

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

**CENTURY INDEMNITY COMPANY'S RESPONSE TO  
LIQUIDATOR'S SUR-REPLY TO OBJECTION TO MOTION FOR STAY OF  
ARBITRATION OF KWELM CLAIMS AGAINST HOME AND REPLY IN  
SUPPORT OF CROSS-MOTION TO COMPEL ARBITRATION**

Century Indemnity Company ("CIC"), by its undersigned counsel, hereby submits its response to the Liquidator's sur-reply in opposition to CIC's motion for stay of the arbitration of KWELM claims against Home and reply in support of the Liquidator's cross-motion to compel arbitration.

1. To a point, CIC and the Liquidator are in agreement. Like the Liquidator, CIC maintains that Judge McGuire "decline[d] to approve" the Liquidator's Report and left the KWELM claims to be processed in accordance with the Protocol.<sup>1</sup> See Liquidator's Sur-Reply at ¶ 1. However, CIC also takes the position—a position which is indisputable given the language of the July 27 Order—that the KWELM Scheme Adjudicator's setoff assessments cannot be the basis for allowed claims against Home because the KWELM Scheme fails to provide a claim determination process even remotely similar to the Protocol, Claims Procedures Order and the New Hampshire liquidation statute. Thus, the issue here is that while both parties agree Judge McGuire sent the Liquidator back to the Protocol if there are KWELM claims he seeks to have allowed against Home's estate, instead of starting at the beginning of the Protocol process and

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<sup>1</sup> Unless otherwise noted, all defined terms herein have the same meaning ascribed in CIC's motion for stay of arbitration of KWELM claims against Home, dated December 15, 2006.

submitting claims to CIC for consideration and adjustment as required, the Liquidator wants to skip straight to arbitration. And that clearly conflicts with the July 27 Order.

2. The Liquidator's argument about the KWELM claims being governed by English law and his seeking to have them determined by an English-law expert, *see* Liquidator's Sur-Reply at ¶¶ 1-2, is superfluous. CIC agrees that the KWELM claims are governed by English law, but their admission into the Home estate is governed by the Protocol, the Claims Procedures Order and New Hampshire law—just as Judge McGuire found in the July 27 Order. CIC also acknowledges that in the event it does not agree properly submitted KWELM claims, the claims shall be arbitrable before an English law expert under ¶¶ 2.5 and 2.7 of the Protocol. But the parties are not yet at the point of arbitration. The KWELM claims must be submitted for consideration and adjustment to CIC first before arbitration becomes an issue.

3. CIC is not trying to avoid claims determination or dodge substantive legal questions, *see* Liquidator's Sur-Reply at ¶ 2. CIC simply refused to make a recommendation regarding the KWELM claims which were solicited, and now submitted by the Liquidator outside of the Protocol, and without the accompanying documentary support the Protocol requires—in this case, without any documentary support at all. If and when the Liquidator properly submits the KWELM claims to CIC for consideration under the Protocol, and if CIC subsequently denies any claim, the issue will become arbitrable and the legal questions CIC has raised can be addressed. But, as CIC has repeatedly said, arbitration now is premature.

4. The Liquidator's assertions regarding the proofs of claim underlying CIC's agreement to allow an additional \$420,000 against Home's estate since the July 27 Order are true red herrings. *See* Liquidator's Sur-Reply at ¶¶ 3-4 and attached affidavit of Jonathan Rosen. The

issue here is not who first presented the underlying claims or when. The point is that CIC, as it told this Court it would, agrees real claims when presented to it for consideration and adjustment in accordance with the Protocol. *See* CIC's Response at ¶¶ 8-10. It continued to agree claims (another \$420,000) despite the fact that the Liquidator said CIC never would. CIC abides by the Protocol, and if claims are valid and submitted under the Protocol, CIC will agree them and there is no possibility for a "windfall" to CIC.

