the Objecting Creditors have failed to identify, with “particular clarity,” any “points of law or fact that the [C]ourt has overlooked or misapprehended” sufficient to warrant a reversal of any of the Court’s January 28, 2021 rulings. Super. Ct. Civ. R. 12(e).

B. Motion to Stay

Contemporaneously with their motion for reconsideration, the Objecting Creditors have filed a motion to stay the Court’s January 28, 2021 Orders “during the pendency of

reconsideration and for a further period of time as necessary to allow for appeal,” whether direct “or interlocutory,” to “the New Hampshire Supreme Court.” (Zurich and Württembergische’s Mot. Stay ¶ 3.) They argue that the 150 day period afforded by the Court to submit amendments to existing claims with the Liquidator is only a “short period,” and allowing the “claim amendment time period to run while the Court considers issues on reconsideration” is unfairly prejudicial to the Objecting Creditors, as the issues raised by the motion to reconsider “bear directly on the Court’s approval of the claim amendment deadline itself.” (Id. ¶ 5.) In addition, they argue the Claim Amendment Deadline renders the Objecting Creditors’ appeal “vulnerable to a mootness argument” absent a stay. (Id. ¶ 6.)

The Liquidator does not object to a stay of the Claim Amendment Deadline “limited to the time until Zurich and Württembergische’s motion for reconsideration is resolved.” (Liq.’s Resp. Mot. Stay ¶ 1.) However, the Liquidator opposes the grant of a stay pending appeal, citing prejudice to Class II creditors, whose claims have preference over the Objecting Creditors’ Class V claims and who would otherwise be prevented from receiving “the full extent of available distributions in a timely fashion.” (Id. ¶¶ 1–5 (citing RSA 402-C:44, II).)

The Court retroactively grants a stay of its January 28, 2021 Orders ending 30 days from the issuance of this Order, so as to afford the Objecting Creditors an opportunity to pursue an interlocutory appeal with the New Hampshire Supreme Court. While the Court is mindful that allowing the clock to run on the Claim Amendment Deadline may prejudice the Objecting Creditors’ arguments on appeal, the Court is also mindful of the interests of Class II priority creditors in securing final distributions from the

Home liquidation. As the Objecting Creditors have only Class V priority status, their interests must yield to those of higher priority creditors that stand to benefit from an imposition of the Claim Amendment Deadline. See RSA 402-C:44.

The Objecting Creditors are, accordingly, granted an opportunity to confer with the Liquidator and submit to the Court an agreed-upon “interlocutory appeal statement” pursuant to Sup. Ct. Civ. R. 46(a). (“Whenever any question of law is to be transferred by interlocutory appeal from a ruling . . . counsel shall seasonably prepare and file with the trial court the interlocutory appeal statement or interlocutory transfer statement pursuant to Supreme Court Rule 8 or Supreme Court Rule 9 . . .”) The Court is mindful “that interlocutory appeals should be limited to exceptional cases” and will only sign an interlocutory appeal statement compliant with Supreme Court Rules. Guyette v. C & K Dev. Co., 122 N.H. 913, 918 (1982). If the parties do not come to an agreement on the scope or any other material aspect of the interlocutory appeal statement within 14 days of the clerk’s notice of decision on this order, counsel for the Objecting Creditors and for the Liquidator shall each submit competing statements for the Court’s consideration within 7 days of that deadline. If an interlocutory appeal is sought, the January 28, 2021 Orders will be stayed. In the event a final interlocutory appeal is accepted by the New Hampshire Supreme Court, the Objecting Creditors’ motion to stay is GRANTED, pending a resolution of the question raised on appeal. Otherwise, the Court’s January 28, 2021 Orders shall take full effect as of 30 days from the issuance of this Order or 30 days from the date of any decision by the New Hampshire Supreme Court denying an interlocutory appeal, whichever is later.

For the foregoing reasons, the Objecting Creditors’ motion for partial

reconsideration is DENIED, in part, and their motion to stay is GRANTED, in part.

SO ORDERED.

4/20/21
Date


John C. Kissinger, Jr.
Presiding Justice

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STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY SUPERIOR COURT

IN THE MATTER OF:) Superior Court Case No.
) 217-2003-EQ-00106
LIQUIDATION OF THE HOME)
INSURANCE COMPANY) Concord, New Hampshire
) December 11, 2020
_____) 9:29 a.m.

HEARING ON THE LIQUIDATION OF THE HOME INSURANCE COMPANY
BEFORE THE HONORABLE JOHN C. KISSINGER, JR.
JUDGE OF THE SUPERIOR COURT

APPEARANCES (All present by video or telephone):

Pro Se Objector:	Linda Faye Peebles
For the Liquidator	Eric A. Smith, Esq.
The Home Insurance Company:	J. David Leslie, Esq.
	RACKMAN, SAWYER, & BREWSTER
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For the Objector	Mark A. Rouvalis, Esq.
Zurich Insurance PLC:	Viggo C. Fish, Esq.
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For the Objectors	Terri L. Pastori, Esq.
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Proceedings recorded by electronic sound recording; transcript
produced by court-approved transcription service.



1 (Proceedings commence at 9:29 a.m.)

2 THE COURT: Good morning.

3 UNIDENTIFIED SPEAKER: Good morning.

4 THE COURT: So this is in the matter of the
5 liquidation of The Home Insurance Company. We are scheduled
6 for a hearing on a motion for approval of the claim amendment
7 deadline.

8 I'm going to ask that, unless you are speaking, just
9 to keep your computer -- your microphone on mute just so that
10 we don't have a lot of background noise here.

11 We're going to have three sets of hearings today;
12 the first will be on objections made by Ms. Linda Peeples --
13 that will be at 9:30. At 10:00 we will have a hearing on
14 objections made by Zurich Resolute and Nationwide. And at
15 1:30, hear from policyholders Johnson & Johnson and the
16 Catholic Foreign Mission Society, also known as Maryknoll
17 Father and Brothers.

18 I did see that there may have been some developments
19 with regards to Johnson & Johnson. So perhaps, at some point,
20 Counsel could bring me up to speed on whether there have been
21 some developments with regards to Johnson & Johnson.

22 But I'm going to start with -- we'll stick to that
23 schedule even if we're a little bit ahead of things unless we
24 have everybody on that wants to be heard. But I think there
25 may be people observing who may think we're going to adhere to

1 the schedule. So my plan would be to just continue to adhere
2 to the schedule that we have announced with regards to hearing
3 these matters.

4 So I don't see Ms. Peeples, but I do see that she is
5 actually on this right now.

6 Ms. Peeples, can you hear me?

7 MS. PEEPLES: I can hear you, but I don't -- I
8 don't -- my video is not showing, so let me just fix that, but
9 I can hear you.

10 THE COURT: Okay, great. So mindful of the fact
11 that the purpose of this hearing is to hear on objections to
12 the request for approval of the claim amendment deadline, why
13 don't you tell me what your objection is to approval of the
14 claim amendment deadline?

15 MS. PEEPLES: Okay. My objection is the ruling of
16 my claim. My claim is a employee's claim; it's a 401K plan
17 that I established with The Home Insurance during my
18 employment during the 80s -- I think, '84 to '89. And my
19 objection is my ruling -- my objections is to the ruling that
20 The Home Insurance liquidation made to my claim.

21 I'm asking the Court, give me moral justice that The
22 Home Insurance will settle my claim irregardless of to the
23 ruling that they made because of my 401 that I invested
24 personally my money into the company.

25 And that's been over -- I was in my 20s. I'm 59



1 years old -- years old now, and I'm at retirement. And
2 personally, I feel that I am entitled to my retirement -- my
3 401 -- the money that I invested. And I understand that Home
4 Insurance liquidations have their particular rulings for
5 employees, and they class me as a Class 5.

6 But I'm asking the Court to give me moral justice,
7 give me my savings that I personally put invested into the
8 company with good faith that I can have my retirement. I was
9 in my early 20s when I retired (sic). I'm 59 years old. I'm
10 due my retirement. And that's -- that's my objection to their
11 ruling that they made to me.

12 THE COURT: Okay.

13 I don't know if the Liquidator wants to respond to
14 Ms. Peeples?

15 MR. SMITH: Yes, Your Honor. Eric Smith, for the
16 Liquidator.

17 I just have two points I'd like the make in brief
18 response. First is that Ms. Peeples's filings don't present an
19 objection at the claim amendment deadline. The claim
20 amendment deadline will not affect her claim since it is a
21 known claim presented in a POC. She has instead requested
22 that the Court reexamine her claim. Liquidator submits that
23 the Court should not do so.

24 Her claim was addressed by the Liquidator back in
25 2011. And then, in a disputed claim proceeding for the

1 referee in 2012 leading to the referee's order on the merits
2 in March of 2013 which assigned -- upheld the Liquidator's
3 assignment to the claim to Class 5, which will not receive any
4 distributions, and therefore the Liquidator does not pose to
5 address the merits of her claim.

6 Since the claim has been determined to be Class 5,
7 and that has been upheld by the referee, and she did not file
8 a motion to recommit after that to seek review of it the
9 matter is, in our view, final. Thank you.

10 THE COURT: Um-hum.

11 Anything further, Ms. Peeples?

12 MS. PEEPLES: Pardon me?

13 THE COURT: Did you want to say anything further in
14 response to Liquidator's arguments?

15 MS. PEEPLES: Yes. What I want to say, I understand
16 the ruling is a Class 5. What The Home Insurance explanation
17 that they gave me is there would not be enough funds. There
18 is funds to settle my claim. I'm not asking for Home
19 Insurance to give me anything. I'm asking them to settle my
20 claim based on what I invested into the company. My 401
21 retirement is due to me.

22 If I would have had my retirement from Home
23 Insurance over the 20 some years it has been, my retirement
24 could have been invested for my -- for the future of my
25 family, for the future of my children, for my children's

1 college fund. Because my retirement was caught up in
2 litigation with Home Insurance Company, I feel that I am due
3 what I have put into the company. I -- I earned that.

4 The money is there. I'm asking the Court to give me
5 justice and settle my claim, my retirement, that I'm due. I'm
6 59 years old. I'm on -- I'm so many years away from
7 retirement. Had I would have had my retirement, I wouldn't be
8 here, but because my retirement was caught up with the company
9 in liquidation, I'm asking for justice. Settle my claim. The
10 money is there.

11 It is a liquidation court, I understand the ruling.
12 The ruling is saying there won't be enough money for Class 5.
13 I have a claim. I have a valid claim. Please, settle my
14 claim.

15 THE COURT: Okay. I think I understand your
16 argument, Ms. Peeples. I will take that under advisement.

17 So I guess my question now is, I know we had
18 published time for other people to speak and set aside times.
19 I'm wondering, given that we had set that whether we should
20 reconvene at 10:00 and take up the next category or proceed.

21 I'd be happy to hear from counsel. I don't know.

22 Attorney Smith, if you have thoughts on that?

23 Attorney Leslie?

24 MR. LESLIE: Your Honor, David Leslie, for the
25 Liquidator. This might be an opportune moment to update the

1 Court on the Johnson & Johnson matter? So the Liquidator in
2 Johnson & Johnson have reached a settlement; that agreement
3 has been submitted to the Court for approval. And Johnson &
4 Johnson has withdrawn its objection to the claim amendment
5 deadline. So Johnson & Johnson will not be participating in
6 this afternoon's hearing.

7 THE COURT: Okay.

8 MR. LESLIE: So I simply wanted to update the Court
9 on that.

10 THE COURT: Great, thank you.

11 Does anybody have thoughts on proceeding with the
12 next category, or I'm certainly mindful of the fact that we
13 did let people know that we were going to follow that
14 schedule, so some folks may not be calling in until close to
15 10:00?

16 I think -- given that, I think, we ought to take a
17 break and resume this hearing at 10:00 mindful of that, so
18 that nobody is left out of this discussion.

19 I do see we have a lot of people on, and I know, you
20 know, it's not like I'm going to be doing lots of other work
21 in the next 20 minutes. But, I think, in fairness to the
22 people who received notice as to when things are scheduled, we
23 ought to take a break right now. I'll go off the record, and
24 then we'll resume this hearing at 10:00. Thank you.

25 MR. LESLIE: Thank you.

1 MR. SMITH: Thank you, Your Honor.

2 MS. PEEPLES: Thank you.

3 THE COURT: Yep.

4 (Recess at 9:39 a.m., recommencing at 10:00 a.m.)

5 THE COURT: Okay. We are back on the record in the
6 matter of the liquidation of The Home Insurance Company.
7 We're now on for the 10:00 objectors, and I know that we have
8 at least three categories of folks who may be speaking on
9 objections in this category of objectors.

10 So maybe -- I don't know who's going to speak on
11 behalf of Zurich Insurance? I don't know if Attorney Rouvalis
12 is going to be speaking or our other Counsel's going to be
13 addressing the Court.

14 MR. ROUVALIS: Your Honor, Mark Rouvalis here along
15 with Viggo Fish from McLane. And I'd introduce to you Peter
16 Steffen from Freeborn & Peters in Chicago. We've been working
17 closely together on this, and he's going to handle the oral
18 argument for the objection.

19 THE COURT: Great, thank you.

20 Attorney Steffen?

21 MR. STEFFEN: Thank you, Your Honor. Good morning.
22 And good morning, Counsel.

23 Along with Mark and Viggo at McLane, I represent two
24 separate objectors, Zurich and Verishicherung, who have joined
25 forces for the purposes of this objection. They are two of

1 the AFIA Cedent's that were reinsured by The Home. And in
2 1977, The Home entered into reinsurance contracts with the
3 AFIA Cedent's, whereby The Home reinsurance 100 percent the
4 AFIA Cedent liabilities relating to something called the
5 running pool. In 1984 INA agreed to reinsure 100 percent of
6 The Home's liabilities, and INA's successor to that is CHUBB.

7 Now, as we know from the papers, after the
8 liquidation proceeding commenced in 2003 the Liquidator and
9 the AFIA Cedent's entered into settlement agreements. Under
10 the agreements, the AFIA Cedent's submit their claims, the
11 estate collects the reinsurance that benefits all Class 2
12 creditors, and the estate pays the AFIA Cedent's a portion as
13 a Class 1 administrative expense.

14 CHUBB objected to those settlement agreements at the
15 time, and the matter went to the New Hampshire Supreme Court.
16 And the liquidator told the court at that time that the estate
17 had IBNR claims against its reinsurers to the tune of -- it
18 could be as much as 231 million dollars and that the
19 settlement agreements with the AFIA Cedent's would allow the
20 estate to collect that reinsurance.

21 So this puts the AFIA Cedent's in a unique position
22 as respects to this motion for a claim amendment deadline
23 because the claims that my clients and the other objectors
24 submit benefit Class 2 creditors.

25 Now, when the New Hampshire Supreme Court ruled on



1 CHUBB's objection to the settlement agreements back in 2006,
2 the New Hampshire Supreme Court ruled that the settlement
3 agreements were reasonable and recognized that this would be a
4 quote lengthy, complex, and difficult, close quote, process.
5 And "most importantly the agreement benefits the Class 2
6 claimants to Home's estate since it increases the likelihood
7 that their claims will be paid." That's at 154 NH 472 at 490.

8 Now, as Liquidator has repeatedly told the Court,
9 collection of reinsurance is the principal asset marshaling
10 task of the liquidator. Most recently, that statement appears
11 in the 78th report at CAD hearing 622 in today's binder.

12 To institute a claim amendment deadline now would
13 cut off future claims and would leave assets of the estate on
14 the table, uncollected, and undistributed to Class 2
15 creditors.

16 Next, I think it's important to point out that the
17 Liquidator has not given the Court an indication of what the
18 effect of its proposed claim amendment deadline would be.

19 Now, obviously, there are inherent uncertainties in
20 IBNR calculation. But in the Ambassador case that we cited
21 from the Vermont Supreme Court, there, that liquidator told
22 the Vermont Court that there was an estimated 13 million
23 dollars in future claims that would be cut off by a claim
24 amendment deadline. That was in paragraph 7 of the Vermont
25 Supreme Court opinion 198 Vermont Reporter 341 at 345.

1 Here, no similar effort has been made by the
2 Liquidator. Less, I suggest that we are flying blind as to
3 what might happen if the Liquidator's deadline is imposed. We
4 believe that for the Liquidator to seek to impose the claim
5 amendment deadline it should provide an actuarial estimate to
6 the Court as to what future claims might be cut off forever,
7 so the Court knows what the implications of the Liquidator's
8 request would be, and it would also give the Court an estimate
9 of the reinsurance recoveries that the estate will never
10 benefit from if such a deadline is imposed.

11 Now, as we pointed out in page 24 of our objection,
12 which is CAD hearing 210, these liquidations often well exceed
13 20 years. Ambassador has been going on since 1987 with no
14 claim amendment deadline yet set. And that's because of the
15 kinds of claims that these liquidations deal with, and here
16 we're talking about long-tail claims.

17 The claims that are affecting my clients are long-
18 tail asbestos claims. AM Best reports that there's an average
19 of 1.7 billion dollars in additional asbestos losses reported
20 over each of the last five years. There are still thousands
21 of asbestos claims being filed across the country every year.
22 As the Court's likely aware, many states have deferral
23 registries that allow plaintiffs to file claims now and to
24 hold the statute of limitations until the plaintiff
25 experiences symptoms.

1 Other Home claims could have environmental, silica,
2 Roundup, firefighter foam, liabilities that are just now
3 coming out to the fore. Then, of course, there are also sex
4 abuse claims.

5 You know from the New York Liquidation Bureau that
6 New York's revival statute goes to August of 2021. And
7 California is now in year one of a three-year revival window.
8 May other states have enacted similar legislation or are
9 considering it.

10 So under these circumstances, we do not believe this
11 is the time to cut off future claims by entities who dutifully
12 paid their premium to The Home expecting to be covered in the
13 event of a loss.

14 Now, the Liquidator has pointed to its
15 administrative expenses and its budget and claims that that
16 justifies implementing a claim amendment deadline. The recent
17 quarterly report, though, shows that the estate recovered 16.7
18 million dollars in reinsurance last year, which exceeded its
19 budget, and as of June 30th of this year was on pace for about
20 12 million dollars in recoveries this year, those numbers are
21 at CAD hearing 631.

22 And as an example of how the AFIA Cedant's can
23 contribute, back in 2015 one of the Cedent's, Enstar, commuted
24 for 14.3 million dollars, and that clearly contributed money
25 to the estate via reinsurance recoveries that benefitted Class

1 2 creditors.

2 So when the Liquidator says that we should shut this
3 down now to make final payments to Class 2 creditors, the
4 Liquidator also admits that it can continue to make interim
5 distributions. That's at page 2 of its motion, CAD hearing 2.

6 For now, the estate still has a five-year lease on
7 its New York office with an option to extend that to 2031.
8 Obviously, when they arranged for that lease they were aware
9 of the potential for this proceeding to last many more years.
10 And meanwhile, the administrative costs of the estate are
11 declining every year.

12 So it's in keeping with the length of similar
13 insolvencies, and it's predicted by the New Hampshire Supreme
14 Court here that this could be a lengthy and difficult process.
15 We believe that this should be allowed to play out, so Class 2
16 creditors can recover as much as they can.

17 Now, the Court has seen several settlement
18 agreements come across it's desk in recent months. Some of
19 those settlement agreements mention future claims directly,
20 others simply say that any claims that may be brought under
21 the subject policies are settled and that Home is released
22 from those policies; presumably, there was consideration for
23 that, so the Liquidator can settle future claims. With my
24 clients, however, the Liquidator says that we have to talk to
25 CHUBB.

1 Now, as related in the affidavits from my clients,
2 at CAD hearing 229 to 30 and 324 to 25, they believed that the
3 Liquidator was negotiating with CHUBB on their behalf. The
4 Liquidator can do that pursuant to the scheme of arrangement
5 in the UK proceeding involving The Home's United Kingdom
6 branch, that's at CAD hearing 459 to 60. Our understanding is
7 that the Liquidator's not doing that.

8 But the Liquidator does admit that it has to be a
9 part of this process because we cannot cut through and have
10 our own agreement with CHUBB. That's at page 4 of the
11 Liquidator's response to our objection, footnote 2, at CAD
12 hearing 715. So we have a situation where other's future
13 claims are settled but not those of the AFIA Cedent's.

14 And I think this comes back to the unique position
15 that my clients and the other AFIA Cedent's are in, which is
16 that our future claims would result in reinsurance recoveries
17 paid by CHUBB, and CHUBB handles our claims as Home's agent
18 pursuant to the settlement agreement.

19 Now, the Court will recall that The Home insured, my
20 client's liabilities a hundred percent, and CHUBB reinsured
21 The Home for those liabilities at a hundred percent. So even
22 though my client's insured underlined policyholders, my
23 clients do not handle or adjust those claims.

24 Under the settlement agreement, The Home committed
25 itself to investigate and adjust all claims brought by my

1 client's policyholders. That's at CAD hearing 261 for Zurich
2 and CAD hearing 352 for Verishicherung.

3 The Home, either through itself or it's agent CHUBB,
4 has the sole right to investigate and adjust these claims and
5 are to provide us with the information necessary to settle
6 claims with The Home estate.

7 Now, my clients have repeatedly asked the Liquidator
8 and CHUBB, it's agent, for IBNR information. And as we put in
9 our papers at CAD hearing 208, reserves for the running pool
10 numbers are at approximately 34 million dollars. The problem
11 is, some of these claims have not had their reserves adjusted
12 by CHUBB in 20 years, despite their duty under the agreement
13 for them to adjust claims.

14 And my client's actuaries cannot estimate IBNR under
15 those circumstances. Actuaries use case reserves to apply a
16 loss development factor and estimate IBNR, but they're not
17 comfortable doing that when reserves haven't been adjusted in
18 20 years in some of these cases.

19 So the Liquidator needs to have its agent actually
20 handle claims, like it's supposed to, and then we can adjust
21 case reserves, actuaries can do their work to develop a sound
22 IBNR number of those reserves, and then we can talk about
23 settling that IBNR and benefitting the creditors of the
24 estate.

25 Now, the Liquidator says that CHUBB doesn't have to

1 settle if it doesn't want to, but for now, with the specter of
2 this claim amendment deadline hanging out there, CHUBB may
3 reasonably believe that they can wait this process out and it
4 doesn't need to reach a settlement with us on future claims
5 because they know that there's a chance that in a few months
6 this will all be rendered moot.

7 Now, New Hampshire law, RSA 402 C46, states that
8 quote,

9 "Under the direction of the Court, the Liquidator
10 shall pay dividends in a manner that will assure the
11 proper recognition of priorities and a reasonable
12 balance between the expeditious completion of the
13 liquidation and the protection of unliquidated and
14 undetermined claims, including third party claims."

15 That protection of unliquidated and undetermined
16 claims mandated by New Hampshire law, which clearly includes
17 the IBNR we're talking about, is why we believe the Court
18 should deny the Liquidator's motion, particularly under these
19 circumstances, were either waiting for that IBNR to crystalize
20 or giving us the runway to obtain a settlement that benefits
21 Class 2 creditors through reinsurance recoveries.

22 Now, earlier I mentioned the Ambassador case from
23 Vermont. I know the Liquidator has said that the courts now
24 need to pay particular attention to the Ambassador case
25 because that had a special fact where the estate was able to

1 pay all the creditors, but the Vermont Supreme Court there set
2 out a four-factor test, and if that was the only issue that
3 mattered, they wouldn't have needed a four-factor test, it
4 would have been a one-factor test. And I think that four-
5 factor test is enlightening and perhaps helpful to the Court
6 in resolving this.

7 The Vermont Supreme Court looked at four things;
8 first, the companies remaining assets, and here they are still
9 very sizable.

10 Number two was the nature and amount of remaining
11 liabilities. Again, what we're talking in terms of the nature
12 of these liabilities, is talking about long-tail claims that
13 take decades to resolve, but for which my clients and others
14 dutifully paid their premium to The Home to cover.

15 And in terms of the amount, well, again, the Court
16 has not been informed of what the effect of this claim
17 amendment deadline might be in terms of cutting off those
18 recoveries and those amounts.

19 The third factor from Ambassador was the
20 administration costs of the estate, which are under 13 million
21 dollars in 2018 and 2019, and as I said, less than reinsurance
22 recoveries.

23 And fourth -- the fourth factor was the extent to
24 which the delay results in a delay of full payment to priority
25 creditors. Obviously, if the claim amendment deadline is not

1 imposed, there will be a delay, but this is an unusual delay
2 because here the delay can result in greater payments to
3 priority creditors through the reinsurance recoveries that
4 would come from the claims that my clients submit.

5 So here's what Zurich and Verishicherung request
6 from the Court; first, we request that the Court deny the
7 motion and keep the estate open because as long as there's a
8 deadline hanging over our head, CHUBB will have no reason to
9 settle our future claims.

10 Second, the Liquidator and its agent CHUBB have to
11 adjust claims like they are supposed to and get us the reserve
12 information that we need. We've asked for this. It has not
13 been forthcoming, but if the message from this Court is that
14 there is not going to be a claim amendment deadline until this
15 happens, perhaps matters will change. And then, after a
16 reasonable time to evaluate that information, if we can reach
17 a settlement with CHUBB for future claims, that's great; it's
18 a win/win. The estate can recover reinsurance and pay more to
19 Class 2 creditors.

20 Once CHUBB can be brought to the table, the Court
21 can then consider what is an appropriate deadline. If the
22 Liquidator, again, is concerned about ongoing administrative
23 costs, this plan would help bring that to a close.

24 So with that, I thank you, Your Honor, for your
25 consideration. I know there are other AFIA objectors present

1 who may have more to add, but I'm happy to answer questions at
2 the appropriate time.

3 THE COURT: Thank you.

4 I think, what I'm going to do is give the other AFIA
5 objectors a chance to speak. And then, I'll hear from the
6 Liquidator, and then when we get to responses I may have some
7 questions for Counsel.

8 Let me ask, I do see Attorney Pastori. I don't know
9 if she's going to speak or anybody with whom she's associated
10 in this matter?

11 MS. PASTORI: Good morning, Judge Kissinger --

12 THE COURT: Good morning.

13 MS. PASTORI: -- and everyone else.

14 My name is Terri Pastori. I represent the resolute
15 objectors. With me is Attorney Mike Mullins from Day Pitney,
16 and he'll be addressing our argument on this issue.

17 THE COURT: Good. Thank you, Attorney Pastori.

18 MS. PASTORI: Thank you.

19 THE COURT: Attorney Mullins?

20 I just need you to unmute.

21 MR. MULLINS: That better?

22 THE COURT: That's much better, yes. Thank you.

23 MR. MULLINS: Thank you for telling me before I get
24 too far in.

25 Good morning. I'm Mike Mullins on behalf of the

1 AFIA Cedent's, managed by Resolute. The Resolute entities
2 object to the Liquidator's motion because a proposed deadline
3 doesn't account for the unique role of the AFIA Cedent's in
4 this liquidation. Instead, the Liquidators really are going
5 for a one size fits all deadline that's inappropriate when it
6 comes to the AFIA Cedent's and that AFIA agreement.

7 One of the reasons it's inappropriate is because of
8 the failure to properly value the IBNR that Zurich's counsel
9 has just spoke about, so I won't repeat all those arguments,
10 other than to say, that my clients have moved to have either
11 the motion for the deadline declined or held in advance, for
12 the same reasons that Zurich's counsel mentions.

13 Without CHUBB having an incentive to come to the
14 table and do its job in valuing these claims, the AFIA
15 Cedent's are out the reinsurance that they paid for, and the
16 estate is going to be out substantial amounts of money.

17 There's no dispute that the AFIA agreement has
18 benefitted the estate. The Liquidator itself puts in its
19 papers it's collected 87 million dollars through that AFIA
20 agreement, and so we know that there's a benefit there. We
21 don't know what the cost will be of terminating that agreement
22 because we don't have the value of those potential, future
23 claims -- the IBNR.

24 And I'll just say that when -- you know, the AFIA
25 agreement was heavily litigated, and when it went to the

1 Supreme Court and the estimates that went to the court about
2 the potential claims that could come through the liquidation
3 and how this agreement was beneficial to the liquidation, IBNR
4 was included -- potential claims were included in those
5 estimates.

6 So there's a real inconsistency to rely on IBNR to
7 gain the Court's approval for the AFIA agreement but then
8 refuse to properly value that same IBNR when it comes to
9 terminating the AFIA agreement. And that's what the proposed
10 deadline would do is terminate that agreement that's been so
11 beneficial to the estate. So we echo all the arguments with
12 respect to the IBNR and the deadline not being imposed.

13 But if the Court is inclined to go ahead with the
14 deadline anyway, I mean, we would say the Liquidator has a
15 burden of proof here, and they haven't met it. And the Court
16 has an independent duty to make sure the estate is being
17 benefitted, and we don't think they have the information in
18 front of them made that determination.

19 But if you disagree with that, there's no reason
20 that the AFIA Cedent's should be included in that deadline.
21 So the claim amendment deadline could be imposed for the Class
22 2 claimants; there's no reason to also impose it on the AFIA
23 Cedent's, and so let me talk about that for a minute.

24 Nothing in The Liquidation Act prohibits the
25 Liquidator from setting a deadline for Class 2 claimants while

1 continuing to operate under the AFIA agreement. The Act, in
2 essence, does not require a one size fits all approach.

3 In fact, when the Act talks about a claim filing
4 deadline, which this Court has previously set, it allows for
5 late-filed claims to be permitted for good cause, so long as
6 they don't prejudice the orderly administration of the
7 estate -- that's the standard in the Act.

8 And that analysis is important, I think, for two
9 reasons. First, it's an individualized determination, all
10 right. So when you're deciding good cause, each good cause
11 determination looks at the particulars of the claims at issue,
12 and some of those particulars are is it a new claim? Is it a
13 contingent claim that became absolute, you know?

14 So it looks at the particulars of the claim. It
15 doesn't say that all late-developing claims in the same class
16 are automatically denied, but that's what the Liquidators
17 proposed order, that's now before this Court, says. Paragraph
18 five of that proposed order would deem all claims or all claim
19 amendments received after the claim amendment deadline quote,
20 to be deemed to prejudice the orderly administration of the
21 liquidation, that's at page 39 of the hearing binder.

22 That proposed order also goes on to state that the
23 Liquidator "shall reject all post-claim amendment deadline
24 claims without consideration of the merits." So that's a
25 significant departure from the individualized evaluation set

1 forth in the Act.

2 And the Liquidator seeks to justify this departure
3 by focusing on the remaining Class 2 claimants. And maybe it
4 is justified on that basis, but it goes too far in the
5 proposed order in including the AFIA Cedent's.

6 Those automatic deeming of prejudice and those
7 failure to look at the merits also apply to the AFIA Cedent's
8 and the reinsurance contracts, and that goes too far because
9 it effectively terminates the AFIA agreement.

10 Which brings us to the second reason why we think
11 the focus on these individual determinations is important.
12 Any determination of an AFIA Cedent claim would show a benefit
13 to the estate. The AFIA agreement brings money into the
14 estate; it doesn't deplete funds otherwise available to Class
15 2 claimants, it's just the opposite.

16 So accordingly, if the Court finds that the proposed
17 deadline is warranted with respect to Class 2 claimants, the
18 Liquidator's not satisfied it's burden to show that the
19 deadline should apply to the AFIA Cedent's because there's no
20 prejudice to the estate, there's only benefit.

21 If the AFIA Cedent's are carved out from this, not
22 only is no prejudice to the estate, but it's basically a win,
23 win, win scenario. The AFIA Cedent's get a portion of the
24 reinsurance they paid for. They bought this reinsurance.

25 The CHUBB companies aren't prejudiced. They merely

1 have to pay for the reinsurance that they've contracted to
2 pay. If they're allowed -- if this deadline passes as
3 written, the windfall here is to CHUBB; they don't have to pay
4 claims that they otherwise would have paid either through the
5 AFIA agreement or but with the liquidation through their
6 contracts; that's a windfall their not entitled to.

7 So the AFIA Cedent's will get the reinsurance they
8 paid for, CHUBB would be required to pay the reinsurance
9 they're supposed to, the estate would collect more money than
10 it otherwise would have collected and have available to pay
11 these allowed claims, and the pot of money for the Class 2
12 claimants grows. If an individualized determination is looked
13 at objectively, it's all benefit for the estate.

14 And so what has the Liquidator said in response to
15 this? They've had essentially two arguments for why they
16 should terminate the AFIA agreement, notwithstanding these
17 ongoing benefits.

18 The first is to say well, we can't treat the AFIA
19 Cedent's different than anyone else, otherwise, we'd be
20 creating a sub-class of Class 5 creditors. Well, if that
21 argument sounds familiar, it's because it's the same argument
22 that ACE presented to the New Hampshire Supreme Court when
23 they objected to the AFIA agreement in the first place, and
24 the Court rejected it. And there's no reason to contravene
25 that ruling now.

1 As the Supreme Court made clear, the AFIA payments
2 are effectively administrative cost; they're incurred to
3 marshal the assets of the estate. And so what the Supreme
4 Court found is that those payments aren't really priority
5 payments of Class 5, they're Class 1 payments designed to
6 increase the funds available to the estate.

7 In essence, the AFIA Cedent's provide a service to
8 the estate. They assist in marshaling and collecting tens of
9 millions of dollars in reinsurance that the estate otherwise
10 would not receive.

11 Now, there's no basis for the estate to stop
12 collecting its reinsurance generally. And then, similarly,
13 there's no basis to terminate the AFIA agreement that
14 effectively collects this portion of reinsurance for the
15 estate.

16 So that brings us to the second problem that they
17 raised where they say well, it cost 13 million dollars a year
18 to run this estate, you know, and it'll be a lot cheaper after
19 we get the claim amendment deadline. But nowhere do they
20 identify any cost associated -- the marginal cost associated
21 with keeping the AFIA agreement in place.

22 That 13 million dollars is for adjusting Class 2
23 claims, and their motion and all their numbers are centered on
24 the Class 2. Nowhere do they say well, it's going to cost us
25 X amount of dollars to continue the AFIA agreement, and the

1 AFIA agreement only brings in Y; you can't do the cost-benefit
2 analysis because they don't give you the cost.

3 And when they give you the benefit, which they have
4 this fuzzy math that says well, if you look at an average over
5 the last five years, it's about 900 thousand dollars a year.
6 That's not how you do it. You know, you have to -- they
7 exclude the commutations as Zurich's counsel pointed out.

8 If CHUBB has a real deadline, there will be more
9 commutation, and those commutation dollars are big. If you
10 include those commutation settlements in there, the average
11 amount goes up to millions of dollars a year, all right.

12 So what you need here is evidence. What you need is
13 an actuary or a third party to come in and look at the numbers
14 and say give the Court the actual evidence they need to decide
15 what the cost-benefit analysis is of cutting off the AFIA
16 agreement. We don't have that.

17 The Liquidator hasn't met their burden on that. The
18 Court doesn't have the evidence necessary to make that
19 determination. It's their burden of proof to put it forward,
20 and they just haven't done it.

21 So on behalf of my clients, we ask either that one
22 of three things happen: the motion be denied outright or it
23 be held in abeyance until CHUBB provides the information so
24 that the IBNR can be appropriately valued; or third if the
25 motion is going to be granted, that it be held in abeyance as

1 the AFIA Cedent's and not cut off an agreement that's
2 otherwise been very beneficial to the estate. Thank you.

3 THE COURT: Thank you, Attorney Mullins.

4 I think, the next category would be Nationwide, and
5 I don't know if we have -- I see Attorney Dotseth is on. And
6 I don't know whether -- it looks like he's going to speak and
7 not Attorney Elliot, but I'm happy to hear from either.

8 MR. DOTSETH: Your Honor, this is Keith Dotseth.
9 I'm here on behalf of Nationwide Mutual Insurance Company, and
10 I intend to address the motion on behalf of Nationwide as it
11 relates to the AFIA objectors.

12 THE COURT: Great.

13 MR. DOTSETH: And I have the great fortune of
14 following two excellent colleagues, and I'm not going to waste
15 that fortune by tossing it aside and repeating all the
16 arguments in probably a less persuasive fashion. Instead,
17 Your Honor, I'm going to just try to focus on a few things
18 very briefly to follow up.

19 Clearly, Nationwide agrees and joins with all the
20 positions of the other AFIA objectors here. Plenty of reasons
21 really; to deny the Liquidator's premature and inadequately
22 supported request to set a blanket, generic claims amended
23 deadline without any regard to the unique peculiarities of the
24 AFIA agreement.

25 The Liquidators here really are trying to force the

1 Court to engage in a sledgehammer remedy that frankly is
2 calling for a scalpel or at least a smaller hammer. The
3 blanket sledgehammer approach that they apply or request here
4 completely ignores the unique role of the AFIA Cedent's and
5 ignores the New Hampshire Supreme Court recognition of that
6 unique role.

7 The AFIA Cedent's encourage this Court to strongly
8 consider either denying the motion in its entirety; if it
9 doesn't, to hold the motion in abeyance as to the AFIA
10 Cedent's.

11 Or lastly, if it's going to grant the motion, grant
12 the motion, but deny it as to the AFIA Cedent's because
13 frankly, the AFIA agreement provides a perfect example of what
14 the statute identifies as being a good cause -- a reason to
15 exclude from a claim amendment deadline.

16 So the short question is why. Why am I asking that?
17 Well, because to do so really recognizes the unique position
18 held in The Home estate by the AFIA Cedent's and honors the
19 already fully recognized unique role that has been endorsed by
20 the New Hampshire Supreme Court.

21 Indeed, I will go so far as to say what Home is
22 asking for you to do here is in direct contravention of the
23 rulings already reached by the New Hampshire Supreme Court.

24 The New Hampshire Supreme Court's already determined
25 that the AFIA Cedent's hold a unique, valuable position.

1 They've already granted the administrative costs as being
2 Class 1 priority status. They've recognized that the AFIA
3 Cedent's are unique quote, because they uniquely, quote,
4 benefit the Class 2 claimants to Homes estate since it
5 increases the likelihood that the claim will be paid and
6 recognize that the AFIA Cedent's is the single largest asset
7 of the estate and should not be lost.

8 The New Hampshire Supreme Court's already recognized
9 this unique role, and this Court should not be asked in a
10 backhand fashion through a blanket request for a claim
11 amendment deadline to disregard that.

12 And indeed, there's a bit of irony here. One of the
13 motions the Liquidator argues for as the basis for its motion
14 is that you need to establish a claim amendment deadline to
15 motivate claimants that have been slow or reluctant to resolve
16 or amend their open proof of claims; you may have heard that
17 is their reason for doing this.

18 Well, the New Hampshire Supreme Court has already
19 held that the AFIA Cedent's role in honoring the AFIA Cedent's
20 unique role is intended to be, quote, an inducement for the
21 AFIA Cedent's to file claims in the liquidation in order to
22 bring a net benefit to creditors of the estate.

23 If indeed Home is telling you that their real
24 motivation here is trying to encourage the collection of
25 claims and processing of claims by setting up a deadline as a

1 threat, the reality is the New Hampshire Supreme Court has
2 already held that the AFIA agreement is a critical cog in
3 setting up motivations in a way that benefits the estate. It
4 sets up the motivation to encourage more claims to be
5 processed through the AFIA agreement.

6 Disregarding that role -- the unique role played by
7 AFIA, really be -- would fall under the banner of cutting your
8 nose to spite your face. And frankly, in this day and age
9 where we're all depending on masks, having a nose is a very
10 valuable thing, and we would not encourage this Court to fall
11 down that path.

12 There's no realistic downside. Again, my colleagues
13 have addressed the administrative cost is, you know, not being
14 tied directly to the cost of running the AFIA agreement. The
15 fact that we are a net positive (indiscernible), it may
16 suggest there's a threat of litigation.

17 I suggest that what they are arguing as the threat
18 of litigation is the litigation that already took place and
19 already resulted with the New Hampshire Supreme Court
20 recognizing that the AFIA agreement is unique, valuable, and
21 should be a protected part of this estate.

22 So for all those reasons, and of course all the
23 reasons already ably described by my colleagues, Nationwide
24 Mutual Insurance Company joins the other AFIA Cedent's in
25 urging a denial of the motion. Or if a denial is not coming

1 on the entire motion, at least the excising of the AFIA
2 Cedent's form that deadline. Thank you.

3 THE COURT: Thank you, Attorney Dotseth.

4 I think now I'll hear from the Liquidator in
5 response.

6 Just need to unmute, Attorney Leslie.

7 I can't tell you how often I do that in the course
8 of the day.

9 MR. LESLIE: There are other people that would like
10 to mute me, so. Can you hear me now, Your Honor?

11 THE COURT: I can, yes. Thank you.

12 MR. LESLIE: Yes, thank you.

13 David Leslie, for the Liquidator. Those were very
14 interesting presentations, and there's a lot to be said.

15 The first place to start is, I think it's very
16 important to keep in mind the priority ladder that was
17 established by the New Hampshire legislature which is the same
18 priority ladder that applies across The United States.

19 So policy level claims are at Class 2. So Class 1
20 are administrative expenses in a proceeding and Class 2 are
21 policy-related claims, and those include the claims of
22 insureds, and that includes the claims of claimants against
23 insureds, and the like.

24 The insurance company liquidations are different
25 than bankruptcies in that policyholders are preferred. We

1 don't have a class of creditors who are distinguished based on
2 who holds security interest and the like as in bankruptcy. In
3 an insurance company liquidation, the thumb is clearly on the
4 side of the scale in favor of policyholders.

5 So the AFIA objectors are Class 5 creditors. There
6 is no money to pay creditors below Class 2. And the statutory
7 scheme is quite clear, no money will be paid to a lower
8 priority class until the more senior class is fully paid.

9 So the first proposition here is Class 2 creditors
10 do not stand to receive a hundred percent distribution, so
11 certainly Class 5 will receive nothing.

12 The terms was used earlier about windfalls and the
13 windfall that Century Indemnity or CHUBB would receive, and it
14 is true. The Liquidator agreed that CHUBB Century Indemnity
15 would have received a windfall absent the AFIA agreement.

16 Home's liquidation would have meant that the Class 5
17 creditors -- the AFIA Cedent's would not have submitted their
18 claims, they would have made no effort to prove their claims,
19 and those reinsurance recoveries would be lost; so we agree
20 with that, and that was the reason for the AFIA agreement.

21 Now, the AFIA agreement simply provides for an
22 inducement to submit claims. It did not create a unique --
23 the AFIA Cedent's are not critical cogs to The Home
24 liquidation; the New Hampshire Supreme Court never said that.
25 They don't play a unique role in The Home liquidation.

1 They're Class 5 creditors who've been induced to submit claims
2 by agreeing to -- through the AFIA agreement -- to a sharing
3 of reinsurance recoveries.

4 They have -- there is a Class 1 administrative claim
5 to those rights under the AFIA agreement to share in the
6 proceeds of the reinsurance. Their Class 5 claims are not
7 transformed into Class 1 claims by the AFIA agreement.

8 So the Class 5 claim is filed. The Class 5 claim is
9 investigated by CIS (indiscernible) CHUBB Insurance Services,
10 a recommendation is made. Based on that recommendation the
11 claim is then submitted to the New Hampshire court for review
12 because the New Hampshire court is the exclusive forum for the
13 determination of claims against The Home Insurance Company.

14 The UK scheme is not a forum for the determination
15 of claims. It is a vehicle for the distribution of the
16 proceeds of the AFIA agreement. Claims are dealt with
17 exclusively in the New Hampshire proceeding.

18 So an AFIA Cedent's claim is adjusted. If there is
19 a disagreement over the adjustment of that claim, then there
20 is an opportunity for a disputed claim proceeding. Again,
21 within the New Hampshire liquidation process. That process is
22 the controlling forum.

23 We haven't had disputed claims proceedings in this
24 case because there's been agreements between the AFIA Cedent's
25 and AISUK now CISUK in the determination of claims and the

1 liquidation. So we have submitted these claims, they've moved
2 through the review processes. They've resulted in reinsurance
3 recoveries, and those recoveries have been submitted through
4 the scheme and accordingly distributed.

5 That inducement -- and that's exactly what it is and
6 it's what the New Hampshire Supreme Court understood it to
7 be -- was deemed to be reasonable, but that is not creating
8 tenure to the AFIA Cedent's.

9 The AFIA Cedent's were not given the right under the
10 AFIA agreement to determine when The Home liquidation process
11 would end. It merely is a vehicle to incentivize them to
12 submit their claims.

13 And the UK scheme itself calls for it to be
14 terminated when the AFIA Cedent's claims are discharged, and
15 those claims will be discharged when they are determined in
16 the New Hampshire liquidation proceeding. And we propose that
17 the be discharged based on the claim amendment deadline.

18 Now, let me go back to talking about the interests
19 of Class 2 creditors, which the liquidator respectfully
20 suggests should be the focus of the Court's concern. So Home
21 stopped writing insurance 25 years ago. Risks stopped being
22 seeding into the AFIA pool 35 years ago. Home's been in
23 liquidation for over 17 years.

24 Now, the court has already determined and approved
25 95 percent in number of Class 2 proofs of claim. As to

1 amount, including the claims awaiting review and approval by
2 the court, the court has approved 73 percent in amount of the
3 Class 2 claims estimated by Milliman, and that estimate was
4 included as a supplement to the interim distribution request
5 the Liquidator made.

6 So the central estimate of Milliman for Class 2
7 claims, when one looks at that, which is 4.2 billion
8 dollars -- the Class 2 claims determined are now awaiting
9 review by the Court at up to 73 percent.

10 So there's a wide range, as the Milliman report
11 indicated there's a wide range of outcomes there, but that's a
12 pretty good accomplishment, and it demonstrates why it's a
13 good time to try to resolve the rest of the claims because
14 they're only going to be resolved by determination.

15 Now, the Liquidator's judgment -- because that's
16 what the statute calls for here is judgment -- and the Court's
17 role is to review that judgment. And to the extent that the
18 Court disagrees with it, feels that the Liquidator is not
19 suitably explained it, by all means, it's not appropriate to
20 proceed.

21 We believe the record that we have submitted here
22 demonstrates why this is a reasonable judgment. And very
23 importantly, I would point out, that there is only one
24 policyholder objector that is here to object to this claim
25 amendment deadline -- one. That's a significant point.

1 And that one objector is objecting about a claim
2 amendment deadline as it might apply if the Hawaii legislature
3 does something -- which it hasn't done at the moment -- to
4 extend the revival period for sexual abuse claims.

5 So that will be addressed later today when Counsel
6 for the Maryknoll brothers is available, and my colleague Mr.
7 Smith will deal with that.

8 But that's all we have. I agree, the Liquidator
9 certainly agrees that Home's insurance includes coverage of
10 long-latency exposures. They are complex exposures, and those
11 insureds have made the judgment not to object to the claim
12 amendment deadline. And the court, we believe, should give
13 that heavy weight.

14 Now, we have approximately 2.9 billion dollars of
15 approved Class 2 claims, with the claimants currently pending
16 before the Court. Those creditors are not able to get a full
17 distribution until all Class 2 claims are determined as to
18 amount.

19 They have waited a long time, and the longer the
20 wait there's -- unlike Ambassador, which is a completely
21 different situation on the facts. There would have been no
22 need for a four-point test if the policyholders weren't going
23 to get a hundred cents on the dollar, that's why there had to
24 be a four-point test. Because when you're cutting off Class 2
25 creditors or policy level creditors, you better have a very

1 good reason for doing that if they're going to get paid a
2 hundred cents on the dollar plus interest, which is what
3 happened in Ambassador; that's not this case.

4 In this case, there's no money to go below Class 2,
5 and Class 2 will not be paid in full. We went through an
6 extensive and lengthy process with The United States to
7 resolve The United States claims. The United States is not
8 subject to a bar date.

9 The United States could step in at any moment and
10 disrupt the process of the proceeding, so our first priority,
11 in addition to adjudicating Class 2 claims, was to make an
12 arrangement with The United States to eliminate the Federal
13 Priority Act exposures.

14 Once we did that, then we believed we were in a
15 position to move forward with a claim amendment deadline; it
16 took many years -- over 17 years. And, you know, over 14
17 years since the AFIA agreement was approved by the court. So
18 we believe this is the time. We believe the Class 2 creditors
19 agree with us now is the time, and we believe the time has
20 come for them to get their money.

21 Now, if the claim amendment deadline, as we have
22 proposed it -- if the Court approves that, it is going to take
23 years to determine those claims. So the sooner we get
24 started, the sooner we'll be finished in the determination of
25 the remaining claims.

1 So we believe this needs to happen in order to
2 benefit the Class 2 creditors. And with due respect to my
3 colleagues advocating for the AFIA Cedent's here, the interest
4 is the interest for the Class 2 creditors, and their silence
5 as objectors is important.

6 Now, back to some of the points about AFIA, and
7 incurred but not reported losses, and the like. So Counsel
8 referred to the illustration provided to the Superior Court,
9 and then to the New Hampshire Supreme Court as part of the
10 record appendix, with 231 million dollars being the projected
11 Home liability to AFIA Cedent's. That number was the number
12 included in the last financial statement filed with the UK
13 regulatory authorities for Home's UK branch. And those
14 financials were prepared by a Century Indemnity Subsidiary
15 AISUK.

16 The Home Insurance Company had nothing really to do
17 with that, but because prior to the liquidation Century
18 Indemnity through AISUK dealt directly with the Cedents for
19 purposes of adjudicating and paying their claims.

20 With the entry of the liquidation order, the
21 insolvency clause in the reinsurance agreement became
22 effective and that required all payments of reinsurance to go
23 to the Liquidator as general assets of the estate.

24 The impact of that insolvency clause is what
25 affected CIC's interest and the AFIA Cedent's interest post-

1 liquidation. Because if the AFIA Cedent's had not continued
2 to submit claims, CIC would have no claims to pay reinsurance
3 on. And the AFIA Cedent's would receive nothing as Class 5
4 creditors because the money that was recovered would go into
5 the general pot, and there's no money to cascade down to Class
6 5.

7 That, again, is why the AFIA agreement was entered
8 into because the Liquidator was attempting to marshal assets
9 as best we could, and we saw that 231 million dollar umber,
10 and we wanted to try to collect as much of that as we could,
11 hence, the AFIA agreement.

12 Now, but it was an illustration. It was not a
13 liquidator estimate; it was an illustration. And it was a
14 good illustration because it was based on number prepared by
15 people who were very familiar with what was going on with the
16 company -- namely AISUK.

17 Now, as to the Liquidator's obligation to compute
18 the IBNR for AFIA related liabilities, there's one big problem
19 with that, it's impossible for the Liquidator to do that
20 because the Liquidator doesn't have the information.

21 Now, we've heard from several AFIA Cedent's, and
22 those AFIA Cedent's are in different positions vis-a-vis IBNR.
23 So as to Zurich and Wurttembergische, under the settlement
24 agreements that were reached pursuant to arbitrations that
25 were going on -- so when the liquidation of The Home began,

1 there were arbitrations occurring with respect to --
2 obligations with respect to who was going to administer
3 certain, what is called the ruddy pool.

4 So Zurich, Wurttembergische, and Nationwide are
5 members of the ruddy pool, and that pool's business was
6 reinsured by AFIA which means by Home. And Home took on the
7 responsibility to administer the claim handling -- the inward
8 claim handling -- for the ruddy pool, pre-liquidation.

9 So claims brought against those three carriers with,
10 respect to the business, Home agreed to defend those third-
11 party claims as against those carriers, and in turn agreed to
12 reinsure those losses, okay.

13 So there was a dispute, prior to liquidation, about
14 that obligation to defend and handle those claims, and there
15 was also a disagreement over how the reinsurance obligation
16 ought to be calculated. Should it be calculated based on
17 which carriers fronted the business of those ruddy pool
18 members? Whose policies or paper was issued to those third
19 parties -- the so-called fronted share? Or should it be based
20 on the pool share of those carriers?

21 In other words, they pooled the loss, and they had
22 pool shares, so there was a dispute. The frontage shares
23 would have yielded higher reinsurance recoveries to particular
24 ruddy pool members.

25 So that was arbitrated, and the conclusion was --

1 and the parties agreed -- Wurttembergische and Zurich agreed
2 with the liquidator that that interest should be computed on a
3 pooled share basis.

4 So those settlement agreements, which settled the
5 disputes that had been arbitrated -- they are not related to
6 the AFIA agreement, okay -- reached a resolution, and that
7 resolution involved two general things.

8 One, Home agreed that it was responsible for the
9 administration of those claims to (indiscernible), and this
10 was negotiated during the liquidation. This agreement was
11 approved by the Court, and we agreed that those administration
12 costs should be Class 1 costs. And we have confirmed that on
13 multiple occasions to Counsel for Zurich and Wurttembergische,
14 we do not back away from that.

15 Those administrative obligations are obligations of
16 The Home, they are entitled to Class 1 status, and they need
17 to be addressed within The Home liquidation proceeding and
18 there, you know, there's a good form for that, they will be
19 addressed; that is not a point for the claim amendment
20 deadline.

21 The second issue, which is the reinsurance shares,
22 the parties agreed that those liabilities should be addressed
23 on a full-share basis, and that's how they have been
24 addressed.

