

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 THE LIQUIDATOR'S
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH METEX MFG
CORPORATION AND THE NEW YORK LIQUIDATION BUREAU**

Century Indemnity Company, as successor to Insurance Company of North America, on its own behalf and as successor to Indemnity Insurance Company of North America ("CIC") by its attorneys Orr & Reno, respectfully submits this Response to the Liquidator's Motion for Approval of Settlement Agreement (the "Settlement Agreement") with Metex Mfg. Corporation ("Metex"), the Superintendent of Financial Services of the State of New York as Administrator of the New York Property/Casualty Insurance Security Fund ("Security Fund") and as Ancillary Receiver of Home ("Ancillary Receiver") (collectively referred to as the New York Liquidation Bureau, or "NYLB").

INTRODUCTION

The Liquidator's motion seeks Court approval of a Settlement Agreement which the Liquidator asserts "provides for a comprehensive resolution of a complex situation involving two entities acting for the insolvent Home (the Liquidator and the NYLB), a policyholder that is in bankruptcy (Metex)" and others. Liquidator's Motion for Approval of Settlement Agreement with Metex and New York Liquidation Bureau dated July 11, 2013 ("Liquidator Motion") at 1.

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Metex is the alleged successor of policies that CIC and Home issued to their mutual policyholder, Kentile Floors, Inc. (“Kentile”). CIC has asserted a contribution claim against Home in connection with payments that CIC made on Home’s behalf to defend and pay underlying asbestos claims against Kentile. The Liquidator’s motion asserts that the Settlement Agreement “preserves CIC’s ability to assert” that contribution claim. Liquidator Motion at 8.

CIC’s Kentile contribution claim against the Home is currently being litigated in a Disputed Claim Proceeding before Referee Melinda Gehris. As discussed below, expressly based on the Liquidator’s representation that the Settlement Agreement does not affect CIC’s contribution claim, CIC does not oppose approval of the Liquidator’s Motion. CIC reserves any and all rights with respect to its Kentile contribution claim against Home.

FACTUAL BACKGROUND

Metex is the alleged successor to policies of insurance that Home and ACE issued to their mutual policyholder, Kentile Floors, Inc. (“Kentile”). Specifically, in November 1992, Kentile filed a petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Settlement Agreement at 2. In December 1998, Kentile confirmed a plan of reorganization; with Kentile then changing its name to KF Real Estate Holding Corporation and merging with Metex Corporation, and the surviving entity now known as Metex. *Id.*

Between 2003 and 2010 CIC paid amounts to defend and resolve asbestos claims asserted against Kentile. CIC paid certain of those amounts on behalf of Home, which this Court had placed into Liquidation in June 2003. Home did not make any payments on its own behalf. Beginning in 2006, CIC asserted a contribution and subrogation claim against Home with respect to the defense and indemnity amounts that CIC paid on Home’s behalf in connection with the

Kentile asbestos claims. The amount of CIC's contribution claim against Home is \$5,092,084.60.

In September 2010, the Liquidator partially disallowed CIC's contribution and subrogation claim, and subsequently disallowed the entire claim. Thereafter, CIC and the Liquidator jointly requested, and the Referee agreed, to have this matter deemed a Disputed Claim Proceeding.

After extensive discovery and briefing in the Kentile Disputed Claim Proceeding, but before a hearing on the merits was scheduled to take place on November 13, 2012, Metex filed a petition for a Chapter 11 Bankruptcy with the United States Bankruptcy Court for the Southern District of New York. Settlement Agreement at 6.

In light of Metex's bankruptcy petition, the Referee adjourned the hearing and ordered CIC and the Liquidator to file position statements regarding whether the hearing could go forward. CIC and the Liquidator ultimately filed these position statements in May 2013. In July 2013, Metex moved to intervene in the Kentile Disputed Claim Proceeding. Additional briefing on Metex's motion will take place in August 2013 and oral argument will take place in September 2013.

