

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

**CIC'S REPLY IN FURTHER SUPPORT OF ITS MOTION TO RECONSIDER
ORDER APPROVING LIQUIDATOR'S REPORT OF CLAIMS AND
RECOMMENDATIONS AS OF DECEMBER 15, 2005 (FILED UNDER SEAL)**

Century Indemnity Company ("CIC"), by its attorneys, Orr & Reno P.A. and Lovells, hereby submits this reply in further support of its Motion to Reconsider the Order Approving Liquidator's Report of Claims and Recommendations as of December 15, 2005 (the "Motion") and respectfully states as follows:

Summary

1. The basis of the Motion is straightforward. CIC has objected to the Liquidator's Report of Claims and Recommendations as of December 15, 2005 (the "Report and Recommendation") because it fails to account for the undisputed fact — undisputed because the Liquidator has admitted it in papers filed with this Court — that CIC has already paid the funds (totaling approximately \$3.5 million) from which the Liquidator intends to pay the claims of Zurich Versicherung Aktiengesellschaft (Deutschland) ("Zurich").¹

2. The effect of allowing the Agrippina claims referred to in the Report and Recommendation — without any recognition that the \$3.5 million was funded by CIC and that payments of Agrippina claims up to \$3.5 million discharge CIC's liability — is that Home could seek reimbursement from CIC, as reinsurer, for claims that CIC has paid already. As this Court has

¹ For ease of reference, CIC (like the Liquidator) will hereafter refer to Zurich as Agrippina Versicherung Aktiengesellschaft ("Agrippina"), which is Zurich's predecessor.

stated, the allowance of a claim (which is what the Liquidator seeks in the Report and Recommendation) triggers Home's ability to seek a reinsurance recovery from CIC. Home, however, cannot recover from CIC for claims that CIC has already paid.

3. Accordingly, CIC respectfully requests that the Court reconsider its order dated February 6, 2006 (the "Order"), and either (a) deny the Report and Recommendation to the extent it seeks the allowance of the Agrippina claims or (b) order the Liquidator to amend the Report and Recommendation to reflect the fact that the Liquidator may not seek recovery for those claims under the reinsurance provided by CIC.

Argument

4. As noted in the Liquidator's motion for approval of the Settlement Agreement (the "Approval Motion"), the Settlement Agreement resolved the arbitration between Home and Agrippina on the issue of whether Home is required to reimburse Agrippina under Treaty R on a "fronted" or "pool share" basis. (Approval Motion at ¶ 6.)² (Reimbursement on a "fronted" basis would result in Home's payment of a larger amount than reimbursement on a "pool share" basis.) In the Settlement Agreement, the parties agreed that Home's obligation to indemnify Agrippina under Treaty R is on a "pool share," not "fronted," basis. (*Id.* at ¶ 11.)

5. During the pendency of the now-settled arbitration between Home and Agrippina, Home made payments to Agrippina on "fronted" basis, subject to a reservation of rights. It is undisputed, and admitted in the Approval Motion, that those payments (which totaled approximately \$3.5 million) were made on Home's behalf by ACE-INA Services U.K. ("AISUK"), as agent for CIC. (*Id.* at ¶ 7.)

6. In the Settlement Agreement, the parties agreed that Agrippina would pay back the \$3.5 million that had been paid by AISUK on Home's behalf. (*Id.* at ¶¶ 16-17.) In other words,

² The Approval Motion is attached to the Motion as Ex. A.

both the Liquidator and Agrippina have admitted that AISUK overpaid Agrippina by \$3.5 million.³ The parties recognized that Agrippina would continue to have indemnity claims against Home, so the Settlement Agreement contemplates that funds would be placed in a segregated trust account and Agrippina's indemnity claims (once they are adjusted and the amounts are determined) would be paid from the funds. (*Id.* at ¶ 17.)

7. The Report and Recommendation, however, does not anywhere acknowledge that CIC, through AISUK, is the source of the funds from which Home will pay Agrippina claims (up to \$3.5 million). Instead, it seeks — without qualification or any other elaboration — the allowance of approximately \$750,000 for Agrippina claims. If those claims are allowed, Home could then try to seek reinsurance recovery from CIC under the Insurance and Reinsurance Assumption Agreement. That would, in effect, mean that CIC could pay twice for the same claims. The Court should not allow such an absurd result.