25 Now, there is a significant difference in the

1 administration of claims between the ruddy pool members and
2 Resolute. So with the ruddy pool members -- AISUK now CISUK
3 administers those claims and reports information to the pool
4 members. As to Resolute, Resolute adjusts its own claims. So
5 Resolute has its own information.

6 Now, the observations that have been made today
7 about CISUK's failure to provide the requisite information to
8 Zurich and Wurttembergische in order for them to be able to
9 determine claim liabilities is news to us.

10 In other words, that's a breach of contract issue.
11 If they're not getting information they need, they need to
12 tell us about that, and we will deal with it.

13 But they have the information that allows an IBNR
14 calculation; the Liquidator does not. Resolute has the
15 information that allows an IBNR calculation; the Liquidator
16 does not. And this was demonstrated when the scheme
17 administrator as the claim amendment deadline motion was
18 submitted Ernst & Young, the scheme administrators, of the UK
19 scheme, invited the AFIA Cedent's to submit IBNR information
20 if they wanted them -- the scheme administrators -- to do a
21 calculation, and they didn't provide the information. E&Y
22 asked for that information or raised this twice, and that's
23 referenced on page HRJ 294 which is the sealed sets of
24 documents, so -- twice.

25 So one, it's impossible for the Liquidator to

1 calculate the IBNR of the AFIA Cedent's.

2 Two, the 231 million dollars that was used at the
3 beginning of this process was number that Home didn't develop,
4 certainly the Liquidator didn't develop. It was information
5 that AISUK could reasonably have put together because they put
6 together the financial statement for the UK regulators, and
7 they did that based on the information that they knew at the
8 time, which was a different world than the post-liquidation
9 world. So we're being asked to do something that we can't do.
10 And more than that, it's something we shouldn't have to do.

11 There is enough actual experience here, which is
12 what are the claim amounts that have been submitted? What's
13 actually happened here? And we have 14 years of experience to
14 look at, and when we look at that actual experience, we see
15 real numbers, not imagined, not hypothetical, not
16 speculative -- we have actual numbers of what claim
17 submissions have been.

18 And the 900 thousand dollar number is not something
19 we dreamt up, it's actual, and the papers that are before the
20 Court show how we did it. It's very simple. It's the real
21 claim submissions. It's the real netting after the offsets
22 that Century Indemnity can assert. It's real. They're
23 substantive. They're there. And so that's what we've used.

24 Now, as to Enstar, okay. Again, back into the real
25 world here, rather than the imagined world, okay. Enstar was

1 able to commute. Enstar negotiated with Century Indemnity,
2 directly. Enstar was paying a lot of money for claims.

3 In my opinion, they incentivized CIC to commute, and
4 the negotiated a commutation, and then they came to the
5 Liquidator because they had to and explained why they thought
6 the commutation was a good idea.

7 The Liquidator did due diligence, thought it was a
8 good arrangement. The Liquidator disclosed to the UK scheme
9 creditors committee members, including Resolute, including
10 Zurich, including Wurttembergische, that no one objected. It
11 was submitted to the Court, and it was approved.

12 Now, there have been multiple occasions when
13 commutation was possible. CIC invited commutation
14 discussions. They invited global discussions. Resolute,
15 Zurich, they had the opportunity to do that. They provided
16 information.

17 There was a wide difference -- as our submission
18 shows -- there was a wide difference in views as to what those
19 liabilities really were. They were not able to reach an
20 agreement, and that's fine; there's nothing wrong with that.

21 Resolute presumably felt their liabilities were
22 higher than Century Indemnity felt, and they couldn't reach an
23 agreement. They were able to reach an agreement with Enstar.
24 And the Enstar commutation benefitted the estate, and it also
25 benefitted the AFIA Cedent's because those proceeds flowed

1 through into the AFIA scheme and are available to be paid to
2 the AFIA Cedent's.

3 So the Liquidator would respectfully suggest that
4 the reality of the circumstance here is what folks have
5 actually done. And while we hear from the three -- well,
6 four -- Zurich and Wurttenbergische and Resolute and
7 Nationwide -- while we hear what they say about their
8 liabilities, Nationwide and Resolute are in a position to do
9 that.

10 By the way, Nationwide didn't submit any claims
11 until after the claim amendment deadline was filed.
12 Nationwide has been hiding in the bushes for years.

13 So we have absolutely no idea what their liabilities
14 are here. So as to Resolute, Zurich, and Wurttenbergische,
15 they have been active participants. They've been on the
16 scheme creditors committee. They've been receiving reports.
17 They know what's going on.

18 And so the Liquidator has made a judgment of what
19 AFIA related recoveries are likely to be based on the actual
20 experience we have, and we posit that a fair and reasonable
21 way to look at it.

22 Now, the New Hampshire Supreme Court did not dub the
23 AFIA Cedent's as critical to the liquidation of The Home. The
24 Supreme Court approved the Liquidator's motion and
25 recommendation that it was economically desirable for

1 creditors -- Class 2 creditors -- to incentivize these Class 5
2 creditors to submit their claims. We felt it was a good idea
3 then, and the Court agreed with us. CIC fought us hard, we've
4 had much litigation with CIC, so we know each other fairly
5 well; we were able to prevail.

6 But we've had 14 years of experience with this
7 scheme, and we've seen what's actually occurred here. And,
8 yes, the estate has benefitted from the AFIA agreement, so too
9 have the AFIA Cedent's, and we have seen this claim volume
10 drop off; the numbers are in our papers. They're in our
11 papers.

12 And for the AFIA Cedent's to assert that they need
13 us to tell them what their IBNR is, is simply bootstrapping.
14 They're in the best position to know what their IBNR is, and
15 if Zurich and Wurttembergische are dissatisfied, then they
16 should be raising that. We can address that with CIC, that's
17 something that can be dealt with.

18 And as to their case researcher, this morning I
19 heard that it's been, I think, over 20 years since certain
20 case reserves have been adjusted, which is astounding. But
21 those case reserves are not going to be cut off by the
22 claimant amendment deadline, they'll all be addressed. We're
23 not going to cut them off.

24 Case reserves relate to claims that are known. They
25 are not unknown claims. They're not unreported claims. They

1 relate to actual claims.

2 So the AFIA Cedent's stand to still benefit with a
3 claim amendment deadline for those claims where there are
4 reserves, and it's a significant amount of money.

5 What we do with the claim amendment deadline is
6 clearly cutoff the incurred but not reported claims; we do
7 that. And we do that because we believe we need to bring this
8 proceeding to a close for the benefit of the Class 2
9 creditors.

10 And we are doing it with our eyes wide open, which
11 we fully disclosed. We are trading off the approximately 900
12 thousand dollars a year for the ability to get the money out
13 the door to the Class 2 creditors who are not objecting to our
14 claim amendment deadline.

15 A few other legal points that were raised during the
16 objectors' arguments which I want to address. One is it's
17 legally incorrect to assert that there can be different claim
18 deadlines for creditors -- final claim deadlines.

19 I mean, and it would be particularly ironic to cut
20 off the Class 2 creditors who are preferred, as Counsel for
21 one of the reinsurers asserted, while keeping the claim
22 deadline open for AFIA Cedent's, Class 5 creditors.

23 I mean, it's just not a legally supportable
24 approach. It's inconsistent with the statute, and they have
25 not demonstrated -- they haven't asserted the statute that

1 gives them the authority to do that. We already have a claim
2 amend -- we had a claim bar date; it was June of 2004.

3 And the arguments -- the legal arguments that we
4 heard earlier about late-filed, excused, et cetera relates to
5 that. It relates to -- you know, claims had to be filed by
6 the June 13, 2004 date, or they were deemed to be late unless
7 one of those exceptions applied, that's where the statute
8 applies.

9 Those excused late notice provisions in the statute,
10 they don't relate to a final claim bar date. They relate to
11 that initial date. And final claim bar dates are essential to
12 complete liquidations.

13 Again, this isn't something that the Liquidator or
14 The Home Insurance Company has dreamt up. We've cited every
15 major property-casualty insurer over the last 20 years in The
16 United States that's been liquidated has a claim deadline -- a
17 claim amendment deadline.

18 They all have them because they're necessary. And
19 the statute authorizes the Liquidator to request one, and it
20 authorizes the Court to approve one because they're necessary
21 to fulfill the purpose of the liquidation.

22 They were necessary in those other liquidations
23 because if you don't have them, you can't determine the
24 class -- the full liability. And so one cannot have
25 different -- cannot keep this liquidation open for AFIA

1 Cedent's to submit their claims, which is a subset of Class 5
2 creditors, and then expect to take those claims and assert
3 them as reinsurance claims against Century Indemnity CHUBB.

4 I mean, undoubtedly, Century Indemnity CHUBB will
5 say you can't do that because we have offset rights for Class
6 2 or the like related claims. So if we're going to cut off
7 CIC and cut off their ability to off-set, how can we continue
8 to allow the AFIA Cedent's to continue to submit their claims,
9 which as a matter of law we would assert cannot be done, and
10 then turn around and seek to cause CIC to pay those claims.
11 They're going to refuse, and they're almost certainly going to
12 win. So it's just imagining; it's not the real world. It's
13 not what the law provides.

14 And two believe that now if the Court doesn't allow
15 a claim amendment deadline, thereby causing the 2.9 billion
16 dollars of Class 2 creditors to wait even longer, that that's
17 somehow going to position the AFIA Cedent's where they're
18 going to somehow force CIC to commute with them, well, I don't
19 understand why that is.

20 I mean, we have the actual experience of what's
21 happened, and they were in a stronger position historically
22 when the Cedent's were paying more in claims than they are
23 today. Why would CIC do that?

24 I mean, it's just -- you know, they are asking the
25 Court to accept a supposition that history doesn't show as

1 valid. So, certainly, reasonable people can disagree with a
2 liquidator's judgment. We do not walk away from the point
3 that this is a judgment call. It is a judgment call.

4 And we also recognize that judgment call is totally
5 within the discretion of the Court. So the Court is charged
6 by the statute to review, determine the suitability of the
7 Liquidator's recommendation, and we respect that and honor
8 that.

9 But we believe, and the 2.9 billion dollars of Class
10 2 creditors appear to agree, that now is the time. And that
11 it is a reasonable trade-off to cut off the 900 thousand
12 dollars a year of anticipated CIC AFIA reinsurance recoveries
13 into the future.

14 And in our papers, we've described how many years it
15 would take in order to be able to reach the numbers that the
16 Cedent's have posited -- the 212 and also the numbers that
17 were floated by the AFIA Cedent's and completely rejected by
18 CIC as part of the global commutation a few years ago, that
19 would take a hundred years at the current pace.

20 So we ask the Court to look at the actual numbers of
21 record, what's actual happened, and not these suppositions.

22 Your Honor, that is what I would offer. But more
23 importantly, what I would offer is, you know, this hearing is
24 to -- I'm certain the Court has waded through all the papers
25 that have been submitted and, you know, I am sure I and my

1 colleagues share the desire to answer the Court's questions
2 because that's really most important. So thank you, Your
3 Honor.

4 THE COURT: Thank you, Attorney Leslie.

5 I want to give Counsel an opportunity to respond to
6 its liquidator's arguments, and I'm just going to go in the
7 order that we followed. There's no necessity, but why don't
8 we start with Attorney Steffen.

9 MR. STEFFEN: Thanks, Your Honor. Just a few
10 comments to some of the remarks by Counsel.

11 First of all, the best way to protect and advance
12 the interests of Class 2 creditors who have priority status,
13 as Counsel discussed, is to increase the assets of the estate.

14 And there was a lot of discussion about how there
15 aren't very many Class 2 objectors today. But I really don't
16 think that it's fair to assume the Class 2 members are aware
17 of all the ins and outs of the AFIA agreement, of the New
18 Hampshire Supreme Court ruling, and understand that the assets
19 of the estate can be increased, and that the Liquidator's
20 claims amendment deadline is leaving funds on the table.

21 And that's why as I believe it was Mr. Mullins who
22 talked about the role of the Court to exercise its discretion
23 and oversight of the process and ensure that the interests of
24 those creditors are protected.

25 There was discussion about the 231 million dollar

1 figure, and there was an illustration. Might I encourage the
2 Court to review the affidavit of Mr. Rosen; it starts at CAD
3 hearing 394. He was the chief operating officer of The Home
4 back in 2004, who submitted the affidavit, and he actually
5 talks about how The Home believes that the 231 million dollar
6 amount is significantly understated. So this idea that it was
7 just an illustration, I think, is belied somewhat by the
8 affidavit of Mr. Rosen and his description of it to the Court.

9 And another matter I'd like to address is the 900
10 thousand dollar figure that we saw in the Liquidator's papers
11 and repeated this morning. There's a giant asterisk on that
12 900 thousand dollar number. And that is it's not including
13 reinsurance recoveries received as a result of the Enstar
14 commutation.

15 As I think Mr. Mullins also pointed out, had it been
16 included in that number, it would be a higher number, so that
17 there's notice as well. And those are my comments, and I'll
18 turn it over to, I suppose, Mr. Mullins.

19 THE COURT: Thank you.

20 Attorney Mullins?

21 MR. MULLINS: Thank you, Your Honor. Just a few
22 points.

23 So there is nothing improper about establishing
24 different bar dates. There's nothing per se improper about
25 that, and we cited the statute in that regard in our reply

1 brief, Resolute ser respondent. We did that hearing 686
2 through 688, I'd commend that to the Court.

3 And we cite the statute, we also cite a handbook
4 that was put out by the National Association of Insurance
5 Commissioners in 2018 -- a receivers handbook for insurance
6 company insolvencies. And that handbook talks about staggered
7 bar dates.

8 Now, they're not the norm, but they're available.
9 And in one of the reasons you would establish a staggered bar
10 date is when you have a specific kind of claim, like a claim
11 that generates additional income to the estate, which is
12 specifically what the AFIA Cedent's do here.

13 So the idea that you can't have staggered dates, I
14 think, is just wrong, and it's not supported by the NAIC, and
15 that's in our brief at 686 through 688.

16 As to the point -- I'll echo what Zurich's Counsel
17 said, that I'm not sure, and I don't think the Court can
18 assume that these Class 2 claimants, these policyholders,
19 understand the intricacies of reinsurance arrangements or what
20 is a unique arrangement in the AFIA agreement.

21 I mean, you can see it discussed in the literature
22 and in courses; it was a creative agreement, it was an unusual
23 agreement. It's not one that you would expect the layperson
24 to understand, or policyholders to understand, some
25 reinsurance counsel don't even understand it, to be frank.

1 I don't think the dearth of Class 2 objectors here
2 means much, but if you're going to look at that, the AFIA
3 Cedent's asked to have the claim amendment deadline, you know,
4 held in abeyance as to them or to have their claims accepted
5 from it. Not one -- zero -- Class 2 claimant came forward
6 and said hey, that's not fair.

7 Not one of them said hey, if the deadline applies to
8 us, it's got to apply to everyone -- zero. So if you want to
9 look at how many people didn't object, you know, no one
10 objected to our alternative form of relief.

11 And when the Liquidator says that, you know, if
12 these claims were to come through that CHUBB or CIC might
13 object to them, they didn't object to holding the deadline in
14 advance either. I don't see any objection or anyone here from
15 CHUBB or Century talking; I know they're observing.

16 But they know what we're asking for. They know why
17 we're asking for it, and they didn't come on the record and
18 say they're not going to pay, so I don't know how they could
19 do that.

20 If the Court was to grant our relief, I don't know
21 how they could come back and say well, we sat silent, you
22 know, on the Webex. We sat there and listened to all these
23 arguments, we saw the pleadings, you know, we've had over a
24 year before these things were submitted because of COVID.

25 We didn't file anything or say anything, but now

1 we're going to object. I don't see how they would win that
2 argument, and I don't know why the Liquidator's granting them
3 victory already on an argument they never raised for
4 themselves.

5 As to the New Hampshire Supreme Court, they did say
6 that the AFIA agreement was necessary -- necessary to marshal
7 the reinsurance assets of the estate. The Superior Court
8 found that it was necessary, and the Supreme Court affirmed
9 that. So it's not some ancillary agreement; it was necessary.
10 And it remains necessary.

11 The Liquidator just said in his comments that even
12 if the proposed deadline as to Class 2 claimants is approved
13 today, it will take years to determine those Class 2 claim
14 amounts -- years.

15 So why would you stop collecting your reinsurance
16 assets now if you know you're not going to pay out on those
17 claims for years? Why don't have the reinsurance proceeds
18 come in through the AFIA pool? That's what would happen if
19 our alternative relief is granted.

20 The Class 2 would be shut down, and you can start
21 the years-long process of adjudicating those claims. But in
22 those intervening years, you can increase the pot of money
23 available. So once those claims are determined, you have more
24 money in.

25 Now, whether it's 900 thousand dollars a year, or 2,

1 or 3 million dollars a year, or another commutation comes
2 through and it's 5 or 6 million, it's more money that the
3 claimants otherwise would have had.

4 And the 900 thousand number, I think, is a fraction
5 for the reasons Zurich's Counsel said -- it's just fuzzy math.
6 But even if it was right, what the Liquidator has said is this
7 is our judgment. Trust our judgment that giving out 900
8 thousand dollars a year is worth it to get these claims done.

9 One, that's a false dichotomy; you don't have to
10 give it up, you could shut off the Class 2 claims and continue
11 to collect the reinsurance.

12 Two, if you decide you have to give it up, you can't
13 make that determination. You can't say that what the
14 Liquidator's doing is reasonable unless you know how much it
15 costs, right, to collect that 900 because I submit it's
16 virtually cost-free.

17 The 13 million dollars that they spend to run this
18 estate, you know, virtually none of it goes to the AFIA -- the
19 AFIA Cedent's submit their claims, CHUBB administers them, and
20 then they collect it. This isn't a big overhead cost for the
21 estate.

22 But if you believe that they can give up this money,
23 when their judgment allows them to give it up, the next
24 question is what's it really costing, right? I don't think
25 it's costing them anything to keep this open, so it's

1 essentially free money that they're saying we don't want to
2 collect because it's easier for us to have one cookie-
3 cutter -- one-size-fits-all deadline, and everyone is just
4 shut off.

5 And I don't think that they should stop collecting
6 the reinsurance. And the Supreme Court said something. We
7 talked about the windfall, and we all agree that CHUBB, you
8 know, would have gotten a windfall if the AFIA agreement
9 wasn't entered into.

10 And if it's terminated, they'll get a windfall then
11 too. And what the Supreme Court said is there is no doubt
12 that the ACE companies, as they were known then, they're now
13 CHUBB, would reap a substantial windfall in the absence of the
14 proposed agreement by depriving Home's creditors of the
15 amounts they would have paid but for Home's insolvency. This
16 would frustrate the legislative purpose of obtaining full
17 payment from reinsurers, despite an insurer's insolvency.

18 Now, the Court was talking about entering into the
19 agreement, but I think that applies with equal force to
20 terminating the agreement, which is what the claim amendment
21 deadline would do. It would say no future claims can come
22 through that agreement. That would frustrate the purpose of
23 the legislature to collect the full reinsurance.

24 I think, that's all the points I have. Thank you,
25 Your Honor.

1 THE COURT: Thank you.

2 Attorney Dotseth?

3 MR. DOTSETH: Your Honor, just, again, not wanting
4 to repeat the excellent points already raised by my
5 colleagues, I have virtually nothing except one note of
6 reality to the imagined view advocated by the Liquidator about
7 what the Class 2 claimants position is or is not.

8 I think, Your Honor, has in front of your own court,
9 and in your own, personal experience the answer to why we
10 don't see a whole lot of Class 2 claimants jumping in here and
11 making their claim.

12 As, Your Honor, will recall when Johnson &
13 Johnson -- one of the more significant class claimants out
14 there in the Class 2 -- brought their motion to oppose the
15 claim deadline, they did so late because they weren't aware of
16 what really was going on here, and they weren't aware of the
17 intricacies. They still, I'm not sure, fully understand the
18 AFIA agreement and the impact on the funds available.

19 But frankly, right in front of, Your Honor, you have
20 as clear as day evidence that the Liquidator's imagined view
21 of the Class 2 claimants having full knowledge and really big
22 boy right behind what the Liquidator is doing and wanting to
23 be supportive of their efforts, it's just a fantasy.

24 Ultimately, the question is what else the assets of
25 this estate -- what magnifies it -- and the New Hampshire

1 Supreme Court has already recognized that the AFIA agreement
2 guarantees that the largest single asset of the estate is not
3 lost. We're just asking you to continue that decision by the
4 New Hampshire Supreme Court. Thank you.

5 THE COURT: Thank you.

6 Attorney Leslie, I don't know if you wanted to
7 respond to any of those arguments from other counsel?

8 MR. LESLIE: Just a few, brief comments. Much has
9 been made of the use of the word necessary and the New
10 Hampshire Supreme Court's decision in authorizing and
11 approving the AFIA agreement. That language is simply -- the
12 language exists in the statute describing an administration
13 cost, so at Section 402 C44 subpart 1, and the costs and
14 expenses of the administration including but not limited to
15 the following, the actual and necessary cost of preserving or
16 recovering the assets of the insurer, and it then goes on.

17 So the court was adopting the language that the
18 Liquidator had advocated to support the agreement because our
19 argument was it was necessary to enter into this agreement to
20 incentivize the AFIA Cedent's to submit their claims so we
21 could try to collect the asset.

22 So the court was not making a finding of any kind of
23 necessity as to AFIA Cedent's and the like, it was that's how
24 an administrative expense is determined by the statute.
25 There's no special finding here.

1 As to the issue of the Enstar commutation, again,
2 you know, words like fantasy and the like have been bandying
3 about here, at CAD HRG 724 and 725 the Liquidator reports the
4 actual NODs 2015 through 2019.

5 So first of all, the AFIA notices of
6 determination -- AFIA related claims as determined -- and then
7 the reinsurance collected on those claims, so all of these are
8 cross-referenced to other filings that have been made with the
9 court and are all of record, so they can be -- notice can be
10 taken of them.

11 So for purposes of argument, let's eliminate Enstar,
12 and look at 2016, 2017, and 2019 through 11 months. In none
13 of those months -- in none of those years did the AFIA related
14 notices of determination exceed 3.5 million dollars.

15 They're 2.7 million, 3.3 million, 3.2 million, and
16 through 11 months of 2019, 2 million; that's not fantasy,
17 that's what they are, and it's all cross-referenced to the
18 claims that have been determined and allowed by the court.

19 And so too, on the reinsurance collection side, it's
20 not fantasy; these are real numbers, and they're the real
21 numbers the Liquidator's looking at. The Liquidator is not
22 interested in giving up assets.

23 If the Liquidator believed that it served the
24 interest of Class 2 creditors to continue this, we would be
25 cheerfully doing that. But we look at the reality of the

1 reinsurance collections here. Net of the setoffs that CIC can
2 assert, and in 2016 there was a collection of 441 thousand
3 dollars. In 2019, 1.8 million dollars. In 2018, 1.3 million
4 dollars, and through 11 months of '19, 950 thousand dollars.
5 So that was the actual reinsurance collected, and then it gets
6 split. So I mean, that's the actual reinsurance collected.

7 So these aren't things we're making up. They're the
8 actual numbers, and what we've seen is what we're relying on,
9 okay.

10 Now, I think a very important point -- you know, I
11 mean, we're not just kind of chewing the fat on this subject.
12 I mean, the statutes matter and one of the operating
13 principles behind the AFIA objector's position here is that
14 somehow there can be a different bar date that applies to
15 them -- that the Court has discretion to adopt different bar
16 dates.

17 And the citation that Counsel referred to in their
18 papers related to statutory language and an NAIC guidance that
19 concerned an initial bar date. In other words, equivalent to
20 the June 2004 date, okay, and allowing different dates for
21 different types of claims to be filed, so that was the
22 argument and that's the statute and the commentary on which
23 they rely.

24 There isn't a single liquidation that we're aware of
25 where that's happened. There's nothing of record that shows

1 that, and we pointed that out in our papers, and we encourage
2 the AFIA Cedent's to point to something like that, and they
3 can't -- they didn't because there isn't one. So that is the
4 initial -- arguably the argument -- it's the initial claim
5 deadline.

6 With a final deadline, you are fixing liabilities.
7 The necessity when you fix the liability as of a point in
8 time, you just can't collect reinsurance on certain other
9 claims which aren't being fixed. I mean, it all has to be in
10 balance, otherwise, we're just opening up pandora's box to
11 litigation.

12 So, again, the precedent of every other major
13 property-casualty liquidation in The United States over the
14 last 20 years is one final claim deadline -- one. There's not
15 a single example that the AFIA objectors have pointed to
16 because they can't. There isn't one. It doesn't work. It
17 simply doesn't work.

18 And finally, I think, it's incredibly unfair, I
19 mean, I don't know if there are many people that have done
20 more litigating against Century Indemnity than I and my
21 colleagues here have done. I mean, we have fought them hard.
22 We have had good success.

23 This liquidation has cost them a lot more money than
24 they ever imagined. But I have respect for all my colleagues,
25 whether they're in my firm or my opponents for the moment,

1 okay. I just think it's simply unfair to assert that because
2 CIC did not appear in this case that they are acquiescing.

3 It's no more fair to assert that the holders of
4 Class 2 claims are unsophisticated and are not objecting
5 because they don't know what they're doing.

6 I mean, the motto on Homes letterhead was complex
7 insurance, and they succeeding in doing that. They insured
8 the Fortune 500. We are dealing with the most sophisticated
9 insurance in America.

10 This is not an auto homeowners insurance company.
11 They afforded liability insurance in large amounts for
12 sophisticated insureds who faced significant exposure, and
13 Johnson & Johnson is a great example of that. Billions of
14 dollars of exposure is being faced by the company. They are
15 ably represented by McCarter & English.

16 They know what they're doing, and to assert that
17 they somehow -- and other insureds who have not yet settled
18 with The Home are somehow unaware, I just think that's, you
19 know, that's assuming something that's just not realistic.
20 It's just not realistic.

21 So in our view, and what we think is reasonable, and
22 which is what we think the standard ought to be here is the
23 Liquidator making a reasonable judgment.

24 We are clear-eyed in looking at what we're giving
25 up, and we need to give up those AFIA recoveries in order to

1 have a claim amendment deadline that will withstand scrutiny.

2 So just like every other liquidator of every other
3 major property-casualty insurer in The United States over the
4 last 20 years, we're asking for the same kind of deadline so
5 that we can bring this to closure, so we can pay these people.

6 Your Honor, that's what we have to say. And again,
7 eager to answer any questions that you might have.

8 THE COURT: So I just want to thank Counsel here. I
9 did have questions in the course of all of your presentations
10 you pretty much addressed an understanding of what the issues
11 that I wanted to have addressed in the course of the hearing.

12 I think I -- obviously, I need to spend some further
13 time looking into some of the issues that have been raised,
14 but I'm satisfied.

15 I do -- mindful of the seriousness to everybody, if
16 any of the counsel for the AFIA objectors wants to make any
17 final points, I'll certainly allow that if there's anything
18 further. If not, then we will suspend this hearing and resume
19 at 1:30 for the Maryknoll objectors.

20 But I don't know whether -- I do want to give
21 counsel, either Attorney Steffen and Attorney Mullins,
22 Attorney Dotseth, if there's anything further you want to say.
23 I usually don't give a third round, and I'm not suggesting you
24 have to do that, but if there's any point that somebody wants
25 to make, you know.

1 And obviously, I'll give Attorney Leslie a chance to
2 respond as well.

3 Anything further from Counsel for any of the
4 objectors?

5 MR. STEFFEN: At the risk, Your Honor, of trying
6 everyone's patient's I have one brief response to something
7 that counsel just described.

8 I just want to be sure that the record's clear.
9 Counsel referred you to CAD hearing 724, and there are a few
10 tables on that page of the Liquidators brief.

11 And I don't know if, Your Honor, can see that right
12 now? But I just want to point out a few things. If you can
13 see them --

14 THE COURT: I'm there.

15 MR. STEFFEN: Thank you, Your Honor.

16 In the first table, you see that the 2015 year has a
17 much larger amount. And then, we can see in footnote 9 that's
18 because it includes the commutation for Enstar.

19 And the point I was trying to make, and I just --
20 again, just so the record's clear, is that if the other AFIA
21 Cedent's also could commute, and as I described earlier, I
22 think as it stands right now with the spectra of the claim
23 amendment deadline, CHUBB has very little interest in
24 commuting with any of us. But if we could calculate our
25 future claims and commute, you would also see larger numbers.

1 I mean, that's why 2015 was a bigger number, and
2 that's why, as I was saying, the 900 thousand dollar figure
3 has a giant asterisk by it. Because if the other AFIA
4 Cedent's could commute, you could in rapid order, feed
5 significant amounts and significant reinsurance recoveries. I
6 just want to be sure the record was clear on that, and nothing
7 further from me.

8 THE COURT: Thank you.

9 I don't know, if Attorney Mullins, Attorney Dotseth
10 anything further from either of you?

11 MR. MULLINS: Nothing from me, thank you.

12 MR. DOTSETH: And I certainly am not going to step
13 in now. Nothing further from me. Thank you.

14 THE COURT: Attorney Leslie, did you want to respond
15 to that argument by Attorney Steffen?

16 MR. LESLIE: No, Your Honor.

17 THE COURT: Okay.

18 MR. LESLIE: Thank you very much

19 THE COURT: Great.

20 Thank you all very much. I appreciate everyone's
21 patience going about an hour and a half on all these
22 objections. We will suspend the hearing now. We will resume
23 at 1:30 with the Maryknoll objections. Thank you.

24 MR. LESLIE: Thank you, Your Honor.

25 MS. PASTORI: Thank you, Your Honor.

1 MR. DOTSETH: Thank you, Your Honor.

2 MR. STEFFEN: Thank you, Your Honor.

3 (Recess at 11:32 a.m., recommencing at 1:30 p.m.)

4 THE COURT: We are back on the record in the matter
5 of the liquidation of The Home Insurance Company. This is a
6 continuation of a hearing on the Liquidator's motion for
7 approval of the claim amendment deadline.

8 And, I think, we are now at the point where the only
9 objector who -- further objector who had requested an
10 opportunity to be heard was the Catholic Foreign Mission
11 Society of America Incorporated also known as the Maryknoll
12 Father and Brothers.

13 I believe Attorney Eyerly is going to be arguing on
14 behalf of that entity if I'm correct, if I'm pronouncing his
15 name correctly. So I want to hear from Maryknoll.

16 MR. EYERLY: Thank you, Your Honor. My name is Tred
17 Eyerly, representing Maryknoll. My presentation is very
18 short.

19 Maryknoll has been hit with many, many lawsuits here
20 in Hawaii, and in the last six or eight months, six additional
21 lawsuits. First, alleged sexual abuse in Hawaii.

22 The Home issued a policy to Maryknoll for the period
23 of 1970 to 1973. So many of these cases have been implicated
24 by The Home's policy, and there are two pending in New York
25 that fall within that policy period. And there are currently

1 six in Hawaii.

2 I understand that you know, the liquidation period
3 cannot go on forever, but, you know, we were given an
4 opportunity to object.

5 Our position is we would like it to remain open
6 because we anticipate additional lawsuits, so that's why I'm
7 here. And that's really all I have to offer.

8 I understand the Liquidator's position. It has to
9 end at some point, but Maryknoll paid for this policy, they
10 need help in resolving these lawsuits, and that's why we're
11 objecting. Thank you.

12 THE COURT: Thank you.

13 Attorney Smith?

14 MR. SMITH: Thank you, Your Honor.

15 From the Liquidator's perspective, there's two
16 aspects to this objection. Maryknoll objects on account of a
17 Hawaii statute. The revised previously time-barred sexual
18 abuse claims.

19 The time for filing revived claims under that
20 statute expired on August 24th of this year. So that to the
21 extent that there's an objection based on the existing
22 statute, it's really moot. Any claims that were filed by the
23 time of that revival period ended and null and can be included
24 in a claim amendment deadline filing.

25 Maryknoll also seems to object of the possibility

1 that this statute, you know, might be reopened retroactively
2 by the Hawaii legislature. And we submit that while the
3 possibility that a legislature may take action that might
4 affect tort claims against Home insureds is one, speculative,
5 and two, it if we're to be given any weight it would
6 effectively mean that there can never be a claim amendment
7 deadline because there's always the possibility that the
8 legislature may do something somewhere that would affect
9 potential liability of The Home's insureds.

10 We submit that the claim amendment deadline depends
11 upon the facts and circumstances of a particular liquidation.
12 And for the reasons set forth in our papers and discussed by
13 Mr. Leslie this morning, we think that that time has come.

14 The interest of the Class 2 creditors of the 2.9
15 billion outweighs Maryknoll's speculative concern about
16 potential future legislative changes. Thank you.

17 THE COURT: Thank you.

18 Anything further Attorney Eyerly?

19 I have to unmute myself after saying that to people
20 this morning.

21 Anything further Attorney Eyerly?

22 MR. EYERLY: I would just note quickly, you know, I
23 can't disagree with what, you know, Mr. Smith is saying.

24 I will point out that there were bills pending
25 before the Hawaii legislature in the spring, before the

1 pandemic, to extend the deadline. The legislature disbanded
2 at that point. So you know, it is speculative, but we
3 anticipate the period is going to be reopened. That's all I
4 can say.

5 THE COURT: Okay.

6 MR. EYERLY: Thank you.

7 THE COURT: Thank you.

8 Attorney Smith, I don't know if you want to respond
9 to that?

10 MR. SMITH: No, Your Honor.

11 THE COURT: Okay, thank you.

12 So, again, I will consider this objection along with
13 the other objections that were made earlier today to the
14 motion by the Liquidator.

15 And I think that concludes the hearing on this
16 motion. Thank you all for your patience, and I appreciate the
17 Liquidator suggestion for how we conduct this hearing. I
18 think, all things considered, it gave people who wanted to be
19 heard the opportunity to be heard and did so in an orderly
20 fashion, so I appreciate that very much.

21 And, again, thank you all very much. Have a good
22 weekend.

23 MR. EYERLY: Thank you, Your Honor.

24 MR. DOTSETH: Thank you, Your Honor.

25 MR. LESLIE: Thanks, Your Honor.

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MS. PASTORI: Thank you, Your Honor.
(Proceedings concluded at 1:35 p.m.)



CERTIFICATE

I, Frances Marcu, a court-approved proofreader, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

TRANSCRIPTIONIST(S): Sara Koonce, CDLT-214

FRANCES MARCU, CDLT-136
Proofreader

December 13, 2020

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 TO RECONSIDER THE ORDERS GRANTING THE
LIQUIDATOR'S MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE
WITH REQUEST FOR A HEARING**

Pursuant to Rule 12(e) of the Rules of the Superior Court of the State of New Hampshire, Zurich Insurance plc, German Branch and Württembergische Versicherung AG (the "Objecting Creditors") respectfully submit the following Motion for Reconsideration to the Court's two January 28, 2021 orders (the "Orders") regarding and approving The Liquidator's Motion for Approval of Claim Amendment Deadline (the "Motion"). As set forth below, the Orders are premised on mistakes of law and fact, and on issues that the Court overlooked. The Objecting Creditors request that the Orders be reconsidered and modified as a result.¹ Further, the Objecting Creditors request the Court clarify whether the Orders, as reconsidered, operate as a final decision on the merits for purposes of appeal to the New Hampshire Supreme Court.

I. The Liquidator Does Not Have the Power to Disavow Post-Liquidation Contracts, Such as the Agreements with the Objecting Creditors

The Order regarding the Motion correctly describes that the Objecting Creditors "contend that the proposed Claim Amendment Deadline is contrary to prior agreements reached with the Liquidator as part of the AFIA Scheme." Order at 13.² As detailed at pp. 25-26 of the Objecting Creditors' November 18, 2019 Objection and at p. 3 of the Objecting Creditors' February 27,

¹ Separately, the Objecting Creditors have filed simultaneously a companion motion to stay the Orders with a request for hearing pending reconsideration and appeal, if necessary.

² Unless otherwise noted, all references to the "Order" are to the Order regarding the Motion.

2020 Sur-Reply in Support of Their Objection to the Motion, under the agreements between the Objecting Creditors and the Liquidator on behalf of the Home, the Liquidator committed to investigate, adjust and admit or refute liability for all claims brought by policyholders insured and cedent insurance companies reinsured by the Objecting Creditors. *See* Feb. 27, 2020 Sur-Reply at 3 (internal citations omitted). In exchange for the filing of these claims by the Objecting Creditors (and other AFIA Cedents), the Home benefits from reinsurance recoveries on these claims, which it would otherwise have not received if the AFIA Cedents had never submitted these claims. Per the agreement with AFIA Cedents and the Scheme of Arrangement approved therein, those reinsurance recoveries by the Home are distributed to the Estate's priority creditors, with 50% going to pay Class II policyholder priority creditors of the Home and the remaining 50% to the Objecting Creditors as costs and expenses of administering the Home estate, which are given *Class I priority status*. Ex. 1 to Liquidator's Resp. to AFIA Objections. The New Hampshire Supreme Court stated that the agreement with the AFIA Cedents "benefits the Class II claimants to Home's estate since it 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." *In re: the Liquidation of the Home Insurance Company*, 154 N.H. 472, 490 (2006).

In their objection and sur-reply, the Objecting Creditors explained that the premature imposition of a claim amendment deadline at this time would be fundamentally at odds with the Liquidator's binding contractual agreements. The Liquidator negotiated a deal with the Objecting Creditors that benefitted both parties – and the priority Class II creditors of the Home. The Liquidator represented to this Court and the New Hampshire Supreme Court that \$231 million (including IBNR) of reinsurance assets would be collected if the Courts would approve

the AFIA Agreement. *See id.* at 477. The Objecting Creditors' ability to recover that IBNR was the essential consideration given to them in return for entering into their various agreements.

Furthermore, ¶ 6.3 of the Agrippina/Zurich Settlement Agreement and ¶ 13 of the Württembergische Settlement Agreement (each with the Liquidator) obligate the Home to adjust and respond to claims asserted by policyholders against the Objecting Creditors' policies and "*do all things necessary* to have [Home's] obligations admitted into Home's estate." *See* Objecting Creditor's Nov. 18, 2019 Objection at p. 26 (internal citations omitted) (emphasis added).³ The proposed deadline is directly at odds with this binding obligation of the Home, as it would terminate the Home's obligations and forfeit the flow of reinsurance recoveries the Liquidator previously touted to this Court and the New Hampshire Supreme Court as an enormous benefit to the Home's priority creditors. If IBNR would be cut off now by the Liquidator's proposed deadline, the Objecting Creditors would lose the bargained-for reinsurance coverage from Home and the Home estate would forfeit substantial reinsurance recoveries the Liquidator can use to pay Class II priority creditor claims.

The Court's Order regarding the Liquidator's motion does not address these issues, stating that the Court need not "further address any of the AFIA cedents' claims for breach of contract or any settlement agreements" because the Liquidator has the broad power to "disavow any contracts to which the insurer is a party." Order at 14 (citing RSA 402-C:25, XI). This finding, which was not addressed in the parties' briefs (and is a power never claimed or invoked by the Liquidator) merits reconsideration because it is manifestly incorrect as a matter of law.

³ The Liquidator then contracted with Century Indemnity Company ("CIC") to provide claim handling services. The statement at p. 4 of the Order that AFIA Cedents entered into a Claims Protocol with CIC is incorrect, as only the Home in Liquidation and CIC are parties to the Claims Protocol. *See* Ex. 2 to Liquidator's Dec. 30, 2019 Response to AFIA Cedents' Objections.

A. Other State Courts Have Applied the Same Statutory Language Only to Pre-Liquidation Contracts of the Insurer

While there is no New Hampshire precedent applying RSA 402-C:25, XI,⁴ several other states have the same statutory language in their own insurance receivership acts. Courts in these states have repeatedly defined this broad power only as one that applies to pre-liquidation agreements. None has authorized a liquidator to disavow a contract entered into by a liquidator.

In *Benjamin v. Pipoly*, 800 N.E.2d 50 (Ohio Ct. App. 2003), the Ohio Court of Appeals applied Ohio R.C. 3903.21(A), which, using verbatim language as the New Hampshire statute, states that a liquidator may “enter into such contracts as are necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party.” In that case, the Ohio court wrote that “when a liquidator is appointed by court order, as in the instant case, she is not automatically bound by the *pre-appointment* contractual obligations of the insurer” and that unless the liquidator adopted those agreements, they “may not be enforced against her.” *Id.* at 59 (emphasis added).

In *State ex rel. Wagner v. Kay*, 722 N.W.2d 348 (Neb. Ct. App. 2006), the Nebraska Court of Appeals applied the same statutory language, which also exists in Neb. Rev. Stat. § 44-4821(1)(m). There too, the Court wrote that a liquidator is “not automatically bound by the *preappointment* contractual obligations of the insurer.” *Id.* at 357-58 (emphasis added).

Similarly, in *First Am. Ins. Co. v. Commonwealth Gen. Ins. Co.*, 954 S.W.2d 460 (Mo. Ct. App. 1997), a Missouri liquidator applying § 375.1182.1, R.S. Mo. 1994, which also contains language verbatim to the New Hampshire statute at issue here, argued that Missouri law grants “broad authority to disaffirm *pre-liquidation* agreements.” *Id.* at 469 (emphasis added). Of

⁴ RSA 402-C:25, XI states that, subject to a court’s control, a liquidator may “Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.”

course, as recognized in this Court's Order, the agreements between the Liquidator and the Objecting Creditors were all entered into *post-liquidation*.

B. The Liquidator Has Agreed to Be Bound by the Agreements

As an initial matter, because the agreements are post-liquidation agreements, the Liquidator has committed the Home estate to be bound by them and to fulfill the Home's contractual obligations. Indeed, at the December 11, 2020 oral argument, the Liquidator did not shy away from these obligations, but instead expressly confirmed them, stating that the Liquidator contractually agreed the Home "was responsible for the administration of those claims ... and this was negotiated during the Liquidation. ... And we have confirmed that on multiple occasions ... we do not back away from that." Ex. A, Oral Argument Tr. at 42:8-14.

Moreover, in *Allied Fidelity Ins. Co. v. Continental Illinois Nat'l Bank & Trust Co.*, 677 F. Supp. 562 (N.D. Ill. 1988), a federal court examined an Indiana statute, Ind. Code § 27-9-3-9(b)(11), which also has the same "affirm or disavow" language as the New Hampshire statute. Once again applying the statute in the context of a pre-liquidation agreement, the court held that by signing certifications required under a letter of credit, the Liquidator had "manifested his intention ... to abide by the obligations" imposed. *Id.* at 564. Here, of course, the Liquidator has manifested his intention to abide by the agreements with the Objecting Creditors by *entering into them himself -- and enabling priority creditors to benefit from them.*⁵

⁵ Furthermore, last year, the Iowa Supreme Court refused to allow a liquidator to disavow a pre-liquidation agreement that the counter-party had "already performed." *Ommen v. Ringlee*, 941 N.W.3d 310 (Iowa 2020). Using verbatim language as the New Hampshire statute, the Iowa Liquidation Act allows liquidators to disavow pre-liquidation contracts entered into by an insurer. Iowa Code § 507C.21(1)(k). The Iowa Supreme Court wrote that the liquidator could not disavow a pre-liquidation agreement while "still retaining the ability to assert claims ... pursuant to the same contract." *Ommen*, 941 N.W.3d at 318. Indeed, here, the Liquidator continues to utilize the agreements with AFIA Cedents to collect reinsurance recoveries for the benefit of the Home estate. Per the same logic, it cannot choose to disavow portions of the agreements that it does not like. A federal court applying Vermont's liquidation statute reached the same conclusion, once again in the context of a pre-liquidation agreement. *Costle v. Fremont Indem. Co.*, 839 F. Supp. 265, 272 (D. Vt. 1993) ("[I]f a liquidator seeks to enforce an insolvent company's rights under a contract, she must also suffer that company's contractual liabilities.").

C. Liquidators Cannot Disavow Post-Liquidation Agreements

Bestowing on a liquidator the power to disavow contracts he entered into would create a strong disincentive for service providers, employees, landlords and other entities supporting the liquidator's efforts to enter into an agreement with a liquidator. The Court's oversight of such contract-breaking (Order at 5, 14) would not cure this lack of certainty. No law firm or accounting firm would want to do business for a liquidator. No landlord would feel comfortable leasing space to a liquidator. Employees would not want to sign employment agreements. Thus, it is not in the interest of creditors to grant a liquidator the power to disavow contracts into which he entered. Indeed, the New Hampshire Supreme Court approved the agreement with the AFIA Cedents with the understanding and expectation that the Liquidator would comply. Certainly, the Objecting Creditors had that expectation as well.

For these reasons, the Objecting Creditors respectfully request that the Court reconsider the portion of the Order describing the Liquidator's power to disavow his own contracts and address the Objecting Creditors' arguments that the Motion is at odds with the Liquidator's binding obligations under the agreements, including to administer claims such that the Objecting Creditors could submit them for reimbursement (including the amount with IBNR advised to the New Hampshire Supreme Court), ultimately for the benefit of the Home Estate.

II. The Issue in *Ambassador* Is the Same as Presented Here and Application of the Balancing Test Must Account for the Liquidator's Failure to Estimate IBNR

The second issue meriting reconsideration deals with the application of a balancing test in the Court's assessment of the Motion. The Court declined to apply the test employed by the Vermont Supreme Court in *In re Ambassador*, 114 A.3d 492 (Vt. 2015), erroneously finding that the motions before the Vermont court and this court were at different stages of the two liquidations. Order at 16.

In *Ambassador*, there was a March 1, 1988 deadline for filing claims and proofs of loss. *Id.* at 493. At issue before the Vermont Supreme Court was the liquidator's request, decades later, to set a date for the filing of "final and complete proofs of claim." *Id.* at 496. In the Home Liquidation, there was an initial claim filing deadline of June 13, 2004. Order at 2. The requested effect of the Liquidator's Motion here is to establish a deadline for the "final submission of amendments ... to proofs of claim" Order Approving Claim Amendment Deadline at 1-2, ¶ 3. The Objecting Creditors submit that there is no practical difference between the Motion here and the motion at issue in *Ambassador*.

While the Order at pp. 14-16 asserts that there would be no difference in result even if the *Ambassador* test were applied (and finds that the Liquidator's request strikes a "reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims"), this finding is based on an incomplete presentation by the Liquidator and is thus in error. A reasonable balance must take into account the IBNR that would be forfeited by the Liquidator's requested relief. This includes the IBNR of Class II creditors⁶ as well as the IBNR of the Objecting Creditors and other AFIA Cedents, whose claims are converted into reinsurance recoveries for the benefit of the Home estate. Inexplicably and unfairly, the Liquidator has never provided the Court and the Objecting Creditors with an estimate of IBNR to allow the Court to assess whether there is a "reasonable balance" or whether the *Ambassador* test is met. Without such an estimate, the Court lacked the evidentiary record to conclude that the Liquidator struck a "reasonable balance" between competing estate interests.

The *Ambassador* liquidator provided the Vermont Supreme Court with an IBNR estimate for the court's consideration in applying its balancing test. *In re Ambassador*, 114 A.3d at 494, ¶

⁶ The settlement agreements the Liquidator enters into with claimants routinely provide consideration for any future claims, demonstrating that claimants that have not reached settlement agreements with the Liquidator do have some amount of IBNR that will be foregone by virtue of a premature claim amendment deadline.

7. That has not happened here. Without that information, the Court cannot assess the reasonable balance called for under New Hampshire law or apply the *Ambassador* test. Without that information, the Liquidator has deprived the Court of the ability to assess the reinsurance recoveries that would be sacrificed by virtue of a premature claim amendment deadline, including but not limited to those under the BAFCO agreements and reinsurance unrelated to the AFIA Cedents. *See* Objecting Creditors' Feb. 27, 2020 Sur-Reply at 8, n. 6. And without that information, the Court cannot assess the harm to Class II creditors from a premature claim amendment deadline that cuts off future reinsurance recoveries of the estate. Indeed, given the New Hampshire Supreme Court's edict that the agreement with AFIA cedents "benefits Class II claimants," any balancing exercise must account for that benefit, and that requires the IBNR information the Liquidator has not provided.

By not providing this, the Liquidator has left the Court with no ability to assess alternative outcomes, such as an extended deadline or the setting of a date for the Liquidator to return with more information.⁷ Rather, the Court has been asked to rule on an incomplete record. Simply put, the Liquidator has not met its burden of proof as the moving party. Applying any balancing test under these circumstances is impossible, and thus the Court's conclusion that the Liquidator's balancing of interests was "reasonable" is an error of fact and law.

III. New York's Statute of Limitations for Abuse Claims Has Already Been Extended to August 2021

The third issue meriting reconsideration is the erroneous statement in the Order that the argument made by the Objecting Creditors (*see* p. 9 of Objecting Creditors' Feb. 27, 2020 Sur-

⁷ Further, the fact that the liquidation is in its 17th year is not a sufficient factor, considering the numerous other liquidations in place longer prior to a final claim amendment deadline. *See* Objecting Creditors' Objection at 24. Assets recognized by the New Hampshire Supreme Court remain that will benefit Class II creditors and it is not unreasonable for the estate to continue for a period of time sufficient for the collection of those assets, or at least until the point when it can be determined that they are exceeded by the administrative costs of the estate.

Reply) and the New York Liquidation Bureau regarding the revival of the statute of limitations in New York is merely a “potential change.” Order at p. 17. As detailed in the Objecting Creditors’ Sur-Reply and in the October 27, 2020 submission by the New York Liquidation Bureau to the Court, New York has already extended its revival period to August 14, 2021. *See* Ex. B. Thus, as is the case with other states’ revival laws described in the Objecting Creditors’ sur-reply, the extended date in New York’s statute is not a potential change, but rather one presently in effect. As currently ordered, the claim amendment deadline would take place prior to August 14, 2021 (as well as the expiration of other states’ already revived statutes of limitations, such as California, which extends to January 1, 2023). Thus, the Objecting Creditors respectfully request that the portion of the Order dealing with the uncertainty of these statutory extensions be reconsidered.

IV. The Status of Johnson & Johnson’s Settlement Agreement Is Unclear

The fourth issue meriting reconsideration relates to claimant Johnson & Johnson (“J&J”). As the Court is aware, J&J withdrew its objection to the Motion when it reached a settlement agreement in principle with the Liquidator. On January 28, 2021 (the same day as the Orders at issue here), J&J filed a motion with the Liquidator’s agreement seeking to hold in abeyance any approval of the J&J settlement for 60 days while it awaits direction regarding a specific new coverage action relating to talc claims. Obviously, the Objecting Creditors lack information regarding whether the J&J settlement agreement is imperiled and what effect that may have, if any, on the Motion. The Court, however, may have issued the Orders here under the belief that the J&J settlement agreement was complete and fully effectuated. To the extent that the Orders were written with that mistaken understanding, the Objecting Creditors respectfully request that the Court reconsider its Orders.

CONCLUSION

Wherefore, for the reasons contained herein, the Objecting Creditors respectfully request that the Court reconsider its Orders regarding and approving the Liquidator's Motion for a Claim Amendment Deadline. Further, the Objecting Creditors request that the Court clarify, in its ruling on reconsideration, whether the Orders as reconsidered operate as a final decision for purposes of appeal to the New Hampshire Supreme Court. The Objecting Creditors request oral argument on this motion, and their companion motion for a stay of the Orders pending reconsideration and appeal, if necessary.

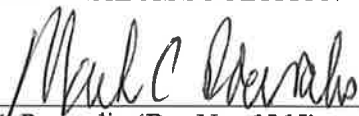
Respectfully submitted,

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Dated: February 11, 2021

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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 Motion to Reconsider the Orders Granting the Liquidator's Motion for Approval of Claim Amendment Deadline and its attached exhibits was sent this 11th day of February 2021 by first class mail, postage prepaid to all persons on the attached service list and via email to those counsel with an asterisk.



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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Exhibit A

Transcript Excerpt from December 11, 2020 Hearing on
Liquidator's Motion to Approve Claim Amendment
Deadline – Page 42

1 and the parties agreed -- Wurttenbergische and Zurich agreed
2 with the liquidator that that interest should be computed on a
3 pooled share basis.

4 So those settlement agreements, which settled the
5 disputes that had been arbitrated -- they are not related to
6 the AFIA agreement, okay -- reached a resolution, and that
7 resolution involved two general things.

8 One, Home agreed that it was responsible for the
9 administration of those claims to (indiscernible), and this
10 was negotiated during the liquidation. This agreement was
11 approved by the Court, and we agreed that those administration
12 costs should be Class 1 costs. And we have confirmed that on
13 multiple occasions to Counsel for Zurich and Wurttenbergische,
14 we do not back away from that.

15 Those administrative obligations are obligations of
16 The Home, they are entitled to Class 1 status, and they need
17 to be addressed within The Home liquidation proceeding and
18 there, you know, there's a good form for that, they will be
19 addressed; that is not a point for the claim amendment
20 deadline.

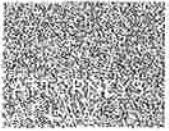
21 The second issue, which is the reinsurance shares,
22 the parties agreed that those liabilities should be addressed
23 on a full-share basis, and that's how they have been
24 addressed.