Thus, to date, no merits hearing has taken place in connection with the Kentile Disputed Claim Proceeding, and no decision has yet been entered as to whether CIC's contribution claim against the Home will ultimately be allowed.

DISCUSSION

The Liquidator entered into the Settlement Agreement with Metex and the NYLB (but without CIC's participation) against the backdrop of the Kentile Disputed Claim Proceeding. As noted, the Kentile Disputed Claim Proceeding has not yet been resolved.

It is CIC's position that nothing in the Liquidator's Settlement Agreement affects, alters or in any way negates CIC's contribution claim against Home in connection with the Kentile policies. This comports with the Liquidator's express representation that the Settlement Agreement will not affect CIC's Kentile contribution claim against Home. Liquidator's Motion at 8.

This also comports with the Settlement Agreement itself. Under that agreement, the NYLB will pay the remaining limits of the policies that Home issued to Kentile, but defines that amount as:

\$10,983,852.62 . . . less (i) all other payments by the Security Fund in respect to Asbestos-Related Claims that are paid by the NYLB prior to the Effective Date . . . and (ii) the final allowed amount of the Century Indemnity Claim, if any, as reflected in a final court order. For avoidance of doubt, the Remaining Policy Limit shall never exceed the aggregate limit of \$25 million less (i) all payments in respect to Asbestos-Related Claims made by the Security Fund prior to the Effective Date and (ii) the final allowed amount of the Century Indemnity Claim.

Settlement Agreement at ¶¶ III.A.1.b.; II.RR.

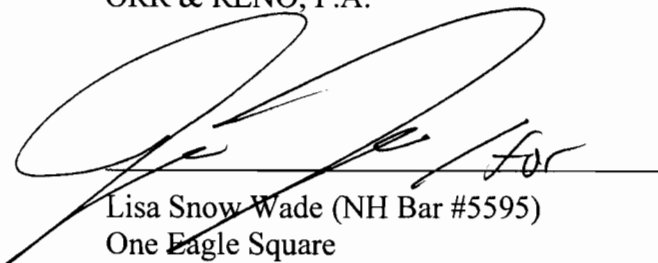
Based on the fact that the Settlement Agreement makes the final payment amount to Metex subject to the outcome of CIC's Kentile contribution claim; the Liquidator's express representation that Settlement Agreement will not affect CIC's Kentile contribution claim; and CIC's understanding and position that nothing in the Settlement Agreement affects CIC's Kentile contribution claim, CIC does not object to the Settlement Agreement. However, CIC reserves any and all of its rights in connection with this matter, including any rights against all parties, including, but not limited to, actions taken by Liquidator, Metex and/or the NYLB which are contrary to the Liquidator's representation that the Settlement Agreement does not affect CIC's Kentile contribution claim. Nothing in this statement shall be deemed an admission by CIC, or a waiver by CIC of any rights or remedies including, without limitation, claims or defenses.

Respectfully submitted,

CENTURY INDEMNITY COMPANY

By its attorneys

ORR & RENO, P.A.

A handwritten signature in black ink, appearing to read "Lisa Snow Wade", is written over a horizontal line. The signature is stylized and includes the word "for" at the end.

Lisa Snow Wade (NH Bar #5595)

One Eagle Square

PO Box 3550

Concord, NH 03302-3550

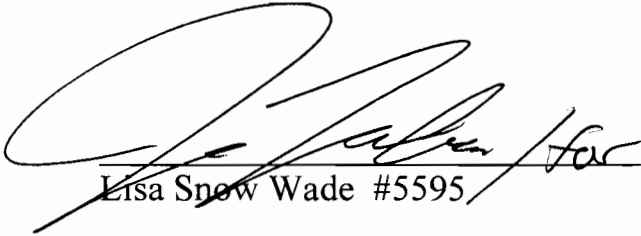
Telephone No. (603) 224-3550

Facsimile (603) 224-2318

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document has been served on counsel of record via First Class mail on July 22, 2013,



