

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET

In re Liquidator Number: 2007-HICIL-32
Proof of Claim Number: INTL 278090
Claimant Name: Unione Italiana (UK) Reinsurance Company Limited
Claimant Number: Class V
Insured or Reinsured
Name: Unione

CENTURY INDEMNITY COMPANY'S RESPONSE TO
UNIONE'S POSITION STATEMENT

Century Indemnity Company ("CIC"), by its undersigned attorneys, hereby submits the following response to the position statement (the "Position Statement") submitted by Unione Italiana (UK) Reinsurance Company Limited ("Unione") on February 4, 2008, and respectfully states as follows.

Preliminary Statement

1. The Position Statement raises two issues: first, whether the Court's March 12, 2007 order (the "March 12 Order") approving Unione's \$556,767.60 third quarter claims (the "3Q06 Claims") defeats Home's statutory setoff rights under N.H. RSA 402-C:34¹; and second, whether a 1988 consent order of the English High Court (the "Consent Order") overrides the provisions of the New Hampshire insurance liquidation statute (N.H. RSA 402-C:1, et seq., the "Liquidation Statute").

2. The March 12 Order does not affect the Liquidator's setoff rights under RSA 402-C:34. That statute provides mutual claims between Home and Unione shall be set off and the

¹ As described below, CIC administers Unione's claims against Home on behalf of the Liquidator and Home pursuant to a Court-approved claims handling protocol. Accordingly, where appropriate, reference to the Liquidator and Home in this response shall include reference to CIC, and vice versa.

balance only shall be allowed or paid. The March 12 Order does not prevent the Liquidator from asserting its claim against Unione and taking the resulting offset, as he is doing here.

3. The Liquidator's claim against Unione arises because Unione invoked the Consent Order to present part of the 3Q06 Claims to the estate without providing adequate supporting documentation.² Specifically, Unione should not have presented \$188,613.00 of the 3Q06 Claims because they are not recoverable under English law (the "Disputed Claims").³

4. At the time Unione submitted the 3Q06 Claims for payment, however, CIC could not determine whether and how much of the 3Q06 Claims were properly presented to the estate. Accordingly, CIC repeatedly asked Unione for claims substantiation beginning in December 2006, but Unione was still providing additional information as late as January 11, 2008 in its mandatory disclosures. The March 12 Order is thus based on incomplete claims information.

5. Even though from the outset CIC asked Unione to substantiate the Disputed Claims – and Unione refused – CIC ultimately agreed them to avoid a claim by Unione that CIC was in breach of the Consent Order. CIC was caught in a clutch: if it did not pay, Unione would claim breach of the Consent Order, and if it did pay, as here, Unione would protest that the Liquidator cannot correct an overpayment. This runs afoul of the Liquidation Statute and punishes CIC for giving Unione the benefit of the doubt.

6. CIC agreeing the 3Q06 Claims notwithstanding, CIC continued to ask Unione for substantiating materials, as it is entitled to do under the Liquidation Statute and the Consent Order: on March 5, 2007, March 22, 2007, April 18, 2007 and then finally on May 11, 2007. Despite those repeated requests, Unione refused to produce further claim details until July 6,

² References to "Unione" in this response shall include its managers where appropriate (e.g., B D Cooke and Partners Limited, Castlewood (EU) Ltd., etc.).

³ The issue of whether the Disputed Claims are not recoverable under English law is not currently before the Referee.

2007. But even then, the file was still incomplete, as Unione continued to provide further details in its January 11, 2008 mandatory disclosures. Case law shows that Unione cannot enforce the March 12 Order because when it came time for Unione to prove up its claims, it only protracted the process.

7. The March 12 Order also has no bearing on the Liquidator's offset because consistent with the Consent Order, CIC repeatedly advised Unione that the 3Q06 Claims were only provisionally agreed and subject to change. Specifically, on March 5, 2007, before the March 12 Order was signed, CIC put Unione on notice that because the 3Q06 Claims "included commuted and accelerated amounts, which . . . should not be presented to the New Hampshire Superior Court for allowance into the Home estate, it would be appropriate under the circumstances to reduce" the 3Q06 Claims. (March 5, 2007 letter to Unione, attached to Unione's mandatory disclosures as Unione doc. no. 15)⁴ (emphasis added.) After the March 12 Order, CIC reminded Unione that CIC's "prior approvals were made under a reservation of rights and to the extent we discover any amounts were not properly recoverable, we continue to reserve our rights to petition the Court to rescind any prior approvals." (Unione doc. no. 17) (emphasis added.) Unione cannot now claim that the Liquidator's setoff is improper under the March 12 Order, as CIC's underlying agreement was subject to CIC's right to adjust the final agreed amount if necessary after Unione fully substantiated its claims.

