

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-40  
Proof of Claim Number: INTL 700695-38  
Claimant Name: Unionamerica Insurance  
Company Limited**

**UNIONAMERICA INSURANCE COMPANY LIMITED'S MOTION TO  
COMPEL AND UN-OBJECTED-TO MOTION TO STAY**

Pursuant to Rule 14(c) of the Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation, and New Hampshire Superior Court Rules 35 and 36, Unionamerica Insurance Company Limited ("Unionamerica") submits this Motion to Compel and Un-Objected-to Motion to Stay. Century Indemnity Company ("CIC") should be compelled to provide complete answers as well as all documents responsive to Unionamerica's First Set of Interrogatories and Document Requests ("Requests"). Moreover, Unionamerica asks that the filing of Unionamerica's written submission be stayed until 30 days after resolution of the discovery issues raised herein.

Unionamerica served very limited discovery – only seven interrogatories and six document requests. A copy of Unionamerica's Requests are attached as Exhibit A. The Requests include standard interrogatories on key issues. CIC, however, asserted blanket objections, and refused to provide nearly any information or documents. A copy of CIC's Objections is attached as Exhibit B. Notably, the one actual answer CIC did provide was to finally concede that its sole reason for heretofore rejecting Unionamerica's "Brush Wellman" claims – that "it can find no evidence of any paid liability" – is in fact wrong and that "there have been some small amounts

paid.” Ex. B, p. 4. But even then, CIC still refuses to identify what actual amount was in fact a paid liability and should therefore be paid to Unionamerica. CIC should be compelled to fully answer the interrogatories and to produce all responsive documents.

### **BACKGROUND**

This matter involves two claims rejected by CIC. CIC rejected Unionamerica’s “Brush Wellman” claim based on the purported reason that Unionamerica’s “underlying payment is in respect of a policy buy back that covered potential future claims that were at the time unsettled ... [CIC] maintains that it can find no evidence of any paid liability, and it does not consider that the liability payments made by Unionamerica are recoverable under the reinsurance agreements.” CIC Brief Summary, ¶ 4, attached as Exhibit C.

Next, CIC rejected the “Norton Company Claim” based on the purported reason that “the claim is purely in respect of defence costs” and “[d]efence costs with no associated liability are not recoverable under the reinsurance.” Ex. C, ¶ 9.

CIC has now conceded that some portion of the Brush Wellman claim is in fact a paid liability, although CIC has refused to identify how much of the Brush Wellman claim is a paid liability and therefore recoverable. Ex. B, p. 4.

### **ARGUMENT**

**A. CIC SHOULD BE COMPELLED TO RESPOND FULLY TO ALL SEVEN INTERROGATORIES AND TO PROVIDE ALL DOCUMENTS RESPONSIVE TO REQUESTS NOS. 2 THROUGH 6**

**1. CIC’S Blanket Objections To State The Basis Interrogatories Are Improper**

CIC’s general and specific objections to Unionamerica’s definition of “State the Basis” are improper. Unionamerica’s Request included a completely standard definition of “state the

basis.”<sup>1</sup> Indeed, Unionamerica’s language is precisely the same definition used by the Federal Court for the District of Massachusetts in its Uniform Definitions in Discovery Requests<sup>2</sup> and language similar to that used by Massachusetts state courts in their Uniform Definitions in Discovery Requests.<sup>3</sup>

Unionamerica’s definition of “state the basis” is proper and widely used. CIC simply offers a blanket objection to this standard definition as overly broad and unduly burdensome. But CIC provides no explanation as to how this standard definition is either overly broad or unduly burdensome in this case. CIC should be compelled to withdraw both its general objection to the definition (Objection, p.1) as well as its specific objections to the definition (Objections to Interrogatories 1, 2, 5, 6 and 7). CIC should be compelled to fully answer Interrogatories 1, 2, 5, 6 and 7.

## **2. CIC Should Be Compelled to Respond Fully To Interrogatory No. 5**

CIC should be compelled to respond fully to Interrogatory No. 5. CIC has heretofore denied all coverage for the Brush Wellman claims on the grounds that “it can find no evidence of any paid liability.” See CIC’s Brief Summary, ¶ 4. Unionamerica’s Interrogatory No. 5 requested that CIC state the basis for this position in light of several documents which clearly show paid claims. CIC answered by asserting its general objection to state the basis interrogatories, and, for the first time conceding “that while there have been some small amounts paid, the bulk of the

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<sup>1</sup> Unionamerica’s definition of “state the basis” reads: “(a) identify each and every document (and where pertinent, the section, article, or subparagraph thereof), which forms any part of your source of information regarding the alleged facts or legal conclusions referred to by the interrogatory; (b) identify each and every communication which forms any part of the source of your information regarding the alleged facts or legal conclusions referred to by this interrogatory; (c) state separately the acts or omissions to act by stating their nature, time, and place and identifying the persons involved which form any part of your information regarding the alleged facts or legal conclusions referred to in this interrogatory; and (d) state separately any other fact which forms the basis of your information regarding the alleged facts or conclusions referred to in the interrogatory.” See Ex. A, Instruction 13.

<sup>2</sup> See United States District Court for the District of Massachusetts Local Rule 26.5(C)(8), attached as Exhibit D.

