

**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**

**LIQUIDATOR'S OBJECTION TO  
CLAIMANT'S MOTION TO RECOMMIT  
(Proof of Claim No. VEND700093-01)**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby objects to the motion to recommit filed by claimant Sheiness, Scott, Grossman & Cohn, LLP ("SSGC"). The only issue in this matter is whether a claim for attorney's fees for services rendered to Home before Home was placed in liquidation or rehabilitation is properly assigned Class V priority under RSA 402-C:44. The Referee correctly ruled that SSGC's claim is properly classified as a Class V claim in the Ruling on Classification of Claim for Pre-receivership Services under RSA 402-C:44 ("Ruling") issued April 11, 2008. The Ruling is attached as Exhibit A. As further reasons, the Liquidator states:

**Background**

1. SSGC is a law firm that represented Home as local bankruptcy counsel in coverage litigation connected with bankruptcy proceedings for Home's insured J.T. Thorpe Company. Case File ("CF", attached as Exhibit B) at CF0001, CF0020. SSGC provided services to Home during the period from October 2002 to January 2003, before Home was placed in receivership. Motion ¶ 1. See SSGC's January 21, 2003 invoice CF0004-CF0016 (billing detail showing services from October 22, 2002 to January 17, 2003).

2. Home was placed in rehabilitation on March 5, 2003, see Order Appointing Rehabilitator (Exhibit C), and it was declared insolvent and ordered liquidated on June 13, 2003. See Order of Liquidation (Exhibit D).<sup>1</sup>

3. SSGC filed a timely proof of claim for attorney's fees totaling \$74,784.89 for the services. CF0001.

4. On May 11, 2006, the Liquidator issued a notice of determination allowing the claim in the amount sought (\$74,784.89) and assigning the claim to Priority Class V under RSA 402-C:44. CF0020. The determination noted that the services were rendered from October 22, 2002 through January 21, 2003; that the services were reasonable and necessary for the defense of Home in the coverage litigation; and that "[t]he invoice was not paid because the services were rendered prior to Home's rehabilitation." Id.

5. SSGC filed a timely request for review contending that the attorney's fees should be classified as Priority Class I (administration costs) under RSA 402-C:44, CF0024, and it later filed an objection on or about October 12, 2007. CF0052.<sup>2</sup>

6. After briefing and telephonic argument, the Referee issued her Ruling on April 11, 2008.

### ARGUMENT

7. SSGC's motion presents the question whether its claim for attorney's fees for services rendered to Home before Home was placed in liquidation or rehabilitation falls in Class V or Class I under RSA 402-C:44. The Referee correctly held that SSGC's claim is a Class V claim.

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<sup>1</sup> The June 13, 2003 Order of Liquidation superseded the original Order of Liquidation entered on June 11, 2003.

<sup>2</sup> Since the Liquidator had not acted on the request for review, the objection was premature. However, the Liquidator considered the priority issue, determined that the request for review should be denied, and proceeded to respond to SSGC's objection before the Referee.

8. Claims for attorney's fees for legal services rendered to Home before rehabilitation or liquidation proceedings commenced are properly assigned to Priority Class V. That class is the "Residual Classification" for "[a]ll other claims, including claims of any state or local government, not falling within other classes under this section." RSA 402-C:44, V. SSGC's claim for attorney's fees is not a policy related claim within Class II, a claim of the federal government within Class III or a wage claim within Class IV. Nor, as discussed below, is it an administration cost claim within Class I.

9. The Class I priority is for "administration costs," which are defined as:

The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

RSA 402-C:44, I (emphasis added). Pre-receivership attorney's fees for services rendered to Home in defending it against a policyholder's claim do not fall within that class. They are not "costs and expenses of administration" of Home's estate.

10. In construing statutes, the courts "examine the language of the statute, ascribing to its words their plain and ordinary meanings, and interpret it in the context of the overall legislative scheme and not in isolation." Mortgage Specialists, Inc. v. Davey, 153 N.H. 764, 774 (2006).

11. The plain meaning of RSA 402-C:44 provides Class I priority to the "costs and expenses of administration," which in context can mean only the administration of the insurer's estate in receivership, as the Referee recognized. Ruling at 2. See RSA 402-C:16, I (rehabilitator is "to take possession of the assets of the insurer and to administer them under the orders of the court")(emphasis added); RSA 402-C:21, I (liquidator is "to take possession of the

assets of the insurer and to administer them under the orders of the court”)(emphasis added). Interpreting “administration” to refer to the business activities of the insurer (such as defending coverage claims) before appointment of the Commissioner as rehabilitator or liquidator, as SSGC urges, disregards its plain meaning and effectively reads the term out of the statute. See New Hampshire Ins. Guar. Ass’n v. Pitco Frialator, Inc., 142 N.H. 573, 578 (1998) (“all of the words of a statute must be given effect”).

12. Furthermore, the costs specifically listed as within Class I all must be costs “of administration” because the statutory list begins with the phrase “including but not limited to.” RSA 402-C:44, I (emphasis added). Thus, contrary to SSGC’s position, the phrase “reasonable attorney’s fees” does not enlarge Class I beyond the administration of the estate. See Thayer v. Town of Tilton, 151 N.H. 483, 486-87 (2004) (“We must keep in mind the intent of the legislation, which is determined by examining the construction of the statute as a whole, and not simply by examining isolated words and phrases found therein.”). Instead, as the Referee held, such fees are limited to those that are incurred as costs and expenses “of administration” of the estate. Ruling at 2. Priority Class I thus does not encompass ordinary business costs incurred prior to the receivership.<sup>3</sup>

13. The New Hampshire Supreme Court’s decision in In the Matter of the Liquidation of The Home Insurance Co., 154 N.H. 472 (2006), does not assist SSGC. The Referee correctly observed that SSGC “overlooks the broader rationale” of the Supreme Court. Ruling at 2. In the part of the decision relied on by SSGC, the Supreme Court merely distinguished the bankruptcy

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<sup>3</sup> The inclusion of costs incurred during rehabilitation proceedings addresses the concern over a troubled insurer obtaining services raised by SSGC (Motion ¶ 11) in a reasonable way while preserving assets for preferred creditors in the event of liquidation. The Order Appointing Rehabilitator ¶ (j) expressly provided that costs “during the period of Rehabilitation” would be treated as costs and expenses of administration pursuant to RSA 402-C:44, I. The Order of Liquidation ¶ (u) similarly provided for costs “during the Rehabilitation proceeding” and “during the Liquidation proceeding.”

cases cited by the ACE Companies. See 154 N.H. at 484-85. The Supreme Court did not hold that the claims were “entitled to priority because pre-petition costs of administration are included in the statute.” Motion ¶ 17. The Supreme Court referred to pre-liquidation claims in rejecting the arguments of the ACE Companies, but the fundamental factor in its analysis was that, “while the AFIA Cedents’ claims against Home arose pre-liquidation, their right to payment under the proposed agreement will arise post-liquidation.” Id. at 484 (emphasis added). The Court reiterated the point in distinguishing Oxendine v. Comm’r of Ins. of North Carolina, 494 S.E.2d 545 (Ga. Ct. App. 1997): “In this case, unlike in Oxendine, the AFIA Cedents’ right to proposed payments will arise post-liquidation, based upon the proposed agreement.” Id. at 485 (emphasis added). This critical factor is absent here. There is no post-liquidation agreement with SSGC. Any agreement with SSGC was during the period October 2002 through January 2003.

14. Finally, SSGC’s argument that “administration costs” encompass “all attorney’s fees, whether incurred before or during the liquidation” (Motion ¶ 11) is contrary to the purpose of the Act and of the priority provision itself. See Appeal of Estate of Van Lunen, 145 N.H. 82, 86 (2000) (courts construe all parts of a statute together “to effectuate its overall purpose and to avoid an absurd or unjust result”). SSGC seeks to broadly elevate claims for pre-receivership attorney’s fees to Class I. This is contrary to the legislative purpose of the Act and the Legislature’s decision as to the classes of persons to be preferred as set forth in the priority statute. Nothing in RSA 402-C indicates an intent to prefer attorneys or other vendors providing pre-receivership services. The priorities of RSA 402-C:44 reflect the legislative purpose of protecting policyholders and claimants against policyholders. They are a principal means of fulfilling “the purpose of RSA chapter 402-C to protect preferred creditors by reserving assets for them, including people insured by Home, and people with claims against those insured by

Home.” Liquidation of Home, 154 N.H. at 488, citing RSA 402-C:1, IV. The Legislature did not recognize attorneys as a preferred class. Giving attorney’s claims for defending Home prior to receivership Class I priority would conflict with the legislative purpose of protecting preferred creditors by reducing the assets available for distribution to those creditors.<sup>4</sup>

### CONCLUSION

For the reasons set forth above, the Court should uphold the Referee’s Ruling that SSGC’s claim is properly assigned to Priority Class V.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE SOLELY AS  
LIQUIDATOR OF THE HOME  
INSURANCE COMPANY,

By his attorneys,  
KELLY A. AYOTTE  
ATTORNEY GENERAL

J. Christopher Marshall  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397  
(603) 271-3650



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J. David Leslie  
Eric A. Smith  
Rackemann, Sawyer & Brewster P.C.  
160 Federal Street  
Boston, MA 02110  
(617) 542-2300

April 29, 2008

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<sup>4</sup> For similar reasons, courts have rejected claims of attorneys for services rendered prior to insolvency under insurance guaranty association acts: “The [guaranty association] act is designed to protect from potentially catastrophic loss persons who have a right to rely on the existence of an insurance policy – the insureds and persons with claims against insureds.” Woodliff v. California Ins. Guar. Ass’n, 3 Cal Rptr. 3d 1, 10 (Cal. App. Ct. 2003) quoting Metry, Metry, Sanom & Ashare v. Michigan Prop. & Cas. Ins. Guar. Ass’n, 267 N.W.2d 695, 697 (Mich. 1977); see also Ohio Ins. Guar. Ass’n v. Simpson, 439 N.E.2d 1257, 1259 (Ohio App. 1981);

**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Objection to Claimant's Motion to Recommit was sent, this 29th day of April, 2008, by email and first class mail to all persons on the following service list.



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Eric A. Smith

SERVICE LIST

H. Miles Cohn, Esq.  
Sheiness, Scott, Grossman & Cohn, LLP  
1001 McKinney, Suite 1400  
Houston, Texas 77002-6323

**BEFORE THE COURT-APPOINTED REFEREE  
IN RE 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

**RULING ON CLASSIFICATION OF CLAIM  
FOR PRE-RECEIVERSHIP SERVICES UNDER RSA 402-C:44.**

At issue in this dispute is whether a claim for attorney's fees for pre-receivership services rendered to The Home Insurance Company ("Home") should be assigned a Class I or Class V priority under RSA 402-C:44. The Claimant, Sheiness, Scott, Grossman, & Cohn, LLP ("SSGC"), objecting to the Liquidator's classification of its claim in the undisputed amount of \$74,784.89 as a Class V claim, argues that its claim should be paid as a Class I administrative expense.

Because RSA 402-C:44 requires that "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 payment", classification of a claim is of significant importance. And, under the practical circumstances pertaining to this liquidation, there is little likelihood of any distribution to claimants beyond those in Class II.

Claims classified as ADMINISTRATIVE COSTS under RSA 402-C:44, are described as follows:

The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

In arguing that the Liquidator's classification of its claim as a Class V claim is in error, SSGC asserts that "administrative costs" must be broadly construed to include costs and expenses which relate to preserving the assets of the estate, even if those costs are incurred pre-receivership. In addition to its argument that the Liquidator's classification of the claim at issue is contrary to the language of the RSA 402-C:44, SSGC also relies upon a New Hampshire Supreme Court decision in an appeal arising from the Home liquidation, In the Matter of the Liquidation of the Home Insurance Co., 154 N.H. 472 (2006).



The Liquidator, taking the position that his classification of the SSGC claim is a proper one, argues that pre-receivership services provided to Home on a policyholder claim do not fall within Class I, as that classification is reserved for claims directly relating to "costs and expenses of administration" of the liquidating estate. For "attorneys fees" to be accorded administrative claim status says the Liquidator, those fees must be fees incurred in connection with services provided during the administration of the estate, a nexus which the Liquidator notes is absent under the facts of this dispute.

The Referee first addresses the Claimant's argument that the Liquidator has improperly classified its claim by reading the language of the RSA 402-C:44, I, too narrowly. In examining that provision, the Referee gives plain and ordinary meaning to its words, while being mindful of the overall legislative scheme into which the provision fits. Mortgage Specialists, Inc. v. Davey, 153 N.H. 764 (2006). The word within RSA 402-C:44, I, which best informs the nature of costs to be accorded Class I priority is the word "administration". Within the context of Chapter 402-C, the word "administration" is most logically construed to refer to the administration of a liquidating estate. While the phrase "reasonable attorney's fees" appears in the non-exclusive list of cost and expenses that will qualify for Class I priority under RSA 402-C:44, that phrase cannot be read in isolation, for the earlier phrase "including but not limited to" clearly ties the list that follows back to "costs and expenses of administration". Therefore, for "reasonable attorney's fees" to be accorded Class I priority such fees must be incurred as "costs and expenses of administration". See New Hampshire Ins. Guar. Ass'n v. Pitco Frialator, Inc. 142 N. H. 573, 578 (1998) ("all the words of a statute must be given effect"). Here, the fees in question were clearly incurred pre-receivership.

In relying upon Home Insurance Company for the proposition a claim for attorney's fees incurred by Home pre-proceeding properly falls within the definition of "administrative costs", SSCG focuses upon the rejection in that case of the argument that "administrative costs" under RSA 402-C:44 should be narrowly confined to "include only rights to payment that arise post-liquidation, and exclude claims that arise pre-liquidation." Id. at 484. In rejecting a narrow construction of "administrative costs" in that case, the Supreme Court noted that RSA 402-C:44 defines administrative costs more generally to include "actual and necessary costs of preserving or recovering assets of the insurer." Id. at 485. However, in focusing upon the Court's rejection of a narrow definition of "administrative costs", SSCG overlooks the broader rationale the Court employed in affirming the trial judge's approval of the agreement at issue in that case. The Court's essential focus was upon the post-liquidation agreement's purpose to bring a "net benefit to creditors of the estate", and the power of the Liquidator to take measures "necessary or expedient to collect, conserve, or protect (the insurer's) assets or property...." under RSA 402-C:25. In determining that sizeable payments to Class V claimants were properly construed as administrative in nature, the Court distinguished between pre-liquidation claims and claimant inducements which were negotiated after the advent of the receivership and created post-liquidation rights. Here, there is neither a post-liquidation agreement with the Liquidator, nor the potential for a net benefit to preferred creditors.

In sum, the Referee concludes that the Liquidator's classification of the claim at issue in this dispute is a proper one.

So ordered.

April 16 '08  
Dated:

Paula T. Rogers  
Referee, Paula T. Rogers

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

BEFORE THE COURT-APPOINTED REFEREE  
IN RE 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: Sheines, Scott, Grossman & Cohn, LLP  
("SSGC")

Case File

Proofs of Claim with Attachment, Received June 22, 2003 ..... CF0001

SSGC Invoice ..... CF0003

Liquidator's Notice of Determination, dated May 11, 2006 ..... CF0020

SSGC Request for Review, dated June 6, 2006 ..... CF0024

Email from SSGC with Attachment, dated January 18, 2007 ..... CF0028

Email from SSGC, dated March 5, 2007 ..... CF0031

Email from SSGC with Attachment, dated March 6, 2007 ..... CF0033

Email from SSGC, dated June 29, 2007 ..... CF0048

Letter from SSGC, dated October 11, 2007 ..... CF0050

Objection to Denial of Claim ..... CF0052

Notice of Disputed Claim ..... CF0057

PROOF OF CLAIM  
**The Home Insurance Company,**  
 Merrimack County Superior Court, State of New Hampshire 03-E-0106  
 Read Carefully Before Completing This Form  
 Please print or type

FOR LIQUIDATOR USE ONLY  
**RECEIVED**  
 DATE PROOF OF CLAIM RECEIVED  
 JUL 22 2003  
 HICIL

POC # VEND700093

**The Deadline for Filing this Form is June 13, 2004.**

You should file this Proof of Claim form if you have an actual or potential claim against The Home Insurance Company of any of its former subsidiaries\* ("The Home") even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be postmarked no later than June 13, 2004. Failure to timely return this completed form will likely result in the **DENIAL OF YOUR CLAIM.** You are advised to retain a copy of this completed form for your records.

1. Claimant's Name: Sheiness, Scott, Grossman & Cohn, LLP
2. Claimant's Address: 1001 McKinney, Suite 1400  
Houston, TX 77002
3. Claimant's Telephone Number: (713) 374-7020  
Fax Number: (713) 374-7049  
Email address: mcohn@hou-law.com
4. Claimant's Social Security Number, Tax ID Number or Employer ID Number: 76-0595042
5. Claim is submitted by (check one):
  - a)  Policyholder or former policyholder
  - b)  Third Party Claimant making a claim against a person insured by The Home
  - c)  Employee or former employee
  - d)  Broker or Agent
  - e)  General Creditor, Reinsurer, or Reinsured
  - f)  State or Local Government Entity
  - g)  Other; describe: counsel for The Home Insurance Company ("Home")

*If your name, address, e-mail address, or telephone number set forth above are incorrect, or if they change, you must notify the Liquidator so she can advise you of new information.*

Describe in detail the nature of your claim. You may attach a separate page if desired. Attach relevant documentation in support of your claim, such as copies of outstanding invoices, contracts, or other supporting documentation.  
Our law firm served as local bankruptcy counsel for Home in In re: J.T. Thorpe Company, Case no. 02-41487-H5-11 in the United States Bankruptcy Court for the Southern District of Texas. We reported to Alberta Brennan at Home.

6. Indicate the total dollar amount of your claim. If the amount of your claim is unknown, write the word "unknown", BUT be sure to attach sufficient documentation to allow for determination of the claim amount.

\$ 74,784.89 (if amount is unknown, write the word "unknown").