8. Thomas Wamser, Esq. of CIC recently discussed this issue with Jonathan Rosen of Home. In a February 6, 2006 e-mail in response to a query from Agrippina, Mr. Rosen stated that the amounts of the Agrippina claims in the Report and Recommendation should “merely be credited” against the trust account funds. (*See Ex. B annexed hereto.*)⁴ In an e-mail dated February 13, 2006, Mr. Wamser agreed that the Agrippina claims should not be allowed and should instead be paid through the trust account funds without admission into Home's estate because “[t]hese amounts have already been ‘paid’ by Home with funding from ACE by virtue of the over-payment

³ CIC has claimed a setoff against Home for the \$3.5 million on the grounds that CIC's agent paid those funds and, as a result, they are immediately due and owing to CIC. Because Home has opposed CIC's demand, CIC is also asserting in the Motion that, at a minimum, Home must be prohibited from claiming reinsurance for the Agrippina claims at issue, given that the \$3.5 million was provided by CIC.

⁴ In his e-mail, Mr. Rosen makes several statements about CIC's remittance of certain “Policy Expenses.” Mr. Rosen's statements are not relevant for the purposes of the Motion before the Court, but CIC notes that it disagrees with them and fully reserves its rights in that regard. (Privileged communications between CIC and its counsel have been redacted from the string of e-mails in Exhibit B.)

of that amount to Agrippina.” (See Ex. C annexed hereto.)⁵ Thus, CIC has informed Home of its concerns regarding the allowance of the Agrippina claims in the Report and Recommendation.

9. The Liquidator may argue that the Settlement Agreement between Home and Agrippina requires the admission of Agrippina’s claims into Home’s estate (or their allowance by the Court under RSA 402-C:45) before those claims may be paid. If the Court accepts the Liquidator’s argument, then CIC respectfully requests that the Court also order the Liquidator to acknowledge that any Agrippina claims paid out of the \$3.5 million funded by CIC are not subject to reinsurance recovery from CIC and are not being allowed for such purpose.

10. The Liquidator argues that CIC somehow waived its objection to the Report and Recommendation by agreeing to the amounts in the Proofs of Claims and by not objecting to the Notices of Determination. (See Opposition at ¶¶ 2-6.) CIC, however, reasonably assumed that the Liquidator would make it clear that the Agrippina claims had been paid with CIC’s funds and were not subject to reinsurance recovery. Indeed, Mr. Rosen says as much in his February 6 e-mail. Because it appeared that the Liquidator did not so in the Report and Recommendation, CIC filed the Motion.⁶

11. Home also attempts to salvage the Report and Recommendation by noting that its schedule states that “[d]istributions will be subject to setoff.” (Opposition at ¶ 11.) However, this boilerplate language does not address the issue raised by CIC. The language cited by the Liquidator presumably refers to the setoff available to Home against Agrippina; here, the issue is whether the Agrippina claims may be allowed without any acknowledgement that the funding for the underlying payments was already provided by CIC, which prohibits any reinsurance recovery from CIC.

⁵ As in Exhibit B, privileged communications have been redacted from Exhibit C. In his February 13 e-mail, Mr. Wamser also addresses Mr. Rosen’s other points regarding “Policy Expenses.”

⁶ CIC had planned to file an opposition to the Report and Recommendation on February 6, 2006, but its filing was delayed as CIC considered the implications of Mr. Rosen’s e-mail of the same date.

WHEREFORE, CIC respectfully requests that the Court reconsider its Order, and deny the Report and Recommendation to the extent described above. In the alternative, CIC respectfully requests that the Court order the Liquidator to amend the Report and Recommendation and make clear that the Agrippina claims are not subject to reinsurance recovery because they are being paid from funds provided by CIC.

Dated: February 14, 2006

Respectfully submitted,



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Lisa S. Wade

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Attorneys for Century Indemnity Company

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing *CIC's Reply in Further Support of its Motion to Reconsider Order Approving Liquidator's Report of Claims and Recommendations as of December 15, 2005 (FILED UNDER SEAL)* has been served on Roger A. Sevigny, Commissioner of Insurance, Peter Bengelsdorf, Special Deputy, and the following counsel via First Class mail on February 14, 2006:

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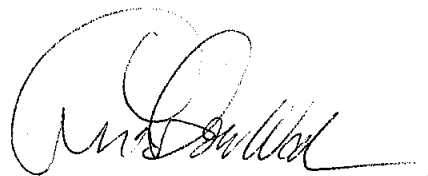
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Concord, NH 03302-1500



Lisa Snow Wade

REDACTED

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

From: jonathan.rosen@homeinsco.com [mailto:jonathan.rosen@homeinsco.com]
Sent: Monday, February 06, 2006 3:01 PM
To: RA Warmuth
Cc: Bateman, Darren; pabinsconsult@aol.com; jdl@rackemann.com;
richard.garippa@homeinsco.com; Wamser, Thomas J
Subject: Re: Home/Agrippina's Claims

Gernot:

As discussed when we spoke earlier today, while you are technically correct that the referenced Report of Claims and Recommendations was inaccurate in reflecting the true priorities, for present purposes it seems immaterial because of Agrippina's (and Home's) offset entitlements. In that regard, I confirm having alerted you to Clause 8.1 of the Home/Agrippina Agreement, which required Agrippina to fund the Reimbursement Trust Account (provided for in Clause 8.2) on the basis set forth therein net of Policy Liabilities and Policy Expenses approved by the Court. It is my understanding that the Reimbursement Trust Account has yet to be fully funded and the monies that you now seek should thus merely be credited against the awaited balance. Obviously, if no further funding is required (and I await your response in that regard), we will amend our priority classification to correctly classify the amounts at issue and will ensure that appropriate remittance is effected. For future purposes (on the presumption that Agrippina has yet to complete its Reimbursement Trust Account funding and this is done in advance of forthcoming Policy Expense submissions), we will require that ACE directly satisfy Policy Expenses and will be in communication with both you and them to properly work through that process. In addition, future Court submissions will correctly reflect the Policy Liability and Policy Expense priority classifications. I accordingly await your good word.

Regards,

Jonathan Rosen

Chief Operating Officer
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Fax: (212) 548 0727

"RA Warmuth"
<warmuth@scheiber
<jonathan.rosen@homeinsco.com>
partner.de>
Bateman" <darren.bateman@ace-ina.com>
02/06/2006 09:57
AM

To: "Jonathan Rosen"
cc: <pabinsconsult@aol.com>, "Darren
Subject: Home/Agrippina's Claims

Jonathan:

My understanding from talking to Darren Bateman last week is that Home's NODs to Agrippina include US attorneys' fees which are "administrations costs". These administration costs have Class One priority. As a result, the Liquidator's Report of Claims and Recommendations as of 15 December 2005 recently posted on the internet is incorrect. Regarding Agrippina's claims, the Report should have stated as follows:

INTL277984-01	USD 12,167.95	Class 5	o.k.
INTL277984-02	USD 100,416.12	Class 5	o.k.
INTL277984-03	USD 175,050.91	Class 5	o.k.
INTL277984-04	USD 217,279.38	Class 5	incorrect (Correct: USD 215,851.43 Class 5 & USD 1,427.95 Class 1)
INTL277984-05	USD 163,996.54	Class 5	incorrect (Correct: USD 151,207.66 Class 5 & USD 12,788.88 Class 1)
INTL277984-06	USD 82,523.69	Class 5	incorrect (Correct: USD 76,658.60 Class 5 & USD 5,865.09 Class 1)

Therefore, I request on behalf of Agrippina that the total amount of USD 20,081.92 relating to NOD 1 through 6 administration costs be paid out of the estate and that the Liquidator's Report be amended accordingly.

Please let me know if a formal request to the court is required. I look forward to hearing from you.

Very truly yours,

Gernot A. Warmuth
Rechtsanwalt/Attorney-at-Law (California)

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REDACTED

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

From: Wamser, Thomas J
Sent: Monday, February 13, 2006 11:48 AM
To: 'jonathan.rosen@homeinsco.com'
Cc: Bateman, Darren; pabinsconsult@aol.com; jdl@rackemann.com;
richard.garippa@homeinsco.com
Subject: RE: Home/Agrippina's Claims

Jonathan, in relation to the email exchange below between you and Gernot, I thought it would be helpful to comment:

1) Given that it has been your position that the overpayment by ACE could only be used to satisfy Agrippina claims, the first \$3.5mm of Agrippina's claims should not be admitted into Home's estate at all. Rather they should simply be agreed to by Home through AISUK. These amounts have already been "paid" by Home with funding from ACE by virtue of the over-payment of that amount to Agrippina (hence Agrippina's obligation to fund the Reimbursement Trust Account and its setoff entitlements under paragraphs 8.1 and 8.2 of the settlement agreement).

2) We have previously advised you that in our view pre-insolvency fees and expenses do not qualify as administrative expenses.

3) ACE is under no requirement to pay Policy Expenses directly to Agrippina under any agreement we have seen.

Thomas J. Wamser, Esq.
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From: jonathan.rosen@homeinsco.com [mailto:jonathan.rosen@homeinsco.com]
Sent: Monday, February 06, 2006 3:01 PM
To: RA Warmuth
Cc: Bateman, Darren; pabinsconsult@aol.com; jdl@rackemann.com;
richard.garippa@homeinsco.com; Wamser, Thomas J
Subject: Re: Home/Agrippina's Claims

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Regards,

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Bateman" <darren.bateman@ace-ina.com>

To: "Jonathan Rosen"
cc: <pabinsconsult@aol.com>, "Darren

Subject: Home/Agrippina's Claims

02/06/2006 09:57
AM

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Gernot A. Warmuth
Rechtsanwalt/Attorney-at-Law (California)

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