

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

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

INTERLOCUTORY APPEAL STATEMENT

Pursuant to Superior Court Rule 46 and New Hampshire Supreme Court Rule 8(1), Zurich Insurance plc, German Branch (“Zurich”) and the Insurance Commissioner of the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), jointly submit this interlocutory appeal statement.

This is an appeal by Zurich from the Court’s Order dated January 28, 2021 granting the Liquidator’s Motion for Approval of Claim Amendment Deadline (“Primary Order”), the Court’s Order Approving Claim Amendment Deadline dated January 28, 2021 establishing the Claim Amendment Deadline (“CAD Order”), and the Court’s Order dated April 22, 2021 denying Zurich’s Motion for Reconsideration of the January 28, 2021 orders (“Reconsideration Order”). The Primary Order, CAD Order and Reconsideration Order (collectively, the “Orders”) are included in the separate Appendix submitted with this Statement. The Liquidator and Zurich disagree about whether the Court’s Orders should stand, but the New Hampshire Supreme Court’s resolution of these issues now will assist the orderly administration of the liquidation.

I. PARTIES AND COUNSEL

Zurich Insurance plc, German Branch

Mark C. Rouvalis (Bar No. 6565)
mark.rouvalis@mclane.com
Steven J. Dutton (Bar No. 17101)
steven.dutton@mclane.com
Viggo C. Fish (Bar No. 267579)
viggo.fish@mclane.com

McLane Middleton, Professional Association
900 Elm Street, 10th Floor
Manchester, NH 03101
(603) 625-6464

Joseph T. McCullough IV* (IL Bar # 6189956)
jmccullough@freeborn.com
Peter B. Steffen* (IL Bar # 6275987)
psteffen@freeborn.com
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606
(312) 360-6000
**Admitted Pro Hac Vice*

Christopher R. Nicolopoulos, Insurance Commissioner of the State of New Hampshire, as
Liquidator of The Home Insurance Company

J. Christopher Marshall, NH Bar ID No. 1619
J.Christopher.Marshall@doj.nh.gov
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650

J. David Leslie, NH Bar ID No. 16859
dleslie@rackemann.com
Eric A. Smith, NH Bar ID No. 16952
esmith@rackemann.com
Margaret A. Capp, *pro hac vice*
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110-1700
(617) 542-2300

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

This statement provides a brief synopsis of facts necessary to an understanding of the controlling questions of law as determined by the Orders of the Court. The facts and circumstances underlying the Liquidator's motion, Zurich's objections, and the Orders are fully set forth in the filings and exhibits included in the Appendix.

This interlocutory appeal arises from the Home liquidation proceeding. Home is a New Hampshire domiciled insurance company which, at its height, wrote insurance and reinsurance in almost all fifty states as well as Canada, Bermuda, Hong Kong and the United Kingdom. It stopped writing insurance and reinsurance in 1995.

By its Order of Liquidation dated June 13, 2003, the Court found that Home was insolvent and appointed the Insurance Commissioner as liquidator to liquidate the company pursuant to the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C (the "Act"). The Order of Liquidation established June 13, 2004 as the deadline for filing claims in the liquidation. This initial filing deadline was subject to provisions permitting the filing of late-filed claims. Broad notice was given of the liquidation and the deadline. Since 2004, at least 20,785 proofs of claim have been filed with the Liquidator. In addition to proofs of claims for known claims on which the amount of Home's liability was either quantified and due and owing or not yet established, claimants were allowed to file proofs of claim encompassing unknown or potential claims. Claimants may update such proofs of claim after the June 13, 2004 initial deadline until the date of the Claim Amendment Deadline.

Zurich is involved in the liquidation because Home had an unincorporated branch in the United Kingdom through which it wrote insurance and reinsurance, including business as a

member of the American Foreign Insurance Association (“AFIA”).¹ As a member of AFIA, Home entered various agreements whereby it reinsured certain insurance companies (the “AFIA Cedents”), including Zurich. In 1984, Cigna bought AFIA, and its subsidiary Insurance Company of North America (now Century Indemnity Company (“CIC”)) assumed Home’s reinsurance obligations respecting AFIA. The assumption agreement contained an insolvency clause requiring CIC to make payments directly to the Liquidator in the event of Home’s insolvency.

Pursuant to RSA 402-C and the Superior Court’s Liquidation Order, the Liquidator is charged with determining and resolving claims and administering and collecting Home’s assets for distribution to Home’s creditors.

