

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**In the Matter of Liquidation
of The Home Insurance Company**

No. 03-E-0106

**RESTATED AND REVISED ORDER ESTABLISHING PROCEDURES
REGARDING CLAIMS FILED WITH
THE HOME INSURANCE COMPANY IN LIQUIDATION**

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**PROCEDURES
REGARDING CLAIMS FILED WITH
THE HOME INSURANCE COMPANY IN LIQUIDATION**

1 Applicability

The provisions of these Procedures shall apply to the resolution of claims against The Home Insurance Company in Liquidation ("The Home"), a New Hampshire property and casualty insurance company which was placed into liquidation effective June 11, 2003, by order of the Superior Court for Merrimack County, New Hampshire (the "Liquidation Court"), in The Matter of the Rehabilitation of The Home Insurance Company, No. 03-E-0106 (the "Liquidation Proceedings"). These Procedures shall apply to claim proceedings before the Liquidator, any court-appointed Referee and the Liquidation Court. These Procedures are adopted pursuant to RSA 402-C:41.

2 Definitions

a. **"Proof of Claim"** shall mean, unless otherwise ordered by the Liquidation Court, any Official Claim Form or any other writing received within the Liquidation the content of which asserts that monies may be owed by The Home to a Claimant.

b. **"Claimant"** shall mean any policyholder, reinsured, reinsurer, general creditor, third-party, or guaranty association that has filed a Proof of Claim. In these Procedures, "Claimant" refers to the Claimant whose right to payment is at issue.

c. **"Determination"** shall mean a decision by the Liquidator (including the Special Deputy Liquidator or a designated Staff Assistant)

regarding a claim, which determines whether a claim is to be allowed in whole or in part, whether a claim is to be disallowed and, if allowed, how the claim is to be classified under RSA 402-C:44. If a claim becomes a Disputed Claim, **“Determination”** shall also mean the determination or order of the Referee or the Liquidation Court determining whether a claim is to be allowed in whole or in part and, if allowed, how the claim is to be classified as to priority.

d. **“Disputed Claim”** shall mean a claim which has been disallowed in whole or in part or classified as to priority by the Liquidator’s Notice of Determination and for which the Claimant has timely filed an Objection.

e. **“Disputed Claims Docket”** shall mean the separate file and numbering system set up and maintained by the Liquidation Clerk for the handling of Disputed Claim proceedings.

f. **“Guaranty Fund”** shall mean an association or other legal entity existing under the laws of any state, the District of Columbia or Puerto Rico and lawfully authorized to pay covered claims under policies issued by an insolvent insurance company.

g. **“The Home Docket”** shall mean the docket maintained by the Merrimack County Superior Court Clerk (“Clerk”) in the Liquidation Proceedings.

h. **“Liquidation”** or **“Liquidation Proceeding”** shall mean the court-supervised Liquidation Proceeding of The Home, which proceeding was ordered and established by the Liquidation Court effective June 11, 2003.

i. **“Liquidation Clerk”** shall be the person responsible for the orderly clerical processing of Proofs of Claim once those claims are disputed. The current address for the Liquidation Clerk is The Home Insurance Company in Liquidation, Office of Disputed Claims, P.O. Box 1720, Manchester, New Hampshire, 03105-1720.

j. **“Liquidation Court”** or **“Court”** shall mean the Superior Court for Merrimack County, New Hampshire. The current address for the Liquidation Court is Office of the Clerk, Merrimack County Superior Court, 4 Court Street, Concord, New Hampshire 03301, Attention: Home Docket, No. 03-E-0106. A copy of any filing with the Liquidation Court should be mailed to the Liquidator at the address given below, and the Office of the Attorney General, Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301, Attention: Home Insurance.

k. **“Liquidator”** shall mean the Insurance Commissioner of the State of New Hampshire in his or her capacity as Liquidator of The Home and, for purposes of these Procedures, includes the Special Deputy Liquidator appointed by the Liquidator pursuant to RSA 402-C:25(I) and any Staff Assistants designated by the Liquidator or Special Deputy Liquidator. The current address of the Liquidator, for purposes of these Procedures, is The Home Insurance Company in Liquidation, Claims Determination Unit, P.O. Box 1720, Manchester, New Hampshire, 03105-1720.

1. **“Motion to Recommit”** shall mean a request by the Liquidator or the Claimant that the Court consider and review the Referee’s Report of a Disputed Claim.

m. **“Official Claim Form”** shall mean the proof of claim form approved by the Court or other specific claim forms approved by the Liquidator.

n. **“Participant”** shall mean the Claimant, the Liquidator and any other person or entity who is granted leave to participate in proceedings under these Procedures.

o. **“Referee”** shall mean an attorney appointed by the Liquidation Court pursuant to RSA 402-C:41(II), RSA 519:9, and N.H. Super. Ct. R. 81 to hear and decide Disputed Claims.

p. **“Request for Review”** shall mean a request by a Claimant that the Liquidator reconsider a Notice of Determination issued to that Claimant.

