THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of The Home Insurance Company

LIQUIDATOR'S OBJECTION TO CLAIMANT'S MOTION TO RECOMMIT (Proof of Claim No. VEND700093-01)

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby objects to the motion to recommit filed by claimant Sheiness, Scott, Grossman & Cohn, LLP ("SSGC"). The only issue in this matter is whether a claim for attorney's fees for services rendered to Home before Home was placed in liquidation or rehabilitation is properly assigned Class V priority under RSA 402-C:44. The Referee correctly ruled that SSGC's claim is properly classified as a Class V claim in the Ruling on Classification of Claim for Pre-receivership Services under RSA 402-C:44 ("Ruling") issued April 11, 2008. The Ruling is attached as Exhibit A. As further reasons, the Liquidator states:

Background

1. SSGC is a law firm that represented Home as local bankruptcy counsel in coverage litigation connected with bankruptcy proceedings for Home's insured J.T. Thorpe Company. Case File ("CF", attached as Exhibit B) at CF0001, CF0020. SSGC provided services to Home during the period from October 2002 to January 2003, before Home was placed in receivership. Motion ¶ 1. See SSGC's January 21, 2003 invoice CF0004-CF0016 (billing detail showing services from October 22, 2002 to January 17, 2003).

- 2. Home was placed in rehabilitation on March 5, 2003, see Order Appointing
 Rehabilitator (Exhibit C), and it was declared insolvent and ordered liquidated on June 13, 2003.

 See Order of Liquidation (Exhibit D).¹
- 3. SSGC filed a timely proof of claim for attorney's fees totaling \$74,784.89 for the services. CF0001.
- 4. On May 11, 2006, the Liquidator issued a notice of determination allowing the claim in the amount sought (\$74,784.89) and assigning the claim to Priority Class V under RSA 402-C:44. CF0020. The determination noted that the services were rendered from October 22, 2002 through January 21, 2003; that the services were reasonable and necessary for the defense of Home in the coverage litigation; and that "[t]he invoice was not paid because the services were rendered prior to Home's rehabilitation." Id.
- 5. SSGC filed a timely request for review contending that the attorney's fees should be classified as Priority Class I (administration costs) under RSA 402-C:44, CF0024, and it later filed an objection on or about October 12, 2007. CF0052.²
- 6. After briefing and telephonic argument, the Referee issued her Ruling on April 11, 2008.

ARGUMENT

7. SSGC's motion presents the question whether its claim for attorney's fees for services rendered to Home before Home was placed in liquidation or rehabilitation falls in Class V or Class I under RSA 402-C:44. The Referee correctly held that SSGC's claim is a Class V claim.

¹ The June 13, 2003 Order of Liquidation superseded the original Order of Liquidation entered on June 11, 2003.

² Since the Liquidator had not acted on the request for review, the objection was premature. However, the Liquidator considered the priority issue, determined that the request for review should be denied, and proceeded to respond to SSGC's objection before the Referee.

- 8. Claims for attorney's fees for legal services rendered to Home before rehabilitation or liquidation proceedings commenced are properly assigned to Priority Class V. That class is the "Residual Classification" for "[a]II other claims, including claims of any state or local government, not falling within other classes under this section." RSA 402-C:44, V. SSGC's claim for attorney's fees is not a policy related claim within Class II, a claim of the federal government within Class III or a wage claim within Class IV. Nor, as discussed below, is it an administration cost claim within Class I.
 - 9. The Class I priority is for "administration costs," which are defined as:

The <u>costs and expenses of administration</u>, <u>including</u> 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.

RSA 402-C:44, I (emphasis added). Pre-receivership attorney's fees for services rendered to Home in defending it against a policyholder's claim do not fall within that class. They are not "costs and expenses of administration" of Home's estate.

- 10. In construing statutes, the courts "examine the language of the statute, ascribing to its words their plain and ordinary meanings, and interpret it in the context of the overall legislative scheme and not in isolation." Mortgage Specialists, Inc. v. Davey, 153 N.H. 764, 774 (2006).
- 11. The plain meaning of RSA 402-C:44 provides Class I priority to the "costs and expenses of administration," which in context can mean only the administration of the insurer's estate in receivership, as the Referee recognized. Ruling at 2. See RSA 402-C:16, I (rehabilitator is "to take possession of the assets of the insurer and to <u>administer</u> them under the orders of the court")(emphasis added); RSA 402-C:21, I (liquidator is "to take possession of the

assets of the insurer and to <u>administer</u> them under the orders of the court")(emphasis added). Interpreting "administration" to refer to the business activities of the insurer (such as defending coverage claims) <u>before</u> appointment of the Commissioner as rehabilitator or liquidator, as SSGC urges, disregards its plain meaning and effectively reads the term out of the statute. See <u>New Hampshire Ins. Guar. Ass'n v. Pitco Frialator, Inc.</u>, 142 N.H. 573, 578 (1998) ("all of the words of a statute must be given effect").

- administration" because the statutory list begins with the phrase "including but not limited to." RSA 402-C:44, I (emphasis added). Thus, contrary to SSGC's position, the phrase "reasonable attorney's fees" does not enlarge Class I beyond the administration of the estate. See <u>Thayer v. Town of Tilton</u>, 151 N.H. 483, 486-87 (2004) ("We must keep in mind the intent of the legislation, which is determined by examining the construction of the statute as a whole, and not simply by examining isolated words and phrases found therein."). Instead, as the Referee held, such fees are limited to those that are incurred as costs and expenses "of administration" of the estate. Ruling at 2. Priority Class I thus does not encompass ordinary business costs incurred prior to the receivership.³
- 13. The New Hampshire Supreme Court's decision in <u>In the Matter of the Liquidation</u> of <u>The Home Insurance Co.</u>, 154 N.H. 472 (2006), does not assist SSGC. The Referee correctly observed that SSGC "overlooks the broader rationale" of the Supreme Court. Ruling at 2. In the part of the decision relied on by SSGC, the Supreme Court merely distinguished the bankruptcy

³ The inclusion of costs incurred during rehabilitation proceedings addresses the concern over a troubled insurer obtaining services raised by SSGC (Motion ¶ 11) in a reasonable way while preserving assets for preferred creditors in the event of liquidation. The Order Appointing Rehabilitator ¶ (j) expressly provided that costs "during the period of Rehabilitation" would be treated as costs and expenses of administration pursuant to RSA 402-C:44, I. The Order of Liquidation ¶ (u) similarly provided for costs "during the Rehabilitation proceeding" and "during the Liquidation proceeding."

cases cited by the ACE Companies. See 154 N.H. at 484-85. The Supreme Court did <u>not</u> hold that the claims were "entitled to priority because pre-petition costs of administration are included in the statute." Motion ¶ 17. The Supreme Court referred to pre-liquidation claims in rejecting the arguments of the ACE Companies, but the fundamental factor in its analysis was that, "while the AFIA Cedents' claims against Home arose pre-liquidation, their right to payment under the <u>proposed agreement will arise post-liquidation</u>." Id. at 484 (emphasis added). The Court reiterated the point in distinguishing <u>Oxendine v. Comm'r of Ins. of North Carolina</u>, 494 S.E.2d 545 (Ga. Ct. App. 1997): "In this case, unlike in <u>Oxendine</u>, the AFIA Cedents' right to proposed payments will arise <u>post-liquidation</u>, based upon the proposed agreement." <u>Id</u>. at 485 (emphasis added). This critical factor is absent here. There is no post-liquidation agreement with SSGC.

14. Finally, SSGC's argument that "administration costs" encompass "all attorney's fees, whether incurred before or during the liquidation" (Motion ¶ 11) is contrary to the purpose of the Act and of the priority provision itself. See Appeal of Estate of Van Lunen, 145 N.H. 82, 86 (2000) (courts construe all parts of a statute together "to effectuate its overall purpose and to avoid an absurd or unjust result"). SSGC seeks to broadly elevate claims for pre-receivership attorney's fees to Class I. This is contrary to the legislative purpose of the Act and the Legislature's decision as to the classes of persons to be preferred as set forth in the priority statute. Nothing in RSA 402-C indicates an intent to prefer attorneys or other vendors providing pre-receivership services. The priorities of RSA 402-C:44 reflect the legislative purpose of protecting policyholders and claimants against policyholders. They are a principal means of fulfilling "the purpose of RSA chapter 402-C to protect preferred creditors by reserving assets for them, including people insured by Home, and people with claims against those insured by

Home." <u>Liquidation of Home</u>, 154 N.H. at 488, citing RSA 402-C:1, IV. The Legislature did not recognize attorneys as a preferred class. Giving attorney's claims for defending Home prior to receivership Class I priority would conflict with the legislative purpose of protecting preferred creditors by reducing the assets available for distribution to those creditors.⁴

CONCLUSION

For the reasons set forth above, the Court should uphold the Referee's Ruling that SSGC's claim is properly assigned to Priority Class V.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE COMMISSIONER OF THE STATE OF NEW HAMPSHIRE SOLELY AS LIQUIDATOR OF THE HOME INSURANCE COMPANY, By his attorneys, KELLY A. AYOTTE ATTORNEY GENERAL

J. Christopher Marshall Civil Bureau New Hampshire Department of Justice 33 Capitol Street Concord, NH 03301-6397 (603) 271-3650

J. David Leslie

Eric A. Smith

Rackemann, Sawyer & Brewster P.C.

160 Federal Street Boston, MA 02110

(617) 542-2300

April 29, 2008

⁴ For similar reasons, courts have rejected claims of attorneys for services rendered prior to insolvency under insurance guaranty association acts: "The [guaranty association] act is designed to protect from potentially catastrophic loss persons who have a right to rely on the existence of an insurance policy – the insureds and persons with claims against insureds." Woodliff v. California Ins. Guar. Ass'n, 3 Cal Rptr. 3d 1, 10 (Cal. App. Ct. 2003) quoting Metry, Metry, Sanom & Ashare v. Michigan Prop. & Cas. Ins. Guar. Ass'n, 267 N.W.2d 695, 697 (Mich. 1977); see also Ohio Ins. Guar. Ass'n v. Simpson, 439 N.E.2d 1257, 1259 (Ohio App. 1981);.

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Objection to Claimant's Motion to Recommit was sent, this 29th day of April, 2008, by email and first class mail to all persons on the following service list.

Eric A. Smith

SERVICE LIST

H. Miles Cohn, Esq. Sheiness, Scott, Grossman & Cohn, LLP 1001 McKinney, Suite 1400 Houston, Texas 77002-6323

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:

Referee, Paula T. Rogers

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: 2007-HICIL-31

Proof of Claim Number: VEND700093-01

Claimant Name: Sheines, Scott, Grossman & Cohn, LLP

("SSGC")

Case File

Proofs of Claim with Attachment, Received June 22, 2003
SSGC Invoice
Liquidator's Notice of Determination, dated May 11, 2006
SSGC Request for Review, dated June 6, 2006
Email from SSGC with Attachment, dated January 18, 2007
Email from SSGC, dated March 5, 2007
Email from SSGC with Attachment, dated March 6, 2007
Email from SSGC, dated June 29, 2007
Letter from SSGC, dated October 11, 2007
Objection to Denial of Claim
Notice of Disputed Claim

PROOF OF CLAIM The Home Insurance Company,

Merrimack County Superior Court, State of New Hampshire 03-E-0106 Read Carefully Before Completing This Form

Please print or type

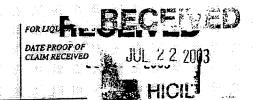
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POC # VEND700093

The Deadline for Filing this Form is June 13, 2004.

You should file this Proof of Chaim form if you have an actual or potential claim against The Home Insurance Company of any of its former subsidiaries. ("The Home") even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be postmarked no later than June 13, 2004. Failure to timely return this completed form will likely result in the <u>PENIAL OF YOUR CLAIM</u>. You are advised to retain a copy of this completed form for your records. Sheiness, Scott, Grossman & Cohn,

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SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

1001 McKINNEY, SUITE 1400 HOUSTON, TX 77002-6420 (713)374-7000 -Telephone (713)374-7049 - Telecopier Tax I.D. No. 76-0595042

January 21, 2003

Alberta Brennan Risk Enterprise Management, Ltd. 59 Maiden Lane, 5th Floor New York, NY 10038 Invoice No.: 6295

Amount

333 BB

Re: The Home Insurance Company / J.T. Thorpe Company

Our File No. 0455 00001

For Services Rendered Through January 21, 2003

ACCOUNT SUMMARY

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SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

1001 McKINNEY, SUITE 1400 HOUSTON, TX 77002-6420 (713)374-7000 -Telephone (713)374-7049 - Telecopier Tax I.D. No. 76-0595042

January 21, 2003

Alberta Brennan Risk Enterprise Management, Ltd. 59 Maiden Lane, 5th Floor New York, NY 10038 Invoice# 6295 Billing through 01/21/2003

Re:

