

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 ASSENTED-TO MOTION FOR COURT TO ADJUDICATE
DISPUTED CLAIM OF UNITED STATES DEPARTMENT OF LABOR AND SET
SCHEDULE FOR SUBMISSIONS**

In accordance with Section 9(c) of the Restated and Revised Order Establishing Procedures regarding Claims Filed with The Home Insurance Company in Liquidation dated January 19, 2005 (the "Claims Procedures Order"), Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), moves that the Court issue an order determining it will adjudicate the disputed claim of the United States Department of Labor ("DOL") in the first instance and setting a schedule for submissions in accordance with Section 15 of the Claims Procedures Order. As reasons therefor, the Liquidator states as follows:

1. DOL filed a proof of claim (No. GOVT 700090-01) in the Home liquidation. The Liquidator issued a notice of determination and, after DOL requested review, a notice of redetermination. A copy of the Notice of Redetermination dated October 28, 2010 is attached as Exhibit A. In the Notice of Redetermination, the Liquidator assigned DOL's claim for assessments under the Longshore and Harbor Workers' Compensation Act to Priority Class III under RSA 402-C:44.
2. DOL filed the U.S. Department of Labor's Notice of Pending Federal Action To Resolve Its Objection To Liquidator's Notice of Redetermination Regarding Proof Of Claim No.

GOVT 700090-01 dated December 22, 2010 (the “Objection”) with this Court regarding its claim. A copy of the Objection is attached as Exhibit B.

3. DOL also filed a declaratory judgment action concerning the claim in the United States District Court for the District of New Hampshire, Hilda L. Solis, Secretary, United States Department of Labor v. The Home Insurance Company and Roger A. Sevigny, New Hampshire Insurance Commissioner, as Liquidator of The Home Insurance Company, C.A. No. 1:10-cv-572 (D. N.H.) (the “Federal Action”).

4. On December 30, 2010, the Court entered an Order Staying Consideration of U.S. Department of Labor’s Proof of Claim. In the Order, the Court stayed consideration of all matters regarding DOL’s proof of claim during the pendency of the Federal Action, including any appeals, and directed the Liquidator to file a report with the Court when the Federal Action is concluded.

5. As set forth in the Liquidator’s Report on Conclusion of Federal Action with United States Department of Labor dated July 12, 2012, the Federal Action has now concluded. The stay of proceedings regarding DOL’s proof of claim in the December 30, 2010 Order has accordingly expired by its terms.

6. The Federal Action resolved against DOL its contentions that the state priority statute, RSA 402-C:44, was preempted by the federal Longshore and Harbor Workers’ Compensation Act and was not protected from preemption by the McCarran-Ferguson Act. The Federal Action did not resolve DOL’s contentions under state law. DOL’s state law claims were dismissed without prejudice from the Federal Action and remain for determination.

7. Under Section 9(c) of the Claims Procedures Order, the Liquidator or Claimant may move for the Court, instead of the Referee, to adjudicate a disputed claim proceeding in the

first instance. The Liquidator requests that the Court adjudicate DOL's remaining state law contentions in the first instance.

8. The DOL's claim presents questions of state law that are of first impression and are likely to require determination by the New Hampshire Supreme Court. DOL contends that its claim is entitled to Class II or, in part, Class I priority under RSA 402-C:44 instead of Class III priority as determined by the Liquidator. The application of the priority statute to DOL's claim for assessments under the Longshore and Harbor Workers' Compensation Act is novel.

9. The DOL's claim does not present disputed issues of fact and is susceptible of resolution on briefs with supporting materials in accordance with Section 15 of the Claims Procedures Order. Indeed, DOL moved for summary judgment on its state law arguments in the Federal Action before the United States District Court determined it would abstain from hearing the state law claims and dismissed them without prejudice. The issues thus may be presented based on briefs and exhibits and affidavits as provided in Section 15 of the Claims Procedures Order without the need for preliminary proceedings other than the setting of a schedule for submissions.

10. In these circumstances, the Liquidator requests that the Court determine to adjudicate DOL's claim in the first instance and issue a schedule for submissions in accordance with Section 15 of the Claims Procedures Order as follows:

- a. DOL's submission is due 30 days after the Court issues its scheduling order;
- b. The Liquidator's submission is due 30 days after DOL's submission;
- c. DOL's reply, if any, is due 15 days after the Liquidator's submission.

