

# The State of New Hampshire

## Superior Court

Merrimack County Courthouse  
163 North Main Street, P.O. Box 2880  
Concord, NH 03302-2880  
(603) 225-5501

No. 03-E-0106

In the Matter of the Liquidation of  
The Home Insurance Company

---

Disputed Claims Docket

In Re Liquidator Number: 2007-HICIL-31  
Proof of Claim Number: VEND700093-01  
Claimant Name: Sheiness, Scott, Grossman & Cohn, LLP

### ORDER ON CLAIMANT'S MOTION TO RECOMMIT

Pursuant to the claim procedures governing this proceeding, the Claimant, Sheiness, Scott, Grossman & Cohn, LLP, has filed a timely motion to recommit to this Court the April 11, 2008 Ruling of the referee in favor of the Liquidator, Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire. The Claimant asserts that the referee erred when she found that that its claim for pre-liquidation legal services in the undisputed amount of \$74,784.89 should be assigned a Class V priority under RSA 402-C:44 ("Residual Classification"), rather than a Class I priority as "Administrative Costs."

The Court has carefully reviewed the Ruling, the record before the referee, and the parties' pleadings filed in connection with the motion to recommit and concludes that the referee did not err in her Ruling. The Claimant argues that fees for its services to The Home Insurance Company shortly before Home was placed in receivership fall within the statutory definition of "administrative costs" because its work effectively resulted in "preserving or recovering the assets of [Home]." The Liquidator objects and argues that the plain meaning of the statute

establishes that such legal fees are not “costs and expenses of administration” of Homes’s estate.

As the Liquidator points out, the plain meaning of the statute must be interpreted in the context of the overall legislative scheme, which “reflect[s] the legislative purpose of protecting policyholders and claimants against policyholders.” The statutory definition of “administrative costs” is set forth, in relevant part, as “The costs and expenses of administration, including but not limited to...the actual and necessary costs of preserving or recovering the assets of the insurer... and reasonable attorney’s fees.” RSA 402-C:44, I. The Court agrees that the predicate for attorney’s fees as an administration cost is that such fees must be generated in the course of administration of the liquidation estate.

The Court further finds that, notwithstanding its assertion, the Claimant’s position is not supported by the New Hampshire Supreme Court’s decision in In the Matter of the Liquidation of the Home Insurance Co., 154 N.H. 472 (2006). As noted by the referee, “Here, there is neither a post-liquidation agreement with the Liquidator, nor the potential for a net benefit to preferred creditors.” The referee properly concluded that for reasonable attorney’s fees to be accorded Class I priority such fees must be incurred as “costs and expenses of administration.”

Accordingly, the Court sustains the referee’s Ruling and denies the relief requested in the Claimant’s motion to recommit.

So ordered.

Date: May 22, 2008



CAROL ANN CONBOY  
Presiding Justice