8. As to whether the Consent Order overrides the Liquidation Statute, the answer is no. The Consent Order purports to establish a level of proof for Unione to substantiate its claims against Home before they are paid, but this is at odds with RSA 402-C:38, II, which allows the Liquidator to ask Unione for claims substantiation materials "at any time." The events leading to

⁴ Unione's exhibits to its mandatory disclosures shall be referred to in this response as "Unione doc. no. ___."

the Consent Order twenty years ago presumably justified requiring Home to pay claims upon presentation, but Home always had the right in the Consent Order to request further substantiation after paying the claims if it could demonstrate the need. The Consent Order thus established a process where Home would pay claims first, and ask questions later.⁵

9. But Home and Unione are now operating under a different regulatory regime – the Liquidation Statute – because Home is insolvent. The Liquidation Statute permits the Liquidator and CIC to request claim details before admitting claims into the estate. By filing a proof of claim against Home, Unione submitted to the exclusive jurisdiction of the Court for having that claim evaluated exclusively under the Liquidation Statute, the Claims Procedures Order and the Protocol. Having done so, Unione cannot now invoke the Consent Order to require Home to pay first, and ask questions later. It must first provide claim details pursuant to RSA 402-C:38, II.

10. Accordingly, the Referee should rule: (a) that the Liquidator’s setoff is proper; and (b) that the Liquidation Statute, and not the Consent Order, governs this disputed claim proceeding, and that Unione is required to provide claim details to CIC consistent with RSA 402-C:38, II before its claims are agreed and paid.⁶

Background

11. CIC, through its agent ACE INA Services U.K. (“AISUK”) and on behalf of Home, has sole responsibility for administering and servicing Unione’s proof of claim under the Insurance and Reinsurance Assumption Agreement, dated January 31, 1984 (the “Assumption

⁵ Under the Consent Order, Home would have a right to adjust the amount paid to Unione once the questions were asked and answered, if Home could show that the claims were outside the coverage of the contract.

⁶ If the Consent Order’s “pay now, ask later” provision is to continue, the Referee should nevertheless enforce Home’s right to set off amounts improperly paid.

Agreement”).⁷ As a result, the Liquidator and CIC negotiated a protocol for the determination of AFIA claims (the “Protocol”), which was subsequently approved by court order.

12. In 1988, the High Court of England entered the Consent Order. (Unione doc. no. 13.) According to the Consent Order, Home agrees to “accept the submission by [Unione] of the quarterly accounts prepared by B.D. Cooke and Partners Limited (or their successors) as being sufficient proof of the sums due to [Unione] from [Home]” (*Id.*, ¶ 3.) Home also declares “that it will pay to [Unione] the sums due . . . within 30 days of receipt of the quarterly accounts referred to in clause 3” (*Id.*, ¶ 4.) And finally, “[i]f in the future [Home is] able to demonstrate a need for additional information regarding specific claims identified by them [Unione] will endeavor to obtain the information from B D Cooke and Partners Limited.” (*Id.*, ¶ 5.) However, the “production of the information is not to affect [Home’s] liability to pay or the payment of all sums due to [Unione]” (*Id.*) The Consent Order does not provide Home with a right to ask for further claims substantiation before claims are agreed.

13. The “quarterly accounts” Unione routinely submits to Home’s estate for payment are limited to accounts bordereaux and reports on inuring reinsurance. The accounts bordereaux do not show the type of payment (*i.e.*, whether it is for defense or indemnity), and because of this, CIC is unable to determine before it agrees or pays claims whether a particular amount Unione requests is properly presented, or is something Home did not contract to pay (*e.g.*, unascertained potential future liabilities and policy buy-backs). The inuring reinsurance reports do not address the underlying claim details, which CIC needs to see in order to make a meaningful claim determination. Unione upon request (*i.e.*, not voluntarily) also provides

⁷ “AFIA” means the American Foreign Insurance Association. Pursuant to the Assumption Agreement, CIC reinsures Home’s AFIA liabilities on a 100% basis (subject to the terms and conditions of the Assumption Agreement in all respects).

attorney reports detailing prior transactions, but only after CIC agrees the claims.⁸ Thus, the information Unione customarily provides to CIC under the Consent Order is insufficient for CIC to properly evaluate and determine Unione's claims.

14. On December 11, 2006, CIC asked Unione for information supporting the Disputed Claims and, at the same time, agreed the 3Q06 Claims (which includes the Disputed Claims) consistent with the Consent Order. (December 11, 2006 letter from CIC to Unione, attached to this response as Exhibit A, the "Dec. 11 Letter," at 1.) CIC's agreement of the claims, however, was subject to CIC's right in the Consent Order to adjust those claims as appropriate after Unione produced its supporting materials – whenever that was to occur. (Id.) In his December 21, 2006 Notice of Determination #15 ("NOD #15"), the Liquidator allowed 3Q06 Claims in the amount of \$556,757.60 and assigned them to Class V. (Unione doc. no. 2.)⁹

15. CIC requested further documentation on March 5, 2007 in response to Unione's December 28, 2006 letter providing attorney reports for the 3Q06 Claims to CIC. (Unione doc. no. 15, at 1.) Based on those reports, CIC suspected – but did not have enough information to confirm – that at least \$200,000 of the \$556,757.60 approved in NOD #15 was improperly agreed. (Id.) Unione did not provide further information in response to CIC's March 5 letter until July 6, 2007, and even then Unione's claim detail was still incomplete (attached to this response as Exhibit B without attachments, the "July 6 Letter"). Also on March 5, 2007, Unione sent its fourth quarter 2006 claims account to AISUK (the "4Q06 Claims"). (Unione doc. no. 4.)