When Home was found insolvent and placed in liquidation, the assumption agreement reinsurance became payable to the Liquidator based on the underlying AFIA Cedents’ claims allowed in the liquidation. The AFIA Cedents’ claims are Class V claims under RSA 402-C:44. As no distribution to Class V creditors was anticipated under the order of distribution set forth under RSA 402-C:44, the AFIA Cedents had no incentive to pursue claims in the Home liquidation. This would deprive the liquidation of reinsurance on the AFIA Cedents’ claims that could be collected and used to pay Class II creditors. To address this, the Liquidator entered into an agreement (“AFIA Agreement”) with the AFIA Cedents dated February 22, 2004. The AFIA Agreement provided an incentive for AFIA Cedents to submit Class V reinsurance claims by providing for the cedents to be paid a part of reinsurance recoveries on AFIA claims as a Class I administration cost. Over the objection of CIC, the Court approved the AFIA Agreement on

¹ On May 8, 2003, in conjunction with an application for an order of liquidation in New Hampshire, the Commissioner petitioned the High Court of Justice in London (an English court) to appoint Joint Provisional Liquidators for Home under English law.

September 22, 2005, and the New Hampshire Supreme Court affirmed the approval in 2006. In the Matter of Liquidation of Home Ins. Co., 154 N.H. 472 (2006) (“Home I”). A Scheme of Arrangement (the “Scheme”) was entered in England to implement the AFIA Agreement.

At the time Home was placed in liquidation, Zurich (then known as Agrippina) was involved in a separate arbitration proceeding with Home concerning a reinsurance contract known as “Treaty R.” The Liquidator and Zurich settled their disputes in a settlement agreement approved by the Court on February 17, 2005 and have obligations to one another pursuant to that agreement.

Since 2004, the Liquidator has determined claims and marshaled assets. As of May 31, 2019, the Liquidator had resolved 19,695 of 20,785 proofs of claim, and the Liquidator had allowed and the Court had approved approximately \$2.705 billion of policy-related claims entitled to Class II priority under RSA 402-C:44 and a total of \$3.08 billion in claims at all priority classes. As of May 31, 2019, the Liquidator held \$808 million in assets and had made early access distributions to guaranty associations totaling \$256 million, interim distributions (at a 30% distribution percentage) to non-guaranty association Class II creditors totaling \$620 million and applied \$56 million of special deposits as setoffs for a total of approximately \$1.74 billion in Home assets. The Liquidator does not expect there to be sufficient assets to pay Class II claims in full or to make any distributions to claimants in lower priority classes.

On August 1, 2019, the Liquidator moved for approval of a final deadline for the submission or amendment of claims in the liquidation proceeding (the “Claim Amendment Deadline”), as he asserted, to ensure Class II creditors receive the full extent of available distributions in a timely fashion. The effect of the Claim Amendment Deadline would be to require claimants to identify all claims so that they may be determined, after which the final

distribution percentage can be calculated and the final distribution paid. Claims not identified by the Claim Amendment Deadline would be barred. The Liquidator contended that the liquidation had progressed to the point where the Claim Amendment Deadline was appropriate and necessary to move the liquidation towards closure and permit final distributions to Class II creditors.

After notice to all persons with open proofs of claim in the liquidation, a number of persons filed objections, including Zurich and certain other AFIA Cedents. Zurich contended the Claim Amendment Deadline was not appropriate because it would end the ability of Zurich and other AFIA Cedents to submit “IBNR” claims, which are claims that are incurred but not yet reported. Zurich contended that it and other AFIA Cedents insure entities with significant “long-tail” exposure, for example, liability for asbestos and pollution claims under which injured parties are continuing to file claims against the policyholders and cedents of Zurich (who in turn are reinsured by Home), and that the establishment of a Claim Amendment Deadline would also end the ability of the Liquidator to make further reinsurance recoveries related to such claims that can then be used to pay creditors of Home.

The Court ultimately granted the Liquidator’s motion and approved the Claim Amendment Deadline in the Orders.

III. STATEMENT AS TO NECESSITY OF TRANSCRIPT

Zurich submits that a transcript of the December 11, 2020 oral argument on the Liquidator’s motion is necessary to determine the issues on appeal.

IV. QUESTIONS PRESENTED

1. Did the Court act within its discretion in granting the Liquidator's motion and approving the Claim Amendment Deadline on the law, facts and circumstances presented?
2. Did the Court act within its discretion in concluding that the Claim Amendment Deadline strikes "a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims" in accordance with RSA 402-C:46, I?

V. REASONS FOR INTERLOCUTORY APPEAL

In its Reconsideration Order, the Court afforded the Objecting Creditors the opportunity to pursue an interlocutory appeal to the New Hampshire Supreme Court. The Court concluded that this dispute over whether and when to establish a final deadline for the submission or amendment of claims in the liquidation proceeding presents a complex question of great importance to the administration of the liquidation, and that acceptance of the appeal may materially advance the termination of the litigation or clarify further proceedings in the litigation.

