

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2021-0211

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

INTERLOCUTORY APPEAL PURSUANT TO RULE 8 FROM AN  
ORDER OF THE MERRIMACK COUNTY SUPERIOR COURT

**BRIEF FOR THE APPELLEE INSURANCE COMMISSIONER  
OF THE STATE OF NEW HAMPSHIRE AS LIQUIDATOR OF  
THE HOME INSURANCE COMPANY**

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SOLELY AS LIQUIDATOR OF THE  
HOME INSURANCE COMPANY

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October 26, 2021

The Liquidator requests fifteen minutes of oral argument  
before the full court to be presented by J. David Leslie.

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## STATEMENT OF THE CASE

### Introduction

This is an appeal from orders approving a Claim Amendment Deadline for the final filing of claims in the liquidation of The Home Insurance Company (“Home”). The Insurance Commissioner as Liquidator (“Liquidator”) has made significant progress in the liquidation, and a final deadline for claims is now necessary so that the Liquidator can determine all remaining claims, make the full possible distributions to the preferred Class II policy-priority creditors, and move this 18-year-old proceeding to closure.

### The Statutory Framework

This case arises under the Insurers Rehabilitation and Liquidation Act, RSA 402-C (the “Act”).<sup>1</sup> The Act provides for appointment of the Insurance Commissioner as liquidator of insolvent New Hampshire-domiciled insurers such as Home. RSA 402-C:21. “Subject to the court’s control,” a liquidator has numerous powers, *see* RSA 402-C:25, as well as authority to “do such 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.

The Act assigns claims to ten priority classes and provides 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 any payment.” RSA 402-C:44. Costs of administering the liquidation are given first

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<sup>1</sup> The full text of the cited sections of the Act is included in the Addendum to this brief (“Liq. Add.”).

priority in RSA 402-C:44, I. They are followed by the policy-related claims of insureds, third party claimants against insureds, and guaranty associations, which all are assigned Class II priority by RSA 402-C:44, II. Other classes follow. “No subclasses shall be established within any class.” RSA 402-C:44.

Proofs of claim must be filed with the Liquidator “on or before the last day for filing specified in the notice required under RSA 402-C:26.” RSA 402-C:37, I. The Liquidator is to accept “excused” late filed proofs of claim, RSA 402-C:37, II, and “may consider” late filings that are not excused. *See* RSA 402-C:37, III. In each case, the Liquidator may not accept late claims that “prejudice the orderly administration of the liquidation.” RSA 402-C:37, II, III. *See also* RSA 402-C:39, III.

The Liquidator, subject to the direction of the court, “shall pay dividends in a manner that will assure . . . a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.” RSA 402-C:46, I.

“When all assets justifying the expense of collection and distribution have been collected and distributed . . . the liquidator shall apply to the court for discharge.” RSA 402-C:48, I.

## **Background**

### **A. Home and Its Liquidation**

Home is a New Hampshire-domiciled insurance company whose predecessors were established as long ago as 1853. Home and its subsidiaries, most of which were merged into Home in 1995, wrote insurance and reinsurance in almost all states of the United States, as well as in Canada, Bermuda, Hong Kong, and the United Kingdom, where



Home's unincorporated branch operation wrote business as a member of the American Foreign Insurance Association ("AFIA"). Home stopped writing insurance in 1995 and had no material coverage in force after 1996. Interlocutory Appeal Statement Appendix ("App.") 202-203, 207-208.

On June 13, 2003, the Merrimack County Superior Court entered an Order of Liquidation declaring Home insolvent and appointing the Commissioner as Liquidator. App. 160, 203. *See In the Matter of Liquidation of Home Ins. Co.*, 154 N.H. 472, 475-76, 488 (2006) ("*Home I*"). The Order of Liquidation established the deadline for filing of claims as June 13, 2004. App. 167 (¶ (bb)); App. 203.<sup>2</sup>

Since that time the Liquidator has made great progress in liquidating Home. As of May 31, 2019, the Liquidator had resolved a total of 19,695 (or 95%) of the 20,785 proofs of claim that had been filed in the liquidation, with a total allowed amount of \$3.08 billion for all priority classes. This included determinations or settlements resolving 17,370 (or 95%) of the 18,257 Class II proofs of claim with a total allowed amount of \$2.705 billion. App. 203-204. As of September 1, 2020, 19,984 of 20,819 proofs of claim had been resolved with total Class II allowances of \$2.9 billion and \$3.2 billion for all priority classes. App. 619.

The Liquidator has also collected assets, in particular reinsurance. As of May 31, 2019, the Liquidator held approximately \$808.4 million in cash and invested assets. He had also made three interim distributions to

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<sup>2</sup> Filings in the liquidation are posted at [http://www.hicilclerk.org/Hicil.nsf/vwCourtFilesDocs?ReadForm&Court+Files\(HICIL\)](http://www.hicilclerk.org/Hicil.nsf/vwCourtFilesDocs?ReadForm&Court+Files(HICIL)).

non-guaranty association Class II creditors totaling 30% on allowed Class II claims with payments totaling \$620.1 million,<sup>3</sup> and eleven Class II early access distributions to insurance guaranty associations that totaled \$256.1 million. Certain states control special deposits totaling \$55.7 million. App. 205-206. As of June 30, 2020, the Liquidator held cash and invested assets of \$812 million and had made interim distributions totaling \$639.8 million and early access distributions totaling \$256 million. Including the special deposits, the Liquidator had marshaled approximately \$1.77 billion in assets distributed or available for distribution to Class II creditors. App. 616. The collection of Home's assets is mostly complete except for reinsurance recoveries on claims that have not yet been determined. App. 206.

The Liquidator pays expenses of the liquidation. The liquidation's annual budget was \$13.5 million for 2019 and \$13.2 million for 2020. App. 206-207, 622.