⁸ The attorney reports do not relate to individual transactions but tend to be the latest annual report that would provide general overviews, giving information (historic and latest developments) on a particular assured that may impact numerous years (and layers) of involvement and not just Unione's participation, but rather the whole solvent London market.

⁹ Consistent with the Protocol, the Liquidator's claim determinations and re-determinations are based on CIC's recommendations.

16. Between March 5, 2007 and July 6, 2007, CIC and Unione corresponded (see, e.g., Unione doc. nos. 15-21 and the July 6 Letter), and the Superior Court approved the 3Q06 Claims on March 12, 2007 (the March 12 Order is attached to this response as Exhibit C.). Ten days after the March 12 Order, CIC reminded Unione of CIC's reservation of rights: "We remind you that our prior approvals were made under a reservation of rights and to the extent we discover any amounts were not properly recoverable, we continue to reserve our rights to petition the Court to rescind any prior approvals." (Unione doc. no. 17.) After receiving the July 6 Letter, CIC determined that \$236,740.60 was improperly agreed and so notified Unione by letter on July 19, 2007. (Unione doc. no. 5.)¹⁰

17. On August 13, 2007, the Liquidator determined the 4Q06 Claims (Unione doc. no. 5, "NOD #16"). In NOD#16, the Liquidator offset the Disputed Claims against the 4Q06 Claims.

18. Unione submitted a request for review for NOD#16 under the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation, dated January 19, 2005 (the "Claims Procedures Order"), on August 21, 2007 (Unione doc. no. 7), and the Liquidator issued his notice of re-determination on September 21, 2007 (Unione doc. no. 8). On or about November 16, 2007, Unione filed its objection (attached to this response as Exhibit D, the "Claims Objection"). Unione did not raise the issue of whether the Liquidator could offset the Disputed Claims against the 4Q06 Claims in either its request for review of NOD#16 or in its Objection. On November 28, 2007, the Office of the Liquidation Clerk filed a Notice of Disputed Claim for 2007-HICIL-32, commencing this disputed claim proceeding.

¹⁰ The value of the Disputed Claims was originally \$236,740.60. As discussed below, CIC agreed to reduce it to \$188,613.00.

19. CIC filed its motion to participate on December 13, 2007, which was granted by the Referee on December 18, 2007.

20. Unione filed its mandatory disclosures on January 11, 2008, where it raised the “offset” issue for the first time. Also as part of its mandatory disclosures, Unione provided further substantiation of its 3Q06 Claims to CIC. This means that more than one year after NOD #15 and nearly one year after the Court approved the 3Q06 Claims, Unione was still providing claim details to CIC. Indeed, as described below, it was only after reviewing the January 11, 2008 mandatory disclosures that CIC was able to reduce the Liquidator’s setoff.

21. The Referee held a telephonic structuring conference with the parties and the Liquidator (through their respective counsel) on January 25, 2008, and entered a scheduling order that identified three issues:

- a. “the necessity of reaching agreement on the actual amounts at issue on this claim;”
- b. “whether CIC was authorized, under New Hampshire law and/or the Claims Protocol approved on November 12, 2004, to offset amounts allowed on a previous claim now believed by CIC to be unrecoverable; and”¹¹
- c. “the need for an English law expert to determine whether unascertained potential future liability or policy buy-back payments are recoverable in this matter.”

The scheduling order set a deadline of February 13, 2008 for the parties to seek agreement on the amount at issue (i.e., the value of the Disputed Claims). On February 11, 2008, CIC agreed to reduce the Disputed Claims from \$236,740.60 to \$188,613.00 (CIC’s February 11, 2008 letter is attached to this response as Exhibit E). The structuring conference order also set a briefing schedule for issue (b), the issue currently before the Referee.

¹¹ In NOD#16, it was the Liquidator who set off the Disputed Claims on CIC’s recommendation. CIC administers Unione’s claims on behalf of Home and the Liquidator and recommended the setoff in that capacity.

Argument

A. The March 12 Order Does Not Affect Home's Statutory Right Of Offset

22. RSA 402-C:34 provides that “[m]utual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter shall be set off and the balance only shall be allowed or paid,” subject to certain exceptions not relevant here. “To be mutual, the debts must be due to and from the same persons in the same capacity.” Prudential Reinsurance Co. v. The Super. Ct. of Los Angeles County, 842 P.2d 48, 53 (1992) (internal citations, quotations and brackets omitted). There are essentially three elements to mutuality: (a) the debts must be owed prior to or contemporaneously with the liquidation order; (b) the debts must exist between the same persons; and (c) the setoff must be between persons of equal capacity (e.g., not in a fiduciary or trust capacity). Id. (citation omitted).

23. Here, the Liquidator meets all three requirements: (a) the debts at issue arise out of the same pre-insolvency contract where Home reinsures Unione (Home owes Unione for the 4Q06 Claims and Unione owes Home for the Disputed Claims); (b) the debts exist between Unione and Home (the Liquidator steps into Home's shoes, preserving mutuality); and (c) the debts are not owed in a “fiduciary, agency, trustee or partnership capacity.” Id. (citation omitted).

