

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

**LIQUIDATOR'S OBJECTION TO CENTURY'S
REQUEST FOR EVIDENTIARY HEARING**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of the Home Insurance Company ("Home"), hereby objects to the request for evidentiary hearing filed by Century Indemnity Company ("Century") in this disputed claim proceeding. For the reasons set forth below, there is no need for an evidentiary hearing, and it would be most efficient for this matter to be addressed through briefing and oral argument as provided in Section 15 of the Restated and Revised Order Establishing Procedures Regarding Claims filed With The Home Insurance Company in Liquidation ("Claims Procedures Order").

1. This proceeding concerns Century's claims relating to third party reinsurance. Century reinsures all of Home's AFIA-related obligations under the Insurance and Reinsurance Assumption Agreement ("Assumption Agreement"). In the Assumption Agreement, Home assigned to INA (now Century) other, pre-existing reinsurance concerning AFIA. Since that time, INA and its successor Century, through their agents including ACE INA Services U.K. Limited ("AISUK"), handled those third party reinsurances and collected them for their own benefit.

2. By the proof of claim AISUK (for Century) asserted claims for third party reinsurance. The Liquidator denied the claim and denied reconsideration, and the matter is before the Referee on Century's Objection.

3. The most efficient method of resolving this disputed claim proceeding is through a non-evidentiary hearing as provided by Section 15 of the Claims Procedures Order. That section provides for the claimant and then the Liquidator to make written submissions that are to include (a) "a statement of the contested issues of fact and law to be determined" by the Referee, (b) "a list of exhibits relied upon, including affidavits submitted," and (c) "a legal brief." Claims Procedures Order § 15(b). This process thus provides for a statement of the legal and factual grounds for Century's claim, a prerequisite for orderly proceedings. Without clarity as to the basis for Century's claim, further proceedings will lack focus and be unnecessarily prolonged and expensive. The Section 15 process permits the presentation of factual background by affidavit, and it is particularly appropriate where – as here – the dispute is principally legal in nature.

4. The essential issue in this claim proceeding is whether Century has any claim against Home for the third party reinsurance. Century has been administering and collecting those reinsurances. Home has not sought to recover from third party reinsurers, and the Liquidator would turn over to Century any amounts he somehow received. To date, Century has not articulated any ground for holding Home liable to Century for the reinsurance obligations of third parties, but the issue appears to be a legal one based upon the Assumption Agreement and, potentially, other related agreements concerning CIGNA's 1984 purchase of AFIA.

5. This issue of contract interpretation does not require extensive factual presentation. It involves the Assumption Agreement and possibly related contracts, whose

interpretation is a matter of law for the Referee. The most efficient way to address these issues is for Century to present its legal arguments to the Referee based on a factual presentation by affidavit.

6. Century contends that it will need testimony to understand the Liquidator's position. Motion ¶¶ 7-8. It is most important, however, that Century articulate its own position concerning why Home should be liable for reinsurance assigned to Century. Moreover, both the alleged claim and the Liquidator's position concern interpretation of contracts entered in 1984 (before any of the present liquidation staff was employed by Home), which are questions of law, not factual questions turning on credibility. These issues should be addressed by briefing the application of the contracts, not testimony. Century appears to have spent little time analyzing the contracts, otherwise it would be aware that the "Assumption Agreement" mentioned in the Liquidator's notice of determination is the January 31, 1984 Assumption Agreement entered into as part of the 1984 CIGNA transaction. That Assumption Agreement was included in the Case File along with the Insurance and Reinsurance Assumption Agreement.¹

7. Proceeding through written submissions under Claims Procedures Order § 15 would permit a considered and orderly presentation of the issues. It would presumably provide a clear articulation by Century of the basis for its claim and allow the Liquidator to provide a clear response. Testimony on industry practices, the contracts and Home's alleged conduct from unspecified "CIC employees and/or agents who are most knowledgeable concerning Home's

¹ The "guarantor" defense mentioned by Century (Motion ¶ 7) is a red herring. It is a reference to the Liquidator's position that Home did not guaranty payment to INA/Century by the third party reinsurers. In its Objection, Century disclaims any argument that Home was a guarantor in this proceeding. Objection at 2. Century notes that "to the extent Home can even be considered a 'guarantor' of [Century]" it is under the Quota Share Reinsurance Treaty, and it adds that it "has filed a claim under the Quota Share Treaty, but that is separate from this Proof of Claim." Id. (emphasis added). That proof of claim seeks allegedly uncollectible third party reinsurance (now approximately \$4.5 million) under the Quota Share Treaty.

obligation to credit [Century] for the inuring third party reinsurance” will not promote the efficient resolution of this matter. Motion ¶ 10.