**B. The American Foreign Insurance Association and Home**

As set forth in *Home I*, Home conducted business in the United Kingdom as a member of AFIA. In 1984, CIGNA purchased AFIA from its members, and as part of the transaction its subsidiary Insurance Company of North America ("INA") entered into an Assumption Agreement under which it assumed the reinsurance obligations of Home

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<sup>3</sup> With the Superior Court's approval, the Liquidator made an initial interim distribution of 15% in 2014, a second distribution of 10% in 2016, and a third distribution of 5% in 2019. Newly allowed Class II claims receive the total 30% interim distribution percentage after the next July 1 or December 31. See App. 624-626.

with respect to AFIA. *Home I*, 154 N.H. at 474. The Assumption Agreement contained an insolvency clause requiring INA to pay obligations directly to Home or its liquidator in the event of Home's insolvency. *Id.* Century Indemnity Company ("CIC") succeeded to INA's obligations in 1996. *Id.* at 475.

The appellant Zurich Insurance PLC, German Branch ("Zurich") is one of the "AFIA Cedents" – reinsureds that ceded risk under reinsurance contracts they entered with Home through AFIA. *Home I*, 154 N.H. at 474. The underlying "Rutty Pool" insurance and reinsurance contracts in which Zurich participated were for the years 1962 through 1967. App. 225, 260.

Home's insolvency meant that all claimants, including the AFIA Cedents, had to file proofs of claims in the liquidation. *Home I*, 154 N.H. at 475. The AFIA Cedents are Class V creditors, *id.* at 477, so they will not receive any distributions from the Home estate because Home will not have sufficient assets to make any distribution to creditors below the Class II priority. *See id.* As a consequence, AFIA Cedents had no incentive to file and prove claims (unless they could be used as setoffs). *Id.* at 477, 486. This would deprive the estate of reinsurance from CIC. *Id.*

1. The AFIA Agreement. To address this situation, the Liquidator proposed an arrangement ultimately agreed as the AFIA Agreement (App. 689). The AFIA Agreement provided AFIA cedents with an incentive to pursue claims by providing that a part of the reinsurance collected from CIC on the claims (after certain deductions) would be paid to the AFIA cedents through a Scheme of Arrangement approved by the English courts. *See Home I*, 154 N.H. at 477, 484; App. 690-693. CIC challenged the AFIA Agreement. This Court upheld it, concluding that

(1) the payments to the AFIA cedents constituted Class I administration cost payments to collect assets, not distributions on Class V claims, *id.* at 482-85; (2) the payments were necessary to collect assets, *id.* at 486-88; and (3) the agreement was fair and reasonable as it benefits Class II claimants, *id.* at 489-90. The Scheme (App. 415) was approved by the English Court.

2. The Claims Protocol. CIC was obligated under the 1984 Assumption Agreement to handle AFIA claims, so the Liquidator and CIC agreed on a protocol for the handling of AFIA claims in the liquidation. The Claims Protocol (“Protocol”; App. 702) was entered August 6, 2004 and approved by the Superior Court on November 12, 2004. Under the Protocol, CIC (through ACE-INA UK Services Limited (“AISUK”), now Chubb International Services UK Limited (“CISUK”)), reviews the claims and makes recommendations. *See* Protocol ¶¶ 2.1-2.3 (App. 704). If the Liquidator agrees, a notice of determination is issued to the claimant. *Id.* ¶ 2.4. Agreed determinations are presented to the Superior Court. Once the determination is approved, CIC applies any offsets it may have and makes payment to the Liquidator. *See* Protocol ¶¶ 3.3, 3.4 (App. 708-709).<sup>4</sup>

3. The Scheme. Under the Scheme, the proceeds received by the Liquidator from CIC after any applicable CIC offset (“Gross Proceeds”) are subject to certain deductions, principally for (1) proceeds reflecting AFIA cedent claims that were satisfied by offset between the cedent and

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<sup>4</sup> The Liquidator and CIC have litigated over the propriety of asserted CIC offsets on several occasions, with the result that many CIC offsets have been reduced or removed. *See, e.g., In the Matter of Liquidation of Home Ins. Co.*, 158 N.H. 677 (2009).

Home (*i.e.*, where the AFIA cedent applied its claim against Home as an offset against its own liability to Home) – these amounts are retained by Home since it had already satisfied the underlying AFIA liability, and (2) the costs of administering the Scheme and collecting reinsurance from CIC – these costs are paid out of the Gross Proceeds. The amounts remaining after the deductions (“Net Proceeds”) are then divided 50/50 between the Home estate and the Scheme. *See* Scheme, Explanatory Statement, Section E, ¶¶ 1, 2 (App. 437); Scheme Cl. 1.1, 2.2, 2.3 (App. 460-462, 466).

The Home share goes to the estate for the benefit of Class II creditors, while the Scheme share constitutes the “Scheme Assets.” The Scheme Administrators are to distribute the Scheme Assets to AFIA cedents. *See* Scheme, Explanatory Statement, Section E, ¶¶ 2, 4 (App. 437, 438); Scheme Cl. 1.1, 2.8 (App. 463-464, 468).

As a result of this structure, AFIA Cedents are incentivized to file and prove claims beyond those necessary to obtain a setoff. *See Home I*, 154 N.H. at 484 (payments are “an inducement for the AFIA Cedents to file claims”), 487. Contrary to Zurich’s assertion (Zurich Br. 11), AFIA cedents are not obligated to submit claims. *See* Scheme Explanatory Statement, Section F, ¶ 1.2 (App. 443). More recent history of the AFIA Agreement and the Scheme is described at pages 24-28 below.

4. The Zurich Settlement. When the liquidation began, Zurich’s predecessor Agrippina and Home were engaged in arbitration over disputes regarding Ruty Pool-related reinsurance contracts known as “Treaty R.” In 2004, Zurich and the Liquidator entered a settlement (“Zurich Settlement”; App. 287) to resolve those disputes. *See* Zurich Settlement, ¶¶ 4.1, 13

(App. 290, 296). Among other things, Zurich agreed that Home was obligated to indemnify only on a “fixed pool share” basis, ¶ 5.1 (App. 291), and the Liquidator agreed on how Home (itself or through AISUK) would administer underlying claims against Zurich. ¶ 6 (App. 291). The Settlement was approved by the Superior Court on February 17, 2005.