3 **Scope and Purpose**

a. These Procedures shall govern the practice and procedures in all proceedings before the Liquidator, any Referee, and the Liquidation Court with respect to claims against The Home, pursuant to the New Hampshire “Insurers Rehabilitation and Liquidation Act,” RSA 402-C:1 – 402-C:61.

b. The purpose of these Procedures is to achieve uniformity and to provide procedures for the presentation, processing, determination and classification of claims and to assist all Claimants worldwide in the orderly presentation of their claims against The Home.

c. In adopting these Procedures, the Court intends to formulate a uniform procedure that will assure that the Liquidation, Claimants (wherever resident), Guaranty Funds and other interested persons or entities are treated fairly and ratably.

4 Filing of Claims [RSA 402-C:37]

Except for preferred ownership and proprietary claims and subject to the provisions of RSA 402-C:37 and C:40 and further order of the Liquidation Court, proof of all claims must be filed with the Liquidator in the form outlined in Rule 5 of these Procedures on or before June 13, 2004.

5 Proof of Claim [RSA 402-C:38]

a. Claim Form. The Official Claim Form is the preferred form for use in making a claim. The failure of a Claimant to use the Official Claim Form will not necessarily be fatal to a claim if the filing fulfills the criteria of a claim as defined in Section 5(b) below.

b. Contents of Proof of Claim. Unless otherwise ordered by the Liquidation Court, Proof of Claim shall consist of a verified statement that includes all of the following that are applicable:

- i. The particulars of the claim, including the consideration given for it.
- ii. The identity and amount of the security on the claim.
- iii. The payments made on the debt, if any.
- iv. That the sum claimed is justly owing and that there is no setoff, counterclaim or defense to the claim.

v. Any right of priority of payment or other specific right asserted by the Claimant.

vi. A copy of any written instrument which is the foundation of the claim.

vii. In the case of any third party claim based on a liability policy issued by The Home, a release of the insured pursuant and subject to RSA 402-C:40(I).

viii. The name and address of the Claimant and the attorney who represents the Claimant, if any.

c. No claim need be considered or allowed if it does not contain all the information under Section 5(b) above which may be applicable. The Liquidator may require that a prescribed form be used and may require that other information and documents be included.

d. Supplementary Information. At any time the Liquidator may request the Claimant to present information or evidence supplementary to that required under Section 5(b) above, and may take testimony under oath, require production of affidavits or depositions or otherwise obtain additional information or evidence.

6 Process of Determining Claims by the Liquidator

a. POC Claim Files; Case Files. The Liquidator shall maintain a file that shall include: any supporting data provided by the Claimant, any relevant documentation found in the Liquidation's records or developed by Liquidation personnel, including without limitation, any available claims file (which may be

incorporated by reference); and, in the case of a coverage issue, any relevant and available policy or contract records, outside litigation documents, consultants' reports, or learned treatises and studies. The Liquidator may request that the Claimant submit additional information or documentation to support the claim. All pertinent information considered by the Liquidator shall be retained in this "POC Claim File", which shall contain a copy of the claim and Liquidator's Determination. When a claim becomes a Disputed Claim by the Claimant's timely filing of an Objection a file will be created and known as the "Case File." The Case File shall contain all of the most pertinent non-privileged information considered by the Liquidator in rendering the Notice of Determination, including a copy of the policy or other contract upon which a claim is based, a copy of the Proof of Claim, copies of pertinent correspondence from Claimant's counsel and/or Claimant and the Liquidator's responses thereto and a copy of the Notice of Determination or Re-determination of the claim.

b. Determination. The Liquidator shall review all claims duly filed in the Liquidation and shall make such further investigation as he or she deems necessary. The Liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the Court. The Liquidator shall enter a determination, which shall either (1) allow the claim in whole or in part and classify the amount of the allowed claim or (2) disallow the claim in whole.

c. Notice of Determination. The Liquidator shall transmit a copy of the Determination to the Claimant by first-class U.S. mail at the address shown on the original Proof of Claim or at such other address as is subsequently provided by the Claimant or his or her authorized representative (as determined by the Liquidator). This transmittal will be known as the "Notice of Determination."

7 Claimant's Request for Review and Liquidator's Re-determination

a. Request for Review. If the claim is disallowed in whole or in part, the Claimant may file a Request for Review with the Liquidator within thirty (30) days of the date on which the Notice of Determination was mailed to the Claimant. The Request for Review must set forth with specificity the reasons why the Determination is being challenged and how it should be modified.

b. Re-determination of Claim. After a Request for Review is filed, the Liquidator will review the claim. The Liquidator shall inform the Claimant of the results of such review by issuing a Notice of Redetermination in writing by first-class mail.

8 Objections to Denial of Claims [RSA 402-C:41(I)]

When a claim is denied in whole or in part in a Notice of Determination, the Claimant may file an Objection with the Court within sixty (60) days from the mailing of the notice. If a timely Request for Review is filed with the Liquidator under Section 7(a) above then the Claimant shall have sixty (60) days from the mailing of the Notice of Redetermination to file an Objection with the Court. The Claimant shall mail a copy of the Objection to the Liquidator. If

no timely Objection is filed, the Claimant may not further object to the Determination.