<sup>3</sup> See Superior Court Standing Order 1-09, 1(c)(9), attached as Exhibit E.

Brush Wellman settlement is a buyback which is in respect of future potential liability.”  
Objection, p. 4 (emphasis added). That is all the information CIC provided. Notably, CIC failed to identify the amount that it now concedes comprises a paid claim.

It bears noting that 1) had CIC made this concession earlier, this portion of the disputed claims may very well have been unnecessary; and 2) by still hiding the ball and failing to identify those portions of the claim it now concedes are amounts paid, CIC continues to drag out this process unnecessarily.

CIC should be compelled to respond fully to Interrogatory No. 5. CIC’s response should, at a bare minimum, include a description of what amounts it now concedes are paid claims, and what amounts it still maintains are not recoverable because they constitute a buyback. With respect to the amounts still at issue, CIC should state the basis for its contention that there is no evidence of any paid liability for such amounts. CIC’s response should be complete and should be structured within the framework of the state the basis interrogatory.

**3. CIC Should be Compelled To Respond To Interrogatory Nos. 6 & 7, and Provide All Documents Responsive to Request No. 6**

CIC should be compelled to respond fully to Interrogatory Nos. 6 and 7, and provide all documents responsive to Request No. 6. Identifying the sections of a previous award on which CIC relies, and the facts on which it bases its position that payments are unrecoverable are proper grounds for an interrogatory. CIC’s refusal to answer these interrogatories on the basis that they implicate “legal issues” is improper.

CIC asserted in its Brief Summary of Position that “Home has previously arbitrated against Unionamerica’s reinsurance presentation obligations, and will refer to the Award dated March 31 1998 for its full terms and effect.” Ex. C, ¶ 3. CIC then attached a copy of that Award to its Brief Summary of Position.

Unionamerica's interrogatory No. 6 simply asks CIC to identify on what sections of that Award it relies. CIC apparently takes the position that Unionamerica is bound by that prior Award. Unionamerica simply wants CIC to be more specific and identify the actual sections of the sixty-six paragraph Award by which it maintains Unionamerica is bound. Unionamerica is not asking for a legal analysis, it is asking CIC to identify the facts underlying its legal position. Such facts are discoverable.

Unionamerica's interrogatory No. 7 is even more factually based. That interrogatory asks CIC to "state the basis for CIC's position (i.e. AISUK's understanding) in CIC's Brief Summary that, 'there are no underlying indemnity payments on these years and that the payments made by Unionamerica are 'accelerated payments'; i.e. they are payments in respect of possible future liabilities.'" Ex. A. CIC refused to answer the interrogatory; CIC objected to the definition of state the basis, and asserted that "whether the payments by Unionamerica are accelerated payments that are not reinsured is a legal issue that is not properly subject to interrogatories." Ex. B, p. 4.

CIC misses the point of a state the basis interrogatory. The interrogatory does not ask for CIC's legal theory. Rather, pursuant to the very definition to which CIC objected, the interrogatory in fact asks CIC to identify the facts on which its allegation is based. Such an interrogatory is wholly proper and common. As explained above, courts' uniform definitions contain exactly such interrogatories. CIC should be compelled to respond to this interrogatory. CIC cannot mask the facts on which its legal theories are based. Indeed, CIC divulging the facts on which *this* allegation is based is even more essential given CIC's concession, in response to Interrogatory No. 5, that its previous position on this issue was flawed. The facts on which CIC bases its position are discoverable and cannot be hidden. Finally, CIC should produce all

documents on this topic.

**4. CIC Should Be Compelled to Respond To Interrogatory Nos. 3 and 4, and Provide Documents Responsive to Request Nos. 3 and 4**

Interrogatory Nos. 3 and 4, and Request Nos. 3 and 4 ask for discoverable information. Interrogatory No. 3 asks CIC to identify other insurers that may have made claims against the Home with respect to losses claimed by the insureds in the Brush Wellman and Norton Company Claims, and to describe CIC's position on such claims, including whether it made the same arguments it has made in this case. Ex. A. Interrogatory No. 4 asks whether CIC has itself made claims against its reinsurers in the Brush Wellman and Norton Company Claims, and how it has addressed the buy back issue in the Brush Wellman Claim, and the defence costs issue in the Norton Company Claim. Ex. A. Document Request Nos. 3 and 4 request documents concerning these topics.

CIC refused to provide any answer or any documents on these topics. CIC simply objected based on a blanket claim of vagueness, breadth, burden and relevance. CIC, however, did not provide any explanation at all as to how the request is vague, broad, or unduly burdensome, or seeks irrelevant information.

The requested information and documents are undeniably discoverable (reasonably calculated to lead to the discovery of admissible evidence). First, if CIC has previously litigated issues with respect to the Brush Wellman and Norton claims and lost, res judicata may very well attach. Indeed, CIC appears to make an argument that Unionamerica is bound by the 31 March 1998 Award; but CIC refuses to disclose what decisions necessarily bind it. Ex. C, ¶ 3.

