

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-16
Proof of Claim Number: RAHM700632
Claimant Name: Century International Reinsurance Company Ltd.

**CIRC'S OBJECTION TO MOTION
OF NATIONWIDE TO PARTICIPATE IN THE
DISPUTED CLAIM PROCEEDING FOR CENTURY
INTERNATIONAL REINSURANCE COMPANY'S OBECTION
TO DENIAL OF CLAIM RELATING TO REINSURANCE OF HOME**

Century International Reinsurance Company Ltd. ("CIRC"), by its attorneys, Orr & Reno P.A., objects to the Motion to Participate in the Disputed Claim Proceeding for Century International Reinsurance Company's Objection to Denial of Claim Relating to Reinsurance by Home (the "Motion to Participate"), filed by Nationwide General Insurance Company and Nationwide Mutual Insurance Company (collectively, "Nationwide") and respectfully states as follows:

1. Nationwide should be prevented from interfering in the above-captioned disputed claim proceeding. Nationwide's entire basis for its Motion to Participate is the same "interest" that is shared by Home's thousands of claimants, and does not warrant Nationwide's request to ostensibly peer over the Liquidator's shoulder and make suggestions about how the Liquidator should defend its claim determination.

2. In fact, allowing Nationwide to participate in this disputed claim proceeding would open the door to Nationwide, and all of Home's claimants, to participate in every disputed claim proceeding. Such a result would wreak havoc on Home's liquidation and claims determination process.

3. Accordingly, Nationwide's Motion to Participate should be denied.

Nationwide Has No Interest in This Disputed Claim Proceeding

4. For the fifth time, Nationwide seeks to involve itself in matters of Home's liquidation that do not pertain to it. Nationwide first presented itself at a hearing on February 17, 2005 regarding the Liquidator's motion for approval of a settlement agreement between Home and Agrippina Versicherung Aktiengesellschaft. After being assured by the Liquidator that the agreement was to have absolutely no effect on Nationwide, the Court denied Nationwide's request to procure a non-redacted version of the confidential agreement.

5. Nationwide's second, third and fourth attempts at involving itself were in the forms of motions seeking intervenor status as regarding the Court's decision whether to approve the Liquidator's proposed agreement with AFIA cedents (the "Agreement"). *See* Motion to Intervene, dated July 22, 2005; Motion for Reconsideration of Court's Denial of Nationwide's Motion to Intervene and Motion to Permit Attorney Cohen to Appear Pro Hac Vice, dated July 28, 2005; Motion to Intervene, dated August 10, 2005. The Liquidator and ACE opposed Nationwide's pleadings and briefed the issue of why Nationwide lacked a direct and apparent interest in the matter which precluded it from obtaining intervenor status under New Hampshire law. The Court denied Nationwide's motions. *See* Transcript ("Tr.") of July 25-29, 2005 Final Hearing at Vol. 1-A, 11:1-6; Tr. 5-A, 6:13-7:11; Order, dated September 29, 2005.

6. Nationwide is now attempting a different tactic. Having been denied intervenor status where Nationwide's only connection with the subject matter was the distribution that it, along with every other AFIA cedent, claims to be entitled to under the Agreement, Nationwide now seeks to avail itself of the participation provision in the Restated and Revised Order Establishing Procedures Regarding Claims Filed with the Home Liquidation, dated January 19, 2005 (the "Claims Procedures Order"), to assert itself into a matter to which its only connection is, once again, the distribution that it, along with every other AFIA cedent, claims to be entitled to

under the Agreement. *See* Motion to Participate at 6 (“Nationwide’s interests will be directly affected by this Court’s disposition of CIRC’s claim to the extent that approval of the claim will result in less distribution to Nationwide as a creditor.”). To be sure, the claim in dispute in this proceeding does not involve Nationwide at all, nor does Nationwide claim that it does.

7. Paragraph 9(b) of the Claims Procedures Order allows a party who is “**directly** affected by the Disputed Claim proceeding [to] seek leave to intervene therein by filing a ‘Motion to Participate.’” (emphasis added). The Claims Procedures Order contains two examples of parties so “directly affected”: guaranty funds and reinsurers. Guaranty funds may be liable to pay claims admitted into an insurer’s estate and are accordingly granted statutory authority to intervene in any court proceeding concerning the insurer’s rehabilitation or liquidation. *See* RSA §§ 402-C:18, IV; 404-D:8, VIII; 404-H:8, II(c); and 408-B:8, VII. Reinsurers may intervene when they “have a contractual right to interpose any defense or defenses that they deem available to The Home[, and must] identify the contract in question and state that they have a contractual right to interpose defenses.” Claims Procedures Order, ¶ 9(b). In addition, paragraph 14(d) of the Claim Procedures Order requires parties who have filed a motion to participate to “provide to both the Liquidator and the Claimant a copy of any documents supporting any defenses they may assert to the Disputed Claim.”

8. Clearly, the Claims Procedures Order contemplates that parties “who are **directly** affected by the Disputed Claim proceeding” will have an interest greater than that belonging to every AFIA cedent. Indeed, the Court previously denied Nationwide’s motion to reconsider the Court’s denial of its motion to intervene because Nationwide failed to articulate why Nationwide “want[s] to be a party in the proceedings, unlike any other AFIA Cedent.” Tr. 5-A, 6:13-17. Likewise, allowing Nationwide to participate in this disputed claim proceeding would open the door for every AFIA cedent to participate in every disputed claim proceeding between ACE and Home, of which there are currently six (out of sixteen docketed disputed claim proceedings).

