

THE STATE OF NEW HAMPSHIRE

MERIMACK, SS.

SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

Claimant	Century Indemnity Company (“CIC”)
Proof of Claim Nos.	AMBC 465096 AMBC 464386 INTL 277878 AMBC 465074
Proceeding:	2500-HICIL-14
Account:	Kentile Floors, Inc. (“Kentile”)

**CIC’S MOTION TO STAY THE KENTILE DISPUTED PROCEEDING
FOR NINETY (90) DAYS**

Century Indemnity Company (“CIC”) respectfully moves for a ninety (90) day stay of the above-referenced disputed proceeding. Because, as set forth below, significant discovery costs associated with upcoming depositions are about to be incurred by the parties, CIC respectfully requests that the Referee schedule an expedited telephonic conference to discuss and resolve CIC’s motion.

This proceeding involves CIC’s setoff claim based on defense and indemnity payments that CIC has made on Home’s behalf with respect to asbestos claims against Kentile, due to Home’s insolvency. The Liquidator allowed nearly all of CIC’s claim for defense costs, but denied CIC’s entire claim for indemnity payments. Thus, while there may be some issues concerning the amount of CIC’s defense costs that the Liquidator ultimately allows, this proceeding primarily concerns the parties’ dispute over whether the Home must reimburse CIC (in the form of setoff) for the indemnity payments that CIC made on Home’s behalf.

CIC requests this limited stay in light of recent developments regarding the reimbursement of those indemnity payments made on Home's behalf that have occurred in related coverage litigation pending in New York state court (the New York Coverage Litigation"). As set forth in more detail below, CIC understands that the New York Liquidation Bureau ("NYLB") recently represented that it may be agreeable to reimbursing Kentile's insurers – including CIC – for indemnity paid on Home's behalf on claims involving alleged exposures in New York ("New York Claims"). A large number of the Kentile claims for which CIC is seeking indemnity from Home here are likely to be encompassed by any NYLB payment. Thus, to the extent that the NYLB reimburses CIC for amounts that are in dispute here, that reimbursement should serve to narrow the issues in this proceeding.

Under these circumstances, a limited-in-time stay while the process of the NYLB's reimbursement to CIC plays out will ensure that the different components of CIC's claim involving Kentile (*i.e.*, in the New York courts and in this proceeding) are coordinated and handled in an efficient and sensible manner, and will prevent duplicative litigation over claims which will likely be resolved under the auspices of the New York courts. As discussed below, when CIC asked the Liquidator to agree to this limited stay the Liquidator refused, unless CIC agreed to conditions which the Liquidator knows are unacceptable to CIC.

CIC's Setoff Claim in the Home Liquidation Proceedings. Numerous asbestos claims have been filed against Kentile, a policyholder which was based out of New York. CIC has been making defense and indemnity payments on Home's behalf as respects these claims against Kentile since 2003. Because Home is a net creditor of CIC in the Liquidation proceedings, the contribution that Home owes CIC for the Kentile payments made on Home's behalf "*shall be set off*" against amounts that CIC owes the Home in the liquidation proceedings. N.H. RSA 402-

C:34 (emphasis added). Indeed, in an August 6, 2004 protocol between the Liquidator and CIC as respects the handling of certain claims in the Liquidation, the Liquidator acknowledged that “[n]otwithstanding anything herein to the contrary, payments to HICIL shall be net of setoff in compliance with N.H. RSA 402-C:34 or otherwise allowed by New Hampshire law.” Exhibit 2 at ¶ 3.4.

In June 2006, CIC submitted documentation to the Liquidator in support of its Kentile setoff claim. The Liquidator responded by asking questions regarding CIC’s claim in August 2006, February 2007 and July 2007. CIC responded to the Liquidator’s questions in December 2006, April 2007 and September 2007, respectively.

After CIC’s September 2007 correspondence, the Liquidator waited for three more years before issuing its Determination of CIC’s Kentile claim in September 2010. The Liquidator partially allowed CIC’s claim for defense costs under one of two policies and disallowed CIC’s claim for indemnity payments, based on some of the very same issues that the Liquidator had raised in its 2007 correspondence with CIC. CIC requested a Redetermination of the Liquidator’s decision in October 2010, and the Liquidator affirmed his decision in December. The Liquidator and CIC then jointly requested that the Referee deem this matter a disputed claim proceeding, which was granted on February 10, 2011.

