

The State of New Hampshire

Superior Court

Merrimack County Courthouse
163 North Main Street, P.O. Box 2880
Concord, NH 03302-2880
(603) 225-5501

No(s). 03-E-0106

In the Matter of the Liquidation of
The Home Insurance Company

Disputed Claims Docket

In Re Liquidator Number: 2006-HICIL-22

Proof of Claim Number: EMPL17440

Claimant Name: Henry P. Lenz

ORDER ON CLAIMANT'S MOTION TO RECOMMIT

Pursuant to the claim procedures governing this proceeding, Claimant Henry P. Lenz has filed a timely motion to recommit to this Court the issue of the proper priority classification of his disputed claim. The motion seeks review of the September 11, 2006 ruling by the Referee affirming the Liquidator's classification of Mr. Lenz's claim as a Class V claim, rather than a Class II claim.

The Court has carefully reviewed the Referee's ruling and the entire file regarding Mr. Lenz's claim, including all written submissions by Mr. Lenz and by the Liquidator. Mr. Lenz is a retired senior executive of The Home Insurance Company ("The Home") who claims certain payments due him under a 1982 agreement with The Home. Under the terms of the agreement, The Home is obligated to pay retirement income to Mr. Lenz according to a specified formula which is based, in part, on his deferred compensation entitlement. The Liquidator determined that, pursuant to N.H. RSA 402-C:44 (Order of Distribution), Mr. Lenz's claim falls within the fifth class of potential recipients of distributions from the liquidation estate -- the "Residual Classification." Mr. Lenz asserts that his claim falls within the second class -- "Policy Related Claims."

In his written submissions, Mr. Lenz argued to the Referee that his claim is a Class II claim based on the language of the statute listing the types of claims included in that class. The statute includes as Class II claims all "policy related claims" including "[a]ll claims by policyholders, ...beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and

insurance contracts issued by the company, and liability claims against insureds...." The statute goes on to specify that, "[a]ll claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds or investment values, shall be treated as loss claims." (Emphasis added.)

It is this latter statutory provision upon which Mr. Lenz relies. He argues that his is a claim for "investment values," because the subject payments are for "interest earned on the money withheld by The Home" in connection with his deferred compensation (which he has received). The Court finds, however, that the language of the statutory provision on which Mr. Lenz relies cannot be viewed in isolation. The "investment values" language is contained in the claim priority classification provision entitled, "Policy Related Claims." A fair reading of the entire provision indicates that "investment values" relates to values associated with insurance contracts and not employment agreements.

Moreover, the Court finds that the Referee properly relied on State of Iowa ex rel. William B. Hager, etc. v. Iowa National Mutual Insurance Company, et al., 430 N.W. 2d 420 (1988). As noted by the Referee, in analyzing an argument pressed by former executive employees that deferred compensation constituted annuity proceeds, "The [Iowa Supreme] Court drew clear distinction between an insolvent insurance company's obligations to its insureds under policies of insurance and other obligations that such insurer might have to its employees." Although Mr. Lenz is not asserting that the subject payments constitute annuity proceeds, it is clear that his claim arises from his status as a former employee and not as an insured.

Upon consideration of the written arguments of the parties, the case file, and the language of the controlling statute, the Court affirms the Referee's ruling that the Liquidator properly classified Mr. Lenz's claim as a Class V claim.

So ordered.

Date: October 26, 2006



CAROL ANN CONBOY
Presiding Justice