

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-2  
Proof of Claim Number: AMBC700308  
Claimant Name: Century Indemnity Company

OFFICE OF THE  
AUG 25 2006  
LIQUIDATION CLERK

**CIC'S MANDATORY DISCLOSURES IN SUPPORT OF ITS  
OBJECTION TO DENIAL OF CLAIM RELATING TO ECRA POOL**

Century Indemnity Company ("CIC"), by its attorneys, Orr & Reno P.A. and Lovells, respectfully submits the following mandatory disclosures, pursuant to Section 14 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation dated January 19, 2005 (the "Restated and Revised Procedures"), in support of its objection (the "Objection") relating to Proof of Claim # AMBC 700308:

**Summary**

1. There are two principal bases for the Objection. First, even though The Home Insurance Company in Liquidation ("Home") has admitted that it owes CIC nearly \$2 million arising out of CIC's involvement with the Excess and Casualty Reinsurance Association (the "ECRA Pool"), it has denied CIC's claim and only allowed the parallel claim filed by the ECRA Pool manager, Excess and Treaty Management Corporation ("ETMC"), on CIC's behalf. Home should instead allow CIC's claim because CIC, not ETMC, is the risk-bearing entity.

2. Second, under the provisions of the New Hampshire liquidation statute and the Claims Protocol approved by the Court on November 12, 2004, CIC is clearly entitled to assert a setoff for the ECRA Pool balances against any amounts that CIC owes Home, without waiting until the portion of its claim relating to those balances is admitted into the estate.

## Background

3. On January 21, 2005, Home issued a Partial Notice of Determination with respect to Proof of Claim # AMBC 700308 filed by CIC. In the Partial Notice of Determination, Home acknowledged that, as of November 2004, \$1,485,791.00 was due CIC from Home arising out of CIC's involvement in the ECRA Pool. However, Home stated that the "net allowance is zero" because of two offsets: (1) \$84,414 due to Home from CIC with respect to the ECRA Pool; and (2) "AFIA balances outside of the ECRA Pool of \$1,401,397 due to Home from CIC."

4. On the same date, Home issued a Partial Notice of Determination with respect to Proof of Claim # RAHM 700581 filed by ETMC. The Partial Notice of Determination issued to ETMC similarly stated that "the net allowance after offset will be zero."

5. Home issued Re-Determinations of the two Partial Notices of Determination for CIC and ETMC on April 7, 2005. In the Re-Determinations, Home abandoned the offset of \$1,401,397 for non-ECRA Pool balances (but maintained the other offset of \$84,414.) Home still stated, however, that the net allowance for CIC is "zero" on the grounds that CIC's claim is a "duplication" of amounts claimed by ETMC. Home, therefore, only allowed ETMC's claim in the amount of \$1,485,791 (minus the offset of \$84,414).

6. In the Liquidator's Report of Claims and Recommendations As Of July 19, 2005, Home recommended that the ETMC claim be allowed as set forth in the Re-Determination. The Court approved the claims report on August 12, 2005.

7. On July 26, 2005, Home issued a second Partial Notice of Determination with respect to CIC's claims arising out of the ECRA Pool. This determination covered balances due from December 2004 through June 2005. Home again stated that the allowance for CIC is "zero" because, on the same date, it issued a second Partial Notice of Determination allowing ETMC's claim in the amount of \$314,876.91 and wanted to avoid "a duplicate allowance." Home

acknowledged that the determination was for balances submitted by ETMC “on behalf of CIC.” Home also asserted an offset of \$32,121.36 against the amount allowed to ETMC.

8. Thus, Home has allowed approximately \$1.8 million (minus approximately \$116,000 in offset) with respect to ECRA Pool balances due CIC, but it has maintained that ETMC, the ECRA Pool manager, should have the benefit of the allowance.

9. In the course of identifying its setoff position (as required by the Claims Protocol), CIC included the ECRA Pool balances. Home has insisted that CIC may not apply those balances as offset against any sums that Home is currently claiming from CIC.

#### **CIC's Disclosures**

10. CIC asserts that the ECRA Pool balances of approximately \$1.8 million, which are indisputably due and owing to CIC, should be allowed as part of CIC's Proof of Claim # AMBC 700308 and not as part of ETMC's Proof of Claim # RAHM 700581.

11. Home's sole justification for denying CIC's claim is that it overlaps with ETMC's claim. Since CIC is the risk-bearing entity and ETMC is only the manager for the ECRA Pool, the most logical way to avoid duplication is to allow CIC's claim and deny ETMC's claim.

12. CIC further asserts that it is entitled to claim an offset for the ECRA Pool balances against any amounts that Home currently seeks from CIC.

13. RSA 402-C:34, I states that mutual debts between the insurer and another person “shall be set off and the balance only shall be allowed or paid.” The statute thus contemplates that an assertion of setoff will be made at the time payment is demanded.

14. The Claims Protocol expressly recognizes that any ongoing payment obligation of CIC “shall be net of set-off in compliance with N.H. RSA 402-C:34.” (Paragraph 3.4.) The Claims Protocol further requires a report by CIC within 30 business days after the end of each month; that report includes a statement of both the amounts payable by CIC to Home and amounts claimed by CIC as offset against the amounts payable. (See Paragraph 3.3.)

15. Thus, the parties anticipated that CIC would be asserting its setoff rights during the claims adjudication process and before CIC's claims are admitted into the estate.

**Supporting Evidence**

16. The documents and evidence supporting the Objection include the documents referred to above, the Case File provided by the Liquidator and other evidence developed during discovery or any evidentiary hearing in this matter. CIC will supplement its mandatory disclosures, if necessary, pursuant to Section 14(b) of the Restated and Revised Procedures.

Respectfully submitted,



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American Reinsurance Company

CERTIFICATE OF SERVICE

I, Lisa Snow Wade, Esq. hereby certify that on this 25<sup>th</sup> day of August, 2005 a copy of this document was forwarded via first class US mail to:

Jonathan Rosen, Esq.  
Home Insurance Company in Liquidation  
59 Maiden Lane, 5<sup>th</sup> Floor  
New York, NY 10038

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

Lisa Snow Wade