24. Unione tries to defeat Home's setoff by referring to the March 12 Order approving the Disputed Claims, but that order has nothing to do with Home's offset rights under RSA 402-C:34. Even if it did, Unione cannot enforce or otherwise rely on it.

25. First, Unione protracted the claim substantiation process and cannot now invoke the March 12 Order to defeat CIC's offset. If that were the case, Unione would improperly benefit from its own delay and courts have uniformly held that parties cannot do that where, as here, it harms their adversaries. See, e.g., Zimmerman v. Kyte, 765 P.2d 905, 909 (Wash. Ct.

App. 1988) (“a party may not benefit from a delayed assertion of rights at the expense of the party’s opponent”) (citation omitted); Medinets v. Betzko 720 A.2d 150, 154 (Pa. Super. Ct. 1998) (“a defendant who has created a delay may not benefit from that delay by obtaining a judgment of *non pros.*”) (citation omitted). In the present case, Unione’s substantiation process lasted more than one year. The cases above show that a party like Unione cannot benefit from this type of delay to disadvantage CIC. Therefore, Unione has no rights to enforce under the March 12 Order and it does not affect the Liquidator setting off the Disputed Claims against the 4Q06 Claims.¹²

26. Second, Unione was well aware based on the correspondence with CIC that the 3Q06 Claims were provisionally agreed at best. CIC in no uncertain terms and consistent with the Consent Order repeatedly stated that its approvals were without prejudice and subject to CIC’s rights to adjust the claims later as appropriate, and to rescind prior approvals after the March 12 Order.

27. CIC’s rights to ask for further claims substantiation and to adjust claims derive in part from the Consent Order, and these are among the rights CIC reserved in its correspondence with Unione. Paragraph 5 of the Consent Order provides that “[i]f in the future [Home is] able to demonstrate a need for additional information regarding specific claims identified by them [Unione] will endeavor to obtain the information from B D Cooke and Partners Limited.” Consent Order, ¶ 5. The Consent Order also provides that the “production of the information requested is not to affect [Home’s] liability to pay or the payment of all sums due to [Unione] under the terms of the settlement of the action and under the terms of the policies of insurance

¹² Most of the delay occurred after the March 12 Order. Even if the exchange had begun in December, it probably would have taken Unione the same time to finish substantiating its 3Q06 Claims: 11 months. If that is the case the March 12 Order would have been entered well before CIC would have been able to fully evaluate the 3Q06 Claims in any event.

specified in clause 3” of the Consent Order. *Id.* However, the Consent Order does not re-write the policies of insurance and if Unione improperly presents claims to Home, those sums are not “due” within the meaning of the Consent Order and the underlying policies. Home can reclaim them under English law. If it were otherwise, paragraph 5 of the Consent Order would be meaningless. Thus, CIC has the right to request further substantiation and adjust the 3Q06 Claims under the Consent Order. For Unione to now take the position that the March 12 Order prevents the Liquidator from setting off the Disputed Claims against the 4Q06 Claims ignores that Unione was on notice that the allowed amount of the 3Q06 Claims was subject to change at any time. Unione’s position is also internally inconsistent because when CIC agrees the claims under the Consent Order, Unione takes the position that CIC cannot challenge it; but when CIC does not agree the claims, Unione takes the position that CIC is in breach of the Consent Order. Unione cannot have it both ways.¹³

B. Under The Liquidation Statute, CIC Is Entitled To Request Claim Details Before It Pays Unione’s Claims

28. The Consent Order envisages Home paying Unione’s claims 30 days after Unione presents the quarterly accounts. Consent Order, ¶ 4. While that may have made sense 20 years ago, now that Home is insolvent, Unione’s claims are paid like all other AFIA claims.

Otherwise, it would be inconsistent with the Liquidation Statute.

29. It would similarly be inconsistent with the Liquidation Statute for Unione to refuse to provide the Liquidator with its claims data upon request in light of RSA 402-C:38, II, which provides that “[a]t any time the liquidator may request the claimant to present information

¹³ Because the March 12 Order approved claims that should not have been presented – never mind agreed and paid – and because Unione was on notice that its claims could be adjusted, CIC and Home’s estate are entitled to be made whole. Under the circumstances, CIC’s setoff of the Disputed Claims is reasonable, equitable and proper, and New Hampshire courts have the authority to award this type of equitable relief when the circumstances require it. *See, e.g., Dunlop v. Daigle*, 122 N.H. 295, 300 (“The trial court has broad and flexible equitable powers which allow it to shape and adjust the precise relief to the requirements of the particular situation.”) (citation and quotations omitted).

or evidence supplementary to that required [in a proof of claim], and may take testimony under oath, require production of affidavits or depositions or otherwise obtain additional information or evidence.” Thus, just as the Consent Order’s payment terms were modified to comport with the Liquidation Statute, the Consent Order’s claim substantiation provision should also be modified so that it is in line with RSA 402-C:38, II. This would work in conjunction with the Consent Order as it is written, not least because, as stated above, it expressly states that Home is entitled to claims data if needed.

