

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Liquidation of
The Home Insurance Company**

**Liquidator's Objection to Claimant's Motion to Recommit Regarding Disputed Claim
Docket No. 2005-HICIL-15**

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, solely in his capacity as Liquidator of The Home Insurance Company ("Liquidator"), by and through counsel, hereby submits this objection to Claimant, Madelyn Miller's ("Claimant") Motion to Recommit.

The Referee's June 28, 2006 Ruling fully and accurately captures the factual history of this disputed claim. Indeed, Claimant does not dispute any of the facts the Referee referenced in her ruling. Nor does Claimant challenge the facts the Liquidator relied upon in his Written Submission (*a copy of which is annexed as Exhibit 1 for ease of reference*). Instead, Claimant inexplicably asserts that the ruling of Justice Thomas Adams of the New York State Supreme Court, which dismissed her claim in 1993, "did not constitute binding authority in New York" (*Claimant's Affidavit in Support of Motion to Recommit ¶ 8*), notwithstanding the numerous appellate decisions that left Justice Adam's decision untouched as well as Claimant's repeated efforts to upend Justice Adams' determination. Furthermore, Claimant does not contend that any of the referenced New York rulings (*copies of which are included as exhibits in the Case File attached as Exhibit 2*) are not accurate reflections of the determinations rendered in those proceedings.

Ely v. DeRosier, 123 N.H. 249, 459 A.2d 280 (1983), sets forth the applicable New Hampshire law, which mandates that full faith and credit be given to judgments of sister states so long as the "foreign court had jurisdiction over the subject matter and the person." Claimant does not dispute – and it is without controversy – that the New York courts had jurisdiction over both Claimant and the subject matter of her claim. As the New York courts had jurisdiction over both

Claimant and the subject matter of her disputes, and Claimant has raised no jurisdictional arguments, “the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action . . . or the validity of the legal principles on which the judgment is based.” *Wilson v. Shepard*, 124 N.H. 392, 469 A. 2d 1359 (1983) (citations omitted). Hence, the Referee properly relied upon Justice Adams’ ruling as well as those the New York appellate courts rendered, as these rulings fully and finally disposed of Claimant’s causes of action.

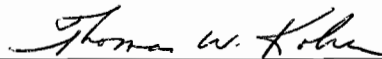
Based on the foregoing, as well as Liquidator’s Written Submission (*Exhibit 1*) and Summary Statement (*a copy of which is annexed as Exhibit 3 for ease of reference*), Claimant’s Motion to Recommit should be denied and this Court should enter judgment on the Referee’s Ruling of June 28, 2006 pursuant to N.H. Rev. Stat. Ann. § 519:12.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE COMMISSIONER
OF THE STATE OF NEW HAMPSHIRE, SOLELY IN
HIS CAPACITY AS LIQUIDATOR OF THE HOME
INSURANCE COMPANY

By his attorneys,
Kelly A. Ayotte
Attorney General

J. Christopher Marshall
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650



Jonathan Rosen, Esq. (N.H. Bar # 16951)
Thomas W. Kober, Esq. (admitted *pro hac vice*)
The Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 10038
(212) 530-4001

July 21, 2006

CERTIFICATE OF SERVICE

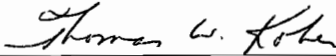
I hereby certify that a copy of this Objection to Claimant's Motion has been forwarded via e-mail and First Class Mail this 21st day of July, 2006 to:

Claimant Madelyn Miller at mrmccc@aol.com and 201 Varick Street, P.O. Box 436, New York, New York 10014-0436 and

Ms. Brooke Holton, Liquidation Clerk at brooke.holton@hicilclerk.org and The Home Insurance Company in Liquidation, Office of Disputed Claims, P.O. Box 1720, Manchester, New Hampshire 03105-1720 and

via First Class Mail this 21st day of July, 2006 to:

Office of the Clerk, Merrimack County Superior Court, 4 Court Street, Concord, New Hampshire 03301, Attention: Home Docket, No. 03-E-0106.



Thomas W. Kober

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

**In Re Liquidator Number: 2005-HICIL-15
Proof of Claim Number: CLMN380542
Claimant Name: Madelyn Miller**

LIQUIDATOR'S WRITTEN SUBMISSION

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, solely in his capacity as Liquidator of The Home Insurance Company ("Liquidator"), by and through counsel, hereby submits this written submission in accordance with Referee Paula Rogers' ("Referee") ruling of April 18, 2006. In an effort to summarize the extensive factual and procedural history of Claimant, Madelyn Miller's ("Claimant"), claim, Liquidator previously furnished Referee with a summary statement dated March 27, 2006 (*copy annexed for ease of reference as Exhibit A.*) Liquidator's statement outlined numerous reasons why the Notice of Determination ("NOD") denying Claimant's claim was and remains appropriate in all respects. Claimant's further submission of June 2, 2006 raised no new issue or argument that would justify reconsideration of Liquidator's position and instead confirmed that the NOD denying Claimant's claim was entirely justified.

As evidenced by the many attachments to the Case File prepared for this matter, over the course of the last two decades Claimant has presented aspects of her case to numerous trial and appellate courts including New York's highest court and even the United States Supreme Court. It is not disputed that all of Claimant's efforts were ultimately unsuccessful. Notwithstanding Claimant's assertion that she did not have "a full and fair opportunity to litigate [her] claim in New York," (*Claimant's Written Submission at 3*) the relevant facts are not contested, namely:

1. New York Supreme Court Justice Thomas A. Adams, in a six (6) page decision dated September 8, 1993, noted that “[t]he basis of plaintiff’s various malpractice claims in this lawsuit concern the interest she received on the judgment.” (*Case File, Exhibit J at 2.*) Justice Adams thereafter ruled that Claimant’s causes of action should be dismissed based upon her failure to state a cause of action (counts one, two, three and five), expiration of the applicable statute of limitations (count four) and generally that the court found “against [Claimant] as to the state of the law on interest in 1985. . .” (*Case File, Exhibit J at 6.*)
2. Justice Adams, citing *Duque v. Ortiz*, 154 AD2d 333, denied Claimant’s motion to reargue noting that the court “did not misapprehend any facts or misinterpret any controlling principles of law therein.” (*Case File, Exhibit K.*)
3. The Appellate Division of the Supreme Court of the State of New York, Second Department dismissed Claimant’s appeal of the foregoing by Decision and Order dated October 12, 1994. (*Case File, Exhibit L.*)
4. Numerous further attempts by Claimant to seek relief were either dismissed, determined to be time-barred or otherwise denied. (*Case File, Exhibits M through T.*)

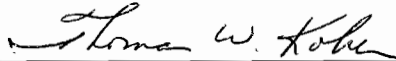
Despite having exhaustively litigated her claim in the New York courts, Claimant nonetheless argues that the Referee should not give the New York rulings “preclusive effect nor full faith and credit. . . .” (*Claimant’s Written Submission at 3.*) New Hampshire law, however, mandates that full faith and credit be given to judgments of sister states so long as the “foreign court had jurisdiction over the subject matter and the person.” *Ely v. DeRosier*, 123 N.H. 249, 459 A.2d 280 (1983). Indeed, as the New York courts had jurisdiction over both Claimant and the subject matter of her disputes, “the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action . . . or the validity of the legal principles on which the judgment is based.” *Wilson v. Shepard*, 124 N.H. 392, 469 A. 2d 1359 (1983), (*citations omitted*).

Based on the foregoing, as well as the additional arguments summarized in Liquidator's summary statement (*Exhibit A*), Claimant's objection to Liquidator's Notice of Determination should be denied and the Notice of Determination should stand as issued.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE COMMISSIONER
OF THE STATE OF NEW HAMPSHIRE, SOLELY IN
HIS CAPACITY AS LIQUIDATOR OF THE HOME
INSURANCE COMPANY

By his attorneys,

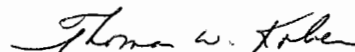


Jonathan Rosen, Esq. (N.H. Bar # 16951)
Thomas W. Kober, Esq. (admitted *pro hac vice*)
The Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 10038
(212) 530-4001
Facsimile (212) 299-3824

June 26, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Summary Statement has been forwarded via e-mail this 26th day of June, 2006 to Claimant Madelyn Miller at mrmccc@aol.com



Thomas W. Kober

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

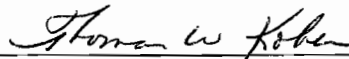
SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

**In Re Liquidator Number: 2005-HICIL-15
Proof of Claim Number: CLMN380542
Claimant Name: Madelyn Miller**

SUPPLEMENTAL CERTIFICATE OF SERVICE

I hereby certify that a copy of Liquidator's Written Submission has been forwarded via e-mail this 26th day of June, 2006 to Claimant Madelyn Miller at mrmccc@aol.com and via First Class Mail to Ms. Madelyn Miller @ 201 Varick Street, P.O. Box 436, New York, New York 10014-0436.



Thomas W. Kober

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

**In Re Liquidator Number: 2005-HICIL-15
Proof of Claim Number: CLMN380542
Claimant Name: Madelyn Miller
Claimant Number: CLMN380542**

TABLE OF CONTENTS

- A. Proof of Claim No. CLMN380542, postmarked June 11, 2004
- B. Claimant's letter dated June 13, 2004
- C. Notice of Determination, dated October 20, 2005
- D. Rejection of Determination with claimant's letter, received November 21, 2005
- E. Home Insurance Company in Liquidation Letter to Claimant, dated December 14, 2005 (via express and regular mail)
- F. Letter from Claimant, dated December 16, 2005
- G. Objection, dated December 16, 2005
- H. Policy LPLF869807-0 Re: Named Insured Kelner & Kelner
- I. Summons and Complaint, dated November 18, 1992
- J. Short Form Order of Hon. Thomas A. Adams, Supreme Court Nassau County, Index No. 32694/92, dated September 8, 1993
- K. Short Form Order of Hon. Thomas A. Adams, Nassau County Index No. 32694/92, dated June 9, 1994
- L. Decision & Order on Motion, dismissing appeals, Appellate Division Second Department, Index Nos. 93-08289, 94-04268, dated October 12, 1994
- M. Decision & Order on Motion, denying vacatur of prior order, Appellate Division Second Department, Index Nos. 93-08289, 94-04268, dated September 19, 1995
- N. Decision & Order, dismissing appeal, New York Court of Appeals, Mo. No. 621 SSD 43, dated June 13, 1996

- O. Decision & Order, denying leave to appeal, New York Court of Appeals, Mo. No. 1136, dated October 15, 1996
- P. Order of Hon. Aaron D. Bernstein, Supreme Court Kings County, Index No. 23018/00, dated November 30, 2000
- Q. Decision & Order, affirming dismissal, Appellate Division, Second Department, No. 2001-00706, dated January 22, 2002
- R. Decision & Order, dismissing appeal, New York Court of Appeals, Mo. No. 587 SSD 22, dated June 11, 2002
- S. Order, denying leave to appeal, New York Court of Appeals, Mo. No. 876, dated October 10, 2002
- T. Order, denying petition for a writ of certiorari, Supreme Court of the United States, No. 02-1398, dated May 27, 2003

PROOF OF CLAIM

The Home Insurance Company,

Merrimack County Superior Court, State of New Hampshire 03-B-0106

Read Carefully Before Completing This Form

Please print or type

FOR LIQUIDATOR'S USE ONLY

DATE PROOF OF CLAIM RECEIVED

RECEIVED

JUN 16 2004

HICIL

PDC #: CLM380542

Miller, Madelyn
201 Varick Street, Box 436
New York NY 10014-4811

The Deadline for Filing this Form is June 13, 2004.

You should file this Proof of Claim form if you have an actual or potential claim against The Home Insurance Company of any of its former subsidiaries* ("The Home") even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be postmarked no later than June 13, 2004. Failure to timely return this completed form will likely result in the DENIAL OF YOUR CLAIM. You are advised to retain a copy of this completed form for your records.

- 1. Claimant's Name: Madelyn Miller
2. Claimant's Address: 201 Varick Street, Box 436 New York, NY 10014
3. Claimant's Telephone Number: (917) 690-9721
4. Claimant's Social Security Number, Tax ID Number or Employer ID Number: 070-380972
5. Claim is submitted by (check one):
a) Policyholder or former policyholder
b) Third Party Claimant making a claim against a person insured by The Home
c) Employee or former employee
d) Broker or Agent
e) General Creditor, Reinsurer, or Reinsured
f) State or Local Government Entity
g) Other; describe:

If your name, address, e-mail address, or telephone number set forth above are incorrect, or if they change, you must notify the Liquidator so she can advise you of new information.

Describe in detail the nature of your claim. You may attach a separate page if desired. Attach relevant documentation in support of your claim, such as copies of outstanding invoices, contracts, or other supporting documentation.

Claim # 0850552335 for professional liability.
Policy # LPL F 809807
Home Insurance Company
Additional documentation to be provided upon request.

6. Indicate the total dollar amount of your claim. If the amount of your claim is unknown, write the word "unknown", BUT be sure to attach sufficient documentation to allow for determination of the claim amount.

\$ UNKNOWN (if amount is unknown, write the word "unknown").

7. If you have any security backing up your claim, describe the nature and amount of such security. Attach relevant documentation.

8. If The Home has made any payments towards the amount of the claim, describe the amount of such payments and the dates paid:

9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim? No

10. Do you claim a priority for your claim? If so, why:

11. Print the name, address and telephone number of the person who has completed this form.

Name: Madelyn Miller
Address: 201 Varick Street, Box 436 New York, NY 10014
Phone Number: (917) 690-9721
Email address:

* The Home Indemnity Company, The Home Insurance Company of Indiana, City Insurance Company, Home Lloyds Insurance Company of Texas, The Home Insurance Company of Illinois, and The Home Insurance Company of Wisconsin.

12. If represented by legal counsel, please supply the following information:
- a. Name of attorney: _____
 - b. Name of law firm: _____
 - c. Address of law firm: _____
 - d. Attorney's telephone: _____
 - e. Attorney's fax number: _____
 - f. Attorney's email address: _____

13. If using a judgment against The Home as the basis for this claim:
- a. Amount of judgment _____
 - b. Date of judgment _____
 - c. Name of case _____
 - d. Name and location of court _____
 - e. Court docket or index number (if any) _____

14. If you are completing this Proof of Claim as a Third Party Claimant against an insured of The Home, you must conditionally release your claim against the insured by signing the following, as required by N.H. Rev. Stat. Ann. § 402-C:40 I:

I, Madelyn Miller (insert claimant's name), in consideration of the right to bring a claim against The Home, on behalf of myself, my officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives hereby release and discharge Kelner & Kelner (insert name of defendant(s) insured by The Home), and his/her/its officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives, from liability on the cause(es) of action that forms the basis for my claim against The Home in the amount of the limit of the applicable policy provided by The Home; provided, however, that this release shall be void if the insurance coverage provided by The Home is avoided by the Liquidator.

Madelyn Miller _____ Date 6/9/04
 Claimant's signature

15. All claimants must complete the following:

I, Madelyn Miller (insert individual claimant's name or name of person completing this form for a legal entity) subscribe and affirm as true, under the penalty of perjury as follows: that I have read the foregoing proof of claim and know the contents thereof, that this claim in the amount of unknown dollars (\$ _____) against The Home is justly owed, except as stated in item 9 above, and that the matters set forth in this Proof of Claim are true to the best of my knowledge and belief. I also certify that no part of this claim has been sold or assigned to a third party.

Madelyn Miller _____ Date 6/9/04
 Claimant's signature

Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

16. Send this completed Proof of Claim Form, postmarked by June 13, 2004, to:

The Home Insurance Company in Liquidation
 P.O. Box 1720
 Manchester, New Hampshire 03105-1720

You should complete and send this form if you believe you have an actual or potential claim against The Home even if the amount of the claim is presently uncertain.

M. Miller
201 Varick Street
Box 436
N.Y., N.Y. 10014

RECEIVED BY THE ADDRESSEE

Return Receipt 12. 1. 1



7003 2260 0004 4793 8416



03105

The Home Insurance Company In Liquidation
P.O. Box 1720
Manchester, New Hampshire

JUN 15 2004

03105 MAIL 1720

RETURN RECEIPT
REQUESTED



RECEIVED

JUN 16 2004

HICIL

201 Varick Street
Box 426
New York, N.Y. 10014

June 13, 2004

Home Insurance Company
in Liquidation
P. O. Box 1720
Manchester, New Hampshire 03105-1720

Re: Proof of Claim #
Clmn 380542

Dear Sir/ Madam,

I am sending this note with reference to the proof of claim that I recently submitted to your office. The nature of the claim is professional malpractice on the part of the insureds Kelner & Kelner when they represented the claimant (myself) in a legal matter entitled Miller v. State in New York.

I was anxious to submit the proof of claim form in a timely manner, so it was mailed to you. I am in the process of compiling further documentation to be provided upon request from your office, should you wish it.

Very truly yours,
Madelyn Miller
Madelyn Miller

RECEIVED

JUN 16 2004

HICIL



The Home Insurance Company in Liquidation
P. O. Box 1720
Manchester, New Hampshire
03105-1720

001055-1720 126



EXHIBIT C

10/1/11

10/1/11

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720

Manchester, New Hampshire 03105-1720

Tel: (800) 347-0014

October 20, 2005

Class: II

Ms. Madelyn Miller
201 Varick Street, Box 436
New York, NY 10014

RE: NOTICE OF DETERMINATION
Proof of Claim No.: CLMN380542-01

Determination Summary

Gross Amount of Claim	: \$ Unknown
Amount Allowed by Liquidation	: \$ 0

Explanation: You brought a legal malpractice suit against Home's insureds under a policy Home issued to Kelner & Kelner. Home defended the insureds under the policy. The Supreme Court of New York, County of Nassau dismissed your complaint. Your appeals to the appellate division and the Court of Appeals were also dismissed. Home's insureds are not liable to you for the damages you have claimed. No allowance has been granted.

Dear Claimant:

The purpose of this letter is to provide you with a determination set forth above of claims you have presented to The Home Insurance Company in Liquidation ("The Home"), under the Proof(s) of Claim specified above. The Home expects to present notice of this determination to the Superior Court for Merrimack County, New Hampshire (the "Court") for approval in accordance with New Hampshire Revised Statute, RSA 402-C:45. Read this Notice of Determination carefully as it sets forth your rights and obligations in detail.

