

**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-14  
**Proof of Claim Number:** AMBC465096  
AMBC464386  
INTL277878  
AMBC465074  
**Claimant Name:** Century Indemnity Company  
**Account** Kentile Floors

**LIQUIDATOR'S OBJECTION TO  
CIC'S REQUEST FOR 90-DAY STAY**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby opposes the request for a 90-day stay of this disputed claim proceeding made by Century Indemnity Company ("CIC") unless CIC agrees to mitigate its economic effect. CIC is taking a setoff of its claim against amounts now due to the Liquidator, and the requested 90-day stay appears likely to be only the beginning of a more protracted stay in favor of uncertain New York proceedings. As further reasons, the Liquidator respectfully states:

1. CIC requests a 90-day stay of this proceeding so that it can present its claim for contribution with respect to Kentile Floors, Inc. ("Kentile") to the New York Liquidation Bureau ("NYLB"). The NYLB acts for the New York Superintendent of Insurance as Ancillary Receiver of Home and for the New York Property Casualty Security Fund ("Security Fund"), which is the New York equivalent of an insurance guaranty association. See N.Y. Ins. Law, Article 76. CIC contends that it may be able to obtain recovery on its contribution claim from the Security Fund.

2. It is not clear from the material presented by CIC either (a) when CIC will make its request of the NYLB, or (b) when or how the NYLB will react to CIC's request. CIC indicates that its request will be part of a submission by Liberty Mutual and other insurers (Motion at 5), but it does not make any representations concerning when Liberty Mutual and the other carriers will make their submission to the NYLB. Further, CIC only states that it "understands" the NYLB represented that it "may be agreeable" to reimbursing Kentile's insurers including CIC for indemnity payments on New York claims (Motion at 2), and that CIC believes "it very possible" that the NYLB will reimburse carriers including CIC "in the next several months" (Motion at 5), but this is plainly speculative. If CIC believed it could recover from the NYLB, it could have made a submission to the NYLB at any time over the last year. See Motion at 4 (noting New York hearing in January 2010).

3. The Liquidator is very concerned that it will take significant time for the insurer group to make its request and more time for the NYLB to consider it and provide even an initial response, so that the requested 90-day stay will become only the first of several and lead to a lengthy delay in resolving this matter. (For instance, if the NYLB determines not to pay the insurers, will CIC seek to stay this disputed claim proceeding during any litigation in the New York courts?)

4. Delay in resolving this disputed claim proceeding harms Home's creditors. CIC has been setting off the alleged value of its Kentile contribution claim (now approximately \$5.5 million) against its reinsurance obligations to Home regarding AFIA since 2006. That is, CIC is withholding \$5.5 million from the Liquidator based on its assertion of the Kentile claim.<sup>1</sup> Indeed, CIC acknowledges that "Home is a net creditor of CIC" (Motion at 2), which is another

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<sup>1</sup> CIC points out that part the Liquidator allowed an as yet uncertain portion of its defense costs, but that is only part of the total CIC indemnity/defense claim and setoff.

way of saying that CIC is a net debtor of Home. Thus, while this proceeding is postured as a claim by CIC, CIC has nothing to gain by resolving it. Resolution cannot put CIC in a better economic position than it is in right now.

5. When CIC requested the Liquidator's assent to the proposed 90-day stay, the Liquidator responded that he would consent to the stay if CIC addressed the harm to Home's creditors in either of two ways. First, CIC could withdraw its setoff of the Kentile contribution claim without prejudice to reasserting it later on. This has precedent. CIC withdrew its setoff of the Treaty 6 claim for over a year after the Liquidator determined the claim so that a disputed claim proceeding over Treaty 6 would not commence. See Exhibits 68 and 69 to the parties' Section 15 submissions in that matter. (The Treaty 6 claim only went into dispute when CIC reasserted its setoff.) Second, CIC could agree to pay interest on its claim to the extent its ultimate recovery from the NYLB – or allowance in this proceeding if recommenced – is less than the amount being set off. Interest would be the usual means of compensating for delay in paying money withheld, but CIC has opposed the Liquidator's requests for interest in other disputed claim proceedings (both in PECO and in Treaty 6).

6. CIC is not willing to agree either to withdraw its setoff of the Kentile claim while it pursues recovery from the NYLB or to pay interest to compensate for prolonging its withholding of funds. CIC does not explain why those conditions are inappropriate but only states they are "unacceptable." Motion at 2.

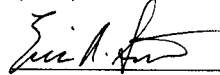
7. Delay in this proceeding harms Home's creditors by prolonging CIC's setoff. If CIC wishes to change course and pursue recovery from the NYLB, it should be required to address the harm caused by the delay of this proceeding. Accordingly, the Liquidator opposes

the requested 90-day stay unless it is conditioned upon either (a) CIC withdrawing the setoff of its Kentile contribution claim, or (b) CIC agreeing to pay interest.

Respectfully submitted,

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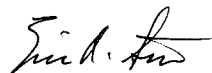


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October 28, 2011

#### **Certificate of Service**

I hereby certify that the foregoing was served by email on counsel for CIC this 28th day of October, 2011.



Eric A. Smith