

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT  
Docket No. 04-E-0208

VENISE THERESA GONYA, as representative of the Estate of Joseph E. Gonya, deceased,  
individually and on behalf of all others similarly situated  
and  
ROXANE S. SCAIFE, as representative of the Estate of Arnold L. Stone, deceased, individually  
and on behalf of all others similarly situated

v.

ROGER A. SEVIGNY, Commissioner of the State of New Hampshire Insurance  
Department, in his official capacity as Insurance Commissioner and liquidator of  
The Home Insurance Company

and

PETER W. HEED, Attorney General of New Hampshire, in his official capacity

**PLAINTIFFS' PROPOSED ORDER RELATIVE TO  
PETITION FOR PERMANENT AND TEMPORARY INJUNCTIVE RELIEF**

The Court enters the following orders with respect to the above referenced matter after a temporary hearing on Plaintiffs' Petition in Equity for Permanent and Temporary Injunctive Relief and Defendants' opposition thereto, held this 27<sup>th</sup> day of July, 2004:

1. The Court finds that Plaintiffs have demonstrated a substantial likelihood of prevailing on the merits of their claims that RSA 402-C:40(I) is unconstitutional as written and as applied to Plaintiffs.

2. The Court finds that Plaintiffs will suffer irreparable injury since they and other third parties with claims against companies insured by The Home Insurance Company are required to release their common law cause of action against insured companies in order to file Proof of Claims in the insurance liquidation.

3. The Court finds this injury is irreparable, as it has the effect of denying people access to the claims process unless they are willing to sacrifice constitutionally protected right.

4. It is highly unlikely the state can constitutionally condition the receipt of a benefit on the relinquishment of a constitutional right.

5. Defendants will suffer comparatively little harm if the deadline is tolled pending the outcome of Plaintiffs' challenge to the constitutionality of RSA 402-C:40(I).

6. The public interest will be served by issuing this injunction.

NOW THEREFORE, Plaintiffs' request for a preliminary injunction is GRANTED. Defendants are enjoined from enforcing any deadlines under the provisions of RSA 402-C:40(I) in The Home Insurance Company liquidation. In addition, Defendants are enjoined from enforcing the third party release provision, until further order of this Court.

SO ORDERED.

Dated:

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Presiding Justice