

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: 2006-HICIL-16
Proof of Claim Number: RAHM 700632
Claimant Name: Century International Reinsurance
Company

**LIQUIDATOR'S OBJECTION TO CIRC'S
REQUEST FOR EVIDENTIARY HEARING**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of the Home Insurance Company ("Home"), hereby objects to the request for evidentiary hearing filed by Century International Reinsurance Company ("CIRC") in this disputed claim proceeding. For the reasons set forth below, there is no need for an evidentiary hearing and it would be most efficient for this matter to be addressed through briefing and oral argument as provided in Section 15 of the Restated and Revised Order Establishing Procedures Regarding Claims filed With The Home Insurance Company in Liquidation ("Claims Procedures Order").

1. This proceeding concerns CIRC's asserted claim against Home under the Quota Share Reinsurance Treaty Agreement (the "Quota Share Agreement") entered in 1984 in connection with the sale of AFIA to CIGNA Corporation ("CIGNA"). CIRC contends that Home is liable to CIRC for certain losses because CIRC is an "Indemnitee" under the Quota Share Agreement.

2. By the proof of claim ACE INA Services U.K. Limited ("AISUK"), for CIRC, asserted a claim against Home for entitlement to offset those losses against any amount due and owing to Home. The Liquidator denied the claim and denied reconsideration, and the matter is

before the Referee on CIRC's Objection. As noted in counsel for ACE's May 13, 2005 letter (included in the case file), CIRC's proof of claim was filed as an alternative to recovery under proof of claim No. RAHM 700631, which was filed by AISUK on behalf of Century Indemnity Company ("Century" or "CIC") and also seeks to establish liability under the Quota Share Agreement. The Liquidator has not yet acted on that proof of claim but notes that CIC would qualify as an "Indemnitee" under the Quota Share Agreement. The same amounts cannot be liabilities under both proofs of claim.

3. The most efficient method of resolving this disputed claim proceeding is through a non-evidentiary hearing as provided by Section 15 of the Claims Procedures Order. That section provides for the claimant and then the Liquidator to make written submissions that are to include (a) "a statement of the contested issues of fact and law to be determined" by the Referee, (b) "a list of exhibits relied upon, including affidavits submitted," and (c) "a legal brief." Claims Procedures Order § 15(b). This process thus provides for a statement of the legal and factual grounds for CIRC's claim, a prerequisite for orderly proceedings. Due to the narrow legal issue presented – whether Home is liable to CIRC under the Quota Share Agreement – there is no reason to engage in prolonged and expensive discovery and evidentiary proceedings. The Section 15 process permits the presentation of factual background by affidavit, which is particularly appropriate where – as here – the dispute is principally legal in nature.

4. The essential issue in this claim proceeding is whether CIRC is an "Indemnitee" within the Quota Share Agreement's definition. The Quota Share Agreement defines that term as "each AFIA Entity (except Seller Branches) and each Purchaser, including INA". Quota Share Agreement at 2. The Purchase Agreement No. 1 entered as part of the sale of AFIA to CIGNA defined "AFIA Entity" as AFIA, Finance, and any company "as to which AFIA and

Finance together own directly or indirectly at least a majority of the outstanding voting stock or otherwise have control.” Purchase Agreement No. 1, clause 4.1(a), p. 19. The issue is thus one of contractual interpretation, i.e., whether CIRC fits the definition of an “AFIA Entity” and, thus, an “Indemnitee.”

5. This issue does not require extensive factual presentation. It involves examination of the Quota Share Agreement and the Purchase Agreement and background on BAFCO Reinsurance Company Ltd. (“BAFCO”) and CIRC’s relationship to BAFCO. The issue in this case should be addressed by briefing the application of the contracts.

6. CIRC also states that it intends to call Mr. Rosen to testify about, “among other things, the facts and evaluation process at Home that led to the denial of the Claim.” Motion ¶ 12. This reflects a misunderstanding of the disputed claim proceeding process. 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. Except as a trigger for this proceeding, the Liquidator’s determinations are not relevant.

7. Under the Act, a claimant is to provide the Liquidator with a proof of claim, including “[t]he particulars of the claim” and “[a] copy of any written instruments which is the foundation of the claim.” RSA 402-C:38, I; see Claims Procedures Order §5(b). The Liquidator may require submission of additional information or evidence. RSA 402-C:38, II; see Claims Procedures Order § 5(d). When the Liquidator denies a claim, he is to issue a notice of determination. The claimant then may file its objections with the Court. RSA 402-C:41, I; see Claims Procedures Order §§ 6, 8. “The matter then may be heard by the court or by a court-appointed referee.” RSA 402-C:41, II; see Claims Procedures Order § 10. Nothing in the Act or the Claims Procedures Order provides for the Referee to review the Liquidator’s determination.

It is the "Disputed Claim" that is to be adjudicated. Claims Procedures Order § 11. Testimony (and discovery) concerning why the Liquidator denied the claim is not relevant to the Referee's de novo review and will only serve to burden the disputed claim proceeding and the liquidation as a whole.

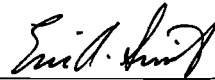
CONCLUSION

For the reasons stated, the Referee should deny CIRC's motion for an evidentiary hearing.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF
INSURANCE OF THE STATE OF NEW HAMPSHIRE
SOLELY AS LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

By his attorneys,



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March 13, 2006

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Objection to CIRC's Request for Evidentiary Hearing was sent, this 13th day of March, 2006, by email to all persons on the following service list.



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