

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 WRITTEN SUBMISSION
IN SUPPORT OF ITS RIGHT TO CLASS I OR CLASS II PRIORITY**

Pursuant to this Court's October 11, 2012, "Order Regarding Disputed Claim" and Section 15 of its January 19, 2005, Claims Procedures Order, Hilda L. Solis, Secretary of the United States Department of Labor (Labor), provides this written submission in support of Labor's right to Class I or Class II priority for its Proof of Claim No. GOVT 700090-01 (Labor's Claim) against the Home Insurance Company in Liquidation (Home). As required by the Claims Procedures Order, Labor includes: (1) a statement of contested issues of fact and law, (2) an exhibit list, and (3) a legal brief.

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SUPERIOR COURT

006681

STATEMENT OF CONTESTED ISSUES OF FACT AND LAW

Issues of Fact:

The material facts affecting the priority of Labor's Claim are not in dispute.

Issues of Law:

1. Is Labor's Claim entitled to Class I priority under New Hampshire's insurance insolvency priority statute, N.H. RSA 402-C:44 (Priority Statute), to the extent that Labor's Claim seeks payment for liabilities Home incurred *after* this Court's June 13, 2003 Order of Liquidation and that must be paid "as part of dealing with the business and property" of Home?

2. To the extent Labor's Claim is not entitled to Class I priority as an administrative expense under the Priority Statute, is Labor's Claim—which seeks payment of assessments Home owes to the Special Fund created for the benefit of injured workers by the Longshore and Harborworkers' Compensation Act, 33 U.S.C. §§ 901-950—entitled to Class II priority because the Special Fund functions in part as a guaranty fund, protects injured workers against the occurrence and effects of insurer insolvencies, and is therefore a "similar organization" to the New Hampshire guaranty associations?

EXHIBIT LIST

Labor relies upon the following affidavit and exhibits, which are attached at the end of Labor's Legal Brief below:

1. Affidavit of Cheryl B. Jordan.
2. Exhibit A – Excerpts from Labor's Office of Inspector General's Financial Statements for the Longshore and Harborworkers' Compensation Act Special Fund.
3. Exhibit B – Labor's Proof of Claim and Supporting Billing Statements.
4. Exhibit C – Liquidator's Notice of Redetermination.

**LEGAL BRIEF IN SUPPORT OF LABOR'S
RIGHT TO CLASS I OR CLASS II PRIORITY**

The Home Insurance Company in Liquidation (Home), through its Liquidator, New Hampshire Insurance Commissioner Roger A. Sevigny (Liquidator), admits that it owes the U.S. Department of Labor (Labor) \$2.67 million in assessments for the “Special Fund” that exists for the benefit of injured workers under the Longshore and Harbor Workers’ Compensation Act (the Longshore Act), 33 U.S.C. §§ 901-50. The Liquidator, however, has erroneously assigned Labor’s claim Class III priority, a priority class he does not expect to receive any payment from Home’s estate.

Home incurred a portion of its liability to Labor in 2003 and 2004, *after* this Court ordered Home’s liquidation. So the Special Fund assessments for 2003 and 2004 are administrative expenses entitled to Class I priority under New Hampshire’s insurance insolvency priority statute. N.H. RSA 402-C:44 (Priority Statute). Further, to the extent it does not receive Class I priority, Labor’s claim belongs in Class II, because the Longshore Act’s Special Fund—which functions in part as a guaranty fund and protects injured workers from the occurrence and effects of insurer insolvencies—is a “similar organization” to New Hampshire’s insurance guaranty associations. Id.

I. BACKGROUND

Labor and the Liquidator do not dispute the following material facts, which support Labor’s right to Class I and/or Class II priority:

A. The Longshore Act Creates a Special Fund for the Benefit of Injured Workers

The Longshore Act, under which Labor’s Claim arises, establishes a mandatory, nationwide system of workers’ compensation insurance for certain maritime workers and their

employers. 33 U.S.C. §§ 901-50. Employers who are covered by the Longshore Act must provide direct payments (via insurance carriers such as Home or self-insurance) to their injured workers for medical services and supplies, and compensation for disability and/or death. 33 U.S.C. §§ 904, 907-909, 932. The Longshore Act prescribes the amounts and duration of the direct payments it requires of employers or their insurance carriers. 33 U.S.C. §§ 906, 908, 909.

Employers and their insurers are relieved of certain direct payment obligations, however, by the Longshore Act's Special Fund, which provides payments to injured workers for covered injuries. 33 U.S.C. § 944(a). The Secretary of Labor (Secretary) administers the Special Fund. 33 U.S.C. § 944(a) and (i).

1. *The Special Fund Relieves Insurers Like Home of Direct Responsibility for "Second Injury Payments"*

One type of payment the Secretary makes with the Special Fund is for certain injuries "increasing disability" (Second Injury Payments). 33 U.S.C. §§ 908(f) and 944(i). When a partially disabled worker suffers a work-related injury that increases his or her disability, the employer (or the employer's insurance carrier) must pay compensation directly to that worker for only a limited period (in most cases 104 weeks). 33 U.S.C. § 908(f)(1). If the worker is entitled to benefits beyond that limited period, the Special Fund takes over the employer's or insurer's *direct* responsibility for making Second Injury Payments. 33 U.S.C. § 908(f)(2)(A). However, the employer or insurer remains *indirectly* responsible for the ongoing Second Injury Payments through the Longshore Act's Special Fund assessments mechanism discussed below in Section I, B. During the Special Fund's fiscal years 2000-2004 (the years for which Home owes Labor \$2.67 million in Special Fund assessments), Second Injury Payments accounted for 92 percent of

the Special Fund's total net costs (\$603,540,614 of \$656,150,901 total net costs). Exh. A at 2, 6, 10.¹

2. *The Special Fund Functions in Part Like a Guaranty Fund*

The Special Fund also functions, in part, like a guaranty fund, by paying injured workers who cannot collect compensation that their employer owes them under the Longshore Act. 33 U.S.C. §§ 918(b) and 944(i). The Special Fund may step in to make these Section 918(b) payments due to the employer's bankruptcy, the insurer's insolvency, or other circumstances precluding payment. Id. When the Special Fund makes such a payment, the Secretary is subrogated to the worker's rights against the employer to the extent of the Special Fund's payment. 33 U.S.C. § 918(b). During the relevant fiscal years of 2000-2004, Section 918(b) Payments due to an employer's insolvency or other circumstances precluding payment constituted the Special Fund's second largest category of payments, accounting for 3.5 percent of total net costs (\$23,157,599 of \$656,150,901). Exh. A at 2, 6, 10.