30. By filing a proof of claim against Home in Home’s liquidation pursuant to RSA 402-C:38 and by following the process set forth in the Protocol, the Claims Procedures Order and the Liquidation Statute, Unione has subjected itself to the Court’s exclusive jurisdiction over adjudication of that claim. See Corcoran v. Frank B. Hall & Co., 545 N.Y.S.2d 278, 282 (N.Y. App. Div. 1989) (“[I]t is well established that in filing a proof of claim in liquidation, a claimant submits itself to the jurisdiction of the liquidation court.”) (citation omitted); In re Emmet, 150 N.Y.S. 398, 399 (App. Div. 1914) (“By filing its claim with the Superintendent of Insurance against the insolvent corporation . . . the Supreme Court acquired jurisdiction over the appellant . . .”).

31. Despite submitting to this jurisdiction for that purpose, Unione tries to make much of the circumstances existing prior to the consent order twenty years ago:

There appears to be a fundamental mis-understanding as to the background to, and effect of, the Consent Order. The terms of the Consent Order were agreed in the light of: (i) contractual arrangements providing the closest back-to-cover, and (ii) a mutual intention to avoid the kind of after-the-event claims examination to which you refer in your correspondence.

Unione doc. no. 18.¹⁴ However, whatever circumstances existed before the Consent Order and whatever the Consent Order sought to address are irrelevant in light of Home's insolvency. The Protocol, the Claims Procedures Order and the overarching Liquidation Statute combined set forth the exclusive mechanism for the assertion, adjudication and admission of Unione's proof of claim against Home's estate. The Consent Order, in light of Home's insolvency, does not.

32. This means that Unione is bound by RSA 402-C:38, II and the other provisions of the Liquidation Statute, and must provide its claim details upon request before CIC agrees the quarterly claims. It should be treated like all other AFIA claimants. To the extent the Consent Order purports to establish a different level of proof for Unione to substantiate its claims, the Consent Order is inoperative. See also, July 27, 2006 Order on Liquidator's Report and Recommendation on KWELM Companies' Proofs of Claim (McGuire, J.), attached to this response as Exhibit E, at p. 5. Accordingly, the Referee should rule that on a going forward basis, the Liquidator and CIC have the right under the Liquidation Statute to request further substantiation materials from Unione before agreeing Unione's quarterly claims.

Conclusion

33. Home's right of offset under the Liquidation Statute is not affected by the March 12 Order. Unione lost all rights to enforce that order when it protracted the claim substantiation process. It also was aware that the 3Q06 Claims were subject to change if and when Unione provided the claim details CIC requested, so to say as Unione does that the Liquidator cannot reduce the 4Q06 Claims through setoff in light of the March 12 Order ignores the facts, RSA 402-C:34 and CIC's rights under the Consent Order. In any event, the Referee should confirm that Unione's claim is to be resolved under the Liquidation Statute, the Protocol and the Claims

¹⁴ Unione's point (ii) contravenes the express language in paragraph 5 of the Consent Order (i.e., permitting Home to ask for further substantiation after the fact).

Procedures Order, and that the “pay now, ask later” provisions in the Consent Order are inoperative.

WHEREFORE, CIC respectfully requests that the Referee enter an order:

- a. Confirming that the Liquidator is permitted to set off the Disputed Claims against the 4Q06 Claims under New Hampshire law;
- b. Determining that the Liquidation Statute, the Protocol and the Claims Procedures Order, and not the Consent Order, govern this disputed claim proceeding, and that Unione is required to provide claim details to CIC consistent with RSA 402-C:38, II before its claims are agreed and paid; and
- c. Granting such other and further relief as the Referee deems is just and proper.

Dated: February 14, 2008

Respectfully submitted,



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Kathleen E. Schaaf
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Attorneys for Century Indemnity Company

Exhibit A



ace european group

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11 December 2006

B.D. Cooke & Partners Ltd
2 Knolle Rise
Orpington
KENT BR6 0NX

For the attention of: Peter Avent

Dear Sir

**Re: Unione Italiana (UK) Reinsurance Company Limited
Aggregate Excess of Loss Cover
3rd Quarter 2006**

We refer to your letter dated 3rd November 2006 together with your electric listing of 13th November 2006.

We have now completed our review of the 3rd Qtr 2006 and would be grateful if you would provide details of the following claims:

Joslyn Corp	EPA
Farrel Co	EPA
Okenite Co	Asbestos
Grefco	Asbestos
Cerro Corp	Asbestos
Bath Iron Works	Asbestos
Abb Lumas	Asbestos
Norton Co	Asbestos
Hopeman	Asbestos
Celotex/Mc Cory	Asbestos
Bendix	Asbestos
C.E. Thurston	Asbestos

The 3rd Quarter 2006 account for US\$556,757.60 has been agreed entirely without prejudice and under a full reservation of rights.

Yours faithfully

Nick Tyndall
**ACE INA Services UK Limited per The Home
Insurance Company in Liquidation Protocol**
ntl 24/claimsdec06

Exhibit B



CASTLEWOOD (EU) LTD.