7. If you have any security backing up your claim, describe the nature and amount of such security. Attach relevant documentation.

n/a

8. If The Home has made any payments towards the amount of the claim, describe the amount of such payments and the dates paid.

n/a

9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim?

n/a

10. Do you claim a priority for your claim? If so, why? Yes. Attorney's fees for representing Home while it was in rehabilitation are entitled to priority under paragraph (1) of the Rehabilitation Order and RSA 402-c:44.1.

\* Provide the name, address and telephone number of the person who has completed this form.

Name: H. Miles Cohn  
 Address: 1001 McKinney, Suite 1400  
Houston, TX 77002  
 Phone Number: (713) 374-7020  
 Email address: mcohn@hou-law.com

\* The Home Indemnity Company, The Home Insurance Company of Indiana, City Insurance Company, Home Lloyds Insurance Company of Texas, The Home Insurance Company of Illinois, and The Home Insurance Company of Wisconsin.

12. If represented by legal counsel, please supply the following information:
- a. Name of attorney: n/a
  - b. Name of law firm: \_\_\_\_\_
  - c. Address of law firm: \_\_\_\_\_
  - d. Attorney's telephone: \_\_\_\_\_
  - e. Attorney's fax number: \_\_\_\_\_
  - f. Attorney's email address: \_\_\_\_\_

13. If using a judgment against The Home as the basis for this claim:
- a. Amount of judgment: n/a
  - b. Date of judgment: \_\_\_\_\_
  - c. Name of case: \_\_\_\_\_
  - d. Name and location of court: \_\_\_\_\_
  - e. Court docket or index number (if any): \_\_\_\_\_

14. If you are completing this Proof of Claim as a Third Party Claimant against an insured of The Home, you must conditionally release your claim against the insured by signing the following, as required by N.H. Rev. Stat. Ann. § 402-C:40 I:

I, \_\_\_\_\_ (insert claimant's name), in consideration of the right to bring a claim against The Home, on behalf of myself, my officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives hereby release and discharge \_\_\_\_\_ (insert name of defendant(s) insured by The Home), and his/her/its officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives, from liability on the cause(s) of action that forms the basis for my claim against The Home in the amount of the limit of the applicable policy provided by The Home; provided, however, that this release shall be void if the insurance coverage provided by The Home is avoided by the Liquidator.

\_\_\_\_\_  
Claimant's signature

\_\_\_\_\_  
Date

15. All claimants must complete the following:

I, H. Miles Cohn (insert individual claimant's name or name of person completing this form for a legal entity) subscribe and affirm as true, under the penalty of perjury as follows: that I have read the foregoing proof of claim and know the contents thereof, that this claim in the amount of \$74,784.89 dollars (S 74,784.89) against The Home is justly owed, except as stated in item 9 above, and that the matters set forth in this Proof of Claim are true to the best of my knowledge and belief. I also certify that no part of this claim has been sold or assigned to a third party.

H. Miles Cohn  
\_\_\_\_\_  
Claimant's signature

7-18-03  
\_\_\_\_\_  
Date

Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

16. Send this completed Proof of Claim Form, postmarked by June 13, 2004, to:

The Home Insurance Company in Liquidation  
P.O. Box 1720  
Manchester, New Hampshire 03105-1720

**You should complete and send this form if you believe you have an actual or potential claim against The Home even if the amount of the claim is presently uncertain.**

# SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

1001 MCKINNEY, SUITE 1400  
HOUSTON, TX 77002-6420  
(713)374-7000 - Telephone  
(713)374-7049 - Telecopier  
Tax I.D. No. 76-0595042

January 21, 2003

Alberta Brennan  
Risk Enterprise Management, Ltd.  
59 Maiden Lane, 5th Floor  
New York, NY 10038

Invoice No.: 6295

Re: The Home Insurance Company / J.T. Thorpe Company  
Our File No. 0455 00001

For Services Rendered Through January 21, 2003

## ACCOUNT SUMMARY

		Amount	
Past Due		\$0.00	
Payment(s) Received - Thank you		\$0.00	CR
Current Charges:			
Total Fees	\$73,266.25		
Total Costs	\$1,338.23		
Total		\$74,604.48	
Less prepaid cash applied to this invoice*		\$0.00	CR
Less Trust funds applied to this invoice		\$0.00	CR
<b>BALANCE DUE</b>		<u>\$74,604.48</u>	

\* Prepaid cash remaining balance is \$0.00  
Trust account remaining balance is \$0.00

CF0003

# SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

1001 MCKINNEY, SUITE 1400  
HOUSTON, TX 77002-6420  
(713)374-7000 - Telephone  
(713)374-7049 - Telecopier  
Tax I.D. No. 76-0595042

January 21, 2003

Alberta Brennan  
Risk Enterprise Management, Ltd.  
59 Maiden Lane, 5th Floor  
New York, NY 10038

Invoice# 6295  
Billing through 01/21/2003

Re: The Home Insurance Company / J.T. Thorpe Company  
Our file# 0455 00001

## PROFESSIONAL SERVICES

10/22/2002	HMC	Review bankruptcy motions, notices and background materials; conferences with Mr. Creely regarding background facts and strategy issues; attend telephone conference meeting with counsel for all insurance companies regarding bankruptcy issues and strategy.	4.50	hrs.	1,125.00
10/24/2002	HMC	Attend telephone conference meeting with other attorneys regarding objection to motion for expedited schedule; telephone conferences with Mr. Drebsky and Mr. Creely regarding same.	1.20	hrs.	300.00
10/25/2002	HMC	Attend hearing on motion to approve financing; draft memo regarding same.	1.00	hrs.	250.00
10/26/2002	HMC	Review revised objection to expedited schedule; draft memo regarding same.	0.40	hrs.	100.00
10/28/2002	HMC	Review and respond to memos regarding objection to expedited scheduling.	0.50	hrs.	125.00
10/29/2002	HMC	Review file and telephone conferences with Mr. Creely and Mr. Kavanaugh in preparation for section 341 meeting of creditors.	1.70	hrs.	425.00
10/30/2002	HMC	Attend section 341 meeting of creditors; conference with Mr. Creely and telephone conference with Mr. Drebsky regarding same; review and respond to email from Mr. Litherland regarding depositions.	3.20	hrs.	800.00
10/31/2002	HMC	Attend telephone conference meeting with counsel in preparation for bankruptcy court	2.00	hrs.	500.00

CF0004

11/01/2002	HMC	hearing on November 1; telephone conferences with Mr. Creely and Mr. Drebsky regarding same and proofs of claim. Review debtor's reply regarding objection to expedited schedule; attend hearing on same and applications to retain professionals; conference with other attorneys regarding strategy options.	3.80	hrs.	950.00
11/04/2002	HMC	Attend telephone conference with counsel regarding discovery in bankruptcy court; telephone conference with Mr. Drebsky and Mr. Creely regarding same; begin to review cases regarding UNR issues, potential plan objections.	2.20	hrs.	550.00
11/06/2002	HMC	Draft Objection to Application to Retain MFR Consulting; review draft notice of removal and motion to transfer coverage action.	1.80	hrs.	450.00
11/07/2002	HMC	Continued drafting of Objection regarding MFR; telephone conferences with Mr. Creely and Mr. Kavanaugh regarding same; telephone conference with Mr. Litherland regarding tasks to be performed by MFR.	1.60	hrs.	400.00
11/08/2002	HMC	Attend hearing on application to retain HRM consultants; draft status memo regarding same.	1.50	hrs.	375.00
11/12/2002	HMC	Review draft proof of claim from Mr. Drebsky; telephone conferences with Mr. Creely and Mr. Drebsky regarding same; review memos and draft deposition notices regarding discovery in bankruptcy; initial review of schedule of documents produced by Thorpe.	1.50	hrs.	375.00
11/13/2002	CM	Draft letter to U. S. Bankruptcy Clerk regarding filing Proof of Claim of Home Insurance Company.	0.10	hrs.	7.50
11/13/2002	HMC	Review case authorities and proposed plan in preparation for depositions; conference with Mr. Creely regarding same; research and draft memo to Mr. Drebsky regarding executory contract analysis of insurance policies; review list of documents produced by Thorpe; review memos and notices regarding deposition schedule.	4.00	hrs.	1,000.00
11/14/2002	HMC	Conferences with Mr. Creely and attend telephone conference meeting with insurers' counsel regarding discovery and strategy issues in bankruptcy; outline interrogatories to Thorpe.	4:00	hrs.	1,000.00
11/15/2002	HMC	Draft interrogatories; attend status conference on discovery issues; review memos regarding same.	5.50	hrs.	1,375.00



Date	Code	Description	Hours	Rate	Amount
11/16/2002	HMC	Continued drafting of interrogatories; review bankruptcy docket regarding insurer claims; draft requests for production; outline documents for review and compilation by Ms. Hooks (paralegal).	3.80	hrs.	950.00
11/18/2002	HMC	Research regarding binding effect of findings in confirmation hearing; review document production and conferences with Ms Hooks and Ms Tolson regarding same; telephone conferences and draft memo regarding interrogatories; review Ms Tolson's outline regarding preparing for deposition of Mr. Scott.	3.50	hrs.	875.00
11/18/2002	AH	Meet with and receive document review guidelines from Mr. Cohn; commence document review of initial 11-box production by J.T. Thorpe in Chapter 11 bankruptcy proceedings; compile listing of all plaintiffs' counsel receiving claim settlement/prepackaged bankruptcy packages from J.T. Thorpe.	8.00	hrs.	600.00
11/19/2002	HMC	Continued review of documents and preparation for depositions; review claims docket and filed claims; conference with Mr. Hirs regarding expert testimony; review discovery requests from other insurers to Thorpe.	3.80	hrs.	950.00
11/19/2002	AH	Receive further instructions regarding document review; continue document review; meet with retained expert, Edward Hirs, regarding initial document requirements to commence his review.	5.00	hrs.	375.00
11/20/2002	HMC	Telephone conference with Mr. Creely, Mr. Kavanaugh and Home personnel regarding evaluation of bankruptcy plan; conference with Ms Hooks regarding document review; telephone conference with Mr. Hirs regarding preparation for depositions; initial review of bankruptcy proofs of claims.	2.30	hrs.	575.00
11/20/2002	AH	Receive further information and instruction from Mr. Cohn regarding his and Mr. Hirs' document needs; identify and prepare documents for review by Mr. Hirs; Telephone conferences with Mr. Hirs regarding same; continue review of documents; commence revision of documents index to expedite search function.	9.00	hrs.	675.00
11/21/2002	HMC	Continued review of proofs of claims; review Debtor's motion for limited withdrawal of the reference; initial review of Thorpe financial records.	1.50	hrs.	375.00
11/21/2002	AH	Further telephone conferences with Mr. Hirs	9.00	hrs.	675.00

		regarding documents; continue document review pursuant to guidelines; continue index revision.			
11/22/2002	HMC	Outline plan objections and disclosure objections; telephone conference with Mr. Creely and Mr. Drebsky regarding depositions and confirmation hearing strategy issues.	1.50	hrs.	375.00
11/22/2002	AH	Continue review of documents.	2.50	hrs.	187.50
11/23/2002	HMC	Prepare for deposition of Mr. Nowlin; draft outline of plan and disclosure objections, including research and review of briefs in Fuller-Austin case regarding same.	7.00	hrs.	1,750.00
11/25/2002	HMC	Continued preparation for, and attend deposition of, Mr. Nowlin.	9.00	hrs.	2,250.00
11/25/2002	AH	Continue document review; receive and respond to instruction to determine the dates on which ballots received from certain plaintiff's groups counsel; receive and review current deposition schedule with focus on required documents briefing for designated deponents; attention to index of bankruptcy documents production; receive documents produced by Dan Lain; receive documents in supplemental production by J.T. Thorpe; receive documents produced responsive to requests for production from Mt. McKinley and U.S. Fire Insurance Companies.	7.00	hrs.	525.00
11/26/2002	HMC	Telephone conferences with Mr. Creely, Mr. Drebsky and attorney for other insurers regarding depositions, plan objections and related issues regarding confirmation hearing; conference with Ms. Hooks and draft memo regarding document review; telephone conference with Mr. Hirs regarding financial analysis; review memoranda regarding privilege issues in preparation for hearing on same.	4.50	hrs.	1,125.00
11/26/2002	AH	Receive and respond to further specific document requests resulting from Nowland's deposition; telephone conferences regarding same; several telephone conferences regarding further documents resulting from Dan Lain's deposition; continue document review; receive and respond to instructions regarding briefing for specific depositions.	9.50	hrs.	712.50
11/27/2002	HMC	Draft answers to interrogatories and requests for production of documents; attend hearing on discovery and privilege issues; begin to review documents regarding Shore and Rooney depositions; research regarding standing to assert plan objections.	6.50	hrs.	1,625.00

Date	Code	Description	Hours	Rate	Total
11/27/2002	AH	Receive and respond to instructions for further deposition briefing for depositions of Baron, Blevins, Shore and Rooney; continue document review.	8.00	hrs.	600.00
11/29/2002	HMC	Continued research regarding grounds for declaration of liability and judgment, in Plan section 10.7; draft memo regarding outline of argument on objection to same.	4.70	hrs.	1,175.00
11/29/2002	HMC	Review objection to Home's proof of claim and motion to estimate same; research regarding issues raised in claim objection; draft responses to objection and motion to estimate.	1.80	hrs.	450.00
11/29/2002	AH	Continue revision of index.	4.00	hrs.	300.00
11/30/2002	HMC	Review documents in preparation for depositions of Mr. Shore and Mr. Rooney; review Debtor's responses to American Motorists discovery requests; review summary notes regarding continuation of Mr. Nowlin's deposition.	1.50	hrs.	375.00
11/30/2002	AH	Continue review and selection of documents for deposition briefing for Baron and Blevins; review and prepare analysis of adoption agreement packages received from 11 certain plaintiffs groups.	7.00	hrs.	525.00
12/02/2002	CM	Draft letter to U. S. Bankruptcy Clerk regarding filing the following: Response of the Home Insurance Company to Debtor's Omnibus Objection to Contingent, Unliquidated Proof of Claim Filed by Certain Insurance Companies; and Response of the Home Insurance Company to Debtor's Motion To Estimate Contingent, Unliquidated Claims of Certain Insurance Companies Pursuant to §502(e) of the Bankruptcy Code.	0.10	hrs.	7.50
12/02/2002	HMC	Prepare for deposition of Mr. Shore, including review of documents; conference with Mr. Creeley and telephone conferences with Mr. Kavanaugh and Mr. Drebsky regarding depositions and strategy issues for confirmation hearing; review discovery requests from other insurers and responses from Debtor.	6.00	hrs.	1,500.00
12/02/2002	AH	Telephone conferences with Mr. Cohn regarding information priorities in Richard Shore's deposition; provide Compensable Disease Matrices listing for review and comment by Mr. Cohn; receive and respond to further document requirements; review files for Motions for Summary Judgment filed by Home; examine exhibits for required	10.00	hrs.	750.00

		documents; review Shore documents, prepare briefing for deposition of Richard Shore; review deposition calendar for briefing schedule.			
12/03/2002	CM	Organize files in preparation of depositions and discovery responses.	0.50	hrs.	37.50
12/03/2002	HMC	Attend deposition of Mr. Shore; continued review of other insurers' and debtor's discovery responses; revise Home's answers to interrogatories; research regarding Plan section 10.7 issues, including alleged anticipatory breach of duty to defend; telephone conference with other insurer counsel regarding potential settlement discussions.	10.00	hrs.	2,500.00
12/03/2002	AH	Prepare e-mail to Mr. Cohn containing Ed Hirs' requests for the work papers created by Arthur Andersen in preparation of its JT Thorpe Valuations as well as in support of any ESOP valuations; receive and respond to inquiry regarding certain documents from Richard Shore to counsel for Home in the coverage litigation; review certain of Home's Motions for Summary Judgment against JT Thorpe Company and Thorpe Corporation; receive request and prepare briefing for the deposition of Richard Schiro; receive request and prepare briefing for the deposition of William O'Farrell/Republic Insurance Company; continue documents review for specific inquiries received from Home's expert, Ed Hirs; receive request and prepare briefing for the deposition of R. E. Ogle; receive request and prepare briefing for the deposition of Warren White, Arthur Andersen.	10.25	hrs.	768.75
12/04/2002	HMC	Attend deposition of Mr. Rooney; continued research regarding Plan section 10.7 objections; review AMICO's motions regarding appointment of examiner, continuance, and claim objections; review debtor's motion to approve St. Paul settlement, to consider whether motion seeks approval of Debtor's attorney's fees; begin preparing for deposition of Mr. Ogle.	9.00	hrs.	2,250.00
12/04/2002	AH	Continue documents review; complete documents briefing for the deposition of Richard Schiro; telephone conferences with Ed Hirs regarding further documents; review case preparation priorities and receive responsive guidelines.	6.00	hrs.	450.00
12/05/2002	HMC	Review files and conference with Mr. Creely	7.00	hrs.	1,750.00

