

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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

**In Re Liquidator Number: 2006-HICIL-17
Proof of Claim Number: INSU52071
Claimant Name: Thomas M. Piccone
Claimant Number: INSU52071
Policy Number: LPL-C133860-0
Insured Name: Thomas M. Piccone / Allen & Piccone,
LLC**

**WRITTEN SUBMISSION OF CLAIMANT
THOMAS M. PICCONE**

Pursuant to the Structuring Conference Order in this matter dated June 9, 2006, Thomas M. Piccone (the “Claimant” or “insured”) offers the following written submission.

INTRODUCTION AND BACKGROUND¹

This matter involves a contractual promise which Home now seeks to avoid, and it presents an extremely important legal question. Home promised to provide insurance coverage, and now – after premiums have been paid and other options for the insured no

¹ The facts are set forth in Claimant’s Proof of Claim dated June 10, 2004, and Objection to Denial of Proof of Claim dated February 22, 2006 (“Objection”), which are hereby incorporated by reference in their entirety. In the interest of brevity and efficiency, the facts are not restated in their entirety in this Submission. The Exhibits supporting this Submission include the Proof of Claim, the Objection, all attachments to and exhibits supporting the Proof of Claim and Objection, and any other materials in the case file for this matter.

longer exist -- refuses to do so. The Claimant chose Home over other insurance based on the terms of the policy, including the specific coverage Home now refuses to honor.

Home's officers were willing to take the Claimant's premiums, but are now unwilling to make good on their own end of the bargain, declining to extend the coverage and refusing to assist the Claimant in finding replacement insurance. The operative statutory scheme exists to protect the public from such conduct.

Briefly, the claim is as follows. Home promised to provide insurance coverage for a specific venture (a law practice) for as long as the Claimant wanted to buy it. The policy provided that an extended reporting period or "tail" could be purchased on a periodic (annual)² basis.³ See Section B(IV) of the policy, attached to the Proof of Claim and Objection. Home has refused to renew the coverage as agreed. The Claimant is a father of three small children who wants and is willing to pay to be insured. The insured has made great efforts to find replacement insurance but has been unable to do so. In contrast, Home, a member of the specific industry at issue, has now spent years refusing to assist the insured in any way in obtaining replacement coverage. Amazingly, notwithstanding its industry expertise, the purpose of this process, and Home's obvious ethical obligation, Home has refused, and still refuses, to make *any effort whatsoever* to solve the problem that it – and it alone -- created.⁴

² The first extension could be and was renewed for a period in excess of one year.

³ The insured was not permitted to purchase an unlimited non-practicing reporting period for a single premium (*see* Section B(V) of the policy) because he had not retired from the practice of law.

⁴ Following the Structuring Conference in this matter, Claimant contacted Home to discuss the applicable law and the possibility of cooperation or resolution. Home

As explained in the Proof of Claim, which is incorporated by reference, the Claimant seeks that Home “be required to provide the coverage it agreed to provide, or to find comparable replacement coverage for [Claimant], or to otherwise see to it that [Claimant is] insured in the future.”⁵ In this regard, and as noted in the Proof of Claim, Home should be responsible for any difference in cost or price between the amount of the premium being charged by Home and the cost of any replacement coverage.⁶

The Claimant is not an insurance expert, but urges that the policies giving rise to the applicable regulatory scheme indicate that this contractual claim should be satisfied. Whether claims like this one are as common in actual *experience* as other types of claims is another question – and that question is irrelevant. This claim is entitled to protections of the regulatory scheme as much as any other.

Even if a claim like this one is unusual, the legislature has given instructions indicating that it should be honored. The very essence and existence of the statutory scheme informs that the damage a liquidation would cause must be addressed. Further, the statutes expressly provide that even claims that are unliquidated are valid claims. Finally, the legislature explicitly stated that the purpose of the regulatory scheme is to protect insureds, creditors and the public generally – *not* insurance companies – and instructed that the statutory scheme must be liberally construed to accomplish that

confirmed that it remained unwilling to make any attempt to help find replacement insurance or otherwise mitigate the damage it has created.

