

Farrell, Ellen

From: Smith, Eric A. EAS [esmith@rackemann.com]
Sent: Thursday, October 27, 2011 10:49 AM
To: Farrell, Ellen
Cc: Kalish, Paul; Christopher Marshall [NH DOJ]
Subject: RE: 2005-HICIL-14: Kentile

Ellen,

When we discussed CIC's initial request for an indefinite stay, the Liquidator responded that such assent would be conditioned on CIC's withdrawal of its setoff for the Kentile contribution claim. If CIC wanted to stay this disputed claim proceeding, which has proceeded through written and documentary discovery, in order to pursue recovery from the NY Liquidation Bureau in another forum, it should be willing to stop asserting the claim as a setoff. Otherwise CIC is receiving the economic benefit of the claim (by setoff) while delaying its resolution. There is precedent for avoiding this unfair result: CIC withdrew its setoff of the Treaty 6 claim after it was determined so that the claim could continue unresolved for over a year.

CIC now requests the Liquidator's assent to a 90-day stay. We are still troubled by this. CIC is retaining the economic benefit of its claim by withholding about \$5.5 million from the Liquidator based on setoff, while delaying resolution of this matter to embark on another avenue of potential recovery. Moreover, the 90 days appears quite optimistic. Unless CIC's proposed submission to the Liquidation Bureau and the Liquidation Bureau's response are both immediate, the likelihood is that the matter will drag on past 90 days and that CIC will seek to extend the stay. It is not clear from your email and the attached materials how the Liquidation Bureau will react to CIC's request.

In the circumstances, the Liquidator proposes to address the economic effect of the requested 90 day stay in one of two ways. First, CIC could withdraw its setoff. That would remove the harm to Home's creditors. CIC would have chosen to pursue its claim against the Liquidation Bureau. Second, in the alternative, CIC could agree to pay interest at the New Hampshire statutory rate on any amount ultimately determined to have been improperly withheld (i.e., the amount presently setoff less any amount ultimately paid by the Liquidation Bureau) from the time setoff was asserted. CIC has to date opposed any obligation to pay interest on amounts improperly withheld, so it has no incentive to resolve these proceedings. The Liquidator would assent to the 90-day stay if CIC will address the situation by agreeing to either of these alternatives.

Regards,

Eric

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From: Farrell, Ellen [mailto:EFarrell@crowell.com]
Sent: Wednesday, October 26, 2011 2:31 PM
To: Smith, Eric A. EAS
Cc: Kalish, Paul
Subject: 2005-HICIL-14: Kentile
Importance: High

Eric,

As we discussed this morning, CIC would like to confirm whether the Liquidator will agree to a ninety day stay of the Kentile dispute which is proceeding in the Home Liquidation, based on events taking place in connection with the New York coverage litigation involving Kentile. Paul Kalish and I described those events when we first requested the Liquidator's agreement to a stay, on October 14. On October 18, you advised that the Liquidator would only agree to a stay if CIC would withdraw its entire Kentile claim in the Home Liquidation. If the Liquidator now affirms that it will agree to a ninety day stay only under those same circumstances, CIC will ask Referee Gehris to order this stay (on an expedited basis, in light of upcoming depositions).

During our discussion this morning, you asked for documentation that the NYLB had agreed to reimburse CIC and other carriers for past indemnity payments made on Home's behalf. I responded that, to my understanding, the NYLB orally made this representation during a court hearing in August. I also told you that I would seek specific information regarding that hearing, which I am now providing:

On July 7, 2011, Metex and Liberty Mutual jointly moved for an Order to Show Cause directing the NYLB to appear before Justice Ramos and explain why the NYLB had not made any payments on behalf of Home; directing the NYLB to establish a procedure for submitting claims to the Ancillary Receivership court for timely payment; and directing the NYLB in accordance with that procedure "to submit all prior and existing Kentile Asbestos Claims in a timely manner for approval by that Court and for payment by the NYLB by a date certain." These OSC filings are attached.

The NYLB appeared before Justice Ramos on July 18, 2011, at which time Justice Ramos directed the NYLB to develop a procedure for paying past and prospective claims, and to reappear in his courtroom on August 15. At that second hearing, counsel for Liberty Mutual counsel reported not only that the NYLB was processing 2 sets of claims submitted by Liberty Mutual, but the NYLB had also agreed to reimburse Home's share of approximately 900 old claims and was discussing a procedure for getting those claims paid. Counsel for the NYLB affirmed that Liberty Mutual's representations were correct.

Justice Ramos scheduled another hearing on the matter for October 12, to make sure that progress continues with respect to the NYLB's reimbursement of claim payments made on Home's behalf. The October 12 conference has been rescheduled for November 29. In the meantime, Liberty Mutual is working with the carriers on providing information that the NYLB has requested with respect to past New York claims (*i.e.*, claims for which carriers including CIC made payments on Home's behalf).

Eric, I trust that this answers your questions. I look forward to the Liquidator's response.

Regards,

Ellen Farrell

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