

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

**REFEREE'S RULING ON LIQUIDATOR'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS
CONCERNING CIC'S TREATY 6 CLAIM**

The Liquidator has filed a motion to compel production of documents from Century Indemnity Company (hereinafter "CIC") related to claims made under Treaty 6. The Liquidator seeks documents responsive to four discovery requests: 10, 11, 12 and 13.

Before the Referee in this dispute over Treaty 6 is whether, in CIC's words, CIC's billing conforms with the letter and intent of Treaty 6 and whether asbestos is the causative agency under Treaty 6. As the Liquidator describes the issue, it is whether CIC can aggregate asbestos bodily injury payments made to many separate insureds under many separate policies into a single loss occurrence under Treaty 6. While the parties use different language, clearly at issue in this dispute is the interpretation of Article 7 of Treaty 6, the definition of "loss occurrence", and specifically paragraph 1.a. of Article 7.

New Hampshire Superior Court Rule 35 allows for discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, etc. The Referee applies this rule to each of the four requests at issue.

Request 10

Request No. 10: Documents concerning the claims of policy holders that underlie the Claim sufficient to identify, for each policyholder: (a) the asbestos-containing product or products at issue in the claims against the policyholder, and (b) the activity or activities of the policyholder giving rise to the claims asserted against it (e.g., manufacture of the product(s), distribution of the product(s), installation of the products(s)). This request may be satisfied by production of the Group's and/or CIC's internal analyses or summaries of the claims against each policyholder, if fully responsive.

Response No. 10: Objection. Century objects to this document request as vague, overly broad and unduly burdensome and because it seeks documents that are not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiver of the foregoing objections and subject to the General Objections above, Century will produce or has produced documents sufficient to identify the billed losses.

CIC argues the documents requested are irrelevant. CIC asserts that the “causative agency” as that term is used in Treaty 6 is asbestos. Both parties agree that the injuries in the underlying claims involve various policyholders and many policies and activities, but CIC alleges the information sought is irrelevant since the causative agency is clear. The interpretation of Article 7 is one issue before the Referee. While CIC may disagree with the Liquidator’s position on this issue, the documents which the Liquidator seeks are relevant to the subject matter of the dispute.

The Referee is cognizant of the efforts and time necessary for CIC to provide the documents responsive to this request. The Liquidator has proposed a compromise - CIC provide the information for a sample of 10 claims, those claims being chosen by the Liquidator. The Liquidator articulated several reasons why not all of the claims listed on page 6 of Exhibit A would be appropriate candidates for the sample of 10. The Referee agrees with CIC that both parties should be involved in choosing the sample set. The parties will confer as soon as possible and agree on a sample of 10.

Request 11

Request No. 11: Documents concerning the claims of policyholders that underlie the Claim sufficient to identify, for each policyholder, whether the claims against the policyholder arise from defective lots or batches of products(s). This request may be satisfied by production of the Group’s and/or CIC’s internal analysis or summaries of the claims against each policyholder, if fully responsive.

Response No. 11: Objection. Century objects to this document request as vague, overly broad and unduly burdensome and because it seeks documents that are not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

CIC asserts that paragraph 1.b. of Article 7 of Treaty 6 does not apply in this case because the “batch clause” is inapplicable to asbestos claims. Therefore, this discovery request should be denied. The Liquidator asserts that the provision may apply and without the documents, it is impossible to determine whether, and how, it does.

As the application of Article 7 of Treaty 6 is the issue before the Referee, and discovery is allowed which is relevant to the subject matter involved in the pending claim, the Liquidator is entitled to information responsive to this request. The Referee understands that the proposed sample of 10 claims discussed above would include documents relevant to and responsive to this request as well. When counsel is choosing the sample set of 10 claims, it should include samples that will respond to this request.

Requests 12 and 13

Request No. 12: Documents concerning the policies that have been combined for purposes of asserting coverage for the Claim under Treaty 6 sufficient to identify, for each policy, the policies by policyholder, type of coverage provided, layer of coverage, policy period and policy limits. This request may be satisfied by production of the Group's and/or CIC's summaries of the policies, if fully responsive.

Response No. 12: Objection. Century objects to this document request as vague, overly broad and unduly burdensome and because it seeks documents that are not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiver of the foregoing objection and subject to the General Objections above, Century will produce or has produced documents sufficient to identify the billed losses.

Request No. 13: Documents concerning the classes of business that have been combined for purposes of asserting coverage for the Claim under Treaty 6 sufficient to identify, for each policy, the class of business to which it belongs. This request may be satisfied by production of the Group's and/or CIC's summaries of the policies, if fully responsive.

Response No. 13: Objection. Century objects to this document request as vague, overly broad and unduly burdensome and because it seeks documents that are not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiver of the foregoing objection and subject to the General Objections above, Century will produce or has produced documents sufficient to identify the billed losses.

Requests 12 and 13 seek documents related to classes of business. CIC argues that it has presented its billing involving two or more policies and injuries traceable to, as CIC defines it, the same causative agency. CIC argues that it is not presenting a billing under those other portions of the Loss Occurrence definition that involved "different types of coverage" or "classes of business."

The Liquidator has not met the burden to demonstrate why this information is necessary, given the characterization of the claim as presented by CIC, and the information regarding the various claims and policies which CIC has produced. The Referee denies the motion as to Requests 12 and 13.

The parties have agreed to extend the deadline for depositions in this matter until April 15, 2011. A separate Scheduling Order addresses the remainder of the scheduling for this Dispute.

The parties are encouraged to confer and agree on a sampling as soon as possible. CIC is to provide the documents covered herein as soon as practical so that discovery may proceed.

So ordered.

Date: 2/22/2011


Referee, Melinda S. Gehris