

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

**LIQUIDATOR'S REPORT REGARDING  
CLAIM AMENDMENT DEADLINE SET AT JANUARY 26, 2023**

Christopher R. Nicolopoulos, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), submits this report concerning the Claim Amendment Deadline established in this Liquidation. In light of the New Hampshire Supreme Court's affirmance of the orders establishing the Claim Amendment Deadline, **the Claim Amendment Deadline has now been established as January 26, 2023.**

**Background**

1. On August 1, 2019, the Liquidator filed his Motion for Approval of Claim Amendment Deadline. The Court issued an order of notice, and the Liquidator gave notice of the motion and deadline for opposition to all persons with open proofs of claim. The Court held a hearing on the motion and objections on December 11, 2020.

2. On January 28, 2021, the Court issued an order granting the Liquidator's motion and a separate order establishing the Claim Amendment Deadline. The Order Approving Claim Amendment Deadline is attached as Exhibit A. (The Court also issued a separate order explaining its decision.)

3. On February 11, 2021, certain objectors moved for reconsideration and for a stay. On April 20, 2021, the Court issued an order effectively denying reconsideration but granting a stay pending appeal. A copy of the Order is attached as Exhibit B. As pertinent here, the Order

provided that: “If an interlocutory appeal is sought, the January 28, 2021 Orders will be stayed. In the event a final interlocutory appeal is accepted by the New Hampshire Supreme Court, the Objecting Creditors’ motion to stay is GRANTED, pending a resolution of the question raised on appeal.” Order at 8.

4. The New Hampshire Supreme Court accepted the interlocutory appeal on July 26, 2021.

5. After briefing and argument, the New Hampshire Supreme Court issued its Opinion in the appeal on August 12, 2022. *In the Matter of the Liquidation of The Home Insurance Company*, No. 2021-0211 (N.H. Aug. 12, 2022). A copy of the Opinion is attached as Exhibit C.

6. The interlocutory appeal presented two questions: “[W]hether the superior court acted within its discretion: (1) ‘in granting the Liquidator’s motion and approving the Claim Amendment Deadline on the law, facts and circumstances presented’; and (2) 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.” *Liquidation of Home*, slip op. at 2.

7. In its Opinion, the New Hampshire Supreme Court answered both questions in the affirmative. *Liquidation of Home*, slip op. at 2. The New Hampshire Supreme Court affirmed the Superior Court’s orders and remanded the matter. *Id.* at 9.

8. On August 29, 2022, the New Hampshire Supreme Court issued its mandate attached as Exhibit D.

### **The Claim Amendment Deadline**

9. As described below, the January 28, 2021 Order Approving Claim Amendment Deadline is now in effect.

10. The New Hampshire Supreme Court's August 12, 2022 Opinion affirmed the Superior Court's Orders. The mandate was effective when it issued. New Hampshire Supreme Court Rule 24(3). The date of the mandate is the effective date of the New Hampshire Supreme Court's decision. New Hampshire Supreme Court Rule 24, comment.

11. In its April 20, 2021 Order, this Court had stayed the January 28, 2021 Orders granting the Liquidator's motion and approving the Claim Amendment Deadline "pending a resolution of the question raised on appeal." The questions presented on appeal have now been answered in the affirmative and the January 28, 2021 Orders have been affirmed by the Opinion. The questions raised on appeal have thus been resolved, and the Court's stay pending appeal has expired according to its terms.

12. The January 28, 2021 Order Approving Claim Amendment Deadline is accordingly effective as of the date of the New Hampshire Supreme Court's mandate: August 29, 2022.

13. The Order Approving Claim Amendment Deadline established the Claim Amendment Deadline as the date 150 days from the date of the Order, or if such date is a Saturday, Sunday or holiday, the next business day. Order Approving Claim Amendment Deadline ¶ 3. That day is Thursday, January 26, 2023.

14. In accordance with the Order Approving Claim Amendment Deadline, the Liquidator is preparing to mail notice of the Claim Amendment Deadline in the approved form to

all claimants who have an open proof of claim in the Home liquidation. *See* Order Approving Claim Amendment Deadline ¶ 12.

15. The Liquidator is also arranging for the Order Approving Claim Amendment Deadline and the notice (with the date of the Claim Amendment Deadline filled in), as well as this Report to be posted to the Liquidation Clerk's website. *See* Order Approving Claim Amendment Deadline ¶ 13.

Respectfully submitted,

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

By his attorneys,

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*/s/ Eric A. Smith*

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September 1, 2022

**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Report Regarding Claim Amendment Deadline was sent this 1<sup>st</sup> day of September, 2022, by first class mail, postage prepaid to all persons on the attached service list.

*/s/ Eric A. Smith*

Eric A. Smith

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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

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# **EXHIBIT A**

**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**

~~**[PROPOSED]**~~

**ORDER APPROVING CLAIM AMENDMENT DEADLINE**

On consideration of the motion of John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), requesting an order approving a claim amendment deadline for the final submission of amendments to proofs of claim and proofs of claim in the Home liquidation, notice of the motion and the deadline for filing of objections having been given as directed in the order of notice, ~~and no objections having been timely filed~~ and after consideration of timely filed objections, the Court hereby ORDERS as follows:

1. Establishment of the requested claim amendment deadline is fair and reasonable and in the best interest of the Home liquidation and Home's creditors as it will facilitate the resolution of claims and advance the distribution of the estate's assets and the closure of this proceeding without unnecessary administrative expense. It represents a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims, in accordance with RSA 402-C:46.
2. The Liquidator's Motion for Approval of Claim Amendment Deadline is granted.
3. The date 150 days from the date of this Order, or if such date is a Saturday, Sunday or holiday, the next business day, is hereby established as the Claim Amendment Deadline for the final submission of amendments (including supplements or any other

enlargements) to proofs of claim and new proofs of claim in the Home liquidation. Amendments to previously filed proofs of claim and any new proofs of claim must be filed by an amendment or completed proof of claim form that is received by the Liquidator on or before the Claim Amendment Deadline or that is mailed to the Liquidator by U.S. mail and bears a legible postmark showing mailing by U.S. mail on or before the Claim Amendment Deadline. Any amendments to previously filed proofs of claim or new proofs of claim received by the Liquidator after the Claim Amendment Deadline (unless mailed on or before the Claim Amendment Deadline as specified above) shall not be considered. Amendments to proofs of claim and proofs of claim shall be sent to:

The Home Insurance Company, in Liquidation  
61 Broadway, Sixth Floor  
New York, NY 10006

4. The June 13, 2004 Claim Filing Deadline established by the June 13, 2003 Order of Liquidation pursuant to RSA 402-C:26 and :37 continues to apply. The Liquidator shall determine whether claims received after the Claim Filing Deadline but on or before the Claim Amendment Deadline are excused or unexcused late-filed claims pursuant to RSA 402-C:37, II and III. The Liquidator shall review and determine all claims filed on or before the Claim Amendment Deadline. Subject to the provisions of this Order, which shall control, the procedures of the Restated And Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation dated January 19, 2005 ("Claims Procedures Order") shall continue to apply to the determination of claims in the Home liquidation.

5. Claims against Home not filed with the Liquidator on or before the Claim Amendment Deadline by amendment to a previously filed proof of claim form or by a new proof of claim form as provided in paragraph 3 above are barred from any distribution of the assets of

the Home estate. Post-Claim Amendment Claims and Potential Claims (as defined below) are deemed to prejudice the orderly administration of the liquidation within RSA 402-C:37 and are barred from any distribution of the assets of the Home estate:

a. **Post-Claim Amendment Deadline Claims.** A “Post-Claim Amendment Deadline Claim” is any amendment (including supplement or any other enlargement) to any previously filed proof of claim or any new proof of claim that is filed after the Claim Amendment Deadline. Post-Claim Amendment Deadline Claims are deemed to prejudice the orderly administration of the liquidation and shall not be considered, regardless of whether good cause – including but not limited to any reason constituting “good cause” under RSA 402-C:37, II – exists for filing after the Claim Amendment Deadline, and regardless of whether a right to reopen, refile, or supplement a claim was previously reserved. The Liquidator shall reject all Post-Claim Amendment Deadline Claims without consideration of their merits.

b. **Potential Claims.** A “Potential Claim” is any claim intended to be covered by a proof of claim or an amendment to a previously filed proof of claim where a specific claim has not been asserted by a specific claimant against a specific person on or before the Claim Amendment Deadline. These are sometimes referred to as “incurred but not reported” claims. Examples of Potential Claims are set forth in the Liquidator’s motion for approval of claim amendment deadline. Potential Claims are deemed to prejudice the orderly administration of the liquidation and shall not be considered, effective as of the Claim Amendment Deadline. The Liquidator shall reject all Potential Claims, effective as of the Claim Amendment Deadline, without consideration of their merits.

6. Claimants with open proofs of claim seeking coverage under a Home policy or reinsurance contract for Potential Claims must amend their proofs of claim by identifying and providing the particulars of all claims for which coverage is sought. Claims that have not been identified (as a specific claim by a specific claimant against a specific person) on or before the Claim Amendment Deadline shall be barred because, if later identified, they will be Post-Claim Amendment Deadline Claims in accordance with paragraph 5 above.

7. Amendments to proofs of claim must include available supporting information regarding the claims. The Liquidator may request claimants to provide additional information or evidence in support of their proofs of claim and amendments as provided in RSA 402-C:38, II. The Liquidator may consider a claimant's failure to timely provide requested supplementary information as ground to deny a claim, subject to review as provided in the Claims Procedures Order.

8. Claimants issued notices of determination as to Class V priority only, deferring determination as to amount, must amend their proofs of claim on or before the Claim Amendment Deadline and include an explanation of why their proofs of claim should be determined as to amount. In the absence of an amendment, the previous notices of determination shall be considered final determinations, and the Liquidator need not make any further determinations on those proofs of claim.

9. The establishment of the Claim Amendment Deadline does not affect claim determinations, including settlements, previously approved by the Court or made or entered by the Liquidator and not yet approved by the Court as of the Claim Amendment Deadline.

10. The establishment of the Claim Amendment Deadline does not permit the refiling or rearguing of proofs of claim previously determined by the Liquidator. Duplicative

amendments or proofs of claim shall not be submitted. If a proof of claim or amendment duplicates or reasserts a previously determined claim, the Liquidator shall reject the proof of claim or amendment without consideration of its merits.

11. The Claim Amendment Deadline applies to all claims except (a) administration costs within RSA 402-C:44, I, and (b) claims of the United States Government.

12. Within 30 days from receipt of this Order, the Liquidator shall mail notice of the Claim Amendment Deadline in the form attached to this Order by first class mail, postage prepaid, using the latest mailing address provided to the Liquidator by the claimant, to all claimants who have open proofs of claim in the Home liquidation. Open proofs of claim means those on which (a) there has been no determination, (b) there has been only a partial determination or determinations, (c) there has been a determination that has not yet been approved by the Court, (d) there has been a determination as to priority but deferral as to amount, or (e) there has been a determination that provided that the claimant could submit further claims. Where the claimant is represented by counsel, notice shall also be mailed to counsel at the latest address provided to the Liquidator. Notice to claimants or counsel with addresses outside the United States shall be sent by air mail, postage prepaid.

13. The Liquidation Clerk shall promptly post this Order and the notice attached to this Order in the Merrimack County Superior Court Files and the Key Documents Relating to the Liquidations sections of the Home Liquidation Clerk website ([www.hicilclerk.org](http://www.hicilclerk.org)).