5. The Liquidator seems to dismiss the \$420,000 in claims as "pipeline" claims. However, these claims, like all other AFIA claims that are admitted into Home's New Hampshire estate, are part of the continuing stream of claims against Home presented by brokers on a market basis as they fall due. So if, as the Liquidator has repeatedly said, KWELM is no longer processing claims, they have clearly not informed their agent, the brokers. Brokers are continuing to this day to present KWELM claims against Home for CIC's consideration, and CIC continues to agree to properly presented and valid claims. Indeed, the Liquidator's argument that there would be no new claims presented after April 12, 2006 is demonstrably wrong. As the Court will see from the materials attached at Exhibit A hereto (all of which were provided to the Home pursuant to the Protocol—the Liquidator's statement notwithstanding) KWELM and its agent brokers have submitted multiple claims over the last several months, many of which have been agreed by CIC, some of which (as Home has been advised) are queried. These are, quite clearly, not "pipeline" claims.

Accordingly, CIC respectfully reiterates its request that the Court enter an Order:

- A. Staying arbitration demanded by the Liquidator under ¶ 2.5 of the Protocol of the KWELM companies' setoff assessments as claims against Home's estate;

- B. Directing the Liquidator to submit KWELM claims, if at all, in accordance with the Protocol and Claims Procedures Order;
- C. Denying the Liquidator's cross-motion to compel arbitration; and
- D. Granting such other and further relief as this Court deems just and proper.

Dated: January 17, 2007

Respectfully submitted,

By: 

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*Attorneys for Century Indemnity Company*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document has been served on Roger A. Sevigny, Commissioner of Insurance, Peter Bengelsdorf, Special Deputy, and the following counsel via First Class mail on January 17, 2007:

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Civil Bureau  
New Hampshire Department of Justice  
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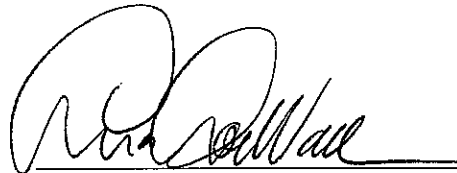
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Concord, NH 03302-1500



Lisa Snow Wade

Exhibit A

*Home (1/10)*

~~ACE HIGH SERVICES UK LIMITED~~  
 KENT HOUSE  
 ROMNEY PLACE  
 HAIDSTONE  
 KENT ME16 5LX

Risk Reference : R2A242 IB  
 Transaction Ref: CLM 0347  
 Claim Number : 078710  
 Your Reference : 76/62/350/2454  
 Account Code : 4005EEN  
 Contact : Hall  
 Extension No : 6515

20th October 2006

CLAIM SETTLEMENT REQUEST

We have received settlement details in respect of:

Reinsured      WATEROOK INS CO LTD (EX HSX)  
 Period        LOD 12 MINS AT MIDNIGHT 30/12/1975  
 Type          CASUALTY EXCESS OF LOSS  
 Limits        GBP250,000 (USD700,000) XS VARIOUS AS PER SLIP  
 Loss Name    MINNESOTA MINING  
                   ASB. PRODUCTS LOSSES INCL. ASBESTOS  
 Date of Loss  31st March 1976  
 Location     USA

	USD
Settled SOU	1,132,877.15
Group Excess	300,000.00
	-----
Total Loss	832,877.15
Client's Share	700,000.00
Prev. Settled	121,394.76
	-----
Collection Due	121,394.76
	-----
	T/Z TO LAYER
	-----
Your Share	5,069.74
5.000000%	

*Agree W.P. but only*

*[Signature]*

Special Draft Required: YES/NO

We propose to debit you in account with your share of this settlement, unless we hear from you to the contrary.



*AC 24 54 95*

Mayland House, Mayland Road, Witham, Essex CM8 3UP  
Telephone +44 (0) 20 7357 1000 Fax +44 (0) 20 7357 2164  
E-mail [ri.enquiries@riglobal.com](mailto:ri.enquiries@riglobal.com) www.riglobal.co.uk

*Home (over)*

~~REINSURANCE COMPANY LIMITED~~  
KENT HOUSE  
ROBINY PLACE  
MIDSTONE  
KENT ME16 6LT

Risk Reference : RER242 5P  
Transaction Ref: DEM 0345  
Claim Number : 078698  
Your Reference : 76/62/350/2454  
Account Code : 60052IN  
Contact : PHall  
Extension No : 6515