**C. The Claim Amendment Deadline Motion Proceedings**

The Liquidator filed the Motion for Approval of Claims Amendment Deadline on August 1, 2019. App. 176. The Superior Court issued an order of notice, and the Liquidator gave notice of the motion and the deadline for oppositions to all persons with open proofs of claim. Objections were filed by one policyholder (three others objected and then withdrew their objections), three workers’ compensation claimants, the New York Liquidation Bureau, a former employee, and four AFIA cedents or groups of AFIA cedents, including Zurich. *See* Addendum to Zurich’s Opening Brief (“Add.”) 47 & n. 1. The Superior Court held a videoconference hearing on December 11, 2020.

On January 28, 2021, the Superior Court issued an order granting the Liquidator’s motion, Add. 47; App. 1, and a separate order establishing the Claim Amendment Deadline. App. 19; Liq. Add. 1. On February 11, 2021, Zurich moved for reconsideration and for a stay. On April 26, 2021, the Court issued an order effectively denying reconsideration but granting a stay pending interlocutory appeal. Add. 65; App. 27. This appeal followed.

#### **D. The Superior Court's Orders and Claim Amendment Deadline**

In its orders, the Superior Court noted that the purpose of the Claim Amendment Deadline was to ensure that Class II creditors receive the full possible distribution in a timely fashion. Add. 51. The Court concluded that the Claim Amendment Deadline strikes “a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims.” Add. 60, 67 (quoting RSA 402-C:46, I). It noted that AFIA cedents such as Zurich are Class V creditors, while the liquidation was aimed at protecting the interests of preferred Class II creditors. Add. 60, 62. The Court distinguished the *Ambassador* decision because, unlike this case, it did not involve any harm to Class II creditors (who had been paid in full). Add. 61-62, 68-69. The Court rejected Zurich’s arguments concerning IBNR, which could not be reliably estimated, and held that the uncertain prospect of additional reinsurance recoveries did not warrant delaying final payments to preferred creditors. Add. 61, 69. Finally, the Superior Court ruled that the various agreements did not address and had no bearing on generally applicable limitations on the filing of claims. Add. 67-68.

The Superior Court also entered an order establishing the Claim Amendment Deadline as a date 150 days from the order and providing for notice and related procedures. App. 20; Liq. Add. 1-2. The order requires that proofs of claim be amended or filed by the deadline to identify all claims for which coverage is sought. Liq. Add. 4 (¶ 6). The order bars “Post-Claim Amendment Deadline Claims” (claims submitted after the deadline) and “Potential Claims” (“claims” where a specific claim has not

been asserted by a specific claimant against a specific person before the deadline, also referred to as “incurred but not reported” or “IBNR” claims).  
Liq. Add. 2-3 (¶ 5).

### **SUMMARY OF ARGUMENT**

This is an appeal from orders approving a final deadline for the submission of claims in the Home liquidation. The Claim Amendment Deadline is necessary to protect the interests of the preferred Class II policy creditors of Home in receiving payment. Without a final deadline, the Liquidator cannot determine all the claims in the liquidation and make the final distribution. As RSA 402-C:44 prohibits subclasses within a priority class, the Liquidator must continue to hold assets to be able to pay future Class II creditors the same distribution percentage, in addition to holding assets to pay the costs of the liquidation. The absence of a final deadline deprives the Class II creditors of the full possible partial payment, while the value of their already determined claims erodes due to inflation.

The Superior Court sustainably exercised its discretion in approving the Claim Amendment Deadline. The Act requires balancing the interests of creditors in the “expeditious completion” of the liquidation against those of claimants with “unliquidated and undetermined” claims. RSA 402-C:46. The interests at stake are those of the Class II preferred creditors, not Class V creditors such as Zurich, who stand to receive payment under the AFIA Agreement only because that may benefit Class II creditors. The Claim Amendment Deadline does not cut off unliquidated and undetermined claims, only claims that have not been filed by the deadline



and potential claims that are not known by the deadline. All identified known claims, unliquidated or not, will be determined in the liquidation.

The record shows the liquidation has progressed to the point where a final deadline is reasonable: the Liquidator has determined 95% of the Class II proofs of claim, with a total allowed Class II amount of \$2.9 billion; the Liquidator has collected the assets, other than reinsurance on remaining claims, with a distributable total of \$1.77 billion; the value of the remaining claims must be determined through the claim process; the Liquidator has made 30% interim distributions on allowed Class II claims but must hold back funds to ensure future claims equivalent distribution and to pay the expenses of liquidation, now \$13 million per year; the \$808 million in assets held by the Liquidator is not sufficient to pay even the existing Class II creditors in full; and the benefit of remaining AFIA reinsurance is now immaterial.

The Superior Court properly distinguished the *Ambassador* case because the absence of a final deadline there did not harm the existing policy creditors, who had been paid “in full, with interest.” Zurich’s other arguments are unavailing. Based on the record, the Superior Court reasonably concluded that no party could reliably estimate IBNR, and that the remaining AFIA reinsurance does not warrant holding the liquidation open. That reinsurance has provided only about \$900,000 annually to the estate in recent years, much less than the \$13 million annual cost of the liquidation.

Zurich offers no textual basis for its arguments that the AFIA Agreement, the Scheme and the separate Zurich Settlement bar a final deadline for claims. Those agreements contemplate that the New

Hampshire liquidation governs claim matters, and nothing in them precludes generally applicable limitations on claims. They do not provide Zurich with veto power over when to bring the liquidation to closure.

The irony of this appeal is that Zurich professes to advocate for Class II creditors, while the indefinitely delayed final deadline it seeks prevents those creditors from receiving the full possible distribution on their claims. No Class II policyholder appealed from approval of the Claim Amendment Deadline.