The Home Insurance Company / J.T. Thorpe Company

Our file#

0455

00001

PROFESSIO	STAT CE	D 371		, 90 , 75	\$, \$	188	38. 3	A N	r í	S E	-115	
3	<u>INAL SE</u> HMC	IX Y J	Review bankruptcy motions, notices and	, in	4.50	- 1 ₅₀ -1	hrs.	V I) j	1,125.	.00	
10/22/2002	TIMIC		background materials; conferences with Mr.	34	B À	<i>;::</i> :	86	# 3		N X		
.a 12 - 23	1946 - 1946 - 1946 1946 -	#40	Creely regarding background facts and	34	4 34		ia.	31 5		#	133	
			strategy issues; attend telephone conference						1 14			1
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	1 30 1 4 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		companies regarding bankruptcy issues and				3%	A, A,				
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10/24/2002	HMC	e tyan	Attend telephone conference meeting with	18	1.20	((2)	nrs.	á r	÷.	J00.	.00	
	500 000		other attorneys regarding objection to motion	l Sign	1.50	A.	5,3		ek I	Q. K.	3450	
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9 -444 (25 - 44)	* _ii		Creely regarding same	- 0	1.00	jak P	hrs.		3%	250	.00	
10/25/2002	HMC	< 884	Attend hearing on motion to approve financing; draft memo regarding same.			100			100		\$35	
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10/26/2002	HMC		schedule; draft memo regarding same.		100 BE	20V			9652 965			
10/28/2002	HMC		Review and respond to memos regarding	- Ass	0.50		hrs.	334 B	388	125	.00	
10/26/2002	111110		objection to expedited scheduling.	. 22	1988 98.9	- 300	9999 . Per Source	200 0	550	Sorte a addition		
10/29/2002	HMC		Review file and telephone conferences with	135	1.70) 33	hrs.	##	388	425	.UU	
		8 80	Mr. Creely and Mr. Kavanaugh in	- 1995 1995	- 10 11	PS	\$4.		ingur Print		. 300	
		e in	preparation for section 341 meeting of	\$13	\$31 03	W.	353		(†)	<u> </u>	188	
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90 796 366 60h	300 s. R840 - R	* *	same; review and respond to email from Mr.	. 33	** **		860	388	55K			:
ina dia mangantan Mangantan	AND THE PARTY OF	oria Li S	Litherland regarding depositions. Attend telephone conference meeting with	100	2.00)	hrs.	99 99	\$\hat{x}	500	.00	
10/31/2002	HMC	13 B.	counsel in preparation for bankruptcy court	1. 1998	: :::::::::::::::::::::::::::::::::::::	• }\$00		365. 355.				1
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	•			11/01/2002	нмс	hearing on November 1; telephor conferences with Mr. Creely and Drebsky regarding same and prod Review debtor's reply regarding of	Mr. ofs of claim.	3.8	0	hrs.			950	.00				TO THE RESERVE THE PROPERTY OF
				11/01/2002	mac	expedited schedule; attend hearing and applications to retain profess conference with other attorneys a strategy options.	ig on same ionals;											C
				11/04/2002	нмс	Attend telephone conference with regarding discovery in bankrupto telephone conference with Mr. D. Mr. Creely regarding same; begin	y court; rebsky and	2.2	0	hrs.			550	.00				60.5
				11/06/0000	HMC	cases regarding UNR issues, pote objections. Draft Objection to Application to	ential plan	. 1.8	0	hrs.			450	.00				pro
				11/06/2002	HMC	MFR Consulting; review draft no removal and motion to transfer caction.	tice of					- -						-
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				11/07/2002		MFR; telephone conferences wit	h Mr.											e de la companya de l
						Creely and Mr. Kavanaugh regar	ding same;			5.1 · · · · ·								a residence
						telephone conference with Mr. L	itherland											um a meditir
					7D 40	regarding tasks to be performed l Attend hearing on application to	retain HRM	1.5	0	hrs.			375	.00				- Summer
				11/08/2002	НМС	consultants; draft status memo re same.	garding					, in						· · · · · · · · · · · · · · · · · · ·
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				e 1 19 1		Creely and Mr. Drebsky regarding	g same;			\$	27 - 2		\$ \$0.					***************************************
				garage see	· · · · · · · · · · · · · · · · · · ·	review memos and draft deposition regarding discovery in bankrupto	on nouces or initial								-0 (and Course
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		* "	-33			counsel regarding discovery and	etrategy	n kin s	8. 335			9 }	#	- 88			1989	0
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			bankruptcy docket regarding in draft requests for production; o	ntline								ξ.,		
			documents for review and com	oilation by			1 21		* N.	w" 				
			Ms. Hooks (paralegal).											
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			document production and confe	erences with										
	1 *		Ms Hooks and Ms Tolson rega	rding same;										
			telephone conferences and draf	i memo										
and the second		· An	regarding interrogatories; revie	w Ms								200,		
			Tolson's outline regarding prep	aring for		e e e								
			deposition of Mr. Scott.		0	.00	hrs.		60	0.00		41.	٠.	
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			bankruptcy proceedings; comp	ne usung or						A	id.	ог Ир.		
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12/03/2002	HMC	Attend deposition of Mr. Sh review of other insurers' and	lore; commuca l debtor's		.0.00									
		discovery responses; revise	Home's answers											And of some
		to interrogatories; research	regarding Plan											**************************************
		section 10.7 issues, including	ig alleged											
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		counsel regarding potential	settlement	i Foreign										
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		Thorne Valuations as well a	is in support of	i iti										
		any ESOP valuations; received	ve and respond to											
		inquiry regarding certain do	cuments from											
		Richard Shore to counsel for	r Home in the	;										
		coverage litigation; review	certain of Home's											
		Motions for Summary Judg Thorpe Company and Thorp	nent against 51											
		receive request and prepare	briefing for the											
		deposition of Richard Schir	o; receive request	•										
		and prepare briefing for the	deposition of	a sai			8.1							
	1	William O'Farrell/Republic	Insurance								R16			
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0455	The Home	e Insurance Company	Invoice#	6295	Page	10			
0455	THE HOME	, mounted company					÷		
		supplemental interrogatory and draft witness and exhibit lists;	swers; review						
		with Ms Tolson regarding pre	paring for						
		confirmation hearing.		10.00	1	750.	00		
12/12/2002	AΗ	Continue preparation of Witne	ess Files and	10.00	hrs.	750.	.00		
		Trial Exhibits; continue comp	llation of						
		materials for inclusion in with	ess mes,						
		continue preparation and over Master Deposition Index List	of Exhibits and						
		the Insurers' Joint Confirmation	n Exhibit List,						
		telephone conferences with re	presentatives						
		of Marker Hoff scheduling for	rm and						
		preparation of 350 Trial Exhib	oits.	7.50	hrs.	1,875	.00		
12/13/2002	HMC	Attend deposition of Mr. Hirs	and	7.50	111.5-	2,0.0			
		conference with Mr. Hirs regatestimony at confirmation hea	ring review						
		witness and exhibit lists of other	ner parties, and						
		assist in completing Hane's w	itness and						
		exhibit lists; telephone confer	ence with other						
		insurers' counsel regarding pr	oposed						
		stipulation to resolve bankrup	tcy issues.	15.00	hrs.	1,125	i.00		
12/13/2002	AH	Continue to supervise and per	torm the	15.00	шэ.		**************************************		
		preparation of Witness Files a Exhibits; continue document	ing IIIai identification						
		and compilation for the Witne	ess Files and						
		Trial Exhibits; continue to rec	eive and			\$			
		respond to further documents	-related	2			100		
		requests and inquiries from va	arious members						
		of the insurer group.		5.50	hrs.	1,375	5.00		
12/14/2002	HMC	Review Debtor's briefs (i) in	support or plan	5.50	11101				
		confirmation, (ii) objecting to insurers and (iii) on insurance	related						
		provisions in plan; research re	garding				.:	(1 - 2)	
		standing issues raised by Deb	tor, review				\$1.00	9	
		pleadings and briefs filed by	other insurers,		4 4 7				
		including motions regarding i	nsurer counter-				98 B	9 e	
		claims; review proposed stip	lation to setue	1 80 114 3	i de is	- 		7. j	ją.
		insurer objections; telephone with Mr. Creely and draft me	mo regarding	. en len e 1 es sul le			94, 3	1 0 5	05 .5W
and the second	\$ \$ 5 .	modifications to proposed sti	pulation.	THE SELECT	56 A.A. 1997 361 MA	5	\$60	eter e	
12/14/2002	AH	Continue to supervise and pe	rform the	15.75	hrs.	1,18	1.25	966. J	
1221-12002		preparation of Witness files a	nd Trial				1941 ·	1865 - 21 	
		Exhibits: continue document	identification	i ia Pili		git et sek	4.7 	45 E	
	ing the last	and compilation for the Witn	ess Files and					## 5	
See the second of the second o		Trial Exhibits; continue to re- respond to further documents	ccive and crelated		製 製 製	# # #	9852 -859	. 1885 - B	
	and the end	respond to further documents requests from various member	ers of the				828		
	AND	incurer grown further telepho	ne conferences		8: S. V				ŽŽ
		with representatives of Mark	er Hoff				. SS		36
	選 時 智	finalizing the Trial Exhibits of	juantum.			2,00			
12/15/2002	HMC	Draft cross-examination outl	nes for Debtor's						
	a B M	financial experts (Ogle and V	Vhite),						
in the second of the	a 12 4			1 14 원		- 11 왕 왕	i m	160 I	enter.

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0455	J	LHC	1100	LIC 1	mburaneo Co				-											
•		·			including review of their depositions; review														reported described for	
					and revise motion for continuance or to									i. i					or relation has	-
				44	strike witness, and telephone conferences								. 1						Chestan if t	
				1.5	regarding filing and presentation of same;														1	
					revise reply brief in support of standing of															
					insurers; revise response to Debtor's brief on														2	2
					insurance provisions; review and respond to														:	
					insurance provisions, leview and response														3	100
					numerous memos regarding hearing issues.		15	5.00		hrs			1,1	25.0	0					
12/15/2002		AF	I.		Coordinate and hand-off initial delivery of															distribution of
					Trial Exhibits to representatives of Market															200
					Hoff for processing into 7, 11-binder sets of															Sandario C
					351 trial exhibits; continue preparation of															Acres 1, 2 o
					Trial Exhibits; update the Trial Exhibits															o accord
			<i>y</i> 1		Index as indicated; receive further requests										: :	ÿ	F. 1			2600000
			-21		from various members of the insurer group															130.40
				<u> </u>	for inclusion of additional documents within															0.000
				4.5	the Trial Exhibits; continue to supervise and		4.		i,		5				AN .		75			Victoria de la constante de la
			. 16.	×	perform the preparation of Trial Exhibits to			29							ing i	<u> </u>		x j	:	ay cyclesic
				4.	completion; coordinate and hand-off final			2 NO.							386			er.		design of the
					delivery of Trial Exhibits to representatives		: :	-67							or e					(0000 June 1999)
e ** 1		13.5	1918	4.6	of Marker Hoff for completion; provide		100	100							No.	î î j		37 1		000000
***					instructions for delivery of the 7, 11-binder			-53			, v ,				44	J. 1				0000000
	-			4,4	sets of Trial Exhibits to Federal Court,					1.2	e-					\$4.				000000
温。1 称""。	**;	1/4	1864	814	Courtroom 9A, on 12/16/02 at 8AM.			n ér		L			- 1 1	875.	oσ	e.a	200			(Constant)
12/16/2002		HI	MC	100	Finalize and file motion for continuance;	A.		7.50	?	hrs	••			J, J.	~~	39.4				1
			1144		attend commencement of confirmation										4	·0.				0.000
			1274	3.54	hearing; conferences with opposing counsel						6		31	, W.,	p 44 202					1
					and insurers' counsel regarding possible						34			388	8,	2.5				
and section of	12	94	1.1		stimulation to settle bankruptcy issues;			14.5					3.5	.1	00.1	****	one of	120	n distra	-
and the second		59.1		847	review drafts of same and telephone			Ņ.	¥.	жŞ	£.,	5		Š.	Ŋē.	93			P\$(
			***		conferences with Mr. Creely and other	4,1	жŹ		- 11	şi.				2	23	100	100			
		170	17		insurers' counsel regarding same.	1107	::		A::	ા ન ે				825	nΛ	J.,	ŧ			
12/16/2002	12	A)	H	Ph.	Further telephone conferences with	983	. 10.64 <u>1</u>	1.00	J	hr	s.				.00	1000	5.00	1.00		-
	. 3	43.77	22	28	representatives of Marker Hoff regarding	195	45	23	by.	Š.	19	27.4	488	181	738	59.				1
	690	990	1096	48.51	completion of 7, 11-binder sets of Joint	138	58.	38		3/9	\$.	jer.	3,5	釒		197	#F.			-
e de la companya de		134	5497	882.	Insurers' Trial Exhibits; attention to	190	1800	(%)	63	Qee.	\$-3	88	35	SQ.		2600 2600	990 683	100	X	1
	New Charles		. 130	9.3	completion and filing of the Amended Joint		-9090	en i		2.55	2001		199			(48) (88)	3888	55 553.	4.5	
	130	- 64	543 366	175.	Insurers Trial Exhibit Index; attention to	16	100	751	23	1968	268		36.5							-
	. 39		9000	93	completion of the Witness Files		300	:29	36	98		39	94	-86		20		10	106	
					Comprehensive Index; attention to Witness	188	98	33	80h		113		5 N 1 5 N 2	466	33	30.5 30.5	99	13	7.1.	
그는 병 및 기		1 199	#Q	8.0	Files prior to shipment to Courtroom 9A	5.50	522	5.5	4361	1.3.	466	300 300	100	採	258	1988	199	Sa		
	: 2	18	41.	90	from Confirmation Hearing before Judge	275	745	997	EAR		38	RMS			2.9	• • •				
	11.7			63	Brown: telephone conferences affirming	98	10	35	200		4,1		30	135	898	Sk	1.de			
					timely delivery and receipt of related	38	940	48	Ter	34	級	W	30	39	16	33	: 3		16.	
			35		documents including insurers'		24.1	900	\$18	200	5. 4	, 8	- Jago 1		888	- 333	889	85	Ž.	
1 1 8 1 A	1		47	Tji:	comprehensive Witness Files to Courtroom	- EV	530	136	1.7	5 700	20	2.21		4,744		-000	and a	95		
	, á.			75.	9A; further telephone conferences with	56	89	140	29	4.5	¥.	M	37	188	14	150	19.	ŵ.		
en e	2 99 25		: : : :	. 2019	Marker Hoff representatives regarding	200			366 368		188	130	553 551	38			, 33 33	. 300	43	
					details of timely providing trial documents	to		9,0		- Feet	-883	258	138	98	233		100	85	线	
	8 #	¥ 191	48		Courtroom 9A for Confirmation Hearing													. 4		
	, d		: 185	<i>\$</i> 1.	today: confer with Court Coordinator	535	86	100	536	\$-80	137	88	880	350 350	200	- 32	84	54		
					regarding Judge Brown's preferences for	: 43	300	98	\$10 \$10	ijž	30	54	10.7	ÇÜ.	385	100	8.3		*	
		9 17		- A.	o च्याक्त्रक्रकाष्ट्राच्या प्रदेश व्यवस्थात्र । श्री विश्वस्थात्र । श्री विश्वस्थात्र । श्री विश्वस्थात्र । श् Taranta anala a		. 5.46			- 44,	,4			143	\$2.5	26,2	940.			

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				handling of all documents and										
				implementation of the Court's preferences;										
				attendance at and participation in										
				Confirmation Hearing in support insurers'										
				trial team; coordinate document handling										
				during hearing as requested by various										
				members of insurers' trial team; telephone										
				members of insurers that team, telephone										
				conferences with counsel.		8.50		hrs			2,	125.	00	
12/17/2002		HMC		Continued negotiations and revisions to										
				stipulation; attend confirmation hearing.	,	0.00		hrs				750.	00	
12/17/2002		AH		Continue attendance at and participation in	1	0.00		III	,,	^		. + - :		
12/2//2				Confirmation Hearing; continue legal										
				support to insurers' trial team; confer with										
				Court Coordinator regarding continued										
				hearing schedule, document handling							- 1	245 19	ecu -	
				responsive to needs of trial team and				: 10						
			*	requirements of the Court.		13 4	•					450	00	
12/18/2002		НМС		Attend continuation of confirmation hearing;		1.80)	hr	5.			450.	.VV	, ,
12/18/2002		THAIC		conference with Mr. Plevin regarding							V			
				potential appeal and telephone conference										
				with Mr. Creely regarding same.		-55						Na	àsi.	
4 13 112 62 81			Ţ.	Continue legal support to trial team;		4.00	}	hr	s.			300	.00	
12/18/2002		AH		continue coordination with the Court										٠.
				Continue Coordination with the Court					2:					9.1
			*	Coordinator regarding appropriate handling				4					er i	
				of trial documents.		9.00)	hr	s.			675	.00	
12/19/2002		\mathbf{AH}		Receive notice from Court Coordinator		J., U.								
				regarding final handling of all trial									14,	
				documents; provide notice to interested					14					,33
. 4				counsel regarding same; coordinate handling							4.5		4.5	400°
				of remaining trial documents trial documents			3:4		112		7 E.		9,00	<i>(</i> %
				pursuant to requests of interested counsel;		3.44	91. 94.		j.		95	35	P.	40
fr i i k				receive documents from Court for final		i.e.		3.4	501	4.75				
(a. 15 to 15	-30	争为	ģ÷.	disposition.	634	- (1) - 44	ings N	744	70. e 8-44.			540	.50	
12/20/2002		AH	10,0	Receive e-mail advice directing basic	4982	7.5	J	hı	S.	503	Ť	202	2.50	386
12/20/2002			pose	documents handling preferences amoung	394	Na	40	50	8.7	1,50	4.1	185	184	35
		N	200	insurers counsel; Telephone conferences		55.83	1154		51.5	×.*	álás:	5(1)	982	60
아 그 게 꽃		* B	199	with counsel for US Fire, Old Republic, Mt.	2525	1594		161	400				5.75	
	4			McKinley, Highlands, Unigard, AMICO,		388		357	350	388	S	3	\$ 18	130
			2000	Home and National Union insurers; receive		800	£52	\$1	300	33	(S)	5 (S) 4235	S	145. 155.
	10,11	fig. 147		shipping instructions from counsel;	gove			1883	388	557	138	34	34	286
	14.	ğ., 186	58E	implement same; provide billing instructions	82	38.	A45.							
	115	\$1. PA	12.4	to Marker Hoff for documents production of	78.	25	9	3/2		17 T	188	. AT.	33	981
				the 7, 11-binder sets of Joint Insurers' Trial	34	\$35.	2000 1000	100	36	43	190	330	136	1999
				in this contains a second and the se				684		, 100 ,600	186	1886		988
主义 黄 华	Ä	35 33	1.50	finalize billing information; telephone	3.5	級		2001	83					
	52		i farr	Imanze oming information, exspect	1, 1	195	a i	Pég	M)	in.	XX	92	80	1838
		en e		conferences regarding same.	- W:	5.0	0	h	rs.	4/4	3%:	37	5.00	- 199
12/23/2002		AH	i jar	Keeeline Sild leafen doodtuging in a			•				:58			60
de la Ar	$\hat{\mathcal{S}}_{i}^{i}$	10 8	1 10	from Confirmation Hearing; attention to	592		88							
		3. · · · · · · · · ·	<u>}</u>	reconstitution of document groups to ensure		. 33	300	2.3	649) 636	\$200 \$200	333	88	588	\$35 \$35
				integrity of various productions.	548	11.5	n	1	rs.	\$.	-8	86	2.50) · 🔯
12/27/2002	3344	AH		COUNTING 162 MISTOR OF GOODINGS										. 🕮
	49.	\$ B		document groupings, attention to integrity of	100	1830 1880			ä.					
			. %."			Ü	300	Mg	367	9335	£	180	88	****
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	0455	The Home	Insurance Company Invoice# 6295 Page 13
• 1			documents groupings and related winding-up
			tasks. 5.25 hrs. 393.75
	12/28/2002	AH	Continue Wirding-up (4545).
	12/29/2002	AH	Finalize winding-up tasks, including review
			of bankruptcy files for completeness,
			integrity of documents groupings, related
		_	trial files and notebooks. Review proposed confirmation order, 1.50 hrs. 375.00
	01/04/2003	HMC	findings, and order regarding standing
			objections; review memos from other insurer
			counsel regarding same; draft memo to Mr.
			Kavanaugh and Mr. Creeley regarding
			possible objections to proposed orders and
			- [編集] - [alternative of the content o
		TD 60	Telephone conferences with Mr. Creeley and 0.60 hrs. 150.00
	01/06/2003	HMC	Mr. Kavanaugh regarding proposed
100			confirmation order and findings, and draft
. 14	and the state of		mamo to Debtor's counsel regarding same.
e e e	CARGINAL CA	HMC	memo to Debtor's counter regarding death of the new revised confirmation order and 0.40 hrs. 100.00
	01/08/2003	HIMIC	findings
	01/10/2003	нмс	findings. Review memos regarding modifications to 0.20 hrs. 50.00
	01/10/2003	THE	confirmation order.
	01/15/2003	HMC	Review final revisions to confirmation order 0.20 hrs. 50.00
	01/13/2003	THITC	and findings.
	01/17/2003	HMC	Review filed confirmation order and 0.30 hrs.
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SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