30th October 2005

CLAIM SETTLEMENT REQUEST

We have received settlement details in respect of:

Reinsured MUTUAL REINSURANCE COMPANY (EX NSW)  
Period 10D 12 MTHS AT MIDNIGHT 30/12/1975  
Type CASUALTY EXCESS OF LOSS  
Limits GBP250,000 (USD700,000) XS VARIOUS AS PER SLIP  
Loss Name MINNESOTA MINING  
AGG. PRODUCTS LOSSES INCL. ASBESTOS  
Date of Loss 31st March 1976  
Location USA

	USD
Settled FGU	1,132,877.15
Group Excess	300,000.00
	-----
Total Loss	832,877.15
Clients Share	700,000.00
Prav. Settled	132,877.15
	-----
Collection Due	118,295.39
	-----
	T/L TO LAYER
	-----
Your Share	5,914.77
5.000000%	

*Agree w/d, last only*

*[Signature]*  
*2/11*

Special Draft Required: YES/NO

We propose to debit you in account with your share of this settlement, unless we hear from you to the contrary.



ReSolutions International Limited

An approved representative of Marsh Ltd, which is authorised and regulated by the Financial Services Authority  
Regulated office: 7, Trench Place West, Tower Place, London EC2R 8BU





# KMS Insurance Management Limited

## EX - H S WEAVERS UNDERWRITING AGENCIES LIMITED

M.E.N:	76135	Layer:	First Excess Casualty Treaty
Insured:	Minnesota Mining & Manufacturing	Groups:	1-3 & 6 Accident Participation
Date of Loss:	1976 Aggregate	Limits:	\$750,000 vs \$300,000
Advice Date:	28 September 2005		
Date of Previous Advice:	28 February 2002		
Comments:	N/A		

**PAID**

A)	100% Paid	\$1,000,000.00 (loss)	Agency Line	20.0000%	\$200,000.00
	100% Paid	\$6,119.00 (fees)*	Agency Line	20.0000%	\$1,233.70
B)	100% Paid	\$3,000,000.00 (loss)	Agency Line	20.0000%	\$600,000.00
C)	100% Paid	\$1,343,797.00 (loss)	Agency Line	8.0000%	\$109,103.76
D)	100% Paid	\$4,067,265.00 (loss)	Agency Line	20.0000%	\$817,441.03
					<u>\$1,737,268.51</u>
Groups 1-3 & 6 Accident Participation					\$1,132,877.15
Loss Retention					\$300,000.00
					<u>\$832,877.15</u>
Loss Previously Requested					\$270,966.17
Now Due From Reinsurers					<u>\$561,910.98</u>
Balance To Total Loss					\$429,071.83

\* Fees - Representative fees not paid by the KWELM Companies

# KMS Insurance Management Limited

MIN 76135 Groups 1-3 & 6 Account Participation  
First Excess Casualty Treaty

100% Due from Reinsurers :                      \$429,031.83

Kingscraft Insurance Company	\$0.00
Wallbrook Insurance Company	\$121,394.78
El Paso Insurance Company	\$0.00
Line Street Insurance Company	\$0.00
Mutual Reinsurance Company	\$118,395.39
Bermuda Fire & Marine Insurance Company	\$15,644.49
Bryanston Insurance Company	\$0.00
Southern American Insurance Company	\$0.00
<b>KWELMBB &amp; SAIC - Sub Total</b>	<b>\$255,334.66</b>

C.E.A.I.	\$0.00
Ludgate Insurance Company	\$0.00
Argonaut Insurance Company	\$0.00
London & Edinburgh Insurance Company	\$43,527.80
St Katherine & St Paul Insurance Company	\$7,853.73
Winterthur Swiss Insurance Company	\$78,519.38
<b>KMS Insurance Services - Sub Total</b>	<b>\$130,280.91</b>

Anglo American Insurance Company	\$0.00
Bishopsgate Insurance Company	\$0.00
City Insurance Company	\$43,496.26
Delta Lloyd Insurance Company	\$0.00
Fidelidade Grupa Seguradora E.P.	\$0.00
National Casualty Company	\$0.00
National Casualty Company of America	\$0.00
Yasudo Insurance Company	\$0.00
<b>Other Stamp Companies - Sub Total</b>	<b>\$43,496.26</b>

