

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  
FURTHER INFORMATION STATEMENT**

Century Indemnity Company ("CIC") hereby submits the following limited response to the further information statement (the "Information Statement") by Unione Italiana (UK) Reinsurance Company Limited ("Unione"), and respectfully states as follows.<sup>1</sup>

1. The issue the Referee asked the parties to brief was whether under New Hampshire law the Liquidator can offset the Disputed Claims against the 4Q06 Claims.<sup>2</sup> As CIC submitted in its brief, that issue could not be decided without first understanding the role the Consent Order played in the claim determination process and its intersection with New Hampshire law and the Protocol. To align Unione's quarterly claims submissions with New Hampshire law, the Referee should rule that the Liquidation Statute, and not the Consent Order, governs this disputed claim proceeding, and that Unione is required to provide claim details to CIC consistent with RSA 402-C:38, II before its claims are agreed and paid.

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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.

2. Furthermore, the Liquidator can offset the Disputed Claims against the 4Q06 Claims under New Hampshire law. First, RSA 402-C:34 permits offset of mutual claims, which the Liquidator satisfies here: Home has a claim against Unione for improperly paid claims, and Unione has a purported claim against Home for reinsurance. Second, invoking the March 12 Order to defeat Home's offset is a red herring: CIC has demonstrated that Home has a claim against Unione for improperly presented and paid claims, which not only gives the Liquidator the requisite "good cause" under New Hampshire law to modify the March 12 Order, but also satisfies the mutuality requirement for setoff. In any event, Unione was on notice that the 3Q06 Claims were subject to change because CIC reserved its rights to adjust its recommendation as and when Unione provided further claim support (a process that Unione delayed for months).

3. Even though CIC has shown "good cause," the Referee does not need to vacate or modify the March 12 Order to find that the Liquidator's setoff satisfies the mutuality requirement in RSA 402-C:34. This is so because setoff "represents the right which one party has against another to use his claim in full or partial satisfaction of what he owes to the other." Studley v. Boylston Nat'l Bank, 229 U.S. 523, 528 (1913). "[T]he defendant, to avoid a circuitry of action, may interpose his mutual claim by way of defense and if it exceeds that of the plaintiff, may recover for the difference." Id. Here, Unione presented its 4Q06 Claims to the estate (and later, commenced this disputed claim proceeding), and the Liquidator is asserting setoff as a defense. The fact that the Liquidator agreed the 3Q06 Claims and those claims were approved by court order is beside the point: the Liquidator still has a claim against Unione for the Disputed Claims because they were improperly presented to and paid by Home's estate.<sup>3</sup> The Liquidator's setoff

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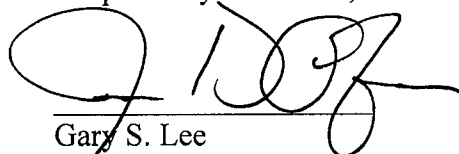
<sup>3</sup> In allowing the Liquidator's setoff, the Referee would be agreeing to evaluate the Liquidator's claim against Unione for improperly presenting claims to Home's estate, nothing more. Indeed, if the Referee later finds that the Disputed Claims are recoverable under English law, the offset goes away.

thus satisfies the mutuality requirement under the Liquidation Statute, and the Referee thus does not have to even consider vacating or modifying the March 12 Order.<sup>4</sup>

4. For the foregoing reasons and for the reasons stated in the February 14 Response and in CIC's February 20, 2008 Limited Response, the Referee should grant the relief CIC requested in the February 14 Response.

Dated: March 10, 2008

Respectfully submitted,

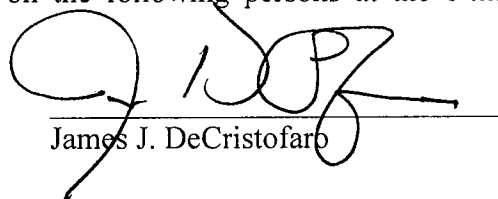


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**Certificate of Service**

I hereby certify that a copy of CIC's Limited Response to Unione's Further Information Statement was served by e-mail on March 10, 2008 on the following persons at the e-mail addresses opposite their names.



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<sup>4</sup> Unione's points 1, 3 and 4 in its Information Statement are non-controversial or premature. As to point 1, CIC agrees that the offset issue is determinative (but so is the issue of recoverability under English law of payments made on account of unascertained potential future liabilities and policy buybacks). As to points 3 and 4, they address the English law issue, which is not currently before the Referee for briefing.