

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: 2008-HICIL-42
Proof of Claim Number: RAHM700612-32
Claimant Name: KX Reinsurance Company Limited
Policy or Contract Number:
Date of Loss:

ORDER ON KX REINSURANCE COMPANY LIMITED'S MOTION TO COMPEL

KX Reinsurance Company Limited ("KX") has filed a motion to compel responses to certain discovery requests propounded to Century Indemnity Company ("CIC"). CIC has objected to the motion and objects to responding to the specific interrogatories and requests for documents to which KX seeks more complete answers and responses.

The Referee has reviewed the pleadings and the discovery requests and responses.

I. Definition of "state the basis"

The parties disagree about whether "state the basis" interrogatories as defined in KX's discovery requests are proper in this disputed claims process. KX asserts that its definition of "state the basis" is broadly accepted in other forums, including certain courts. CIC argues that the disputed claims process under the adopted protocol is an expedited process and that contention interrogatories have no place in such a process because they seek information about CIC's legal defenses. CIC contends its legal defenses are set forth in the brief summary of its position, previously filed at the direction of the Referee. Finally, CIC asserts it is not required to provide its legal arguments prior to briefing in this process.

CIC is correct that the process for disputed claims is to be more streamlined. CIC is also correct that the purpose for the Referee's request that it provide a brief statement of its position prior to written discovery was to streamline the discovery process in this disputed claim. However, the process does anticipate and include written discovery where appropriate. The Referee has already determined that written discovery will be allowed in this dispute.

While CIC is not required to explain the legal basis of its defense in advance of briefing in this process, it is required to provide information regarding the documents and information on which it relies. New Hampshire Superior Court Rule 35 allows for discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, etc. Therefore, CIC may not rely on its objection to the definition of "state the basis" as a reason not to respond to the interrogatories and document requests.

II. Interrogatory No. 5

This interrogatory requests that CIC state the basis for the position in CIC's Brief Summary that it can find no evidence of any paid liability with respect to the Brush Wellman Claims. CIC objected to the interrogatory to the extent of the "state the basis" request and then stated there have been some small amounts paid in connection with the Brush Wellman claims, but the bulk of the settlement is a buyback which is in respect of future potential claims.

CIC is ordered to respond more fully to this interrogatory. CIC must provide the evidence supporting its statements that there have been some small amounts paid in connection with the Brush Wellman claims, the amounts of those payments, and the amounts it contends are not recoverable because they constitute a buyback.

III. Interrogatory No. 6

Interrogatory No. 6 asks CIC to state each and every paragraph from the Award dated 31 March 1998 on which CIC specifically relies in support of its position. KX contends CIC should be required to answer this interrogatory and further contends that proper grounds for interrogatories include the facts on which CIC bases its position that payments are unrecoverable. CIC asserts that to answer this interrogatory requires it to identify the basis for its legal position.

First, this interrogatory refers to CIC's "position" which is undefined. The Referee agrees with CIC that this interrogatory appears to require CIC to provide the basis for its legal position. CIC is not required to respond to this interrogatory further.

IV. Interrogatory No. 7 And Document Request No. 6

KX contends that Interrogatory No. 7 seeks only the facts on which CIC relies for its statement that "there are no underlying indemnity payments on these years and that the payments made by KX Re are 'accelerated payments'..." CIC claims that it has answered this interrogatory in its Brief Summary. To the extent that there are facts upon which CIC relies for the position set forth in its Brief Summary, CIC is required to specify them in response to this interrogatory. CIC is not required to provide the legal basis for its contention.

Document Request No. 6 requests documents related to the same position referenced in Interrogatory No. 7. KX contends CIC should produce all documents related to its position. CIC has responded that it has previously produced such documents. To the extent that the Referee's Order regarding Interrogatory No. 6. leads to reliance on additional documents, CIC is ordered to produce any such documents.

V. Interrogatory Nos. 3 and 4 and Document Requests 3, 4 and 5

Interrogatory No. 3 seeks the identity of all other reinsurers that have made claims against The Home with respect to the losses (or losses similar to the losses) claimed by the insureds in the Brush Wellman and Norton Company claims. The interrogatory specifically seek identity of the claims, CIC's position, and whether CIC has asserted that payments to Brush Wellman are in respect of a policy buyback and whether CIC has asserted that payments to the Norton Company (or losses similar to the loss) are in

respect of defense costs and therefore not recoverable. Document Request No. 3 seeks documents related to the response.

CIC asserts KX has failed to explain why payments made by Home to other cedents on other claims under other insurance policies or other reinsurance contracts could lead to admissible evidence. KX asserts that the positions CIC has taken related to different reinsurers as to the same claims are potentially relevant, as is information regarding CIC's position on other Brush Wellman and Norton Claims. To the extent the interrogatory and discovery request seek information about the position taken with other reinsurers as to claims by Brush Wellman and/or Norton Company that are at issue in this dispute, the Referee finds them to be appropriate and CIC is ordered to respond.

Interrogatory No. 4 asks whether CIC has or will make claims against its reinsurers with respect to the losses, or similar losses, claimed by the insureds in the Brush Wellman and Norton Company claims, the identity of each of these claims, and how CIC will address buyback issues with respect to the Brush Wellman claims and defense cost issues with respect to the Norton Company claim. Document Request No. 4 seeks documents related to CIC's response.

KX argues it is entitled to determine how CIC has presented the Brush Wellman and Norton Company claims to its own reinsurers and whether CIC has taken inconsistent positions. CIC states that CIC's reinsurance claims to other reinsurers under other reinsurance contracts for claims under other policies issued to Brush Wellman or the Norton Company are irrelevant. To the extent the interrogatory and discovery request seek information about the position CIC has taken on its own behalf related to the same claims by Brush Wellman and Norton Company that are at issue in this dispute, the Referee finds the potential for the information to lead to discoverable evidence and CIC is ordered to respond.

Document Request No. 5 seeks all documents concerning KX's Brush Wellman and Norton Claims (and the Brush Wellman and Norton Company losses generally) including CIC documents and communications with The Home. CIC responded by producing documents and has indicated that it has produced all documents in the AISUK's Brush Wellman and Norton Company claims files. CIC objects to providing documents related to other Brush Wellman and Norton Company claims. To the extent CIC has not provided documents related to the Brush Wellman and Norton Company claims which are at issue in this dispute, it is ordered to do so. KX has not convinced the Referee that it is entitled to documents concerning the losses generally.

VI. Document Request 2

CIC's statement that it has produced all documents in AISUK's Brush Wellman and Norton Company's claims files apparently resolves this issue.

VII. Schedule

CIC has until February 17, 2010 to provide the discovery ordered herein.

So ordered.

January 4, 2010
Date



Referee, Melinda S. Gehris