SO ORDERED

Dated: \_\_\_\_\_

1/28/21

  
\_\_\_\_\_  
Presiding Justice

**The Home Insurance Company, in Liquidation  
61 Broadway, Sixth Floor  
New York, NY 10006**

POC No(s): \_\_\_\_\_

**NOTICE OF CLAIM AMENDMENT DEADLINE  
FOR THE HOME INSURANCE COMPANY, IN LIQUIDATION**

To Persons who have open proofs of claim in the liquidation of The Home Insurance Company ("Home") and other persons:

Home is in liquidation proceedings before the Merrimack County Superior Court of the State of New Hampshire (the "Court"), In the Matter of the Liquidation of The Home Insurance Company, Docket No. 217-2003-EQ-00106. John R. Elias, Insurance Commissioner of the State of New Hampshire, is the Liquidator of Home ("Liquidator").

The Court has established \_\_\_\_\_ [INSERT BUSINESS DATE 150 DAYS FROM DATE OF COURT'S ORDER OR NEXT BUSINESS DAY] as the Claim Amendment Deadline for the final amendment of proofs of claim or submission of proofs of claim in the Home liquidation. Claims against Home must be received by the Liquidator or postmarked by U.S. mail on or before the Claim Amendment Deadline at the address set forth above or they will be barred from sharing in any distribution of assets from the Home estate. "Post Claim Amendment Claims" and "Potential Claims" as defined the Order Approving Claim Amendment Deadline dated \_\_\_\_\_ are barred and will not be considered. The Order Approving Claim Amendment Deadline is available in the "Key Documents Relating To The Liquidations" section of the Home Liquidation Clerk website, [www.hicilclerk.org](http://www.hicilclerk.org), at \_\_\_\_\_ [INSERT LINK].

If you have an open proof of claim in the Home liquidation, you have until \_\_\_\_\_ [INSERT SAME DATE] to amend your proof of claim to supplement or update your claim. If you add a claim, you must include an explanation of why the claim was not filed by the June 13, 2004 claim filing deadline with your amendment. If your open proof of claim seeks coverage under a Home policy or reinsurance contract for Potential Claims, you must amend your proof of claim to make it specific by identifying and providing the particulars of all claims for which coverage is sought.

Any new proofs of claim in the Home liquidation must be filed on or before \_\_\_\_\_ [INSERT SAME DATE]. The proof of claim form and instructions may be obtained by downloading them from the "Key Documents Relating To The Liquidations" section of the website for the liquidation, [www.hicilclerk.org](http://www.hicilclerk.org), by calling 1-800-347-0014 during regular business hours (Monday-Friday 8-5 ET), or by writing to the address above. You must include an explanation of why your proof of claim was not filed by the June 13, 2004 claim filing deadline with your proof of claim.

If you have been issued a notice of determination as to Class V priority only, deferring determination as to amount, you have until \_\_\_\_\_ [INSERT SAME DATE] to amend your proof of claim and include an explanation of why your proof of claim should be determined as to amount. In the absence of an amendment, the previous notices of determination shall be considered final determinations, and the Liquidator need not make any further determination on your proof of claim.

**Your submission must include available supporting information regarding your claim.**

Amendments and proofs of claim must be received by the Liquidator or legibly postmarked by U.S. mail on or before the \_\_\_\_\_ [INSERT SAME DATE] Claim Amendment Deadline. Amendments and proofs of claim received or postmarked after the Claim Amendment Deadline will not be considered.

**John R. Elias, New Hampshire Insurance Commissioner,  
as Liquidator of The Home Insurance Company**



# **EXHIBIT B**

# The State of New Hampshire

MERRIMACK COUNTY

SUPERIOR COURT

IN THE MATTER OF THE LIQUIDATION OF  
THE HOME INSURANCE, CO.

Docket No.: 217-2003-EQ-00106

## ORDER

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator of the Home Insurance Company (the "Home"), has moved for the Court to establish a final deadline for the amendment or submission of claims in the Home's liquidation proceedings (the "Claim Amendment Deadline"). The Court granted the Liquidator's motion on January 28, 2021, over the objection of various parties, including several insurance agencies reinsured by the Home (the "AFIA Cedents"). A number of AFIA Cedents (the "Objecting Creditors") now move for the Court to stay and to reconsider portions of its January 28, 2021 Orders granting the Liquidator's motion. These are: the German branch of Zurich Ins., P.L.C., Württembergische Versicherung, A.G. (collectively, "Zurich and Württembergische"), Nationwide Mutual Ins. Co., Indemnity Marine Assurance Co., Nederlandse Reassurantie Groep N.V., NRG Victory Reinsurance Ltd., NRG Fenchurch Ins. Co., Ltd., New Zealand Reinsurance Co., Tenecom Ltd., Underwriters at Lloyd's of London, Winterthur Swiss Ins. Co., and World Auxiliary Corp., Ltd. The Liquidator<sup>1</sup> partially objects. For the following reasons, the Objecting Creditors' motion for partial reconsideration of the Court's January 28, 2021

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<sup>1</sup> The current Liquidator, and the party bringing the objection, is Christopher R. Nicolopoulos. Mr. Elias has not served as Insurance Commissioner since December 2019.

Orders is DENIED in part, while their motion to stay is GRANTED in part.

A. Motion for Reconsideration

A motion for reconsideration “shall state, with particular clarity, points of law or fact that the [C]ourt has overlooked or misapprehended.” Super. Ct. Civ. R. 12(e). The Objecting Creditors contend the Court overlooked or misapprehended each of the following: (1) the Liquidator does not have the power to disavow post liquidation contracts, (2) the facts before the Vermont Supreme Court in In re Ambassador Insurance Co., 114 A.3d 492 (2015), are the “[s]ame as [p]resented [h]ere” and this Court’s application of the balancing test employed by the In re Ambassador court must account for the Liquidator’s “[f]ailure to [e]stimate” the value of incurred but not reported (“IBNR”) claims, (3) the statute of limitations for claims brought pursuant to New York’s Child Victims Act has been extended to August 2021, and (4) the status of Johnson & Johnson’s settlement is unclear and may bear upon the Court’s consideration of the instant motion. (Zurich and Württembergische’s Mot. Recon. at 1–9.) The Court addresses each argument in turn.