1001 McKINNEY, SUITE 1400 HOUSTON, TX 77002-6420 (713)374-7000 -Telephone (713)374-7049 - Telecopier Tax I.D. No. 76-0595042

February 17, 2003

ACCOUNT SUMMARY

Alberta Brennan Risk Enterprise Management, Ltd. 59 Maiden Lane, 5th Floor New York, NY 10038 Invoice No.: 6442

Re: The Home Insurance Company / J.T. Thorpe Company
Our File No. 0455 00001

For Services Rendered Through January 31, 2003

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BALANCE DUE

* Prepaid cash remaining balance is \$0.00

Trust account remaining balance is \$0.00

SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

1001 McKINNEY, SUITE 1400 HOUSTON, TX 77002-6420 (713)374-7000 -Telephone (713)374-7049 - Telecopier Tax I.D. No. 76-0595042

February 17, 2003

Alberta Brennan Risk Enterprise Management, Ltd. 59 Maiden Lane, 5th Floor New York, NY 10038

Invoice# 6442 Billing through 01/31/2003

Re:

The Home Insurance Company / J.T. Thorpe Company

00001 0455 Our file#

EXPENSES

01/03/2003 **HMC** Computer Research Expense: West Group;

Invoice #803515235; online research on 12-

03-02 & 12-04-02

\$180.41

180.41

TIMEKEEPER SUMMARY - THIS BILL

Total expenses incurred

Total charges for this invoice

Plus net balance forward

Total Balance Due

\$180.41

\$74,604.48

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720 Manchester, New Hampshire 03105-1720 Tel: (800) 347-0014

May 11, 2006

Class V

H. Miles Cohn, Esquire Sheiness, Scott, Grossman & Cohn, LLP 1001 McKinney, Suite 1400 Houston, TX 77002

RE: NOTICE OF DETERMINATION

Proof of Claim No.: VEND700093-01

Determination Summary

Gross Amount of Claim :\$ 74,784.

Amount Allowed by Liquidation :\$ 74,784.

Explanation: The Home Insurance Company Home retained the Sheiness Scott Grossman & Cohn law firm as local bankruptcy counsel in coverage litigation involving Home's insured J.T. Thorpe Company related to asbestos litigation involving the insured. Services were rendered from 10/22/02 through 1/21/03 in amount of \$74,784.89. A review of invoice 6295 confrims that the services provided were reasonable and necessary for the defense of Home in the referenced coverage litigation. The invoice was not paid because the services were rendered prior to the Home's rehabilitation.

Deor Claimant

The purpose of this letter is to provide you with a determination set forth above of claims you have presented to The Home Insurance Company in Liquidation ("The Home"), under the Proof(s) of Claim specified above. The Home expects to present notice of this determination to the Superior Court for Merrimack County, New Hampshire (the "Court") for approval in accordance with New Hampshire Revised Statute, RSA 402-C:45. Read this Notice of Determination carefully as it sets forth your rights and obligations in detail.

The Home has now made a Determination on the claims as set forth above in accordance with The Home Claim Procedures (the "Procedures") approved by the Court. If the claim has been allowed, in whole or in part, it has been assigned a Class V priority as a "residual

^{*} A copy of the January 19, 2005 Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation may be obtained from the website of the Office of the Liquidation Clerk for The Home Insurance Company in Liquidation and US International Reinsurance Company in Liquidation, www.hicilclerk.org.

claim" pursuant to the Order of Distribution set forth in RSA 402-C:44 and will be placed in line for payment as directed by the Court from the assets of The Home. The first \$50 of the amount allowed on each claim in this class shall be deducted from the amount distributed as specified in RSA 402-C:44.

You may have other claims against The Home for which you may receive other Notices of Determination. You will have a separate right to dispute each Notice of Determination. If your claim has been allowed in whole or in part, this Notice of Determination does not mean that your claim will immediately be paid, or that it will be paid in full or at all. Pursuant to order of the Court, The Home may make distributions of its assets as a percentage of all allowed claims in a particular priority class in The Home estate as approved by the Court. The amount of the final payment for allowed claims will be determined by the final ratio of assets to liabilities and the applicable priority. Please be advised that the final percentage of payment you receive from The Home, at the time The Home estate is finally closed, is the total payment amount that you will be entitled to for this claim.

The Liquidator does not expect there to be assets sufficient to make a distribution to creditors in classes below Class II.

Any and all distributions of assets may be affected and/or reduced by any payments you have received on this claim from any other sources not listed on the Notice of Distribution. Any such distributions by The Home are based on The Home's knowledge and/or understanding of the amounts you have received in settlement and/or reimbursement of this claim from all other sources at the time of the allowance or thereafter. Should The Home subsequently become aware of prior recoveries from other sources The Home has the right to reduce its future distribution payments to you to the extent of such other recoveries or to seek and obtain repayment from you with respect to any previous distributions that were made to you.

Further, if you seek or receive any future payment from any other source on this claim after you receive a distribution payment from The Home you must notify The Home at the address below and The Home has the right to recover from you the distribution payments in whole or in part, to the extent of any such other future recoveries.

As a condition to receipt of any distributions, The Home shall be entitled to any rights to subrogation you may have against any third party and you shall be deemed to have assigned to The Home such rights upon receipt of any distributions. You shall also be obliged to reimburse The Home for any legal fees or other costs associated with The Home recovering from you any distribution payments to which you are not entitled.

The following instructions apply to this Notice of Determination:

Claim Allowed

 If this claim has been allowed in whole or in part and you agree with the determination, sign and date the enclosed Acknowledgment of Receipt of the Notice of Determination and mail the completed Acknowledgment to The Home.

Claim Disallowed

2. A. If all or part of your claim has been disallowed or you wish to dispute the determination or creditor classification for any reason, you may file a Request for Review with the Liquidator. The Request for Review is the first of two steps in the process of disputing a claim determination. The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination.

REQUEST FOR REVIEW FILING REQUIREMENTS:

- (a) Sign and return the attached Acknowledgment of Receipt form.
- (b) On a separate page, state specifically the reasons(s) you believe that the determination is in error and how it should be modified. Please note the Proof of Claim number on that page and sign the page.
- (c) Mail the Request for Review to:

 The Home Insurance Company in Liquidation
 P.O. Box 1720

 Manchester, NH 03105-1720

You should keep a copy of this Notice of Determination, Acknowledgment of Receipt and Request for Review, then mail the Original Request for Review to us by U.S. Certified Mail.

- (d) The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination. The Request for Review must be in writing.
- (e) The Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination.

IF A REQUEST FOR REVIEW IS NOT FILED WITH THE HOME WITHIN THE THIRTY (30) DAY PERIOD, YOU MAY NONETHELESS DIRECTLY FILE AN OBJECTION WITH THE COURT WITHIN SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE. You do not have to file the Request for Review as a prerequisite to dispute the Notice of Determination. Please see Section 2B (below) for the Objections to Denial of Claims.

B. If your claim is disallowed in whole or in part, you may file an Objection with the Court at

Office of the Clerk, Merrimack County Superior Court 163 N. Main Street, P.O. Box 2880

Concord, New Hampshire 03301

Attention: The Home Docket No.03-E-0106

within sixty (60) days from the mailing of the Notice of Determination and bypass the Request for Review procedures as noted in Section 2A (above). If the Request for Review is timely filed, as outlined in Section 2A, the Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination. If the redetermination is to disallow the claim, you may still file an Objection with the Court. You have sixty (60) days from the mailing of the Notice of Redetermination to file your Objection. Please also sign and return the Acknowledgment of Receipt form and mail a copy of the Objection to the Liquidator.

IF YOU DO NOT FILE AN OBJECTION WITH THE COURT WITHIN EITHER SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE OF DETERMINATION OR SIXTY (60) DAYS FROM THE MAILING OF ANY NOTICE OF REDETERMINATION, YOU MAY NOT FURTHER OBJECT TO THE DETERMINATION.

A timely filed Objection will be treated as a Disputed Claim and will be referred to the Liquidation Clerk's Office for adjudication by a Referee in accordance with the Procedures.

3. You must notify The Home of any changes in your mailing address. This will ensure your participation in future distributions, as applicable. For purposes of keeping The Home informed of your current address, please notify us at the address given on the letterhead above.

Sincerely yours,

Peter Bengelsdorf, Special Deputy Liquidator For Roger A. Sevigny, Liquidator of The Home Insurance Company in Liquidation

If you wish to speak to someone regarding this Notice of Determination, please contact:

Alberta Brennan
Senior Manager
Home Insurance Company in Liquidation
212-530-4129

SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

ATTORNEYS AT LAW
1001 MCKINNEY, SUITE 1400
HOUSTON, TEXAS 77002-6323
TEL: 713.374.7000 FAX: 713.374.7049

H. Miles Cohn
Direct: 713/374-7020
Email: mcohn@hou-law.com

June 6, 2006

The Home Insurance Company in Liquidation
P.O. Box 1720
Manchester, N.H. 03105-1720
By Certified United States mail, Receipt No. 7005 1820 0003 4969 6091

Re: Proof of Claim No.: VEND700093-01 - Request for Review

Gentlemen:

I am requesting a review of the determination of the referenced claim, made by letter dated May 11, 2006. I have completed the "Acknowledgment of Receipt," and it is enclosed.

This is a claim for attorney's fees and expenses incurred in representing The Home Insurance Company in a bankruptcy proceeding in Houston, Texas, during the period from October 2002 through January 2003. Together with other attorneys representing Home, we successfully defended and ultimately settled an attempt to impose substantial asbestos claim liability against the Home through the bankruptcy of T. J. Thorpe Company.

The claim was allowed, but only as a Class V claim that will never be paid. I am requesting review with respect to the classification of the claim, which we filed as a Class I (administration cost) claim.

To begin with, the statute defines Class I claims to include all administration costs, including "costs of preserving . . . assets" and "reasonable attorney's fees." Specifically:

"I ADMINISTRATION COSTS. 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."

N.H. Rev.Stat. §402-C:44.



The Home Ins. Co. In Liquidation June 6, 2006 Page 2

This definition is not limited to costs or attorney's fees incurred by the liquidator. On the contrary, by stating that it "includes, but is not limited to . . . compensation for all services rendered in the liquidation," the language suggests that costs incurred prior to the liquidation that qualify as "administration costs" would be entitled to Class I treatment.

An insurance company that is in liquidation, or is soon to be in liquidation, cannot protect itself and its assets if there is no assurance that attorneys and other persons working to protect it, including those who served the company shortly before the liquidation order, will be paid. It should be remembered that in the months before the liquidation order, we and other attorneys worked very diligently to protect Home. We knew that the prospect of a liquidation was looming in late 2002, but we were assured by Home personnel that we would be paid even if the company went into liquidation, as attorney's fees would be a priority claim.

We continued to work in good faith and, indeed, we put our hearts and souls into representing Home despite the difficulties that led to the liquidation. I recall one night, before a bankruptcy court hearing the next morning, when we worked literally through the night crafting the settlement that has protected Home from the enormous asbestos liability that other parties were attempting to impose through the bankruptcy process and without opportunity for defense of the underlying claims.

We are a small law firm and the loss of this claim is a very real and substantial loss for the firm and for me personally. I therefore request that you review and reconsider the determination on our claim and issue a redetermination allowing the claim as a under Class I (administration costs).

Sincerely,

H. Miles Cohn

ce Alberta Brennan Senior Manager Home Insurance Company in Liquidation

HAHMC\HomeThorpe\Liquidator.02.wpd

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720 Manchester, New Hampshire 03105-1720 Tel: (800) 347-0014

POC#: VEND700093-01

Amount Allowed: \$ 74,784.89

H. Miles Cohn, Esquire Sheiness, Scott, Grossman & Cohn, LLP 1001 McKinney, Suite 1400 Houston, TX 77002

ACKNOWLEDGMENT OF RECEIPT

(Check off all applicable items.)

I hereby acknowledge receipt of the Notice of Determination as a Class V Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Determination of my Claim against The Home Insurance Company in Liquidation and in that regard advise as follows:

I agree to the determination.

I reject the determination and want to file a Request for Review (specific reasons must be included along with return of the signed Acknowledgment).

I reject the determination and intend to file a separate Objection with the Court, without filing a Request for Review.

I have not assigned any part of this claim.

I have not made any other recoveries with respect to this claim.

I have not sought and do not intend to seek any other recoveries with respect to this claim.

I have made recovery from others with respect to this claim (full details must be included with this Acknowledgement).

I have sought or intend to seek recovery from others with respect to this claim (full details must be included with this Acknowledgement).

