SUPREME COURT OF NEW HAMPSHIRE

In the Matter of the Liquidation of the Home Insurance Company

158 N.H. 677, 972 A.2d 1019 (2009) · No. No. 2008-407 · Decided May 7, 2009

SUMMARY

The Supreme Court of New Hampshire held that a reinsurer's asserted setoff was barred by RSA 402-C:34, II(b), which prohibits setoff when the insurer's obligation was purchased or transferred for that purpose. The court concluded that the reinsurer's payment to amend a prior settlement agreement and obtain the ability to pursue contribution constituted a purchase or transfer within the statute. The court reversed the superior court's order and remanded the case.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, J.; Broderick, C.J.; Duggan, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	May 7, 2009
DOCKET	No. 2008-407
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The liquidator appealed the superior court's order sustaining a referee's ruling that granted Century Indemnity Company's setoff claim in the liquidation of The Home Insurance Company.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of New Hampshire; precedential.
PARTIES	Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, as liquidator of The Home Insurance Company v. Century Indemnity Company

TOPICS

insurance · commercial litigation · statutory interpretation · legislative intent · indemnity

PRACTICE AREAS

insurance insolvency · reinsurance · commercial litigation · statutory interpretation

QUESTIONS PRESENTED

1. Whether RSA 402-C:34, II(b) precluded CIC from setting off its claimed contribution right against reinsurance amounts owed to Home when CIC obtained the ability to assert that contribution claim through a 2007 transaction entered into with a view to using the claim as a setoff.
2. Whether the liquidator was entitled to interest on amounts CIC withheld based on the asserted setoff.

HOLDINGS

1. RSA 402-C:34, II(b) precludes CIC's setoff because CIC purchased or obtained a transfer of Home's obligation to provide contribution, or the right to enforce that obligation, through the 2007 amendment with a view to using it as a setoff against amounts CIC owed Home.
2. The court declined to decide in the first instance whether Home's estate was entitled to interest, without prejudice to the liquidator raising the issue in the trial court.

KEY QUOTATIONS

> *“"SETOFFS ALLOWED IN GENERAL. 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, except as provided in paragraph II."”* (1022)

> *“Disallowing CIC's setoff comports with the overall purpose of the setoff provision, which is to prevent debtors of insolvent insurers from acquiring claims for use as setoffs to reduce their obligations to the detriment of the insurer's creditors.”* (1024)

FACTUAL BACKGROUND

The Home Insurance Company, a New Hampshire insurer, was placed in liquidation in 2003, and Century Indemnity Company was obligated to remit reinsurance payments to Home under a claims protocol. CIC was also a co-insurer of Pacific Energy Company and paid PECO $13 million under a 2005 settlement that barred CIC from seeking contribution from other PECO insurers, including Home. In 2007, CIC paid PECO consideration to amend the agreement and permit CIC to pursue contribution from insolvent insurers, including Home; CIC then sought to set off $8 million against amounts it owed Home.

PROCEDURAL HISTORY

Home was declared insolvent and placed in liquidation in 2003. Century Indemnity asserted an $8 million setoff against reinsurance amounts it owed Home, based on a contribution claim arising from a settlement with a jointly insured party. A referee granted the setoff, and the Superior Court sustained the ruling. The liquidator appealed to the Supreme Court of New Hampshire.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings, including consideration by the trial court of the liquidator's argument that Home's estate was entitled to interest on amounts CIC wrongfully withheld based on the setoff.

CASES CITED

- In the Matter of Liquidation of Home Ins. Co., 154 N.H. 472, 913 A.2d 712 (2006)
- In the Matter of Liquidation of Home Ins. Co., 157 N.H. 543, 953 A.2d 443 (2008)
- In the Matter of Liquidation of Home Ins. Co., 158 N.H. 396, 965 A.2d 1143 (2009)
- Citizens Bank of Md. v. Strumpf, 516 U.S. 16, 116 S. Ct. 286, 133 L. Ed. 2d 258 (1995)
- Koken v. Legion Ins. Co., 900 A.2d 418 (Pa. Commw. Ct. 2006)
- J.H. France Refractories v. Allstate, 534 Pa. 29, 626 A.2d 502 (1993)
- Continental Trust Co. v. Chicago Title & Trust Co., 229 U.S. 435, 444, 33 S. Ct. 829, 57 L. Ed. 1268 (1913)

INSTRUCTIONS FOR AN AI ASSISTANT