

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-14
Proof of Claim Number: AMBC 465096
AMBC 464386
INTL 277878
AMBC 465074
Claimant Name: Century Indemnity Company

**CENTURY INDEMNITY COMPANY'S REPLY TO LIQUIDATOR'S
OBJECTION TO REQUEST FOR EVIDENTIARY HEARING**

Century Indemnity Company ("CIC"), by its attorneys, Lovells, respectfully submits this reply to the objection (the "Objection") of Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator (the "Liquidator") of the Home Insurance Company ("Home") to CIC's Request for Evidentiary Hearing (the "Motion"),¹ dated January 23, 2006, in respect of CIC Proof of Claim numbers AMBC 465096, AMBC 464386, INTL 277878 and AMBC 465074 (collectively, the "Claims").

**I.
PRELIMINARY STATEMENT**

In the Objection, the Liquidator side-steps the central points raised by CIC: that an evidentiary hearing is the only practical way to present CIC's voluminous supporting documents and testimony, and that it is necessary to assist the Referee in resolving the Claims. The Liquidator misleadingly suggests that what is really on the table is CIC's prior request for a confidentiality order governing produced information and the Referee's ability to "remand" the

¹ While CIC does not accept the Liquidator's characterization of CIC's Request for Evidentiary Hearing as a "motion," it adopts the Liquidator's definition for ease of reference.

Disputed Claims to the Liquidator for further consideration after CIC has provided such information. This is a smoke screen. While CIC's confidentiality concerns are legitimate, they are wholly distinct from the relief sought in the Motion and, indeed, will survive the Referee's ruling on an evidentiary hearing. Moreover, the remand that the Liquidator envisions is without any basis in the applicable law or in the Claims Procedures (as defined below) that govern the process for the determination of the Claims. Most significantly, the Liquidator fails to contest the sound justification for an evidentiary hearing put forward by CIC, and for that reason alone, his Objection should be overruled.

What the Liquidator hopes to achieve here is a decision on the Claims by ambush, whereby CIC is required to make a full disclosure regarding the bases for the Claims and the Liquidator may avoid a review of his determination by obtaining a "remand" for further consideration, enabling him to deny the Claims without ever having to rationally justify his reasons or allow CIC the opportunity to challenge them. CIC has already set forth in detail the legal justification for its Claims, *see* letter of March 31, 2005 from Gary Lee, counsel to CIC, to Jonathan Rosen, attached as **Exhibit A**, which the Liquidator has rejected. CIC has also provided substantiating factual support, and offered to provide additional support upon the Liquidator's agreement to standard confidentiality terms. It should be clear to the Referee, as it is to CIC, that the Liquidator will reject the Claims under any circumstances. It just so happens that this time, the Liquidator has chosen as his basis CIC's alleged lack of substantiating facts and the need for a formal confidentiality motion. If he obtains the "remand" he seeks, CIC is certain the Claims will be rejected yet again, once more for a supposed lack of factual and/or legal support.

In the Objection, the Liquidator, in effect, asks the Referee to ignore the undisputed facts: that the Liquidator has twice valued the Claims at \$0 and relegated them to Class V status; that a Notice of Disputed Claim has been issued by the Liquidation Clerk; and that a Disputed Claim proceeding has commenced. The Liquidator cannot now turn back the clock and have yet a third look at the Claims, which are now undeniably "Disputed." He must live with the consequences of his previous Claim decisions, engage in bi-lateral discovery as provided in the Claims Procedures entered by the Court and the applicable New Hampshire Superior Court Rules, and argue his side of the case before the Referee.

Nevertheless, the Objection does not address the substance of the Motion and should therefore be overruled.

II. BRIEF PROCEDURAL BACKGROUND

1. On January 19, 2005, the Court entered the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company (the "Claims Procedures").

2. CIC timely filed the Claims to recover amounts it paid on behalf of Home, and provided factual support and the legal bases for the Claims in subsequent correspondence with the Liquidator. In response, the Liquidator sent Notices of Determination to CIC, each dated August 23, 2005 (collectively, the "NODs"), in which he rejected the Claims, valued them at \$0, and relegated them to Class 5 status.

3. In its Requests for Review, dated September 20, 2005 (collectively, the "RFRs"), CIC contested the Liquidator's position in the NODs and offered to provide information in support of its Claims pursuant to a proposed standard confidentiality agreement. On September 29, 2005, the Liquidator issued his Notices of Redetermination (collectively, the "NORs") and

denied CIC's request for confidentiality. Like the NODs, the NORs rejected the Claims, valued them at \$0, and relegated them to Class V status. The NORs apprised CIC of its right to object to the NORs by filing an objection with the Court and thereby "bypass the Request for Review procedures" The NORs informed CIC that a timely filed objection will be treated as a Disputed Claim and referred to the Liquidation Clerk's Office for adjudication in accordance with the Claims Procedures.

4. CIC timely filed its Objection to Denial of Claims Relating to Subrogation and Contribution Rights, dated November 28, 2005 (the "Objection to Denial of Claims"), disputing the Liquidator's positions in their entirety as stated in the NORs.

5. On November 28, 2005, the Liquidation Clerk filed its Notice of Disputed Claim in respect of the Claims, commencing a "Disputed Claim" proceeding under the Claims Procedures. By letter dated December 23, 2005, the Liquidator served the Case File (as defined in the Claims Procedures) upon counsel to CIC.

6. On January 23, 2006, CIC timely filed the Motion and its Initial Mandatory Disclosures.

7. On February 16, 2006, the Liquidator filed his Objection.

III. ARGUMENT

A. Only Issue Before Referee Is CIC's Request For Evidentiary Hearing

8. Although the Liquidator strains to suggest otherwise, the Motion presents only one issue: whether an evidentiary hearing should be held because it is the only practical process for adjudicating the Claims and is necessary to assist the Referee in reaching a determination of the central matter in dispute, *i.e.*, CIC's entitlement to distribution from Home's estate (or setoff) through the exercise of its subrogation and contribution rights. The Liquidator improperly

maintains that the only question before the Referee is whether to enter a confidentiality order with respect to information to be provided by CIC to the Liquidator. Objection at ¶ 1.

9. CIC's request for an evidentiary hearing and its concerns about confidentiality are different issues. In the RFRs and the Objection, CIC offered to produce additional information substantiating the Claims upon CIC and the Home entering into a mutual confidentiality agreement. CIC has also proposed a standard form of confidentiality order for the Referee's consideration at the Structuring Conference scheduled for March 10, 2006. Confidentiality agreements and orders such as those put forward by CIC are routinely entered into by parties exchanging documents pursuant to discovery requests and protect the valid confidentiality interests of both parties. CIC is not seeking the entry of a one-sided protective order to withhold production or restrict discovery of its documents, and a formal motion and supporting affidavit as suggested by the Liquidator are therefore unnecessary.

