

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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

**In Re Liquidator Number: 2006-HICIL-23
Proof of Claim Number: INSU700111
Claimant Name: MITCHELL SMITH**

LIQUIDATOR'S WRITTEN SUBMISSION

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, acting solely in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), by and through counsel, submits this written submission as directed by the Ruling of Referee Paula T. Rogers dated September 8, 2006. Claimant, Mitchell Smith ("Claimant"), submitted a Proof of Claim to Liquidator on July 21, 2003 for "unknown possible claims under non-practicing extended coverage option, Lawyers Prof Liability. . . ." (Case file Exhibit A, Response to POC Question 5.)

Pursuant to §§ 6b and 6c of the *Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation* (the "Procedures"), the Liquidator reviewed Claimant's submission and issued a Notice of Determination dated October 20, 2005 disallowing Claimant's claim. In explaining his disallowance, Liquidator stated:

You indicated that you purchased the unlimited claims reporting coverage Purchased Optional Extension Period Endorsement on your legal malpractice policy LPL with an effective date 4/01/90.

You have indicated there are no claims pending or known against you. Since you have no claims against you or against The Home Insurance Company, this claim is being disallowed.

Should a claim be made in the future, you should promptly file a new Proof of Claim giving reasons the proof is being filed after the claim filing deadline of June 13, 2004 pursuant to NH Rev. Statutes Section 402-C.37 II, III and reference this prior proof of claim.

(Case file Exhibit B.)

Claimant, through counsel, rejected Liquidator's determination and filed a request for review ("RFR") dated November 30, 2005. (Case file Exhibit C.) By letter dated March 27, 2006, Liquidator issued his re-determination notice ("NOR") affirming his initial determination with the following explanation:

You indicated that you purchased the unlimited claims reporting coverage "Purchased Optional Extension Period Endorsement" on your legal malpractice policy LPLF436281 with an effective date 4/01/90. You confirmed there are no claims pending or known against you. Since you have no claims against you or against The Home Insurance Company, this claim was disallowed.

You rejected our original determination dated October 20, 2005, but failed to provide specific reasons for your rejection. We have attempted to obtain this information through your attorney and have been unsuccessful. Our position has not changed and this claim is still disallowed.

Should a claim be made in the future, you should promptly file a new Proof of Claim giving reasons the proof is being filed after the claim filing deadline of June 13, 2004 pursuant to NH Rev. Statutes 402 C:C37 II, III [sic] and reference this proof of claim.

(Case file Exhibit D.)

Claimant objected to the NOR simply stating "Mr. Smith has an unliquidated, unmaturred claim and asserts all rights and privileges attendant to his status." (Case file Exhibit E.)

The matter came on for a structuring conference before Referee Rogers on September 8, 2006. After giving due consideration to oral presentations of Claimant and Liquidator, Referee Rogers directed Claimant to provide written submissions “by the end of business on Monday, October 9, 2006.” Further, “Liquidator [was directed to] provide written submissions by the end of business on Monday, October 23, 2006.” (Exhibit 1.) Despite Claimant having failed to file a written submission, Liquidator, in accordance with the Referee’s directive, submits this written submission.

FACTUAL BACKGROUND

Home issued a lawyer’s professional liability policy to Claimant. The policy afforded “claims made” errors and omissions coverage to Claimant during the policy term and any renewal periods. Upon Claimant’s retirement from the active practice of law on April 1, 1990, he purchased a “Non-Practicing Extension Coverage Option” which provided, in pertinent part:

In consideration of the payment of the additional premium indicated below, it is understood and agreed that:

1. Solely with respect to the Insured(s) designated below, [*i.e.*, *Claimant*] the insurance afforded by this policy is hereby extended to apply to claims first made against the Insured(s) designated below during unlimited months, immediately following 4-1-90, but only by reason of an act, error or omission in professional services rendered before the Insured’s date of retirement or termination of private practice as stated below this unlimited interval is referred to as the Non Practicing Extension Coverage Period.

(Case file Exhibit F.)

Home has no record of Claimant ever reporting any claim to Home under his claims made policy or during the extended reporting period. Moreover, Claimant has not asserted that he knows of any claim that could have been made during his Non-

Practicing Extension Coverage period. Indeed, Claimant has not identified any claim as of the date of this proceeding that could arguably implicate his policy coverage. Accordingly, Claimant has not suffered any policy-related damage that would, or could, justify an allowance in the Home estate.