Same address as above New address its Acknowledgment of Receipt must be completed, signed and returned to The Home in der to be eligible for distributions from The Home estate as directed by the Court. gnature: A. U.L. G. gnature: H. A. I.L. S. C. L. inted Name: H. A. I.L. S. C. L. inted Name: Complete terms 1. and 3. Above complete then 4 if Postback parts 1 and 3. Above complete then 4 if Postback parts 1 and 3. Above complete then 4 if Postback parts 1 and 3. Above complete then 4 if Postback parts 1 and 3. Above complete then 4 if Postback parts 1 and 3 above complete then 4 if Postback parts 1 and 3. Above complete then 4 if Postback parts 1 and 3. Above complete then 4 if Postback parts 1 and 3. Above complete or on the proof is depended and the search of the beat of the purpose and the postback parts 1 and 3. Above and the postback parts 1 and 3. Above and the postback parts 1 and 3. Above and 3 is a postback parts 1 and 3 is a postback parts	<u> </u>	San	e na w na	4.7	as a	abo	ve.	4.5		مانست	in print	:		· ·		Na Table	i.			 	-				21 22			
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I request that The Home mail further correspondence to:

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To <jacqueline.merson@homeinsco.com>

CC

bcc

Subject Claim VEND700093-01

Jacqueline, attached is the request for review that I discussed with you a few minutes ago.

This was submitted last June and we have received no ruling or response. I noticed the 12/5/06 decision of the New Hampshire Supreme Court, 2006 WL 3489902, which supports our position in the request for review, and it occurred to me that the Liquidator might have been holding our request and perhaps similar claims until receiving a decision in that case. If that is the situation, I suppose I should continue waiting for a decision. But if it does not appear that any decision will be made any time soon on the request for review, then perhaps I should go ahead and file an objection with the court to get that process going.

Anyway, that is the situation. I would sincerely appreciate any information you can provide regarding the status of our request for review.

Thanks, Miles

H. Miles Cohn

Sheiness, Scott, Grossman & Cohn, L.L.P.
1001 McKinney St., Suite 1400
Houston, Texas 77002
Telephone (713) 374-7020 (direct)
Facsimile (713) 374-7049
mail to:meohn@hou-law.com



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SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

ATTORNEYS AT LAW
1001 McKINNEY, SUITE 1400
HOUSTON, TEXAS 77002-6323
TEL: 713.374.7000 FAX: 713.374.7049

H. Miles Cohn Direct: 713/374-7020 Email: mcohn@hou-law.com

June 6, 2006

The Home Insurance Company in Liquidation
P.O. Box 1720
Manchester, N.H. 03105-1720
By Certified United States mail, Receipt No. 7005 1820 0003 4969 6091

Re: Proof of Claim No.: VEND700093-01 - Request for Review

Gentlemen:

I am requesting a review of the determination of the referenced claim, made by letter dated May 11, 2006. I have completed the "Acknowledgment of Receipt," and it is enclosed.

This is a claim for attorney's fees and expenses incurred in representing The Home Insurance Company in a bankruptcy proceeding in Houston, Texas, during the period from October 2002 through January 2003. Together with other attorneys representing Home, we successfully defended and ultimately settled an attempt to impose substantial asbestos claim liability against the Home through the bankruptcy of T. J. Thorpe Company.

The claim was allowed, but only as a Class V claim that will never be paid. I am requesting review with respect to the classification of the claim, which we filed as a Class I (administration cost) claim.

To begin with, the statute defines Class I claims to include all administration costs, including "costs of preserving... assets" and "reasonable attorney's fees." Specifically:

"I. ADMINISTRATION COSTS. 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."

N.H. Rev.Stat. §402-C:44

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The Home Ins. Co. In Liquidation June 6, 2006 Page 2

This definition is not limited to costs or attorney's fees incurred by the liquidator. On the contrary, by stating that it "includes, but is not limited to ... compensation for all services rendered in the liquidation," the language suggests that costs incurred prior to the liquidation that qualify as "administration costs" would be entitled to Class I treatment.

An insurance company that is in liquidation, or is soon to be in liquidation, cannot protect itself and its assets if there is no assurance that attorneys and other persons working to protect it, including those who served the company shortly before the liquidation order, will be paid. It should be remembered that in the months before the liquidation order, we and other attorneys worked very diligently to protect Home. We knew that the prospect of a liquidation was looming in late 2002, but we were assured by Home personnel that we would be paid even if the company went into liquidation, as attorney's fees would be a priority claim.

We continued to work in good faith and, indeed, we put our hearts and souls into representing Home despite the difficulties that led to the liquidation. I recall one night, before a bankruptcy court hearing the next morning, when we worked literally through the night crafting the settlement that has protected Home from the enormous asbestos liability that other parties were attempting to impose through the bankruptcy process and without opportunity for defense of the underlying claims.

We are a small law firm and the loss of this claim is a very real and substantial loss for the firm and for me personally. I therefore request that you review and reconsider the determination on our claim and issue a redetermination allowing the claim as a under Class I (administration costs).

Sincerely,

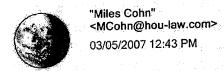
H. Miles Cohn

Alberta Brennan
Senior Manager
Home Insurance Company in Liquidation

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HAHMC\HomeThorpe\Liquidator.02.wpd



To <jacqueline.merson@homeinsco.com>

CC

bcc

Subject FW: Claim VEND700093-01

Jacqueline, below are my prior emails. The claim in question is described in the first one, and a copy of the request for determination is attatched. I would appreciate it if you would let me know the status of our request for determination.

Many thanks,

Miles Cohn

From: Miles Cohn

Sent: Tuesday, January 30, 2007 5:01 PM
To: 'jacqueline.merson@homeinsco.com'
Subject: FW: Claim VEND700093-01

Jacqueline, have you been able to determine whether anything has happened with the request for review that I filed last year?

I would appreciate any information you may be able to provide.

Thanks, Miles

From: Miles Cohn

Sent: Thursday, January 18, 2007 10:37 AM

To: 'jacqueline.merson@homeinsco.com'

Subject: Claim VEND700093-01

Jacqueline, attached is the request for review that I discussed with you a few minutes ago

This was submitted last June and we have received no ruling or response. I noticed the 12/5/06 decision of the New Hampshire Supreme Court, 2006 WL 3489902, which supports our position in the request for review, and it occurred to me that the Liquidator might have been holding our request and perhaps similar claims until receiving a decision in that case. If that is the situation, I suppose I should continue waiting for a decision. But if it does not appear that any decision will be made any time soon on

the request for review, then perhaps I should go ahead and file an objection with the court to get that process going.

Anyway, that is the situation. I would sincerely appreciate any information you can provide regarding the status of our request for review.

NAMES OF THE PARTY
Thanks, Miles

H. Miles Cohn

Sheiness, Scott, Grossman & Cohn, L.L.P.
1001 McKinney St., Suite 1400
Houston, Texas 77002
Telephone (713) 374-7020 (direct)
Facsimile (713) 374-7049
mail to:mcohn@hou-law.com
www.ssgclawyers.com



<<doc20070118102746.pdf>> doc20070118102746.pdf



"Miles Cohn" <MCohn@hou-law.com> 03/06/2007 06:55 PM To <jacqueline.merson@homeinsco.com

CC

bcc

Subject Claim VEND700093-01

Jacqueline,

To follow up on our conversation earlier this afternoon, attached is a copy of the New Hampshire Supreme Court decision, *In the Matter of the Liquidation of Home Insurance Company*, 913 A.2d 712 (N.H. 2006). The opinion was issued on December 5, 2006.

The discussion regarding administrative claims begins at p. 9 of the court opinion. Beginning at the bottom of that page, the Court rejects the "bankruptcy" approach that would limit administrative costs to those incurred after appointment of the receiver and instead holds that such costs include all expenses within the broad definition in Section 402-C:44. Under that definition, my firm's legal fees for representing Home Insurance Company in late 2002 and early 2003 should certainly be included.

Please let me know if there is any additional information I can provide in connection with the Receiver's consideration of our Request for Review.

Thanks, Miles Cohn

H. Miles Cohn

Sheiness, Scott, Grossman & Cohn, L.L.P.

1001 McKinney St., Suite 1400

Houston, Texas 77002

Telephone (713) 374-7020 (direct)

Facsimile (713) 374-7049

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Westlaw.

913 A.2d 712 913 A.2d 712

(Cite as: 913 A.2d 712)

In re Liquidation of Home Ins. Co.N.H.,2006.

Supreme Court of New Hampshire.
In the Matter of the LIQUIDATION OF the HOME INSURANCE COMPANY.
No. 2005-740.

Argued: June 7, 2006. Opinion Issued: Dec. 5, 2006.

Background: Insurance Commissioner brought action as liquidator for approval of settlement entitling insolvent company's reinsureds to \$78 million if they submitted all claims to liquidator without pursuing claims against company's reinsurers. The Superior Court, Merrimack County, McGuire, J., ruled in favor of liquidator. Insured and reinsurers appealed. The Supreme Court vacated order. On remand, the Superior Court approved the agreement. Insured and reinsurers appealed.

Holdings: The Supreme Court, Duggan, J., held that:

- (1) liquidator had authority to enter the agreement;
- (2) payments to the reinsureds were vadministration costs vith first priority for payment;
- (3) evidence supported conclusion that the payments were necessary; and
- (4) the agreement was fair and reasonable.

Affirmed.

West Headnotes

[1] Insurance 217 = 1365

217 Insurance

217VI Financial Impairment 217VI(A) In General

217k1362 Assets

217k1365 k. Listing and Collection. Most Cited Cases

Insurance 217 €=1405

217 Insurance

217VI Financial Impairment

217VI(C) Supervisors, Liquidators, Conservators, Rehabilitators or Receivers 217k1405 k. Powers and Duties. Most Cited Cases

100

Insurance 217 €=1414

217 Insurance

217VI Financial Impairment 217VI(D) Claims

217k1414 k. Priorities. Most Cited Cases

Liquidator had authority to enter agreement entitling insolvent company's reinsureds to \$78 million if they submitted all claims to liquidator without pursuing claims against company's reinsurers and had authority to treat the payment as class I payment for administrative expenses, even though reinsureds were in class V; liquidator had broad authority to take all necessary and appropriate action in collecting company's assets, and no statute barred payment of administration costs to lower priority creditors in order to collect an asset. RSA 402-C:25, 402-C:44.

[2] Insurance 217 €= 1365

217 Insurance

217VI Financial Impairment 217VI(A) In General

217k1362 Assets

217k1365 k. Listing and Collection. Most Cited Cases

The liquidator has broad authority to take all necessary and appropriate action in collecting the assets of an insolvent insurer. RSA 402-C:25.

[3] Insurance 217 0 1414

217 Insurance

217VI Financial Impairment

217VI(D) Claims

217k1414 k. Priorities. Most Cited Cases

Liquidator's payments to insolvent company's reinsureds under proposed agreement requiring them to submit all claims to liquidator without pursuing claims against company's reinsurers were deadministration costs with first priority for payment; even though reinsureds' claims against company arose pre-liquidation and even if claims and rights to payment arising pre-liquidation could not constitute administration costs, the reinsureds' right to payment under the proposed agreement arose post-liquidation. RSA 402-C:44(1).

[4] Insurance 217 0= 1414

217 Insurance

217VI Financial Impairment

217VI(D) Claims

217k1414 k. Priorities. Most Cited Cases

Liquidator's payments to insolvent company's reinsureds under proposed agreement requiring them to submit all claims to liquidator without pursuing claims against company's reinsurers did not create an impermissible subclass by splitting class V into two groups; payments of class I administration costs, by definition, were not a distribution to a lower priority class and therefore did not create a subclass of lower priority creditors. RSA 402-C:44.

[5] Insurance 217 = 1365

217 Insurance

217VI Financial Impairment 217VI(A) In General

217k1362 Assets

217k1365 k. Listing and Collection, Most Cited Cases

Insurance 217 € 1399

217 Insurance

217VI Financial Impairment

217VI(B) Proceedings

217k1399 k. Costs and Expenses. Most Cited Cases

Evidence supported conclusions that insolvent company's reinsureds would not file and prosecute claims without a financial incentive and that liquidator's payments to them in exchange for submitting claims to liquidator, not

company's reinsurers, were necessary administration costs of preserving and recovering company's assets from reinsurers; testimony indicated that reinsureds had no economic incentive to prosecute their claims, and uncertainty existed as to whether cut-through deals between reinsureds and reinsurers were legally permissible. RSA 402-C:44(1).

[6] Appeal and Error 30 € 846(1)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k844 Review Dependent on Mode of Trial in Lower Court
30k846 Trial by Court in General
30k846(1) k. In General. Most Cited Cases

Appeal and Error 30 €=1010.2

30 Appeal and Error
30XVI Review
30XVI(I) Questions of Fact, Verdicts, and Findings
30XVI(I)3 Findings of Court
30k1010 Sufficiency of Evidence in Support
30k1010.2 k. Total Failure of Proof. Most Cited Cases

The Supreme Court will uphold the superior court's findings and rulings unless they lack evidential support or are legally erroneous.

[7] Appeal and Error 30 994(3)

30 Appeal and Error
30XVI Review
30XVI(I) Questions of Fact, Verdicts, and Findings
30XVI(I)1 In General
30k994 Credibility of Witnesses
30k994(3) k. Province of Trial Court. Most Cited Cases

Appeal and Error 30 €=1011.1(6)

30 Appeal and Error
30XVI Review
30XVI(I) Questions of Fact, Verdicts, and Findings
30XVI(I)3 Findings of Court
30k1011 On Conflicting Evidence
30k1011.1 In General
30k1011.1(6) k. Credibility and Number of Witnesses. Most Cited Cases

Appeal and Error 30 €=1012.1(2)

30 Appeal and Error
30XVI Review
30XVI(I) Questions of Fact, Verdicts, and Findings
30XVI(I)3 Findings of Court
30k1012 Against Weight of Evidence
30k1012 1 In General

30k1012.1(2) k. Province of Trial Court. Most Cited Cases

The Supreme Court defers to the superior court's resolution of conflicting testimony, evaluation of credibility, and determination of the weight to be given evidence.

[8] Insurance 217 €=1412

217 Insurance

217VI Financial Impairment

217VI(D) Claims

217k1412 k. In General. Most Cited Cases

Liquidator's proposed agreement to pay \$78 million to insolvent company's reinsureds if they submitted all claims to liquidator without pursuing claims against company's reinsurers was fair and reasonable; evidence indicated that reinsureds would not have filed claims against estate without financial incentive, their claims totaled approximately \$231 million, collection proceedings against reinsurers would likely be lengthy, complex, and difficult, and the agreement increased the likelihood that class II claims of policyholders would be paid.

*713 Rackemann, Sawyer & Brewster, of Boston, Massachusetts (J. David Leslie and Eric A. Smith on the brief, and Mr. *714 Leslie orally), and Kelly A. Ayotte, attorney general (J. Christopher Marshall, attorney, on the brief), for the petitioner, the Commissioner of Insurance of the State of New Hampshire as Liquidator of the Home Insurance Company.

Lovells, of New York, New York (Gary S. Lee & a. on the brief, and Pieter Van Tol orally), and Orr & Reno, P.A., of Concord (Ronald L. Snow and Lisa Snow Wade on the brief), for intervenors Century Indemnity Company, Pacific Employers Insurance Company, ACE Property and Casualty Insurance Company, and ACE American Reinsurance Company.

Downs Rachlin Martin, PLLC, of Burlington, Vermont (Andre D. Bouffard and Eric D. Jones on the brief, and Mr.

Bouffard orally) for intervenor Benjamin Moore & Company.

Rebecca W. McElduff, of Kansas City, Missouri, by brief, and Sheehan Phinney Bass + Green, P.A., of Manchester (Bruce A. Harwood and James P. Harris on the brief) for the National Association of Insurance Commissioners, as amicus curiae.

Wiggin & Nourie, P.A., of Manchester (Doreen F. Connor on the brief), and Dykema Gossett PLLC, of Detroit, Michigan (Suzanne Sahakian on the brief) for the National Conference of Insurance Guaranty Funds, as amicus curiae. Orr & Reno, P.A., of Concord (Lisa Snow Wade on the brief), and Tracy W. Laws and Matthew T. Wulf, of Washington, D.C., by brief for the Reinsurance Association of America, as amicus curiae. DUGGAN, J.