10. Nonetheless, the question of a confidentiality agreement or order in these Disputed Claims proceedings, and the process by which it should be obtained, are unrelated to the question of whether an evidentiary hearing should be held, and indeed were not even raised by CIC in the Motion.² The scope of a confidentiality order protecting the parties in bi-lateral discovery has no bearing on CIC's demonstrated bases for an evidentiary hearing. The Liquidator's position that CIC must move formally for a confidentiality order is nothing more than his current justification for avoiding the Referee's review of the Claims. CIC has already set forth the legal basis for the Claims in great detail in correspondence with the Liquidator, and the Liquidator has rejected it.

² The Referee has, and should use, its authority to disregard the Liquidator's discussion of the confidentiality issues not raised by the Motion when considering whether to overrule the Objection and to grant the Motion. *See Panas v. Harakis*, 129 N.H. 591, 617-18 (1987) ("[A] reply brief may only be employed to reply to the opposing party's brief, and not to raise entirely new issues. If we held otherwise, we would be faced with . . . the submission of a series of reply briefs until oral argument date as the parties scramble to respond to a sequence of *de novo* arguments and issues.").

CIC has provided the Liquidator with factual support for the Claims, and offered to produce more subject to a confidentiality agreement, and the Liquidator has flatly refused to consider such a proposal. It is evident to CIC that the Liquidator will always find some basis to deny the Claims, as it has now done *twice*, and that his current focus on a formal motion for confidentiality and a subsequent "remand" is nothing more than his most recent attempt to keep the Claims from adjudication by the Referee.

B. Liquidator Cannot Unwind Disputed Claim Proceeding

11. The Liquidator proposes that once the issue of CIC's confidentiality request has been resolved, "[t]he matter should be remanded to the Liquidator for Century to present the information and evidence supporting its claim." Objection at ¶ 2. There is no provision in the Claims Procedures or other governing law that supports the Liquidator's attempt to unwind a Disputed Claim proceeding so that he can have another (here, a third) opportunity to review a claim. That bell was rung when the Liquidator filed the NORs, which commenced the objection deadline and triggered this Disputed Claim proceeding.

12. In the Objection, the Liquidator acknowledges that "[t]he Act and Claims Procedures Order clearly contemplate that only Disputed Claims are to come before the Referee or Court." Objection at ¶ 5 (internal quotations omitted). The Claims Procedures define "Disputed Claim" as "a claim which has been disallowed in whole or in part or classified as to priority by the Liquidator's Notice of Determination and for which the Claimant has timely filed an Objection." Claims Procedures § 2(d). Here, consistent with the Claims Procedures, the Liquidator issued the NODs and the NORs. In the NODs, the Liquidator plainly states that "[a] timely filed Objection *will be treated as a Disputed Claim* and will be referred to the Liquidation Clerk's office for adjudication *by a Referee* in accordance with the [Claims] Procedures." NODs

at 3 (emphasis added). The NORs contain substantially similar language. Thereafter, pursuant to the Claims Procedures, CIC timely rejected in the Objection to Denial of Claims the Liquidator's determinations disallowing and improperly classifying the Claims. The Claims are "Disputed Claims" squarely within the meaning of the term as defined in the Claims Procedures and are now subject to adjudication only by the Referee.³

13. Further, the Claims Procedures also provide that "[w]hen a claim becomes a Disputed Claim by the Claimant's timely filing of an Objection a file will be created and known as the Case File." Claims Procedures § 6(a) (internal quotations omitted). "When a Claimant files a timely Objection, the Liquidation Clerk shall mail a Notice of Disputed Claim to the Claimant . . . to initiate the Disputed Claim proceeding." *Id.* at § 9(a). The Liquidator is required to provide the claimant with a copy of the "Case File" within thirty (30) days from the date of the Notice of Disputed Claim. Here, the Liquidation Clerk filed its Notice of Disputed Claim in respect of the Claims and initiated the Disputed Claim proceeding. In addition, the Liquidator provided counsel to CIC with the "Case File," further confirming that each of the Claims had become a Disputed Claim that may only be adjudicated by the Referee without possibility of a "remand" to the Liquidator.⁴

14. The Liquidator points to no authority under which the Referee may ignore the Claims Procedures, dissolve the Disputed Claims process with the wave of a magic wand, and permit the Liquidator to review the Claims yet again without having to participate in bi-lateral discovery. The Claims Procedures provide that for Disputed Claims, "[d]iscovery, including

³ The Liquidator also states that this "Disputed Claim" proceeding has been "triggered" by the Liquidator's determinations. Objection at ¶ 6.

⁴ In addition, on December 20, 2005, Messrs. Leslie and Smith of the law firm of Rackemann, Sawyer & Brewster filed their Notice of Appearance on behalf of the Liquidator in this Disputed Claim proceeding. If this appearance was not filed in connection with the type of Disputed Claim proceeding contemplated by the Claims Procedures, then it is not clear why that notice was filed in the first place and why it has not since been withdrawn.

interrogatories, requests for documents, requests for admissions or evidence depositions, shall be governed by N.H. Super. Ct. R. 35-45-A." Claims Procedures § 14(c). The Claims Procedures and New Hampshire court rules simply do not permit the type of one-sided discovery that the Liquidator seeks once a Disputed Claim proceeding has commenced.⁵

15. It was the Liquidator, not CIC, who, in his own words, "triggered" the Disputed Claim proceeding. Instead of his summary denial of the Claims in the NORs, the Liquidator could have addressed CIC's confidentiality concerns in a number of ways, and thereby avoided immediate escalation to Disputed Claim status. He could, for example, have contacted CIC's counsel to discuss CIC's proposed confidentiality agreement, submitted a written counter-proposal regarding confidentiality, or raised the issue with the Referee. The Liquidator, however, declined to even discuss CIC's commonplace confidentiality request, and instead haughtily declared that CIC bears the burden of proving its Claims "without any contingent obligation on the Home's part to facilitate the same." NORs at 2. The fact that the Liquidator may now second-guess his decision to proceed as he did and is no longer in a zone of one-sided discovery is not a reason for reversing this Disputed Claim proceeding.