25 Now, there is a significant difference in the



Exhibit B

New York Liquidation Bureau
Notice of Non-Participation in Hearing and of Extension
of Filing Deadline Under Child Victim Act to August 14,
2021



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October 27, 2020

Catherine J. Ruffle, Clerk
Merrimack County Superior Court
5 Court Street
Concord, NH 03301

RE: In the Matter of the Liquidation of The Home Insurance Company
Docket No. 217-2003-EQ-00106
Our File No. Q09026-65033

Dear Ms. Ruffle:

Enclosed for filing with the court in the above-referenced matter please find The Ancillary's Notice of Intent with respect to the December 11, 2020 video conference hearing. Thank you.

Very truly yours,

/s/ Doreen F. Connor
Doreen F. Connor

DFC/Encl.

cc: John Kelly, Esq.
David Axinn, Esq.
Attached Service List

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

**NOTICE OF NON-PARTICIPATION AT THE DECEMBER 11, 2020 VIDEO
CONFERENCE**

NOW COMES the Special Deputy Superintendent of the New York Liquidation Bureau, and the agent of the New York Superintendent of Financial Services (“New York Superintendent”) in its capacity as the ancillary receiver (“Ancillary Receiver”) of The Home Insurance Company (“The Home”) and respectfully advises the Court that:

1. The Ancillary Receiver will rest on its pleadings and will not participate in the December 11, 2020 video conference.
2. Although the Ancillary Receiver rests on its prior pleadings and is not requesting any additional relief, the Court should be aware that the New York Legislature extended the filing deadline under the Child Victim Act to August 14, 2021, which will be impacted by this Court’s final bar order.

Respectfully Submitted

New York Superintendent of
Financial Services as Ancillary Receiver
of the Home Insurance Company
in Liquidation

By Its Attorneys,

Primmer Piper Eggleston & Cramer, PC

Dated: 10/27/2020

By: /s/ Doreen F. Connor
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was this day forwarded all counsel of record on the enclosed Service List.

/s/ Doreen F. Connor
Doreen F. Connor

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 OBJECTION TO ZURICH'S AND WÜRTTEMBERGISCHE'S
MOTION TO RECONSIDER THE ORDERS GRANTING THE LIQUIDATOR'S
MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE**

Christopher R. Nicolopoulos, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby objects to the motion of Zurich Insurance plc, German Branch and Württembergische Versicherung AG ("Zurich and Württembergische") to reconsider the Order [Granting Liquidator's Motion for Approval of Claim Amendment Deadline] ("Order") and the Order Approving Claim Amendment Deadline, both dated January 28, 2021 and issued under Clerk's Notices dated February 1, 2021 (the "Orders").

I. The Zurich and Württembergische Settlement Agreements and the AFIA Scheme Do Not Support Reconsideration.

The Liquidator has not contended and does not contend that he has the authority to disavow post-liquidation contracts such as the settlement agreements with Zurich and Württembergische. The Court approved those settlements by orders entered February 17, 2005 and March 21, 2006. Those agreements are binding.

However, the Court should conclude that those agreements have no bearing on the Liquidator's motion for approval of the Claim Amendment Deadline, and Zurich's and Württembergische's contract arguments have no merit, and revise the Order accordingly. Contrary to the broad assertions at pages 2-3 of the motion to reconsider, the settlement

agreements do not somehow require that the liquidation be held open for the submission of claims in perpetuity. The settlement agreements (and the Scheme) acknowledge that generally applicable New Hampshire liquidation requirements govern the claims. As the Liquidator noted in his December 30, 2019 and April 30, 2020 filings, they do not address questions of how long claims may be submitted or the liquidation may last. These are matters of public interest to be determined by the Court under the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C (“Act”) [CAD HRG 138, 717-718, 733-734¹].

As an initial matter, Zurich and Württembergische persist in conflating the AFIA Scheme with their individual settlement agreements. However, as explained in the Liquidator’s December 30, 2019 filing, the AFIA Agreement [CAD HRG 740] – implemented by the Scheme [CAD HRG 404] – provided an incentive for AFIA cedents generally to submit Class V reinsurance claims by providing for the cedents to be paid a part of reinsurance recoveries on the claims as an administration cost [see CAD HRG 714-717]. By contrast, the Zurich and Württembergische settlements resolved pre-liquidation disputes with the two particular cedents that were the subject of arbitrations [see CAD HRG 717-718]. The two resulting settlements are separate and distinct from the AFIA Scheme.

The Zurich and Württembergische settlement agreements resolved arbitrations regarding a reinsurance contract known as “Treaty R”. See Zurich and Württembergische Settlements, Whereas Clauses (D), (G) [CAD HRG 257, 258, 343]. The Liquidator’s motions for approval of the settlement agreements (to which Zurich and Württembergische did not object) also make this clear. See Liquidator’s Motion for Approval of Settlement Agreement with Wüstenrot &

¹ These page references are to the binders of filings submitted in connection with the December 11, 2020 videoconference hearing.

Württembergische AG ¶¶ 3, 6 (March 1, 2006); Liquidator’s Motion for Approval of Settlement Agreement with Agrippina ¶¶ 3, 6-7 (January 25, 2005).²

As Zurich and Württembergische acknowledge (Motion to Reconsider at 2), the settlement agreements address Home’s obligations with respect to underlying claims by policyholders against Zurich and Württembergische. See Zurich Settlement, definition of “Policy Liability” [CAD HRG 259]; Württembergische Settlement, definition of “Policy Liability” [CAD HRG 347]. Home had agreed to administer as well as reinsure these underlying claims in “Treaty R”, and the settlement agreements provide specificity both as to the basis for Home’s potential liability (fixed pool share) as reinsurer of such policy claims and as to how Home will administer the underlying claims going forward (that administration being the Class I obligation referred to at argument). See Zurich Settlement ¶¶ 6.3.3, 6.3.1, 6.7 [CAD HRG 261, 262]; Württembergische Settlement ¶¶ 9, 13, 13.9 [CAD HRG 350, 352, 359].

In the settlements, the Liquidator agreed that when underlying policy claims are accepted as obligations of Zurich or Württembergische, then the fixed pool share would also be deemed to be part of Zurich’s or Württembergische’s proof of claim in the New Hampshire liquidation. See Zurich Settlement ¶ 6.3.3 (claims for which Agrippina’s liability has been established “shall automatically be deemed to form part of Agrippina’s Proof of Claim submitted in Home’s estate and shall immediately be capable of determination and admission in and to such estate”) [CAD HRG 261]; Württembergische Settlement ¶ 15.2.2 (periodic quarterly accounts of adjusted and established claims “shall automatically be deemed to form part of Württembergische’s Proof of

² The Court may properly take judicial notice of the motions for approval of the settlements and other filings and orders in this proceeding, see Wellington v. Wellington, 88 N.H. 482 (1937), and rely on them. See In the Matter of Liquidation of Home Ins. Co., 2017 WL 5951591, *3 (N.H. Oct. 27, 2017) (relying on statements in the Liquidator’s unopposed motion for approval of a settlement with the Western Asbestos Settlement Trust). The separate AFIA Agreement was approved on September 22, 2005, and the approval was affirmed in 2006. In the Matter of Liquidation of Home Ins. Co., 154 N.H. 472, 488 (2006) (“Home I”).

Claim submitted in Home's estate and shall immediately be capable of determination and admission in and to such estate.") [CAD HRG 356]. These provisions, however, do not purport to set aside generally applicable limitations governing proofs of claim. They are merely an administratively efficient way of submitting particular underlying claims by including them in proofs of claim as they are accepted and paid by Zurich and Württembergische.³ Those proofs of claim are subject to the limits established in the New Hampshire liquidation proceeding. The settlements do not say anything different.

Zurich's and Württembergische's arguments are unmoored from the actual contract language. The settlement agreements do not contain any provision that purports to displace the rules for admission of claims in the Home liquidation established by the Act and the Court supervising the liquidation. It would be perverse to interpret the parties' silence on these issues as indicating an intent to override otherwise applicable New Hampshire law. Cf. In the Matter of Liquidation of Home Ins. Co., 166 N.H. 84, 92 (2014) ("Home V") ("To interpret the parties' silence on the issue of interest as evidencing an intent that there be none would require us to write into the contract a term that the parties did not include."). That is particularly the case where Zurich and Württembergische are Class V claimants who will not receive any distribution, and they seek to override a Claim Amendment deadline established to protect preferred Class II creditors by advancing distributions to them.

The Scheme similarly leaves the determination of claims against Home to the New Hampshire liquidation process. The Scheme depends upon the claim determinations made in the

³ The language quoted at page 3 of the motion to reconsider does not concern policy liabilities that, when admitted in the Home estate, could generate reinsurance recoveries from CIC. It is found in Zurich Settlement ¶ 6.3.2 and Württembergische Settlement ¶ 15.1 and concerns the Class I administration costs, which are not subject to the Claim Amendment Deadline. In any event, the phrase "do all things necessary to have such obligations admitted into Home's estate" does not override generally applicable liquidation requirements. "All things necessary" is necessarily limited by the requirements of the Act as applied by the Court supervising the liquidation.

Home liquidation (which trigger the CIC reinsurance obligations); it does not control them. The purpose of the Scheme is merely to serve as the vehicle for distribution to Scheme Creditors of the subject CIC reinsurance collections as transferred to the Scheme by the Liquidator. See Scheme Clause 1.4 (“The purpose of the Scheme is to distribute the Scheme Assets to the Scheme Creditors”) [CAD HRG 454]. The Scheme expressly recognizes that claims must be determined under the procedures established in the New Hampshire liquidation, including the 2004 claim filing deadline and the Claims Procedures Order.⁴ See Scheme Clause 2.8 (a claim only becomes established for purposes of the Scheme “when a proof . . . has been first lodged in the New Hampshire Liquidation in accordance with the terms of the Claims Procedures Order and there has been finally and conclusively established in accordance with the Claims Procedures Order . . . a present obligation of the Company to pay an ascertained sum of money”) [CAD HRG 457]; Scheme Explanatory Statement, Sections E.4, F.1-2 (“Pursuant to the terms of the Scheme, a Scheme Creditor is required to have submitted a proof of 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.”) [CAD HRG 427, 432-433]. Indeed, the Scheme’s definition of “liability” expressly excludes claims that are not admissible in the New Hampshire liquidation. See Scheme Clause 1.1 (“such expression does not include any liability which is barred by

⁴ The Claims Procedures Order is “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).” Scheme Clause 1.1 [CAD HRG 447]. That order applies generally to claims made against Home pursuant to the Act, and its purpose is to achieve uniformity and provide procedures for the presentation, processing, determination, and classification of claims against Home. Home V, 166 N.H. at 86-87.

statute or otherwise unenforceable or which would be inadmissible in the New Hampshire Liquidation of the Company”) [CAD HRG 450].

The Scheme thus acknowledges that claims must be determined in the New Hampshire liquidation subject to any applicable liquidation requirements. A requirement that the Liquidator accept AFIA claims in perpetuity would be contrary to the principle that the New Hampshire liquidation governs claims against Home. Not surprisingly, the Scheme contains no such provision.

In sum, the Zurich and Württembergische settlement agreements and the Scheme contemplate the submission of claims subject to generally applicable limitations established in the liquidation. They do not preclude establishing a Claim Amendment Deadline. Neither the settlements nor the Scheme provide that the Liquidator must accept claims and the New Hampshire liquidation remain open forever. Such an extraordinary result would be contrary to the purpose of the Act to provide for the “efficien[t]” and reasonably “expeditious” completion of the liquidation (see RSA 402-C:1, IV(c), RSA 402-C:46, I) and to the interests of the Class II policyholders and claimants that the Act is intended to prefer and protect. See RSA 402-C:44; Home I, 154 N.H. at 488.

II. The Ambassador Decision Is Not Relevant To The Balancing Of Interests.

Zurich and Württembergische note that In re Ambassador Ins. Co., 114 A.3d 492 (2015), involved a request to establish a final claim date similar to the Claim Amendment Deadline here. That is correct, but beside the point. As the Court recognized in its Order, “Home is unable to pay all policyholder claimants in full, and it will be unable to issue final disbursements to policyholder claimants until a claim amendment deadline is approved.” Order at 16. By contrast, in Ambassador, the estate “had already paid all allowed policyholder claims ‘in full, with

interest,' and had an additional \$92 million remaining to address future and lower priority claims." Order at 15 (quoting Ambassador, 114 A.3d at 493-494). The Ambassador estate thus could be held open indefinitely without prejudice to the policyholder creditors, while holding the Home estate open harms the Class II creditors by preventing them from getting paid the full potential distribution.

The Ambassador decision offers no useful guidance here because its balancing of interests did not involve consideration of prejudice to policyholder creditors. As the Court held, the interest of Class II creditors in obtaining final distributions weighs heavily in favor of a Claim Amendment Deadline here. See Order at 7, 15-16. The Liquidator addressed that balance and other aspects of Ambassador in his December 30, 2019 filing [CAD HRG 721-723].

Zurich and Württembergische again contend that their IBNR should be given significant weight in the balancing of interests. However, the Liquidator has previously noted in his April 30, 2020 and December 30, 2019 filings that IBNR is speculative and uncertain, Scheme Creditors – although invited to do so on two occasions by the Scheme Administrators [SEAL CAD HRG 294, 312] – have not provided the information necessary to make any assessment, and the actual annual benefit from AFIA-related reinsurance recoveries to Class II creditors (about \$900,000 per year over the last five years) is a small fraction (less than 10%) of the annual cost of the liquidation [CAD HRG 140-143, 723-726]. Zurich and Württembergische repeatedly refer to the \$231 million number, but the Liquidator has explained why that 2002 estimate (used to illustrate operation of the AFIA Agreement in 2004) does not deserve weight now [CAD HRG 142-143, 725-26]. That illustration number has been supplanted by the lower actual Class V claims submitted by AFIA cedents over the past 16 years. Class II IBNR is speculative for similar reasons, and cannot be estimated with any useful reliability as the

Liquidator explained in his original motion [CAD HRG 4, n. 2]. Claims need to be proven through the claim determination process, and that can only be reasonably accomplished by establishing a Claim Amendment Deadline to require identification and valuation of claims.

The Court properly concluded that the Claim Amendment Deadline strikes a “reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims.” Order at 14 (quoting RSA 402-C:46, I).

III. The Remaining Arguments Do Not Warrant Reconsideration.

Zurich and Württembergische finally make arguments respecting the New York Liquidation Bureau (“NYLB”) and Johnson & Johnson (“J&J”). However, Zurich and Württembergische lack standing to advance arguments based on the interests of others. See Libertarian Party of New Hampshire v. Secretary of State, 158 N.H. 194, 196 (2008); Gill v. Gerrato, 156 N.H. 595, 599 (2007). In any event, these matters do not change the balance of interests supporting the Claim Amendment Deadline.

Zurich and Württembergische point out that the New York Legislature extended the time for filing of “revived” sexual abuse claims from August 14, 2020 to August 14, 2021. See N.Y. Laws 2020, c. 130, § 1. However, the possibility that sexual abuse claims implicating Home policies might be submitted during the extended period is too speculative to warrant delaying a Claim Amendment Deadline and prolonging the Home liquidation. As the Court has noted, such legislative action is always possible, and delaying distributions to Class II creditors across the country on this basis more than 16 years after the initial filing deadline began (and more than 24 years after Home’s last policies expired) is unwarranted. Order at 17. A particular New York statute does not change the balance of interests supporting the Claim Amendment Deadline.

Zurich and Württembergische finally note that Johnson & Johnson (“J&J”) has filed a motion to hold approval of its settlement with the Liquidator in abeyance in light of discussions

with an entity in bankruptcy. Any uncertainty regarding the status of the J&J settlement is not relevant to the Liquidator's motion for a Claim Amendment Deadline. J&J withdrew its objection to the Liquidator's motion without qualification on December 8, 2020. The possibility of some further action respecting a particular policyholder settlement does not affect the balance of interests underlying the Claim Amendment Deadline.

Conclusion

Zurich's and Württembergische's motion to reconsider should be denied. The Liquidator submits that a hearing on the motion is unnecessary.

Respectfully submitted,

CHRISTOPHER R. NICOLOPOULOS, INSURANCE
COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE, AS LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

By his attorneys,

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February 19, 2021

Certificate of Service

I hereby certify that copies of the foregoing Liquidator's Objection to Zurich's and Württembergische's Motion to Reconsider were sent this 19th day of February, 2021, by first class mail, postage prepaid to all persons on the attached service list, and by email to counsel for Zurich and Württembergische and other objectors participating at the hearing.

/s/ Eric A. Smith

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 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’S REPLY IN SUPPORT OF ITS
MOTION TO RECONSIDER THE ORDERS GRANTING THE LIQUIDATOR’S
MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE
WITH REQUEST FOR A HEARING**

Pursuant to Rule 13A of the Rules of the Superior Court of the State of New Hampshire, Zurich Insurance plc, German Branch (“Zurich”) respectfully submits the following Reply in Support of Its Motion to Reconsider the Court’s two January 28, 2021 orders (the “Orders”) regarding and approving The Liquidator’s Motion for Approval of Claim Amendment Deadline (the “Motion”).

As an initial matter, Zurich notes that the Liquidator’s Objection to the Motion to Reconsider (the “Objection”) seeks the denial of the Motion to Reconsider, even though the Liquidator freely admits that several material statements in the Order¹ are contrary to the law or the facts in the record. Of course, the presence of these undisputed errors justifies the reconsideration and re-issuance of the Orders and justifies the need to address all arguments made by Zurich and other AFIA Cedents that the Orders did not address as a result of a misunderstanding of key facts or principles.

I. Because the Liquidator Does Not Have the Power to Disavow Post-Liquidation Contracts, the Court Erred in Disregarding the Liquidator’s Agreements with AFIA Cedents

The Order states that the Court need not “further address any of the AFIA cedents’ claims for breach of contract or any settlement agreements” because the Liquidator has the broad power

¹ Unless otherwise noted, all references to the “Order” are to the order regarding the Motion.

to “disavow any contracts to which the insurer is a party.” Order at 14 (citing RSA 402-C:25, XI). On page 1 of the Objection, the Liquidator agrees with Zurich and Wuerttembergische that he does not have “the authority to disavow post-liquidation contracts” and that agreements with Zurich and Wuerttembergische “are binding” on him. Thus, the Court must consider and address the AFIA Cedents’ arguments about those agreements.

The Liquidator baldly contends that those agreements “have no bearing” on his Motion, and thus, the Orders. Objection at 1. That is not the case. The January 22, 2004 agreement with all AFIA Cedents (Ex. 1 to Liquidator’s Resp. to AFIA Objections) implements the Scheme of Arrangement between The Home and the AFIA Cedents and imposes a binding contractual obligation on the Liquidator to pay the AFIA Cedents 50% of the Liquidator’s reinsurance recoveries (less specified deductions, such as offsets asserted by the reinsurers) for their claims, with the other 50% remaining for use to pay Class II claimants. It was this agreement that the New Hampshire Supreme Court specifically approved, writing that while collection proceedings “will be lengthy, complex, and difficult,” the agreement “benefits the Class II claimants to Home’s estate since it 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.” *In re: the Liquidation of the Home Insurance Company*, 154 N.H. 472, 490 (2006) (noting the \$231 million including IBNR then calculated as “significant”). The implementation of a premature claim amendment deadline would harm Class II creditors (as well as Zurich and other AFIA Cedents) by reducing the estate’s reinsurance recoveries, all of which is contrary to the interests protected by the Supreme Court’s order.

The Scheme of Arrangement established by this agreement expressly authorizes the Liquidator to enter into commutations with The Home’s reinsurers. Ex. E to Zurich’s Objection,

¶ 2.12, at CAD-HRG 459. Unbeknownst to Zurich until recently, however, the Liquidator ended these efforts to collect IBNR amounts that would benefit the Estate’s priority creditors. Ex. A to Zurich’s Objection at ¶¶ 12-13, at CAD-HRG 230. The result is a proposed premature claim amendment deadline that unfairly and unreasonably bestows a windfall on The Home’s reinsurers, to the detriment of both Class II creditors and the AFIA Cedents, including Zurich. The Liquidator should live up to his contractual obligations, maximize reinsurance recoveries, and later propose a claim amendment deadline once that process is complete.

This failure by the Liquidator to commute with The Home’s reinsurers coupled with the request for a premature claim amendment deadline, however, has frustrated the very purpose of the Scheme, which was to allow the Liquidator to collect claims – including IBNR – from The Home’s reinsurers. The Scheme does not terminate until the liabilities of the AFIA Cedents are discharged in full (which would maximize reinsurance recoveries for The Home Estate, for the benefit of Class II creditors) or unless the Scheme Creditors and the Liquidator conclude based upon the facts that the Scheme is no longer in the interests of the Scheme Creditors, of which Zurich is one. Ex. E to Zurich’s Objection at ¶ 7.1.1, at CAD-HRG 482.

In addition to the Liquidator’s agreement with the AFIA Cedents, Zurich and Wuerttembergische have their individual, separate post-liquidation settlement agreements with the Liquidator. These are the agreements that obligate The Home Estate to adjust and respond to claims asserted by policyholders and cedents against Zurich and Wuerttembergische. *See, e.g.*, Ex. A-2 to Zurich’s Objection at ¶ 6.3, at CAD-HRG 261. Specifically, The Home (that is, the Liquidator) is to “***do all things necessary*** to have such obligations admitted into Home’s estate.” *Id.* at ¶ 6.3.2 (emphasis added). Both by failing to provide updated reserves on claims so that they may be commuted with underlying cedents and policyholders of Zurich, and by advocating

the premature claim amendment deadline, the Liquidator has violated these obligations of The Home to Zurich. The Liquidator has failed to take the actions The Home is required to take to have Zurich's obligations admitted into Home's estate; in fact, with regard to Zurich's IBNR, he is actively trying to prevent that from happening.

For these reasons, Zurich respectfully requests that the Court reconsider the portion of the Order describing the Liquidator's power to disavow his own contracts and address the arguments that the Motion is at odds with the Liquidator's binding obligations under the agreements, including to administer claims such that Zurich and other AFIA Cedents may submit them for reimbursement and for the Liquidator to negotiate commutations with The Home's reinsurers of Zurich's claims against the Estate, all ultimately for the benefit of The Home Estate's Class II creditors.

II. The Issue in *Ambassador* Is the Same as Presented Here and the Liquidator Has Failed to Provide the Court with Information Necessary to Conduct a Balancing Test

The Liquidator agrees with Zurich that the deadline at issue in *In re Ambassador Ins. Co.*, 114 A.3d 492 (Vt. 2015) was procedurally the same as that presently before this Court. Thus, the Order should be corrected to remove the erroneous finding that the test employed therein by the Vermont Supreme Court should be ignored because it involved a different kind of deadline.

The Liquidator claims that *Ambassador* is irrelevant (Objection at 6), but once this Court examines the *Ambassador* test, it will find that the *Ambassador* court had information that The Home's Liquidator has declined to provide that is necessary for any balancing of interests. Namely, the Liquidator here has failed to provide the Court with an estimation of the IBNR that will be foregone by implementation of a premature claim amendment deadline. Furthermore, the Liquidator has failed to provide the Court with an estimation of the reinsurance recoveries that

will also be forfeited if his requested deadline is implemented. Without that information, application of two prongs of the *Ambassador* test (consideration of the insolvent company's remaining assets (*i.e.*, reinsurance recoverables) and the nature and amount of its remaining liabilities (*i.e.*, IBNR)) is simply impossible. In *Ambassador*, the liquidator there provided its "professional judgment" about the amount of IBNR so that the Court could take into account the remaining liabilities of the estate. *Id.* at 494, ¶ 7. Indeed, in 2004, The Home's Liquidator did the same thing, providing an affidavit to this Court (and, later, the New Hampshire Supreme Court), that The Home stood to recover \$231 million, **including IBNR**, on AFIA claims. Ex. C to Zurich's Objection at CAD-HRG 395.

Despite the Liquidator's inexplicable failure to provide this Court with current information, there is undoubtedly IBNR that will be cut off if the premature claim amendment deadline is adopted, resulting in claims that will be fully borne by The Home's insureds and reinsureds and foregone reinsurance recoveries on those liabilities of The Home. The proposed Johnson & Johnson ("J&J") settlement demonstrates this, as it provides a release by J&J of the Liquidator of any future claims J&J may have under its policies with The Home. *See* Ex. A to Liquidator's Dec. 3, 2020 Motion for Approval of Settlement Agreement with Johnson & Johnson at p. 5, ¶ 3. That is standard language appearing throughout The Home's settlements, and it demonstrates that IBNR was part of the approved claim of J&J in The Home Estate. For those creditors such as Zurich that have not entered into such settlements with the Liquidator, their IBNR claims will be forfeited by a premature claim amendment deadline and policyholders or reinsureds that faithfully paid premiums to The Home will now bear the full costs of those claims.

Seventeen years after it chose to provide this Court and the New Hampshire Supreme Court with an estimate of IBNR of the AFIA Cedents, the Liquidator does not provide a plausible explanation for his failure to provide this Court now with IBNR information to assist the Court's decision-making process. He contends that the estimation of IBNR is "speculative and uncertain." Yet he used IBNR in 2004 and urged this Court and the New Hampshire Supreme Court to rely on that figure as the primary evidence supporting that petition. Moreover, calculating IBNR is something insurance companies do as a regular function of their business, including in preparing their financial filings with state regulators or settling with insureds. While IBNR is an estimation, it is underpinned by mathematics and actuarial science. The Liquidator is the only entity that can estimate the Estate's IBNR and should not be absolved of that responsibility by the approval of a premature claim amendment deadline.

Rather than provide the Court with this essential information, the Liquidator instead provides a highly selective calculation about AFIA-related reinsurance recoveries that ignores commutation values. Objection at 7. In so doing, the Liquidator disregards the entirety of the Estate's reinsurance recoveries, which at present exceed the Estate's operating costs (even without more AFIA Cedent commutations). *See* Liquidator's 78th Report at CAD-HRG 631. Indeed, the Liquidator's Objection completely ignores the argument made in the Motion to Reconsider that the Liquidator has deprived the Court of the ability to assess all of the reinsurance recoveries that would be sacrificed by virtue of a premature claim amendment deadline, including but not limited to those under the BAFCO agreements and reinsurance *unrelated* to the AFIA Cedents. Motion to Reconsider at 8.

Without an estimate of IBNR and the resulting estimate of the reinsurance recoveries that will be foregone, the Court is simply unable to apply either the *Ambassador* test or, indeed,

any balancing of interests that could inform a decision as to whether this is the time to implement a claim amendment deadline.

III. Statutes of Limitations for Abuse Claims Have Already Been Extended Beyond the Order's Claim Amendment Deadline

With regard to New York's statute of limitations for sexual abuse claims, the Liquidator does not deny that the date identified in the Order is in error. Objection at 8. Thus, the present date of the claim amendment deadline would precede the already-enacted revival period of the New York Child Victims Act and New York insureds of The Home would not be able to process all of their eligible claims in this liquidation. *See* New York Liquidation Bureau's November 15, 2019 Objection and Ex. B to Motion to Reconsider. The same is true in California, where, as mentioned in Zurich's Sur-Reply in support of its original objection and in the Motion to Reconsider, the already-enacted revival period lasts until January 1, 2023. Cal. Code of Civil Proc. § 340.1(q).

The Home's insureds and reinsureds paid for coverage expecting that The Home would respond to claims brought against them. Obviously, the liquidation process means those insureds and reinsureds will not receive payment for the entirety of their claims, but they should at least have the opportunity to seek their proportionate reimbursement for all claims that they are able to file prior to the expiration of statutes of limitations. By seeking to impose a claim amendment deadline that is so premature that even statutes of limitations have not yet expired for claims that state legislatures have determined are deserving of compensation, the Liquidator is simply seeking to bring this Estate to a close too quickly. Thus, the Objecting Creditors respectfully request that the portion of the Order dealing with these statutory extensions be reconsidered in light of these facts.

IV. Johnson & Johnson’s Objection Was Only Withdrawn Based Upon Approval of a Settlement Agreement that It (and the Liquidator) Now Seek to Hold in Abeyance

Finally, there is no dispute that there is a pending motion, to which the Liquidator has assented, to hold approval of the J&J settlement in abeyance. The Liquidator’s Objection claims that “the possibility of some further action respecting a particular policyholder settlement does not affect the balance of interests underlying the Claim Amendment Deadline” and that J&J “withdrew its objection to the Liquidator’s motion without qualification.” Objection at 9.

First, only the Court knows if the mistaken belief that the J&J settlement was complete affected its decision. Second, it is important to note that the J&J settlement originally approved by this Court specifically provided that J&J would withdraw its objection to the claim amendment deadline “upon approval of this Settlement Agreement by the Court.” *See* Ex. A to Liquidator’s Motion for Approval of Settlement Agreement with Johnson & Johnson at pp. 9-10, ¶ 10. The Liquidator should not benefit from the apparent rush to settle with J&J in advance of the hearing on the claim amendment deadline. J&J’s withdrawal of its objection at that time was based on approval of a settlement agreement that it and the Liquidator now seek to hold in abeyance. The Court should reconsider the Orders in light of this new information.

CONCLUSION

Wherefore, for the reasons contained herein, Zurich respectfully requests that the Court reconsider its Orders regarding and approving the Liquidator’s Motion for a Claim Amendment Deadline. Further, Zurich requests that the Court clarify in its ruling on reconsideration whether the Orders as reconsidered operate as a final decision for purposes of appeal to the New Hampshire Supreme Court. Zurich requests oral argument on this motion, and their companion motion for a stay of the Orders pending reconsideration and appeal, if necessary.

Respectfully submitted,

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By its Attorneys,

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Dated: March 4, 2021

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Certificate of Service

I hereby certify that a copy of the foregoing Zurich Insurance plc German Branch's Reply in Support of Its Motion to Reconsider the Orders Granting the Liquidator's Motion for Approval of Claim Amendment Deadline was sent this 4th day of March 2021 by first class mail, postage prepaid to all persons on the attached service list and by email to those with an asterisk by their names.

/s/ Mark C. Rouvalis _____
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THE STATE OF NEW HAMPSHIRE

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SUPERIOR COURT

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

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SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Rehabilitation of
The Home Insurance Company

ORDER OF LIQUIDATION

This proceeding was commenced on March 4, 2003, upon the Verified Petition for Rehabilitation of Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire (the "Commissioner"). The Commissioner filed the Verified Petition for Rehabilitation pursuant to RSA 402-C:15, seeking appointment as receiver of The Home Insurance Company ("The Home") for the purpose of rehabilitating and conserving the assets of The Home. On March 5, 2003, this Court entered an Order Appointing Rehabilitator, in which the Commissioner was appointed Rehabilitator of The Home. The Commissioner, as Rehabilitator, has now determined pursuant to RSA 402-C:19 that further attempts to rehabilitate The Home would be futile, that The Home is insolvent within the meaning of RSA 402-C:3 and RSA 402-C:20, II, and that it should be liquidated. On May 8, 2003, the Commissioner, as Rehabilitator, filed a Verified Petition for Order of Liquidation pursuant to RSA 402-C:5, RSA 402-C:19 and RSA 402-C:20 (the "Petition"), in which she has sought an order of liquidation for The Home, her appointment as Liquidator, and the requested permanent injunctions. After having heard and considered the facts set forth in the Petition, the Court finds that the law and facts are

as the Commissioner has alleged in the Petition and that there exists a present necessity for the entry of this order.

WHEREFORE, it is hereby ordered, adjudged and decreed that:

- (a) The proceeding for the rehabilitation of The Home is hereby terminated pursuant to RSA 402-C:19;
- (b) The Home is declared to be insolvent;
- (c) Sufficient cause exists for an order to liquidate The Home;
- (d) Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, is hereby appointed Liquidator of The Home;
- (e) The Liquidator shall cancel all in-force contracts of insurance and bonds effective as of 30 days after the date of this Order;
- (f) The Liquidator is directed forthwith to take possession of the assets of The Home wherever located and administer them under the orders of the Court. The Liquidator is vested with title to all of the property, contracts and rights of action and all of the books and records of The Home, wherever located, and in whomever's possession they may be found;
- (g) The Liquidator is directed to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, source codes, passwords, or any other recorded information relating to The Home);
- (h) The Liquidator is authorized to transfer, invest, re-invest and otherwise deal with the assets and property of The Home so as to effectuate its liquidation;

(i) The Liquidator is authorized to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable without prior permission of the Court in the ordinary course of business;

(j) The Home and its directors, officers, employees, agents, and representatives are prohibited from proceeding with the business of The Home, except upon the express written authorization of the Liquidator;

(k) The Home and its directors, officers, employees, agents, and representatives, and any persons acting in concert with The Home, are prohibited from disposing, using, transferring or removing any property of The Home, without the express written authorization of the Liquidator, or in any way (i) interfering with the conduct of the Liquidator or (ii) interfering with the Liquidator's possession and rights to the assets and property of The Home;

(l) Any bank, savings and loan association or other financial institution or other legal entity is prohibited from disposing of or allowing to be withdrawn in any manner property or assets of The Home, except under the express written authorization of the Liquidator or by further order of this Court.

(m) All actions and all proceedings against The Home whether in this state or elsewhere shall be abated in accordance with RSA 402-C:28 and RSA 402-C:5, except to the extent the Liquidator sees fit and obtains leave to intervene;

(n) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all persons are hereby permanently enjoined and restrained from any of the following actions:

(1) commencing or continuing any judicial, administrative, or other action or proceeding against The Home or the Liquidator;

(2) commencing or continuing any judicial, administrative, or other action or proceeding against The Home's, the Rehabilitator's or the Liquidator's present or former directors, officers, employees, agents, representatives, or consultants, including, without limitation, Risk Enterprise Management Limited and each of its officers, directors and employees, arising from their actions on behalf of The Home, the Rehabilitator or the Liquidator;

(3) enforcing any judgment against The Home or its property;

(4) any act to obtain possession of property of The Home or to exercise control over property of The Home;

(5) any act to create, perfect, or enforce any lien against property of The Home;

(6) any act to collect, assess, or recover a claim against The Home, other than the filing of a proof of claim with the Liquidator; and

(7) the setoff of any debt owing to The Home; provided, however, that notwithstanding anything in this Order to the contrary, nothing herein is intended nor shall it be deemed to stay any right of setoff of mutual debts or mutual credits by reinsurers as provided in and in accordance with RSA 402-C:34;

(o) The Court hereby seeks and requests the aid and recognition of any Court or administrative body in any State or Territory of the United States and any Federal Court or administrative body of the United States, any Court or administrative body in any Province or Territory of Canada and any Canadian Federal Court or

administrative body, and any Court or administrative body in the United Kingdom or elsewhere to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

(p) All persons doing business with The Home on the date of the Liquidation Order are permanently enjoined and restrained from terminating or attempting to terminate such relationship for cause under contractual provisions on the basis of the filing of the petition to rehabilitate The Home, The Home's assent to the entry of the Rehabilitation Order, the entry of the Rehabilitation Order, the filing of this Petition, the entry of the Liquidation Order, the rehabilitation or liquidation proceedings for The Home, or The Home's financial condition during the rehabilitation or liquidation proceedings;

(q) All persons in custody or possession of any property of The Home are hereby directed and ordered to turn over any such property to the Liquidator;

(r) The Liquidator is authorized, in her discretion, to pay expenses incurred in the course of liquidating The Home, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home, wherever located, and the costs of goods and services provided to The Home estate in this and other jurisdictions. Such costs shall include, but not be limited to: (1) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the Department, the Commissioner or the Liquidator to perform services relating to the liquidation of The Home or the feasibility, preparation, implementation, or operation of a liquidation plan; (2) compensation and other costs related to representatives, employees or agents of The Home or its affiliates who perform services for The Home in liquidation;

and (3) the costs and expenses of and a reasonable allocation of costs and expenses associated with time spent by New Hampshire Insurance Department personnel and New Hampshire Department of Justice personnel in connection with the rehabilitation and the liquidation of The Home;

(s) The Liquidator is authorized to employ or continue to employ, to delegate authority to and fix the compensation of such appropriate personnel, including actuaries, accountants, consultants, special counsel, and counsel in this and other jurisdictions, as she deems necessary to carry out the liquidation of The Home and its worldwide operations, subject to compliance with the provisions of RSA 402-C, the supervision of the Liquidator, and of this Court. The Liquidator is authorized to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, subject to court approval;

(t) The Liquidator is authorized to appoint, and determine the compensation and terms of engagement of, a special deputy to act for her pursuant to RSA 402-C:25, I.

(u) The actual, reasonable and necessary costs of preserving, recovering, distributing or otherwise dealing with the assets of The Home, wherever located, and the costs of goods or services provided to The Home estate under paragraph (i) of the Rehabilitation Order, during the Rehabilitation proceeding, and under paragraphs (r)-(t) and (v) of the Liquidation Order, during the Liquidation proceeding, shall be treated as "costs and expenses of administration," pursuant to RSA 402-C:44, I;

(v) The Liquidator is authorized and directed to work with any joint provisional liquidator or other person of comparable position appointed by a foreign

tribunal with respect to all or any portion of the estate of The Home located outside the United States (the "foreign estates") for the purpose of preserving, recovering and incorporating into the domiciliary estate all assets of The Home located outside the United States. The Liquidator is authorized to fund from the domiciliary estate the costs and expenses of administering the foreign estates;

(w) The Liquidator is directed to administer and make payments on all claims against The Home estate filed with the Liquidator in the domiciliary proceeding, including the claims of claimants residing in foreign countries (provided the assets of such foreign estate are transferred to the Liquidator), in accordance with New Hampshire's priority statute, RSA 402-C:44;

(x) The amounts recoverable by the Liquidator from any reinsurer of The Home shall not be reduced as a result of the prior rehabilitation proceeding or this liquidation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Liquidator may, in her discretion, commute any contract with a reinsurer or reinsurers;

(y) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all actions or proceedings against an insured of The Home in which The Home has an obligation to defend the insured are hereby stayed for a period of six months from the date of the Order and such additional time as the Court may determine pursuant to RSA 404-B:18;

(z) Within one year of the entry of this Order, and then annually thereafter, the Liquidator shall file with the Court a financial report, as of the preceding December 31, in accordance with RSA 402-C:21, V, which shall include, at a minimum, the assets and liabilities of The Home and all funds received or disbursed by the Liquidator during the period;

(aa) The Liquidator shall have full powers and authority given the Liquidator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Liquidator under RSA 402-C of Title XXXVII, and under the Order, specifically including, but not limited to, each and every power and authority bestowed upon the Liquidator under RSA 402-C:25, I-XXII, the provisions of which are incorporated by reference in their entirety into this Order, and the common law of New Hampshire; and

(bb) The deadline for the filing of claims pursuant to RSA 402-C:26, II, RSA 402-C:37, I, and RSA 402-C:40, II, shall be one year from the date of this Order.

Date: 6/13/03
Time: _____

By: 
Presiding Justice

TITLE XXXVII INSURANCE

CHAPTER 402-C INSURERS REHABILITATION AND LIQUIDATION

Section 402-C:1

402-C:1 Title, Construction and Purpose. –

- I. Short Title. This chapter may be cited as the "Insurers Rehabilitation and Liquidation Act."
- II. Construction: No Limitation of Powers. This chapter shall not be interpreted to limit the powers granted the commissioner by other provisions of the law.
- III. Liberal Construction. This chapter shall be liberally construed to effect the purpose stated in paragraph IV.
- IV. Purpose. The purpose of this chapter is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors, through:
 - (a) Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures, neither unduly harsh nor subject to the kind of publicity that would needlessly damage or destroy the insurer;
 - (b) Improved methods for rehabilitating insurers, by enlisting the advice and management expertise of the insurance industry;
 - (c) Enhanced efficiency and economy of liquidation, through clarification and specification of the law, to minimize legal uncertainty and litigation;
 - (d) Equitable apportionment of any unavoidable loss;
 - (e) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extension of the scope of personal jurisdiction over debtors of the insurer outside this state; and
 - (f) Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

Source. 1969, 272:1, eff. June 23, 1969.

TITLE XXXVII INSURANCE

CHAPTER 402-C INSURERS REHABILITATION AND LIQUIDATION

Formal Proceedings

Section 402-C:25

402-C:25 Powers of Liquidator. –

The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. Subject to the court's control, he may:

I. Appoint a special deputy to act for him under this chapter, and determine his compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

II. Appoint or engage employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and other personnel he deems necessary to assist in the liquidation. RSA 98 shall not apply to such persons.

III. Fix the compensation of persons under paragraph II, subject to the control of the court.

IV. Defray all expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the liquidator may advance the costs so incurred out of any available appropriation. Any amounts so paid shall be deemed expense of administration and shall be repaid for the credit of the insurance department out of the first available moneys of the insurer.

V. Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath and compel any person to subscribe to his testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents which he deems relevant to the inquiry.

VI. Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts; do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including sell, compound, compromise or assign for purposes of collection, upon such terms and conditions as he deems best, any bad or doubtful debts; and pursue any creditor's remedies available to enforce his claims.

VII. Conduct public and private sales of the property of the insurer in a manner prescribed by the court.

VIII. Use assets of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under RSA 402-C:44.

IX. Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable, except that no transaction involving property the market value of which exceeds \$10,000 shall be concluded without express permission of the court. He also may execute, acknowledge and deliver any deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation. In cases where real property sold by the liquidator is located other than in the county where the liquidation is pending, the liquidator shall cause to be filed with the register of deeds for the county in which the property is located a certified copy of the order appointing him.

X. Borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

XI. Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.

XII. Continue to prosecute and institute in the name of the insurer or in his own name any suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he deems unprofitable to pursue further. If the insurer is dissolved under RSA 402-C:23, he may apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff.

XIII. Prosecute any action which may exist in behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person.

XIV. Remove any records and property of the insurer to the offices of the commissioner or to such other place as is

convenient for the purposes of efficient and orderly execution of the liquidation.

XV. Deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions.

XVI. File any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located.

XVII. Assert all legal and equitable defenses available to the insurer as against third persons. A waiver of any defense by the insurer after a petition for liquidation has been filed shall not bind the liquidator.

XVIII. Exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member, including any power to avoid any transfer or lien that may be given by law and that is not included within RSA 402-C:30-32.

XIX. Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

XX. Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states.

XXI. Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this chapter.

XXII. The enumeration in this section of the powers and authority of the liquidator is not a limitation upon him, nor does it exclude his right to do such other acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

Source. 1969, 272:1, eff. June 23, 1969.

**TITLE XXXVII
INSURANCE
CHAPTER 402-C
INSURERS REHABILITATION AND LIQUIDATION**

Formal Proceedings

Section 402-C:26

402-C:26 Notice to Creditors and Others. –

I. Notice Required.

(a) General Requirements. The liquidator shall give notice of the liquidation order as soon as possible by first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is licensed to do business, by first class mail within this state and by airmail outside this state to all insurance agents having a duty under RSA 402-C:27, and by first class mail within this state and by airmail outside this state at the last known address to all persons known or reasonably expected to have claims against the insurer, including all policyholders. He also shall publish notice in a newspaper of general statewide circulation or in Merrimack county, the last publication to be not less than 3 months before the earliest deadline specified in the notice under paragraph III.

(b) Special Requirements. Notice to agents shall inform them of their duties under RSA 402-C:27 and inform them what information they must communicate to insureds. Notice to policyholders shall include notice of impairment and termination of coverage under RSA 402-C:22. When it is applicable, notice to policyholders shall include 1) notice of withdrawal of the insurer from the defense of any case in which the insured is interested and 2) notice of the right to file a claim under RSA 402-C:40.

(c) Reports and Further Notice. Within 15 days of the date of entry of the order, the liquidator shall report to the court what notice has been given. The court may order such additional notice as it deems appropriate.

II. Notice Respecting Claims Filing. Notice to potential claimants under paragraph I shall require claimants to file with the liquidator their claims together with proper proofs thereof under RSA 402-C:38 on or before a date the liquidator specifies in the notice, which shall be no less than 6 months nor more than one year after entry of the order, except that the liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. The liquidator may specify different dates for the filing of different kinds of claims.

III. Notice Conclusive. If notice is given in accordance with this section, the distribution of the assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice.

Source. 1969, 272:1. 1975, 348:16, eff. Aug. 6, 1975.

TITLE XXXVII INSURANCE

CHAPTER 402-C INSURERS REHABILITATION AND LIQUIDATION

Formal Proceedings

Section 402-C:37

402-C:37 Filing of Claims. –

I. **Deadline for Filing.** Proof of all claims must be filed with the liquidator in the form required by RSA 402-C:38 on or before the last day for filing specified in the notice required under RSA 402-C:26, except that proof of preferred ownership claims and proprietary claims under RSA 402-C:44 need not be filed at all, and proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

II. **Excused Late Filings.** For a good cause shown, the liquidator shall recommend and the court shall permit a claimant making a late filing to share in dividends, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation. Good cause includes but is not limited to the following:

(a) That existence of a claim was not known to the claimant and that he filed within 30 days after he learned of it;

(b) That a claim for cash surrender values or other investment values in life insurance or annuities which was not required to be filed was omitted from the liquidator's recommendations to the court under RSA 402-C:45, and that it was filed within 30 days after the claimant learned of the omission;

(c) That a transfer to creditor was avoided under RSA 402-C:30-32 or was voluntarily surrendered under RSA 402-C:33, and that the filing satisfies the conditions of RSA 402-C:33;

(d) That valuation under RSA 402-C:43 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation; and

(e) That a claim was contingent and became absolute, and was filed within 30 days after it became absolute.

III. **Unexcused Late Filings.** The liquidator may consider any claim filed late which is not covered by paragraph II, and permit it to receive dividends, other than the first dividend, which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is then being paid to other claimants of the same priority plus the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

Source. 1969, 272:1. 1975, 348:12, 13, eff. Aug. 6, 1975.

TITLE XXXVII INSURANCE

CHAPTER 402-C INSURERS REHABILITATION AND LIQUIDATION

Formal Proceedings

Section 402-C:44

402-C:44 Order of Distribution. –

The order of distribution of claims from the insurer's estate shall be as stated in this section. The first \$50 of the amount allowed on each claim in the classes under paragraphs II, V, and VI except claims of the guaranty associations as defined in RSA 404-B, 404-H, 404-D, and 408-B shall be deducted from the claim. Claims may not be cumulated by assignment to avoid application of the \$50 deductible provision. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class.

I. Administration Costs. The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

II. Policy Related Claims. All claims by policyholders, including claims for unearned premiums in excess of \$50, beneficiaries, and insureds 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, and liability claims against insureds which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company and claims of the New Hampshire Insurance Guaranty Association, the New Hampshire Life and Health Insurance Guaranty Association and any similar organization in another state. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds or investment values, shall be treated as loss claims. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employee shall be treated as a gratuity.

III. Claims of the Federal Government.

IV. Wages.

(a) Debts due to employees for services performed, not to exceed \$1,000 to each employee which have been earned within one year before the filing of the petition for liquidation. Officers shall not be entitled to the benefit of this priority.

(b) Such priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employees.

V. Residual Classification. All other claims including claims of any state or local government, not falling within other classes under this section. Claims, including those of any non-federal governmental body, for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under paragraph VIII.

VI. Judgments. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he deems appropriate. The claim as allowed shall receive the priority it would receive in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

VII. Interest on Claims Already Paid. Interest at the legal rate compounded annually on all claims in the classes under paragraphs I through VI from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the approval of the court, may make reasonable classifications of claims for purposes of computing interest, may make approximate computations and may ignore certain classifications and time periods as de minimis.

VIII. Miscellaneous Subordinated Claims. The remaining claims or portions of claims not already paid, with interest, as in paragraph VII:

- (a) Claims under RSA 402-C:39, II;
 - (b) Claims subordinated by RSA 402-C:61;
 - (c) Claims filed late;
 - (d) Portions of claims subordinated under paragraph V;
 - (e) Claims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.
- IX. Preferred Ownership Claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in paragraphs VII and VIII.
- X. Proprietary Claims. The claims of shareholders or other owners.

Source. 1969, 272:1. 1975, 348:14. 1977, 499:1. 1998, 99:1. 2005, 248:5, eff. Sept. 12, 2005.

TITLE XXXVII INSURANCE

CHAPTER 402-C INSURERS REHABILITATION AND LIQUIDATION

Formal Proceedings

Section 402-C:46

402-C:46 Distribution of Assets. –

I. Payments to Creditors. Under the direction of the court, the liquidator shall pay dividends in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

II. Excess Assets.

(a) Upon liquidation of a domestic mutual insurance company, any assets held in excess of its liabilities and the amounts which may be paid to its members as provided under subparagraph (b) shall be paid into the state treasury for the credit of the insurance department.

(b) The maximum amount payable upon liquidation to any member for and on account of his membership in a domestic mutual insurance company, in addition to the insurance benefits promised in the policy, shall be the total of all premium payments made by the member with interest at the legal rate compounded annually.

Source. 1969, 272:1, eff. June 23, 1969.

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 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"), hereby moves that the Court enter an order establishing a final deadline for the amendment or submission of claims in the Home liquidation proceeding (the "Claim Amendment Deadline") at the date 150 days after the Court's order. The Claim Amendment Deadline will apply to all claims except administration costs and federal government claims. It will promote the final determination of claims against Home and advance the closure of this proceeding by requiring that claimants specifically identify and describe claims so that the Liquidator can determine them. Unidentified and potential claims will be barred. A proposed form of order is submitted herewith. The Liquidator has filed a separate motion for order of notice. As reasons for this motion, the Liquidator states as follows:

Introduction

In the Order of Liquidation entered June 13, 2003, the Court declared Home insolvent and appointed the Insurance Commissioner as Liquidator to liquidate the company pursuant to the Insurers Rehabilitation and Liquidation Act, RSA 402-C (the "Act"). The Order of Liquidation established the deadline for filing of claims as June 13, 2004 (the "Claim Filing Deadline"). Order of Liquidation ¶ (bb). The Court also issued an Order Approving Notice on June 11, 2003 approving notice of the Order of Liquidation and the Claim Filing Deadline.

The Liquidator's principal goals in this liquidation are to determine claims and collect assets for the ultimate purpose of distributing Home's assets to its creditors, in particular the creditors with claims under policies of insurance issued by Home that are granted Class II priority by the Act. As of May 31, 2019, the Liquidator has determined and the Court has allowed Class II claims totaling approximately \$2.705 billion, and the Liquidator has made interim distributions totaling 30% on allowed Class II claims.

The Liquidator has concluded that to move this proceeding to closure and protect the interests of creditors with allowed Class II claims (those who will receive distributions) it is now necessary to establish a deadline by which claimants must finally amend their claims in order to provide the Liquidator with the specificity required for determination of claims. While it may be possible to make additional interim distributions, the final distribution of assets can only be made after all Class II claims have been determined. The Liquidator has made substantial progress in determining Class II claims, but it will be difficult to make significant additional progress without a final deadline for claimants to amend claims or submit any new claims and barring claims that are not identified and presented.

This motion accordingly requests the establishment of the Claim Amendment Deadline. This will not change the original Claim Filing Deadline of June 13, 2004. The Liquidator gave the statutorily required notice of the liquidation and the Claim Filing Deadline to potential claimants in 2003, and that broad notice is conclusive. See RSA 402-C:26, III ("If notice is given in accordance with this section, the distribution of the assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice."); Order Approving Notice ¶ 10 ("Notice provided in accordance with this Order shall be deemed to satisfy the requirements of RSA 402-C:26."). The Claim Amendment Deadline is a means to

bring the claim determination process, in particular the remaining open proofs of claim, to a close so that a final distribution may be made. While the deadline applies to any new proofs of claim so that all claims will be subject to the same limits, it is not a general call for claims, which was already made in 2003.

Background Regarding Home and the Liquidation

Home is a New Hampshire-domiciled insurance company incorporated in 1973, although its predecessor corporations were established as long ago as 1853. Home had a number of insurer subsidiaries, most of which were merged into Home as part of its reorganization in 1995.¹ Home and its subsidiaries wrote insurance and reinsurance in almost all states and territories of the United States, as well as in Canada, Bermuda, Hong Kong, and the United Kingdom, where Home's unincorporated branch operation wrote business as a member of the American Foreign Insurance Association. Home and its subsidiaries generally stopped writing personal lines business in the early 1990's, and they stopped writing all business, including commercial lines (subject to certain personal lines mandatory renewal requirements in a few states), in 1995. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Claim Amendment Deadline ("Bengelsdorf Aff.") ¶ 3.

Claims. A total of 20,785 proofs of claim have been filed as of May 31, 2019. As described in the Liquidator's reports, the Liquidator has been reviewing and determining claims throughout the liquidation. The Liquidator has filed numerous reports of claims and recommendations and motions for approval of policyholder settlements with the Court since 2004. As of May 31, 2019, the Court has approved claim recommendations, including

¹ A reinsurer subsidiary, US International Reinsurance Company ("USI Re"), was the subject of a separate liquidation proceeding in this Court, Docket No. 03-E-0112. After a claim amendment deadline of December 31, 2008, the USI Re liquidation proceeding was concluded on December 3, 2013.

settlements, resolving a total of 19,695 proofs of claim with a total allowed amount of approximately \$3.08 billion for all priority classes. Bengelsdorf Aff. ¶ 5.