The Home has now made a Determination on the claims as set forth above in accordance with The Home Claim Procedures (the "Procedures")* approved by the Court. If the claim has been allowed, in whole or in part, it has been assigned a Class II priority as a "policy related claim" pursuant to the Order of Distribution set forth in RSA 402-C:44 and will be placed in line for payment as directed by the Court from the assets of The Home. The first

*A copy of the January 19, 2005 Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation may be obtained from the website of the Office of the Liquidation Clerk for The Home Insurance Company in Liquidation and US International Reinsurance Company in Liquidation, www.hicilclerk.org

\$50 of the amount allowed on each claim in this class shall be deducted from the amount distributed as specified in RSA 402-C:44.

You may have other claims against The Home for which you may receive other Notices of Determination. You will have a separate right to dispute each Notice of Determination. If your claim has been allowed in whole or in part, this Notice of Determination does not mean that your claim will immediately be paid, or that it will be paid in full or at all. Pursuant to order of the Court, The Home may make distributions of its assets as a percentage of all allowed claims in a particular priority class in The Home estate as approved by the Court. The amount of the final payment for allowed claims will be determined by the final ratio of assets to liabilities and the applicable priority. Please be advised that the final percentage of payment you receive from The Home, at the time The Home estate is finally closed, is the total payment amount that you will be entitled to for this claim.

The Liquidator does not expect there to be assets sufficient to make a distribution to creditors in classes below Class II.

Any and all distributions of assets may be affected and/or reduced by any payments you have received on this claim from any other sources not listed on the Notice of Distribution. Any such distributions by The Home are based on The Home's knowledge and/or understanding of the amounts you have received in settlement and/or reimbursement of this claim from all other sources at the time of the allowance or thereafter. Should The Home subsequently become aware of prior recoveries from other sources The Home has the right to reduce its future distribution payments to you to the extent of such other recoveries or to seek and obtain repayment from you with respect to any previous distributions that were made to you.

Further, if you seek or receive any future payment from any other source on this claim after you receive a distribution payment from The Home you must notify The Home at the address below and The Home has the right to recover from you the distribution payments in whole or in part, to the extent of any such other future recoveries.

As a condition to receipt of any distributions, The Home shall be entitled to any rights to subrogation you may have against any third party and you shall be deemed to have assigned to The Home such rights upon receipt of any distributions. You shall also be obliged to reimburse The Home for any legal fees or other costs associated with The Home recovering from you any distribution payments to which you are not entitled.

The following instructions apply to this Notice of Determination:

Claim Allowed

1. If this claim has been allowed in whole or in part and you agree with the determination, sign and date the enclosed Acknowledgment of Receipt of the Notice of Determination and mail the completed Acknowledgment to The Home.

Claim Disallowed

2. A. If all or part of your claim has been disallowed or you wish to dispute the determination or creditor classification for any reason, you may file a Request for Review with the Liquidator. The Request for Review is the first of two steps in the process of disputing a claim determination. The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination.

REQUEST FOR REVIEW FILING REQUIREMENTS:

- (a) Sign and return the attached Acknowledgment of Receipt form.
 - (b) On a separate page, state specifically the reasons(s) you believe that the determination is in error and how it should be modified. Please note the Proof of Claim number on that page and sign the page.
 - (c) Mail the Request for Review to:
The Home Insurance Company in Liquidation
P.O. Box 1720
Manchester, NH 03105-1720
- You should keep a copy of this Notice of Determination, Acknowledgment of Receipt and Request for Review, then mail the Original Request for Review to us by U.S. Certified Mail.
- (d) The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination. The Request for Review must be in writing.
 - (e) The Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination.

IF A REQUEST FOR REVIEW IS NOT FILED WITH THE HOME WITHIN THE THIRTY (30) DAY PERIOD, YOU MAY NONETHELESS DIRECTLY FILE AN OBJECTION WITH THE COURT WITHIN SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE. You do not have to file the Request for Review as a prerequisite to dispute the Notice of Determination. Please see Section 2B (below) for the Objections to Denial of Claims.

- B. If your claim is disallowed in whole or in part, you may file an Objection with the Court at
- Office of the Clerk, Merrimack County Superior Court
163 N. Main Street, P.O. Box 2880
Concord, New Hampshire 03301-2880
Attention: The Home Docket No. 03-E-0106

within sixty (60) days from the mailing of the Notice of Determination and bypass the Request for Review procedures as noted in Section 2A (above). If the Request for Review is timely filed, as outlined in Section 2A, the Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination. If the redetermination is to disallow the claim, you may still file an Objection with the Court. You have sixty (60) days from the mailing of the Notice of Redetermination to file your Objection. Please also sign and return the Acknowledgment of Receipt form and mail a copy of the Objection to the Liquidator.

IF YOU DO NOT FILE AN OBJECTION WITH THE COURT WITHIN EITHER SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE OF DETERMINATION OR SIXTY (60) DAYS FROM THE MAILING OF ANY NOTICE OF REDETERMINATION, YOU MAY NOT FURTHER OBJECT TO THE DETERMINATION.

A timely filed Objection will be treated as a Disputed Claim and will be referred to the Liquidation Clerk's Office for adjudication by a Referee in accordance with the Procedures.

3. You must notify The Home of any changes in your mailing address. This will ensure your participation in future distributions, as applicable. For purposes of keeping The Home informed of your current address, please notify us at the address given on the letterhead above.

Sincerely yours,

Peter Bengelsdorf, Special Deputy Liquidator
For Roger A. Sevigny, Liquidator
of The Home Insurance Company in Liquidation

If you wish to speak to someone regarding this Notice of Determination, please contact:

Ron Barta
Senior Manager
Home Insurance Company in Liquidation
Phone: 212-530-4054

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720

Manchester, New Hampshire 03105-1720

Tel: (800) 347-0014

POC #: CLMN380542-01

Amount Allowed: \$ 0

Madelyn Miller
201 Varick Street, Box 436
New York, NY 10014

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge receipt of the Notice of Determination as a Class II Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Determination of my Claim against The Home Insurance Company in Liquidation and in that regard advise as follows:

(Check off all applicable items.)

I agree to the determination.

I reject the determination and want to file a Request for Review (specific reasons must be included along with return of the signed Acknowledgment).

I reject the determination and intend to file a separate Objection with the Court, without filing a Request for Review.

I have not assigned any part of this claim.

I have not made any other recoveries with respect to this claim.

I have not sought and do not intend to seek any other recoveries with respect to this claim.

I have made recovery from others with respect to this claim (full details must be included with this Acknowledgment).

I have sought or intend to seek recovery from others with respect to this claim (full details must be included with this Acknowledgment).

I request that The Home mail further correspondence to:

_____ Same name as above.
New name _____

_____ Same address as above
New address _____

This Acknowledgment of Receipt must be completed, signed and returned to The Home in order to be eligible for distributions from The Home estate as directed by the Court.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

RECEIVED

NOV 21 2005

HICIL

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720

Manchester, New Hampshire 03105-1720

Tel: (800) 347-0014

POC #: CLMN380542-01

Amount Allowed: \$ 0

Madelyn Miller
201 Varick Street, Box 436
New York, NY 10014

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge receipt of the Notice of Determination as a Class II Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Determination of my Claim against The Home Insurance Company in Liquidation and in that regard advise as follows:

(Check off all applicable items.)

I agree to the determination.

I reject the determination and want to file a Request for Review (specific reasons must be included along with return of the signed Acknowledgment).

I reject the determination and intend to file a separate Objection with the Court, without filing a Request for Review.

I have not assigned any part of this claim.

I have not made any other recoveries with respect to this claim.

I have not sought and do not intend to seek any other recoveries with respect to this claim.

I have made recovery from others with respect to this claim (full details must be included with this Acknowledgement).

I have sought or intend to seek recovery from others with respect to this claim (full details must be included with this Acknowledgement).

I request that The Home mail further correspondence to:

Same name as above.
New name _____

Same address as above
New address 201 Varick Street
P.O. Box 436
New York, New York 10014-0436

This Acknowledgment of Receipt must be completed, signed and returned to The Home in order to be eligible for distributions from The Home estate as directed by the Court.

Signature: Madelyn Miller

Printed Name: Madelyn Miller

Title: claimant

Date: November 18, 2005

I would like an opportunity to have this determination reviewed. Despite the fact that the determination is dated October 20, 2005, I did not receive it until November 12, 2005. I have further clarified the mailing address, so that such a delay in my receipt of correspondence hopefully will not occur again. Because I have just received this determination notice, I request the review in this letter to be followed up shortly with my specific reasons for the review. Also, because the thirtieth day falls on a Saturday, I was told that receipt of this request for review could arrive on the following business day - November 21, 2005. I spoke with Mr. Chris Fontenel about this.

Madelyn Miller
POC # CLMN380542-01

RECEIVED

NOV 21 2005

HICIL

The Home Insurance Company in Liquidation

P. O. Box 1720

Manchester, N. H.

03105-1720

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Place Sticker To Address

CALL 1-800-222-1811 FOR PICKUP OR TRACKING OF ALL YOUR PACKAGES



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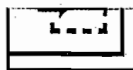
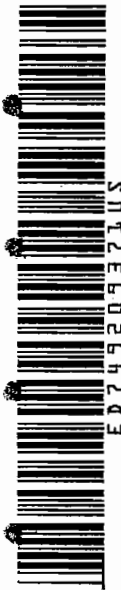
U.S. POSTAGE
PAID
NEW YORK, NY
10199
NOV 19 '05
AMOUNT

\$13.65
00034293-83



9252

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Addresssee Copy
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DELIVERY (POSTAL USE ONLY)

Delivery Attempt	Time	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Employee Signature
Mo. Day	Time	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Employee Signature
Mo. Day	Time	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Employee Signature
Mo. Day	Time	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Employee Signature

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WAIVER OF SIGNATURE (Only Mail Only)
Additional Postage Insurance is void if
customer's signature is not provided.

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Postal Service Acct. No.

NO DELIVERY
Weekend Holiday Mailing Signature

TO: (PLEASE PRINT) PHONE () - () - ()

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Day of Delivery
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Scheduled Date of Delivery
Month Day

Scheduled Time of Delivery
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2nd Day 3rd Day

Int'l Alpha Country Code

PO ZIP Code

Date Accepted

Mo. Day Year

Time Accepted AM PM

Flat Rate or Weight

lbs. ozs.

Postage \$

Return Receipt Fee \$

Insurance Fee \$

Total Postage & Fees \$

Acceptance Emp. Initials

FROM: (PLEASE PRINT) PHONE () - () - ()

RECEIVED

NOV 21 2005

HICIL

FOR PICKUP OR TRACKING

*overnite mail
copy*

**THE HOME
INSURANCE
COMPANY IN
LIQUIDATION**



59 Maiden Lane
New York, New York 10038

Ronald F. Barta
Senior Manager
Telephone: 212-530-4054
Fax: 212-299-3772
ron.barta@homeinsco.com

December 14, 2005

VIA OVERNIGHT MAIL

Madelyn Miller
201 Varick St.
P.O. Box 436
New York, NY 10014-0436

Re: Proof of Claim No. : CLMN380542-01

Dear Ms. Miller:

Your rejection of the Notice of Determination and Request for Review was not timely filed. It was received in our Manchester, NH office on November 21, 2005, more than 30 days after we mailed the Notice of Determination to you on October 20, 2005.

As I informed you in the voicemail message I left for you today at 917- 690 - 9721, we wish to remind you of the following information as you have been previously advised in the Notice of Determination letter:

"...

- B. If your claim is disallowed in whole or in part, you may file an Objection with the Court at

Office of the Clerk, Merrimack County Superior Court
163 N. Main Street, P.O. Box 2880
Concord, New Hampshire 03301-2880
Attention: The Home Docket No. 03-E-0106

within sixty (60) days from the mailing of the Notice of Determination ..."

THE HOME
INSURANCE
COMPANY IN
LIQUIDATION



IF YOU DO NOT FILE AN OBJECTION WITH THE COURT WITHIN SIXTY
(60) DAYS FROM THE MAILING OF THE NOTICE OF DETERMINATION

December 14, 2005
Madelyn Miller

-2-

(OCTOBER 20, 2005), YOU MAY NOT FURTHER OBJECT TO THE
DETERMINATION.

A timely filed Objection will be treated as a Disputed Claim and will be
referred to the Liquidation Clerk's Office for adjudication by a Referee in
accordance with the Procedures.

Sincerely,

Ronald F. Barta

THE HOME
INSURANCE
COMPANY IN
LIQUIDATION



*mailed via registered mail
5:00pm 12/14/05
via U.S. Mail
Ron Barta*

59 Maiden Lane
New York, New York 10038

Ronald F. Barta
Senior Manager
Telephone: 212-530-4054
Fax: 212-299-3772
ron.barta@homeinsco.com

December 14, 2005

Madelyn Miller
201 Varick St.
P.O. Box 436
New York, NY 10014-0436

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"...

B. If your claim is disallowed in whole or in part, you may file an Objection with the Court at

Office of the Clerk, Merrimack County Superior Court
163 N. Main Street, P.O. Box 2880
Concord, New Hampshire 03301-2880
Attention: The Home Docket No. 03-E-0106

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IF YOU DO NOT FILE AN OBJECTION WITH THE COURT WITHIN SIXTY
(60) DAYS FROM THE MAILING OF THE NOTICE OF DETERMINATION

THE HOME
INSURANCE
COMPANY IN
LIQUIDATION



December 14, 2005
Madelyn Miller

-2-

(OCTOBER 20, 2005), YOU MAY NOT FURTHER OBJECT TO THE DETERMINATION.

A timely filed Objection will be treated as a Disputed Claim and will be referred to the Liquidation Clerk's Office for adjudication by a Referee in accordance with the Procedures.

Sincerely,

Ronald F. Barta

DEC-16-2005 12:22 FROM NYU STUDENT RESOURCE CENT

TO 912122993772

P.01

AAA: Ron Barta

To: Ron Barta
Home Insurance Company in Liquidation
Re: Proof of Claim No: CLMN380542-01

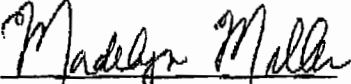
December 16, 2005

Dear Mr. Barta,

I am faxing to you the grounds upon which I seek review and reconsideration by you of your notice of determination.

I would like to remind you that you contacted me, directing me to send this information to you directly, and not to New Hampshire. However, you did not supply me with a mailing address until last Friday—December 9.

Because of time constraints I am faxing the information to you and would like you to review the determination.


Madelyn Miller

Re: Proof of Claim No.: CLMN380542-01

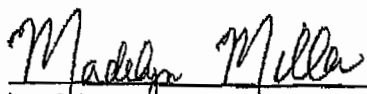
The gross amount of the claim is slightly less than \$100,000 before interest, largely consisting of claimant's loss representing the failure on the part of the insureds to obtain the correct post-judgment interest on claimant's award in a matter in which she was represented by the insureds, entitled Miller v. State.

The dismissal of claimant's civil complaint in Supreme Court Nassau County was based on the judge's interpretation of the state of the law pertaining to prejudgment interest. Such an interpretation does not carry much weight as any kind of legal precedent. Furthermore, the error on the part of the insureds' Kelner & Kelner was failure to obtain the correct amount of post-judgment interest. The merits of claimant's malpractice case were never put before the Appellate Division or the Court of Appeals and they made no rulings on the merits of the case.

It is claimant's position that she is owed in the ballpark of \$90,000 to \$100,000 plus interest for the failure of the insureds to obtain the correct postjudgment interest on her award. There is case law and legal precedent showing the validity of her position.

The notice of determination is in error in its assumption that this matter is closed. There were also improprieties committed by the insureds in their forgery of claimant's signature endorsing the check settling Miller v. State, as well as in their failure to turn the proceeds of the award over to claimant in a timely way. It is claimant's position that the wrongful acts committed by the insureds generate grounds for other proceedings. Claimant seeks to present these claims within the context of a New York state attorney disciplinary proceeding, as well as seek criminal prosecution of the insureds for their conduct pertaining to the forgery and other financial improprieties. As the wrongful acts were committed by the insureds Kelner & Kelner in the course of their rendering professional services to the claimant, it would seem that the Home could have a duty to defend or be otherwise involved in such proceedings.

Claimant would like reconsideration of her claim.



Madelyn Miller

December 16, 2008

Office of the Clerk
Merrimack County Superior Court
163 N. Main Street
P. O. Box 2880
Concord, New Hampshire 03301-2880
Attention Home Docket No. 03-E-0106

TO Whom It May Concern,

There seems to have been some misunderstanding and/or miscommunication regarding my request for review (copies attached). I am therefore filing an objection with the Court to the determination in my claim to preserve my rights. However, I still would prefer to have the review first, if possible.

Madelyn Miller
POC # CLMN380542-01

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720

Manchester, New Hampshire 03105-1720

Tel: (800) 347-0014

POC #: CLMN380542-01

Amount Allowed: \$ 0

Madelyn Miller
201 Varick Street, Box 436
New York, NY 10014

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge receipt of the Notice of Determination as a Class II Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Determination of my Claim against The Home Insurance Company in Liquidation and in that regard advise as follows:

(Check off all applicable items.)

I agree to the determination.

I reject the determination and want to file a Request for Review (specific reasons must be included along with return of the signed Acknowledgment).

I reject the determination and intend to file a separate Objection with the Court without filing a Request for Review. *(I did file a Request for Review)*

I have not assigned any part of this claim.

I have not made any other recoveries with respect to this claim.

I have not sought and do not intend to seek any other recoveries with respect to this claim.

I have made recovery from others with respect to this claim (full details must be included with this Acknowledgment).

I have sought or intend to seek recovery from others with respect to this claim (full details must be included with this Acknowledgment).

I request that The Home mail further correspondence to:

Same name as above.
New name _____

Same address as above
New address 201 Varick Street
P.O. Box 436
New York, New York 10014-0436

This Acknowledgment of Receipt must be completed, signed and returned to The Home in order to be eligible for distributions from The Home estate as directed by the Court.

Signature: Madelyn Miller

Printed Name: Madelyn Miller

Title: Claimant

Date: December 16, 2005

**Statistical Information. Do Not Complete Blank And Screened Areas.
Tear Off And Discard After Completion.**

Acct. I.D.	P/C Indicator C Commercial	Producer No. 39754	OPC 351	Renewal of LPL-F553221	SIC	Insured Short Name
Prepared By	Agency Field Office	Annualization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Cycle Billing/Instalment <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Sur-Charge	Code Amount	Code Amount	Code Amount	Code Amount	Extra Entry Area	
Commission Rate	Reinsurance Co.	C/S Prod No.	OPC	C/S Comm. Rate	Tax Code	Market Code

Declarations
Professional Liability Insurance Policy

Policy Number: LPL-F869807-0



This is a claims made Policy. Please review the Policy carefully.