Moreover, Unionamerica is clearly entitled to learn what positions CIC has taken on other Brush Wellman and Norton claims. A key issue in this case is how CIC has handled Unionamerica's Brush Wellman and Norton claims. Whether the positions CIC has taken in this

matter are consistent or inconsistent with prior positions CIC has taken is clearly discoverable. If CIC has previously accepted the arguments advanced by Unionamerica, then Unionamerica is entitled to show that.

Likewise, how CIC has presented the Brush Wellman and Norton claims to its own reinsurers is undeniably discoverable. Unionamerica is clearly entitled to learn whether CIC has taken inconsistent positions with respect to the Brush Wellman and Norton claims.

**5. CIC Should Be Compelled to Disclose Whether It is Withholding Documents Responsive To Document Request No. 2**

CIC responded to Document Request No. 2 by saying that it previously produced responsive documents, and that it “is producing documents ... which are also responsive to this request.” Ex. B, p. 5. Although CIC does not assert any objections to this request, it does not agree to produce all documents. CIC should disclose whether it is withholding any responsive documents.

**6. CIC Should Be Compelled to Produce All Documents Responsive to Request No. 5**

Request No. 5 asks for “All documents concerning Unionamerica’s Brush Wellman and Norton Claims (and the Brush Wellman and Norton Company losses generally), including internal CIC documents and communications with The Home.” Ex. A.

CIC did not assert any objections to this document request. CIC answered that “In addition to documents that CIC has previously produced, CIC is producing documents bates-stamped CIC 000009-62, which are responsive to this request.” Ex. B, p.6. Such documents, however, appear to all be related specifically to Unionamerica’s Brush Wellman and Norton claims. CIC appears not to have produced any documents concerning the Brush Wellman and Norton Company losses generally (e.g. internal documents and communications with The Home)

as it agreed. CIC undoubtedly has such documents within its custody and control. CIC should be compelled to produce all such documents.

**B. A STAY ON UNIONAMERICA'S BRIEFING SHOULD BE ENTERED UNTIL THE ISSUES RAISED IN THIS MOTION TO COMPEL ARE RESOLVED**

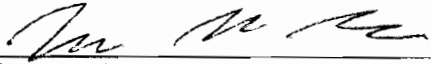
Finally, Unionamerica asks that a stay on briefing in this matter be entered until after the issues raised in this Motion to Compel are resolved. The Structuring Conference Order reads that "Unionamerica will have thirty (30) days from the receipt of the responses to its discovery requests to file its own brief on the issue." 6/15/09 Order. Unionamerica will not be in a position to submit its brief until CIC has fully responded to discovery. Accordingly, Unionamerica respectfully requests that Unionamerica's briefing in this matter be stayed, and that Unionamerica be provided thirty (30) days from the resolution of the issues raised in this Motion to file its brief.

Unionamerica has discussed this request for a stay with counsel to CIC, and CIC does not object to this request.

**CONCLUSION**

For all these reasons, Unionamerica respectfully requests that this Motion be granted.

Unionamerica Insurance Company Limited  
By its attorneys,

  
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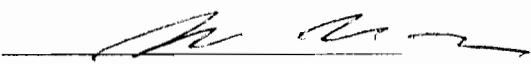
**Certificate of Compliance With N.H. Superior Court Rule 36-A**

I, Joshua W. Gardner, hereby certify that counsel to CIC and I had a conference in a good faith attempt to settle the issues raised in this Motion by agreement. Unionamerica and CIC continue to discuss certain issues raised by this Motion, and some issues raised herein may still be resolved. The parties will alert the referee should there be any such resolution.

  
Joshua W. Gardner

**Certificate of Service**

I, Joshua W. Gardner, hereby certify that the above document was served on all counsel of record on this 6th day of November, 2009.

  
Joshua W. Gardner

# **EXHIBIT A**

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-40  
**Proof of Claim Number:** INTL 700695-38  
**Claimant Name:** Unionamerica Insurance  
Company Limited  
**Policyholder Account:** Various

**UNIONAMERICA INSURANCE COMPANY LIMITED'S FIRST SET  
OF INTERROGATORIES AND DOCUMENT REQUESTS**

Pursuant to the Structuring Conference Order dated June 15, 2009, Rule 14(c) of the Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation, and New Hampshire Superior Court Rules 35 and 36, Unionamerica Insurance Company Ltd. ("Unionamerica") propounds the following First Set of Interrogatories and Document Requests on Century Indemnity Company ("CIC"). Pursuant to the Structuring Conference Order, CIC's response is due forty five (45) days from its receipt of this document.

New Hampshire Superior Court Rule 36 requires the following language be included in this document:

THESE INTERROGATORIES ARE PROPOUNDED IN ACCORDANCE WITH SUPERIOR COURT RULE 36. YOU MUST ANSWER EACH QUESTION SEPARATELY AND FULLY IN WRITING AND UNDER OATH. YOU MUST RETURN THE ORIGINAL AND ONE COPY OF YOUR ANSWERS WITHIN FORTY-FIVE DAYS OF THE DATE YOU RECEIVED THEM TO THE PARTY OR COUNSEL WHO SERVED THEM UPON YOU. IF

YOU OBJECT TO ANY QUESTION, YOU MUST NOTE YOUR OBJECTION AND STATE THE REASON THEREFORE. IF YOU FAIL TO RETURN YOUR ANSWERS WITHIN FORTY FIVE DAYS, THE PARTY WHO SERVED THEM UPON YOU MAY INFORM THE COURT, AND THE COURT SHALL MAKE SUCH ORDERS AS JUSTICE REQUIRES, INCLUDING THE ENTRY OF A CONDITIONAL DEFAULT AGAINST YOU.