The Referee originally entered a scheduling order which the parties had jointly proposed during the March 10, 2011 structuring conference for this proceeding. As the Referee will recall, however, the parties jointly moved on September 12, 2011 to extend that schedule. On September 20, 2011, the Referee granted the parties’ motion and adopted dates that the parties had jointly proposed as the new schedule; that schedule is attached as Exhibit 3. As set forth in that Exhibit, fact discovery is set to close on December 2, 2011, and each party will advise

whether it will use experts by December 9, 2011 (and at that time propose the timetable for expert discovery). In the meantime, depositions are scheduled to take place beginning on November 10, and both parties are likely to incur significant costs in connection with that process.

Events in the New York Courts. While CIC's setoff claim against the Liquidator has been pending, so too has litigation involving insurance coverage for asbestos claims against Kentile, including the New York Coverage Litigation which has been pending since 2008. *National Fire Ins. Co. of Hartford, et al., v. Travelers Cas. & Sur. Co., et al.*, Index No.: 08105522 (N.Y. Sup. Ct.). In January 2010, the NYLB appeared before Justice Ramos in those proceedings and made representations regarding its review and analysis of claims that insurers (including CIC) had paid on Home's behalf due to its insolvency. The NYLB confirmed later that month that it was supposedly "taking all diligent steps to resolve the remaining issues and begin making eligible payments" on settled claims – *i.e.*, claims for which CIC and other insurers had made payments on Home's behalf. Exhibit 4 at ¶ 14.

When the NYLB still had not made any payments a year and a half later, Liberty Mutual Insurance Company (another of Kentile's insurers) and Metex Manufacturing Corporation (the entity which has apparently succeeded to Kentile's rights under insurance policies issued to Kentile) jointly filed an Order to Show Cause in the New York Coverage Litigation, directing the NYLB to appear before Justice Ramos and explain why the NYLB had not made any payments and to establish a procedure for the payment of those claims. Exhibits 4, 5, 6. In response to this motion, Justice Ramos on July 18, 2011 held a hearing in which he required the NYLB to explain why it had not yet actually reimbursed any carriers for payments on New York Claims made on Home's behalf. During that hearing, Justice Ramos directed the NYLB to develop a

procedure for paying past and prospective claims, and to reappear in his courtroom on August 15.

During the August 15 hearing, Liberty Mutual reported to Justice Ramos that substantial progress had been made; the NYLB was processing two sets of claims that Liberty Mutual had submitted; the NYLB had also agreed to reimburse Home's share of indemnity with respect to approximately 900 old claims; and the NYLB was discussing a procedure for getting those claims paid. Counsel for the NYLB affirmed that Liberty Mutual's representations were correct. And in fact, on August 12, 2011, the NYLB filed a Verified Petition with the New York court overseeing Home's Ancillary Receivership proceedings, seeking payment of approximately \$2.45 million to Liberty Mutual as reimbursement of amounts that Liberty Mutual had paid on the Home's behalf. Exhibit 1.

Justice Ramos scheduled another hearing for October 12, 2011 to make sure that progress continues with respect to the NYLB's reimbursement of indemnity payments made on Home's behalf. The October 12 conference has been rescheduled for November 29. In the meantime, Liberty Mutual is working with Kentile's carriers who have paid amounts on Home's behalf, including CIC, to provide information that the NYLB has requested with respect to past New York claims (*i.e.*, claims for which carriers including CIC made payments on Home's behalf).

CIC believes it very possible that the NYLB will reimburse carriers including CIC in the next several months for the indemnity payments on New York Claims that they made on Home's behalf. There is substantial overlap between those claims and CIC's claims against the Liquidator in this proceeding, and assuming that there is reimbursement by the NYLB for those claims will serve to narrow CIC's dispute with the Liquidator here.