This motion focuses on the policy-related claims assigned Class II priority by RSA 402-C:44, II, although the Claim Amendment Deadline is to apply to all claims except administration costs and federal claims. The Liquidator concluded early in the liquidation that there would not be sufficient assets to make any distribution to priority classes below Class II. See In the Matter of Liquidation of Home Ins. Co., 154 N.H. 472, 477 (2006). The total amount of Home's Class II liabilities can be determined only by resolving all Class II claims, and the final distribution percentage to Class II creditors cannot be calculated and the distribution made until all claims have been determined. See Gonya v. Comm'r, N.H. Ins. Dept., 153 N.H. 521, 535 (2006) (“[N]o reasonable prediction of recovery can be made until the Commissioner knows the final cost of the administration of the liquidation as well as the size of every claim filed in the liquidation.”).² Bengelsdorf Aff. ¶ 6.

The remaining 1,090 open proofs of claim include 887 proofs of claim that involve Class II policy-related claims.³ As of May 31, 2019, the Liquidator has recommended and the Court has approved Class II determinations or settlements resolving 17,370 proofs of claim with

² The Liquidator engaged the actuarial consulting firm Milliman, Inc., to provide an estimate of Home's ultimate unpaid Class II obligations in connection with the first two interim distributions, leading to an undiscounted actuarial central estimate of \$4.034 billion as of December 31, 2014. Executive Summary of Milliman's Roll-Forward Analysis of Unpaid Loss and ALAE as of June 13, 2003 and December 31, 2014, Summary by Class at 2 (attached as Exhibit F to the Liquidator's Fifty-Seventh Report (June 24, 2015)). This actuarial central estimate “should be interpreted as an estimate of the expected value over [a] range of reasonably possible outcomes.” Executive Summary at 4. See id. at 8 (“the average of a wide range of possible outcomes”). Milliman noted that “[t]he uncertainty in our estimates is greater than it otherwise would be due to the liquidation of Home and the resulting involvement of state GAs and insureds, including their agents, in the process of handling and determining claims. Because Home is in liquidation, its historical loss experience as well as the experience since Home entered liquidation is less predictive of future claim activity, both with respect to the timing of claim reporting and payment, and with respect to the size of the payments that will ultimately be made.” Id. at 8. Because of such factors, the uncertainties in reserve estimates, and the shrinking number of open claims (which will be determined through the liquidation process), the Liquidator has not engaged Milliman to perform another analysis.

³ This does not include proofs of claim where the determination provided that the claimant could submit further claims.

a total allowed amount of approximately \$2.705 billion. These resolved Class II proofs of claim represent 95% of the 18,257 Class II proofs of claim. The 887 remaining open Class II proofs of claim generally involve policyholder or guaranty association claims. Bengelsdorf Aff. ¶ 7.

As of May 31, 2019, there are 237 policyholders/insureds with open Class II proofs of claim (representing a total of 828 Class II proofs of claim).⁴ Of these remaining policyholder accounts, 131 involve non-workers compensation claims and 106 involve only workers compensation claims. In most instances, the 131 non-workers compensation accounts involve long-tail claims such as asbestos, lead, talcum powder, environmental or other mass tort claims that depend upon complex underlying facts or lawsuits and emerge over time, if at all. Such claims may not implicate Home coverage – which is often high level excess coverage – for many years, if ever. In certain instances, the underlying claims are being fully paid by solvent insurers. These insureds whose proofs of claim remain open generally are not willing to voluntarily resolve their proofs of claim. Bengelsdorf Aff. ¶ 8.

There are also 59 open Class II proofs of claim filed by insurance guaranty associations for claims against Home insureds or Home that are being handled as “covered claims” by the associations in accordance with their respective statutes. See, e.g., RSA 404-B (the New Hampshire Insurance Guaranty Association Act). Subject to statutory limitations, insurance guaranty associations handle and, where appropriate, pay claims under Home policies and in turn have a claim against the Home estate. E.g., RSA 404-B:11. The guaranty associations are currently handling approximately 2,063 open claims under Home policies. Guaranty association

⁴ This tally counts all entities within the coverage of a policy, including the named insured and its successors, as one policyholder/insured if they filed a consolidated proof of claim or proofs of claim. Where the insured, additional named insureds, and/or their successors filed separate proofs of claim, the entities are counted separately.

payments under Home policies are accorded Class II priority – the same priority to which the claimants would have been entitled absent the guaranty association. Id.⁵ Bengelsdorf Aff. ¶ 9.

As of May 31, 2019, there are also approximately 304 proofs of claim that have been issued determinations as to Class V priority only, deferring determination as to amount, since there will not be assets sufficient to make any distribution to claims below Class II priority. Bengelsdorf Aff. ¶ 10.

Assets and distributions. The Liquidator has been collecting assets, in particular reinsurance. As a result of these efforts, the Liquidator has approximately \$808.4 million in cash and invested assets under his control as of May 31, 2019. Additional assets have already been collected and distributed as early access distributions to guaranty associations or as interim distributions as described below. Bengelsdorf Aff. ¶ 11.

With Court approval, the Liquidator has made eleven Class II early access distributions to insurance guaranty associations pursuant to RSA 402-C:29, III totaling total \$256.1 million as of May 31, 2019. In addition, certain states have taken control of special deposits that with interest now total approximately \$55.7 million which the Liquidator is setting off against claims of guaranty associations in those states. Bengelsdorf Aff. ¶ 12.

With Court approval, the Liquidator made three interim distributions totaling 30% on allowed Class II claims: an initial interim distribution of 15% in 2014, a second distribution of 10% in 2016, and a third distribution of 5% in 2019.⁶ In accordance with the approval orders,

⁵ Guaranty associations' claims include defense expenses incurred under Home policies. The Liquidator initially assigned such claims to Class II priority, while guaranty associations contended they were entitled to Class I priority. Pursuant to a Settlement Agreement approved by the Court on July 15, 2013, 90% of guaranty association defense expense claims are assigned to Class II and 10% to Class I.

⁶ The orders approving the three interim distributions each provided that the distribution was subject to receipt of a waiver of federal priority claims from the United States. The Liquidator obtained waivers from the United States Department of Justice ("US DOJ") for the first two distributions and entered the Release Agreement with the US DOJ approved by the Court on March 26, 2019, to address the third distribution and future distributions.

newly allowed Class II claims receive the 30% interim distribution percentage following the next July 1 or December 31. As of May 31, 2019, a total of \$620.1 million in interim distributions has been paid to non-guaranty association Class II creditors. Bengelsdorf Aff. ¶ 13.

Adding the \$808.4 million in estate assets, the \$256.1 million of early access distributions to guaranty associations, the \$620.1 million in interim distributions to non-guaranty association claimants, and the \$55.7 million in deposits, a total of approximately \$1.74 billion in assets is either available for distribution or has been distributed to Class II claimants. The collection of Home's assets is mostly complete except for reinsurance recoveries on claims that have not yet been determined. Bengelsdorf Aff. ¶ 14.

The liquidation. As of May 31, 2019, the liquidation staff is 39 in number (including part-time employees), plus information technology and other consultants. The size of the staff has been significantly reduced over the course of the liquidation, as in 2004 staff totaled 95. The annual cost of the liquidation has also dropped over time, from \$26.9 million in 2004 to a budget of \$13.5 million for 2019. Bengelsdorf Aff. ¶ 15.

The Statutory Framework

The Act assigns claims to ten successive priority classes and provides that all claims in each class must be paid in full (or assets reserved) before claims in lower priority classes receive any distribution. RSA 402-C:44. Costs of administering the liquidation are given first priority in RSA 402-C:44, I. They are followed by the policy-related claims of insureds, third party claimants against insureds, and guaranty associations which all are assigned Class II priority by RSA 402-C:44, II. See Liquidation of Home, 154 N.H. at 475-76, 488.

Claims are to be asserted through the proof of claim process. See RSA 402-C:37. Proofs of claim must be filed with the Liquidator "on or before the last day for filing specified in the

notice required under RSA 402-C:26.” RSA 402-C:37, I.⁷ The Liquidator is also required to accept “excused” late filed proof of claim: “For good cause shown, the liquidator shall recommend and the court shall permit a claimant making a late filing to share in dividends, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation.” RSA 402-C:37, II. The Act defines “good cause” to include (i) that the existence of the claim was “not known” to the claimant and he files within 30 days after learning of it, and (ii) that “a claim was contingent and became absolute” and was filed within 30 days after it became absolute. RSA 402-C:37, II(a) and (e).⁸

However, the Liquidator may not accept claims that “prejudice the orderly administration of the liquidation.” RSA 402-C:37. This reflects legislative recognition that at some point acceptance of claims will harm the estate, to the detriment of those with allowed claims, by preventing the determination of a distribution percentage and making of distributions.

The Act recognizes that competing interests need to be balanced by providing that the Liquidator, under the direction of the Court, shall pay dividends in a manner that will assure “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. The Act provides that “[w]hen all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge.” RSA 402-C:48, I.

⁷ Claims must be submitted on the proof of claim form (or by amendment to a previously filed proof of claim form). See RSA 402-C:37, I; RSA 402-C:38, I(b). If a claimant attempts to submit a claim without using the form, the Liquidator notifies the claimant of the requirement to use the proof of claim form and measures timeliness based on the date the form is received.

⁸ The Liquidator may also accept late filings that are not excused. See RSA 402-C:37, III (Liquidator “may consider” other late filings and “permit” them to “receive dividends, other than the first dividend, which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation.”).

ARGUMENT

The Court should approve a Claim Amendment Deadline – a deadline by which claimants must amend or file all claims. Such a deadline is a practical necessity to bring finality to an insurer liquidation proceeding. The estate’s assets cannot be finally distributed until the Liquidator knows the size of every claim filed in the liquidation in the priority classes that will receive a distribution. See Gonya, 153 N.H. at 535. A deadline will move the liquidation toward closure by providing claimants with reason to assert and prove up their claims with the Liquidator, which will allow the Liquidator to determine the claims. Those determinations will allow the Liquidator to collect any applicable reinsurance and to calculate the final distribution percentage based on the assets in the estate. Without a claim amendment deadline, the Home liquidation will remain open indefinitely, and the Liquidator will be unable to distribute estate assets as he will need to retain a conservative reserve to pay the costs of administering the estate and to handle and make distributions on whatever Class II claims come in or develop over the years. Without a deadline, claimants with allowed Class II claims will not receive the full possible distribution on their claims for years.

The proposed Claim Amendment Deadline of 150 days after the Court’s order is reasonable and appropriate. Home stopped writing policies in 1995, and it has been in liquidation since 2003. Claims thus have had many years to develop, and claimants have had sixteen years to assert them in the liquidation. The Claim Amendment Deadline will allow claimants a reasonable final opportunity to amend and assert claims. While the Claim Amendment Deadline will cut off potential future claims, that is consistent with the Act and reflects the reality that keeping the liquidation open after all these years disadvantages the claimants with allowed Class II claims by preventing them from obtaining the full possible

distribution on their claims. The Claim Amendment Deadline should be established so that the universe of claims against the Home estate can be determined, a final *pro rata* Class II distribution made, and the Home estate closed.

I. THE COURT MAY PROPERLY ESTABLISH A CLAIM AMENDMENT DEADLINE.

The New Hampshire Act is part of an integrated national scheme of generally similar insurer liquidation statutes enacted in the various States. It is generally recognized under such statutes that the insurer liquidation process requires a final deadline after which no further claims can be submitted in order to bring the proceeding to closure. See, e.g., Warrentech Consumer Prods. Servs., Inc. v. Reliance Ins. Co., 96 A.3d 346, 358 (Pa. 2014) (“[B]arring claims against insolvent insurers after a certain date, while it may work hardships on certain parties, is necessary to permit the Liquidator to manage effectively existing liabilities for the ultimate benefit of all claimants of insolvent insurers.”).

[P]rovisions for a claims filing deadline indicate legislative intent to provide a cutoff date after which a receiver is no longer obligated to accept claims. The filing deadline protects policyholders who timely filed claims because the allowance of late filed claims would unnecessarily prolong distribution of an insolvent insurer’s assets and dilute funds from which to satisfy timely filed claims.

Chandler v. Jose A. Gutierrez, P.C., 906 S.W.2d 195, 200 (Tex. App. 1995). The proposed Claim Amendment Deadline will serve these purposes, and it should be approved.⁹

⁹ For examples of final filing deadlines in insurer liquidations under other States’ statutes, see MSEJ, LLC v. Transit Cas. Co., 280 S.W.3d 621, 622-23 (Mo. 2009) (Transit liquidation set a “final, once-and-for-all time limit on the filing of claims” in Administrative Order 49, which established a deadline for the filing of “existing evidence of [the claimants’] current unresolved claims” after which “no new claims or evidence of claims shall be accepted.”); Comm’r of Ins. v. Integrity Ins. Co./W.R. Grace & Co., 2012 WL 75097 at *3 (N.J. Super. Ct. App. Div. Jan. 11, 2012) (Integrity liquidation: Amended Liquidation Closing Plan provided for all claims and supporting documentation to be filed with the liquidator by a deadline of September 30, 2009 and that only claims that had become absolute by June 30, 2009 could be considered); Garamendi v. Mission Ins. Co., 2005 WL 1060443 at *1, *10 (Cal. Ct. App. 2005) (Mission liquidation: “Final Dividend Claims Bar Date” required that “[a]ny contingent, unliquidated and/or undetermined claims not so amended by the Final Dividend Claims Bar Date shall conclusively be deemed forever waived.”); In re Reliance Ins. Co. in Liquidation, No. 1 REL 2001, Memorandum and Order re: Claims Bar Date (Dec. 22, 2015) (Reliance liquidation: establishing claims bar date by which all claims must be

A. A Claim Amendment Deadline Is Proper Under the Act.

As the Vermont Supreme Court held under a statute like the Act, “a court supervising the liquidation of an insolvent insurer has the authority to set a reasonable deadline for filing final proofs of claim as long as that deadline is not in conflict with any statutory requirements.” In re Ambassador Ins. Co., 114 A.3d 492, 497 n. 9 (Vt. 2015). The Act is properly construed to authorize the Claim Amendment Deadline as it provides for a deadline for filing of claims, permits certain late-filed claims to participate, and cuts-off unknown or contingent claims which prejudice the orderly administration of the liquidation.

The Act mandates a deadline in its “Deadline for Filing” provision, RSA 402-C:37, I. That section requires that “[p]roof of all claims must be filed with the liquidator . . . on or before the last date for filing specified in the notice required under RSA 402-C:26.” RSA 402-C:37, I. The Act then permits the filing of claims after the filing deadline in certain circumstances, but only so long as they do not “prejudice the orderly administration of the liquidation.” See RSA 402-C:37, II, III. The phrase “does not prejudice the orderly administration of the liquidation” reflects a legislative intent that at some point claims must end. Late filed claims that “prejudice the orderly administration of the liquidation” may not participate. RSA 402-C:37, II, III, :39, III.

This scheme of a deadline, late-filed claims, and cut-off is confirmed by the provisions that exclude unknown claims and contingent claims that may linger at the end of a liquidation. The Act provides that unknown claims may participate in dividends only where the “existence of a claim was not known to the claimant and . . . he filed within 30 days after he learned of it.”

filed or forever barred from any distribution); In re Liquidation of Midland Ins. Co., 32 Misc.3d 1211(A), 930 N.Y.S.2d 175, 2011 N.Y. slip op. 51261(U) at *5-*7 (N.Y. Sup. Ct. June 27, 2011) (Midland liquidation: establishing deadline for amendments of timely filed proofs of claim and for submission of evidence in support of allowance of a claim); In re Liquidation of Am. Mut. Liab. Ins. Co., No. 89-23, Order Approving Claim Amendment Deadline (Supreme Judicial Court for Suffolk County, MA, June 14, 2006) (American Mutual liquidation: claim amendment deadline for claimants with contingent or unliquidated claims to perfect their claims by showing that the claims are absolute and the amount has been fixed or can be proved).

RSA 402-C:37, II(a). It provides for contingent claims only where: (1) the contingent claim becomes absolute, see RSA 402-C:39, III (“A claim may be allowed even if contingent, if it is filed in accordance with RSA 402-C:37, II,” which in turn provides that “good cause” for late filing includes that “a claim was contingent and became absolute, and was filed within 30 days after it became absolute,” RSA 402-C:37, II(e)), or (2) the claim is a third party claim contingent on obtaining a judgment against the insured, RSA 402-C:39, I (“The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.”). See also RSA 402-C:40, II and III.

These sections permit allowance of unliquidated, and even certain contingent, known claims but do not encompass claims that are not actually known (*i.e.*, embodied in a cause of action asserted by a particular plaintiff). Such potential or “incurred but not reported” (“IBNR”) claims are wholly contingent.

The Act expressly provides for the Liquidator and the Court to balance the interests of claimants with allowed claims against the interests of claimants with “unliquidated and undetermined” – not unknown – claims in considering when to bring the liquidation to closure. The Act provides that the Liquidator, subject to the direction of the court, “shall pay dividends in a manner that will assure . . . 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 (emphasis added). It contemplates reasonably expeditious liquidations. See RSA 402-C:40, III (“Delay in final payment under this section shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.”); RSA 402-C:48, I “When all assets justifying the expense of collection and distribution have been collected and distributed . . . the liquidator shall apply to the court for discharge.”).

The Court long ago established June 13, 2004 as the deadline for the filing of claims in the Home liquidation. The Liquidator now seeks to provide a firm deadline for the filing of amended claims and any additional late filed claims. This final Claim Amendment Deadline is reasonable and necessary to bring this proceeding to a close for the benefit of policy-level claimants. It is accordingly authorized as an exercise of the Liquidator’s authority, “[s]ubject to the court’s control,” to “do such acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.” RSA 402-C:25, XXII. See Liquidation of Home Ins. Co., 154 N.H. at 480.

B. The Proposed Claim Amendment Deadline Implements The Act.

The Claims Amendment Deadline as proposed by the Liquidator is set forth in the proposed Order Approving Claim Amendment Deadline submitted herewith. The Claim Amendment Deadline will implement the Act and facilitate closure of the estate by requiring the filing of claims and barring unfiled claims and potential claims from participating in distributions because they prejudice the orderly administration of the estate. See Proposed Order ¶ 5. It will bar Post-Claim Amendment Claims and Potential Claims:

1. A “Post-Claim Amendment Deadline Claim” is any amendment (including supplement or any other enlargement) to any previously filed proof of claim or any new proof of claim that is filed after the Claim Amendment Deadline. Proposed Order ¶ 5(a). This category encompasses all claims first filed in the liquidation after the Claim Amendment Deadline. Because they will delay the final determination of all claims and thus the distribution of assets, Post-Claim Amendment Deadline Claims prejudice the orderly administration of the liquidation. In light of the need for finality and the years that have passed since the 2004 Claim Filing Deadline, Post-Claim Amendment Deadline Claims should not be considered, regardless of whether good cause – including but not limited to any reason constituting “good cause” under

RSA 402-C:37, II – exists for filing after the Claim Amendment Deadline, and regardless of whether a right to reopen, refile, or supplement a claim was previously reserved.

Because a number of the remaining open proofs of claim seek coverage for unidentified claims under a Home policy or reinsurance contract, the proposed order requires claimants with such proofs of claim to amend their proofs of claim to identify and provide the particulars of all claims for which coverage is sought. Proposed Order ¶ 6. See RSA 402-C:38, I(a)(1) (requiring the “particulars” of a claim in a proof of claim). Claims that have not been so identified (as a specific claim by a specific claimant against a Home insured or reinsured) on or before the Claim Amendment Deadline will be barred because, if later identified to the Liquidator, they will be Post-Claim Amendment Deadline claims. The proposed order also requires that the amendment to the proof of claim include available supporting information. Proposed Order ¶ 7.

2. A “Potential Claim” is any claim intended to be covered by a proof of claim or by an amendment where a specific claim has not been asserted by a specific claimant against a specific person on or before the Claim Amendment Deadline. Proposed Order ¶ 5(b). These are sometimes referred to as “incurred but not reported” claims. This category encompasses all claims that are not known or identified before the Claim Amendment Deadline. Some proofs of claim seek to assert claims that may emerge in the future or to reserve the right to assert claims that emerge in the future. As described above, such potential but presently unknown claims are not provided for in the Act. The delay that would result from continuing to wait for specific, identifiable claims to emerge would delay the determination of claims and distributions from the estate. Such “claims” prejudice the orderly administration of the liquidation and will not be considered, effective as of the Claim Amendment Deadline.

By way of example only, the following are types of Potential Claims that will be barred effective as of the Claim Amendment Deadline even if they are attempted to be included in a proof of claim or amendment filed before the Claim Amendment Deadline:

- a. any claims not asserted by a specifically identified claimant until after the Claim Amendment Deadline;
- b. any claims by a specifically identified claimant that are not asserted until after the Claim Amendment Deadline;
- c. any claims asserted in a legal proceeding commenced before the Claim Amendment Deadline on behalf of claimants who have not been specifically identified in the legal proceeding before the Claim Amendment Deadline, including but not limited to “Doe” or unknown parties and future class members or plaintiffs;
- d. any claims asserted in a legal proceeding commenced before the Claim Amendment Deadline by a claimant added as a party to the proceeding after the Claim Amendment Deadline;
- e. any claims asserted in a legal proceeding filed after the Claim Amendment Deadline, even if the legal proceeding relates to a legal proceeding filed before the Claims Amendment Deadline;
- f. projections of claims that may be asserted after the Claim Amendment Deadline; and
- g. assertions that a Home policy or reinsurance contract provides coverage for claims that may be asserted after the Claim Amendment Deadline.

The definition of Potential Claims focuses on the identification of claims asserted by a known, identifiable person before the Claim Amendment Deadline. For instance, assume that an insured company subject to suits by persons allegedly injured by its products filed a proof of claim before the Claim Amendment Deadline for existing and projected future claims. To the extent that claims are asserted against the company by known plaintiffs and identified in the proof of claim (or in an amendment) before the Claim Amendment Deadline, they may be addressed. However, projected claims not asserted by specific plaintiffs and identified in an amendment before the Claim Amendment Deadline are barred Potential Claims.

II. THE PROPOSED CLAIM AMENDMENT DEADLINE OF 150 DAYS AFTER THE ORDER IS APPROPRIATE.

A “reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims” now requires a final Claim Amendment Deadline. Such a deadline will motivate claimants that have been slow or reluctant to resolve or amend their open proofs of claim claims to do so, and it will thus expedite the final determination of claims necessary to collect reinsurance and to make a final distribution of Home’s assets. While it cuts off potential claims, that is necessary to achieve the final resolution of claims required to make a final distribution. See Bengelsdorf Aff. ¶ 16.

The proposed Claim Amendment Deadline of 150 days from the Court’s order granting the motion is fair and reasonable in light of the progress of the liquidation. Given the time that has passed, the claims that have been determined, and the increasing difficulty of obtaining information from those with asserted but unsubstantiated claims, the Liquidator has concluded that the balance of interests weighs in favor of establishing a final deadline by which claims must be amended and filed. This will benefit the broad group of policyholders and claimants with allowed claims by enabling the Liquidator to determine the remaining claims, collect any reinsurance on those claims, calculate and make the final distribution, and close the proceeding. The Liquidator’s conclusion reflects the factors described below. See Bengelsdorf Aff. ¶ 17.

First, there has been a lengthy period of time for claims against Home to emerge. Home has been in liquidation for sixteen years (since 2003), and it was in run-off for eight years before that (since 1995). Home stopped writing insurance – that is, issuing insurance policies – in 1995. Home did not have material coverage in force after 1996.¹⁰ Claims under Home policies thus

¹⁰ When it was placed in liquidation, Home had approximately 1000 in-force policies and bonds, including 900 perpetual first party property policies, 5 legal liability policies with ongoing tail coverage, and 100 bonds. These

have had at least twenty-three years to develop, and claimants have had sixteen years to assert them in the liquidation. The Liquidator provided broad notice of Home's liquidation and the June 13, 2004 claim filing deadline in 2003 as required by RSA 402-C:26 and the Court's Order Approving Notice.¹¹ Bengelsdorf Aff. ¶ 18.

The sixteen years of liquidation for Home is comparable to the periods before final claim deadlines in other major property-casualty insurer liquidations, especially in light of Home's eight prior years of run-off. See MSEJ, 280 S.W.3d at 622 (13 years from December 31, 1987 initial claim filing deadline to March 15, 2001 absolute deadline in Transit liquidation); Integrity Ins. Co./W.R. Grace & Co., 2012 WL 75097 at *1, *3 (21 years from initial March 25, 1988 deadline to September 30, 2009 deadline in Integrity liquidation); Garamendi, 2005 WL 1060443 at *1 (8 years from September 12, 1987 initial deadline to August 18, 1995 deadline in Mission liquidation); Reliance Ins. Co. in Liquidation, No. 1 REL 2001 (Memorandum and Order re: Claims Bar Date (Dec. 22, 2015)) (12 years from initial December 31, 2003 filing deadline to March 31, 2016 claims bar date); Liquidation of Midland, 2011 N.Y. slip op. 51261(U) at *1, *11 (25 years from initial April 3, 1987 deadline to January 31, 2013 final deadline in Midland liquidation); Liquidation of Am. Mut. Liab., No. 89-23, Order Approving Claim Amendment Deadline (June 14, 2006) (15 years from original March 9, 1990 claim filing deadline to October 31, 2006 amendment deadline in American Mutual liquidation).

Second, the Liquidator has determined the vast majority of proofs of claim. As of May 31, 2019, the Liquidator had issued and the Court had approved determinations resolving

policyholders and bondholders were sent notices of cancellation as well as notices of the liquidation and Claim Filing Deadline in 2003.

¹¹ In accordance with the Order Approving Notice, the Liquidator mailed notice of the liquidation and proof of claim forms including the June 13, 2004 Claim Filing Deadline to approximately 334,000 potential claimants (including insureds) and published notice of the liquidation and Claim Filing Deadline in 94 newspapers and a trade publication in the period July-September 2003. See Liquidator's First Report ¶¶ 5, 9 (July 3, 2003); Liquidator's Second Report ¶ 4 (August 11, 2003); Liquidator's Third Report ¶ 4 (September 12, 2003).

19,695 (almost 95%) of the 20,785 proofs of claim, including 17,370 (95%) of the 18,257 Class II proofs of claim. The Liquidator has also issued and the Court has approved determinations to guaranty associations involving thousands of claims under their proofs of claim. The approved Class II determinations for claimants, insureds and guaranty associations total approximately \$2.705 billion as of May 31, 2019. (This represents approximately 67% of Milliman's earlier actuarial central estimate of Class II liabilities, which was part of a wide range of possible outcomes. See n. 2, above.) Given the passage of time and the number of claims determined, the Liquidator has concluded that the liquidation is at a point where the answer to the value of the remaining claims must be arrived at through the claim determination process. See Bengelsdorf Aff. ¶ 19.

Third, the insureds with remaining open proofs of claim are generally resistant to providing information or resolving the matters as the claims increasingly involve future expectations. The 828 open non-guaranty association Class II proofs of claim as of May 31, 2019 involve a total of 237 policyholder accounts, of which 131 involve non-workers compensation claims and 106 involve only workers compensation. Many of the non-workers compensation accounts involve "long tail" exposures, such as asbestos or environmental exposures, that the insureds contend will result in covered liabilities that will emerge many years and, in some instances, decades into the future. Absent some requirement to update and substantiate their claims, these insureds are likely to prefer to keep them open and await future developments. Bengelsdorf Aff. ¶ 20.

Fourth, the Liquidator has collected a substantial part of the assets of the estate. As of May 31, 2019, the Liquidator controlled \$808.4 million in cash and invested assets. Adding the \$620.1 million of interim distributions paid to non-guaranty association claimants, the

\$256.1 million in early access distributions to guaranty associations, and the \$55.7 million of special deposits held by states, the Liquidator has collected a total of \$1.74 billion in assets available for Class II claims. While the Liquidator is still collecting assets, the remaining additional assets (other than potential investment income) principally consist of potential reinsurance recoveries that will not be realized unless underlying claims against Home are filed and proved. Bengelsdorf Aff. ¶ 21.

Fifth, keeping the liquidation open requires the payment of the ongoing costs of administering the estate. The liquidation presently has 39 liquidation staff (plus consultants), leases space in New Hampshire (through 2019) and New York, and an annual budget of \$13.5 million. The staff, in particular the claims staff, is appropriately experienced and sized to handle the open claims – many of which are complex and require both claims experience and knowledge of Home’s policies – and to address claims filed in connection with the Claim Amendment Deadline. However, if the estate were to remain open for the filing of claims without a deadline, the inevitable loss of experienced claims and reinsurance staff, to retirement or otherwise, who are necessary to handle the remaining complex claims and to collect any applicable reinsurance, will hinder the liquidation process while adding to the expense of administering the proceeding due to the necessity of hiring new staff or engaging more expensive consultants. The Claim Amendment Deadline will permit more efficient and economical handling of claims and collection of reinsurance by the present experienced staff. See Bengelsdorf Aff. ¶ 22.

In these circumstances, the Liquidator has concluded that a final deadline is necessary to move the liquidation to closure. Settlements, which are the principal way of resolving complex claims, are becoming more difficult as claims increasingly reflect expectations of future claims.

Collection of remaining reinsurance depends upon proof of underlying claims. Absent a final deadline, claims may straggle in, potentially for decades, which will require the maintenance of a liquidation operation and deferral of a final Class II distribution. See Bengelsdorf Aff. ¶ 23.

Such potential claims do not warrant keeping the liquidation open indefinitely. The “reasonable balance” required by RSA 402-C:46, I, is between the expeditious completion of the liquidation and protection of “unliquidated and undetermined” claims, not contingent and unknown claims. At some point in the life of the estate, the balance tips in favor of completing the liquidation by setting a final deadline for submission of claims so that claims may be finally determined and claimants with allowed Class II claims may receive a final distribution. After careful consideration, the Liquidator has concluded that, sixteen years into the liquidation and twenty-four years after Home stopped writing policies, the balance now clearly weighs in favor of establishing the Claim Amendment Deadline. See Bengelsdorf Aff. ¶ 24.

III. THE CLAIM AMENDMENT DEADLINE WILL NOT APPLY TO THE UNITED STATES.

The U.S. Department of Justice has asserted that state claim filing deadlines do not apply to the United States Government in light of the Federal Priority Statute, 31 U.S.C. § 3713. See Ruthardt v. United States, 303 F.3d 375, 384-386 (1st Cir. 2002). The Liquidator has resolved all known federal claims, and in the Settlement Agreement approved on March 26, 2019, the Federal Claimants stated that they do not intend to file any more proofs of claim in the Home liquidation. Settlement Agreement, tenth whereas clause. Further, in the Release Agreement approved on March 26, 2019, the United States released the Liquidator and Home from any and all liability and obligations under 31 U.S.C. § 3713 in connection with Home’s liquidation, subject to certain exceptions. Release Agreement ¶ III.4-5. The Liquidator does not anticipate more federal claims. However, given the Federal Priority Statute and the exceptions in the

Release Agreement, the Claim Amendment Deadline should not apply to the United States. See Bengelsdorf Aff. ¶ 25.

IV. THE PROPOSED ORDER IS APPROPRIATE.

The proposed form of Order Approving Claim Amendment Deadline submitted with this motion provides for a Claim Amendment Deadline consistent with the foregoing discussion of the Act and the circumstances of the Home liquidation:

The Proposed Order establishes the date 150 days after the order (or, if that is not a business day, the next business day) as the Claim Amendment Deadline. Proposed Order ¶ 3. Amendments to proofs of claim and any new proofs of claim must be received by the Liquidator or mailed to the Liquidator by U.S. mail on or before the Claim Amendment Deadline. *Id.*

To bring finality to the claim determination process and permit closure of the liquidation, the Proposed Order bars amendments or proofs of claim filed after the Claim Amendment Deadline (the “Post-Claim Amendment Deadline Claims” discussed above) because such late claims will prejudice the orderly administration of the liquidation. Proposed Order ¶ 5(a). Amendments and proofs of claim received after the Claim Amendment Deadline shall not be considered. *Id.* ¶ 3. Claimants with proofs of claim seeking coverage under a Home policy or reinsurance contract for unknown or potential claims must amend their proofs of claim to identify the claims. *Id.*, ¶ 6.

The Proposed Order bars unknown claims, where a specific claim has not been asserted by a specific claimant against a specific person on or before the Claim Amendment Deadline, sometimes referred to as “incurred but not reported” or “IBNR” claims (the “Potential Claims” discussed above), because such unknown or contingent claims will prejudice the orderly administration of the liquidation. Proposed Order ¶ 5(b).

To expedite review of claims, the Proposed Order requires that amendments to proofs of claim include available supporting information. Proposed Order ¶ 7. It also reiterates the Liquidator's statutory authority to request additional information, see RSA 402-C:38, II, and provides that failure to timely provide requested supplementary information may be a ground to deny a claim, subject to review under the Claims Procedures Order. Id.

Claimants who were issued notice of determination as to Class V priority only (deferring determination as to amount because there are insufficient assets to make any distribution to claims below Class II) must amend their proofs of claim and include an explanation of why their proofs of claim should be determined as to amount. Absent such an amendment, the previous notices of determination are final and the Liquidator need not act further. Proposed Order ¶ 8.

The Proposed Order makes clear that the Claim Amendment Deadline does not affect earlier claim determinations, does not permit refileing or rearguing of previous determinations, and does not apply to administration costs or to the United States. Proposed Order ¶¶ 9-11.

The Proposed Order makes clear that the June 13, 2004 Claim Filing Deadline continues to apply. Proposed Order ¶ 4. It further provides that, subject to the provisions of the Proposed Order (e.g., the barring of Post-Claim Amendment Deadline Claims and Potential Claims under ¶ 5), the claim determination process will continue under the January 19, 2005 Claims Procedures Order. Id. The Liquidator will continue to determine and settle claims subject to Court approval with disputes being resolved by the Referee and the Court.

Finally, the Proposed Order requires the Liquidator to provide mail notice of the Claim Amendment Deadline in the form attached to the order within 30 days of the order. Proposed Order ¶ 12. The notice will also be posted on the Home Liquidation Clerk website. Id. ¶ 13. This will provide claimants with about 120 days before the deadline to submit any amendments.

WHEREFORE, the Liquidator requests that the Court:

- A. Grant this Motion for Approval of Claim Amendment Deadline;
- B. Enter an order in the form submitted herewith approving the proposed Claim Amendment Deadline for the final amendment of proofs of claim and submission of any new proofs of claim in the Home liquidation, barring Post-Claim Amendment Deadline claims and Potential Claims as of the deadline, and directing the Liquidator to give notice of the Claim Amendment Deadline; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

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OF THE STATE OF NEW HAMPSHIRE,
SOLELY AS LIQUIDATOR OF THE HOME
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Dated: July 31, 2019

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Claim Amendment Deadline, the Affidavit of Peter A. Bengelsdorf, and the proposed approval order, was sent this 31st day of July, 2019 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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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, IN SUPPORT OF MOTION FOR APPROVAL OF
CLAIM AMENDMENT DEADLINE**

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 Liquidator’s Motion for Approval of Claim Amendment Deadline (the “Motion”) seeks approval for a claim amendment deadline as described in the Motion and set forth in the Proposed Order Approving Claim Amendment Deadline (“Proposed Order”) submitted with the Motion.

3. Home is a New Hampshire-domiciled insurance company incorporated in 1973, although its predecessor corporations were established as long ago as 1853. Home had a number of insurer subsidiaries, most of which were merged into Home as part of its reorganization in

1995.¹ Home and its subsidiaries wrote insurance and reinsurance in almost all states and territories of the United States, as well as in Canada, Bermuda, Hong Kong, and the United Kingdom, where Home's unincorporated branch operation wrote business as a member of the American Foreign Insurance Association. Home and its subsidiaries generally stopped writing personal lines business in the early 1990's, and they stopped writing all business, including commercial lines (subject to certain personal lines mandatory renewal requirements in a few states), in 1995.

4. Home is in liquidation pursuant to the Order of Liquidation entered June 13, 2003, in which the Court declared Home insolvent and appointed the Insurance Commissioner as Liquidator to liquidate the company. The Order of Liquidation established the deadline for filing of claims in the liquidation as June 13, 2004 (the "Claim Filing Deadline"). The Court also issued an Order Approving Notice on June 11, 2003 approving notice of the Order of Liquidation and the Claim Filing Deadline.

5. A total of 20,785 proofs of claim have been filed in the liquidation as of May 31, 2019. As described in the Liquidator's reports, the Liquidator has been reviewing and determining claims throughout the liquidation. The Liquidator has filed numerous reports of claims and recommendations and motions for approval of policyholder settlements with the Court since 2004. As of May 31, 2019, the Court has approved claim recommendations, including settlements, resolving a total of 19,695 proofs of claim with a total allowed amount of approximately \$3.08 billion for all priority classes.

6. The Motion focuses on the policy-related claims assigned Class II priority by RSA 402-C:44, II, although the Claim Amendment Deadline is to apply to all claims except

¹ A reinsurer subsidiary, US International Reinsurance Company ("USI Re"), was the subject of a separate liquidation proceeding in this Court, Docket No. 03-E-0112. After a claim amendment deadline of December 31, 2008, the USI Re liquidation proceeding was concluded on December 3, 2013.

administration costs and federal claims. The Liquidator concluded early in the liquidation that there would not be sufficient assets to make any distribution to priority classes below Class II. The total amount of Home's Class II liabilities can be determined only by resolving all Class II claims, and the final distribution percentage to Class II creditors cannot be calculated and the distribution made until all claims have been determined.²

7. The remaining 1,090 open proofs of claim include 887 proofs of claim that involve Class II policy-related claims.³ As of May 31, 2019, the Liquidator has recommended and the Court has approved Class II determinations or settlements resolving 17,370 proofs of claim with a total allowed amount of approximately \$2.705 billion. These resolved Class II proofs of claim represent 95% of the 18,257 Class II proofs of claim. The 887 remaining open Class II proofs of generally involve policyholder or guaranty association claims.

8. As of May 31, 2019, there are 237 policyholders/insureds with open Class II proofs of claim (representing a total of 828 Class II proofs of claim).⁴ Of these remaining policyholder accounts, 131 involve non-workers compensation claims and 106 involve only

² The Liquidator engaged the actuarial consulting firm Milliman, Inc., to provide an estimate of Home's ultimate unpaid Class II obligations in connection with the first two interim distributions, leading to an undiscounted actuarial central estimate of \$4.034 billion as of December 31, 2014. Executive Summary of Milliman's Roll-Forward Analysis of Unpaid Loss and ALAE as of June 13, 2003 and December 31, 2014, Summary by Class at 2 (attached as Exhibit F to the Liquidator's Fifty-Seventh Report (June 24, 2015)). This actuarial central estimate "should be interpreted as an estimate of the expected value over [a] range of reasonably possible outcomes." Executive Summary at 4. See *id.* at 8 ("the average of a wide range of possible outcomes"). Milliman noted that "[t]he uncertainty in our estimates is greater than it otherwise would be due to the liquidation of Home and the resulting involvement of state GAs and insureds, including their agents, in the process of handling and determining claims. Because Home is in liquidation, its historical loss experience as well as the experience since Home entered liquidation is less predictive of future claim activity, both with respect to the timing of claim reporting and payment, and with respect to the size of the payments that will ultimately be made." *Id.* at 8. Because of such factors, the uncertainties in reserve estimates, and the shrinking number of open claims (which will be determined through the liquidation process), the Liquidator has not engaged Milliman to perform another analysis.

³ This does not include proofs of claim where the determination provided that the claimant could submit further claims.

⁴ This tally counts all entities within the coverage of a policy, including the named insured and its successors, as one policyholder/insured if they filed a consolidated proof of claim or proofs of claim. Where the insured, additional named insureds, and/or their successors filed separate proofs of claim, the entities are counted separately.

workers compensation claims. In most instances, the 131 non-workers compensation accounts involve long-tail claims such as asbestos, lead, talcum powder, environmental or other mass tort claims that depend upon complex underlying facts or lawsuits and emerge over time, if at all. Such claims may not implicate Home coverage – which is often high level excess coverage – for many years, if ever. In certain instances, the underlying claims are being fully paid by solvent insurers. These insureds whose proofs of claim remain open generally are not willing to voluntarily resolve their proofs of claim.

9. There are also 59 open Class II proofs of claim filed by insurance guaranty associations for claims against Home insureds or Home that are being handled as “covered claims” by the associations in accordance with their respective statutes. Subject to statutory limitations, insurance guaranty associations handle and, where appropriate, pay claims under Home policies and in turn have a claim against the Home estate. The guaranty associations are currently handling approximately 2,063 open claims under Home policies. Guaranty association payments under Home policies are accorded Class II priority – the same priority to which the claimants would have been entitled absent the guaranty association.⁵

10. As of May 31, 2019, there are also approximately 304 proofs of claim that have been issued determinations as to Class V priority only, deferring determination as to amount, since there will not be assets sufficient to make any distribution to claims below Class II priority.

11. The Liquidator has been collecting assets, in particular reinsurance. As a result of these efforts, the Liquidator has approximately \$808.4 million in cash and invested assets under

⁵ Guaranty associations’ claims include defense expenses incurred under Home policies. The Liquidator initially assigned such claims to Class II priority, while guaranty associations contended they were entitled to Class I priority. Pursuant to a Settlement Agreement approved by the Court on July 15, 2013, 90% of guaranty association defense expense claims are assigned to Class II and 10% to Class I.

his control as of May 31, 2019. Additional assets have already been collected and distributed as early access distributions to guaranty associations or as interim distributions as described below.

12. With Court approval, the Liquidator has made eleven Class II early access distributions to insurance guaranty associations pursuant to RSA 402-C:29, III totaling total \$256.1 million as of May 31, 2019. In addition, certain states have taken control of special deposits that with interest now total approximately \$55.7 million which the Liquidator is setting off against claims of guaranty associations in those states.

13. With Court approval, the Liquidator made three interim distributions totaling 30% on allowed Class II claims: an initial interim distribution of 15% in 2014, a second distribution of 10% in 2016, and a third distribution of 5% in 2019.⁶ In accordance with the approval orders, newly allowed Class II claims receive the 30% interim distribution percentage following the next July 1 or December 31. As of May 31, 2019, a total of \$620.1 million in interim distributions has been paid to non-guaranty association Class II creditors.

14. Adding the \$808.4 million in estate assets, the \$256.1 million of early access distributions to guaranty associations, the \$620.1 million in interim distributions to non-guaranty association claimants, and the \$55.7 million in deposits, a total of approximately \$1.74 billion in assets is either available for distribution or has been distributed to Class II claimants. The collection of Home's assets is mostly complete except for reinsurance recoveries on claims that have not yet been determined.

15. As of May 31, 2019, the liquidation staff is 39 in number (including part-time employees), plus information technology and other consultants. The size of the staff has been

⁶ The orders approving the three interim distributions each provided that the distribution was subject to receipt of a waiver of federal priority claims from the United States. The Liquidator obtained waivers from the United States Department of Justice ("US DOJ") for the first two distributions and entered the Release Agreement with the US DOJ approved by the Court on March 26, 2019, to address the third distribution and future distributions.

significantly reduced over the course of the liquidation, as in 2004 staff totaled 95. The annual cost of the liquidation has also dropped over time, from \$26.9 million in 2004 to a budget of \$13.5 million for 2019.

16. I have concluded that a “reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims” now requires a final Claim Amendment Deadline. Such a deadline will motivate claimants that have been slow or reluctant to resolve or amend their open proofs of claim claims to do so, and it will thus expedite the final determination of claims necessary to collect reinsurance and to make a final distribution of Home’s assets. While the deadline cuts off potential claims, that is necessary to achieve the final resolution of claims required to make a final distribution.

17. The proposed Claim Amendment Deadline of 150 days from the Court’s order granting the Motion is fair and reasonable in light of the progress of the liquidation. Given the time that has passed, the claims that have been determined, and the increasing difficulty of obtaining information from those with asserted but unsubstantiated claims, I have concluded that the balance of interests weighs in favor of establishing a final deadline by which claims must be amended and filed. This will benefit the broad group of policyholders and claimants with allowed claims by enabling the Liquidator to determine the remaining claims, collect any reinsurance on those claims, calculate and make the final distribution, and close the proceeding. This conclusion reflects the factors described below.

18. There has been a lengthy period of time for claims against Home to emerge. Home has been in liquidation for sixteen years (since 2003), and it was in run-off for eight years before that (since 1995). Home stopped writing insurance – that is, issuing insurance policies –

in 1995. Home did not have material coverage in force after 1996.⁷ Claims under Home policies thus have had at least twenty-three years to develop, and claimants have had sixteen years to assert claims in the liquidation. The Liquidator provided broad notice of Home's liquidation and the June 13, 2004 claim filing deadline in 2003 as required by RSA 402-C:26 and the Court's Order Approving Notice.⁸

19. The Liquidator has determined the vast majority of proofs of claim. As of May 31, 2019, the Liquidator had issued and the Court had approved determinations resolving 19,695 (almost 95%) of the 20,785 proofs of claim, including 17,370 (95%) of the 18,257 Class II proofs of claim. The Liquidator has also issued and the Court has approved determinations to guaranty associations involving thousands of claims under their proofs of claim. The approved Class II determinations for claimants, insureds and guaranty associations total approximately \$2.705 billion as of May 31, 2019. (This represents approximately 67% of Milliman's earlier actuarial central estimate of Class II liabilities, which was part of a wide range of possible outcomes, see note 2 above.) Given the passage of time and the number of claims determined, I have concluded that the liquidation is at a point where the answer to the value of the remaining claims must be arrived at through the claim determination process.

20. The insureds with remaining open proofs of claim are generally resistant to providing information or resolving the matters as the claims increasingly involve future expectations. The 828 open non-guaranty association Class II proofs of claim as of May 31,

⁷ When it was placed in liquidation, Home had approximately 1000 in-force policies and bonds, including 900 perpetual first party property policies, 5 legal liability policies with ongoing tail coverage, and 100 bonds. These policyholders and bondholders were sent notices of cancellation as well as notices of the liquidation and Claim Filing Deadline in 2003.

⁸ In accordance with the Order Approving Notice, the Liquidator mailed notice of the liquidation and proof of claim forms including the June 13, 2004 Claim Filing Deadline to approximately 334,000 potential claimants (including policyholders/insureds) and published notice of the liquidation and Claim Filing Deadline in 94 newspapers and a trade publication in the period July-September 2003. See Liquidator's First Report ¶¶ 5, 9 (July 3, 2003); Liquidator's Second Report ¶ 4 (August 11, 2003); Liquidator's Third Report ¶ 4 (September 12, 2003).

2019 involve a total of 237 policyholder accounts, of which 131 involve non-workers compensation claims and 106 involve only workers compensation. Many of the non-workers compensation accounts involve “long tail” exposures, such as asbestos or environmental exposures, that the insureds contend will result in covered liabilities that will emerge many years and, in some instances, decades into the future. Absent some requirement to update and substantiate their claims, these insureds are likely to prefer to keep them open and await future developments.

21. The Liquidator has collected a substantial part of the assets of the estate. As of May 31, 2019, the Liquidator controlled \$808.4 million in cash and invested assets. Adding the \$620.1 million of interim distributions paid to non-guaranty association claimants, the \$256.1 million in early access distributions to guaranty associations, and the \$55.7 million of special deposits held by states, the Liquidator has collected a total of \$1.74 billion in assets available for Class II claims. While the Liquidator is still collecting assets, the remaining additional assets (other than potential investment income) principally consist of potential reinsurance recoveries that will not be realized unless underlying claims against Home are filed and proved.

22. Keeping the liquidation open requires the payment of the ongoing costs of administering the estate. The liquidation presently has 39 liquidation staff (plus consultants), leases space in New Hampshire (through 2019) and New York, and an annual budget of \$13.5 million. In my opinion, the staff, in particular the claims staff, is appropriately experienced and sized to handle the open claims – many of which are complex and require both claims experience and knowledge of Home’s policies – and to address claims filed in connection with the Claim Amendment Deadline. However, if the estate were to remain open for the filing of claims without a deadline, the inevitable loss of experienced claims and reinsurance staff, to retirement or otherwise, who are necessary to handle the remaining complex claims and to

collect any applicable reinsurance, will hinder the liquidation process while adding to the expense of administering the proceeding due to the necessity of hiring new staff or engaging more expensive consultants. The Claim Amendment Deadline will permit more efficient and economical handling of claims and collection of reinsurance by the present experienced staff.

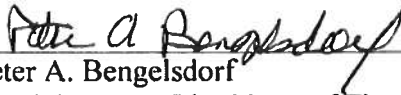
23. In these circumstances, I have concluded that a final deadline is necessary to move the liquidation to closure. Settlements, which are the principal way of resolving complex claims, are becoming more difficult as claims increasingly reflect expectations of future claims. Collection of remaining reinsurance depends upon proof of underlying claims. Absent a final deadline, claims may straggle in, potentially for decades, which will require the maintenance of a liquidation operation and deferral of a final Class II distribution.

24. Such potential claims do not warrant keeping the liquidation open indefinitely. The “reasonable balance” required by RSA 402-C:46, I, is between the expeditious completion of the liquidation and protection of “unliquidated and undetermined” claims, not contingent and unknown claims. At some point in the life of the estate, the balance tips in favor of completing the liquidation by setting a final deadline for submission of claims so that claims may be finally determined and claimants with allowed Class II claims may receive a final distribution. After careful consideration, I have concluded that, sixteen years into the liquidation and twenty-four years after Home stopped writing policies, the balance now clearly weighs in favor of establishing the Claim Amendment Deadline.

25. The U.S. Department of Justice has asserted that state claim filing deadlines do not apply to the United States Government in light of the Federal Priority Statute, 31 U.S.C. § 3713. The Liquidator has resolved all known federal claims, and in the Settlement Agreement approved on March 26, 2019, the Federal Claimants stated that they do not intend to file any more proofs of claim in the Home liquidation. Settlement Agreement, tenth whereas clause.

Further, in the Release Agreement approved on March 26, 2019, the United States released the Liquidator and Home from any and all liability and obligations under 31 U.S.C. § 3713 in connection with Home's liquidation, subject to certain exceptions. Release Agreement ¶ III.4-5. I do not anticipate more federal claims. However, given the Federal Priority Statute, and the exceptions in the Release Agreement, the Claim Amendment Deadline should not apply to the United States.

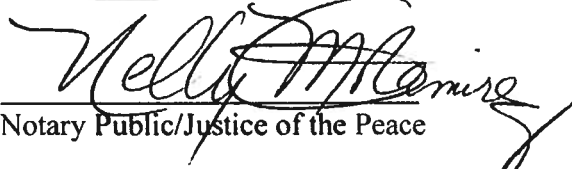
Signed under the penalties of perjury this 30 day of July, 2019.



Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

STATE OF NEW YORK
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 30th day of July, 2019.