⁵ Due to the nature of the claim, the Claimant has not specified an amount of money that the Claimant asserts is due.

⁶ Claimant also reserves and continues to assert his claim “for claims or events that may occur in the future.”

purpose. Accordingly, since this process must be liberally and flexibly construed to protect the insured, Home should be required to honor this claim.

CONTESTED ISSUES OF FACT

The Claimant is not aware of any disputed issues of fact.⁷

CONTESTED ISSUES OF LAW

Whether an insurer who has extended the promise of an unlimited extended reporting period or “tail”⁸ and enjoyed the benefit of the insured’s performance should be permitted to terminate coverage or liquidate before it has found an insurer to take its place and provide the coverage it promised to provide.

LEGAL DISCUSSION

I. The New Hampshire Statutes Instruct That This Claim Should Be Satisfied

The New Hampshire statutes indicate that Home should be required to obtain comparable replacement insurance or otherwise remedy the damage caused by its failure. First, the statutes addressing liquidation expressly provide that their purpose is to protect insureds, and that they must be liberally construed to accomplish that purpose. Second, the statutes demonstrate the critical importance of obtaining replacement coverage, and specifically contemplate the involvement of a liquidating insurance company in transferring its obligations to a solvent insurer.

⁷ The Claimant will supply an affidavit in support of facts represented in Claimant’s materials upon request.

⁸ In the instant case, Home did not sell a single unlimited extension for a single premium. Rather, Home agreed to sell extensions on a periodic basis for as long as the insured wished to purchase them. *See* Section B(IV) of the policy, attached to the Proof of Claim and Objection.

A. The New Hampshire Statutes Mandate That This Process Be Liberally And Flexibly Construed To Protect The Insured.

The New Hampshire insurance statutes do not appear to specifically address the problem of an insured being unable to obtain replacement coverage. In such circumstances, it is appropriate to resolve the question by considering the purpose and intent of the statutory scheme and any instructions from the legislature as to how properly to interpret and apply it.

The answers to those questions, at least, are clear. Indeed, they are explicit. As to construction, N.H. Rev. Stat. §402-C:1, III, provides that “[t]his chapter shall be liberally construed to effect the purpose stated in paragraph IV.” The referenced paragraph IV, in turn, states that, “[t]he purpose of this chapter is the protection of the interests of insureds, creditors, and the public generally....” N.H. Rev. Stat. §402-C:1, IV. “Creditors” include all persons “having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.” N.H. Rev. Stat. §402-C:3, XVI. *See also* N.H. Rev. Stat. §402-C:39, III (“[a] claim may be allowed even if contingent....”). Thus, contrary to Home’s suggestions, the primary objective of the liquidation process is not the protection of insurance companies, and the express purposes of the regulatory scheme do not include permitting insurers to abandon contractual obligations, regardless of the damage, whenever meeting or transferring those obligations seems like it might be inconvenient.

Applied to the facts before the Court, these legal principles instruct that Home should be required to find equivalent replacement insurance or otherwise satisfy this claim. Even if the claim is unusual, the principles for resolving the question it presents are clear. In the absence of specific provisions barring this claim – and Claimant is not

aware of any such provisions – the process must be *liberally* and flexibly construed to protect the *insured*. Accordingly, Home should be required to meet this claim.

B. The New Hampshire Statutes Recognize The Importance Of Replacement Coverage, And Contemplate The Involvement Of A Liquidating Insurance Company In Obtaining It.

Chapter 402-C clearly acknowledges the critical importance of obtaining replacement insurance, and also contemplates assistance from the liquidator in finding it. N.H. Rev. Stat. §402-C:22, I, provides that, in the context of a liquidation, “[a]ll insurance policies issued by the insurer shall continue in force:”

- “For a period of 30 days from...entry of the liquidation order;”
- “Until the normal expiration of the policy coverage:”
- “Until the insured has replaced the insurance coverage with *equivalent insurance* in another insurer;” or
- “Until the *liquidator has effected a transfer of the policy obligation* pursuant to RSA 402-C:25, VIII” (emphasis added).