A Limited-in-Time Stay Would be Sensible and Efficient. Given that events taking place in connection with the New York Coverage Litigation may well narrow the disputes between CIC and the Liquidator here, CIC believes it would make sense to stay this proceeding for ninety days, as those events play out. On October 14, 2011, CIC's counsel asked that the Liquidator agree to stay this proceeding based on the circumstances described in this motion. On October 26, CIC provided the Liquidator with documents and additional information supporting CIC's request, and made clear that CIC is seeking only a ninety day stay. Exhibit 7. At that time, the Liquidator claimed not to have known about the NYLB's agreement to reimburse the carriers for indemnity payments made on Home's behalf.

The Liquidator responded to CIC's request on October 27. Exhibit 8. The Liquidator stated that he would agree to a stay, *but only* if CIC would either agree to withdraw the setoff of its entire claim – presumably including the amounts that the Liquidator has *allowed* – or alternatively, if CIC would agree to pay interest on any amount on which CIC cannot ultimately assert setoff, even though questions concerning interest in this case are not ripe and knowing that disputes between CIC and the Liquidator regarding interest are already pending in two other proceedings (PECO and Treaty 6). Thus, instead of simply agreeing to CIC's sensible suggestion, the Liquidator would only consent to a limited-in-time stay if it could obtain some sort of benefit in this litigation (beyond the saving of litigation costs for the estate). Clearly, the Liquidator knew that CIC could not possibly accept these conditions.

The Liquidator attempted to justify imposing these conditions by suggesting that these proceedings must move quickly because CIC is allegedly holding some of the Liquidator's money. This fails to recognize, however, that the Liquidator waited more than four years to make a determination on CIC's claim, during which time CIC was (as it is entitled to do) taking

setoff for that claim. The Liquidator's claim that ninety days is somehow unacceptable is undercut by the apparent lack of urgency with which the Liquidator has approached CIC's claim.

The Liquidator also implied that CIC is trying to take advantage of events taking place in the New York Coverage Litigation. But in fact, the NYLB has delayed paying its obligations in that litigation for years. Once it became clear that the NYLB was finally ready to (or being forced to) move forward, CIC went to the Liquidator and sought to stay this proceeding in order to save litigation costs for both parties. In short, the arguments articulated by the Liquidator fail when viewed in the context of the Liquidator's previous delay in determining CIC's claims, and the opportunity to narrow the issues presented by the recent advances in the New York Coverage Litigation.

For all of these reasons, CIC seeks coordination with the New York proceedings, to ensure that neither CIC nor the Liquidator continue to spend money litigating issues that are likely going to be resolved in those other proceedings. Given that both parties are about to embark on costly deposition discovery in November, followed by expert discovery in December or in early 2012, CIC respectfully submits that it would be logical and efficient to put that additional discovery on hold until the NYLB's reimbursement of CIC narrows the issues in this case and, concomitantly, the remaining discovery to be taken.

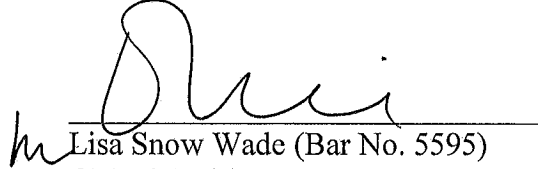
WHEREFORE, CIC respectfully requests that the Referee:

1. Grant a ninety (90) day stay of these proceedings, at which time the parties will report back to the Referee regarding the status of the NYLB's processing of indemnity payments to CIC;
2. Hold an expedited telephonic conference to discuss and resolve these issues, given that the first deposition is set to take place on November 10, 2011; and

3. Grant such further relief as the Referee deems necessary.

Dated: October 28, 2011

Respectfully submitted,



Lisa Snow Wade (Bar No. 5595)

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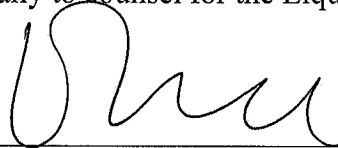
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Attorneys for Claimant

Century Indemnity Company

Certificate of Service

I, Lisa Snow Wade, Esq., hereby certify that on this 28th day of October, 2011, I have provided a copy of the foregoing document electronically to counsel for the Liquidator.



Lisa Snow Wade

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