

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-22

Proof of Claim Number: EMPL17440

Claimant Name: Henry P. Lenz

REFEREE'S RULING

This disputed claim is initiated by Mr. Henry P. Lenz, a retired senior executive of The Home Insurance Company ("Home"), who provided many years of distinguished and dedicated service to the Home enterprise. Mr. Lenz disagreed with the Liquidator's classification of his claim as a Class V claim and therefore instituted this disputed claim proceeding.

Mr. Lenz's claim arises from an agreement, apparently unique, executed between Home and Mr. Lenz approximately three years before Home went into run-off. The agreement imposed two principal obligations upon Home. The first, which covered apportionment and distribution to Mr. Lenz of amounts held in his deferred compensation account over a ten (10) year post-retirement period, has been satisfied. At issue in this dispute is the second part of the agreement, obligating Home to boost the Claimant's "Home Insurance Retirement Plan" income by factoring the previously mentioned deferred compensation payments into the calculation of his entitlement under that plan. It is the failure of Home to follow through on this enhancement that under-girds this dispute.

As a threshold matter, the Referee is asked to determine whether Mr. Lenz's proof of claim is properly classified as a Class II or Class V claim. This threshold determination is of importance because great uncertainty pertains as to whether distributions in the Home estate will extend further than Class II claimants.

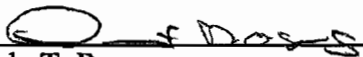
The Referee has reviewed Mr. Lenz's Section 15 submission. Recognizing that to qualify for Class II assignment claims must be "policy related claims", Mr. Lenz advances a cogent argument for classifying his claim as a Class II claim, essentially analogizing the nature of the additional distributions he should have received under Paragraph B. of the agreement to annuity payments under an insurance contract. Apparently advanced without assistance of counsel, this construction is not unimpressive. However, the Referee's misgivings over cloaking what more logically presents as an employee contract with the trappings of an insurance contract are nicely captured in the case cited by counsel for the Liquidator. In that case, *State of Iowa ex rel. William B. Hager, etc. v. Iowa National Mutual Insurance Company, et al.*, 430 N.W. 2d 420 (1988), the Iowa

Supreme Court rejected the analogy advanced by Mr. Lenz. There, the Court concluded that the payments former executive employees of Iowa National Mutual Insurance Company sought to recover were not properly within the classification for policyholder related claims, because that classification included only "annuities issued by the insurer in the normal course of business". The Court drew clear distinction between an insolvent insurance company's obligations to its insureds under policies of insurance and other obligations that such insurer might have to its employees.

Because the Referee finds no reason to take issue with the Iowa Supreme Court's analysis and holding in the referenced case, the Referee finds it necessary to affirm the Liquidator's classification of Mr. Lenz's claim as a Class V claim.

So ruled:

Dated: September 11 2006



Paula T. Rogers
Referee