The Policy is limited to liability for only those claims that are first made against the Insured during the policy period.

Insured by the stock company below and hereinafter called the company	
THE HOME INSURANCE COMPANY OF INDIANA INDIANAPOLIS, INDIANA	
Item 1. Named Insured and Address (Number, Street, Town or City, County, State, Zip Code)	Producer Name
KELNER & KELNER 222 BROADWAY, 24TH FLOOR NEW YORK NEW YORK NY 10038	BERTHOLON-ROWLAND CORPORATION
Item 2. Policy Period	From (Day-Mon-Yr) To (Day-Mon-Yr)
	10-DEC-1991 10-DEC-1993
12:01 A.M. Standard Time at the address of the Named Insured as stated herein.	
Item 3. Form of Named Insured's Business	Insured is
	PARTNERSHIP
And Those Professionals Listed on the Application.	
Item 4. Limit of Liability	THE FOLLOWING NOTICE IS APPLICABLE ONLY TO POLICIES WRITTEN WITH LIMITS OF LIABILITY OF TWO MILLION DOLLARS PER CLAIM AND ABOVE. THE LIMITS OF LIABILITY STATED IN THE POLICY SHALL BE REDUCED BY THE AMOUNT OR PERCENTAGE STATED IN THE POLICY BY CLAIM EXPENSES INCURRED IN THE SETTLEMENT OF A CLAIM COVERED BY THE POLICY. SUCH CLAIM EXPENSES SHALL ALSO BE APPLIED AGAINST THE DEDUCTIBLE BY THE AMOUNT OR PERCENTAGE STATED IN THE POLICY. PLEASE REFER TO THE POLICY FOR THE EXACT TERMS AND CONDITIONS CONCERNING THE COMPANY'S LIMITS OF LIABILITY.
Each Claim \$ 2,000,000	
Aggregate \$ 2,000,000	
Item 5. Deductible	
Per Claim \$ 25,000	
Item 6. Premium	THIS IS A CLAIMS MADE POLICY, PLEASE READ CAREFULLY. SEE THE INSURING AGREEMENT FOR INFORMATION CONCERNING OPTIONAL PURCHASE OF EXTENDED REPORTING PERIOD FOR CLAIMS MADE AFTER THE TERMINATION DATE OF THE POLICY. PLEASE MAKE ANY INQUIRIES, REGARDING THIS COVERAGE, TO YOUR AGENT IN ADVANCE OF THE EXPIRATION DATE OF THIS POLICY.
SEE FORM H37925F 03/89 NO. OF PROFESSIONALS 6	
Item 7. Forms Attached at Issuance	
H36876 11/86 INSOLVENCY/BANKRUPT	H38965 01/91 LPL POLICY JACKET
H36878 11/86 NOTICE TO AGNT/CO	H37882 02/89 2 YR LPL AMEND ENDST
H36879 03/89 NY CANCEL/REN PROV	H37925 03/89 2 YR LPL POLICY
H37043 03/89 EXTENDED REPORT PER	
H37090 04/89 PARTIAL DEFENSE	
H37740 11/83 REMOVAL OF POLL EXCL	
By acceptance of this policy the insured agrees that the statements in the Declarations and the Application and any attachments hereto are the Insured's agreements and representations and that this policy embodies all agreements existing between the Insured and the Company or any of its representatives relating to this insurance.	
Do Not Write In This Box	Remarks
	Countersigned at NEW YORK, NY
	Issue Date 09-OCT-1991
	Authorized Representative
	Countersign Date



Non-Premium Endorsement

To Item 6, Premium, of the Declarations Page
Two Year Lawyers Professional Liability Policy — New York

H37825F
Ed 3-89

Name Insured	Policy Number	Endorsement Number	Effective Date
KELNER & KELNER	LFL F869807-0		10-Dec-1991

In consideration of the premium paid, Item 6, Premium, of the Declarations page is deleted and replaced by the following:

Item 6. Premium

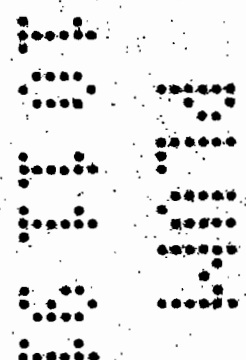
\$ 21,525.00 First Installment Premium due at inception for the first twelve month term of the policy period based upon ⁶ attorney(s).

21,525.00 Total Premium, Taxes and Surcharges for the first twelve month term of the policy period.

\$ 21,525.00 Estimated Second Installment Premium due at anniversary 10-Dec-1992 for the second twelve month term of the policy period based upon ⁶ attorney(s). This installment is subject to the company's right to charge additional premium for any increase in the Company's exposure resulting from the progression of the claims-made relationship. Also, this installment is subject to the Company's right to return premium or charge additional premium as a result of changes in the number of lawyers, areas of practice, or applicable laws.

\$ 21,525.00 Total Premium, Taxes and Surcharges for the second twelve month term of the policy.

\$ 43,050.00 Estimated Total Premium, Taxes and Surcharges for the entire two year policy period.



**Professional Liability Insurance
Policy and Mandatory Endorsements
New York Lawyers**

THE HOME INSURANCE COMPANIES



Provisions

(A stock insurance company, hereinafter called the Company)

In consideration of the undertaking of the Named Insured to pay, when due, the premium and the deductible as described herein and in the amounts stated in the Declarations, and in reliance upon the statements in the application attached hereto and made a part hereof, and subject to the limits of liability shown in the Declarations, and subject to all of the terms of this insurance, the company agrees with the Named Insured as follows:

This is a Claims Made Policy — Please Read Carefully

Section A — Insured

I. The Insured: The word "Insured," whenever used in this policy, means:

(a) The Named Insured firm or persons named in the Declarations, or any lawyer or professional legal corporation who during the policy period becomes a partner, officer, director or employee of the firm;

(b) any lawyer or professional legal corporation who was a former partner, officer, director or employee of the firm or predecessor firm(s) solely while acting in a professional capacity on behalf of such firms;

(c) any lawyer or professional legal corporation who was a partner, officer, director or employee of the firm or predecessor firm(s) who has retired from the practice of law, but only for those professional services rendered prior to the date of retirement from the Insured firm;

(d) any non-lawyer who was, is now, or hereinafter becomes an employee of the firm or predecessor firm(s) solely while acting within the scope of such person's duties as an employee;

(e) as respects to the liability of each Insured as is otherwise covered herein, the heirs, executors, administrators, assigns and legal representatives of each Insured in the event of death, incapacity or bankruptcy;

(f) any lawyer acting as "of counsel," but only while performing services on behalf of the Insured, any employed lawyer or any other employee.

II. Firm Changes: Any material change among the partners or stockholders of the Named Insured during the policy period should be reported to the Company immediately, and the Company given the right to decline to continue coverage or to charge an additional premium therefor.

Section B — Coverage

I. Professional Liability and Claims Made Clause: To pay on behalf of the Insured all sums in excess of the deductible amount stated in the Declarations which the Insured shall become legally obligated to pay as damages as a result of CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD caused by any act, error or omission for which the Insured is legally responsible, and arising out of the rendering or failure to render professional services for others in the Insured's capacity as a lawyer or notary public.

It is a condition precedent to coverage under this policy that all claims be reported in compliance with the Section F CLAIMS I. NOTICE OF CLAIMS.

PROVIDED ALWAYS THAT such act, error or omission happens:

(a) during the policy period; or,

(b) prior to the policy period, provided that prior to the effective date of the first Lawyers Professional Liability Insurance Policy issued by this Company to the Named Insured or predecessor law firm and continuously renewed and maintained in effect to the inception of this policy period:

1) The Insured did not give notice to any prior insurer of any such act or error, and

2) the Named Insured, any partner, shareholder, employee, or where appropriate the Named Insured's management committee or any member thereof, had no reasonable basis to believe that the Insured had breached a professional duty or to foresee that a claim would be made against the Insured; and

3) there is no prior policy or policies which provide insurance for such liability or claim, unless the available limits of liability of such prior policy or policies are insufficient to pay any liability or claim, in which event this

policy will be excess over any such prior coverage, subject to this policy's terms, limits of liability, exclusions and conditions.

When the Insured renders or fails to render services as an administrator, conservator, receiver, executor, guardian, trustee, or in any similar fiduciary capacity, the Insured's acts and omissions in such capacity shall be deemed for the purpose of this section to be the performance of professional services for others in the Insured's capacity as a lawyer, provided that this coverage shall not apply to any loss sustained by the Insured as the beneficiary or distributee of any trust or estate.

Services performed by the Insured in a lawyer-client relationship on behalf of one or more clients shall be deemed for the purpose of this section to be the performance of professional services for others in the Insured's capacity as a lawyer, although such services could be performed wholly or in part by non-lawyers.

It is a condition precedent to coverage under this policy that all claims be reported in compliance with the Section F CLAIMS I. NOTICE OF CLAIMS.

Claim, whenever used in this policy, means a demand received by the Insured for money or services, including the service of suit or institution of arbitration proceedings against the Insured.

Damages, whenever used in this policy, means a monetary judgement or settlement, including any such judgement or settlement for personal injury, and does not include fines or statutory penalties, or sanctions whether imposed by law or otherwise, nor the return of or restitution of legal fees, costs and expenses.

Predecessor Firms, whenever used in this policy, means any lawyer, law firm or professional legal corporation engaged in the practice of law to whose financial assets and liabilities the firm listed as Named Insured in the Declarations is the majority successor in interest.

Policy Period, whenever used in this policy, means the period from the inception date of this policy to the policy expiration date as set forth in the Declarations or its earlier termination date, if any.

II. Consent to Settle, Defense: With respect to the insurance afforded by this policy, the Company shall defend any claim against the Insured including the appeal thereof seeking damages to which this insurance applies even if any of the allegations of the suit are groundless, false, or fraudulent. The Company shall not settle any claim without the consent of the Insured unless otherwise agreed between the Insured and the

Company. If the Insured shall refuse to consent to any settlement or compromise recommended by the Company and acceptable to the claimant and shall elect to contest the claim or proceeding, then the Company's liability under this policy shall not exceed and shall be limited to the amount for which the claim or proceedings could have been settled or compromised. It is further agreed that the Company may make such investigation of any claim as it deems expedient, but the Company shall not be obligated to pay any claim or judgement or to defend or to continue to defend any claim after the limits of the Company's liability have been exhausted. Thus, when the claims expenses equal the amount for which the case could have been settled or compromised, the Company shall have the right to withdraw from the further investigation and/or defense thereof by tendering control of such investigation or defense to the Insured, and the Insured agrees, as a condition of the issuance of this policy, to accept such tender.

III. Discovery Clause: If, during the policy or any optional Reporting Period purchased hereunder, the Insured first becomes aware that an Insured has committed a specific act, error or omission in professional services for which coverage is otherwise provided hereunder, and if the Insured shall during the policy period or the optional Reporting Period purchased hereunder give notice to the Company of:

- (a) the specific act, error or omission; and
- (b) the injury or damage which has or may result from such act, error or omission; and
- (c) the circumstances by which the Insured first becomes aware of such act, error or omission

then any claim that may subsequently be made against the Insured arising out of such act, error or omission shall be deemed for the purposes of this insurance to have been made during the policy period or the optional Reporting Period purchased hereunder. The Insured shall cooperate fully with the Company as provided in Section F CLAIMS I. and II. and any investigation conducted by the Company or its representatives shall be subject to the terms set forth in this policy.

IV. Options to Extend Claims Reporting Period: If the Named Insured does not renew this policy after complying with all the terms and conditions thereof, including the payment of all premiums and/or deductibles when due, or if the Company shall cancel or refuse to renew the policy for reasons other than the Named Insured's non-payment of premiums and/or deductibles or non-compliance with the terms and conditions of

this policy, then the Named Insured upon payment of an additional premium as set forth herein shall have the option to extend the insurance afforded by this policy subject otherwise to its terms, limit of liability, exclusions and conditions, to apply to CLAIMS FIRST MADE AGAINST THE INSURED DURING (a) 12 MONTHS, (b) 24 MONTHS, or (c) 36 MONTHS, as elected by the Named Insured, following immediately upon the effective date of such termination, but only by reason of any act, error or omission in professional services rendered before such effective termination date and otherwise covered by this insurance.

The extension of coverage for claims made subsequent to termination of the policy shall be endorsed hereto, if purchased, and shall hereinafter be referred to as the OPTIONAL REPORTING PERIOD.

The premium for the optional Reporting Period elected by the Named Insured shall be (a) 100% for 12 MONTHS, (b) 150% for 24 MONTHS, or (c) 185% for 36 MONTHS, of the full annual premium for this policy.

This coverage will be renewable annually at the expiration of the optional Reporting Period at the option of the Insured upon payment of an additional premium determined by the Company in accordance with the rates in effect at each annual renewal date.

At the commencement of any optional Reporting Period, the entire premium therefor shall be deemed earned, and in the event the Insured terminates the optional Reporting Period before its term for any reason, the Company shall not be liable to return to the Insured any portion of the premium for the optional Reporting Period.

The fact that the period during which claims must be first made against the Insured under this policy is extended by virtue of the optional Reporting Period shall not in any way increase the limits of liability of this policy.

V. Option to Purchase Non-Practicing Reporting Period: If any Insured retires or otherwise ceases the private practice of law during the policy period, then upon payment of an additional premium as set forth herein, the Insured shall have the option to extend the insurance afforded by this policy to apply to CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING (a) 12 MONTHS, (b) 24 MONTHS, (c) 36 MONTHS or (d) an unlimited period immediately following the expiration date of this policy as stated in the Declarations, but only by reason of any act, error or omission in professional services

rendered before the Insured's date of retirement or termination of private practice and otherwise covered by the insurance, PROVIDED there is no other insurance procured on or after the Insured's date of retirement or termination of practice which covers the Insured for such liability or claim. Such other insurance shall render this coverage inapplicable, even though the limits of liability of such other insurance may be inadequate to pay all losses and claim expenses and/or the deductible amount and deductible provisions of such other insurance may be different from those of this policy.

The extension of coverage elected by the Insured for claims made subsequent to the Insured's date of retirement or termination of private practice shall be endorsed hereto, if purchased, and shall hereinafter be referred to as the NON-PRACTICING REPORTING PERIOD.

The premium for the Non-Practicing Reporting Period elected by the Insured shall be (a) 100% for 12 MONTHS, (b) 150% for 24 MONTHS, (c) 185% for 36 MONTHS, or (d) 225% for an unlimited period of the full annual premium for this policy.

The deductible amount and deductible provisions of this policy will be waived with respect to claims first made against the Insured during the Non-Practicing Reporting Period purchased by the Insured.

The limits of liability stated in the Declarations and described in Section E LIMITS OF LIABILITY I. and II. shall not apply to the optional reporting period available herein. The limits of liability stated in the following schedule shall apply to claims first made against the Insured during the Non-Practicing Reporting Period, if purchased and shall apply as described in said schedule.

The limits of liability in effect at the inception of this policy as stated in the Declarations shall be used to compute the limits of liability provided during the Non-Practicing Reporting Period if purchased.

In the event of the death of an Insured or for those Insureds with three consecutive full years of coverage by the Company who become permanently, totally disabled preventing further practice of an Insured as defined by item (a) in Section A INSURED I. THE INSURED, such Insured shall be entitled, at no additional premium, to a Non-Practicing Reporting Period for all claims first made after the termination of the policy period arising out of any act, error or omission occurring prior to the termination of the policy period and otherwise covered by this policy. However, those

identified by items (b) thru (f) of Section A INSURED I. THE INSURED are specifically excluded from exercising this option.

"Totally and permanently disabled" means that the Insured has become so disabled as to be wholly prevented from rendering professional services for others in the capacity as a lawyer or notary public provided that such disability:

- A. has existed continuously for not less than 6 months; and
- B. is expected to be continuous and permanent.

"Totally and permanently disabled" shall not include any condition which:

- A. is a result of war or acts of war, whether or not declared;
- B. occurred during active service in the armed forces of any country; or
- C. results from:
 - 1. intentionally self-inflicted injuries;
 - 2. actual or attempted suicide, whether or not sane; or

- 3. the abuse or misuse of addictive chemical compounds or alcohol.

If the Insured exercises the Non-Practicing Reporting Period option:

(a) The liability of the Company for each claim FIRST MADE AGAINST THE INSURED DURING THE NON-PRACTICING REPORTING PERIOD purchased by the Insured shall not exceed the amount(s) stated in the applicable schedule for "each claim"; and

(b) Subject to the limits of liability for "each claim," the liability of the Company for all claims FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD INCLUDING THE NON-PRACTICING REPORTING PERIOD shall not exceed the amount(s) stated in the schedule below as "policy aggregate."

If any "aggregate" or "policy aggregate" limit of liability becomes exhausted by payment of claims expenses, judgments and/or settlements, this policy, including the Non-Practicing Reporting Period, may be cancelled by the Company. The Company also shall not be obligated to defend or continue to defend any claim for which the applicable "aggregate" or "policy aggregate" has been exhausted by payment of claims expenses, judgments or settlements.

V (SCHEDULE)

- 1. \$100,000 each claim/\$300,000 aggregate, then Column I of the following schedule applies.
- 2. \$200,000 each claim/\$600,000 aggregate, then Column II of the following schedule applies.
- 3. Other than those indicated in I or II, then such limits as shown in the Declarations shall also apply during the total Non-Practicing Reporting Period purchased and the "aggregate" limit shall be deemed the "policy aggregate" as referred to in subparagraph (b) above.

	Effective as of and applicable to CLAIMS FIRST MADE AGAINST THE INSURED DURING		
	I	II	
A. Each Claim:	\$100,000	\$ 200,000	First 12 month period immediately following expiration, if a 12 month extension is purchased;
Policy Aggregate:	300,000	600,000	
B. Each Claim:	110,000	220,000	Second 12 month period immediately following expiration, if a 24 month extension is purchased (Also subject to A);
Policy Aggregate:	350,000	600,000	
C. Each Claim:	120,000	240,000	Third 12 month period immediately following expiration, if a 36 month extension is purchased (Also subject to A and B);
Policy Aggregate:	400,000	600,000	
D. Each Claim:	130,000	260,000	Fourth 12 month period immediately following expiration;
Policy Aggregate:	500,000	600,000	
Each Claim:	140,000	280,000	and thereafter, if the unlimited extension is purchased (Also subject to A, B and C).
Policy Aggregate:	500,000	600,000	

VI. Exercising The Options: As a condition precedent to the Insured's right to exercise these options, the full annual premium of this policy and any deductibles that are due must have been paid. Neither the Optional Reporting Period nor the Non-Practicing Reporting Period shall be available when any Insured's license or right to practice his profession is revoked, suspended by or surrendered at the request of any regulatory authority.