B. The Special Fund Relies on Assessments Collected from Insurers Like Home

The Special Fund's payments to injured workers are funded almost exclusively by assessments collected from participating insurers. Insurance carriers covered by the Longshore Act, including Home, must pay annual assessments to the Special Fund, in amounts determined by the Secretary. 33 U.S.C. § 944(c)(2); Exh. B; Exh. C at 1. The Secretary determines the amount of an insurance carrier's annual assessment based upon a statutory formula that considers: (1) the amount of the workers' compensation payments the carrier made under the Longshore Act during the preceding calendar year, relative to the total amount of workers'

¹ References to Exhibits A through C refer to the exhibits attached to the affidavit of Cheryl B. Jordan, which accompanies Labor's Legal Brief.

compensation payments all carriers made under the Longshore Act during the same period; (2) the amount of the Special Fund's Second Injury Payments during the preceding calendar year which were attributable to the carrier, relative to the total amount of such payments the Special Fund made during the same period; and (3) the Secretary's estimate of the Special Fund's expenses for the current calendar year. 33 U.S.C. § 944(c)(2). In other words, an insurer's annual assessment is proportionate to the insurer's share of Longshore Act claims industry-wide. For the Special Fund's fiscal years 2000-2004, insurer assessments supplied more than 99 percent of the Special Fund's revenues. Exh. A at 3, 7, 11.

C. The Secretary Regulates Insurers Covered by the Longshore Act

Insurance carriers must receive authorization from the Secretary before they can provide the insurance required by the Longshore Act. 33 U.S.C. § 932; 20 C.F.R. § 703.102. In order to receive the Secretary's authorization, insurers must disclose a "full and complete statement of their financial condition." 20 C.F.R. § 703.102. In deciding whether to authorize an insurance carrier to provide insurance under the Longshore Act, the Secretary may consider the recommendation of "any State authority having supervision over carriers or over workmen's compensation." 33 U.S.C. § 932(b). And the Secretary may suspend or revoke an insurance carrier's authorization to provide insurance under the Longshore Act for good cause shown. 33 U.S.C. § 932(b).

D. Home Declared Insolvent and Ordered Liquidated

On June 13, 2003, this Court declared Home insolvent, ordered its liquidation, and appointed the Liquidator to administer the liquidation. June 13, 2003, Order of Liquidation. The Liquidator is "vested with title to all of the property, contracts and rights of action and all of the books and records of [Home]." Order of Liquidation at 2; see also N.H. RSA 402-C:21, I.

Among other responsibilities, the Liquidator must review each claim filed in Home's liquidation, and determine whether the claim should be allowed, in what amount, and at what priority class level. The Liquidator then makes a recommendation to this Court regarding his determinations. N.H. RSA 402-C:45.

E. Labor's Claim for Home's Unpaid Special Fund Assessments

Shortly after the Court's Order of Liquidation, Labor filed a proof of claim (Labor's Claim) with the Liquidator, for Special Fund assessments totaling \$1,531,483 that Home owes to Labor under the Longshore Act for years 2000-2002. Exh. B at 1-8 (Proof of Claim with supporting bills for assessments); see also 33 U.S.C. § 944(c). In 2005, Labor amended its claim to include Special Fund assessments that Home owes for 2003 and 2004, totaling an additional \$1,141,044, which Labor assessed in July 2003 and July 2004, *after* the Court's June 13, 2003, Order of Liquidation. Exh. B at 9-16. Home's payments of its 2003 and 2004 assessments were due 30 days after Labor issued its assessment bills on July 25, 2003 and July 14, 2004. Id.

The Liquidator later determined that Labor's entire claim for year 2000-2004 assessments should be allowed in its full amount of \$2,672,527. Exh. C at 1 (Notice of Redetermination). However, the Liquidator relegated Labor's entire claim to priority Class III under the Priority Statute, despite the fact that Home's liability for the 2003 and 2004 assessments arose *after* the Order of Liquidation, and despite the similarities between the Longshore Act's Special Fund and the New Hampshire guaranty associations. Exh. C at 1; see also N.H. RSA 402-C:44, I & II. Unless the Court reclassifies Labor's Claim, it will go entirely unpaid, because the Liquidator does not expect Class III claims to receive any payment from Home's estate. Exh. C at 2.

II. ARGUMENT

The Liquidator has misclassified Labor's Claim as a priority Class III claim. For the reasons that follow, Labor's Claim belongs in Class I as an administrative expense, to the extent Labor seeks Home's Special Fund assessments for 2003 and 2004 (after the Order of Liquidation). And the remainder of Labor's Claim, for Home's 2000-2002 assessments, deserves Class II status because the Longshore Act's Special Fund is similar to the New Hampshire guaranty associations.

The Priority Statute provides for ten priority classes into which an insolvent insurance company's creditors' claims may fall. N.H. RSA 402-C:44. Only the first three classes are relevant here: Class I includes the "costs and expenses of administration" of the insolvent insurer's estate; Class II includes "Policy Related Claims," including "claims of the New Hampshire Insurance Guaranty Association, the New Hampshire Life and Health Insurance Guaranty Association and any similar organization in another state;" and Class III includes "Claims of the Federal Government." *Id.* Every claim of a given priority class must be paid in full (or adequate funds retained for such payment in full) before any payment is made for claims of the next lower class. *Id.*

A. The 2003 and 2004 Assessments Arose After Home's Order of Liquidation, and Must Be Paid in Full As Administrative Costs

Special Fund assessments assessed after the June 13, 2003 entry of Home's Order of Liquidation are administrative costs entitled to Class I priority. N.H. RSA 402-C:44, I. The Priority Statute "draws a clear distinction in time separated by the order to liquidate," such that expenses incurred *before* entry of a liquidation order cannot qualify as administrative costs. In re Liquidation of the Home Ins. Co., 965 A.2d 1143, 1145 (N.H. 2009); N.H. RSA 402-C:44, I; N.H. RSA 402-C:21. As Home's liability for the 2003 and 2004 Special Fund assessments arose

on July 25, 2003 and July 14, 2004, *after* the Order of Liquidation, these obligations meet the threshold, post-liquidation, requirement for administrative costs. Id.

The law defines administrative costs to include the Special Fund assessments for 2003 and 2004. See N.H. RSA 402-C:44, I; N.H. RSA 402-C:25, IV. In addition to the non-exhaustive list of administrative costs listed in the Priority Statute, administration of the estate includes “various actions such as ‘[d]efray[ing] all expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of the insurer.’” Home Ins. Co., 965 A.2d at 1145 (quoting N.H. RSA 402-C:25, IV) (alterations in original). Recognizing the breadth of this language, the New Hampshire Supreme Court has noted that the Priority Statute’s definition of administrative costs “encompasses a much broader category of items and transactions than is found in the bankruptcy code.” In re Liquidation of the Home Ins. Co., 913 A.2d 712, 722 (N.H. 2006).

