

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: 2006-HICIL-18 and 21(Consolidated)
Proof of Claim Number: INTL278096
INTL278096-02
Claimant Name: Winterthur Swiss Insurance Company

CENTURY INDEMNITY COMPANY'S REQUEST FOR CLARIFICATION

Century Indemnity Company ("CIC") submits this request for clarification of the Referee's Structuring Conference Order, dated June 12, 2006 (the "Order") in the above-captioned consolidated disputed claim proceedings (the "Disputed Claim Proceedings") concerning claim numbers INTL278096 and INTL278096-02 (the "Claims").

Request for Clarification Regarding Evidentiary Hearing

1. A telephonic structuring conference was held in the Disputed Claim Proceedings on June 9, 2006 (the "Conference"). Following the Conference, the Referee issued the Order and acknowledged CIC's right under the Court-approved protocol entered into between the Home Insurance Company in Liquidation (the "Home") and CIC for the adjudication of AFIA-related claims (the "Protocol") to participate in the Disputed Claim Proceedings and interpose defenses. The Referee stated, however, that CIC's status as a participant prohibits it from requesting an evidentiary hearing under Section 9(b) of the Court's Restated and Revised Order Establishing Procedures Regarding Claims Filed with the Home, dated January 19, 2005 ("the CPO"). CIC notes that Section 2.15 of the Protocol provides that the Referee, in her discretion, shall prescribe procedures and provisions appropriate to assist in the adjudication of disputed claims subject to the Protocol and that such procedures include the taking of evidence. CIC suggests that the

evidence in these Disputed Claim Proceedings and other future proceedings governed by the Protocol may be of a highly complex and specialized nature and that taking evidence through oral testimony, and evaluating its strength through cross-examination, may benefit the Referee. CIC requests clarification that, notwithstanding Section 9(b) of the CPO, it will not be precluded from seeking to take its evidence by means of an evidentiary hearing as permitted under Section 2.15 of the Protocol.

2. CIC also notes that during the Conference, counsel for the Home's Liquidator stated that the Liquidator intended to let CIC effectively "take the lead" in these Disputed Claim Proceedings because the Liquidator had denied the Claims based on the recommendation of ACE-INA Services U.K. Limited. Further, pursuant to section 2.14 of the Protocol, CIC will assert any defenses available to the Home in the Disputed Claim Proceedings. Further, under the Insurance and Reinsurance Assumption Agreement between Home and Insurance Company of North America, dated January 31, 1984 (the "Assumption Agreement"), CIC has the right to proceed in Home's name in the defense of any claim covered thereunder, Assumption Agreement ¶ 3, and Home must cooperate with CIC in the defense of such claims and take any action CIC may reasonably request in connection therewith, Assumption Agreement ¶ 5. CIC suggests, and seeks to clarify, that because it has thus stepped into Home's shoes in the Disputed Claim Proceedings, it is entitled to request an evidentiary hearing under Section 11 of the CPO on Home's behalf, as Home itself could do—and as CIC could request that Home do under the Assumption Agreement.

Request for Clarification Regarding English Law Expert

3. The Referee states in the Order that as the Disputed Claim Proceedings progress, she will "assure that, as necessary, an appropriate English expert is appointed and that all required

documents and information are transmitted to any such expert" The Referee has previously appointed an English law expert, Colin Edelman, Q.C., to assist in the resolution of disputed claims subject to the Protocol where (as here) the relevant contracts are governed by English law, although Mr. Edelman's services as Referee have not yet been called upon. *See* Referee's Ruling Granting Assented-To Motion to Appoint Colin Edelman, Q.C. as Expert, dated January 27, 2006. CIC requests clarification that, to the extent an English law expert is necessary, the Referee intends to use Mr. Edelman as such expert in these Disputed Claim Proceedings pursuant to Mr. Edelman's earlier appointment.

Dated: June 20, 2006

Respectfully submitted,

By: 

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