The Insured's right to purchase any extension option must be exercised by notice in writing not later than thirty (30) days after the cancellation or termination date of this policy. Effective notice must indicate the total extension period desired **AND MUST INCLUDE PAYMENT OF PREMIUM FOR SUCH EXTENSION PERIOD** as well as all deductibles due the Company.

If such notice, premium and deductible payment are not so given to the Company, the Insured shall not at a later date be able to exercise such rights.

Section C – Exclusions

I. This policy does not apply:

(a) to any judgement or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the Insured;

(b) to any claim made by or against any business enterprise not named in the Declarations which is owned by the Insured or in which the Insured is a partner or employee, or which is controlled, operated or managed by the Insured, either individually or in a fiduciary capacity, including the ownership, maintenance or use of any property in connection therewith, or to any claim made against the Insured solely because the Insured is a partner, officer, director, stockholder employee or employee of any firm or corporation not named in the Declarations;

(c) to liability arising out of the Insured's services and/or capacity as:

1) an officer, director, partner, trustee, or employee of a business enterprise or charitable organization or pension, welfare, profit sharing, mutual or investment fund or trust;

2) a public official, or an employee of a governmental body, subdivision, or agency;

3) a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto, except if an Insured is deemed to be a fiduciary solely by reason of legal advice rendered with respect to an employee benefit plan;

(d) to any liability for bodily injury, sickness, disease or death of any person, or injury to or destruction of any tangible property or loss of use resulting therefrom;

(e) to any claims arising out of notarized certification or acknowledgement of a signature without the physical appearance before such notary public as Insured hereunder of the person who is or claims to be the person signing said instrument;

(f) to any claim made by a present, former or prospective partner, officer, director, stockholder employee or employee of the Insured unless such claim arises out of the professional services of the Insured in a lawyer-client relationship except as otherwise excluded under Exclusion (h);

(g) to any claim based upon or arising out of discrimination by the Insured on the basis of race, creed, age, sex or marital status;

(h) to any claim based upon or arising out of the work performed by the Insured, with or without compensation, with respect to any corporation, fund, trust, association, partnership, limited partnership, business enterprise or other venture, be it charitable or otherwise, of any kind or nature in which any Insured has any pecuniary or beneficial interest, irrespective of whether or not an attorney-client relationship exists, unless such entity is named in the Declarations. For purposes of this policy, ownership or shares in a corporation shall not be considered a "pecuniary or beneficial interest" unless one Named Insured or members of the immediate family of the Named Insured own(s) 10% of the issued and outstanding shares of such corporation;

(i) to any claim for property damage arising out of Insured's act, error or omission while acting as attorney, officer, director, partner, trustee or employee of a business enterprise which is liable or may be held liable for the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon

land, the atmosphere or any water course or body of water.

II. Waiver of Exclusion and Breach of Conditions:

Whenever coverage under any provision of this policy would be excluded, suspended or lost

(a) because of exclusion (a) relating to any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, malicious or deliberately wrongful acts or omissions by any Insured, or

(b) because of noncompliance with Section F CLAIMS I. NOTICE OF CLAIMS relating to the giving of notice to the Company with respect to which any other Insured shall be in default solely because of the default or concealment of such default by one or more partners or employees responsible for the loss or damage otherwise insured hereunder,

the Company agrees that such insurance as would otherwise be afforded under this policy shall apply with respect to each and every Insured who did not personally commit or personally participate in committing one or more of the acts, errors or omissions described in any such exclusion or condition; provided that if the condition be one with which such Insured can comply, after receiving knowledge thereof, the Insured entitled to the benefit of the Waiver of Exclusions and Breach of Conditions shall comply with such condition promptly after obtaining knowledge of the failure of any other Insured or employee to comply therewith. However, related acts, errors or omissions shall be treated as a single claim, and suits brought by more than one person or organization shall not operate to increase the Company's limit of liability.

With respect to provision II. (a) above, the Company's obligation to pay in the event of such waiver shall be in excess of the deductible and in the excess of the full extent of any assets in the firm of any Insured who is not a beneficiary to the waiver.

Section D — Territory

The insurance afforded applies worldwide.

Section E — Limits of Liability

I. Limits of Liability — Each Claim: The liability of the Company for each claim FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD, including the Optional Reporting Period, if such is purchased, shall not exceed the amount stated in the Declaration for each claim, and shall include

all claim expenses. If the limits of liability are exhausted prior to settlement or judgment of any pending claim or suit, the Company shall have the right to withdraw from the further investigation or defense thereof by tendering control of such investigation or defense to the Insured, and the Insured agrees, as a condition to the issuance of this policy, to accept such tender.

II. Limits of Liability/Aggregate: Subject to Section E I. LIMITS OF LIABILITY — EACH CLAIM, the liability of the Company shall not exceed the amount stated in the Declarations as aggregate as a result of all claims FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD including the Optional Reporting Period, if such is purchased.

III. Deductible: The deductible amount stated in the Declarations shall be paid by the Named Insured and shall be applicable to all damages and claim expenses, for each and every claim, whether or not loss payment is made for claims first made during the policy period. The deductible shall be deemed to be applied first to the damages and/or claim expenses.

If the Optional Reporting Period is purchased, the deductible will be applicable in the full amount shown in the Declarations and shall be applicable to all damages and claim expenses, for each and every claim whether or not loss payment is made, for all claims first made during the Optional Reporting Period.

Such amounts shall upon written demand by the Company be paid by the Named Insured within thirty (30) days regardless of the number of claims first made during the policy period.

The determination of the Company as to the reasonableness of the claim expenses shall be conclusive on the Named Insured.

IV. Multiple Insureds, Claims and Claimants: The inclusion herein of more than one Insured or the making of claims or the bringing of suits by more than one person or organization shall not operate to increase the Company's limit of liability. Related acts, errors or omissions shall be treated as a single claim. All such claims, whenever made, shall be considered first made during the policy period or optional Reporting Period in which the earliest claim arising out of such act, error or omission was first made, and all such claims shall be subject to the same limits of liability.

V. Payment and Apportionment of Claim Expenses: All claim expenses shall first be

subtracted from the limit of liability with the remainder, if any, being the amount available to pay as damages. If the limits of liability are exhausted prior to settlement or judgment of any pending claim or suit, the Company shall have the right to withdraw from the further investigation or defense thereof by tendering control of such investigation or defense to the Insured, and the Insured agrees, as a condition to the issuance of this policy, to accept such tender.

Claim expenses, whenever used in this policy, means:

- (a) fees charged by any lawyer designated by the Company;
- (b) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a claim, if incurred by the Company.

However, "claim expenses" does not include salary charges of regular employees or of the officials of the Company or any supervisory counsel retained by the Company.

Section F — Claims

I. Notice of Claims: As a condition precedent to the right to the protection afforded by this insurance, the Insured shall, as soon as practicable, give to the Company written notice of any claim made against the Insured.

In the event suit is brought against the Insured, the Insured shall immediately forward to the Company every demand notice, summons or other process received directly or by the Insured's representatives.

II. Assistance and Cooperation of the Insured: The Insured shall cooperate with the Company and upon the Company's request shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials, and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits, as well as in the giving of a written statement or statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense, all without charge to the Company. The Insured shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment which the Insured may have. The Insured shall exercise the Insured's right to either reject or demand the arbitration of any claim made against the Insured in accordance with the written instructions of the

Company. The Insured shall not, except at the Insured's own cost, make any payment, admit any liability, settle any claims, assume any obligation or incur any expense without the written consent of the Company.

III. Subrogation: In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization, and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing to prejudice such rights.

The Company shall not exercise any such rights against any persons, firms or corporations included in the definition of Insured. Notwithstanding the foregoing, however, the Company reserves the right to exercise any rights of subrogation against an Insured with respect to any claim brought about or contributed to by the intentional, dishonest, fraudulent, criminal or malicious act or omission of such Insured.

Any amount so recovered shall be apportioned as follow:

Any recovery shall first be used for the repayment of expenses incurred toward subrogation; second, to loss and/or claim expenses paid by the Company; third, to any loss and expense payment by the Insured in excess of any deductible(s); fourth, to any loss and expense payments by an excess carrier on behalf of the Insured; fifth, to any loss and expense payments by any primary carrier on behalf of the Insured; and last, to repayment of the Insured's deductible.

IV. Action Against the Company: No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been fully and finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the Claimant and the Company.

Nothing contained in this policy shall give any person or organization the right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

V. False or Fraudulent Claims: If any Insured shall commit fraud in proffering any claim as regards

amount or otherwise, this insurance shall become void as to such Insured from the date such fraudulent claim is proffered.

Section G — Conditions

I. Application: By acceptance of this policy, the Insured agrees that the statements in the application are personal representations, that they shall be deemed material and that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the Insured and the Company, or any of its agents, relating to this insurance.

II. Other Insurance: Subject to the limitation of coverage as set forth in Section B COVERAGE I. (b) for prior insurance, and Section B COVERAGE V. for insurance procured subsequent to termination of practice, this insurance shall be in excess of the amount of the applicable deductible of this policy and any other valid and collectible insurance available to the Insured whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the limits of liability provided in the policy.

III. Changes: Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Company shall not affect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of the policy, nor shall the terms of the policy be waived or changed, except by written endorsement issued to form a part of this policy.

IV. Assignment: Assignment of interest under this policy shall not bind the Company unless its consent is endorsed in writing hereon.

V. Cancellations: This policy may be cancelled by the Named Insured by surrender thereof to the

Company or by mailing to the Company written notice stating when thereafter such cancellation shall be effective. If cancelled by the Insured, the Company shall retain the customary short rate proportion of the premium.

This policy may be cancelled by the Company by mailing to the Named Insured in the Declarations written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. Such notice shall be conclusive on all Named Insureds.

However, if the Company cancels the policy because the Insured has failed to pay a premium or deductible when due, this policy may be cancelled by the Company by mailing a written notice of cancellation to the Insured stating when not less than ten (10) days thereafter such cancellation shall be effective. The mailing of notice as aforementioned shall be sufficient notice and the effective date of cancellation stated in any notices shall become the end of the policy period. Delivery of such written notice by the Named Insured or the Company shall be the equivalent to mailing.


If cancelled by the Company, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

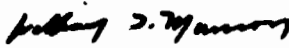
Definitions-Reference

Certain words are specifically defined for the policy and the definitions are to be found in the sections set forth below:


- (a) Claim, damages, policy period — see Section B COVERAGE I.
- (b) Claim expenses — see Section E LIMITS OF LIABILITY V.

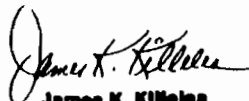
IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the Company.



James J. Meenaghan
President
THE HOME INSURANCE COMPANY
OF WISCONSIN


William L. Munson
President
THE HOME INDEMNITY COMPANY


F. A. Mina
President
CITY INSURANCE COMPANY


Arthur Phillips
President
THE HOME INSURANCE COMPANY
OF INDIANA
THE HOME INSURANCE COMPANY
OF ILLINOIS


James K. Killilea
Secretary
THE HOME INSURANCE COMPANY
THE HOME INDEMNITY COMPANY
CITY INSURANCE COMPANY


Mark L. Gardner
Secretary
THE HOME INSURANCE COMPANY
OF INDIANA
THE HOME INSURANCE COMPANY
OF ILLINOIS

**Removal Of Pollution Exclusion
Amendatory Endorsement**
Lawyers Professional Liability Insurance

In consideration of the premium charged, it is hereby understood and agreed that Exclusion (i) of Section C - Exclusions is deleted in its entirety.

All other policy terms and conditions remain unchanged.

Mandatory Cancellation And Renewal Provisions New York

In consideration of the premium charged, it is hereby understood and agreed that the following cancellation and renewal provisions shall apply to the policy:

Section 1 Cancellation during first sixty days. During the first sixty days of the first year that this policy shall be in effect, no cancellation shall become effective until twenty days after written notice is mailed to the Named Insured by the Company at the mailing address shown in the policy, unless such cancellation is due to the reasons specified in paragraphs (a) and (b) of Section 2 of this endorsement.

Section 2 Cancellation after sixty days. After this policy shall have been in effect for sixty days, no notice of cancellation by the Company shall be effective until fifteen days after notice is mailed or delivered to the Named Insured at the address shown in the policy and to the Insured's authorized agent or broker. Such cancellation may be only for one or more of the following reasons:

- (a) (i) nonpayment of premium;
- (ii) conviction of any Insured of a crime arising out of acts increasing the hazard insured against;
- (iii) discovery of fraud or material misrepresentation in the application for the policy or in the presentation of a claim thereunder;
- (iv) after issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;
- (v) material physical change in the property insured, occurring after issuance or last renewal of the policy, which results in the property becoming uninsurable in accordance with the Company's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal of the policy, which causes the risk of loss to be substantially and materially increased beyond

that contemplated at the time the policy was issued or last renewed;

- (vi) cancellation is required pursuant to a determination by the Superintendent of Insurance that continuation of the present premium volume of the Company would jeopardize the Company's solvency or be hazardous to the interests of policyholders of the Company, its creditors or the public;
- (vii) a determination by the Superintendent of Insurance that the continuation of the policy would violate, or would place the Company in violation of, any provision of the Insurance Law;
- (viii) where the Company has reason to believe, in good faith and with sufficient cause, that there is a probable risk or danger that the Insured will destroy, or permit to be destroyed, the Insured property for the purpose of collecting the insurance proceeds.

- (b) If this policy is a professional liability insurance policy, in addition to the basis for cancellation set forth in paragraph (a), the Company shall have the right to cancel this policy in the event of revocation or suspension of Insured's license to practice his profession.

Section 3 Nonrenewal of this policy by the Company.

- (a) This policy shall remain in full force and effect pursuant to the same terms, conditions and rates unless a written notice is mailed or delivered to the Named Insured by the Company, and to its authorized agent or broker, indicating the Company's intention:
 - (i) not to renew the policy;
 - (ii) to condition its renewal upon change of limits, change in type of coverage, reduction of coverage, increased deductible or addition of any exclusion, or upon increased premiums in excess of ten percent; or
 - (iii) that the policy will not be renewed or will not be renewed upon the same terms, conditions or rates; such alternative renewal notice will advise the Insured that a second notice shall be mailed or delivered

at a later date indicating the Company's intention as specified in subsection (i) or (ii) of this paragraph and that coverage shall continue on the same terms, conditions and rates as the expiring policy, until the later of the expiration date or sixty days after the second notice is mailed or delivered.

- (b) Any notice as described above shall contain the specific reason or reasons for nonrenewal or conditional renewal, and shall set forth the amount of any premium increase and the nature of any other pro-

posed changes. Such notice shall be mailed or delivered at least sixty but not more than one hundred twenty days in advance of the end of the policy period.

- (c) This section shall not apply if the Named Insured, or any agent or broker authorized by the Named Insured, or another insurer of the Named Insured, mails or delivers written notice to the Company that the policy has been replaced or is no longer required.

Extended Reporting Periods - Lawyers Professional Liability Insurance

In consideration of the premium charged, it is hereby understood and agreed that Section B, Coverage, is amended by deleting Paragraphs IV and VI thereof and the following substituted in their place:

IV. Extended Reporting Periods

A. Automatic Extended Reporting Period

If the policy shall be cancelled by the Company or by the Named Insured, or if the Company or the Named Insured shall not renew the policy for any reason, or if the Company shall offer a conditional renewal under terms and conditions less favorable to the Named Insured than those in the policy, the Named Insured shall be entitled to an Automatic Extended Reporting period of 60 days from the end of the policy period subject otherwise to the terms and conditions of the policy, but only by reason of any act, error or omission in professional services rendered before such effective termination date and otherwise covered by the policy. This Extended Reporting Period may not be cancelled by the Company and does not require the payment of an additional premium.

B. Optional Extended Reporting Periods

If the policy shall be cancelled by the Company or by the Named Insured, or if the Company or the Named Insured shall not renew the policy for any reason, or if the Company shall offer a conditional renewal under terms and conditions less favorable to the Named Insured than those in the policy, the Named Insured shall have the option, upon payment of the applicable premium, to purchase an Extended Reporting Period, subject otherwise to the terms and conditions of the policy, but only by reason of any act, error or omission in professional services rendered before such effective termination date and otherwise covered by the policy.

The extension of coverage for claims made subsequent to termination of the policy shall be endorsed thereto if purchased, and shall hereinafter be referred to as the Optional Reporting Period.

The insurance provided by the Optional Reporting Period will be excess over any other valid and collectible insurance available to the Named Insured whether primary, excess, contingent or on any other basis the policy period of which begins or continues after the endorsement amending this policy to include an Optional Reporting Period first takes effect.

C. Premium for Optional Extended Reporting Periods

The Named Insured may elect to purchase either a 12 month, a 24 month or a 36 month Optional Extended Reporting Period. The premium for the Optional Extended Reporting Period elected by the Insured shall be (a) 100% for 12 MONTHS, (b) 150% for 24 MONTHS, or (c) 185% for 36 MONTHS, of the full annual premium of the policy.

In the event the Named Insured elects a 36 month Optional Extended Reporting Period, but not otherwise, after the 36 month Optional Extended Reporting Period has expired, the Company will offer the Named Insured a renewal of such Optional Extended Reporting Period for an additional 12 months, which the Named Insured may thereafter renew annually. The premium for such renewal shall be determined by the Company in accordance with rates in effect at each annual renewal date. In the event the Named Insured elects not to renew the Optional Extended Reporting Period at any anniversary

thereof, then the Company shall have no obligation to offer the Named Insured any subsequent renewal.

D. Limits of Coverage Under the Extended Reporting Periods

The coverage under the Automatic and Optional Extended Reporting Periods shall be as follows:

- (i) if the policy has been in effect three years or more at the date of termination, the aggregate limit of indemnity shall be equal to the annual aggregate limit of the policy immediately prior to the date of termination.
- (ii) if the policy has been in effect less than three years at the date of termination, the aggregate limit of indemnity shall be the greater of the amount of coverage remaining under the policy aggregate immediately prior to its termination, or fifty percent (50%) of the aggregate limit of the policy immediately prior to the date of termination.

