

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

**In Re Liquidator Number: 2005-HICIL-8
Proof of Claim Number: EMPL16733
Claimant Name: DONALD J. VANO**

THE LIQUIDATOR'S SUPPLEMENTAL MEMORANDUM

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, acting solely in his capacity as Liquidator of The Home Insurance Company (the "Liquidator"), by and through counsel, hereby submits this supplemental memorandum in accordance with the ruling of Referee Paula T. Rogers rendered on January 26, 2006 directing that he "address the issue of the value, if any, of Mr. Vano's claim," while ruling that "this claim is properly classified as a residual claim, or Class V claim."

PRELIMINARY STATEMENT

On September 8, 2003, Claimant Donald J. Vano ("Claimant"), filed a Proof of Claim in the Home estate. Claimant sought approximately sixty-five thousand (\$65,000) dollars and described his claim as follows:

"Loss of 401K value – 401K investment was mandated to purchase of Home Ins stock and as a result of senior management mismanagement, the total investment was lost." (*Case file tab 5, ¶5*)

The Liquidator, by Sally Goldberg, Vice President, Human Resources of The Home Insurance Company in Liquidation ("Home"), issued a Notice of Determination disallowing Claimant's Proof of Claim on May 9, 2005. As pertinent here, the determination provided that the Liquidator would recommend that no allowance be made to Claimant because the "stock at issue was Home Group (Ambase) not The Home Insurance Company." Claimant rejected the

determination and filed a Request for Review dated May 31, 2005. (*Case file tab 4*). The Liquidator issued a Re-determination notice on August 2, 2005, which affirmed the position advanced in the original determination. (*Case file tab 1*). On September 7, 2005, Claimant filed his formal Objection to the determinations. (*Case file tab 2*). As set forth herein, the Liquidator properly determined that Claimant's claim has a "zero" value.

ARGUMENT

The Liquidator's Notices of Determination and Re-determination Properly Assigned a "Zero" Value To Claimant's Claim

Claimant has taken issue with the Liquidator having assigned a "zero" value to his claim by asserting that "[s]enior management of the Home Ins. Co. did not act in good faith... and further failed in their fiduciary duties through mismanagement and indifferent decisions..." thereby resulting in Claimant's financial loss. (*Case file tab 2*). As an initial matter, regardless of the merits of Mr. Vano's assertion, he is not, as a matter of law, entitled to relief because his claim is barred by virtue of the applicable statutes of limitation. Home is a New Hampshire domiciled company having its principal place of business in New York. In either jurisdiction Claimant's claim is time-barred.

In New York, a "cause of action premised upon a claim of breach of fiduciary duty is governed by a three-year Statute of Limitations where, as here, monetary relief and not equitable relief is sought." *Escava v. Escava*, 9 Misc. 3d 1101, 806 N.Y.S.2d 444 (2005) (citations omitted). Should Claimant seek to couch his claim in terms of fraudulent conduct, a six-year Statute of Limitations, from the date the cause of action accrued, or two years from the date the fraud could have been discovered with reasonable diligence, will operate to bar later filed claims. NY Civil Practice Law and Rules ("CPLR") §213(8).

The New Hampshire statute of limitations for personal actions was amended in 1986. The pre-1986 statute allowed for a six year statute from the time of accrual of a cause of action. New Hampshire courts have followed the “common-law” discovery rule, which permits causes of action to accrue after discovery or when, in the exercise of reasonable diligence, the plaintiff should have discovered both the fact of his injury and its cause. *Conrad v. Hazen*, 140 N.H. 249, 250, 665 A.2d 372 (1995), *citing McCollum v. D’Arcy*, 138 N.H. 285, 286, 638 A.2d 797, 798 (1994).

The 1986 statutory amendment codified the discovery rule but reduced the limitations period to within three years of discovery for causes of action arising after July 1, 1986. *Conrad*, 140 N.H. at 251, *citing* NH RSA § 508:4, I (Supp. 1994) and Laws 1986, 227:22, II.

Other, more restrictive, statutes of limitation apply to negligence actions (*see e.g.*, N.Y. CPLR § 214 - 3 year statute of limitations) or intentional acts (*see e.g.*, N.Y. CPLR §215 - 1 year statute of limitations). However, viewing the instant claim most favorably to Claimant, his claim would be time-barred by any applicable statute of limitations, including a six year statute with accrual following discovery.

