

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

ROGER A. SEVIGNY, in his official capacity)
as INSURANCE COMMISSIONER OF THE)
STATE OF NEW HAMPSHIRE, as)
LIQUIDATOR OF THE HOME)
INSURANCE COMPANY,)

Plaintiff,)

v.)

THE UNITED STATES OF AMERICA and)
ERIC H. HOLDER, JR., in his official capacity)
as ATTORNEY GENERAL OF THE)
UNITED STATES,)

Defendants.)

Civil Action No. 13-401-PB

LIQUIDATOR’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, the plaintiff, Roger A. Sevigny, in his official capacity as Insurance Commissioner of the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), moves for summary judgment against the defendants the United States of America and Eric H. Holder, Jr., in his official capacity as Attorney General of the United States (“Attorney General” and, collectively, “United States” or “defendants”).

As reasons therefor, the Liquidator relies on the Liquidator’s Memorandum of Law in Support of Motion for Summary Judgment and the Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Summary Judgment submitted herewith.

WHEREFORE, the Liquidator requests that the Court enter a judgment declaring that:

1. For a “claim” to support personal liability under the Federal Priority Act, a federal official must have determined that funds are owed to the United States by Home based upon

evaluation of specific factual circumstances and advised the Liquidator of that determination before the Liquidator makes a distribution.

2. The unknown, possible, or potential claims asserted by the United States in the protective proof of claim and the EPA list are not “claims” that can form the basis for imposing personal liability on the Liquidator under the Federal Priority Act;

3. The Liquidator may make the 15% interim distribution to claimants with allowed Class II claims without incurring personal liability to the United States.

Respectfully submitted,

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

By his attorneys,

JOSEPH A. FOSTER
NEW HAMPSHIRE ATTORNEY GENERAL

J. Christopher Marshall, NH Bar ID No. 1619
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/s/ Eric A. Smith

J. David Leslie, NH Bar ID No. 16859
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September 9, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing has been served on counsel of record pursuant to the Court’s electronic filing system on September 9, 2014.

/s/ Eric A. Smith

Eric. A. Smith