12/05/2002	AH	<p>and Ms. Hooks regarding preparation for confirmation hearing; complete and send our answers to discovery; prepare for deposition of Mr. Ogle; participate in telephone conference with other insurer counsel regarding settlement discussions; begin review of draft objections to plan. Receive schedule and guidelines for preparation of witness files for use at trial from Mr. Creely and Mr. Cohn; draft Witness Files Production Chart and Witness Files Work Flow Chart for control of numerous depositions and to insure production of required related analyses; receive comments to these proposed charts from this task coordinator; finalize the deposition production/flow charts; draft the outline for Master Deposition Index List of Exhibits; instruct the paralegal regarding preparation of that master list; draft letter to Mr. Hirs transmitting certain financial documents responsive to his requests; receive and review further documents from Mr. Cohn; meet with the paralegal and contract attorney regarding preparation of witness files; participate in team planning meeting regarding witness file preparation, including review and summarizing of deposition transcripts as received, preparation of documents lists from such transcripts, and transfer of those document lists onto the Master Deposition Index List of Exhibits and, subsequently, to the Insurers' Joint Confirmation Exhibit List; receive and review JT Thorpe's answers to Interrogatories regarding expert designations.</p>	10.75	hrs.	806.25
12/06/2002	HMC	<p>Attend deposition of Mr. Ogle; attend court hearing on discovery disputes and scheduling issues; telephone conferences with Mr. Creely, Mr. Drebsky and Mr. Kavanaugh regarding deposition and confirmation strategy issues; draft memo to Mr. Drebsky regarding suggestions for draft objection to plan; review draft objection to plan from U. S. Fire and revised draft of Home Objections; outline research regarding waiver of "no action clause."</p>	10.00	hrs.	2,500.00
12/06/2002	AH	<p>Further planning and coordination meetings among the task team; receive and review documents regarding testimony of R.E. Ogle; continue documents review; receive</p>	9.50	hrs.	712.50

		initial documents listings prepared from draft deposition transcripts; commence the documents compilation for record and description entry onto the Master Deposition Index List of Exhibits.			
12/07/2002	HMC	Draft insert to plan objections regarding Gandy case and waiver of "no action" clause; review notice of Mr. Hirs' deposition, and telephone conferences with Mr. Drebsky and Mr. Creely regarding plan objections.	6.50	hrs.	1,625.00
12/08/2002	HMC	Review Home's revised draft objection to plan, and memo to Mr. Drebsky regarding same; reievw AMICO's draft objection to plan; draft memos to other insurers' counsel and review memo from Ms. Tolson regarding preparing for confirmation hearing.	3.00	hrs.	750.00
12/09/2002	HMC	Continued revisions to plan objections, including review of draft objections from other insurers; telephone conferences with Mr. Drebsky and Ms. Schiller regarding same; finalize and file same; attend hearing on AMICO's motion to appoint examiner; prepare for deponiton of Mr. White.	8.00	hrs.	2,000.00
12/09/2002	AH	Receive and review documents produced by various deponents; review such documents against listings prepared from deposition transcripts for inclusion among witness file documents on which testimony was given (Scott, Nowland, Schiro, Rooney, Lain, Baron); receive and review supplemental documents production from JT Thorpe responsive to St. Paul's requests; receive and review documents produced responsive to US Fire requests; receive and review documents produced responsive to Mt. McKinley requests; telephone conferences with Mr. Cohn regarding updated priorities; conferences with Mr. Cohn, Mr. Creely and Ms. Tolson updating priorities, task assignments, deadlines; continue review of documents; receive and respond to specific documents request from Mr. Cohn as needed at the impromptu evidentiary hearing; travel to Federal Court regarding same.	12.75	hrs.	956.25
12/10/2002	HMC	Attend deposition of Mr. White; conference with Mr. Hirs regarding preparation of his expert report; telephone conferences with Mr. Creely, Mr. Wood and Mr. Drebsky regarding possible off-set agreement on Home's proof of claim; review objections to plan filed by Corpus Christi Gasket, other	6.50	hrs.	1,625.00

Date	Initials	Description	Hours	Rate	Total
12/10/2002	AH	insurers. Receive and review documents produced by various deponents; review such documents against listings prepared from such deposition transcripts for inclusion among witness file documents on which testimony was given (Lain, Shore, White); receive and respond to request from Mr. Cohn in connection with additional materials required during deposition of Richard Shore at offices of Bracewell Patterson and provide such material; receive further requests/status information; meet with Ed Hirs regarding the 1998-1999 Leacon transaction; identify and provide such reports; continue review of documents lists created from transcripts for preparation and inclusion in respective witness files.	10.50	hrs.	787.50
12/11/2002	CM	Telephone conference with Mr. Creely's office regarding documents prior to filing bankruptcy and The Home Insurance Company's proof of claim, objections, and answers to interrogatories; review file and produce copies regarding same.	0.30	hrs.	22.50
12/11/2002	HMC	Review financial documents regarding liquidation and going concern valuations, and compile documents regarding same; telephone conferences with Mr. Heintz, Mr. Millone and Mr. Creely regarding potential settlement of claim issues; review additional plan objections filed by other parties; review and respond to memos regarding compiling exhibits and assigning witnesses for trial.	4.50	hrs.	1,125.00
12/11/2002	AH	Continue preparation of Witness Files and Trial Exhibits; provide assignments to paralegal and attorney regarding same; continue to receive and respond to additional documents requests from among insurer group; continue focus on documents identified from the depositions of Gerald Scott, Richard Nowland, Byron Blevins and Steve Baron.	13.50	hrs.	1,012.50
12/12/2002	CM	Telephone conferences with Mr. Creely's office regarding documents from Mr. White's deposition; review files regarding same.	0.30	hrs.	22.50
12/12/2002	HMC	Conference with Mr. Hirs regarding completion of his expert report and preparation for his deposition; telephone conferences with Mr. Heintz and Mr. Creely regarding stipulation on proof of claim, and draft letter confirming same; revise	5.50	hrs.	1,375.00

12/12/2002	AH	supplemental interrogatory answers; review draft witness and exhibit lists; conference with Ms Tolson regarding preparing for confirmation hearing. Continue preparation of Witness Files and Trial Exhibits; continue compilation of materials for inclusion in witness files; continue preparation and oversight of the Master Deposition Index List of Exhibits and the Insurers' Joint Confirmation Exhibit List; telephone conferences with representatives of Marker Hoff scheduling form and preparation of 350 Trial Exhibits.	10.00	hrs.	750.00
12/13/2002	HMC	Attend deposition of Mr. Hirs and conference with Mr. Hirs regarding testimony at confirmation hearing; review witness and exhibit lists of other parties, and assist in completing Hane's witness and exhibit lists; telephone conference with other insurers' counsel regarding proposed stipulation to resolve bankruptcy issues.	7.50	hrs.	1,875.00
12/13/2002	AH	Continue to supervise and perform the preparation of Witness Files and Trial Exhibits; continue document identification and compilation for the Witness Files and Trial Exhibits; continue to receive and respond to further documents-related requests and inquiries from various members of the insurer group.	15.00	hrs.	1,125.00
12/14/2002	HMC	Review Debtor's briefs (i) in support of plan confirmation, (ii) objecting to standing of insurers and (iii) on insurance related provisions in plan; research regarding standing issues raised by Debtor; review pleadings and briefs filed by other insurers, including motions regarding insurer counter-claims; review proposed stipulation to settle insurer objections; telephone conference with Mr. Creely and draft memo regarding modifications to proposed stipulation.	5.50	hrs.	1,375.00
12/14/2002	AH	Continue to supervise and perform the preparation of Witness files and Trial Exhibits; continue document identification and compilation for the Witness Files and Trial Exhibits; continue to receive and respond to further documents-related requests from various members of the insurer group; further telephone conferences with representatives of Marker Hoff finalizing the Trial Exhibits quantum.	15.75	hrs.	1,181.25
12/15/2002	HMC	Draft cross-examination outlines for Debtor's financial experts (Ogle and White),	8.00	hrs.	2,000.00



12/15/2002	AH	including review of their depositions; review and revise motion for continuance or to strike witness, and telephone conferences regarding filing and presentation of same; revise reply brief in support of standing of insurers; revise response to Debtor's brief on insurance provisions; review and respond to numerous memos regarding hearing issues. Coordinate and hand-off initial delivery of Trial Exhibits to representatives of Marker Hoff for processing into 7, 11-binder sets of 351 trial exhibits; continue preparation of Trial Exhibits; update the Trial Exhibits Index as indicated; receive further requests from various members of the insurer group for inclusion of additional documents within the Trial Exhibits; continue to supervise and perform the preparation of Trial Exhibits to completion; coordinate and hand-off final delivery of Trial Exhibits to representatives of Marker Hoff for completion; provide instructions for delivery of the 7, 11-binder sets of Trial Exhibits to Federal Court, Courtroom 9A, on 12/16/02 at 8AM.	15.00	hrs.	1,125.00
12/16/2002	HMC	Finalize and file motion for continuance; attend commencement of confirmation hearing; conferences with opposing counsel and insurers' counsel regarding possible stipulation to settle bankruptcy issues; review drafts of same and telephone conferences with Mr. Creely and other insurers' counsel regarding same.	7.50	hrs.	1,875.00
12/16/2002	AH	Further telephone conferences with representatives of Marker Hoff regarding completion of 7, 11-binder sets of Joint Insurers' Trial Exhibits; attention to completion and filing of the Amended Joint Insurers' Trial Exhibit Index; attention to completion of the Witness Files Comprehensive Index; attention to Witness Files prior to shipment to Courtroom 9A from Confirmation Hearing before Judge Brown; telephone conferences affirming timely delivery and receipt of related documents including insurers' comprehensive Witness Files to Courtroom 9A; further telephone conferences with Marker Hoff representatives regarding details of timely providing trial documents to Courtroom 9A for Confirmation Hearing today; confer with Court Coordinator regarding Judge Brown's preferences for	11.00	hrs.	825.00

		handling of all documents and implementation of the Court's preferences; attendance at and participation in Confirmation Hearing in support insurers' trial team; coordinate document handling during hearing as requested by various members of insurers' trial team; telephone conferences with counsel.			
12/17/2002	HMC	Continued negotiations and revisions to stipulation; attend confirmation hearing.	8.50	hrs.	2,125.00
12/17/2002	AH	Continue attendance at and participation in Confirmation Hearing; continue legal support to insurers' trial team; confer with Court Coordinator regarding continued hearing schedule, document handling responsive to needs of trial team and requirements of the Court.	10.00	hrs.	750.00
12/18/2002	HMC	Attend continuation of confirmation hearing; conference with Mr. Plevin regarding potential appeal and telephone conference with Mr. Creely regarding same.	1.80	hrs.	450.00
12/18/2002	AH	Continue legal support to trial team; continue coordination with the Court Coordinator regarding appropriate handling of trial documents.	4.00	hrs.	300.00
12/19/2002	AH	Receive notice from Court Coordinator regarding final handling of all trial documents; provide notice to interested counsel regarding same; coordinate handling of remaining trial documents pursuant to requests of interested counsel; receive documents from Court for final disposition.	9.00	hrs.	675.00
12/20/2002	AH	Receive e-mail advice directing basic documents handling preferences among insurers counsel; Telephone conferences with counsel for US Fire, Old Republic, Mt. McKinley, Highlands, Unigard, AMICO, Home and National Union insurers; receive shipping instructions from counsel; implement same; provide billing instructions to Marker Hoff for documents production of the 7, 11-binder sets of Joint Insurers' Trial Exhibits; finalize shipping arrangements; finalize billing information; telephone conferences regarding same.	7.50	hrs.	562.50
12/23/2002	AH	Receive and review documents returned from Confirmation Hearing; attention to reconstitution of document groups to ensure integrity of various productions.	5.00	hrs.	375.00
12/27/2002	AH	Continue restoration of documents, document groupings, attention to integrity of	11.50	hrs.	862.50

		documents groupings and related winding-up tasks.			
12/28/2002	AH	Continue winding-up tasks.	5.25	hrs.	393.75
12/29/2002	AH	Finalize winding-up tasks, including review of bankruptcy files for completeness, integrity of documents groupings, related trial files and notebooks.	5.00	hrs.	375.00
01/04/2003	HMC	Review proposed confirmation order, findings, and order regarding standing objections; review memos from other insurer counsel regarding same; draft memo to Mr. Kavanaugh and Mr. Creeley regarding possible objections to proposed orders and findings.	1.50	hrs.	375.00
01/06/2003	HMC	Telephone conferences with Mr. Creeley and Mr. Kavanaugh regarding proposed confirmation order and findings, and draft memo to Debtor's counsel regarding same.	0.60	hrs.	150.00
01/08/2003	HMC	Review revised confirmation order and findings.	0.40	hrs.	100.00
01/10/2003	HMC	Review memos regarding modifications to confirmation order.	0.20	hrs.	50.00
01/15/2003	HMC	Review final revisions to confirmation order and findings.	0.20	hrs.	50.00
01/17/2003	HMC	Review filed confirmation order and findings, with Debtor's letters to court regarding same.	0.30	hrs.	75.00
					<u>\$73,266.25</u>

EXPENSES

11/15/2002	CM	Photocopy Expense			2.25
11/15/2002	CM	Delivery Expense: Mach 5 Couriers; Invoice # 20785; from U.S. Clerk			6.25
11/15/2002	CM	Delivery Expense: Mach 5 Couriers; Invoice # 20785; to U.S. Clerk			5.00
12/01/2002	HMC	Computer Research Expense: West Group; Invoice # 803290892; online westlaw search on 11/04 & 11/26/02			193.12
12/02/2002	HMC	Photocopy Expense			33.75
12/02/2002	CM	Photocopy Expense			2.25
12/09/2002	CM	Photocopy Expense			132.00
12/09/2002	CM	Photocopy Expense			46.35
12/09/2002	HMC	Delivery Expense: Mach 5 Couriers; Invoice # 21217; to U.S. Bankruptcy Court			12.95
12/09/2002	HMC	Delivery Expense: Mach 5 Couriers; Invoice # 21217; from U.S. Bankruptcy Court			12.95
12/09/2002	HMC	Delivery Expense: Mach 5 Couriers; Invoice # 21217; to Bracewell & Patterson			12.95
12/09/2002	CM	Postage Expense			8.75
12/09/2002	CM	Postage Expense			31.50
12/09/2002	CM	Postage Expense			162.75

12/10/2002	HMC	Misc. Expense: Jet Litigation Support Services; Invoice # 6497; charges for copies to all parties listed on service list (7,300)	553.16
12/11/2002	CM	Photocopy Expense	2.25
12/12/2002	CM	Photocopy Expense	120.00
			<u>\$1,338.23</u>

TIMEKEEPER SUMMARY - THIS BILL

		Hours	Rate	Total
HMC	Cohn, H. Miles	209.80	\$250.00	\$52,450.00
AH	Hooks, Adra	276.25	\$75.00	\$20,718.75
CM	Murray, Cheryl	1.30	\$75.00	\$97.50

BILLING SUMMARY

Total professional services	\$73,266.25
Total expenses incurred	\$1,338.23
	-----
Total charges for this invoice	\$74,604.48
	-----
<b>Total Balance Due</b>	<u><b>\$74,604.48</b></u>

# SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

1001 MCKINNEY, SUITE 1400  
HOUSTON, TX 77002-6420  
(713)374-7000 - Telephone  
(713)374-7049 - Telecopier  
Tax I.D. No. 76-0595042

February 17, 2003

Alberta Brennan  
Risk Enterprise Management, Ltd.  
59 Maiden Lane, 5th Floor  
New York, NY 10038

Invoice No.: 6442

Re: The Home Insurance Company / J.T. Thorpe Company  
Our File No. 0455 00001

For Services Rendered Through January 31, 2003

## ACCOUNT SUMMARY

	Amount	
Past Due	\$74,604.48	
Payment(s) Received - Thank you	\$0.00	CR
Current Charges:		
Total Fees	\$0.00	
Total Costs	\$180.41	
Total	\$180.41	
Less prepaid cash applied to this invoice*	\$0.00	CR
Less Trust funds applied to this invoice	\$0.00	CR
<b>BALANCE DUE</b>	<b>\$74,784.89</b>	

\* Prepaid cash remaining balance is \$0.00  
Trust account remaining balance is \$0.00

CF0018

**SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.**

1001 McKINNEY, SUITE 1400  
HOUSTON, TX 77002-6420  
(713)374-7000 - Telephone  
(713)374-7049 - Telecopier  
Tax I.D. No. 76-0595042

February 17, 2003

Alberta Brennan  
Risk Enterprise Management, Ltd.  
59 Maiden Lane, 5th Floor  
New York, NY 10038

Invoice# 6442  
Billing through 01/31/2003

Re: The Home Insurance Company / J.T. Thorpe Company  
Our file# 0455 00001

**PROFESSIONAL SERVICES  
EXPENSES**

01/03/2003	HMC	Computer Research Expense: West Group; Invoice # 803515235; online research on 12- 03-02 & 12-04-02	180.41
			<hr/>
			\$180.41

**TIMEKEEPER SUMMARY - THIS BILL**

	Hours	Rate	Total
<b><u>BILLING SUMMARY</u></b>			
Total expenses incurred		\$180.41	
		<hr/>	
Total charges for this invoice		\$180.41	
Plus net balance forward		\$74,604.48	
		<hr/>	
Total Balance Due		\$74,784.89	

CF0019

**THE HOME INSURANCE COMPANY IN LIQUIDATION**

P.O. Box 1720  
Manchester, New Hampshire 03105-1720  
Tel: (800) 347-0014

May 11, 2006

Class V

H. Miles Cohn, Esquire  
Sheiness, Scott, Grossman & Cohn, LLP  
1001 McKinney, Suite 1400  
Houston, TX 77002

RE: NOTICE OF DETERMINATION  
Proof of Claim No.: VEND700093-01

Determination Summary

Gross Amount of Claim : \$ 74,784.89  
Amount Allowed by Liquidation : \$ 74,784.89

Explanation: The Home Insurance Company Home retained the Sheiness Scott Grossman & Cohn law firm as local bankruptcy counsel in coverage litigation involving Home's insured J.T. Thorpe Company related to asbestos litigation involving the insured. Services were rendered from 10/22/02 through 1/21/03 in amount of \$74,784.89. A review of invoice 6295 confirms that the services provided were reasonable and necessary for the defense of Home in the referenced coverage litigation. The invoice was not paid because the services were rendered prior to the Home's rehabilitation.

Dear Claimant:

The purpose of this letter is to provide you with a determination set forth above of claims you have presented to The Home Insurance Company in Liquidation ("The Home"), under the Proof(s) of Claim specified above. The Home expects to present notice of this determination to the Superior Court for Merrimack County, New Hampshire (the "Court") for approval in accordance with New Hampshire Revised Statute, RSA 402-C:45. Read this Notice of Determination carefully as it sets forth your rights and obligations in detail.

The Home has now made a Determination on the claims as set forth above in accordance with The Home Claim Procedures (the "Procedures")\* approved by the Court. If the claim has been allowed, in whole or in part, it has been assigned a Class V priority as a "residual

\* A copy of the January 19, 2005 Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation may be obtained from the website of the Office of the Liquidation Clerk for The Home Insurance Company in Liquidation and US International Reinsurance Company in Liquidation, [www.hicilclerk.org](http://www.hicilclerk.org).