Notary Public/Justice of the Peace

Nelly M. Gomez-Ramirez
Notary Public State of New York
No. 01GO5005271
Qualified in Bronx County
Commission Expires 2/1/2019

**THE STATE OF NEW HAMPSHIRE
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NOTICE OF DECISION

Mark C. Rouvalis, ESQ
McLane Middleton Professional Association
900 Elm Street
PO Box 326
Manchester NH 03105-0326

Case Name: **In the Matter of Rehabilitation of The Home Insurance Company**
Case Number: **217-2003-EQ-00106**

Enclosed please find a copy of the court's order of January 28, 2021 relative to:

Order Approving Claim Amendment Deadline; Court Order Regarding Claim Amendment Deadline

February 01, 2021

Catherine J. Ruffle
Clerk of Court

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C: John F O'Connor, ESQ; Carey Almond, ESQ; Lawrence J Eisenstein, ESQ; Melinda S Gehris, ESQ; John A Hubbard; Richard Mancino, ESQ; Joseph G Davis, ESQ; Albert P Bedecarre, ESQ; Marc E Rosenthal; Eric A Smith, ESQ; J. David Leslie, ESQ; David H Simmons, ESQ; Peter Bengelsdorf; J. Christopher Marshall, ESQ; Peter C.L. Roth, ESQ; Century Indemnity Company; Harry L. Bowles; Daniel J. O'Malley, ESQ; Lisa Snow Wade, ESQ; Jeffrey W. Moss, ESQ; Linda Faye Peeples; Gregory T. LoCasale, ESQ; William F. Wills; Joseph C. Tanski, ESQ; John S. Stadler, ESQ; Steven J. Lauwers, ESQ; Michael S. Lewis, ESQ; Michael J. Tierney, ESQ; Mark J. Andreini, ESQ; Paul A. Zevnik, ESQ; Michael Y. Horton, ESQ; Central National Insurance Company; Keith Dotseth, ESQ; Samantha D. Elliott, ESQ; Stephanie V. Corrao, ESQ; Harry P. Cohen, ESQ; Justin N. Leonelli, ESQ; Joseph A. Carroll, ESQ; J. Chase Johnson, ESQ; Doreen F. Connor, ESQ; Terri L. Pastori, ESQ; Kimberly Beth Mason, ESQ; Michael P. Mullins, ESQ; Peter B. Steffen, ESQ; Joseph T. McCullough IV, ESQ; Margaret A. Capp, ESQ; David Himelfarb, ESQ; Christopher J. Valente, ESQ; Thomas W. Ladd; Jessica L.G. Moran; Joseph C. Safar; Bekir Yilmaz

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

~~PROPOSED~~

ORDER APPROVING CLAIM AMENDMENT DEADLINE

On consideration of the motion of John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), requesting an order approving a claim amendment deadline for the final submission of amendments to proofs of claim and proofs of claim in the Home liquidation, notice of the motion and the deadline for filing of objections having been given as directed in the order of notice, ~~and no objections having been timely filed~~ and after consideration of timely filed objections, the Court hereby ORDERS as follows:

1. Establishment of the requested claim amendment deadline is fair and reasonable and in the best interest of the Home liquidation and Home's creditors as it will facilitate the resolution of claims and advance the distribution of the estate's assets and the closure of this proceeding without unnecessary administrative expense. It represents a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims, in accordance with RSA 402-C:46.
2. The Liquidator's Motion for Approval of Claim Amendment Deadline is granted.
3. The date 150 days from the date of this Order, or if such date is a Saturday, Sunday or holiday, the next business day, is hereby established as the Claim Amendment Deadline for the final submission of amendments (including supplements or any other

enlargements) to proofs of claim and new proofs of claim in the Home liquidation. Amendments to previously filed proofs of claim and any new proofs of claim must be filed by an amendment or completed proof of claim form that is received by the Liquidator on or before the Claim Amendment Deadline or that is mailed to the Liquidator by U.S. mail and bears a legible postmark showing mailing by U.S. mail on or before the Claim Amendment Deadline. Any amendments to previously filed proofs of claim or new proofs of claim received by the Liquidator after the Claim Amendment Deadline (unless mailed on or before the Claim Amendment Deadline as specified above) shall not be considered. Amendments to proofs of claim and proofs of claim shall be sent to:

The Home Insurance Company, in Liquidation
61 Broadway, Sixth Floor
New York, NY 10006

4. The June 13, 2004 Claim Filing Deadline established by the June 13, 2003 Order of Liquidation pursuant to RSA 402-C:26 and :37 continues to apply. The Liquidator shall determine whether claims received after the Claim Filing Deadline but on or before the Claim Amendment Deadline are excused or unexcused late-filed claims pursuant to RSA 402-C:37, II and III. The Liquidator shall review and determine all claims filed on or before the Claim Amendment Deadline. Subject to the provisions of this Order, which shall control, the procedures of the Restated And Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation dated January 19, 2005 ("Claims Procedures Order") shall continue to apply to the determination of claims in the Home liquidation.

5. Claims against Home not filed with the Liquidator on or before the Claim Amendment Deadline by amendment to a previously filed proof of claim form or by a new proof of claim form as provided in paragraph 3 above are barred from any distribution of the assets of

the Home estate. Post-Claim Amendment Claims and Potential Claims (as defined below) are deemed to prejudice the orderly administration of the liquidation within RSA 402-C:37 and are barred from any distribution of the assets of the Home estate:

a. **Post-Claim Amendment Deadline Claims.** A “Post-Claim Amendment Deadline Claim” is any amendment (including supplement or any other enlargement) to any previously filed proof of claim or any new proof of claim that is filed after the Claim Amendment Deadline. Post-Claim Amendment Deadline Claims are deemed to prejudice the orderly administration of the liquidation and shall not be considered, regardless of whether good cause – including but not limited to any reason constituting “good cause” under RSA 402-C:37, II – exists for filing after the Claim Amendment Deadline, and regardless of whether a right to reopen, refile, or supplement a claim was previously reserved. The Liquidator shall reject all Post-Claim Amendment Deadline Claims without consideration of their merits.

b. **Potential Claims.** A “Potential Claim” is any claim intended to be covered by a proof of claim or an amendment to a previously filed proof of claim where a specific claim has not been asserted by a specific claimant against a specific person on or before the Claim Amendment Deadline. These are sometimes referred to as “incurred but not reported” claims. Examples of Potential Claims are set forth in the Liquidator’s motion for approval of claim amendment deadline. Potential Claims are deemed to prejudice the orderly administration of the liquidation and shall not be considered, effective as of the Claim Amendment Deadline. The Liquidator shall reject all Potential Claims, effective as of the Claim Amendment Deadline, without consideration of their merits.

6. Claimants with open proofs of claim seeking coverage under a Home policy or reinsurance contract for Potential Claims must amend their proofs of claim by identifying and providing the particulars of all claims for which coverage is sought. Claims that have not been identified (as a specific claim by a specific claimant against a specific person) on or before the Claim Amendment Deadline shall be barred because, if later identified, they will be Post-Claim Amendment Deadline Claims in accordance with paragraph 5 above.

7. Amendments to proofs of claim must include available supporting information regarding the claims. The Liquidator may request claimants to provide additional information or evidence in support of their proofs of claim and amendments as provided in RSA 402-C:38, II. The Liquidator may consider a claimant's failure to timely provide requested supplementary information as ground to deny a claim, subject to review as provided in the Claims Procedures Order.

8. Claimants issued notices of determination as to Class V priority only, deferring determination as to amount, must amend their proofs of claim on or before the Claim Amendment Deadline and include an explanation of why their proofs of claim should be determined as to amount. In the absence of an amendment, the previous notices of determination shall be considered final determinations, and the Liquidator need not make any further determinations on those proofs of claim.

9. The establishment of the Claim Amendment Deadline does not affect claim determinations, including settlements, previously approved by the Court or made or entered by the Liquidator and not yet approved by the Court as of the Claim Amendment Deadline.

10. The establishment of the Claim Amendment Deadline does not permit the refiling or rearguing of proofs of claim previously determined by the Liquidator. Duplicative

amendments or proofs of claim shall not be submitted. If a proof of claim or amendment duplicates or reasserts a previously determined claim, the Liquidator shall reject the proof of claim or amendment without consideration of its merits.


11. The Claim Amendment Deadline applies to all claims except (a) administration costs within RSA 402-C:44, I, and (b) claims of the United States Government.

12. Within 30 days from receipt of this Order, the Liquidator shall mail notice of the Claim Amendment Deadline in the form attached to this Order by first class mail, postage prepaid, using the latest mailing address provided to the Liquidator by the claimant, to all claimants who have open proofs of claim in the Home liquidation. Open proofs of claim means those on which (a) there has been no determination, (b) there has been only a partial determination or determinations, (c) there has been a determination that has not yet been approved by the Court, (d) there has been a determination as to priority but deferral as to amount, or (e) there has been a determination that provided that the claimant could submit further claims. Where the claimant is represented by counsel, notice shall also be mailed to counsel at the latest address provided to the Liquidator. Notice to claimants or counsel with addresses outside the United States shall be sent by air mail, postage prepaid.

13. The Liquidation Clerk shall promptly post this Order and the notice attached to this Order in the Merrimack County Superior Court Files and the Key Documents Relating to the Liquidations sections of the Home Liquidation Clerk website (www.hicilclerk.org).

SO ORDERED

Dated: 1/28/21


Presiding Justice

**The Home Insurance Company, in Liquidation
61 Broadway, Sixth Floor
New York, NY 10006**

POC No(s): _____

**NOTICE OF CLAIM AMENDMENT DEADLINE
FOR THE HOME INSURANCE COMPANY, IN LIQUIDATION**

To Persons who have open proofs of claim in the liquidation of The Home Insurance Company ("Home") and other persons:

Home is in liquidation proceedings before the Merrimack County Superior Court of the State of New Hampshire (the "Court"), In the Matter of the Liquidation of The Home Insurance Company, Docket No. 217-2003-EQ-00106. John R. Elias, Insurance Commissioner of the State of New Hampshire, is the Liquidator of Home ("Liquidator").

The Court has established _____ [INSERT BUSINESS DATE 150 DAYS FROM DATE OF COURT'S ORDER OR NEXT BUSINESS DAY] as the Claim Amendment Deadline for the final amendment of proofs of claim or submission of proofs of claim in the Home liquidation. Claims against Home must be received by the Liquidator or postmarked by U.S. mail on or before the Claim Amendment Deadline at the address set forth above or they will be barred from sharing in any distribution of assets from the Home estate. "Post Claim Amendment Claims" and "Potential Claims" as defined the Order Approving Claim Amendment Deadline dated _____ are barred and will not be considered. The Order Approving Claim Amendment Deadline is available in the "Key Documents Relating To The Liquidations" section of the Home Liquidation Clerk website, www.hicilclerk.org, at _____ [INSERT LINK].

If you have an open proof of claim in the Home liquidation, you have until _____ [INSERT SAME DATE] to amend your proof of claim to supplement or update your claim. If you add a claim, you must include an explanation of why the claim was not filed by the June 13, 2004 claim filing deadline with your amendment. If your open proof of claim seeks coverage under a Home policy or reinsurance contract for Potential Claims, you must amend your proof of claim to make it specific by identifying and providing the particulars of all claims for which coverage is sought.

Any new proofs of claim in the Home liquidation must be filed on or before _____ [INSERT SAME DATE]. The proof of claim form and instructions may be obtained by downloading them from the "Key Documents Relating To The Liquidations" section of the website for the liquidation, www.hicilclerk.org, by calling 1-800-347-0014 during regular business hours (Monday-Friday 8-5 ET), or by writing to the address above. You must include an explanation of why your proof of claim was not filed by the June 13, 2004 claim filing deadline with your proof of claim.

If you have been issued a notice of determination as to Class V priority only, deferring determination as to amount, you have until _____ [INSERT SAME DATE] to amend your proof of claim and include an explanation of why your proof of claim should be determined as to amount. In the absence of an amendment, the previous notices of determination shall be considered final determinations, and the Liquidator need not make any further determination on your proof of claim.

Your submission must include available supporting information regarding your claim.

Amendments and proofs of claim must be received by the Liquidator or legibly postmarked by U.S. mail on or before the _____ [INSERT SAME DATE] Claim Amendment Deadline. Amendments and proofs of claim received or postmarked after the Claim Amendment Deadline will not be considered.

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

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 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") oppose the Liquidator's Motion for Approval of Claim Amendment Deadline ("Motion") because, *inter alia*, the proposed accelerated deadline fails to strike a "reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims" as required by RSA 402-C:46, I. As set forth below, this Motion is premature and not in the best interests of creditors, including Class 2 creditors whose claims at present will not be paid in full by The Home Insurance Company ("The Home Estate") if the Motion is granted.

While there is no binding New Hampshire authority directly on point, the Vermont Supreme Court addressed and denied such a motion of a liquidator in another insurer insolvency proceeding, *In re Ambassador Insurance Co.*, 198 Vt. 341, 114 A.3d 492 (2015) (hereinafter, "the *Ambassador* Decision"). The Vermont Supreme Court employed a well-considered framework for analyzing whether a proposed final claim amendment deadline in an insurance liquidation proceeding would foster a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims of creditors. Specifically, the Vermont Supreme Court held that courts facing this issue should analyze and

weigh the following four factors: “(1) the company’s remaining assets; (2) the nature and amount of its remaining liabilities; (3) the administration costs of the estate; and (4) the extent to which delay in termination of the liquidation proceedings results in a delay of full payment to priority claim holders.” *Ambassador*, 114 A.3d at 500. The Vermont Supreme Court, after considering facts similar to those relevant to The Home Liquidator’s Motion before this Court, denied the Ambassador liquidator’s motion. Four years after the *Ambassador* Decision, the lower court supervising the Ambassador liquidation has not yet imposed a final claim amendment deadline, enabling creditors of the Ambassador Estate to continue submitting newly reported additional claims against those creditors’ insurance policies and reinsurance contracts that were previously incurred but not yet reported claims (“IBNR”).

Here, all four factors weigh in favor of denying the Liquidator’s Motion to impose, at this time, a final claim amendment deadline that would deprive The Home Estate of substantial additional reinsurance recoveries/assets, to the detriment of The Home Estate’s creditors.

- First, The Home Estate still has over \$800 million in undistributed assets and, in addition, has substantial reinsurance recoverables due to The Home Estate on non-contingent claims that will further augment the Estate’s on-hand assets in the foreseeable future. Indeed, the Liquidator reported to this Court on September 18, 2019 that “*the collection of reinsurance is the principal remaining asset-marshaling task of the Liquidator.*”
- Second, the remaining IBNR claims (and the substantial reinsurance assets that will eventually be due from The Home’s reinsurers on those claims) that the Motion seeks to cut off are long-tail claims insured or reinsured by The Home Insurance Company (“The Home”) arising primarily from products injurious to humans (such as asbestos, silica, and talc) and harmful acts that occurred many years ago (such as child sexual abuse and

sports head injuries) and which, by their nature, take decades to become reported claims. Nowhere in his Motion does the Liquidator even attempt to quantify the enormous amounts of claims against The Home Estate arising from such IBNR of the Objecting Creditors *and other creditors* that would be entirely cut off by the premature and unjustifiably early claim amendment deadline the Liquidator asks this Court to impose. Indeed, the Joint Provisional Liquidator and Scheme Administrator¹ of The Home's United Kingdom branch admitted as recently as last month that at this time, "*estimated future values [of IBNR] are subject to significant uncertainty and simplistic assumptions that may result in a wide range of possible outcomes.*"

- Third, the annual costs to administer The Home Estate are modest when compared with the current assets of The Home Estate, and these administrative expenses have declined substantially over the course of the Liquidation. More importantly, the additional assets the Liquidator will be able to collect in the future from The Home's reinsurers as IBNR losses "crystallize" into actual reported claims over time (or are crystallized via actuarial estimation and included in agreed settlements of final amended claims between creditors and The Home Estate) will serve to substantially augment the assets of the Estate, to the considerable benefit of the priority creditors of The Home Estate.
- Finally, the Liquidator has made numerous interim distributions to priority Class I and II creditors, totaling billions of dollars to date, and keeping the Liquidation open would not delay further interim distributions to these priority creditors. It is common for liquidation

¹ The Scheme is discussed in further detail in Section III of the Background Section below. It effectuates a settlement agreement whereby the Objecting Creditors and other AFIA Cedents are obligated to submit claims reinsured by The Home so that the Liquidator can collect reinsurance from The Home's reinsurers (called "retrocessionaires"), including ACE/Chubb which reinsures 100% of The Home's Ruddy Pool liabilities.

proceedings of property/casualty insurance companies with long-tail IBNR liabilities to last multiple decades,² so granting the Motion to impose an early final claim amendment deadline only 16 years after The Home was placed into liquidation would be contrary to the precedent established by other liquidations. Simply put, affording The Home's creditors additional time to present IBNR claims that will crystallize into reported claims³ in the coming years will increase reinsurance recoveries for The Home Estate, and thus increase the assets available to make payments to priority creditors of The Home Estate.

Further, this Court should also decline to impose a final claim amendment deadline on the Objecting Creditors and other similarly situated creditors of The Home due to the unique circumstances in this matter. Without any advance notice to the Objecting Creditors, the Liquidator filed his Motion seeking to cut off their future IBNR claims despite his representations to AFIA Cedent creditors and to the New Hampshire courts in 2005-06 that The Home Estate would achieve substantial amounts of reinsurance recoveries arising from the non-contingent and IBNR claims of the AFIA Cedents if the New Hampshire courts would uphold the settlement agreements with the Objecting Creditors and other AFIA Cedents. Specifically, (1) the proposed early claims amendment deadline is fundamentally at odds with the settlement agreements that the Liquidator entered into with the Objecting Creditors and other AFIA Cedents in 2004 and 2006 (the "Settlement Agreements"), as well as the Scheme of Arrangement that the Liquidator initiated to collect non-contingent and IBNR claims from The Home's reinsurers; and (2) the information that the Objecting Creditors require to submit their final claims for non-

² For example, as discussed in Section I(C)(4) of the Argument section below, several insurance liquidation proceedings have spanned nearly thirty years and more.

³ These IBNR claims can also be crystallized if AFIA Cedents and the Liquidator reach agreement on the amount of IBNR that this Court should approve, based on sound actuarial estimates of such remaining IBNR. As discussed further below, certain creditors have reached such agreements with the Liquidator, and this Court has approved claims that include IBNR.

contingent claims, as well as IBNR claims, is within the possession and control of the Liquidator and/or its claims handler, and the proposed 150-day deadline for submitting their final amended claims does not give the Objecting Creditors sufficient time to calculate these case reserves and IBNR claims and negotiate commutations with the Liquidator that reliably estimate the value of those outstanding losses/case reserves and crystallize that remaining IBNR for inclusion in their final amended claims. Thus, the Court should decline to impose a final claim amendment deadline at this time.

Alternatively, if this Court elects to set a final claim amendment deadline at this time, then it should carefully select a date that will allow the Objecting Creditors and other creditors of The Home Estate to include their IBNR claims as part of their final amended claims in The Home Estate.⁴ The Liquidator has permitted other creditors to include IBNR claims in settlements with The Home Estate, so the Liquidator should be estopped from refusing to allow the Objecting Creditors to include IBNR claims here. RSA 402-C:46 mandates a reasonable balance between the Liquidator's desire for an expeditious completion of the Liquidation and "the protection of unliquidated and undetermined claims, including third party claims." Thus, RSA 402-C:46 accords IBNR claims protection, and this Court should afford creditors with those claims sufficient time to calculate and present those claims under a claims amendment deadline that provides ample time for IBNR to be included. Imposing the premature claims amendment date requested by the Liquidator would unfairly discriminate against the Objecting Creditors and other creditors whose IBNR claims have not been crystallized as part of approved final amended claims. There is simply no reason to treat the IBNR claims of the Objecting Creditors differently than those of other creditors by rushing the claims amendment deadline.

⁴ As discussed in Section III of the Argument section below, several other entities have entered into settlement agreements with the Liquidator containing IBNR components.

The Objecting Creditors request oral argument on the Motion and this Objection.

BACKGROUND

On June 13, 2003, the Court declared The Home insolvent and appointed the Insurance Commissioner as the liquidator (the “Liquidator”) pursuant to the New Hampshire Insurers’ Rehabilitation and Liquidation Act, RSA 402-C. Pursuant to the original order, the deadline for filing initial claims was June 13, 2004. On June 3 and June 4, 2004, the Objecting Creditors filed their initial proofs of claims. (*See* Affidavit of Dirk Eichler, attached as Exhibit A, at ¶ 3; *see also* Affidavit of Robert Bühler, attached as Exhibit B, at ¶ 3.) The proofs of claim explicitly stated that the Objecting Creditors’ reinsurance claims against The Home Estate were unquantified, that The Home and its reinsurer had been handling the claims on behalf of the Objecting Creditors and only they were in a position to fully quantify those claims, and that the Objecting Creditors’ claims included IBNR. *See* Ex. A at ¶ 4; Ex. B at ¶ 4.

I. The Rutty Pool

The Objecting Creditors were both members of a group, or “pool,” of insurance companies that underwrote insurance and reinsurance risks through the M.E. Rutty Underwriting Agency Limited (the “Rutty Pool”).⁵ *See* Ex. A at ¶ 5; Ex. B at ¶ 5. The annual participations of the two Objecting Creditors varied. Zurich Insurance plc, German Branch (“Zurich”) took part in the Rutty Pool from 1962 to 1967, and Württembergische Versicherung (“Württembergische”) took part from 1964 to 1967.⁶ *See* Ex. A at ¶ 5; Ex. B at ¶ 5.

⁵ Zurich Insurance plc, German Branch is the successor-in-interest to Agrippina Versicherung Aktiengesellschaft, an original Rutty Pool member. (Ex. A at ¶ 5.)

⁶ Württembergische Feuerversicherung, Aktiengesellschaft in Stuttgart was the original name of the member of the Rutty Pool in 1964-1967 and its business is currently the responsibility of Württembergische Versicherung AG within the Wüstentrot & Württembergische AG group. (*See* Ex. B at ¶ 5.)

In 1977, The Home, through The Home's United Kingdom branch and the American Foreign Insurance Association ("AFIA"), entered into reinsurance contracts with the Objecting Creditors and other Rutty Pool members (collectively referred to as "AFIA Cedents") whereby The Home reinsured 100% of the Rutty Pool liabilities of the AFIA Cedents. *See In re Liquidation of Home Ins. Co.*, 154 N.H. 472, 474 (2006).

In 1984, as part of the Insurance and Reinsurance Assumption Agreement between Insurance Company of North America ("INA"), The Home, and the AFIA Cedents, INA agreed to reinsure 100% of The Home's reinsurance obligations for the Rutty Pool liabilities. *See id.* Since that time, INA and its successor Century Indemnity Company, both member companies of the ACE/Chubb Group ("ACE/Chubb"), have been obligated to pay The Home for its reinsurance obligations to the AFIA Cedents, including the Objecting Creditors.⁷ *Id.* at 475.

II. The Settlement Agreements Between The Home and The AFIA Cedents

After these liquidation proceedings commenced in 2003, the Liquidator proposed and entered into the Settlement Agreements between The Home Estate and the respective Objecting Creditors (as well as the other AFIA Cedents), under which each AFIA Cedent undertook to continue submitting all of its Rutty Pool claims to the Liquidator, who in turn would submit them to ACE/Chubb and other reinsurers of The Home. *See* Ex. A at ¶ 6; Ex. B at ¶ 6. At the time, the Liquidator reported to the Court that The Home Estate had IBNR claims against its reinsurers, which the Settlement Agreements would enable the Liquidator to collect. *See* the March 26, 2004 Affidavit of Jonathan Rosen, attached as Exhibit C, at ¶¶ 2-3. Through these proposed Settlement Agreements with AFIA Cedents, the Liquidator informed the New Hampshire courts in 2006 that he would be able to recover an estimated \$231 million of reinsurance from The Home's

⁷ The Home Estate may recover this reinsurance from ACE/Chubb without having to first pay the claims of the Objecting Creditors or other creditors of the Estate. *See* RSA 402-C:36.

reinsurers for the enormous benefit of the priority creditors of The Home Estate. *See In re Liquidation of Home Ins. Co.*, 154 N.H. at 477. This \$231 million figure specifically included actuarial IBNR estimates, a figure that The Home advised the courts that it expected to increase. Ex. C at ¶ 3, fn. Over time, even though claims have matured and been reported to the AFIA Cedents and in turn The Home Estate, the IBNR of the AFIA Cedents in fact **increased**. In 2012, the Scheme Administrator reported to Scheme creditors that IBNR on the AFIA liabilities of The Home Estate was estimated to be \$313,848,000. *See* December 4, 2012 Report of the Scheme Administrator, attached as Exhibit D, at 2.

Under these Settlement Agreements, The Home Estate committed itself to investigate, adjust and admit or refute liability for all claims brought by policyholders and cedent insurance companies insured and reinsured by the AFIA Cedents, including the Objecting Creditors. *See* Ex. A at ¶ 7; Ex. B at ¶ 7. In exchange for the filing of these claims by the Objecting Creditors and other AFIA Cedents against The Home Estate that would enable The Home Estate and its priority creditors to benefit from reinsurance recoveries, the Liquidator undertook to distribute half of the net reinsurance recoveries (estimated in 2006 to be \$69 million) to the AFIA Cedents, including the Objecting Creditors, and use the remainder to pay priority creditors of The Home Estate pursuant to the priority distribution order of creditors set forth under New Hampshire law. *See In re Liquidation of Home Ins. Co.*, 154 N.H. at 477. Thus, recoveries of a substantial percentage of their IBNR claims against The Home Estate were part of the bargained-for consideration due the Objecting Creditors and other AFIA Cedents when they entered into these Settlement Agreements.

ACE/Chubb objected to these agreements, but the New Hampshire Supreme Court ruled in 2006 that the Settlement Agreements were fair and reasonable. *See generally In re: the*

Liquidation of the Home Insurance Company, 154 N.H. 472 (2006). The Supreme Court found that “[ACE/Chubb] would reap a substantial windfall in the absence of the proposed agreement by depriving Home’s creditors of the amounts they would have paid but for Home’s insolvency. This would frustrate the legislative purpose of obtaining full payment from reinsurers despite an insurer’s insolvency.” *Id.* at 488 (citing RSA 402–C:36 and RSA 405:49, I).

Further, the Court found that “the 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 [New Hampshire law] provides that the statute should be ‘liberally construed’ to effectuate this purpose.” *Id.* at 488 (citing RSA 402-C:1, IV; RSA 402-C:1, III). Moreover, the Court concluded, “the AFIA Cedents’ claims are significant, totaling approximately \$231 million. The substantial dollar amount of these claims suggests that *it is reasonable to assume that collection proceedings would be lengthy, complex, and difficult.* Most importantly, as the superior court properly concluded, *the agreement benefits the Class II claimants to Home’s estate since it increases the likelihood that their claims will be paid.*” *Id.* at 490 (emphasis added).⁸ Thus, the New Hampshire Supreme Court upheld the Settlement Agreements and The Home is contractually bound to handle the Objecting Creditors’ claims, collect reinsurance recoveries, and distribute a portion of such recoveries to the Objecting Creditors, with the remainder available to pay Class II creditors.

III. United Kingdom Scheme of Arrangement

Pursuant to the Settlement Agreements with the Objecting Creditors and other AFIA Cedents, a scheme of arrangement between The Home and the AFIA Cedents (the “Scheme”) was implemented pursuant to § 425 of the English Companies Act of 1985. *See* the Scheme,

⁸ The Court also noted that the Settlement Agreements would enable the Liquidator to “marshal assets to be distributed to creditors which would otherwise be unavailable.” *Id.* at 483.

attached as Exhibit E. The Scheme creates a dynamic to secure the Liquidator's recovery of reinsurance of AFIA Cedents' claims from ACE/Chubb and other reinsurers, which to date has resulted in many millions of dollars of recoveries for The Home Estate (and which in turn have been distributed to The Home Estate's priority creditors and to the AFIA Cedents).⁹ See Ex. E.

Pursuant to the Scheme, the Liquidator may enter into compromises with reinsurers of The Home, including ACE/Chubb, with input from the AFIA Cedents. *Id.*, Part II, The Scheme, at ¶ 2.12. The Scheme can only terminate upon one of a defined set of termination events, such as the agreement of the Scheme Creditors' Committee (*i.e.*, the AFIA Cedents) or the discharge of The Home's liabilities to the Scheme Creditors in full. *Id.*, Part II, The Scheme, at ¶ 7.1. None of those events have occurred, and none are proposed.

Due to the long-tail nature of much of the Ruddy Pool business, which includes liability for asbestos, pollution and other types of long-tail claims, the injured parties continue to file claims against the policyholders and ceding insurers of the Ruddy Pool members, including the Objecting Creditors, and those claims are reinsured by The Home and, in turn, ACE/Chubb. See Ex. A at ¶ 8; Ex. B at ¶ 8. The precise amount of IBNR at present is not known to the Objecting Creditors. See Ex. A at ¶ 9; Ex. B at ¶ 9. The Liquidator represented to the Objecting Creditors on November 15, 2019 that he "has not calculated the amount of IBNR of the AFIA Cedents that would be cut off" by his proposed claim amendment deadline. See E-mail of David Leslie, attached as Exhibit G. As the Joint Provisional Liquidator and Scheme Administrator of The Home's United Kingdom branch admitted as recently as last month, "*estimated future values [of IBNR] are subject to significant uncertainty and simplistic assumptions that may result in a*

⁹ As of December 31, 2015, ACE/Chubb alone had already paid \$83.7 million to The Home Estate net of offsets. (See excerpt of March 10, 2017 Report of the Scheme Administrator, attached hereto as Exhibit F.)

wide range of possible outcomes.” See October 3, 2019 email from Patrick Brazzill, Joint Provisional Liquidator and Scheme Administrator, attached hereto as Exhibit H.¹⁰

When the Scheme began, the Liquidator recognized that the potential for recoveries made reinsurance one of The Home Estate’s “most valuable assets in relation to AFIA.” See Ex. E, Part I, Explanatory Statement, Section C, ¶ 8. This remains true today. Via the Scheme, The Home Estate continues to receive reinsurance recoveries to this very day that are then used to pay the priority creditors of The Home Estate and the bargained-for consideration due to the AFIA Cedents. Indeed, the Liquidator reported to the Court on September 18, 2019 that “[t]he *collection of reinsurance is the principal remaining asset-marshaling task of the Liquidator.*” See Liquidator’s 74th Report, attached hereto as Exhibit I, at ¶ 16 (emphasis added).

Thus, the Objecting Creditors and other AFIA Cedents, as well as policyholder creditors of The Home Estate, still have substantial amounts of contingent IBNR claims that have yet to be submitted to the Liquidator but which will eventually crystallize and become non-contingent claims if the Motion is denied and The Home Estate remains open for a number of years. These claims will continue to benefit the priority creditors of The Home Estate and will prevent ACE/Chubb from gaining an unfair windfall to the detriment of those creditors and the AFIA Cedents, to whom the Liquidator owes a contractual obligation to pursue IBNR claims under the Settlement Agreements. Imposing a final claims amendment deadline at this time would deprive The Home Estate’s creditors of the amounts they would have been paid but for The Home’s insolvency. Granting the Motion “would frustrate the legislative purpose of obtaining full payment from reinsurers despite an insurer’s insolvency.” See *In re Liquidation of Home Ins. Co.*, 154 N.H. at 488 (citing RSA 402–C:36 and RSA 405:49, I).

¹⁰ Privileged communications within this email have been redacted.

At this time, the Objecting Creditors lack sufficient information to provide a reasoned estimate of their IBNR claims to the Liquidator and this Court. To enable themselves to calculate the IBNR load factors and include them in their claims, the Objecting Creditors are seeking detailed claims information from the Liquidator and the Liquidator's agent, ACE/Chubb, which handles these claims as described above. To date, neither the Liquidator nor ACE/Chubb has shared with the Objecting Creditors their IBNR figures for the AFIA Cedents as a whole, nor sufficient information to enable the Objecting Creditors to calculate themselves their IBNR load factors to be used in their final amended claims against The Home Estate. For these reasons, the Objecting Creditors are requesting from the Liquidator and/or its agent ACE/Chubb: 1) the amount of IBNR of the AFIA Cedents that the Liquidator and/or ACE/Chubb estimates will be cut off if the Liquidator's Motion is granted (and an explanation of the calculation that is sufficient to be subjected to independent analysis, verification and potential challenge); and 2) the component of that IBNR attributable to the Objecting Creditors so they can then enter into negotiations to attempt to agree upon the IBNR factor and use that number in final settlements of their claims with the Liquidator, for approval by this Court. The Objecting Claimants reserve their rights to seek the assistance of this Court to obtain this essential information.

IV. The Liquidator's Motion

On July 31, 2019, the Liquidator filed the Motion at issue asking the Court to impose on creditors of The Home Estate a final claim amendment deadline of 150 days after the entry of the Court's order granting the Motion. Inexplicably, the Liquidator gave no advance notice of his Motion to the Objecting Creditors, nor, on information and belief, the other approximately 1,000 creditors whose claims would be adversely impacted if the Motion were granted.

The Motion seeks, among other things, to cut off IBNR claims of The Home Estate's remaining creditors and to set a definitive date for creditors to report to the Liquidator their final remaining non-contingent claims. If granted, the Motion would deprive The Home Estate of reinsurance recoveries on enormous amounts of long-tail IBNR claims that are actuarially projected to be reported in the future, after the proposed 150-day deadline, against the creditors' insurance policies and reinsurance contracts.

On August 19, 2019, this Court entered an order directing any objections to the Motion be filed no later than 90 days from the date of the order. The Objecting Creditors now timely file their Objection to the Motion.¹¹

ARGUMENT

This Court should follow the well-reasoned four-factor analysis of the *Ambassador* Decision. The facts before the Court strongly support the conclusion that the Liquidator's proposed unreasonably short deadline that he sprung on creditors without any advance notice fails 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 (internal quotation marks omitted); *see also* RSA 402-C:46, I. Therefore, the Objecting Creditors respectfully request that this Court deny the Motion and decline to impose a final claims amendment deadline at this time. If the Court determines that a claim amendment deadline should be imposed, then the Objecting Creditors respectfully request that the Court take evidence and select a date that provides all creditors sufficient time to calculate their IBNR and negotiate with the Liquidator its inclusion in their approved claims.

¹¹ The Objecting Creditors sought the Liquidator's agreement to a one-week extension to file this Objection, which the Liquidator refused. The Objecting Creditors filed a request with this Court seeking an extension.

In addition to the factors employed by the Vermont Supreme Court in the *Ambassador* Decision, three other factors unique to this case justify the Court's denial of the Motion. First, the proposed deadline contravenes the fundamental underpinning of the Settlement Agreements that the Liquidator entered into with the Objecting Creditors and other AFIA Cedents. Second, the Motion is at odds with the binding Scheme of Arrangement the Liquidator initiated, as the Scheme does not authorize the imposition of such a truncated deadline. Third, it is too early to set a final claim amendment deadline at this time because the Objecting Creditors require a significant amount of information to quantify the amount of their IBNR claims, which is in the possession or control of the Liquidator and/or ACE/Chubb, and which the Objecting Creditors cannot reasonably obtain and use to calculate their IBNR claims in the proposed 150 days.

Finally, the Liquidator's Motion, if granted, would unfairly discriminate against the Objecting Creditors. The Liquidator previously reached settlements with other creditors, including other AFIA Cedents, and obtained this Court's approval of final claims of those creditors that include IBNR. For example, in 2015 and 2019, respectively, this Court, upon motions filed by the Liquidator, approved settlements between The Home Estate and Enstar and National Casualty Company (other AFIA Cedents), that included IBNR. Thus, as a matter of fairness and equity, the Objecting Creditors should receive the same treatment.

I. Based on the Four-Factor Analysis Employed in the *Ambassador* Decision, This Court Should Decline to Set the Final Claims Deadline Proposed in the Motion.

Liquidators of insolvent insurance companies do not possess unfettered discretion in setting a final claim amendment deadline. The *Ambassador* Decision identified four factors supervising courts should consider when determining whether a requested final claim amendment deadline achieves a "reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims." *Ambassador*, 114 A.3d

at 500 (internal quotation marks omitted). Those four factors are: (1) the insolvent insurance company's remaining assets; (2) the nature and amount of the company's remaining liabilities; (3) the administration costs of the company's estate; and (4) the extent to which delay in termination of the liquidation proceedings would result in a delay of full payment to priority claim holders. *Ambassador*, 114 A.3d at 500.¹² Here, all four factors weigh against establishing a final claims amendment deadline at this time.

A. The *Ambassador* Decision.

The *Ambassador* Decision involved an insolvent property/casualty insurer domiciled in Vermont that was placed into receivership in 1983. *Id.* at 493. The court issued a liquidation order in 1987 and set a deadline of March 1, 1988, for the filing of initial claims and accompanying proofs of loss. *Id.* In the course of the liquidation process, the liquidator secured approximately \$347 million in assets for the estate. *Id.* at 494. By the time the Vermont Supreme Court rendered the *Ambassador* Decision in 2015, the liquidator had roughly \$92 million in undistributed assets remaining. *Id.*

In the early 1980's – before the liquidation proceedings began – *Ambassador* issued two long-tail occurrence-based excess liability policies to AP Green Industries, a manufacturer of products containing asbestos. *Id.* at 495. Each policy provided for \$10 million in excess coverage. *Id.* By the early 2000's, AP Green's liability for asbestos claims covered by those excess policies reached the levels that could have eventually triggered the policies. *Id.* Eventually, AP Green assigned all of its claims against *Ambassador* to National Indemnity Company (“NICO”). *Id.*

¹² The Liquidator cited *Ambassador* in passing on page 11 of its Motion, but did not advise the Court of these factors or the substance of the *Ambassador* decision.

Meanwhile, in June 2010, years after the insurer was placed into liquidation, the liquidator “filed a motion with the superior court to establish a deadline by which all claimants, including those who previously filed policyholder-protection claims, would need to file final and complete proofs of claim.” *Ambassador*, 114 A.3d at 496. NICO objected on the grounds that it was too soon to set a deadline because it would unreasonably limit claimants’ ability to submit proof of long-tail claims under the two excess policies. *Id.* The lower court rejected NICO’s arguments and set a final deadline for submitting claims. *Id.*

On appeal, the Vermont Supreme Court analyzed whether the trial court unreasonably imposed a final claims amendment date that was too early. *Id.* at 497. The Court discussed two “legal considerations” that affected whether the final claim date was reasonable. First, “any final claim date must be consistent with the terms and goals of the liquidation order,” including distributing assets “in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims.” *Id.* at 498 (internal quotation marks omitted).¹³ Second, “any final claim date must be consistent with the critical goal of the liquidation process: the protection of the public in general and policyholders in particular.” *Id.* The Vermont Supreme Court found:

The policyholders in this case paid good money for the insurance they purchased. Members of the public who have sustained injuries for which the policyholders are liable may also suffer if the contracted-for insurance is not available to the policyholder[s]. When an insurer is insolvent, frustration of some policyholders’ contractual expectations and a lack of coverage for some injured innocent third parties may be inevitable, **but courts and liquidators should be loath to cut off**

¹³ New Hampshire has the identical statutory language as Vermont. *See* RSA 402-C:46, I (“Under the direction of the court, the liquidator shall pay dividends in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.”).

valid claims in the face of ample funds to pay those claims without good reason.

Ambassador, 114 A.3d at 498. (emphasis added) (citation omitted).

Moreover, the Vermont Supreme Court found that there were two key facts in the case that justified a longer liquidation proceeding. First, much of the insurance written by Ambassador was for “excess coverage for long-tail claims,” and “[i]njury caused by the risks insured by Ambassador—including disease caused by asbestos exposure—often does not declare itself until years, even decades, after the underlying exposure.” *Id.* at 499 (citing *Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076, 1083 (5th Cir. 1973); M. Veed, *Cutting the Gordian Knot: Long-Tail Claims in Insurance Insolvencies*, 34 Tort & Ins. L.J. 167, 169 (Fall 1998)). Second, the Ambassador liquidator still had substantial undistributed assets on hand (\$92 million); thus, there were still ample funds available to pay future claims. *Id.* at 499–500. The Court also found that there were ample funds to sustain its administrative costs for several more years. *Id.* at 500-01.

After acknowledging these legal principles and key facts, the Court concluded that when determining whether the liquidator’s proposed final claim amendment date strikes a reasonable balance between the expeditious completion of the liquidation and the protection of future unliquidated and undetermined claims, “courts should consider, among other factors: (1) the company’s remaining assets; (2) the nature and amount of its remaining liabilities; (3) the administration costs of the estate; and (4) the extent to which delay in termination of the liquidation proceedings results in a delay of full payment to priority claim holders.” *Id.* at 500.

The Court then evaluated and applied these four factors and held that the trial court’s final claim amendment deadline date 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. (internal quotation marks omitted). The Court “recognize[d] that this liquidation has continued for quite some time—nearly three decades—**but the length of the liquidation is not in and of itself sufficient to justify cutting off valid but not fully ripe claims under the Ambassador policies** when funds remain to pay those claims and the estate can be administered economically.” *Id.* at 501 (emphasis added). By denying the liquidator’s motion for a final claim amendment deadline that was not appropriate at that time, the Court’s decision has allowed the *Ambassador* liquidation proceeding to continue *without fixing a final cutoff date for amendments of claims*, thereby permitting IBNR to develop into non-contingent paid claims that can be included in the creditors’ claims against the Ambassador estate. Nearly five years after the *Ambassador* decision, the liquidation is ongoing, and creditors’ claim amendments continue to be accepted with no deadline in place for finalizing claims.¹⁴

B. This Court Should Employ the Four Factors Test of the *Ambassador* Decision as Persuasive Authority.

While the *Ambassador* Decision is not binding precedent in New Hampshire, for the following reasons this Court should give considerable weight to it as persuasive authority in determining whether to grant or deny The Home Liquidator’s Motion.¹⁵

- To begin with, the statutory language interpreted and applied by the Vermont Supreme Court is identical to the language of the New Hampshire insurance insolvency statute at issue here.

¹⁴ See <https://ambassadorliquidation.com>.

¹⁵ The New Hampshire Supreme Court has acknowledged the good practice of relying on persuasive authority from sister states in rendering decisions under New Hampshire law. *See In re Waterman*, 154 N.H. 437, 442 (2006) (rendering a holding “[i]n light of the above discussion of the persuasive authority from other jurisdictions[.]”); *In re Opinion of the Justices*, 129 N.H. 714, 718 (1987) (stating “[i]n so holding, we come to the same conclusion that other courts have reached when confronted with questions similar to those posed to us,” citing to multiple sister state authorities, then recognizing “the weight of such persuasive authority”) (citations omitted).

- Second, there is no New Hampshire case law directly on point addressing the question at issue, and no court other than Vermont’s highest court has addressed the issue.¹⁶
- Third, the *Ambassador* Decision is particularly persuasive authority because the facts and issues involved are directly on point with the facts and issues raised by the Liquidator’s Motion.
- Fourth, no court has since criticized the reasoning or result of the *Ambassador* Decision. To the contrary, a leading secondary source, *Corpus Juris Secundum*, has recognized the *Ambassador* Decision as a chief case on the subject of the reasonableness of a claim filing deadline proposed by an insurance company liquidator. *See* 44 C.J.S. Insurance § 258 (citing to the four factors from *Ambassador* in explaining the policy behind setting a reasonable final claims amendment deadline in insurance liquidation proceedings).

C. Application of the Four Factors of the *Ambassador* Decision to The Home Liquidator’s Motion.

The application of the four factors from the *Ambassador* Decision establishes that the Liquidator’s requested final truncated claim amendment deadline of 150 days from the date the Court rules on the Motion does not strike a reasonable balance between the completion of The Home liquidation and the protection of unliquidated and undetermined claims of creditors against the Home Estate.

¹⁶ Given the lack of case law on point, the *Ambassador* Decision cited several cases only for broad propositions of law, but ultimately its key analysis focused on public policy considerations rather than prior case law. The *Ambassador* Decision also cited to an article published in the *Tort & Insurance Law Journal*; M. Veed, *Cutting the Gordian Knot: Long-Tail Claims in Insurance Insolvencies*, 34 *Tort & Ins. L.J.* 167 (Fall 1998) (attached hereto as Exhibit J.) The article addresses how the “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,” and that, due to the nature of long-tail claims, achieving this objective generally requires liquidation estates that span multiple decades. *Id.* at 170.

1. The Home's Remaining Assets.

As detailed in the Liquidator's Motion, The Home had approximately \$808.4 million in undistributed assets as of May 31, 2019 (*see* Mot. at 6); substantially more than the \$92 million in assets that remained in the Ambassador estate at the time of the Vermont Supreme Court's decision. More importantly, postponing the imposition of the claim amendment deadline proposed by the Liquidator will enable The Home Estate to collect substantially more assets from The Home's reinsurers as IBNR becomes reported claims and the Liquidator agrees on claims of creditors that include IBNR. Thus, there are substantial assets remaining in The Home Estate, and even more reinsurance assets that have yet to be recovered. In fact, in the Liquidator's Motion and accompanying affidavit, the Liquidator acknowledges that reinsurance recoveries are still an outstanding asset. *See* Mot. at 7; *see also* Bengelsdorf Aff. at ¶ 14. Notably, the Liquidator neglects to apprise the Court of the amount of IBNR that will be cut off and the considerable reinsurance recoveries that would be lost to The Home Estate and its priority creditors if the Motion is granted.

Further, the Liquidator claims that he has not quantified the actuarially estimated remaining IBNR claims that AFIA Cedents will file against The Home Estate if the Motion is denied, nor has the Liquidator calculated the resulting reinsurance claims that he is seeking to forfeit. Thus, the Liquidator amazingly claims he does not know the amount of IBNR claims that will be cut off if the Motion is granted. Rather, the Liquidator merely acknowledges that such IBNR would be cut off but dismisses the resulting prejudice that the premature claim amendment deadline would impose on creditors, including Class II's priority policyholder creditors, by summarily and vaguely asserting that waiting for long-tail claims to emerge will "prejudice the orderly administration of the liquidation...." *See* Mot. at 14.

But the Liquidator ignores the following facts that argue against granting the Motion: (1) The Home Estate's current assets of \$808.4 million are sufficient to make additional significant partial payments to Class II policyholder creditors whose claims have been approved by this Court; (2) at present, there are insufficient assets in The Home Estate to pay the approved claims of Class II creditors in full; (3) the early claim amendment deadline would preclude Class II priority creditors from making claims against The Home Estate for additional liabilities that have not yet been reported to these policyholders; and (4) leaving the Liquidation open will enable the Liquidator to collect substantially more reinsurance assets over time as IBNR becomes reported claims and the Liquidator agrees on IBNR figures to be included in creditors' final amended claims approved by this Court, all for the benefit of Class II policyholder creditors and the AFIA Cedents to which the Liquidator owes obligations under the Settlement Agreements. These facts warrant keeping the Liquidation open indefinitely to ensure that more of the long-tail IBNR claims of these creditors will be paid. *See Ambassador*, 114 A.3d at 498 ("liquidators should be loath to cut off valid claims in the face of ample funds to pay those claims without good reason").

2. The Nature and Amount of the Home's Remaining Liabilities.

The remaining IBNR liabilities for the Objecting Creditors, as well as the other AFIA Cedents and the policyholder creditors of The Home, derive in large measure from general liability insurance policy long-tail claims. Long-tail claims include losses arising from exposure to asbestos, silica, talc, pollution, and other latent injuries, such as sports head injuries and child abuse, the latter of which has been the subject of very recent amendments to statutes of limitations in various states prompting new claims being brought under decades-old insurance policies. As the Liquidator acknowledges in his Motion, long-tail claims "depend upon complex

underlying facts or lawsuits and emerge over time,” and can take “many years” for such claims to implicate coverage from policies, as well as reinsurance contracts, issued or entered into by The Home. *See* Mot. at 5. Granting the Liquidator’s Motion would preclude claims against The Home Estate for these claims.

By themselves alone, the Objecting Creditors and the other Ruty Pool members have approximately (a) \$25.9 million in reported outstanding losses/case reserves for known asbestos claims; (b) \$4.2 million in outstanding losses/case reserves for reported outstanding losses/case reserves for environmental claims; (c) \$1.7 million for reported outstanding losses/case reserves for health claims; and (d) \$1.9 million in reported outstanding losses/case reserves for “other” long-tail claims. *See* Ex. A at ¶ 10; Ex. B at ¶ 10. On top of these known claims that have not yet been quantified with certainty, there are considerable IBNR losses that the Objecting Creditors, other AFIA Cedents, and other creditors with IBNR claims (including Class II priority policyholder creditors) will be reporting to the Liquidator over the coming years. Thus, just as in the *Ambassador* liquidation, here there are substantial long-tail claims that will not be reported for years or included in settlement agreements between the Liquidator and creditors, making an early deadline unreasonable because it would deny coverage for these claims (as well as decrease additional reinsurance recoveries that will be available to pay creditors’ claims if the deadline is postponed).

Therefore, the remaining long-tail claims in this proceeding weigh heavily against setting a final claims amendment deadline at this time.

3. The Administration Costs of the Home Estate.

The Liquidator’s Motion concedes that the operating costs for this liquidation have decreased significantly from an annual budget of \$26.9 million in 2004 to an annual budget of

\$13.9 million in 2019. *See* Mot. at 7. Thus, the operating costs if the Liquidation remains open are decreasing and are relatively modest, especially compared with the \$808.4 million in currently available assets of The Home Estate and the substantial additional reinsurance recoverables that could be recovered from The Home’s reinsurers for their share of creditors’ IBNR claims.

There are ample assets remaining to cover the operating costs of The Home Estate for many years, and because additional reinsurance recoveries will be made as a result of delaying the claim amendment deadline indefinitely, there will be more than enough assets to cover future operating costs of the Liquidation. Thus, this factor weighs against granting the Liquidator’s Motion.

4. The Extent to Which Delay in Termination of the Home Liquidation Will Result in Delay of Full Payment to Priority Claim Holders.

Declining to set a final claims amendment deadline at this time will not prevent or unduly delay partial payments to policyholders in the interim. As mentioned in his Motion, the Liquidator has been making billions of dollars of interim distributions to Class II policyholders on their approved claims throughout this proceeding. *See* Mot. at 3-4, 6-7. Therefore, Class II policyholders of The Home have not had to wait to receive partial payments. Further, the Liquidator has made no showing that The Home Estate cannot continue to make such additional interim distributions on approved claims in this proceeding while the Liquidation remains open; rather, in the Motion, the Liquidator acknowledges that “it may be possible to make additional interim distributions....” Mot. at 2.

In addition, “the length of the liquidation is not in and of itself sufficient to justify cutting off valid but not fully ripe claims under the Ambassador policies when funds remain to pay those claims and the estate can be administered economically.” *Ambassador*, 114 A.3d at 501. Thus,

the mere fact that a denial of the Motion will result in delaying the conclusion of this Liquidation does not, in and of itself, warrant granting the Motion to the detriment of future long-tail claimants and creditors.

In fact, 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. *See Ambassador Insurance Company, Inc.*, 198 Vt. 341, 114 A.3d 492 (2015) (thirty-two years, beginning in 1987 and no claim amendment deadline has been set); *In re Liquidation of Integrity Ins. Co.*, 193 N.J. 86, 935 A.2d 1184 (2007) (nearly thirty years, beginning in 1987 and concluded in 2016, <https://www.nj.gov/dobi/finreceivership/integrityfinalorder160106.pdf>); *In re Liquidation of Midland Ins. Co.*, 16 N.Y.3d 536, 947 N.E.2d 1174, 1176 (2011) (nearly thirty years; entered into liquidation proceedings in 1986 and final claim amendment deadline of December 31, 2015, http://www.nylb.org/Documents/Midland_POC2015Order.pdf); *Pac. Mut. Life Ins. Co. of Cal. v. McConnell*, 44 Cal. 2d 715, 719, 285 P.2d 636, 637 (1955) (nearly thirty years; entered into liquidation proceedings in 1937, was still proceeding through the judicial system in 1955, and closed in 1967, <https://www.caclo.org/perl/companies.pl?closed=1>).¹⁷ These other proceedings demonstrate how unusually early it would be to impose a final claim amendment deadline on The Home's creditors now, after only sixteen years have elapsed, particularly given the massive

¹⁷ *See also* Liquidation of Union Indemnity Insurance Company of New York (twenty-five years; entered into liquidation in 1985 and final claims date entered in 2010, <http://www.nylb.org/UnionIndem.htm>), Liquidation Proceedings of Pine Top Insurance Company (twenty-three years; entered into liquidation proceedings in 1987 and final claims deadline in 2010, <https://www.osdchi.com/closed/pinetop.htm>); Liquidation Proceedings of American Mutual Reinsurance Company (twenty-one years; began in 1988 and closed in 2009, <https://www.osdchi.com/closed/americanmutual.htm>); Liquidation Proceedings of Los Angeles Insurance Company (twenty-one years; began in 1973 and closed in 1994, https://www.caclo.org/perl/index.pl?document_id=d7a1369866b95e9d6df5726826ad88f1).

size of this Liquidation and the fact that Class II policyholder creditors' reported claims would not be paid in full if the Motion is granted, and their IBNR claims would also be barred.

Therefore, based on the well-reasoned analysis of the *Ambassador* Decision, the proposed deadline of 150 days from the date the Motion would be granted does not strike a "reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims" as required by RSA 402-C:46, I. Thus, the Court should deny the Liquidator's Motion and should not impose a final claims deadline at this time.

II. Apart from the Four Factors from *Ambassador*, This Court Should Deny the Liquidator's Motion for Three Additional Reasons Unique to the Objecting Claimants' Circumstances.

A. Imposing a Deadline at this Time Conflicts with the Prior Settlement Agreements Between the AFIA Cedents and the Liquidator.

Additionally, the Liquidator should be estopped from imposing the proposed deadline on the Objecting Creditors and other AFIA Cedents because the deadline is at odds with the Settlement Agreements the Liquidator invited and entered into with the Objecting Creditors and other AFIA Cedents in the early 2000s. At that time, the Liquidator negotiated a deal with the Objecting Creditors that benefitted both parties – and the priority Class II creditors of The Home Estate. The Liquidator represented to this Court and the New Hampshire Supreme Court that \$231 million of reinsurance assets would be collected if the Court approved the Settlement Agreements. That amount *included* IBNR. The Objecting Creditors' ability to recover a portion of that IBNR was part of the offered consideration for their entering into those Settlement Agreements. Now, in 2019, the Liquidator has abruptly changed the position he argued to the New Hampshire courts in 2005-06 and makes his Motion for a premature claim amendment

deadline that would deprive the Objecting Creditors and the Class II priority creditors of any benefit of the remaining IBNR claims.

Furthermore, Paragraph 6.3 of the Agrippina/Zurich Settlement Agreement and Paragraph 13 of the Württembergische Settlement Agreement provide that The Home Estate will respond to claims asserted by policyholders against the Objecting Creditors' policies and "do all things necessary to have [The Home's] obligations admitted into Home's estate." Ex. A-2 at ¶ 6.3.2; *see also* Ex. B-2 at ¶ 13. The proposed claims amendment deadline ends the process of accepting The Home Estate's obligations and cuts off the flow of future reinsurance recoveries the Liquidator once touted to this Court. If IBNR would be cut off now by the Liquidator's proposed claim amendment deadline, then when future claims are reported and brought by policyholders and cedent insurers of the AFIA Cedents, the Objecting Creditors would lose the bargained-for reinsurance coverage from The Home and The Home Estate would not be able to collect reinsurance from ACE/Chubb to pay Class II priority creditor claims.

