

MERRIMACK, SS

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Docket No. 04-E-0208

Venise Theresa Gonya, representative of the  
Estate of Joseph E. Gonya, deceased, et al.

2004 AUG 31 P 3: 37

NH SUPERIOR COURT  
MERRIMACK COUNTY  
MERRIMACK, NH

v.

Roger A. Sevigny, Commissioner, in his official capacity as  
Insurance Commissioner and Liquidator of The Home Insurance Company

ANSWER

NOW COMES the Defendant, Roger A. Sevigny, the Commissioner of the New Hampshire Department of Insurance, in his official capacity as Insurance Commissioner and Liquidator of The Home Insurance Company (the Commissioner), by and through counsel, and denies all allegations in Plaintiffs' Petition in Equity for Permanent and Temporary Injunctive Relief, and except as specifically admitted herein, and answers Plaintiffs' Petition as follows.

1. Defendant is without sufficient knowledge to admit or deny the allegations of this paragraph and therefore denies the same.
2. Defendant is without sufficient knowledge to admit or deny the allegations of this paragraph and therefore denies the same.
3. Admitted.
4. Denied except as to the address of the Office of the Attorney General. In further answer, the Attorney General has been dismissed as a party defendant.
5. Denied. In further answer, issues of class certification have been stayed pending resolution of summary judgment.
6. Denied.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Defendant admits that Plaintiffs are represented by experienced counsel. The remaining allegations are denied.

12. This paragraph contains assertions of law to which no response is required. The statutes cited speak for themselves. To the extent facts are alleged, they are denied.

13. Defendant is without sufficient knowledge to admit or deny the allegations in the first sentence. Defendant admits that The Home Insurance Company is being liquidated and that the Commissioner is the liquidator. Defendant admits that the Commissioner has given notice of the court ordered proof of claims deadline of June 13, 2004. Defendant admits that the proof of claim form contains the language required by RSA 402-C:40(I). The instructions and proof of claim form are attached to the Petition and speak for themselves. To the extent other facts are alleged, they are denied.

14. This paragraph contains assertions of law to which no response is required. The statute cited speaks for itself.

15. Denied.

16. Defendant admits that Plaintiffs purport to file a declaratory judgment action to bring state constitutional challenges under RSA 491:22 and that jurisdiction is proper in this court. Defendant admits that Plaintiffs have filed an action in federal district court and that that action purports to raise federal constitutional claims. To the extent other facts are alleged, they are denied.

17. Defendant admits that venue is proper in this court. Defendant admits that the Defendant's principal place of business is 21 South Fruit Street, Suite 14, Concord, NH 03301. To the extent other facts are alleged, they are denied. In further answer, the Attorney General is no longer a party defendant.

18. Defendant admits that the events that are the subject of the Petition and pertain to the Defendant took place in New Hampshire. Defendant admits that all or a substantial part of the claim asserted by the Plaintiffs arose in New Hampshire and in Merrimack County.

19. Denied.

20. Defendant admits that the Commissioner is required to and does comply with the State Constitution. To the extent other facts are alleged, they are denied.

21. This paragraph contains assertions of law to which no response is required. To the extent facts are alleged, they are denied.

COUNT I  
Facial Violation of Equal Protection

22. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 21 above.

23. Denied.

24. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.

COUNT II  
Violation of Equal Protection as Applied

25. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 24 above.

26. Denied.

27. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.

COUNT III

Facial Violation of New Hampshire's Court Access Guaranty

28. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 27 above.

29. Denied.

30. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.

COUNT IV

Violation of New Hampshire's Court Access Guaranty as Applied

31. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 30 above.

32. Denied.

33. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.

COUNT V

Facial Violation of Due Process

34. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 33 above.

35. Denied.

36. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.

COUNT VI  
Violation of Due Process as Applied

37. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 36 above.

38. Denied.

39. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.

COUNT VII  
Violation of the Doctrine of Unconstitutional Conditions

40. Defendant realleges and incorporates herein each of the responses set forth in paragraphs 1 through 39 above.

41. Denied.

42. Defendant admits the allegation in the first sentence. The allegations in the second sentence are denied.

Paragraphs A-F are prayers for relief to which no response is required. To the extent facts are alleged, they are denied.

AND IN FURTHER ANSWER and by way of affirmative defense, Defendant states as follows.

1. Plaintiffs' Complaint fails to state a claim for which relief can be granted.
2. Defendant is entitled to and asserts all applicable immunities, including but not limited to sovereign, absolute, qualified, official and Eleventh Amendment immunities.
3. Plaintiffs' claims are barred in whole or in part by the doctrines of waiver and estoppel.
4. Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

5. Plaintiffs' claims are barred in whole or in part for failure to exhaust administrative remedies.

6. Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

7. Plaintiffs have failed to satisfy the requirements for class certification under Superior Court Rule 27-A

8. Defendant reserves the right to amend this Answer as appropriate and in accordance with Court rules.

WHEREFORE, the Defendant respectfully requests that this Honorable Court:

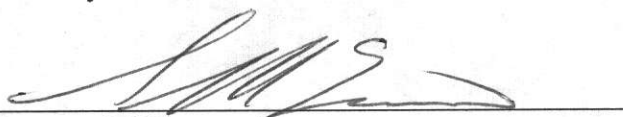
- A. Deny Plaintiffs' request for certification of a class;
- B. Deny Plaintiffs' request for an injunction against enforcement of the June 13, 2004 deadline for filing third party claims with the liquidator;
- C. Deny Plaintiffs' request for declaratory judgment;
- D. Deny Plaintiffs' request for a jury trial; and
- E. Grant such other and further relief as justice may require.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER, NH  
DEPARTMENT OF INSURANCE, IN HIS  
OFFICIAL CAPACITY AS INSURANCE  
COMMISSIONER AND LIQUIDATORY OF THE  
HOME INSURANCE COMPANY  
By his attorneys,

Kelly A. Ayotte  
Attorney General

Date: 8/31/04

  
Suzanne M. Gorman  
Senior Assistant Attorney General  
Civil Bureau  
33 Capitol Street

Concord, New Hampshire 03301-6397  
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Certificate of Service

I hereby certify that a copy of the foregoing was sent this 31<sup>st</sup> day, of August 2004, first class mail, postage prepaid, to Thomas R. Watson, Esq., Jennifer A. Lemire, Esq., at Watson & Lemire, P.A., 75 Congress Street, Suite 211, Portsmouth, NH 03801 and Alan Rich, Esq. at Baron & Budd, P.C., 3102 Oak Lawn Avenue, Suite 1100, Dallas, TX 75219-4281.



Suzanne M. Gorman