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

The orders approving the Claim Amendment Deadline concern matters regarding the administration of the liquidation by the Liquidator, subject to the control of the Superior Court. *See* RSA 402-C:25. Accordingly, they are reviewed for an unsustainable exercise of discretion. Under that standard, “the question is ‘whether the record establishes an objective basis sufficient to sustain the discretionary judgment made.’” *Hayes v. Connolly*, 172 N.H. 102, 106 (2019) (quoting *State v. Lambert*, 147 N.H. 295, 296 (2001)). “The party asserting that a trial court order is unsustainable must demonstrate that the ruling was unreasonable or untenable to the prejudice of his case.” *Id.* at 106-107 (quoting *Foley v. Wheelock*, 157 N.H. 329, 332 (2008)). The Court “will not disturb the findings of the trial court unless they lack evidentiary support or are legally erroneous.” *Id.* at 107. It “will not substitute [its] judgment for that of the trial court unless the findings and rulings are unsupported by the evidence or are erroneous as a matter of law,” nor will it “reweigh the equities.” *Id.*

The interpretation of a contract is a question of law which the Court reviews *de novo*. *In the Matter of Liquidation of Home Ins. Co.*, 166 N.H. 84, 88 (2014) (“*Home V*”).

**II. THE SUPERIOR COURT’S DISCRETIONARY JUDGMENT THAT THE CLAIM AMENDMENT DEADLINE REFLECTS A REASONABLE BALANCE SHOULD BE SUSTAINED.**

A final deadline for claims is of critical importance to the liquidation because Class II creditors with allowed claims cannot be paid the full possible distribution on their claims until all claims are determined. The Claim Amendment Deadline serves to define the universe of remaining claims against Home so that they can be determined. Without such a deadline, policyholders with allowed claims will continue to be deprived of their full distribution.

The timing of such a deadline is a matter of judgment based on a balancing of the interests of priority creditors in the “expeditious completion” of the liquidation and the “protection of unliquidated and undetermined claims.” *See* RSA 402-C:46, I. Here, the Liquidator concluded that in his judgment the time for a Claim Amendment Deadline had come (App. 207, 210), and the Superior Court agreed. This exercise of discretion is supported in the record and should be sustained.

**A. The Claim Amendment Deadline Protects The Interests Of The Statutorily Preferred Class II Creditors Who Cannot Receive Their Full Possible Distribution Until All Claims Are Determined.**

As the Superior Court recognized (Add. 60), the interests to be protected in considering the Claim Amendment Deadline are those of the

policyholders and insureds of Home and claimants against those policyholders, not reinsureds. “[T]he 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.” *Home I*, 154 N.H. at 488 (citing RSA 402-C:1, IV). The Act is to be “liberally construed” to effectuate this purpose. *Id.* (citing RSA 402-C:1, III). The preferred creditors are the holders of policy-related claims – the Class II creditors. *See* RSA 402-C:44, II. Zurich does not fall within the preferred creditor class. The AFIA Cedents are Class V creditors. *Home I*, 154 N.H. at 477. They do not stand to receive any distribution in the liquidation. Their only interest is in receiving incentive payments under the AFIA Agreement through the Scheme.<sup>5</sup>

The Claim Amendment Deadline protects the Class II creditors who presently hold \$2.9 billion in allowed claims by facilitating the full possible distribution on their claims. The Act requires that all creditors within a priority class receive distributions at the same percentage. RSA 402-C:44 (prohibiting subclasses); *see In re Coronet Ins. Co.*, 698 N.E.2d 598, 603 (Ill. App. Ct. 1998) (Illinois act). This means that, while the Liquidator

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<sup>5</sup> Contrary to Zurich’s assertion (Zurich Br. 12, 18), Zurich did not receive Class I priority for part of its IBNR. *See Home I*, 154 N.H. at 482-485 (payments to AFIA cedents are administration cost payments to collect assets). Zurich’s suggestion that it is entitled to protection under the general “[e]quitable apportionment of any unavoidable loss” language of RSA 402-C:1(d) is misplaced. The Legislature chose how to allocate loss by preferring Class II policy claimants, not reinsureds. *See* RSA 402-C:44; *see also, e.g., In re Liquidations of Reserve Ins. Co.*, 524 N.E.2d 538, 541-543 (Ill. 1988).

can make some interim distributions, the Liquidator must retain sufficient assets so that all subsequently determined Class II claims will receive the same percentage on their claims. The Liquidator must also hold sufficient assets to pay the ongoing costs of the liquidation.

Class II creditors thus cannot receive the full possible distribution on their claims until all claims are determined and their amounts known. Only then can the final distribution percentage to Class II creditors be calculated and the distribution made. As this Court previously noted, “no reasonable prediction of recovery can be made until the Commissioner knows the final cost of the administration of the liquidation as well as the size of every claim filed in the liquidation.” *Gonya v. Comm’r, N.H. Ins. Dept.*, 153 N.H. 521, 535 (2006).

Absent a final deadline, claims may straggle in, potentially for decades, which will require the maintenance of a liquidation operation and deferral of the final Class II distribution. The Claim Amendment Deadline facilitates completing the liquidation by requiring claimants to identify all their claims so that those claims may be determined. Liq. Add. 4 (¶ 6). It bars submission of claims after the deadline and the assertion of claims for coverage of claims that are unknown at the deadline. Liq. Add. 2-3 (¶ 5).

Such potential claims do not warrant keeping the liquidation open indefinitely. The “reasonable balance” required by RSA 402-C:46, I, is between the “expeditious completion” of the liquidation and protection of “unliquidated and undetermined” claims, not unknown and contingent claims. The Act contemplates reasonably expeditious liquidations. *See* RSA 402-C:46, I (“expeditious completion”); RSA 402-C:29, II (“The liquidator shall reduce the assets to a degree of liquidity that is consistent

with the effective execution of the liquidation as rapidly and economically as he can.”); RSA 402-C:40, III (“Delay in final payment under this section shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.”). At this point, the balance has tipped in favor of completing the liquidation by setting a final deadline so claims may be finally determined and Class II creditors may receive a final distribution.

