

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-14
Proof of Claim Number: AMBC 465096
AMBC 464386
INTL 277878
AMBC 465074
Claimant Name: Century Indemnity Company

**CENTURY INDEMNITY COMPANY'S
REQUEST FOR EVIDENTIARY HEARING**

Century Indemnity Company ("CIC"), by its attorneys, Orr & Reno P.A. and Lovells, hereby submits the following request for an evidentiary hearing, pursuant to Section 11 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation ("Home"), dated January 19, 2005 (the "Claims Procedures"), in connection with the dispute (the "Claims Dispute") concerning proof of claim numbers AMBC 465096, AMBC 464386, INTL 277878 and AMBC 465074 (collectively, the "Claims"), and respectfully states as follows.¹

**I.
SUMMARY OF RELIEF REQUESTED**

1. An evidentiary hearing is the only reasonable forum in which this Claims Dispute can be efficiently resolved. The Claims seek to recover from Home's estate those amounts which CIC paid -- and continues to pay -- on Home's behalf in respect of dozens, if not hundreds, of policyholders. With respect to each policyholder, CIC can show its entitlement to distribution

¹ CIC reserves all rights to change or supplement the evidence discussed herein in all respects, including witness identity and coverage and scope of anticipated testimony.

from Home's estate under the applicable -- and numerous -- insurance policies, cost share agreements, settlement agreements, e-mails, letters, handwritten notes, spreadsheets, account summaries and payment ledgers, among other documents, as well as by testimony of experts and others. The evidence supporting the Claims is extremely voluminous and comes in two forms, documentary and testimonial, both of which will be extensive.

2. Through an evidentiary hearing, CIC can present this evidence in a manner which would meaningfully and substantially ease the administration of this Claims Dispute and intelligibly synthesize the facts supporting the Claims. The alternative could very well be a complex and alienating written labyrinth of cross references and excerpts that could easily span tens of thousands of pages and multiple deposition transcripts. Accordingly, CIC's request for an evidentiary hearing in respect of the Claims should be granted.

II. **BRIEF BACKGROUND**

3. CIC paid and continues to pay defense and indemnity claims to policyholders and others that Home should have paid but did not pay because of its insolvency. Pursuant to insurance policy language and the doctrines of subrogation and contribution, Home is required to reimburse CIC. Thus, in the Claims, CIC seeks to recover from Home's estate the amounts it paid and continues to pay on Home's behalf.²

III. **CURRENT PROCEDURAL POSTURE**

4. CIC timely filed the Claims to recover amounts it paid on behalf of Home. In response, Jonathan Rosen, as Chief Operating Officer of Home and on behalf of Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, Liquidator of Home (the

² A more detailed background of the Claims is contained in CIC's Objection to Denial of Claims Relating to Subrogation and Contribution Rights, filed on November 28, 2005 (the "Objection"), which is incorporated herein in its entirety.

"Liquidator"), sent Notices of Determination to CIC, each dated August 23, 2005 (collectively, the "NODs"), in which he rejected the Claims, valued them at \$0, and relegated them to Class 5 status.

5. In its Requests for Review, dated September 20, 2005 (collectively, the "RFRs"), CIC rejected Mr. Rosen's position as stated in the NODs. Also in the RFRs, CIC offered to provide information in support of its Claims pursuant to a proposed confidentiality agreement. Thereafter, on September 29, 2005, Mr. Rosen issued his Notices of Redetermination (collectively, the "NORs") and denied CIC's request for confidentiality. Like the NODs, the NORs rejected the Claims, valued them at \$0, and relegated them to Class 5 status. CIC timely filed the Objection and disputes the NORs in their entirety.

6. On November 28, 2005, the Liquidation Clerk filed its Notice of Disputed Claim in respect of the Claims. By letter dated December 23, 2005, the Liquidator served the Case File (as defined in the Claims Procedures) upon counsel to CIC.

7. Concurrently with this request for evidentiary hearing, CIC is filing its mandatory disclosures in respect of this Claims Dispute.

IV. **BASIS FOR RELIEF REQUESTED**

8. Against the backdrop of the subrogation and contribution doctrines, CIC will show that it is entitled to the Claims by producing supporting documents to Home (subject to the resolution of CIC's confidentiality concerns as stated in the Objection) and, where applicable, the Referee or the Court, and by presenting testimonial and expert evidence. Provided immediately below is a brief and preliminary summary of the types of evidence CIC anticipates it will seek to introduce in this Claims Dispute.

A. *The Documentation Supporting the Claims Is Voluminous and Intricate*

9. As previously stated, the universe of documentation supporting CIC's Claims includes, but is not limited to, insurance policies, cost share agreements, settlement agreements, e-mails, letters, handwritten notes, spreadsheets, account summaries and payment ledgers. Rather than pouring through these documents in the context of CIC's supporting pleadings, the Referee and the parties would be better served by exploring the discrete and relevant underlying facts at an evidentiary hearing. Thus, an evidentiary hearing should be granted in respect of the Claims.

B. *The Testimony Will Clarify CIC's Right to Distributions from Home's Estate on Account of the Claims*

10. CIC intends to present testimony of its claims personnel (collectively, the "Claims Handlers"), and expert witnesses.

11. Claims Handlers typically manage the claims payment process for many policyholder claims and therefore, each Claims Handler should be able to provide, generally, testimony for more than one policyholder. CIC anticipates that the testimony of its Claims Handlers will include, but not be limited to:

- a. cost sharing and allocation practices at CIC generally and on a policyholder-by-policyholder basis;
- b. identifying which of CIC's insurance policies paid claims and on which dates;
- c. identifying those policies which have exhausted and underlie CIC and Home (where CIC and Home are excess);
- d. specifying the reasons why CIC paid amounts on behalf of Home on a policyholder-by-policyholder basis (*e.g.*, in settlement of a claim dispute, in settlement of a claim by a policyholder for breach of contract, etc.);
- e. identifying in which states the insurance policies were issued (if not otherwise evident); and

- f. explaining insurance policy language, e-mails, letters, handwritten notes, spreadsheets, account summaries, payment ledgers and other documents.

12. In addition, CIC believes that it will be necessary to call expert witnesses to testify about a number of different topics, including, but not limited to:

- a. insurer cost sharing and allocation practices throughout the insurance industry generally; and
- b. reasons why one insurer may pay another insurer's liability.

13. CIC intends to depose Mr. Rosen on, among other things, the facts and evaluation process at Home which lead to the serial denial of the Claims.

V. CONCLUSION

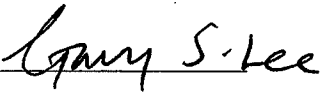
14. For the reasons stated above, CIC believes that an evidentiary hearing will greatly assist the Referee and the parties in connection with this Claims Dispute and this request should therefore be granted.³

WHEREFORE, CIC respectfully requests that an evidentiary hearing be granted in this Claims Dispute pursuant to Section 11 of the Claims Procedures.

³ Prior to filing this request, CIC's counsel contacted the Liquidator's counsel by e-mail to see if they would support the relief requested herein. In response to that e-mail, the Liquidator's counsel suggested that CIC's Request for Evidentiary Hearing should be considered at the scheduling conference.

Dated: January 23, 2006

Respectfully submitted,



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