

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: 2008-HICIL-41

Proof of Claim Number: CLMN712396-01

Claimant Name: Harry L. Bowles

LIQUIDATOR'S OBJECTION TO CLAIMANT'S MOTIONS FOR  
APPOINTMENT OF AUDITOR AND FOR PARTIAL SUMMARY JUDGMENT

Roger A. Sevigny, Insurance Commissioner, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby objects to the motions filed by Claimant Harry L. Bowles ("Claimant") seeking (1) appointment of an auditor, and (2) partial summary judgment on the issue of coverage. As reasons therefor, the Liquidator states:

1. Claimant's motion for appointment of an auditor under RSA 519:1 should be denied for two independent reasons. First, the Superior Court has already appointed the Referee to hear disputed claim proceedings, including this one, pursuant to RSA 519:9 and :10 in the Claims Procedures Order. Where there is a Referee, there is no need for an auditor. Second, Claimant has no legally cognizable interest in whether Home's insured has satisfied the deductible under Home's policy. For the reasons set forth at pages 18-22 of the Liquidator's Section 15 Submission, Claimant has failed to state a viable claim regarding coverage, and his request for appointment of an auditor is merely another attempt to inquire where he has no legal basis for doing so.

2. Claimant's motion for partial summary judgment should also be denied. The Liquidator has previously addressed Claimant's contentions regarding the absence of coverage at pages 18-24 of the Liquidator's Section 15 Submission, and those arguments warrant denial of

this new motion. Claimant, as a person bringing suit against Home's insured, has no legally cognizable interest in whether the insured has satisfied the deductible under Home's policy.<sup>1</sup>

3. Claimant's two new arguments also lack merit. First, his contention that the Liquidator has somehow improperly "intervened" in the Texas action in violation of RSA 402-C:28 is incorrect. That statute, implemented by the abatement provision of the Order of Liquidation ¶ (m), only concerns actions "against the insurer." It governs when and how the Liquidator may "intervene" in such an action, which refers to participation by appearing as a party litigant. Claimant's suit against Home's insured is not such an action. It was not abated by the Order of Liquidation. Moreover, Home and the Liquidator never intervened in the action. An insurer does not intervene by providing a defense to a defendant insured. Certainly, TPCIGA's provision of a defense to the insured (pursuant to its own statutory obligations) does not constitute intervention by the Liquidator.

4. Second, the cancellation of policies 30 days after liquidation pursuant to RSA 402-C:22 and the Order of Liquidation ¶ (e) has no bearing on the policy issued to BPS. The statute concerns policies that are "in force," meaning that the policy period has not yet expired so the policy provides coverage for present events. The statute allows 30 days (unless the policy expires earlier) for the insured to seek replacement coverage from another insurer. RSA 402-C:22, I. It does not apply to policies whose policy periods expired before the liquidation. Whatever coverage those policies provided regarding events in their past policy periods continues, subject to the policy terms and the claim filing deadline and other provisions of RSA 402-C.

---

<sup>1</sup> The Liquidator notes that the deductible provision of the policy (Liq. Ex. B, Section E(III)) does not require that a claimant pay the deductible before Home provides a defense pursuant to Section B(II). The deductible provision does not contain language setting forth a condition precedent. Instead, it merely provides for reimbursement of claim expenses up to the deductible after "written demand" by Home. Further, by agreement, the deductible may be satisfied by an insured representing itself without compensation up to the amount of the deductible.

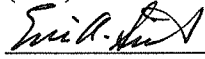
**CONCLUSION**

For the foregoing reasons and those set forth in the Liquidator's Section 15 Submission, the Referee should deny Claimant's motions.

Respectfully submitted,

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

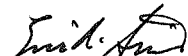
J. Christopher Marshall  
NH Bar ID No. 1619  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397  
(603) 271-3650

  
Eric A. Smith  
NH Bar ID No. 16952  
Rackemann, Sawyer & Brewster P.C.  
160 Federal Street  
Boston, MA 02110-1700  
(617) 542-2300

November 24, 2009

Certificate of Service

I hereby certify that a copy of the foregoing Objection to Claimant's Motions was emailed and sent by first class mail to the Claimant on November 24, 2009.

  
Eric A. Smith