CF0020

claim" pursuant to the Order of Distribution set forth in RSA 402-C:44 and will be placed in line for payment as directed by the Court from the assets of The Home. The first \$50 of the amount allowed on each claim in this class shall be deducted from the amount distributed as specified in RSA 402-C:44.

You may have other claims against The Home for which you may receive other Notices of Determination. You will have a separate right to dispute each Notice of Determination. If your claim has been allowed in whole or in part, this Notice of Determination does not mean that your claim will immediately be paid, or that it will be paid in full or at all. Pursuant to order of the Court, The Home may make distributions of its assets as a percentage of all allowed claims in a particular priority class in The Home estate as approved by the Court. The amount of the final payment for allowed claims will be determined by the final ratio of assets to liabilities and the applicable priority. Please be advised that the final percentage of payment you receive from The Home, at the time The Home estate is finally closed, is the total payment amount that you will be entitled to for this claim.

The Liquidator does not expect there to be assets sufficient to make a distribution to creditors in classes below Class II.

Any and all distributions of assets may be affected and/or reduced by any payments you have received on this claim from any other sources not listed on the Notice of Distribution. Any such distributions by The Home are based on The Home's knowledge and/or understanding of the amounts you have received in settlement and/or reimbursement of this claim from all other sources at the time of the allowance or thereafter. Should The Home subsequently become aware of prior recoveries from other sources The Home has the right to reduce its future distribution payments to you to the extent of such other recoveries or to seek and obtain repayment from you with respect to any previous distributions that were made to you.

Further, if you seek or receive any future payment from any other source on this claim after you receive a distribution payment from The Home you must notify The Home at the address below and The Home has the right to recover from you the distribution payments in whole or in part, to the extent of any such other future recoveries.

As a condition to receipt of any distributions, The Home shall be entitled to any rights to subrogation you may have against any third party and you shall be deemed to have assigned to The Home such rights upon receipt of any distributions. You shall also be obliged to reimburse The Home for any legal fees or other costs associated with The Home recovering from you any distribution payments to which you are not entitled.

The following instructions apply to this Notice of Determination:

**Claim Allowed**

1. If this claim has been allowed in whole or in part and you agree with the determination, sign and date the enclosed Acknowledgment of Receipt of the Notice of Determination and mail the completed Acknowledgment to The Home.



## Claim Disallowed

2. A. If all or part of your claim has been disallowed or you wish to dispute the determination or creditor classification for any reason, you may file a Request for Review with the Liquidator. The Request for Review is the first of two steps in the process of disputing a claim determination. The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination.

### REQUEST FOR REVIEW FILING REQUIREMENTS:

- (a) Sign and return the attached Acknowledgment of Receipt form.
- (b) On a separate page, state specifically the reasons(s) you believe that the determination is in error and how it should be modified. Please note the Proof of Claim number on that page and sign the page.
- (c) Mail the Request for Review to:  
The Home Insurance Company in Liquidation  
P.O. Box 1720  
Manchester, NH 03105-1720

You should keep a copy of this Notice of Determination, Acknowledgment of Receipt and Request for Review, then mail the Original Request for Review to us by U.S. Certified Mail.

- (d) The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination. The Request for Review must be in writing.
- (e) The Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination.

**IF A REQUEST FOR REVIEW IS NOT FILED WITH THE HOME WITHIN THE THIRTY (30) DAY PERIOD, YOU MAY NONETHELESS DIRECTLY FILE AN OBJECTION WITH THE COURT WITHIN SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE. You do not have to file the Request for Review as a prerequisite to dispute the Notice of Determination. Please see Section 2B (below) for the Objections to Denial of Claims.**

- B. If your claim is disallowed in whole or in part, you may file an Objection with the Court at

Office of the Clerk, Merrimack County Superior Court  
163 N. Main Street, P.O. Box 2880  
Concord, New Hampshire 03301  
Attention: The Home Docket No.03-E-0106

within sixty (60) days from the mailing of the Notice of Determination and bypass the Request for Review procedures as noted in Section 2A (above). If the Request for Review is timely filed, as outlined in Section 2A, the Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination. If the redetermination is to disallow the claim, you may still file an Objection with the Court. You have sixty (60) days from the mailing of the Notice of Redetermination to file your Objection. Please also sign and return the Acknowledgment of Receipt form and mail a copy of the Objection to the Liquidator.

**IF YOU DO NOT FILE AN OBJECTION WITH THE COURT WITHIN EITHER SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE OF DETERMINATION OR SIXTY (60) DAYS FROM THE MAILING OF ANY NOTICE OF REDETERMINATION, YOU MAY NOT FURTHER OBJECT TO THE DETERMINATION.**

A timely filed Objection will be treated as a Disputed Claim and will be referred to the Liquidation Clerk's Office for adjudication by a Referee in accordance with the Procedures.

3. You must notify The Home of any changes in your mailing address. This will ensure your participation in future distributions, as applicable. For purposes of keeping The Home informed of your current address, please notify us at the address given on the letterhead above.

Sincerely yours,

Peter Bengelsdorf, Special Deputy Liquidator  
For Roger A. Sevigny, Liquidator  
of The Home Insurance Company in Liquidation

If you wish to speak to someone regarding this Notice of Determination, please contact:

Alberta Brennan  
Senior Manager  
Home Insurance Company in Liquidation  
212-530-4129

FILE COPY

SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

ATTORNEYS AT LAW  
1001 MCKINNEY, SUITE 1400  
HOUSTON, TEXAS 77002-6323  
TEL: 713.374.7000 FAX: 713.374.7049

H. Miles Cohn  
Direct: 713/374-7020  
Email: [mcohn@hou-law.com](mailto:mcohn@hou-law.com)

June 6, 2006

The Home Insurance Company in Liquidation  
P.O. Box 1720  
Manchester, N.H. 03105-1720  
By *Certified United States mail, Receipt No. 7005 1820 0003 4969 6091*

Re: Proof of Claim No.: VEND700093-01 – Request for Review

Gentlemen:

I am requesting a review of the determination of the referenced claim, made by letter dated May 11, 2006. I have completed the "Acknowledgment of Receipt," and it is enclosed.

This is a claim for attorney's fees and expenses incurred in representing The Home Insurance Company in a bankruptcy proceeding in Houston, Texas, during the period from October 2002 through January 2003. Together with other attorneys representing Home, we successfully defended and ultimately settled an attempt to impose substantial asbestos claim liability against the Home through the bankruptcy of T. J. Thorpe Company.

The claim was allowed, but only as a Class V claim that will never be paid. I am requesting review with respect to the classification of the claim, which we filed as a Class I (administration cost) claim.

To begin with, the statute defines Class I claims to include *all* administration costs, including "costs of preserving . . . assets" and "reasonable attorney's fees." Specifically:

"I. ADMINISTRATION COSTS. The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees."

N.H. Rev.Stat. §402-C:44.



VISIT US AT OUR WEBSITE: [WWW.LAWYERS.COM/SSG&C](http://WWW.LAWYERS.COM/SSG&C)

CF0024

The Home Ins. Co. In Liquidation  
June 6, 2006  
Page 2

This definition is *not limited to costs or attorney's fees incurred by the liquidator*. On the contrary, by stating that it "includes, but is not limited to . . . compensation for all services rendered in the liquidation," the language suggests that costs incurred prior to the liquidation that qualify as "administration costs" would be entitled to Class I treatment.

An insurance company that is in liquidation, or is soon to be in liquidation, cannot protect itself and its assets if there is no assurance that attorneys and other persons working to protect it, including those who served the company shortly before the liquidation order, will be paid. It should be remembered that in the months before the liquidation order, we and other attorneys worked very diligently to protect Home. We knew that the prospect of a liquidation was looming in late 2002, but we were assured by Home personnel that we would be paid even if the company went into liquidation, as attorney's fees would be a priority claim.

We continued to work in good faith and, indeed, we put our hearts and souls into representing Home despite the difficulties that led to the liquidation. I recall one night, before a bankruptcy court hearing the next morning, when we worked literally through the night crafting the settlement that has protected Home from the enormous asbestos liability that other parties were attempting to impose through the bankruptcy process and without opportunity for defense of the underlying claims.

We are a small law firm and the loss of this claim is a very real and substantial loss for the firm and for me personally. I therefore request that you review and reconsider the determination on our claim and issue a redetermination allowing the claim as a under Class I (administration costs).

Sincerely,



H. Miles Cohn

cc Alberta Brennan  
Senior Manager  
Home Insurance Company in Liquidation

H:\HMC\Home\Thorpe\Liquidator.02.wpd

CF0025

**THE HOME INSURANCE COMPANY IN LIQUIDATION**

P.O. Box 1720  
Manchester, New Hampshire 03105-1720  
Tel: (800) 347-0014

POC #: VEND700093-01

Amount Allowed: \$ 74,784.89

H. Miles Cohn, Esquire  
Sheiness, Scott, Grossman & Cohn, LLP  
1001 McKinney, Suite 1400  
Houston, TX 77002

**ACKNOWLEDGMENT OF RECEIPT**

I hereby acknowledge receipt of the Notice of Determination as a Class V Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Determination of my Claim against The Home Insurance Company in Liquidation and in that regard advise as follows:

(Check off all applicable items.)

I agree to the determination.

I reject the determination and want to file a Request for Review (specific reasons must be included along with return of the signed Acknowledgment).

I reject the determination and intend to file a separate Objection with the Court, without filing a Request for Review.

I have not assigned any part of this claim.

I have not made any other recoveries with respect to this claim.

I have not sought and do not intend to seek any other recoveries with respect to this claim.

I have made recovery from others with respect to this claim (full details must be included with this Acknowledgment).

I have sought or intend to seek recovery from others with respect to this claim (full details must be included with this Acknowledgment).

I request that The Home mail further correspondence to:

- Same name as above.  
New name \_\_\_\_\_
- Same address as above  
New address \_\_\_\_\_

This Acknowledgment of Receipt must be completed, signed and returned to The Home in order to be eligible for distributions from The Home estate as directed by the Court.

Signature: H. Miles Cohn

Printed Name: H. Miles Cohn

Title: Partner, Sheinewess, Scott, Grossman & Cohn, LLP

Date: June 6, 2006

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>		A. Signature <b>X</b> <b>INTRA-CITY</b> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: <b>THE HOME INSURANCE COMPANY IN LIQUIDATION</b> <b>P.O. Box 1720</b> <b>MANCHESTER, NH</b> <b>03105-1720</b>		B. Received by (Printed Name) <b>C. Corbett</b>	C. Date of Delivery <b>9.7.06</b>
2. Article Number (Transfer from service label) <b>7005 1820 0003 4969 6091</b>		D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:	
PS Form 3811, February 2004 <b>HMC</b> Domestic Return Receipt		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	



"Miles Cohn"  
<MCohn@hou-law.com>  
01/18/2007 11:37 AM

To <jacqueline.merson@homeinsco.com>  
cc  
bcc  
Subject Claim VEND700093-01

Jacqueline, attached is the request for review that I discussed with you a few minutes ago.

This was submitted last June and we have received no ruling or response. I noticed the 12/5/06 decision of the New Hampshire Supreme Court, 2006 WL 3489902, which supports our position in the request for review, and it occurred to me that the Liquidator might have been holding our request and perhaps similar claims until receiving a decision in that case. If that is the situation, I suppose I should continue waiting for a decision. But if it does not appear that any decision will be made any time soon on the request for review, then perhaps I should go ahead and file an objection with the court to get that process going.

Anyway, that is the situation. I would sincerely appreciate any information you can provide regarding the status of our request for review.

Thanks, Miles

---

**H. Miles Cohn**

Sheiness, Scott, Grossman & Cohn, L.L.P.  
1001 McKinney St., Suite 1400  
Houston, Texas 77002  
Telephone (713) 374-7020 (direct)  
Facsimile (713) 374-7049  
mail to: [mcohn@hou-law.com](mailto:mcohn@hou-law.com)  
[www.ssgclawyers.com](http://www.ssgclawyers.com)



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FILE COPY

SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

ATTORNEYS AT LAW  
1001 MCKINNEY, SUITE 1400  
HOUSTON, TEXAS 77002-6323  
TEL: 713.374.7000 FAX: 713.374.7049

H. Miles Cohn  
Direct: 713/374-7020  
Email: [mcohn@hou-law.com](mailto:mcohn@hou-law.com)

June 6, 2006

The Home Insurance Company in Liquidation  
P.O. Box 1720  
Manchester, N.H. 03105-1720  
By Certified United States mail, Receipt No. 7005 1820 0003 4969 6091

Re: Proof of Claim No.: VEND700093-01 – Request for Review

Gentlemen:

I am requesting a review of the determination of the referenced claim, made by letter dated May 11, 2006. I have completed the "Acknowledgment of Receipt," and it is enclosed.

This is a claim for attorney's fees and expenses incurred in representing The Home Insurance Company in a bankruptcy proceeding in Houston, Texas, during the period from October 2002 through January 2003. Together with other attorneys representing Home, we successfully defended and ultimately settled an attempt to impose substantial asbestos claim liability against the Home through the bankruptcy of T. J. Thorpe Company.

The claim was allowed, but only as a Class V claim that will never be paid. I am requesting review with respect to the classification of the claim, which we filed as a Class I (administration cost) claim.

To begin with, the statute defines Class I claims to include *all* administration costs, including "costs of preserving . . . assets" and "reasonable attorney's fees." Specifically:

"I. ADMINISTRATION COSTS. The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees."

N.H. Rev.Stat. §402-C:44.

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CF0029



The Home Ins. Co. In Liquidation  
June 6, 2006  
Page 2

This definition is *not limited to costs or attorney's fees incurred by the liquidator*. On the contrary, by stating that it "includes, but is not limited to . . . compensation for all services rendered in the liquidation," the language suggests that costs incurred prior to the liquidation that qualify as "administration costs" would be entitled to Class I treatment.

An insurance company that is in liquidation, or is soon to be in liquidation, cannot protect itself and its assets if there is no assurance that attorneys and other persons working to protect it, including those who served the company shortly before the liquidation order, will be paid. It should be remembered that in the months before the liquidation order, we and other attorneys worked very diligently to protect Home. We knew that the prospect of a liquidation was looming in late 2002, but we were assured by Home personnel that we would be paid even if the company went into liquidation, as attorney's fees would be a priority claim.

We continued to work in good faith and, indeed, we put our hearts and souls into representing Home despite the difficulties that led to the liquidation. I recall one night, before a bankruptcy court hearing the next morning, when we worked literally through the night crafting the settlement that has protected Home from the enormous asbestos liability that other parties were attempting to impose through the bankruptcy process and without opportunity for defense of the underlying claims.

We are a small law firm and the loss of this claim is a very real and substantial loss for the firm and for me personally. I therefore request that you review and reconsider the determination on our claim and issue a redetermination allowing the claim as a under Class I (administration costs).

Sincerely,



H. Miles Cohn

cc Alberta Brennan  
Senior Manager  
Home Insurance Company in Liquidation

HAHMC\Home\Thorpe\Liquidator.02.wpd

CF0030



"Miles Cohn"  
<MCohn@hou-law.com>  
03/05/2007 12:43 PM

To <jacqueline.merson@homeinsco.com>  
cc  
bcc  
Subject FW: Claim VEND700093-01

Jacqueline, below are my prior emails. The claim in question is described in the first one, and a copy of the request for determination is attached. I would appreciate it if you would let me know the status of our request for determination.

Many thanks,

Miles Cohn

---

**From:** Miles Cohn  
**Sent:** Tuesday, January 30, 2007 5:01 PM  
**To:** 'jacqueline.merson@homeinsco.com'  
**Subject:** FW: Claim VEND700093-01

Jacqueline, have you been able to determine whether anything has happened with the request for review that I filed last year?

I would appreciate any information you may be able to provide.

Thanks, Miles

---

**From:** Miles Cohn  
**Sent:** Thursday, January 18, 2007 10:37 AM  
**To:** 'jacqueline.merson@homeinsco.com'  
**Subject:** Claim VEND700093-01

Jacqueline, attached is the request for review that I discussed with you a few minutes ago.

This was submitted last June and we have received no ruling or response. I noticed the 12/5/06 decision of the New Hampshire Supreme Court, 2006 WL 3489902, which supports our position in the request for review, and it occurred to me that the Liquidator might have been holding our request and perhaps similar claims until receiving a decision in that case. If that is the situation, I suppose I should continue waiting for a decision. But if it does not appear that any decision will be made any time soon on

CF0031

the request for review, then perhaps I should go ahead and file an objection with the court to get that process going.

Anyway, that is the situation. I would sincerely appreciate any information you can provide regarding the status of our request for review.

Thanks, Miles

---

**H. Miles Cohn**

Sheiness, Scott, Grossman & Cohn, L.L.P.

1001 McKinney St., Suite 1400  
Houston, Texas 77002

Telephone (713) 374-7020 (direct)

Facsimile (713) 374-7049

mail to: [mcohn@hou-law.com](mailto:mcohn@hou-law.com)

[www.ssgclawyers.com](http://www.ssgclawyers.com)



<<doc20070118102746.pdf>> doc20070118102746.pdf



"Miles Cohn"  
<MCohn@hou-law.com>  
03/06/2007 06:55 PM

To: <jacqueline.merson@homeinsco.com>  
cc  
bcc  
Subject: Claim VENDOR700093-01

Jacqueline,

To follow up on our conversation earlier this afternoon, attached is a copy of the New Hampshire Supreme Court decision, *In the Matter of the Liquidation of Home Insurance Company*, 913 A.2d 712 (N.H. 2006). The opinion was issued on December 5, 2006.

The discussion regarding administrative claims begins at p. 9 of the court opinion. Beginning at the bottom of that page, the Court rejects the "bankruptcy" approach that would limit administrative costs to those incurred after appointment of the receiver and instead holds that such costs include all expenses within the broad definition in Section 402-C:44. Under that definition, my firm's legal fees for representing Home Insurance Company in late 2002 and early 2003 should certainly be included.

Please let me know if there is any additional information I can provide in connection with the Receiver's consideration of our Request for Review.