**I. DEFINITIONS AND INSTRUCTIONS**

1. "You" or "CIC" means Century Indemnity Company and all of its past or present agents, representatives, employees, attorneys, accountants, and investigators.

2. "KX" means KX Reinsurance Company Limited and all of his past or present agents, representatives, employees, attorneys, accountants, and investigators.

3. "The Home" mean The Home Insurance Company and all of its past or present agents, representatives, employees, attorneys, accountants, and investigators.

4. "Unionamerica" means Unionamerica Insurance Company Ltd. and all of its past or present agents, representatives, employees, attorneys, accountants, and investigators.

5. "Brush Wellman and Norton Company Claims" means the claims described as "Brush Wellman" and "Norton Company" in Unionamerica's Written Submission.

6. "CIC's Brief Summary" means the "Brief Summary of Position of Century Indemnity Company" served in this matter and dated June 13, 2009.

7. "Unionamerica's Written Submission" means the "Written Submission (Mandatory Disclosure) of Unionamerica Insurance Company Limited" as well as its exhibits, served in this matter and dated May 1, 2009.

8. The term "document" means all writings of any kind, including originals and all nonidentical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including without limitation correspondence, email, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, certificates, drawings, plans, specifications, blueprints, interoffice and intraoffice communications, or offers; notations in any form made of conversations, telephone calls, meetings or other communications; bulletins, printed matter (including newspapers, magazines and other publications, and articles and clippings therefrom), press releases, computer printouts, teletypes, telecopies, invoices, orders, confirmations, shipping or delivery advices, ledgers, worksheets (and all drafts, alterations, modifications, changes and amendments of any of the foregoing), graphic or oral records or representations of any kind (including without limitation photographs, charts, graphs, and microfiche, microfilm, videotape, or film recordings), and electronic, mechanical or electrical records or representations of any kind (including without limitation tapes, cassettes, discs, recordings), or transcriptions thereof.

9. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive.

10. The word "including" shall be construed to mean without limitation.

11. The term "communication" means any oral or written statements, conversations, meetings, speeches, discussions, remarks, questions, answers, telephone calls, letters, memoranda, correspondence, electronic transmissions, or other transmittal of information by any means.

12. The term "concerning" means referring to, describing, evidencing, or constituting.

13. The phrase "state the basis" means that with respect to a particular claim, assertion, allegation, or contention, you should:

(a) identify each and every document (and where pertinent, the section, article, or subparagraph thereof), which forms any part of your source of information regarding the alleged facts or legal conclusions referred to by the interrogatory;

(b) identify each and every communication which forms any part of the source of your information regarding the alleged facts or legal conclusions referred to by this interrogatory;

(c) state separately the acts or omissions to act by stating their nature, time, and place and identifying the persons involved which form any part of your information regarding the alleged facts or legal conclusions referred to in this interrogatory; and

(d) state separately any other fact which forms the basis of your information regarding the alleged facts or conclusions referred to in the interrogatory.

14. The term "identify" when used with respect to a communication means you should state:

(a) the substance of the communication;

(b) the date, time, and place of the communication;

- (c) the method of the communication (e.g., telephone, letter, in person, etc.); and
- (d) the names of the persons participating in the communication.

15. The term "identify" when used with respect to a document means you should state:

- (a) the type of document;
- (b) the general subject matter;
- (c) the date of the document; and
- (d) the author(s), addressee(s), and recipient(s).

16. These interrogatories and document requests shall be deemed continuing in nature, and all answers must be supplemented when additional information and/or documents come to your attention or the attention of your attorneys or other representatives while this case is pending.

17. Each interrogatory should be answered fully and independently. If it is not possible to provide a complete answer to an interrogatory, or portion of an interrogatory, the remaining part of the interrogatory should be answered and a reason should be stated why only part of the interrogatory has been answered.

18. All words used in their singular form shall include the words in their plural form, and all words in their plural form shall include the words in their singular form.

19. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense.

20. If you contend that you are entitled to withhold any information requested herein on a claim of privilege, then for each such item of information:

- (a) Identify the privilege claimed;
- (b) Identify the character of the information that is claimed to be privileged;
- (c) State the date and place of any communication which contained the information;
- (d) Identify each person who sent, participated in, overheard, or received the communication or who now has possession, custody, or control of any documents relating thereto;
- (e) Describe the subject matter of the privileged information; and
- (f) State the basis upon which you contend that you are entitled to withhold the information.

21. Any objection which you raise should be confined to that portion of the interrogatory or document request for which you claim a privilege or objection and shall not excuse you from responding to the remaining part of the interrogatory or document request.

## **II. FORMAT**

Pursuant to Superior Court Rule 36, the following interrogatories and document requests have been served in electronic format which eliminates the need to provide adequate space between each interrogatory.