On June 11, 2003, the New Hampshire Superior Court, Merrimack County (the "Liquidation Court"), ordered that Home be placed into liquidation pursuant to N.H. Rev. Stat. Ann. § 402-C:1 *et seq.* (Exhibit 2.) As part of the Order of Liquidation ("Order"), the Liquidation Court ordered that the "Liquidator shall cancel all in-force contracts of insurance and bonds effective as of 30 days after the date of this Order." (Exhibit 1, p.2 (e).) Thus, in accordance with the Order, Home was prohibited from providing Claimant with any further insurance coverage, including any extended reporting period endorsements, and was further required to cancel any existing coverage that may have been in force at the time the Liquidation Court placed Home into liquidation. The Order therefore preempted any assertion that Home was obligated to extend Claimant's reporting period in perpetuity.

ARGUMENT

HOME WAS NOT AND IS NOT PERMITTED TO CONTINUE TO PROVIDE COVERAGE TO CLAIMANT

This Referee previously addressed the same issue in Disputed Claim Proceeding No. 2006-HICIL-17 (Piccone). In *Piccone*, the Referee held that there was "nothing improper with the termination of [Claimant's] coverage" and further agreed "with the Liquidator's determination that [Claimant's] claim has no present merit." (Exhibit 3.) The Liquidation Court, by Order of Presiding Justice Carol Ann Conboy, dated October 2, 2006, subsequently approved the Referee's ruling and authorized the entry of

judgment therein in accordance with RSA § 519:12. (Exhibit 4.) Accordingly, this Court has already resolved the issue the Claimant presents in this disputed claim and should summarily rule in favor of the Liquidator.

The Referee and the Liquidation Court correctly determined *Piccone* because under the clear and unambiguous provisions of the Order, and pursuant to N.H. Rev. Stat. Ann. § 402-C:22, Home was not permitted to provide Claimant with any further insurance coverage beyond July 11, 2003 (30 days after the entry of the Order) and was, in fact, required to cancel any existing coverage, including any extended reporting period that Claimant may have purchased. Section 402-C:22 states:

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

Thus, by operation of law, Claimant's coverage was canceled by no later than July 11, 2003 and he had no right to any further coverage under his claims made policy from Home.

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

Finally, the "Special Claims" consideration permitted under RSA 402-C:39, II is inapplicable to the instant circumstance as no claim, that would otherwise be covered

by Claimant's legal malpractice insurance, has ever been reported by Claimant. Claimant's assertion that he has an "unliquidated, unmatured claim" (Case file Exhibit E) can be addressed in the context of RSA 402-C:39, III which permits consideration of a contingent claim assuming it does not prejudice the orderly administration of the estate and otherwise satisfies the "good cause" justifications for late filings. Indeed, Liquidator's notices of determination and re-determination both directed Claimant to the statutory prescriptions of RSA 402-C:37, II, and III wherein examples of "good cause" excuses for a late filed claim are enumerated. Should Claimant hereafter become aware of a claim, that would otherwise be covered under his errors and omissions coverage with Home, he has been given ample guidance regarding how to proceed to advance his claim within the statutory framework governing the Home liquidation proceeding.

CONCLUSION

For the reasons set forth herein, Liquidator respectfully requests that the Referee: (1) dismiss Claimant's Objections to Liquidator's Notice of Re-Determination and (2) rule that Liquidator's Re-Determination, as set forth in the notice of Re-Determination, be allowed as stated; and (3) grant such other and further relief as is deemed appropriate in the circumstances.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE
COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE SOLELY IN HIS CAPACITY AS
LIQUIDATOR OF THE HOME INSURANCE
COMPANY

By his attorneys,

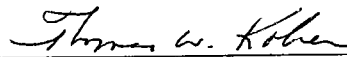
October 20, 2006



Jonathan Rosen, Esq. (N.H. Bar #16951)
Thomas W. Kober, Esq. (*admitted pro hac vice*)
The Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 10038
(212) 530-4001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Liquidator's Written Submission has been forwarded via First Class mail and e-mail this 20th day of October, 2006 to Claimant's counsel, at the addresses identified below.