Contrary to Zurich’s repeated assertions (Zurich Br. 17, 21, 34), the Claim Amendment Deadline does not cut off unliquidated claims. It leaves unliquidated claims to be determined in the liquidation. Any claim that can be identified as a specific claim by a specific claimant against a specific person can be filed by the Claim Amendment Deadline, even if unliquidated or contingent, and it will be addressed in the liquidation. Only claims that are not filed or that remain unknown at the Claim Amendment Deadline are barred. *See* Liq. Add. 2-4; App. 190, 713.

**B. The Record Provides An Objective Basis For The Superior Court’s Approval Of The Claim Amendment Deadline.**

The Superior Court considered the balance in light of the record showing the harm to policyholder interests from the lack of a final deadline and the progress of the liquidation, App. 202, 615, 661, 721, 737, as well as the history of the Scheme described in the reports to Scheme Creditors’ Committee (“SCC”) included in the Confidential Appendix, App. S-1. Zurich disregards that record in favor of abstract discussions of IBNR. However, the record shows:

- The Class II creditors with \$2.9 billion of allowed claims are harmed by prolonging the liquidation. While they have received 30% in

interim distributions on their claims, they cannot receive the full possible distribution in a timely fashion without a Claim Amendment Deadline. App. 204, 207, 210, 619. Delay in making the final distribution harms the policyholders. They are deprived of the money, the value of their allowances erodes over time due to inflation, and they will not receive any interest on the partial payment to compensate for the delay. *See* RSA 402-C:44, VII (interest on claims falls in priority Class VII).

- Claims under Home policies have had at least 25 years to develop, and claimants have had 18 years to assert them in the liquidation. Home has been in liquidation since 2003 and in run-off since 1995. Home stopped issuing policies in 1995 and did not have material coverage in force after 1996. App. 207-208. (Zurich's claims have had 54 years to develop, as it participated in the Ruddy Pool from 1962 through 1967. App. 225, 260.)<sup>6</sup>
- The Liquidator has determined 95% of the filed proofs of claim, including 95% of the Class II proofs of claim. The approved Class II determinations for claimants, insureds and guaranty associations total approximately \$2.9 billion. App. 204, 619, 659.

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<sup>6</sup> The now 18-year period from Home's Order of Liquidation to the proposed Claim Amendment Deadline is comparable to the period from liquidation order to final claim deadline in other liquidations. *See* App. 192. In discussing liquidations in its brief, Zurich Br. 33, Zurich generally refers to the period from the liquidation order to the close of the liquidation. That is years longer, since claims remain to be determined after the final filing deadline.

- The insureds with remaining open proofs of claim are generally resistant to providing information or resolving the matters as the claims increasingly involve future expectations. Absent some requirement to update and substantiate their claims, these insureds are likely to prefer to keep them open and await future developments. App. 208-209, 210.
- The Liquidator concluded, given the passage of time and the number of claims determined, that the liquidation is at a point where the answer to the value of the remaining claims must be arrived at through the claim determination process. App. 208.<sup>7</sup>

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<sup>7</sup> The Liquidator noted that in the past he had engaged the actuarial consulting firm Milliman, Inc., to provide an estimate of Home’s ultimate unpaid Class II obligations in connection with the first two interim distributions, leading to an undiscounted actuarial central estimate of \$4.034 billion as of December 31, 2014. App. 204 n. 2. See Executive Summary of Milliman’s Roll-Forward Analysis of Unpaid Loss and ALAE as of June 13, 2003 and December 31, 2014, Summary by Class at 2 (Exhibit F to the Liquidator’s Fifty-Seventh Report (June 24, 2015), [www.hicilclerk.org/Hicil.nsf/vwDocsLiqReports?ReadForm&Reports](http://www.hicilclerk.org/Hicil.nsf/vwDocsLiqReports?ReadForm&Reports)). This actuarial central estimate “should be interpreted as an estimate of the expected value over [a] range of reasonably possible outcomes.” Executive Summary at 4. See *id.* at 8 (“the average of a wide range of possible outcomes”). Contrary to Zurich’s unsupported suggestions about the effect of liquidation (Zurich Br. 35), Milliman noted that “[t]he uncertainty in our estimates is greater than it otherwise would be due to the liquidation of Home and the resulting involvement of state GAs and insureds, including their agents, in the process of handling and determining claims. Because Home is in liquidation, its historical loss experience as well as the experience since Home entered liquidation is less predictive of future claim activity, both with respect to the timing of claim reporting and payment, and with respect to the size of the payments that will ultimately be made.” *Id.* at 8 (emphasis added). Because of such factors, the uncertainties in



- The Liquidator has collected \$1.77 billion in assets available for Class II claims as of June 30, 2020. App. 206, 616.
- The remaining additional assets principally consist of potential reinsurance recoveries that will not be realized unless underlying claims against Home are filed and proved. App. 209.
- Keeping the liquidation open requires the payment of the ongoing costs of administering the estate. The liquidation has staff and consultants, leases space in New Hampshire and New York City, and presently has an annual budget of approximately \$13 million. App. 209-210, 622.

A reasonable balance now requires a final Claim Amendment Deadline to facilitate the final determination of claims necessary to collect reinsurance and make a final distribution. While the deadline cuts off potential claims, that is a necessary step to make a final distribution. App. 207, 210.

**C. Zurich’s Objections Are Erroneous And Not Supported By The Record.**

**1. The *Ambassador* Decision is Not Relevant.**

Zurich’s reliance on *In re Ambassador Ins. Co.*, 114 A.3d 492 (Vt. 2015), is misplaced. Zurich continues to ignore the critical factor that distinguishes *Ambassador* from this case: in *Ambassador*, there were no interests of Class II policyholders weighing against holding the liquidation

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reserve estimates, and the shrinking number of open claims (which will be determined through the liquidation process), the Liquidator has not engaged Milliman to perform another analysis. App. 204 n. 2.

open. Ambassador was solvent, and all its policyholder claims had been paid “in full, with interest.” 114 A.3d at 494. By contrast, Home’s Class II creditors have only received 30% on their claims.