## **III. INTERROGATORIES**

1. State the basis for CIC's allegation in CIC's Brief Summary that "Unionamerica also refused to answer AISUK's reasonable questions regarding the Claims"; identify each communication and document concerning this allegation; and identify each such "question"



referenced in CIC's allegation.

2. State the basis for CIC's allegation in CIC's Brief Summary that "the documents that Unionamerica permitted AISUK to inspect were insufficient and, in some cases, Unionamerica refused to let AISUK see certain documents" and "the documents that Unionamerica permitted AISUK to inspect were very limited and insufficient"; identify each communication and document concerning this allegation; identify each document Unionamerica "refused to let AISUK see" or otherwise withheld; and identify what documents CIC would have deemed sufficient.

3. Identify all insurers other than KX and Unionamerica that have made reinsurance claims against The Home with respect to the losses (or losses similar to the losses) claimed by the insureds in the Brush Wellman and Norton Company Claims. Identify each such claim, and describe the position CIC has taken concerning each claim, including whether CIC has asserted that payments to Brush Wellman (or losses similar to the loss) are in respect of a policy buy back based on potential future claims and therefore not recoverable, and whether CIC has asserted that payments to the Norton Company (or losses similar to the loss) are in respect of defence costs and therefore not recoverable.

4. State whether CIC has, or will, make claims against its reinsurers with respect to the losses (or losses similar to the losses) claimed by the insureds in the Brush Wellman and Norton Company Claims. Identify each such claim, and describe how CIC has, or will, present such claims to its reinsurers, including how CIC has, or will, address buy back issues with respect to the Brush Wellman Claim and defence costs issues with respect to the Norton Company Claim.

5. State the basis for CIC's position in CIC's Brief Summary that "it can find no

evidence of any paid liability” with respect to the Brush Wellman Claims, in light of Exhibit A15 to Unionamerica’s Written Submission, which documents paid claims for each of the 1974, 1975 and 1976 years.

6. State each and every paragraph from the Award dated 31 March 1998 on which CIC specifically relies in support of its position.

7. State the basis for CIC's position (i.e. AISUK's understanding) in CIC's Brief Summary that, "there are no underlying indemnity payments on these years and that the payments made by Unionamerica are ‘accelerated payments’; i.e. they are payments in respect of possible future liabilities".

#### **DOCUMENT REQUESTS**

1. All documents concerning CIC’s allegation in CIC’s Brief Summary that “Unionamerica also has refused to answer AISUK’s reasonable questions regarding the Claims.”

2. All documents concerning CIC’s allegation in CIC’s Brief Summary that “the documents that Unionamerica permitted AISUK to inspect were insufficient and, in some cases, Unionamerica refused to let AISUK see certain documents” and “the documents that that Unionamerica permitted AISUK to inspect were very limited and insufficient.”

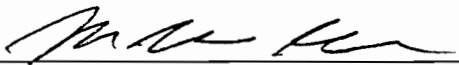
3. All documents concerning CIC’s position concerning insurers other than KX and Unionamerica that have made reinsurance claims against The Home with respect to the losses (or losses similar to the losses) claimed by the insureds in the Brush Wellman and Norton Company Claims, including documents concerning whether CIC has asserted that payments to Brush Wellman are in respect of a policy buy back based on potential future claims and therefore not recoverable, and documents concerning whether CIC has asserted that payments to the Norton Company are in respect of defence costs and therefore not recoverable.

4. All documents concerning whether CIC has, or will, make claims against its reinsurers with respect to the losses (or losses similar to the losses) claimed by the insureds in the Brush Wellman and Norton Company Claims, including documents concerning how CIC has, or will, address buy back issues with respect to the Brush Wellman Claim and defence costs issues with respect to the Norton Company Claim.

5. All documents concerning Unionamerica's Brush Wellman and Norton Company Claims (and the Brush Wellman and Norton Company losses generally), including internal CIC documents and communications with The Home.

6. All documents concerning CIC's position (i.e. AISUK's understanding) in CIC's Brief Summary that, "there are no underlying indemnity payments" on these years and that the payments made by Unionamerica are 'accelerated payments'; i.e. they are payments in respect of possible future liabilities".

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By its attorneys,

  
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**Certificate of Service**

I, Joshua W. Gardner, hereby certify that the above document was served on all counsel of record on this 25th day of August, 2009.



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Joshua W. Gardner

# **EXHIBIT B**

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-40  
Proof of Claim Number: INTL 700695-38  
Claimant Name: Unionamerica Insurance Company  
Limited  
Policyholder Account: Various

**ANSWERS AND OBJECTIONS OF CENTURY INDEMNITY COMPANY  
TO UNIONAMERICA INSURANCE COMPANY LIMITED'S  
FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS**

Pursuant to the Structuring Conference Order dated June 15, 2009, Rule 14(c) of the Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation, and New Hampshire Superior Court Rules 35 and 36, Century Indemnity Company ("CIC") answers and objects to Unionamerica Insurance Company Limited's ("Unionamerica") First Set of Interrogatories and Document Requests

**OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. CIC objects to Definition and Instruction Number 1 on the ground that it is overly broad and unduly burdensome. CIC further objects to this Definition and Instruction on the ground that the parties to the contract that is the subject of this disputed claim proceeding are Unionamerica 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.

