

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of  
The Home Insurance Company

**CIC'S OBJECTION TO THE LIQUIDATOR'S PROPOSED ORDER  
APPROVING THE REPORT AND RECOMMENDATION AND  
THE LIQUIDATOR'S MOTION TO AMEND AUGUST 12, 2005 ORDER**

Century Indemnity Company ("CIC"), by its attorneys, Orr & Reno P.A. and Lovells, hereby submits this objection to the Liquidator's proposed order approving the Report of Claims and Recommendations as of September 26, 2005 (the "Report and Recommendation") and the Liquidator's motion to amend the August 12, 2005 Order Approving Liquidator's Report of Claims and Recommendations as of July 19, 2005 (the "August 12, 2005 Order"). In support of its objection, CIC respectfully states as follows:

1. The Liquidator has requested the entry of an order (the "Proposed Order") approving the Report and Recommendation and amending the August 12, 2005 Order. As discussed below, the Proposed Order is unfairly skewed and wholly unnecessary. The simpler and better course would be for the Court to defer any decision on the ETMC Proof of Claim and avoid any interference with the Referee's adjudication of the setoff issues raised by CIC in Disputed Claims Docket No. 2005-HICIL-2 (the "Disputed Claim Proceeding").
2. The Liquidator alleges that the Proposed Order would "comprehensively" address the issues raised by CIC in the Disputed Claim Proceeding. (Liquidator's Opp'n and Mot. at ¶ 8.) The Proposed Order, however, is clearly designed to either (a) allow the Liquidator to argue that the issues have been resolved against CIC; or (b) delay the resolution of those issues.

3. The Liquidator vaguely refers to the “offset rights” involved in the Disputed Claim Proceeding. (*Id.* at ¶ 6.) The exact relief sought by CIC is critical and it demonstrates that the Proposed Order is an attempt to derail or delay the Disputed Claim Proceeding.

4. CIC has requested that the Referee determine the issue of when CIC may assert a setoff for the ECRA Pool balances and whether, as the Liquidator maintains, CIC must wait until the balances are allowed before it may use them to offset amounts claimed by the Liquidator. (*See* CIC’s Objection, dated Oct. 5, 2005, at ¶¶ 5-14.) Paragraphs 3 and 4 of the Proposed Order refer to the allowance of the ECRA Pool balances and then state that CIC “is entitled to use those amounts to offset Home’s claims against CIC.” (Proposed Order at ¶¶ 3-5.) The Liquidator could try to argue that Paragraphs 3 and 4 of the Proposed Order represent a finding — or support an inference — that CIC may not use the ECRA Pool balances as offset until the claims have been allowed by the Court.

5. Thus, the Liquidator may seek to use the Proposed Order to deny the relief sought by CIC in the Disputed Claim Proceeding. Such a result would violate this Court’s claims procedures and would rob CIC of its right to be heard by the Referee at this time.<sup>1</sup>

6. The Proposed Order also includes a paragraph stating that the order “shall not be construed as an express or implied finding regarding CIC’s assertion of offset rights or CIC’s position on the manner of treatment of offsets.” (Proposed Order at ¶ 5.) There are several problems with this provision. First, the language quoted above is preceded by the words “except as expressly provided in paragraphs 3 and 4.” Because those paragraphs may be construed by the Liquidator as a finding with respect to the timing of setoff, the Liquidator could argue that CIC is precluded from raising the timing issue despite the language in Paragraph 5 of the Proposed Order.

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<sup>1</sup> CIC does not believe that the entry of the Proposed Order would be determinative of its rights. The danger, however, is that the Liquidator will attempt to argue that the Proposed Order has such an effect. As shown below, there is no reason to enter the Proposed Order and even allow that potential complication to arise.

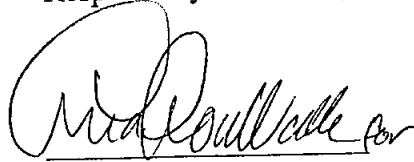
7. Second, the Liquidator may use Paragraph 5 to support his argument that the Disputed Claim Proceeding is moot. The Liquidator states that any order dismissing the Disputed Claim Proceeding should contain similar language stating that it is without prejudice to CIC's rights. (*See* Liquidator's Opp'n and Mot. at ¶ 7.) The net effect of such a dismissal could be to defer a determination of the timing issue raised by CIC in the Disputed Claim Proceeding. The Liquidator has never explained — and cannot show — why the determination of this issue should be delayed. There is a present and justiciable controversy over when the right of setoff arises, which must be resolved through the Court's claim procedures. Moreover, even if no controversy existed, the Disputed Claim Proceeding indisputably falls within an exception to the mootness doctrine for issues that are capable of repetition but would evade review in the event of dismissal.

8. On the other hand, the Liquidator has failed to articulate any reason for an allowance of the ETMC Proof of Claim now. There would certainly be no prejudice caused to the Liquidator by holding the ETMC Proof of Claim in abeyance while the Referee determines the issues in the Disputed Claim Proceeding.

9. Accordingly, the Court should defer the allowance of the ETMC Proof of Claim, especially in light of the potential confusion and consequences that the entry of the Proposed Order could arise.

WHEREFORE, CIC respectfully requests that the Court reject the Proposed Order, deny the motion to amend and defer any allowance of the ETMC Proof of Claim until the conclusion of the disputed claim proceeding (or a further order by the Court).

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing *CIC's Objection to the Liquidator's Proposed Order Approving the Report and Recommendation and the Liquidator's Motion to Amend August 12, 2005 Order* has been served on Roger A. Sevigny, Commissioner of Insurance, Peter Bengelsdorf, Special Deputy, and the following counsel via First Class mail on October 13, 2005:

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A handwritten signature in black ink, appearing to read "Lisa Snow Wade", written over a horizontal line.

Lisa Snow Wade