On the other hand, if the Liquidator's Motion is denied, The Home and ACE/Chubb will continue to handle future claims brought against the Objecting Creditors and the other AFIA Cedents, and reinsurance recoveries arising from those claims will benefit The Home Estate and the AFIA Cedents as all parties envisioned when they entered into these Settlement Agreements. The Objecting Creditors will also have more time to negotiate settlements with the Liquidator that include an IBNR load factor, which would not be possible if the proposed 150-day deadline is imposed.

B. Imposing a Deadline at this Time Conflicts with the Scheme of Arrangement that Binds The Home Estate.

The Scheme of Arrangement initiated by and binding upon The Home Estate is also at odds with the Liquidator's proposed early claim amendment deadline. As explained above at

pages 8-9, the Scheme authorizes the Liquidator to enter into commutations with The Home's reinsurers, but, unbeknownst to the Objecting Creditors, the Liquidator ceased pursuing a commutation with ACE/Chubb. By closing the door to IBNR claims of the AFIA Cedents, the Liquidator can no longer use the AFIA Cedents' IBNR claims to obtain additional reinsurance recoveries from ACE/Chubb and other reinsurers that benefit Class II creditors and the Objecting Creditors.

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 at ¶¶ 12-13; Ex. B at ¶¶ 12-13. In fact, however, the Liquidator's counsel has now admitted that the Liquidator is not seeking any such commutation with ACE/Chubb. *See* E-mail of David Leslie, Ex. G. Thus, the Liquidator has frustrated the purpose of the Scheme to maximize reinsurance recoveries for the benefit of all Class II creditors of The Home Estate by not settling the AFIA Cedents' IBNR claims with ACE/Chubb and now seeking to cut off remaining IBNR that can be used to recover additional amounts from all of The Home Estate's reinsurers, including ACE/Chubb.

Furthermore, the Scheme, which was approved by a court in the United Kingdom, does not terminate until the liabilities of the Objecting Creditors and the other AFIA Cedents are discharged in full. The establishment of a premature claim amendment deadline would deny the rights of the Objecting Creditors (and other Scheme Creditors) who are entitled to enforce the obligations the Liquidator agreed to assume, by acting in their interests to commute IBNR with reinsurers of The Home and only terminate the Scheme when all of The Home's liabilities are properly discharged in full or the Scheme comes to an end pursuant to the other terms of the Scheme. The Liquidator has not sought to modify the terms of the Scheme or to seek approval of

a court in the United Kingdom for that purpose. Thus, the Liquidator cannot be allowed to evade its responsibilities under the Scheme and its binding Settlement Agreements with the Objecting Creditors and other AFIA Cedents by prematurely cutting off the IBNR claims that were a central component of the Scheme.

C. Imposing a Claim Amendment Deadline at this Time is Unfair to the Objecting Creditors Because the Information Necessary to Determine Their Final Claims is in the Possession and Control of the Liquidator and/or ACE/Chubb

Granting the Liquidator's Motion and imposing a 150-day deadline would impose severe and unfair hardship on the Objecting Creditors because they do not presently possess the information necessary to calculate their IBNR claims and quantify the fair value of their case reserves.

Under the terms of the respective Settlement Agreements between the Liquidator and each of the Objecting Creditors, the claims against Ruddy Pool members are handled, adjusted, and settled by The Home, either through itself or through ACE/Chubb. *See* Ex. A at ¶ 7; Ex. B at ¶ 7. Those Settlement Agreements expressly provide that "The Home shall, either itself or through AISUK,¹⁸ have the sole right to and will investigate, adjust and admit or refute liability for such claims in the name and with the authority (which is hereby granted and/or confirmed)" of the Objecting Creditors. *See* Ex. A-2 at Section 6.3; *see also* Ex. B-2 at Section 13. Those Settlement Agreements further provide that The Home will either itself, or through ACE/Chubb, advise the Objecting Creditors of adjusted claims and provide information needed by the Objecting Creditors "for the determination of claims in Home's estate." *See* Ex. A-2 at Section 6.3; *see also* Ex. B-2 at Section 13.

¹⁸ AISUK has been succeeded in this role by CISUK, an ACE/Chubb entity.

Currently, claims against the insurance policies and reinsurance contracts of the Rutty Pool members are submitted directly to ACE/Chubb by the policyholders and ceding insurers of Rutty Pool members. While quarterly reports of gross reserves are shared with the Objecting Creditors, the Objecting Creditors do not have sufficient information to be able to estimate their IBNR with confidence and then attempt to commute those IBNR claims with the Liquidator. *See* Ex. A at ¶ 14; Ex. B at ¶ 14. That detailed information is in the possession of the Liquidator and/or ACE/Chubb. *See* Ex. A at ¶ 9; Ex. B at ¶ 9. Since 2009, Württembergische has had regular conversations with representatives of the Liquidator regarding the inwards claim exposures of the Rutty Pool that The Home, and in turn ACE/Chubb, fully reinsure. *See* Ex. B at ¶ 11. Zurich has also had such regular conversations since 2015. *See* Ex. A at ¶ 11. These discussions have also addressed the Liquidator's efforts to negotiate a settlement with ACE/Chubb relating to the AFIA Cedents' exposures, including IBNR. *See* Ex. A at ¶ 11; Ex. B at ¶ 11.

On December 12, 2011, the Liquidator wrote the Objecting Creditors regarding a potential settlement with ACE/Chubb. *See* Ex. A at ¶ 12; Ex. B at ¶ 12. On April 13, 2012, Württembergische and Zurich each responded separately that their assessments of future claims were dependent on data in ACE/Chubb's possession. *See* Ex. A at ¶ 12; Ex. B at ¶ 12. Since that time, the Objecting Creditors have been repeatedly assured that a settlement with ACE/Chubb would be pursued, but have not received any details of such negotiations, nor have they received any IBNR methodology or calculation used by the Liquidator in those negotiations, despite the Objecting Creditors' requests. *See* Ex. A at ¶ 13; Ex. B at ¶ 13. It is the Liquidator and ACE/Chubb that are best placed to provide a reasoned estimate of this IBNR, given their central roles and access to the necessary information (*see* Ex. A at ¶ 13; Ex. B at ¶ 13), and their refusal

to update the Objecting Creditors have prevented the Objecting Creditors from taking their own action to attempt to properly settle the IBNR claims the Liquidator now seeks to cut off prematurely.

This imbalance in information highlights the unfairness of the Liquidator's Motion. The Objecting Creditors and other AFIA Cedents agreed to help the Liquidator collect substantial amounts of claims from ACE/Chubb, including IBNR, when they entered into the Settlement Agreements and established the Scheme together with the Liquidator. Now, without providing any advance notice to the Objecting Creditors (despite regular discussions with the Liquidator's representatives and the Scheme Administrator), the Liquidator has suddenly requested a claim amendment deadline earlier than in other analogous insurance liquidations and has sought to cut off IBNR claims that form an important component of the consideration offered to the AFIA Cedents in 2004 in return for their agreement to settle. Meanwhile, the Liquidator did not inform the Objecting Creditors about any progress in settling with ACE/Chubb or the abandonment of those efforts, and the Objecting Creditors have not engaged in their own settlement discussions with the Liquidator regarding their future claims because they lack the information they require to calculate with confidence their IBNR claims against The Home Estate.

For these reasons, the Objecting Creditors are requesting from the Liquidator and/or its agent ACE/Chubb: 1) the amount of IBNR of the AFIA Cedents that the Liquidator and/or ACE/Chubb estimates will be cut off if the Liquidator's Motion is granted (and an explanation of the calculation that is sufficient to be subjected to independent analysis, verification and potential challenge); and 2) the component of that IBNR attributable to the Objecting Creditors so they can then enter into negotiations to agree upon the IBNR factor and use that number in final settlements of their claims with the Liquidator, for approval by this Court. The Objecting

Claimants reserve their rights to seek the assistance of this Court to obtain this essential information.

It is worth noting that, in his Motion, the Liquidator suggests that creditors with remaining unresolved proofs of claim are merely “resistant” or unwilling to quantify or settle their claims. Mot. at 18. The Liquidator offers no evidence or proof to support this contention. In any case, the Objecting Creditors are certainly not recalcitrant claimants who have dallied and failed to present settled claims to the Liquidator. The Objecting Creditors have been waiting for IBNR to crystallize into reported claims, and for the outcome of the Liquidator’s commutation negotiations with ACE/Chubb.¹⁹ And if the Objecting Creditors had the information ACE/Chubb possesses regarding IBNR, they could at least attempt to agree upon final claim settlements that include their IBNR with The Home Estate, which would move this Liquidation that much closer to finality.

It is unreasonable to set a final claims amendment deadline when the information needed by the Objecting Creditors to calculate and present their amended claims is in the hands of The Home and/or ACE/Chubb. And by cutting off these future claims, the Liquidator’s Motion seeks relief that would interfere with the Objecting Creditors’ rights under the respective Settlement Agreements with the Liquidator, and would harm the Class II creditors in this matter. Thus, the

¹⁹ Indeed, the Liquidator argues in its Motion that the Court should set a claims amendment deadline in order to “motivate claimants that have been slow or reluctant to resolve or amend their open proofs of claims...” (Mot. at 16.) This is a misleading characterization that ignores the reality of the nature of long-tail claims. There is nothing that the Objecting Creditors could do to expedite reporting of long-tail IBNR claims other than wait for the injuries from the underlying asbestos exposure, environmental pollution, etc. to be reported as claims, which can take years (even decades). Moreover, the Objecting Creditors cannot move forward with negotiations with the Liquidator to agree on an IBNR load factor for their claims until they receive essential information from the Liquidator and/or ACE/Chubb. Thus, rather than motivate actions by the Objecting Creditors, the Motion makes it virtually impossible for the Objecting Creditors to include in their claims any remaining IBNR.

same principle that guided the New Hampshire Supreme Court to approve the Settlement Agreements with the Objecting Creditors in 2006, namely that all Class II creditors would greatly benefit from future reinsurance recoveries, counsels against the establishment of such a premature claims amendment deadline.

Therefore, for these additional reasons, the Court should deny the Liquidator's Motion and reject imposing a final claims amendment deadline in this matter.

III. Alternatively, If This Court Does Set a Final Claims Deadline, Then This Court Should Allow the Objecting Creditors to Submit IBNR Claims to The Home Estate.

In the alternative, if the Court grants the Liquidator's Motion and schedules a final claim amendment deadline, then the Objecting Creditors should be permitted to submit their IBNR claims as part of their final amended claim against The Home Estate for approval, just as the Liquidator has approved IBNR claims of other AFIA Cedents and other creditors.

For example, on February 25, 2019, the Liquidator filed a motion for approval of his settlement/commutation agreement with United States Fidelity and Guaranty Company ("USF&G"), another insurance company cedent creditor of The Home Estate, that involved both reinsurance that cedent creditor USF&G purchased from The Home and reinsurance The Home purchased from USF&G. *See* Motion for Approval of Reinsurance Commutation Agreement with USF&G, attached as Exhibit K, at ¶ 4. Paragraph 9 of the motion makes clear that the settled amount includes the agreed value of each party's IBNR claim against the other. *Id.* at ¶ 9.

Similar motions to approve commutations/settlements with AFIA Cedents Enstar and National Casualty Company (*i.e.* Nationwide) were filed in 2015 and August 2019, respectively, and these included those AFIA Cedents' claims under the reinsurance agreement with The Home, and also expressly stated that the net agreed amount included offsets of both parties' IBNR claims against one another. *See* Motion for Approval of Reinsurance Commutation with

National Casualty, attached as Exhibit K, at ¶ 10. Now, however, the Liquidator seeks to block the Objecting Creditors from receiving compensation for their IBNR claims despite the fact that their similarly situated fellow AFIA Cedents did receive such credit for their IBNR claims.

It would be patently unfair for the Liquidator to treat the Objecting Creditors' IBNR claims differently than those of other creditors. Liquidation proceedings in other states frequently recognize the "rule of equality" among creditors, providing that no creditor can be paid in full unless all similarly situated creditors can be in full as well. *See, e.g., In re Pac. Coast Bldg.-Loan Ass'n of Los Angeles*, 15 Cal. 2d 134, 147, 99 P.2d 251, 257 (1940) (defining the "principle of equality among creditors" as the rule that "one creditor is not entitled to payment of interest on his claim in receivership, bankruptcy, or other form of liquidation, . . . where the assets are not sufficient to pay the principal of all claims in full"); *In re Workmen's & Suffolk Mut. Ins. Co.*, 71 Misc. 2d 614, 615, 336 N.Y.S.2d 389, 390 (Sup. Ct. 1972), modified, 42 A.D.2d 215, 345 N.Y.S.2d 64 (1973) ("It is, of course, a general principle of equity that persons in the same class should be treated alike, *i.e.*, equally or proportionately."); *Washington v. Merit Mut. Ins. Co.*, 5 Ill. App. 3d 742, 745, 284 N.E.2d 304, 306 (1972) ("The general rule is that all creditors are entitled to share equally in the assets of an insolvent company in proportion to their claims."); *Gen. Reinsurance Corp. v. Am. Bankers Ins. Co. of Fla.*, 996 A.2d 26, 34 (Pa. Commw. Ct. 2009) ("State insolvency statutes . . . are designed to give all creditors in the same priority class an equal share of the insolvent insurer's estate"). Thus, just as other reinsureds that are similarly situated creditors were able to settle their IBNR claims with The Home Estate,²⁰ so should the Objecting Creditors.²¹

²⁰ Moreover, no reinsurer (including ACE/Chubb) opposed the settlement of future liabilities with USF&G, Enstar, Nationwide, or direct policyholders. Therefore, these reinsurers, which

Finally, as noted above, the New Hampshire Supreme Court upheld the Objecting Creditors' Settlement Agreements premised on the undertaking of the Liquidator to collect hundreds of millions of dollars in reinsurance recoveries (including for IBNR). *See In re Liquidation of Home Ins. Co.*, 154 N.H. 472, 477, 490 (2006). Thus, the Liquidator has no basis to completely reverse course and reject IBNR claims when it has accepted such claims throughout this proceeding. Indeed, part of the bargained-for consideration that induced the Objecting Creditors (and undoubtedly the other AFIA Cedents) to enter into the Settlement Agreements was the Liquidator's undertaking to allow them to eventually submit their IBNR portions of their claims and collect the agreed portion of the reinsurance recoveries on those claims via the Scheme. To deny them their IBNR claims is not only inconsistent, but denies them the bargained-for consideration underlying those Settlement Agreements.

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.

were on notice of these policyholder AFIA Cedent settlements, have waived any right to challenge IBNR claims being admitted as valid claims in The Home estate.

²¹ While the settlement agreements Liquidator has entered into with direct policyholder creditors do not expressly refer to "IBNR" claims under the policies, these settlements clearly included some amount of IBNR since they settled any claims that have been or ever could be asserted under the policies. *See, e.g.*, August 2019 Motion for Approval of Settlement with Bridgestone Americas Tire; January 30, 2019 Motion for Approval of Settlement with the Order of Friars Minor Province of the Immaculate Conception (which settled any child sexual abuse claims that had yet to be reported and which now presumably are being made against that policyholder in light of state laws allowing claims that were previously time barred under applicable statute of limitations); August 15, 2018 Motion for Approval of Settlement with the Parishes within the Archdiocese of Saint Paul and Minneapolis; May 25, 2018 Motion for Approval of Settlement with U.S. Silica; and April 26, 2017 Motion for Approval of Settlement Agreement with Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust.

Respectfully submitted,

ZURICH INSURANCE PLC GERMAN
BRANCH AND WUERTTEMBERGISCHE
VERSICHERUNG,

By their Attorneys,

McLANE MIDDLETON,
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Dated: November 18, 2019

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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 Objection to Liquidator's Motion for Approval of Claim Amendment Deadline and its attached exhibits was sent this 18th day of November 2019 by first class mail, postage prepaid to all persons on the attached service list.



/s/ 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**

**AFFIDAVIT OF DIRK EICHLER
IN SUPPORT OF ZURICH INSURANCE PLC, GERMAN BRANCH AND
WÜRTTEMBERGISCHE VERSICHERUNG AG'S OPPOSITION TO LIQUIDATOR'S
MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE**

I, Dirk Eichler, hereby depose and say:

1. I am Head of Liability Claims Non Motor of Zurich Insurance plc, German branch ("Zurich").

2. I submit this affidavit in support of Zurich and Württembergische Versicherung AG's ("Württembergische") Opposition to Liquidator's Motion for Approval of Claim Amendment Deadline. The facts and information set forth are either within my own knowledge gained through my close involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others or documents in Zurich's files, in which case the stated facts are true to the best of my knowledge, information, and belief.

3. After I joined Zurich on January 1, 2015, I took over the responsibility for the matters described herein in the spring of 2015. From my review of company records, I am aware that on or about June 3, 2004, Zurich filed its proof of claims in The Home liquidation proceeding. A true and accurate copy of Zurich's proof of claims is attached hereto as Exhibit A-1.

4. The proof of claim explicitly states that Zurich's reinsurance claims were unknown, that The Home and its reinsurer had been handling the claims and only they were in a

position to fully quantify Zurich's reinsurance claims, and that Zurich's reinsurance claims against The Home included incurred but not reported claims ("IBNR"). (See Ex. A-1 at ¶¶ 1.4-2.2.2.)

5. Zurich is a member of a group, or pool, of companies that underwrote insurance and reinsurance risks through a pool underwriting managing agent, the M.E. Rutty Underwriting Agency Limited (the "Rutty Pool"). Zurich is the successor-in-interest to Agrippina Versicherung Aktiengesellschaft, an original Rutty Pool member that participated on the risks written for the Rutty Pool from 1962 to 1967.

6. In approximately 2004 the Liquidator proposed settlement agreements between The Home Estate and a number of The Home's cedents, including Zurich (collectively the "AFIA Cedents"), under which Zurich and the other AFIA Cedents agreed to submit all of their reinsurance claims to the Liquidator, who would then submit them to ACE/Chubb and other reinsurers of The Home to recover reinsurance payments for the benefit of The Home's creditors. A true and accurate copy of the settlement agreement between The Home and Zurich (the "Settlement Agreement") is attached hereto as Exhibit A-2.

7. Pursuant to the Settlement Agreement, The Home is obligated to investigate, adjust and admit or refute liability for all claims brought by insurance policyholders and cedent insurance companies of Zurich as an AFIA Cedent. (See Ex. A-2 at ¶ 6.3.)

8. Due to the long-tail nature of much of the Rutty Pool business, which includes liability for asbestos, pollution and other types of long-tail claims, injured parties continue to file claims against the policyholders and ceding insurers of the Rutty Pool members, including Zurich. Those claims are fully reinsured by The Home and, in turn, ACE/Chubb.

9. At this time, Zurich lacks sufficient information to calculate and provide to the Liquidator a reliable estimate of its IBNR arising from its Rutty Pool business. ACE/Chubb, as The Home's claims handling agent for the Rutty Pool business, possesses the claims information needed to prepare a reliable IBNR estimate. Neither ACE/Chubb nor the Liquidator has provided Zurich with an IBNR estimate for Zurich's share of the Rutty Pool business that The Home reinsures on a 100% basis.

10. Moreover, according to recent estimates provided by CISUK (an ACE/Chubb entity), Zurich and the other Rutty Pool members standing alone have approximately (a) \$25.9 million in outstanding losses/case reserves for reported and known asbestos claims; (b) \$4.2 million in outstanding losses/case reserves for reported and known environmental claims; (c) \$1.7 million in outstanding losses/case reserves for reported and known health claims; and (d) \$1.9 million in outstanding losses/case reserves for "other" reported and known long-tail claims.

11. Since 2015, I have had regular telephone conversations, as well as in-person meetings in England, with representatives of the Liquidator and with personnel administering the inwards claims exposures of the Rutty Pool, which The Home fully reinsures (and in turn ACE/Chubb fully reinsures). In my role at Zurich as the manager responsible for Zurich's Rutty Pool business, my understanding is that from 2012 onwards, these discussions have addressed the efforts of the Liquidator to negotiate an agreement between the Home Estate and its reinsurer of the Rutty Pool business, ACE/Chubb, under which ACE/Chubb will pay The Home Estate a negotiated sum in return for the complete discharge of all obligations between the parties under their reinsurance contract covering the Rutty Pool and other business relating to the AFIA Cedents' claims exposures (including the paid loss, case reserves and IBNR claims exposures of

Württembergische and Zurich arising from the Ruddy Pool which are fully reinsured by The Home and in turn ACE/Chubb).

12. Zurich sent a letter to the Liquidator dated 13 April 2012, in response to his request of 12 December 2011, providing Zurich's ultimate valuation analysis of its total case reserves and IBNR for its Ruddy Pool claims exposures. A true and accurate copy of Zurich's letter is attached hereto as Exhibit A-3. Based on conversations with representatives of the Liquidator, Zurich understood that this analysis would serve as the basis of the Liquidator's commutation negotiations with ACE/Chubb. Zurich did not receive any response from the Liquidator to its letter.

13. In September 2012, a Zurich representative, Guido Aulbach, was informed in discussions with representatives of the Liquidator that ACE/Chubb was serious about negotiations to commute these Ruddy Pool exposures including a negotiated and agreed IBNR value. However, despite having been assured in the years since 2012 that such a commutation would be pursued, representatives of the Liquidator have not provided to Zurich any details of such negotiations. Despite requests in discussions with representatives of the Liquidator and ACE/Chubb over the years, neither the Liquidator nor ACE/Chubb has shared with Zurich any IBNR methodology or calculation that has been used in these negotiations. Given their central roles and access to the necessary information for preparing a reliable estimate of IBNR on the Ruddy Pool claims exposures, it is my understanding that the Liquidator and/or ACE/Chubb have possessed all of the required data to perform these IBNR calculations. Zurich does not possess this essential data.

14. While quarterly reports of gross case reserves are shared with Zurich, Zurich does not have sufficient information to be able to perform a reliable estimate of its Ruddy Pool IBNR.

As a result, Zurich is unable to engage in negotiations with the Liquidator or its agent claims handler to commute this IBNR.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on November 18, 2019.



Dirk Eichler
Head of Liability Claims Non-Motor
Zurich Insurance plc, German Branch

Document Register No. 1568/2019 -CN-

This is to certify that the above signature was made before me in his own hand by

Mr. Dirk Eichler,
born on 30.06.1967,
resident in Mülheim an der Ruhr,
business address 50679 Köln, Deutzer Allee 1,

who is personally known to me.

Cologne, this 18 November 2019



(Dr. Christoph Neuhaus)
civil law notary

 *** SENDEBERICHT ***

SENDUNG OK

SE/EM NR 0203
 NR. GEGENSTELLE R0012125480727
 SUBADRESSE
 NAME GEGENSTELLE
 ANF. ZEIT 03/06 11:16
 ÜB. ZEIT 05'42
 S. 19
 ERGEBNIS OK

SCHEIBER & PARTNER

Rechtsanwälte · Notare



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Frankfurt, 03.06.2004

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Fr. Kühlborn D/

Tel.: 069/61003-145

warmuth@scheiberpartner.de

**Re: Zürich Versicherung AG (Deutschland)
 (legal successor of Agrippina / Ruddy Pool)
 Placeholder claim / AFIA business**

Dear Sirs:

I herewith submit an

original placeholder claim

on behalf of

 *** SENDEBERICHT ***

SENDUNG OK

SE/EM NR 0201
 NR. GEGENSTELLE R0016032236269
 SUBADRESSE
 NAME GEGENSTELLE
 ANF. ZEIT 03/06 10:54
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warmuth@scheiberpartner.de

**Re: Zürich Versicherung AG (Deutschland)
 (legal successor of Agrippina / Rutty Pool)
 Placeholder claim / AFIA business**

Dear Sirs:

I herewith submit an

original placeholder claim

on behalf of

 *** SENDEBERICHT ***

SENDUNG OK

SE/EM NR 0202
 NR. GEGENSTELLE R0012125480740
 SUBADRESSE
 NAME GEGENSTELLE
 ANF. ZEIT 03/06 11:02
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warmuth@scheiberpartner.de

**Re: Zürich Versicherung AG (Deutschland)
 (legal successor of Agrippina / Rutty Pool)
 Placeholder claim / AFTA business**

Dear Sirs:

I herewith submit an

original placeholder claim

on behalf of

SCHEIBER & PARTNER

Rechtsanwälte • Notare



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**Re: Zürich Versicherung AG (Deutschland)
(legal successor of Agrippina / Rutty Pool)
Placeholder claim / AFIA business**

Dear Sirs:

I herewith submit an

original placeholder claim

on behalf of

**Zürich Versicherung Aktiengesellschaft
(Deutschland) with its place of business
at Solmsstrasse 27-37, D-60486 Frank-
furt/Main, Germany**

(„Zürich“)

**for consideration by the Liquidator of The Home
Insurance Company in Liquidation („The Home“).**

1. Zürich's placeholder claim is based on the following facts:

1.1 During the mid-1960's, Agrippina Versicherung Aktiengesellschaft, a German corporation originally located in Cologne („Agrippina“), and five other companies („the Pool Members“) participated in a reinsurance pool managed in London, England by M.E. Ruty Underwriting Agency Limited („Ruty“).

The Pool Members delegated to Ruty the authority to underwrite, administer and handle claims for a book of direct and reinsurance business. The authority to underwrite was at some point in time extended to shares in any one risk exceeding the proportionate pool member share stated in the agency agreements between Ruty and the Pool Members. The Pool Members also agreed that if one member becomes insolvent the remaining solvent members shall be liable for their proportionate share of the unpaid loss of the insolvent member. Pool members and pool shares were different for each and every underwriting year. In 1967, the Ruty Pool went into run-off.

1.2 In 1977, Agrippina entered into **Reinsurance Contract No. "R"** with The Home which provided that said Contract No. „R“ is in respect of all losses arising out of risks written for Agrippina by Ruty and further provided that The Home from now on deal only with Ruty. Three other Pool Members received reinsurance protection from The Home as well. The Home (U.K. Branch) acted as fronting company for the AFIA Pool.

1.3 Between 1977 and 2003, Ruty became insolvent and The Home through ACE INA Services U.K. Limited („ACE INA“) took over the management of the run-off of the participation of the four Home reinsured Pool Members, including Agrippina. Thereafter, three pool members became insolvent, one of them being a Home reinsured Pool Member. Agrippina merged with Zürich and Zürich became the legal successor of Agrippina.

1.4 The book of Rutty business is still creating APH related losses as of today. Also, there are still a number of unresolved legal issues among Pool Members as well as between The Home reinsured Pool Members and The Home due to (i) the complex structure of the pool, (ii) disputes relating to construction of Contract No. „R“ as well as (iii) the insolvencies of the agency Rutty, the three Pool Members and The Home.

2. The attached placeholder claim of Zürich related to Contract No. „R“ has the following two components:

2.1 Reinsurance claims

Zürich's reinsurance claims are unknown for the following reasons:

2.1.1 The Home/ACE INA have been handling Rutty related claims of policyholders and reinsureds against Agrippina since 1996. Therefore, only The Home/ACE INA are in a position to both fully identify and fully quantify those claims but not Zürich.

2.1.2 Unresolved and in dispute between The Home and Zürich is, inter alia, the issue as to which portion of these claims has actually been reinsured by The Home.

2.1.3 The Home, ACE INA and Zürich have to make a common effort to consolidate numbers once the scope of reinsurance has been either determined or agreed.

Enclosed are both a summary statement of outstanding losses for all Rutty Pool underwriting years per year end 2003 and a summary statement of paid losses for all Rutty Pool underwriting years between 1996 and 2003, both prepared by The Home through ACE INA. Although a huge portion of those paid losses should have already been paid by the Home to Rutty Pool policyholders and reinsureds, a substantial portion should relate to losses agreed but not actually paid to the respective claimants or agreed but paid by Zürich directly. Claims paid by

Zürich directly could also relate to sums listed in the summaries as "outstanding".

Therefore, prior to consolidation of numbers and further information from The Home through ACE INA, it is ineffective and meaningless to be specific on only a few claims paid by Zürich directly.

- 2.1.4 Zürich believes the average IBNR on the total book of Ruddy business to be 264% based on advice by KPMG in February of 2000. However, said advice has not been updated.

2.2 Administration costs (priority)

Zürich's position is that, according to Contract No. "R", The Home is fully responsible for the run-off of Agrippina's participation in the Ruddy Pool. This responsibility continues for the time being. Underlying claims against The Home are administration costs as defined in New Hampshire Section 402-C:44 (I). The amount of administration costs owed by The Home to Zürich is unknown for the following reasons:

- 2.2.1 The scope of administration responsibilities is in dispute between The Home and Zürich.
- 2.2.2 The amounts owed will only crystallize during the duration of Contract No. "R".

3. Set-offs

Set offs rights of The Home, if any, are unknown. The Home claims reimbursement from Zürich for certain portions of administration costs and certain portions of losses allegedly advanced by The Home for Agrippina between 1996 and 2003. Each and every aspect of these set off rights is in dispute and remains unresolved at this time.

Again, the whole situation is both highly complex and legally unresolved which is why Zürich has currently no choice but to file a placeholder claim

with regard to risks reinsured by The Home and related administration responsibilities of The Home based on Contract No. „R“.

This letter is written for the purpose of explaining the reasons for the submission of a placeholder claim by Zürich. The explanations and statements contained herein are made without prejudice and under full reservation of rights with regard to issues in dispute between Zürich and The Home.

Please confirm that there are no objections against submitting Zürich's claims as placeholder claim and that Zürich has hereby preserved its right to fully substantiate all of its claims related to Contract No. „R“ for consideration by the Liquidator of The Home at a later time when they become known.

Please do not hesitate to contact the undersigned at 011-49-69-61003-233 if you have any questions.

Very truly yours,

SCHEIBER & PARTNER
Rechtsanwälte und Notare
Frankfurt am Main

(G. Warmuth)
Rechtsanwalt

Enclosures:

- Original placeholder claim of Zürich
- Copy of Contract No „R“
- Copies of M.E.Rutty Summary Statements of Paid and Outstanding losses 1962-1967 u/w yrs 4th Qtr.1996 to 4th Qtr 2003 (prepared by The Home through ACE INA)

cc: Jonathan Rosen, Esq. with enclosures
(per Telefax: 001-212-548-0727)

The Home Insurance Company,

Merrimack County Superior Court, State of New Hampshire 03-E-0106

Read Carefully Before Completing This Form

Please print or type

DATE PROOF OF
CLAIM RECEIVED

POC #: Int1277984

Mr Gernot Warmuth
Agrrippina
Scheiber & Partner
Kennedyallee 97
D-60596 Frankfurt AM M
Germany

The Deadline for Filing this Form is June 13, 2004.

You should file this Proof of Claim form if you have an actual or potential claim against The Home Insurance Company of any of its former subsidiaries* ("The Home") even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be postmarked no later than June 13, 2004. Failure to timely return this completed form will likely result in the DENIAL OF YOUR CLAIM. You are advised to retain a copy of this completed form for your records.

AKTIENGESELLSCHAFT (DEUTSCHLAND)

- 1. Claimant's Name: ZÜRICH VERSICHERUNG
- 2. Claimant's Address: SOLMSSTRASSE 27-37
D-60486 FRANKFURT /MAIN
GERMANY
- 3. Claimant's Telephone Number: (+4969) 7115-0 (2810)
Fax Number: (+4969) 7115-2401
Email address: GUIDO.AVLBACH@ZURICH.COM
- 4. Claimant's Social Security Number, Tax ID Number or Employer ID Number: N/A

If your name, address, e-mail address, or telephone number set forth above are incorrect, or if they change, you must notify the Liquidator so she can advise you of new information.

- 5. Claim is submitted by (check one):
 - a) Policyholder or former policyholder
 - b) Third Party Claimant making a claim against a person insured by The Home
 - c) Employee or former employee
 - d) Broker or Agent
 - e) General Creditor, Reinsurer, or Reinsured
 - f) State or Local Government Entity
 - g) Other; describe: _____

Describe in detail the nature of your claim. You may attach a separate page if desired. Attach relevant documentation in support of your claim, such as copies of outstanding invoices, contracts, or other supporting documentation.

RUTTY BUSINESS REINSURED BY THE HOME (U.V. BRANCH);
SEE COVER LETTER OF SCHEIBER & PARTNER

- 6. Indicate the total dollar amount of your claim. If the amount of your claim is unknown, write the word "unknown", BUT be sure to attach sufficient documentation to allow for determination of the claim amount.

\$ UNKNOWN (if amount is unknown, write the word "unknown").

- 7. If you have any security backing up your claim, describe the nature and amount of such security. Attach relevant documentation.

N/A

- 8. If The Home has made any payments towards the amount of the claim, describe the amount of such payments and the dates paid.

SEE COVER LETTER

- 9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim?

SEE COVER LETTER

- 10. Do you claim a priority for your claim? If so, why: SEE COVER LETTER

- 11. Print the name, address and telephone number of the person who has completed this form.

Name: GERNOT WARMUTH
Address: SCHEIBER & PARTNER
KENNEDYALLEE 97, D-60596 FRANKFURT /MAIN
Phone Number (+4969) 61003-233
Email address: WARMUTH@SCHEIBERPARTNER.DE

* The Home Indemnity Company, The Home Insurance Company of Indiana, City Insurance Company, Home Lloyds Insurance Company of Texas, The Home Insurance Company of Illinois, and The Home Insurance Company of Wisconsin.

12. If represented by legal counsel, please supply the following information:
- a. Name of attorney: GERNOT WARMUTH
 - b. Name of law firm: SCHWEIBER & PARTNER
 - c. Address of law firm: KENNEDY ALLEE 97
D-60596 FRANKFURT / MAIN
 - d. Attorney's telephone: 011-49-69-61003-233
 - e. Attorney's fax number: 011-49-69-61003-100
 - f. Attorney's email address: WARMUTH@SCHWEIBERPARTNER.DE

13. If using a judgment against The Home as the basis for this claim:
- a. Amount of judgment N/A
 - b. Date of judgment _____
 - c. Name of case _____
 - d. Name and location of court _____
 - e. Court docket or index number (if any) _____

14. If you are completing this Proof of Claim as a Third Party Claimant against an insured of The Home, you must conditionally release your claim against the insured by signing the following, as required by N.H. Rev. Stat. Ann. § 402-C:40 I:

I, N/A (insert claimant's name), in consideration of the right to bring a claim against The Home, on behalf of myself, my officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives hereby release and discharge _____ (insert name of defendant(s) insured by The Home), and his/her/its officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives, from liability on the cause(es) of action that forms the basis for my claim against The Home in the amount of the limit of the applicable policy provided by The Home; provided, however, that this release shall be void if the insurance coverage provided by The Home is avoided by the Liquidator.

Claimant's signature

Date

15. All claimants must complete the following:

I, GUIDO AULBACH / RAINER LEMOISNE (insert individual claimant's name or name of person completing this form for a legal entity) subscribe and affirm as true, under the penalty of perjury as follows: that I have read the foregoing proof of claim and know the contents thereof, that this claim in the amount of UNKNOWN dollars (\$ _____) against The Home is justly owed, except as stated in item 9 above, and that the matters set forth in this Proof of Claim are true to the best of my knowledge and belief. I also certify that no part of this claim has been sold or assigned to a third party.

Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

[Signature]
Claimant's signature

JUNE 2, 2004
Date

16. Send this completed Proof of Claim Form, postmarked by June 13, 2004, to:

The Home Insurance Company in Liquidation
P.O. Box 1720
Manchester, New Hampshire 03105-1720

You should complete and send this form if you believe you have an actual or potential claim against The Home even if the amount of the claim is presently uncertain.

made between

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

As underwritten for Agrippina Versicherung A.G. by

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

and

HOME INSURANCE COMPANY OF NEW YORK

acting through its branch office at

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

(Hereinafter referred to as the "Reinsurers")

R E C I T A L S

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

ARTICLE I

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

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

ARTICLE II

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

ARTICLE III

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

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

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

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

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

- b) Life, Financial Guarantee and Insolvency Risks.

- c) Furthermore, it is understood and agreed that:

- 1) As regards Non-Marine business accepted by the
Reassured

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

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

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

ARTICLE IV

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

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

ARTICLE V

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

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

ARTICLE VI

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

ARTICLE IX

Should the Reinsurers

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

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

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

ARTICLE X

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 appointer hereinafter named to nominate an Arbitrator on behalf of the Respondent.

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

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

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

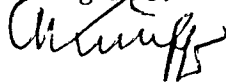
(6) The appointer shall be the Chairman or Deputy Chairman for the time being of Lloyd's or the Institute of London Underwriters.

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

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

Signed:

Agrippina Versicherung A.G.

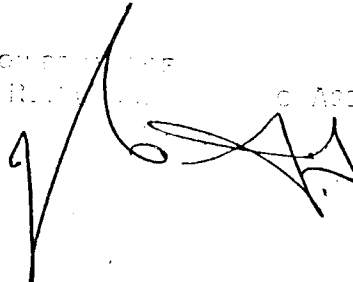


Home Insurance Company



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

FOR AND ON BEHALF OF
M. E. RUTTY UNDERWRITING AGENCY LTD.



Secretary.

Signed:

M. E. RUTTY UNDERWRITING AGENCY LIMITED

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

Signed:

HOME INSURANCE COMPANY



M.E. Ruffy Pool
 Summary Statement of Paid Losses 1962 - 1967 u/w yrs
 4th Qtr 1996 to 4th Qtr 2003

Section 1		Wurttembergische	Agrippina	Nationwide	FAI	AFG	North Atlantic	Totals	Section 1 - The columns show Fronting Totals only.
Fronted Values	£	23,013.61	132,319.28	78,588.35	887.17	0.00	0.00	234,808.41	
	US\$	4,415,704.33	18,159,934.75	15,399,937.26	79,459.85	0.00	0.00	38,055,036.19	
	CAN\$	634.21	3,662.34	31,103.78	0.00	0.00	0.00	35,400.33	
Section 2		Wurttembergische	Agrippina	Nationwide	FAI	AFG	North Atlantic	Totals	Section 2 - The rows show the calculation of each Pool Member's original fixed Pool Share. The columns show the Fronting breakdown of the Pool Share.
Wurttembergische	£	4,078.91	24,644.79	11,514.24	-7.34	0.00	0.00	40,228.60	
	US\$	732,645.50	3,017,299.23	2,183,385.44	6,184.75	0.00	0.00	5,939,414.91	
	CAN\$	95.63	359.16	4,355.49	0.00	0.00	0.00	4,810.28	
Agrippina	£	6,114.53	37,291.26	17,733.71	220.30	0.00	0.00	61,359.80	
	US\$	1,116,944.22	4,876,619.60	3,594,596.04	20,242.35	0.00	0.00	9,608,402.20	
	CAN\$	143.45	621.96	7,108.10	0.00	0.00	0.00	8,173.52	
Nationwide	£	952.33	10,933.88	11,072.04	302.50	0.00	0.00	23,260.75	
	US\$	530,573.58	2,883,478.33	3,210,677.67	20,071.91	0.00	0.00	6,644,801.48	
	CAN\$	168.10	1,169.98	4,890.32	0.00	0.00	0.00	6,228.40	
FAI	£	952.56	9,339.74	11,879.31	179.88	0.00	0.00	22,351.49	
	US\$	381,596.25	1,776,377.62	2,307,719.06	11,353.68	0.00	0.00	4,477,046.61	
	CAN\$	93.13	577.17	4,765.12	0.00	0.00	0.00	5,435.42	
AFG	£	4,175.26	17,688.89	7,121.63	5.98	0.00	0.00	28,991.76	
	US\$	534,360.45	1,627,283.85	799,459.76	4,150.64	0.00	0.00	2,965,254.70	
	CAN\$	4.68	6.47	2,584.39	0.00	0.00	0.00	2,595.54	
North Atlantic	£	6,742.01	32,420.71	19,267.42	185.86	0.00	0.00	58,616.00	
	US\$	1,119,684.34	3,978,876.13	3,304,099.29	17,456.53	0.00	0.00	8,420,116.29	
	CAN\$	129.22	627.58	7,400.36	0.00	0.00	0.00	8,157.17	
Total	£	23,013.61	132,319.28	78,588.35	887.17	0.00	0.00	234,808.41	
	US\$	4,415,704.33	18,159,934.75	15,399,937.26	79,459.85	0.00	0.00	38,055,036.19	
	CAN\$	634.21	3,662.34	31,103.78	0.00	0.00	0.00	35,400.33	
Section 3		Reallocation of North Atlantic Share							
Wurttembergische	£	1,724.47	2,586.32	293.22	304.31	1,833.68	-6,742.01	0.00	Section 3 - shows the reallocation of North Atlantic's original fixed Pool Share amongst the other solvent Pool Members. The rows show Pool Share. The columns show Fronting Share.
	US\$	262,486.67	396,902.68	129,570.03	102,964.28	227,760.68	-1,119,684.34	0.00	
	CAN\$	24.84	36.96	42.21	23.50	1.91	-129.22	0.00	
Agrippina	£	7,875.70	11,593.38	2,755.20	3,036.25	7,260.18	-32,420.71	0.00	
	US\$	854,100.36	1,347,361.96	616,837.50	491,255.88	669,320.42	-3,978,876.13	0.00	
	CAN\$	64.51	186.19	240.16	132.06	2.64	-627.58	0.00	
Nationwide	£	3,766.34	5,764.70	3,504.92	3,857.53	2,373.93	-19,267.42	0.00	
	US\$	810,376.97	988,948.21	800,853.80	629,055.65	275,064.66	-3,304,099.29	0.00	
	CAN\$	1,387.37	2,220.63	1,441.45	1,488.72	862.20	-7,400.36	0.00	
FAI	£	0.11	58.19	78.65	46.92	1.99	-185.86	0.00	
	US\$	2,138.21	5,927.61	4,789.83	2,739.63	1,861.26	-17,456.53	0.00	
	CAN\$	0.00	0.00	0.00	0.00	0.00	8.00	0.00	
Total	£	13,166.63	20,002.59	6,631.98	7,245.01	11,569.78	-58,616.00	0.00	
	US\$	1,729,102.22	2,739,140.46	1,561,851.16	1,226,015.44	1,174,007.01	-8,420,116.29	0.00	
	CAN\$	1,476.52	2,445.77	1,723.62	1,644.30	866.75	-8,157.17	0.00	
North Atlantic Share	£	6,742.01	32,420.71	19,267.42	185.86	0.00	0.00	58,616.00	
	US\$	1,119,684.34	3,978,876.13	3,304,099.29	17,456.53	0.00	0.00	8,420,116.29	
	CAN\$	129.22	627.58	7,400.36	0.00	0.00	0.00	8,157.17	
Section 4		Revision of North Atlantic Share (including reallocation of FAI's Share of ISA)							
Wurttembergische	£	1,799.78	2,699.30	365.13	0.00	1,877.80	-6,742.01	0.00	Section 4 - shows the reallocation of FAI's share of North Atlantic's ISA (from Section 3) amongst the other Pool Members and the change to the total of their share of North Atlantic's ISA. The rows show Pool Share. The columns show Fronting Share.
	US\$	287,129.92	434,556.53	159,835.04	0.00	238,162.85	-1,119,684.34	0.00	
	CAN\$	30.08	45.12	51.96	0.00	2.06	-129.22	0.00	
Agrippina	£	8,415.38	12,729.90	3,447.60	0.00	7,827.83	-32,420.71	0.00	
	US\$	961,674.91	1,529,621.40	769,890.98	0.00	717,688.83	-3,978,876.13	0.00	
	CAN\$	78.56	239.15	307.02	0.00	2.85	-627.58	0.00	
Nationwide	£	4,703.84	7,209.21	4,387.01	0.00	2,967.36	-19,267.42	0.00	
	US\$	750,337.15	1,221,496.58	996,476.68	0.00	335,788.88	-3,304,099.29	0.00	
	CAN\$	1,730.80	2,761.11	1,811.40	0.00	1,077.06	-7,400.36	0.00	
FAI	£	0.24	77.79	105.34	0.00	2.49	-185.86	0.00	
	US\$	2,274.45	7,032.91	6,270.45	0.00	1,878.72	-17,456.53	0.00	
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Total	£	14,919.24	22,716.20	8,305.08	0.00	12,675.48	-58,616.00	0.00	
	US\$	2,001,416.42	3,192,707.42	1,932,473.16	0.00	1,293,519.28	-8,420,116.29	0.00	
	CAN\$	1,839.44	3,065.36	2,170.38	0.00	1,081.97	-8,157.17	0.00	
North Atlantic Share	£	6,742.01	32,420.71	19,267.42	185.86	0.00	0.00	58,616.00	
	US\$	1,119,684.34	3,978,876.13	3,304,099.29	17,456.53	0.00	0.00	8,420,116.29	
	CAN\$	129.22	627.58	7,400.36	0.00	0.00	0.00	8,157.17	

Section 5

1st Qtr 2001 & onwards only

Reallocation of FAI Share

		Wurttembergische	Agrippina	Nationwide	FAI	AFG		
Wurttembergische	£	14.69	22.04	12.25	-58.78	9.80	0.00	Section 5 - shows the reallocation of FAI's original fixed Pool Share amongst the solvent other Pool Members. The rows show Pool Share. The columns show Fronting Share.
	US\$	20,476.59	31,282.79	27,752.23	-86,415.67	6,904.06	0.00	
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	
Agrippina	£	756.51	1,134.76	725.10	-3,057.59	441.22	0.00	
	US\$	51,972.63	83,289.27	75,823.66	-228,541.14	17,455.38	0.00	
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	
Nationwide	£	955.69	1,434.53	1,193.77	-3,956.88	372.88	0.00	
	US\$	97,247.41	182,143.34	174,976.05	-489,820.39	35,453.58	0.00	
	CAN\$	17.71	29.52	35.43	-82.66	0.00	0.00	
FAI	£	0.00	0.00	0.00	0.00	0.00	0.00	
	US\$	227.82	844.05	1,107.28	-2,179.15	0.00	0.00	
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	
Total	£	1,726.89	2,591.33	1,931.12	-7,073.25	823.90	0.00	
	Share of Shortfall US\$	169,924.44	297,559.46	279,859.42	-806,956.35	59,813.03	0.00	
	CAN\$	17.71	29.52	35.43	-82.66	0.00	0.00	
FAI Share of Fronted Balances	£	58.78	3,057.59	3,956.88	0.00	0.00	7,073.25	
	US\$	86,415.67	228,541.14	489,820.39	2,179.15	0.00	806,956.35	
	CAN\$	0.00	0.00	82.66	0.00	0.00	82.66	

Section 6

Revision of North Atlantic Share (including reallocation of AFG & FAI's Share of NA ISA)

		Wurttembergische	Agrippina	Nationwide	FAI	AFG	North Atlantic	
Wurttembergische	£	2,528.92	3,792.82	420.27	0.00	0.00	-6,742.01	0.00
	US\$	377,201.92	569,644.67	172,837.76	0.00	0.00	-1,119,684.34	0.00
	CAN\$	30.83	46.25	52.14	0.00	0.00	-129.22	0.00
Agrippina	£	11,312.92	17,075.63	4,032.17	0.00	0.00	-32,420.71	0.00
	US\$	1,224,586.54	1,923,938.08	830,351.50	0.00	0.00	-3,978,878.13	0.00
	CAN\$	79.60	240.70	307.28	0.00	0.00	-627.58	0.00
Nationwide	£	5,594.07	8,544.56	5,128.80	0.00	0.00	-19,267.42	0.00
	US\$	854,291.96	1,377,425.37	1,072,381.96	0.00	0.00	-3,304,099.29	0.00
	CAN\$	2,054.19	3,266.20	2,079.97	0.00	0.00	-7,400.36	0.00
FAI	£	0.99	78.91	105.96	0.00	0.00	-185.86	0.00
	US\$	3,017.28	8,146.97	6,292.28	0.00	0.00	-17,456.53	0.00
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	£	19,436.89	29,491.91	9,687.20	0.00	0.00	-58,616.00	0.00
	Share of Shortfall US\$	2,459,097.70	3,879,155.09	2,081,863.50	0.00	0.00	-8,420,116.29	0.00
	CAN\$	2,164.82	3,553.15	2,439.40	0.00	0.00	-8,157.17	0.00
North Atlantic Share of Fronted Balances	£	6,742.01	32,420.71	19,267.42	185.86	0.00	58,616.00	0.00
	US\$	1,119,684.34	3,978,878.13	3,304,099.29	17,456.53	0.00	8,420,116.29	0.00
	CAN\$	129.22	627.58	7,400.36	0.00	0.00	8,157.17	0.00

Section 7

1st Qtr 2001 & onwards only

Revision of FAI Share (including reallocation of AFG share of FAI ISA)

		Wurttembergische	Agrippina	Nationwide	FAI	AFG		
Wurttembergische	£	17.83	26.45	14.69	-58.78	0.00	0.00	Section 7 - shows the reallocation of AFG's share of FAI's ISA (from Section 5) amongst the other solvent Pool Members and the change to the total of their share of FAI's ISA. The rows show Pool Share. The columns show Fronting Share.
	US\$	22,547.80	34,389.62	29,478.25	-86,415.67	0.00	0.00	
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	
Agrippina	£	888.87	1,333.31	835.41	-3,057.59	0.00	0.00	
	US\$	57,209.24	91,144.19	80,187.70	-228,541.14	0.00	0.00	
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	
Nationwide	£	1,067.56	1,602.33	1,286.99	-3,956.88	0.00	0.00	
	US\$	107,883.49	198,097.45	183,839.45	-489,820.39	0.00	0.00	
	CAN\$	17.71	29.52	35.43	-82.66	0.00	0.00	
FAI	£	0.00	0.00	0.00	0.00	0.00	0.00	
	US\$	227.82	844.05	1,107.28	-2,179.15	0.00	0.00	
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	
Total	£	1,974.06	2,962.09	2,137.09	-7,073.25	0.00	0.00	
	Share of Shortfall US\$	187,868.35	324,475.32	294,612.67	-806,956.35	0.00	0.00	
	CAN\$	17.71	29.52	35.43	-82.66	0.00	0.00	
FAI Share of Fronted Balances	£	58.78	3,057.59	3,956.88	0.00	0.00	7,073.25	
	US\$	86,415.67	228,541.14	489,820.39	2,179.15	0.00	806,956.35	
	CAN\$	0.00	0.00	82.66	0.00	0.00	82.66	

Section 8

Reallocation of AFG Share

		Wurttembergische	Agrippina	Nationwide	FAI	AFG		
Wurttembergische	£	1,617.32	2,425.60	132.34	0.00	-4,175.26	0.00	Section 8 - shows the reallocation of AFG's original fixed Pool Share amongst the solvent other Pool Members. The rows show Pool Share. The columns show Fronting Share.
	US\$	201,279.05	301,874.88	31,206.52	0.00	-534,360.45	0.00	
	CAN\$	1.70	2.54	0.44	0.00	-4.68	0.00	
Agrippina	£	6,514.89	9,771.04	1,402.97	0.00	-17,888.89	0.00	
	US\$	592,916.11	889,262.49	145,105.25	0.00	-1,627,283.85	0.00	
	CAN\$	2.34	3.51	0.62	0.00	-6.47	0.00	
Nationwide	£	2,136.53	3,204.80	1,780.30	0.00	-7,121.63	0.00	
	US\$	246,917.85	370,369.23	182,172.68	0.00	-799,459.76	0.00	
	CAN\$	775.92	1,163.88	644.58	0.00	-2,584.39	0.00	
FAI	£	1.79	2.69	1.49	0.00	-5.98	0.00	
	US\$	1,539.47	2,458.79	52.38	0.00	-4,150.64	0.00	
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	
Total	£	10,270.54	15,404.13	3,317.10	0.00	-28,991.76	0.00	
	Share of Shortfall US\$	1,042,752.49	1,563,965.39	358,536.82	0.00	-2,965,254.70	0.00	
	CAN\$	779.96	1,169.94	645.64	0.00	-2,595.54	0.00	
AFG Share of Fronted Balances	£	4,175.26	17,888.89	7,121.63	5.98	0.00	28,991.76	
	US\$	534,360.45	1,627,283.85	799,459.76	4,150.64	0.00	2,965,254.70	
	CAN\$	4.68	6.47	2,584.39	0.00	0.00	2,595.54	

