

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Liquidation of
The Home Insurance Company**

**LIQUIDATOR'S OPPOSITION TO CIC'S OBJECTION TO
LIQUIDATOR'S REPORT OF CLAIMS AND
RECOMMENDATIONS AS OF SEPTEMBER 26, 2005
AND MOTION TO AMEND AUGUST 12, 2005 ORDER**

Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby opposes the Objection ("Objection") of Century Indemnity Company ("CIC") to the Liquidator's Report of Claims and Recommendations as of September 26, 2005 (the "Report") and moves to amend the August 12, 2005 Order Approving Liquidator's Report of Claims and Recommendations as of July 19, 2005 to clarify certain offset issues. As reasons therefor, the Liquidator states as follows:

1. In the Objection, CIC objects to the Liquidator's recommended allowance of a proof of claim filed by Excess and Treaty Management Corporation ("ETMC"), Proof of Claim No. RAHM 700581 (the "ETMC Claim"), in the amount of \$314,876.91, which was submitted by ETMC on behalf of CIC.

2. ETMC manages the Excess and Casualty Reinsurance Association (the "ECRA Pool"), including the administration of claims for amounts due both to and from the Pool. Both Home and CIC were participants in the ECRA Pool.

3. As pertinent here, the ETMC Claim is for paid amounts due CIC from Home arising from CIC's involvement in the ECRA Pool from December 2004 through June 2005. In

the Report, the Liquidator has recommended allowance of those amounts in full. CIC had also filed a proof of claim, Proof of Claim No. AMBC 700308 (the “CIC Claim”) covering these same amounts.

4. Faced with duplicative claims, the Liquidator accepted the ETMC Claim because ETMC historically submitted the claims involving ECRA Pool participants, including CIC, and Home historically dealt with ETMC, the ECRA Pool manager, over all claims arising from Home’s ECRA Pool involvement. CIC is one of a number of equally significant ECRA participants that ceded into the ECRA Pool, and given ETMC’s involvement in all ECRA Pool participant related business, the Liquidator was of the view that it would be more efficient and consistent with past practice to deal with ETMC with respect thereto (without the ceding participants losing any offset rights as a result). The Liquidator accordingly denied the CIC Claim. However, the letter accompanying the notice of determination denying the CIC Claim advised CIC that the amount had been fully accepted on CIC’s account under the ETMC Claim.

5. This is the second partial acceptance of the ETMC Claim and corresponding denial of the CIC Claim for the same amounts. The first partial acceptance of an ETMC Claim concerned amounts due CIC for amounts paid prior to December 2004, and the letter accompanying the denial of CIC’s Claim for these amounts also advised CIC that the amount had been fully accepted on CIC’s account under the ETMC Claim. The Liquidator’s recommendation concerning the ETMC Claim was approved by the Court in the August 12, 2005 Order Approving Liquidator’s Claims Report and Recommendations as of July 19, 2005.

6. CIC objected to the first denial of its claim, and disputed claims proceedings are pending before the Referee on that objection. Disputed Claims Docket No. 2005-HICIL-2. The Liquidator has moved to dismiss those proceedings as moot in light of the acceptance of the same amounts under the ETMC Claim. CIC has opposed that motion on the ground that its

offset rights are affected. In its Objection to the present Report, CIC raises essentially the same concerns.

7. As the Liquidator has acknowledged both in the disputed claim proceedings and by email prior to the filing of CIC's Objection here (see Exhibit 1), CIC will receive credit for the amounts allowed under the ETMC Claim on behalf of CIC and is entitled to use them to offset Home's claims against CIC. The Liquidator has also acknowledged that any order dismissing the disputed claim proceeding as moot would be without prejudice to CIC's assertion of offset rights or its position on the manner of treatment of offsets and proposed that language to that effect be included in any such order.

8. In order to avoid any doubt and address the issues arising from the duplication between the ETMC Claim and CIC Claim comprehensively, the Liquidator proposes that the order approving the Report should expressly confirm that CIC may offset the amounts allowed under the ETMC Claim regarding CIC against Home's claims against CIC. A revised proposed form of approval order is submitted herewith. So that there will be no confusion, the Liquidator also requests that the Court amend the August 12, 2005 order to similarly confirm CIC's ability to offset the amounts previously allowed. The revised form of order submitted herewith also addresses this point. 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.

WHEREFORE, the Liquidator requests that the Court enter an order:

(1) approving the Report;

(2) confirming CIC's offset rights with respect to the allowed amount under the ETMC

Claim;

(3) amending the August 12, 2005 order to similarly confirm CIC's offset rights with respect to the allowed amount under the ETMC Claim; and

(4) granting such other and further relief as may be just.

A proposed order is submitted herewith

Respectfully submitted,

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

By his attorneys,

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Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Opposition to CIC's Objection to Liquidator's Report of Claims and Recommendations as of September 26, 2005 and Motion to Amend August 12, 2005 Order was sent, this 11th day of October, 2005, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106

In the Matter of the Liquidation of
US International Reinsurance Company
Docket No. 03-E-0112

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Smith, Eric A. EAS

From: jonathan.rosen@homeinsco.com
Sent: Tuesday, October 04, 2005 3:24 PM
To: Leslie, J. David; Smith, Eric A. EAS
Subject: Fw: ECRA

Jonathan Rosen
Chief Operating Officer
The Home Insurance Company In Liquidation
59 Maiden Lane
New York, New York 10038
Tel: (212) 530 7336
Fax: (212) 548 0727

----- Forwarded by Jonathan Rosen/New York/HomeIns on 10/04/2005 03:21 PM

"Van Tol, Pieter"
<Pieter.VanTol@lo
vells.com>

To: <jonathan.rosen@homeinsco.com>
cc:
Subject: RE: ECRA

10/04/2005 02:56
PM

Thank you. I was just seeking clarification; of course, we don't agree with anything below after "yes."

-----Original Message-----

From: jonathan.rosen@homeinsco.com [mailto:jonathan.rosen@homeinsco.com]

Sent: Tuesday, October 04, 2005 2:55 PM
To: Van Tol, Pieter
Subject: Re: ECRA

Yes. As I indicated, we are recommending that the partial NOD be allowed in full. If so allowed, CIC will receive the credit and concomitant offset entitlement. We are of the firm view that creating a distinction between ETMC and CIC for determination of ECRA related balances is purely artificial and represents form over substance. It is neither our desire nor intent to play cute strategic games and I am puzzled by the tack that you have chosen to presently employ. Regards.

Jonathan Rosen
Chief Operating Officer
The Home Insurance Company In Liquidation
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New York, New York 10038
Tel: (212) 530 7336
Fax: (212) 548 0727

"Van Tol, Pieter"

Rosen" <jonathan.rosen@homeinsco.com>
<Pieter.VanTol@lo
vells.com>

To: "Jonathan

cc:

Subject: ECRA

10/04/2005 02:16

PM

Confidential

Thank you for your voicemail. I hope mine was clear and I just wanted to make sure I understand your position. We are requesting that the Liquidator defer any consideration by the Court on the Liquidator's recommendation to allow the ETMC Proof of Claim. If I referred to a withdrawal of the recommendation in my voicemail (and I'm not sure I did), I meant by that a deferral of the recommendation. On that basis, is your response the same?

Regards,

Pieter Van Tol
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