E. Section Not Applicable To Cancellation for Non-Payment of Premium During First Year of Coverage

This Paragraph IV, Extended Reporting Periods, and the rights granted herein to the Named Insured, shall not apply in the event of cancellation resulting from non-payment of premium during the first year the policy shall be in effect.

VI. Exercising The Options

Within thirty (30) days of termination of coverage under the policy, the Company shall advise the Named Insured in writing of the availability of, the premium for, and the importance to the Named Insured, of purchasing either the Optional Reporting Period or the Non-Practicing Reporting Period. The Non-Practicing Reporting Period shall be available as an alternative to the Optional Reporting Period only if the Named Insured shall have retired or otherwise ceased the private practice of law during the policy period. If cancellation or non-renewal is initiated by the Company such written notice shall be included in the notice of cancellation or non-renewal. The right to any Extended Reporting Period shall terminate, however, unless written notice of such election together with the premium due is received by the Company within sixty (60) days after the effective date of termination or non-renewal.

**Insolvency Or Bankruptcy
Of The Insured**

H36876D
Ed. 11-86

In consideration of the premium charged, it is hereby understood and agreed that the following provisions shall apply:

The insolvency or bankruptcy of the Insured, or the insolvency of his estate if the Insured is a natural person, shall not release the Company from liability for the payment of damages for claims made during the life of this policy or any Extended Reporting Period, for injury sustained or loss occasioned within the coverage of this policy.

Regulation 107 Lawyers Professional Liability Amendatory Endorsement New York

In consideration of the premium charged, it is hereby understood and agreed that **Section E - Limits Of Liability** is amended as follows:

Provision I is deleted and replaced in its entirety by the following:

I. Limits of Liability - Each Claim

- (a) **For Policies With Liability Limits Of Less Than \$2,000,000. Per Claim** - the stated limits of liability may not be reduced by any claims expenses incurred by the Company, nor may such claims expenses be applied against the deductible amount stated in the Declarations.
- (b) **For Policies With Liability Limits Of \$2,000,000. Or More Per Claim** - claims expenses charged against the stated limits of liability shall not exceed fifty percent (50%) of such limits and the Company shall assume any and all claims expenses over this amount.

The liability of the Company for each claim **First Made Against The Insured And Reported To The Company During The Policy Period**, including the Optional Reporting Period if such is purchased, shall not exceed the amount stated in the Declarations for each claim.

Provision II is amended by the addition of the following sentence to the end thereof:

If the aggregate limits of liability are exhausted prior to settlement or judgment of any pending claim or suit, the Company shall have the right to withdraw from further investigation or defense thereof by tendering control of such investigation or defense to the Insured, and the Insured agrees, as a condition to the issuance of this policy, to accept such tender.

Provision III is deleted and replaced in its entirety by the following:

III. Deductible:

- (a) **For Policies With Liability Limits Of Less Than \$2,000,000. Per Claim** - the deductible amount stated in the Declarations shall be paid by the Named Insured and shall be applicable to all damages, for each and every claim.

If the Optional Reporting Period is purchased, the deductible will be applicable in the full amount shown in the Declarations and shall be applicable to all damages, for each and every claim.

- (b) **For Policies With Liability Limits Of \$2,000,000. Or More Per Claim** - the deductible amount stated in the Declarations shall be paid by the Named Insured and shall be applicable to all damages and claims expenses, for each and every claim, whether or not loss payment is made for claims first made during the policy period. However, claims expenses assumed by or charged to the Named Insured shall not exceed fifty percent (50%) of the deductible amount per claim stated in the Declarations. Subject to the Named Insured's obligation to pay expenses as set forth in Provision I (b) of this Section, the Company shall assume any claims expenses in excess of this amount.

If the Optional Reporting Period is purchased, the deductible will be applicable in the full amount shown in the Declarations and shall be applicable to all damages and claims expenses, subject to the fifty percent (50%) limitation described herein, for each and every claim first made during the Optional Reporting Period whether or not loss payment is made.

Comm. 19-2 %

Date Prepared
10/28/91

Endorsement No.
1

General Purpose Endorsement

Issued By

The Home Insurance Company

City Insurance Company

The Home Indemnity Company

The Home Insurance Company of Indiana

ATTACH

Policy Number LPL-F869807-0	Certificate Number	Named Insured KELNER & KELNER	
Producer BERTHOLON-ROWLAND CORP		Producer No. - OPC 39754 351	
Policy Period:	Inception (Month-Day-Year) 12/10/91	Expiration (Month-Day-Year) 12/10/93	Effective Date and Time of Endorsement 12/10/91

It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged

In consideration of the premium paid, it is hereby understood and agreed that R36877 4/89, 107 Endorsement is added to Item 7 of the declarations page.

Continued on Page 2

Additional Premium	Total Additional Premium	Pro Rate of	Additional Premium Due at Endorsement Effective Date
Return Premium	Total Return Premium	Pro Rate or Short Rate of	Return Premium Due at Endorsement Effective Date

Premium Adjustments If the Premium is Payable in Installments or Cycle Billing:

BB	Dates Due	Present Installment	Increase	Decrease	Revised Installment
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
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		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$

Signature of Authorized Representative	PDE Folder Number	Date
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General Purpose Endorsement

Date Prepared	Comm. 19.2 %
11/23/92	Endorsement No. 2

Issued By

The Home Insurance Company
 City Insurance Company
 The Home Indemnity Company
 The Home Insurance Company of Indiana

Policy Number	Certificate Number	Named Insured	
LPL-7869887		KELNER & KELNER	
Producer		Producer No. - OPC	
BERTHOLOM ROWLAND CORP.		39754 351	
Policy Period:	Inception (Month-Day-Year)	Expiration (Month-Day-Year)	Effective Date and Time of Endorsement
	12/10/92	12/10/93	12/10/92 12:01 am

It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged

It is hereby understood and agreed that attorney Rita Dave, is added to the policy.

Revised Second Year Premium \$23,457.00

Revised Total Number of attorneys 7

Renewed looked 12/92

11 25 92

PLUM

Continued on Page 2

Additional Premium	Total Additional Premium	Pro Rate Of	Additional Premium Due at Endorsement Effective Date
	\$1978.00	100%	
Return Premium	Total Return Premium	Pro Rate or Short Rate of	Return Premium Due at Endorsement Effective Date

Premium Adjustments if the Premium is Payable in Installments or Cycle Billing:

Dates Due	Present Installment	Increase	Decrease	Revised Installment
	\$	\$	\$	\$
	\$	\$	\$	\$
AC	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
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	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$

Signature of Authorized Representative	PDE Folder Number	Date
	1030	DEC 17 1992



THE HOME INSURANCE COMPANIES

Non-Premium Endorsement

To Item 6, Premium, of the Declarations Page
Two Year Lawyers Professional Liability Policy — New York

H37825F
Ed. 3-89

Name Insured	Policy Number	Endorsement Number	Effective Date
KELNER & KELNER	LPL FB69807-0		10-Dec-1991

In consideration of the premium paid, Item 6, Premium, of the Declarations page is deleted and replaced by the following:

Item 6. Premium

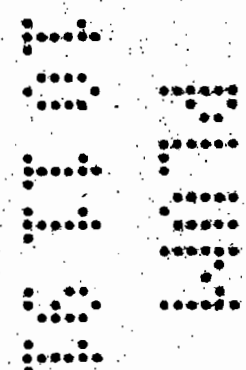
\$ 21,525.00 First Installment Premium due at inception for the first twelve month term of the policy period based upon ⁶ attorney(s).

\$ 21,525.00 Total Premium, Taxes and Surcharges for the first twelve month term of the policy period.

\$ 21,525.00 Estimated Second Installment Premium due at anniversary 10-Dec-1992 for the second twelve month term of the policy period based upon ⁶ attorney(s). This installment is subject to the company's right to charge additional premium for any increase in the Company's exposure resulting from the progression of the claims-made relationship. Also, this installment is subject to the Company's right to return premium or charge additional premium as a result of changes in the number of lawyers, areas of practice, or applicable laws.

\$ 21,525.00 Total Premium, Taxes and Surcharges for the second twelve month term of the policy.

\$ 43,050.00 Estimated Total Premium, Taxes and Surcharges for the entire two year policy period.



THE HOME INSURANCE COMPANIES

**Insolvency Or Bankruptcy
Of The Insured**

**H36876D
Ed. 11-86**

In consideration of the premium charged, it is hereby understood and agreed that the following provisions shall apply:

The insolvency or bankruptcy of the Insured, or the insolvency of his estate if the Insured is a natural person, shall not release the Company from liability for the payment of damages for claims made during the life of this policy or any Extended Reporting Period, for injury sustained or loss occasioned within the coverage of this policy.

THE HOME INSURANCE COMPANIES

**Notice To Agent As
Notice To The Company**

**H38878D
Ed. 11-86**

In consideration of the premium charged, it is hereby understood and agreed that where the terms and conditions of the policy require that notice be given to the Company, notice given by or on behalf of the Insured, or written notice by or on behalf of the injured person or any other claimant, to any licensed agent of the Company in the State of New York, with particulars sufficient to identify

the Insured, shall be deemed notice to the Company. Failure to give any notice required to be given within the time prescribed in the policy shall not invalidate any claim made by the Insured or by any other claimant if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and notice was given as soon as was reasonably possible.

Mandatory Cancellation And Renewal Provisions New York

In consideration of the premium charged, it is hereby understood and agreed that the following cancellation and renewal provisions shall apply to the policy:

Section 1 Cancellation during first sixty days. During the first sixty days of the first year that this policy shall be in effect, no cancellation shall become effective until twenty days after written notice is mailed to the Named Insured by the Company at the mailing address shown in the policy, unless such cancellation is due to the reasons specified in paragraphs (a) and (b) of Section 2 of this endorsement.

Section 2 Cancellation after sixty days. After this policy shall have been in effect for sixty days, no notice of cancellation by the Company shall be effective until fifteen days after notice is mailed or delivered to the Named Insured at the address shown in the policy and to the Insured's authorized agent or broker. Such cancellation may be only for one or more of the following reasons:

- (a) (i) nonpayment of premium;
- (ii) conviction of any Insured of a crime arising out of acts increasing the hazard insured against;
- (iii) discovery of fraud or material misrepresentation in the application for the policy or in the presentation of a claim thereunder;
- (iv) after issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;
- (v) material physical change in the property insured, occurring after issuance or last renewal of the policy, which results in the property becoming uninsurable in accordance with the Company's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal of the policy, which causes the risk of loss to be substantially and materially increased beyond

that contemplated at the time the policy was issued or last renewed;

(vi) cancellation is required pursuant to a determination by the Superintendent of Insurance that continuation of the present premium volume of the Company would jeopardize the Company's solvency or be hazardous to the interests of policyholders of the Company, its creditors or the public;

(vii) a determination by the Superintendent of Insurance that the continuation of the policy would violate, or would place the Company in violation of, any provision of the Insurance Law;

(viii) where the Company has reason to believe, in good faith and with sufficient cause, that there is a probable risk or danger that the Insured will destroy, or permit to be destroyed, the Insured property for the purpose of collecting the insurance proceeds.

- (b) If this policy is a professional liability insurance policy, in addition to the basis for cancellation set forth in paragraph (a), the Company shall have the right to cancel this policy in the event of revocation or suspension of Insured's license to practice his profession.

Section 3 Nonrenewal of this policy by the Company.

- (a) This policy shall remain in full force and effect pursuant to the same terms, conditions and rates unless a written notice is mailed or delivered to the Named Insured by the Company, and to its authorized agent or broker, indicating the Company's intention:
 - (i) not to renew the policy;
 - (ii) to condition its renewal upon change of limits, change in type of coverage, reduction of coverage, increased deductible or addition of any exclusion, or upon increased premiums in excess of ten percent; or
 - (iii) that the policy will not be renewed or will not be renewed upon the same terms, conditions or rates; such alternative renewal notice will advise the Insured that a second notice shall be mailed or delivered

at a later date indicating the Company's intention as specified in subsection (i) or (ii) of this paragraph and that coverage shall continue on the same terms, conditions and rates as the expiring policy, until the later of the expiration date or sixty days after the second notice is mailed or delivered.

- (b) Any notice as described above shall contain the specific reason or reasons for nonrenewal or conditional renewal, and shall set forth the amount of any premium increase and the nature of any other pro-

posed changes. Such notice shall be mailed or delivered at least sixty but not more than one hundred twenty days in advance of the end of the policy period.

- (c) This section shall not apply if the Named Insured, or any agent or broker authorized by the Named Insured, or another insurer of the Named Insured, mails or delivers written notice to the Company that the policy has been replaced or is no longer required.



THE HOME INSURANCE COMPANIES

Extended Reporting Periods - Lawyers Professional Liability Insurance

Endorsement No.

This endorsement, effective

forms a part of policy number

issued to

by

In consideration of the premium charged, it is hereby understood and agreed that Section B, Coverage, is amended by deleting Paragraphs IV and VI thereof and the following substituted in their place:

IV. Extended Reporting Periods

A. Automatic Extended Reporting Period

If the policy shall be cancelled by the Company or by the Named Insured, or if the Company or the Named Insured shall not renew the policy for any reason, or if the Company shall offer a conditional renewal under terms and conditions less favorable to the Named Insured than those in the policy, the Named Insured shall be entitled to an Automatic Extended Reporting period of 90 days from the end of the policy period subject otherwise to the terms and conditions of the policy, but only by reason of any act, error or omission in professional services rendered before such effective termination date and otherwise covered by the policy. This Extended Reporting Period may not be cancelled by the Company and does not require the payment of an additional premium.

B. Optional Extended Reporting Periods

If the policy shall be cancelled by the Company or by the Named Insured, or if the Company or the Named Insured shall not renew the policy for any reason, or if the Company shall offer a conditional renewal under terms and conditions less favorable to the Named Insured than those in the policy, the Named Insured shall have the option,

upon payment of the applicable premium, to purchase an Extended Reporting Period, subject otherwise to the terms and conditions of the policy, but only by reason of any act, error or omission in professional services rendered before such effective termination date and otherwise covered by the policy.

The extension of coverage for claims made subsequent to termination of the policy shall be endorsed thereto if purchased, and shall hereinafter be referred to as the Optional Reporting Period.

The insurance provided by the Optional Reporting Period will be excess over any other valid and collectible insurance available to the Named Insured whether primary, excess, contingent or on any other basis the policy period of which begins or continues after the endorsement amending this policy to include an Optional Reporting Period first takes effect.

C. Premium for Optional Extended Reporting Periods

The Named Insured may elect to purchase either a 12 month, a 24 month or a 36 month Optional Extended Reporting Period. The premium for the Optional Extended Reporting Period

elected by the Insured shall be (a) 100% for 12 MONTHS, (b) 150% for 24 MONTHS, or (c) 185% for 36 MONTHS, of the full annual premium of the policy.

In the event the Named Insured elects a 36 month Optional Extended Reporting Period, but not otherwise, after the 36 month Optional Extended Reporting Period has expired, the Company will offer the Named Insured a renewal of such Optional Extended Reporting Period for an additional 12 months, which the Named Insured may thereafter renew annually. The premium for such renewal shall be determined by the Company in accordance with rates in effect at each annual renewal date. In the event the Named Insured elects not to renew the Optional Extended Reporting Period at any anniversary thereof, then the Company shall have no obligation to offer the Named Insured any subsequent renewal.

D. Limits of Coverage Under the Extended Reporting Periods

The coverage under the Automatic and Optional Extended Reporting Periods shall be as follows:

- (i) If the policy has been in effect three years or more at the date of termination, the aggregate limit of indemnity shall be equal to the annual aggregate limit of the policy immediately prior to the date of termination.
- (ii) If the policy has been in effect less than three years at the date of termination, the aggregate limit of indemnity shall be the greater of

the amount of coverage remaining under the policy aggregate immediately prior to its termination, or fifty percent (50%) of the aggregate limit of the policy immediately prior to the date of termination.

E. Section Not Applicable To Cancellation for Non-Payment of Premium During First Year of Coverage

This Paragraph IV, Extended Reporting Periods, and the rights granted herein to the Named Insured, shall not apply in the event of cancellation resulting from non-payment of premium during the first year the policy shall be in effect.

VI. Exercising The Options

Within thirty (30) days of termination of coverage under the policy, the Company shall advise the Named Insured in writing of the availability of, the premium for, and the importance to the Named Insured, of purchasing either the Optional Reporting Period or the Non-Practicing Reporting Period. The Non-Practicing Reporting Period shall be available as an alternative to the Optional Reporting Period only if the Named Insured shall have retired or otherwise ceased the private practice of law during the policy period. If cancellation or non-renewal is initiated by the Company such written notice shall be included in the notice of cancellation or non-renewal. The right to any Extended Reporting Period shall terminate, however, unless written notice of such election together with the premium due is received by the Company within sixty (60) days after the effective date of termination or non-renewal.

**Regulation 107 Lawyers Professional Liability
Amendatory Endorsement
New York**

In consideration of the premium charged, it is hereby understood and agreed that **Section E - Limits Of Liability** is amended as follows:

Provision I is deleted and replaced in its entirety by the following:

I. Limits of Liability - Each Claim

- (a) **For Policies With Liability Limits Of Less Than \$2,000,000. Per Claim** - the stated limits of liability may not be reduced by any claims expenses incurred by the Company, nor may such claims expenses be applied against the deductible amount stated in the Declarations.
- (b) **For Policies With Liability Limits Of \$2,000,000. Or More Per Claim** - claims expenses charged against the stated limits of liability shall not exceed fifty percent (50%) of such limits and the Company shall assume any and all claims expenses over this amount.

The liability of the Company for each claim **First Made Against The Insured And Reported To The Company During The Policy Period**, including the Optional Reporting Period if such is purchased, shall not exceed the amount stated in the Declarations for each claim.

Provision II is amended by the addition of the following sentence to the end thereof:

If the aggregate limits of liability are exhausted prior to settlement or judgment of any pending claim or suit, the Company shall have the right to withdraw from further investigation or defense thereof by tendering control of such investigation or defense to the Insured, and the Insured agrees, as a condition to the issuance of this policy, to accept such tender.

Provision III is deleted and replaced in its entirety by the following:

III. Deductible:

- (a) **For Policies With Liability Limits Of Less Than \$2,000,000. Per Claim** - the deductible amount stated in the Declarations shall be paid by the Named Insured and shall be applicable to all damages, for each and every claim.