9 Service of Filings after Claim is Disputed

a. When a Claimant files a timely Objection, the Liquidation Clerk shall mail a Notice of Disputed Claim to the Claimant, with a copy to the Liquidator and to the Referee or Court as the case may be, to initiate the Disputed Claim proceeding. The Liquidator and the Claimant are the only persons who shall be considered parties to the Disputed Claim proceeding.

b. Persons or entities who are directly affected by the Disputed Claim proceeding may seek leave to intervene therein by filing a "Motion to Participate" with the Liquidation Clerk no later than thirty (30) days after the date of mailing of the Notice of Disputed Claim proceeding. Guaranty Funds with an actual or potential interest shall recite that interest in the motion. Reinsurers that have a contractual right to interpose any defense or defenses that they deem available to The Home shall identify the contract in question and state that they have a contractual right to interpose defenses. Persons or entities granted leave to participate in the Disputed Claim proceeding shall not be considered parties to the Disputed Claim proceeding but may participate in the proceeding in all respects not specifically denied in these Procedures.

c. After the Liquidation Clerk has issued a Notice of Disputed Claim proceeding, any subsequent filings with respect to the claim, whether in the form of notices, motions, pleadings, orders, letters or other papers, shall be served by first class mail, by overnight courier service, or by hand on all

Participants in such proceeding. The original of any filing shall be filed with the Liquidation Clerk, and upon request by the Liquidation Clerk or Referee, a copy shall be sent to the Referee at his or her business address, unless the Liquidation Court determines, either sua sponte or on motion by the Liquidator or the Claimant, to adjudicate a disputed claim, in which event a copy shall be sent to the Court. Should a Disputed Claim be adjudicated by a Referee, no filings shall be made with the Superior Court for Merrimack County. If an attorney has entered an appearance on behalf of a Participant, all future communications to that Participant for so long as the attorney remains counsel of record shall be transmitted to the attorney rather than to the Participant. Service on an attorney of record shall be deemed to be service upon a Participant represented by such attorney.

d. Once the Liquidation Clerk has issued a Notice of Disputed Claim, no other pleadings or motions shall be filed except as expressly provided in these Procedures.

10 Referees

Unless the Liquidation Court determines, either sua sponte or on motion by the Liquidator or the Claimant, to adjudicate a Disputed Claim:

- a. Each Disputed Claim shall be adjudicated by a Referee appointed by the Court pursuant to RSA 519:9.
- b. All Disputed Claim proceedings shall be conducted by the Referee according to the rules of equity or law, as the case may be, pursuant to RSA 519:10, and shall be governed by the New

Hampshire Superior Court Rules and the New Hampshire Rules of Evidence.

- c. Referees shall have all the powers, duties and limitations specified in RSA 493-A:1 and shall enjoy the same immunity as the Court. All Referees shall be governed by all of the canons of the Code of Judicial Conduct. Notwithstanding any appointment, Referees shall serve at the pleasure of the Court.
- d. Referees shall be allowed reasonable compensation for their services and expenses at such rate as the Court shall determine from time to time. All bills for services and expenses shall be submitted to the Clerk and shall include reference to the days when the Referee sat and Disputed Claims heard. For deliberation times, research and decision writing, cases shall be listed by Claimants' name and claim number with the amount of time spent per claim. Expenses shall be itemized. The Clerk shall pay the Referee in the first instance and then submit a bill to the Liquidator for reimbursement.
- e. No Referee shall appear as counsel in connection with any matter connected to the Liquidation.

11 Requests for Evidentiary Hearing

Each Disputed Claim shall be adjudicated on the basis of written submissions and oral argument as set forth in Section 15 of these Procedures, unless either the Claimant or the Liquidator files a request for evidentiary

hearing to be conducted in accordance with the procedures set forth in Section 16 of these Procedures. Persons or entities granted leave to participate pursuant to Section 9(b) may not request an evidentiary hearing. If an evidentiary hearing is granted, the Court or the Referee, as the case may be, shall issue an order designating the time and place for the hearing.

12 Expedited Disputed Claims Proceedings for "Small Claims"

In the case of Disputed Claim that is a "Small Claim," the Liquidator is authorized to vary from these procedures so as not to burden the Claimant or the administration of the Liquidation. The Liquidator may, among other things, but not before such time as the mandatory disclosures are accommodated under Section 14(b), immediately set the case for pre-hearing conference with a Referee specially designated in advance by the Liquidation Court to handle such matters to attempt to resolve such Small Claims. Notice of such conference shall be mailed to the Claimant not less than ten (10) days before the conference. No pre-hearing brief is required but will be accepted if filed. The Referee has the authority to issue a final determination of a Small Claim at a pre-hearing conference. For the purposes of this Section, the term "Small Claim" shall include any claim with an asserted value of less than \$50,000.