The decision to establish a final deadline for submission or amendment of claims is important to the liquidation and its creditors because the deadline will identify the universe of remaining claims so that they may be determined, which will permit the calculation and payment of the final distribution to Class II creditors. It affects the interests of the Class II priority creditors with allowed claims in obtaining final distributions on their claims and determining the amount available to Class II creditors. It also affects the interests of creditors such as Zurich with potential future claims that will be cut off by the deadline and an interest in Class I administrative expenses pursuant to the AFIA Agreement.

The parties submit that there is a substantial basis for a difference of opinion as to whether the established Claim Amendment Deadline is appropriate considering the law, facts, and circumstances of the liquidation proceeding. Specifically, the parties have a substantial difference of opinion as to whether the established claim amendment deadline strikes “a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims.” RSA 402-C:42.

Further, acceptance of this appeal will materially advance the termination of the liquidation proceeding if the Orders are upheld, and it will clarify further proceedings in the liquidation if they are not.

VI. APPENDICES AND STATEMENT OF CONFIDENTIALITY

Copies of the Orders, the pertinent text of statutes, and the pleadings, motions, and other filings, orders and exhibits necessary for the determination of the questions appealed, are included in the Appendices submitted with this Statement.

The Appendices consist of 3 volumes. Volumes 1 & 2 do not contain confidential information and were not filed under seal at the trial court. Volume 3 contains exhibits that the parties filed under seal and were treated as confidential before the trial court. On December 3, 2019 Zurich moved to file Exhibits 18D, 18F, 18G, and 18H under seal. *See Zurich’s Motion to File Under Seal Exhibits D, F, G, H of Zurich Insurance PLC, German Branch and Württembergische Versicherung AG’s Objection to the Liquidator’s Motion for Approval of Claim Amendment Deadline.* The trial court granted Zurich’s motion on February 28, 2020. *See Order Approving Motion to File Under Seal,* February 28, 2020. On May 1, 2020, the Liquidator moved to file Exhibits 24B – 24I under seal (*Liquidator’s Motion to File Under Seal Exhibits B to I to Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, Regarding*

Reports to Scheme Creditors' Committee), which the trial court hereby allows. The exhibits filed under seal are contained in Appendix Volume 3 and are marked FILED UNDER SEAL.

VII. APPROVAL

The undersigned hereby approves the transfer of the questions presented for appeal to the New Hampshire Supreme Court in accordance with Superior Court Rule 46 and Supreme Court Rule 8.

Date: _____

John C. Kissinger, Jr.
Presiding Justice

Respectfully submitted,

ZURICH INSURANCE PLC GERMAN
BRANCH,

By its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: May 12, 2021

By: /s/ Mark C. Rouvalis

Mark C. Rouvalis (Bar No. 6565)

mark.rouvalis@mclane.com

Steven J. Dutton (Bar No. 17101)

steven.dutton@mclane.com

Viggo C. Fish (Bar No. 267579)

viggo.fish@mclane.com

900 Elm Street, 10th Floor

Manchester, NH 03101

(603) 625-6464

FREEBORN & PETERS LLP

Joseph T. McCullough IV* (IL Bar # 6189956)

jmccullough@freeborn.com

Peter B. Steffen* (IL Bar # 6275987)

psteffen@freeborn.com

Freeborn & Peters LLP

311 South Wacker Drive, Suite 3000

Chicago, IL 60606

(312) 360-6000

**Admitted Pro Hac Vice*

CHRISTOPHER R. NICOLOPOULOS, INSURANCE
COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE, AS LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

By his Attorneys,

OFFICE OF THE NEW HAMPSHIRE
ATTORNEY GENERAL

J. Christopher Marshall, NH Bar ID No. 1619
J.Christopher.Marshall@doj.nh.gov
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650

Dated: May 12, 2021

By: /s/ Eric A. Smith
J. David Leslie, NH Bar ID No. 16859
dleslie@rackemann.com
Eric A. Smith, NH Bar ID No. 16952
esmith@rackemann.com
Margaret A. Capp, *pro hac vice*
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110-1700
(617) 542-2300

Certificate of Service

I hereby certify that a copy of the foregoing Interlocutory Appeal Statement was sent this 12th day of May 2021 by first class mail, postage prepaid to all persons on the attached service list and by email to those with an asterisk by their names. Due to the volume of the Interlocutory Appeal Statement appendices, which include documents that were filed under seal, hard copies of the appendices were not sent to the service list but the non-confidential appendices were made available electronically upon request.