Thanks, Miles Cohn

---

**H. Miles Cohn**  
Sheiness, Scott, Grossman & Cohn, L.L.P.  
1001 McKinney St., Suite 1400  
Houston, Texas 77002  
Telephone (713) 374-7020 (direct)  
Facsimile (713) 374-7049  
mail.to:mcohn@hou-law.com  
[www.ssgclawyers.com](http://www.ssgclawyers.com)

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CF0033

Westlaw

913 A.2d 712

913 A.2d 712

(Cite as: 913 A.2d 712)

In re Liquidation of Home Ins. Co.N.H.,2006.

Supreme Court of New Hampshire.

In the Matter of the LIQUIDATION OF the HOME INSURANCE COMPANY.

No. 2005-740.

Argued: June 7, 2006.

Opinion Issued: Dec. 5, 2006.

**Background:** Insurance Commissioner brought action as liquidator for approval of settlement entitling insolvent company's reinsureds to \$78 million if they submitted all claims to liquidator without pursuing claims against company's reinsurers. The Superior Court, Merrimack County, McGuire, J., ruled in favor of liquidator. Insured and reinsurers appealed. The Supreme Court vacated order. On remand, the Superior Court approved the agreement. Insured and reinsurers appealed.

**Holdings:** The Supreme Court, Duggan, J., held that:

- (1) liquidator had authority to enter the agreement;
- (2) payments to the reinsureds were ♦ administration costs ♦ with first priority for payment;
- (3) evidence supported conclusion that the payments were necessary; and
- (4) the agreement was fair and reasonable.

Affirmed.

West Headnotes:

[1] Insurance 217 ⇌ 1365

217 Insurance

217VI Financial Impairment

217VI(A) In General

217k1362 Assets

217k1365 k. Listing and Collection. Most Cited Cases

Insurance 217 ⇌ 1405

217 Insurance

217VI Financial Impairment

217VI(C) Supervisors, Liquidators, Conservators, Rehabilitators or Receivers

217k1405 k. Powers and Duties. Most Cited Cases

Insurance 217 ⇌ 1414

217 Insurance

217VI Financial Impairment

217VI(D) Claims

217k1414 k. Priorities. Most Cited Cases

Liquidator had authority to enter agreement entitling insolvent company's reinsureds to \$78 million if they submitted all claims to liquidator without pursuing claims against company's reinsurers and had authority to treat the payment as class I payment for administrative expenses, even though reinsureds were in class V; liquidator had broad authority to take all necessary and appropriate action in collecting company's assets, and no statute barred payment of administration costs to lower priority creditors in order to collect an asset. RSA 402-C:25, 402-C:44.

[2] Insurance 217 ⇌ 1365

217 Insurance

217VI Financial Impairment

217VI(A) In General

217k1362 Assets

217k1365 k. Listing and Collection. Most Cited Cases

The liquidator has broad authority to take all necessary and appropriate action in collecting the assets of an insolvent insurer. RSA 402-C:25.

[3] Insurance 217 ⇌ 1414

217 Insurance

217VI Financial Impairment

217VI(D) Claims

217k1414 k. Priorities. Most Cited Cases

Liquidator's payments to insolvent company's reinsureds under proposed agreement requiring them to submit all claims to liquidator without pursuing claims against company's reinsurers were administration costs with first priority for payment; even though reinsureds' claims against company arose pre-liquidation and even if claims and rights to payment arising pre-liquidation could not constitute administration costs, the reinsureds' right to payment under the proposed agreement arose post-liquidation. RSA 402-C:44(1).

[4] Insurance 217 ⇌ 1414

217 Insurance

217VI Financial Impairment

217VI(D) Claims

217k1414 k. Priorities. Most Cited Cases

Liquidator's payments to insolvent company's reinsureds under proposed agreement requiring them to submit all claims to liquidator without pursuing claims against company's reinsurers did not create an impermissible subclass by splitting class V into two groups; payments of class I administration costs, by definition, were not a distribution to a lower priority class and therefore did not create a subclass of lower priority creditors. RSA 402-C:44.

[5] Insurance 217 ⇌ 1365

217 Insurance

217VI Financial Impairment

217VI(A) In General

217k1362 Assets

217k1365 k. Listing and Collection. Most Cited Cases

Insurance 217 ⇌ 1399

217 Insurance

217VI Financial Impairment

217VI(B) Proceedings

217k1399 k. Costs and Expenses. Most Cited Cases

Evidence supported conclusions that insolvent company's reinsureds would not file and prosecute claims without a financial incentive and that liquidator's payments to them in exchange for submitting claims to liquidator, not

company's reinsurers, were necessary administration costs of preserving and recovering company's assets from reinsurers; testimony indicated that reinsureds had no economic incentive to prosecute their claims, and uncertainty existed as to whether cut-through deals between reinsureds and reinsurers were legally permissible. RSA 402-C:44(1).

**[6] Appeal and Error 30 ⇨846(1)**

- 30 Appeal and Error
- 30XVI Review
  - 30XVI(A) Scope, Standards, and Extent, in General
  - 30k844 Review Dependent on Mode of Trial in Lower Court
  - 30k846 Trial by Court in General
  - 30k846(1) k. In General. Most Cited Cases

**Appeal and Error 30 ⇨1010.2**

- 30 Appeal and Error
- 30XVI Review
  - 30XVI(I) Questions of Fact, Verdicts, and Findings
  - 30XVI(I)3 Findings of Court
  - 30k1010 Sufficiency of Evidence in Support
  - 30k1010.2 k. Total Failure of Proof. Most Cited Cases

The Supreme Court will uphold the superior court's findings and rulings unless they lack evidential support or are legally erroneous.

**[7] Appeal and Error 30 ⇨994(3)**

- 30 Appeal and Error
- 30XVI Review
  - 30XVI(I) Questions of Fact, Verdicts, and Findings
  - 30XVI(I)1 In General
  - 30k994 Credibility of Witnesses
  - 30k994(3) k. Province of Trial Court. Most Cited Cases

**Appeal and Error 30 ⇨1011.1(6)**

- 30 Appeal and Error
- 30XVI Review
  - 30XVI(I) Questions of Fact, Verdicts, and Findings
  - 30XVI(I)3 Findings of Court
  - 30k1011 On Conflicting Evidence
  - 30k1011.1 In General
  - 30k1011.1(6) k. Credibility and Number of Witnesses. Most Cited Cases

**Appeal and Error 30 ⇨1012.1(2)**

- 30 Appeal and Error
- 30XVI Review
  - 30XVI(I) Questions of Fact, Verdicts, and Findings
  - 30XVI(I)3 Findings of Court
  - 30k1012 Against Weight of Evidence
  - 30k1012.1 In General
  - 30k1012.1(2) k. Province of Trial Court. Most Cited Cases

The Supreme Court defers to the superior court's resolution of conflicting testimony, evaluation of credibility, and determination of the weight to be given evidence.

**[8] Insurance 217 ⇨1412**

217 Insurance

217VI Financial Impairment

217VI(D) Claims

217k1412 k. In General. Most Cited Cases

Liquidator's proposed agreement to pay \$78 million to insolvent company's reinsureds if they submitted all claims to liquidator without pursuing claims against company's reinsurers was fair and reasonable; evidence indicated that reinsureds would not have filed claims against estate without financial incentive, their claims totaled approximately \$231 million, collection proceedings against reinsurers would likely be lengthy, complex, and difficult, and the agreement increased the likelihood that class II claims of policyholders would be paid.

\*713 Rackemann, Sawyer & Brewster, of Boston, Massachusetts (J. David Leslie and Eric A. Smith on the brief, and Mr. \*714 Leslie orally), and Kelly A. Ayotte, attorney general (J. Christopher Marshall, attorney, on the brief), for the petitioner, the Commissioner of Insurance of the State of New Hampshire as Liquidator of the Home Insurance Company.

Lovells, of New York, New York (Gary S. Lee & a. on the brief, and Pieter Van Tol orally), and Orr & Reno, P.A., of Concord (Ronald L. Snow and Lisa Snow Wade on the brief), for intervenors Century Indemnity Company, Pacific Employers Insurance Company, ACE Property and Casualty Insurance Company, and ACE American Reinsurance Company.

Downs Rachlin Martin, PLLC, of Burlington, Vermont (Andre D. Bouffard and Eric D. Jones on the brief, and Mr. Bouffard orally) for intervenor Benjamin Moore & Company.

Rebecca W. McElduff, of Kansas City, Missouri, by brief, and Sheehan Phinney Bass + Green, P.A., of Manchester (Bruce A. Harwood and James P. Harris on the brief) for the National Association of Insurance Commissioners, as amicus curiae.

Wiggin & Nourie, P.A., of Manchester (Doreen F. Connor on the brief), and Dykema Gossett PLLC, of Detroit, Michigan (Suzanne Sahakian on the brief) for the National Conference of Insurance Guaranty Funds, as amicus curiae. Orr & Reno, P.A., of Concord (Lisa Snow Wade on the brief), and Tracy W. Laws and Matthew T. Wulf, of Washington, D.C., by brief for the Reinsurance Association of America, as amicus curiae.

DUGGAN, J.

The intervenors, Century Indemnity Company, Pacific Employers Insurance Company, ACE Property and Casualty Insurance Company, ACE American Reinsurance Company (collectively, the ACE Companies) and Benjamin Moore & Company (BMC), appeal orders of the Superior Court (*McGuire, J.*) granting the motion of the petitioner, the New Hampshire Commissioner of Insurance (commissioner) as liquidator of the Home Insurance Company (Home), for approval of a proposed agreement with certain insureds and reinsureds of Home. Under the proposed agreement, these entities would receive payments of approximately \$78 million in exchange for filing reinsurance claims against Home. The superior court granted the commissioner's motion upon finding that: (1) the commissioner was authorized to enter into the proposed agreement; (2) the proposed agreement was necessary to maximize the recovery of Home's assets and protect the interests of the insureds and creditors; and (3) the proposed agreement was fair and reasonable. We affirm.

The record supports the following facts. The ACE Companies are reinsurers of Home. BMC is a policyholder claimant with numerous open liability claims against Home. Prior to becoming insolvent, Home was domiciled in New Hampshire, and licensed and regulated by the New Hampshire Insurance Department. Home operated an unincorporated branch in the United Kingdom, its UK Branch, through which it wrote property and casualty insurance and reinsurance.

Home conducted business in the United Kingdom as a member of the American Foreign Insurance Association (AFIA), an unincorporated association of American insurance companies that wrote insurance and reinsurance. As a member of the AFIA, Home entered into insurance and reinsurance agreements (collectively, the AFIA treaties) with certain entities in the United Kingdom (collectively, the AFIA Cedents). Home then obtained reinsurance on these agreements from member companies in the AFIA and other third party reinsurers.

\*715 In 1984, CIGNA Insurance Company purchased the AFIA. As part of that transaction, Insurance Company of North America (INA), a subsidiary of CIGNA, entered into an Insurance and Reinsurance Assumption Agreement (assumption agreement) with Home and other participating members of the AFIA. Pursuant to the assumption agreement, INA assumed the insurance and reinsurance liabilities of Home with respect to Home's operations in the United Kingdom, and agreed to bear the related costs and expenses of administering this business. Significantly, the



assumption agreement contains an insolvency clause requiring INA to pay obligations directly to Home, or Home's liquidator, in the event of Home's insolvency.

In 1996, as part of a corporate restructuring, Century Insurance Company (Century) succeeded to INA's rights and obligations under the assumption agreement and became required to reinsure Home for all of its obligations to the AFIA Cedents. Century became part of the ACE Companies in 1999, thereby obligating the ACE Companies to pay all claims submitted against Home by the AFIA Cedents under the AFIA.

Proceedings against Home under the Insurers Rehabilitation and Liquidation Act, RSA ch. 402-C (2006), were initiated when the commissioner petitioned the superior court for an Order of Rehabilitation for Home. On March 5, 2003, the superior court entered an Order of Rehabilitation for Home and appointed the commissioner to be Home's rehabilitator. 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 (English Court) to appoint a Joint Provisional Liquidation (JPL) team for Home under English law. While this provisional liquidation proceeding took place in the United Kingdom, the liquidation of Home is under the primary jurisdiction of the superior court. On June 13, 2003, the superior court entered a liquidation order declaring Home insolvent and appointing the commissioner as the liquidator of Home's estate.

Pursuant to RSA 402-C:21, I (2006), RSA 402-C:25, VI (2006) and the superior court's liquidation order, the liquidator is vested with title to and charged with administering and collecting Home's assets for distribution to Home's creditors. All persons asserting claims against Home must file proofs of claim in the New Hampshire liquidation, and the liquidator's ability to collect reinsurance payments on claims made against Home depends upon the timely filing and proving of claims in Home's liquidation. A claim can only be submitted to a reinsurer if it is allowed by Home's estate, a process overseen by the liquidator and the superior court.

RSA 402-C:44 (2006) governs the order of distribution of claims from a liquidated insurer's estate, and establishes classes of claimants as part of the distribution process. After a fifty-dollar 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 also provides that [n]o subclasses shall be established within any class. *Id.*

RSA 402-C:44 requires that classes of claims against an insolvent insurance company's estate be paid in the following order:

I. Administration Costs. The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; \*716 any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

II. Policy Related Claims. All claims by policyholders, including claims for unearned premiums in excess of \$50, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company....

III. Claims of the Federal Government.

IV. Wages.

(a) Debts due to employees for services performed, not to exceed \$1,000 to each employee which have been earned within one year before the filing of the petition for liquidation....

(b) Such priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employees.

V. Residual Classification. All other claims including claims of any state or local government, not falling within other classes under this section....

VI. Judgments. Claims based solely on judgments....

VII. Interest on Claims Already Paid. Interest at the legal rate compounded annually on all claims in the classes under paragraphs I through VI from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared....

VIII. Miscellaneous Subordinated Claims. The remaining claims or portions of claims not already paid, with interest, as in paragraph VII....

IX. Preferred Ownership Claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies....

X. Proprietary Claims. The claims of shareholders or other owners.

RSA 402-C:44, I-X.

The claims of the AFIA Cedents based upon their pre-liquidation reinsurance contracts with Home fall into the **all** other claims **category** of Class V. See RSA 402-C:44, V. The claims of BMC, as a policyholder of Home, are in Class II. The superior court determined that it is unlikely that there will be sufficient assets to make distributions to classes beyond Class II. The AFIA Cedents' claims-if paid to Home under the assumption agreement-would constitute the largest single asset in Home's estate and total approximately \$231 million. Pursuant to the liquidation order, the AFIA Cedents must submit their claims against Home to the liquidator in order to obtain any recovery.

After liquidation proceedings had commenced, the liquidator proposed an agreement (the proposed agreement) between the Home estate and the AFIA Cedents, under which the AFIA Cedents would be required to submit all of their claims to the liquidator. Once these claims were allowed, the liquidator would submit them to the ACE Companies and other reinsurers of Home to recover reinsurance payments. In exchange for the filing of their claims, the liquidator would distribute a portion of this recovery directly to the AFIA Cedents, and use the remainder to pay creditors pursuant to the priority distribution provision of RSA 402-C:44. Under this arrangement, the AFIA Cedents would receive distributions of approximately \$78 million. This figure corresponds to fifty **717** percent of the \$231 million less deductions for offsets and expenses associated with administering the agreement. The distributions would be made to the AFIA Cedents proportionately, based upon the value of their allowed claims against Home. The proposed agreement would prohibit the AFIA Cedents from seeking **cut-through** agreements, i.e., direct agreements with the ACE Companies that bypass the liquidator.

By its own terms, the proposed agreement is subject to the approval of both a majority in number and seventy-five percent in value of the AFIA Cedents. It is also subject to approval by the superior court. Once approval is obtained from the superior court, the proposed agreement would be submitted to the English Court for approval. Upon approving the proposed agreement, the English Court would issue a **Global Liquidation Order**, which would be filed with the Financial Services Agency (FSA), a government regulator of financial services in the United Kingdom. Upon the approval or non-objection of the FSA, the proposed agreement would become binding upon all creditors of Home, including the AFIA Cedents.

This litigation commenced when the liquidator filed a motion in the superior court seeking approval of the proposed agreement. The ACE Companies and BMC objected to the motion arguing, in pertinent part, that: (1) the liquidator lacked authority to enter into the proposed agreement; (2) the proposed payments to the AFIA Cedents could not properly be classified as Class I administrative costs; and (3) the proposed agreement creates a subclass of creditors within Class V in violation of the statutory prohibition against subclasses. See RSA 402-C:44.

The superior court issued an order on April 29, 2004, which ruled that the liquidator was authorized under RSA 402-C:25 to enter into the proposed agreement with the AFIA Cedents, and that the proposed agreement was **consistent with the goals and purpose of the statute to protect the interests of the insureds and creditors**. The ACE Companies and BMC appealed.

We issued an order on September 13, 2004, vacating the superior court's order. We directed the court to consider: (1) whether the superior court has an independent obligation to assess the fairness of the proposed agreement; and (2) whether the payment to the AFIA Cedents qualifies as an **administration cost** under RSA 402-C:44, I.

On remand, the superior court ruled that: (1) the payments to the AFIA Cedents are Class I **administration costs** because they constitute the **actual and necessary costs of preserving or recovering the assets of the insurer** under RSA 402-C:44, I; and (2) it has an independent obligation to assess the fairness of the proposed agreement. The superior court also ruled that the liquidator was authorized under RSA chapter 402-C to enter into the proposed agreement and that the liquidator's endorsement of the proposed agreement is **consistent with the broad purposes and goals of [RSA chapter 402-C] to protect the interests of insureds and creditors**.

Following the issuance of the order on remand, the parties filed an interlocutory appeal to this court seeking a determination of whether, as a matter of law: (1) the liquidator is authorized by statute to enter into the proposed agreement with the AFIA Cedents; and (2) the payments to the AFIA Cedents qualify as administrative costs. We declined the appeal.

