

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: RAHM700612-32
Claimant Name: KX Reinsurance Company Limited
Policyholder Account: Various

**KX REINSURANCE COMPANY LIMITED'S OBJECTION TO CENTURY
INDEMNITY COMPANY'S MOTION FOR CLARIFICATION**

KX Reinsurance Company Limited ("KX") submits this brief objection to the motion submitted by Century Indemnity Company ("CIC") seeking "Clarification" of the Referee's January 4, 2010 Order.

CIC does not need clarification of the Referee's Order. The Referee's Order was perfectly clear. The Motion for Clarification is nothing other than a veiled motion for re-consideration; it seeks to winnow down the Order to the point where it has no effect. The issues were already fully briefed, and properly determined. CIC had its proper opportunity and raised these issues already, following which the Referee entered the Order. The Order means what it says.

I. KX Sought Information And Documents From CIC, And The Order Compelled Their Production

The Referee has already properly ruled that CIC must provide information and documents concerning other positions CIC, and not just one of its affiliates, has taken on the claims in this matter.

KX properly propounded its discovery request against the very party against whom it is positioned in this matter – CIC.¹ KX specifically sought documents and information relevant to the position of CIC, not just one of CIC’s affiliates – ACE INA Services U.K. Limited (“AISUK”). Contrary to CIC’s suggestion, CIC has participated fully in this disputed claim.

CIC’s discovery response sought to limit its obligations to its affiliate – AISUK. KX, however, did not accept that limitation and subsequently brought its Motion to Compel against CIC. CIC’s Objection to the Motion to Compel then asked the Referee to limit the response to the affiliate.² The Referee, however, properly ordered CIC to provide discovery concerning “CIC’s position on other Brush Wellman and Norton Claims.” Order, at V.

The Referee’s ruling was proper. CIC, as the reinsurer/retrocessionaire (i.e. the risk carrier), is the relevant entity. Despite CIC’s suggestions to the contrary, AISUK is not an insurer or reinsurer. The positions taken by CIC as a reinsurer/retrocessionaire are undeniably relevant.

Moreover, given the Order’s finding that inconsistent positions by CIC on other claims are potentially relevant, there can be no principled reason to limit CIC’s discovery obligation only to one of its affiliates. Indeed, it is CIC, not AISUK, that is KX’s opponent in this matter. That CIC’s positions in this matter may contradict positions CIC has taken in other matters is relevant. Hence the Order says what it does.

II. The Order’s Reference To “other reinsurers” Does Not Require Clarification

CIC notes that the Ruling “directs CIC to respond with respect to ‘other reinsurers,’” and protests that “CIC is unsure what this involves.” Motion, at ¶5. It is clear, however, that the word “reinsurers” should be read to mean the generic “insurers.” Given the context, it is clear

¹ KX propounded its discovery on CIC “and all of its past or present agents, representatives, employees, attorneys, accountants, and investigators.”

² See Objection, at ¶ 8.

that CIC should respond in relation to all inwards claims in respect of Brush Wellman and Norton Company whether by reinsurance (e.g. KX, as insurer, in respect of Brush Wellman) or retrocession (e.g. KX, as reinsurer, in respect of Norton Company). Indeed, CIC appears comfortable with this principle in Paragraph 7 of its Motion where it refers, in the context of the confidentiality issue, to claims submitted by "other insurers or reinsurers" which it further describes using the generic "cedents" (i.e. it accepts and understands the principle that it is obliged by the Order to address all inwards claims).

III. There Exists No Need To Dilute The Order With CIC's Many New Restrictions

CIC's effort to winnow down the Order, at Paragraphs 4, 6, 13, 14, 15 and 16 of its Motion, based on speculation as to similar language, or law, or layers of insurance, should be rejected. CIC is simply trying to dilute the Order to the level where the Order might very well have no effect, particularly if CIC applies its own definitions to these new restrictions. The Order is proper as issued.

IV. Confidentiality

CIC provides no explanation as to why it needs to redact the information identifying other cedents. Indeed the identity of many (if not all) other cedents (as a matter of general information, though not by reference to any specific claim) is available to creditors and to the public through the HICIL website. CIC doubtless seeks this provision for the purpose of cloaking its inconsistent treatment of creditors and keeping creditors from maintaining a unified front on these claims/issues. In any event, the confidentiality agreement already in place fully addresses CIC's concerns.

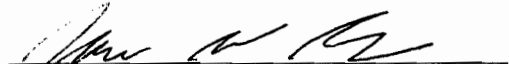
V. KX Assents To CIC's Request for Additional Time

Finally, KX assents to CIC's request that it be allowed forty-five days from the date of the Referee's decision on the Motion to provide the discovery required by the Order.

CONCLUSION

For all these reasons, KX submits that the Referee's Order was clear and proper and need not be re-opened, re-considered, or "clarified."

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By its attorneys,


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Dated: January 25, 2010

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 January 2009.


Joshua W. Gardner