THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. **SUPERIOR COURT**

In the Matter of the Liquidation of the Home Insurance Company

No. 03-EQ-106, 2008-HICIL-37

ORDER

The claimant, John Hubbard, has filed a motion to recommit and requests this court to review the decision of the referee approving the denial of coverage by Home Insurance Company ("Home"). The liquidator objects. The court heard argument on September 23, 2011. The liquidator appeared through counsel. Mr. Hubbard appeared telephonically *pro se*. Because the court is satisfied that the referee correctly determined that that the policy excluded coverage for Mr. Hubbard's work related injuries, his motion to recommit is DENIED.

On January 22, 1987, Mr. Hubbard was employed by Carl Weissman & Sons, Inc. ("CWS") and suffered a work-related injury causing *inter alia* severe facial and neck injuries and the loss of his right arm. CWS held a general liability policy with Home during the relevant period of Hubbard's injury. As part of a settlement agreement, CWS assigned its rights under the policy to Mr. Hubbard. As a result, Mr. Hubbard filed a Proof of Claim in the Home liquidation asserting coverage under the policy issued to CWS on his own and on CWS's behalf.

The policy, basic form H21013F, number GL 1 48 82 51, would have provided coverage for Mr. Hubbard's injury absent endorsement L-6178. The endorsement, however, clearly excludes employees—whether work related or otherwise in the course of employment—from those covered by its terms. Consequently, Home denied coverage.

During the September 23, 2011 argument, Mr. Hubbard acknowledged that the policy clearly excludes employees and work related injuries, such as those he suffered, from coverage. Nonetheless, he challenges the referee's denial.

Because the interpretation of a contract is a legal issue, the superior court reviews the referee's interpretation of insurance policy language *de novo*.

> When interpreting a written agreement, [the court] give[s] the language used by the parties its reasonable meaning, considering the circumstances and the context in which the agreement was negotiated, and reading the document as a whole. Absent ambiguity, the parties' intent will be determined from the plain meaning of the language used in the contract.

In re Liquidation of Home Ins. Co., 157 N.H. 543, 546 (2008).

The policy provides that "[t]his insurance does not apply: ... (i) to bodily injury to any employee of the insured [CWS] arising out of and in the course of his employment...." Mr. Hubbard does not dispute that he suffered bodily injury arising out of and in the course of his employment with CWS. He nevertheless argues that he is entitled to relief because the "arising out of" language is ambiguous. The court disagrees. The policy and the injury occurred in Montana. Montana law governs. Montana cases interpreting similar provisions have clearly answered this question—the language of the exclusion has not been held to be ambiguous in all contexts. *Pablo v. Moore*, 2000 MT 48, ¶ 16, 298 Mont. 393, 398, 995 P.2d 460, 462 (interpreting the term "accident arising out of" in the context of an assault by an uninsured motorist); *Wendell v. State Farm Mut. Auto. Ins. Co.*, 1999 MT 17, ¶ 29, 293 Mont. 140, 153, 974 P.2d 623, 632 (interpreting "arising out of" in the context of an uninsured motorist provision). This language is not ambiguous in the Home policy and any Montana cases discussing similar policy language are not applicable here. *Pablo*, 1999 MT ¶ 29, 298 Mont. at 398, 995 P.2d at 462. Thus, the referee properly concluded that the language of CWS's general liability policy excludes coverage.

Mr. Hubbard also challenges Home's unfair claims practices and alleges that they may violate Montana's Unfair Claims Settlement Practices Act. Additionally, Mr. Hubbard made other tort-based challenges not under the policy. The referee postponed ruling on these motions indefinitely as the assets of the liquidation are projected to be insufficient to fulfill its Class II claims related to insurance coverage, and any claim not related to coverage under a policy is governed by either RSA 402-C:44, V or VI. This decision by the referee is part legal and part procedural.

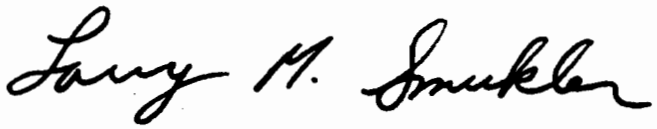
The referee's categorization of tort-based claims as class V claims is a legal determination based on interpretation of RSA 402-C:44. This decision must be reviewed *de novo*. *In re Liquidation of Home Ins. Co.*, 157 N.H. 543, 546 (2008). "When a statute's language is plain and unambiguous, [the court] need not look beyond it for further indication of legislative intent...." *In re Liquidation of Home Ins. Co.*, 154 N.H. 472, 479 (2006). RSA 402-C:44, II defines policy related claims in pertinent part as "all claims by policyholders, including claims for unearned premiums in excess of $50, beneficiaries, and insureds arising from and within coverage of and not in excess of the applicable limits of insurance policies...." The language does not include the claims that Mr. Hubbard seeks to bring under Montana law or other tort-based theories. Even though Mr. Hubbard is an assignee of his former employer, he does not have a claim in that capacity under RSA 402-C:44, II. A tort-theory, if successful would either result in a court-awarded judgment or a claim against the insurer. Either of these theories would be categorized, respectively, under sub-sections VI or V. The referee did not err by interpreting Mr. Hubbard's claims as falling outside the definition of "policy related claims."

The referee's determination that there will be no funding to provide a legal remedy to class V claims is one based on economy and procedure. This decision is reviewed under an abuse

of discretion standard. *Alexander v. Town of Hampstead*, 129 N.H. 278, 284 (1987). Mr. Hubbard has not sustained his burden of showing that the referee's determination was an abuse of discretion. Indeed, even if the referee made a favorable determination on Mr. Hubbard's allegations, he would have no remedy. As elaborated by the referee and liquidator, the liquidation assets will be insufficient to cover even the currently pending class II claims. Thus, analysis of any claims related to lower classes is futile. The referee properly refused to hear the merits of these claims.

In the course of his argument, Mr. Hubbard made serious representations regarding the actions of his attorneys. Those representations, if true, would support recovery against Mr. Hubbard's attorneys. This does not, however, avail Mr. Hubbard in the instant matter. The language in Home policy number GL 1 48 82 51 excluded coverage for Mr. Hubbard's serious work related injuries. Accordingly, Mr. Hubbard's motion to recommit is DENIED.

So ORDERED.



Date: September 30, 2011

LARRY M. SMUKLER
PRESIDING JUSTICE