As the Superior Court recognized, “Home is unable to pay all policyholder claimants in full, and it will be unable to issue final disbursements to policyholder claimants until a claim amendment deadline is approved.” Add. 62. In *Ambassador*, the estate “had already paid all allowed policyholder claims ‘in full, with interest,’ and had an additional \$92 million remaining to address future and lower priority claims.” Add. 61 (quoting *Ambassador*, 114 A.3d at 493-494). *Accord*, Add. 68-69. The Ambassador estate thus could be held open indefinitely without any prejudice to the policyholder creditors, while holding the Home estate open harms those Class II creditors by preventing them from getting paid their full potential distribution.

Given this critical distinction, the Superior Court did not err in declining to follow what Zurich refers to as the “Ambassador test.” Zurich Br. 26. There is no such “test,” as the *Ambassador* court acknowledged that the four factors were not exclusive and should be considered “among other factors.” 114 A.3d at 500. In any event, as the Superior Court held, the factors weigh in favor of the Claim Amendment Deadline. Add. 62, 69.

Remaining estate liabilities. Home’s liabilities have been to a great extent determined, as 95% of the proofs of claim, including 95% of the Class II proofs of claim, have been resolved, and there has been a lengthy period for claims to be asserted. Zurich contends that future liabilities can be estimated by methods “underpinned by mathematics and actuarial science.” Zurich Br. 30. However, “[a]s courts have noted, IBNR reserves

are extremely conjectural and may need adjustment over time.” Ostrager & Vyskocil, *Modern Reinsurance Law & Practice* § 1:03 (3d ed. 2014). Zurich presented no evidence that estimating can be done reliably here, and the record includes an explanation from the Liquidator (drawing on the 2014 Milliman report) as to why that is not reasonable in the context of a liquidation with a diminishing body of remaining claims. App. 204 n. 2, 208. *See* note 7 above. In the Liquidator’s judgment, the only reasonable way to determine the amount of the remaining claims at this point is to identify and determine them, not to try and make speculative estimates of their possible amount. Zurich admits that, even with the reports it receives regarding paid claims and case reserves, it cannot estimate its own IBNR “with confidence.” Zurich Br. 41. The Superior Court reasonably concluded that no party was in a position to produce a reliable estimate of the value of IBNR claims. Add. 69.

Remaining assets of the estate. Zurich attempts to portray Home as having \$808 million in assets, as if that represented funds available for future claims comparable to the \$92 million in *Ambassador*. Zurich Br. 26. That is an incorrect comparison. The *Ambassador* funds were available to distribute on future claims because the existing creditors had already been paid in full. By contrast, the entire \$808 million held by the Liquidator could be paid out on the \$2.9 billion of allowed Class II claims (which have only received the 30% distribution) without paying those claims in full. Such a payment cannot be made, of course, because that would leave nothing for subsequently allowed claims that must receive an equivalent distribution percentage, or for the expenses of liquidation. Unlike *Ambassador*, there are not “ample funds” to pay future claims.

The remaining uncollected assets consist of whatever reinsurance applies to claims that are determined in the future. App. 206. Since future liabilities are uncertain and, at this point, claim values can only be determined through the claim determination process, App. 208, any reinsurance on those claims is also uncertain. Reinsurance depends upon the determination of underlying claims, a process that will be expedited by the Claim Amendment Deadline. The AFIA reinsurance of concern to Zurich is immaterial as discussed at pages 25-28 below. The Superior Court reasonably concluded that the remaining assets are limited. Add. 62.

Administration costs. So long as claims remain open, the Liquidator will need to maintain a claims staff and administrative structure to handle claims, collect reinsurance and make distributions. The record shows that it is presently costing about \$13 million per year to keep the estate open. App. 209. Zurich attempts to downplay this by asserting that the annual cost is only about 1.6% of “remaining assets” of \$808 million. Zurich Br. 30-31. However, those assets are not “remaining” but assets that can and – with a Claim Amendment Deadline – will be paid to creditors. The recent annual administration cost is more than ten times the amount of the average annual AFIA reinsurance collected for the benefit of the estate over the last five years. See App. 726, 739. The Superior Court reasonably concluded that the ongoing administration costs weigh in favor of a deadline.

Delay in final payments. This was not a factor in *Ambassador* since the policyholders there had already been paid in full. Here, however, the longer the Home estate stays open, the longer the delay before the final distribution payment to Class II creditors. It is no answer to say that the creditors have “not had to wait for partial payments.” Zurich Br. 32.

Partial interim distributions do not justify delaying the final distribution of the full possible distribution percentage. As set forth at pages 14-15 above and in the Liquidator's motions for approval of the interim distributions, the Liquidator must hold assets back from distribution so that all Class II creditors of the estate may receive the same distribution percentage no matter when their claim was determined, as well as to pay the ongoing administration costs. Interim distributions are thus necessarily less than the final distribution. The Superior Court properly distinguished *Ambassador* and concluded this factor supports the final deadline. Add. 62, 68-70.

**2. The Concrete Harm to Class II Creditors of Keeping the Liquidation Open Outweighs the Speculative Value of IBNR and Reinsurance Recoveries.**

Zurich contends that the Liquidator should have been required to estimate the potential claims (IBNR) that will be cut off, and that potential reinsurance recoveries merit holding the liquidation open. However, Zurich identifies no requirement that the Liquidator estimate IBNR, and the record supports the Superior Court's conclusion that no party could reliably estimate IBNR and that potential AFIA reinsurance is not material.

**a. No Party Can Reliably Estimate IBNR.**

IBNR is by definition a projection or estimation of claims that have not yet emerged, and any estimate is uncertain. *See Ostrager & Vyskocil, Modern Reinsurance Law* § 1:03.<sup>8</sup> Zurich acknowledged this in its initial

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<sup>8</sup> IBNR should be distinguished from "case reserves." "Incurred-But-Not-Reported Reserves (or 'IBNR')" are "reserves set aside before claims are

objections, where it noted that “estimated future values [of IBNR] are subject to significant uncertainty and simplistic assumptions that may result in a wide range of possible outcomes.” App. 222. In its brief, Zurich states that it cannot estimate its own IBNR “with confidence.” Zurich Br. 41.