13 Bifurcation

To the extent The Home's coverage is contested (including situations when a policyholder's liability to a third-party is contested), at any time up to the Structuring Conference pursuant to Section 14, any party may request that

the issues of coverage and valuation of the claim be bifurcated. When the issues are bifurcated, discovery and any proceeding shall be limited to the issue pending before the Referee at that time. The Request to Bifurcate shall be determined in the Structuring Conference Order.

14 Case Management

a. A Structuring Conference for each Disputed Claim shall be scheduled in accordance with N.H. Super. Ct. R. 62 following issuance of the Notice of Disputed Claim.

b. Within thirty (30) days from the date on which the Notice of Disputed Claim was mailed to the Claimant, the Liquidator shall provide the Claimant and the Liquidation Clerk (but not the Court or the Referee, as the case may be) with a copy of the "Case File" as referred to in Section 6(a) of these Procedures. Within thirty (30) days after the date on which the Liquidator mails the Case File to the Claimant and Liquidation Clerk, the Claimant shall provide the Liquidator and the Liquidation Clerk (but not the Court or the Referee, as the case may be) with a written submission stating the amount the Claimant asserts is due, the method of calculation of the amounts owed and the allocation methodology (if applicable), along with any additional documents or other evidentiary material that the Claimant contends support the amount claimed due. These document submissions will be considered "mandatory disclosures." Persons or entities granted leave to participate pursuant to Section 9(b) shall be provided a copy of the Case File, mandatory disclosures and any other information submitted by the Liquidator or

Claimant, within thirty (30) days from the date on which they are permitted to participate in the proceedings, upon a written request to the Liquidation Clerk. The Liquidation Clerk shall give notice to the Liquidator and Claimant to provide copies of all filings submitted by them since the time the Notice of Disputed Claim was issued and until such time that the dispute is resolved, to those persons or entities granted leave to participate in that disputed claim proceeding. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. Unless otherwise directed by the Court or the Referee, as the case may be, all disclosures required hereby shall be made in writing, signed, served and promptly filed. A party who has made a disclosure or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired.

c. Discovery, including interrogatories, requests for documents, requests for admissions or evidence depositions, shall be governed by N.H. Super. Ct. R. 35-45-A.

d. Persons or entities who have filed a Motion to Participate in Disputed Claim proceedings are required to provide to both the Liquidator and the Claimant a copy of any documents supporting any defenses they may assert to the Disputed Claim.

e. If an evidentiary hearing is granted in a Disputed Claim proceeding it shall be held at such time and place in Manchester, New Hampshire, or elsewhere as ordered. The hearing may be adjourned as may reasonably be determined and the attendance of the Participants and all witnesses with all documents or other relevant evidence in their possession or under their control may be required. If after receipt of the order granting an evidentiary hearing, a Participant shall fail to appear at the time and place for the hearing, the hearing may proceed and that Participant shall have waived its right to any further participation.

f. Upon motion by a Participant, and for good cause shown, the hearing may be continued to a later date, not to exceed thirty (30) days from the original hearing date.

g. Upon a motion by the Claimant or the Liquidator, and for good cause shown, the evidentiary hearing may be held at any other place as shall be determined appropriate. All requests for the hearing to be held in a location other than Manchester, New Hampshire shall be made in writing prior to the date of the Structuring Conference. A copy of the motion must be served on all other Participants.

15 Briefing and Oral Argument - Disputed Claim Without an Evidentiary Hearing

a. Unless a request for an evidentiary hearing in a Disputed Claim proceeding has been granted, the Disputed Claim proceeding will be conducted based on the written submissions and oral argument of the Participants. The Claimant shall have thirty (30) days after the Structuring Conference Order is

entered to submit a written submission in support of the Proof of Claim, unless the Court or the Referee, as the case may be, directs otherwise. The Liquidator and other persons or entities who are participating will then have thirty (30) days from the filing of the Claimant's submission in which to respond. The Case File shall be filed if the Court or the Referee, as the case may be, so directs. The Participants shall make no other submissions unless specifically requested by the Court or the Referee.

b. The written submissions shall include: (1) a statement of the contested issues of fact and law to be determined by the Court or Referee, as the case may be; (2) a list of exhibits relied upon, including affidavits submitted; and (3) a legal brief. The written submission may be no longer than thirty (30) pages, exclusive of the affidavits and exhibits. The written submission and all attachments shall be filed with the Liquidation Clerk and served on all Participants to the Disputed Claim proceeding. A copy shall also be served on the Court or the Referee, as the case may be.

c. Upon request of a party, the Court or the Referee, as the case may be, may order that oral argument be scheduled. The Liquidation Clerk shall mail notice of such hearing to the Participants not less than ten (10) nor more than thirty (30) days before the hearing. In accordance with N.H. Super. Ct. R. 58, the Referee may issue his or her report within ten days of the filing of the last written submission.

16 Briefing – Disputed Claim With an Evidentiary Hearing

a. When a request for evidentiary hearing pursuant to Section 11 of these Procedures is granted, all Participants to the Disputed Claim proceeding shall be required to submit a pre-hearing statement in accordance with N.H. Super. Ct. R. 62.

b. If disputed issues of law exist, the filing of pre-hearing briefs may be allowed concurrently with the pre-hearing statements.

