

**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: RAHM 700632  
Claimant Name: Century International Reinsurance Company

**CENTURY INTERNATIONAL REINSURANCE COMPANY'S  
REQUEST FOR EVIDENTIARY HEARING REGARDING CLAIM  
RELATING TO REINSURANCE BY HOME**

Century International Reinsurance Company Ltd. ("CIRC"), by its attorneys Lovells, hereby submits the following request for evidentiary hearing, pursuant to Section 11 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation ("Home"), dated January 19, 2005 (the "Claims Procedures"), in connection with the dispute (the "Claim Dispute") concerning proof of claim number RAHM 700632 (the "Claim"), and respectfully states as follows.<sup>1</sup>

**I.**  
**SUMMARY OF RELIEF REQUESTED**

1. An evidentiary hearing is necessary if the Referee is to efficiently adjudicate Home's denial of the Claim. As set forth in more detail in CIRC's Objection to Denial of Claim Relating to Reinsurance by Home (the "Objection"), Home has raised defenses to the Claim that are not supported by the available documents. In light of the need for testimony and further information on Home's defenses, CIRC submits that an evidentiary hearing provides the Referee with the most helpful, economical means to resolve the Claim Dispute.

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<sup>1</sup> CIRC reserves all rights to change or supplement the evidence discussed herein in all respects, including witness identity and coverage and scope of anticipated testimony.

**II.**  
**BRIEF BACKGROUND**

2. Under the Quota Share Reinsurance Treaty Agreement (the "Quota Share"), which was executed in connection with the sale of AFIA, Home and the other AFIA sellers agreed to reinsure certain "Indemnitees" in relation to "London Losses" and "non-recoverable reinsurance." The Quota Share defined "Indemnitees" to include each "AFIA Entity (except Seller Branches)."

3. CIRC is an "Indemnitee" under the terms of the Quota Share because its predecessor, BAFCO Reinsurance Company Ltd. of Bermuda ("BAFCO") was an "AFIA Entity" and was not a "Seller Branch." Accordingly, Home is liable to CIRC for any payments made by CIRC in relation to "London Losses" and "non-recoverable reinsurance," and CIRC may set off the amount of such liabilities as they become due and owing.<sup>2</sup>

**III.**  
**CURRENT PROCEDURAL POSTURE**

4. CIRC timely filed the Claim. In response, Jonathan Rosen, as Chief Operating Officer of Home and on behalf of Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, Liquidator of Home (the "Liquidator"), ultimately sent a Notice of Determination to CIRC, dated August 23, 2005 (the "NOD"), in which he rejected the Claim and valued it at \$0.

5. In its Request for Review, dated September 20, 2005 (the "RFR"), CIRC rejected Mr. Rosen's position as stated in the NOD. Thereafter, on November 9, 2005, Mr. Rosen issued his Notice of Redetermination (the "NOR"). Like the NOD, the NOR rejected the Claim and valued it at \$0. In the NOR, Mr. Rosen claimed that CIRC is not an "Indemnitee" under the

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<sup>2</sup> A more detailed description of the Claim is contained in the Objection, which is incorporated herein in its entirety.

Quota Share and alleged that Michael Durkin, an employee of ACE INA Services UK Limited ("ASIUK"), had admitted as much in his deposition. CIRC timely filed the Objection and disputes the NOR in its entirety.

6. On January 9, 2006, the Liquidation Clerk filed its Notice of Disputed Claim in respect of the Claim. On February 2, 2006, the Liquidator mailed the Case File (as defined in the Claims Procedures) to counsel for CIRC.

7. Concurrently with this request for evidentiary hearing, CIRC is filing its mandatory disclosures in respect of this Claim Dispute.

#### **IV.** **BASIS FOR RELIEF REQUESTED**

8. Consideration of testimony here would be much more efficient and helpful than exclusive reliance on documents, because the disagreements between the parties are not readily resolved through the latter. Home, for example, has supported its denial by claiming that Mr. Durkin's deposition testimony constitutes an "admission against interest." CIRC will present testimony refuting Home's characterization of Mr. Durkin's testimony, not least because Mr. Durkin used the generic word "beneficiary" rather than "Indemnatee," which is a specifically defined term in the Quota Share; Mr. Durkin, who was well aware of the terms of the Quota Share, would have used the defined term if he had meant that CIRC is not an "Indemnatee." Furthermore, the basis for Home's characterization of Mr. Durkin's testimony has not been set forth in any detail in any documents.

9. Moreover, in the NOR, Home claims that it is "axiomatic" that CIRC is not an "Indemnatee" under the Quota Share and the December 30, 1983 Purchase Agreement No. 1 (the "Purchase Agreement"), but Home does not justify its position in any detail. In order to clarify

Home's argument and allow CIRC to set forth an appropriate response, testimony would be much more helpful than facial review of the terms of the Quota Share and the Purchase Agreement.

10. Finally, unlike documentary evidence and affidavits, hearing testimony permits cross-examination, and thus is indispensable to the narrowing of the issues and consideration of the credibility of the witness.

11. CIRC intends to call the persons who are most knowledgeable concerning Home's obligation to indemnify CIRC under the Quota Share. CIRC anticipates that such testimony will at least shed light on the following relevant subjects:

- a. CIRC's and Home's understanding of the scope of the term "Indemnitee" under the Quota Share and the Purchase Agreement; and
- b. Home's past conduct and representations in connection with its obligations under the Quota Share.

12. CIRC also 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. It appears that production of documents will not provide sufficient information on this issue.

## V. CONCLUSION

13. For the reasons stated above, CIRC respectfully submits that an evidentiary hearing will greatly assist the Referee and the parties in connection with this Claim Dispute and should therefore be granted.<sup>3</sup>

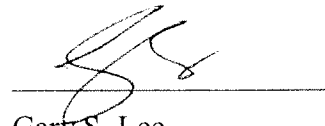
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<sup>3</sup> Prior to filing this request, CIRC's counsel contacted the Liquidator's counsel by e-mail to determine whether the Liquidator would support the relief requested herein. Counsel for the Liquidator responded that the Liquidator would not support such relief.

**WHEREFORE**, CIRC respectfully requests that an evidentiary hearing be granted in this Claim Dispute pursuant to Section 11 of the Claims Procedures.

Dated: March 3, 2006

Respectfully submitted,



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