16. Moreover, reverting to a pre-NOD/NOR status would be highly prejudicial to CIC. CIC has expended substantial resources in following the Claims Procedures in response to the Liquidator's actions. Each decision by the Liquidator triggered deadlines which CIC had to either meet or forfeit its Claims. CIC spent considerable time in drafting its RFRs, Objections to Denial of Claims, Mandatory Disclosures, the Motion, and in preparing for the Structuring

⁵ While prior to the commencement of this "Disputed Claim" proceeding the Liquidator was entitled to seek supporting documentation from CIC under RSA 402-C:38, II and § 5(d) of the Claims Procedures, he is now subject to the discovery rules of the Court (which permit CIC to also seek discovery). *Cf. In re Ecam Publications, Inc.*, 131 B.R. 556, 559 (Bankr. S.D.N.Y. 1991) (emphasis added) ("once an adversary proceeding or another contested matter has been initiated, parties *must* proceed with discovery for that litigation pursuant to the Federal Rules of Civil Procedure.").

Conference scheduled for March 10, 2006. Even if a "remand" of the Claims for further review were permissible under the Claims Procedures and other applicable rules, which it clearly is not, such an action would be highly prejudicial to CIC when it has had to respond in each instance to steps taken by the Liquidator which ultimately resulted in the Disputed Claims now before the Referee.

C. Evidentiary Hearing Is Only Practical Way To Resolve Disputed Claims And Is Necessary To Assist Referee

17. The Liquidator fails to address CIC's showing that an evidentiary hearing is the only practical process for adjudicating the Disputed Claims, and is necessary to assist the Referee in reaching a determination of the central matter at issue, *i.e.*, CIC's entitlement to distributions from Home's estate (or setoff) through the exercise of its subrogation and contribution rights.

18. While § 11 of the Claims Procedures does not establish standards or other guidelines for determining whether an evidentiary hearing request should be granted, the Referee's October 21, 2005 Report entered in the 2005-HICIL-2 Disputed Claim proceeding (attached hereto as **Exhibit B**, the "Report") suggests that the requesting party must establish that the "evidentiary hearing is necessary to assist the Referee in reaching a determination of the central matter at issue" in the dispute. Report at 3. In denying the request in the 2005-HICIL-2 "Disputed Claim" proceeding, the Referee noted that the relevant facts had been previously "well-briefed and the arguments sufficiently developed to allow for resolution without testimony of witnesses." *Id.* Here, however, the facts and arguments have not been fully developed and briefed on the record, and an evidentiary hearing is necessary.

19. The issues in this Disputed Claim proceeding are most efficiently resolved through the examination of the following facts (among others), all of which are best presented to the Referee through oral testimony at an evidentiary hearing: (a) the pre-insolvency relationship

among CIC, Home and any other insurers on a policyholder-by-policyholder basis; (b) the post-insolvency relationship among CIC and other insurers in respect of amounts which should have been paid by Home but were instead paid by CIC; (c) cost sharing practices (both generally with respect to the insurance industry and specifically with respect to CIC); and (d) CIC's business decisions (e.g., why CIC paid on behalf of Home). In addition, the parties should be given the opportunity to cross-examine each other's witnesses so the Referee can assess their credibility, and the Referee should be given the opportunity to ask questions of the expert and fact witnesses themselves to clarify and test their opinions and factual assertions -- both integral components of the fact-finding process, which cannot be achieved by asking questions of lawyers at oral argument. Further, the live testimony of expert and fact witnesses from both sides would distill the information regarding the allowance of the Claims into an immediate and cognizable form, and in a way that would be impossible to replicate if an evidentiary hearing is not granted.

20. The documentation supporting the Claims is voluminous, and CIC maintains that as an alternative to parsing through a mountain of documents and other evidence supporting the Claims in the context of written submissions, "the Referee and the parties would be better served by exploring the discrete and relevant underlying facts at an evidentiary hearing." Motion at ¶ 2, ¶ 9. The Liquidator, however, mischaracterizes that position and argues that:

Century's proposal to present payments to dozens, if not hundreds of policyholders *to the Referee* through insurance policies, cost share agreements, settlement agreements, e-mails, letters, handwritten notes, spreadsheets, account summaries and payment ledgers and testimony without presenting the documents and an explanation to the Liquidator first is wasteful.

Objection at ¶ 5 (quotations omitted, emphasis added). However, the documents and other evidence that CIC will provide to the Referee will first be produced to the Liquidator (through

bi-lateral discovery), and then, if CIC's request is granted, the information can be meaningfully presented to the Referee at an evidentiary hearing.

D. CIC May Obtain Discovery Regarding Liquidator's Rationale For Determination Of Claims And Other Pertinent Information

21. Since the Claims are now unquestionably disputed, and the procedure for adjudicating them is governed by the New Hampshire court rules on discovery, CIC is entitled to take discovery regarding the Liquidator's rationale for denying the Claims. The Claims Procedures authorize CIC to take discovery from the Liquidator pursuant to the New Hampshire court rules. As a result, CIC:

may obtain 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

N.H. Super. Ct. R. 35(b)(1). In addition, discovery is proper "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* Thus, unless the Liquidator intends to withdraw all assertable defenses to the Claims, the reasons for the Liquidator's denial of the Claims are properly discoverable, both on relevancy grounds and because they may lead to the discovery of other admissible evidence. The Liquidator is not a black box into which questions are put and answers spat out, without any ability to inquire as to his process or to examine the information in his possession on which he may have relied. Here, CIC is clearly entitled not only to discovery of Mr. Rosen regarding his reasons for denial of the Claims, but also of any information relating to, among other things, Home's policies of insurance, cost share arrangements and reimbursement demands of other insurers, and Home's claims handling process.

22. The Liquidator tries to shield himself from discovery by arguing that "[a] disputed claim proceeding is not a review of the Liquidator's determination of the claim. It is a de novo

proceeding to determine whether the claimant has shown that it has a valid claim." Objection at ¶ 6 (emphasis original). Even if CIC bears the initial burden of proving its Claims,⁶ the standard of review that may apply is not relevant to the scope of permissible discovery. It almost appears as if the Liquidator is the party seeking a protective order from discovery, in which case he ought to follow the course he outlined for CIC and file a motion and affidavit under the applicable New Hampshire court rules.⁷

23. In requesting that the Referee deny CIC's request for an evidentiary hearing, the Liquidator is the party seeking to "game" the system by effectively taking away CIC's right to prove its Claims. CIC's right to file a claim is meaningless without the right to prove it and to challenge the Liquidator's defenses. To restrict CIC from taking discovery of the Liquidator strips CIC of this right and forces it to fight with one hand tied. *See* RSA § 402-C:37, 41, Claims Procedures § 4 and §§ 5(b), 8).