17 Pre-Hearing Conference

No less than thirty (30) days prior to the evidentiary hearing in a Disputed Claim proceeding, if one is granted, the Participants shall be directed to appear either in person or by telephone conference call for a Trial Management Conference in accordance with N.H. Super. Ct. R. 62.

18 Evidentiary Hearing Procedures

a. When an evidentiary hearing in a Disputed Claim proceeding has been granted, the hearing shall be conducted in accordance with the New Hampshire Superior Court Rules and New Hampshire Court practice.

b. Electronic, magnetic or mechanical sound or video recording devices or a court reporter or a stenographer shall be used for the purpose of preserving the record. The costs of such recording shall be payable as an administrative expense by the Liquidator, provided, however, that if the testimony is transcribed and if the Claimant or any other Participant wants a copy of the transcript, that Participant shall be responsible for paying for the cost of the copy.

c. The parties may, in accordance with RSA 519:11, submit proposed findings of fact and rulings of law.

19 Report

The Disputed Claim shall be ruled on after the completion of the filing of the written submissions and oral argument or after the close of the evidentiary hearing and if adjudicated by a Referee, the Referee shall issue his or her report in accordance with RSA 519:10-12. The Liquidation Clerk shall mail copies of all such reports to all Participants. A report by a Referee shall be filed with the Court in accordance with RSA 519:10.

20 Motions to Recommit

a. Within fifteen (15) days from the date the Referee's report is filed with the Court, the Claimant or the Liquidator shall have the right to file a Motion to Recommit with the Clerk for the Liquidation Court at the address set forth in Section 2(j) of these Procedures. Persons or entities who have been granted leave to participate in a Disputed Claim proceeding pursuant to Section 9(b) shall not have the right to file a Motion to Recommit independently but may join in a Motion filed by the Claimant or the Liquidator. The Motion shall request that the Court review the report of the Referee. A copy shall also be filed with the Liquidation Clerk at the address set forth in Section 2(i) of these Procedures and served on all Participants and also the Office of the Attorney General at the Address set forth in Section 2(j).

b. If a Motion to Recommit is filed, any other Participants (including persons or entities granted leave to participate pursuant to Section 9(b)) to the

Disputed Claim proceeding shall have ten (10) days from service of the Motion within which to file a response to the motion.

c. If no Motion to Recommit is filed within 15 days of the filing of the Referee's report, the Court shall enter judgment thereon in accordance with RSA 519:12.

21 Liquidation Clerk

The Liquidation Clerk shall be an employee of the Liquidator, subject to the direction and supervision of the Court, who shall:

a. Receive, log, assign and track all Disputed Claims forwarded to the Disputed Claims office;

b. Keep a record of the date on which the Notice of Disputed Claim is sent to the Claimant, and any persons or entities granted leave to participate pursuant to Section 9(b);

c. Receive all original documents filed in all pending Disputed Claims proceedings;

d. Serve a copy of any interim orders on all Participants in a Disputed Claim proceeding;

e. Coordinate hearings pursuant to the Structuring Conference Order;

f. Serve copies of the Referee's report on the Participants in the Disputed Claim proceedings and file the report with the Court;

g. Keep a record of the current status of all Disputed Claims proceedings; and

- h. Maintain current minute entries on each Disputed Claim file.

22 Captions of Pleadings and Orders In Disputed Claim Proceedings

Captions of pleadings and orders filed in Disputed Claim proceedings before a Referee should be captioned as follows:

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

In Re Liquidator Number:	_____
Proof of Claim Number:	_____
Claimant Name:	_____
Claimant Number:	_____ if any
Policy or Contract Number:	_____ if any
Insured or Reinsured Name:	_____ if any
Date of Loss:	_____ if any

23 Costs

No filing fee or Court costs shall be chargeable with respect to proceedings related to a Disputed Claim proceeding except, however, the following costs and charges shall be paid by a Claimant:

- (1) The cost of the original of a deposition taken at the request of a Claimant in a Disputed Claim proceeding.
- (2) The cost of any deposition copy or transcript secured by a Claimant.
- (3) Charges for any copies made of documents for the Claimant.
- (4) Costs incurred by a Claimant, including but not limited to, witness fees.

- (5) Deposition costs and witness fees in a Disputed Claim proceeding may be charged against a Claimant if the Liquidator is the prevailing party.

Any other Court costs not mentioned heretofore, including the compensation and expenses of the Referee, shall be paid by the Court and assessed against the Liquidation and said expense shall be an expense of administration. The Referee may impose costs against a party in accordance with RSA 519:14.

24 Severability

If any part of these Procedures shall be determined to be invalid, such portion is hereby declared to be severable, and the remaining portions of these Procedures shall be considered as remaining in full force and effect.

25 Effective Date

These Procedures shall be effective as of the date of approval by the Court and where applicable and appropriate shall be retroactive in application to the date when The Home was ordered into liquidation on June 11, 2003.

