

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

03-E-0106

In the Matter of the Rehabilitation of
The Home Insurance Co.

MOTION OF REHABILITATOR FOR ORDER
AMENDING ORDER OF REHABILITATION

Paula Rogers, Commissioner of the New Hampshire Insurance Department and rehabilitator of The Home Insurance Company, pursuant to Order of this Court dated March 5, 2003, by her attorneys, the Office of the Attorney General, hereby moves the Court to Amend the Court's March 5, 2003 Order Appointing Rehabilitator to allow for setoff rights of reinsurers of The Home. This relief is necessary because the Rehabilitator has determined that it would be in the best interest of The Home, its policyholders, creditors, and the public, to remove doubts about the setoff rights of reinsurers of The Home. In support hereof, the Rehabilitator respectfully represents as follows:

1. On March 5, 2003, this Court entered an Order appointing the Rehabilitator and granting certain other relief.
2. Among other things, the Order imposed a stay against proceedings against The Home and its property.
3. Stay provisions included a stay against setoffs of claims against debts owed to The Home.

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4. The Home is a party to a number of reinsurance contracts whereby reinsurers backstop The Home's insurance liabilities upon certain terms and conditions.
5. In some cases, reinsurers —while owing reinsurance obligations to The Home— may also be owed reimbursement or other obligations *by* The Home.
6. New Hampshire RSA 402-C:34 provides as follows:
 - I. 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.
 - II. EXCEPTIONS. No setoff or counterclaim shall be allowed in favor of any person where:
 - (a) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle him to share as a claimant in the assets of the insurer;
 - (b) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;
 - (c) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or
 - (d) The obligation of the person is to pay premiums, whether earned or unearned, to the insurer.
7. The Rehabilitator has determined that it would be in the best interests of The Home, its policyholders, creditors, and the public, if doubts about the availability to reinsurers of rights of setoff as set forth in and in accordance with RSA 402-C:34 are removed. The Rehabilitator has determined that uncertainty about setoff rights has unnecessarily

complicated the Rehabilitator's ability to deal effectively with reinsurers. As a result, recoveries from some of the reinsurers may be unnecessarily delayed or lost by The Home. To improve the returns to The Home from reinsurance, the Rehabilitator has determined that the best course is to provide the reinsurers relief from the stay with respect to setoff rights as may be available to reinsurers pursuant to and in accordance with RSA 402-C:34.

8. The Rehabilitator does not hereby grant any reinsurer a setoff right it would not otherwise have pursuant to RSA 402-C:34 (or otherwise), or admit to any such rights in any particular case. The purpose and effect of the relief requested herein is only to amend the stay to allow for setoff by The Home's reinsurers in appropriate circumstances.
9. Pursuant to N.H. Super. Ct. R. 57-A, counsel to the Commissioner hereby certifies that he has attempted to obtain concurrence of Martin Honigberg, Esq., who has filed an appearance in the case. Attorney Honigberg concurs with this Motion.

WHEREFORE, the Commissioner prays that this Court enter an Order amending its Order Appointing Rehabilitator dated March 5, 2003, in the form proposed, and grant such other and further relief as may be just.

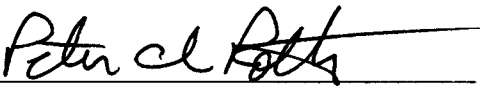
Respectfully submitted,

PAULA T. ROGERS, COMMISSIONER
THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF INSURANCE

By her attorneys,

PETER W. HEED
ATTORNEY GENERAL

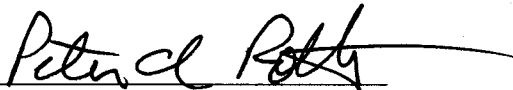
Dated: April 1, 2003

By: 
Peter C.L. Roth
Senior Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
Tel. (603) 271-3679

CERTIFICATE OF SERVICE

I, Peter C.L. Roth, do hereby certify that on April 1, 2003 I served a true copy of the foregoing motion upon Martin Honigberg, Esq, Sulloway & Hollis, 9 Capitol Street, Concord, NH 03301, by first class mail, postage prepaid.

Dated: April 1, 2003


Peter C.L. Roth