The superior court subsequently held an evidentiary hearing to determine whether the [proposed] agreement is necessary to preserve and recover assets of the [Home] \*718 estate and whether the terms of the agreement are fair and reasonable. The court heard the testimony of the liquidator; the chief operating officer of Home, Jonathan Rosen; and JPL team members Sarah Ellis, Peter Bengelsdorf and Gareth Hughes. By order dated September 22, 2005, the superior court expressly held that the proposed agreement was both necessary to preserve access to and marshal the AFIA reinsurances and fair and reasonable. The superior court granted the liquidator's motion for approval of the proposed agreement.

The ACE Companies and BMC appeal the superior court's orders, arguing that the trial court erred by ruling that: (1) the liquidator has authority to enter into the proposed agreement; (2) payments to the AFIA Cedents under the proposed agreement constitute administration costs under RSA 402-C:44, I; and (3) the terms of the proposed agreement are fair and reasonable. We address each argument in turn.

### I. Liquidator's Authority

[1] First, we address the ACE Companies' and BMC's argument that the superior court erred in holding that the liquidator has the authority under RSA chapter 402-C to enter into the proposed agreement. In particular, they argue that: (1) the liquidator's actions were inconsistent with RSA chapter 402-C because they violated the mandatory priority distribution in RSA 402-C:44; (2) nothing in the statute indicates that the legislature intended to grant the liquidator unfettered discretion; (3) courts in other states have refused to depart from statutory mandates, even where to do so would increase estate assets; and (4) allowing a deviation from the clear requirements of RSA 402-C:44 would open the door to similar agreements with other creditors or attempts by creditors to enhance their priority.

In response, the liquidator asserts that: (1) RSA chapter 402-C grants the liquidator broad authority to collect assets and gives actual and necessary collection costs Class I priority so that payment of those costs is consistent with the provisions of RSA 402-C:44; (2) RSA 402-C:44 contains no bar on payment of administration costs to lower priority creditors; and (3) the drafting notes to the most recent version of the Insurer Receivership Model Act specifically state that a liquidator has the right to pay Class I administration costs to persons in any priority class where those ... payments assist or result in the collection or recovery of property of the insurer for the benefit of creditors of the estate.

We begin our analysis by examining the language of the relevant provisions of RSA chapter 402-C. The interpretation of a statute is a question of law, which we review *de novo*. We are the final arbiters of the legislature's intent as expressed in the words of the statute considered as a whole. We first examine the language of the statute, and, where possible, ascribe the plain and ordinary meanings to the words used. When a statute's language is plain and unambiguous, we need not look beyond it for further indication of legislative intent, and we will not consider what the legislature might have said or add language that the legislature did not see fit to include.

*Woodview Dev. Corp. v. Town of Pelham*, 152 N.H. 114, 116, 871 A.2d 58 (2005) (citations omitted).

RSA 402-C:1, IV (2006) states the general purpose of chapter 402-C and provides, in pertinent part: The purpose of this chapter is the protection of the interests of insureds, creditors, and the public \*719 generally.... This is achieved through, among other things:

- (a) Early detection of potentially dangerous conditions in an insurer, and prompt application of appropriate corrective measures ...
- (b) Improved methods for rehabilitating insurers ... and
- (c) Enhanced efficiency and economy of liquidation....

RSA 402-C:1, IV(a)-(c).

[2] RSA 402-C:25 sets forth an extensive, nonexclusive list enumerating the powers of the liquidator, and provides that subject to the court's control, a liquidator may [c]ollect all debts and moneys due and claims belonging to the insurer, and do such other acts as are necessary or expedient to collect, conserve or protect its assets or

property.... RSA 402-C:25, VI. The statute also authorizes the liquidator to [d]efray all expenses of taking possession of, [and] conserving ... property of the insurer. RSA 402-C:25, IV. The statute further provides the liquidator with the authority to do such other acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation. RSA 402-C:25, XXII. Thus, on its face, RSA 402-C:25 grants the liquidator broad authority to take all necessary and appropriate action in collecting the assets of an insolvent insurer.

Consistent with this authority, the statute provides that the necessary costs of collecting assets are a principal expense, giving Class I priority to administration costs, which are defined as [t]he costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer.... RSA 402-C:44, I. The ACE Companies and BMC contend that the priority provisions of RSA 402-C:44 facially prohibit administrative cost payments to an entity which is also a lower priority creditor. However, the plain language of RSA chapter 402-C contains no bar on payment of administration costs to lower priority creditors in order to collect an asset.

The ACE Companies assert that courts in other states have refused to depart from statutory mandates, even when to do so would increase the assets of an insolvent insurer's estate, citing *Kemper Reinsurance Co. v. Corcoran (In the Matter of Liquidation of Midland Ins. Co.)*, 79 N.Y.2d 253, 582 N.Y.S.2d 58, 590 N.E.2d 1186 (1992), and *Prudential Reinsurance Co. v. Superior Court*, 3 Cal.4th 1118, 14 Cal.Rptr.2d 749, 842 P.2d 48 (1992), for support. While it is accurate that in both cases the courts reference the general rule of adhering to the priority of claims in the statutory scheme, both cases address a different issue not relevant to our discussion; namely, whether reinsurance debts and credits generated between a reinsurer and the original insurer under the terms of their reciprocal contracts may be set off when the original insurer becomes insolvent. See *Midland Ins. Co.*, 582 N.Y.S.2d 58, 590 N.E.2d at 1187-88, 1191; *Prudential Reinsurance Co.*, 14 Cal.Rptr.2d 749, 842 P.2d at 50, 61-62.

The liquidator directs our attention to the most recent revision of the Insurer Receivership Model Act (IRMA), adopted by the National Association of Insurance Commissioners (NAIC), which explicitly recognizes that administrative cost payments to creditors to assist in the collection of assets for the benefit of a broad body of creditors are consistent with the priorities of distribution. He argues that we may properly consider IRMA in this context, because not only is RSA chapter 402-C consistent with IRMA, but we have previously relied upon NAIC comments to \*720 the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, see *Benson v. N.H. Ins. Guaranty Assoc.*, 151 N.H. 590, 599, 864 A.2d 359 (2004).

The New Hampshire legislature has not adopted IRMA. However, RSA chapter 402-C is nearly identical to the 1967 Wisconsin Insurers Rehabilitation and Liquidation Act (Wisconsin Act), which the NAIC adopted as the Model Act. Compare Wis. Stat. §§ 645.01-645.90 (1967) with RSA 402-C:1-61 (2006). See 1 Nat'l Ass'n of Ins. Comm'rs, *Proceedings of the National Association of Insurance Commissioners* 241 (1969). IRMA is a recent revision of the Model Act. See 3 Nat'l Ass'n of Ins. Comm'rs, *Model Laws Regulations and Guidelines* 555-1 to 555-96 (2006).

Section 801 of IRMA is entitled Priority of Distribution, and is analogous to RSA 402-C:44. Section 801A(1) provides that the costs and expenses of administration are given Class I priority status. See *id.* at 555-83. Further, as in RSA 402-C:44, administrative costs and expenses include [t]he actual and necessary costs of preserving or recovering the property of the insurer.... *Id.* In the drafting note to this subsection of section 801, the NAIC noted that:

Implicit in the powers conferred on the liquidator under this Act ... is the right, subject to approval by the receivership court, to pay Class 1 administrative costs to persons in any priority class where those Class 1 administrative cost payments assist or result in the collection or recovery of property of the insurer for the benefit of creditors of the estate. Payments of administrative costs in these circumstances do not constitute distributions so as to circumvent priority classes or establish subclasses within a class.

*Id.* at 555-84. This note clarifies that in order to maximize the collection of estate assets, a liquidator is authorized to enter into agreements in order to encourage creditors to prosecute their claims, so long as the agreement results in a net benefit to creditors of the estate. Given the similarities between IRMA and RSA chapter 402-C, we conclude that the broad language of RSA 402-C:25 confers this same authority upon the liquidator.

The ACE Companies argue that affirming the superior court's orders would set a precedent for wholesale violations of RSA 402-C:44. They contend that affirming the order would permit creditors to freely negotiate individual percentage distributions depending on the value of their claim to the liquidation. We disagree. Although RSA chapter 402-C grants the liquidator broad authority to administer liquidation proceedings, the court oversees the entire process. Therefore, any agreement negotiated by the liquidator requires court approval. See RSA 402-C:25 (the liquidator must report to the court regularly on the progress of the litigation, and any actions the liquidator takes are subject to the court's control); RSA 402-C:45, I (the liquidator should as often as practicable ... present to the court reports of claims against the insurer with his recommendations); RSA 402-C:46, I (the liquidator shall distribute assets under the direction of the court). Since the liquidator's actions are closely supervised by the court, there is little risk that the priority provisions of RSA 402-C:44 will be violated.

We thus conclude that the superior court did not err in ruling that the liquidator has the authority under RSA chapter 402-C to enter into the proposed agreement.

#### \*721 II. Administration Costs

[3] We now address whether the payments to the AFIA Cedents under the proposed agreement constitute administration costs under RSA 402-C:44, I. As noted, RSA 402-C:44 provides that Class I claims must be paid in full before distributions may be made to any other classes. Class I claims include claims for administrative costs and expenses, which are:

[t]he costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

RSA 402-C:44, I (emphasis added). Class V claims are all other claims including claims of any state or local government, not falling within other classes.... RSA 402-C:44, V.

In ruling that the payments to the AFIA Cedents are Class I administrative costs, the superior court noted that the provisions of RSA chapter 402-C are to be liberally construed and that the purpose of the statute is to protect insureds, creditors and the general public. It also considered the nature and complexity of ... [Home's] insurance and reinsurance business, and that its substantial involvement in the London market posed significant challenges to the Liquidator. The court recognized the circumstances which put collection of the asset at risk, particularly the fact that the AFIA Cedents would have little reason to file and prosecute claims if neither setoff nor actual distribution were likely. In support of this position, the court cited to the testimony of the JPL team members. The superior court found that, under RSA 402-C:44, I, the structure of the agreement was necessary to preserve and recover assets. It also stated that with the agreement the Liquidator would be able to marshal assets to be distributed to creditors which would otherwise be unavailable.

The ACE Companies and BMC argue that the superior court's ruling that the payments to the AFIA Cedents are administration costs is contrary to the language and clear intent of RSA 402-C:44, I. They first contend that the proposed payments to the AFIA Cedents cannot be qualified as administration costs because they arose from the pre-liquidation AFIA contracts, and that administration costs only arise from post-liquidation transactions. Second, they argue that the proposed agreement creates an impermissible subclass by splitting the Class V creditors into two groups. Third, the ACE Companies and BMC challenge the superior court's ruling that the payments to the AFIA Cedents were necessary costs of preserving Home's estate.

In arguing that the proposed payments to the AFIA Cedents cannot be qualified as administration costs because they arose from pre-liquidation transactions, the ACE Companies rely upon a line of bankruptcy cases holding that administration costs include only rights to payment that arise post-liquidation, and exclude claims that arise pre-liquidation. See *Mass. Div. of Empl. and Training v. Boston Reg'l Med. Ctr.*, 291 F.3d 111, 125 (1st Cir.2002); *Woburn Assoc. v. Kahn (In re Hemingway Transport, Inc.)*, 954 F.2d 1, 5 (1st Cir.1992); *In re Food Barn Stores, Inc.*, 175 B.R. 723, 728 (Bankr.W.D.Mo.1994). They urge us to apply the reasoning of the bankruptcy cases here, contending that the proposed agreement is based upon the AFIA Cedents' claims against Home, which arose from the pre-liquidation AFIA treaties.

\*722 The bankruptcy cases cited above involved the interpretation of 11 U.S.C.A. § 503 (Supp.2006). Entitled Allowance of administrative expenses, 11 U.S.C.A. § 503(b)(1)-(8) enumerates a list of items that may be considered administrative expenses, such as wages, salaries, and commissions for services rendered after the commencement of the case; *id.* § 503(b)(1)(A)(i), and reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable by statute, *id.* § 503(b)(4).

We are not persuaded that the interpretation of administrative expenses in bankruptcy cases applies to the definition of administration costs in RSA 402-C:44, I. A comparison of the language of the respective statutes reveals that they differ in terms of what is meant by administrative costs and expenses. Unlike the bankruptcy statute, which contains a specific list of items that constitute administrative expenses, RSA 402-C:44, I, defines administration costs more generally by including the actual and necessary costs of preserving or recovering the assets of the insurer. This definition encompasses a much broader category of items and transactions than is found in the bankruptcy code.

Even if we were to assume that claims and rights to payment that arise pre-liquidation cannot constitute administration costs under RSA 402-C:44, I, we are not persuaded that the proposed payments to the AFIA Cedents arose pre-liquidation. The proposed payments do not arise from the AFIA Cedents' Class V claims themselves, but rather as an inducement for the AFIA Cedents to file claims in the liquidation in order to bring a net benefit to creditors of the estate. Thus, while the AFIA Cedents' claims against Home arose pre-liquidation, their right to payment under the proposed agreement will arise post-liquidation.

The ACE companies and BMC rely upon an insurance liquidation case in which the Georgia Court of Appeals refused to qualify claims that arose from pre-liquidation transactions as administrative expenses. See *Oxendine v. Comm'r of Ins. of North Carolina*, 229 Ga.App. 604, 494 S.E.2d 545 (1997). They argue that the proposed payments to the AFIA Cedents are akin to the pre-liquidation claims in *Oxendine*, and cannot be classified as administrative costs. We disagree.

In *Oxendine*, the Georgia Commissioner of Insurance (GCI) had settled claims of the North Carolina Commissioner of Insurance (NCCI) and FICA Marketing, Inc. (FICA) against an insurer during a court-approved rehabilitation of the insurer. *Id.* at 546-47. The rehabilitation efforts failed and the insurer was declared insolvent. *Id.* at 547. NCCI and FICA then asserted that their claims against the insolvent insurer were entitled to priority status as costs and expenses of administration. *Id.* The trial court overseeing the liquidation agreed, and GCI appealed. *Id.*

The *Oxendine* court reversed. Interpreting a provision similar to RSA 402-C:44, I, see Ga.Code Ann. § 33-37-41(1)(2005), it ruled that [n]o reasonable definition of costs' or expenses' can include the claims which [NCCI and FICA] assert. These claims are for money which [NCCI and FICA] claim from [the insurance company's] estate and not administrative costs and expenses incurred. *Id.* at 548. *Oxendine* held that giving the claims of NCCI and FICA priority as Class I administrative expenses violated the mandatory priority set forth in the liquidation statute. *Id.*

We disagree with the ACE Companies and BMC that *Oxendine* applies to this case. In *Oxendine*, the claims brought by \*723 NCCI and FICA were settled claims against the insurer that arose pre-liquidation. The liquidation of the insurer did not change the fact that NCCI and FICA still had unpaid claims against the insurer that arose from their pre-liquidation right to payment. In this case, unlike in *Oxendine*, the AFIA Cedents' right to proposed payments will arise post-liquidation, based upon the proposed agreement. While the AFIA Cedents' Class V claims arose pre-liquidation, their right to payment for filing these claims in the liquidation proceeding will arise post-liquidation.

[4] Moreover, we disagree that the proposed agreement creates an impermissible subclass by splitting Class V into two groups. Payments of Class I administration costs, by definition, do not constitute a distribution to a lower priority class, and therefore do not create a subclass of lower priority creditors.

[5] The ACE Companies argue that even if the payments are administration costs, the superior court erred by ruling that they are necessary costs of preserving and recovering the assets of Home, within the meaning of RSA

402-C:44, I. After an evidentiary hearing, the superior court found that the proposed agreement was necessary because the Liquidator could not have marshaled this asset absent the contingent payments.... It also ruled that the Liquidator has met his burden of proving that a reasonable liquidator under the circumstances would have concluded that the agreement was necessary to preserve access to and marshal the AFIA reinsurances.

First, the ACE Companies argue that the [s]uperior [c]ourt applied the wrong standard in determining the necessity issue. They contend that the proper standard is whether the AFIA Cedents, in the absence of the [Proposed] Agreement, would have filed and prosecuted their claims. They argue that the superior court erroneously applied the standard of whether it was reasonable for the Liquidator to conclude that an agreement with the AFIA Cedents was necessary....

RSA 402-C:25, VI provides that the liquidator may take measures that are necessary or expedient to collect, conserve or protect [the insurer's] assets or property.... We will assume, as the ACE Companies argue, that the appropriate standard is whether the AFIA Cedents, in the absence of the proposed agreement, would have filed and prosecuted their claims. In light of the superior court's finding that the Liquidator could not have marshaled [\$231 million in reinsurance payments on the AFIA Cedents' claims] absent the contingent payments, we are not persuaded that the superior court applied the incorrect standard in determining the necessity of the proposed agreement.

Next, the ACE Companies and BMC argue that [a]n objective examination of the evidence reveals that the AFIA Cedents would have filed and prosecuted claims even in the absence of the Proposed Agreement. They contend that the AFIA Cedents had several incentives for the filing and prosecution of reinsurance claims, including the preservation of set off, tax concerns and the possibility of a better than expected return for the estate. They also assert that the AFIA Cedents' prosecution of their pre-liquidation claims would not cease once the level of setoff is reached ..., nor would it be difficult or costly to prosecute the claims. Finally, the ACE Companies argue that the superior court erred by finding that there was significant legal uncertainty as to whether the AFIA Cedents could negotiate a cut-through deal with the ACE Companies because, under the terms of the assumption agreement, the AFIA \*724 Cedents could not legally negotiate a cut-through deal.

The liquidator contends that the superior court made a factual finding that the AFIA Cedents would not file and prosecute claims in excess of offset without an incentive. The liquidator asserts that the testimony at the evidentiary hearing that the court found to be credible amply supports the conclusion that the agreement was necessary. Further, the liquidator asserts that the superior court properly found that there was uncertainty over potential direct dealing between [the ACE Companies] and [the] AFIA Cedents to circumvent Home. He argues that *Nationwide Mutual Insurance Co. v. Home Ins. Co.*, 150 F.3d 545 (6th Cir.1998), cert. denied, 525 U.S. 1140, 119 S.Ct. 1030, 143 L.Ed.2d 39 (1999), left open the status of cut through litigation, while *Koken v. Legion Insurance Co.*, 831 A.2d 1196, 1236 (Pa.Comm.w.Ct.2003), showed cut through litigation is allowable on particular facts, and thus the Court had ample reason to conclude that direct dealing was a credible threat.