<b>Total</b>	<b>\$429,031.83</b>
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Lloyds Chambers  
1 Portoken Street  
London E1 8DF

Tel : 0207 767 2700  
Fax : 0207 767 2800  
Extension : 1111  
VAT Regd. No. 839 5995 55

A10 8832

*MS!*

CLAIM SETTLEMENT STATEMENT

CONTACT: NICOLA DURANT

HOME INSURANCE COMPANY *(1990)*  
~~C/O ACE INS SA NV (EX STONE)~~  
KENT HSE, 8TH FLOOR, LOHER STONE ST  
MAIDSTONE  
KENT ME15 6LT

YOUR REFERENCE : 78623503832  
POLICY NUMBER : 6C7878020-04  
CLAIM FILE NUMBER : 6620952  
TRANSACTION NUMBER: 6E7E20628

REASSURED : WALBROOK INS CO LTD *Comp 7*  
PERIOD : LOD 12 MOS AT 1/4/78  
INTEREST : HS WEAVERS EX MINET 3978020 - WALBROOK  
SUM REINSURED : CAD400,000 XS CAD100,000  
GBP142,857 XS GBP35,714  
USD400,000 XS USD100,000  
DETAILS OF LOSS : ASARCO  
AGGREGATE ASBESTOS LOSSES  
15/03/79 - 14/03/80  
HS WEAVERS EX MINET  
PREV 3978020  
6C7878020  
MLN 79153

TYPE OF ENTRY : CLAIM  
DATE LAST ADVISED : FIRST ADVICE  
HIGHEST ESTIMATE : USD34,193 CLM  
LAST OUTSTANDING : NIL  
PREVIOUSLY SETTLED : NIL  
OUTSTANDING : NIL  
CLIENT GROSS : USD34,192.93CLM  
YOUR SIGNED LINE : 4.4300000% OF 100%  
YOUR PROPORTION : USD 1,583.13CLM  
YOUR PROPORTION OF O/S : NIL

*See only WP  
Comments on 18th March 2006  
Copy to Mr. Kesteven (copy to  
2.5) re transfer of Walbrook  
Account per the Home Office  
liquidation 15/10/06*

PLEASE MAKE THE ABOVE ENTRY IN YOUR RECORDS.  
WE CONFIRM THAT YOUR ACCOUNT WILL BE DEBITED ACCORDINGLY.

DATE: 1ST DECEMBER 2006

For all references please quote transaction number.

Registered Office: Lloyds Chambers, 1 Portoken Street, London E1 8DF. Registered in London 4054402

40220

ACE INA SERVICES UK LIMITED  
 KENT HOUSE  
 ROMNEY PLACE  
 WALDSTONE  
 KENT ME15 6LT

Risk Reference : 233542 6A  
 Transaction Ref: CIM 0049  
 Claim Number : 120133  
 Your Reference : 76623503391  
 Account Code : 4005ZIN  
 Contact : THall  
 Extension No : 6615

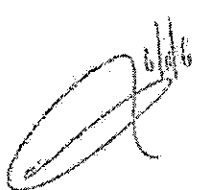
31st October 2006

**CLAIM SETTLEMENT REQUEST**

We have received settlement details in respect of:

Reinsured MUTUAL REINSURANCE CO. LTD (EX-HSW)  
 Period LOD 12 MINS AT MIDNIGHT 01/04/1976  
 Type CASUALTY EXCESS OF LOSS  
 Limits GBP13,393 (USD37,500) XS VARIOUS AS PER SLIP  
 Loss Name MINNESOTA MINING  
 ASBESTOS RELATED LOSSES  
 Date of Loss 1st April 1976  
 Location USA

	USD
Settled RCU	1,122,877.15
Group Excess	1,062,500.00
	-----
	70,377.15
Clients Share	10,339.72
Prev. Settled	0.00
	-----
Collection Due	10,339.72
	-----
	T/L TO LAYER
	-----
Your Share	6,893.49
66.67%	

*As per comments*  
*TH*  


Special Draft Required: YES/NO

We propose to debit you in account with your share of this settlement, unless we hear from you to the contrary.



