

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: 2005-HICIL-13
Proof of Claim Number: INTL 277844
Claimant Name: Century Indemnity Company

CENTURY INDEMNITY COMPANY'S
REQUEST FOR EVIDENTIARY HEARING REGARDING CLAIM
RELATING TO THIRD PARTY REINSURANCE

Century Indemnity Company ("CIC"), by its attorneys Lovells, hereby submits the following request for evidentiary hearing, pursuant to Section 11 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation ("Home"), dated January 19, 2005 (the "Claims Procedures"), in connection with the dispute (the "Claim Dispute") concerning proof of claim number INTL 277844 (the "Claim"), and respectfully states as follows.¹

I.
SUMMARY OF RELIEF REQUESTED

1. An evidentiary hearing is necessary if the Court is to efficiently adjudicate Home's denial of the Claim. As set forth in more detail in CIC's Objection to Denial of Claim Relating to Third Party Reinsurance (the "Objection"), Home has raised defenses to the Claim that are not supported by the available documents. In light of the need for testimony and further information on Home's defenses, CIC submits that an evidentiary hearing provides the Referee with the most helpful, economical means to resolve the Claim Dispute.

¹ CIC reserves all rights to change or supplement the evidence discussed herein in all respects, including witness identity and coverage and scope of anticipated testimony.

II. BRIEF BACKGROUND

2. Under the Insurance and Reinsurance Assumption Agreement, CIC reinsures Home for its liabilities arising out of Home's participation in the AFIA Pool and its reinsurance of certain insurers' participation in the Ruddy Pool. Third-party reinsurers also provide reinsurance for the AFIA Pool and the Ruddy Pool that responds before CIC's obligations under the Insurance and Reinsurance Assumption Agreement. It is well settled that such "inuring reinsurance" inures to the benefit of the ultimate reinsurer, which is CIC in this instance. Accordingly, CIC is entitled to a set off in the amount of any inuring third party reinsurance recovered by Home.²

III. CURRENT PROCEDURAL POSTURE

3. CIC timely filed the Claim. In response, Jonathan Rosen, as Chief Operating Officer of Home and on behalf of Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, Liquidator of Home (the "Liquidator"), ultimately sent a Notice of Determination to CIC, dated August 23, 2005 (the "NOD"), in which he rejected the Claim and valued it at \$0.

4. In its Request for Review, dated September 20, 2005 (the "RFR"), CIC rejected Mr. Rosen's position as stated in the NOD. Thereafter, on September 29, 2005, Mr. Rosen issued his Notice of Redetermination (the "NOR"). Like the NOD, the NOR rejected the Claim and valued it at \$0. In the NOR, Mr. Rosen claimed that Home bears no "credit risk" in relation to the third party reinsurance, emphasizing CIC's alleged obligation to indemnify Home in relation

² A more detailed description of the Claim is contained in the Objection, which is incorporated herein in its entirety.

to the third-party reinsurance in question. CIC timely filed the Objection and disputes the NOR in its entirety.

5. On November 28, 2005, the Liquidation Clerk filed its Notice of Disputed Claim in respect of the Claim. On December 23, 2005, the Liquidator mailed the Case File (as defined in the Claims Procedures) to counsel for CIC.

6. Concurrently with this request for evidentiary hearing, CIC is filing its mandatory disclosures in respect of this Claim Dispute.

IV.
BASIS FOR RELIEF REQUESTED

7. Consideration of testimony here would be much more efficient and helpful than exclusive reliance on documents, because the disagreements between the parties are not readily resolved through the latter. Home, for example, has supported its denial by claiming that Home is not a guarantor under the Insurance and Reinsurance Assumption Agreement. CIC will need testimony on Home's theory because it is not set forth in any detail in any documents. CIC also submits that the Referee should judge the credibility of Home's witnesses in putting forth the "guarantor" defense.

8. Second, in the NOR, Home refers not only to the Insurance and Reinsurance Assumption Agreement but also an Assumption Agreement, and claims that under this Assumption Agreement, CIC was obligated to "assume, hold harmless and indemnify Home against liabilities," which, Home claims, include the third-party reinsurance in question. CIC disputes that such an obligation on the part of CIC exists under any agreement. In order to clarify what the Assumption Agreement is and how it is pertinent here, testimony would be much more helpful than facial review of this contract.

9. Third, unlike documentary evidence and affidavits, hearing testimony permits cross-examination, and thus is indispensable to the narrowing of the issues and consideration of the credibility of the witness.

10. CIC intends to call the CIC employees and/or agents who are most knowledgeable concerning Home's obligation to credit CIC for the inuring third party reinsurance. CIC anticipates that such testimony will at least shed light on the following relevant subjects:

- a. Industry practices concerning crediting of inuring reinsurance;
- b. Home's obligation to CIC with respect to third party reinsurance under the Insurance and Reinsurance Assumption Agreement;
- c. The Assumption Agreement referenced by Home and whether it obligates CIC to indemnify Home, as Home claims; and
- d. Home's conduct and representations in connection with the third party reinsurance.

11. CIC also intends to call Mr. Rosen to testify about, among other things, the facts and evaluation process at Home that led to the denial of the Claim. It appears that production of documents will not provide sufficient information on this issue.

V. CONCLUSION

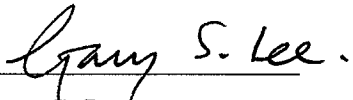
12. For the reasons stated above, CIC respectfully submits that an evidentiary hearing will greatly assist the Referee and the parties in connection with this Claim Dispute and should therefore be granted.³

³ Prior to filing this request, CIC's counsel contacted the Liquidator's counsel by e-mail to see if they would support the relief requested herein. In response to that e-mail, the Liquidator's counsel suggested that CIC's Request for Evidentiary Hearing should be considered at the scheduling conference.

WHEREFORE, CIC respectfully requests that an evidentiary hearing be granted in this Claim Dispute pursuant to Section 11 of the Claims Procedures.

Dated: January 23, 2006

Respectfully submitted,



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