The intervenors, Century Indemnity Company, Pacific Employers Insurance Company, ACE Property and Casualty Insurance Company, ACE American Reinsurance Company (collectively, the ACE Companies) and Benjamin Moore & Company (BMC), appeal orders of the Superior Court (McGuire, I.) granting the motion of the petitioner, the New Hampshire Commissioner of Insurance (commissioner) as liquidator of the Home Insurance Company (Home), for approval of a proposed agreement with certain insureds and reinsureds of Home. Under the proposed agreement, these entities would receive payments of approximately \$78 million in exchange for filing reinsurance claims against Home. The superior court granted the commissioner's motion upon finding that: (1) the commissioner was authorized to enter into the proposed agreement; (2) the proposed agreement was necessary to maximize the recovery of Home's assets and protect the interests of the insureds and creditors; and (3) the proposed agreement was fair and reasonable. We affirm.

The record supports the following facts. The ACE Companies are reinsurers of Home. BMC is a policyholder claimant with numerous open liability claims against Home. Prior to becoming insolvent, Home was domiciled in New Hampshire, and licensed and regulated by the New Hampshire Insurance Department. Home operated an unincorporated branch in the United Kingdom, its &UK Branch, through which it wrote property and casualty insurance and reinsurance.

Home conducted business in the United Kingdom as a member of the American Foreign Insurance Association (AFIA), an unincorporated association of American insurance companies that wrote insurance and reinsurance. As a member of the AFIA, Home entered into insurance and reinsurance agreements (collectively, the AFIA treaties) with certain entities in the United Kingdom (collectively, the AFIA Cedents). Home then obtained reinsurance on these agreements from member companies in the AFIA and other third party reinsurers.

*715 In 1984, CIGNA Insurance Company purchased the AFIA. As part of that transaction, insurance Company of North America (INA), a subsidiary of CIGNA, entered into an Insurance and Reinsurance Assumption Agreement (assumption agreement) with Home and other participating members of the AFIA. Pursuant to the assumption agreement, INA assumed the insurance and reinsurance liabilities of Home with respect to Home's operations in the United Kingdom, and agreed to bear the related costs and expenses of administering this business. Significantly, the

assumption agreement contains an insolvency clause requiring INA to pay obligations directly to Home, or Home's liquidator, in the event of Home's insolvency.

In 1996, as part of a corporate restructuring, Century Insurance Company (Century) succeeded to INA's rights and obligations under the assumption agreement and became required to reinsure Home for all of its obligations to the AFIA Cedents. Century became part of the ACE Companies in 1999, thereby obligating the ACE Companies to pay all claims submitted against Home by the AFIA Cedents under the AFIA.

Proceedings against Home under the Insurers Rehabilitation and Liquidation Act, RSA ch. 402-C (2006), were initiated when the commissioner petitioned the superior court for an Order of Rehabilitation for Home. On March 5, 2003, the superior court entered an Order of Rehabilitation for Home and appointed the commissioner to be Home's rehabilitator. On May 8, 2003, in conjunction with an application for an order of liquidation in New Hampshire, the commissioner petitioned the High Court of Justice in London (English Court) to appoint a Joint Provisional Liquidation (JPL) team for Home under English law. While this provisional liquidation proceeding took place in the United Kingdom, the liquidation of Home is under the primary jurisdiction of the superior court. On June 13, 2003, the superior court entered a liquidation order declaring Home insolvent and appointing the commissioner as the liquidator of Home's estate.

Pursuant to RSA 402-C:21, I (2006), RSA 402-C:25, VI (2006) and the superior court's liquidation order, the liquidator is vested with title to and charged with administering and collecting Home's assets for distribution to Home's creditors. All persons asserting claims against Home must file proofs of claim in the New Hampshire liquidation, and the liquidator's ability to collect reinsurance payments on claims made against Home depends upon the timely filing and proving of claims in Home's liquidation. A claim can only be submitted to a reinsurer if it is allowed by Home's estate, a process overseen by the liquidator and the superior court.

RSA 402-C:44 (2006) governs the order of distribution of claims from a liquidated insurer's estate, and establishes classes of claimants as part of the distribution process. After a fifty-dollar per claim deductible, vevery claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. RSA 402-C:44. The statute also provides that P[n]o subclasses shall be established within any class.

RSA 402-C:44 requires that classes of claims against an insolvent insurance company's estate be paid in the following

I. Administration Costs. 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; *716 any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

II. Policy Related Claims. All claims by policyholders, including claims for unearned premiums in excess of \$50, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company....

III. Claims of the Federal Government.

(a) Debts due to employees for services performed, not to exceed \$1,000 to each employee which have been earned within one year before the filing of the petition for liquidation....

(b) Such priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of

V. Residual Classification. All other claims including claims of any state or local government, not falling within other VI. Judgments. Claims based solely on judgments....

VII. Interest on Claims Already Paid. Interest at the legal rate compounded annually on all claims in the classes under paragraphs I through VI from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared

VIII. Miscellaneous Subordinated Claims. The remaining claims or portions of claims not already paid, with interest, as in paragraph VII....

IX. Preferred Ownership Claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies.... 35.3

X. Proprietary Claims. The claims of shareholders or other owners.

RSA 402-C:44, I-X.

The claims of the AFIA Cedents based upon their pre-liquidation reinsurance contracts with Home fall into the �all other claims � category of Class V. See RSA 402-C:44, V. The claims of BMC, as a policyholder of Home, are in Class II. The superior court determined that it is unlikely that there will be sufficient assets to make distributions to classes beyond Class II. The AFIA Cedents' claims-if paid to Home under the assumption agreement-would constitute the largest single asset in Home's estate and total approximately \$231 million. Pursuant to the liquidation order, the AFIA Cedents must submit their claims against Home to the liquidator in order to obtain any recovery.

After liquidation proceedings had commenced, the liquidator proposed an agreement (the proposed agreement) between the Home estate and the AFIA Cedents, under which the AFIA Cedents would be required to submit all of their claims to the liquidator. Once these claims were allowed, the liquidator would submit them to the ACE Companies and other reinsurers of Home to recover reinsurance payments. In exchange for the filing of their claims, the liquidator would distribute a portion of this recovery directly to the AFIA Cedents, and use the remainder to pay creditors pursuant to the priority distribution provision of RSA 402-C:44. Under this arrangement, the AFIA Cedents would receive distributions of approximately \$78 million. This figure corresponds to fifty *717 percent of the \$231 million less deductions for offsets and expenses associated with administering the agreement. The distributions would be made to the AFIA Cedents proportionately, based upon the value of their allowed claims against Home. The proposed agreement would prohibit the AFIA Cedents from seeking *cut-through* agreements, i.e., direct agreements with the ACE Companies that bypass the liquidator.

By its own terms, the proposed agreement is subject to the approval of both a majority in number and seventy-five percent in value of the AFIA Cedents. It is also subject to approval by the superior court. Once approval is obtained from the superior court, the proposed agreement would be submitted to the English Court for approval. Upon approving the proposed agreement, the English Court would issue a Global Liquidation Order, which would be filed with the Financial Services Agency (FSA), a government regulator of financial services in the United Kingdom. Upon the approval or non-objection of the FSA, the proposed agreement would become binding upon all creditors of Home, including the AFIA Cedents.

This litigation commenced when the liquidator filed a motion in the superior court seeking approval of the proposed agreement. The ACE Companies and BMC objected to the motion arguing, in pertinent part, that: (1) the liquidator lacked authority to enter into the proposed agreement; (2) the proposed payments to the AFIA Cedents could not properly be classified as Class I administrative costs; and (3) the proposed agreement creates a subclass of creditors within Class V in violation of the statutory prohibition against subclasses. See RSA 402-C:44.

The superior court issued an order on April 29, 2004, which ruled that the liquidator was authorized under RSA 402-C:25 to enter into the proposed agreement with the AFIA Cedents, and that the proposed agreement was consistent with the goals and purpose of the statute to protect the interests of the insureds and creditors. The ACE Companies and BMC appealed.

We issued an order on September 13, 2004, vacating the superior court's order. We directed the court to consider: (1) whether the superior court has an independent obligation to assess the fairness of the proposed agreement; and (2) whether the payment to the AFIA Cedents qualifies as an �administration cost� under RSA 402-C:44, I.

On remand, the superior court ruled that: (1) the payments to the AFIA Cedents are Class I ** administration costs ** because they constitute the ** ** actual and necessary costs of preserving or recovering the assets of the insurer ** under RSA 402-C:44, I; ** and (2) it has an independent obligation to assess the fairness of the proposed agreement. The superior court also ruled that the liquidator was authorized under RSA chapter 402-C to enter into the proposed agreement and that the liquidator's endorsement of the proposed agreement is ** consistent with the broad purposes and goals of [RSA chapter 402-C] to protect the interests of insureds and creditors. **

Following the issuance of the order on remand, the parties filed an interlocutory appeal to this court seeking a determination of whether, as a matter of law: (1) the liquidator is authorized by statute to enter into the proposed agreement with the AFIA Cedents; and (2) the payments to the AFIA Cedents qualify as administrative costs. We declined the appeal.

The superior court subsequently held an evidentiary hearing to determine whether the [proposed] agreement is necessary to preserve and recover assets of the [Home] *718 estate and whether the terms of the agreement are fair and reasonable. The court heard the testimony of the liquidator; the chief operating officer of Home, Jonathan Rosen; and JPL team members Sarah Ellis, Peter Bengelsdorf and Gareth Hughes. By order dated September 22, 2005, the superior court expressly held that the proposed agreement was both necessary to preserve access to and marshal the AFIA reinsurances and fair and reasonable. The superior court granted the liquidator's motion for approval of the proposed agreement.

The ACE Companies and BMC appeal the superior court's orders, arguing that the trial court erred by ruling that: (1) the liquidator has authority to enter into the proposed agreement; (2) payments to the AFIA Cedents under the proposed agreement constitute & administration costs & under RSA 402-C:44, I; and (3) the terms of the proposed agreement are fair and reasonable. We address each argument in turn.

I. Liquidator's Authority

[1] First, we address the ACE Companies' and BMC's argument that the superior court erred in holding that the liquidator has the authority under RSA chapter 402-C to enter into the proposed agreement. In particular, they argue that: (1) the liquidator's actions were inconsistent with RSA chapter 402-C because they violated the mandatory priority distribution in RSA 402-C:44; (2) nothing in the statute indicates that the legislature intended to grant the liquidator unfettered discretion; (3) courts in other states have refused to depart from statutory mandates, even where to do so would increase estate assets; and (4) allowing a deviation from the clear requirements of RSA 402-C:44 would open the door to similar agreements with other creditors or attempts by creditors to enhance their priority.

In response, the liquidator asserts that: (1) RSA chapter 402-C grants the liquidator broad authority to collect assets and gives �actual and necessary � collection costs Class I priority so that payment of those costs is consistent with the provisions of RSA 402-C:44; (2) RSA 402-C:44 contains no bar on payment of administration costs to lower priority creditors; and (3) the drafting notes to the most recent version of the Insurer Receivership Model Act specifically state that a liquidator has the right to pay Class I administration costs � to persons in any priority class where those ... payments assist or result in the collection or recovery of property of the insurer for the benefit of creditors of the estate. �

We begin our analysis by examining the language of the relevant provisions of RSA chapter 402-C. The interpretation of a statute is a question of law, which we review *de novo*. We are the final arbiters of the legislature's intent as expressed in the words of the statute considered as a whole. We first examine the language of the statute, and, where possible, ascribe the plain and ordinary meanings to the words used. When a statute's language is plain and unambiguous, we need not look beyond it for further indication of legislative intent, and we will not consider what the legislature might have said or add language that the legislature did not see fit to include.

Woodview Dev. Corp. v. Town of Pelham, 152 N.H. 114, 116, 871 A.2d 58 (2005) (citations omitted).

RSA 402-C:1, IV (2006) states the general purpose of chapter 402-C and provides, in pertinent part: The purpose of this chapter is the protection of the interests of insureds, creditors, and the public *719 generally.... This is achieved through, among other things:

(a) Early detection of potentially dangerous conditions in an insurer, and prompt application of appropriate corrective measures ...

(b) Improved methods for rehabilitating insurers ... and

(c) Enhanced efficiency and economy of liquidation....

RSA 402-C:1 IV(a)-(c).

[2] RSA 402-C:25 sets forth an extensive, nonexclusive list enumerating the powers of the liquidator, and provides that subject to the court's control, a liquidator may Φ [c]ollect all debts and moneys due and claims belonging to the insurer, Φ and Φ do such other acts as are necessary or expedient to collect, conserve or protect its assets or

property.... RSA 402-C:25, VI. The statute also authorizes the liquidator to [d]efray all expenses of taking possession of, [and] conserving ... property of the insurer. RSA 402-C:25, IV. The statute further provides the liquidator with the authority to do such other acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation. RSA 402-C:25, XXII. Thus, on its face, RSA 402-C:25 grants the liquidator broad authority to take all necessary and appropriate action in collecting the assets of an insolvent insurer.

Consistent with this authority, the statute provides that the necessary costs of collecting assets are a principal expense, giving Class I priority to �administration costs, � which are defined as �[t]he 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.... � RSA 402-C:44, I. The ACE Companies and BMC contend that the priority provisions of RSA 402-C:44 facially prohibit administrative cost payments to an entity which is also a lower priority creditor. However, the plain language of RSA chapter 402-C contains no bar on payment of administration costs to lower priority creditors in order to collect an asset.

The ACE Companies assert that courts in other states have refused to depart from statutory mandates, even when to do so would increase the assets of an insolvent insurer's estate, citing Kemper Reinsurance Co. v. Corcoran (In the Matter of Liquidation of Midland Ins. Co.), 79 N.Y.2d 253, 582 N.Y.S.2d 58, 590 N.E.2d 1186 (1992), and Prudential Reinsurance Co. v. Superior Court, 3 Cal.4th 1118, 14 Cal.Rptr.2d 749, 842 P.2d 48 (1992), for support. While it is accurate that in both cases the courts reference the general rule of adhering to the priority of claims in the statutory scheme, both cases address a different issue not relevant to our discussion; namely, whether reinsurance debts and credits generated between a reinsurer and the original insurer under the terms of their reciprocal contracts may be set off when the original insurer becomes insolvent. See Midland Ins. Co., 582 N.Y.S.2d 58, 590 N.E.2d at 1187-88, 1191; Prudential Reinsurance Co., 14 Cal.Rptr.2d 749, 842 P.2d at 50, 61-62.

The liquidator directs our attention to the most recent revision of the Insurer Receivership Model Act (IRMA), adopted by the National Association of Insurance Commissioners (NAIC), which explicitly recognizes that administrative cost payments to creditors to assist in the collection of assets for the benefit of a broad body of creditors are consistent with the priorities of distribution. He argues that we may properly consider IRMA in this context, because not only is RSA chapter 402-C consistent with IRMA, but we have previously relied upon NAIC comments to *720 the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, see Benson v. N.H. Ins. Guaranty Assoc., 151 N.H. 590, 599, 864 A.2d 359 (2004).

The New Hampshire legislature has not adopted IRMA. However, RSA chapter 402-C is nearly identical to the 1967 Wisconsin Insurers Rehabilitation and Liquidation Act (Wisconsin Act), which the NAIC adopted as the Model Act. Compare Wis. Stat. §§ 645.01-645.90 (1967) with RSA 402-C:1-:61 (2006). See 1 Nat'l Ass'n of Ins. Comm'rs, Proceedings of the National Association of Insurance Commissioners 241 (1969). IRMA is a recent revision of the Model Act. See 3 Nat'l Ass'n of Ins. Comm'rs, Model Laws Regulations and Guidelines 555-1 to 555-96 (2006).