Interpreting nearly identical statutory language regarding the activities of administration under North Carolina law, the U.S. Court of Appeals for the Fourth Circuit held that federal income taxes incurred by an insolvent insurer after the order of liquidation were entitled to first priority as administrative costs. North Carolina v. United States, No. 97-2108, 1998 WL 178374, at *4 (4th Cir. Apr. 16, 1998). Payment of such “legal obligations [wa]s necessary and beneficial in the sense that it allow[ed] the receiver or the liquidator to conduct the ongoing business of selling assets and distributing claims in an orderly manner.” North Carolina at *4 (citing Reading Co. v. Brown, 391 U.S. 471, 483-85 (1968) (postpetition tort damages were “actual and necessary” administrative costs in bankruptcy)).

This reasoning encompasses Home's outstanding 2003 and 2004 Special Fund assessments, which are, no less than the federal income taxes at issue in North Carolina, legal

obligations that arose post-liquidation. The Liquidator concedes that the Longshore Act continues to apply to Home after the Order of Liquidation and that Home owes the 2003 and 2004 assessments. Exh. C. Indeed, Home's *ongoing* obligation to pay its assessments arises directly from the Special Fund's *ongoing* payments to injured workers who were covered by Home's insurance policies. Exh. B at 9-16; 33 U.S.C. § 944(c)(2) (formula for Special Fund assessments). As with the taxes at issue in North Carolina, payment of Home's Special Fund assessments is mandatory and not within the Liquidator's discretion. The assessments are unavoidable costs of administering the estate; they are not penalties that accrued through negligence or mismanagement. 33 U.S.C. § 944(c)(2). Accordingly, the Liquidator must pay them as part of "dealing with the business and property of the insurer." N.H. RSA 402-C:25, IV; N.H. RSA 402-C:44, I.

B. Because the Special Fund is a "Similar Organization" to the New Hampshire Guaranty Associations, Labor's Claim for 2000-2002 Assessments Is Entitled to Class II Priority

As to the year 2000-2002 Special Fund assessments, Labor's Claim is entitled to Class II priority because the Special Fund is a "similar organization" to the New Hampshire guaranty associations.² The Priority Statute provides that "policy related claims" receive second priority. N.H. RSA 402-C:44, II. "Policy related claims" include (1) claims by "policyholders, . . . beneficiaries, and insureds" that are covered by the insolvent insurer's policies; (2) "liability claims against insureds" that are covered by the insolvent insurer's policies; and, most pertinently, (3) "claims of the New Hampshire Insurance Insolvency Guaranty Association, the New Hampshire Life and Health Insurance Guaranty Association and *any similar organization in*

² If the Court finds that Labor's Claim for Home's 2003 and 2004 assessments is not entitled to Class I priority as an administrative expense, then this argument for Class II priority also applies to the 2003 and 2004 assessments.

another state.” Id. (emphasis added). The Special Fund is a “similar organization in another state” that qualifies for Class II priority under New Hampshire law.

Counsel is unaware of any court decisions interpreting the phrase “any similar organization in another state,” as that phrase is used in the New Hampshire priority statute, so the analysis proceeds directly from statute’s text. Taking the second half of this phrase first, the Special Fund is “in another state” by virtue of the fact that it is part of a federal program that operates nationwide. 33 U.S.C. § 903(a). New Hampshire law does not require such a “similar organization” to be a creature of another state, or established by another state, but simply to be “*in another state.*” N.H. RSA 402-C:44, II (emphasis added). The law defines “state” as “any state of the United States and the Panama Canal Zone,” and the Special Fund—which operates nationwide—clearly operates within a “state of the United States” outside New Hampshire. N.H. RSA 402-C:3; 33 U.S.C. § 903(a).

Turning back to the first half of the phrase, the Priority Statute broadly embraces “any similar organization;” it does not confine its reach to “identical organizations” or to “state guaranty associations.” N.H. RSA 402-C:44, II. The Special Fund is “similar” to the New Hampshire guaranty associations in several important respects. First, the Special Fund functions in part *as a guaranty fund* for injured workers whose employers or insurance carriers are insolvent. 33 U.S.C. § 918(b); see above at 6 (Sec. I, A, 2). Just like the New Hampshire guaranty associations, when the Special Fund makes such a guaranty-fund-like payment, the Secretary is subrogated to the insured employee’s rights against the employer to the extent of the Special Fund’s payment. 33 U.S.C. § 918(b); N.H. RSA 404-B:11; N.H. RSA 408-B:8, XIII.

Second, even when the Special Fund does not function as a guaranty fund, it is similar to the New Hampshire guaranty associations because its payments insulate injured workers from

the occurrence and effects of insurance carrier insolvencies. About ninety percent of the Special Fund's expenditures cover Second Injury Payments. Exh. H at 2, 6, 10 (Special Fund Annual Report Excerpts). At the end of each insurer's statutorily limited period of direct liability, the Special Fund assumes responsibility for payments the insurer formerly made. 33 U.S.C. § 908(f). Under the Secretary's assessment formula, the carrier remains indirectly and partially liable for claims that arose under its insurance policies,³ but is relieved from the full burden of making direct payments in perpetuity to workers with permanent total disabilities. 33 U.S.C. § 944(c)(2)(B). In this way, the Special Fund's Section 908(f) Payments spread the risk of catastrophic losses to the entire insurance industry, thereby cushioning individual insurers (and their insureds) from the risks of insolvency. See 20 C.F.R. § 702.144 (expressly noting this risk-spreading purpose).

A third similarity also relates to insolvency prevention. The statutory schemes governing the Special Fund and the New Hampshire guaranty associations both aim to prevent insurer insolvencies through regulation and investigation of insurance carriers' financial conditions. 33 U.S.C. § 932; 20 C.F.R. § 703.102; N.H. RSA 404-B:13, II; N.H. RSA 408-B:12, V. Underscoring the similarity of these federal and state regulatory roles, the Longshore Act permits the Secretary to "take into consideration the recommendation of any State authority having supervision over carriers or over workmen's compensation." 33 U.S.C. § 932(b). For all these reasons, the Special Fund is a "similar organization in another state," and DOL's claim is entitled to Class II priority. N.H. RSA 402-C:44, II.

³ Even after the Special Fund takes over the direct payments on a section 908(f) claim, the carrier under whose policy the claim arose "remain[s] a party to the claim, retain[s] access to

III. CONCLUSION

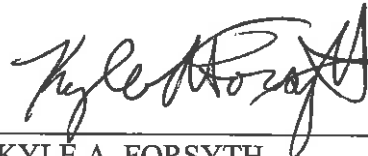
For all the foregoing reasons, Labor's Claim is entitled to Class I priority as an administrative expense for Home's 2003 and 2004 assessments, totaling \$1,141,044, which Home incurred *after* the Order of Liquidation, and which the Liquidator must pay as part of "dealing with the business and property of" Home. Further, to the extent the Court finds that any part of Labor's Claim for Home's 2000-2004 assessments does not qualify for Class I priority, Labor's Claim is entitled to Class II priority as the claim of an organization "similar" to the New Hampshire guaranty associations.

