

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT
2004 OCT 15 A 9:41

Docket No. 04-E-0208

VENISE THERESA GONYA, as representative of the Estate of Joseph E. Gonya, deceased,
individually and on behalf of all others similarly situated
and

ROXANE S. SCAIFE, as representative of the Estate of Arnold L. Stone, deceased, individually
and on behalf of all others similarly situated

v.

ROGER A. SEVIGNY, Commissioner of the State of New Hampshire Insurance
Department, in his official capacity as Insurance Commissioner and liquidator of
The Home Insurance Company

PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

Thomas R. Watson, Esq.
NH Bar #2670
Jennifer A. Lemire, Esq.
NH Bar #11316
WATSON & LEMIRE, P.A
75 Congress Street, Suite 211
Portsmouth, NH 03801
Telephone: (603) 436-7667

OF COUNSEL:
Alan Rich, Esq.
Stephen Blackburn, Esq.
BARON & BUDD, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75219
Telephone: (214) 525-3729

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CONCISE STATEMENT OF ISSUE PRESENTED

Whether the "Special Provisions for Third Party Claims" subsection of the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C:40, I, which requires a third party to release its claims against a liquidating insurer's policy-holder in order to file a claim with the liquidator, violates Part I, articles Two, Twelve, Fourteen and Fifteen of the New Hampshire Constitution.

CONTROLLING AUTHORITIES

CASES

Brannigan v. Usitalo, 134 N.H. 50, 587 A.2d 1232 (1991).

Carson v. Maurer, 120 N.H. 925, 424 A.2d 825 (1980).

City of Dover v. Imperial Casualty & Indemnity Co., 133 N.H. 109, 575 A.2d 1280 (1990).

Gould v. Concord Hospital, 126 N.H. 405, 493 A.2d 1193 (1985).

Opinion of the Justices (Limitations on Civil Actions), 137 N.H. 260, 628 A.2d 1069 (1993).

STATUTORY LAW

RSA 402-C:40, I.

CONSTITUTIONAL PROVISIONS

N.H. CONST. Pt. 1 art. 2.

N.H. CONST. Pt. 1 art. 12.

N.H. CONST. Pt. 1 art. 14.

N.H. CONST. Pt. 1 art. 15.

MISCELLANEOUS

III *NAIC Model Laws, Regulations and Guidelines*, 555-1 (2004).

Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413 (1989).

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