

**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: 2005-HICIL-17  
Proof of Claim Number: INSU52071  
Claimant Name: THOMAS M. PICCONE**

**LIQUIDATOR'S WRITTEN SUBMISSION**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, acting solely in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), by and through counsel, hereby submits this written submission as directed by the Ruling of Referee Paula T. Rogers dated June 9, 2006.

Claimant, Thomas M. Piccone ("Claimant"), submitted a Proof of Claim to Liquidator on June 10, 2004 "asserting a claim against Home for the ability to purchase the insurance coverage Home agreed to provide." (Case file tab A, Further Response to POC Question 5.)

Pursuant to §§ 6b and 6c of the *Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation* (the "Procedures"), the Liquidator duly reviewed the claim submitted by Claimant and issued a Notice of Determination dated December 27, 2005 disallowing Claimant's claim. In explaining his disallowance, Liquidator stated:

"Your Proof of Claim attached a series of optional reporting period endorsements, the last extension expiring June 1, 2003. In correspondence you refer to your inability to obtain replacement

insurance. Coverage under the endorsements only applies to claims made and reported during the reporting extension endorsement and only for acts or omissions prior to the inception of the first reporting period which was June 1, 1995. As of the date of this Notice, no such claim has ever been made and thus you have not suffered any damage. Accordingly, we are disallowing your claim. If a claim is made against you in the future, you should promptly file a new proof of claim at that time giving the reasons the Proof of Claim is being filed after the claim filing deadline of June 13, 2004 pursuant to NH Rev. Statutes Section 402-C.37 II, III and referencing the prior proof of claim.” (Case file tab B.)

Claimant objected to Liquidator’s Notice of Determination by filing an Objection with the Court asserting that he has made numerous attempts to find replacement insurance, but has been unable to do so and requesting “Home provide the coverage it agreed to provide or find comparable replacement insurance on similar terms.” (Case file tab E.)

The matter came on for a Pre-hearing conference before Referee Rogers on June 9, 2006. After giving due consideration to oral presentations of the Claimant and Liquidator, Referee Rogers directed that the parties provide written submissions.

### **FACTUAL BACKGROUND**

Home issued a lawyer’s professional liability policy to Claimant. The policy required, in pertinent part, that claims must first be made to the insured **and** reported to Home during the policy period of June 1, 1994 through June 1, 1995. Furthermore, the complained of act, error, or omission must have occurred on or after the prior acts exclusionary date of June 1, 1994. At the policy expiration, Claimant purchased an optional reporting period endorsement extending the claims reporting period for an additional 12 month period. Claimant purchased additional yearly reporting period extensions through the annual period commencing June 1, 2002. When Claimant attempted

to renew the optional reporting period endorsement in 2003 he was “informed that the premium would not be accepted and the policy would not be renewed.” (Case file tab A, Further Response to POC Question 5.) Claimant has never reported any claim to Home under the claims made policy or during the extended reporting periods nor has Claimant asserted that any claim would have been made and reported during the desired 2003 optional reporting period. Indeed, Claimant has not identified any claim as of the date of this proceeding which could arguably implicate his policy coverage. Accordingly, Claimant has not suffered any policy-related damage that would, or could, justify an allowance by Liquidator.

On June 11, 2003, the New Hampshire Superior Court, Merrimack County (the “Liquidation Court”), ordered that Home be placed into liquidation pursuant to N.H. Rev. Stat. Ann. § 402-C:1 et seq. (Case file, tab G.) As part of the Order of Liquidation (“Order”), the Liquidation Court ordered that the “Liquidator shall cancel all in-force contracts of insurance and bonds effective as of 30 days after the date of this Order.” (Case file, tab G, p.2 (e).) Thus, in accordance with the Order, Home was prohibited from providing Claimant with any further insurance coverage, including any extended reporting period endorsements, and was further required to cancel any existing coverage that may have been in force at the time the Liquidation Court placed Home into liquidation. To the extent that Home had any obligation to provide Claimant with an extended reporting period endorsement for the June 1, 2003 to June 1, 2004 term, that requirement would have been absolutely terminated effective July 11, 2003, *i.e.*, 30 days after the Order of Liquidation.