**ReSolutions International Limited**

An appointed representative of M&S Ltd, which is authorized and regulated by the Financial Services Authority  
 Registered office: 1 Tower Place West, Tower Place, London EC3R 8BU  
 Registered in England no 1192219

ACE INA SERVICES UK LIMITED  
 KENT HOUSE  
 ROMNEY PLACE  
 MAIDSTONE  
 KENT ME15 5LT

Risk Reference : RZA242 6A  
 Transaction Ref: CLM 0339  
 Claim Number : 119290  
 Your Reference : 76/62/350/2454  
 Account Code : 4005ZEN  
 Contact : TMail  
 Extension No : 6515

30th August 2006

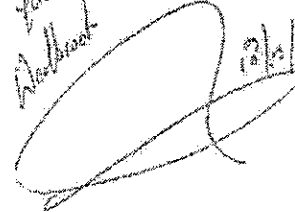
CLAIM SETTLEMENT REQUEST

We have received settlement details in respect of:

Reinsured: MUTUAL REINSURANCE COMPANY (OR ESW) *D. Owen*  
 Period: LOD 12 MINS AT MIDNIGHT 30/12/1975  
 Type: CASUALTY EXCESS OF LOSS  
 Limits: GBP250,000 (USD700,000) XS VARIOUS AS PER SLIP  
 Loss Name: OWENS CORNING  
 AGGREGATE ASBESTOS LOSSES  
 Date of Loss: 22nd October 1976  
 Location: USA

	USD
Settled FGD	884,528.75
Group Excess	300,000.00
Client's Share	584,528.75
Prov. Paid	160,800.57
	0.00
Collection Due	160,800.57
Your Share	8,540.03
5.000000%	

*See only subject to full payment of 12/10/06*  
*Ref: Without cover to*



Special Draft Required: YES/NO

We propose to debit you in account with your share of this settlement, unless we hear from you to the contrary.



ReSolutions International Limited

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 Registered office: 1 Tower Place, Tower Place, London EC3N 2PJ  
 Registered in England no 1196219

ACE INA SERVICES UK LIMITED  
 KENT HOUSE  
 HORNBY PLACE  
 MAIDSTONE  
 KENT ME15 8LT

Risk Reference : R2B853 GA  
 Transaction Ref: CLM 0443  
 Claim Number : 119263  
 Your Reference : 75623503454  
 Account Code : 4005EIN  
 Contact : TR11  
 Extension No : 6515

29th August 2006

### CLAIM SETTLEMENT REQUEST

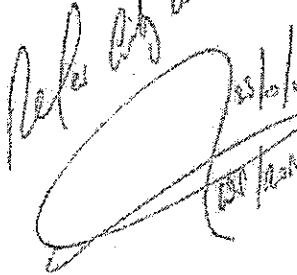
We have received settlement details in respect of:

Reinsured MUTUAL REINSURANCE (EX NSW)  
 Period LON 31 MTHS AT 01/04/1975  
 Type CASUALTY EXCESS OF LOSS  
 Limits GBP250,000 (USD700,000) XS VARIOUS AS PER SLIP  
 Loss Name OWENS CORNING  
 AGGREGATE ASBESTOS LOSSES  
 Date of Loss 22nd October 1975  
 Location USA

	USD
Settled GCU	884,582.75
Group Excess	300,000.00
	-----
Clients Share	584,582.75
Prev. Settled	150,800.57
	0.00
	-----
Collection Due	150,800.57
	-----
Your Share	
5.00%	8,040.03

Special Draft Required: YES/NO

We propose to debit you in account with your share of this settlement,  
 unless we hear from you to the contrary.

*Refer to [unclear]*  
  
 [unclear]



ReSolutions International Limited

An approved representative of Allianz Ltd, which is authorised and regulated by the Financial Services Authority  
 Registered office: 1 Tower Place West, Tower Place, London EC3N 2SE  
 Registered in England no: 1192633