/s/ Mark C. Rouvalis
Mark C. Rouvalis

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106**

SERVICE LIST

J. Christopher Marshall*
J.Christopher.Marshall@doj.nh.gov
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397

J. David Leslie*
dleslie@rackemann.com
Eric A. Smith*
esmith@rackemann.com
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110

Lisa Snow Wade, Esq.*
Orr & Reno
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Gary S. Lee, Esq.
James J. DeCristofaro, Esq.
Kathleen E. Schaaf, Esq.
Morrison & Foerster
250 West 55th Street
New York, NY 10019-9601

Joseph G. Davis, Esq.
Willkie Farr & Gallagher, LLP
1875 K Street, N.W.
Washington, DC 20006

Samantha D. Elliott, Esq.*
Gallagher, Callahan & Gartrell, P.C.
214 North Main Street
Concord, NH 03301

Harry Cohen, Esq.
Crowell & Moring
590 Madison Avenue
20th Floor
New York, New York 10022-2544

Stephanie V. Corrao, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

Joseph C. Tanski, Esq.
John S. Stadler, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110

David M. Spector, Esq.
Dennis G. LaGory, Esq.
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606

Martin P. Honigberg, Esq.
Suloway & Hollis, P.L.L.C.
9 Capitol Street
P.O. Box 1256
Concord, New Hampshire 03302-1256
Richard Mancino, Esq.
Willkie Farr & Gallagher, LLP
787 Seventh Avenue
New York, New York 10019

Albert P. Bedecarre, Esq.
Quinn Emanuel Urguhart Oliver & Hedges LLP
50 California Street, 22nd Floor
San Francisco, California 94111

Robert M. Horkovich, Esq.
Robert Y. Chung, Esq.
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020

Jeffrey W. Moss, Esq.
Morgan Lewis & Bockius, LLP
One Federal Street
Boston, Massachusetts 02110

Kyle A. Forsyth, Esq.
Commercial Litigation Branch/Civil Division
United States Department of Justice
P.O. Box 875
Washington, D.C. 20044-0875

Gregory T. LoCasale, Esq.
White and Williams, LLP
One Liberty Place, Suite 1800
Philadelphia, Pennsylvania 19103-7395

John A. Hubbard
615 7th Avenue South
Great Falls, Montana 59405

Mark J. Andreini, Esq.
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Paul A. Zevnik, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Tred R. Eyerly, Esq.*
Damon Key Leon Kupchak Hastert
1003 Bishop Street, Suite 1600
Honolulu, HI 96813

David H. Simmons, Esq.
Mary Ann Etzler, Esq.
Daniel J. O'Malley, Esq.
deBeaubien, Knight, Simmons,
Mantzaris & Neal, LLP
332 North Magnolia Drive
P.O. Box 87
Orlando, FL 32801

Joseph C. Safar
Jessica L.G. Moran
K&L Gates LLP
210 Sixth Ave.
Pittsburgh, PA 15222

Doreen F. Connor, Esq.
Primmer Piper Eggleston & PC
P.O. Box 3600
Manchester, NH 03105

Michael J. Tierney, Esq.
Wadleigh, Starr & Peters, PLLC
95 Market Street
Manchester, New Hampshire 03101

Harry L. Bowles
306 Big Hollow Lane
Houston, Texas 77042

Michael S. Lewis, Esq.
Rath Young Pignatelli
One Capital Plaza
Concord, New Hampshire 03302-1500
Keith Dotseth, Esq.*
Larson King
2800 Wells Fargo Place
30 East Seventh Street, Suite 2800
Saint Paul, Minnesota 55101

Michel Y. Horton, Esq.
Morgan, Lewis & Bockius LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, California 90071

Terri L. Pastori, Esq.*
Ashley Taylor, Esq.
Pastori | Krans, PLLC
82 North Main Street, Suite B
Concord, NH 03301

Michael P. Mullins, Esq.*
Day Pitney LLP
One International Place
Boston, MA 02110

Christopher J. Valente, Esq.
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, MA 02111
Mr. Edward Crosby
P.O. Box 155
Crowell, TX 79227

Ms. Patricia Erway
16604 Rialto Dr.
Winter Garden, FL 34787

Mark C. Rouvalis, Esq.
Steven J. Dutton, Esq.
Viggo C. Fish, Esq.
McLane Middleton, P.A.
900 Elm Street, 10th Floor
Manchester, NH 03101

Mark R. Goodman, Esq. Joseph T.
McCullough IV, Esq.*
Peter B. Steffen, Esq.*
Freeborn & Peters LLP
311 South Wacker Dr., Suite 3000
Chicago, IL 60606

Thomas J. Ladd, Esq.*
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102

Mr. Howard Campbell 10011
Mosher Hollow Road
Cattaraugus, NY 14719

Linda Faye Peebles*
P.O. Box 974
Fresno, TX 77545

Roland Jackson
Chief Executive Officer, Director
Catalina Services, UK Limited
1 Alie Street, 1st Floor
London, England E1 8DE

David Himelfarb, Esq.*
McCarter & English, LLP
265 Franklin Street, 14th Fl.
Boston, MA 02110