If the Optional Reporting Period is purchased, the deductible will be applicable in the full amount shown in the Declarations and shall be applicable to all damages, for each and every claim.

- (b) **For Policies With Liability Limits Of \$2,000,000. Or More Per Claim** - the deductible amount stated in the Declarations shall be paid by the Named Insured and shall be applicable to all damages and claims expenses, for each and every claim, whether or not loss payment is made for claims first made during the policy period. However, claims expenses assumed by or charged to the Named Insured shall not exceed fifty percent (50%) of the deductible amount per claim stated in the Declarations. Subject to the Named Insured's obligation to pay expenses as set forth in Provision I (b) of this Section, the Company shall assume any claims expenses in excess of this amount.

If the Optional Reporting Period is purchased, the deductible will be applicable in the full amount shown in the Declarations and shall be applicable to all damages and claims expenses, subject to the fifty percent (50%) limitation described herein, for each and every claim first made during the Optional Reporting Period whether or not loss payment is made.

Such deductible amount shall upon written demand by the Company be paid by the Named Insured within thirty (30) days regardless of the number of claims first made during the policy period.

The determination of the Company as to the reasonableness of the claims expenses shall be conclusive on the Named Insured.

Provision V is deleted and replaced in its entirety by the following:

V. Payment and Apportionment of Claims Expenses:

- (a) **For Policies With Liability Limits Of Less Than \$2,000,000. Per Claim** - subject to the Named Insured's obligation to pay the deductible as set forth in Provision III (a) of this Section, which includes an obligation to pay loss payments, the Company shall pay all claims expenses in addition to the applicable limits of liability.
- (b) **For Policies With Liability Limits Of \$2,000,000. Or More Per Claim** - subject to the Named Insured's obligation to pay the deductible as set forth in Provision III (b) of this Section, claims expenses charged against the stated limits of liability stated in the Declara-

tions shall not exceed fifty percent (50%) of such limits. The balance of the stated limits of liability shall be the amount available to pay damages. The Company shall be responsible for paying all claims expenses which exceed fifty percent (50%) of the stated limits of liability.

Claims expenses, whenever used in this policy, means:

- (a) fees charged by any lawyer designated by the Company,
- (b) all other fees, costs and expenses resulting from the investigation, adjustments, defense and appeal of a claim, if incurred by the Company, and
- (c) fees charged by any lawyer designated by the Named Insured with the written consent of the Company.

However, "claims expenses" does not include salary charges of regular employees or of the officials of the Company or any supervisory counsel retained by the Company.

Nothing contained herein shall be held to vary, alter, waive or extend any of the Declarations, or Insuring Agreements, Exclusions, Conditions or Provisions of the policy, other than as stated herein.



THE HOME INSURANCE COMPANIES

**Removal Of Pollution Exclusion
Amendatory Endorsement
Lawyers Professional Liability Insurance**

In consideration of the premium charged, it is hereby understood and agreed that Exclusion (i) of Section C - Exclusions is deleted in its entirety.

All other policy terms and conditions remain unchanged.

**Two Year Lawyers Professional Liability Policy
Amendatory Endorsement**

In consideration of the premium charged, it is hereby understood and agreed that provision II., Firm Changes, of Section A - Insured, is amended by the addition of the following to the end thereof:

At the end of the first twelve month term of the Policy Period, the Company expressly reserves the right to charge additional premium or return premium for the second twelve month term of the Policy Period due to:

- a) **any changes** among owners, partners or stockholders, officers, lawyers or professional legal corporations or other employed professionals; or
- b) **any changes** in the areas or types of practice; or
- c) **any changes** in Federal or New York statutes or regulations, which relate to the policy or lawyers professional liability insurance, such that the Company determines that existing terms and conditions are inadequate.

As a condition precedent to the right to the protection afforded by this policy, the Insured represents that the information in (a) and (b) above will be reported to the Company immediately at the end of the first twelve month term of the Policy Period.

It is further understood and agreed that provisions IV. Options To Extend Claims Reporting Period, V. Option to Purchase Non-Practicing Reporting Period, and VI. Exercising The Options, of Section B - Coverage, are each respectively amended by the addition of the following:

The phrase "full annual premium" shall be construed to mean the First Installment Premium stated in the Declarations. However, in the event there are any changes in the information provided in the application, the Company expressly reserves the right to revise the Second Installment Premium as a result of such changes. If the Second Installment Premium is revised, then the phrase "full annual premium" shall be construed to mean the Second Installment Premium, which shall be determined and calculated by the Company at the commencement of the second twelve month term of the Policy Period.

It is further understood and agreed that provision II., Limits of Liability/Aggregate, of Section E - Limits of Liability, is deleted in its entirety and replaced by the following:

- II. **Limits of Liability/Aggregate:** Subject to provision I., LIMITS OF LIABILITY - EACH CLAIM, of this Section, the liability of the Company for each twelve month term of the Policy Period shall not exceed the amount stated in the Declarations as aggregate as a result of all claims FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING EACH SUCH TWELVE MONTH TERM OF THE POLICY PERIOD, including the Optional Reporting Period, if such is purchased.

Nothing contained herein shall be held to vary, alter, waive or extend any of the Declarations or Insuring Agreements, Exclusions, Conditions or Provisions of the policy other than as stated herein.



THE HOME INSURANCE COMPANIES

**Regulation 107 Statement
New York**

The following information is required only when this endorsement is issued subsequent to preparation of policy.

Named Insured	Policy Number	Endorsement Number	Effective Date
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I. Declination of the Triple Option

The Insured acknowledges that they were simultaneously offered and have declined all three options of purchasing a policy with liability limits, not subject to legal defense cost offset provisions, of \$500,000, \$750,000 and \$1,000,000.

II. Limits of Liability

The Insured further acknowledges that they are aware that the limit(s) of liability as stated in the Declarations shall be reduced by claims expenses incurred by the Company in connection with any claim or claims covered by the provisions of this policy. However, in no event shall the limit(s) of liability be reduced more than fifty percent (50%) by such claims expenses. The Company shall be liable for any claims expenses in excess of this amount, except for those applied against the deductible amount, as set forth below.

III. Deductible

The Insured further acknowledges that they are aware that the deductible amount stated in the Declarations shall be applicable to all damages and claims expenses, for each and every claim. However, claims expenses that are incurred shall be paid by the Insured to an amount equal to but not greater than fifty percent (50%) of the deductible. The Company shall be liable for any claims expenses in excess of this amount, except for those applied against the limit(s) of liability, as set forth above.

_____ Signature of Partner, Officer, or Sole Proprietor	_____ Title	_____ Date
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

MADELYN MILLER,

Plaintiff,

-against-

**JOSEPH KELNER and ROBERT KELNER,
Individually and as partners in
the law firm of KELNER & KELNER,
a New York State Partnership,
and KELNER & KELNER,**

Defendants.
_____X

SUMMONS

**Plaintiff's Address:
201 Varick Street
New York, NY 10014**

**Basis for Venue:
Residence of Defendants**

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the annexed Complaint of the plaintiff, MADELYN MILLER, and to serve copies of your Answer on the undersigned, ROBERT A. BLOOM, ESQ., attorney for plaintiff, MADELYN MILLER, within twenty (20) days after service of this Summons exclusive of the date of service, or within thirty (30) days after service is complete if service is made by any method other than personal delivery to you within the State of New York.

In case of your failure to answer the Complaint of the plaintiff, judgment will be taken against you upon default for the relief sought in the plaintiff's Complaint.

**Dated: November 18, 1992
New York, New York**

**Yours, etc.,
ROBERT A. BLOOM, ESQ.
Attorney for Plaintiff,
Wall Street Plaza
25th Floor
New York, New York 10005
(212) 363-3100**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

MADELYN MILLER,

Plaintiff,

COMPLAINT

-against-

**JOSEPH KELNER and ROBERT KELNER,
individually and as partners in
the law firm of KELNER & KELNER,
a New York State Partnership,
and KELNER & KELNER,**

Defendants.

**Plaintiff, by her attorneys, ROBERT A. BLOOM, ESQ., complaining of the
defendants, allege as follows:**

AS AND FOR A FIRST CAUSE OF ACTION

- 1. Plaintiff, MADELYN MILLER, at the commencement of this action is a
resident of the City of New York.**
- 2. Upon information and belief, at all times hereinafter mentioned, defendant,
JOSEPH KELNER, was a resident of Nassau County, New York.**
- 3. Upon information and belief, at all times hereinafter mentioned, defendant,
ROBERT KELNER, was a resident in Nassau County, New York,**
- 4. Upon information and belief, defendant, KELNER & KELNER, is a New York
State partnership engaged in the practice of law with offices in New York County and
Nassau County, New York, whose partners are defendants, JOSEPH KELNER and
ROBERT KELNER.**

5. On or about February, 1978, plaintiff retained defendants, JOSEPH KELNER, ROBERT KELNER, and the law firm of KELNER & KELNER, to prosecute a civil action to recover damages which arose from an assault on the plaintiff which occurred in March, 1975, at Stonybrook University.

6. Upon information and belief, a judgment after trial was rendered in favor of the plaintiff and against the State of New York in the New York State Court of Claims in the amount of \$25,000 on February 8, 1982.

7. Upon information and belief, the plaintiff filed an appeal from this judgment on the grounds of inadequacy and defendant, STATE OF NEW YORK, filed an appeal on the issue of liability.

8. Upon information and belief, the Appellate Division of the Supreme Court of the State of New York, Second Department, in an Order entered on September 6, 1983, ordered that the judgment on appeal be reversed without costs or disbursements and that the plaintiff's claim be dismissed.

9. Upon information and belief, the plaintiff appealed the said Order of the Appellate Division, Second Department to the Court of Appeals of the State of New York, which by a decision of June 14, 1984, reversed the Appellate Division, reinstated the judgment on liability and remitted the case to the Appellate Division, Second Department for proceedings on the issue of damages.

10. Upon information and belief, upon said remittal, the Appellate Division, Second Department rendered a decision on April 1, 1985, which modified the judgment entered in the Court of Claims on February 8, 1982, by increasing the award in favor of the plaintiff of \$25,000 to the principal sum of \$400,000.

11. Upon information and belief, on or about June 21, 1985, a judgment was entered in favor of the plaintiff against the State of New York, with costs and disbursements in the sum of \$402,143.75 and a certificate of no further appeal was issued on July 3, 1985.

12. Upon information and belief, as of April 1, 1985, when the Appellate Division, Second Department so modified the judgment entered in the Court of Claims Clerk's Office on February 8, 1982, the plaintiff was entitled to legal interest on the sum of \$400,000, from February 8, 1982, the date of the original judgment in favor of the plaintiff on liability.

13. Upon information and belief, the defendants realized that said interest was due from February 8, 1982 and without notifying the plaintiff or advising her of her rights to said interest, asserted said position both by means of letters to the Controller of New York State and by means of a Motion, dated March 3, 1986, made in the New York State Court of Claims.

14. Upon information and belief, the defendants Motion was denied because it was untimely brought since a judicial review of a controllers audit must be commenced within the four month period set forth in New York State CPLR 5217. Said motion was brought on March 3, 1986, which was more than four months from the controller's final determination, which was made on September 26, 1985.

15. Upon information and belief, the defendants effort to attain the proper interest for plaintiff was also denied because the Court lacked proper jurisdiction to grant relief requested since the proper procedure which would have been to file an

"Article 78" proceeding against the Controller of the State of New York , which procedure the defendants did not institute.

16. Solely as the result of the defendants negligence, failure to file timely and the proper proceeding, delay and lack of skill in the prosecution of plaintiff's rightful claim for interest, plaintiff has been barred from obtaining proper interest on said award of \$400,000 from February 8, 1982, all to her damage in the sum of at least \$150,000.

17. Upon information and belief, if the defendants would have dilligently, skillfully and timely prosecuted plaintiff's rightful claim for said interest, plaintiff would have recovered interest at the legal rate from said date of February 8, 1982.

18. Upon information and belief, because the defendants failed to advise plaintiff of her rights to said interest, she was deprived of the opportunity to pursue this right directly or through other attorneys.

19. Solely as the result of the defendants negligence, failure, delay and lack of skill in the prosecution of said interest claim and failure to advise plaintiff of her right to said interest, plaintiff has been damaged in the sum of at least \$150,000.

20. All of the legal actions and proceedings described herein were handled on behalf of the plaintiff by the defendants, who acted as the plaintiff's attorney.

AS AND FOR A SECOND CAUSE OF ACTION

21. Plaintiff realleges and repeats paragraphs "1" through "20" inclusive as though set forth in full herein.

22. Defendants contracted with the plaintiff as part of the retainer agreement to properly prosecute her causes of action based upon said assault to its conclusion.

23. By failing to prosecute properly and timely, plaintiff's rightful claim to said interest and by failing to advise and inform plaintiff of the proper procedure and time within which to bring said claim for interest, defendants breached their agreement and contract with plaintiff, as a result of which the plaintiff has been damaged in the sum of at least \$150,000.

AS AND FOR A THIRD CAUSE OF ACTION

24. Plaintiff realleges and repeats paragraphs "1" through "23" inclusive as though set forth in full herein.

25. Defendants have concealed from the plaintiff the fact that they prosecuted a claim for said interest in 1985 and 1986.

26. Defendants have concealed from the plaintiff her right to said interest and her right to prosecute a claim for it.

27. Defendants have concealed from the plaintiff the fact that they brought an improper proceeding and brought a proceeding beyond the time limit for it.

28. Defendants wrongfully refused to allow the plaintiff access to her file and then restricted her access to it in order to conceal from her their acts and omissions of malpractice and breach of contract.

29. The above actions and omissions of the defendants constitute deceit and collusion among them with an intent to deceive the plaintiff so that she would not, in a timely fashion, assert her legal rights.

30. Upon information and belief, said acts and omissions on the part of defendants constitute a violation of §487 of the Judiciary Law of the State of New York entitling the plaintiff to treble damages.

AS AND FOR A FOURTH CAUSE OF ACTION

31. Plaintiff realleges and repeats paragraphs "1" through "30" inclusive as though set forth in full herein.

32. Upon information and belief, when defendants received said principal sum of \$400,000 pursuant to the decision of the Appellate Division, Second Department, dated April 1, 1985, they deposited it in an interest-bearing account and failed to promptly remit plaintiff's share of said \$400,000 and failed to properly remit to the plaintiff the interest earned on her share of the \$400,000 while in the defendants interest-bearing account.

AS AND FOR A FIFTH CAUSE OF ACTION

33. Plaintiff realleges and repeats paragraphs "1" through "32" inclusive as though set forth in full herein.

34. During all of the times described herein and to date, defendants as plaintiff's attorney had the duty to fully reveal to her all of the relevant facts and circumstances as concerning her claims against the State of New York.

35. In violation of said duty, defendants deliberately concealed from the plaintiff their acts and omissions of malpractice and of breach of contract and of deceit and collusion and failed to reply truthfully to various inquiries made of them by the plaintiff.

36. The failure to honestly reveal what should have been revealed and the misleading and untruthful answers to plaintiff's inquiries constituted falsehoods.

37. At the time of said concealment and the making of said falsehoods, defendants knew that their actions amounted to false representations or failure to make truthful representations when required, and the defendants knew that said representations and failures were false at the time.

38. The defendants made said false representations and failures to truthfully represent what should have been represented to the plaintiff with intent to deceive and defraud the plaintiff and to induce her to forego necessary actions to protect her rights.

39. Plaintiff was ignorant of the falsity of said representations and of the untruthful situation created by failure to reveal facts when they should have been revealed and believed the defendants conduct and actions and omissions to be truthful.

40. Plaintiff relied upon said representations, failures and omissions and as a result, did not take necessary steps to protect her legal rights. }

41. If plaintiff had been aware of the true situation and not been misled as stated herein, the plaintiff would have properly taken action to protect her legal rights regarding the interest on said \$400,000 principal amount, all to her damage in the amount of at least \$150,000.

WHEREFORE, plaintiff demands judgment against the defendants in the amount of \$150,000, or the amount of interest determined to be properly due to her on said \$400,000 judgment from February 8, 1982 on the first, second and fifth causes of

action, and demands that said judgment be trebled pursuant to §487 of the Judiciary Law, pursuant to the third cause of action, and demands an accounting and payment of all sums due to her pursuant to the fourth cause of action, together with the costs and disbursements of this action.

**Dated: November 18, 1992
New York, New York**

Yours, etc.,

**ROBERT A. BLOOM, ESQ.
Attorneys for Plaintiff
Wall Street Plaza
New York, New York 10005
(212) 363-3100**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

MADELYN MILLER,

Plaintiff,

-against-

**JOSEPH KELNER and ROBERT KELNER,
individually and as partners in
the law firm of KELNER & KELNER,
a New York State Partnership,
and KELNER & KELNER,**

Defendants.

X

**INDIVIDUAL
VERIFICATION**

**STATE OF NEW YORK)
)ss:
COUNTY OF NASSAU)**

MADELYN MILLER, being duly sworn says:

I am one the plaintiff in the within action; I have read the annexed Summons and Verified Complaint, know the contents thereof and the same is true to my knowledge, except those matters therein which is stated to be alleged on information and belief, and as to those matters I believe them to be true.

MADELYN MILLER

**Sworn to before me this
11th day of November, 1992**

NOTARY PUBLIC

**ROBERT A. BLOOM
NOTARY PUBLIC, State of New York
Exp. 02-02-2000**

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS A. ADAMS
Justice

TRIAL/IAS, PART 28
NASSAU COUNTY

MADELYN MILLER,

Plaintiff(s),

INDEX No.92-32694

-against-

MOTION DATE: 6/14/93

JOSEPH KELNER and ROBERT KELNER, individually
and as partners in the law firm of KELNER &
KELNER, a New York State Partnership, and
KELNER & KELNER..,

Defendant(s).

The following papers read on this motion
Notice of Motion/ Order to Show Cause
Answering Affidavits
Replying Affidavits
Briefs: Plaintiff's/Petitioner's
Defendant's/Respondent's

Motion by defendants pursuant to CPLR 3211 (a)(7) for judgment dismissing the first, second, third and fifth causes of action for failure to state a cause of action is granted. Defendants additional request for judgment dismissing the complaint pursuant to CPLR (a)(5) on the basis of the statute of limitations is also granted as to the fourth cause of action. Defendants' request for an award of costs and reasonable attorneys' fees pursuant to CPLR 8303-a, on the grounds that this action is frivolous, is denied.

