

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**
Date of Loss: 7/18/88

**REQUEST FOR LEAVE TO SUBMIT REPLY STATEMENT
AND REPLY STATEMENT**

Claimant Unione Italiana (UK) Reinsurance Company Limited (“Unione Italiana”) respectfully requests leave to submit a short reply to the Response of Century Indemnity Company’s (“CIC”). Unione Italiana believes such a reply will assist the Referee in evaluating the preliminary issue before it. Should the Referee entertain such a reply, Unione Italiana submits the following:

A. CIC Fails To Address The Narrow Preliminary Issue Framed by The Referee

The Referee’s January 30, 2008 Scheduling Order outlines a very narrow issue that must be decided before moving to the merits of Notice of Determination (“NOD”) #16: “whether CIC was authorized, under New Hampshire law and/or the Claims Protocol approved on November 12, 2004, to offset amounts allowed on a previous claim now believed by CIC to be unrecoverable.”¹

¹ Jan. 30, 2008 Scheduling Order.

Unione Italiana directly explained in its February 4, 2008 Position Statement that the Liquidator has no authority under New Hampshire law, the Claims Protocol or the Restated Order to alter the amount of the claim for reinsurance submitted by Unione Italiana in the amount of \$556,758 that the Liquidator previously allowed in full, and for which it issued NOD #15 that was subsequently approved by the Liquidation Court, by attempting to "offset" amounts against Unione Italiana's separate and subsequent claim for reinsurance in the amount of \$216,429 submitted in connection with NOD #16. Nowhere in its fourteen-page Opposition Position Statement does CIC address this issue, let alone point to any actual provision purporting to allow it to revisit prior determinations approved by the Court. CIC's lengthy discussion of such things as the Consent Order² is nothing more than a red herring designed to enmesh the Referee in issues that need not be decided because, as CIC apparently concedes, CIC has no authority to re-visit claims it allowed, it affirmatively chose to submit to the Court, and the Court approved.

B. The New Hampshire Offset Statute Has Nothing To Do With The Issue Before The Referee

CIC's reliance on the New Hampshire offset statute, N.H. RSA 402-C:34, is misplaced. That very reasonable statute allows mutual debts or credits between an insurer in liquidation and another person to be set off, and only the balance to be paid to the third party.³ Unione Italiana *agrees* that CIC has such a right under New Hampshire law. But that is not what CIC is trying to

² The Consent Order in no way affects the preliminary issue before the Referee. That having been said, Unione Italiana notes that 1) the Home agreed to the Consent Order and thus CIC is bound by it; 2) although CIC characterizes the Consent Order as a pay-first-ask-questions-later procedure, CIC has failed to point to any actual provision in the Consent Order allowing for re-examination under its procedures; 3) CIC's position that the Consent Order allows for re-examinations is disingenuous given the bordereaux nature of the contracts at issue; and 4) CIC's explanation that it is bound by the timing of the Consent Order is similarly disingenuous because Unione Italiana has no method for obtaining relief if CIC fails to follow the Consent Order's timing guidelines.

³ "Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter shall be set off and the balance only shall be allowed or paid ..." N.H. RSA 402-C:34(I).

do in this case. CIC is not offsetting a debt that Unione Italiana owes against a debt that the Liquidator owes; CIC is attempting to re-open a Court determination that has already been made, an act having nothing to do with the offset statute.

C. CIC's Position Would Render Finality Impossible

CIC's position that it (and presumably not Unione Italiana) has the unilateral right to re-open prior Court-approved determinations would be absurd in practice. Under CIC's view, no participant in a liquidation proceeding could ever rely on a NOD that has been approved by the Court – finality would be impossible.

In this case, CIC had a full opportunity to question NOD # 15.⁴ CIC could have denied the claim, but CIC affirmatively chose not to do so. CIC, not Unione Italiana, controlled the speed of the process. CIC *chose* to submit the claim to the Court.

Even if CIC purported to reserve its rights in correspondence with Unione Italiana, the fact remains that CIC affirmatively chose to submit the claim to the Court for approval, and the Court in fact approved the claim without reservations. Whatever purported reservation CIC may have communicated to Unione Italiana can have no legal effect, and in any event was superceded by the Court's approval.

Nor did CIC ever move to alter or vacate the Court's ruling. Instead, CIC now wants to place itself above the Court and claim a unilateral right to re-open the Court's determination despite pointing to no procedural rule allowing for such a drastic measure.

The Court's ruling must stand. Any other outcome would serve to give CIC the unilateral right to revisit Court decisions at whim, turning the Claims Protocol and Restated Order on their

⁴ Although the issue does not affect the preliminary issue before the Referee, Unione Italiana notes that CIC's claim that its delay in questioning NOD #15 was caused by the late delivery of documents is wrong. There were no documents submitted in Unione Italiana's mandatory disclosures that CIC had not already received. Unione Italiana responded to CIC's request dated December 11, 2006 by its letter dated December 28, 2006, attaching the various documents requested by CIC. CIC did not respond until March 5, 2007.

head by causing the claims process to remain open into perpetuity. That is simply not the way New Hampshire law, the Claims Protocol and the Restated Order are meant to operate. The issues must crystallize at some point and there must be finality at some point. That point was when the Liquidator allowed NOD #15 in full, and when NOD #15 was approved by the Liquidation Court.. The Liquidator has no authority under New Hampshire law, the Claims Protocol or the Restated Order to alter that order of the Liquidation Court.

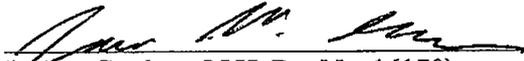
CONCLUSION

For all the foregoing reasons, and for the reasons stated in its January 11, 2008 Written Submission and in its February 4, 2008 Position Statement, Unione Italiana requests that the Referee issue an order:

1. That the Referee effect (i) a reversal of the Determination that there is an “offset” due to The Home against Unione Italiana in the sum of \$236,740.60; and (ii) a reinstatement of the original Determination of the claim in the sum of \$236,740.60; and
2. That Unione Italiana is therefore entitled to the full sum of \$773,187 (being the claims submitted which together compromise the sums determined in NOD #15 and NOD #16, namely \$556,758 and \$216,429).

UNIONE ITALIANA (UK)
REINSURANCE COMPANY
LIMITED
By its attorneys,

Dated: February 18, 2008


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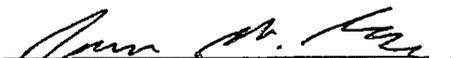
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Certification

I, Joshua Gardner, hereby certify that on the 19th day of February 2008, I will cause to be served a copy of the foregoing via regular mail, postage prepaid to:

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Joshua Gardner