11. Counsel for the Liquidator has conferred with counsel for DOL, and DOL assents to the relief requested in this motion.

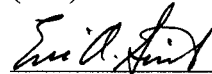
WHEREFORE, the Liquidator requests that the Court issue an order in the form submitted herewith (1) determining that the Court will adjudicate the disputed claim proceeding for DOL's claim, and (2) setting a schedule for Section 15 submissions as set forth in paragraph 10 above.

Respectfully submitted,

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

By his attorney,
MICHAEL A. DELANEY
ATTORNEY GENERAL

J. Christopher Marshall
NH Bar ID No. 1619
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650

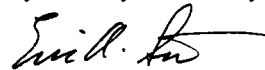


J. David Leslie
NH Bar ID No. 16859
Eric A. Smith
NH Bar ID No. 16952
Rackemann, Sawyer & Brewster
160 Federal Street
Boston, MA 02110
(617) 542-2300

July 12, 2012

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Court to Adjudicate Disputed Claim of United States Department of Labor and Set Schedule for Submissions and the proposed form of order were sent, this 12th day of July, 2012, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106

SERVICE LIST

Lisa Snow Wade, Esq.
Orr & Reno
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Gary S. Lee, Esq.
James J. DeCristofaro, Esq.
Kathleen E. Schaaf, Esq.
Morrison & Foerster
1290 Avenue of the Americas
New York, New York 10104-0050

Pieter Van Tol, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, New York 10022

Peter G. Callaghan, Esq.
Preti, Flaherty, Beliveau, Pachos
& Haley, PLLP
57 North Main Street
P.O. Box 1318
Concord, New Hampshire 03302-1318

George T. Campbell, III, Esq.
Robert A. Stein, Esq.
Robert A. Stein & Associates, PLLC
One Barberry Lane
P.O. Box 2159
Concord, New Hampshire 03302-2159

David M. Spector, Esq.
Dennis G. LaGory, Esq.
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606

Michael Cohen, Esq.
Cohen & Buckley, LLP
1301 York Road
Baltimore, Maryland 21093

David H. Simmons, Esq.
Mary Ann Etzler, Esq.
Daniel J. O'Malley, Esq.
deBeaubien, Knight, Simmons,
Mantzaris & Neal, LLP
332 North Magnolia Avenue
P.O. Box 87
Orlando, Florida 32801

Martin P. Honigberg, Esq.
Suloway & Hollis, P.L.L.C.
9 Capitol Street
P.O. Box 1256
Concord, New Hampshire 03302-1256

Richard Mancino, Esq.
Willkie Farr & Gallagher, LLP
787 Seventh Avenue
New York, New York 10019

Joseph G. Davis, Esq.
Willkie Farr & Gallagher, LLP
1875 K Street, N.W.
Washington, DC 20006

Albert P. Bedecarre, Esq.
Quinn Emanuel Urguhart Oliver & Hedges, LLP
50 California Street, 22nd Floor
San Francisco, California 94111

Jeffrey W. Moss, Esq.
Morgan Lewis & Bockius, LLP
225 Franklin Street
16th Floor
Boston, Massachusetts 02110

Gerald J. Petros, Esq.
Hinckley, Allen & Snyder LLP
50 Kennedy Plaza, Suite 1500
Providence, Rhode Island 02903

Christopher H.M. Carter, Esq.
Hinckley, Allen & Snyder LLP
11 South Main Street, Suite 400
Concord, New Hampshire 03301

Robert M. Horkoviceh
Robert Y. Chung
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020

Andrew B. Livernois
Ransmeier & Spellman, P.C.
One Capitol Street
P.O. Box 600
Concord, New Hampshire 03302-0600

John A. Hubbard
615 7th Avenue South
Great Falls, Montana 59405

Adebowale O. Osijo
2015 East Pontiac Way, Suite 209
Fresno, California 93726

Jim Darnell, Esq.
Jim Darnell, P.C.
310 N. Mesa Street, Suite 212
El Paso, Texas 79901

Edmond J. Ford, Esq.
Ford & Weaver, P.A.
10 Pleasant Street, Suite 400
Portsmouth, New Hampshire 03801