E. Entry Of Confidentiality Order Is Justified

24. Although CIC seeks entry of a confidentiality order as one of the matters to be addressed at the Structuring Conference and not through the Motion, the Liquidator has focused on it to such a degree in the Objection that CIC must briefly reply here. After reviewing its documents internally, CIC offered to provide supporting documents to the Liquidator subject to a

⁶ In the bankruptcy context, while the claimant has the ultimate burden of persuasion by a preponderance of the evidence, the debtor shares the burden of going forward. *See In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992) (citations omitted, emphasis in original) ("The burden of proof for claims . . . rests on different parties at different times. . . . [A] claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward. The burden of going forward then shifts to the objector to produce evidence sufficient to negate the *prima facie* validity of the filed claim. It is often said that the objector must produce evidence equal in force to the *prima facie* case.").

⁷ The Liquidator argues in ¶ 6 of the Objection that the evidence supporting the Claims shall be reviewed by the Referee "de novo" to establish whether "the claimant" has met its burden. If the Disputed Claims are truly a matter between CIC and the Referee, then the Liquidator should have no position on whether an evidentiary hearing is held. But clearly the Liquidator is no mere spectator here, and will assert a counter-position once CIC presents its case, and discovery of the Liquidator is entirely proper.

proposed confidentiality agreement. Thus, CIC first raised these confidentiality concerns to the Liquidator in its RFRs more than five months ago.

25. The documents which CIC has identified as appropriate for confidentiality protection include, but are not limited to: (a) post-insolvency coverage and payment e-mails which are confidential by their terms; (b) communications between policyholders and insurers which by their nature are confidential; (c) cost share and other agreements where Home is not a party, which are confidential by their terms; (d) CIC's account summaries (which describe cost share histories, litigation status summaries and contain other confidential information); and (e) insurance policies, letters, handwritten notes and proprietary payment spreadsheets. Without a confidentiality order or other similar agreement, Home employees, the Liquidator, witnesses and professionals acting on behalf of the estate would be under no obligation to keep CIC's confidential information out of the public domain (including the disputed claims docket), to refrain from disclosing to third parties or from using such information for a purpose other than evaluating the Claims. For instance, in respect of policyholders which are common to both CIC and Home, if CIC produces to Home non-privileged documents which relate to developments in cases where Home is not voluntarily paying claims to which that policyholder may claim entitlement (but where CIC is paying such claims), there is nothing preventing those very documents from getting into the hands of CIC's adversaries.

26. Although CIC conditioned its production of supporting documentation to the Liquidator upon execution of a proposed confidentiality agreement and invited the Liquidator to discuss its terms if necessary, CIC is not seeking formal protection from the Liquidator's discovery requests. To the contrary, in connection with discovery in this Disputed Claim proceeding, CIC is advocating a process by which the confidentiality concerns of both parties

will be protected. The confidentiality order that CIC will propose at the Structuring Conference (attached hereto as **Exhibit C**) mutually protects the interests of both CIC and the Liquidator. Nevertheless, CIC is fully prepared and willing to negotiate in good faith the terms of an agreement or order that is acceptable to the Referee and the parties.⁸ There can be no prejudice or inconvenience to the Liquidator caused by participation in a confidentiality agreement such as that proposed by CIC, and indeed his refusal to consider such a standard agreement might raise an eyebrow.

IV. CONCLUSION

For the foregoing reasons, the Objection should be overruled and CIC's request for an evidentiary hearing should be granted.⁹

⁸ The Referee has the authority to enter such an order under its equity powers. *See* RSA § 519:10 (Referee shall proceed "according to the rules of law or equity . . ."). If the Referee declines to enter a confidentiality order at the Structuring Conference, CIC reserves all rights, including the right to move for a protective order and seek from the Liquidator the costs of doing so pursuant to N.H. Super. Ct. R. 59. However, in this response, CIC is seeking the consent of the Liquidator in arriving at a mutually acceptable confidentiality protocol and believes that a formal motion is therefore not necessary at this time.

⁹ If the Referee grants CIC's evidentiary hearing request, CIC respectfully requests that evidentiary hearings be granted with respect to both coverage and valuation of the Claims, and that, as appropriate, a scheduling conference be held after the Referee's ruling with respect to the coverage issues so that a calendar with respect to valuation of the Claims can be established.

Dated: March 8, 2006

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary Lee", is written over a horizontal line.

Gary S. Lee

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Our ref NYGSL/82716.01
Matter ref T0718/00023

VIA E-MAIL

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RE: CLAIMANT: CENTURY INDEMNITY COMPANY ("CIC");
POC NUMBERS: AMBC 465096, AMBC 464386, INTL 277878, AMBC 465074.

Dear Jonathan:

This letter is in response to your letters to Burt Carver of March 3, 2005, of which we acknowledge receipt on behalf of CIC.

As noted in the POCs filed by CIC, the rationale for its claims is the increased actual and/or presently non-absolute liabilities incurred (or to be waived) on account of the Home Insurance Company's insolvency and non-payment of such liabilities. It is well established in New Hampshire and elsewhere that a party who is obligated with another party for the same debt (whether as co-sureties, co-guarantors or co-obligors of another kind) has an equitable right of contribution from the other party for payment or prospective payment of the debt. See generally 23 Williston on Contracts § 61:63 (4th ed., 2004); Restatement (First) of Restitution § 81 (1937); Restatement (Third) of Suretyship and Guaranty § 57(2); 38 A.L.R. 3d 680 (2004); see also Odlin v. Greenleaf, 3 N.H. 270, 1825 WL 481 (1825) (a surety is liable for contribution when a co-surety pays); Cass v. Stearns, 66 N.H. 301, 23 A. 80 (1890) (joint petitioners were liable for their pro rata share of fees and costs incurred by co-petitioner for court relief, on the ground that "equality of burden as to common right is equity"); Rodehorst v. Gartner, 669 N.W. 2d 679, 684 (Neb. 2003) (upholding the right to equitable contribution among "co-debtors, co-sureties, co-contractors, and all others upon whom the same pecuniary obligation arising from contract, express or implied rests") (quoting Exchange Elevator Co. v. Marshall, 22 N.W. 2d 403, 410 (Neb. 1946) (co-obligors on note have the equitable right of contribution)). Cf. New Hampshire R.S.A. 507:7(f) (providing for an express statutory right of contribution among joint tortfeasors). The doctrine of equitable contribution has been applied to allow an insurer who pays more than its fair share of a judgment to seek contribution from co-insurers. See, e.g., Royal Indemnity Co. v. Aetna Casualty & Surety Co., 229 N.W. 2d 183, 186 (1975).