The Order therefore rendered moot Claimant’s assertion that Home should have extended his reporting period in perpetuity.

## ARGUMENT

### **HOME IS NOT PERMITTED TO CONTINUE TO PROVIDE COVERAGE TO CLAIMANT AND THE LIQUIDATOR IS NOT OBLIGATED TO PROCURE REPLACEMENT COVERAGE ON CLAIMANT'S BEHALF**

Under the clear and unambiguous provisions of the Order, and pursuant to N.H. Rev. Stat. Ann. § 402-C:22, Home was not permitted to provide Claimant with any further insurance coverage beyond July 11, 2003 and would have, in fact, been required to cancel any existing coverage, including any extended reporting period that Claimant may have purchased. Section 402-C:22 states:

- I. All insurance policies issued by the insured shall continue in force:
  - (a) For a period of 30 days from the date of entry of the liquidation order;
  - (b) Until the normal expiration of policy coverage;
  - (c) Until the insured has replaced the insurance coverage with equivalent insurance in another insurer; or
  - (d) Until the liquidator has effected a transfer of the policy obligation pursuant to RSA 402-C:25, VIII; **whichever time is less.** (Emphasis added.)

As a matter of law, even if Home had issued an extended reporting period endorsement to Claimant, it would have been forced to cancel this coverage effective 30 days after the entry of the Order or July 11, 2003. Moreover, by operation of the same law, after July 11, 2003, Claimant would have had no right to any further coverage under its claims made policy from Home.

Claimant asserts that Home was required to maintain the in force insurance until “one of the events set forth [in section 402-C:22] occurs.” Claimant, however, ignores the

“whichever time is less” language in section 402-C:22. As a result thereof, whichever of the four options listed in section 402-C:22 results in the insurance remaining open for the least amount of time will be applicable. The legislature made an obvious policy decision to terminate all coverage that an insolvent insurer had issued as quickly as possible. As the policy would remain in force for the shortest amount of time under 402-C:22(a), Home was obligated to cancel Claimant’s coverage 30 days after the entry of the Order.

As such, the Order rendered moot Claimant’s assertion that Claimant should have been permitted to extend his reporting period given that July 11, 2003 (30 days after the Order) was the maximum extension that Home could have provided to Claimant under the constraints of the Order.

Claimant then cites Rev. Stat. Ann. § 402-C:25, VIII in support of his position that the Liquidator is required to use assets of the Home estate to arrange for the transfer of Home’s policy obligations to a solvent assuming insurer. The critical language of section 402-C:25 indisputably does not require the Liquidator to act in such a manner:

“The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. Subject to the court’s control, he **may**:

VIII. Use assets of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under RSA 402-C:44.” (Emphasis added.)

Such discretionary language permits – but does not require – the Liquidator to transfer policy obligations to a solvent assuming insurer if he believes it appropriate in the circumstances.

Finally, Claimant has never reported any claims under his single year of policy coverage or in the eleven year period since policy expiration. Accordingly, Claimant has suffered no policy-related injury that would support an allowance in the Home estate.

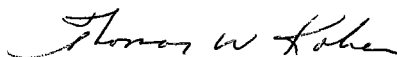
### CONCLUSION

For the reasons set forth herein, Liquidator respectfully requests that the Referee: (1) dismiss Claimant's Objections to Liquidator's Notice of Determination and (2) rule that Liquidator's Determination, as set forth in the notice of Determination, 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 SOLELY IN HIS CAPACITY AS  
LIQUIDATOR OF THE HOME INSURANCE  
COMPANY

By his attorneys,

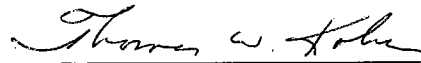


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New York, New York 10038  
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August 4, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Liquidator's Written Submission has been forwarded via First Class mail this 4th day of August, 2006 to Claimant at the address identified below.

A handwritten signature in cursive script, reading "Thomas W. Kober", is written above a horizontal line.

Thomas W. Kober

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