

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**

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

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of the Home Insurance Company ("Home"), hereby submits this brief sur-reply to address points raised in the reply of Century Indemnity Company ("CIC") to the Liquidator's objection to CIC's motion for stay of arbitration of the KWELM claims against Home and the Liquidator cross-motion to compel arbitration.

1. CIC's reply makes clear that CIC and the Liquidator disagree over the substance of the Court's holding in the July 27 Order. CIC contends that the July 27 Order held that the Scheme Adjudicator's valuation of the claims cannot be a claim in the estate, so that it must be disregarded in all future proceedings. See CIC Reply ¶¶ 3, 4, 11. The Court did not so hold. It merely "decline[d] to approve" the Liquidator's report and left the KWELM claims to the process under the Claims Protocol. July 27 Order at 5. The Court did not determine the merits of the Liquidator's presentation of the claim because it (a) summarized CIC's position as asserting "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," *id.* at 3-4, and (b) plainly contemplated that English law would be brought to bear on the question under the Claims Protocol, which "include[s] protocols for disputes involving contracts implicating English law." *Id.* at 5.

2. This is precisely what the Liquidator now seeks to do: to have an English Queen's Counsel or retired judge determine whether, as a matter of English law, Home's reinsurance contracts cover the KWELM claims as presented in the Scheme Adjudicator's decision. CIC had contended that the reinsurance contracts do not cover those amounts, CIC Response ¶¶ 2, 23, 24 (Liquidator's Objection Ex. 4), and that under the Claims Protocol CIC had the right to "challenge the legitimacy of the claims in issue and, where appropriate, invoke the English law dispute procedure to resolve any disputes." CIC Response ¶ 16. See *id.* ¶ 18; June 2, 2006 Tr. 10-11, 36 (Liquidator's Objection Ex. 5). Having persuaded the Court that the Scheme Adjudicator's decision should not be given comity because that would deny CIC the right to raise this English law question, CIC should not now be permitted to avoid determination of the question on the ground that the Court already rejected the claim. The Liquidator presented the decision to CIC with a request that they make a recommendation in the August 10, 2006 letter (Liquidator's Objection Ex. 2), CIC refused to make a recommendation, and the Liquidator now seeks to have it determined by an arbitrator as provided in the Claims Protocol. CIC's arguments under the Claims Protocol ignore the fact that the Protocol applies to claims based on loss reserves where "otherwise . . . required by law" (Claims Protocol – Liquidator's Objection Ex. 1 – at 2). In any event, by referring to the Claims Protocol the Court did not intend to permit CIC to dodge the substantive legal question CIC itself had raised.

3. CIC's unsubstantiated assertion that "since issuance of the July 27 Order, the Liquidator has presented additional KWELM claims to CIC," CIC Reply ¶¶ 4, 9, is incorrect. As set forth in the Affidavit of Jonathan Rosen ("Rosen Aff.") submitted herewith, the only KWELM claim presented to CIC by the Liquidator is the Scheme Adjudicator's decision enclosed with the Liquidator's August 10, 2006 letter (Liquidator's Objection Ex. 2). Rosen Aff.

¶ 6. CIC appears to be referring to so-called “pipeline” claims (see Rosen Aff. ¶ 2) presented to CIC’s affiliate AISUK by London market insurance brokers, which may have been issued long before the Scheme Adjudicator’s February 7, 2006 decision. According to the “CP 13” forms provided by CIC to the Liquidator from January 1 through April 10, 2006, the KWELM claims submitted by brokers during the first part of 2006 all dated from 2005 or earlier, including as long ago as 1997. Rosen Aff. ¶¶ 3-4. The Liquidator does not know when the claims now referred to by CIC originated because CIC has not provided the CP 13 forms to the Liquidator. However, in light of the history of lagged pipeline claims and the Scheme Administrator’s confirmation that they will not further participate in the Home liquidation set forth in the April 12, 2006 letter (Liquidator’s Objection Ex. 6), it can reasonably be inferred that any claims since the July 27 Order are pipeline claims. See Rosen Aff. ¶ 5.

4. This tail of broker claims obscures the underlying reason for the parties’ disputes over the arbitration. Unless the matter is arbitrated, CIC will not have to pay the value of the KWELM claim to Home because the Scheme Administrators will not pursue claims further. See Liquidator’s Objection Ex. 6. This would give CIC, as reinsurer of Home, a windfall because Home has already paid this amount to KWELM through offset under the Scheme. CIC’s complaints about substantiation and the English law Scheme assessment process (CIC Reply ¶¶ 12-13) are of no moment if Home is liable under its English law reinsurance contracts for amounts determined under the Scheme established under English and Bermuda law. If a solvent Home would be liable for those amounts, then so should an insolvent Home – and so should CIC.

WHEREFORE, the Court should deny CIC's motion for stay of arbitration, grant the Liquidator's cross-motion to compel arbitration, order that CIC arbitrate this matter as provided in the Claims Protocol, and grant such other and further relief as it deems appropriate.

REQUEST FOR ORAL ARGUMENT

The Liquidator believes that oral argument in this matter would be of assistance to the Court and accordingly requests to be heard on these motions.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF
INSURANCE OF THE STATE OF NEW HAMPSHIRE,
SOLELY AS LIQUIDATOR OF THE HOME
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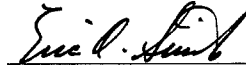


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January 12, 2007

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Sur-Reply Objection to CIC's Motion for Stay of Arbitration of KWELM Companies' Claims Against Home and Reply in Support of Cross-Motion to Compel Arbitration, and the attached Affidavit of Jonathan Rosen, were sent, this 12th day of January, 2007, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith

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