Paul W. Kalish, Esq.
Ellen M. Farrell, Esq.
Kristine E. Nelson, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

Harry L. Bowles
306 Big Hollow Lane
Houston, Texas 77042

Michael S. Olsan, Esq.
Christine G. Russell, Esq.
Brendan D. McQuiggan, Esq.
Gregory T. LoCasale, Esq.
White and Williams, LLP
One Liberty Place, Suite 1800
Philadelphia, Pennsylvania 19103-7395

Kyle A. Forsyth, Esq.
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Washington, D.C. 20044-0875

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720
Manchester, New Hampshire 03105-1720
10/28/2010 Tel: (800) 347-0014

October 28, 2010

US Department of Labor Longshore Special Fund
200 Constitution Ave NW
RM C 4315
Washington, DC 20210

RE: NOTICE OF REDETERMINATION
Proof of Claim No.: GOVT 700090-01

Redetermination Summary

Class III

Gross Amount of Claim	: \$ 2,672,527.00
Final Amount Allowed by Liquidation	: \$ 2,672,527.00

Explanation: On review of the United States' Request for Reconsideration, the Liquidator has determined to allow the claim for assessments to the Special Fund under the Longshore and Harbor Workers' Compensation Act in the full amount requested, \$2,672,527.

The Liquidator adheres to the original assignment of the claim to Class III priority. The Liquidator previously addressed the United States' contention that the claim should be paid in full due to alleged preemption in a letter dated September 27, 2005 from David Leslie of Rackemann, Sawyer & Brewster to Sharon Williams of the Department of Justice (copy attached).

After review the Liquidator also disagrees with the United States' alternative assertion that the claim is entitled to Class II priority. The Special Fund is not "a similar organization [to the New Hampshire insurance guaranty associations] in another state" within RSA 402-C:44, II. The term "state" means state of the United States, RSA 402-C:3, V, and the statute plainly refers to the insurance guaranty associations established by statute in the various states. The functions of the Special Fund are quite distinguishable from those of a guaranty association, whose purpose is to step in and pay claims under policies issued by an insolvent insurer, subject to statutory limitations. In any event, the claims for assessments are not claims within the coverage of Home insurance policies as required for Class II priority.

The Liquidator also does not accept the argument that the 2003 and 2004 assessments are entitled to Class I administration cost priority. The assessment obligations arise from Home's pre-liquidation issuance of insurance policies, not from activities in furtherance of the liquidation as required for administration cost priority. See In re Liquidation of The Home Ins. Co., 158 N.H. 396, 399 (2009).

Dear Claimant:

The purpose of this letter is to respond to your Request for Reconsideration and provide you with a Redetermination 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 Liquidator expects to present notice of this redetermination 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 Redetermination carefully as it sets forth your rights and obligations in detail.

The Home has reviewed your request for reconsideration and made a Redetermination on the claim as set forth above in accordance with The Home’s Claim Procedures (the “Procedures”)¹ approved by the Court. If the claim has been allowed, in whole or in part, it has been assigned a Class III priority as a “claim of the Federal Government” pursuant to the Order of Distribution set forth in Revised Statute, RSA 402-C:44 and will be placed in line for payment as directed by the Court from the assets of The Home.

You may have other claims against The Home for which you may receive other Notices of Determination or Redetermination. You will have a separate right to dispute each Notice of Determination or Redetermination. If your claim has been allowed in whole or in part, this Notice of Redetermination 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.

¹ 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.hicileclerk.org.

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 Redetermination:

Claim Allowed

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

Claim Disallowed

2. If all or part of your claim has been disallowed or you wish to dispute the Redetermination or creditor classification for any reason, you may still 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-106

within sixty (60) days from the mailing of the Notice of Redetermination. **You have sixty (60) days from the mailing of the Notice of Redetermination to file your Objection.** Please also sign and return the Acknowledgement of Receipt form and mail a copy of the Objection to the Liquidator while maintaining copies of all documents for your reference.

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

If you wish to speak with someone regarding this Notice of Redetermination, please contact the Liquidator's counsel:

J. David Leslie, Esq.
Rackemann, Sawyer & Brewster
617-951-1131

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720

Manchester, New Hampshire 03105-1720

Tel: (800) 347-0014

October 28, 2010

POC #: GOVT700090-01

Amount Allowed: \$2,672,527.00

US Department of Labor Longshore Special Fund
200 Constitution Ave NW
RM C 4315
Washington, DC 20210

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge receipt of the Notice of Redetermination as a Class III Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Redetermination 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 Redetermination.

