

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: 2006-HICIL-23

Proof of Claim Number: INSU700111

Claimant Name: Mitchell Smith

REFEREE RULING

This disputed claim comes before the Referee under Section 15 of the Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation. The Claimant, Mitchell Smith, who disputes the Liquidator's determination, first purchased claims made professional liability coverage from The Home Insurance Company ("Home") for a one year period commencing April 1, 1989 and ending on March 31, 1990. Then, upon his retirement from the active practice of law, and effective April 1, 1990, the Claimant purchased an unlimited Non-Practicing Extension Coverage Option as a shield against claims that might later arise from his professional activities during the underlying period of Home coverage. For this protection, the Claimant paid a one time premium to Home in the amount of Eight Thousand, One Hundred Eighteen Dollars (\$8,118.00). Despite the fact that there have been no claims filed against the Claimant in the nearly seventeen (17) years since his retirement, Mr. Smith is motivated to dispute the Liquidator's determination because he seeks protection from any continuing exposure he may have.

The Liquidator has disallowed Mr. Smith's claim taking the position that there is no present claim to be reviewed. The Referee agrees with the Liquidator that the absence of an actual claim in this dispute fully supports the Liquidator's determination of record, but the Referee also believes it is important to address some of the procedural uncertainties for claimants like Mr. Smith, who at significant expense purchased an unlimited Non-Practicing Extension Coverage Option. In weighing this matter, the Referee draws a distinction between those Home insureds who renewed tail coverage year to year, and those who purchased an unlimited non-practicing extension coverage option for a substantial one-time premium payment. For those that were renewing coverage on a yearly basis, further extension of tail coverage by the liquidating company would not be authorized under RSA 402:C:22, and the extended reporting period protection came to a necessary end. However, for those that had purchased unlimited tail coverage prior to the liquidation, the effect of the liquidation of The Home Insurance Company is less clear and more vexing.

Accommodatingly, counsel for the Liquidator has taken the position that there will be no objection from that quarter if Mr. Smith has later occasion to file an actual claim prior to the final bar date (a date yet to be determined). Practically speaking however, even with

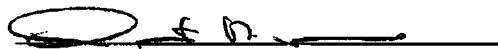
no objection from the Liquidator on the basis of a late filing, the fortunes of any claim later filed by Mr. Smith's would next be weighed by the appropriate state guaranty fund to which the Liquidator would initially forward it. There the claim would be evaluated within the context of that fund's definition of "covered claim", as well as any other statutory provisions which would affect its consideration. If the guaranty fund were to determine that it is foreclosed from handling such a claim based upon its own statutory constraints and/or case law from the pertinent jurisdiction, the claim would be returned to the Liquidator for further consideration.

At hearing on this matter Mr. Smith's counsel requested that her client be provided some assurance that during the life of the liquidation an actual claim filed by her client would be given proper consideration, and that coverage within the terms and conditions of the endorsement would be extended to him. In that regard, Referee takes the liberty of noting that in a factually congruent dispute, 2006-HICIL-25, where the colloquy between and amongst the Referee, counsel for the Liquidator and Claimant ranged a bit further than it did in this matter, Liquidator's counsel indicated that if a guaranty fund were to reject a later filed claim "we would take the claim as it stood at that point in time, subject to the terms and conditions of the policy without concern for late filing." For purposes of consistency, the Referee imports that representation to this disputed matter.

While not all uncertainty can be eliminated for the Claimant in this matter, the Liquidator has confirmed his position that a later claim filed by Mr. Smith prior to the final bar date, even if rejected by any guaranty fund initially involved, will be fairly considered by the Liquidator. As to the pending claim, the Referee AFFIRMS the Liquidator's determination. The Referee also directs the Liquidator to assure that Mr. Smith and all those similarly situated will be properly advised of the advent of a final bar date.

So ruled:

Dated: January 3, 2007


Paula T. Rogers
Referee