First, the Objecting Creditors successfully argue the Court misapprehended the Liquidator’s power to disavow contracts post-liquidation pursuant to RSA 402-C:25, XI. RSA 402-C:25, XI provides, in relevant part, that “[s]ubject to the [C]ourt’s control, [the Liquidator] may . . . affirm or disavow any contracts to which the insurer is a party.” In its January 28, 2021 Order addressing the AFIA Cedents’ objections to the Claim Amendment Deadline (the “Primary Order”), the Court interpreted this provision to grant the Liquidator broad authority to disavow any prior agreements the Liquidator may have reached with the AFIA Cedents once appointed to the liquidation. Upon

reconsideration, such a reading does not comport with the policy goals sought to be advanced by the statute, nor with the New Hampshire Supreme Court's endorsement of binding agreements between the AFIA Cedents and the Liquidator. See In re Liquidation of Home Ins. Co., 154 N.H. 472, 490 (2006) (upholding the AFIA agreements as "fair and reasonable"); 402-C:1, IV ("The purpose of this chapter is," in part, to promote "[i]mproved methods for rehabilitating insurers" and to "[e]nhance[] [the] efficiency and economy of liquidation."). Despite the ostensibly broad language of RSA 402-C:25, XI, courts in other jurisdictions have interpreted similar statutory provisions to apply only in the pre-liquidation context. See, e.g., State ex rel. Wagner v. Kay, 722 N.W.2d 348, 355 (2006) (The "liquidator is not automatically bound by the preappointment contractual obligations of the insurer.") (emphasis added); Benjamin v. Pipoly, 800 N.E.2d 50, 59 (2003) (Ohio Ct. App. 2003) ("Thus, we hold that when a liquidator is appointed by court order, as in the instant case, she is not automatically bound by the pre-appointment contractual obligations of the insurer.") (emphasis added); First Am. Ins. Co. v. Commonwealth Gen. Ins. Co., 954 S.W.2d 460, 469 (Mo. Ct. App. 1997) (The applicable state statute "grants [the liquidator] broad authority to disaffirm pre-liquidation agreements to which the insurer is a party . . .") (emphasis added).

Nevertheless, for the reasons cited in the Primary Order, the Court properly concludes the Claim Amendment Deadline strikes "a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims." See RSA 402-C:46, I. The agreements reached between the Liquidator and the Objecting Creditors, including those common to all AFIA Cedents

and those reached with individual parties, have no bearing on the result reached by the Court. Nothing in the texts of the agreements cited by the Objecting Creditors, nor by any of the AFIA Cedents in this litigation, addresses how long the Liquidator is obligated to accept the filing of proofs of claim, nor purports to set aside generally applicable limitations the Liquidator may ordinarily impose on the filing of such claims. In the absence of any contractual language addressing these matters, or of any other indications that the Liquidator ever manifested an intent to limit his authority to impose a Claim Filing Deadline, the Court cannot read into the parties' various agreements what the parties did not see fit to include. Poland v. Twomey, 156 N.H. 412, 414 (2007) ("A valid, enforceable contract requires . . . a meeting of the minds," which consists of a shared understanding of the "essential terms" of the agreement and a "manifest . . . intention" to be bound by such terms) (emphasis added).

Second, the Court neither overlooked nor misapprehended any issue of fact or law in its treatment of In re Ambassador, 114 A.3d 492. Super. Ct. Civ. R. 12(e). As the Court noted in its Primary Order, the facts before the Vermont Supreme Court in In re Ambassador are not the same as those presently before the Court. In re Ambassador dealt with a claim filing deadline, not a claim amendment deadline. Here, a claim filing deadline was imposed more than sixteen years ago, in June 2004. In addition, unlike the liquidator before the Vermont Supreme Court in In re Ambassador, the Liquidator here does not have sufficient means to pay all policyholder claimants in full. Crucially, the Liquidator is unable to issue final disbursements to policyholder claimants unless and until a claim amendment deadline is imposed. The Court can hardly agree with the Objecting Creditors that the facts before the Vermont Supreme

Court in In re Ambassador are, in practice, the “[s]ame as [those] [p]resented [h]ere.” (Zurich and Württembergische’s Mot. Recon. at 6.) Moreover, the Court committed no error by failing to require the Liquidator to quantify the value of IBNR claims prior to weighing the factors adopted by the In re Ambassador court. No party to this action is in a position to produce a reliable estimate of the value of IBNR claims and, for the reasons laid out in the Court’s Primary Order, there are sufficient facts before the Court for it to conclude the In re Ambassador factors, if applicable, do not compel the Court to require the Liquidator to keep the liquidation open at the expense of ensuring final distributions are disbursed to priority creditors.

Third, the Objecting Creditors successfully argue the Court misapprehended the latest extension of the statute of limitations applicable to New York’s Child Victims Act. See N.Y. C.P.L.R. § 214-g (2020). The statute of limitations pertaining to New York’s Child Victims Act was most recently extended to August 14, 2021, not 2020. Id. (An “action [hereunder] may be commenced not earlier than six months after, and not later than two years and six months after” February 14, 2019, “the effective date of this section.”) (emphasis added). The Court erroneously relied on a prior version of the statute, which instead read “not earlier than six months after, and not later than one year and six months after” the effective date of the statute. Id. (2019) (emphasis added).

Nevertheless, the Court is not persuaded that the interests of those Class II policy holders who may be affected by the statute of limitations’ extension outweigh the interests of other Class II policy holders in securing timely, final distributions on their pending claims. It has now been more than sixteen years since the expiration of the

Claim Filing Deadline, and the Liquidator has a statutory mandate to “[e]xercise and enforce all the rights, remedies and powers” of priority creditors, not individually but as a class. 402-C:25, XVIII, X. The Court committed no error by granting a Claim Amendment Deadline that prioritizes the interests of all Class II creditors over the interests of individual creditors who are or may be affected by limitations extensions to statutes that implicate potential claims. In the absence of the Claim Amendment Deadline, the Liquidator is unable to distribute substantial estate assets to Class II creditors for the foreseeable future, frustrating his statutory obligation to secure an “expeditious completion” of the liquidation that timely distributes to priority creditors as large a portion of their claims as possible. Id.; RSA 402-C:46, I.