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 _____

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: _____

Print Name: _____

Title: _____

Date: _____

RACKEMANN, SAWYER & BREWSTER

PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
ESTABLISHED 1888

ONE FINANCIAL CENTER
BOSTON, MASSACHUSETTS 02111-2659

TELEPHONE 617-542-2300
FACSIMILE 617-542-7437
www.rackemann.com

J. DAVID LESLIE
(617) 951-1131
jdl@rackemann.com

September 27, 2005

Sharon C. Williams
Trial Attorney
US Department of Justice
Commercial Litigation Branch/Civil Division
Room 10016
1100 L Street, NW
Washington, D.C. 20005

Re: The Home Insurance Company ("Home")

Dear Ms. Williams:

I write on behalf of Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of Home, to respond to your letter of May 17, 2005 concerning the United States' claims for assessments to the Special Fund established under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. ("LHWCA"). The proofs of claim and supplements received from the United States Department of Labor to date total \$2,672,527 for Special Fund assessments for the years 2000 through 2004. The claims for the assessments are asserted under section 44 of the LHWCA, 33 U.S.C. § 944, which provides for such assessments and authorizes the Secretary of Labor to assert claims for unpaid assessments in a civil action.

In your letter, the United States requests that the claims for Special Fund assessments be given an absolute priority and paid immediately on the grounds that the state priority statute is preempted by the LHWCA and the McCarran-Ferguson Act, 15 U.S.C. § 1012, does not apply. For the reasons summarized below, the Liquidator respectfully disagrees.

1. As an initial matter, there is no "irreconcilable conflict" between the LHWCA and the state priority statute as is necessary for preemption. See Barnett Bank of Marion County v. Nelson, 517 U.S. 25, 31 (1996). The purpose of the assessment and civil action provisions of LHWCA § 44 is to provide an appropriate mechanism for spreading the cost of the Special Fund and authorize collection actions by the Secretary. The Special Fund is principally used to make second injury payments under section 8(f). Section 44 and the state priority statute do not conflict as they have different objects and can be harmonized. The federal statute seeks to spread costs through assessments and collection actions by the Secretary for unpaid assessments. The state statute governs the distribution of assets where an insurer has become insolvent. The

state statute does not conflict with the assertion of the federal claim, which will be allowed at its full value through the claim determination process. The priority of distribution is a remedial issue separate from the claim itself, and the two statutes thus operate in separate spheres.¹

The state law does not stand as an obstacle to the purpose of Congress. The Congressional purpose of LHWCA § 44 was not to ensure the collection of unpaid assessments regardless of insolvency. If it had been, Congress would have addressed the priority issue expressly instead of leaving it to otherwise applicable law. The history of the LHWCA makes clear that Congress intended that priority issues be addressed under insolvency law. Prior to 1978, the LHWCA provided that:

Any person entitled to compensation under provisions of this Act shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

LHWCA § 17(a), 33 U.S.C. § 917(a), as amended by Pub. L. No. 92-576 (1972). Section 17(a) of the LHWCA was repealed in 1978 as part of the Bankruptcy Reform Act that enacted the Bankruptcy Code. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, tit. III, § 324, 92 Stat. 2549, 2679. The Bankruptcy Reform Act also deleted other special priority provisions in the interest of a coherent bankruptcy policy. *Id.*, tit. III.

Congress thus specifically chose to have issues concerning priority in distributions of assets of insolvent carriers and employers addressed under the statutes governing the insolvency proceedings for those entities, not the LHWCA. (Indeed, the Bankruptcy Reform Act also reaffirmed that the States would control insurer insolvency proceedings by removing domestic insurance companies from the entities subject to the Bankruptcy Code. *Id.*, § 109(b)(2) (codified at 11 U.S.C. § 109(b)(2)).) Since preemption is ultimately a question of Congressional intent, the LHWCA does not have preemptive effect as to priority.