Section 801 of IRMA is entitled Priority of Distribution, and is analogous to RSA 402-C:44. Section 801A(1) provides that the costs and expenses of administration are given Class I priority status. See 1d. at 555-83. Further, as in RSA 402-C:44, administrative costs and expenses include [t]he actual and necessary costs of preserving or recovering the property of the insurer... Id. In the drafting note to this subsection of section 801, the NAIC noted that:

Implicit in the powers conferred on the liquidator under this Act ... is the right, subject to approval by the receivership court, to pay Class 1 administrative costs to persons in any priority class where those Class 1 administrative cost payments assist or result in the collection or recovery of property of the insurer for the benefit of creditors of the estate. Payments of administrative costs in these circumstances do not constitute distributions so as to circumvent priority classes or establish subclasses within a class.

Id. at 555-84. This note clarifies that in order to maximize the collection of estate assets, a liquidator is authorized to enter into agreements in order to encourage creditors to prosecute their claims, so long as the agreement results in a net benefit to creditors of the estate. Given the similarities between IRMA and RSA chapter 402-C, we conclude that the broad language of RSA 402-C:25 confers this same authority upon the liquidator.

The ACE Companies argue that affirming the superior court's orders \(\phi\) would set a precedent for wholesale violations of RSA 402-C:44. \(\phi\) They contend that affirming the order would permit creditors to freely negotiate \(\phi\) individual percentage distributions depending on the value of their claim to the liquidation. \(\phi\) We disagree. Although RSA chapter 402-C grants the liquidator broad authority to administer liquidation proceedings, the court oversees the entire process. Therefore, any agreement negotiated by the liquidator requires court approval. See RSA 402-C:25 (the liquidator must report to the court regularly on the progress of the litigation, and any actions the liquidator takes are \(\phi\)[s]ubject to the court's control \(\phi\)); RSA 402-C:45, I (the liquidator should \(\phi\)[a]s often as practicable ... present to the court reports of claims against the insurer with his recommendations \(\phi\)); RSA 402-C:46, I (the liquidator shall distribute assets \(\phi\)[u]nder the direction of the court \(\phi\)). Since the liquidator's actions are closely supervised by the court, there is little risk that the priority provisions of RSA 402-C:44 will be violated.

We thus conclude that the superior court did not err in ruling that the liquidator has the authority under RSA chapter 402-C to enter into the proposed agreement.

*721 II. Administration Costs

[3] We now address whether the payments to the AFIA Cedents under the proposed agreement constitute administration costs under RSA 402-C:44, I. As noted, RSA 402-C:44 provides that Class I claims must be paid in full before distributions may be made to any other classes. Class I claims include claims for administrative costs and expenses, which are:

[t]he 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.

RSA 402-C:44, I (emphasis added). Class V claims are •[a]ll other claims including claims of any state or local government, not falling within other classes....• RSA 402-C:44, V.

In ruling that the payments to the AFIA Cedents are Class I administrative costs, the superior court noted that \$\displaystar{O}\$ the provisions of RSA chapter 402-C are to be liberally construed and that the purpose of the statute is to protect insureds, creditors and the general public. It also \$\displaystar{O}\$ considered the nature and complexity of ... [Home's] insurance and reinsurance business, and that its substantial involvement in the London market posed significant challenges to the Liquidator. The court \$\displaystar{O}\$ recognized the circumstances which put collection of the asset at risk, particularly the fact that the AFIA Cedents would have little reason to file and prosecute claims if neither setoff nor actual distribution were likely. In support of this position, the court cited to the testimony of the JPL team members. The superior court found that, under RSA 402-C:44, I, The structure of the agreement was necessary to preserve and recover assets. It also stated that \$\displaystar{O}\$ with the agreement the Liquidator would be able \$\displaystar{O}\$ to marshal assets to be distributed to creditors which would otherwise be unavailable.

The ACE Companies and BMC argue that the superior court's ruling that the payments to the AFIA Cedents are administration costs is contrary to the language and clear intent of RSA 402-C:44, I. They first contend that the proposed payments to the AFIA Cedents cannot be qualified as administration costs because they arose from the pre-liquidation AFIA contracts, and that administration costs only arise from post-liquidation transactions. Second, they argue that the proposed agreement creates an impermissible subclass by splitting the Class V creditors into two groups. Third, the ACE Companies and BMC challenge the superior court's ruling that the payments to the AFIA Cedents were necessary costs of preserving Home's estate.

In arguing that the proposed payments to the AFIA Cedents cannot be qualified as &administration costs because they arose from pre-liquidation transactions, the ACE Companies rely upon a line of bankruptcy cases holding that administration costs include only rights to payment that arise post-liquidation, and exclude claims that arise pre-liquidation. See Mass Div. of Empl. and Training v. Boston Reg'l Med. Ctr., 291 F.3d 111, 125 (1st Cir.2002); Woburn Assoc. v. Kahn (In re Hemingway Transport, Inc.), 954 F.2d 1, 5 (1st Cir.1992); In re Food Barn Stores, Inc., 175 B.R. 723, 728 (Bankr.W.D.Mo.1994). They urge us to apply the reasoning of the bankruptcy cases here, contending that the proposed agreement is based upon the AFIA Cedents' claims against Home, which arose from the pre-liquidation AFIA treaties.

*722 The bankruptcy cases cited above involved the interpretation of 11 U.S.C.A. § 503 (Supp.2006). Entitled Allowance of administrative expenses, \$\infty\$ 11 U.S.C.A. § 503(b)(1)-(8) enumerates a list of items that may be considered administrative expenses, such as \$\infty\$ wages, salaries, and commissions for services rendered after the commencement of the case \$\infty\$; id. § 503(b)(1)(A)(i), and \$\infty\$ reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable \$\infty\$ by statute, id. § 503(b)(4).

We are not persuaded that the interpretation of �administrative expenses in bankruptcy cases applies to the definition of �administration costs • in RSA 402-C:44, I. A comparison of the language of the respective statutes reveals that they differ in terms of what is meant by �administrative costs and expenses. • Unlike the bankruptcy statute, which contains a specific list of items that constitute administrative expenses, RSA 402-C:44, I, defines administration costs more generally by including • the actual and necessary costs of preserving or recovering the assets of the insurer. • This definition encompasses a much broader category of items and transactions than is found in the bankruptcy code.

Even if we were to assume that claims and rights to payment that arise pre-liquidation cannot constitute administration costs under RSA 402-C:44, I, we are not persuaded that the proposed payments to the AFIA Cedents arose pre-liquidation. The proposed payments do not arise from the AFIA Cedents' Class V claims themselves, but rather as an *inducement* for the AFIA Cedents to file claims in the liquidation in order to bring a net benefit to creditors of the estate. Thus, while the AFIA Cedents' claims against Home arose pre-liquidation, their right to payment under the proposed agreement will arise post-liquidation.

The ACE companies and BMC rely upon an insurance liquidation case in which the Georgia Court of Appeals refused to qualify claims that arose from pre-liquidation transactions as administrative expenses. See Oxendine v. Comm'r of Ins. of North Carolina, 229 Ga. App. 604, 494 S.E.2d 545 (1997). They argue that the proposed payments to the AFIA Cedents are akin to the pre-liquidation claims in Oxendine, and cannot be classified as *administrative costs.* We disagree.

In Oxendine, the Georgia Commissioner of Insurance (GCI) had settled claims of the North Carolina Commissioner of Insurance (NCCI) and FICA Marketing, Inc. (FICA) against an insurer during a court-approved rehabilitation of the insurer. Id. at 546-47. The rehabilitation efforts failed and the insurer was declared insolvent. Id. at 547. NCCI and FICA then asserted that their claims against the insolvent insurer were entitled to priority status as costs and expenses of administration. Id. The trial court overseeing the liquidation agreed, and GCI appealed. Id.

The Oxendine court reversed. Interpreting a provision similar to RSA 402-C:44, I, see Ga.Code Ann. § 33-37-41(1)(2005), it ruled that • [n]o reasonable definition of • costs! or • expenses' can include the claims which [NCCI and FICA] assert. These claims are for money which [NCCI and FICA] claim from [the insurance company's] estate and not administrative costs and expenses incurred. • Id. at 548. Oxendine held that giving the claims of NCCI and FICA priority as Class I administrative expenses violated the mandatory priority set forth in the liquidation statute.

We disagree with the ACE Companies and BMC that Oxendine applies to this case. In Oxendine, the claims brought by *723 NCCI and FICA were settled claims against the insurer that arose pre-liquidation. The liquidation of the insurer did not change the fact that NCCI and FICA still had unpaid claims against the insurer that arose from their pre-liquidation right to payment. In this case, unlike in Oxendine, the AFIA Cedents' right to proposed payments will arise post-liquidation, based upon the proposed agreement. While the AFIA Cedents' Class V claims arose pre-liquidation, their right to payment for filing these claims in the liquidation proceeding will arise post-liquidation.

[4] Moreover, we disagree that the proposed agreement creates an impermissible subclass by splitting Class V into two groups. Payments of Class I administration costs, by definition, do not constitute a � distribution � to a lower priority class, and therefore do not create a subclass of lower priority creditors.

[5] The ACE Companies argue that even if the payments are administration costs, the superior court erred by ruling that they are necessary costs of preserving and recovering the assets of Home, within the meaning of RSA

402-C:44, I. After an evidentiary hearing, the superior court found that the proposed agreement was necessary because the Liquidator could not have marshaled this asset absent the contingent payments.... It also ruled that the Liquidator has met his burden of proving that a reasonable liquidator under the circumstances would have concluded that the agreement was necessary to preserve access to and marshal the AFIA reinsurances.

First, the ACE Companies argue that the [s]uperior [c]ourt applied the wrong standard in determining the necessity issue. They contend that the proper standard is whether the AFIA Cedents, in the absence of the [Proposed] Agreement, would have filed and prosecuted their claims. They argue that the superior court erroneously applied the standard of whether it was reasonable for the Liquidator to conclude that an agreement with the AFIA Cedents was necessary....

RSA 402-C:25, VI provides that the liquidator may take measures that �are necessary or expedient to collect, conserve or protect [the insurer's] assets or property....� We will assume, as the ACE Companies argue, that the appropriate standard is whether the AFIA Cedents, in the absence of the proposed agreement, would have filed and prosecuted their claims. In light of the superior court's finding that �the Liquidator could not have marshaled [\$231 million in reinsurance payments on the AFIA Cedents' claims] absent the contingent payments, � we are not persuaded that the superior court applied the incorrect standard in determining the necessity of the proposed agreement.

Next, the ACE Companies and BMC argue that •[a]n objective examination of the evidence reveals that the AFIA Cedents would have filed and prosecuted claims even in the absence of the Proposed Agreement. • They contend that the AFIA Cedents had •several incentives for the filing and prosecution of reinsurance claims, including the preservation of set off, tax concerns and the possibility of a better than expected return for the estate. • They also assert that • the AFIA Cedents' prosecution of their pre-liquidation claims would not cease once the level of setoff is reached ..., nor would it be difficult or costly to prosecute the claims. • Finally, the ACE Companies argue that the superior court erred by finding that there was • significant legal uncertainty • as to whether the AFIA Cedents could negotiate a cut-through deal with the ACE Companies because, under the terms of the assumption agreement, the AFIA *724 Cedents could not legally negotiate a • cut-through • deal.

The liquidator contends that the superior court made a factual finding that the AFIA Cedents would not file and prosecute claims in excess of offset without an incentive. The liquidator asserts that the testimony at the evidentiary hearing that the court found to be credible amply supports the conclusion that the agreement was necessary. Further, the liquidator asserts that the superior court properly found that there was uncertainty over potential direct dealing between [the ACE Companies] and [the] AFIA Cedents to circumvent Home. He argues that Nationwide Mutual Insurance. Co. v. Home Ins. Co., 150 F.3d 545 (6th Cir.1998), cert. denied, 525 U.S. 1140, 119 S.Ct. 1030, 143 L.Ed.2d 39 (1999), left open the status of cut through litigation, while Koken v. Legion Insurance. Co., 831 A.2d 1196, 1236 (Pa.Commw.Ct.2003), showed cut through litigation is allowable on particular facts, and thus the Court had ample reason to conclude that direct dealing was a credible threat.

[6][7] We will uphold the superior court's findings and rulings unless they lack evidential support or are legally erroneous. Cook v. Sullivan, 149 N.H. 774, 780, 829 A.2d 1059 (2003). We defer to the superior court's resolution of conflicting testimony, evaluation of credibility, and determination of the weight to be given evidence. Id.

After reviewing the record, we conclude that there was sufficient evidence to support the superior court's finding that the AFIA Cedents would not file and prosecute claims without a financial incentive. In particular, JPL team member Sarah Ellis testified that she interviewed representatives of several AFIA Cedent companies who informed her that because they were subordinated creditors, they saw no economic benefit to submitting claims to the Home Estate. JPL team member Gareth Hughes testified about his concern that creditors would have no economic incentive for prosecuting their claims. In addition, there was sufficient evidence to support the court's conclusion that cut-through litigation was a threat. Both Sarah Ellis and Gareth Hughes testified that the AFIA Cedents were in talks to form side agreements with the ACE Companies.

Furthermore, we agree that the Nationwide decision leaves uncertainty as to whether cut-through deals between the ACE Companies and the AFIA Cedents are legally permissible. In that case, Nationwide Mutual Insurance Company

(Nationwide) purchased reinsurance from Home, which at that time was a member of the AFIA. Nationwide Mutual Ins. Co., 150 F.3d at 546-47 & n. 2. Subsequently, CIGNA Insurance Company and its subsidiaries (the CIGNA defendants) entered into an assumption agreement with Home and the other members of the AFIA, wherein it �agreed to purchase all interests in and rights to the policies and contracts that Home and the other AFIA members entered into through the AFIA pool. � Id. at 547. The assumption agreement at issue in Nationwide is the same assumption agreement in this case.

Nationwide sued both Home and the CIGNA defendants, alleging that Φ Home and the CIGNA defendants had breached reinsurance contracts under which they were responsible for paying certain claims filed against Nationwide. Φ Id. at 546. The district court referred Nationwide's claims against both Home and the CIGNA defendants to arbitration, and dismissed the entire case. See id. at 547. The CIGNA defendants appealed.

The primary issue on appeal was whether the district court erred in concluding*725 that Nationwide could bring a claim directly against the CIGNA defendants by virtue of the CIGNA defendants' assumption of the reinsurance contract between Nationwide and Home.... Id at 548. The appeals court concluded that Nationwide could not bring a claim directly against CIGNA. Id The court interpreted disclaimer language in the assumption agreement and held that the language unequivocally:

bars any person or entity, except the parties to the Assumption Agreement (the members of AFIA and the CIGNA defendants), from *suing* on any of the obligations undertaken pursuant to the Assumption Agreement, including the CIGNA defendants' obligation to make payments on the reinsurance contract between Nationwide and Home.

Id. (emphasis added). Despite this holding, the court acknowledged that Home's insolvency could affect the parties' respective rights and obligations. Id. at 549. The court did not address this issue, however, because it concluded the issue was not ripe for review. Id.

Although the disclaimer language in the assumption agreement technically bars cut-through litigation by the AFIA Cedents, the Nationwide decision is silent on the issue of whether it would be permissible for the AFIA Cedents to deal directly with the ACE Companies outside of court subsequent to Home's insolvency. Moreover, the facts and circumstances have changed since Nationwide Most significantly, Home is now insolvent. In light of the appeals court's decision in Nationwide, whether or not the AFIA Cedents can pursue cut-through litigation or deal directly with the ACE Companies is an open question.