Section 1		Wurtembergische	Agrippina	Nationwide	FAI	AFG	North Atlantic	Totals	
Fronted Values	£	129,680.66	437,831.08	129,026.01	1,199.14	0.00	0.00	697,736.89	Section 1 - The columns show Fronting Totals only.
	US\$	9,837,544.64	36,609,668.04	26,251,614.60	272,730.91	0.00	0.00	72,971,558.19	
	CAN\$	18,841.67	91,796.90	129,519.33	0.00	0.00	0.00	239,957.90	
	FFRC	1,000.00	1,500.00	0.00	0.00	0.00	0.00	2,500.00	
Section 2	Wurtembergische	£	22,535.14	73,143.22	18,123.62	224.84	0.00	114,026.81	Section 2 - The rows show the calculation of each Pool Member's original fixed Pool Share.
	US\$	1,674,952.70	5,796,734.78	3,543,704.43	21,648.42	0.00	0.00	11,037,040.34	
	CAN\$	3,205.98	13,426.49	17,156.93	0.00	0.00	0.00	33,789.39	
FFRC	187.50	281.25	0.00	0.00	0.00	0.00	468.75	The columns show the Fronting breakdown of the Pool Share.	
Agrippina	£	33,798.59	110,744.25	29,734.05	337.20	0.00	0.00	174,614.89	Section 2 - The rows show the calculation of each Pool Member's original fixed Pool Share.
	US\$	2,535,620.32	9,090,972.64	5,136,130.99	67,989.28	0.00	0.00	17,830,613.23	
	CAN\$	4,808.42	23,167.84	30,466.15	0.00	0.00	0.00	58,442.40	
	FFRC	281.20	421.80	0.00	0.00	0.00	0.00	703.00	
Nationwide	£	6,984.48	42,073.89	23,438.87	0.00	0.00	0.00	72,477.24	Section 2 - The rows show the calculation of each Pool Member's original fixed Pool Share.
	US\$	892,341.61	5,037,107.85	5,648,455.53	76,558.17	0.00	0.00	11,654,463.16	
	CAN\$	1,460.54	14,703.97	29,240.63	0.00	0.00	0.00	45,405.14	
	FFRC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
FAI	£	7,119.95	33,954.32	19,547.85	0.00	0.00	0.00	60,622.12	Section 2 - The rows show the calculation of each Pool Member's original fixed Pool Share.
	US\$	678,347.67	3,661,190.87	4,011,120.56	42,988.26	0.00	0.00	8,393,647.36	
	CAN\$	1,157.35	9,590.45	20,184.89	0.00	0.00	0.00	30,932.68	
	FFRC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
AFG	£	22,047.67	60,061.32	8,781.00	262.37	0.00	0.00	91,152.36	Section 2 - The rows show the calculation of each Pool Member's original fixed Pool Share.
	US\$	1,412,740.17	3,934,673.43	1,290,404.76	7,858.70	0.00	0.00	6,645,677.87	
	CAN\$	2,831.45	8,976.47	5,638.99	0.00	0.00	0.00	17,446.91	
	FFRC	218.80	328.20	0.00	0.00	0.00	0.00	547.00	
North Atlantic	£	37,214.83	117,854.09	29,400.62	374.73	0.00	0.00	184,844.27	Section 2 - The rows show the calculation of each Pool Member's original fixed Pool Share.
	US\$	2,643,642.17	9,088,988.46	5,621,798.32	55,688.09	0.00	0.00	17,410,117.04	
	CAN\$	5,177.93	21,931.70	26,831.75	0.00	0.00	0.00	53,941.38	
	FFRC	312.50	468.75	0.00	0.00	0.00	0.00	781.25	
Total	£	129,680.66	437,831.08	129,026.01	1,199.14	0.00	0.00	697,736.89	Section 2 - The rows show the calculation of each Pool Member's original fixed Pool Share.
	US\$	9,837,544.64	36,609,668.04	26,251,614.60	272,730.91	0.00	0.00	72,971,558.19	
	CAN\$	18,841.67	91,796.90	129,519.33	0.00	0.00	0.00	239,957.90	
	FFRC	1,000.00	1,500.00	0.00	0.00	0.00	0.00	2,500.00	

Section 3	Reallocation of North Atlantic Share								
Wurtembergische	£	9,294.29	13,939.56	2,163.95	2,287.39	9,529.65	-37,214.83	0.00	Section 3 - shows the reallocation of North Atlantic's original fixed Pool Share amongst the other solvent Pool Members. The rows show Pool Share.
	US\$	643,505.70	969,259.58	228,493.82	190,503.41	611,879.65	-2,643,642.17	0.00	
	CAN\$	1,275.64	1,913.21	411.06	344.44	1,233.59	-5,177.93	0.00	
	FFRC	85.23	127.82	0.00	0.00	99.45	-312.50	0.00	
Agrippina	£	28,043.78	42,306.08	11,752.36	10,093.34	25,856.53	-117,854.09	0.00	Section 3 - shows the reallocation of North Atlantic's original fixed Pool Share amongst the other solvent Pool Members. The rows show Pool Share.
	US\$	2,025,550.17	3,129,868.30	1,277,074.98	1,010,541.87	1,644,963.14	-9,088,988.46	0.00	
	CAN\$	4,588.83	7,817.72	3,452.58	2,442.27	3,829.28	-21,931.70	0.00	
	FFRC	127.84	191.73	0.00	0.00	149.18	-468.75	0.00	
Nationwide	£	5,469.36	8,811.78	6,385.66	5,785.13	2,988.69	-29,400.62	0.00	Section 3 - shows the reallocation of North Atlantic's original fixed Pool Share amongst the other solvent Pool Members. The rows show Pool Share.
	US\$	991,196.85	1,661,821.47	1,415,564.01	1,091,881.22	441,315.79	-5,621,798.32	0.00	
	CAN\$	4,576.84	7,878.40	7,063.02	5,333.83	1,878.66	-26,831.75	0.00	
	FFRC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
FAI	£	102.20	153.27	0.00	0.00	119.26	-374.73	0.00	Section 3 - shows the reallocation of North Atlantic's original fixed Pool Share amongst the other solvent Pool Members. The rows show Pool Share.
	US\$	6,105.39	17,890.84	17,965.53	10,229.31	3,457.02	-55,688.09	0.00	
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
	FFRC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Total	£	42,909.63	65,210.69	20,301.97	18,145.85	38,276.12	-184,844.27	0.00	Section 3 - shows the reallocation of North Atlantic's original fixed Pool Share amongst the other solvent Pool Members. The rows show Pool Share.
	Share of Shortfall US\$	3,667,357.09	5,798,890.19	2,939,118.34	2,303,155.82	2,701,605.59	-17,410,117.04	0.00	
	CAN\$	10,451.31	17,509.33	10,826.66	8,120.54	6,833.53	-53,941.38	0.00	
	FFRC	213.07	319.55	0.00	0.00	248.64	-781.25	0.00	
North Atlantic Share of Fronted Balances	£	37,214.83	117,854.09	29,400.62	374.73	0.00	0.00	184,844.27	Section 3 - shows the reallocation of North Atlantic's original fixed Pool Share amongst the other solvent Pool Members. The rows show Pool Share.
	US\$	2,643,642.17	9,088,988.46	5,621,798.32	55,688.09	0.00	0.00	17,410,117.04	
	CAN\$	5,177.93	21,931.70	26,831.75	0.00	0.00	0.00	53,941.38	
	FFRC	312.50	468.75	0.00	0.00	0.00	0.00	781.25	

Section 4	Revision of North Atlantic Share (including reallocation of FAI's Share of ISA)								
Wurtembergische	£	9,861.18	14,789.90	2,695.85	0.00	9,867.91	-37,214.83	0.00	Section 4 - shows the reallocation of FAI's share of North Atlantic's ISA (from Section 3) amongst the other Pool Members and the change to the total of their share of North Atlantic's ISA.
	US\$	689,462.00	1,039,877.27	282,409.20	0.00	632,693.69	-2,643,642.17	0.00	
	CAN\$	1,359.36	2,038.80	509.45	0.00	1,270.33	-5,177.93	0.00	
	FFRC	85.23	127.82	0.00	0.00	99.45	-312.50	0.00	
Agrippina	£	30,461.04	45,009.49	14,596.11	0.00	26,787.45	-117,854.09	0.00	Section 4 - shows the reallocation of FAI's share of North Atlantic's ISA (from Section 3) amongst the other Pool Members and the change to the total of their share of North Atlantic's ISA.
	US\$	2,256,271.71	3,502,047.03	1,587,036.42	0.00	1,743,633.30	-9,088,988.46	0.00	
	CAN\$	5,057.76	8,535.53	4,339.42	0.00	3,998.98	-21,931.70	0.00	
	FFRC	127.84	191.73	0.00	0.00	149.18	-468.75	0.00	
Nationwide	£	6,774.75	10,964.04	7,990.04	0.00	3,671.78	-29,400.62	0.00	Section 4 - shows the reallocation of FAI's share of North Atlantic's ISA (from Section 3) amongst the other Pool Members and the change to the total of their share of North Atlantic's ISA.
	US\$	1,220,762.41	2,088,294.78	1,771,578.46	0.00	541,162.67	-5,621,798.32	0.00	
	CAN\$	5,670.75	9,970.44	8,840.99	0.00	2,349.58	-26,831.75	0.00	
	FFRC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
FAI	£	102.20	153.27	0.00	0.00	119.26	-374.73	0.00	Section 4 - shows the reallocation of FAI's share of North Atlantic's ISA (from Section 3) amongst the other Pool Members and the change to the total of their share of North Atlantic's ISA.
	US\$	6,877.23	21,982.79	23,291.90	0.00	3,536.16	-55,688.09	0.00	
	CAN\$	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
	FFRC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Total	£	47,199.17	71,916.70	25,282.00	0.00	40,446.40	-184,844.27	0.00	Section 4 - shows the reallocation of FAI's share of North Atlantic's ISA (from Section 3) amongst the other Pool Members and the change to the total of their share of North Atlantic's ISA.
	Share of Shortfall US\$	4,173,373.35	6,651,401.87	3,664,315.99	0.00	2,921,025.83	-17,410,117.04	0.00	
	CAN\$	12,087.86	20,544.77	13,689.86	0.00	7,618.89	-53,941.38	0.00	
	FFRC	213.07	319.55	0.00	0.00	248.64	-781.25	0.00	
North Atlantic Share of Fronted Balances	£	37,214.83	117,854.09	29,400.62	374.73	0.00	0.00	184,844.27	Section 4 - shows the reallocation of FAI's share of North Atlantic's ISA (from Section 3) amongst the other Pool Members and the change to the total of their share of North Atlantic's ISA.
	US\$	2,643,642.17	9,088,988.46	5,621,798.32	55,688.09	0.00	0.00	17,410,117.04	
	CAN\$	5,177.93	21,931.70	26,831.75	0.00	0.00	0.00	53,941.38	
	FFRC	312.50	468.75	0.00	0.00	0.00	0.00	781.25	

SETTLEMENT AGREEMENT

This Agreement (the "Agreement") is made on this 30th day of November 2004

BETWEEN:

1. **ZÜRICH VERSICHERUNG AKTIENGESELLSCHAFT (DEUTSCHLAND)** of Solmsstrasse 27-37, 60486 Frankfurt am Main, Germany as legal successor to the rights and obligations of Agrippina Versicherung Aktiengesellschaft ("Agrippina")

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 instrument dated 21st June 2000 and shareholders' resolution of 17th August 2000 the rights and obligations of Agrippina Versicherung Aktiengesellschaft were transferred to Zürich Versicherung Aktiengesellschaft (Deutschland).
- (B) Agrippina and/or the members of the Ruty pool directly or through the M. E. Ruty Underwriting Agency Limited (the "Ruty Agency") entered into the following agreements:
 - (a) Agency Agreement dated 1st July 1962 and Addenda Numbers 1 to 3 thereto;
 - (b) Insolvency Shortfall Agreement signed by Agrippina on 18th November 1965; and
 - (c) Agency Agreement dated 6th January 1967 and Addendum Number 1 and 2 theretowhich are in Appendix 1 and are together referred to as the "Agency Agreements", by which Agrippina became a member between 1st July 1962 and 31st December 1967 of the group of companies writing insurance and reinsurance business through the Ruty Agency who were together known as the "Ruty Pool".
- (C) On or about 1st December 1977, Agrippina as reassured entered into a reinsurance contract (which is in Appendix 2) with Home as reinsurer in respect of certain of Agrippina's rights and obligations under contracts of insurance and reinsurance which had been accepted by the Ruty Agency pursuant to the Agency Agreements ("Treaty R").
- (D) On 26th August 1999, Home commenced arbitration proceedings against Agrippina (the "Arbitration Proceedings") by which Home sought, inter alia, a declaration that it was entitled to avoid Treaty R.
- (E) On 8th May 2003, Home was placed into provisional liquidation in England and Wales pursuant to the Order of Mr Justice Pumfry which is in Appendix 3.

- (F) On 11th June 2003, Home was placed into liquidation in the State of New Hampshire, USA. pursuant to the Order which is in Appendix 4.
- (G) The Parties desire to accomplish a full and complete settlement and compromise of all disputes arising under or relating to Treaty R between Agrippina and Home with respect to the Agency Agreements, Treaty R and all policies and contracts reinsured thereunder.
- (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.

The words printed in bold typeface in the Recitals hereto shall bear the meanings there ascribed to them.

"AISUK" shall mean ACE INA Services UK Limited of London, England.

"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 on behalf of Agrippina 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) Agrippina's liability 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 defense in the trial of any action against a Policyholder or in the preparation or prosecution of an appeal consequent upon such action.

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

"Fixed Pool Share" refers to the 'fixed quota share' percentages referred to in the Agency Agreements which provide as follows:

1.1.1 between 1.7.62 and 31.12.63 (under First Schedule of 1962 Agency Agreement signed on behalf of Agrippina on 5th July 1962) 25% any one acceptance;

1.1.2 between 1.1.64 and 31.12.65 (by Addendum No. 3 signed on behalf of Agrippina on 22nd September 1964) 25% any one acceptance;



1.1.3 between 1.1.66 and 31.12.66 (by Agency Agreement signed on behalf of Agrippina dated 6th January 1967) 22.5% any one acceptance;

1.1.4 between 1.1.67 and 31.12.67 (by Addendum No.1 to 1967 Agency Agreement signed on behalf of Agrippina on 21st July 1967) 28.12% any one acceptance;

"ISA" shall mean the Insolvency Shortfall Agreement signed by Agrippina on 18th November 1965 and section 18(b) of the Agency Agreement dated 6th January 1967 and the agreements between Ruty Pool members which arise by virtue thereof.

"LMCS Fee" shall mean a fee paid to the London Market Claims Service 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.

"Policy" shall mean

- (1) a policy and/or contract of insurance and/or reinsurance written by the Ruty Agency for Agrippina pursuant to the Agency Agreements other than the ISA in favour of an assured or reassured who was not a member of the Ruty Pool at the time such policy incepted; and/or
- (2) a contract of reinsurance which arose by virtue of the Agency Agreements other than the ISA between (a) Agrippina (as reinsurer) and (b) (as reassured) those Ruty Pool members other than Agrippina 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 Ruty Agency in favour of assureds and reassureds who were not members of the Ruty Pool at the time such policy and/or contract and/or reinsurance incepted.

"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 Agrippina's liability with respect to either an adverse order or award for costs made by a competent court or arbitration panel or 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 Agrippina'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 Agrippina by a Policyholder.

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.

3. **Condition Precedent**

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 28th February 2005. In the event that this condition is not so satisfied, this Agreement will be null and void and of no legal effect.

4. **Treaty R - General**

- 4.1 Subject to the terms of this Agreement, as between Home and Agrippina Treaty R is valid and binding, and Home's claim in the Arbitration to rescind Treaty R is hereby abandoned and withdrawn for all time.
- 4.2 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 "Home shall bear all expenses as expressly set out in the Agreement dated 30th November 2004 between Agrippina and Home".

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

The final page of Treaty R in which the M. E. Ruty Underwriting Agency Ltd acknowledge and commit themselves to certain obligations shall be deleted and shall be replaced by Article 6 hereof.

- 4.3 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.
- 4.4 The terms of Treaty R 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 as set out above, the terms of this Agreement shall prevail.
- 4.5 Save as set out expressly in this Agreement and in Treaty R (as amended by this Agreement), Home has no obligations and owes no duties whatsoever to Agrippina and Agrippina has no rights or causes of action whatsoever against Home, whether arising out of in connection with or under Treaty R (in its original form) or the Agency Agreements or the ISA.

Handwritten signature and initials in the bottom right corner of the page.

5. **Treaty R – Policy Obligations**

- 5.1 In respect of each and every Policy, Home shall be liable to indemnify Agrippina for the Fixed Pool Share of Agrippina's Policy Liabilities.
- 5.2 Nothing in this Agreement is intended or shall be construed to create obligations or duties directly or indirectly owed by Home to Policyholders.
- 5.3 For the avoidance of doubt Home does not reinsure and Home has no liability whatsoever in respect of or arising out of the insolvency of any member of the Ruddy Pool whether under the ISA or otherwise howsoever.

6. **Treaty R - Administration**

- 6.1 Within 14 days of the date when this Agreement becomes of binding legal effect under Article 3 hereof Agrippina shall pay GBP 20,000 (in cash without set off or diminution thereof) to Home's account the details of which are in Appendix 6.
- 6.2 Interest shall accrue in favour of Home at the rate of 5% per annum in respect of any part of the sum due under 6.1 which remains unpaid at the date upon which it falls due.
- 6.3 Where Policyholders asserts claims against Agrippina under Policies:-

6.3.1 Home shall, either itself or through AISUK, have the sole right to and will investigate, adjust and admit or refute liability for such claims in the name and with the authority (which is hereby granted and/or confirmed) of Agrippina. Home will, either itself or through AISUK, advise Agrippina of adjusted claims and will provide Agrippina with pertinent information to distinguish so far as is possible between Policy Liabilities, Coverage Costs, Policyholders' Expenses, underwriting years and such other information which is necessary

- (a) for Agrippina to administer, account, settle and pay the claims, including information which enables Agrippina to maintenance and reconciliation of its accounts with brokers and/or Policyholders and its reserves for notified outstanding losses;
- (b) for Agrippina to administer the billing and collection of sums due from other Pool Members; and
- (c) for the determination of claims in Home's estate.

6.3.2 Agrippina agrees that Home's obligations pursuant to 6.6.1 and 6.6.2 shall, immediately upon being established, be treated as falling within Agrippina's Proof of Claim and Home agrees to do all things necessary to have such obligations admitted into Home's estate for the purposes set forth in 6.7.

6.3.3 Agrippina agrees that the Fixed Pool Share of its Policy Liabilities in relation to claims by Policyholders which have been adjusted by Home or AISUK, as the case may be, and for which Agrippina's liability has been established pursuant to 6.3.1, shall automatically be deemed to form part of Agrippina's Proof of Claim submitted in Home's estate and shall immediately be capable of determination and admission in and to such estate. With respect to claims which have been so adjusted by AISUK and for which Agrippina's liability has been established pursuant to 6.3.1, Agrippina hereby consents to AISUK effecting submission thereof to Home on its behalf for purposes of determination and admission of such claims in and to Home's estate.

- 6.4 Home will bear its internal costs and salaries associated with its obligations under 6.3 and 6.5.
- 6.5 Where Home in its discretion considers it proper to do so in connection with a claim asserted against Agrippina under a Policy, Home shall, either itself or through AISUK, have the sole right to and will contest the claim and appoint lawyers, adjusters, experts and other third parties in Agrippina's name in connection with such claim with the authority (which is hereby granted and/or confirmed) of Agrippina.
- 6.6 In addition to the obligations set out in 5.1 hereof:
- 6.6.1 Provided always that such Policy Expenses do not arise by any litigation caused by delay, failure or omission of Agrippina, and solely in respect of Policy Expenses which arise out of litigation conducted in any jurisdiction other than the USA, Home will in the first instance advance all those Policy Expenses including that proportion of Policy Expenses which exceeds Agrippina's Fixed Pool Share of Policy Expenses in respect of a particular Policy, but Agrippina shall then reimburse that said proportion to Home; provided that in the event that and to the extent that Home successfully recovers the same from the Policyholder, Home shall pay over such recovery to Agrippina less the proportion of any and all fees and expenses incurred by Home in obtaining such recovery.
- 6.6.2 In respect solely of Policy Expenses which arise out of litigation conducted in the USA, Agrippina will in the first instance bear all such Policy Expenses, but Home shall then reimburse Agrippina in an amount equal to Agrippina's Fixed Pool Share of such Policy Expenses; provided that in the event and to the extent that Agrippina successfully recovers the same from the Policyholder, Agrippina shall pay over such recovery to Home less the proportion of any and all fees and expenses incurred by Agrippina in obtaining such recovery.
- 6.6.3 Agrippina will indemnify Home against any liability for Extra Contractual Obligations and related expenses which arise due to action, inaction, delay, failure or omission of Agrippina or its agents or representatives (which, for the avoidance of doubt, do not include Home or AISUK) .
- 6.6.4 Home will indemnify Agrippina 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 6.3 or 6.5.
- 6.6.5 Home will bear all LMCS Fees payable by Agrippina
- 6.7 Home agrees that Home's obligations under 6.6.1, 6.6.2, 6.6.4 and 6.6.5 hereof will have administrative expense priority pursuant to the law of New Hampshire, USA. in particular N.H. RSA 402-C:44,I.
- 6.8 Every quarter Home will render Ruddy Pool account reports to Agrippina in the format and containing the information set out in Schedule 1 hereto and every year Home will render a summary annual pool account report to Agrippina in the format and containing the information set out in Schedule 2 hereto.
- 6.9 Agrippina will at its own cost administer and pay for the administration of the billing and collection of sums due from other Ruddy Pool members pursuant to the Agency Agreements and the ISA, and of sums claimed from Agrippina to other Ruddy Pool members under the ISA.

6.10 Agrippina agrees to pay and/or reimburse Home's costs and expenses for exceptional work which lies outside the services set out as provided for in this Agreement. It is noted (but without creating any obligations hereunder on the part of Home or AISUK) that AISUK will carry out any such work and that AISUK will charge for services outside of those provided for in this Agreement upon a reasonable hourly fee basis.

7. Use of Agrippina's disclosure

7.1 Home has provided Agrippina with copy documents from Agrippina's disclosure in the Arbitration Proceedings which Home intends to rely upon in dealings with and proceedings against other members of the Ruddy Pool which are set forth in Appendix 7. Agrippina has advised Home that certain other members of the Ruddy Pool have already made a general objection to Home's use of these documents. The Parties therefore agree that where a Ruddy Pool Member may object to Home's use of or reliance upon any of the documents in Appendix 7 in proceedings with that Pool Member, Home's entitlement to use or rely upon any such documents shall be determined by the relevant court or arbitration tribunal which is seized of the proceedings between Home and the other Ruddy Pool member. Agrippina agrees that it will not oppose any application made to any relevant court or arbitration tribunal concerning Home's right to adduce and / or rely upon any such documents.

8. Reimbursement of funded balances

8.1 The Parties agree that Agrippina will reimburse Home for all balances in excess of Agrippina's Fixed Pool Share of liabilities on Agrippina fronted policies (to the extent that such balances relate to insolvency shortfall liabilities) which Home has previously funded plus interest at a rate of 5% from the date on which the relevant claim was agreed (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 the Notice of Arbitration. However, before making any payment hereunder Agrippina shall be entitled to set off against any amount due to Home under this clause 8.1 (a "Reimbursement Amount") any Policy Liability or Policy Expense which in either case is approved by the Court as due to Agrippina from Home under or in pursuance of Treaty R (a "Reinsurance Amount") and Agrippina shall only be obliged to pay to Home the amount by which the aggregate of all Reimbursement Amounts exceeds the aggregate of all Reinsurance Amounts.

8.2 The amounts to be paid by Agrippina under this Agreement, if any, shall, within 14 days of this Settlement Agreement be paid into a segregated trust account in the names of Home and Agrippina (the "Reimbursement Trust Account"). Home will be entitled to the benefit of all interest earned on the sums held in the Reimbursement Trust Account. When Agrippina's claims for Policy Liabilities have been admitted by the Court, Agrippina will be entitled to be paid from the Reimbursement Trust Account a sum equivalent to the total of those admitted claims until such time either as Agrippina has no further claims against Home's estate which Agrippina can setoff against the funds in the Reimbursement Trust Account or until the Reimbursement Trust Account balance has been withdrawn entirely by Agrippina pursuant to this 8.2.

9. Ruddy Pool Reinsurance Collections

9.1 Agrippina shall at its own expense have the sole entitlement and authorisation to claim and pursue and retain sums due to Agrippina from other members of the Ruddy Pool under the Agency Agreements and the ISA in respect of Policy Liabilities and Policy Expenses admitted and/or paid by Agrippina.

- 9.2 Save as set out in 9.1 hereof, at Home's expense Home has the sole entitlement and authorisation in Agrippina's name to bill and collect and retain all sums due to Agrippina from reinsurers of Ruddy Pool members (whether for "common account" or otherwise) and all other income due to Agrippina and Home pursuant to Article IV of Treaty R.
- 9.3 At Home's expense, Home has the sole entitlement and authorisation in Agrippina's name to sue and defend all forms of legal proceedings brought by or against reinsurers of the members of the Ruddy Pool and to enter into all kind 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.
- 9.4 Home shall, either itself or through AISUK, keep Agrippina fully informed of such steps which it takes outside the normal course of collecting reinsurance assets pursuant to 9.3. Home, either itself or through AISUK, will notify Agrippina before Home enters into a commutation agreement with a policyholder or a reinsurer of the Ruddy Pool. Should Agrippina request the same within 21 days of receiving such a notification, Home agrees to arrange for a certificate as to the reasonableness of the proposed commutation from an independent actuary, the cost of which will be shared equally by Home and Agrippina. If the parties cannot agree upon the appointment of an independent actuary, the independent actuary shall be appointed by the President of the Royal Society of Actuaries. Home and Agrippina agree to be bound by the independent actuary's findings.
- 9.5 Home shall be entitled absolutely to all receipts pursuant to 9.2 and 9.3. 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:
- 9.5.1 Home will notify Agrippina of such receipt and
- 9.5.2 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
- 9.5.3 Home shall pay the remaining 95% of such receipt into the IBNR Account.
- 9.5.4 Home shall keep a record of the claims which would, but for the commutation agreement, or scheme of arrangement or 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 9.2 and 9.3 hereof which is not paid into the IBNR Account, then provided that Agrippina has submitted the corresponding claims under Treaty R to Home and Home admits liability to Agrippina in respect thereof, Home shall be entitled to withdraw the corresponding reinsurance sum from the IBNR Account (until it is exhausted) and Agrippina will forthwith supply all instruments and consents necessary to effect such a transaction.
- 9.5.5 For the purposes of calculating the claims which would, but for the commutation agreement, have been billed to the commuting reinsurer under 9.5.4, 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 relevant Policy, and Home will be entitled to the corresponding withdrawals from the IBNR Account until it is exhausted.

- 9.5.6 Notwithstanding the provisions of 9.5.4 and 9.5.5, in the event that (a) Agrippina relinquishes in writing its claim to the proceeds then remaining in the IBNR Account; (b) Agrippina notifies Home in writing that it has elected not to terminate Treaty R; or (c) a Scheme of Arrangement with respect to Home's UK business is fully and finally approved by a court of competent jurisdiction, Home shall be entitled to withdraw in full the balance in the IBNR Account and Agrippina will forthwith supply all instruments and consents necessary to effect such a transaction.
- 9.6 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 Agrippina then Home will notify Agrippina of this whereupon Agrippina will pay Home the cash equivalent of the amount which was subject to such setoff. 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 9.5 hereof. If such a reinsurer should attempt to effect an invalid set off, Home will either 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 an amount equal to the sum which was allegedly invalidly set off.

10. Termination of Treaty R

- 10.1 In the event that Agrippina terminates Treaty R pursuant to Article IX thereof prior to the final approval of a Scheme of Arrangement in relation to Home's UK business by a court of competent jurisdiction:

- 10.1.1 Agrippina shall be entitled to all sums remaining in the IBNR Account, including any accrued interest thereon, which are not otherwise due to Home, and Home shall be entitled to all sums remaining in the Reimbursement Trust Account, including any interest thereon, which are not otherwise due to Agrippina.
- 10.1.2 Home's accrued entitlement to sums due under 6.1, 6.2, 6.6.1, 6.6.2, 6.6.3, 6.10, 8, 9.5. and 9.6 at the time that termination of Treaty R is effective shall not be affected and Agrippina shall be liable in respect thereof.
- 10.1.3 Agrippina's accrued entitlement to sums due under 5.1, 6.6.1, 6.6.2, 6.6.4, 6.6.5, 8, 9.1 and 9.6 at the time that termination of Treaty R is effective shall not be affected and Home shall be liable in respect thereof.
- 10.1.4 The rights and obligations of the Parties under Treaty R and this Agreement shall be terminated except as specified in 10.1.1, 10.1.2, 10.1.3, 11.1 and 12.
- 10.1.5 At the time that termination of Treaty R is effective, 6.3.3 shall be of no further force or effect.

11. Inspection Provision

- 11.1 Each Party shall to the extent reasonable, and upon giving no less than 14 days notice, be entitled to inspect the books, records, and correspondence of the other Party relating to their management of the run-off of the M. E. Ruddy Underwriting Agency Ltd book of business

insofar as they relate to Agrippina's participations in Policies or reinsurances of Agrippina. The rights set forth in this 11.1 shall survive termination of Treaty R and/or this Agreement.

12. Miscellaneous

12.1 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.

12.2 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 or any document entered into pursuant to or in connection with it.

12.3 This Agreement shall constitute the entire Agreement between the Parties hereto relating to the subject matter hereof and this Agreement may not be amended, except by written amendment executed by each of the Parties.

12.4 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.

12.5 The validity of this Agreement shall be in no way conditional upon the entering into or validity of any other Agreement by the Parties hereto.

12.6 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.

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

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

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

12.7.3 Disclosure to any other person with the prior written consent of the other party, such consent not to be unreasonably withheld; and/or

12.7.4 Disclosure to the Court.

12.8 The Parties represent and warrant that they have the necessary power and specific authority to enter into this Agreement.

13. Arbitration Proceedings and Jurisdiction of English Court

13.1 Subject to Article 3, the Parties agree to withdraw and abandon all their claims made in the Arbitration Proceedings.

13.2 There shall be no order as to costs in the Arbitration Proceedings, and each party thereto shall bear its own legal costs and the costs to date of its appointed arbitrator.

APPENDIX 1

Handwritten: 10/11/62

T H I S A G R E E M E N T is made the First day
of July One thousand nine hundred and sixty-two *Some 10/11*
BETWEEN M. E. RUTTY UNDERWRITING AGENCY LIMITED of 10/11 Lime
Street London E.C.3. (hereinafter referred to as "the Agency")
of the one part and AGRIPPINA VERSICHERUNGS AKTIENGESELLSCHAFT
of 90 RIEHLER STRASSE, (22c) COLOGNE 16, GERMANY.

(hereinafter referred to as "the Company") of the other part

W H E R E A S the Agency has been incorporated in order
to carry on the business of an underwriting agency for the
purpose of accepting all classes of Insurance and Reinsurance
business (subject to exclusions as defined in the Second Schedule
hereto) and it has been agreed that it should enter into

Agreements with the Company and with the other Companies listed
in the First Schedule hereto in the terms of this Agreement

NOW THIS AGREEMENT WITNESSETH and it is HEREBY AGREED AND
DECLARED as follows :-

1. IN this Agreement unless the context otherwise requires
the following words and phrases shall bear the meanings set
opposite to them :-

- | | |
|---------------------------|--|
| "Risk" and "Insurance" | Any policies, slips,
certificates and contracts,
treaties, covers of insurance or
reinsurance indemnity or guarantees |
| "Underwriting year" | 1st January to 31st December
(inclusive) in any year save that
the first underwriting year shall be
the period from 1st July, 1962
to 31st December 1963 (inclusive) |
| "Participating Companies" | The Companies listed in the First
Schedule hereto |

2. THE Company hereby authorises the Agency to underwrite any
Risk whatsoever on its behalf for an amount not exceeding 25%
of the limits set out in the Second Schedule hereto and the
Company binds itself to accept liability for its share of each

Risk accepted on its behalf The liability of the Company shall remain in force until the expiration of the term of the Insurance to which such Risk appertains

3. ALL Risks underwritten and entered in the books of the Agency during an Underwriting year shall for the purposes of this Agreement be deemed to have been undertaken in that Underwriting year and all matters relating to such Risks shall be referred back to that Underwriting year and adjustments made to the accounts of that year accordingly

4. THE Agency may at its absolute discretion reinsure the whole or part of any Risks and/or Insurances such reinsurances being effected for the common account of the Participating Companies and the Company shall bear its proportionate part of the premium paid and expenses incurred in respect of such reinsurances

5. THE Agency shall furnish the Company upon request with particulars of all Risks and/or Insurances effected under this Agreement and the Agency shall enter in a Register details of each Risk and the amount of the Company's participation The books and documents of the Agency so far as they relate to matters falling under this Agreement shall be open at all reasonable times to the inspection of the Company by its duly authorised representative

6. IT is mutually agreed that any inadvertent delays, omissions or errors made in connection with any Risk and/or Insurance effected under this Agreement shall not be held to release either party hereto from any liability which would attach to them hereunder if such delays omissions or errors had not been made and it is further agreed that in all things coming within the scope of this Agreement the Company shall share to the extent of its interests the fortune of the Risk and/or Insurance This being an Agreement between the parties in a spirit of trust with one another the Company is bound in every case to follow the fortune of the Risk and/or Insurance and any error or omission which may arise in the execution of the terms of the present Agreement will

not under any circumstances alter the spirit of it or nullify the responsibility accepted under it

7. * ALL premium received in respect of Risks and Insurances effected under this Agreement shall be credited to the Participating Companies after deducting all allowances taxes and charges as agreed by the Company

8. AS soon as practicable after the close of the quarters ^(Sub) ending 31st March 30th June 30th September and 31st December the Agency will forward an account current to the Company and payment of the balance of such account shall be made by the debtor to the creditor within thirty days after despatch of such account In such quarterly accounts the Company will be debited with Eighty per centum (80%) of its fixed quota share of premiums received to be credited to the Premium Reserve Fund hereinafter mentioned The Premium Reserve Fund will be applied first in meeting losses and if at any time the Premium Reserve Fund is insufficient for this purpose the Company shall remit to the Agency within fourteen days of notification by the Agency the amount of its share of such deficiency Subject as hereinafter provided any amount standing to the credit of the Premium Reserve Fund will be retained by the Agency for three years and the balance (if any) of sums so credited after making provision for all outstanding losses will be accounted for to the Company in the thirteenth quarter following the commencement of any one Underwriting year

9. THE Agency shall be entitled at its absolute discretion to invest the whole or any part of the sums for the time being standing to the credit of Premium Reserve Fund in any investments authorised by law for the investment of trust moneys or place the same on deposit with any bank discount house or Local ^(Sub) Authority and to change such investments Any income on such investments shall be paid to the Participating Companies in accordance with their shares Any profits or losses on the realisation of such investments shall be credited or debited

to Premium Reserve Fund. A statement giving details of all investments held by the Agency on behalf of the Participating Companies will be forwarded by the Agency to the Participating Companies with the June and December accounts and the Companies' share of the income on such investments will be paid by the Agency to the Company within thirty days after the 31st December of each year

The Agency shall be under no liability whatsoever for any losses incurred on such investments

10. IT is understood and agreed that the premiums payable under this Agreement apart from Sterling United States Dollars and Canadian Dollars shall be accepted by the Company in Sterling at the rates of exchange which may from time to time be adopted as appropriate by the Agency and that amounts recoverable for losses shall hereafter be debited at the same rate of exchange as that employed at the time of settlement of claim by the Agency

11. THIS Agreement shall take effect for all entries appearing in ~~July~~ ~~One thousand nine hundred and sixty two~~ and subsequent registers and shall remain in force until terminated by either party giving to the other not less than six months' notice in writing to expire on the 31st December of any year during the currency of this Agreement

But should at any time the Company :-

- (a) Commit any breach of the terms of the Agreement; or
- (b) Lose the whole or part of its paid-up capital; or
- (c) Become insolvent or suspend payment of its debts or enter into any arrangement with its creditors or cease or threaten to cease to carry on its business; or
- (d) Go into liquidation or a Receiver be appointed; or
- (e) Be acquired or controlled by any other Company or Corporation

the Agency shall have the right to terminate this Agreement at any time by giving notice in writing to the Company

The liability of the Company shall continue in accordance

with the terms of this Agreement in respect of each Risk and/or Insurance accepted by the Agency on its behalf until the date of the termination thereof and any acceptances by the Agency whether before or after any such notice is given as aforesaid shall remain in force and the liability of the Company thereunder shall continue until the expiration of such Risk and/or Insurance in the ordinary course of business

12. THE Agency reserves to itself the sole right to settle losses whether by way of compromise ex gratia payment or otherwise and all settlements shall be unconditionally binding on the Company. The Agency may contest any claim and institute any action it thinks fit in relation to a claim and the Company shall be liable for its share of the claim and all costs and expenses incurred in connection therewith but the Company shall be entitled to its share of any salvages or recoveries relating to such claim

13. THE Company shall pay the Agency a commission of 5% and 2% Agency allowance on the net premiums payable under this Agreement.

The Company shall pay the Agency a commission of 12½% on the profits of each Underwriting year to be calculated after the end of 12 quarters as follows :-

Income

1. All Premiums less expenses in connection with reinsurance for joint agency account

Outgo:

1. Commission and Agency allowances
2. Claims paid less refunds and recoveries under reinsurance for joint agency account
3. Reserve for Outstanding Losses
4. Three per centum (3%) of income in respect of Company's expenses

In the event of any alteration being made to the figures used in calculating the aforesaid commission on profits in any

one Underwriting year the commission shall be adjusted subsequently in accordance with the revised figures

14. IF for any reason one or more of the Participating Companies withdraws from its participation in the Agency or its Agreement is terminated then the fixed quota share or shares of such company or companies shall be offered to the remaining companies PROVIDED ALWAYS that the Agency shall have the right to allocate such share or shares to new companies approved by the remaining Participating Companies In the event of any part of the available share or shares still remaining unallocated the Agency shall be entitled to increase the reinsurances effected in order that the remaining Participating Companies' shares of the limits set out in the Second Schedule hereto are not increased from that stated In the event of any of the Participating Companies not being able to fulfil their obligations under this Agreement the remaining Participating Companies are absolved from any liability accruing as a result of the failure of any other Participating Company

15. IN the event of the Company going into liquidation becoming insolvent suspending payment entering into any arrangement with its creditors ceasing to carry on business or having a Receiver appointed or making any default hereunder or of notice being given in accordance with Clause 11 to terminate this Agreement no further payments under this Agreement or out of the Premium Reserve Fund shall be made by the Agency to the Company All sums due or which may thereafter become due from the Agency to the Company shall be retained and held in Trust for the purposes herein mentioned Thereafter any sums payable by the Company to the Agency in respect of losses or returns of premiums or otherwise shall be debited against and paid out of the Premium Reserve Fund and the balance (if any) of such Fund shall not be paid over to the Company until all its liabilities under this Agreement shall have been ascertained and satisfied In the event of the Premium Reserve Fund proving

insufficient to satisfy all such liabilities the amount remaining unsatisfied shall be paid by the Company to the Agency forthwith

Furthermore it is hereby agreed (in addition to the above provisions and without limiting same) that if and so far as may be necessary to secure the Agency in the event of liquidation either voluntary or compulsory of the Company the Agency have prior charge and lien on the said Premium Reserve Fund and also upon any further money with which the Company may be entitled to be credited under the present Agreement and the Agency shall be secured creditors to that extent

16. IN event of any dispute at any time arising out of or in any way connected with or relating to this Agreement whether before or after the termination by notice under this Agreement the same shall be referred to the decision of two Arbitrators one to be appointed in writing by the Agency and the other by the Company or in case of disagreement between the Arbitrators to the decision of an Umpire to be appointed in writing by the Arbitrators before entering upon the reference and it shall be a condition precedent that unless and until an award has been made neither party shall have any right of action against the other

The said Arbitrators and Umpire shall be executive officers of ~~the~~ Insurance or ~~the~~ Reinsurance Companies and the seat of the Court of Arbitrators shall be in London

The Arbitrators and Umpire will not have to undergo any judicial formalities and may abstain from following the strict rules of Law

The costs of the Arbitrators and award shall be in the discretion of the Court of Arbitrators

Save as aforesaid the provision of the Arbitration Act 1950 shall apply

17. IN the event of war arising between the respective countries of the Agency and the Company this Agreement shall be thereby

immediately cancelled and the adjustment of accounts shall be delayed until the termination of hostilities

18. IN the event of war arising in which Great Britain is involved the Company undertakes not to cede directly or indirectly any part of the business effected under this Agreement to any persons or body of persons corporate or incorporate of whatever nationality resident or incorporated or whose chief place of business is in any enemy country

19. THIS Agreement may at any time be altered by mutual consent of the Agency and the Company ~~and such of the Participating Companies as are for the time being bound by similar agreements by an addendum signed by a responsible official of the parties~~ and such addendum shall be binding on the parties and be deemed to be an integral part of this Agreement

20. THIS Agreement shall be governed and construed by the laws of England *sub 21/10*

IN WITNESS whereof this Agreement has been signed by

M. E. RUTTY duly authorised on behalf of the Agency and by *S. Rixon and W. Kubon* duly authorised on behalf of the Company the day and year first before written

THE FIRST SCHEDULE above referred to

Company Initial fixed quota share

<i>Agrippina Versicherungs Aktiengesellschaft</i>	25%
<i>Australian & International Insurance Ltd</i>	20%
<i>British National Insurance Society Ltd</i>	20%
<i>Nationwide Mutual Insurance Company</i>	35%

THE SECOND SCHEDULE above referred to

Scope:	World Wide but only underwritten in the Agency's office in London
100% Group Limit:	£50,000 any one acceptance subject to Excess of Loss treaties remaining in force giving protection in Excess of £5,000 any one acceptance and £25,000 any one catastrophe
Exclusions of Business under this Agreement:	Direct Motor Guarantee Bonds Life Financial Guarantees Marine, Obligatory Participating Reinsurance Agreements.

SIGNED by the said
in the presence of:- }

B.E. DREW
10/11 LIME ST.
LONDON, E.C.3.



SIGNED by the said
in the presence of:- }

Cologne, the 5th of July 1962
Antonia
VERSICHERUNGS-AKTIENGESELLSCHAFT
M. M. M.

Urk.R.Nr. 824 für 1962.

Hiermit beglaubige ich die vorstehenden Namensunterschriften von:-

1. Herrn Hans R i x e n , Direktor zu Köln,
2. Herrn Wilhelm K u h n , Prokurist zu Köln.

Gleichzeitig bescheinige ich auf Grund Einsichtnahme in das Handelsregister des Amtsgerichts Köln - HRB 701 - vom heutigen Tage, dass die vorgenannten Herren gemeinsam zur Vertretung

der "Agrippina Versicherungs-Aktiengesellschaft" in
Köln berechtigt und als solche im Handelsregister
eingetragen sind.

Köln, den 5. Juli 1962.

Der Notar:



DATED 1st July 1962

M. E. RUTTY UNDERWRITING
AGENCY

- and -

AGRIPPINA VERISHERUNGS
AKTIENGESELLSCHAFT

U N D E R W R I T I N G
A G R E E M E N T

ADDENDUM NO. 1.

IT IS UNDERSTOOD AND AGREED that with effect from 1st October, 1962 Paragraph No. 4 of this Agreement is cancelled and replaced as follows:

4.A. THE Agency may at its absolute discretion reinsure the whole or part of any Risks and/or Insurances such reinsurances being effected for the common account of the Participating Companies and the Company shall bear its proportionate part of the premium paid and expenses incurred in respect of such reinsurances.

B. IT is understood and agreed that the Agency may at its absolute discretion underwrite Risks and/or Insurances in the names of ^{one} two or more of the Participating Companies where it is deemed to be in the best interests of the Participating Companies so to do. Provided always that the Agency shall effect the necessary apportionment of premium in respect of such Risks and/or Insurances over all Companies in accordance with the proportions listed in the first schedule and that each Company shall bear its proportion in accordance with the first schedule of any loss or losses arising on such Risks and/or Insurances.

SIGNED in LONDON, ENGLAND this *Nineteenth* day of *September* 1962 for and on behalf of

M. E. RUTTY UNDERWRITING AGENCY LTD
[Signature]
DIRECTOR.

SIGNED in COLOGNE, GERMANY this 21 st day of Sept. 1962 for and on behalf of

A G R I P P I N A
Versicherungs-Aktiengesellschaft

[Handwritten notes and signatures]
I
The note, one of 32 of the N.B. should be paid
to the ...
[Signature]

ADDENDUM NO. 2.

IT IS UNDERSTOOD AND AGREED that as on and from ~~the~~
First day of January One thousand nine hundred and
sixty three the following amendments to the within-written
Agreement shall take effect:-

1. Add the following Definition at the end of Clause 1:-

"Net Premium" The gross premium adjusted to include
all additional premiums returnable
premiums, ~~reinsurance premiums,~~
brokerage, commissions taxes and
charges payable in respect of such
gross premium _____

2. Delete Clause 3 and substitute new Clause as follows:-

"3. The Agency shall have an absolute discretion in
deciding the appropriate Underwriting year or years in respect
of which the Risk was so entered and adjustments shall be
made to the accounts accordingly, save that when the Risk is
apportioned between two or more years and/or between two or
more Groups of Participating Companies the Agency shall have
an absolute discretion in deciding the appropriate division
of the premium claim or other matter as aforesaid between such
years and between such Groups." _____

3. Delete Clause 5 and substitute new Clause as follows:-

"5. The Agency shall enter in a Register details of each
Risk and/or Insurance effected under this Agreement and the
amount of the Company's participation The books and
documents of the Agency so far as they relate to matters
falling under this Agreement shall be open at all reasonable
times to the inspection of the Company by its duly authorised
representative and the Company shall be entitled to take
extracts therefrom of matters concerning the Company for its
own private use." _____

4. Delete existing Clause 7 and substitute new Clause as
follows:-

"7. All premiums payable in respect of Risks and Insurances effected under this Agreement shall be credited to the Participating Companies when the same become due and payable after deducting all allowances taxes and charges as agreed by the Company and likewise all losses commissions and other payments by the Agency relating to such Risks and Insurances shall be debited to the Participating Companies when the same become due and payable."

5. Delete Clause 8 and substitute new Clause as follows:-

"8. As soon as practicable after the close of the quarter ending 31st March 30th June 30th September and 31st December the Agency will forward an account current to the Company and payment of the Balance of such account shall be made by the Debtor to the creditor within thirty days after despatch of such accounts or so soon thereafter as payment is received by the Agency of any outstanding sums due from brokers or others In such quarterly accounts the Company will be debited with Eighty per centum (80%) of its fixed quota share of premiums receivable to be credited to the Premium Reserve Fund hereinafter mentioned and for such purpose premiums receivable shall be net premiums The Premium Reserve Fund will be applied first in meeting losses and if at any time the Premium Reserve Fund is insufficient for this purpose the Company shall remit to the Agency within fourteen days of notification by the Agency the amount of its share of such deficiency Subject as hereinafter provided any amount standing to the credit of the Premium Reserve Fund will be retained by the Agency for three years and the balance (if any) of sums so credited after making provision for all outstanding losses (both actual and contingent) will be accounted for the Company within six months after the expiration of the said period of three years

6. Delete Clause 9 and substitute new Clause as follows:-

"9. The Agency shall be entitled at its absolute discretion to invest the whole or any part of the sums for the

time being standing to the credit of Premium Reserve Fund in any investments authorised by law for the investment of trust moneys or place the same on deposit with any bank discount house or Local Authority and to change such investments Any income on such investments shall be paid to the Participating Companies in accordance with their shares and where any such income falls to be apportioned between two or more Underwriting Years the Agency shall have an absolute discretion in deciding the appropriate division of such income between such years Any profits or losses on the realisation of such investments shall be credited or debited to Premium Reserve Fund and shall be allocated to such Underwriting year or years as the Agency may in its absolute discretion determine The decision of the Agency as to the amount of the share of any Participating Company or Group of Participating Companies in any income or profit or loss on the realisation of any investments held by the Agency in respect of Premium Reserve Fund as aforesaid shall be final and binding on each Participating Company or Group of Participating Companies As soon as practicable after the 31st December in each year the Agency will value or procure a valuation to be made of all investments in which the Premium Reserve Fund or any part thereof shall be invested as at such 31st day of December and there shall also be taken into account all purchases and sales of such investments and all profits less losses and expenses realised on the sale of such investments since the previous 31st December Such valuation and the figures shown therein shall be final and binding on the Participating Companies A Statement giving details of all investments held by the Agency on behalf of the Participating Companies will be forwarded by the Agency to the Participating Companies with the June and December accounts and the Companies' share of the income on such investments will be paid by the Agency to the Company within ninety days after the 31st December of each year

The Agency shall be under no liability whatsoever for any losses incurred on such investments."

7. Delete Clause 13 and substitute new Clause as follows:-

"13. The Company shall pay the Agency a commission of 5% ^{written} and ~~2% Agency allowance~~ on the Net Premiums payable under this Agreement.

The Company shall pay the Agency a commission of 12 1/2% on the profits of each Underwriting year to be calculated after the end of 12 quarters as follows:-

Income

1. Net Premiums less expenses in connection with reinsurance for joint agency accounts
2. The Company's share of the gross income before deduction of tax that shall be derived from the Premium Reserve Fund and the amount of any appreciation in the value of the investments representing the same as calculated for the purposes of Clause 9 hereof.

Outgo

1. Commission on Net Premiums and Agency allowances
2. Claims paid less refunds and recoveries under reinsurance for joint agency account
3. Reserve for Outstanding Losses .
4. Three per centum (3%) of income in respect of Company's expenses
5. The amount of any depreciation in the value of the investments representing the Premium Reserve Fund calculated as aforesaid.

In the event of any alteration being made to the figures used in calculating the aforesaid commission on profits in any one Underwriting year the commission shall be adjusted subsequently in accordance with the revised figures."

8. Delete Clause 20 and add new Clauses 20 21 and 22 as follows:-

"20. The Company shall not later than five months after the end of each of its financial years deliver to the Agency for deposit with the Board of Trade a revenue account for the year a balance sheet and profit and loss account in the form prescribed in accordance with the Insurance Companies Act, 1958 or any modification or re-enactment thereof and such accounts shall be audited in manner prescribed under the said Act."

"21. The Agency shall be entitled to discharge out of moneys held for the Company any liability to tax in respect of profits of the Company assessable in the name of the Agency and the Agency shall also be entitled to retain out of moneys otherwise due to be paid to the Company hereunder such amount as the Agency may consider appropriate in order to pay or provide for payment of tax assessable in the name of the Agency on profits made by the Company hereunder."

"22. (i) This Agreement shall be governed and construed by the laws of England and the Company hereby accepts the jurisdiction of the English Courts and appoints Messrs. C. Neville Russell & Co, London as authorised on its behalf to accept service of any proceedings"

(ii) The Agency shall have power to appoint any Attorney or Attorneys together with any other advisers consultants or agents as may be necessary in any part of the world to accept service of any proceedings on behalf of the Company and in connection with any suit arbitration proceeding or other matter or thing to take all such steps as may in the opinion of the Agency be desirable or necessary."

SIGNED in London, England this

7th

day of

February

1963.

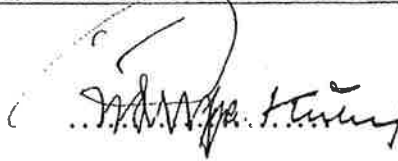
For and on behalf of
M. E. FIDITY UNDERWRITING AGENCY
LIMITED



.....
 Director

SIGNED in Cologne, Germany this 13th day of February 1963
1963.

For and on behalf of
AGRIPPINA VERSICHERUNGS AKTIENGESELLSCHAFT

A handwritten signature in dark ink, appearing to be "J. W. H. H. H. H.", is written over the company name. The signature is somewhat stylized and partially overlaps the text.

ADDENDUM NO. 1.

IT IS UNDERSTOOD AND AGREED that with effect from 1st January, 1964, the Companies and their proportions appearing in the First Schedule are amended as follows:-

" Company	Initial fixed quota share
NATIONWIDE GENERAL INSURANCE COMPANY	30%
AGRIPPINA VERSICHERUNGS AKTIENGESELLSCHAFT	25%
BRITISH NATIONAL LIFE INSURANCE SOCIETY LTD.	15%
AUSTRALIAN & INTERNATIONAL INSURANCES LTD.	15%
WURTEMBERGISCHE FEURVERSICHERUNG AKTIENGESELLSCHAFT	15% "

IT is further understood and agreed that the 100% Group Limit contained in the Second Schedule is amended to read :-

" 100% Group Limit: £100,000 any one acceptance subject to Excess of Loss treaties remaining in force giving protection in Excess of £10,000 any one acceptance and £25,000 any one catastrophe "

SIGNED in London, England this *20th* day of *September* 1964.

For and on behalf of M.E. ROTHY UNDERWRITING AGENCY LIMITED

LIMITED



.....
Director

SIGNED in Cologne, Germany this 22nd day of September 1964.

For and on behalf of AGRIPPINA VERSICHERUNGS AKTIENGESELLSCHAFT

Agrippina
VERSICHERUNGS AKTIENGESELLSCHAFT
[Handwritten signature]

Dated SIXTH DAY OF JANUARY 1968.

