

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

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SUPREME COURT  
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In The Matter Of The Liquidation Of  
The Home Insurance Company

2004 JUN 11 A 10: 24

No. 2004-0319

**APPELLANT BENJAMIN MOORE & CO.'S OBJECTION TO THE LIQUIDATOR'S  
MOTION TO DISMISS**

Appellant, policyholder-claimant Benjamin Moore & Co. ("Benjamin Moore"), hereby respectfully objects to the Liquidator's Motion To Dismiss. In support of its Objection, Benjamin Moore relies upon the attached Memorandum of Law, and states as follows:

1. Benjamin Moore has standing to appeal the Superior Court's Order.
2. Benjamin Moore is a Class II policy-holder claimant, and therefore is within the class of persons the Legislature sought to protect in establishing a strict order of distribution of estate assets under the Insurers Rehabilitation and Liquidation Act, R.S.A. 402-C:1 et seq. See R.S.A. 402-C:1(IV)("the purpose of this chapter is the protection of the interests of insureds, creditors, and the public generally")(emphasis added); R.S.A. 402-C:44(II)("claims by policyholders" are class II claims). Accordingly, Benjamin Moore has a clear, legally cognizable interest in this proceeding.
3. The trial court's order authorizes the Liquidator to enter an agreement under which over \$100,000,000.00 of estate assets will be distributed to a preferred subclass of junior (Class V) claimants before senior claimants are paid.
4. As a senior (Class II) claimant, Benjamin Moore has been aggrieved by the trial court's decision, because the decision authorizes the distribution of a huge estate asset in

violation of the strict order of distribution scheme set forth in the Insurers Rehabilitation and Liquidation Act. R.S.A. 402-C:44.

5. The Liquidator's suggestion that Benjamin Moore lacks standing because, according to the Liquidator, a separate company that is owned by Benjamin Moore's parent company may be exposed to liability, is irrelevant and unfounded. The Liquidator has not presented facts sufficient to disregard Benjamin Moore's corporate identity or otherwise ignore its independent status as a class II creditor of the Home estate.

WHEREFORE, Appellant Benjamin Moore respectfully requests that the Court,

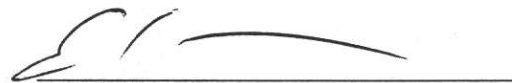
1. Deny the Liquidator's Motion to Dismiss; and
2. Grant such other and further relief as the Court deems just and equitable.

Respectfully submitted,

DOWNS RACHLIN MARTIN PLLC

June 10, 2004

By:



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#### CERTIFICATE OF SERVICE

I, Eric D. Jones, do hereby certify that on this date, I served a true copy of the foregoing upon Ronald Snow, Esq. of Orr & Reno, One Eagle Square, P.O. Box 3550, Concord, New Hampshire 03302-3550 and Peter C.L. Roth, Esq., Senior Assistant Attorney General, Environmental Protection Bureau, New Hampshire Department of Justice, 33 Capital Street, Concord, New Hampshire 03301-6397, by first class mail, postage prepaid.

Dated: June 10, 2004



Eric D. Jones

BTV.267954.1

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MARTIN PLLC

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**APPELLANT BENJAMIN MOORE & CO.'S MEMORANDUM OF LAW IN SUPPORT  
OF ITS OBJECTION TO THE LIQUIDATOR'S MOTION TO DISMISS**

Appellant, policyholder-claimant Benjamin Moore & Co. ("Benjamin Moore"), hereby respectfully submits this Memorandum to support its Objection to the Liquidator's Motion To Dismiss. As explained below, Benjamin Moore has clear legal standing to pursue this appeal, and the Liquidator's motion should be denied.

**INTRODUCTION**

Nature Of The Appeal

By this appeal, Benjamin Moore seeks review of a trial court order that permits the Liquidator of the Home Insurance Company to distribute over \$100,000,000.00 in estate assets to junior creditors, in violation of the express provisions of the Insurers Rehabilitation and Liquidation Act, R.S.A. 402-C:1 et seq. (the "Act" or "liquidation statute"). See R.S.A. 402-C:44 (setting forth a strict Order of Distribution of estate assets). By authorizing the distribution of assets to junior creditors before senior creditors are paid in full, the trial court altered the statutory rules of priority and created a special class of creditors who enjoy "super priority" status. Because the order offends the Act as a matter of law, Benjamin Moore asks this Court to reverse the trial court's decision and vacate the order.