The cross motion by plaintiff, pro se, for an "adjudication on the issue of the state of the law that existed in 1986 pertaining to the disputed interest" is determined as set forth below. Plaintiff's additional request for leave to replead pursuant to CPLR 3211(e) is denied.

In this lawsuit plaintiff essentially seeks compensation for alleged legal malpractice by her former attorneys, Kelner & Kelner, in connection with their representation of her in an action entitled Miller v State. In that case, plaintiff's former attorney's obtained an award of \$25,000.00 on February 8, 1982 after a full trial in the Court of Claims. Both parties appealed to the Appellate Division where the case was dismissed as a matter of law. (Miller v State, 96 AD2d 1031.) Thereafter, the Court of appeals reversed and remitted the case to the Appellate Division.

(Miller v State, 62 NY2d 506.) On June 21, 1985, the Appellate Division modified the trial court judgment by increasing the damages award to plaintiff to \$400,000.00. (Miller v State, 110 AD2d 627.) Thereafter, on September 25, 1985, the state comptroller paid the total judgment of \$417,831.23 which included interest earned on the \$25,000.00 from February 8, 1982 and interest earned on \$375,000.00 from June 21, 1983. In early 1986 plaintiff's former attorneys made a motion in the Court of Claims challenging this calculation of interest, but the motion was denied. The basis of plaintiff's various malpractice claims in this lawsuit concern the interest she received on the judgment. Inasmuch as a client cannot recover against an errant attorney for malpractice without demonstrating that he or she would otherwise have succeeded on the merits in the underlying litigation (Servidone Constr. v Security, 64 NY2d 419, 425), the dispositive issue presented, and the linchpin of this entire lawsuit is whether plaintiff was properly entitled to interest on the \$400,000.00 from the date of the original judgment in 1982, under the law as it existed in 1985.

In 1985 payment of interest in a bifurcated personal injury action was determined by a fault-based analysis. In the leading case of *Trimboli v Scarpaci Funeral Home, Inc.*, (37 AD2d 386, aff'd 30 NY2d 687), the plaintiffs successfully obtained a liability verdict in their favor and the defendants brought an

interlocutory appeal before the damages phase of the action. The court found that since the defendants' unsuccessful appeal delayed payment of the judgment to plaintiff for nearly a year, interest was to be properly computed from the date of the interlocutory judgment entered on the liability verdict. In short, *Trimboli* stands for the proposition that in considering the allowance of interest, "the delay in the rendition of damages may properly be charged against the party causing it". (*Trimboli*, supra, at p. 389.)

In cases where the delay in payment was attributable to the plaintiff, interest was not awarded back to the date of the liability verdict. [*Malkin v Wright*, 64 AD2d 569 (plaintiff's delay in unsuccessfully seeking to increase ad damnum clause resulted in interest from date of damages verdict rather than liability verdict); *Lindwall v Talent Cab Corp.*, 51 Misc2d 381, aff'd 27 AD2d 647 (interest from the date of initial verdict denied where delay caused by plaintiff's failure to accept reduced award).] The crux of these cases is that interest is "an invariable legal incident of the principal debt" and must be given "whenever a debtor knows precisely what he is to pay and when he is to pay, but does not". (*Malkin*, supra, at p. 570.)

Under *Trimboli*, *Lindwall* and *Malkin*, since the delay in obtaining the increased judgment in *Miller v State* is not chargeable to the State, the State would be obligated to pay interest only from 1985, except to the extent of the original

award. Moreover, since the State only knew that it had to pay an additional \$375,000.00 from the date of the second appellate determination, the state comptroller's calculation of interest was proper.

The fact that the fault-based analysis for interest calculations was overruled in 1991 by the Court of Appeals in *Love v State of New York* (78 NY2d 540), has no bearing on this case. Furthermore, plaintiff cannot show that had defendants herein appealed the 1986 Court of Claims decision upholding the comptroller's calculation of interest, the state of the law on this issue would have changed in 1986. In addition, plaintiff's reliance upon CPLR 5522 and 5003 is misplaced as these provisions do not mandate the relief plaintiff seeks. The cases of *Stever v Associated Transport, Inc.*, 270 App. Div. 956 (reduced award offered by trial court accepted by plaintiff after appeal) and *Berg v Cacoulidis*, 123 AD2d 807 (mortgage foreclosure action) are factually distinguishable.

Based on the foregoing, this Court determines that plaintiff's first, second, third and fifth causes of action must be dismissed for failure to state a cause of action. Although the Court is troubled by plaintiff's allegations of concealment of her file from her, based upon the state of the law as it existed in 1985, plaintiff cannot establish negligence, malpractice or wrongful conduct by defendants in connection with the interest obtained on the judgment in *Miller v State*. Moreover, under these

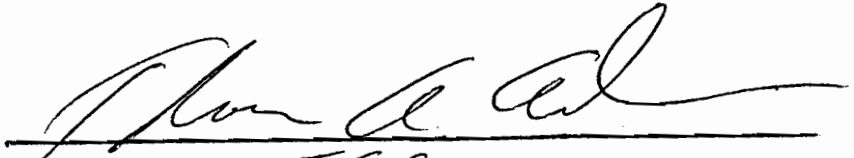
circumstances, leave to replead must be denied. (Thomson McKinnon Securities Inc. v Cioccolanti, 135 AD2d 624 (leave to amend pleading denied where proposed amendment devoid of merit)).

As to the fourth cause of action for an accounting, plaintiff simply claims that defendants failed to properly remit to plaintiff the interest on her share of the \$400,000.00 award which accrued while the \$400,000.00 was allegedly maintained in defendants' interest-bearing account. Suffice it to say that the claim is time-barred. More than six years passed from the time that plaintiff received her settlement check and closing statement in late 1985 to the commencement of this lawsuit in late 1992. Consequently, whether the fourth cause of action is considered as for malpractice, simple negligence, breach of contract, or even an action for which no limitation is specifically prescribed by law, the maximum limitations period is 6 years (see CPLR 213 and 214), and plaintiff's failure to pursue this claim within such 6 year time frame is fatal. Nor has plaintiff presented any evidence of omissions or representations as to this fourth cause of action to support her argument that defendants are estopped from pleading the statute of limitations. (See Augstein v Levey, 3 AD2d 595, aff'd 4 NY2d 791.) Accordingly, the motion to dismiss the fourth cause of action on the basis of the statute of limitations is granted.

Finally, defendants' request for costs and attorneys' fees pursuant to CPLR 8303-a, on the grounds that the complaint

constituted a frivolous action, is denied. Plaintiff's claims do not meet the statutory definition for frivolous claims because there is no evidence in the record of bad faith or intent to harass defendants. Although this Court finds against plaintiff as to the state of the law on interest in 1985, plaintiff's arguments, like the 1986 motion by defendants to the Court of Claims, were not without some basis in law. Accordingly, sanctions are denied.

9/8/93



J.S.C.

FILED
SEP 10 1993
CLERK OF COURT
STATE OF NEW YORK
WESTCHESTER COUNTY

1

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS A. ADAMS

Justice

TRIAL/IAS, PART 27
NASSAU COUNTY

MADELYN MILLER

Plaintiff,

-against-

Index No. 32694/92

Motion Date: 5/20/94

JOSEPH KELNER and ROBERT KELNER, individually
and as partners in the law firm of KELNER &
KELNER, a New York State Partnership, and
KELNER & KELNER


Defendant.

The following papers read on this motion:
Notice of Motion/Order to Show Cause
Answering Affidavits
Replying Affidavits
Briefs: Plaintiff's/Petitioner's
Defendant's/Respondent's

Motion by plaintiff to reargue this Court's previous decision dated September 8, 1993 is denied.

In doing so, this Court notes that it did not misapprehend any facts or misinterpret any controlling principles of law therein. (Duque v Ortiz, 154 AD2d 333.)

Date 6/9/94

J.S.C. 

ENTERED

JUN 14 1994

COUNTY CLERK OF NASSAU COUNTY

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

5414L
L/

GUY JAMES MANGANO, P.J.
WILLIAM C. THOMPSON
LAWRENCE J. BRACKEN
THOMAS R. SULLIVAN
VINCENT R. BALLETTA, JR., JJ.

93-08289, 94-04268

DECISION & ORDER ON MOTION

Madelyn Miller, appellant, v Joseph Kelner,
et al., respondents.

By order of this court dated May 31, 1994, the appellant was directed to perfect appeals from two orders of the Supreme Court, Nassau County, dated May 5, 1993 and September 8, 1993, respectively, on or before July 1, 1994. More than 30 days have elapsed since that date and the appeals have not been perfected. The title of the matter appeared on a dismissal calendar published in the *New York Law Journal*, and the appellant failed to make an application to cure the default within 10 days after the last date of publication.

Pursuant to 22 NYCRR 670.8(g) it is,

ORDERED that the appeals are dismissed.

MANGANO, P.J., THOMPSON, BRACKEN, SULLIVAN and BALLETTA, JJ., concur.

ENTER:

Martin H. Brownstein
Clerk

October 12, 1994

MILLER v KELNER

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

5597S
F/cs

THOMAS R. SULLIVAN, J.P.
VINCENT R. BALLETTA, JR.
MYRIAM J. ALTMAN
WILLIAM D. FRIEDMANN, JJ.

93-08289, 94-04268

DECISION & ORDER ON MOTION

Madelyn Miller, appellant, v Joseph
Kelner, et al., respondents.

Motion by the appellant *pro se* to vacate an order of this court, dated October 12, 1994, which dismissed her appeals from two orders of the Supreme Court, Nassau County, dated May 5, 1993 and September 8, 1993, respectively, and to reinstate the appeals.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied.

SULLIVAN, J.P., BALLETTA, ALTMAN and FRIEDMANN, JJ., concur.

ENTER:

Martin H. Brownstein
Clerk

September 19, 1995

MILLER v KELNER

EXHIBIT N



*State of New York
Court of Appeals*

*Donald M. Sheraw
Clerk of the Court*

*Clerk's Office
Albany, New York 12207*

DECISION June 13, 1996

Mo. No. 621 SSD 43
Madelyn Miller,
Appellant,
v.
Joseph Kelner et al.,
Respondents.

Appeal, insofar as taken from the September 19, 1995 Appellate Division order that denied appellant's motion to vacate the prior order of dismissal and that portion of the October 12, 1994 Appellate Division order that dismissed appellant's appeal from that portion of Supreme Court's September 8, 1993 order denying appellant's motion to replead, dismissed without costs, by the Court sua sponte, upon the ground that the September 19, 1995 Appellate Division order and the above-specified portion of the October 12, 1994 Appellate Division order do not finally determine the action within the meaning of the Constitution; appeal, insofar as taken from the remaining portion of the October 12, 1994 Appellate Division order dismissed without costs, by the Court sua sponte, upon the ground that that part of the October 12, 1994 Appellate Division order does not directly involve a substantial constitutional question.

State of New York,
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the.....thirteenth.....day
of.....June..... 1996

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

Mo. No. 621 SSD 43
Madelyn Miller,
Appellant,
v.
Joseph Kelner et al.,
Respondents.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal, insofar as taken from the September 19, 1995 Appellate Division order that denied appellant's motion to vacate the prior order of dismissal and that portion of the October 12, 1994 Appellate Division order that dismissed appellant's appeal from that portion of Supreme Court's September 8, 1993 order denying appellant's motion to replead, be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that the September 19, 1995 Appellate Division order and the above-specified portion of the October 12, 1994 Appellate Division order do not finally determine the action within the meaning of the Constitution; and it is

ORDERED, that the appeal, insofar as taken from the remaining portion of the October 12, 1994 Appellate Division order be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that that part of the October 12, 1994 Appellate Division order does not directly involve a substantial constitutional question.

Donald M. Sheraw
Donald M. Sheraw
Clerk of the Court

EXHIBIT O



State of New York
Court of Appeals

Donald M. Sheraw
Clerk of the Court

Clerk's Office
Albany, New York 12207-1095

DECISION October 15, 1996

Mo. No. 1136
Madelyn Miller,
Appellant,
v.
Joseph Kelner et al.,
Respondents.

Motion for leave to appeal denied.

State of New York,
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the..... fifteenth..... day
of..... October..... 1996

Present, HON. JUDITH S. KAYE, *Chief Judge, presiding.*

Mo. No. 1136
Madelyn Miller,
Appellant,
v.
Joseph Kelner et al.,
Respondents.

A motion for leave to appeal to the Court of Appeals
in the above cause having heretofore been made upon the part
of the appellant herein and papers having been submitted
thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby
is denied.

Stuart M. Cohen
Stuart M. Cohen
Deputy Clerk of the Court

Order Appealed From dated November 30, 2000 [6-17]

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 30th day of November, 2000

PRESENT:

HON. AARON D. BERNSTEIN,
Justice.

_____X
MADELYN MILLER,

Petitioner(s),

- against -

Index No. 23018/00

MARTIN H. BROWNSTEIN and JAMES E. PELZER and THE OFFICE OF THE CLERK OF THE COURT of the APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT OF THE SUPREME COURT of the STATE OF NEW YORK, and JOSEPH KELNER and ROBERT KELNER, individually and as partners in the law firm of KELNER & KELNER, a New York State Partnership, and KELNER & KELNER,

Respondent(s).

_____X

The following papers number 1 to 8 read on this motion:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	1-2 3-4 5-6 _____
Opposing Affidavits (Affirmations) _____	7-8 _____
Reply Affidavits (Affirmations) _____	_____
_____ (Affirmations) _____	_____
Other Papers _____	_____

Upon the foregoing papers in this proceeding brought by petitioner pursuant to CPLR article 78 and 3001, and 42 USC §§ 1983 and 1988, respondents Joseph Kelner and Robert Kelner, individually and as partners in the law firm of Kelner & Kelner, a New York State Partnership, and Kelner & Kelner ("the Kelner & Kelner respondents") move for an order dismissing the petition as against them, granting them sanctions against petitioner for the filing of frivolous and vexatious litigation, and permanently enjoining petitioner from initiating, serving, or filing any action, proceeding, litigation, motion, petition, or claim with any court in any state against them based upon any of the events or circumstances involving or surrounding Kelner & Kelner's representation of petitioner with respect to her claims against the State of New York which arose out of an incident that occurred in 1976, or petitioner's legal malpractice lawsuit against Kelner & Kelner brought by her in connection with such claims, without first obtaining permission from a Justice of this court after disclosing this court's order on this motion.

Respondents Martin H. Brownstein, James E. Pelzer, and the Office of the Clerk of the Court of the Appellate Division, Second Judicial Department of the Supreme Court of the State of New York ("the State respondents") cross-move, pursuant to CPLR 3211 (a)(2), (5), and (7), and 7804, for an order dismissing the petition as against them on the grounds that this court lacks subject matter jurisdiction over petitioner's claims, that such claims are barred by the applicable Statute of Limitations, and that the petition fails to state a claim upon which relief may be granted.

In March 1976, petitioner, who at that time was a student at the State University of New York at Stony Brook, was attacked in her dormitory, where she resided. Thereafter, she retained the law firm of Kelner & Kelner to represent her in an action against the State of New York. On February 8, 1982, after a trial in the Court of Claims in which she was represented by Kelner & Kelner, petitioner was awarded damages for the injuries she sustained from the attack in the amount of \$25,000. That award was appealed to the Appellate Division, Second Department, which dismissed the action on the ground that the State owed no duty to petitioner (Miller v State of New York, 96 AD2d 1031). Kelner & Kelner appealed this determination to the Court of Appeals, which reversed the Appellate Division, Second Department's decision and order, establishing new rules of law requiring the State to provide reasonable security for the safety of its dormitory students, and remitted the matter to the Appellate Division, Second Department (Miller v State of New York, 62 NY2d 506, 514). On remittitur, by decision and order dated June 21, 1985, the Appellate Division, Second Department, awarded damages in the amount of \$400,000 to petitioner (Miller v State of New York, 110 AD2d 627, 627-628).

In March 1986, Kelner & Kelner applied to the Court of Claims for interest on the \$400,000 award from February 8, 1982, the date of the original award of \$25,000. By decision and order dated May 1, 1986, the Court of Claims denied the motion, holding that the amount of interest awarded to petitioner would be computed and allowed on the \$25,000

portion of her award from February 8, 1982, the date of the initial Court of Claims decision, and on the remaining \$375,000 from June 21, 1985, the date of the \$400,000 award.

In November 1992, petitioner brought a legal malpractice action against Kelner & Kelner, alleging that it committed malpractice by obtaining interest on the entire award only from June 21, 1985 instead of from the earlier date of February 8, 1982. By order dated September 8, 1993, the Supreme Court Nassau County, dismissed petitioner's complaint in that action. Petitioner appealed that order to the Appellate Division, Second Department, where she represented herself following the withdrawal of her counsel.

On May 20, 1994, petitioner moved to reargue the September 8, 1993 order dismissing the complaint. By order dated June 9, 1994, the Supreme Court, Nassau County, denied that motion. Petitioner sought to appeal the September 8, 1993 order and filed a motion to enlarge her time to perfect her appeal. That motion was granted by the Appellate Division, Second Department, on May 31, 1994, which enlarged her time to perfect the appeal until July 1, 1994.

By letter dated July 6, 1994, respondent Martin H. Brownstein, the Clerk of the Appellate Division, Second Department, advised petitioner that her appendix and brief were rejected on July 5, 1994 as being untimely, noting that petitioner first attempted to file her brief and appendix on July 1, 1994 between 5:45 and 6:00 p m. On August 25, 1994, petitioner's brief and appendix were sent back to petitioner following her failure to make arrangements with the Clerk's office to pick up such documents. After publication in the

New York Law Journal's dismissal calendar for the Appellate Division, Second Department, and petitioner's failure to make an application within 10 days to cure her default, the Appellate Division, Second Department, by decision and order dated October 12, 1994, dismissed petitioner's appeal pursuant to Appellate Division - Second Department Rules of Procedure in the Appellate Division (22 NYCRR) 670.8.

By letter dated March 30, 1995, petitioner advised Martin H. Brownstein that she never received his July 6, 1994 or August 25, 1994 mailings. Martin H. Brownstein, by letter dated April 4, 1995, advised petitioner that she could move to vacate the dismissal of her appeal. By letter dated May 9, 1995, petitioner contended that copies of her brief and appendix should have been accepted for filing because her representative arrived at the Appellate Division, Second Department, to file the documents on July 1, 1995 at approximately 5:00 p m, but that no court clerks were present to receive the filing. She stated that a court officer wrote a note acknowledging her representative's presence, time-stamped the note 5:21 p m, and advised her representative to return on July 5, 1995 to file copies of the brief and appendix. Petitioner's representative left the documents on the counter in the Clerk's Office on the same day.