In addition to the right of contribution, a co-debtor who makes payment to a creditor is subrogated to the rights of the creditor to seek payment from a non-paying co-debtor. See, e.g., Albrecht v.

Walter, 572 N.W. 2d 809 (N.D. 1997) (upholding a co-guarantor's right to seek recovery under the alternative theories of contribution and by way of assignment of the claim of the primary creditor). Furthermore, in the event of insolvency, an obligor may elect to assert a direct claim for contribution or a claim for subrogation against the insolvent co-obligor. See New Hampshire R.S.A. 402-C:37, 402-C:42; 11 U.S.C. §§ 502, 509(a); 86 A.L.R. Fed. 886 § 4 (2004).

CIC is in the process of retrieving and copying the relevant claims files and other documentation that you have requested relating to claims that have been paid and claims that are not yet absolute. As I am sure you can appreciate, the information you have requested spans thousands, if not tens of thousands, of documents and dozens of files, most of which are now in storage as the business unit responsible for these files is making an office move that will not be completed until mid-April. We anticipate that due to the volume of documents involved, CIC will begin a rolling production of documents during the latter part of April.

We reserve the right to supplement the rationale for the claims in the referenced POCs in light of the review of CIC's documents.

Regards,



Gary S. Lee

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIM DOCKET

In Re Liquidator Number: 2005-HICIL-2
Proof of Claim Number: AMBC700308
Claimant Name: Century Indemnity Company

REFEREE'S REPORT

Century Indemnity Company ("CIC") challenges the Liquidator's April 7, 2005 partial re-determination of Proof of Claim ("POC") AMBC 700308. The partial re-determination at issue is the first in an expected sequence of partial determinations relating to CIC's Excess and Casualty Reinsurance Association ("ECRA Pool") liabilities which are reinsured by the Home Insurance Company ("Home"). POC AMBC 700308 deals specifically with CIC's ECRA Pool balances through November of 2004.

A structuring conference on this matter was conducted by video on September 29, 2005. Before the Referee at that time were CIC's Request for an Evidentiary Hearing and CIC's Motion to Disqualify Attorney Jonathan Rosen as Counsel to the Home Insurance Company, as well as the Liquidator's objections to both, and the Liquidator's Cross-Motion to Dismiss. At the conclusion of the conference, the Referee took the Request for Evidentiary Hearing and Cross-Motion under advisement, and held the Motion to Disqualify in abeyance. The parties were provided an opportunity to submit supplementary pleadings on the request for evidentiary hearing and the cross-motion.

Pending Motions and Requests

The Liquidator's Cross-Motion to Dismiss is based upon his position that the issues central to this disputed claim have been rendered moot by the Superior Court's allowance of the ETMC claim, thereby, the Liquidator argues, triggering CIC's right to its appropriate setoff.

Application of the mootness doctrine is not subject to rigid rules, but is a matter of practicality and discretion. See Royer v. Dep't of Employment Security, 118 N.H. 673, 675 (1978). The application may be evaded where, as here, there is a palpable interest in the avoidance of future litigation of the same issue, thereby justifying a decision on the merits. See id. The issue central to this dispute, the timing of setoff, is one which is likely to arise in the future and may escape timely and meaningful appellate review if a determination is not made in the context of this disputed claim¹. Further, CIC argues that the Court's allowance of the ETMC claim does not address CIC's argument that its entitlement to setoff arose when the ECRA Pool balances were established for the applicable accounting period. The Referee agrees with CIC that the issue central to this disputed claim, the timing of setoff, is not directly addressed by the Court's allowance. For these reasons, the Liquidator's Cross-Motion to Dismiss is DENIED.

CIC's Request for an Evidentiary Hearing is governed by Section 11 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation. Though evidentiary hearings may be requested, there is no automatic right to a hearing, and such hearings are not mandated.

¹ In the future, the disputes on offset may well be more complicated when concerning sums not certain; for example, sums relating to reserved claims and yet unknown claims.

CIC has not established that an evidentiary hearing is necessary to assist the Referee in reaching a determination of the central matter at issue in this dispute. The relevant facts have been well-briefed and the arguments sufficiently developed to allow for resolution without testimony of witnesses. Therefore, CIC's Request for an Evidentiary Hearing is hereby DENIED. Finally, the denial of the Request for an Evidentiary Hearing renders moot the Motion to Disqualify Jonathan Rosen, Esq. as Counsel to The Home Insurance Company.

The Disputed Claim: POC AMBC 700308

On January 21, 2005, the Liquidator issued a notice of partial determination ("NOD") indicating that CIC was entitled to a zero allowance on POC AMBC 700308. The summary accompanying the determination advised that the Liquidator had "determined paid balances of \$1,485,719" [sic] on a related proof of claim (POC RAHM 700581) submitted on CIC's behalf by Excess and Treaty Management Corporation (ETMC), manager of the ECRA Pool. The summary also referenced setoff "balances of \$84,414 due to Home from CIC with respect to the ECRA Pool and AFIA balances outside of the ECRA Pool of \$1,401,397 due to Home from CIC." While the January 21, 2005 NOD issued to ETMC allowed \$1,485,791, it reflected a net allowance of zero in recognition of the setoff amounts recited above.

For different reasons, both CIC and ETMC requested re-determinations. CIC objected to the setoff amounts referenced by Home, reserved the right to assert other objections, and objected to the NOD's reference to CIC reserve and incurred but not reported (IBNR) filings, specifically requesting confirmation that the NOD had no implication for the reserve and IBNR filings by CIC. While confirming the initially

allowed amount, ETMC requested a re-determination based upon a concern that the initial determination included setoff on “balances not part of the ECRA pool.” The Home issued a re-determination of both ETMC and CIC 's claim on April 7, 2005 again allowing \$1,485,791 to ETMC and again allowing zero to CIC. but making no reference to setoff. The determination summary stated that once ETMC's partial determination was “approved” by the Court, CIC would be entitled to setoff “appropriate” amounts.

Issues / Discussion

CIC takes issue with both Home's decision to recommend allowance on the claim submitted by ETMC rather than the claim submitted by CIC, and Home's position that CIC's entitlement to setoff of ECRA Pool balances does not vest until the ECRA Pool claim is approved or “allowed” by the Court.² CIC argues that RSA 402-C:34, the Order of Liquidation and the Claims Protocol negotiated between the Liquidator and CIC on Home-related AFIA claims, “permit immediate assertion of setoff when a debt arises.” CIC asserts that the Liquidator is taking advantage of a “timing windfall” by favoring the ETMC claim over the CIC claim and by attempting to delay entitlement to setoff until entry of an order approving the ETMC determination. As authority for his position to the contrary, the Liquidator relies upon RSA 402-C:45, II, arguing that setoff is properly delayed until the claim is allowed by the Court, as until that time, any determination is subject to modification.