Lisa Snow Wade #5595

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SERVICE LIST

J. Christopher Marshall,
Esq.
New Hampshire
Department of Justice
Attorney General's Office
33 Capitol Street
Concord, NH 03301-6397

J. David Leslie, Esq.
Eric. A. Smith, Esq.
Rackemann, Sawyer &
Brewster
160 Federal Street
Boston, MA 02111

Gary S. Lee, Esq.
Kathleen E. Schaaf, Esq.
James J. DeChristofaro,
Esq.
Morrison & Foerster
1290 Avenue of the
Americas
New York, NY 10104-
0050

George T. Campbell, III,
Esq.
Robert A. Stein, Esq.
Robert A. Stein &
Associates, PLLC
One Barberry Lane
P.O. Box 2159
Concord, NH 03302-2159

David M. Spector, Esq.
Dennis G. LaGory, Esq.
Schiff Hardin, LLP
6600 Sears Tower
Chicago, Illinois 60606

Michael Cohen, Esq.
Cohen & Buckley, LLP
1301 York Road
Baltimore, Maryland 21093

David H. Simmons, Esq.
Mary Ann Etzler, Esq.
De Beaubien, Knight,
Simmons,
Mantzaris & Neal, LLP
332 North Magnolia
Avenue
P.O. Box 87
Orlando, Florida 32801

Martin P. Honigberg, Esq.
Sulloway & Hollis,
P.L.L.C.
9 Capitol Street
P.O. Box 1256
Concord, NH 03302-1256

Richard Mancino, Esq.
Willkie Farr & Gallagher,
LLP
787 Seventh Avenue
New York, NY 10019

Joseph G. Davis, Esq.
Willkie Farr & Gallagher,
LLP
1875 K Street, N.W.
Washington, DC 20006

Albert P. Bedecarre, Esq.
Quinn Emanuel Urguhart
Oliver & Hedges, LLP
50 California Street, 22nd
Floor
San Francisco, California
94111

Jeffrey W. Moss, Esq.
Morgan Lewis & Bockius,
LLP
115 Franklin Street
16th Floor
Boston, MA 02110

Gerald J. Petros, Esq.
Hinckley, Allen & Snyder,
LLP
50 Kennedy Plaza, Suite
1500
Providence, RI 02903

Christopher H. M. Carter,
Esq.
Hinckley, Allen & Snyder,
LLP
11 South Main Street
Suite 400
Concord, NH 03301-4810

Robert M. Horkoviceh, Esq.
Robert Y Chung, Esq.
Anderson Kill & Olick,
P.C.
1251 Avenue of the
Americas
New York, NY 10020

Andrew B. Livernois, Esq.
Ransmeier & Spellman,
P.C.
One Capitol Street
P.O. Box 600
Concord, NH 03302-0600

John A. Hubbard, Esq.
615 7th Avenue South
Great Falls, Montana
59404

Adebowale O. Osijo, Esq.
2015 East Pontiac Way,
Suite 203
Fresno, California 93726

Paul Kalish, Esq.
Crowell Moring
1001 Pennsylvania Avenue,
NW
Washington, DC 20004-
2500

Ellen Farrell, Esq.
Crowell Moring
1001 Pennsylvania Avenue,
NW
Washington, DC 20004-
2500

Kyle A. Forsyth, Esq.
Commercial Litigation
Branch
Civil Division
U.S. Dept. of Justice –
PO Box 875
Washington, DC 20044-
0875

Harry L. Bowles
306 Big Hollow Lane
Houston, Texas 77402

Kristine E. Nelson, Esq.
Crowell & Moring, LLP
1001 Pennsylvania Avenue,
NW
Washington, DC 20004-
2595

Gregory T. LoCasale, Esq.
White and Williams, LLP
One Liberty Place
Suite 1800
Philadelphia, PA 19103-
7395

W. Daniel Deane, Esq.
Nixon, Peabody LLP
900 Elm Street, 14th Floor
Manchester, NH 03101-
2031
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