

MERRIMACK, SS

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Docket No. 04-E-0208

Venise Theresa Gonya, representative of the
Estate of Joseph E. Gonya, deceased, et al.

2004 AUG 31 P 3: 37

NH SUPERIOR COURT
MERRIMACK COUNTY
MERRIMACK, N.H.

v.

Roger A. Sevigny, Commissioner, in his official capacity as
Insurance Commissioner and Liquidator of The Home Insurance Company

ANSWER

NOW COMES the Defendant, Roger A. Sevigny, the Commissioner of the New Hampshire Department of Insurance, in his official capacity as Insurance Commissioner and Liquidator of The Home Insurance Company (the Commissioner), by and through counsel, and denies all allegations in Plaintiffs' Petition in Equity for Permanent and Temporary Injunctive Relief, and except as specifically admitted herein, and answers Plaintiffs' Petition as follows.

1. Defendant is without sufficient knowledge to admit or deny the allegations of this paragraph and therefore denies the same.
2. Defendant is without sufficient knowledge to admit or deny the allegations of this paragraph and therefore denies the same.
3. Admitted.
4. Denied except as to the address of the Office of the Attorney General. In further answer, the Attorney General has been dismissed as a party defendant.
5. Denied. In further answer, issues of class certification have been stayed pending resolution of summary judgment.
6. Denied.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Defendant admits that Plaintiffs are represented by experienced counsel. The remaining allegations are denied.

12. This paragraph contains assertions of law to which no response is required. The statutes cited speak for themselves. To the extent facts are alleged, they are denied.

13. Defendant is without sufficient knowledge to admit or deny the allegations in the first sentence. Defendant admits that The Home Insurance Company is being liquidated and that the Commissioner is the liquidator. Defendant admits that the Commissioner has given notice of the court ordered proof of claims deadline of June 13, 2004. Defendant admits that the proof of claim form contains the language required by RSA 402-C:40(I). The instructions and proof of claim form are attached to the Petition and speak for themselves. To the extent other facts are alleged, they are denied.

14. This paragraph contains assertions of law to which no response is required. The statute cited speaks for itself.

15. Denied.

16. Defendant admits that Plaintiffs purport to file a declaratory judgment action to bring state constitutional challenges under RSA 491:22 and that jurisdiction is proper in this court. Defendant admits that Plaintiffs have filed an action in federal district court and that that action purports to raise federal constitutional claims. To the extent other facts are alleged, they are denied.

17. Defendant admits that venue is proper in this court. Defendant admits that the Defendant's principal place of business is 21 South Fruit Street, Suite 14, Concord, NH 03301. To the extent other facts are alleged, they are denied. In further answer, the Attorney General is no longer a party defendant.

18. Defendant admits that the events that are the subject of the Petition and pertain to the Defendant took place in New Hampshire. Defendant admits that all or a substantial part of the claim asserted by the Plaintiffs arose in New Hampshire and in Merrimack County.

19. Denied.

20. Defendant admits that the Commissioner is required to and does comply with the State Constitution. To the extent other facts are alleged, they are denied.

21. This paragraph contains assertions of law to which no response is required. To the extent facts are alleged, they are denied.

COUNT I
Facial Violation of Equal Protection

22. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 21 above.

23. Denied.

24. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.

COUNT II
Violation of Equal Protection as Applied

25. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 24 above.

26. Denied.

27. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.

COUNT III

Facial Violation of New Hampshire's Court Access Guaranty

28. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 27 above.

29. Denied.

30. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.

COUNT IV

Violation of New Hampshire's Court Access Guaranty as Applied

31. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 30 above.

32. Denied.

33. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.

COUNT V

Facial Violation of Due Process

34. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 33 above.

35. Denied.

36. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.