M.E.RUTTY UNDERWRITING
AGENCY LIMITED (I)

and

AGRIPPINA VERSICHERUNGS
AKTIENGESELLSCHAFT (2)

A G R E E M E N T

A G R E E M E N T

WHEREAS, the M. E. RUTTY UNDERWRITING AGENCY, LIMITED of London, England, hereinafter known as the "RUTTY AGENCY", effective August 1, 1962, entered into separate, but identical, quota share underwriting contracts with NATION-WIDE GENERAL INSURANCE COMPANY of Columbus, Ohio; AGRIPPINA VERSICHERUNGS AKTIENGESELLSCHAFT of Cologne, Germany; BRITISH NATIONAL LIFE INSURANCE SOCIETY, LIMITED of London, England, and AUSTRALIAN AND INTERNATIONAL of Melbourne, Australia, Hereinafter known as the "PARTICIPATING COMPANIES", and *signed to include NATIONAL FIRE AND GENERAL INSURANCE CO. and ANIKA*

WHEREAS, the WURTEMBERGISCHE VERSICHERUNGS of Stuttgart, Germany, effective January 1, 1964 became one of the PARTICIPATING COMPANIES, and

WHEREAS, the RUTTY AGENCY was in the business of being an underwriting agency for the purpose of accepting all classes of Insurance and Reinsurance, subject to certain limitations in the underwriting contract, and

WHEREAS, each one of the PARTICIPATING COMPANIES bound itself to accept liability for its respective shares of each and every risk accepted on behalf of the PARTICIPATING COMPANIES by the RUTTY AGENCY, subject to certain monetary limitations as specified in the underwriting contract, and

WHEREAS, any one of the PARTICIPATING COMPANIES in the quota share underwriting contract may have its policy of insurance or contract of reinsurance issued on a particular risk, for which it would be entirely liable to the policyholder or reinsured if called upon to pay in the event of a loss, and

WHEREAS, a situation may arise where one of the PARTICIPATING COMPANIES may be called upon by a policyholder or reinsured to pay a loss under the policy of insurance or contract of reinsurance, but subsequently discovers that one or more of the PARTICIPATING COMPANIES cannot pay its proportionate share of the loss under the quota share underwriting contract due to insolvency, so

THEREFORE, in consideration of the mutual agreements of the parties and the exchange of these documents, each of the PARTICIPATING COMPANIES agree that in the event that any one of the PARTICIPATING COMPANIES, which is a signatory to this agreement, is insolvent and unable to pay its share in accordance with the provisions of the quota share underwriting contract, the remaining solvent PARTICIPATING COMPANIES will be liable for their proportionate share of the unpaid loss of the insolvent PARTICIPATING COMPANY, after all funds withheld by the RUTTY AGENCY in the name of the insolvent PARTICIPATING COMPANY have been exhausted.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed respectively by their proper officers:

Signed this 4th day of November, 1965 in Columbus, Ohio

Attest: Robin Natus NATIONWIDE GENERAL INSURANCE COMPANY
by: [Signature]
Vice President - Special Markets

Signed this 18 day of November, 1965 in Glogau, Germany

Attest: [Signature] AGRIPPINA VERSICHERUNGS AKTIENGESELLSCHAFT
by: [Signature]

Signed this 9th day of November, 1965 in London, England

Attest: [Signature] BRITISH NATIONAL LIFE INSURANCE SOCIETY, LIMITED
by: [Signature]

Signed this 28th day of February, 1966 in Melbourne, Australia

Attest: [Signature] AUSTRALIAN AND INTERNATIONAL
by: [Signature]

Signed this 26th day of November, 1965 in Stuttgart, Germany

Attest: [Signature] WURTTENBERGISCHE ^{Feurversicherung A.G.} ~~VERSICHERUNGS~~ _{in Stuttgart}
by: [Signature]

Signed this 16th day of May, 1966 in Melbourne, Australia

from 1-1-1966
Attest: S. Robertson AUTOMOBILE FIRE & GENERAL INSURANCE COMPANY OF AUSTRALIA LIMITED
by: [Signature]

THIS AGREEMENT is made this *sixth* day of *January* 1967
 BETWEEN M.E. RUTTY UNDERWRITING AGENCY LIMITED whose
 registered office is at 10-11 Lime Street London E.C.3.
 (hereinafter called "the Agency") of the one part and
 AGRIPPINA VERSICHERUNGS AKTIENGESELLSCHAFT a company
 incorporated under the laws of Germany having its
 principal office at 90 Riehler Strasse 5 Cologne 16
 Germany (hereinafter called "the Company") of the other
 part

WHEREAS the Agency carries on the business of an
 underwriting agency for the purposes of accepting all
 classes of Insurance and Reinsurance business and it has
 been agreed that with effect from 1st January 1966 it
 should enter into Agreements with the Company and with
 the other companies listed in the First Schedule hereto
 in the terms of this Agreement

NOW THIS AGREEMENT WITNESSETH and it is HEREBY
 AGREED AND DECLARED as follows :-

1. IN this Agreement unless the context otherwise
 requires the following words and phrases shall bear the
 meanings set opposite to them:-

- | | |
|---------------------------|--|
| "Risk" and "Insurance" | Any policies slips certificates
and contracts covers of insurance
or reinsurance indemnity or
guarantees |
| "Underwriting year" | 1st January to 31st December
(inclusive) in any year |
| "Participating Companies" | The Companies listed in the First
Schedule hereto |
| "Gross Premium" | The premium received by the
Agency on behalf of all
Participating Companies adjusted
to include all additional
premiums returnable premiums
brokerage commissions taxes and
charges payable in respect of such
premiums |

"Net Premium"	The Gross Premium less reinsurance premiums paid
"the First Agreement"	An Agreement (and the addenda thereto) dated _____ and made between the parties hereto.
"Proportionate Share"	The share set out against each of the Participating Companies in the First Schedule hereto
"the majority of the Participating Companies"	Participating Companies representing in the aggregate not less than fifty per cent. in value of the proportionate shares
"the Auditors"	Neville Russell & Co. Chartered Accountants or such other Auditors as a majority of the Participating Companies may agree

2.(a) SUBJECT to sub-clause (b) of this Clause the Company hereby authorises the Agency to underwrite in London any Risk located anywhere in the world on its behalf for an amount not exceeding the limit stated in the Second Schedule hereto and the Company binds itself to accept liability for its proportionate share of each Risk accepted on its behalf. The liability of the Company shall remain in force until the expiration of the term of the Insurance to which such Risk appertains.

(b) The Risks mentioned in the Second Schedule are excluded from this authorisation with the exception of those risks in force expiring not later than 31st December 1966. The Agency has taken notice that the Company is not anxious to become engaged to any great extent in the class of Risks mentioned in the Third Schedule hereto. Such Risks may be underwritten by the Agency if such underwriting is considered necessary in exceptional cases but the Agency agrees to do so with the utmost restraint.

(c) The Agency undertakes to meet or correspond with the Representatives of all Participating Companies before the end of each underwriting year to discuss possible alterations to the Second and Third Schedules.

3. THE Agency shall have an absolute discretion in deciding the appropriate underwriting year or years in respect of which the Risk was so entered and adjustments shall be made to the accounts accordingly save that when the Risk is apportioned between two or more years and/or between two or more groups of Participating Companies the Agency shall have an absolute discretion in deciding the appropriate division of the premium claim or other matter as aforesaid between such years and between such groups.

4. THE agency has effected and may hereafter effect certain reinsurances for the whole or part of any Risk and certain Treaties for the common account of the Participating Companies.

In the event of any proposed significant change in the re-insurance programme this shall first be approved by the Company before finalisation and advised thereafter by the agency to all other Participating Companies. The overriding commission received on such reinsurances by the Agency will be proportionately credited to the Company

5. (a) THE Agency shall furnish the Company upon request with particulars of all Insurances effected under this Agreement and the Company will treat such information with the secrecy appropriate under the circumstances. The Agency shall enter in a Register details of each Risk and the amount of the Company's participation. The books accounting documents and records of the Agency so far as they relate to matters falling under this Agreement shall be open at all reasonable times to the inspection of the Company by its authorised representative

(b) The accounting documents and records of the Agency shall be audited annually by the Auditors

6. IT is mutually agreed that any inadvertent delays omissions or errors made in connection with any Insurance effected under this Agreement shall not be held to release either party hereto from any liability which would attach to them hereunder if such delays omissions or errors had not been made and it is further agreed that in all things coming within the scope of this Agreement the Company shall share to the extent of its interests the fortune of the Insurance. This being an Agreement between the parties hereto in a spirit of trust with one another the Company is bound in every case to follow the fortune of the Insurance and any error or omission which may arise in the execution of the terms of the present Agreement will not under any circumstances alter the spirit of it or nullify the responsibility accepted under it.

7. ALL premiums payable in respect of Insurances effected under this Agreement shall be credited to the Participating Companies after deducting all allowances taxes and charges as agreed by the Company and likewise all losses commissions and other payments by the Agency relating to such Insurances shall be debited to the Participating Companies

8. (a) THE Agency hereby undertakes to use its best endeavours to collect all amounts due to the Participating Companies under this Agreement

(b) It is mutually agreed between the parties hereto that any losses resulting from the failure of the Agency to collect such amounts due whether in respect of premiums or recoveries or reinsurance effected by the Agency pursuant to Clause 4 hereof or otherwise shall be borne by the Participating Companies to the extent of their respective proportionate shares provided that in the event of such losses being due to the negligence or default of the Agency such losses shall be borne by the Agency.

9. AS soon as practicable after the close of each quarter ending 31st March 30th June 30th September and 31st December the Agency shall forward an account current to the Company and payment of the balance of such account shall be made by the Debtor to the Creditor within thirty days after despatch of such accounts or so soon thereafter as payment is received by the Agency of any outstanding sums due from brokers or others. In such quarterly accounts the Company will be debited with Eighty per cent. (80) of its fixed quota share of premiums receivable to be credited to a Premium Reserve Fund in the books of the Agency and for such purpose premiums receivable shall be Net Premiums. The Premium Reserve Fund shall be applied first in meeting losses and if at any time the Premium Reserve Fund is insufficient for this purpose the Company shall remit to the Agency within fourteen days of notification by the Agency the amount of its proportionate share of such deficiency. Subject as hereinafter provided any amount standing to the credit of the Premium Reserve Fund will be retained by the Agency for three years and the balance (if any) of sums so credited after making provisions for all outstanding losses (both actual and contingent) will be accounted to the Company within six months after the expiration of the said period of three years.

10(a) SUBJECT to the retention of a working cash balance the Agency shall transfer all funds held by it on behalf of the Participating Companies (other than Nationwide General Insurance Company) to separate bank accounts in respect of Sterling U.S. Dollars and Canadian Dollars respectively. The signature to any documents relating to these bank accounts shall be either (i) the Agency and the Auditors signing together or (ii) all Participating Companies for the time being (other than Nationwide General Insurance Company) signing together.

(b) From these accounts the Agency shall be entitled at its absolute discretion to invest in the name of the bank's

nominee company and subject to the same conditions of signature as the previous sub-section any moneys standing to the credit of these bank accounts in any investments authorised by law for the investment of trust moneys or place the same on deposit subject to the same conditions of signature with any bank discount house or local authority and to change such investments. Any income less any tax thereon on such investments shall be paid to the Participating Companies in accordance with their proportionate shares and where any such income falls to be apportioned between two or more underwriting years the Agency shall have an absolute discretion in deciding the appropriate division of such income between such years. Any profits or losses on the realisation of such investments less any tax thereon shall be allocated to such underwriting year or years as the Agency may in its absolute discretion determine. The decision of the Agency as to the amount of the shares of any Participating Company or group of Participating Companies in any income or profit or loss on the realisation of any investments held by the Agency as aforesaid shall (subject to such decision having been agreed by the Auditor) be final and binding on each Participating Company or group of Participating Companies. As soon as practicable after the 31st December in each year the Agency will value or procure a valuation to be made of all investments as at such date and there shall also be taken into account all purchases and sales of such investments and all profits less losses and expenses realised on the sale of such investments since the previous 31st December. Such valuation and the figures shown therein shall (subject to the same having been certified by the Auditors) be final and binding on the Participating Companies. A Statement giving details of all investments held by the Agency on behalf of the Participating Companies shall be forwarded to the Participating Companies with the June

and December accounts and the Company's share of the income on such investments will be paid by the Agency to the Company within ninety days after the 31st December in each year. The Agency shall be under no liability whatsoever for any losses incurred on such investments.

11. IT is understood and agreed that the premiums payable under this Agreement in any currency other than Sterling U.S. Dollars and Canadian Dollars shall be accepted by the Company in Sterling at the rates of exchange which may from time to time be adopted as appropriate by the Agency and that amounts recoverable for losses shall hereafter be debited at the same rate of exchange as that employed at the time of the settlement of a claim by the Agency.

12.(a) THE First Agreement shall be deemed to have been superseded at the close of business on 31st December 1965 by this Agreement which shall accordingly become effective as on and from 1st January 1966 and shall take effect for all entries appearing in January 1966 and subsequent months. It shall remain in force until terminated by either party giving to the other not less than six months' notice in writing to expire on the 31st December in any year during the currency of this Agreement. The Agency on receiving notice from any Company of termination or reduction of its participation shall forthwith advise all the other Participating Companies of the Group.

(b) Should at any time either the Agency or the Company:-

- (i) commit any breach of the terms of this Agreement; or
- (ii) lose the whole or a substantial part of its paid-up capital; or
- (iii) become insolvent or suspend payment of its debts or enter into any arrangement with its creditors generally or cease or threaten to cease to carry on its business; or

- (iv) go into liquidation or have a Receiver appointed;
- or
- (v) be acquired or become controlled by any other Company or corporation

Then either party shall have the right to terminate this Agreement at any time by giving notice in writing to the other party and informing the other Participating Companies accordingly.

(c) The provisions of sub-clause (b) of this Clause shall operate in respect of any event affecting the Company the nature whereof shall be the same or substantially similar to one of the events specified in that sub-clause.

(d) The liabilities hereunder of the Company and the Agency shall continue in respect of each Insurance accepted by the Agency on behalf of the Company until the date of the termination thereof. Any acceptances by the Agency before such notice is given as aforesaid shall remain in force and the liabilities of the Company and the Agency thereunder shall continue until the expiration of such Insurance in the ordinary course of business.

(e) If such notice as aforesaid has been given by either party the Company may issue special underwriting instructions in respect of Insurances underwritten pursuant to this Agreement and the Agency undertakes to abide by such instructions for the remainder of the validity of this Agreement provided such instructions are supported by a majority of the other Participating Companies

13. THE Agency reserves the sole right to settle losses whether by way of compromise ex gratia payment or otherwise and all settlements shall be unconditionally binding on the Company. The Agency may contest any claim and institute any action it thinks fit in relation to a claim and the Company shall be liable for its proportionate share of the claim

and all costs and expenses incurred in connection therewith but the Company shall be entitled to its proportionate share of any salvages or recoveries relating to such claim.

14. (a) THE Company shall pay to the Agency (by deduction from premiums received) its share of commission payable by the Participating Companies in respect of each underwriting year according to the following scale:-

- 6 per cent. on the first £1,000,000 of Gross Premium
- 3 per cent. on the next £1,000,000 of Gross Premium
- 1.5 per cent. on any excess over £2,000,000 of Gross Premium

(b) The Agency shall bear all costs of maintaining an office and an efficient office organisation as well as all other expenses and outlays necessary to deal with the Company's business.

(c) In the event of a termination of this Agreement the Agency shall if the majority of the Participating Companies so desire be responsible for running off all Risks current at the date of termination and all claims in respect of Insurances effected pursuant to this Agreement or the First Agreement without further remuneration for the Agency's services.

15. (a) THE Company shall pay the Agency a provisional profit commission of 25 per cent. on the profits of each underwriting year to be calculated after the end of twelve quarters from the commencement of such underwriting year as follows:-

Income:-

- (i) Net Premiums
- (ii) The Company's proportionate share of gross interest or dividend (before deduction of any tax payable thereon) derived from the investment of moneys retained (less interest (before deduction of any tax payable thereon) paid to reinsurers on premiums reserves withheld) and the amount of any appreciation

AGR.32

in the value of the investments representing the same (before deduction of any tax payable thereon) as calculated for the purposes of Clause 10 hereof

(iii) Overriding commission received by the Company from reinsurers.

Less the following Outgoings:-

- (i) Commission payable under Clause 14 hereof
- (ii) Claims paid less refunds and recoveries under reinsurance
- (iii) Reserve for outstanding and unreported losses or reinsurance premium paid to reinsure all outstanding liabilities pursuant to Clause 16 hereof
- (iv) 3 per cent. of income as calculated above in respect of the Company's expenses
- (v) The amount of any depreciation in the value of the investment of moneys retained calculated as aforesaid (without allowance for any tax relief)
- (vi) Any losses borne by the Company as a result of the failure to collect amounts due in respect of premiums or recoveries of reinsurance effected pursuant to Clause 4 hereof or otherwise

In the event of any alteration being made to the figures used in calculating the aforesaid profit commission in any one underwriting year the commission shall be adjusted at the end of the third and sixth years following the end of the above mentioned period of twelve quarters in accordance with the revised figures. A further adjustment as aforesaid shall be made at the end of the ninth year following the above-mentioned period of twelve quarters in the event of substantial alteration being made in such figures.

(b) Any losses of underwriting years prior to 1966 will not be carried forward until an underwriting year has resulted in a profit. Should 1966 or subsequent underwriting years produce losses as calculated above such losses will be carried forward to the three subsequent underwriting years.

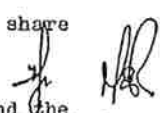
16. SUBJECT to the agreement of a majority of the Participating Companies the Agency may close any insurance year at any time after the expiration of three years from the commencement of such insurance year by effecting reinsurance of all liabilities for the time being outstanding attaching to that year of account

17.(a) IF for any reason the Agreement between the Agency and one or more of the Participating Companies is terminated then the proportionate share or shares of such company or companies shall be offered to the remaining Participating Companies PROVIDED ALWAYS that the Agency shall have the right to allocate such proportionate share or shares to new companies approved by the remaining Participating Companies. In the event of any part of the available proportionate share or shares still remaining unallocated the Agency shall be entitled to increase the reinsurances effected in order that the remaining Participating Companies' proportionate shares of the limit set out in Clause 2 hereof are not increased from that stated.

(b) In the event of any Participating Company not being able to fulfil the obligations under this Agreement the remaining Participating Companies are not bound under this Agreement or a corresponding Agreement to assume any liability accruing as a result of the failure of any other Participating Company except in the circumstances specified by Clause 18 hereof.

18.(a) IT is understood and agreed that the Agency may at its discretion underwrite Risks in the name of the Company or of any other Participating Company for a share in any one Risk exceeding the proportionate share stated in Clause 2 hereof but not exceeding however 100 per cent. of the Groups Limit specified in the Second Schedule hereto PROVIDED ALWAYS that the Agency shall effect the necessary apportionment of premium only in respect of the Company's proportionate share in such Risks as stated in Clause 2 hereof

(b) In the circumstances specified in sub-clause (a) of this Clause where one of the Participating Companies may be called upon by a policy holder or re-assured to pay a loss under the policy of insurance or contract of insurance but subsequently discovery is made that one or more of the Participating Companies cannot pay their proportionate share of the loss under this contract due to insolvency the Company hereby agrees with the Agency and the other Participating Companies that it will be liable for its proportionate share of the unpaid loss of the insolvent Participating Company or Companies after all funds retained by the Agency in the name of the insolvent Participating Company or Companies have been exhausted.


 to the fronting Company

19.(a) ON the occurrence in respect of the Company of any of the events specified in Clauses 12(b) or 12(c) hereof no further payments under this Agreement or out of the Premium Reserve Fund shall be made by the Agency to the Company. All sums due or which may thereafter become due from the Agency to the Company shall be retained and held in trust for the purposes herein mentioned. Thereafter any sums payable by the Company to the Agency in respect of losses or returns of premiums or otherwise shall be debited against and paid out of the Premium Reserve Fund and the balance (if any) of such Fund shall not be paid over to the Company until all its liabilities under this Agreement shall have been ascertained and fulfilled. In the event of the Premium Reserve Fund proving insufficient to fulfil all such liabilities the amount remaining unfulfilled shall be paid by the Company to the Agency forthwith.

(b) It is hereby agreed (in addition to the above provisions and without limiting the same) that if and so far as may be necessary for the security of the Agency in the event of liquidation either voluntary or compulsory of the Company the Agency has a prior charge and lien on the said Premium Reserve Fund and also upon any further money with which the Company may be entitled to be credited under this Agreement

and the Agency shall be secured creditors to that extent.

20.(a) IN the event of any dispute arising at any time out of or in any way connected with or relating to this Agreement whether before or after the termination by notice under this Agreement the same shall be referred to the decision of two Arbitrators one to be appointed in writing by the Agency and the other by the Company or in case of disagreement between the Arbitrators to the decision of an Umpire to be appointed in writing by the Arbitrators.

(b) If either party refuses or neglects to nominate an Arbitrator within thirty (30) days after having been required to do so or should the two Arbitrators fail to appoint an Umpire within thirty (30) days any appointment so failing to be made shall be left to the choice of the Chairman for the time being of the British Insurance Association.

(c) Each party shall submit its case in writing to the Arbitrators within one month of the constitution of the Arbitration Tribunal which shall give its award in writing at the earliest convenient date. The Arbitrators and Umpire are not bound by any strict rules of law or procedure or evidence and they shall make their award with a view to effecting the general purpose of this Agreement in a reasonable manner rather than in accordance with a literal interpretation of the language. The decision of the Arbitrators shall be final and binding on both parties to this Agreement.

(d) The costs of the reference the award and the parties shall be at the discretion of the Arbitrators and/or Umpire who may direct to whom by whom and in what manner those costs or any part thereof shall be paid.

(e) The above mentioned Arbitration shall take place in London.

21.(a) IN the event of war arising between the respective countries of the Agency and the Company this Agreement shall

be thereby immediately cancelled and the adjustment of accounts shall be delayed until the termination of hostilities.

(b) In the event of war arising in which Great Britain is involved the Company undertakes not to cede directly or indirectly any part of the business effected under this Agreement to any persons or body of persons corporate or incorporate of whatever nationality resident or incorporated or whose chief place of business is in any enemy country.

22. THE Company shall not later than five months after the end of each of its financial years deliver to the Agency for deposit with the Board of Trade a revenue account for the year a balance sheet and a profit and loss account in the form prescribed in accordance with the Insurance Companies Act 1958 or any modification or re-enactment thereof and such accounts shall be audited in the manner prescribed under the said Act.

23. THE Agency shall be entitled to discharge out of moneys held for the Company any liability to United Kingdom tax in respect of profits of the Company including underwriting investment profits and investment income earned for the Company under this Agreement.

24. THE Agency shall have power to appoint any Attorney or Attorneys together with any other advisors consultants or agents as may be necessary in any part of the world to accept service of any proceedings on behalf of the Company and in connection with any suit arbitration proceeding or other matter or affair to take all such steps as may in the opinion of the Agency be desirable or necessary.

25.(a) IT is hereby agreed that other Agency Agreements with Participating Companies will be in the terms of this Agreement and that no Participating Company will be granted special conditions that have not been granted to all other Participating Companies. Should any special requirement be imposed on any Participating Company by local laws or by government or other supervisory authorities different

administrative procedures may be granted to such company. However the other Participating Companies must be informed of any such separate arrangements. The Company undertakes closely to co-operate with the remaining Participating Companies in the framework of the business of the Agency and to inform the remaining Participating Companies as early as possible of any changes it contemplates with regard to this Agreement.

(b) No further company shall be included in the list of Participating Companies set out in the Second Schedule unless each of the Participating Companies shall have previously agreed to (i) its being included (ii) its proposed share of each Risk accepted by the Agency and (iii) the consequential adjustments to the proportionate shares of the Participating Companies as at the date hereof

26. IT is hereby agreed that in any matters of common interest to all Participating Companies within the terms of this Agreement the Agency may consult with the Company and the Agency will follow the recommendations of the Company wherever possible. In the event of any disagreement arising as a result of these consultations reference will then be made to the other Participating Companies.

27. THIS Agreement shall be subject to English Law.

IN WITNESS whereof this Agreement has been entered into the day and year first above written

FIRST SCHEDULE

1.	Agrippina Versicherungs Aktiengesellschaft 90 Riehler Strasse 5 Cologne 16 Germany	22.5 per cent.
2.	Australian and International Insurances Limited 26-32 King Street Melbourne Victoria Australia	15.0 per cent.
3.	Automobile Fire and General Insurance Company of Australia Limited 277-287 William Street Melbourne Victoria Australia	10.0 per cent.
4.	British National Life Insurance Society Limited Spencer House 4 South Place London E.C.2	25.0 per cent.
5.	Nationwide General Insurance Company 246 North High Street, Columbus 16 Ohio U.S.A.	12.5 per cent.
6.	" Württembergische Feuerversicherungs AG. 7 Stuttgart Postfach 60 Johannesstrasse 1-7 Germany	15.0 per cent.
		<u>100.0 per cent.</u>

SECOND SCHEDULE

1. 100 per cent. Group Limit: £100,000 Any one acceptance subject to excess of Loss Treaties remaining in force giving protection as agreed separately

2. Exclusions of Business under this Agreement:

Direct Motor Business

Life Business

Direct Marine Business

Obligatory Participating Reinsurance Treaties

Guarantee Bonds

Financial Guarantees

Stop Loss Reinsurance Treaties

Loss Excess Treaties covering loss Excess Portfolios of Reinsurers

Risks covering exclusively the Earthquake Hazard

Third Party Liability Risks covering malpractice.

THIRD SCHEDULE

Undesirable Risks under this Agreement.

French and Belgian Motor Loss Excess Treaties

Product liability business with low priorities

Professional Liability Risks located outside England

Direct Fire Business from the United States of America

Policies covering the Risk of Windstorm and extended coverage alone without including the Fire Risk

SIGNED by

For and on behalf of
M.E. RUTTY UNDERWRITING
AGENCY LIMITED
in the presence of

[Handwritten signature]

For and on behalf of
M.E. RUTTY UNDERWRITING
AGENCY LIMITED

[Handwritten signature] 

.....
Director

SIGNED by

For and on behalf of
AGRIPPINA VERSICHERUNGS
AKTIENGESELLSCHAFT
in the presence of

[Handwritten signature]

For and on behalf of
AGRIPPINA VERSICHERUNGS
AKTIENGESELLSCHAFT

[Handwritten signature]

.....
Duly authorised officer

ADDENDUM NO.1

IT IS UNDERSTOOD AND AGREED that with effect from the 1ST JANUARY, 1967 the Companies and their proportions appearing in the First Schedule are amended as follows:-

AGRIPPINA VERSICHERUNGS AKTIENGESELLSCHAFT	28.12%
AUTOMOBILE FIRE & GENERAL INSURANCE COMPANY OF AUSTRALIA LIMITED.	21.88%
BRITISH NATIONAL LIFE INSURANCE SOCIETY LTD.	31.25%
WURTEMBERGISCHE FEUERVERSICHERUNG AKTIENGESELLSCHAFT	18.75%
	<hr/> 100.00% <hr/>

IT IS FURTHER UNDERSTOOD that the Group Limit contained in the Second Schedule is amended to read as follows:-

- | | | | |
|----|-------------------|---------|--|
| 1. | 100% Group Limit: | £80,000 | Any one acceptance subject to excess of Loss Treaties remaining in force giving protection as agreed separately. |
|----|-------------------|---------|--|

IT IS FURTHER UNDERSTOOD AND AGREED that Clause 14, paragraph (a) is amended to read as follows:-

14, (a) THE Company shall pay to the Agency (by deduction from premiums received) its share of commission payable by the Participating Companies in respect of each underwriting year according to the following scale:-

- 6% on the first £800,000 of Gross Premium
- 3% on the next £800,000 of Gross Premium
- 1.5% on any excess over £1,600,000 of Gross Premium

SIGNED in London, England this 26th day of July 1967.

For and on behalf of M. E. RUTTY UNDERWRITING AGENCY LIMITED

SIGNED in the presence of

.....
.....

.....
.....
Duly authorised officer.

SIGNED in Cologne, Germany this 21st day of July 1967.

For and on behalf of AGRIPPINA VERSICHERUNGS AKTIENGESELLSCHAFT

SIGNED in the presence of

.....
.....

.....
.....
Duly authorised officer.

ADDENDUM NO.2.

IT IS UNDERSTOOD AND AGREED that with effect from the 8TH MAY, 1967 the list of Exclusions shown in the Second Schedule are cancelled and replaced as follows:-

2. Exclusions of Business under this Agreement:

- Direct Motor Business
- Life Business
- Direct Marine Business
- Obligatory Participating Reinsurance Treaties
- Guarantee Bonds
- Financial Guarantees
- Stop Loss Reinsurance Treaties including Aggregate Excess Loss
- Loss Excess Treaties covering loss Excess Portfolios of Reinsurers
- Risks covering exclusively the Earthquake Hazard
- Third Party Liability Risks covering Malpractice including Excess Layers
- Motor Excess Loss Business from the Continent of Europe other than the United Kingdom.
- Professional Indemnity Business anywhere in the World other than the United Kingdom, U.S.A. and Australia (Maximum participation of 50% any one acceptance and to follow the lead of a Lloyd's Underwriter)
- Aviation Hull & Liability Business
- Fire Business emanating from Belgium, Austria and Canada
- German Business
- Accident Business limited to a maximum participation of 50% any one acceptance.

SIGNED in London, England this *26th* day of *July* 1967.
 For and on behalf of M. E. RUTTY UNDERWRITING AGENCY LIMITED

SIGNED in the presence of

 Duly authorised officer.

SIGNED in Cologne, Germany this *21st* day of *July* 1967.
 For and on behalf of AGRIPPINA VERSICHERUNGS AKTIENGESELLSCHAFT.

SIGNED in the presence of

 Duly authorised officer.

SCHEIBER & PARTNER
Rechtsanwälte • Notare

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

Per E-Mail

SUBJECT to CONFIDENTIALITY PROVISION

Dr. Peter Scheiber
Rechtsanwalt, Notar

Carl-W. Kiefer
Rechtsanwalt, Notar

Gernot A. Warmuth, LL.M.
Rechtsanwalt, Attorney at Law (California)
Fachanwalt für Handels- und Gesellschaftsrecht

Dr. Sylvia Plaßmann
Rechtsanwältin
Fachanwältin für Versicherungsrecht

Dr. Angelika Krug, LL.M.
Rechtsanwältin, Notarin
Fachanwältin für Bau- und Architektenrecht

Dr. Robert Unkrich
Rechtsanwalt

Alexandra Machwirth
Rechtsanwältin

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☎ (069) 61003-100

Frankfurt, den 13.04.2012

AZ: 914/96D69

Fr. Volz D/

☎ (069) 61003-211

warmuth@scheiberpartner.de

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

Dear Pete:

This letter is in response to your request of 12 December 2011 for a substantiated ultimate valuation analysis of Agrippina'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, would require the prior written approval by Agrippina.

Per your request, we have divided the evaluation analysis of Agrippina's reinsurance claims into five parts, (1.) Paid/Billed Losses, (2.) Case Reserves, (3.) IBNR, (4.) Discount Rate Applied to Case and IBNR, and (5.) a valuation summary of Agrippina's reinsurance claims.

Please note

- That pursuant to both Reinsurance Contract "R" between The Home and Agrippina of 01 December 1977 (or around that time) and the Settlement Agreement between The Home and Agrippina dated 30 November 2004 The Home shall not only be liable to indemnify Agrippina for the fixed pool share of Agrippina's Ruddy policy liabilities but also shall bear certain pool administration responsibilities and respective costs of Agrippina as further described in said Settlement Agreement;
- That, as a result, Agrippina's Ruddy related inwards and outwards claims are being processed (denied/calculated/admitted) by The Home with the assistance of ACE;
- That, as a result, Agrippina's Ruddy related reserves are being maintained by The Home with the assistance of ACE;
- That, because of limited access to more current data, Agrippina has decided to base the following analysis on the reserve data provided by ACE for the first quarter of 2012 and, regarding paid losses, on all claims up to and including Claim No. INTL277984-35;
- That it is Agrippina'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 Agrippina's information regarding their pool share where the other Ruddy Pool member Nationwide fronted is limited which is why that portion of the claim requires an upwards risk adjustment;
- That such upwards risk adjustment for unknown pool share claims of Agrippina 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 Agrippina's pool share (and not at Ruddy Pool level);
- That, due to the poor quality of the Ruddy Pool records and Agrippina's limited access to such records, the IBNR calculations are on the basis of a simple benchmark method;
- That for all of Agrippina's Ruddy Pool participations from 1962 and 1967, the same benchmark IBNR load 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 Agrippina's understanding that, upon commutation between The Home and ACE, The Home will return to Agrippina 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 Agrippina on the one hand and Agrippina'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 Agrippina would get substantial time and support as well as all documentation and electronic data which will be necessary to continue with the administration of Agrippina's pool responsibilities in a timely and cost effective manner;
- That Agrippina'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 Agrippina;
- That Agrippina'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 Agrippina have been made part of and included in the IBNR calculations; and
- That, regarding unpaid items "pre 2003", Agrippina applied the following currency exchange rates to convert foreign currencies into USD:

CAD	-> USD	1,00
AUD	-> USD	1,00
GBP	-> USD	1,50
EUR	-> USD	1,30

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

1. **Paid/Billed Losses**

1.1 Total Paid Losses

Accepted insolvency claims:	USD 5,158,802
Reduced by set-offs:	USD 4,095,332
Plus Unpaid Items "Pre 2003"	USD 295,331
	=====
	USD 1,358,801

Regarding the paid losses, please find attached copies of the following three documents for your further information:

- NOD List per 31 March 2012
- E-mail of 19 July 2011
- M.E.Rutty 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 Agrippina to The Home. It is Agrippina'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 1.3 Mio.

1.2 Total NOD Amounts

USD 5,158,802

1.3 Amount of Billed Losses for which AISUK has issued inquiries

Generally unknown

1.4 Amount of Paid Losses Awaiting Submission to AISUK

Generally unknown

1.5 Total Amount of London Market Fees

Generally unknown

2. **Case Reserves**

2.1 Total of Reserves Maintained by The Home and ACE on behalf of Agrippina

USD 14.3 Mio

2.2 Total of Reserves Not Yet Submitted to AISUK

Generally unknown

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

2.3.1 Asbestos Reserves **USD 7.4 Mio**

2.3.2 Pollution Reserves **USD 5.6 Mio**

2.3.3 Other Mass Tort (Health) **USD 0.6 Mio**

2.3.4 General Casualty Business **USD 0.7 Mio**

3. **IBNR (Best Case - Average)**

3.1.1 Asbestos Reserves (389%) **USD 28.8 Mio**

3.1.2 Pollution Reserves (73%) **USD 4.1 Mio**

3.1.3 Health (100%) **USD 0.6 Mio**

3.1.4 Attritional (50%) **USD 0.3 Mio**

Total IBNR loads **USD 33.8 Mio**

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

As discount rate, Agrippina 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 Agrippina's claims.


5. **Summary of Reinsurance Claims**

Case and IBNR	USD 48.1 Mio
	=====
Case and IBNR after discount	USD 44.1 Mio
Paid Claims	USD 1.3 Mio
	=====
TOTAL CLAIM	USD 45.4 Mio

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

Very truly yours,

SCHEIBER & PARTNER
Rechtsanwälte und Notare
Frankfurt am Main



(G. Warmuth)
Rechtsanwalt

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 ROBERT BÜHLER
IN SUPPORT OF ZURICH INSURANCE PLC, GERMAN BRANCH AND
WÜRTTEMBERGISCHE VERSICHERUNG AG'S OPPOSITION TO LIQUIDATOR'S
MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE**

I, Robert Bühler, hereby depose and say:

1. I am the Run-Off Manager of Württembergische Versicherung AG ("Württembergische").

2. I submit this affidavit in support of Zurich Insurance plc, German Branch ("Zurich") and Württembergische's Opposition to Liquidator's Motion for Approval of Claim Amendment Deadline. The facts and information set forth are either within my own knowledge gained through my close involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others or documents in Württembergische's files, in which case the stated facts are true to the best of my knowledge, information, and belief.

3. I joined Württembergische in 2008, but from my review of company records, I am aware that on or about June 4, 2004, Württembergische filed its proof of claims in The Home liquidation proceeding. A true and accurate copy of Württembergische's proof of claims is attached hereto as Exhibit B-1.

4. The proof of claim explicitly states that Württembergische's reinsurance claims were unknown, that The Home and its reinsurer had been handling the claims and only they were in a position to fully quantify Württembergische's reinsurance claims, and that

Württembergische's reinsurance claims against The Home included incurred but not reported claims ("IBNR"). (See Ex. B-1 at 2-3.)

5. Württembergische Feuerversicherung, Aktiengesellschaft in Stuttgart ("WFA") was a member of a group of companies that wrote insurance and reinsurance through the M.E. Ruty Underwriting Agency Limited (the "Ruty Pool"). The business of WFA has now been assigned to Württembergische within the Wüstenrot & Württembergische AG group of companies. Württembergische participated on the risks written for the Ruty Pool from 1964 to 1967.

6. In the mid-2000s, the Liquidator proposed settlement agreements between The Home Estate and a number of The Home's cedents, including Württembergische (collectively the "AFIA Cedents"), under which Württembergische and the other AFIA Cedents agreed to submit all of their reinsurance claims to the Liquidator, who would then submit them to ACE/Chubb and other reinsurers of The Home to recover reinsurance payments for the benefit of The Home's creditors. A true and accurate copy of the settlement agreement between The Home and Württembergische (the "Settlement Agreement") is attached hereto as Exhibit B-2.

7. Pursuant to the Settlement Agreement, The Home is obligated to investigate, adjust and admit or refute liability for all claims brought by insurance policyholders and cedent insurance companies of Württembergische as an AFIA Cedent. (See Ex. B-2 at ¶ 13.)

8. Due to the long-tail nature of much of the Ruty Pool business, which includes liability for asbestos, pollution and other types of long-tail claims, injured parties continue to file claims against the policyholders and ceding insurers of the Ruty Pool members, including Württembergische. Those claims are fully reinsured by The Home and, in turn, ACE/Chubb.

9. At this time Württembergische lacks sufficient information to calculate and provide to the Liquidator a reliable estimate of its IBNR arising from its Rutty Pool business. ACE/Chubb, as The Home's claims handling agent for the Rutty Pool business, possesses the claims information needed to prepare a reliable IBNR estimate. Neither ACE/Chubb nor the Liquidator has provided Württembergische with an IBNR estimate for Württembergische's share of the Rutty Pool business that The Home reinsures on a 100% basis.

10. Moreover, according to recent estimates provided by CISUK (an ACE/Chubb entity), Württembergische and the other Rutty Pool members standing alone have approximately (a) \$25.9 million in outstanding losses/case reserves for reported and known asbestos claims; (b) \$4.2 million in outstanding losses/case reserves for reported and known environmental claims; (c) \$1.7 million in outstanding losses/case reserves for reported and known health claims; and (d) \$1.9 million in outstanding losses/case reserves for "other" reported and known long-tail claims.

11. Since 2009, I have had regular telephone conversations, as well as meetings in England, with representatives of the Liquidator of The Home and with personnel administering the inwards claims exposures of the Rutty Pool, which The Home fully reinsures (and in turn ACE/Chubb fully reinsures). From 2012 onwards, these discussions have addressed the efforts of the Liquidator to negotiate an agreement between The Home Estate and its reinsurer of the Rutty Pool business, ACE/Chubb, under which ACE/Chubb will pay The Home Estate a negotiated sum in return for the complete discharge of all obligations between the parties under their reinsurance contract covering the Rutty Pool and other business relating to the AFIA Cedents' claims exposures (including the paid loss, case reserves and IBNR claims exposures of Württembergische and Zurich arising from the Rutty Pool which are fully reinsured by The Home and in turn ACE/Chubb).

12. On April 13, 2012, I sent a letter to the Liquidator, in response to his request of December 12, 2011, providing Württembergische's ultimate valuation analysis of its total case reserves and IBNR for their Ruddy Pool claims exposures. True and accurate copies of this correspondence are attached as Exhibits B-3 and B-4. Based on conversations with representatives of the Liquidator, I understood that this analysis would serve as the basis of the Liquidator's commutation negotiations with ACE/Chubb. I did not receive any response from the Liquidator to my letter.

13. In September 2012, I was informed in discussions with representatives of the Liquidator that ACE/Chubb was serious about negotiations to commute these Ruddy Pool exposures including a negotiated and agreed IBNR value. However, despite having been assured in the years since 2012 that such a commutation would be pursued, representatives of the Liquidator have not provided to me any details of such negotiations. Despite my requests in discussions with representatives of the Liquidator and/or ACE/Chubb over the years since then, neither the Liquidator nor ACE/Chubb has shared with Württembergische any IBNR methodology or calculation that has been used in these negotiations. Given their central roles and access to the necessary information for preparing a reliable estimate of IBNR on the Ruddy Pool claims exposures, it is my understanding that the Liquidator and/or ACE/Chubb have possessed all of the required data to perform these IBNR calculations. Württembergische does not possess this essential data.

14. While quarterly reports of gross case reserves are shared with Württembergische, Württembergische does not have sufficient information to be able to perform a reliable estimate of its Ruddy Pool IBNR. As a result, Württembergische is unable to engage in negotiations with the Liquidator or its agent claims handler to commute this IBNR.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on November 18, 2019.



Robert Bühler
Run-off Manager
Württembergische Versicherung AG

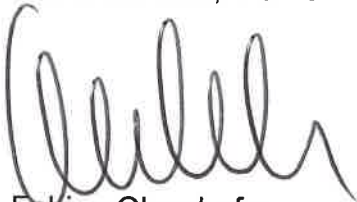
Certificate verifying signature

I hereby certify that this document was signed in my presence by

Mr. Robert Bühler,
born on 16.06.1971,
business address Gutenbergstraße 30, 70176 Stuttgart, Germany

- identified by means of his German identity card -

Kornwestheim, the 18.11.2019



Fabian Oberdorfer
Notary



Name: **Alexander Danyi**
 Telefon / Phone: **(+49-711) 662-1171**
 Telefax: **(+49-711) 662-2030**
 E-mail: **Alexander.Danyi@ww-ag.com**

✉ Wüstenrot & Württembergische AG, D-70163 Stuttgart
 The Home Insurance Company in Liquidation
 P.O. Box 1720
 Manchester
 New Hampshire 03105-1720

USA

By registered mail and fax (001-603 634 0425)

Stuttgart, 04.06.2004

**The Home Insurance Company in Liquidation
 Wüstenrot & Württembergische AG – Proof of Claim**

Dear Sirs,

We refer to the Proof of Claim Form we have attached and would like to explain some details in relation to our Claim.

The M.E. Ruty Pool and Württembergische's participation

The M.E. Ruty Pool was in existence from 1962 to 1967. In these years the M.E. Ruty Underwriting Agency Limited ("Ruty") underwrote risks on behalf of the Pool. The risk written comprised direct business, reinsurance of US cedants and London Market reinsurance. Each Pool Member entered into an agency agreement with Ruty and agreed to take a certain percentage of the risk so written. These Pool Shares changed from time to time. Often all of the Pool Members in the relevant underwriting year did not directly write their relevant proportions of the risk underwritten by Ruty. Instead of that, one or more of the Pool Members were "fronting" the risk, in the sense that those fronting companies were directly writing the risk, as between themselves and the insured or reinsured.

Württembergische Feuerversicherung AG of Stuttgart/Germany was a member of the M.E. Ruty Pool from 1964 to 1967. Württembergische's original pool shares were 15% from 1964 to 1966 and 18.75% in 1967. Wüstenrot & Württembergische AG ("Württembergische") is the successor of Württembergische Feuerversicherung AG.

The question of insolvency of a Pool Member was addressed in a separate agreement between the pool members under which, in the event of an insolvency, the remaining solvent participating Pool Members would be liable for their proportionate share of the unpaid loss. So far three Pool Members are insolvent. In March 1997 Provisional Liquidators were appointed for North Atlantic Insurance Company Limited (formerly British National Life Insurance Society Limited). In the meantime there is a Scheme of Arrangement implemented. FAI Insurances Limited (formerly Australian & International) is in liquidation since 2001. Finally, in August 2002 administrators were appointed for AFG Insurances Limited (formerly The Automobile Fire & General Insurance Company of Australia Limited).

Reinsurance Contract R

In 1977 the Home Insurance Company of New York ("the Home") agreed to reinsure Württembergische Feuerversicherung AG as underwritten for by M.E. Ruty Underwriting Agency Limited ("Reinsurance Contract R"). The Home acted as a fronting company for the American Foreign Insurance Association (AFIA). Reinsurance Contract R covered all losses presented for payment on or after 1st January 1977 arising out of the Reinsured's 1964, 1965, 1966 and 1967 underwriting accounts. We have attached a copy of the wording and a copy of the slip of Reinsurance Contract R.

There have been various disputes in the past between Württembergische and the Home about the construction of Reinsurance Contract R. While the legal relationship between the two parties in respect of Reinsurance Contract R is not established completely, we would like to refer to some English judgments that were rendered in the past in this context.

The Judgements of Evans J (November 1992) and the Court of Appeal (June 1994) in essence rule that on a true construction of Contract R Home was substituted for Württembergische as a member of the M.E. Ruty Pool and Württembergische were to have no further part in the business of the run-off of the Pool.

Waller J (June 1996) held that according to Reinsurance Contract R the Home was to relieve Württembergische from any further part in the run-off and consequently Württembergische should not have to incur any further expenditure either in respect of claims and expenses or costs as from 1st January 1977. Furthermore, the Home was not permitted to argue that they had no obligation to continue with the run-off.

Judge Kershaw QC (November 1997) and the Court of Appeal (March 1999) ruled on the issue, whether Home was obliged to indemnify Württembergische for any increase in its liability pursuant to the reallocation of the share of an insolvent pool member amongst other pool members as required by the pool agreements. They held that this increase would not be covered by Reinsurance Contract R, since it would arise as a consequence of the insolvency of another Pool Member and not as a consequence of the placement by Ruty.

On the basis of these judgments Reinsurance Contract R does not only cover losses, but also expenses and costs that are associated with the administration of the run-off and which will crystallize in the course of the run-off.

Administration of the M.E. Ruty Pool

ACE INA Services U.K. Limited (AISUK) (formerly CIGNA Services UK Limited (CSUK)) has administered the M.E. Ruty Pool for the Home in recent years.

There have been continuously difficulties with respect to the administration and in 2003 AISUK stopped the administration due to the Home's liquidation.

Württembergische does not know to what extent AISUK or the Home have paid for claims, expenses and costs that have arisen in connection with Württembergische's involvement in the M.E. Ruty Pool. It might be that claims have not been paid for which the Home is liable under Reinsurance Contract R. It might also be that claims have been paid for which the Home is not liable.

However, since AISUK stopped the administration of the Pool, Württembergische increasingly has been approached by cedants of the M.E. Ruty Pool which asked for the payment of claims.

As a result of the lack of information and transparency with respect to the administration Württembergische now experiences difficulties in submitting claims in the Home Liquidation.

Amount of Württembergische's claims

Due to the uncertainties described above Württembergische is currently not in a position to specify the amount of its claim.

Württembergische's claim consists of Paid Losses, Outstanding Losses and IBNR.

We have attached a summary statement of Paid Losses for the period of 4th Quarter 1996 to 4th Quarter 2003 received from AISUK. Furthermore, please find attached a summary statement of Outstanding Losses as at 4th Quarter 2003 provided by AISUK.

As to IBNR, KPMG estimated in an analysis in 2000 an IBNR loading of 268% of the notified outstanding losses. We consider this loading to be minimal in the light of the recent developments on asbestos and pollution.

For the sake of completeness we would like to point out that we have entered into an agreement with the Liquidator of the Home in March and May 2004 in which the Liquidator agreed not to oppose a withdrawal of our proof of claim filings should the intended Scheme of Arrangement between the Home and the AFIA Cedants not be implemented or terminated by the Liquidator.

Please note that I will be out of office from Thursday 10th June 2004 to Friday 18th June 2004. In urgent cases please contact:

Mr. Michael Gollhofer

Tel.: 0049-711 662 1347

Fax: 0049-711 662 2030

Email: michael.gollhofer@ww-ag.com

Please confirm safe receipt of this letter.

Should you have any queries please do not hesitate to contact us.

Kind regards,

Württembergische Versicherung AG

im Auftrag der

Wüstenrot & Württembergische AG

ppc. G. i. A. A. Danz

PROOF OF CLAIM

The Home Insurance Company,

Merrimack County Superior Court, State of New Hampshire 03-E-0106

Read Carefully Before Completing This Form

Please print or type

FOR LIQUIDATOR'S USE ONLY

DATE PROOF OF CLAIM RECEIVED

The Deadline for Filing this Form is June 13, 2004.

You should file this Proof of Claim form if you have an actual or potential claim against The Home Insurance Company of any of its former subsidiaries* ("The Home") even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be postmarked no later than June 13, 2004. Failure to timely return this completed form will likely result in the DENIAL OF YOUR CLAIM. You are advised to retain a copy of this completed form for your records.

- 1. Claimant's Name: Wuestenrot & Wuerttembergische AG
2. Claimant's Address: Gutenbergstrasse 30, 70176 Stuttgart, Germany
3. Claimant's Telephone Number: (0049) 711 662 1177
Fax Number: (0049) 711 662 2030
Email address: alexander.danyi@ww-ag.com
4. Claimant's Social Security Number, Tax ID Number or Employer ID Number:
5. Claim is submitted by (check one):
a) Policyholder or former policyholder
b) Third Party Claimant making a claim against a person insured by The Home
c) Employee or former employee
d) Broker or Agent
e) General Creditor, Reinsurer, or Reinsured
f) State or Local Government Entity
g) Other; describe:

If your name, address, e-mail address, or telephone number set forth above are incorrect, or if they change, you must notify the Liquidator so she can advise you of new information.

Describe in detail the nature of your claim. You may attach a separate page if desired. Attach relevant documentation in support of your claim, such as copies of outstanding invoices, contracts, or other supporting documentation. please see accompanying letter

6. Indicate the total dollar amount of your claim. If the amount of your claim is unknown, write the word "unknown", BUT be sure to attach sufficient documentation to allow for determination of the claim amount.

\$ unknown (if amount is unknown, write the word "unknown").

7. If you have any security backing up your claim, describe the nature and amount of such security. Attach relevant documentation.

8. If The Home has made any payments towards the amount of the claim, describe the amount of such payments and the dates paid:

9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim?

10. Do you claim a priority for your claim? If so, why:

11. Print the name, address and telephone number of the person who has completed this form.

Name: Alexander Danyi
Address: Gutenbergstrasse 30, 70176 Stuttgart, Germany
Phone Number (0049) 711 662 1177
Email address alexander.danyi@ww-ag.com

* The Home Indemnity Company, The Home Insurance Company of Indiana, City Insurance Company, Home Lloyds Insurance Company of Texas, The Home Insurance Company of Illinois, and The Home Insurance Company of Wisconsin.

12. If represented by legal counsel, please supply the following information:
- a. Name of attorney: _____
 - b. Name of law firm: _____
 - c. Address of law firm: _____
 - d. Attorney's telephone: _____
 - e. Attorney's fax number: _____
 - f. Attorney's email address: _____

13. If using a judgment against The Home as the basis for this claim:
- a. Amount of judgment _____
 - b. Date of judgment _____
 - c. Name of case _____
 - d. Name and location of court _____
 - e. Court docket or index number (if any) _____

14. If you are completing this Proof of Claim as a Third Party Claimant against an insured of The Home, you must conditionally release your claim against the insured by signing the following, as required by N.H. Rev. Stat. Ann. § 402-C:40 I:

I, _____ (insert claimant's name), in consideration of the right to bring a claim against The Home, on behalf of myself, my officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives hereby release and discharge _____ (insert name of defendant(s) insured by The Home), and his/her/its officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives, from liability on the cause(s) of action that forms the basis for my claim against The Home in the amount of the limit of the applicable policy provided by The Home; provided, however, that this release shall be void if the insurance coverage provided by The Home is avoided by the Liquidator.

 Claimant's signature Date

15. All claimants must complete the following:

I, Michael Grollhofer (insert individual claimant's name or name of person completing this form for a legal entity) subscribe and affirm as true, under the penalty of perjury as follows: that I have read the foregoing proof of claim and know the contents thereof, that this claim in the amount of unknown dollars (\$ _____) against The Home is justly owed, except as stated in item 9 above, and that the matters set forth in this Proof of Claim are true to the best of my knowledge and belief. I also certify that no part of this claim has been sold or assigned to a third party.

Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

pc. [Signature] i. A. D. Dany Stuttgart, 04. Juni 2004
 Claimant's signature Date

Württembergische Versicherung AG
 im Auftrag der
Wüstenrot & Württembergische AG

16. Send this completed Proof of Claim Form, postmarked by June 13, 2004
- The Home Insurance Company in Liquidation
 P.O. Box 1720
 Manchester, New Hampshire 03105-1720

You should complete and send this form if you believe you have an actual or potential claim against The Home even if the amount of the claim is presently uncertain.