9. In fact, allowing Nationwide to participate in this disputed claim proceeding would be tantamount to allowing all of Home's thousands of claimants to participate in every disputed claim proceeding on the basis of their interests in the estate's distribution. It is well settled, however, that "[g]eneral creditors in the receivership do not have the direct interest in any single asset of the receivership to justify intervention in the Receiver's action to administer the assets. If a Class 10 creditor was held to have such a direct interest, then all claimants would have a sufficient interest to support intervention in practically every action by the Receiver." *Oklahoma, ex rel. Crawford v. American Standard Life & Accident Ins. Co.*, 37 P.3d 971, 974 (Okla. Civ. App. 2001) (denying intervention by general creditor); *see also Frederick v. Third Nat. Bank & Trust Co.*, Case No. CA 6673, 1980 Ohio App. LEXIS 9909, * 6-7 (Ohio Ct. App. Sept. 19, 1980) ("Appellant's interest in these proceedings is only as a creditor of the bankrupt, and as such, is no different nor of any greater magnitude than any ... other creditor. If PNB is permitted to intervene in the case at bar, there is no reason why all other creditors ... should not be permitted to intervene to protect their interests in these assets."); *Trosper v. Ingham*, 292 N.W. 360, 361 (Mich. 1940) ("If petitioner is permitted to intervene then the other policyholders must be granted like permission on application and such would defeat the very policy of the insurance law.").¹

10. Accordingly, Nationwide cannot be allowed to use the provisions of the Claims Procedures Order, the purpose of which "is to achieve uniformity and ... to assist all Claimants worldwide in the orderly presentation of their claims against The Home," to cause extreme chaos, delay and unnecessary expense in Home's claims determination process and liquidation by opening the door for all of Home's claimants to participate in its disputed claim proceedings.

¹ For the same reason, RSA § 402-C:41 does not aid Nationwide's argument. (*See Mot. to Participate*, at 1.) That section discusses what occurs when a liquidator objects to a claim. If the claimant objects to the liquidator's claim determination, the liquidator will ask the court for a hearing and give notice of the hearing to the claimant and to "any other persons directly affected." Nationwide's citation of this section suggests that notice should be given to every claimant in Home's liquidation, as they all share Nationwide's interest in disputed claim proceedings that will affect the distribution of Home's estate assets.

11. To avoid this scenario, supervising courts appoint liquidators to step into the shoes of the insurer and entrust the liquidators with authority to review, investigate and recommend claims, *see* RSA § 402-C:45, I, to prosecute actions on behalf of the insurer, and on behalf of the creditors and policyholders of the insurer (including the assertion of rights and defenses of such insurers, creditors and policyholders), *see* RSA § 402-C:25, XII, XIII, XVII and XVIII, and to pay out distribution of assets. *See* RSA § 402-C:46, I. Moreover, liquidators are also “charged with representing the interests of all creditors,” as conceded by Nationwide. *See* Motion to Participate at ¶ 7.

12. Nationwide suggests that despite these charges to the Liquidator, it will only argue its case half-heartedly because it will be able to set off amounts it owes to ACE even if it loses this disputed claim proceeding. *Id.* (“Home will still receive economic value should CIRC prevail in that the estate of Home will have its liabilities under the stop loss cover reduced dollar for dollar by reason of the setoff. The effect on Nationwide and the other AFIA creditors conversely will only be to reduce the administrative payments to them without conferring a corresponding benefit such as the reduction of their liabilities.”). Again, Nationwide’s suggestion invites all of Home’s claimants to participate in disputed claim proceedings where they suspect that the Liquidator is not doing its utmost to ensure that the claimants are recovering as much in the way of distributions as possible. By doing so, Nationwide undermines the very concept of a liquidator.²

13. In light of the foregoing, Nationwide’s Motion to Participate should be denied because it has no interest in this disputed claim proceeding. Further, this motion should be denied to avoid setting up an invitation to every claimant in every insurance liquidation from seeking to participate in disputed claim proceedings to which they would otherwise have no connection at all, on the basis that the outcomes of the disputes affect their distributions.

² Nationwide also ignores the fact that ACE is a net creditor of Home, which causes the Liquidator’s interests to be aligned with Home’s creditors, as both seek to have Home become a net creditor of ACE.

WHEREFORE, CIRC respectfully requests that the Referee:

- A. Deny Nationwide's Motion to Participate; and
- B. Grant such other and further relief as the Referee deems proper.

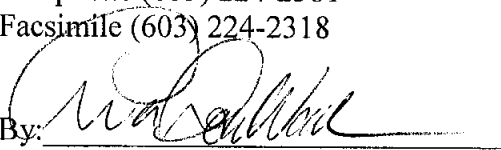
Respectfully submitted,

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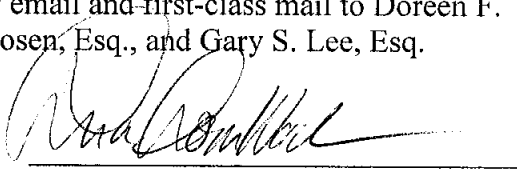
Dated: February 13, 2006

By: 

Lisa Snow Wade

Certificate of Service

I, Lisa Snow Wade, Esq., hereby certify that on this 13th day of February 2006 I have caused a copy of the foregoing to be forwarded by email and first-class mail to Doreen F. O'Connor, Esq., J. David Leslie, Esq., Jonathan Rosen, Esq., and Gary S. Lee, Esq.



Lisa Snow Wade

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