Section 402-C:25, VIII, in turn, empowers the *liquidator* to “*transfer policy obligations to a solvent assuming insurer....*” (emphasis added).

Section 402-C:22 does not appear to require that coverage continue in force indefinitely; it provides that the insurance will continue until one of the events set forth above occurs. N.H. Rev. Stat. §402-C:22, I(d). Nonetheless, it demonstrates that the New Hampshire legislature: (i) intended that insureds should be protected from cancellation of their coverage; (ii) assumed that replacement coverage could be obtained; and (iii) understood that liquidators would assist in completing transfers of policy obligations to other insurers.

Contrary to what may have been assumed, this case demonstrates that equivalent replacement coverage cannot always be obtained by an individual insured. In such circumstances, the other policies inherent in the legislative scheme indicate that the insurer must be required to find the replacement insurance. Having enjoyed the benefit of the insured's performance, an insurer who has extended the promise of an unlimited tail cannot be permitted to liquidate until it has found an insurer to take its place.

CONCLUSION

An insurance company that accepts premium in return for promising to provide coverage indefinitely must be required to obtain equivalent replacement insurance for the insured before being relieved of that obligation. Accordingly, Home should be required to find comparable replacement insurance in this case. It should be required to pay another insurer to accept the obligation it seeks to abandon – the obligation to provide the extended reporting period coverage at the same cost the insured was paying for as long as the insured wishes to purchase it.

Home will undoubtedly argue that such coverage may be unavailable. As an initial matter, that argument simply should not be heard from an insurer that has refused to take any action whatsoever even to try to mitigate the damage it has caused. Moreover, Home can certainly be expected, at least at this stage of the proceedings, to be successful. An individual is often forced to deal with agents on commission who may rightly understand that doing something unusual may not be as profitable a use of their time as moving on to the next sales opportunity. In contrast, an insurance company required by law to negotiate replacement insurance at whatever cost is necessary would be much more likely to be successful. Finally, if Home really is unable to transfer the obligation – a

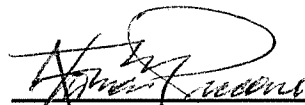
possibility that should not be accepted until after Home has diligently attempted to do so and made a showing of impossibility to this Court – the claim could be resolved by payment of a liquidated amount appropriate to the risk that is either negotiated or chosen by the Court.

This claim presents an important and compelling issue. The extended reporting period coverage that lawyers and other professionals bargain for should not be lightly cast aside. In addition to the professionals involved, such coverage also protects the interests of the professional's clients. Those members of the public also deserve the protection bargained for and promised. An insurance company that takes business and premiums by promising extended coverage should not be permitted merely to walk away from its contract.

For the reasons set forth above, the applicable law, the equities, and appropriate public policy all demand that Home be required to satisfy this claim.

Dated: July 9, 2006.

Respectfully submitted,



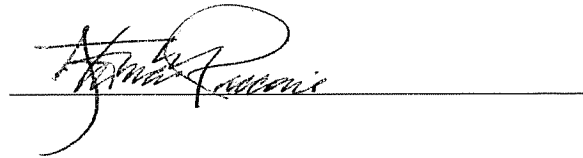
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CERTIFICATE OF SERVICE

On July 9, 2006, copies of the foregoing Written Submission of Claimant Thomas M. Piccone were transmitted by e-mail to the following persons at the following e-mail addresses:

Brooke Holton
brooke.holton@hicilclerk.org

Thomas W. Kober
tom.kober@homeinsco.com

A handwritten signature in black ink, appearing to read "Thomas M. Piccone", is written over a solid horizontal line. The signature is cursive and somewhat stylized.