Thomas W. Kober

Judy F. Hyman, Esq.
Beasley Hauser Kramer Leonard & Galardi, Esqs.
505 South Flagler Dr., Suite 1500
West Palm Beach, Florida 33401
and Hyman@Beasleylaw.net

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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


In Re Liquidator Number: 2006-HICIL-23
Proof of Claim Number: INSU700111
Claimant Name: Mitchell Smith

STRUCTURING CONFERENCE ORDER

A telephone conference was held in this matter on September 8, 2006. Pursuant to Section 15 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with the Home Insurance Company in Liquidation, this matter will be determined based upon written submissions. The Referee directs the Claimant to provide written submissions by the end of business on Monday, October 9, 2006. The Liquidator shall provide written submissions by the end of business on Monday, October 23, 2006.

So ruled:

Dated: September 8 06


Paula T. Rogers
Referee

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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;

(l) 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

tribunal with respect to all or any portion of the estate of The Home located outside the 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:
Time:

6/13/03

By:

Kenneth M. Quirk
Presiding Justice

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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

In Re Liquidator Number: 2006-HICIL-17
Proof of Claim Number: INSU52071
Claimant Name: Thomas M. Piccone

REFEREE'S RULING

This dispute arises out of a proof of claim filed by Attorney Thomas M. Piccone relating to a professional liability policy he purchased from The Home Insurance Company of Indiana ("Home") for the period June 1, 1994 through May 31, 1995. At the expiration of the policy term, Mr. Piccone chose not to renew, opting instead to purchase extended reporting period coverage for three (3) years under the terms and conditions of the policy. Attorney Piccone then renewed the extended reporting period coverage, or "tail" coverage, each year after that initial extension through 2002, paying the annual premium as required. However, when he attempted to renew in 2003, he was informed that because the Home was in liquidation, or going into liquidation, coverage was no longer available.

Apparently unable to purchase replacement coverage, Attorney Piccone filed a claim seeking a determination that would hold Home liable for providing him continuing coverage, comparable replacement coverage, or on-going claims protection as would have been provided under the terminated coverage. The Liquidator denied the claim and Attorney Piccone disputes that determination.

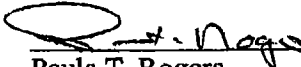
The Claimant basically argues that Home made a "contractual promise" when it sold him professional liability coverage with an extended reporting period endorsement, and that Home has failed to keep that promise. Even if Claimant's argument that he was entitled to "guaranteed issue" of extended reporting period coverage were to be given sway, any extension of coverage based on such an argument would quickly run into other obstacles. Under the June 11, 2003 Order of Liquidation and RSA 402:C:22, Continuance of Coverage, it appears that Attorney Piccone's coverage would then have been properly terminated on July 11, 2003. While Attorney Piccone might have gained several weeks of additional coverage under his argument, the Referee is unable to find anything within the policy or the endorsements that suggests that the insured had any guarantee of future extensions of "tail" coverage. Therefore, the Referee finds nothing improper with the termination of Attorney Piccone's coverage on May 31, 2003, and agrees with the Liquidator's determination that Attorney Piccone's claim has no present merit.

Even though no claim was brought against Attorney Piccone during the initial 1994-1995 policy term, nor has any been brought during any of the eleven (11) years of extended reporting period coverage, the Referee is not dismissive of the Claimant's lingering concern. In part, that

lingering concern may be allayed by the Liquidator's representation in pleadings and at the structuring conference that should a claim against Attorney Piccone arise in the future, the Liquidator will not object to a late filing of a related proof of claim.

So ruled:

Dated: August 29 06



Paula T. Rogers
Referee

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

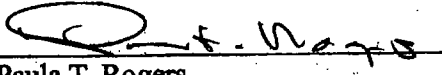
BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET

In Re Liquidator Number: 2006-HICIL-17
Proof of Claim Number: INSU52071
Claimant Name: Thomas M. Piccone

REFEREE'S REQUEST FOR JUDGMENT TO BE ENTERED

The Referee has filed a report in the above captioned disputed claim. No Motion to Recommit has been filed with the Merrimack County Superior Court. Pursuant to Section 20 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with the Home Insurance Company in Liquidation, the Referee requests that the Court enter judgment in accordance with RSA 519:12.

Dated: October 2, 2006


Paula T. Rogers
Referee

*Granted. So ordered.
Carol Ann Conway, P.J.
Oct. 2, 2006*