Respectfully submitted,

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*Attorneys for Hilda L. Solis
Secretary, U.S. Department of Labor*

all records relating to the claim, and in all other respects retain[s] all rights granted under [the Longshore Act]." 33 U.S.C. § 908(f)(2)(B).

CERTIFICATE OF SERVICE

I certify that the foregoing "U.S. Department of Labor's Written Submission in Support of Its Right to Class I or Class II Priority" together with the Affidavit of Cheryl B. Jordan and Exhibits A-C, were sent today via first class U.S. Mail to all persons on the attached Service List.

Dated: November 13, 2012

A handwritten signature in black ink, appearing to read "Kyle A. Forsyth", written over a horizontal line.

KYLE A. FORSYTH

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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**

AFFIDAVIT OF CHERYL B. JORDAN IN SUPPORT
OF LABOR'S RIGHT TO CLASS I OR CLASS II PRIORITY

I, Cheryl B. Jordan, solemnly swear as follows:

1. I am employed by the United States Department of Labor (Labor) as a Workers' Compensation Claims' Examiner. I make this declaration based on my personal knowledge and observations of the facts herein and my review of the relevant records and files.

2. Exhibit A to this affidavit contains true and correct copies of excerpts from the financial reports of the Longshore and Harborworkers' Compensation Act Special Fund published by Labor's Office of Inspector General for fiscal years 2000 through 2004. The full reports are publicly available on a Department of Labor website at:

http://www.oig.dol.gov/cgi-bin/oa_rpts.cgi?s=04-43&y=all&a=all

3. In the course of performing my duties at Labor, I am familiar with the proof of claim Labor filed against The Home Insurance Company on June 26, 2003, and subsequently amended on February 2, 2005 and April 8, 2005.

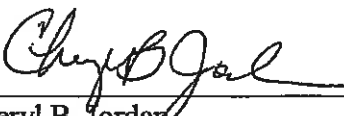
4. Exhibit B to this affidavit, including the Bills for Collection included therein, is a true and correct copy of Labor's proof of claim, as amended, that Labor filed against the Home Insurance Company.

5. I am familiar with Labor's filing system for the Bills for Collection that are included in Exhibit B. These Bills for Collection are records that Labor regularly creates and maintains in the ordinary course of its business. The Bills for Collection that are included in Exhibit B are true and correct copies of the records in Labor's files.

6. Also in the course of performing my duties at Labor, I am familiar with the Notice of Redetermination dated October 28, 2010, that was addressed to "US Department of Labor Longshore Special Fund, 200 Constitution Ave NW, RM C 4315, Washington, DC 20210."

7. Exhibit C to this affidavit is a true and correct copy of the Notice of Redetermination that Labor received.


Signed under oath on November 13, 2012.



Cheryl B. Jordan

Cheryl B. Jordan personally appeared before me on November 13, 2012, and swore that the statements contained in this affidavit are true to the best of her knowledge, belief, and opinion.

[Notary Public's Certification]

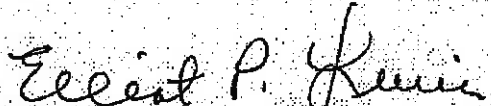
District of Columbia : SS
Subscribed and Sworn to before me
this 13th day of November, 2012


Onetia J. Evans, Notary Public, D.C.
My commission expires July 14, 2015

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

LONGSHORE AND HARBOR WORKERS'
COMPENSATION ACT SPECIAL FUND
FINANCIAL STATEMENTS
SEPTEMBER 30, 2001 AND 2000

This audit was performed by Kearney & Company, Certified Public Accountants, under contract to the Inspector General, and, by acceptance, it becomes a report of the Office of Inspector General.


Acting Deputy Inspector General for Audit

**LONGSHORE AND HARBOR WORKERS'
COMPENSATION ACT SPECIAL FUND**

**STATEMENTS OF NET COST
For The Years Ended September 30, 2001 and 2000**

	2001	2000
SPECIAL FUND NET COST OF OPERATIONS		
With the public		
Second injury compensation, Section 8(f)	\$ 120,088,037	\$ 119,537,494
Wage increase compensation, Section 10(h)	2,301,236	2,470,725
Compensation payment for self-insurer in default, Section 18(b)	4,699,839	4,780,069
Rehabilitation services 39 (c)	3,138,657	2,498,457
Rehabilitation maintenance, Section 8(g)	1,016	25,073
Medical services, Section 7(e)	1,647	934
Disbursement – bankrupt self-insured employers	<u>495,509</u>	<u>140,126</u>
Net cost of operations	<u>\$ 130,725,941</u>	<u>\$ 129,452,878</u>

The accompanying notes are an integral part of these statements.

**LONGSHORE AND HARBOR WORKERS'
COMPENSATION ACT SPECIAL FUND**

**STATEMENTS OF CHANGES IN NET POSITION
For The Years Ended September 30, 2001 and 2000**

	2001	2000
CHANGE IN NET POSITION		
Net cost of operations	\$(130,725,941)	\$(129,452,878)
Net financing sources		
Non-exchange revenue		
Assessments	133,948,006	132,300,020
Interest	<u>1,890,879</u>	<u>2,457,542</u>
Total	135,838,885	134,757,562
Transfers-out (Note 6)	<u>(1,981,000)</u>	<u>(1,740,000)</u>
Total net financing sources	<u>133,857,885</u>	<u>133,017,562</u>
Net results of operations	3,131,944	3,564,684
Net position, beginning of period	<u>23,661,493</u>	<u>20,096,809</u>
Net position, end of period	<u>\$ 26,793,437</u>	<u>\$ 23,661,493</u>

The accompanying notes are an integral part of these statements.

U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



MAR 30 2004

MEMORANDUM FOR:

VICTORIA LIPNIC
Assistant Secretary for
Employment Standards

FROM:

Elliot P. Lewis
ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT:

Final Audit Report No. 22-04-007-04-432 Longshore and
Harbor Workers' Compensation Act Special Fund
Financial Statements and Related Reports; and

Final Audit Report No. 22-04-008-04-432 District of
Columbia Workmen's Compensation Act Special Fund
Financial Statements and Related Reports
September 30, 2003 and 2002

Attached are copies of the referenced audit reports, which cover the Fiscal Years 2003 and 2002 financial statements of each Special Fund. The Assistant Inspector General's opinions are unqualified for these two Special Funds and neither report notes any reportable conditions.

If you have any questions, please contact Michael McFadden, Director, Office of Accountability Audits, on 693-5164.