[6][7] We will uphold the superior court's findings and rulings unless they lack evidential support or are legally erroneous. *Cook v. Sullivan*, 149 N.H. 774, 780, 829 A.2d 1059 (2003). We defer to the superior court's resolution of conflicting testimony, evaluation of credibility, and determination of the weight to be given evidence. *Id.*

After reviewing the record, we conclude that there was sufficient evidence to support the superior court's finding that the AFIA Cedents would not file and prosecute claims without a financial incentive. In particular, JPL team member Sarah Ellis testified that she interviewed representatives of several AFIA Cedent companies who informed her that because they were subordinated creditors, they saw no economic benefit to submitting claims to the Home Estate. JPL team member Gareth Hughes testified about his concern that creditors would have no economic incentive for prosecuting their claims. In addition, there was sufficient evidence to support the court's conclusion that cut-through litigation was a threat. Both Sarah Ellis and Gareth Hughes testified that the AFIA Cedents were in talks to form side agreements with the ACE Companies.

Furthermore, we agree that the *Nationwide* decision leaves uncertainty as to whether cut-through deals between the ACE Companies and the AFIA Cedents are legally permissible. In that case, *Nationwide Mutual Insurance Company*

(Nationwide) purchased reinsurance from Home, which at that time was a member of the AFIA. *Nationwide Mutual Ins. Co.*, 150 F.3d at 546-47 & n. 2. Subsequently, CIGNA Insurance Company and its subsidiaries (the CIGNA defendants) entered into an assumption agreement with Home and the other members of the AFIA, wherein it agreed to purchase all interests in and rights to the policies and contracts that Home and the other AFIA members entered into through the AFIA pool. *Id.* at 547. The assumption agreement at issue in *Nationwide* is the same assumption agreement in this case.

Nationwide sued both Home and the CIGNA defendants, alleging that Home and the CIGNA defendants had breached reinsurance contracts under which they were responsible for paying certain claims filed against Nationwide. *Id.* at 546. The district court referred Nationwide's claims against both Home and the CIGNA defendants to arbitration, and dismissed the entire case. *See id.* at 547. The CIGNA defendants appealed.

The primary issue on appeal was whether the district court erred in concluding\*725 that Nationwide could bring a claim directly against the CIGNA defendants by virtue of the CIGNA defendants' assumption of the reinsurance contract between Nationwide and Home.... *Id.* at 548. The appeals court concluded that Nationwide could not bring a claim directly against CIGNA. *Id.* The court interpreted disclaimer language in the assumption agreement and held that the language unequivocally:

bars any person or entity, except the parties to the Assumption Agreement (the members of AFIA and the CIGNA defendants), from suing on any of the obligations undertaken pursuant to the Assumption Agreement, including the CIGNA defendants' obligation to make payments on the reinsurance contract between Nationwide and Home.

*Id.* (emphasis added). Despite this holding, the court acknowledged that Home's insolvency could affect the parties' respective rights and obligations. *Id.* at 549. The court did not address this issue, however, because it concluded the issue was not ripe for review. *Id.*

Although the disclaimer language in the assumption agreement technically bars cut-through litigation by the AFIA Cedents, the *Nationwide* decision is silent on the issue of whether it would be permissible for the AFIA Cedents to deal directly with the ACE Companies outside of court subsequent to Home's insolvency. Moreover, the facts and circumstances have changed since *Nationwide*. Most significantly, Home is now insolvent. In light of the appeals court's decision in *Nationwide*, whether or not the AFIA Cedents can pursue cut-through litigation or deal directly with the ACE Companies is an open question.

While we conclude that the evidence supports the superior court's finding that the proposed agreement was necessary, there are also significant policy reasons that reinforce the court's decision. As noted previously, the purpose of RSA chapter 402-C is to protect preferred creditors by reserving assets for them, including people insured by Home, and people with claims against those insured by Home. *See* RSA 402-C:1, IV. RSA 402-C:1, III provides that the statute should be liberally construed to effectuate this purpose. Further, RSA 402-C:25 grants the liquidator broad authority to collect the assets of an insolvent insurer. A liberal construction of the statutory language supports a finding that the proposed payments to the AFIA Cedents are necessary to collect and preserve assets of Home's estate. By contrast, the ACE Companies' and BMC's reading of the statute would prevent collection of additional assets by barring payment of necessary costs.

As a final point, there is no doubt that the ACE Companies would reap a substantial windfall in the absence of the proposed agreement by depriving Home's creditors of the amounts they would have paid but for Home's insolvency. This would frustrate the legislative purpose of obtaining full payment from reinsurers despite an insurer's insolvency. *See* RSA 402-C:36; *see also* RSA 405:49, I (2006) (Reinsurance Insolvency). Accordingly, for the foregoing reasons, we conclude that the payments to the AFIA Cedents under the proposed agreement constitute administration costs under RSA 402-C:44, I.

### III. Fair and Reasonable

[8] Finally, we address the ACE Companies' and BMC's argument that the superior court erred in concluding that the proposed agreement is fair and reasonable. First, the ACE Companies and BMC argue that the court failed to apply the controlling multi-factored standard for fairness and reasonableness. They assert \*726 that our order dated September 13, 2004, specifically directed the superior court to apply the multi-factored tests set forth in *Matter of Boston &*



*Providence Rail Road Corp.*, 673 F.2d 11 (1st Cir.1982), and *In re Estate of Indian Motorcycle Manufacturing, Inc.*, 299 B.R. 8 (D.Mass.2003), vacated in part on other grounds by 452 F.3d 25 (1st Cir.2006), when considering the fairness of the proposed agreement on remand. Second, they argue that proper application of the multi-factored test demonstrates that the proposed agreement is neither fair nor reasonable as a matter of law.

As the ACE Companies and BMC correctly point out, we issued an order on September 13, 2004, vacating the superior court's April 29, 2004 order in which it determined that the proposed agreement was lawful and consistent with the goals and purpose of RSA chapter 402-C. In our order, we directed the court to consider on remand whether it had an independent obligation to assess the fairness of the agreement with the AFIA Cedents. We cited *Matter of Boston & Providence R.R. Corp.* for the proposition that, in a reorganization proceeding, a bankruptcy court must act independently, out of its own initiative, for the benefit of all creditors when assessing the fairness of a compromise with creditors. *Matter of Boston & Providence R.R. Corp.*, 673 F.2d at 13. We also cited *Indian Motorcycle*, which lists factors for a bankruptcy court in a Chapter 7 proceeding to consider when assessing whether a compromise with creditors is fair. *In re Estate of Indian Motorcycle Mfg., Inc.*, 299 B.R. at 20. These factors include:

- (1) the probability of success in the litigation being compromised;
- (2) the difficulties, if any, to be encountered in the matter of collection;
- (3) the complexities of the litigation involved, and the expense, inconvenience, and delay attending it; and
- (4) the paramount interest of the creditors and a proper deference to their reasonable views.

*Id.*

On remand, the superior court recognized that it had an independent obligation to assess the fairness of the agreement with the AFIA Cedents. Thereafter, the court held an evidentiary hearing to determine whether the terms of the agreement are fair and reasonable. Evidence presented at the five-day hearing addressed the circumstances and terms of the agreement and compromise with AFIA Cedents. After considering all of the evidence presented at the hearing, the court concluded that the proposed agreement was fair and reasonable.

The court reviewed the agreement with the paramount interest of creditors in mind, and found that ACE's rights as a claimant and creditor and its rights to setoff under RSA 402-C:34 are unimpaired by the pending agreement and thus the agreement is not unfair to ACE. The court found the testimony of the JPL team members to be highly credible, and gave due deference to the business judgment of Mr. Bengelsdorf, Mr. Rosen and Mr. Hughes that it was necessary to negotiate an agreement with the AFIA Cedents to assure that the largest single asset of the estate was not lost. See *id.* at 21 (The court may give substantial deference to the business judgment of a bankruptcy trustee when deciding whether to approve a settlement). Further, the court found that [u]nder the agreement the Liquidator stands to collect a portion of reinsurances otherwise at risk, for purposes of providing a direct and substantial benefit to Class II claimants, which comprise ninety (90) percent of all claimants.

\*727 The superior court did not precisely apply the multi-factor test outlined above. Indeed, a precise application of the *Indian Motorcycle* factors is difficult in this case because of the complex reinsurance obligations at issue. However, the court's order demonstrates consideration of the relevant factors, given the complexities of this case, and we concur with the court's decision that the agreement was fair and reasonable. First, the evidence demonstrates that the AFIA Cedents would not have filed claims against the Home estate without a financial incentive. Second, the AFIA Cedents' claims are significant, totaling approximately \$231 million. The substantial dollar amount of these claims suggests that it is reasonable to assume that collection proceedings would be lengthy, complex, and difficult. Most importantly, as the superior court properly concluded, the agreement benefits the Class II claimants to Home's estate since it increases the likelihood that their claims will be paid.

Based upon the foregoing, we conclude that the superior court correctly ruled that the proposed agreement was fair and reasonable.

*Affirmed.*

BRODERICK, C.J., and DALIANIS and GALWAY, JJ., concurred.  
N.H. 2006.  
In re Liquidation of Home Ins. Co.

913 A.2d 712

END OF DOCUMENT

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**Miles Cohn**

---

**From:** Miles Cohn  
**Sent:** Friday, June 29, 2007 1:22 PM  
**To:** 'jacqueline.merson@homeinsco.com'  
**Subject:** FW: Claim VEND700093-01

**Attachments:** doc20070118102746.pdf

Jacqueline, please see the string of emails below, which may refresh your recollection regarding my previous inquiries as to the status of my request for review of a determination regarding the referenced claim.

It has now been more than two years since the request for review was filed on June 6, 2006. On several occasions, most recently in March of this year, you indicated that a decision would be forthcoming, but I have received nothing yet.

If I do not hear from you in the next week, I plan on filing an objection with the Court. As it appears there may never be a ruling on my request for review, I will ask the Court to deem my request denied so that I may proceed with the next step, a court objection regarding the treatment of my claim.

Miles Cohn

---

**From:** Miles Cohn  
**Sent:** Monday, March 05, 2007 11:44 AM  
**To:** 'jacqueline.merson@homeinsco.com'  
**Subject:** FW: Claim VEND700093-01

Jacqueline, below are my prior emails. The claim in question is described in the first one, and a copy of the request for determination is attached. I would appreciate it if you would let me know the status of our request for determination.

Many thanks,

Miles Cohn

---

**From:** Miles Cohn  
**Sent:** Tuesday, January 30, 2007 5:01 PM  
**To:** 'jacqueline.merson@homeinsco.com'  
**Subject:** FW: Claim VEND700093-01

Jacqueline, have you been able to determine whether anything has happened with the request for review that I filed last year?

I would appreciate any information you may be able to provide.

Thanks, Miles

---

**From:** Miles Cohn  
**Sent:** Thursday, January 18, 2007 10:37 AM  
**To:** 'jacqueline.merson@homeinsco.com'  
**Subject:** Claim VEND700093-01



Jacqueline, attached is the request for review that I discussed with you a few minutes ago.

This was submitted last June and we have received no ruling or response. I noticed the 12/5/06 decision of the New Hampshire Supreme Court, 2006 WL 3489902, which supports our position in the request for review, and it occurred to me that the Liquidator might have been holding our request and perhaps similar claims until receiving a decision in that case. If that is the situation, I suppose I should continue waiting for a decision. But if it does not appear that any decision will be made any time soon on the request for review, then perhaps I should go ahead and file an objection with the court to get that process going.

Anyway, that is the situation. I would sincerely appreciate any information you can provide regarding the status of our request for review.

Thanks, Miles

---

**H. Miles Cohn**  
Sheiness, Scott, Grossman & Cohn, L.L.P.  
1001 McKinney St., Suite 1400  
Houston, Texas 77002  
Telephone (713) 374-7020 (direct)  
Facsimile (713) 374-7049  
mail to: [mcohn@hou-law.com](mailto:mcohn@hou-law.com)  
[www.ssgclawyers.com](http://www.ssgclawyers.com)



doc2007011810274  
6.pdf (317 KB)...

SCANNED

SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P. OCT 15 2007

ATTORNEYS AT LAW  
1001 MCKINNEY, SUITE 1400  
HOUSTON, TEXAS 77002-6323  
TEL: 713.374.7000 FAX: 713.374.7049

RECEIVED

OCT 15 2007

HICIL

H. Miles Cohn  
Direct: 713/374-7020  
Email: [mcohn@hou-law.com](mailto:mcohn@hou-law.com)

October 11, 2007

Office of the Clerk  
Merrimack County Superior Court  
4 Court Street  
Concord, New Hampshire 03301  
ATTN: HOME DOCKET, NO. 03-E-0106

Re: **In the Matter of Liquidation of The Home Insurance Company; No. 03-E-0106**

To Whom It May Concern:

Enclosed for filing in the above-referenced matter is the original and one copies of the following instruments:

1. **Objection to Denial of Claim (VEND700093-01)**

Please file stamp the extra copy and return it to us. A self-addressed, stamped envelope is enclosed for your convenience.

Thank you for your attention to the foregoing.

Sincerely,

H. Miles Cohn

Enclosure

Merrimack County Clerk  
October 11, 2007  
Page2

cc: The Home Insurance Company in Liquidation  
Claims Determination Unit  
P.O. Box 1720  
Manchester, New Hampshire 03105-1720  
*Via CMRRR 7006 0810 0001 8778 3132*

Office of the Attorney General  
Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301  
Attention: Home Insurance  
*Via CMRRR 7006 0810 0001 8778 3125*

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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

In the Matter of Liquidation  
of The Home Insurance Company

No. 03-E-0106

**OBJECTION TO DENIAL OF CLAIM (VEND700093-01)**

Sheiness, Scott, Grossman & Cohn, LLP ("SSGC"), a Claimant in this liquidation proceeding, objects to the Liquidator's denial of its Claim, and respectfully states:

**Introduction and Summary of Objection**

SSGC is a Texas law firm that represented Home Insurance Company in late 2002, prior to the Court's order placing Home in liquidation. SSGC filed a timely claim for its attorney's fees, requesting that they be allowed as an administrative expense pursuant to RSA 402-c:44.I. The claim was allowed, but only as a Class V (residual) claim, on May 11, 2006. SSGC timely requested redetermination with respect to whether its claim is an "administrative" claim under the statute, but in more than sixteen (16) months the Liquidator has not issued a decision on the request. Therefore SSGC has elected to proceed with an Objection.

The Liquidator's decision is contrary to the New Hampshire Supreme Court's decision in *In the Matter of the Liquidation of the Home Insurance Company*, 913 A.2d 712, 721-22 (N.H. 2006), which affirmed this Court's holding that administrative claims are not limited to costs incurred after appointment of the Liquidator. The Liquidator's determination should therefore be reversed.

**Procedural History**

1. On July 18, 2003, SSGC submitted its Proof of Claim in the amount of \$74,784.89.

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A true copy of the Claim (including the postal receipt) is attached hereto as Exhibit A. The Claim was designated Claim No. VEND700093-01.

2. On May 11, 2006, the Liquidator issued a Determination, allowing the Claim in the full amount but denying that the claim was entitled to priority as an administrative claim and instead placing the claim in Class V, as a "residual" claim that, as a practical matter, will receive no distribution. A true copy of the Determination is attached hereto as Exhibit B.

3. On June 6, 2006, SSGC mailed its Request for Review with respect to the Determination. A true copy of the Request for Review (including the postal receipt) is attached hereto as Exhibit C. As indicated by the postal receipt, the Request was received by the Liquidator on June 9, 2006.

4. When no decision was issued after a number of months, SSGC inquired as to the status of its Request for Redetermination. In January 2007, SSGC was advised that contacts regarding the Claim should be directed to Jacqueline Merson, an employee of the Liquidator. On various occasions from January through June 2007, inquiries were made of Ms Merson, in each case followed by a confirming email. However, SSGC has never received a response to its inquiries other than Ms Merson's reassurances that a decision would be forthcoming. A true copy of the above-described emails is attached hereto as Exhibit D.

#### **This Objection is Timely Filed**

If a timely request for review of the Liquidator's determination on a claim has been made, an objection to the determination must be filed, if at all, no later than sixty days after the mailing of the Liquidator's notice of redetermination. See Restated and Revised Order Establishing Procedures Regarding Claims Filed with the Home Insurance Company in Liquidation ("Procedures Order"),



July 19, 2005, at ¶8 (“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.”)

As noted above, the Liquidator has never ruled on SSGC’s request for review of his Determination. SSGC recognizes that the Liquidator is dealing with a large number of claims, but the delay in this case is inexplicable: the issue rests solely on a straightforward legal issue – whether SSGC’s pre-liquidation legal fees are an administrative cost. After sixteen months and numerous status inquiries, there is no reason to think that a ruling will ever be issued. However, the Procedures Order does not require either a request for redetermination or an order on such a request, rather the Procedures Order requires that the objection be filed no later than sixty days after the mailing of the notice of determination. Since no such notice has been mailed, this objection is well within the time allowed.<sup>1</sup>

#### Grounds for Objection

SSGC represented Home (not an insured of Home) in a bankruptcy case in the Southern District of Texas in which an Chapter 11 Debtor, J. T. Thorpe Co., sought to recover millions of dollars from Home.<sup>2</sup> In the bankruptcy and related litigation, Thorpe asserted claims against Home and a number of other insurers for hundreds of millions of dollars in liability resulting from alleged

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<sup>1</sup> If the Court interprets the Procedures Order to require notice of redetermination before an objection can be filed, SSGC requests that the Court order the Liquidator to issue such a notice.

<sup>2</sup> *In re J. T. Thorpe Company*, Case No. 02-41487-H5-11 in the United States Bankruptcy Court for the Southern District of Texas. In the bankruptcy and in related litigation, Thorpe sought to recover estimated future liabilities from its insurers rather than allowing the insurers to defend each claim, as and when filed.

actual and future asbestos claims.<sup>3</sup> However, Home was never required to pay any sum or settlement to Thorpe.