The record demonstrates the uncertainty of IBNR estimates generally (*see* pages 20-21 above) and also as to AFIA. When valuations of paid losses, case reserves and IBNR were exchanged by AFIA Cedents and CIC in 2012 as part of the ill-fated global commutation discussions, the valuations diverged widely: CIC’s overall valuation was 10% of the AFIA Cedents’ values. App. S-56 to S-57 (Confidential Appendix Volume), App. S-102.

The record further shows that the Liquidator does not have information to estimate AFIA IBNR, which concerns potential future claims against the AFIA Cedents. The AFIA Cedents, who have the information concerning the underlying claims and their development, are unwilling to provide it. In March 2019, Zurich (implicitly acknowledging the need for such information) urged the Scheme Administrators to request claim information from AFIA Cedents. App. S-303 (minutes of March 25, 2019 SCC meeting; Mr. Crabtree for Zurich). The Scheme Administrators responded by requesting information from SCC members twice, in

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even filed, based upon historical data, including loss experience.” Ostrager & Vyskocil, *Modern Reinsurance Law* § 1:03. Case Reserves, by contrast, are reserves for known claims that have been reported. *Id.* (definition of “Loss Reserves”). *See In re Liquidation of Am. Mut. Liab. Ins. Co.*, 747 N.E.2d 1215, 1228, 1232 (Mass. 2001). The Claim Amendment Deadline permits case reserves to be valued and allowed.

September 2019 and again in January 2020. App. S-308 (“Action 1”). However, “the Scheme Administrators did not receive sufficient responses” from the Cedents to make any estimate. *Id.* See also App. S-290 (“Insufficient information has been received”).<sup>9</sup>

The Superior Court reasonably concluded that no party can reliably estimate IBNR.

**b. AFIA Reinsurance is No Longer Material to the Estate.**

The record also shows that the AFIA reinsurance now has limited value to the liquidation. Zurich repeatedly refers to the \$231 million estimate of AFIA claims from 2002. That estimate was not made by the Liquidator and it has little relevance today, almost 20 years later.

The best practical guide to the current value of the AFIA reinsurance to the estate is recent actual experience. The record shows that the annual benefit to the estate from 2015 to 2019 was only about \$900,000 per year. App. 673-674, 737 n. 1. Since 2015, the AFIA Cedents’ claims have averaged about \$3 million per year resulting, after CIC offsets, in about \$1.8 million per year of reinsurance collections which, after the split

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<sup>9</sup> Zurich also asserts that CISUK should estimate Zurich’s IBNR, but it provides no basis for this. CISUK is administering underlying inwards claims against Zurich (not other AFIA Cedents) pursuant to the Zurich Settlement. Nothing in the Settlement obligates CISUK to estimate IBNR. As Zurich acknowledges (Zurich Br. 41), paragraph 6.8 of the Zurich Settlement requires CISUK to provide regular reports to Zurich with agreed-upon historical information about its paid losses and case reserves. See App. 292. CISUK has done this but, notwithstanding those reports, Zurich cannot estimate its IBNR “with confidence.” Zurich Br. 41.

between the estate and the Scheme (and disregarding expenses and other deductions), yields about \$900,000 per year in benefit to the estate. *See* App. 726, 739. \$900,000 is not a material number in the context of an estate with \$2.9 billion of allowed Class II claims. It is also only a small fraction of the annual operating expenses of approximately \$13 million. The annual AFIA recovery does not warrant keeping the estate open.

Moreover, the \$231 million figure from 2002 must be considered in light of the claims that have actually emerged since that time. The AFIA claim allowances (Notices of Determination or “NODs”) from the inception of the liquidation in 2003 through 2019 totaled \$134 million. App. S-279. Deducting that number from the \$231 million leaves \$97 million. A portion of the \$97 million figure represents paid losses and case reserves for known claims. Those amounts should be removed, as they are not cut-off by the Claim Amendment Deadline. *See* Liq. Add. 2-4; App. 713. Zurich asserts there are \$33.7 million of outstanding Ruddy Pool losses/case reserves. App. 241. (That figure does not include non-Ruddy Pool AFIA case reserves, which should also be removed.) Accordingly, if the 2002 estimate has continuing vitality, the maximum amount of IBNR that could be affected by the deadline is \$63 million. The maximum benefit to Class II creditors from that IBNR would be less than \$30 million because, under the AFIA Agreement and Scheme, the resulting reinsurance would be reduced by CIC offsets (yielding the “Gross Proceeds”) and then by the expenses of collection and the UK proceedings (yielding the “Net Proceeds”), and would then be shared 50%/50% with the Scheme (with 50% becoming “Scheme Assets”). *See* pages 6-7 above.



Further, such reinsurance on IBNR could only be realized over years as claims come in and are determined. AFIA claims have recently been about \$3 million per year (with a \$900,000 benefit to Class II creditors). At that rate it would take decades for claims to emerge. During that time, the expenses of the liquidation would continue, the Class II creditors would not receive the fullest possible distribution, and the value of their allowances would be eroded by inflation.

Zurich suggests that IBNR could be realized more quickly through commutations. This overlooks the fact that commutation is a voluntary act that cannot be compelled. Zurich's suggestion that postponing a final deadline would provide an opportunity for commutation with CIC ignores the history of discussions with CIC since 2012.

This history was not “[u]nbeknownst to Zurich until recently.”

