

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: 2008-HICIL-42
Proof of Claim Number: RAHM 700612-32
Claimant Name: KX Reinsurance Company Limited
Policyholder Account: Various

CENTURY INDEMNITY COMPANY'S MOTION
FOR CLARIFICATION OF REFEREE'S JANUARY 4, 2010 RULING
ON KX REINSURANCE COMPANY LIMITED'S
MOTION TO COMPEL DISCOVERY

Century Indemnity Company ("CIC") hereby moves for clarification of the Referee's January 4, 2010 ruling on the motion ("Motion") of KX Reinsurance Company Limited ("KX Re") to compel discovery (the "Ruling").

Specifically, CIC requests that the Ruling be clarified to confirm that CIC's response to Interrogatory No. 3 and Document Request No. 3 is limited to (1) AFIA claims submitted to the Home Insurance Company ("Home"), (2) claims by excess insurers of Brush Wellman in connection with a settlement of Brush Wellman's beryllium claims that includes a policy buyback, and (3) claims by reinsurers of Norton Company's primary insurers that are submitted under an excess of loss reinsurance treaty that involve the settlement of Norton Company's Welsh Respirator claims. CIC also requests that the Ruling be clarified to permit redaction of identifying information about other insurers or reinsurers that have ceded losses to Home under AFIA contracts and that any documents produced by CIC pursuant to the Ruling are subject to the confidentiality stipulation that was approved on April 21, 2009.

CIC also seeks to clarify the Ruling insofar as CIC is directed to respond to Interrogatory No. 4 and Document Request No. 4. CIC requests that the Ruling be clarified so that it is limited to positions taken by CIC's affiliate, ACE INA Services U.K. Limited ("AISUK"), on its own behalf or on behalf of CIC under reinsurance contracts governed by the law of the United Kingdom in connection with (1) beryllium claims against Brush Wellman under settlements that include the buyback of excess liability insurance policies, and (2) Welsh Respirator claims that have been ceded to AISUK/CIC by primary insurers of Norton Company under an excess of loss reinsurance treaty and that include defense cost issues.

I.

PRELIMINARY STATEMENT

1. KX Re is seeking recovery from Home for payments KX Re made to its insured, Brush Wellman, in connection with a settlement of beryllium claims against the insured. KX Re is also seeking to recover the amounts it paid to its cedent, Liberty Mutual Insurance Company ("Liberty"), for Liberty's settlement of silicosis claims against Norton Company. KX Re served discovery on CIC which CIC answered and objected to; KX Re then filed the Motion to compel CIC to provide further answers to interrogatories and to produce additional documents.

2. In the Ruling, the Motion was granted in part and denied in part. Among other things, the Ruling directed CIC to answer Interrogatory No. 3 and Document Request No. 3 by providing "information about the position taken with other reinsurers as to claims by Brush Wellman and/or Norton Company that are at issue in this dispute." Ruling at 3. CIC was also ordered to respond to Interrogatory No. 4 and Document Request No. 4 "[t]o the extent the interrogatory and document request seek information

about the position CIC has taken on its own behalf related to the same claims by Brush Wellman and Norton Company that are at issue in this dispute.” *Id.* CIC now seeks clarification of these parts of the Ruling.

II.

ARGUMENT

A. **The Ruling as to Interrogatory No. 3 and Document Request No. 3 should be clarified.**

3. CIC has been directed to provide information about Brush Wellman/Norton Company claims submitted to Home by other reinsurers. While the Ruling purports to limit CIC’s response to the claims “that are at issue in this dispute,” it is unclear how that limitation would apply to the material that CIC is now required to provide to KX Re.

4. For example, Interrogatory No. 3 states:

Identify all insurers other than KX and Unionamerica that have made reinsurance claims against The Home with respect to the losses...claimed by the insureds in the Brush Wellman and Norton Company Claims.

KX Re Interrogatories at 7. (A copy of KX Re’s Interrogatories is attached to the Motion as Exhibit A.) “The Home” is defined as “The Home Insurance Company and all of its past and present agents, representatives, employees, attorneys, accountants, and investigators.” KX Ex. A at 2. While CIC’s participation in this disputed claim proceeding is limited to the responsibility of AISUK to manage claims under Home’s AFIA book of business, the Ruling does not correspondingly limit the breadth of CIC’s response. Accordingly, CIC seeks clarification that its response to Interrogatory No. 3 and Document Request No. 3 is limited to AFIA claims.

