

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 INTERNATIONAL REINSURANCE COMPANY'S
OBJECTION TO DENIAL OF
CLAIM RELATING TO REINSURANCE BY HOME

Century International Reinsurance Company Ltd. ("CIRC"), by its attorneys, Orr & Reno and Lovells, pursuant to RSA 402-C:41 and the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation, dated January 19, 2005 (the "Claims Procedures"), respectfully submits this Objection to the Notice of Redetermination (the "NOR," attached hereto as Exhibit A) dated November 9, 2005 concerning CIRC Proof of Claim number RAHM 700632 (the "Proof of Claim"), and respectfully represents as follows.¹

Background

This Proof of Claim was filed to preserve the right of CIRC to claim against Home under a Quota Share Reinsurance Treaty Agreement (the "Quota Share") attached hereto as Exhibit B. Specifically, CIRC has filed this Proof of Claim in order to protect its set off rights if Home seeks payment from CIRC.

The Quota Share was executed on January 31, 1984 as a condition of the sale of AFIA to CIGNA Corporation ("CIGNA") and its designated subsidiaries. Under the Quota Share, Home and the other AFIA sellers agreed to reinsure "Indemnitees," defined in the Quota

¹ This Objection is intended to set forth an overview of this claim and is not intended to be a complete expression of CIRC's position. Accordingly, CIRC reserves the right to amend, supplement or modify this claim, the arguments and positions contained herein, and to make additional arguments as are necessary or appropriate.

Share to include each "AFIA Entity (except Seller Branches)" and each purchaser of AFIA, in relation to "London Losses" and "non-recoverable reinsurance." (See Exhibit B at 2-4.) "London Losses" are losses suffered by Home's London treaty reinsurance department that were, in turn, reinsured by other members of AFIA. (*Id.* at 3.) "Non-recoverable reinsurance," on the other hand, broadly refers to third party reinsurance of paid London Losses which became at least 180 days overdue or which Home could not collect due to the third party reinsurer's insolvency. (*Id.* at 3-4.)

CIRC is an "Indemnitee" under the terms of the Quota Share because its predecessor, BAFCO Reinsurance Company Ltd. of Bermuda ("BAFCO") was an "AFIA Entity." Accordingly, Home is liable to CIRC for any payments made by CIRC in relation to "London Losses" and "non-recoverable reinsurance," and CIRC may set off the amount of such liabilities as they become due and owing.

Basis for Objection

In the NOR, Home apparently concedes that, as long as CIRC is an "Indemnitee" as defined under the Quota Share, it may claim a set off for covered payments made by CIRC. Home's sole stated argument for disallowing this claim is that CIRC is not an "AFIA Entity" (and thus not an "Indemnitee") under the Quota Share and the related agreement by which CIGNA purchased AFIA, Purchase Agreement No. 1 (the "Purchase Agreement"). (A copy of the Purchase Agreement is attached hereto as Exhibit C.)

Home's argument ignores the plain terms of the Quota Share and the Purchase Agreement. As noted above, the Quota Share defines the "Indemnitees" to include any "AFIA Entity" that is not a "Seller Branch," and the Purchase Agreement, in turn, defines "AFIA Entity"

to include AFIA, AFIA Finance Corporation ("AFIA Finance"), and "all companies as to which AFIA and [AFIA Finance] together own directly or indirectly at least a majority of the outstanding stock or otherwise have actual control." (See Exhibit C at 19.)

BAFCO, CIRC's predecessor, was ultimately 100% owned by AFIA Finance, was not a "Seller Branch," and thus is an "Indemnitee." Despite Home's argument to the contrary, the Quota Share and Purchase Agreement do not require BAFCO to have been owned by both AFIA and AFIA Finance; the term "together" is used in the Purchase Agreement to require that the holdings of AFIA and AFIA Finance, *when taken together*, aggregate to a controlling percentage of BAFCO. (See *id.*) Otherwise, a wholly owned subsidiary of AFIA would not be an "AFIA Entity." The unambiguous language of the Purchase Agreement precludes such an absurd result.

The express terms of the Quota Share and Purchase Agreement, moreover, fly in the face of Home's restrictive interpretation. First, "London Outward Reinsurance" is defined in the Quota Share with reference to "BAFCO or any other Indemnitee which is an AFIA Entity or AFIA Affiliate." (See Exhibit B at 5.) Home cannot seriously claim that CIRC is not an "Indemnitee" when the Quota Share singles out CIRC's predecessor as exactly that.²

Second, Exhibit D to the Purchase Agreement contains a list of the "AFIA Entities," as defined in the Purchase Agreement itself. (A copy of Exhibit D to the Purchase Agreement is attached hereto as Exhibit D.) Of the 41 "AFIA Entities," only 4 appear to be

² Likewise, the Court should reject Home's contention that a statement made by Michael Durkin, an employee of ACE INA Services U.K. Ltd., at his July 1, 2005 deposition constitutes an "admission against interest." Although Mr. Durkin stated that "CIRC is not a beneficiary of" the Quota Share, that has no bearing on whether CIRC is an "Indemnitee." (Deposition of Michael Durkin, 106:7-8.) The term "beneficiary" does not mean the same thing as "indemnitee," and even if it did, the term "Indemnitee" is specifically defined in the Quota Share. If Mr. Durkin had intended to state that CIRC was not an "Indemnitee," he would have made specific reference to this defined term. Moreover, as detailed above, the term "Indemnitee" is defined broadly, and thus may include an entity, such as CIRC, that might not be considered a "beneficiary" under the Quota Share. In any event, Mr. Durkin's statement cannot constitute a waiver by CIC of its right to assert the Claim.

owned by both AFIA and AFIA Finance. Thus, under Home's argument, only 4 of 41 AFIA Entities would be AFIA Entities. The Court should reject such an absurdity.

Conclusion

For the reasons stated above, the Proof of Claim should be allowed and CIRC should be permitted to assert set off in relation to the Quota Share.

In accordance with Section 14 of the Claims Procedures, CIRC will provide "mandatory disclosures" within 30 days of the mailing of the Case File. Once this Objection is before the Referee, CIRC will request an evidentiary hearing under Section 11 of the Claims Procedures.³

³ Moreover, a motion to disqualify Jonathan Rosen from acting as counsel for Home may be necessary if Mr. Rosen appears at future proceedings in a legal capacity. Mr. Rosen cannot be an advocate here, having signed the NOR and having otherwise been actively involved in this claim.

Respectfully submitted,



Dated: January 6, 2006

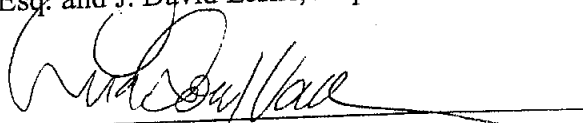
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date the foregoing document was forwarded via email and first-class mail to Jonathan Rosen, Esq. and J. David Leslie, Esq.



Lisa Snow Wade