Claimant has not specifically stated when he became aware of the AmBase/Home Group stock devaluation. However, AmBase stock was delisted by the New York Stock Exchange on or about December 4, 1992. Indeed, the AmBase stock value ranged from \$0.94 - \$0.04 during calendar year 1992 and from \$0.90 - \$0.27 in calendar year 1993. (*AmBase Corporation 1993 Annual Report p. 5 attached as Exhibit 1*). Claimant stated that his stock was redeemed at either \$0.60 or \$0.75 per share. (*Case file tabs 4, 5*) It is thus reasonable to assume that Claimant was aware of the stock devaluation by year end 1993 at the latest. Since Claimant did not bring a claim against Home until he filed his Proof of Claim on or about September 8, 2003, his claims are clearly time-barred under any applicable statute of limitations. Furthermore, under any

statute of limitations analysis, Claimant's asserted causes of action would have been time-barred prior to entry of the Order of Rehabilitation of Home on March 5, 2003, whereby all actions against Home were stayed, and the permanent injunction that was part of the Order of Liquidation of June 13, 2003.

Finally, even if consideration of the merits of Claimant's claim was in order (which the Liquidator refutes,) the Liquidator's "zero" determination is appropriate given that Claimant's "proof" of malfeasance by Home senior management personnel is nothing more than unsubstantiated accusations. Claimant presents no specific acts, errors or omissions. Nor does Claimant provide any evidence of a causal relationship between any claimed acts and the financial loss at issue which, as noted in the Notices of Determination and Re-determination, arises from stock issued not by Home, but by its then parent, AmBase Corporation (formerly known as The Home Group, Inc.), a non-party to this liquidation proceeding. As such, the Liquidator properly rendered his determination.

CONCLUSION

For the reasons set forth herein, the Liquidator respectfully requests that the Referee: (1) dismiss Claimant's Objection to the Liquidator's Notices of Determination and Re-determination; (2) rule on the bifurcated issue of value that the Liquidator's recommended Re-determination, as set forth in the Notice of Re-determination, assigning a "zero" value to Claimant's claim, be allowed as stated; and (3) grant such other and further relief as is deemed appropriate in the circumstances.

Respectfully submitted,

**ROGER A. SEVIGNY, INSURANCE
COMMISSIONER of the STATE OF NEW
HAMPSHIRE, as LIQUIDATOR OF
THE HOME INSURANCE COMPANY,**

By his attorneys,

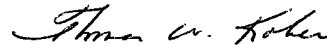


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February 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that copies of this Supplemental Memorandum have been forwarded this 3rd day of February, 2006 via First Class mail to Claimant and by e-mail to counsel identified below.



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AM
BASE CORPORATION

1993 Annual Report
and Form 10-K

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

The Common Stock of the Company trades through one or more market-makers with quotations made available in the "pink sheets" published by the National Quotation Bureau, Inc. ("Pink Sheets") under the symbol ABCP. The sales prices per share for the Company's Common Stock, subsequent to December 4, 1992 as indicated below represent the range of the reported high and low bid quotations as indicated in the Pink Sheets or as communicated orally to the Company by market-makers. Such prices reflect interdealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions. Following the OTS action on December 4, 1992, trading in the Common Stock of the Company was suspended by the New York Stock Exchange ("NYSE") and the Common Stock was subsequently delisted by the NYSE. The National Association of Securities Dealers ("NASD") has declined to grant an exception to the requirements (specifically to the requirement that listing companies have a minimum net worth of \$2 million) for listing the Common Stock of the Company on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") Small Capitalization Issues list. The prices per share for the Company's Common Stock as indicated below, through December 4, 1992, represent the high and low sales prices per share, as reported by the NYSE.

	1993	
	High	Low
First Quarter	\$ 0.20	\$ 0.09
Second Quarter	0.22	0.16
Third Quarter	0.16	0.11
Fourth Quarter	0.27	0.14

	1992	
	High	Low
First Quarter	\$ 0.94	\$ 0.34
Second Quarter	0.69	0.28
Third Quarter	0.63	0.28
Fourth Quarter:		
October 1, 1992 through December 4, 1992	0.56	0.28
December 5, 1992 through December 31, 1992	0.08	0.04

As of February 15, 1994, there were approximately 26,000 beneficial owners of the Company's Common Stock. No dividends were declared or paid on the Company's Common Stock in 1993 or 1992.

In connection with the proceeding entitled *Rolo and Tenerelli v. City Investing Company Liquidating Trust, et al.*, pending in the District Court of New Jersey, as further described in *Item 8 - Note 12* to the Company's consolidated financial statements, the Company cannot make any dividend payments pending further judicial action.