

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

MOTION TO LIFT STAY AND TO COMPEL ARBITRATION

Century Indemnity Company (“CIC”), by its attorneys, Morrison & Foerster LLP and Orr & Reno, P.A., respectfully requests that the stay entered by this Court in its June 13, 2003 Liquidation Order (the “Stay Order”) be lifted to allow CIC to assert defensive claims in an arbitration proceeding against Home Insurance Company (“Home”), and to compel Home to participate in the arbitration. This arbitration is required because Home breached the Insurance and Reinsurance Assumption Agreement dated January 31, 1984 (the “Insurance and Reinsurance Agreement”) between Home and CIC. CIC further states:

1. CIC is the successor-in-interest to the Insurance and Reinsurance Agreement. This Agreement contains an arbitration clause that mandates that “*any dispute*” between the parties regarding the “interpretation [of the agreement] or their rights under it...*shall be submitted to arbitration.*” (Exhibit A, attached to Memorandum of Law of Century Indemnity Company Supporting Motion to Lift Stay and to Compel Arbitration (“Memorandum of Law”), at ¶ 7; emphasis added).

2. There is a dispute between the parties that is now ripe for arbitration: CIC has made its first payment to Home in connection with the AFIA Liabilities since Home entered into the AFIA Agreement. CIC has made that payment under a reservation of rights. Home’s breach of the Insurance and Reinsurance Agreement, however, should bar any obligation to pay. More specifically, CIC should not be obligated to make payments to Home for the AFIA Liabilities

where Home induced the AFIA cedents to pursue claims in Home's estate which they would not otherwise have pursued. *See* Memorandum of Law.

3. This Court has the authority to lift the stay. *Id.* Furthermore, lifting the stay will not undermine the stay's purpose given the context of the contractual dispute between the parties. *Id.* Nor will granting the requested relief interfere with the orderly liquidation of Home's assets because the Liquidation Court's policies and procedures are not implicated. This is merely an effort by CIC to rectify a post-liquidation breach of the Insurance and Reinsurance Agreement by Home, not an effort to elevate the priority of a pre-liquidation claim. *Id.*

4. Moreover, CIC's claim is defensive because it is being raised solely in defense of Home's claim that CIC is obligated to pay the AFIA Liabilities. These liabilities, in turn, arise out of the Liquidator's breach of the Insurance and Reinsurance Agreement. Courts in other jurisdictions have repeatedly held that a liquidation stay should be lifted to permit a party to assert a defensive claim. *Id.*

5. Finally, arbitration of CIC's claim is mandated by New Hampshire's Arbitration Act (RSA 542:1) and the Federal Arbitration Act (9 USC §1, *et seq.*). *Id.*

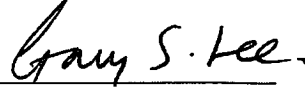
WHEREFORE, Century Indemnity Company respectfully requests that the Court modify the Stay Order to allow CIC to pursue arbitration, compel Home to participate in the arbitration, and grant such further relief as the Court deems just.

Dated: April 1, 2008

Respectfully submitted,

CENTURY INDEMNITY COMPANY

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