5. Even assuming that CIC is required to respond only in connection with AFIA claims, the Ruling is also unclear about what is actually covered by its terms. Interrogatory No. 3 requests that CIC “[i]dentify all *insurers* other than KX and Unionamerica that have made reinsurance claims against The Home....” KX Ex. A at 7; emphasis added. The Ruling, however, directs CIC to respond with respect to “other *reinsurers*” (Ruling at 3; emphasis added), and CIC is unsure what this involves. First, this direction is not what KX Re requested, nor what the Interrogatories and Document Requests sought. Second, reinsurers would not be submitting “claims by Brush Wellman...that are at issue in this dispute,” because KX Re is an insurer of Brush Wellman. KX Re is, however, a reinsurer of Liberty Mutual, which insures Norton Company. CIC thus requests that the Referee clarify whether this part of the Ruling applies to other *insurers* of Brush Wellman and other *reinsurers* of Norton Company.

6. Assuming that the Ruling was intended to apply to Brush Wellman insurers and Norton Company reinsurers, CIC requests further clarification of the meaning of “claims...that are at issue in this dispute.” For example, are the “claims” limited to those on the same layer of insurance or reinsurance as KX Re? Are the claims limited to those submitted under contracts that contain the same language as those under which KX Re’s claims are submitted? Without this clarification, CIC will be unable to determine what is and is not encompassed by the Ruling.

7. Finally, CIC will be confronted with significant confidentiality issues in connection with any production of information or documents relating to claims submitted by other insurers or reinsurers. CIC thus requests that it be permitted to redact any information that identifies other cedents of Home and that any documents produced be

subject to the confidentiality agreement already in place in this disputed claim proceeding.

B. The Ruling as to Interrogatory No. 4 and Document Request No. 4 should be clarified.

8. The Ruling directs CIC to produce “information about the position CIC has taken on its own behalf related to the same claims by Brush Wellman and Norton Company that are at issue in this dispute” Ruling at 3. In light of CIC’s limited participation in this disputed claim, the obligation to describe what position CIC “has taken on its own behalf related to the same claims by Brush Wellman and Norton Company that are at issue in this dispute” is unclear and requires clarification.

i. CIC’s interest in this disputed claim proceeding arises from the Assumption Agreement.

9. A brief history of CIC’s responsibilities in connection with KX Re’s disputed reinsurance claims will be helpful in explaining the need for clarification of the Ruling. In 1984, CIGNA¹ purchased the rights and interests of the American Foreign Insurance Association (“AFIA”), an unincorporated association of American insurers that included Home. In connection with CIGNA’s purchase, INA entered into the Insurance and Reinsurance Assumption Agreement, dated January 31, 1984 (the “Assumption Agreement”), pursuant to which INA assumed, among other things, 100 percent of Home’s liabilities under certain reinsurance treaty arrangements (the “AFIA Liabilities”). (A copy of the Assumption Agreement is attached as Exhibit 1.) CIC is the successor to INA and to INA’s rights and obligations under the Assumption Agreement.

10. Under the Assumption Agreement, CIC is obligated, among other things, to:

¹ CIGNA was formed after the merger of Connecticut General Insurance Company and INA.

(1) administer and service the AFIA Liabilities including their investigation, payment, settlement, defense and the processing and collection of any reinsurance related thereto,

(2) have all authority to act in the name of [Home] as may be required to perform such administration and service, and

(3) bear all costs and expenses related to the AFIA Liabilities and their administration and service.

Ex. 1, ¶3. CIC fulfils these obligations through AISUK, which acts on Home's behalf.

ii. Because CIC's participation in this disputed claim proceeding is limited, the Ruling should be clarified to limit its reach to AISUK.

11. As set forth in the Motion to Participate (attached as Exhibit 2), CIC's interest in this dispute arises solely out of its "continued undertaking of Home's administration and service obligations" under the Assumption Agreement. Ex. 2, ¶2. CIC reiterated the limited nature of its involvement here in its objection to Definition and Instruction No. 1 in KX Re's Interrogatories,² as follows:

CIC objects to Definition and Instruction Number 1...on the ground that the parties to the contract that is the subject of this disputed claim proceeding are KX Re and Home Insurance Company (in Liquidation) ("Home"). CIC, through its affiliate ACE INA Services U.K. Limited ("AISUK"), is acting on Home's behalf. Unless otherwise indicated, CIC's answers and objections will be based upon the knowledge and information of AISUK.