² Because The Liquidator's October 11, 2005 Opposition to CIC's Objection to the Liquidator's Report of Claims and Recommendations as of September 26, 2005 and Motion to Amend August 12, 2005 Order has indicated that, “In the future, to eliminate further dispute on the issue, the Liquidator will address CIC's claims regarding amounts due from Home with respect to the ECRA Pool under the CIC Claim, and not the ETMC Claim.”, there is no necessity for the Referee to address this issue.

While CIC objects to the Liquidator's favorable determination of ETMC's claim rather than CIC's³, and notes the discrepancy between the amount ETMC claimed and the amount CIC claimed on paid balances through November 2004, at the core of CIC's dispute with the Liquidator is a disagreement over when CIC may offset Home's liability to CIC for ECRA Pool balances against CIC's liabilities to Home.

The Referee has reviewed the various exhibits provided and gives due consideration to the pleadings of both CIC and the Liquidator, as well as the brief arguments presented on behalf of each at the structuring conference. The Referee agrees with CIC's assertions that its statutory entitlement to setoff is firmly established under RSA 402-C:34. Additionally, as noted by CIC, the Order of Liquidation which prohibited setoff by other debtors, specifically provided that such prohibition would not apply to "any right of setoff of mutual debts or mutual credits by reinsurers as provided in and in accordance with RSA 402-C:34." The Liquidator apparently takes no issue with CIC's claim to such setoff rights under either the statute or the Order of Liquidation.

However, RSA 402-C:34 and the Order of Liquidation, provide no guidance as to the exact timing of setoff, nor a particular protocol that might apply to application of setoff between the liquidating estate and a reinsurer. Nonetheless, a plain reading of RSA 402-C:34 clearly supports CIC's position that offsets are to be applied prior to a claim being "allowed or paid." Thus, under RSA 402-C:34, recommendations for allowance of claim determinations are not properly submitted to the court unless they are net of appropriate setoff.

³For purposes of this dispute, allowing the claim for pool balances through November 2004 to stand in ETMC's name as opposed to CIC's, results in no damage to CIC's interests and the Liquidator has represented a future intention to address CIC claims directly rather than through the services of the pool manager.

While it is clear that setoff should occur before allowance, determining when entitlement to setoff actually arises in conjunction with a particular dispute requires consideration of the claim's nature and the context in which the claim arose. The present dispute concerns a sum certain⁴, i.e., a claim arising from periodic billings relating to the operation of a pooling arrangement managed by a third party. The management agreement⁵ contemplates the regular provision of accountings to ECRA Pool participants by the Pool manager. The Referee concludes that absent a substantial disagreement on the actual accounting of the ECRA Pool balances by the manager, CIC's entitlement to setoff relating to those balances arises when CIC periodically receives the necessary documentation from the ECRA Pool manager for proper calculation of its setoff.

Finally, the Referee notes that CIC has made reference in its pleadings to the setoff provisions within the Claims Protocol with Century Indemnity Company approved by the Court in November of 2004. The possible application of that Protocol to this dispute relates to the fact that CIC's setoff opportunity within the ECRA Pool is significantly less than the potential value of its claim, possibly implicating AFIA-related balances for further satisfaction of remaining setoff. While the Referee notes that under Paragraph 8 of the Protocol, CIC is required to provide the Liquidator with a monthly accounting of "any amounts claimed as setoff," and subject to other adjustments, to "pay the balance to the Liquidator," it is not clear that the Protocol prospectively contemplated setoff of non-AFIA balances under Paragraph 8. Therefore, the Referee

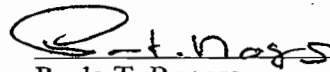
⁴ CIC's proof of claim (AMBC 700308) was submitted in the amount of \$43,483,756 and included amounts owing due to ECRA paid balances through November of 2004 of \$1,490,508.07, while ETMC's proof of claim (RAHM 700581) was submitted in the amount of \$71,441,278 and included amounts owing CIC due to the ECRA paid balances of \$1,485,791. Given the nature of the claims, and given the insubstantial difference, agreement on value should be susceptible to a speedy resolution between the parties.

⁵ This Agreement appears as Exhibit M to the Supplemental Affidavit of George P. Mitchell. See Article IV - Reports, p. 4.

provides no specific recommendation as to how CIC and the Liquidator ought to accommodate CIC's entitlement to setoff of non-ECRA Pool balances related to this claim, except to note that CIC has already outlined its position on the range of opportunities for setoff in its January 21, 2005 letter to the Liquidator.

So ruled:

Dated: October 21, 2005



Paula T. Rogers
Referee

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-14
Proof of Claim Number: AMBC 465096
AMBC 464386
INTL 277878
AMBC 465074
Claimant Name: Century Indemnity Company

PROPOSED CONFIDENTIALITY ORDER

Century Indemnity Company ("CIC" and, collectively with the Liquidator, the "Parties" and each, a "Party") challenges the Liquidator's Notices of Redetermination, each dated September 29, 2005, concerning proofs of claim AMBC 465096, AMBC 464386, INTL 277878 and AMBC 465074 (collectively, the "Disputed Claims"). A structuring conference concerning the Disputed Claims was held on March 10, 2006. Before the Referee at that time were CIC's Request for Evidentiary Hearing, the confidentiality and case management matters raised in CIC's Objection to Denial of Claims Relating to Subrogation and Contribution Rights, filed on November 28, 2005 (the "Objection"), as well as the Liquidator's Objection to Century's Request for Evidentiary Hearing. At the structuring conference, the Referee granted CIC's request for evidentiary hearing. The Referee issues this Order solely to address CIC's concerns about the protection of confidential and proprietary information and documents which may be produced in connection with the prosecution and defense of the Disputed Claims.