Finally, the Court’s January 28, 2021 Orders contain no errors of fact or law with respect to any aspect of Johnson & Johnson’s settlement agreement with the Liquidator. As the Objecting Creditors note, Johnson & Johnson withdrew its objection to the Claim Amendment Deadline prior to the December 11, 2020 hearing on the merits. The status of the settlement agreement has no bearing on the Court’s January 28, 2021 Orders and the Court was under no obligation to consider any of Johnson & Johnson’s former objections once those objections were withdrawn. Accordingly, the Objecting Creditors have failed to identify, with “particular clarity,” any “points of law or fact that the [C]ourt has overlooked or misapprehended” sufficient to warrant a reversal of any of the Court’s January 28, 2021 rulings. Super. Ct. Civ. R. 12(e).

#### B. Motion to Stay

Contemporaneously with their motion for reconsideration, the Objecting Creditors have filed a motion to stay the Court’s January 28, 2021 Orders “during the pendency of

reconsideration and for a further period of time as necessary to allow for appeal,” whether direct “or interlocutory,” to “the New Hampshire Supreme Court.” (Zurich and Württembergische’s Mot. Stay ¶ 3.) They argue that the 150 day period afforded by the Court to submit amendments to existing claims with the Liquidator is only a “short period,” and allowing the “claim amendment time period to run while the Court considers issues on reconsideration” is unfairly prejudicial to the Objecting Creditors, as the issues raised by the motion to reconsider “bear directly on the Court’s approval of the claim amendment deadline itself.” (Id. ¶ 5.) In addition, they argue the Claim Amendment Deadline renders the Objecting Creditors’ appeal “vulnerable to a mootness argument” absent a stay. (Id. ¶ 6.)

The Liquidator does not object to a stay of the Claim Amendment Deadline “limited to the time until Zurich and Württembergische’s motion for reconsideration is resolved.” (Liq.’s Resp. Mot. Stay ¶ 1.) However, the Liquidator opposes the grant of a stay pending appeal, citing prejudice to Class II creditors, whose claims have preference over the Objecting Creditors’ Class V claims and who would otherwise be prevented from receiving “the full extent of available distributions in a timely fashion.” (Id. ¶¶ 1–5 (citing RSA 402-C:44, II).)

The Court retroactively grants a stay of its January 28, 2021 Orders ending 30 days from the issuance of this Order, so as to afford the Objecting Creditors an opportunity to pursue an interlocutory appeal with the New Hampshire Supreme Court. While the Court is mindful that allowing the clock to run on the Claim Amendment Deadline may prejudice the Objecting Creditors’ arguments on appeal, the Court is also mindful of the interests of Class II priority creditors in securing final distributions from the



Home liquidation. As the Objecting Creditors have only Class V priority status, their interests must yield to those of higher priority creditors that stand to benefit from an imposition of the Claim Amendment Deadline. See RSA 402-C:44.

The Objecting Creditors are, accordingly, granted an opportunity to confer with the Liquidator and submit to the Court an agreed-upon “interlocutory appeal statement” pursuant to Sup. Ct. Civ. R. 46(a). (“Whenever any question of law is to be transferred by interlocutory appeal from a ruling . . . counsel shall seasonably prepare and file with the trial court the interlocutory appeal statement or interlocutory transfer statement pursuant to Supreme Court Rule 8 or Supreme Court Rule 9 . . .”) The Court is mindful “that interlocutory appeals should be limited to exceptional cases” and will only sign an interlocutory appeal statement compliant with Supreme Court Rules. Guyette v. C & K Dev. Co., 122 N.H. 913, 918 (1982). If the parties do not come to an agreement on the scope or any other material aspect of the interlocutory appeal statement within 14 days of the clerk’s notice of decision on this order, counsel for the Objecting Creditors and for the Liquidator shall each submit competing statements for the Court’s consideration within 7 days of that deadline. If an interlocutory appeal is sought, the January 28, 2021 Orders will be stayed. In the event a final interlocutory appeal is accepted by the New Hampshire Supreme Court, the Objecting Creditors’ motion to stay is GRANTED, pending a resolution of the question raised on appeal. Otherwise, the Court’s January 28, 2021 Orders shall take full effect as of 30 days from the issuance of this Order or 30 days from the date of any decision by the New Hampshire Supreme Court denying an interlocutory appeal, whichever is later.

For the foregoing reasons, the Objecting Creditors’ motion for partial

reconsideration is DENIED, in part, and their motion to stay is GRANTED, in part.

**SO ORDERED.**

Date 4/26/21

  
John C. Kissinger, Jr.  
Presiding Justice

# **EXHIBIT C**

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Charles Doe Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by email at the following address: [reporter@courts.state.nh.us](mailto:reporter@courts.state.nh.us). Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court's home page is: <https://www.courts.nh.gov/our-courts/supreme-court>

THE SUPREME COURT OF NEW HAMPSHIRE

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Merrimack  
No. 2021-0211

IN THE MATTER OF THE LIQUIDATION OF THE HOME INSURANCE  
COMPANY

Argued: February 10, 2022  
Opinion Issued: August 12, 2022

McLane Middleton, Professional Association, of Manchester (Mark C. Rouvalis and Viggo C. Fish on the brief), and Freeborn & Peters LLP, of Chicago, Illinois (Joseph T. McCullough IV and Peter B. Steffen on the brief, and Peter B. Steffen orally), for the appellant.

John M. Formella, attorney general (J. Christopher Marshall on the brief), and Rackemann, Sawyer & Brewster P.C., of Boston, Massachusetts (J. David Leslie, Eric A. Smith, and Margaret C. Fitzgerald on the brief, and J. David Leslie orally), for appellee Insurance Commissioner of the State of New Hampshire, as Liquidator of the Home Insurance Company.