2. CIC objects to Definitions and Instructions Number 2-4, 8, 11, 13-15, and 20 on the ground that they are overly broad and unduly burdensome.

**ANSWERS AND OBJECTIONS TO INTERROGATORIES**

1. State the basis for CIC's allegation in CIC's Brief Summary that "Unionamerica also refused to answer AISUK's reasonable questions regarding the Claims"; identify each communication and document concerning this allegation; and identify each such "question" referenced in CIC's allegation.

CIC objects to Interrogatory 1 to the extent that it requests that CIC "state the basis" for its allegations. Subject to this objection, CIC has produced documents that set forth Unionamerica's refusal to answer questions regarding the Brush Wellman and Norton Company Claims.

2. State the basis for CIC's allegation in CIC's Brief Summary that "the documents that Unionamerica permitted AISUK to inspect were insufficient and, in some cases, Unionamerica refused to let AISUK see certain documents" and "the documents that Unionamerica permitted AISUK to inspect were very limited and insufficient"; identify each communication and document concerning this allegation; identify each document Unionamerica "refused to let AISUK see" or otherwise withheld; and identify what documents CIC would have deemed sufficient.

CIC objects to Interrogatory 2 to the extent that it requests that CIC "state the basis" for its allegations. Subject to this objection, CIC states that, insofar as AISUK's access to Unionamerica's documents was limited, it is unable to identify the documents that AISUK was not permitted to see. CIC has previously produced documents that set forth Unionamerica's

refusal to permit full inspection of all relevant documents regarding the Brush Wellman and Norton Company Claims.

3. Identify all insurers other than KX and Unionamerica that have made reinsurance claims against The Home with respect to the losses (or losses similar to the losses) claimed by the insureds in the Brush Wellman and Norton Company Claims. Identify each such claim, and describe the position CIC has taken concerning each claim, including whether CIC has asserted that payments to Brush Wellman (or losses similar to the loss) are in respect of a policy buy back based on potential future claims and therefore not recoverable, and whether CIC has asserted that payments to the Norton Company (or losses similar to the loss) are in respect of defence costs and therefore not recoverable.

CIC objects to Interrogatory 3 on the grounds that it is vague, overly broad and unduly burdensome and seeks information that is irrelevant to this disputed claim proceeding.

4. State whether CIC has, or will, make claims against its reinsurers with respect to the losses (or losses similar to the losses) claimed by the insureds in the Brush Wellman and Norton Company Claims. Identify each such claim, and describe how CIC has, or will, present such claims to its reinsurers, including how CIC has, or will, address buy back issues with respect to the Brush Wellman Claim and defence costs issues with respect to the Norton Company Claim.

CIC objects to Interrogatory 4 on the grounds that it is vague, overly broad and unduly burdensome and seeks information that is irrelevant to this disputed claim proceeding.

5. State the basis for CIC's position in CIC's Brief Summary that "it can find no evidence of any paid liability" with respect to the Brush Wellman Claims, in light of Exhibit A15 to Unionamerica's Written Submission, which documents paid claims for each of the 1974, 1975



and 1976 years.

CIC objects to Interrogatory 5 to the extent that it requests that CIC "state the basis" for its allegations. Subject to this objection, CIC states that while there have been some small amounts paid in connection with the Brush Wellman claims, the bulk of the settlement is a buyback which is in respect of future potential liability.

6. State each and every paragraph from the Award dated 31 March 1998 on which CIC specifically relies in support of its position.

CIC objects to Interrogatory 6 to the extent that it requests that CIC "state the basis" for its allegations. CIC further objects to Interrogatory 6 on the ground that the effect of the Award on this disputed claim proceeding is a legal issue that is not properly subject to interrogatories.

7. State the basis for CIC's position (i.e. AISUK's understanding) in CIC's Brief Summary that, "there are no underlying indemnity payments on these years and that the payments made by Unionamerica are 'accelerated payments'; i.e. they are payments in respect of possible future liabilities".

CIC objects to Interrogatory 7 to the extent that it requests that CIC "state the basis" for its allegations. CIC further objects to Interrogatory 7 on the ground that whether the payments by Unionamerica are accelerated payments that are not reinsured is a legal issue that is not properly subject to interrogatories.

#### **OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS**

1. All documents concerning CIC's allegation in CIC's Brief Summary that "Unionamerica also has refused to answer AISUK's reasonable questions regarding the Claims."

CIC has previously produced all documents in its possession responsive to Document Request 1.

2. All documents concerning CIC's allegation in CIC's Brief Summary that "the documents that Unionamerica permitted AISUK to inspect were insufficient and, in some cases, Unionamerica refused to let AISUK see certain documents" and "the documents that that [sic] Unionamerica permitted AISUK to inspect were very limited and insufficient."

In addition to documents that CIC has previously produced, CIC is producing documents bates-stamped CIC 000001-8, which are also responsive to this request.

3. All documents concerning CIC's position concerning insurers other than KX and Unionamerica that have made reinsurance claims against The Home with respect to the losses (or losses similar to the losses) claimed by the insureds in the Brush Wellman and Norton Company Claims, including documents concerning whether CIC has asserted that payments to Brush Wellman are in respect of a policy buy back based on potential future claims and therefore not recoverable, and documents concerning whether CIC has asserted that payments to the Norton Company are in respect of defence costs and therefore not recoverable.