26

Discovery in Disputed Claim Proceedings Regarding Reinsurance Claims

Where there is a Disputed Claim proceeding regarding a claim under a reinsurance agreement that provides for a dispute resolution procedure with more limited discovery than that permitted under this Claims Procedures Order, the extent of discovery in the Disputed Claim proceeding (including, without limitation, requests for documents, interrogatories, requests for admissions, or evidence depositions) shall be limited to that which would otherwise have been available under the contractually provided procedure.

SO ORDERED:

Presiding Justice

Dated this ____ day of _____, 2004.

MERRIMACK, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of
The Home Insurance Company

INTERLOCUTORY APPEAL STATEMENT

I. Statement of the Case and Statement of Facts

This interlocutory appeal is taken by Century Indemnity Company ("Century"), ACE Property and Casualty Insurance Company ("ACE P & C"), Pacific Employers Insurance Company ("PEIC"), and ACE American Reinsurance Company ("AARe") (collectively, the "ACE Companies"), and Benjamin Moore & Co. ("Benjamin Moore") from the ruling issued on October 8, 2004 by the Merrimack County Superior Court (McGuire, J.) (the "Order on Remand") in favor of Roger Sevigny, Insurance Commissioner for the State of New Hampshire, as Liquidator (the "Liquidator") of the Home Insurance Company ("Home") that potential payments to certain insurers who had ceded insurance risk to the Home's UK branch (the "AFIA Cedents") are administrative expenses authorized under RSA 402-C:1, III and IV; RSA 402-C:25, IV, VI and XXII; and RSA 402-C:44, I. (Order on Remand at 14.) The ACE Companies and Benjamin Moore had intervened, without objection, in the Home liquidation proceedings to challenge the agreement between the Liquidator and the AFIA Cedents (the "Agreement"), pursuant to which the AFIA Cedents would be provided financial incentive for their filing and prosecution of claims in Home's liquidation.

In its Order issued on April 29, 2004 (the "April 29 Order"), the Superior Court ruled that "[t]he agreement proposed by the Liquidator is authorized under the broad array of powers granted the Liquidator under RSA 402-C:25 and is consistent with the goals and purposes of the

statute to protect the interests of the insured and creditors.” (April 29 Order at 2.) The New Hampshire Supreme Court accepted an appeal from the April 29 Order.

After briefing and oral argument, the New Hampshire Supreme Court, in an Order dated September 13, 2004 (the “September 13 Order”), vacated the April 29 Order approving the Agreement, and remanded the case to the Superior Court. It specifically directed the Superior Court to consider five issues upon remand:

- (1) Whether the New Hampshire liquidation proceedings should be stayed pending the completion of the regulatory and judicial proceedings in the United Kingdom;
- (2) Whether the Superior Court has an independent obligation to assess the fairness of the Agreement;
- (3) Whether the intervenors have standing to contest the Agreement;
- (4) Whether the “Necessity of Payment Doctrine” or some other equitable doctrine authorizes the Liquidator or the Superior Court to vary the mandatory priorities set forth in RSA 402-C:44; and
- (5) Whether the proposed payments to the AFIA Cedents qualify as administrative expenses under RSA 402-C:44, I.

(September 13 Order at 2.)

Following conferences with counsel and the submission of papers regarding a draft order, the Superior Court issued the Order on Remand and ruled, *inter alia*, that (1) the ACE Companies and Benjamin Moore have standing to contest the Agreement; (2) consideration of a stay of the New Hampshire proceedings is not appropriate in the circumstances; (3) equitable doctrines such as the Necessity of Payment doctrine may not override a statute enacted on a

particular topic; and (4) it recognized an independent obligation to assess the fairness of the Agreement. (Order on Remand at 4-6, 10-13).

In response to the Supreme Court's specific inquiry whether the proposed payments to the AFIA Cedents qualify as administrative expenses under RSA 402-C:44, I, the Superior Court ruled that such payments would be administrative expenses authorized under RSA 402-C:1, III and IV; 402-C:25, IV, VI, and XXII; and RSA 402-C:44, I. (See Order on Remand at 6-10.) The parties agreed that the Superior Court's determination as to whether the proposed payments to the AFIA Cedents qualify as administrative expenses under RSA 402-C:44, I is a matter of law. (See Order on Remand at 6).

The Superior Court granted the ACE Companies and Benjamin Moore leave to appeal the legal issue of whether the proposed payments to the AFIA Cedents qualify as administrative expenses. (*Id.* at 14). The facts forming the basis of the Superior Court's Order on Remand in this case are summarized in said Order which accompanies this statement, pursuant to Supreme Court Rule 8.

II. Question of Law

The following controlling question of law is transferred in accordance with Supreme Court Rule 8 and RSA 491:17:

Whether, as a matter of law, the payments to the AFIA Cedents under the Agreement qualify as administrative expenses under RSA 402-C:44, I.