Answers and Objections of Century Indemnity Company to KX Re Insurance Company Limited's First Set of Interrogatories and Document Requests, attached as Ex. B to the Motion, at 1. KX Re did not object to this limitation on CIC's responses or document production in the Motion.

² KX Re's Interrogatories define "CIC" to include "Century Indemnity Company and all of its past or present agents, representatives, employees, attorneys, accountants, and investigators." KX Ex. A at 2.

12. The particular circumstances of CIC's limited participation in this disputed claim proceeding requires that discovery be similarly circumscribed. CIC thus requests that the Ruling be clarified to limit its reach to AISUK and claims submitted by AISUK on behalf of CIC.

iii. The Ruling should be clarified as to the "claims" to which it refers.

13. In addition, the phrase "the same claims by Brush Wellman and Norton Company that are at issue in this dispute" should be clarified. Does the Ruling refer to claims where CIC or AISUK is, like KX Re, an insurer of Brush Wellman and a reinsurer of Norton Company? Are the claims limited to the settlement of Brush Wellman's beryllium claims and Norton Company's Welsh Respirator claims? Are the claims limited to contracts that are, like the contracts here, subject to UK law? Without clarification, CIC will be unable to determine what the Ruling requires it to provide to KX Re.

III.

CONCLUSION

14. CIC has demonstrated that the Ruling is unclear in several respects. Its direction as to Interrogatory No. 3 and Document Request No. 3 should be limited to AFIA claims and to insurers of Brush Wellman and reinsurers of Norton Company. The "claims" that are subject to the Ruling should also be clarified. CIC's responsibility to respond to Interrogatory No. 4 and Document Request No. 4 should be limited to AISUK and the "claims" to which the Ruling refers should be more clearly defined.

15. As set forth above, CIC requests that the Ruling be clarified to confirm that CIC's response to Interrogatory No. 3 and Document Request No. 3 is limited to

AFIA claims submitted to the Home (1) by excess insurers of Brush Wellman in connection with the settlement of Brush Wellman's beryllium claims that includes a policy buyback, and (2) by reinsurers of Norton Company's primary insurers involving the settlement of Norton Company's Welsh Respirator claims. CIC also requests that the Ruling be modified to permit it to redact information that identifies other Home cedents and that any documents produced are subject to the April 21 confidentiality stipulation.

16. With respect to Interrogatory No. 4 and Document Request No. 4, CIC requests that the Ruling be limited to positions taken by AISUK on its own behalf or on behalf of CIC under UK reinsurance contracts in connection with the settlement of beryllium claims against Brush Wellman that include excess policy buybacks and Welsh Respirator claims that include defense cost issues ceded to AISUK/CIC by primary insurers of Norton Company under an excess of loss reinsurance treaty.

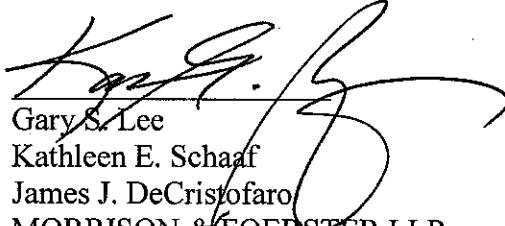
Wherefore, for all the foregoing reasons, CIC respectfully requests that the Referee clarify the Ruling and issue an order in the form attached hereto as Exhibit 3.

Dated: January 14, 2010

Respectfully submitted,

CENTURY INDEMNITY COMPANY

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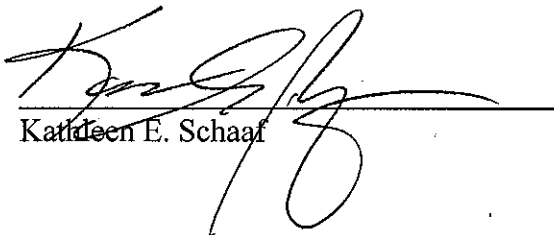
CERTIFICATE OF SERVICE

I, Kathleen E. Schaaf, hereby certify that, on January 14, 2010, a copy of the foregoing Century Indemnity Company's Motion for Clarification of Referee's January 4, 2010 Ruling on KX Re Insurance Company Limited's Motion to Compel has been electronically forwarded to the following counsel:

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