Attachment

cc Samuel Mok, CFO

Working for America's Workforce

Exhibit A - Page 4

**U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION**

**LONGSHORE AND HARBOR WORKERS'
COMPENSATION ACT SPECIAL FUND
FINANCIAL STATEMENTS
SEPTEMBER 30, 2003 AND 2002**

March 2004

**Office of Management, Administration and Planning
Division of Financial Management**

ANNUAL FINANCIAL STATEMENTS

**LONGSHORE AND HARBOR WORKERS'
COMPENSATION ACT SPECIAL FUND**

**STATEMENTS OF NET COST
For the Years Ended September 30, 2003 and 2002**

	<u>2003</u>	<u>2002</u>
SPECIAL FUND NET COST OF OPERATIONS		
With the public		
Second injury compensation, Section 8(f)	\$ 121,355,505	\$ 119,122,754
Wage increase compensation, Section 10(h)	2,157,599	2,245,307
Compensation payment for self-insurer in default, Section 18(b)	4,598,743	4,362,906
Rehabilitation services, Section 39 (c)	2,611,956	2,830,417
Rehabilitation maintenance, Section 8(g)	(400)	200
Medical services, Section 7(e)	2,315	1,750
Bankrupt self-insured employers	<u>1,626,725</u>	<u>576,224</u>
Net cost of operations	<u>\$ 132,352,443</u>	<u>\$ 129,139,558</u>

The accompanying notes are an integral part of these statements.

ANNUAL FINANCIAL STATEMENTS

**LONGSHORE AND HARBOR WORKERS'
COMPENSATION ACT SPECIAL FUND**

**STATEMENTS OF CHANGES IN NET POSITION
For the Years Ended September 30, 2003 and 2002**

	<u>2003</u>	<u>2002</u>
CUMULATIVE RESULTS OF OPERATIONS		
Cumulative results of operations, beginning	\$ 30,619,035	\$ 26,793,437
Budgetary financing sources:		
Transfers in/out without reimbursement (Note 6)	(2,029,188)	(1,970,000)
Non-exchange revenues:		
Interest	511,065	854,090
Assessments	<u>127,660,869</u>	<u>134,081,066</u>
Total non-exchange revenues	<u>128,171,934</u>	<u>134,935,156</u>
Total financing sources	126,142,746	132,965,156
Net cost of operations	<u>(132,352,443)</u>	<u>(129,139,558)</u>
Net position, end of period	<u>\$ 24,409,338</u>	<u>\$ 30,619,035</u>

The accompanying notes are an integral part of these statements.

U.S. Department of Labor

Office of Inspector General—Office of Audit

EMPLOYMENT STANDARDS ADMINISTRATION



LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT SPECIAL FUND FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS' REPORT

September 30, 2004 and 2003

This report was prepared by M.D. Oppenheim & Company, P.C., under contract to the U.S. Department of Labor, Office of Inspector General, and by acceptance, it becomes a report of the Office of Inspector General.

Eelise P. Lewis

Assistant Inspector General for Audit

Date Issued: September 30, 2005
Report Number: 22-05-010-04-432

**U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION**

**LONGSHORE AND HARBOR WORKERS'
COMPENSATION ACT SPECIAL FUND
FINANCIAL STATEMENTS
SEPTEMBER 30, 2004 AND 2003**

**Office of Management, Administration and Planning
Division of Financial Management**

**LONGSHORE AND HARBOR WORKERS'
COMPENSATION ACT SPECIAL FUND**

**STATEMENTS OF NET COST
For the Years Ended September 30, 2004 and 2003**

	<u>2004</u>	<u>2003</u>
SPECIAL FUND NET COST OF OPERATIONS		
With the public		
Second injury compensation, Section 8(f)	\$ 123,436,824	\$ 121,355,505
Wage increase compensation, Section 10(h)	2,091,456	2,157,599
Compensation payment for self-insurer in default, Section 18(b)	4,716,042	4,598,743
Rehabilitation services, Section 39 (c)	2,968,490	2,611,956
Rehabilitation maintenance, Section 8(g)	175	(400)
Medical services, Section 7(e)	8,939	2,315
Bankrupt self-insured employers	<u>1,258,155</u>	<u>1,626,725</u>
Net cost of operations	<u>\$ 134,480,081</u>	<u>\$ 132,352,443</u>

The accompanying notes are an integral part of these statements.

LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT SPECIAL FUND		
STATEMENTS OF CHANGES IN NET POSITION		
For the Years Ended September 30, 2004 and 2003		
	<u>2004</u>	<u>2003</u>
CUMULATIVE RESULTS OF OPERATIONS		
Cumulative results of operations, beginning	\$ 24,409,338	\$ 30,619,035
Budgetary financing sources:		
Transfers in/out without reimbursement (Note 6)	(2,021,000)	(2,029,188)
Non-exchange revenues:		
Interest	420,648	511,065
Assessments	<u>135,813,028</u>	<u>127,660,869</u>
Total non-exchange revenues	<u>136,233,676</u>	<u>128,171,934</u>
Total financing sources	134,212,676	126,142,746
Net cost of operations	<u>(134,480,081)</u>	<u>(132,352,443)</u>
Net position, end of period	<u>\$ 24,141,933</u>	<u>\$ 24,409,338</u>

The accompanying notes are an integral part of these statements.

II - 3

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: US Dept. of Labor Longshore Special Fund
2. Claimant's Address: 200 Constitution Ave. NW
RM C4315 Washington, DC 20210
3. Claimant's Telephone Number: (202) 693-0801
Fax Number: (202) 693-1380
Email address: abildso.carl@dol.gov
4. Claimant's Social Security Number, Tax ID Number or Employer ID Number: N/A
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.

Longshore Special Fund assessments are unpaid for
years 2000, 2001, and 2002.

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.

\$ 1,531,483 (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.

N/A

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

N/A

9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim?

N/A

10. Do you claim a priority for your claim? If so, why: Unknown- see class (e&f) above

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

Name: Carl B. Abildso - US Dept of Labor
Address: 200 Constitution Ave NW - Rm C-4315
Washington, DC 20210
Phone Number (202) 693-0801
Email address Abildso.Carl@dol.gov

* 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: Not at this time
 - 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 N/A
 - 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, N/A (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 _____ (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(s) of action that forms the basis for my claim against The Home in the amount of _____ of the applicable policy provided by The Home; provided, however, that this release shall be void if the insured _____.

 Claimant's signature _____

 Date

15. All claimants must complete the following:

I, Carl B. Abildso (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 \$1,531,483.00 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.

Carl B. Abildso
 Claimant's signature _____

JUN 26 2003
 Date

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.

Bill For Collection

Bill No. 8130
DATE: 06/16/2000
SEQ: 1470 EIN: 020308052

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and Harbor Workers' Compensation

Home Insurance Company
c/o Risk Enterprise Mgmt.Svcs
59 Maiden Lane
New York, NY 10038
Lara Richardson, Data Mgmt.