This analysis means that, depending on the other claims and available assets in a particular insolvency, claims for unpaid LHWCA assessments may not be paid. However, a federal claim does not simply override all state law that affects the ability to collect on that claim. See O'Melveny & Myers v. F.D.I.C., 512 U.S. 79, 88 (1994), citing United States v.

¹ By contrast, there is a "direct conflict" between the general federal priority statute, 31 U.S.C. § 3713(b), and state insurer insolvency priority statutes. United States Dep't of Treasury v. Faba, 508 U.S. 491, 502 (1993). However, the McCarran-Ferguson Act resolves that issue. See *id.* In the absence of a direct conflict between state law and federal law (as was addressed in Faba), the state law should apply.

Kimbell Foods, Inc., 440 U.S. 715 (1979), and United States v. Yazell, 382 U.S. 341 (1966).² By choosing to address the priority of LHWCA (and other) claims through insolvency law and excluding insurers from the Bankruptcy Code, Congress left creditor priority to the state priority statutes and the general federal priority statute (an interaction mediated by the McCarran-Ferguson Act as determined in Fabe).

2. If there were a conflict between LHWCA § 44 and RSA 402-C:44, the state law may be protected by the McCarran-Ferguson Act unless the federal statute “specifically relates to the business of insurance.” See Fabe, 508 U.S. 491; United States v. Rhode Island Insurers’ Insolvency Fund, 80 F.3d 616, 619 (1st Cir. 1996) (“RIIF”). By referring to “each carrier” in section 44, the federal statute appears to “specifically relate” to insurers. See RIIF, 80 F.3d at 620-21. However, the statute does not pertain to activities that are part of the “business of insurance” because it does not regulate “the core relationship between a private insurer and its insured.” Id. 621-22. See Barnett Bank, 517 U.S. at 39 (focusing on whether the statute at issue “affects the relation of insured to insurer and the spreading of risk – matters that [the Court], in other contexts, has placed at the core of the McCarran-Ferguson Act’s concern”).

LHWCA § 44 does not regulate the relationship between insured and insurer at all. It merely provides a funding mechanism for the Fund. The assessment mechanism is not specifically related to the “business of insurance,” so to the extent of any conflict that part of the federal statute is reverse preempted by the state priority statute under the McCarran-Ferguson Act.

The Jackson case does not require a different result. The Fifth Circuit there held that, “[i]nsofar as the matters presented in the instant case are concerned, . . . the LHWCA ‘specifically relates to the business of insurance’ and thus falls outside the area left to the exclusive regulation of the states.” Texas Employers’ Ins. Ass’n v. Jackson, 820 F.2d 1406, 1414 (5th Cir. 1987) (emphasis added), cert. denied, 490 U.S. 1035 (1989). That case did not involve Special Fund assessments or LHWCA § 44 but the separate question whether a claimant’s state law bad faith claims handling claims against the LHWCA insurer were precluded by the LHWCA. Id. at 1410. The claim involved the claimant’s direct rights – effectively as an insured – against an insurer under the LHWCA, a matter that is clearly an integral part of the relationship of insurer and insured. The result of the case is thus consistent with Barnett Bank and RIIF, but its broad approach does not address the “business of insurance” analysis articulated in those later cases.

* * *

² The monies in the Special Fund are only held in trust by the Treasurer and specifically “shall not be money or property of the United States.” LHWCA § 44(a); 20 C.F.R. § 702.143.

BACKMANN, SAWYER & BREWSTER

Sharon C. Williams

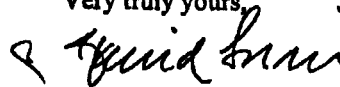
September 27, 2005

Page 4

In these circumstances, the Liquidator proposes to issue a notice of determination on the Department of Labor's proofs of claim allowing the claims, as appropriate, and classifying them as Class III. The United States may then object to the priority classification. Before taking any action, however, we wanted to see if you have any comments. I note that the Liquidator will be seeking to make a second early access distribution to guaranty funds in late 2005 and will be requesting a waiver of priority claims from the United States so that the early access distribution may proceed. To obtain the waiver and facilitate the early access distribution, the Liquidator is willing to agree to set aside the amount of the LHWCA assessment claims until the priority issue is resolved.

Please let me know if you have any comments or questions concerning our analysis of this matter.