III. Statement of Reasons for Interlocutory Transfer

Rule 8 of the Supreme Court Rules requires "a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an interlocutory appeal may materially advance the termination or clarify further proceedings of the litigation, protect a party from substantial and irreparable injury, or present the opportunity to decide, modify or clarify an

issue of general importance in the administration of justice.” N.H. Sup. Ct. R. 8(1)(d) (emphasis added). The requirements of Rule 8 are met here.

A. A Substantial Basis Exists for a Difference of Opinion on Whether the Proposed Payments to the AFIA Cedents Qualify as Administrative Expenses

Before the Superior Court and in the appeal to the Supreme Court, the Liquidator characterized the proposed payments to the AFIA Cedents as administrative expenses within the scope of RSA 402-C:44, I, which defines the “costs and expenses of administration” to include “the actual and necessary costs of preserving or recovering the assets of the insurer.” The ACE Companies and Benjamin Moore disputed the Liquidator’s casting of the proposed payments as administrative expenses. (*See* Order on Remand at 7, 9-10.) It is the ACE Companies and Benjamin Moore’s position that such a classification of the payments is not supported by the language of the statute, the applicable case law or public policy.

It is also the ACE Companies and Benjamin Moore’s position that in relying on RSA 402-C:25, IV and VI, and RSA 402-C:1, III and IV, in the Order on Remand the Superior Court simply restated its original (and now vacated) finding that the Proposed Agreement is “authorized under the broad array of powers granted the Liquidator under 402-C:25, and is consistent with the goals and purposes of the statute to protect the interests of the insureds and creditors.”

Accordingly, a substantial basis exists for a difference of opinion on the controlling question of law identified above.

B. Resolution of the Issue of Whether the Proposed Payments to the AFIA Cedents Qualify as Administrative Expenses Will Materially Advance the Termination of, or Clarify Further Proceedings in, the Subsequent Litigation

The Superior Court noted that a decision by the Supreme Court that the proposed payments to the AFIA Cedents do not qualify as administrative expenses would resolve this key

issue. (Order on Remand at 13.) It is also likely that a determination that the proposed payments are administrative expenses would help frame the issues, thus clarifying further proceedings and streamlining the litigation before the Superior Court.

C. Opportunity to Decide Issue of Importance

An interlocutory transfer would provide an opportunity for the New Hampshire Supreme Court to decide an issue that is of obvious interest to that Court, but was not decided on the previous appeal. The administrative expense provision is a core provision in the statute, and the issue of whether the proposed payments to the AFIA Cedents qualify as administrative expenses is of critical importance in this liquidation and future liquidations in New Hampshire. Also, since virtually every state liquidation statute refers to administrative expenses, a decision by the Supreme Court could have far-reaching consequences throughout the United States.

IV. Counsel

The names and addresses of the lawyers involved in this appeal and the names of their respective clients are as follows:

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V. Record

Copies of the applicable statutes, pleadings, affidavits, transcripts, and orders are contained in the Joint Appendix and the Liquidator's Appendix previously submitted to the New Hampshire Supreme Court. In addition, the following exhibits are annexed hereto:

Exhibit 1: Order on Remand.

Exhibit 2: Transcription of the oral argument before the Supreme Court on July 15, 2004.

Transfer Ordered:


Honorable Kathleen A. McGuire

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11/5/04

MERRIMACK, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of
The Home Insurance Company

TABLE OF CONTENTS OF EXHIBITS
TO INTERLOCUTORY APPEAL STATEMENT*

1. Merrimack County Superior Court Order on Remand, dated October 8, 2004
2. Transcription of the oral argument before the Supreme Court on July 15, 2004

* The Joint Appendix in the Briefs of the ACE Companies and Benjamin Moore and the Liquidator's Appendix including citations to relevant statutes and case law previously submitted to the New Hampshire Supreme Court are incorporated by reference.

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of
The Home Insurance Company

**MOTION TO TRANSFER QUESTION OF
LAW FOR INTERLOCUTORY APPEAL**

Respondents Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company (collectively, the "ACE Companies") respectfully move this Court to transfer, for interlocutory appeal pursuant to Rule 8 of the New Hampshire Supreme Court Rules, the question of law identified in the annexed Interlocutory Appeal Statement. In support of this Motion, the ACE Companies state as follows:

(1) This Court, in its Order on Remand issued on October 8, 2004, granted the ACE Companies and Benjamin Moore the right to appeal the Court's finding that proposed payments to the AFIA Cedents are administrative expenses.

(2) The ACE Companies, through counsel, have prepared the attached Interlocutory Transfer Statement to be signed by the Court.

(3) Because this Court has already granted the right to appeal to the ACE Companies, the concurrence of the Liquidator to this Motion was not sought.

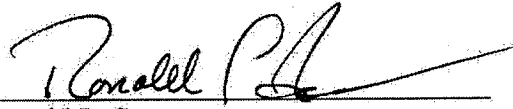
(4) No memorandum of law has been filed with this motion as the grant or denial of the relief sought is within the discretion of this Court.

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GRANTED
Kathleen A. McGuire
Kathleen A. McGuire
Presiding Justice

10/27/04

Date: October 21, 2004

Respectfully submitted,



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SERVICE LIST

The undersigned certifies that I served a copy of the foregoing on the following counsel via First Class mail on October 21, 2004.