Based upon the foregoing claims, petitioner made a motion to vacate the dismissal of her appeal. By decision and order dated September 19, 1995, the Appellate Division, Second Department, denied her motion. By decision and order dated January 8, 1996, the

Appellate Division, Second Department, also denied a motion by petitioner to reargue the denial of said motion to vacate.

Petitioner appealed to the Court of Appeals from the Appellate Division orders dated October 12, 1994 and September 19, 1995. By decision and order dated June 13, 1996, the Court of Appeals dismissed the appeal upon the grounds that the October 12, 1994 order did not directly involve a substantial constitutional question and that both orders did not finally determine the action within the meaning of the New York State Constitution (Miller v Kelner, 88 NY2d 916, 916-917). On July 30, 1996, petitioner again moved for leave to appeal from the October 12, 1994 Appellate Division order dismissing her appeal, and by decision and order dated October 15, 1996, the Court of Appeals denied that motion.

Petitioner has now brought the instant proceeding against respondents to compel the Appellate Division, Second Department, and the Clerk of that Court to restore her appeal to the general calendar. She alleges that Martin H. Brownstein was required by the New York State Constitution and the laws of this State to place her appeal on the calendar upon her payment of the \$250 filing fee to the Appellate Division, Second Department, that his refusal to do so was illegal, malicious, and in excess of his authority, and a deprivation of her rights under the Fourteenth Amendment to the U.S. Constitution, the New York State Constitution, the laws of the State of New York, 42 USC § 1983, and her rights to equal protection and due process. She claims that the continued failure by respondent James E. Pelzer, who, in November 1999, replaced Martin H. Brownstein as the Clerk of the

Appellate Division, Second Department, to restore her appeal to the calendar represents a continuing failure to perform a duty enjoined upon him by law, a continuing deprivation of her rights, and a continuing violation of 42 USC § 1983. She seeks relief, under CPLR article 78, directing James E. Pelzer to restore her appeal to the general calendar of the Appellate Division, Second Department, a declaration that she was deprived of her rights, and an award of \$5 million in damages.

In opposition to the motion and cross motion to dismiss the petition, petitioner argues that Martin H. Brownstein lacked the discretion to reject her papers as late because he accepted her papers and the filing fee of \$250 on July 5, 1994 and that this perfected her appeal. Such argument is unavailing. Pursuant to Appellate Division - Second Department Rules of Procedure in the Appellate Division (22 NYCRR) 670.8(a), "[a]n appeal may be placed on the general calendar by filing with the clerk the record on appeal pursuant to one of the methods set forth in section 670.9 of th[at] Part and by filing nine copies of a brief, with proof of service of two copies upon each of the other parties" (emphasis supplied). This rule does not mandate that the Clerk must put the appeal on the calendar without exercising his discretion in determining whether the requirements of this rule have been met. Indeed, Appellate Division - Second Department Rules of Procedure in the Appellate Division (22 NYCRR) 670.8 (h) requires that where the appellant fails "to make an application to enlarge [the] time to perfect within 10 days following the last day of

publication [of the clerk's calendar in the New York Law Journal], an order shall be entered dismissing [a civil] cause" which has not been timely perfected (emphasis supplied).

"The extraordinary remedy of mandamus will lie only to compel the performance of a [purely] ministerial act, and only when there exists a clear legal right to the relief sought" (Matter of Mullins v O'Dwyer, ___ AD2d ___, NYLJ, Oct. 30, 2000, at 28, col 6; see also, Matter of Legal Aid Socy. v Scheinman, 53 NY2d 12, 16). A proceeding in the nature of mandamus is unavailable where a petitioner seeks a court order compelling a body or officer to perform a statutory duty which is entirely discretionary (see, Matter of County of Fulton v State of New York, 76 NY2d 675, 678; Klostermann v Cuomo, 61 NY2d 525, 539; Matter of Hamptons Hosp. & Med. Center v Moore, 52 NY2d 88, 96-97). Thus, inasmuch as the act sought to be compelled by petitioner is discretionary and not ministerial and petitioner has failed to demonstrate a clear legal right to the relief sought, a writ of mandamus will not lie to compel the Appellate Division, Second Department, and its Clerk to restore petitioner's appeal (see, Matter of Crain Communications v Hughes, 74 NY2d 626, 628; Matter of Morgenthau v Gold, 69 NY2d 735, 737; Matter of Legal Aid Socy. v Scheinman, supra, 53 NY2d, at 16) and petitioner has failed to state a viable cause of action in this proceeding (see, CPLR 3211[a] [7], 7804 [f]).

Moreover, the Appellate Division, Second Department, has already issued binding rulings on the very same issues raised by the petition herein in its order of October 12, 1994, which determined that petitioner failed to perfect her appeal in accordance with the rules of

that court, and in its order of September 19, 1995, which denied petitioner's motion to vacate the dismissal of her appeal. Petitioner's contention that her petition raises different issues than those addressed and determined by the Appellate Division, Second Department, because she did not previously argue that Martin H. Brownstein acted illegally and deprived her of her property interest in her appeal without due process, thereby violating her rights under the New York State Constitution, the U.S. Constitution, and 42 USC § 1983, or that Martin H. Brownstein had a duty enjoined on him by law to file her appeal papers, is devoid of merit. Although petitioner now attempts to frame her claims in the form of a CPLR article 78 proceeding with constitutional arguments, the subject of these claims, the issues raised, and the ultimate relief sought by her (i.e., restoration of her appeal to the calendar) are, in essence, identical to those already raised, addressed, and finally decided and rejected by the orders of the Appellate Division, Second Department. The petition's allegations, however couched, seek for this court to modify, overturn, or vacate the order of the Appellate Division, Second Department, which denied petitioner leave to appeal. Such determination may not be collaterally attacked by way of mandamus (see, Matter of Branciforte v Spanish Naturopath Socy., 217 AD2d 619).

Petitioner's only proper remedy was to seek to appeal the orders of the Appellate Division, Second Department, to the Court of Appeals, which she has already done, albeit unsuccessfully (see, id., at 619 - 620). This court may not disregard these earlier orders by these higher appellate courts and is plainly without the authority to modify, overturn, or

vacate such orders (see, id., at 620; Fleet Credit Corp. v Cabin Serv. Co., 210 AD2d 57; Brown v Brown, 169 AD2d 487; Maracina v Schirmeister, 152 AD2d 502, 502 - 503).

Thus, the petition must be dismissed as this court lacks subject matter jurisdiction to grant the relief which petitioner seeks herein (see, CPLR 3211[a] [2], 7804 9[f]). Petitioner's claims are also barred by the doctrine of res judicata (see, CPLR 3211 [a] [5], 7804 [f]).

Dismissal of the petition is further required on the additional ground that it is time-barred (see, CPLR 3211[a] [5], 7804 [f]). Petitioner's argument that her petition is not time-barred because she alleges therein that the Clerk of the Appellate Division, Second Department, failed to comply with a continuing constitutional or statutory duty, is rejected. Under CPLR 217 (1), a proceeding against a body or officer must be commenced within four months after the determination sought to be reviewed becomes final and binding upon the petitioner or after the respondent's refusal to perform the duty believed to be mandated took place (see, Matter of Vil. of Westbury v Department of Transp. of State of N.Y., 75 NY2d 62, 72; Washington v Alissa Kampner Rudin - Victims Servs., 256 AD2d 178, 179). Here, the latest possible date that petitioner's rights were determined was when the Court of Appeals denied petitioner's motion for leave to appeal on October 15, 1996. Consequently, her petition, sworn to on July 3, 2000, was untimely.

The court has considered all of petitioner's remaining contentions in opposition to the motion and cross motion and finds them to be without merit.

Accordingly, the Kelner & Kelner respondents' motion to the extent that it seeks dismissal of the petition is granted. The Kelner & Kelner respondents' motion insofar as it seeks the imposition of sanctions against petitioner is denied as the court finds that the pro se petitioner's conduct does not rise to the level of frivolous conduct, as defined in Rules of the Chief Administrator (22 NYCRR) 130-1.1(c), to warrant such sanctions (see, Rules of the Chief Administrator [22 NYCRR] 130-1.1[a], [c]). Additionally, the court declines to grant the Kelner & Kelner respondents the injunction requested by them in their motion as this court will not deprive petitioner of her lawful right to appeal this order (see, CPLR 5501, 5511). The State respondents' cross motion to dismiss the petition as against them is granted.

This constitutes the decision, order, and judgment of the court.

ENTER


J. S. C.

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RS

8451

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

8553B
K/jv

AD2d

Argued - November 19, 2001

FRED T. SANTUCCI, J.P.
SANDRA J. FEUERSTEIN
GABRIEL M. KRAUSMAN
DANIEL F. LUCIANO, JJ.

23018 - 00

2001-00706

In the Matter of Madelyn Miller, appellant,
v Martin H. Brownstein, et al., respondents.

DECISION & ORDER

Madelyn Miller, New York, N.Y., appellant *pro se*.

Eliot Spitzer, Attorney-General, New York, N.Y. (Michael S. Belohlavek and Charles F. Sanders of counsel), for State respondents.

L'Abbate, Balkan, Colavita & Contini, LLP, Garden City, N.Y. (Peter L. Contini of counsel), for respondents Joseph Kelner and Robert Kelner.

In a proceeding pursuant to CPLR article 78, *inter alia*, to compel the Clerk of the Appellate Division, Second Judicial Department, to restore to the general calendar the petitioner's appeals from two orders of the Supreme Court, Nassau County, in an action entitled *Miller v Kelner*, commenced under Index No. 32694/92, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Kings County (Bernstein, J.), dated November 30, 2000, which, upon granting the motion of the respondents Joseph Kelner and Robert Kelner, individually and as partners in the law firm of Kelner & Kelner, a New York State Partnership, and Kelner & Kelner, and the separate motion of the respondents Martin H. Brownstein, James E. Pelzer, and the Office of the Clerk of the Court of the Appellate Division, Second Judicial Department, to dismiss the proceeding insofar as asserted against them, dismissed the proceeding.

ORDERED that the order and judgment is affirmed, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

Contrary to the petitioner's contention, the Supreme Court did not err in dismissing this proceeding as time-barred. CPLR 217 requires that a proceeding against a body or officer be commenced "within four months after the determination to be reviewed becomes final and binding upon the petitioner". A challenged determination is final and binding within

the meaning of the statute when it has an impact upon the petitioner and when he or she knows that he or she is aggrieved (*see, Matter of Edmead v McGuire*, 67 NY2d 714; *Matter of James v Wing*, 281 AD2d 627, *lv denied* 96 NY2d 721). The petitioner challenges the refusal of the State respondents to calendar her two appeals which had been rejected for filing as untimely and which were ultimately dismissed on October 12, 1994. This determination became final and binding no later than October 15, 1996, when the Court of Appeals denied the petitioner's application for leave to appeal from the denial of her motion to vacate the dismissal of the appeals. Accordingly, the Supreme Court properly determined that this proceeding, commenced more than three years after the Court of Appeals denied the petitioner's leave application, is time-barred by the applicable four-month Statute of Limitations (*see, CPLR* 217).

In light of our determination, we need not address the petitioner's remaining contentions.

SANTUCCI, J.P., FEUERSTEIN, KRAUSMAN and LUCIANO, JJ., concur.

ENTERED BY **JAMES EDWARD PELZER**

James Edward Pelzer
Clerk

I, JAMES EDWARD PELZER, Clerk of the Appellate Division of the Second Judicial Department, do hereby certify that this is a true and correct copy of the original thereof filed in said office on January 22, 2002 and that the same is a correct transcript thereof, and of the whole of said original.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this Court on

JAN 22 2002

JAN 22 2002
11:06 AM
FILED
CLERK
SANTUCCI

January 22, 2002

MATTER OF MILLER v BROWNSTEIN



*State of New York
Court of Appeals*

*Stuart M. Cohen
Clerk of the Court*

*Clerk's Office
Albany, New York 12207-1095*

DECISION June 11, 2002

Mo. No. 587 SSD 22
In the Matter of Madelyn Miller,
Appellant,
v.
Martin H. Brownstein et al.,
Respondents.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

State of New York,
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the ^{eleventh}.....day
of June..... 2002

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

Mo. No. 587 SSD 22
In the Matter of Madelyn Miller,
Appellant,
v.
Martin H. Brownstein et al.,
Respondents.

The appellant having filed notice of appeal in the
above title and due consideration having been thereupon had,
it is

ORDERED, that the appeal be and the same hereby is
dismissed without costs, by the Court sua sponte, upon the
ground that no substantial constitutional question is directly
involved.

Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court


State of New York,
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the.....tenth.....day
of.....October.....2002

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

2-10 Mo. No. 876
In the Matter of Madelyn Miller,
Appellant,
v.
Martin H. Brownstein et al.,
Respondents.

A motion for leave to appeal to the Court of Appeals
in the above cause having heretofore been made upon the part
of the appellant herein and papers having been submitted
thereon and due deliberation having been thereupon had, it is
ORDERED, that the said motion be and the same hereby
is denied.


Stuart M. Cohen
Clerk of the Court

Appendix D

File *Chavez* 16-8451 (Compassion) PLC

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

May 27, 2003

Mr. Ralph A. Catalano
L'Abbate, Balkan Colavita Cont
1050 Franklin Avenue
Garden City, NY 11530

Re: Madelyn Miller
v. Martin H. Brownstein, et al.
No. 02-1398

Dear Mr. Catalano:

The Court today entered the following order in the above
entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
William K. Suter
William K. Suter, Clerk

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

**In Re Liquidator Number: 2005-HICIL-15
Proof of Claim Number: CLMN380542
Claimant Name: Madelyn Miller**

LIQUIDATOR'S SUMMARY STATEMENT

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, solely in his capacity as Liquidator of The Home Insurance Company ("Liquidator"), by and through counsel, hereby submits this summary statement to apprise the Referee of the nature of his defenses to Claimant, Madelyn Miller's ("Claimant"), Proof of Claim and as succinctly as possible direct the Referee to pertinent rulings and orders that have exhaustively and finally determined Claimant's assertions and provide ample support for the Liquidator's claim determination.

The Home Insurance Company of Indiana ("Home") insured the law firm of Kelner & Kelner ("Insured") under policy number LPL-F869807 ("the Policy") (*Case file tab H*) for liability for those professional errors and omissions claims first made against the Insured and reported to the company during the policy term of December 10, 1991 through December 10, 1993.

Claimant brought suit against the Insured by service of a summons and complaint (*Case file tab I*) dated November 18, 1992 alleging professional negligence. Pursuant to the Policy provisions, Home provided the Insured a defense to the assertions put forth by Claimant and her counsel.

By Order of Justice Thomas A. Adams, Supreme Court of the State of New York, dated September 8, 1993, Claimant's claims against the Insured were dismissed in their entirety. (*Case file tab J*).

Claimant's motion to reargue was denied by Justice Adams on June 9, 1994. (*Case file tab K*).

Claimant's appeal of Justice Adams' rulings to the Appellate Division of the Supreme Court for the State of New York; Second Department was dismissed on October 12, 1994. (*Case file tab L*). Her motion to vacate the dismissal was denied on September 19, 1995. (*Case file tab M*).

Claimant then appealed to New York's highest court, the Court of Appeals, and by decision dated June 13, 1996, her appeal was denied. (*Case file tab N*). A further motion for leave to appeal to the Court of Appeals was also denied by decision dated October 15, 1996. (*Case file tab O*).

Claimant initiated another proceeding (termed an Article 78 proceeding) against the Insured and others regarding the same matters addressed in the foregoing litigation and said action was dismissed by Hon. Aaron D. Bernstein on November 30, 2000. (*Case file tab P*). Notably, Justice Bernstein remarked that, "Although petitioner now attempts to frame her claims in the form of a CPLR article 78 proceeding with constitutional arguments, the subject of these claims, the issues raised, and the ultimate relief sought by her ... are identical to those already raised, addressed, and finally decided and rejected by orders of the Appellate Division, Second Department." (*Case file tab P, page 9*).

Further appellate efforts, including a petition seeking a writ of certiorari to the United States Supreme Court, were all denied. (*Case file tabs Q, R, S, T*).

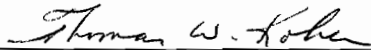
Claimant now seeks another opportunity to revisit, as noted by Justice Bernstein, matters "already raised, addressed, and finally decided and rejected" by prior orders and court rulings. The fact that Claimant, in her Mandatory Disclosures, now references "criminal implications that transcend Claimant's dismissed civil action" is immaterial to the propriety of Liquidator's determination. (*Claimant's Mandatory Disclosures, 2/23/2006*). The underlying facts giving rise to Claimant's claim are identical to those that have been presented to and rejected by duly sanctioned trial and appellate courts of the State of New York. Also, without intending to infer that Claimant's claims regarding "criminal implications" are supportable in any context, it is noted that the Home Policy issued to the Insured does not apply to "any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, **criminal**, (emphasis supplied) ... acts or omissions committed by the Insured." (*Case file tab H, page 5*). Finally, Claimant's threat "to seek disbarment and prosecution of the insureds..." (*Claimant's Mandatory Disclosures, 2/23/2006*) would similarly fall outside the scope of coverage as defined in the Policy. (*Case file tab H, page 2, e.g., definitions of Claim, Damages*).

Based on an elaboration of the foregoing, the Liquidator anticipates moving to dismiss Claimant's objection to his Notice of Determination referencing, at a minimum, defenses based on *res judicata*, collateral estoppel, statutes of limitation, policy exclusionary language and otherwise.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE COMMISSIONER OF
THE STATE OF NEW HAMPSHIRE, SOLELY IN HIS
CAPACITY AS LIQUIDATOR OF THE HOME INSURANCE
COMPANY

By his attorneys,

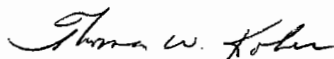


Jonathan Rosen, Esq. (N.H. Bar # 16951)
Thomas W. Kober, Esq. (admitted *pro hac vice*)
The Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 10038
(212) 530-4001
Facsimile (212) 299-3824

March 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Summary Statement has been forwarded via e-mail this 27th day of March, 2006 to Claimant Madelyn Miller at mrmccc@aol.com



Thomas W. Kober