Kazmarek Mowrey Cloud Laseter LLP, of Pittsburgh, Pennsylvania (Paul K. Stockman on the brief and orally), and Wadleigh, Starr & Peters, P.L.L.C., of Manchester (Michael J. Tierney on the brief), for appellees Bridgestone

Americas Tire Operations, LLC, Eli Lilly and Company, ViacomCBS Inc., and the Archdiocese of Saint Paul and Minneapolis Settlement Trust.

HANTZ MARCONI, J. This interlocutory appeal was filed by the appellant, Zurich Insurance plc, German Branch (Zurich), from an order of the Superior Court (Kissinger, J.) granting the motion of the Insurance Commissioner of the State of New Hampshire, as Liquidator (Liquidator) of the Home Insurance Company (Home), for approval of the Claim Amendment Deadline pursuant to the Insurers Rehabilitation and Liquidation Act (Act). See RSA ch. 402-C (2018 & Supp. 2021); see also Sup. Ct. R. 8(1), Super. Ct. R. 46(a). Policyholders Bridgestone Americas Tire Operations, LLC, Eli Lilly and Company, ViacomCBS Inc., and the Archdiocese of Saint Paul and Minneapolis Settlement Trust (policyholders), submitted a brief in support of the Claim Amendment Deadline.

The two questions presented are whether the superior court acted within its discretion: (1) “in granting the Liquidator’s motion and approving the Claim Amendment Deadline on the law, facts and circumstances presented”; and (2) 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 (2018). We answer both questions in the affirmative.

## I. Background

We accept the statement of the case and facts as presented in the interlocutory appeal statement and rely upon the record for additional facts as necessary. See State v. Hess Corp., 159 N.H. 256, 258 (2009). Home is a New Hampshire-domiciled insurance company, which wrote insurance and reinsurance in almost all fifty states as well as Canada, Bermuda, Hong Kong, and the United Kingdom. After experiencing financial difficulties, Home stopped writing new personal lines of business in the early 1990s. By 1995, Home had stopped writing all business, including commercial lines, with the exception of certain personal lines subject to renewal in a few states.

In June 2003, Home was declared insolvent and the Liquidator was appointed to administer and collect Home’s assets for distribution to Home’s creditors. See In the Matter of Liquidation of Home Ins. Co., 154 N.H. 472, 475 (2006) (Home I). The Order of Liquidation established June 13, 2004 as the deadline for filing claims, subject to provisions permitting the filing of late-filed claims. 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 deadline until the date of the Claim Amendment Deadline, which the Liquidator proposes to be established 150 days from the trial court's final order.

Before liquidation, Home participated in the insurance market in the United Kingdom as part of the American Foreign Insurance Association (AFIA). As an AFIA member, Home entered into various agreements whereby it reinsured certain insurance companies' risks (the AFIA cedents), including Zurich. In 1984, AFIA was purchased by Cigna and, as part of the transaction, a subsidiary of Cigna, the Insurance Company of North America (INA), assumed Home's reinsurance obligations with respect to AFIA. By agreement, INA was required to pay obligations directly to Home or the Liquidator in the event of Home's insolvency. In 1999, Century Indemnity Company (CIC) succeeded to INA's obligations.

When Home was declared insolvent in 2003, the reinsurance obligations became payable to the Liquidator based on the underlying AFIA cedents' claims allowed in the liquidation. The Liquidator determined that the AFIA cedents' claims are Class V claims under RSA 402-C:44 (2018), and no distribution to Class V creditors was anticipated under the order of distribution set forth in the statute. As incentive for the AFIA cedents to continue to file and prove their claims, so that the Liquidator could collect reinsurance to use to pay Class II creditors, the Liquidator entered into an agreement with the AFIA cedents (AFIA Agreement).

Under the AFIA Agreement, the AFIA cedents agreed to cede to the Liquidator their claims under the reinsurance contracts with Home and, in return for continuing to file and quantify their claims, the Liquidator would pay them a share of the reinsurance collected by the Liquidator from CIC as a Class I administrative cost. See RSA 402-C:44, I (2018). This court upheld the AFIA Agreement as fair and reasonable because the AFIA cedents would not have filed claims against the Home estate without a financial incentive and, most importantly, the agreement benefitted the Class II claimants by increasing the likelihood that their claims would be paid. Home I, 154 N.H. at 489-90. A Scheme of Arrangement (Scheme) was entered into in England to implement the AFIA Agreement.

As of May 31, 2019, the Liquidator had resolved 19,695 of 20,785 proofs of claim and allowed \$2.705 billion of policy-related claims entitled to Class II priority and a total of \$3.08 billion in claims at all priority classes. As of the same date, the Liquidator held \$808 million in assets and had made early distribution 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.

In August 2019, the Liquidator moved for approval of the Claim Amendment Deadline for the submission or amendment of claims in the liquidation proceeding. The effect of the 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 asserted that “to move this proceeding to closure and protect the interests of creditors with allowed Class II claims,” it was “necessary to establish a deadline by which claimants must finally amend their claims in order to provide the Liquidator with the specificity required for determination of claims.” The Liquidator contended that establishing such a deadline was supported by five factors.

First, the Liquidator asserted, “there has been a lengthy period of time for claims against Home to emerge’ — because Home stopped issuing policies in 1995 and has been in liquidation since 2003, claims under Home policies “have had at least twenty-three years to develop, and claimants have had sixteen years to assert them in the liquidation.” Second, “the vast majority” of proofs of claim have been determined, “resolving 19,695 (almost 95%) of the 20,785 proofs of claim, including 17,370 (95%) of the 18,257 Class II proofs of claim.” Third, because the “remaining open proofs of claim . . . involve ‘long tail’ exposures, such as asbestos or environmental exposures,” “[a]bsent some requirement to update and substantiate their claims, these insureds are likely to prefer to keep them open and await future developments.” Fourth, the Liquidator asserted that he had “collected a substantial part of the assets of the estate” and the remaining additional assets “principally consist of potential reinsurance recoveries that will not be realized unless underlying claims against Home are filed and proved.” Finally, the Liquidator explained, “keeping the liquidation open requires the payment of the ongoing costs of administering the estate” of approximately \$13 million per year. Given these circumstances, the Liquidator concluded that “the balance now clearly weighs in favor of establishing the Claim Amendment Deadline.”