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THE STATE OF NEW HAMPSHIRE
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NOTICE OF DECISION

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03-E-0106 In the Matter of Rehabilitation of TheHome Insurance Company

Please be advised that on 10/27/2004 Judge McGuire made the following order relative to:

Motion for Interlocutory Appeal ; Granted

10/27/2004

William McGraw
Clerk of Court

Court Copy (jil)

cc: Roger A. Sevigny, Commissioner of Ins.
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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of
The Home Insurance Company

**ACE COMPANIES' WRITTEN RESPONSE
TO PROPOSED ORDER ON REMAND**

Respondents Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company (collectively, the "ACE Companies") by their attorneys, Orr & Reno, PA, submit the following written response to the Court's proposed order on remand:

(1) The ACE Companies believe that in order to be consistent with and give due respect and deference to the issues remanded by the Supreme Court one particular aspect of the Court's draft order on remand needs to be recast - that relating to the fifth issue remanded by the New Hampshire Supreme Court. The Supreme Court specifically requested that this Court consider: "(5) whether the payment to the AFIA Cedents qualifies as an administrative expense under RSA 402-C:44."

(2) At the status conference, the parties agreed that question (5) is a matter of law and could be resolved without further evidence. However, the Draft Order re-characterizes the question in a much broader way; in essence, it re-frames the question as a matter of the Liquidator's authority to enter the agreement. It is, was and remains the ACE Companies' position that that issue is not an issue remanded to this Court. Indeed, the issue of the Liquidator's authority under RSA 402-C to enter into the agreement was not discussed at the status conference on October 4, 2004. It is not conceded by the ACE Companies here, nor was it

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conceded by the ACE Companies at the status conference, that the issue of the Liquidator's authority to enter into the agreement with the AFIA Cedents could be determined without further evidence. The ACE Companies believe that the issue of the Liquidator's authority to enter into the agreement with the AFIA Cedents is inextricably linked with the "fairness" question, and requires discovery and an evidentiary hearing.

(3) Accordingly, the ACE Companies respectfully request that the first full paragraph under section (5) on page 6 of the draft order read "agreed that the Court's determination as to whether the payment to AFIA Cedents qualifies as an administrative expense is a matter of law," rather than "agreed that the Court's determination as to whether *the Liquidator has the authority to enter into the agreement and compromise* is a matter of law." (emphasis supplied).

(4) The same issue arises on page 12 of the draft Order. The ACE Companies believe that the last sentence of the first full paragraph should address the issue on remand "administrative expenses", and not authority to enter an agreement. Accordingly, the Order should read "For this reason, the Court will hold a further hearing on the matter if its ruling *that the payment to AFIA Cedents qualifies as an administrative expense* is upheld by the Supreme Court". (emphasis added) The next paragraph should read: "At this point, the Court and the parties request that the Supreme Court decide the legal issue, *whether the payment under the agreement is an administrative expense*, before the Court conducts the reasonableness/fairness issues. If the *payment is not an administrative expense*, the issue is resolved." (emphasis added).

(5) The proposed Conclusion again suggests an answer to a question the Supreme Court did not ask. Accordingly, the ACE Companies respectfully suggest that the conclusion read:

"1. The parties agree that the record is adequate to determine the legal issue of whether the payment to AFIA Cedents is an administrative expense;" and

2. For the reasons stated above, the Court rules that the payments are administrative expenses and authorized under RSA 402-C:25, VI and XXII."

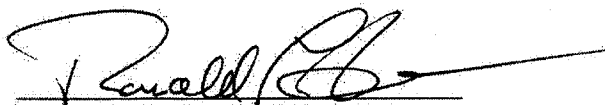
(6) The ACE Companies believe that an Order by this Court which suggests a different question to be decided by the Supreme Court is inconsistent with the order from the Supreme Court, raises an issue that was not addressed by any party at the status conference, and proposes a "procedural direction" not agreed to by the ACE Companies at the status conference

(7) The ACE Companies also respectfully suggest that the second full paragraph on page 9 beginning with the word "Contrary" should read "... The Court now determines that the Liquidator could properly classify ...". The ACE Companies suggest this change because the original Order appealed did not refer to "administrative expenses" but rather discretion to enter the agreement. To suggest otherwise now would be unfair to the appealing parties originally (who appealed focusing on discretion) and now.

(8) The draft Order should also reflect that the ACE Companies and Benjamin Moore argued that the payments to the AFIA Cedents would violate RSA 402-C:44 and 402-C:25 (xxi). See p. 7 of proposed Order (emphasis supplied)

(8) Finally, on page 1 of the draft Order, the ACE Companies contest that the primary purpose of the UK proceedings are to "protect and preserve assets". There is no evidence whatsoever that there are any assets in the UK to protect, as ACE's counsel has repeatedly argued. To the contrary the reinsurance at issue is not a UK asset at all. Accordingly, the purpose articulated is a "purported one" and no more.

Respectfully submitted,



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