8. The Section 15 process is designed to present matters to the Referee in an organized way. To invoke the more cumbersome evidentiary hearing process of Sections 16-18, Century must identify the factual issues it believes to be in dispute that require resolution through an evidentiary hearing. Century instead has essentially asserted that it wishes to proceed by testimony. Motion ¶¶ 7-12. This is not a reason for an evidentiary hearing.

9. Century also states that it 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.” Motion ¶ 11. This reflects a misunderstanding of the disputed claim proceeding process. A disputed claim proceeding is not a review of the Liquidator’s determination of the claim. It is a de novo proceeding to determine whether the claimant has shown that it has a valid claim. Except as a trigger for this proceeding, the Liquidator’s determinations are not relevant.

10. Under the Act, a claimant is to provide the Liquidator with a proof of claim, including “[t]he particulars of the claim” and “[a] copy of any written instruments which is the foundation of the claim.” RSA 402-C:38, I; see Claims Procedures Order §5(b). The Liquidator may require submission of additional information or evidence. RSA 402-C:38, II; see Claims Procedures Order § 5(d). When the Liquidator denies a claim, he is to issue a notice of determination. The claimant then may file its objections with the Court. RSA 402-C:41, I; see Claims Procedures Order §§ 6, 8. “The matter then may be heard by the court or by a court-appointed referee.” RSA 402-C:41, II; see Claims Procedures Order § 10. Nothing in the Act or the Claims Procedures Order provides for the Referee to review the Liquidator’s determination. It is the “Disputed Claim” that is to be adjudicated. Claims Procedures Order § 11. Testimony

(and discovery) concerning why the Liquidator denied the claim is not relevant to the Referee's de novo review and will only serve to burden the disputed claim proceeding and the liquidation as a whole.

11. Century also misunderstands the nature of the disputed claim process in contending that it will be able to develop new evidence during disputed claim proceeding, as is suggested by paragraph 8 of its Mandatory Disclosure (referring to "Documentation regarding Home's third party reinsurance recoveries" and "All other evidence developed during discovery or any evidentiary hearing in this matter"). Information and evidence in support of a claim should be presented to the Liquidator in the first instance, not the Referee or the Court. It would be inefficient and promote attempts to "game" the system if a claimant can avoid providing information to the Liquidator and then provide it to the Referee in the first instance. As a debtor to Home, Century benefits from delay in the determination of its claims by assertions of offsets that defer payment of its obligations to Home.

12. Under the Claims Procedures Order, the Liquidator is to prepare and submit a Case File containing the most pertinent non-privileged information considered by the Liquidator in rendering the notice of determination to the Claimant and Liquidation Clerk. Claims Procedures Order §§ 6(a), 14(b). The Case File should contain the information critical to any determination of the claim. Allowing a claimant to develop and present new factual information or legal theories to the Referee in the first instance would discourage claimants from dealing with the Liquidator and increase the number and complexity of disputed claims proceedings. The process provided by RSA 402-C:38 and 41 and the Claims Procedures Order contemplates the narrowing, not widening, of information and arguments as a claim moves from the Liquidator to the Referee or Court. Century should not be permitted to delay and confuse this matter (and

ultimate payment of its obligations to Home) through time-consuming and expensive discovery as well as an evidentiary hearing with multiple witnesses when it could be presented in a straightforward way under Claims Procedures Order § 15.

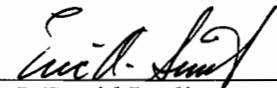
CONCLUSION

For the reasons stated, the Referee should deny Century’s motion for an evidentiary hearing.

Respectfully submitted,

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

By his attorneys,



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February 16, 2006

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator’s Objection to Century’s Request for Evidentiary Hearing was sent, this 16th day of February, 2006, by email to all persons on the attached service list.



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