

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

**LIQUIDATOR'S OBJECTION TO CENTURY'S
REQUEST FOR EVIDENTIARY HEARING**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of the Home Insurance Company ("Home"), hereby objects to the request for evidentiary hearing filed by Century Indemnity Company ("Century") in this disputed claim proceeding. For the reasons set forth below, there is no need for an evidentiary hearing. It would be most efficient for the Referee to address Century's request for a confidentiality order on a properly supported motion and, after that issue is resolved, to remand the matter to the Liquidator for Century to present substantiation of its claim.

1. This proceeding concerns Century's claims relating to alleged subrogation and contribution rights. Century has not provided substantiation for those claims to the Liquidator on the ground that it can do so only under a confidentiality agreement. The only issue properly now before the Referee is whether to enter a confidentiality order covering documentation to be provided to the Liquidator. That issue should be resolved by Century filing a motion for confidentiality order, supported by affidavit, that explains the reasons for requesting confidential treatment, together with a proposed form of confidentiality order specifying the restrictions

Century seeks. The Liquidator will then respond, and the Referee will act on the motion for confidentiality order.

2. The matter should then be remanded to the Liquidator for Century to present the information and evidence supporting its claim. This disputed claim proceeding is not the appropriate place for Century to make initial submissions concerning its subrogation and contribution claims. Century should provide the information supporting the claims to the Liquidator. Only if the Liquidator denies the claims after review of the supporting information should these matters be presented to the Referee.

3. Century asserts that it has claims against Home for “amounts which [Century] paid – and continues to pay – on Home’s behalf in respect of dozens, if not hundreds, of policyholders.” Motion ¶ 1. Century estimates that these claims total “approximately \$93 million.” Mandatory Disclosures ¶ 10. The Liquidator denied the claims because they had not been substantiated, and Century now asserts that “[o]nce [Century’s] concerns about Confidential Information are resolved through a Confidentiality Order (or such other determination as the Referee may make), [Century] will provide to the Liquidator documentation in support of its claims, which includes, but is not limited to, insurance policies, cost share agreements, settlement agreements, e-mails, letters, handwritten notes, spreadsheets, account summaries and payment ledgers.” *Id.* ¶ 12. Century adds that, if an evidentiary hearing is granted, it “intends to present testimony showing that it is entitled to the Claims.” *Id.*

4. Century’s proposed process is neither efficient nor consistent with the Act or the Restated and Revised Order Establishing Procedures Regarding Claims filed With The Home Insurance Company in Liquidation (“Claims Procedures Order”). Century should not be permitted to leap-frog over the Liquidator and avoid the orderly process of presenting its claim.

Both the Act and the Claims Procedures Order contemplate that claimants will present substantiating information to the Liquidator in the first instance, not the Referee or the Court. The claimant is required to present the particulars of the claim and supporting information or evidence to the Liquidator. See RSA 402-C:38, I (proof of claim is to include “[t]he particulars of the claim” and any supporting “written instrument”); RSA 402-C:38, II (Liquidator may require “additional information or evidence”); Claims Procedures Order § 5. The Liquidator is to investigate and determine the claim and, if it is disputed, create a Case File with the most pertinent non-privileged information. RSA 402-C:45, I; RSA 402-C:41, I; Claims Procedures Order §§ 6, 14. Contrary to Century’s apparent position that an explanation of the claim can only be provided through testimony to the Referee or Court, the claimant may (and should) provide the Liquidator with a written explanation of the claim by letter or affidavit. See RSA 402-C:38, II; Claims Procedures Order § 5.

5. This process serves the obvious purposes of allowing the Liquidator to consider the claim and supporting information in the first instance and reserving the resources of the Referee or Court for claims where there is a dispute. It would be inefficient for claims to be presented for the first time during the course of a disputed claim proceeding. The Act and Claims Procedures Order clearly contemplate that only “Disputed Claims” are to come before the Referee or Court. Century’s proposal to present payments to “dozens, if not hundreds” of policyholders to the Referee through “insurance policies, cost share agreements, settlement agreements, e-mails, letters, handwritten notes, spreadsheets, account summaries and payment ledgers” and testimony without presenting the documents and an explanation to the Liquidator first is wasteful. The process provided by RSA 402-C:38 and 41 and the Claims Procedures Order contemplates the narrowing, not widening, of information and arguments as a claim moves

from the Liquidator to the Referee or Court. It would be far more efficient for Century to present the claims information by supplying written explanation and documentation to the Liquidator than for it to present testimony of numerous “Claims Handlers” and “experts” and “voluminous” documentation to the Referee in the first instance. Motion ¶¶ 9-11.

6. Century also states that it intends to call Mr. Rosen to testify about, “among other things, the facts and evaluation process at Home that led to the denial of the Claim.” Motion ¶ 14. This reflects a misunderstanding of the disputed claim proceeding process. A disputed claim proceeding is not a review of the Liquidator’s determination of the claim. It is a de novo proceeding to determine whether the claimant has shown that it has a valid claim. Except as a trigger for this proceeding, the Liquidator’s determinations are not relevant. Under the Act, a claimant is to provide the Liquidator with a proof of claim and supporting information or evidence. RSA 402-C:38; see Claims Procedures Order § 5. When the Liquidator denies a claim, he is to issue a notice of determination. The claimant then may file its objections with the Court. RSA 402-C:41, I; see Claims Procedures Order §§ 6, 8. “The matter then may be heard by the court or by a court-appointed referee.” RSA 402-C:41, II; see Claims Procedures Order § 10. Nothing in the Act or the Claims Procedures Order provides for the Referee to review the Liquidator’s determination. It is the “Disputed Claim” that is to be adjudicated. Claims Procedures Order § 11. Testimony (and discovery) concerning why the Liquidator denied the claim is not relevant to the Referee’s de novo review and will only serve to burden the disputed claim proceeding and the liquidation as a whole. This is particularly the case where, as here, Century admits that it has not provided any of the supporting information to the Liquidator, and the denial was for lack of substantiation.

7. Accordingly, the only issue appropriate for determination by the Referee at this time is Century's request for a confidentiality order. That request, however, does not require an evidentiary hearing. Century should file a motion for confidentiality order (supported by affidavit) that explains the reasons for requesting confidential treatment. Century should also submit a proposed form of confidentiality order specifying the restrictions it seeks to impose. The Liquidator will then respond, and the Referee will act on the motion for confidentiality order. The matter should be remanded to the Liquidator for Century to present the information and evidence supporting its claim. Only if the Liquidator then determines to deny all or part of the claim and Century objects will it be disputed and ripe for determination by the Referee.

CONCLUSION

For the reasons stated, the Referee should deny Century's motion for an evidentiary hearing.

Respectfully submitted,

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

By his attorneys,




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Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Objection to Century's Request for Evidentiary Hearing was sent, this 16th day of February, 2006, by email to all persons on the attached service list.



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