2000 Final Assessment Due = \$7,984

*This bill should be returned by
the payer with this remittance.
See instructions below.*

WORKER'S COMPENSATION PAYMENT	AMOUNT
1999 Company Compensation Payments	0
1999 Total Compensation Payments	353,071,178
SPECIAL FUND DATA	AMOUNT
1999 Company 8(f) Participation	673,279
1999 Total 8(f) Participation	103,318,103
2000 Special Fund Estimated Expenses	130,000,000

FORMULA FOR ASSESSMENT
 (1999 Company Compensation Payments / 1999 Total Compensation Payments) +
 (1999 Company 8(f) Participation / 1999 Total 8(f) Participation)
 DIVIDED BY 2 X 2000 Special Fund Estimated Expenses = ASSESSMENT
 OR
 (0 / 353,071,178) + (673,279 / 103,318,103) / 2 X 130,000,000 = 423,577

ADVANCE ASSESSMENT EQUALS 1/2 OF ESTIMATED YEARLY BILL

CALCULATION	AMOUNT
2000 Total Assessment	423,577
2000 Less Assessment Paid	0
Less Credit	0
Plus Interest or Adjustment	0
2000 Final Assessment Due	\$423,577

INSTRUCTIONS
 Payment is due within 30 days from the date of the bill.
DO NOT combine any payments.
 Please send your check with a copy of this bill to:
 Department of Labor, P.O.Box 371088M, Pittsburgh, PA 15251

Bill For Collection

Bill No. 8130
DATE: 06/16/2000
SEQ: 1460 EIN: 230304627

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and Harbor Workers' Compensation

Home Indemnity Co.
59 Maiden Lane
New York, NY 10038

2000 Final Assessment Due = \$7,984

*This bill should be returned by
the payer with this remittance.
See instructions below.*

Tax Dept -3

WORKER'S COMPENSATION PAYMENT	AMOUNT
1999 Company Compensation Payments	0
1999 Total Compensation Payments	353,071,178
SPECIAL FUND DATA	AMOUNT
1999 Company 8(f) Participation	364,434
1999 Total 8(f) Participation	103,318,103
2000 Special Fund Estimated Expenses	130,000,000

FORMULA FOR ASSESSMENT

(1999 Company Compensation Payments / 1999 Total Compensation Payments) +
 (1999 Company 8(f) Participation / 1999 Total 8(f) Participation)
 DIVIDED BY 2 X 2000 Special Fund Estimated Expenses = ASSESSMENT
 OR
 (0 / 353,071,178) + (364,434 / 103,318,103) / 2 X 130,000,000 = 229,275

ADVANCE ASSESSMENT EQUALS 1/2 OF ESTIMATED YEARLY BILL

CALCULATION	AMOUNT
2000 Total Assessment	229,275
2000 Less Assessment Paid	0
Less Credit	0
Plus Interest or Adjustment	0
2000 Final Assessment Due	\$229,275

INSTRUCTIONS

Payment is due within 30 days from the date of the bill.
DO NOT combine any payments.
 Please send your check with a copy of this bill to:
 Department of Labor, P.O.Box 371088M, Pittsburgh, PA 15251

Bill For Collection

Bill No. 8130

DATE: 07/23/2001

SEQ: 1470 EIN: 020308052

U.S. Department of LaborEmployment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and Harbor Workers' CompensationHome Insurance Company
c/o Risk Enterprise Mgmt.Svcs
59 Maiden Lane
New York, NY 10038
Lara Richardson, Data Mgmt.**2001 Final Assessment Due: \$372,840***This bill should be returned by
the payer with this remittance.
See instructions below.*

WORKER'S COMPENSATION PAYMENT	AMOUNT
2000 Company Compensation Payments	0
2000 Total Compensation Payments	358,603,454
SPECIAL FUND DATA	AMOUNT
2000 Company 8(f) Participation	604,340
2000 Total 8(f) Participation	107,790,409
2001 Special Fund Estimated Expenses	133,000,000

FORMULA FOR ASSESSMENT	
<i>(2000 Company Compensation Payments / 2000 Total Compensation Payments) +</i>	
<i>(2000 Company 8(f) Participation / 2000 Total 8(f) Participation)</i>	
<i>DIVIDED BY 2 X 2001 Special Fund Estimated Expenses = ASSESSMENT</i>	
OR	
<i>(0 / 358,603,454) + (604,340 / 107,790,409) / 2 X 133,000,000 = 372,840</i>	

ADVANCE ASSESSMENT EQUALS 1/2 OF ESTIMATED YEARLY BILL

CALCULATION	AMOUNT
2001 Total Assessment	372,840
2001 Less Assessment Paid	0
Less Credit	0
Plus Interest or Adjustment	0
2001 Final Assessment Due	\$372,840

INSTRUCTIONS	
Payment is due within 30 days from the date of the bill.	
DO NOT combine any payments.	
Please send your check with a copy of this bill to:	
Department of Labor, P.O.Box 371088M, Pittsburgh, PA 15251	

Bill For Collection

Bill No. 8130

DATE: 07/23/2001

SEQ: 1460 EIN: 230304627

U.S. Department of LaborEmployment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and Harbor Workers' Compensation

Home Indemnity Co.

59 Malden Lane

New York, NY 10038

2001 Final Assessment Due: \$222,956*This bill should be returned by
the payer with this remittance.
See instructions below.*

Tax Dept -3

WORKER'S COMPENSATION PAYMENT	AMOUNT
2000 Company Compensation Payments	0
2000 Total Compensation Payments	358,603,454
SPECIAL FUND DATA	AMOUNT
2000 Company 8(f) Participation	361,391
2000 Total 8(f) Participation	107,790,409
2001 Special Fund Estimated Expenses	133,000,000

FORMULA FOR ASSESSMENT	
<i>(2000 Company Compensation Payments / 2000 Total Compensation Payments) +</i>	
<i>(2000 Company 8(f) Participation / 2000 Total 8(f) Participation)</i>	
<i>DIVIDED BY 2 X 2001 Special Fund Estimated Expenses = ASSESSMENT</i>	
OR	
<i>(0 / 358,603,454) + (361,391 / 107,790,409) / 2 X 133,000,000 = 222,956</i>	

ADVANCE ASSESSMENT EQUALS 1/2 OF ESTIMATED YEARLY BILL

CALCULATION	AMOUNT
2001 Total Assessment	222,956
2001 Less Assessment Paid	0
Less Credit	0
Plus Interest or Adjustment	0
2001 Final Assessment Due	\$222,956

INSTRUCTIONS	
Payment is due within 30 days from the date of the bill.	
DO NOT combine any payments.	
Please send your check with a copy of this bill to:	
Department of Labor, P.O.Box 371088M, Pittsburgh, PA 15251	

Bill For Collection

Bill No. 8130

DATE: 01/29/2002

SEQ: 1470 EIN: 020308052

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and Harbor Workers' Compensation

Home Insurance Company
c/o Risk Enterprise Mgmt.Svcs
59 Maiden Lane
New York, NY 10038
Lara Richardson, Data Mgmt.