Very truly yours,



J. David Leslie

JDL:dlc

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**

**U.S. DEPARTMENT OF LABOR'S NOTICE OF PENDING FEDERAL ACTION TO
RESOLVE ITS OBJECTION TO LIQUIDATOR'S NOTICE OF REDETERMINATION
REGARDING PROOF OF CLAIM NO. GOVT 700090-01**

The United States Department of Labor (DOL) notifies this Court that Hilda L. Solis, Secretary of the United States Department of Labor, has filed an action against The Home Insurance Company (Home) and Roger A. Sevigny, New Hampshire Insurance Commissioner and Liquidator of Home (Liquidator), in the United States District Court for the District of New Hampshire.¹ The federal action seeks declaratory and injunctive relief to resolve DOL's dispute with the Liquidator and Home regarding the treatment of DOL's Proof of Claim No. GOVT 700090-01 (DOL's claim). DOL, as an agency of the "federal sovereign," has invoked its "virtually absolute right to litigate claims brought either by or against it in the federal, rather than the state, courts," and intends to resolve its dispute with the Liquidator and Home in the pending federal action. Hudson Sav. Bank v. Austin, 479 F.3d 102, 106 (1st Cir. 2007).

DOL has also moved in the federal action for a preliminary injunction to enjoin the Liquidator and Home from participating in any proceedings in this Court regarding DOL's claim until the conclusion of the pending federal action, including but not limited to, making any report or recommendation to this Court respecting DOL's claim, or in any other way seeking or prompting this Court to adjudicate the merits or priority of DOL's claim. (Dkt. No. 5, Dec. 22,

¹ The federal action is styled Solis v. The Home Ins. Co, Case No. 1:10-cv-572 (D.N.H.).

2010, Solis v. The Home Ins. Co., Case No. 1:10-cv-572 (D.N.H.)). DOL's requested injunction would not prohibit the Liquidator and Home from moving in this Court to stay Home's insolvency proceeding with respect to DOL's claim or advising this Court of the status of the federal action.

DOL does not submit its dispute with the Liquidator and Home to be decided in this Court, nor does DOL intend to initiate the disputed claim proceedings described at N.H. RSA 402-C:41 and in this Court's January 19, 2005 "Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation." For purposes of preserving DOL's right to object to the Liquidator's October 28, 2010 Notice of Redetermination regarding DOL's claim, this Notice may be construed as an Objection to that Notice of Redetermination.

Respectfully submitted,

TONY WEST
Assistant Attorney General
J. CHRISTOPHER KOHN
Director
RUTH A. HARVEY
Assistant Director



KYLE A. FORSYTH
Washington State Bar No. 34609
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Washington, D.C. 20044-0875
Tel. (202) 307-0452
Fax. (202) 514-6163
Kyle.Forsyth@usdoj.gov

Attorneys for the U.S. Department of Labor

CERTIFICATE OF SERVICE


I certify that a copy of the foregoing "U.S. Department of Labor's Notice of Pending Federal Action to Resolve its Objection to Liquidator's Notice of Redetermination Regarding Proof of Claim No. Govt 700090-01" was served today on the following person(s) via First Class U.S. Mail, postage prepaid:

J. David Leslie
Rackeman Sawyer & Brewster
160 Federal Street
Boston, MA 02100-1700

J. Christopher Marshall
Department of Justice
State of New Hampshire
33 Capitol Street
Concord, NH 03301-6397

Peter Bengelsdorf, Special Deputy Liquidator
For Roger A. Sevigny, Liquidator
of The Home Insurance Company
P.O. Box 1720
Manchester, NH 03105-1720

Dated: December 22, 2010



KYLE A. FORSYTH

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720
Manchester, New Hampshire 03105-1720
Tel: (800) 347-0014
October 28, 2010

POC #: GOVT700090-01

Amount Allowed: \$2,672,527.00

US Department of Labor Longshore Special Fund
200 Constitution Ave NW
RM C 4315
Washington, DC 20210

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge receipt of the Notice of Redetermination as a Class III Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Redetermination 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 Redetermination.

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 Kyle A. Forsyth
U.S. Dept. of Justice

Same address as above
New address P.O. Box 875
Washington, DC 20044

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: *Kyle A. Forsyth*

Print Name: Kyle A. Forsyth

Title: Trial Attorney, U.S. Dept. of Justice

Date: Dec. 22, 2010