

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: 2007-HICIL-32  
Proof of Claim Number: INTL 278090  
Claimant Name: Unione Italiana (UK) Reinsurance Company Limited  
Claimant Number: Class V  
Insured or Reinsured  
Name: Unione

**CENTURY INDEMNITY COMPANY'S LIMITED RESPONSE TO UNIONE'S  
REQUEST FOR LEAVE TO FILE REPLY STATEMENT**

Century Indemnity Company ("CIC") hereby submits the following limited response to the request by Unione Italiana (UK) Reinsurance Company Limited ("Unione") for leave to file a reply statement (the "Reply"), and respectfully states as follows.<sup>1</sup>

1. Unione now acknowledges that the timing provisions of the Consent Order are inoperative in light of Home's insolvency: "Unione Italiana has no method for obtaining relief if CIC fails to follow the Consent Order's timing guidelines." (Reply at 2, n.2.)<sup>2</sup> This is a complete departure from Unione's position in prior correspondence: "In view of the terms of the Consent Order, there is no basis on which [the 3Q06 Claims] can be refused acceptance into The Home estate." (Unione doc. no. 18) (emphasis added). This also undermines any opposition Unione may have to the determination CIC is seeking from the Referee that the Liquidation Statute, the Protocol and the Claims Procedures Order, and not the Consent Order, govern this

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<sup>1</sup> As stated in CIC's February 14 Response to Unione's Position Statement, filed with the disputed claims docket on February 14, 2008 (the "February 14 Response"), CIC administers Unione's claims against Home on behalf of the Liquidator and Home pursuant to a Court-approved claims handling protocol. Accordingly, where appropriate, reference to the Liquidator and Home in this limited response shall include reference to CIC, and vice versa.

<sup>2</sup> All capitalized terms used but not otherwise defined in this limited response shall have the meanings ascribed to those terms in the February 14 Response.

disputed claim proceeding. Consistent with RSA 402-C:38, II, Unione is required to provide claim details to CIC before its claims are agreed and paid.

2. The only remaining issue for the Referee to decide is whether the March 12 Order prevents the Liquidator from setting off the Disputed Claims against the 4Q06 Claims. The Reply tries to answer that question by minimizing the Liquidation Statute's setoff provision and ignoring the role the Consent Order played in CIC agreeing the 3Q06 Claims. However, it is within the context of this same Liquidation Statute and Consent Order that the Referee should analyze setoff.

3. First, Unione is wrong to suggest that: "The New Hampshire Offset Statute Has Nothing To Do With The Issue Before The Referee." (Reply, at 2) (bold omitted). The issue before the Referee is whether the Liquidator can offset the Disputed Claims against the 4Q06 Claims. The New Hampshire setoff statute is thus not only relevant here, but it also governs, and permits the Liquidator's setoff. RSA 402-C:34 only requires that the Liquidator have a mutual "debt" or "credit" against Unione.<sup>3</sup> He satisfies that requirement because Unione improperly presented the Disputed Claims to the estate, and the Liquidator gave Unione the benefit of the doubt and agreed those claims under the Consent Order.<sup>4</sup> The Liquidator thus agreed claims that he should not have, and he has a resulting "debt" or "credit" he can enforce against Unione. Since the Liquidator is netting that mutual "debt" or "credit" against the 4Q06 Claims (i.e., a

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<sup>3</sup> It does not require, as Unione suggests (Reply, at 3), that the Liquidator petition the Court to vacate the March 12 Order.

<sup>4</sup> Unione characterized the explanation for CIC's approval of the 3Q06 Claims as "disingenuous" because Unione now apparently agrees, contrary to the positions it took in prior correspondence, that the Consent Order's timing provisions are unenforceable in light of Home's insolvency. See Reply at 2, n.2. That was not the case when CIC agreed the 3Q06 Claims.

purported “debt” or “credit” Unione is enforcing against the estate), the offset is proper and falls within the meaning of RSA 402-C:34.<sup>5</sup>

4. Second, even if the Court has to modify the March 12 Order, CIC has shown “good cause,” as required by New Hampshire law. Coburn v. First Equity Assocs., 116 N.H. 522, 523, 363 A. 2d 402, 403 (1976) (“As a general proposition, courts have power to set aside, vacate, modify, or amend their judgments for good cause shown.”) (citations and quotations omitted). As described in CIC’s February 14 Response, the Consent Order hamstrung the Liquidator because he had to either agree the claims and risk that Unione would not let him correct an overpayment (as Unione is doing now), or ask for substantiation before paying the accounts and risk a claim that he breached the Consent Order (which, for the first time in its Reply, Unione has now stated it will not do). CIC agreed the 3Q06 Claims and, consistent with the Consent Order and the Liquidation Statute, reserved all rights to review further claims data and correct overpayments. Thus, even if modification of the March 12 Order is required for setoff under RSA 402-C:34 (which it is not), CIC has demonstrated good cause to do so: the Disputed Claims should not have been presented to and paid by Home’s estate in the first place.

5. Contrary to Unione’s insistence that “[t]here were no documents submitted in Unione Italiana’s mandatory disclosures that CIC had not already received” (Reply, at 3 n.4), CIC saw for the first time on January 11, 2008 Unione’s explanation of the amount it believed to be in controversy, despite CIC’s repeated requests. See, e.g., Unione doc. no. 15 (CIC requested the complete files so that it “may arrive at a more precise amount by which the claim should be reduced as and if appropriate.”); see also Unione doc. nos. 17, 19. Only after reviewing the explanation Unione provided on January 11, 2008 could CIC determine that \$188,613.00 – not

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<sup>5</sup> The procedures the Liquidator would have to follow to assert its claim against Unione outside the setoff context are irrelevant for purposes of RSA 402-C:34.

\$236,740.60 – was improperly presented to the estate for payment and adjust its setoff. To suggest as Unione does that it did not delay substantiating the 3Q06 Claims is not supported by the facts.<sup>6</sup>

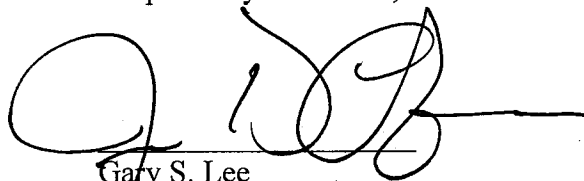
**Request for Oral Argument**

6. In accordance with N.H. Super. Ct. Rule 58, CIC hereby requests oral argument with respect to the issue of whether the Liquidator can set off the Disputed Claims against the 4Q06 Claims under New Hampshire law. CIC believes that oral argument will further assist the Referee because it will help explain (a) the role the Consent Order played in CIC's decision to agree the 3Q06 Claims, (b) the claim substantiation process after CIC agreed those claims, and (c) why the March 12 Order does not affect the Liquidator's setoff here.

7. For the foregoing reasons and for the reasons stated in the February 14 Response, the Referee should grant the relief CIC requested in the February 14 Response and order the parties to propose a date to the Referee for oral argument.

Dated: February 20, 2008

Respectfully submitted,



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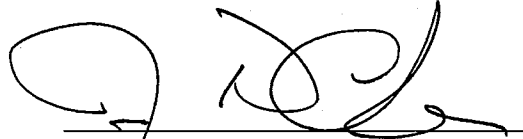
Attorneys for Century Indemnity Company

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<sup>6</sup> CIC reserves the right to request further claim details from Unione for all claims, including the Disputed Claims.

**Certificate of Service**

I hereby certify that a copy of CIC's Limited Response to Unione's Request for Leave to File Reply Statement was served by e-mail on February 20, 2008 on the following persons at the e-mail addresses opposite their names.



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