2002 Advance Assessment Due: \$173,460

*This bill should be returned by
the payer with this remittance.
See instructions below.*

WORKER'S COMPENSATION PAYMENT	AMOUNT
2000 Company Compensation Payments	0
2000 Total Compensation Payments	361,549,459
SPECIAL FUND DATA	AMOUNT
2001 Company 8(f) Participation	592,694
2001 Total 8(f) Participation	107,631,824
2002 Special Fund Estimated Expenses	126,000,000

FORMULA FOR ASSESSMENT	
(2000 Company Compensation Payments / 2000 Total Compensation Payments) + (2001 Company 8(f) Participation / 2001 Total 8(f) Participation)	
DIVIDED BY 2 X 2002 Special Fund Estimated Expenses = ASSESSMENT	
OR	
$(0 / 361,549,459) + (592,694 / 107,631,824) / 2 \times 126,000,000 = 173,460$	

ADVANCE ASSESSMENT EQUALS 1/2 OF ESTIMATED YEARLY BILL

CALCULATION	AMOUNT
2002 Total Assessment	173,460
2002 Less Assessment Paid	0
Less Credit	0
Plus Interest or Adjustment	0
2002 Advance Assessment Due	\$173,460

INSTRUCTIONS	
Payment is due within 30 days from the date of the bill.	
DO NOT combine any payments.	
Please send your check with a copy of this bill to:	
Department of Labor, P.O.Box 371088M, Pittsburgh, PA 15251	

Bill For Collection

Bill No. 8130

DATE: 01/29/2002

SEQ: 1460 EIN: 230304627

U.S. Department of LaborEmployment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and Harbor Workers' Compensation

Home Indemnity Co.

59 Maiden Lane

New York, NY 10038

2002 Advance Assessment Due: \$109,375*This bill should be returned by
the payer with this remittance.
See instructions below.*

Tax Dept -3

WORKER'S COMPENSATION PAYMENT	AMOUNT
2000 Company Compensation Payments	0
2000 Total Compensation Payments	361,549,459
SPECIAL FUND DATA	AMOUNT
2001 Company 8(f) Participation	373,722
2001 Total 8(f) Participation	107,631,824
2002 Special Fund Estimated Expenses	126,000,000

FORMULA FOR ASSESSMENT	
<i>(2000 Company Compensation Payments / 2000 Total Compensation Payments) +</i>	
<i>(2001 Company 8(f) Participation / 2001 Total 8(f) Participation)</i>	
<i>DIVIDED BY 2 X 2002 Special Fund Estimated Expenses = ASSESSMENT</i>	
<i>OR</i>	
<i>(0 / 361,549,459) + (373,722 / 107,631,824) / 2 X 126,000,000 = 109,375</i>	

ADVANCE ASSESSMENT EQUALS 1/2 OF ESTIMATED YEARLY BILL

CALCULATION	AMOUNT
2002 Total Assessment	109,375
2002 Less Assessment Paid	0
Less Credit	0
Plus Interest or Adjustment	0
2002 Advance Assessment Due	\$109,375

INSTRUCTIONS

Payment is due within 30 days from the date of the bill.

DO NOT combine any payments.

Please send your check with a copy of this bill to:

Department of Labor, P.O.Box 371088M, Pittsburgh, PA 15251

April 8, 2005

The Deadline for Filing this Form is June 13, 2004 (SUPPLEMENTAL AMENDED CLAIM)

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: US Dept of Labor Longshore Special Fund
- 2. Claimant's Address: 200 Constitution Ave. NW
RM C4315 Washington, DC 20210
- 3. Claimant's Telephone Number: (202) 693-0801
Fax Number: (202) 693-1380
Email address: abildso.carl@dol.gov

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.

- 4. Claimant's Social Security Number, Tax ID Number or Employer ID Number: N/A
- 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: _____

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.

Longshore Special Fund assessments are unpaid for
year 2003 CY

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.

\$ 554,449 (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.

N/A

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

N/A

9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim?

N/A

10. Do you claim a priority for your claim? If so, why: Unknown- see class (e&f) above

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

Name: Carl B. Abildso - US Dept of Labor
Address: 200 Constitution Ave NW - Rm C-4315
Washington, DC 20210
Phone Number (202) 693-0801
Email address Abildso.Carl@dol.gov

* 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: Not at this time
 - 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 N/A
 - 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, N/A (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 _____ (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(s) of action that forms the basis for my claim against The Home in the amount of _____ of the applicable policy provided by The Home; provided, however, that this release shall be void if the insured _____.

 Claimant's signature Date

15. All claimants must complete the following:

I, Carl B. Abildso (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 \$554,449 dollars (\$ _____) represents the amount of my claim against the insured named 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.

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

Carl B. Abildso April 8, 2005
 Claimant's signature Date

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.

Bill For Collection

Bill No. 8130
July 25, 2003
SEQ: 1470 EIN: 020308052

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and Harbor Workers' Compensation

Home Insurance Company
c/o Risk Enterprise Mgmt.Svcs
59 Maiden Lane
New York NY 10038
Lara Richardson, Data Mgmt.

2003 Final Assessment Due: \$332,285

*This bill should be returned by
the payer with this remittance.
See instructions below.*

WORKER'S COMPENSATION PAYMENT	AMOUNT
2002 Company Compensation Payments	0
2002 Total Compensation Payments	362,392,867
SPECIAL FUND DATA	AMOUNT
2002 Company 8(f) Participation	561,317
2002 Total 8(f) Participation	105,579,082
2003 Special Fund Estimated Expenses	125,000,000

FORMULA FOR ASSESSMENT
*(2002 Company Compensation Payments / 2002 Total Compensation Payments) +
 (2002 Company 8(f) Participation / 2002 Total 8(f) Participation)
 DIVIDED BY 2 X 2003 Special Fund Estimated Expenses = ASSESSMENT*
 OR
 $(0 / 362,392,867) + (561,317 / 105,579,082) / 2 \times 125,000,000 = 332285$

CALCULATION	AMOUNT
2003 Final Assessment	332,285
2003 Less Assessment Paid	0
Less Credit	0
Plus Interest (*)	0
2003 Final Assessment Due	\$332,285

INSTRUCTIONS
 Payment is due within 30 days from the date of the bill.
 DO NOT combine any payments.
 Please send your check with a copy of this bill to:
 Department of Labor, P.O.Box 371088M, Pittsburgh, PA 15251

Bill For Collection

Bill No. 8130
July 25, 2003
SEQ: 1460 EIN: 230304627

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and Harbor Workers' Compensation

Home Indemnity Co.
59 Maiden Lane
New York NY 10038

2003 Final Assessment Due: \$222,164

*This bill should be returned by
the payer with this remittance.
See instructions below.*