Zurich objected, arguing that the proposed deadline fails to strike the “reasonable balance” required by RSA 402-C:46, I. Zurich contended that the superior court should decline to set the proposed claims deadline, as it would “cut off” Zurich’s ability to submit claims that were previously incurred but not yet reported (IBNR claims). In addition, Zurich argued that the Liquidator “should be estopped from imposing the proposed deadline” because it “is at odds with” the AFIA Agreement, Zurich’s settlement with Home, and the Scheme.

Following a hearing, the superior court granted the Liquidator's motion. The court concluded that the Claim Amendment Deadline satisfied the "reasonable balance" standard set forth in RSA 402-C:46, I. Rejecting Zurich's objections, the court reasoned:

Home has been in liquidation since June 2003, more than seventeen years ago. The only recoverable non-administrative claims that remain are those of Class II policyholders, whose claims have had at least twenty-three years to develop since the Home stopped providing material coverage in 1997. The Liquidator does not owe a duty under the Act to protect the undetermined claims of creditors below Class II, including those of the AFIA cedents, as the Home estate lacks assets sufficient to make distributions to Class II claimants. Consequently, the AFIA cedents' IBNR claims are not relevant to the "reasonable balance" analysis imposed by the Act.

(Citations omitted.) The court subsequently denied Zurich's motion for reconsideration, but stayed the effect of its order pending resolution of this interlocutory appeal.

## II. The Act

The purpose of RSA chapter 402-C "is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors, through . . . [e]nhanced efficiency and economy of liquidation," and "[e]quitable apportionment of any unavoidable loss." RSA 402-C:1, IV(c), (d) (2018); see Home I, 154 N.H. at 488 (explaining that "the purpose of RSA chapter 402-C is to protect preferred creditors by reserving assets for them"). The Act "grants the liquidator broad authority to administer liquidation proceedings," as overseen by the superior court. Home I, 154 N.H. at 482. The chapter "shall be liberally construed to effect" its purpose. RSA 402-C:1, III (2018).

RSA 402-C:44 governs the order of distribution of claims from a liquidated insurer's estate, and establishes classes of claimants as part of the distribution process. RSA 402-C:44 (2018); see Home I, 154 N.H. at 475. Subject to a \$50 per claim deductible, "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." RSA 402-C:44. The statute sets forth ten successive priority classes of claims against an insolvent estate and the order in which they shall be paid. See RSA 402-C:44, I-X. Costs of administering the liquidation are given first priority, RSA 402-C:44, I, followed by Class II priority claims, which include policy-related claims of insureds, third party claimants against insureds, and guaranty associations, RSA 402-C:44, II. See Home I, 154 N.H. at 475-76.



As to the distribution of assets upon liquidation, the Act provides that “[u]nder the direction of the court, the liquidator shall pay dividends in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims.” RSA 402-C:46, I. “When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge.” RSA 402-C:48 (2018).

### III. Analysis

The questions before us ask whether the superior court acted within its discretion in granting the Liquidator’s motion for the Claim Amendment Deadline. Thus, in reviewing the superior court’s decision, we determine whether the record establishes an objective basis sufficient to sustain the discretionary judgment made. See State v. Lambert, 147 N.H. 295, 296 (2001). The party challenging the decision must demonstrate that the court’s ruling was clearly untenable or unreasonable. See id.

Zurich argues that the superior court erred in granting the Liquidator’s motion because it fails to strike a “reasonable balance” between the expeditious completion of the liquidation and the protection of IBNR claims since “the Liquidator provided no estimate of either [Home’s] unrecovered assets or remaining liabilities that would allow such an analysis to take place.” Acknowledging that there is “no binding New Hampshire authority directly on point,” Zurich relies upon a Vermont Supreme Court case, In re Ambassador Insurance Company, Inc., 114 A.3d 492 (Vt. 2015), and asserts that the superior court erroneously failed to follow the test set forth in that case. The Liquidator counters that Zurich’s reliance on Ambassador is misplaced. The Liquidator asserts that, unlike Ambassador where the company was solvent “and all its policyholder claims had been paid ‘in full, with interest,’” here “Home’s Class II creditors have only received 30% on their claims.”

Ambassador involved the liquidation of Ambassador Insurance Company, Inc., an insurance company incorporated and domiciled in Vermont. Id. at 493. In 2008, in the course of the liquidation proceedings, the liquidator recovered \$205 million from a judgment against Ambassador’s auditor for professional malpractice. Id. at 494. Those funds allowed Ambassador to pay in full priority-four policyholders who had previously received only partial distributions. Id. As of 2012, all court-approved policyholder claims had been paid in full, with interest, and Ambassador had nearly \$92 million in assets remaining. Id.

The liquidator moved to establish a deadline by which all claimants, including those who previously filed policyholder-protection claims, would need to file final proofs of claim. Id. at 494, 496. NICO, assignee of two excess

coverage policies with Ambassador, was in litigation over \$20 million in claims stemming from an underlying suit related to asbestos exposure, and objected to the establishment of a final claim date, arguing that setting the date too soon would “unreasonably limit claimants’ ability to submit proof of their claims.” Id. at 495-96. Nonetheless, the trial court set December 31, 2013 as the final deadline. Id.

On appeal, NICO argued that, because Ambassador was solvent and the liquidator could “continue to cover all costs of administration in addition to paying claims,” the final claim date did not “strike a reasonable balance between the need to wind up the liquidation and the rights of policyholders with unliquidated claims.” Id. at 497. The Vermont Supreme Court agreed. Id. at 500.