No. 1 Stoke Road, Guildford, Surrey GU1 4HW, England
Tel: +44 (0) 1483 452 622 Fax: +44 (0) 1483 452 644
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ACE INA Services UK Limited
(per The Home Insurance Company in Liquidation Protocol)
Run-Off Services
9-13 Fenchurch Buildings
London EC3M 5HR

Attention: Nick Tyndall

By e:mail

6th July 2007

Dear Mr Tyndall,

Unione Italiana (UK) Reinsurance Company Limited ("Unione")
Aggregate Excess of Loss Cover
3rd Quarter 2006

With reference to your letter dated 2nd May 2007, we have liaised with BD Cooke & Partners (being the managers of Unione's BD Cooke Pool business). As you know, BD Cooke & Partners have a wide discretion in the management of Unione's BD Cooke Pool business, consistent with the very broad cover under the reinsurance and the terms of the Consent Order. Please find herewith certain documentation relating to the Celotex and Liberty Mutual settlements, which BD Cooke have supplied. Please ensure that the confidentiality of this information is protected. As previously advised, this information is provided to you entirely without prejudice to Unione's position that you are not entitled to it under the Consent Order; rather, its provision should protect Unione's position in connection with the costs associated with establishing The Home's liability within the Liquidation Protocol, and might assist in resolving the current (unjustifiable) impasse. For the avoidance of any doubt, no precedent is set by its provision.

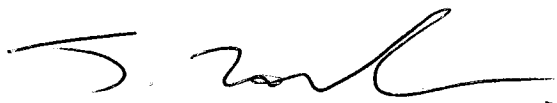
We repeat that the reinsurance in question provides for broad back-to-back cover in respect of "all losses". It was because of the nature of the reinsurance that the terms of the Consent Order were agreed, pursuant to which The Home's entitlement to additional information is restricted (and cannot affect The Home's liability to pay the sums due anyway). As we have said from the outset, the losses in question are recoverable. Please confirm within 14 days that this is now accepted, failing which Unione will have no alternative but to pursue its entitlement within the Liquidation Protocol, and will seek its costs in relation thereto on an indemnity basis.

Page 2

I look forward to hearing from you.

All of Unione's rights and remedies continue to be fully reserved.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Zisaruk', with a long horizontal flourish extending to the right.

Jonathan Zisaruk

Castlewood (EU) Limited

For and on behalf of Unione Italiana (UK) Reinsurance Company Limited

cc Jonathan Rosen, Esq. (Chief Operating Office, HICIL)

Exhibit C

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

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

Docket No. 03-E-0112

**In the Matter of the Liquidation of
US International Reinsurance Company**

**ORDER APPROVING LIQUIDATOR'S REPORT OF CLAIMS
AND RECOMMENDATIONS AS OF JANUARY 29, 2007**

On consideration of the Liquidator's Report of Claims and Recommendations as of January 29, 2007, submitted by Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator of The Home Insurance Company and US International Reinsurance Company, it is hereby ORDERED as follows:

1. The Claims Report is hereby APPROVED; and
2. The claims identified in Schedules 1 and 2 to the Claims Report are hereby ALLOWED in the amounts and at the priorities set forth in those schedules.

So Ordered.

Dated:

Mar. 12, 2007

Carol Ann Conboy
Presiding Justice

Exhibit D

KENDALL FREEMAN

Solicitors

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Office of the Clerk
Merrimack County Superior Court
163 N. Main Street
P.O. 2880
Concord
New Hampshire 03301
USA

16 November 2007

Attention: The Home Docket No. 03-E-0106

Our ref MCE\JW\01120040

By courier and by email

Dear Sirs

Unione Italiana (UK) Reinsurance Company Limited: Notice of Re-determination of Partial NOD 16

We act on behalf of Unione Italiana (UK) Reinsurance Company Limited (**Unione**) and Enstar (EU) Limited (formerly known as Castlewood (EU) Limited).

We write formally to file an Objection with the Court in accordance with the Claims Procedures Order entered by the Court on 19 December 2003.

In summary, Unione objects to the Re-determination of Partial NOD 16 on the following bases:

1. Unione has demonstrated its claim in the sum of \$236,740.60 and the obligation of The Home to pay it, as agreed in the contract between Unione and The Home.
2. The Home's agreement to pay is further embodied in an Order of the English High Court dated 1 July 1988 and The Home is obliged to pay the claim in accordance with the Order.
3. In any event, Unione has fulfilled such burden of proof on it in respect of the claim as there is under English Law, in relation to the contract and in light of the Order.
4. Further, Unione reserves the right to submit additional documentation in further support of its claim, both in relation to the detail and nature of the claim and in relation to the position on payment of the claim under English Law.

Unione will set out its position and the arguments in support of its position in full at the appropriate time in the Disputed Claim proceeding.