Tax Dept -3

WORKER'S COMPENSATION PAYMENT	AMOUNT
2002 Company Compensation Payments	0
2002 Total Compensation Payments	362,392,867
SPECIAL FUND DATA	AMOUNT
2002 Company 8(f) Participation	375,294
2002 Total 8(f) Participation	105,579,082
2003 Special Fund Estimated Expenses	125,000,000

FORMULA FOR ASSESSMENT
*(2002 Company Compensation Payments / 2002 Total Compensation Payments) +
 (2002 Company 8(f) Participation / 2002 Total 8(f) Participation)
 DIVIDED BY 2 X 2003 Special Fund Estimated Expenses = ASSESSMENT*
 OR
 $(0 / 362,392,867) + (375,294 / 105,579,082) / 2 \times 125,000,000 = 222164$

CALCULATION	AMOUNT
2003 Final Assessment	222,164
2003 Less Assessment Paid	0
Less Credit	0
Plus Interest (*)	0
2003 Final Assessment Due	\$222,164

INSTRUCTIONS
 Payment is due within 30 days from the date of the bill.
 DO NOT combine any payments.
 Please send your check with a copy of this bill to:
 Department of Labor, P.O.Box 371088M, Pittsburgh, PA 15251

FEB - 2 2005

The Deadline for Filing this Form is June 13, 2004. (SUPPLEMENTAL AMENDED CLAIM)

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: US Dept of Labor Longshore Special Fund
2. Claimant's Address: 200 Constitution Ave. NW
RM C4315 Washington, DC 20210
3. Claimant's Telephone Number: (202) 693-0801
Fax Number: (202) 693-1380
Email address: abildso.carl@dol.gov
4. Claimant's Social Security Number, Tax ID Number or Employer ID Number: N/A
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.

Longshore Special Fund assessments are unpaid for
year 2004 CY

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.

\$586,595.00 (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.

N/A

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

N/A

9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim?

N/A

10. Do you claim a priority for your claim? If so, why: Unknown- see class (e&f) above

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

Name: Carl B. Abildso - US Dept of Labor
Address: 200 Constitution Ave NW - Rm C-4315
Washington, DC 20210
Phone Number (202) 693-0801
Email address Abildso.Carl@dol.gov

* 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: Not at this time
 - 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: N/A
 - 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, N/A (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 _____ (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(s) of action that forms the basis for my claim against The Home in the amount of _____ of the applicable policy provided by The Home; provided, however, that this release shall be void if the insured _____

Claimant's signature

Date

15. All claimants must complete the following:

I, Carl B. Abildso (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 \$586,595.00 dollars (\$ _____) against _____ 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.

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

Claimant's signature

Feb 2, 2005

Date

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.

Bill For Collection

Bill No. 8130
 July 14, 2004
 SEQ: 1470 EIN: 020308052

U.S. Department of Labor

Employment Standards Administration
 Office of Workers' Compensation Programs
 Division of Longshore and Harbor Workers' Compensation

Home Insurance Company
 c/o Risk Enterprise Mgmt.Svcs
 59 Maiden Lane
 New York NY 10038
 Lara Richardson, Data Mgmt.

2004 Final Assessment Due: \$359,606

*This bill should be returned by
 the payer with this remittance.
 See instructions below.*

WORKER'S COMPENSATION PAYMENT	AMOUNT
2003 Company Compensation Payments	0
2003 Total Compensation Payments	368,769,923
SPECIAL FUND DATA	AMOUNT
2003 Company 8(f) Participation	564,684
2003 Total 8(f) Participation	107,564,601
2004 Special Fund Estimated Expenses	137,000,000

FORMULA FOR ASSESSMENT	
<i>(2003 Company Compensation Payments / 2003 Total Compensation Payments) +</i>	
<i>(2003 Company 8(f) Participation / 2003 Total 8(f) Participation)</i>	
<i>DIVIDED BY 2 X 2004 Special Fund Estimated Expenses = ASSESSMENT</i>	
OR	
<i>(0 / 368,769,923) + (564,684 / 107,564,601) / 2 X 137,000,000 = 359606</i>	

CALCULATION	AMOUNT
2004 Final Assessment	359,606
2004 Less Assessment Paid	0
Less Credit	0
Plus Interest (*)	0
2004 Final Assessment Due	\$359,606

INSTRUCTIONS	
Payment is due within 30 days from the date of the bill.	
DO NOT combine any payments.	
Please send your check with a copy of this bill to:	
Department of Labor, P.O.Box 371088M, Pittsburgh, PA 15251	

The information in this report may be protected by the Privacy Act of 1974, as amended. By accessing this information you certify you are complying with all requirements under the Privacy Act, where applicable.

Bill For Collection

Bill No. 8130
 July 14, 2004
 SEQ: 1460 EIN: 230304627

U.S. Department of Labor

Employment Standards Administration
 Office of Workers' Compensation Programs
 Division of Longshore and Harbor Workers' Compensation

Home Indemnity Co.
 59 Maiden Lane
 New York NY 10038

2004 Final Assessment Due: \$226,989

*This bill should be returned by
 the payer with this remittance.
 See instructions below.*

Tax Dept -3

WORKER'S COMPENSATION PAYMENT	AMOUNT
2003 Company Compensation Payments	0
2003 Total Compensation Payments	368,769,923
SPECIAL FUND DATA	AMOUNT
2003 Company 8(f) Participation	356,438
2003 Total 8(f) Participation	107,564,601
2004 Special Fund Estimated Expenses	137,000,000

FORMULA FOR ASSESSMENT	
$\frac{(2003 \text{ Company Compensation Payments} / 2003 \text{ Total Compensation Payments}) + (2003 \text{ Company } 8(f) \text{ Participation} / 2003 \text{ Total } 8(f) \text{ Participation})}{2 \times 2004 \text{ Special Fund Estimated Expenses}} = \text{ASSESSMENT}$	
OR	
$(0 / 368,769,923) + (356,438 / 107,564,601) / 2 \times 137,000,000 = 226989$	

CALCULATION	AMOUNT
2004 Final Assessment	226,989
2004 Less Assessment Paid	0
Less Credit	0
Plus Interest (*)	0
2004 Final Assessment Due	\$226,989

INSTRUCTIONS	
Payment is due within 30 days from the date of the bill.	
DO NOT combine any payments.	
Please send your check with a copy of this bill to:	
Department of Labor, P.O.Box 371088M, Pittsburgh, PA 15251	

The information in this report may be protected by the Privacy Act of 1974, as amended. By accessing this information you certify you are complying with all requirements under the Privacy Act, where applicable.

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.hicilclerk.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

PCC #: 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 02111-2000

TELEPHONE 617-642-2300
FACSIMILE 617-642-7437
www.rackemann.com

J. DAVID LESLIE
(617) 651-1131
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. Seigny, 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. Fabe, 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 Fabe), 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, “insofar 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.

RACKMANN, 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:dle