At the outset, the court explained that the primary issue before it was “not whether the trial court had the legal authority to set a final claim date,” or “whether the liquidation estate should remain open forever, with no deadline for presenting liquidated claims.” Id. at 497. Rather, the question was “whether, given the unique circumstances of [the] case, the trial court erred in setting December 31, 2013 as a final date for submission of proofs of liquidated claims.” Id.

Those “unique circumstances” included that the liquidator had “approximately \$92 million in Ambassador assets—more than enough to pay the \$26 million in known [policyholder] claims, the approved [priority-five] claims, and the reasonable costs of administration.” Id. at 497, 500. Thus, Ambassador had “ample resources to meet its known obligations” to policyholder claimants (\$26 million), “to pay the \$20 million in claims asserted by NICO, if they [were] established, to pay claimants with known but not yet liquidated [policyholder] claims (estimated in Ambassador’s reserves to be around \$18 million), to sustain its administrative costs for at least five years, and even to pay the bulk of known obligations to [priority-five] claimants.” Id. at 500-01. Given that Ambassador had “sufficient funds to pay additional known and not yet liquidated, and even yet-unknown [policyholder] claims,” the court could not conclude that “all assets that [could] be economically collected and distributed [had] been collected and distributed.” Id. at 501 (quotation omitted).

The court distinguished the case before it from “the typical liquidation” in which the insurance company is insolvent and “the limited assets relative to the outstanding debt generally force an end to the liquidation proceeding: at some point, the insolvent estate runs out of money, or its assets drop to a point where it becomes uneconomic to continue administering the estate.” Id. at 500. The court also noted that “no [policyholder] claimants [were] currently prejudiced by allowing additional time for those with known but unliquidated

claims to perfect their claims, or for those with yet-unknown claims protected by policyholder-protection claims to make actual claims.” Id. at 501.

We agree with the Liquidator that Ambassador is readily distinguishable from the circumstances presented here. As the Liquidator asserts, “in Ambassador, there were no interests of Class II policyholders weighing against holding the liquidation open,” because “Ambassador was solvent, and all of its policyholder claims had been paid in full, with interest.” (Emphasis and quotation omitted.) In contrast, here, as the superior court found, “Home is unable to pay all policyholder claimants in full, and it will be unable to issue final disbursements to policyholder claimants until a claim amendment deadline is approved.” The fact that there are insufficient assets to make whole the priority Class II policyholders renders the analysis in Ambassador inapplicable to the determination in this case of whether the Claim Amendment Deadline satisfied the “reasonable balance” required by RSA 402-C:46, I. Accordingly, we disagree with Zurich that it was error for the superior court to decline to apply Ambassador.

Zurich also argues that the superior court erred in approving the Claim Amendment Deadline because imposing a deadline “is at odds with” the AFIA Agreement, Zurich’s settlement agreement with Home, and the Scheme. The interpretation of a contract is a question of law, which we review de novo. In the Matter of Liquidation of Home Ins. Co., 157 N.H. 543, 546 (2008). When interpreting a written agreement, we give 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. Id. Absent ambiguity, the parties’ intent will be determined from the plain meaning of the language used in the contract. Id.

As to the AFIA Agreement, Zurich does not point to any contractual language in support of its argument. Regarding Zurich’s settlement agreement with Home, Zurich relies on language whereby Home agreed “to do all things necessary” to have policyholder claims admitted into Home’s estate as Class I administrative expenses. As to the Scheme, Zurich relies on language that the Liquidator is to use “all reasonable endeavors” to collect amounts owed by reinsurers. We agree with the superior court that neither of these contract provisions “addresses how long the Liquidator is obligated to accept the filing of proofs of claim, nor purports to set aside generally applicable limitations the Liquidator may ordinarily impose on the filing of such claims.”

We have reviewed Zurich’s remaining arguments and determine that they are without merit and do not warrant further discussion. See Vogel v. Vogel, 137 N.H. 321, 322 (1993). Accordingly, we determine that the record establishes an objective basis sufficient to sustain the superior court’s discretionary judgment that the Claim Amendment Deadline assures “a reasonable balance between the expeditious completion of the liquidation and

the protection of unliquidated and undetermined claims,” RSA 402-C:46, I, and that Zurich has failed to demonstrate that the court’s ruling was clearly untenable or unreasonable, Lambert, 147 N.H. at 296.

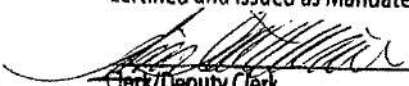
Affirmed and remanded.

HICKS and DONOVAN, JJ., concurred.

# **EXHIBIT D**

## MANDATE

Certified and Issued as Mandate Under NH Sup. Ct. R. 24

  
Clerk/Deputy Clerk

8/29/22  
Date

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Charles Doe Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by email at the following address: [reporter@courts.state.nh.us](mailto:reporter@courts.state.nh.us). Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court's home page is: <https://www.courts.nh.gov/our-courts/supreme-court>

### THE SUPREME COURT OF NEW HAMPSHIRE

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Merrimack  
No. 2021-0211

#### IN THE MATTER OF THE LIQUIDATION OF THE HOME INSURANCE COMPANY

Argued: February 10, 2022  
Opinion Issued: August 12, 2022

McLane Middleton, Professional Association, of Manchester (Mark C. Rouvalis and Viggo C. Fish on the brief), and Freeborn & Peters LLP, of Chicago, Illinois (Joseph T. McCullough IV and Peter B. Steffen on the brief, and Peter B. Steffen orally), for the appellant.

John M. Formella, attorney general (J. Christopher Marshall on the brief), and Rackemann, Sawyer & Brewster P.C., of Boston, Massachusetts (J. David Leslie, Eric A. Smith, and Margaret C. Fitzgerald on the brief, and J. David Leslie orally), for appellee Insurance Commissioner of the State of New Hampshire, as Liquidator of the Home Insurance Company.

Kazmarek Mowrey Cloud Laseter LLP, of Pittsburgh, Pennsylvania (Paul K. Stockman on the brief and orally), and Wadleigh, Starr & Peters, P.L.L.C., of Manchester (Michael J. Tierney on the brief), for appellees Bridgestone