

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-12
Proof of Claim Number: INTL 700616
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, and it would be most efficient for this matter to be addressed through briefing and oral argument as provided in Section 15 of the Restated and Revised Order Establishing Procedures Regarding Claims filed With The Home Insurance Company in Liquidation ("Claims Procedures Order").

1. This proceeding concerns Century's claims arising from payments made regarding Home's reinsurance of members of the M.E. Ruddy Pool ("Ruddy Pool"). Home reinsured four members of the Ruddy Pool on Pool business (Nationwide, Agrippina, Wurttembergische, and FAI). These Ruddy Pool liabilities of Home were 100% reinsured by Century under the Insurance and Reinsurance Assumption Agreement ("Assumption Agreement"). ACE INA Services U.K. Limited ("AISUK") made payments to the Ruddy Pool members drawing on a trust fund. Certain of Home's (and thus Century's) liabilities regarding the Ruddy Pool members have been determined either through arbitration or settlement

agreements. Accordingly, some of the previous payments have been determined to be in excess of Home's obligations to the Ruddy Pool members.

2. By the proof of claim AISUK (for Century) asserted claims against Home for those overpayments to Ruddy Pool members. The Liquidator denied the claim and denied reconsideration, and the matter is before the Referee on Century's Objection.

3. The most efficient method of resolving this disputed claim proceeding is through a non-evidentiary hearing as provided by Section 15 of the Claims Procedures Order. That section provides for the claimant and then the Liquidator to make written submissions that are to include (a) "a statement of the contested issues of fact and law to be determined" by the Referee, (b) "a list of exhibits relied upon, including affidavits submitted," and (c) "a legal brief." Claims Procedures Order § 15(b). This process thus provides for a statement of the legal and factual grounds for Century's claim, a prerequisite for orderly proceedings. Without clarity as to the basis for Century's claim, further proceedings will lack focus and be unnecessarily prolonged and expensive. The Section 15 process permits the presentation of factual background by affidavit, which is particularly appropriate where – as here – the dispute is principally legal in nature.

4. The essential issue in this claim proceeding is whether Century – which is obligated for 100% of Home's obligations and has been autonomously administering the Ruddy Pool business under the Assumption Agreement – made the overpayments on its own account; that is, whether Home has any liability to Century for overpayments made by AISUK from the trust account. To date, Century has not articulated any ground for holding Home liable to it, but the issue appears to be a legal one based upon the Assumption Agreement. The issue is thus

whether the Assumption Agreement (or some other legal ground) makes Home liable to Century for the overpayments to the Ruddy Pool members.

5. This issue does not require extensive factual presentation. It involves only some background to the overpayments themselves (the amounts of which have been established by arbitration (Nationwide) or agreement (Agrippina and Wurttembergische); the much smaller FAI situation is not yet resolved), and the Assumption Agreement, a contract whose interpretation is a matter of law for the Referee. The most efficient way to address these issues is for Century to present its legal arguments to the Referee based on a factual presentation by affidavit.

6. Century refers to 4,147 pages of documentation of payments submitted to date and additional documentation that may be forthcoming. Motion ¶ 7. There is no need for Century to present those documents to the Referee, so long as it provides an appropriate summary. This is most efficiently done by affidavit. The Liquidator can then review the summary against the documentation in an orderly fashion and raise any issues in his written submissions. Similarly, the reasons for AISUK making the payments are best presented in an affidavit describing the underlying disputes over “fronted share” or “fixed pool share” obligations with the Ruddy Pool members. Indeed, the nature of the disputes is likely to be readily apparent from the decisions in the arbitration or litigation or the agreements that resolved them. (Century’s Mandatory Disclosures, for instance, quote extensively from a Sixth Circuit decision in the Nationwide case. Mandatory Disclosures ¶ 8.) The alleged “complexity” of these matters (Motion ¶ 8) warrants a considered and orderly presentation in writing, not testimony on a wide range of topics from unspecified “AISUK employees who were involved in the administration of the Nationwide business, . . . as well as other [Century] representatives with knowledge of the payments out of which the Claim arose.” Id. ¶ 10.

7. The Section 15 process is designed to present matters to the Referee in an organized way. To invoke the more cumbersome evidentiary hearing process of Sections 16-18, Century must identify the factual issues it believes to be in dispute that require resolution through an evidentiary hearing. Century instead has merely asserted that the matter is complex and involves voluminous documentation. Motion ¶ 12. This is not a reason for an evidentiary hearing; indeed, it suggests that the more defined Section 15 process would be better.

8. 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 ¶ 11. 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.

9. Under the Act, a claimant is to provide the Liquidator with a proof of claim, including “[t]he particulars of the claim” and “[a] copy of any written instruments which is the foundation of the claim.” RSA 402-C:38, I; see Claims Procedures Order §5(b). The Liquidator may require submission of additional information or evidence. RSA 402-C:38, II; see Claims Procedures Order § 5(d). 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.

10. Century also misunderstands the nature of the disputed claim process in contending that it will be able to develop new evidence during disputed claim proceeding, as is suggested by paragraph 9 of its Mandatory Disclosure (referring to “Other documentation regarding AISUK’s administration of the Ruddy Pool business” and “All other evidence developed during discovery or any evidentiary hearing in this matter”). Information and evidence in support of a claim should be presented to the Liquidator in the first instance, not the Referee or the Court. It would be inefficient and promote attempts to “game” the system if a claimant can avoid providing information to the Liquidator and then provide it to the Referee in the first instance. As a debtor to Home, Century benefits from delay in the determination of its claims by assertions of offsets that defer payment of its obligations to Home.

11. Under the Claims Procedures Order, the Liquidator is to prepare and submit a Case File containing the most pertinent non-privileged information considered by the Liquidator in rendering the notice of determination to the Claimant and Liquidation Clerk. Claims Procedures Order §§ 6(a), 14(b). The Case File should contain the information critical to any determination of the claim. Allowing a claimant to develop and present new factual information or legal theories to the Referee in the first instance would discourage claimants from dealing with the Liquidator and increase the number and complexity of disputed claims proceedings. 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. Century should not be permitted to delay and confuse this matter (and ultimate payment of its obligations to Home) through time-consuming and expensive discovery

as well as an evidentiary hearing with multiple witnesses when it could be presented in a straightforward way under Claims Procedures Order § 15.

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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February 16, 2006

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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