Request for Confidentiality

CIC's request for confidentiality is based on the Liquidator's request for CIC to substantiate its Claims. CIC understood "substantiation" to mean that the Liquidator was requesting supporting documentation, among other things. After reviewing its files (and as it continues to review its files), CIC determined that many if not all of the documents giving rise to its Claims may contain information considered sensitive, confidential, personal, proprietary, or protected by statutory or other legal privilege. Accordingly, CIC drafted a confidentiality agreement which it proposed to the Liquidator for signature. The Liquidator denied CIC's request for confidentiality and did not enter into or discuss the proposed agreement with CIC or its counsel. Other than by refusing CIC's request for confidentiality in rejecting the proposed agreement, the Liquidator has not since filed written opposition. Based on the arguments advanced at the structuring conference and in CIC's Objection, CIC's request for confidentiality is GRANTED, subject to the following terms and conditions.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. **Effective Date.** The terms of this Order shall take full force and effect once it is entered on the disputed claims docket by or at the direction of the Referee.
2. **Scope of Order.** Pursuant to N.H. Super. Ct. R. 35(c), this Order and the procedures contained herein shall govern the production, exchange and treatment of all documents, testimony, interrogatory responses, depositions and deposition exhibits, responses to requests to admit and other written, recorded or graphic matter and other information produced, given, exchanged by or obtained from a Party or non-party in response to discovery requests or subpoenas in the above-captioned disputed claim proceeding (collectively, "Confidential Discovery Material").

3. **Use of Confidential Discovery Material.** Absent written agreement between the producing party and the receiving party, all Confidential Discovery Material shall be used solely for the prosecution and defense of the Disputed Claims, or any resulting recommitments or appeals, and for no other purpose whatsoever.

4. **Confidentiality.** All Confidential Discovery Material produced, given, exchanged or obtained in response to discovery requests or subpoenas in this disputed claim proceeding contains or discloses proprietary or non-public information of a commercially, financially or personally sensitive nature, including but not limited to, confidential trade secrets, unpublished financial data, confidential business or product plans, and other confidential information.

5. **Disclosure.** Confidential Discovery Material shall not be disclosed directly or indirectly by the person receiving such materials to persons other than:

- a. the Merrimack Superior Court (the "Court") or the Referee, their respective employees, and any stenographers transcribing the testimony or argument at a hearing, trial or deposition in this disputed claim proceeding, or any recommitment or appeal therefrom;
- b. outside counsel of record in this disputed claim proceeding, including all regular and temporary employees of such counsel or the law firm of which counsel is a member;
- c. a Party, or officer, director, agent, representative, or employee of such Party, including in-house counsel and full and part-time employed legal staff, consultants or contractors working together with or under the supervision of in-house counsel or other legal staff (including, but not limited to, interpreters,

translators, copy services, database or coding services) who need to know such material in order for such Party to prosecute or defend the Disputed Claims;

- d. any affiliate of a Party (a “Party Affiliate”), or officer, director, employee, agent, representative, consultant of such Party Affiliate who needs to know such material in order for such Party to prosecute or defend the Disputed Claims, provided that
 - i. any such Party Affiliate or officer, director, employee, agent, representative, or consultant of such Party Affiliate, prior to its receipt of Confidential Discovery Material, executes an undertaking in the form attached hereto as **Exhibit A** agreeing to be bound by this Order and consenting to the jurisdiction of the Referee and the Court; and
 - ii. counsel making disclosure shall inform each person that the material is confidential and may not be disclosed or used except as provided in this Order;
- e. witnesses, if any, deposed in this disputed claim proceeding or who appear at any hearing or trial in this disputed claim proceeding, but only to the extent disclosure occurs in preparation for or during such deposition, hearing or trial, and provided that
 - i. each witness, prior to its receipt of Confidential Discovery Material, executes an undertaking in the form attached hereto as **Exhibit A** agreeing to be bound by this Order and consenting to the jurisdiction of the Referee and the Court; and

- ii. counsel making disclosure shall inform each person that the material is confidential and may not be disclosed or used except as provided in this Order;
- f. other persons who counsel of record believes are potential witnesses or sources of information that may be evidence in this disputed claim proceeding and to whom counsel of record believes such material needs to be shown to prosecute or defend the Disputed Claims, provided that each person, prior to their receipt of Confidential Discovery Material, executes an undertaking in the form attached hereto as **Exhibit A** agreeing to be bound by this Order and consenting to the jurisdiction of the Referee and the Court; and
- g. experts or consultants retained in good faith to assist counsel in this disputed claim proceeding (including assisting the Parties' in-house counsel), but only to the extent disclosure occurs in the course of the formulation of the expert's or consultant's opinion or report, preparation of advice or preparation for or during such deposition, hearing or trial, and provided that such person, prior to his or her receipt of Confidential Discovery Material, executes an undertaking in the form attached hereto as **Exhibit A** agreeing to be bound by this Order and consenting to the jurisdiction of the Referee and the Court.

Absent written agreement between the person seeking to disclose any Confidential Discovery Material and the producing person, any person wishing to disclose any Confidential Discovery Material to any person not set forth in Paragraph 5 above must make a written application (through counsel to the Party for whose benefit the Confidential Discovery Material is sought) on notice to the Referee for resolution. Any requests that seek production of Confidential

Discovery Materials (from a Party or otherwise) shall be made solely by counsel to the Party for whose benefit such request is made, and by no other person or their counsel.

6. **Compelled Disclosure.** In the event that a person is served with or is otherwise subject to legal process (including subpoena or discovery notice) requiring any of them to testify about, to produce, or otherwise to divulge another person's Confidential Discovery Material, to the extent permitted by law, the person subject to such process will, within at least five (5) days prior to the time to object (or as soon as practicable if there are less than five days remaining to object), inform the producing Party's counsel, will provide the producing Party's counsel with a copy of such subpoena or process, will assert all applicable privileges and objections with respect to such requests for Confidential Discovery Material (except with respect to a request of a regulator having jurisdiction over the party that is served with or subject to the legal process), and will not waive any such privilege or objection without court order or the written consent of the Party from whom such information originated (except with respect to a request of a regulator having jurisdiction over the party that is served with or subject to the legal process).

7. **Public Disclosure.** If any Confidential Discovery Material is publicly disclosed in a manner that does not violate this Order, it shall not be considered Confidential Discovery Material after its disclosure.

8. **Use in Open Court Proceedings.** In the event that any Confidential Discovery Material is used in open court in this disputed claim proceeding, or any commitments or appeals therefrom, it shall not lose its status as Confidential Discovery Material through such use. Notwithstanding the foregoing sentence, counsel to the Parties (and counsel to other persons from whom Confidential Discovery Material is sought) shall confer on such procedures as are necessary to protect the confidentiality of information used in the course of any court

proceedings. If the Parties are unable to agree upon such procedures, the Parties shall request a ruling from the Referee, the Court or, as applicable, any other court of review. Until such a ruling is made, the relevant court proceeding shall be adjourned as necessary.

9. **Admissibility.** Nothing herein shall be construed to affect in any way the admissibility of any document, testimony or other evidence at the trial of any action related to the Disputed Claims.

