

402-C:1

INSURANCE

Risk-based capital for life and health insurers, see RSA 404-F.
Safety funds of fire insurance companies, see RSA 404.

ANNOTATIONS

Cited

Cited in *In re Beacon Health, Inc.*, 105 B.R. 178 (Bankr. D.N.H. 1989).

LIBRARY REFERENCES

New Hampshire Code of Administrative Rules Insurance § 119 et seq.
Rules of the Insurance Commissioner, Ins 201.01 et seq., New Hampshire Code of Administrative Rules Annotated.

402-C:1 Title, Construction and Purpose.

I. SHORT TITLE. This chapter may be cited as the "Insurers Rehabilitation and Liquidation Act."

II. CONSTRUCTION: NO LIMITATION OF POWERS. This chapter shall not be interpreted to limit the powers granted the commissioner by other provisions of the law.

III. LIBERAL CONSTRUCTION. This chapter shall be liberally construed to effect the purpose stated in paragraph IV.

IV. PURPOSE. The purpose of this chapter is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors, through:

(a) Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures, neither unduly harsh nor subject to the kind of publicity that would needlessly damage or destroy the insurer;

(b) Improved methods for rehabilitating insurers, by enlisting the advice and management expertise of the insurance industry;

(c) Enhanced efficiency and economy of liquidation, through clarification and specification of the law, to minimize legal uncertainty and litigation;

(d) Equitable apportionment of any unavoidable loss;

(e) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extension of the scope of personal jurisdiction over debtors of the insurer outside this state; and

(f) Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

HISTORY

Source. 1969, 272:1, eff. June 23, 1969.

INSURERS

402-C:2 Persons covered may be applied to:

I. All insurers who are licensed in this state, and against whom claims are now or in the future;

II. All insurers who are licensed in another state;

III. All insurers who are licensed in another state and who have an intent to do an insurance business in this state;

IV. All other persons who are licensed in another state and all fraternal benefit societies.

Source. 1969, 272:1, eff. June 23, 1969; 190:4, eff. Jan. 1, 1998.

Health maintenance organizations

402-C:3 Definitions

I. "Commissioner" means the commissioner of insurance supervisory services.

II. "Receiver" means a receiver as the context requires.

III. "Insurer" means a person who is licensed to do an insurance business or is licensed to do an insurance business by authority of, or to liquidate an insurance company by, a commissioner. For purposes of this section shall include a person licensed under this section shall.

IV. "Delinquency procedure" means a procedure for the purpose of rehabilitating an insurer for the purpose of rehabilitating such insurer.

V. "State" means any state, territory, or Zone.

VI. "Foreign country" means any country other than the United States.

VII. "Domiciliary state" means the state in which an insurer has, at the time of its liquidation, the largest amount of its assets, or the state in which the majority of its policyholders and creditors are domiciled.

VIII. "Ancillary state" means the state in which an insurer has, at the time of its liquidation, a substantial amount of its assets.

IX. "Reciprocal state" means a state with which the commissioner has entered into a reciprocal agreement for the purpose of rehabilitating an insurer. 402-C:55, 57, and 60.

HISTORY

Source. 1969, 272:1, eff. June 23, 1969.

402-C:24 Federal Receivership.

I. **PETITION FOR FEDERAL RECEIVER.** Whenever in the commissioner's opinion, liquidation of a domestic insurer or an alien insurer domiciled in this state would be facilitated by a federal receivership, and when any ground exists upon which the commissioner might petition the court for an order of rehabilitation or liquidation under RSA 402-C:15 or 20, or if an order of rehabilitation or liquidation has already been entered, the commissioner may request another commissioner or other willing resident of another state to petition any appropriate federal district court for the appointment of a federal receiver. The commissioner may intervene in any such action to support or oppose the petition, and may accept appointment as the receiver if he is so designated. So much of this chapter shall apply to the receivership as can be made applicable and is appropriate. Upon motion of the commissioner, the courts of this state shall relinquish all jurisdiction over the insurer for purposes of rehabilitation or liquidation.

II. **COMPLIANCE WITH FEDERAL REQUIREMENTS.** If the commissioner appoints a receiver under this section, he shall comply with any requirements necessary to give him title to and control over the assets and affairs of the insurer.

HISTORY

Source. 1969, 272:1, eff. June 23, 1969.

402-C:25 Powers of Liquidator. The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. Subject to the court's control, he may:

I. Appoint a special deputy to act for him under this chapter, and determine his compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

II. Appoint or engage employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and other personnel he deems necessary to assist in the liquidation. RSA 98 shall not apply to such persons.

III. Fix the compensation of persons under paragraph II, subject to the control of the court.

IV. Defray all expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the liquidator may advance the costs so incurred out of any available appropriation. Any amounts so paid shall be deemed expense of administration and shall be

repaid for the credit of the insurance department out of the first available moneys of the insurer.

V. Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath and compel any person to subscribe to his testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents which he deems relevant to the inquiry.

VI. Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts; do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including sell, compound, compromise or assign for purposes of collection, upon such terms and conditions as he deems best, any bad or doubtful debts; and pursue any creditor's remedies available to enforce his claims.

VII. Conduct public and private sales of the property of the insurer in a manner prescribed by the court.

VIII. Use assets of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under RSA 402-C:44.

IX. 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, except that no transaction involving property the market value of which exceeds \$10,000 shall be concluded without express permission of the court. He also may execute, acknowledge and deliver any deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation. In cases where real property sold by the liquidator is located other than in the county where the liquidation is pending, the liquidator shall cause to be filed with the register of deeds for the county in which the property is located a certified copy of the order appointing him.

X. Borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

XI. Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.

XII. Continue to prosecute and institute in the name of the insurer or in his own name any suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he deems unprofitable to pursue further. If the insurer is dissolved under RSA 402-C:23, he may apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff.

XIII. Prosecute any action which may exist in behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person.

XIV. Remove any records and property of the insurer to the offices of the commissioner or to such other place as is convenient for the purposes of efficient and orderly execution of the liquidation.

XV. Deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions.

XVI. File any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located.

XVII. Assert all legal and equitable defenses available to the insurer against third persons. A waiver of any defense by the insurer after a petition for liquidation has been filed shall not bind the liquidator.

XVIII. Exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member, including any power to avoid any transfer or lien that may be given by law and that is not included within RSA 402-C:30-32.

XIX. Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

XX. Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states.

XXI. Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this chapter.

XXII. The enumeration in this section of the powers and authority of the liquidator is not a limitation upon him, nor does it exclude his right to do such other acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

HISTORY

Source. 1969, 272:1, eff. June 23, 1969.

References in text. RSA 98, referred to in par. II, was repealed by 1986, 12:12, I, effective March 27, 1986. See now RSA 21-I.

CROSS REFERENCES

State personnel system, see RSA 21-I.

402-C:26 Notice to Creditors and Others.

I. NOTICE REQUIRED.

(a) GENERAL REQUIREMENTS. The liquidator shall give notice of the liquidation order as soon as possible by first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is licensed to do business, by first class mail within this state and by airmail outside this state to all insurance agents having a duty under RSA 402-C:27, and by first class mail within this state and by airmail outside this state at the last known address to all persons known or

except that where justice requires the court may order them discounted at the legal rate of interest.

HISTORY

Source. 1969, 272:1, eff. June 23, following "notice was mailed to" in 1969. 1998, 99:4, eff. July 19, 1998. the first sentence and "RSA 402-C:44, Amendments—1998. Paragraph II: II" for "RSA 402-C:44, III" in the Substituted "the claimant" for "him" second sentence.

402-C:44 Order of Distribution. The order of distribution of claims from the insurer's estate shall be as stated in this section. The first \$50 of the amount allowed on each claim in the classes under paragraphs II, V, and VI except claims of the guaranty associations as defined in RSA 404-B, 404-D, and 408-B shall be deducted from the claim. Claims may not be cumulated by assignment to avoid application of the \$50 deductible provision. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class.

I. ADMINISTRATION COSTS. The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

II. POLICY RELATED CLAIMS. All claims by policyholders, including claims for unearned premiums in excess of \$50, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and liability claims against insureds which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company and claims of the New Hampshire Insurance Guaranty Association, the New Hampshire Life and Health Insurance Guaranty Association and any similar organization in another state. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds or investment values, shall be treated as loss claims. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advan-

REH

tages
gation
proce
an e

III.

IV.

exc

with

Off

(

aut

V.

of any

under

gover

in thi

from

or for

there

class

VI.

claim

the u

dator

appre

would

larger

portio

based

VII.

comp

graph

or the

until

with

tions

appre

and t

tages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employee shall be treated as a gratuity.

III. CLAIMS OF THE FEDERAL GOVERNMENT.

IV. WAGES.

(a) Debts due to employees for services performed, not to exceed \$1,000 to each employee which have been earned within one year before the filing of the petition for liquidation. Officers shall not be entitled to the benefit of this priority.

(b) Such priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employees.

V. RESIDUAL CLASSIFICATION. All other claims including claims of any state or local government, not falling within other classes under this section. Claims, including those of any non-federal governmental body, for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under paragraph VIII.

VI. JUDGMENTS. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he deems appropriate. The claim as allowed shall receive the priority it would receive in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

VII. INTEREST ON CLAIMS ALREADY PAID. Interest at the legal rate compounded annually on all claims in the classes under paragraphs I through VI from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the approval of the court, may make reasonable classifications of claims for purposes of computing interest, may make approximate computations and may ignore certain classifications and time periods as de minimis.

VIII. MISCELLANEOUS SUBORDINATED CLAIMS. The remaining claims or portions of claims not already paid, with interest, as in paragraph VII:

- (a) Claims under RSA 402-C:39, II;
- (b) Claims subordinated by RSA 402-C:61;
- (c) Claims filed late;
- (d) Portions of claims subordinated under paragraph V;
- (e) Claims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.

IX. PREFERRED OWNERSHIP CLAIMS. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in paragraphs VII and VIII.

X. PROPRIETARY CLAIMS. The claims of shareholders or other owners.

HISTORY

Source. 1969, 272:1. 1975, Amendments—1998. Amended section 348:14. 1977, 499:1, eff. Sept. 12, 1977. 1998, 99:1, eff. July 19, 1998.

*[RSA 402-C:50 effective until January 1, 2004;
see also RSA 402-C:50 set forth below.]*

402-C:50 Disposition of Records During and After Termination of Liquidation. Whenever it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he may recommend to the court what records should be retained for future reference and what should be disposed of. The court shall enter an order thereon. The commissioner shall immediately submit to the state historical society a copy of the court order, and on written application of the historical society within 3 months after receipt from the commissioner of the copy of the court order, the commissioner shall deliver to the society such records which are to be disposed of as the society deems of historical significance and shall destroy the remainder whether or not the records have been photographed or otherwise reproduced. Until further order of the court, the commissioner shall keep all records the court orders preserved.