While we conclude that the evidence supports the superior court's finding that the proposed agreement was necessary, there are also significant policy reasons that reinforce the court's decision. As noted previously, the purpose of RSA chapter 402-C is to protect preferred creditors by reserving assets for them, including people insured by Home, and people with claims against those insured by Home, See RSA 402-C:1, IV. RSA 402-C:1, III provides that the statute should be \$\Phi\text{liberally construed}\$\Phi\text{ to effectuate this purpose Further, RSA 402-C:25 grants the liquidator broad authority to collect the assets of an insolvent insurer. A liberal construction of the statutory language supports a finding that the proposed payments to the AFIA Cedents are necessary to collect and preserve assets of Home's estate. By contrast, the ACE Companies' and BMC's reading of the statute would prevent collection of additional assets by barring payment of necessary costs.

As a final point, there is no doubt that the ACE Companies would reap a substantial windfall in the absence of the proposed agreement by depriving Home's creditors of the amounts they would have paid but for Home's insolvency. This would frustrate the legislative purpose of obtaining full payment from reinsurers despite an insurer's insolvency. See RSA 402-C:36; see also RSA 405:49, I (2006)(Reinsurance Insolvency). Accordingly, for the foregoing reasons, we conclude that the payments to the AFIA Cedents under the proposed agreement constitute administration costs under RSA 402-C:44, I.

III. Fair and Reasonable

[8] Finally, we address the ACE Companies' and BMC's argument that the superior court erred in concluding that the proposed agreement is fair and reasonable. First, the ACE Companies and BMC argue that the court failed to apply the controlling multi-factored standard for fairness and reasonableness. They assert *726 that our order dated September 13, 2004, specifically directed the superior court to apply the multi-factored tests set forth in Matter of Boston &

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Providence Rail Road Corp., 673 F.2d 11 (1st Cir.1982), and In re Estate of Indian Motorcycle Manufacturing, Inc., 299 B.R. 8 (D.Mass. 2003), vacated in part on other grounds by 452 F.3d 25 (1st Cir. 2006), when considering the fairness of the proposed agreement on remand. Second, they argue that proper application of the multi-factored test demonstrates that the proposed agreement is neither fair nor reasonable as a matter of law.

As the ACE Companies and BMC correctly point out, we issued an order on September 13, 2004, vacating the superior court's April 29, 2004 order in which it determined that the proposed agreement was lawful and consistent with the goals and purpose of RSA chapter 402-C. In our order, we directed the court to consider on remand whether it had an vindependent obligation to assess the fairness of the agreement with the AFIA Cedents. We cited Matter of Boston & Providence R.R. Corp. for the proposition that, in a reorganization proceeding, a bankruptcy court must ♦act independently, out of its own initiative, for the benefit of all creditors ♦ when assessing the fairness of a compromise with creditors. Matter of Boston & Providence R.R. Corp., 673 F.2d at 13. We also cited Indian Motorcycle, which lists factors for a bankruptcy court in a Chapter 7 proceeding to consider when assessing whether a compromise with creditors is fair. In re Estate of Indian Motorcycle Mfg., Inc., 299 B.R. at 20. These factors include:

(1) the probability of success in the litigation being compromised;

(2) the difficulties, if any, to be encountered in the matter of collection;

(3) the complexities of the litigation involved, and the expense, inconvenience, and delay attending it; and

(4) the paramount interest of the creditors and a proper deference to their reasonable views.

Id.

On remand, the superior court recognized that it had van independent obligation to assess the fairness of the agreement with the AFIA Cedents. • Thereafter, the court held an evidentiary hearing to determine whether the terms of the agreement are fair and reasonable. Evidence presented at the five-day hearing addressed the circumstances and terms of the agreement and compromise with AFIA Cedents. After considering all of the evidence presented at the hearing, the court concluded that the proposed agreement was fair and reasonable.

The court reviewed the agreement with the paramount interest of creditors in mind, wand found that ACE's rights as a claimant and creditor and its rights to setoff under RSA 402-C:34 are unimpaired by the pending agreement and thus the agreement is not unfair to ACE. The court found the testimony of the JPL team members to be highly credible, and gave volue deference to the business judgment of Mr. Bengelsdorf, Mr. Rosen and Mr. Hughes that it was necessary to negotiate an agreement with the AFIA Cedents to assure that the largest single asset of the estate was not lost. See id. at 21 (The court may give substantial deference to the business judgment of a bankruptcy trustee when deciding whether to approve a settlement.). Further, the court found that [u]nder the agreement the Liquidator stands to collect a portion of reinsurances otherwise at risk, for purposes of providing a direct and substantial benefit to Class II claimants, which comprise ninety (90) percent of all claimants.

*727 The superior court did not precisely apply the multi-factor test outlined above. Indeed, a precise application of the Indian Motorcycle factors is difficult in this case because of the complex reinsurance obligations at issue: However, the court's order demonstrates consideration of the relevant factors, given the complexities of this case, and we concur with the court's decision that the agreement was fair and reasonable. First, the evidence demonstrates that the AFIA Cedents would not have filed claims against the Home estate without a financial incentive. Second, the AFIA Cedents' claims are significant, totaling approximately \$231 million. The substantial dollar amount of these claims suggests that it is reasonable to assume that collection proceedings would be lengthy, complex, and difficult. Most importantly, as the superior court properly concluded, the agreement benefits the Class II claimants to Home's estate since it increases the likelihood that their claims will be paid.

Based upon the foregoing, we conclude that the superior court correctly ruled that the proposed agreement was fair and reasonable.

Affirmed.

BRODERICK, C.J., and DALIANIS and GALWAY, JJ., concurred. N.H.,2006.

In re Liquidation of Home Ins. Co. 913 A.2d 712

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3/6/2007 4:41 PM

CF0047

Miles Cohn

From:

Miles Cohn

Sent:

Friday, June 29, 2007 1:22 PM

To:

'jacqueline.merson@homeinsco.com

Subject:

FW: Claim VEND700093-01

Attachments:

doc20070118102746.pdf

Jacqueline, please see the string of emails below, which may refresh your recollection regarding my previous inquiries as to the status of my request for review of a determination regarding the referenced claim.

It has now been more than two years since the request for review was filed on June 6, 2006. On several occasions, most recently in March of this year, you indicated that a decision would be forthcoming, but I have received nothing yet.

If I do not hear from you in the next week, I plan on filing an objection with the Court. As it appears there may never be a ruling on my request for review, I will ask the Court to deem my request denied so that I may proceed with the next step, a court objection regarding the treament of my claim.

Miles Cohn

From:

Miles Cohn

Sent To:

Monday, March 05, 2007 11:44 AM 'jacqueline.merson@homeinsco.com' FW: Claim VEND700093-01

Subject:

Jacqueline, below are my prior emails. The claim in question is described in the first one, and a copy of the request for determination is attached. I would appreciate it if you would let me know the status of our request for determination.

Many thanks,

Miles Cohn

From:

Miles Cohn

To: Subject: Tuesday, January 30, 2007 5:01 PM

iacqueline.merson@homeinsco.com FW: Claim VEND700093-01

Jacqueline, have you been able to determine whether anything has happened with the request for review that I filed last year?

I would appreciate any information you may be able to provide

From:

Miles Cohn

Sent:

Thursday, January 18, 2007 10:37 AM

To: Subject: jacqueline.merson@homeinsco.com

Claim VEND700093-01

PLAINTIFF'S

Jacqueline, attached is the request for review that I discussed with you a few minutes ago.

This was submitted last June and we have received no ruling or response. I noticed the 12/5/06 decision of the New Hampshire Supreme Court, 2006 WL 3489902, which supports our position in the request for review, and it occurred to me that the Liquidator might have been holding our request and perhaps similar claims until receiving a decision in that case. If that is the situation, I suppose I should continue waiting for a decision. But if it does not appear that any decision will be made any time soon on the request for review, then perhaps I should go ahead and file an objection with the court to get that process going.

Anyway, that is the situation. I would sincerely appreciate any information you can provide regarding the status of our request for review.

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Thanks, Miles

H. Miles Cohn
Sheiness, Scott, Grossman & Cohn, L.L.P.
1001 McKinney St., Suite 1400
Houston, Texas 77002
Telephone (713) 374-7020 (direct)
Facsimile (713) 374-7049
mail to:mcohn@hou-law.com
www.ssgclawyers.com



CF0049

SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P. OCT 1 5 2007

ATTORNEYS AT LAW
LOO L MCKINNEY, SUITE 1400
HOUSTON, TEXAS 77002-6323
TEL: 713.374,7000 FAX: 713.374.7049

H. Miles Cohn
Direct: 713/374-7020
Email: mcohn@hou-law.com

OCT 1 5 2007

HICIL

October 11, 2007

Office of the Clerk
Merrimack County Superior Court
4 Court Street
Concord, New Hampshire 03301
ATTN: HOME DOCKET, NO. 03-E-0106

Re: In the Matter of Liquidation of The Home Insurance Company; No. 03-E-0106

To Whom It May Concern:

Enclosed for filing in the above-referenced matter is the original and one copies of the following instruments:

1. Objection to Denial of Claim (VEND700093-01)

Please file stamp the extra copy and return it to us. A self-addressed, stamped envelope is enclosed for your convenience.

Thank you for your attention to the foregoing.

Sincerely

H. Miles Cohn

Enclosure

Merrimack County Clerk October 11, 2007 Page2

cc: The Home Insurance Company in Liquidation Claims Determination Unit P.O. Box 1720 Manchester, New Hampshire 03105-1720 Via CMRRR 7006 0810 0001 8778 3132

Office of the Attorney General
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301
Attention: Home Insurance
Via CMRRR 7006 0810 0001 8778 3125

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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

In the Matter of Liquidation of The Home Insurance Company

No. 03-E-0106

OBJECTION TO DENIAL OF CLAIM (VEND700093-01)

Sheiness, Scott, Grossman & Cohn, LLP ("SSGC"), a Claimant in this liquidation proceeding, objects to the Liquidator's denial of its Claim, and respectfully states:

Introduction and Summary of Objection

SSGC is a Texas law firm that represented Home Insurance Company in late 2002, prior to the Court's order placing Home in liquidation. SSGC filed a timely claim for its attorney's fees, requesting that they be allowed as an administrative expense pursuant to RSA 402-c:44.I. The claim was allowed, but only as a Class V (residual) claim, on May 11, 2006. SSGC timely requested redetermination with respect to whether its claim is an "administrative" claim under the statue, but in more than sixteen (16) months the Liquidator has not issued a decision on the request. Therefore SSGC has elected to proceed with an Objection.

The Liquidator's decision is contrary to the New Hampshire Supreme Court's decision in In the Matter of the Liquidation of the Home Insurance Company, 913 A.2d 712, 721-22 (N.H. 2006), which affirmed this Court's holding that administrative claims are not limited to costs incurred after appointment of the Liquidator. The Liquidator's determination should therefore be reversed.

Procedural History

1. On July 18, 2003, SSGC submitted its Proof of Claim in the amount of \$74,784.89

A true copy of the Claim (including the postal receipt) is attached hereto as Exhibit A. The Claim was designated Claim No. VEND700093-01.

- 2. On May 11, 2006, the Liquidator issued a Determination, allowing the Claim in the full amount but denying that the claim was entitled to priority as an administrative claim and instead placing the claim in Class V, as a "residual" claim that, as a practical matter, will receive no distribution. A true copy of the Determination is attached hereto as Exhibit B.
- 3. On June 6, 2006, SSGC mailed its Request for Review with respect to the Determination. A true copy of the Request for Review (including the postal receipt) is attached hereto as Exhibit C. As indicated by the postal receipt, the Request was received by the Liquidator on June 9, 2006.
- 4. When no decision was issued after a number of months, SSGC inquired as to the status of its Request for Redetermination. In January 2007, SSGC was advised that contacts regarding the Claim should be directed to Jacqueline Merson, an employee of the Liquidator. On various occasions from January through June 2007, inquiries were made of Ms Merson, in each case followed by a confirming email. However, SSGC has never received a response to its inquiries other than Ms Merson's reassurances that a decision would be forthcoming. A true copy of the above-described emails is attached hereto as Exhibit D.

This Objection is Timely Filed

If a timely request for review of the Liquidator's determination on a claim has been made, an objection to the determination must be filed, if at all, no later than sixty days after the mailing of the Liquidator's notice of redetermination. See Restated and Revised Order Establishing Procedures Regarding Claims Filed with the Home Insurance Company in Liquidation ("Procedures Order"),

July 19, 2005, at ¶8 ("If a timely Request for Review is filed with the Liquidator under Section 7(a) above then the Claimant shall have sixty (60) days from the mailing of the Notice of Redetermination to file an Objection with the Court."

As noted above, the Liquidator has never ruled on SSGC's request for review of his Determination. SSGC recognizes that the Liquidator is dealing with a large number of claims, but the delay in this case is inexplicable: the issue rests solely on a straightforward legal issue – whether SSGC's pre-liquidation legal fees are an administrative cost. After sixteen months and numerous status inquiries, there is no reason to think that a ruling will ever be issued. However, the Procedures Order does not require either a request for redetermination or an order on such a request, rather the Procedures Order requires that the objection be filed no later than sixty days after the mailing of the notice of determination. Since no such notice has been mailed, this objection is well within the time allowed.

Grounds for Objection

SSGC represented Home (not an insured of Home) in a bankruptcy case in the Southern District of Texas in which an Chapter 11 Debtor, J. T. Thorpe Co., sought to recover millions of dollars from Home. In the bankruptcy and related litigation, Thorpe asserted claims against Home and a number of other insurers for hundreds of millions of dollars in liability resulting from alleged

¹ If the Court interprets the Procedures Order to require notice of redetermination before an objection can be filed, SSGC requests that the Court order the Liquidator to issue such a notice.

² In re J. T. Thorpe Company; Case No. 02-41487-H5-11 in the United States Bankruptcy Court for the Southern District of Texas. In the bankruptcy and in related litigation, Thorpe sought to recover estimated future liabilities from its insurers rather than allowing the insurers to defend each claim, as and when filed.

actual and future asbestos claims.³ However, Home was never required to pay any sum or settlement to Thorpe.

The Determination issued by the Liquidator explains the reasons for allowing the SSGC claim only as a Class V claim rather than an administrative expense: "Services were rendered from 10/22/02 through 1/21/03 in the amount of \$74,784.89. A review of [SSGC's] invoice confirms that the services provided were reasonable and necessary for the defense of Home.... The invoice was not paid because the services were rendered prior to the Home's liquidation."

Several months after the Liquidator's Determination, the New Hampshire Supreme Court decided In the Matter of the Liquidation of the Home Insurance Company, 913 A.2d 712, 721-22 (N.H. 2006). One of the Supreme Court's holdings in that decision undermines the Liquidator's treatment of the SSGC claim. Affirming a decision of this Court, the Supreme Court held that "administrative costs" are not limited to post-confirmation expenses as they would be in a bankruptey proceeding. Rather, "administrative costs" under RSA 402-C:44,1 "encompass a much broader category of items and transactions than is found in the bankruptey code." 913 A.2d at 722.

SSGC represented Home in defending against millions of dollars in direct claims. There can be little doubt that, in the words of the statute, SSGC's services were "actual and necessary costs of preserving ... the assets" of Home.

WHEREFORE, Claimant Sheiness, Scott, Grossman & Cohn, LLP objects to the Liquidator's Determination that its claim, designated VEND700093-01, is allowed only under Class V and not as an administrative cost, and prays that the Court reverse such determination and order

Monies collected in settlements from other insurers is currently being administered in a trust established under Thorpe's reorganization plan. The website for the trust is http://www.jtthorpetrust.com/default.asp.

that such claim be approved and paid as an administrative cost.