PCL2\2652254\1

Neil Adams
Helen Clark
Tim Daniel
Mark Everiss

Laurence Harris
Richard Hopley
Colin Joseph
David Kendall

Ashwani Kochhar
Martin Lister
James Maton
Mark Meyer

Alan Perry
Kevin Perry
Ambereen Salamat
Richard Spiller

Vivien Tyrell
Simon Williams
Antony Woodhouse

Office of the Clerk
Merrimack County Superior Court

16 November 2007

Unione therefore seeks, and will seek in the Disputed Claim proceedings: (i) a reversal of the Determination that there is an offset due to The Home against Unione in the sum of \$236,740.60; and (ii) a reinstatement of the original Determination of the claim in the sum of \$236,740.60.

We should be grateful if you could direct all further communication in relation to the Re-determination and Unione's objection to the Re-determination to us.

Yours faithfully

A handwritten signature in black ink, appearing to be 'J. Rosen', with a long horizontal line extending to the right from the end of the signature.

Copy to Jonathan Rosen, Chief Operating Officer for Roger A. Sevigny, Liquidator The Home Insurance Company (in Liquidation), P.O. Box 1720, Manchester, New Hampshire 03105-1720 (by courier and by email)

Exhibit E



ace european group

ACE INA Services U.K. Limited
Run-Off Services
9-13 Fenchurch Buildings
London
EC3M 5HR
United Kingdom

0207 780 5984 tel
0207 780 5869 fax
www.ace-ina.com

11 February 2008

Castlewood (EU) Ltd.
No. 1 Stoke Road
Guildford
Surrey GU1 4HW
England

COPY

For the attention of: Jonathan Ziraruk

Dear Sirs

Re: **R/I Unione Italiana (UK) Reinsurance Company**
Aggregate Excess of Loss Cover
4th Quarter 2006

We refer to our letter dated 25th July 2007 concerning our recommendations for the 4th Quarter 2006 accounts wherein we discussed the amount in dispute that would be held against the balance claimed for that period of account.

Following receipt and analysis of the written submission of Unione Italiana (UK) Reinsurance Company in the dispute currently before the New Hampshire Court we are only now in a position to appreciate that the balance withheld against the 4th Quarter 2007 was overstated. We are at a loss to understand why this material was not produced earlier. At any rate, now that Unione has finally seen fit to produce information supporting its claim, we would amend our recommendation accordingly.

The value of the 4thQuarter 2006 account, which we advised that in principle we agreed on a without prejudice basis, was \$236,740.60. We now, can agree, that the net value of the Liberty Mutual commutation according to the information provided in your written submission is \$188,613.00. We therefore recommend acceptance of the difference between the value of the account and the net value of the commutation, being US\$48,127.60

It is unfortunate that Unione chose to only disclose this supporting documentation in the Court proceeding. A revised recommendation could have been avoided had the explanation regarding the precise value of the commutation, now made in Union's written submission, been conveyed to ACE INA Services UK Limited following our initial letter in July.

Yours faithfully

Nick Tyndall
ACE INA Services UK Limited per The Home
Insurance Company in Liquidation Protocol

Exhibit F

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**Docket No. 03-E-0106
In the Matter of the Liquidation of
The Home Insurance Company**

**ORDER ON LIQUIDATOR'S REPORT AND RECOMMENDATION
ON KWELM COMPANIES' PROOFS OF CLAIM**

Before the Court for approval is the Liquidator's Report and Recommendation on KWELM Companies' Proofs of Claim. Because Century Indemnity Company objected to an approval, a hearing in this matter was held on June 2, 2006.

HISTORY:

Kingscroft Insurance Company Limited, Walbrook Insurance Company Limited, El Paso Insurance Company Limited, Lime Street Insurance Company Limited and Mutual Reinsurance Company Limited ("KWELM"), five insurance company members of an underwriting pool managed by HS Weavers Agency Limited, were placed into run-off under a scheme of arrangement approved by the English and Bermudan courts in 1993. In 2004, subsequent to the order of liquidation of The Home Insurance Company ("Home"), the original KWELM scheme was amended and converted to a "cut-off scheme".

Under a cut-off scheme, the values of creditor claims, including where appropriate those yet to be fully developed, are crystallized for the purpose of calculating a final distribution. This significantly truncates the natural life of the run-off operation and accelerates the distributions. Consistent with the terms of the amended KWELM

scheme, creditors were required to prove up claims with the scheme administrator under a newly established bar date. As part of that process, any claims that a KWELM company may have had against any of the scheme creditors were to be valued for purposes of effecting KWELM companies' setoff opportunities.

Home is a creditor of each of the KWELM companies, and as such, bound by the terms of the cut-off scheme of arrangement. Because KWELM companies' claims against Home are part of Home's AFIA exposures, Century Indemnity Company ("CIC"), pursuant to the Insurance and Reinsurance Assumption Agreement between CIC and Home, participated in the KWELM scheme procedures establishing the value of KWELM companies' entitlement to setoff against Home. For reasons made clear below, CIC has done so under a reservation of rights.

Pursuant to the terms of the cut-off scheme, the KWELM administrator reached a provisional resolution on calculations necessary to determine whether Home as a claimant was entitled to any distribution. Unhappy with the initial calculations, CIC apparently provided additional documentation to the scheme adjudicator. That effort produced a substantially more favorable setoff calculation, diminishing it from \$11.8 Million to \$3.9 Million. And, it also raised the value of Home's claims against KWELM from \$14.8 Million to \$19.7 Million.