CIC objects to Document Request 3 on the grounds that it is vague, overly broad and unduly burdensome and seeks documents that are irrelevant to this disputed claim proceeding.

4. All documents concerning whether CIC has, or will, make claims against its reinsurers with respect to the losses (or losses similar to the losses) claimed by the insureds in the Brush Wellman and Norton Company Claims, including documents concerning how CIC has, or will, address buy back issues with respect to the Brush Wellman Claim and defence costs issues with respect to the Norton Company Claim.

CIC objects to Document Request 4 on the grounds that it is vague, overly broad and unduly burdensome and seeks documents that are irrelevant to this disputed claim proceeding.

5. All documents concerning Unionamerica's Brush Wellman and Norton Company

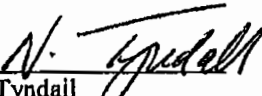
Claims (and the Brush Wellman and Norton Company losses generally), including internal CIC documents and communications with The Home.

In addition to documents that CIC has previously produced, CIC is producing documents bates-stamped CIC 000009-62, which are also responsive to this request.

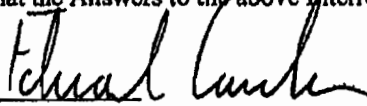
6. All documents concerning CIC's position (i.e. AISUK's understanding) in CIC's Brief Summary that, "there are no underlying indemnity payments" on these years and that the payments made by Unionamerica are 'accelerated payments'; i.e. they are payments in respect of possible future liabilities".

CIC has previously produced all non-privileged documents in its possession responsive to Document Request 6.

AS TO ANSWERS TO INTERROGATORIES:

  
Nick Tyndall  
Claims Manager, ACE European Group

On this 8<sup>th</sup> day of October, 2009, Nick Tyndall, personally known to me, appeared before me and made an oath that the Answers to the above Interrogatories are true to the best of his knowledge and belief.



Notary Public, London, England

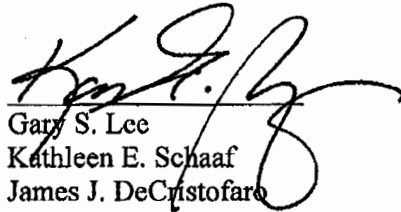
(Edward Gardiner)

My Commission Expires with Life

AS TO OBJECTIONS TO INTERROGATORIES AND RESPONSES TO DOCUMENT  
REQUESTS:

Dated: October 9, 2009

Respectfully submitted,  
CENTURY INDEMNITY COMPANY  
By its attorneys,



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Solicitors for Century Indemnity Company

**CERTIFICATE OF SERVICE**

I, Kathleen E. Schaaf, hereby certify that, on October 9, 2009, a copy of the foregoing Answers and Objections of Century Indemnity Company to Unionamerica Insurance Company Limited's First Set of Interrogatories and Document Requests has been electronically forwarded to the following counsel:

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\_\_\_\_\_  
Kathleen E. Schaaf

# EXHIBIT C

Confidential

# **EXHIBIT D**

**LOCAL RULES  
OF THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS**



**Including Amendments Through  
APRIL 1, 2008**



## RULE 26.5 UNIFORM DEFINITIONS IN DISCOVERY REQUESTS

**(a) Incorporation by Reference and Limitations.** The full text of the definitions set forth in paragraph (c) is deemed incorporated by reference into all discovery requests, but shall not preclude

- (1) the definition of other terms specific to the particular litigation;
- (2) the use of abbreviations; or
- (3) a narrower definition of a term defined in paragraph (c).

**(b) Effect on Scope of Discovery.** This rule is not intended to broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure.

**(c) Definitions.** The following definitions apply to all discovery requests:

(1) *Communication.* The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

(2) *Document.* The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

(3) *Identify (With Respect to Persons).* When referring to a person, “to identify” means to give, to the extent known, the person’s full name, present or last known address, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(4) *Identify (With Respect to Documents).* When referring to documents, “to identify” means to give, to the extent known, the

- (a) type of document;
- (b) general subject matter;
- (c) date of the document; and
- (d) author(s), addressee(s), and recipient(s).

(5) *Parties.* The terms “plaintiff” and “defendant” as well as a party’s full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(6) *Person.* The term “person” is defined as any natural person or any business, legal, or governmental entity or association.

(7) *Concerning.* The term “concerning” means referring to, describing, evidencing, or constituting.

(8) *State the Basis.* When an interrogatory calls upon a party to “state the basis” of or for a particular claim, assertion, allegation, or contention, the party shall

- (a) identify each and every document (and, where pertinent, the section, article, or subparagraph thereof), which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the interrogatory;
- (b) identify each and every communication which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the interrogatory;
- (c) state separately the acts or omissions to act on the part of any person (identifying the acts or omissions to act by stating their nature, time, and place and identifying the persons involved) which form any part of the party's information regarding the alleged facts or legal conclusions referred to in the interrogatory; and
- (d) state separately any other fact which forms the basis of the party's information regarding the alleged facts or conclusions referred to in the interrogatory.

