

**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**

**ORDER ON LIQUIDATOR'S REPORT AND RECOMMENDATION  
ON KWELM COMPANIES' PROOFS OF CLAIM**

Before the Court for approval is the Liquidator's Report and Recommendation on KWELM Companies' Proofs of Claim. Because Century Indemnity Company objected to an approval, a hearing in this matter was held on June 2, 2006.

**HISTORY:**

Kingscroft Insurance Company Limited, Walbrook Insurance Company Limited, El Paso Insurance Company Limited, Lime Street Insurance Company Limited and Mutual Reinsurance Company Limited ("KWELM"), five insurance company members of an underwriting pool managed by HS Weavers Agency Limited, were placed into run-off under a scheme of arrangement approved by the English and Bermudan courts in 1993. In 2004, subsequent to the order of liquidation of The Home Insurance Company ("Home"), the original KWELM scheme was amended and converted to a "cut-off scheme".

Under a cut-off scheme, the values of creditor claims, including where appropriate those yet to be fully developed, are crystallized for the purpose of calculating a final distribution. This significantly truncates the natural life of the run-off operation and accelerates the distributions. Consistent with the terms of the amended KWELM

scheme, creditors were required to prove up claims with the scheme administrator under a newly established bar date. As part of that process, any claims that a KWELM company may have had against any of the scheme creditors were to be valued for purposes of effecting KWELM companies' setoff opportunities.

Home is a creditor of each of the KWELM companies, and as such, bound by the terms of the cut-off scheme of arrangement. Because KWELM companies' claims against Home are part of Home's AFIA exposures, Century Indemnity Company ("CIC"), pursuant to the Insurance and Reinsurance Assumption Agreement between CIC and Home, participated in the KWELM scheme procedures establishing the value of KWELM companies' entitlement to setoff against Home. For reasons made clear below, CIC has done so under a reservation of rights.

Pursuant to the terms of the cut-off scheme, the KWELM administrator reached a provisional resolution on calculations necessary to determine whether Home as a claimant was entitled to any distribution. Unhappy with the initial calculations, CIC apparently provided additional documentation to the scheme adjudicator. That effort produced a substantially more favorable setoff calculation, diminishing it from \$11.8 Million to \$3.9 Million. And, it also raised the value of Home's claims against KWELM from \$14.8 Million to \$19.7 Million.

Based upon those figures, a net payout of approximately \$15.8 Million, the difference between \$19.7 Million and the \$3.9 Million setoff, has been made to Home. Because \$1.7 Million of KWELM claims has already been filed and allowed in the Home estate and were part of the KWELM scheme setoff calculation, the Court is concerned only with the unresolved remainder of approximately \$2.2 Million.

PARTIES' POSITIONS:

The Liquidator requests that this Court recognize and allow KWELM claims against Home at the value assigned by the KWELM adjudicator and used in calculating the net amount the KWELM scheme owed the Home estate. In support of his request, the Liquidator cites Sec. 304 injunctive orders<sup>1</sup> issued by the U.S. Bankruptcy Court for the Southern District of New York.

Beyond asserting that the orders channel U.S. creditors exclusively to the KWELM scheme, the Liquidator argues that the orders also favor and support his request to import the scheme-established setoff values and convert them to allowed KWELM claims in the Home estate. The Liquidator asserts that the values have been duly negotiated within the KWELM scheme and require no further formal determination, adding that reliance upon them would bring additional efficiencies to Home's claims determination process.

CIC takes issue with the Liquidator's reliance on the Sec. 304 orders to support importation of the KWELM scheme setoff valuations and the consequent bypass of the Home estate's claims procedures and protocols. While CIC acknowledges that the Section 304 orders bind Home as a creditor to the terms of the KWELM cut-off scheme, CIC rejects the Liquidator's assertion that the orders apply to Home as a debtor of KWELM. CIC argues that the protections of the procedural orders of this Court, specifically the claims procedures order most recently restated and approved on 1/19/2005 and the protocol on AFIA related claims approved on 11/12/2004, require determination of KWELM claims values in the New Hampshire liquidation of Home.

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<sup>1</sup> The first injunctive order was entered on December 14, 1993. In conjunction with the conversion of the KWELM runoff scheme to a cut-off scheme, an amended injunctive order was entered on March 31, 2004.

Further, CIC notes that Home liquidation procedures, most particularly the protocol, provide for the proper application of English law to the contracts which determine Home's liability to KWELM companies. And, CIC asserts that if English law is properly applied to those claims, their values will be substantially diminished from those assigned in the KWELM scheme, thus reducing CIC's ultimate liability to Home.

ANALYSIS:

The Liquidator directs the Court's attention to the Sec. 304 orders, arguing that those orders are pivotal to support his contention that an expansive view of comity is appropriate in this circumstance. He argues that the amended Sec. 304 order, which provides that the scheme "be given full force and effect and .....be binding and enforceable against all Scheme Creditors in the United States that have claims against the Scheme Companies", can be read to do more than simply channel creditors to the KWELM scheme and/or enjoin creditors from disrupting an orderly and fair liquidation in a foreign jurisdiction. The Liquidator asserts that, for purposes of comity and efficiency, and for these specific claims, the Court should substitute KWELM cut-off scheme procedures in place of the procedures established in the Home liquidation.

The essential purpose of a Sec. 304 order is to "assure an economical and expeditious administration" of the estate for which protection is sought. *See*: 11 USC §. 304 (c). Such orders allow "foreign bankrupts to prevent piecemeal distribution of assets in this country by filing ancillary proceedings in domestic bankruptcy courts." *In re. Lines*, 81 B.R. 267, 271(1988). The Court recognizes the essential purpose of Sec. 304 injunctive orders and in this instance their application to the KWELM scheme. By their terms however, the Sec. 304 orders apply to creditors of KWELM. The reach of the Sec.

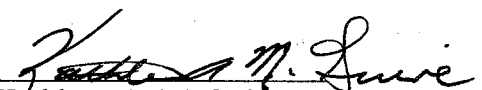
304 orders should not extend to Home as a debtor, nor to the adoption of the setoff values assigned in the KWELM scheme. In its consideration of this matter the Court has weighed the potential adverse effect upon both the KWELM scheme and the Home liquidation if deference to the KWELM scheme setoff calculations is withheld. The Court agrees with counsel for both the Liquidator and CIC that there is no adverse effect on the KWELM scheme.

As to the effect on Home's liquidation, the Court first notes that counsel for the Liquidator advised that even if the Court were to grant the Liquidator's request, CIC will likely contest collection of KWELM-related reinsurances. But more importantly, the Liquidator and CIC carefully considered and agreed upon detailed procedures to address anticipated disputes over processing of AFIA claims in the Home liquidation. A lengthy protocol governing the handling of AFIA related claims was submitted to the Court for review and approval. It included protocols for disputes involving contracts implicating English law. From review of the testimony and pleadings, and with particular reference to the affidavit of John Fredrick Powell, the Court is unable to conclude that the procedures used to establish KWELM companies' setoff entitlements meaningfully correspond to the procedures and the protocol addressing AFIA related claims in the Home estate, nor is the Court able to find a compelling reason for setting those procedures and protocols aside for this discrete set of claims.

In light of the foregoing, the Court declines to approve The Liquidator's Report and Recommendation on KWELM Companies' Proofs of Claim.

So Ordered

Date: 7/27/06

  
Kathleen A. McGuire  
Presiding Justice