

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

In Re Liquidator Number: 2007-HICIL-31
Proof of Claim Number: VEND700093-01
Claimant Name: Sheiness, Scott, Grossman &
Cohn, LLP

**RULING ON CLASSIFICATION OF CLAIM
FOR PRE-RECEIVERSHIP SERVICES UNDER RSA 402-C:44.**

At issue in this dispute is whether a claim for attorney's fees for pre-receivership services rendered to The Home Insurance Company ("Home") should be assigned a Class I or Class V priority under RSA 402-C:44. The Claimant, Sheiness, Scott, Grossman, & Cohn, LLP ("SSGC"), objecting to the Liquidator's classification of its claim in the undisputed amount of \$74,784.89 as a Class V claim, argues that its claim should be paid as a Class I administrative expense.

Because RSA 402-C:44 requires that "every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive payment", classification of a claim is of significant importance. And, under the practical circumstances pertaining to this liquidation, there is little likelihood of any distribution to claimants beyond those in Class II.

Claims classified as ADMINISTRATIVE COSTS under RSA 402-C:44, are described as follows:

The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

In arguing that the Liquidator's classification of its claim as a Class V claim is in error, SSGC asserts that "administrative costs" must be broadly construed to include costs and expenses which relate to preserving the assets of the estate, even if those costs are incurred pre-receivership. In addition to its argument that the Liquidator's classification of the claim at issue is contrary to the language of the RSA 402-C:44, SSGC also relies upon a New Hampshire Supreme Court decision in an appeal arising from the Home liquidation, In the Matter of the Liquidation of the Home Insurance Co., 154 N.H. 472 (2006).

The Liquidator, taking the position that his classification of the SSGC claim is a proper one, argues that pre-receivership services provided to Home on a policyholder claim do not fall within Class I, as that classification is reserved for claims directly relating to “costs and expenses of administration” of the liquidating estate. For “attorneys fees” to be accorded administrative claim status says the Liquidator, those fees must be fees incurred in connection with services provided during the administration of the estate, a nexus which the Liquidator notes is absent under the facts of this dispute.

The Referee first addresses the Claimant’s argument that the Liquidator has improperly classified its claim by reading the language of the RSA 402-C:44, I, too narrowly. In examining that provision, the Referee gives plain and ordinary meaning to its words, while being mindful of the overall legislative scheme into which the provision fits. Mortgage Specialists, Inc. v. Davey, 153 N.H. 764 (2006). The word within RSA 402-C:44, I, which best informs the nature of costs to be accorded Class I priority is the word “administration”. Within the context of Chapter 402-C, the word “administration” is most logically construed to refer to the administration of a liquidating estate. While the phrase “reasonable attorney’s fees” appears in the non-exclusive list of cost and expenses that will qualify for Class I priority under RSA 402-C:44, that phrase cannot be read in isolation, for the earlier phrase “including but not limited to” clearly ties the list that follows back to “costs and expenses of administration”. Therefore, for “reasonable attorney’s fees” to be accorded Class I priority such fees must be incurred as “costs and expenses of administration”. See New Hampshire Ins. Guar. Ass’n v. Pitco Frialator, Inc. 142 N. H. 573, 578 (1998) (“all the words of a statute must be given effect”). Here, the fees in question were clearly incurred pre-receivership.

In relying upon Home Insurance Company for the proposition a claim for attorney’s fees incurred by Home pre-proceeding properly falls within the definition of “administrative costs”, SSCG focuses upon the rejection in that case of the argument that “administrative costs” under RSA 402-C:44 should be narrowly confined to “include only rights to payment that arise post-liquidation, and exclude claims that arise pre-liquidation.” Id. at 484. In rejecting a narrow construction of “administrative costs” in that case, the Supreme Court noted that RSA 402-C:44 defines administrative costs more generally to include “actual and necessary costs of preserving or recovering assets of the insurer.” Id. at 485. However, in focusing upon the Court’s rejection of a narrow definition of “administrative costs”, SSCG overlooks the broader rationale the Court employed in affirming the trial judge’s approval of the agreement at issue in that case. The Court’s essential focus was upon the post-liquidation agreement’s purpose to bring a “net benefit to creditors of the estate”, and the power of the Liquidator to take measures “necessary or expedient to collect, conserve, or protect (the insurer’s) assets or property....” under RSA 402-C:25. In determining that sizeable payments to Class V claimants were properly construed as administrative in nature, the Court distinguished between pre-liquidation claims and claimant inducements which were negotiated after the advent of the receivership and created post-liquidation rights. Here, there is neither a post-liquidation agreement with the Liquidator, nor the potential for a net benefit to preferred creditors.

In sum, the Referee concludes that the Liquidator's classification of the claim at issue in this dispute is a proper one.

So ordered.

April 11 '08
Dated:

Paula T. Rogers
Referee, Paula T. Rogers