*Adopted effective October 1, 1992.*

**EXHIBIT E**

**SUPERIOR COURT STANDING ORDER 1-09.**  
**WRITTEN DISCOVERY**

**(Applicable to All Counties)**

**1. Uniform definitions in discovery requests**

(a) **Incorporation by Reference and Limitations.** The full text of the definitions set forth in paragraph (1)(c) is deemed incorporated by reference into all discovery requests, but shall not preclude (i) the definition of other terms specific to the particular litigation; (ii) the use of abbreviations; or (iii) a narrower definition of a term defined in paragraph (1)(c).

(b) **Effect on Scope of Discovery.** This rule is not intended to broaden or narrow the scope of discovery permitted by the Massachusetts Rules of Civil Procedure.

(c) **Definitions.** The following definitions apply to all discovery requests, unless otherwise ordered by the court:

(1) *Communication.* The term “communication” means the transmittal of information (in the form of facts, opinions, ideas, inquiries, or otherwise).

(2) *Document.* The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in *Mass. R. Civ. P. 34(a)*. An earlier draft is a separate document within the meaning of this term.

(3) *Identify (With Respect to Persons).* When referring to a natural person, to “identify” means to give, to the extent known, the person’s (a) full name, (b) present or last known address, and (c) the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(4) *Identify (With Respect to Entities).* When referring to an entity, to “identify” means to give, to the extent known, (a) the entity’s full name, including (when not apparent from the name) the nature of the entity, e.g. corporation, limited liability corporation, partnership, or professional corporation, (b) present or last known address of its headquarters or principal place of business, and (c) the state in which the entity is incorporated or otherwise created. Once an entity has been identified in accordance with this subparagraph, only the name of that entity need be listed in response to subsequent discovery requesting the identification of that entity.

(5) *Identify (With Respect to Documents).* When referring to documents, to “identify” means to give, to the extent known: (a) the type of document; (b) the general subject matter; (c) the date of the document; (d) the author or authors, according to the document; and (e) the persons to whom, according to the document, the document (or a copy) was to have been sent.

(6) *Parties.* The term “plaintiff” or “defendant,” as well as a party’s full or abbreviated name or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, and subsidiaries. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(7) *Person*. The term “person” means any natural person or any business, legal, or governmental entity.

(8) *Concerning*. The term “concerning” means referring to, describing, offering evidence of, or constituting.

(9) *State the Basis or State all Facts*. When an interrogatory calls upon a party to “state the basis” of or “state all facts” concerning a particular claim, allegation, or defense (or uses comparable language), the party shall provide a substantial summary of the factual basis supporting the claim, allegation, or defense at the time the interrogatory is answered. The summary shall: (a) identify the essential acts or failures to act forming the substance of the claim, allegation, or defense, (b) identify the persons and entities that, through firsthand information or possession of documents, are the sources of the party’s information regarding the claim, allegation, or defense, and (c) when one or more documents is the basis of the claim, allegation, or defense, such as a written contract in a contractual claim or defense, or a written misrepresentation in a misrepresentation claim, identify (or provide as part of the interrogatory answer a copy of) each such document. In stating the basis, a party may not withhold information from the interrogatory answer because it derives from attorney work product or was obtained in anticipation of litigation if the party intends to offer this information at trial.

2. **Objections to Interrogatories**

General objections to interrogatories are prohibited. Each objection to an interrogatory shall be specific to that interrogatory and shall have a good faith basis. If a party refuses to answer an interrogatory, the party shall so state and identify each objection asserted to justify the refusal to answer. If a party, after having asserted an objection, answers the interrogatory, the answer shall state either: (a) notwithstanding the objection no information has been withheld from the answer, or (b) information has been withheld from the answer because of the objection. Where information has been withheld from the answer, the objecting party shall describe the nature of the information withheld and identify each objection asserted to justify the withholding.

3. **Objections to Requests for the Production of Documents and Things**

(a) Where a party serves a response to a request for production of documents and things under Mass. R. Civ. P. 34 before production is completed, the response may include general objections. However, where general objections are made, the responding party shall prepare and serve a supplemental response no later than 10 days after the completion of production.

(b) Once production is completed, general objections to requests for production of documents and things are prohibited. As to each request, the supplemental response shall state either: (i) notwithstanding prior general objections, all responsive documents or things in the possession, custody, or control of the responding party have been produced; (ii) after diligent search no responsive documents or things are in the possession, custody, or control of the responding party; or (iii) the specific objection made to the request. When specific objection is made, the response shall describe the nature of all responsive documents or things in the possession,

custody, or control of the responding party that have not been produced because of the objection. Where a privilege log is required by Mass. R. Civ. P. 26(b)(5) or court order, the log shall be served with the supplemental response, unless the requesting party waives entitlement to the log or agrees to a later date for service.

(c) In the initial written response, the responding party shall articulate with clarity the scope of the search conducted or to be conducted. If the scope of the search changes during production, the responding party in the supplemental written response shall articulate with clarity the change in scope. If the scope of the search does not include all locations, including electronic storage locations, where responsive documents or things reasonably might be found, the responding party shall explain why these locations have been excluded from the scope of the search.

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**Barbara J. Rouse**  
**Chief Justice**  
**Superior Court**

**Adopted Effective: January 12, 2009**