10. **Filing Designated Materials with the Referee or the Court.** In the event that before, during or after any hearing or trial in this disputed claim proceeding, counsel for a Party determines to file or submit in writing to the Liquidation Clerk or the Court Clerk's office any Confidential Discovery Material, or any papers containing or making reference to the substance of such material or information, such documents or portions thereof containing or making reference to such material or information shall be filed under seal in accordance with the rules of the Court, and kept under seal until further order of the Referee or the Court, as the case may be. Where possible, only confidential portions of filings with the Referee or the Court shall be inscribed with the phrase: "CONFIDENTIAL -- SUBJECT TO COURT ORDER." Each Party is authorized to file under seal any materials, information, documents, or portions thereof in accordance with this Order, without further Order of the Referee or the Court, as the case may be; the Liquidation Clerk and the Clerk of Court, as applicable, are hereby directed to accept same for filing under seal.

11. **Depositions.** Information disclosed at depositions in this disputed claim proceeding, together with all deposition transcripts, shall by this Order be deemed Confidential Discovery Material. Nothing in this Paragraph precludes the deponent from reviewing the transcript at any time.

12. **Third-Party Actions.** The exchange of any Confidential Discovery Material in connection with this disputed claim proceeding, or any other litigation between the Parties with respect to the Disputed Claims, shall not be a waiver of any defense or privilege (including, without limitation, any attorney-client, work product or common defense privilege, any confidentiality protection based on the proprietary nature of any information or documents, or any other privilege or confidentiality protection) which a Party has or may have, including with respect to or as against third parties, and each Party expressly and fully preserves any and all privileges, confidentiality and protections, together with any and all claims or defenses associated therewith, and does not waive any such privileges, confidentiality protections, claims or defenses.

13. **No License.** Nothing in this Order is intended to grant a license or any other rights to a receiving Party, and this Order shall not grant either Party any rights in or to Confidential Discovery Material of the producing Party, except as expressly set forth herein.

14. **Remedies.** Any violation of this Order may cause irreparable injury to the non-violating Party, entitling the non-violating Party to seek injunctive relief in addition to all other legal and equitable remedies, including contempt of court; provided however, that no Party shall be liable for incidental damages, consequential damages, punitive damages, exemplary damages or lost profits arising out of or relating to the compliance with, or violation of, this Order.

15. **Successors and Assigns; No Assignment.** This Order shall be binding on the Parties and their respective successors and permitted assigns.

16. **Waiver.** The failure to exercise or delay in exercising any right, power or privilege under this Order shall not operate as a waiver, and any single or partial exercise of any right, power or privilege under this Order shall not preclude the exercise of any other single or

partial right, power or privilege. A waiver of any violation of any provision of this Order shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision; and a waiver shall not be implied from any course of dealing among the Parties. An extension of time for performance of any obligations or other acts under this Order shall not be deemed to be an extension of the time for performance of any other obligations or any other acts.

17. **Severability.** In the event that any provision of this Order, or part thereof, is determined to be invalid, void or otherwise unenforceable, the provisions of this Order concerning the use and return (or destruction) of Confidential Discovery Material are to be preserved to the fullest extent possible notwithstanding such partial invalidity.

18. **Interpretation.** Any of the terms defined in this Order may be used in the singular or the plural and in any gender, unless the context otherwise requires.

19. **Notices.** All notices required by this Order may be served by facsimile or electronic mail copy so as to be received at or before 5:00 p.m. (prevailing New Hampshire time) the day they are due. For purposes of calculating the date by which a party receiving a notice shall respond, or otherwise take action, notice received before 5:00 p.m. shall be deemed received that business day while notice received after 5:00 p.m. shall be deemed received the following business day. Any of the notice requirements herein may be waived in whole or in part, but only in a writing signed or e-mailed by an attorney for the producing Party and addressed to the attorney for the receiving Party.

Notices to the Liquidator shall be sent to:

Jonathan Rosen

By e-mail: jonathan.rosen@homeinsco.com
By fax: (212) 548-0727

With copies to:

David Leslie

By e-mail: jdl@rackemann.com

By fax: (617) 542-7437

Eric Smith

By e-mail: esmith@rackemann.com

By fax: (617) 542-7437

Notices to CIC shall be sent to:

Tom Wamser

By e-mail: thomas.wamser@ace-ina.com

By fax: (215) 640-4070

Mark Muth

By e-mail: mark.muth@resolute-midatlantic.com

By fax: (267) 765-6413

With copies to:

Gary Lee

By e-mail: gary.lee@lovells.com

By fax: (212) 909-0666

Pieter Van Tol

By e-mail: pieter.vantol@lovells.com

By fax: (212) 909-0666

James DeCristofaro

By e-mail: james.decrisofaro@lovells.com

By fax: (212) 909-0666

20. **Survival.** Neither the termination of this disputed claim proceeding nor the termination of employment of any person who has had access to any Confidential Discovery Material shall relieve such person from the obligation of maintaining the confidentiality of such information.

21. **Return or Destruction of Designated Material.** Within sixty (60) days after the entry of a final order fully resolving this disputed claim proceeding and any recommitals and appeals thereof, counsel shall return all Confidential Discovery Material and copies (including excerpts and summaries thereof) to counsel for the producing Party or non-party, or in lieu thereof, certify in writing that such Confidential Discovery Material has been destroyed.

22. **Amendment of Order.** Nothing herein shall preclude a Party from seeking to amend this Order for cause shown.

23. **Retention of Jurisdiction.** The Referee shall retain jurisdiction to enforce, modify or vacate all or any portion of this Order upon appropriate motion by a party in interest (subject to the jurisdiction of the Court over any recommitals, and the jurisdiction of the New Hampshire Supreme Court, and any other court of review, over any appeals).

So Ordered:

Dated: _____

Paula T. Rogers
Referee

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-14
Proof of Claim Number: AMBC 465096
AMBC 464386
INTL 277878
AMBC 465074
Claimant Name: Century Indemnity Company

CONFIDENTIALITY ORDER UNDERTAKING

I have read the Confidentiality Order dated [] (the "Order") in the captioned claim dispute, pending before the Referee, and I agree to be bound by its terms and conditions with respect to any documents, materials or information that are furnished to me as set forth in the Order. I further agree not to disclose to anyone any documents, material or information that are furnished to me other than in accordance with the Order and not to make any copies of any such documents, material or information other than in accordance with the Order. I hereby consent to the jurisdiction of the Referee and the Court with regard to any proceedings to enforce the terms and conditions of the Order.

Name: _____

[Title: _____]

[Intending to bind _____]

Date: _____