

## Farrell, Ellen

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**From:** Farrell, Ellen  
**Sent:** Wednesday, October 26, 2011 2:31 PM  
**To:** Smith, Eric A. EAS  
**Cc:** Kalish, Paul  
**Subject:** 2005-HICIL-14: Kentile  
**Attachments:** Kentile Proposed OSC re NYLB-c-c.pdf; Kentile OSC Supporting Breene Affirmation-c-c.pdf; Kentile OSC Supporting Hoegle Affidavit-c-c.pdf

**Importance:** High

Eric,

As we discussed this morning, CIC would like to confirm whether the Liquidator will agree to a ninety day stay of the Kentile dispute which is proceeding in the Home Liquidation, based on events taking place in connection with the New York coverage litigation involving Kentile. Paul Kalish and I described those events when we first requested the Liquidator's agreement to a stay, on October 14. On October 18, you advised that the Liquidator would only agree to a stay if CIC would withdraw its entire Kentile claim in the Home Liquidation. If the Liquidator now affirms that it will agree to a ninety day stay only under those same circumstances, CIC will ask Referee Gehris to order this stay (on an expedited basis, in light of upcoming depositions).

During our discussion this morning, you asked for documentation that the NYLB had agreed to reimburse CIC and other carriers for past indemnity payments made on Home's behalf. I responded that, to my understanding, the NYLB orally made this representation during a court hearing in August. I also told you that I would seek specific information regarding that hearing, which I am now providing:

On July 7, 2011, Metex and Liberty Mutual jointly moved for an Order to Show Cause directing the NYLB to appear before Justice Ramos and explain why the NYLB had not made any payments on behalf of Home; directing the NYLB to establish a procedure for submitting claims to the Ancillary Receivership court for timely payment; and directing the NYLB in accordance with that procedure "to submit all prior and existing Kentile Asbestos Claims in a timely manner for approval by that Court and for payment by the NYLB by a date certain." These OSC filings are attached.

The NYLB appeared before Justice Ramos on July 18, 2011, at which time Justice Ramos directed the NYLB to develop a procedure for paying past and prospective claims, and to reappear in his courtroom on August 15. At that second hearing, counsel for Liberty Mutual counsel reported not only that the NYLB was processing 2 sets of claims submitted by Liberty Mutual, but the NYLB had also agreed to reimburse Home's share of approximately 900 old claims and was discussing a procedure for getting those claims paid. Counsel for the NYLB affirmed that Liberty Mutual's representations were correct.

Justice Ramos scheduled another hearing on the matter for October 12, to make sure that progress continues with respect to the NYLB's reimbursement of claim payments made on Home's behalf. The October 12 conference has been rescheduled for November 29. In the meantime, Liberty Mutual is working with the carriers on providing information that the NYLB has requested with respect to past New York claims (*i.e.*, claims for which carriers including CIC made payments on Home's behalf).

Eric, I trust that this answers your questions. I look forward to the Liquidator's response.

Regards,

Ellen Farrell

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