The Determination issued by the Liquidator explains the reasons for allowing the SSGC claim only as a Class V claim rather than an administrative expense: "Services were rendered from 10/22/02 through 1/21/03 in the amount of \$74,784.89. A review of [SSGC's] invoice confirms that the services provided were reasonable and necessary for the defense of Home. . . . The invoice was not paid because the services were rendered prior to the Home's liquidation."

Several months after the Liquidator's Determination, the New Hampshire Supreme Court decided *In the Matter of the Liquidation of the Home Insurance Company*, 913 A.2d 712, 721-22 (N.H. 2006). One of the Supreme Court's holdings in that decision undermines the Liquidator's treatment of the SSGC claim. Affirming a decision of this Court, the Supreme Court held that "administrative costs" are not limited to post-confirmation expenses as they would be in a bankruptcy proceeding. Rather, "administrative costs" under RSA 402-C:44, I "encompass a much broader category of items and transactions than is found in the bankruptcy code." 913 A.2d at 722.

SSGC represented Home in defending against millions of dollars in direct claims. There can be little doubt that, in the words of the statute, SSGC's services were "actual and necessary costs of preserving . . . the assets" of Home.

WHEREFORE, Claimant Sheiness, Scott, Grossman & Cohn, LLP objects to the Liquidator's Determination that its claim, designated VEND700093-01, is allowed only under Class V and not as an administrative cost, and prays that the Court reverse such determination and order

---

<sup>3</sup> Monies collected in settlements from other insurers is currently being administered in a trust established under Thorpe's reorganization plan. The website for the trust is <http://www.jthorpetrust.com/default.asp>.

that such claim be approved and paid as an administrative cost.

Respectfully submitted,

SHEINESS, SCOTT, GROSSMAN  
& COHN, L.L.P.

By: 

H. Miles Cohn  
Texas State Bar No. 04509600  
1001 McKinney St., Suite 1400  
Houston, Texas 77002  
Telephone: (713) 374-7020  
Facsimile: (713) 374-7049

**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing Objection to Denial of Claim (VEND700093-01) has been served, by United States certified mail, return receipt requested, on this 11<sup>th</sup> day of October, 2007, on the following:

The Home Insurance Company in Liquidation  
Claims Determination Unit  
P.O. Box 1720  
Manchester, New Hampshire 03105-1720

Office of the Attorney General  
Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301  
Attention: Home Insurance

  
H. Miles Cohn

**BEFORE THE COURT-APPOINTED REFEREE  
IN RE «HOME»  
DISPUTED CLAIMS DOCKET**

**In Re Liquidator Number:** 2007-HICIL-31  
**Proof of Claim Number:** VEND700093-01  
**Claimant Name:** Sheines, Scott, Grossman & Cohn, LLP  
("SSGC")  
**Claimant Number:** VEND700093-01  
**Policy or Contract Number:** TJ Thorpe Litigation Fees  
**Date Of Loss:** 2002

**NOTICE OF DISPUTED CLAIM**

An Objection to the Liquidator's Determination ( or Re-determination) was filed by

**Sheines, Scott, Grossman & Cohn, LLP ("SSGC")**

with the Merrimack County Superior Court. In accordance with the Merrimack County Superior Court Restated and Revised Order Establishing Procedures Regarding Claims filed with the Home Insurance Company in Liquidation, the above-referenced claim has been placed on the Disputed Claims Docket for adjudication.

**THE ORIGINAL OF ANY SUBSEQUENT FILINGS WITH RESPECT TO THIS DISPUTED CLAIM SHALL BE FILED WITH THE OFFICE OF THE LIQUIDATION CLERK.**

**Office of the Liquidation Clerk**  
286, Commercial Street, 3<sup>rd</sup> Floor  
P.O. Box 1210  
Manchester, NH 03101-1210  
Telephone : (603) 641-1211  
Fax : (603) 622-0283  
[www.hicilclerk.org](http://www.hicilclerk.org)

*Any subsequent filings with respect to this claim, whether in the form of notices, motions, pleadings, orders, letters or other papers, shall be served electronically, by first class mail, by overnight courier service, or by hand. ALL NOTICES AND ORDERS ISSUED BY THE OFFICE OF THE LIQUIDATION CLERK SHALL BE POSTED ON THE WEBSITE AT [WWW.HICILCLERK.ORG](http://WWW.HICILCLERK.ORG) AND SUCH POSTING SHALL REPLACE PAPER NOTIFICATION. If claimant does not have access to electronic filing **PLEASE NOTIFY THIS OFFICE IMMEDIATELY.** If an attorney has entered an appearance on behalf of the Claimant, Liquidator or a person given leave to participate, all future communications shall be transmitted to the attorney. Service on an attorney of record shall be deemed to be service upon a Participant represented by such attorney.*

Stacy C. Furlotte  
Liquidation Clerk

11/2/07

CF0057

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Rehabilitation of  
The Home Insurance Company

**PROPOSED ORDER APPOINTING REHABILITATOR**

After having heard and considered the facts set forth in the Commissioner's Verified Petition for Rehabilitation, the Court finds that the law and facts are as the Commissioner of Insurance of the State of New Hampshire (the "Commissioner") has alleged in the Petition and that there exists a present necessity for the immediate entry of this order.

WHEREFORE, it is hereby ordered as follows:

- (a) Sufficient cause exists for an order of rehabilitation of The Home Insurance Company ("The Home") and appointment of the Commissioner as Rehabilitator;
- (b) Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, is appointed Rehabilitator of The Home;
- (c) The Rehabilitator may consult with and obtain the assistance and advice of insurance experts, including, without limitation, actuaries, accountants, attorneys and consultants, and authorizing the Rehabilitator to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, and providing that the Rehabilitator shall have all the powers of the officers and managers of The Home, whose authority shall be suspended, except as they are specifically re-delegated by the Rehabilitator;
- (d) The Rehabilitator is to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, or any other recorded information relating to The Home);

(e) The officers, directors, agents, employees, and representatives of The Home, any persons acting in concert with The Home, are prohibited from disposing, using, transferring, removing or concealing any property of The Home, without the express written authority of the Rehabilitator, or in any way (i) interfering with the conduct of the Rehabilitation or (ii) interfering with the Rehabilitator's possession and rights to the assets and property of The Home;

(f) Any bank, savings and loan association or other financial institution or other legal entity are prohibited from disposing of, allowing to be withdrawn or concealing in any manner property or assets of The Home, except under the express authorization of the Rehabilitator or by the further order of this Court;

(g) Any of the following actions are stayed:

(1) The commencement or continuation of a judicial, administrative, or other action or proceeding against The Home or any insured of The Home that was or could have been commenced before the commencement of this case, or to recover a claim against The Home that arose before the commencement of the Rehabilitation, for ninety (90) days, except as may be modified by further order of the Court;

(2) The enforcement, against The Home or its property, of a judgment obtained before the commencement of the Rehabilitation;

(3) Any act to obtain possession of property of The Home or to exercise control over property of The Home;

(4) Any act to create, perfect, or enforce any lien against property of The Home;

(5) Any act to create, perfect or enforce against property of The Home any lien to the extent that such lien secures a claim that arose before the commencement of the Rehabilitation;

(6) Any act to collect, assess, or recover a claim against The Home that arose before the commencement of the Rehabilitation; and

(7) The setoff of any debt owing to The Home that arose before the commencement of this case against any claim against The Home;

(h) The Rehabilitator is authorized, in her discretion, to pay any and all claims for losses, in whole or in part, under policies and contracts of insurance and associated loss adjustment expenses including, but not limited to, claims for losses which, as of the date of the Order, have been previously settled and approved for payment in the normal course of business;

(i) The Rehabilitator, in her discretion, is authorized to pay expenses incurred in the ordinary course of The Home's business in rehabilitation, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home and the costs of goods and services provided to The Home's estate. Such costs shall include, but not be limited to: (i) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the State of New Hampshire Insurance Department, the Commissioner or the Rehabilitator to perform services relating to the Rehabilitation of The Home or the feasibility, preparation, implementation, or operation of a rehabilitation plan; (ii) compensation and other costs related to representatives and employees of The Home or its affiliates who perform services for The Home; and (iii) a reasonable allocation of costs and expenses associated with time spent by Department personnel in connection with the Rehabilitation of The Home;

(j) The actual, reasonable and necessary costs of preserving or recovering assets of The Home and the costs of goods or services provided to and approved by The Home, under paragraph (i) of this Order, during the period of Rehabilitation will be treated as "costs and expenses of administration," pursuant to RSA 402-C:44 I.;

(k) The amounts recoverable by the Rehabilitator from any reinsurer of The Home shall not be reduced as a result of this Rehabilitation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each such reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Rehabilitator may, in her discretion, commute any contract with a reinsurer or reinsurers;

(l) This Order shall not be deemed a finding or declaration of insolvency such as would activate the provisions of the New Hampshire Guaranty Association, RSA 404-B, or the provisions of similar acts of any other state or territory;

(m) The Rehabilitator shall have full powers and authority given the Rehabilitator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Rehabilitator under RSA 402-C of Title XXXVII, and under this Order.

Date: 3/5/03  
Time: 1:45 p.m.

By: *Kathleen M. Luce*  
Presiding Justice



## THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Rehabilitation of  
The Home Insurance Company

## ORDER OF LIQUIDATION

This proceeding was commenced on March 4, 2003, upon the Verified Petition for Rehabilitation of Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire (the "Commissioner"). The Commissioner filed the Verified Petition for Rehabilitation pursuant to RSA 402-C:15, seeking appointment as receiver of The Home Insurance Company ("The Home") for the purpose of rehabilitating and conserving the assets of The Home. On March 5, 2003, this Court entered an Order Appointing Rehabilitator, in which the Commissioner was appointed Rehabilitator of The Home. The Commissioner, as Rehabilitator, has now determined pursuant to RSA 402-C:19 that further attempts to rehabilitate The Home would be futile, that The Home is insolvent within the meaning of RSA 402-C:3 and RSA 402-C:20, II, and that it should be liquidated. On May 8, 2003, the Commissioner, as Rehabilitator, filed a Verified Petition for Order of Liquidation pursuant to RSA 402-C:5, RSA 402-C:19 and RSA 402-C:20 (the "Petition"), in which she has sought an order of liquidation for The Home, her appointment as Liquidator, and the requested permanent injunctions. After having heard and considered the facts set forth in the Petition, the Court finds that the law and facts are

as the Commissioner has alleged in the Petition and that there exists a present necessity for the entry of this order.

WHEREFORE, it is hereby ordered, adjudged and decreed that:

- (a) The proceeding for the rehabilitation of The Home is hereby terminated pursuant to RSA 402-C:19;
- (b) The Home is declared to be insolvent;
- (c) Sufficient cause exists for an order to liquidate The Home;
- (d) Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, is hereby appointed Liquidator of The Home;
- (e) The Liquidator shall cancel all in-force contracts of insurance and bonds effective as of 30 days after the date of this Order;
- (f) The Liquidator is directed forthwith to take possession of the assets of The Home wherever located and administer them under the orders of the Court. The Liquidator is vested with title to all of the property, contracts and rights of action and all of the books and records of The Home, wherever located, and in whomever's possession they may be found;
- (g) The Liquidator is directed to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, source codes, passwords, or any other recorded information relating to The Home);
- (h) The Liquidator is authorized to transfer, invest, re-invest and otherwise deal with the assets and property of The Home so as to effectuate its liquidation;

(i) The Liquidator is authorized to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable without prior permission of the Court in the ordinary course of business;

(j) The Home and its directors, officers, employees, agents, and representatives are prohibited from proceeding with the business of The Home, except upon the express written authorization of the Liquidator;

(k) The Home and its directors, officers, employees, agents, and representatives, and any persons acting in concert with The Home, are prohibited from disposing, using, transferring or removing any property of The Home, without the express written authorization of the Liquidator, or in any way (i) interfering with the conduct of the Liquidator or (ii) interfering with the Liquidator's possession and rights to the assets and property of The Home;

(l) Any bank, savings and loan association or other financial institution or other legal entity is prohibited from disposing of or allowing to be withdrawn in any manner property or assets of The Home, except under the express written authorization of the Liquidator or by further order of this Court.

(m) All actions and all proceedings against The Home whether in this state or elsewhere shall be abated in accordance with RSA 402-C:28 and RSA 402-C:5, except to the extent the Liquidator sees fit and obtains leave to intervene;

(n) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all persons are hereby permanently enjoined and restrained from any of the following actions:

(1) commencing or continuing any judicial, administrative, or other action or proceeding against The Home or the Liquidator;

(2) commencing or continuing any judicial, administrative, or other action or proceeding against The Home's, the Rehabilitator's or the Liquidator's present or former directors, officers, employees, agents, representatives, or consultants, including, without limitation, Risk Enterprise Management Limited and each of its officers, directors and employees, arising from their actions on behalf of The Home, the Rehabilitator or the Liquidator;

(3) enforcing any judgment against The Home or its property;

(4) any act to obtain possession of property of The Home or to exercise control over property of The Home;

(5) any act to create, perfect, or enforce any lien against property of The Home;

(6) any act to collect, assess, or recover a claim against The Home, other than the filing of a proof of claim with the Liquidator; and

(7) the setoff of any debt owing to The Home; provided, however, that notwithstanding anything in this Order to the contrary, nothing herein is intended nor shall it be deemed to stay any right of setoff of mutual debts or mutual credits by reinsurers as provided in and in accordance with RSA 402-C:34;

(o) The Court hereby seeks and requests the aid and recognition of any Court or administrative body in any State or Territory of the United States and any Federal Court or administrative body of the United States, any Court or administrative body in any Province or Territory of Canada and any Canadian Federal Court or

administrative body, and any Court or administrative body in the United Kingdom or elsewhere to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

(p) All persons doing business with The Home on the date of the Liquidation Order are permanently enjoined and restrained from terminating or attempting to terminate such relationship for cause under contractual provisions on the basis of the filing of the petition to rehabilitate The Home, The Home's assent to the entry of the Rehabilitation Order, the entry of the Rehabilitation Order, the filing of this Petition, the entry of the Liquidation Order, the rehabilitation or liquidation proceedings for The Home, or The Home's financial condition during the rehabilitation or liquidation proceedings;

(q) All persons in custody or possession of any property of The Home are hereby directed and ordered to turn over any such property to the Liquidator;

(r) The Liquidator is authorized, in her discretion, to pay expenses incurred in the course of liquidating The Home, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home, wherever located, and the costs of goods and services provided to The Home estate in this and other jurisdictions. Such costs shall include, but not be limited to: (1) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the Department, the Commissioner or the Liquidator to perform services relating to the liquidation of The Home or the feasibility, preparation, implementation, or operation of a liquidation plan; (2) compensation and other costs related to representatives, employees or agents of The Home or its affiliates who perform services for The Home in liquidation;

and (3) the costs and expenses of and a reasonable allocation of costs and expenses associated with time spent by New Hampshire Insurance Department personnel and New Hampshire Department of Justice personnel in connection with the rehabilitation and the liquidation of The Home;

(s) The Liquidator is authorized to employ or continue to employ, to delegate authority to and fix the compensation of such appropriate personnel, including actuaries, accountants, consultants, special counsel, and counsel in this and other jurisdictions, as she deems necessary to carry out the liquidation of The Home and its worldwide operations, subject to compliance with the provisions of RSA 402-C, the supervision of the Liquidator, and of this Court. The Liquidator is authorized to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, subject to court approval;

(t) The Liquidator is authorized to appoint, and determine the compensation and terms of engagement of, a special deputy to act for her pursuant to RSA 402-C:25, I.

(u) The actual, reasonable and necessary costs of preserving, recovering, distributing or otherwise dealing with the assets of The Home, wherever located, and the costs of goods or services provided to The Home estate under paragraph (i) of the Rehabilitation Order, during the Rehabilitation proceeding, and under paragraphs (r)-(t) and (v) of the Liquidation Order, during the Liquidation proceeding, shall be treated as "costs and expenses of administration," pursuant to RSA 402-C:44, I;

(v) The Liquidator is authorized and directed to work with any joint provisional liquidator or other person of comparable position appointed by a foreign

tribunal with respect to all or any portion of the estate of The Home located outside the United States (the "foreign estates") for the purpose of preserving, recovering and incorporating into the domiciliary estate all assets of The Home located outside the United States. The Liquidator is authorized to fund from the domiciliary estate the costs and expenses of administering the foreign estates;

(w) The Liquidator is directed to administer and make payments on all claims against The Home estate filed with the Liquidator in the domiciliary proceeding, including the claims of claimants residing in foreign countries (provided the assets of such foreign estate are transferred to the Liquidator), in accordance with New Hampshire's priority statute, RSA 402-C:44;

(x) The amounts recoverable by the Liquidator from any reinsurer of The Home shall not be reduced as a result of the prior rehabilitation proceeding or this liquidation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Liquidator may, in her discretion, commute any contract with a reinsurer or reinsurers;

(y) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all actions or proceedings against an insured of The Home in which The Home has an obligation to defend the insured are hereby stayed for a period of six months from the date of the Order and such additional time as the Court may determine pursuant to RSA 404-B:18;

(z) Within one year of the entry of this Order, and then annually thereafter, the Liquidator shall file with the Court a financial report, as of the preceding December 31, in accordance with RSA 402-C:21, V, which shall include, at a minimum, the assets and liabilities of The Home and all funds received or disbursed by the Liquidator during the period;

(aa) The Liquidator shall have full powers and authority given the Liquidator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Liquidator under RSA 402-C of Title XXXVII, and under the Order, specifically including, but not limited to, each and every power and authority bestowed upon the Liquidator under RSA 402-C:25, I-XXII, the provisions of which are incorporated by reference in their entirety into this Order, and the common law of New Hampshire; and

(bb) The deadline for the filing of claims pursuant to RSA 402-C:26, II, RSA 402-C:37, I, and RSA 402-C:40, II, shall be one year from the date of this Order.

Date: 6/13/03  
Time: \_\_\_\_\_

By: *Kathleen M. Lurie*  
Presiding Justice