Respectfully submitted,

SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

By: H. Miles Cohn
Texas State Bar No. 04509600
1001 McKinney St., Suite 1400
Houston, Texas 77002
Telephone: (713) 374-7020

Telephone: (713) 374-7020 Facsimile: (713) 374-7049

CERTIFICATIO OF SERVICE

I certify that a true copy of the foregoing Objection to Denial of Claim (VEND700093-01) has been served, by United States certified mail, return receipt requested, on this 11th day of October, 2007, on the following:

The Home Insurance Company in Liquidation Claims Determination Unit P.O. Box 1720
Manchester, New Hampshire 03105-1720

Office of the Attorney General
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301
Attention: Home Insurance



BEFORE THE COURT-APPOINTED REFEREE IN RE «HOME» DISPUTED CLAIMS DOCKET

In Re Liquidator Number: 2007-HICIL-31 Proof of Claim Number: VEND700093-01

Claimant Name: Sheines, Scott, Grossman & Cohn, LLP

("SSGC")

Claimant Number: VEND700093-01

Policy or Contract Number: TJ Thorpe Litigation Fees

Date Of Loss: 2002

NOTICE OF DISPUTED CLAIM

An Objection to the Liquidator's Determination (or Re-determination) was filed by

Sheines, Scott, Grossman & Cohn, LLP ("SSGC")

with the Merrimack County Superior Court. In accordance with the Merrimack County Superior Court Restated and Revised Order Establishing Procedures Regarding Claims filed with the Home Insurance Company in Liquidation, the above–referenced claim has been placed on the Disputed Claims Docket for adjudication.

THE ORIGINAL OF ANY SUBSEQUENT FILINGS WITH RESPECT TO THIS DISPUTED CLAIM SHALL BE FILED WITH THE OFFICE OF THE LIQUIDATION CLERK.

Office of the Liquidation Clerk

286, Commercial Street, 3rd Floor P.O. Box 1210 Manchester, NH 03101-1210 Telephone: (603) 641-1211

Fax: (603) 622-0283 www.hicilclerk.org

Any subsequent filings with respect to this claim, whether in the form of notices, motions, pleadings, orders, letters or other papers, shall be served electronically, by first class mail, by overnight courier service, or by hand. All notices and orders issued by the office of the liquidation clerk shall be posted on the website at www.hicilclerk.org and such posting shall replace paper notification. If claimant does not have access to electronic filing please Notify this office immediately. If an attorney has entered an appearance on behalf of the Claimant, Liquidator or a person given leave to participate, all future communications shall be transmitted to the attorney. Service on an attorney of record shall be deemed to be service upon a Participant represented by such attorney.

Stacy C. Furlotte Liquidation Clerk

11/2/07

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Rehabilitation of The Home Insurance Company

PROPOSED ORDER APPOINTING REHABILITATOR

After having heard and considered the facts set forth in the Commissioner's Verified Petition for Rehabilitation, the Court finds that the law and facts are as the Commissioner of Insurance of the State of New Hampshire (the "Commissioner") has alleged in the Petition and that there exists a present necessity for the immediate entry of this order.

WHEREFORE, it is hereby ordered as follows:

- (a) Sufficient cause exists for an order of rehabilitation of The Home Insurance Company ("The Home") and appointment of the Commissioner as Rehabilitator;
- (b) Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, is appointed Rehabilitator of The Home;
- (c) The Rehabilitator may consult with and obtain the assistance and advice of insurance experts, including, without limitation, actuaries, accountants, attorneys and consultants, and authorizing the Rehabilitator to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, and providing that the Rehabilitator shall have all the powers of the officers and managers of The Home, whose authority shall be suspended, except as they are specifically re-delegated by the Rehabilitator;
- (d) The Rehabilitator is to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, or any other recorded information relating to The Home);



- (e) The officers, directors, agents, employees, and representatives of The Home, any persons acting in concert with The Home, are prohibited from disposing, using, transferring, removing or concealing any property of The Home, without the express written authority of the Rehabilitator, or in any way (i) interfering with the conduct of the Rehabilitation or (ii) interfering with the Rehabilitator's possession and rights to the assets and property of The Home;
- (f) Any bank, savings and loan association or other financial institution or other legal entity are prohibited from disposing of, allowing to be withdrawn or concealing in any manner property or assets of The Home, except under the express authorization of the Rehabilitator or by the further order of this Court;
 - (g) Any of the following actions are stayed:

- (1) The commencement or continuation of a judicial, administrative, or other action or proceeding against The Home or any insured of The Home that was or could have been commenced before the commencement of this case, or to recover a claim against The Home that arose before the commencement of the Rehabilitation, for ninety (90) days, except as may be modified by further order of the Court;
- (2) The enforcement, against The Home or its property, of a judgment obtained before the commencement of the Rehabilitation;
- (3) Any act to obtain possession of property of The Home or to exercise control over property of The Home;
- (4) Any act to create, perfect, or enforce any lien against property of The Home;
- (5) Any act to create, perfect or enforce against property of The Home any lien to the extent that such lien secures a claim that arose before the commencement of the Rehabilitation;
- (6) Any act to collect, assess, or recover a claim against The Home that arose before the commencement of the Rehabilitation; and
- (7) The setoff of any debt owing to The Home that arose before the commencement of this case against any claim against The Home;

(h) The Rehabilitator is authorized, in her discretion, to pay any and all claims for losses, in whole or in part, under policies and contracts of insurance and associated loss adjustment expenses including, but not limited to, claims for losses which, as of the date of the Order, have been previously settled and approved for payment in the normal course of business:

- (i) The Rehabilitator, in her discretion, is authorized to pay expenses incurred in the ordinary course of The Home's business in rehabilitation, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home and the costs of goods and services provided to The Home's estate. Such costs shall include, but not be limited to: (i) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the State of New Hampshire Insurance Department, the Commissioner or the Rehabilitator to perform services relating to the Rehabilitation of The Home or the feasibility, preparation, implementation, or operation of a rehabilitation plan; (ii) compensation and other costs related to representatives and employees of The Home or its affiliates who perform services for The Home; and (iii) a reasonable allocation of costs and expenses associated with time spent by Department personnel in connection with the Rehabilitation of The Home;
- (j) The actual, reasonable and necessary costs of preserving or recovering assets of The Home and the costs of goods or services provided to and approved by The Home, under paragraph (i) of this Order, during the period of Rehabilitation will be treated as "costs and expenses of administration," pursuant to RSA 402-C:44 I.;
- (k) The amounts recoverable by the Rehabilitator from any reinsurer of The Home shall not be reduced as a result of this Rehabilitation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each such reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Rehabilitator may, in her discretion, commute any contract with a reinsurer or reinsurers;
- (1) This Order shall not be deemed a finding or declaration of insolvency such as would activate the provisions of the New Hampshire Guaranty Association, RSA 404-B, or the provisions of similar acts of any other state or territory;

(m) The Rehabilitator shall have full powers and authority given the Rehabilitator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Rehabilitator under RSA 402-C of Title XXXVII, and under this Order.

Date: 3/5/03 Time: 1:45 By: A M. Sure Presiding Justice

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COUKT

Docket No. 03-E-0106

In the Matter of the Rehabilitation of The Home Insurance Company

ORDER OF LIQUIDATION

This proceeding was commenced on March 4, 2003, upon the Verified Petition for Rehabilitation of Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire (the "Commissioner"). The Commissioner filed the Verified Petition for Rehabilitation pursuant to RSA 402-C:15, seeking appointment as receiver of The Home Insurance Company ("The Home") for the purpose of rehabilitating and conserving the assets of The Home. On March 5, 2003, this Court entered an Order Appointing Rehabilitator, in which the Commissioner was appointed Rehabilitator of The Home. The Commissioner, as Rehabilitator, has now determined pursuant to RSA 402-C:19 that further attempts to rehabilitate The Home would be futile, that The Home is insolvent within the meaning of RSA 402-C:3 and RSA 402-C:20, II, and that it should be liquidated. On May 8, 2003, the Commissioner, as Rehabilitator, filed a Verified Petition for Order of Liquidation pursuant to RSA 402-C:5, RSA 402-C:19 and RSA 402-C:20 (the "Petition"), in which she has sought an order of liquidation for The Home, her appointment as Liquidator, and the requested permanent injunctions. After having heard and considered the facts set forth in the Petition, the Court finds that the law and facts are

as the Commissioner has alleged in the Petition and that there exists a present necessity for the entry of this order.

WHEREFORE, it is hereby ordered, adjudged and decreed that:

- (a) The proceeding for the rehabilitation of The Home is hereby terminated pursuant to RSA 402-C:19;
 - (b) The Home is declared to be insolvent;
 - (c) Sufficient cause exists for an order to liquidate The Home;
- (d) Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, is hereby appointed Liquidator of The Home;
- (e) The Liquidator shall cancel all in-force contracts of insurance and bonds effective as of 30 days after the date of this Order;
- (f) The Liquidator is directed forthwith to take possession of the assets of The Home wherever located and administer them under the orders of the Court. The Liquidator is vested with title to all of the property, contracts and rights of action and all of the books and records of The Home, wherever located, and in whomever's possession they may be found;
- (g) The Liquidator is directed to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, source codes, passwords, or any other recorded information relating to The Home);
- (h) The Liquidator is authorized to transfer, invest, re-invest and otherwise deal with the assets and property of The Home so as to effectuate its liquidation;

- (i) The Liquidator is authorized to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable without prior permission of the Court in the ordinary course of business;
- (j) The Home and its directors, officers, employees, agents, and representatives are prohibited from proceeding with the business of The Home, except upon the express written authorization of the Liquidator;
- (k) The Home and its directors, officers, employees, agents, and representatives, and any persons acting in concert with The Home, are prohibited from disposing, using, transferring or removing any property of The Home, without the express written authorization of the Liquidator, or in any way (i) interfering with the conduct of the Liquidator or (ii) interfering with the Liquidator's possession and rights to the assets and property of The Home;
- (1) Any bank, savings and loan association or other financial institution or other legal entity is prohibited from disposing of or allowing to be withdrawn in any manner property or assets of The Home, except under the express written authorization of the Liquidator or by further order of this Court.
- (m) All actions and all proceedings against The Home whether in this state or elsewhere shall be abated in accordance with RSA 402-C:28 and RSA 402-C:5, except to the extent the Liquidator sees fit and obtains leave to intervene;
- (n) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all persons are hereby permanently enjoined and restrained from any of the following actions:

- (1) commencing or continuing any judicial, administrative, or other action or proceeding against The Home or the Liquidator;
- (2) commencing or continuing any judicial, administrative, or other action or proceeding against The Home's, the Rehabilitator's or the Liquidator's present or former directors, officers, employees, agents, representatives, or consultants, including, without limitation, Risk Enterprise Management Limited and each of its officers, directors and employees, arising from their actions on behalf of The Home, the Rehabilitator or the Liquidator;
 - (3) enforcing any judgment against The Home or its property;
- (4) any act to obtain possession of property of The Home or to exercise control over property of The Home;
- (5) any act to create, perfect, or enforce any lien against property of The Home;
- (6) any act to collect, assess, or recover a claim against The Home, other than the filing of a proof of claim with the Liquidator; and
- (7) the setoff of any debt owing to The Home; provided, however, that notwithstanding anything in this Order to the contrary, nothing herein is intended nor shall it be deemed to stay any right of setoff of mutual debts or mutual credits by reinsurers as provided in and in accordance with RSA 402-C:34;
- (o) The Court hereby seeks and requests the aid and recognition of any Court or administrative body in any State or Territory of the United States and any Federal Court or administrative body of the United States, any Court or administrative body in any Province or Territory of Canada and any Canadian Federal Court or

administrative body, and any Court or administrative body in the United Kingdom or elsewhere to act in aid of and to be complementary to this Court in carrying out the terms of the Order:

- (p) All persons doing business with The Home on the date of the Liquidation Order are permanently enjoined and restrained from terminating or attempting to terminate such relationship for cause under contractual provisions on the basis of the filing of the petition to rehabilitate The Home, The Home's assent to the entry of the Rehabilitation Order, the entry of the Rehabilitation Order, the filing of this Petition, the entry of the Liquidation Order, the rehabilitation or liquidation proceedings for The Home, or The Home's financial condition during the rehabilitation or liquidation proceedings;
- (q) All persons in custody or possession of any property of The Home are hereby directed and ordered to turn over any such property to the Liquidator;
- (r) The Liquidator is authorized, in her discretion, to pay expenses incurred in the course of liquidating The Home, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home, wherever located, and the costs of goods and services provided to The Home estate in this and other jurisdictions. Such costs shall include, but not be limited to: (1) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the Department, the Commissioner or the Liquidator to perform services relating to the liquidation of The Home or the feasibility, preparation, implementation, or operation of a liquidation plan; (2) compensation and other costs related to representatives, employees or agents of The Home or its affiliates who perform services for The Home in liquidation;

and (3) the costs and expenses of and a reasonable allocation of costs and expenses associated with time spent by New Hampshire Insurance Department personnel and New Hampshire Department of Justice personnel in connection with the rehabilitation and the liquidation of The Home;

- (s) The Liquidator is authorized to employ or continue to employ, to delegate authority to and fix the compensation of such appropriate personnel, including actuaries, accountants, consultants, special counsel, and counsel in this and other jurisdictions, as she deems necessary to carry out the liquidation of The Home and its worldwide operations, subject to compliance with the provisions of RSA 402-C, the supervision of the Liquidator, and of this Court. The Liquidator is authorized to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, subject to court approval;
- (t) The Liquidator is authorized to appoint, and determine the compensation and terms of engagement of, a special deputy to act for her pursuant to RSA 402-C:25, I.
- (u) The actual, reasonable and necessary costs of preserving, recovering, distributing or otherwise dealing with the assets of The Home, wherever located, and the costs of goods or services provided to The Home estate under paragraph (i) of the Rehabilitation Order, during the Rehabilitation proceeding, and under paragraphs (r)-(t) and (v) of the Liquidation Order, during the Liquidation proceeding, shall be treated as "costs and expenses of administration," pursuant to RSA 402-C:44, I;
- (v) The Liquidator is authorized and directed to work with any joint provisional liquidator or other person of comparable position appointed by a foreign

United States (the "foreign estates") for the purpose of preserving, recovering and incorporating into the domiciliary estate all assets of The Home located outside the United States. The Liquidator is authorized to fund from the domiciliary estate the costs and expenses of administering the foreign estates;

- (w) The Liquidator is directed to administer and make payments on all claims against The Home estate filed with the Liquidator in the domiciliary proceeding, including the claims of claimants residing in foreign countries (provided the assets of such foreign estate are transferred to the Liquidator), in accordance with New Hampshire's priority statute, RSA 402-C:44;
- (x) The amounts recoverable by the Liquidator from any reinsurer of The Home shall not be reduced as a result of the prior rehabilitation proceeding or this liquidation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Liquidator may, in her discretion, commute any contract with a reinsurer or reinsurers;
- (y) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all actions or proceedings against an insured of The Home in which The Home has an obligation to defend the insured are hereby stayed for a period of six months from the date of the Order and such additional time as the Court may determine pursuant to RSA 404-B:18;

(z) Within one year of the entry of this Order, and then annually thereafter, the Liquidator shall file with the Court a financial report, as of the preceding December 31, in accordance with RSA 402-C:21, V, which shall include, at a minimum, the assets and liabilities of The Home and all funds received or disbursed by the Liquidator during the period;

(aa) The Liquidator shall have full powers and authority given the Liquidator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Liquidator under RSA 402-C of Title XXXVII, and under the Order, specifically including, but not limited to, each and every power and authority bestowed upon the Liquidator under RSA 402-C:25, I-XXII, the provisions of which are incorporated by reference in their entirety into this Order, and the common law of New Hampshire; and

(bb) The deadline for the filing of claims pursuant to RSA 402-C:26, II, RSA 402-C:37, I, and RSA 402-C:40, II, shall be one year from the date of this Order.

Date: _	6	/13	103
Time:		ı	

By: Presiding Justice