Based upon those figures, a net payout of approximately \$15.8 Million, the difference between \$19.7 Million and the \$3.9 Million setoff, has been made to Home. Because \$1.7 Million of KWELM claims has already been filed and allowed in the Home estate and were part of the KWELM scheme setoff calculation, the Court is concerned only with the unresolved remainder of approximately \$2.2 Million.

PARTIES' POSITIONS:

The Liquidator requests that this Court recognize and allow KWELM claims against Home at the value assigned by the KWELM adjudicator and used in calculating the net amount the KWELM scheme owed the Home estate. In support of his request, the Liquidator cites Sec. 304 injunctive orders¹ issued by the U.S. Bankruptcy Court for the Southern District of New York.

Beyond asserting that the orders channel U.S. creditors exclusively to the KWELM scheme, the Liquidator argues that the orders also favor and support his request to import the scheme-established setoff values and convert them to allowed KWELM claims in the Home estate. The Liquidator asserts that the values have been duly negotiated within the KWELM scheme and require no further formal determination, adding that reliance upon them would bring additional efficiencies to Home's claims determination process.

CIC takes issue with the Liquidator's reliance on the Sec. 304 orders to support importation of the KWELM scheme setoff valuations and the consequent bypass of the Home estate's claims procedures and protocols. While CIC acknowledges that the Section 304 orders bind Home as a creditor to the terms of the KWELM cut-off scheme, CIC rejects the Liquidator's assertion that the orders apply to Home as a debtor of KWELM. CIC argues that the protections of the procedural orders of this Court, specifically the claims procedures order most recently restated and approved on 1/19/2005 and the protocol on AFIA related claims approved on 11/12/2004, require determination of KWELM claims values in the New Hampshire liquidation of Home.

¹ The first injunctive order was entered on December 14, 1993. In conjunction with the conversion of the KWELM runoff scheme to a cut-off scheme, an amended injunctive order was entered on March 31, 2004.

Further, CIC notes that Home liquidation procedures, most particularly the protocol, provide for the proper application of English law to the contracts which determine Home's liability to KWELM companies. And, CIC asserts that if English law is properly applied to those claims, their values will be substantially diminished from those assigned in the KWELM scheme, thus reducing CIC's ultimate liability to Home.

ANALYSIS:

The Liquidator directs the Court's attention to the Sec. 304 orders, arguing that those orders are pivotal to support his contention that an expansive view of comity is appropriate in this circumstance. He argues that the amended Sec. 304 order, which provides that the scheme "be given full force and effect andbe binding and enforceable against all Scheme Creditors in the United States that have claims against the Scheme Companies", can be read to do more than simply channel creditors to the KWELM scheme and/or enjoin creditors from disrupting an orderly and fair liquidation in a foreign jurisdiction. The Liquidator asserts that, for purposes of comity and efficiency, and for these specific claims, the Court should substitute KWELM cut-off scheme procedures in place of the procedures established in the Home liquidation.

The essential purpose of a Sec. 304 order is to "assure an economical and expeditious administration" of the estate for which protection is sought. *See*: 11 USC §. 304 (c). Such orders allow "foreign bankrupts to prevent piecemeal distribution of assets in this country by filing ancillary proceedings in domestic bankruptcy courts." *In re. Lines*, 81 B.R. 267, 271(1988). The Court recognizes the essential purpose of Sec. 304 injunctive orders and in this instance their application to the KWELM scheme. By their terms however, the Sec. 304 orders apply to creditors of KWELM. The reach of the Sec.

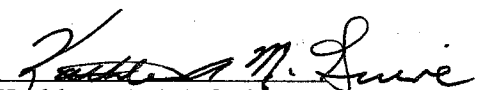
304 orders should not extend to Home as a debtor, nor to the adoption of the setoff values assigned in the KWELM scheme. In its consideration of this matter the Court has weighed the potential adverse effect upon both the KWELM scheme and the Home liquidation if deference to the KWELM scheme setoff calculations is withheld. The Court agrees with counsel for both the Liquidator and CIC that there is no adverse effect on the KWELM scheme.

As to the effect on Home's liquidation, the Court first notes that counsel for the Liquidator advised that even if the Court were to grant the Liquidator's request, CIC will likely contest collection of KWELM-related reinsurances. But more importantly, the Liquidator and CIC carefully considered and agreed upon detailed procedures to address anticipated disputes over processing of AFIA claims in the Home liquidation. A lengthy protocol governing the handling of AFIA related claims was submitted to the Court for review and approval. It included protocols for disputes involving contracts implicating English law. From review of the testimony and pleadings, and with particular reference to the affidavit of John Fredrick Powell, the Court is unable to conclude that the procedures used to establish KWELM companies' setoff entitlements meaningfully correspond to the procedures and the protocol addressing AFIA related claims in the Home estate, nor is the Court able to find a compelling reason for setting those procedures and protocols aside for this discrete set of claims.

In light of the foregoing, the Court declines to approve The Liquidator's Report and Recommendation on KWELM Companies' Proofs of Claim.

So Ordered

Date: 7/27/06


Kathleen A. McGuire
Presiding Justice