Zurich Br. 39. The record includes the UK Scheme Administrator's annual reports to the SCC (including Zurich) which detail that history:

- In 2012, the Liquidator gathered information from AFIA Cedents and attempted to start “global” commutation discussions with CIC. App. S-55, S-102.
- The Liquidator presented the information, and CIC responded with a valuation of about 10%. App. S-56 to S-57, App. S-102.
- After efforts over two years, in 2014 the parties were so far apart that the SCC was advised that the possibility of such a commutation “appears remote.” App. S-111. This was discussed at the SCC meeting on December 8, 2014. App. S-145 (“[T]he likelihood of the parties being able to agree a global commutation was now considered to be remote.”).<sup>10</sup>

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<sup>10</sup> During this period, Resolute (Equitas) and Enstar engaged with CIC on a “reconciliation” process over their claims, as Zurich was aware. *See* App.

- In 2014, CIC advised (and the SCC was informed) that CIC was “now prepared to consider the commutation of AFIA liabilities with individual cedents.” App. S-112. This was discussed at the December 8, 2014 SCC meeting. App. S-146.
- Only one cedent of any significance, the Enstar group of companies, chose to negotiate a commutation with CIC. The SCC was consulted about the Enstar Group commutation in March and April of 2015, and the Liquidator then moved for approval of the commutation, which was approved in July 2015. App. S-133. The price was negotiated between Enstar and CIC. Liquidator’s Motion for Approval of Commutation Agreements with Enstar Companies ¶¶ 2, 4 (May 28, 2015).
- There have been no material AFIA commutations since. (A commutation with NCC included a \$100,000 allowance on AFIA claims which was agreed by CIC. That sum is not material. *See* App. 576-577.)

The Superior Court reasonably concluded that AFIA does not warrant keeping the liquidation open. Based on the record, the remaining benefit from AFIA Cedents’ claims is not material. The incremental reinsurance benefit does not “justify” the continued annual cost of the liquidation. *See* RSA 402-C:48, I.

**D. The AFIA Agreement, Scheme and the Zurich Settlement Agreement Have No Bearing on the Claim Amendment Deadline.**

Zurich finally contends that the Claim Amendment Deadline conflicts with the AFIA Agreement, the Scheme and the separate Zurich Settlement. Zurich’s arguments are unmoored from any actual contract

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S-102, S-124. This process did not produce results for Resolute, and Zurich chose not to engage with CIC.

language. As the Superior Court held, “[n]othing in the texts of the agreements . . . addresses how long the Liquidator is obligated to accept the filing of proofs of claim, nor purports to set aside generally applicable limitations the Liquidator may ordinarily impose on the filing of such claims.” Add. 68. *Cf. Czumak v. N.H. Div. of Developmental Servs.*, 155 N.H. 368, 375 (2007). The Superior Court properly refused to read into the various agreements what the parties did not see fit to include. Add. 68 (citing *Poland v. Twomey*, 156 N.H. 412, 414 (2007)).

Zurich effectively contends that the parties’ silence somehow shows a mutual intent to preclude the Liquidator and Superior Court from establishing generally applicable limitations pursuant to the Act. That is contrary to established principles of contract interpretation, which determine the parties’ intent “from the plain meaning of the language used in the contract.” *Czumak*, 155 N.H. at 373. *See Home V*, 166 N.H. at 92 (“To interpret the parties’ silence on the issue of interest as evidencing an intent that there be none would require us to write into the contract a term that the parties did not include.”). It is particularly inappropriate here, where the Act provides the Liquidator with broad power to take steps for the accomplishment of the purpose of liquidation, subject to the Superior Court’s control. RSA 402-C:25, XXII. The purpose of liquidation is to benefit the preferred creditors, *see Home I*, 154 N.H. at 488, and the Claim Amendment Deadline will facilitate distributions to them. It would be contrary to the purpose of the Act to infer limitations on the Liquidator’s authority in the absence of express language mandating such limits.

**1. The AFIA Agreement and Scheme Leave the Determination of Claims to the New Hampshire Liquidation Process.**

Zurich contends that the Claim Amendment Deadline “conflicts” with the AFIA Agreement. However, Zurich does not identify any language in the AFIA Agreement concerning limitations on claims in the liquidation. Zurich Br. 37. The AFIA Agreement (described at pages 5-6s above) contains a general reference to claims “as agreed or adjudicated” in the Home liquidation (Cl. 1.9.1 (App. 692)), but it says nothing about limitations that may apply to claims. This silence does not “conflict” with the Claim Amendment Deadline.

Zurich instead asserts that the Court in *Home I* somehow addressed how long the Liquidator is obligated to accept claims. Zurich Br. 37. It cites to the Court’s comment that “collection proceedings would be lengthy, complex and difficult” in the Court’s discussion of whether the AFIA Agreement was fair and reasonable. 154 N.H. at 490. That comment was not a directive but an observation supporting approval of the agreement. It says nothing about how long the Liquidator should continue to accept claims, and it does not preclude the Liquidator and Superior Court from establishing a final deadline. Proceedings have in fact been lengthy, as it has been more than 17 years since the AFIA Agreement was entered in February 2004. The Court’s language does not create a contractual bar not found in the text of the AFIA Agreement.

Zurich also relies on the Scheme, but it again fails to identify any provision that would require the Liquidator to accept claims in perpetuity. The Scheme is merely the vehicle for distribution to Scheme Creditors of

the “Scheme Assets” as transferred to the Scheme by the Liquidator. *See* Scheme Clause 1.4 (“The purpose of the Scheme is to distribute the Scheme Assets to the Scheme Creditors . . . .”) (App. 465).

The Scheme expressly recognizes that claims are subject to limitations established in the New Hampshire liquidation. A claim only becomes established for purposes of the Scheme “when a proof . . . has been first lodged in the New Hampshire Liquidation in accordance with the terms of the Claims Procedure Order and there has been finally and conclusively established in accordance with the Claims Procedure Order . . . a present obligation of the Company to pay an ascertained sum of money . . . .” Scheme Clause 2.8 (App. 468).<sup>11</sup> The Scheme Explanatory Statement makes clear that New Hampshire procedures govern proofs of claim. *See* Explanatory Statement Section E.4 (“Proofs of claim received after [the June 13, 2004] filing deadline may be accepted by the New Hampshire Liquidator in certain circumstances. If, however, such a proof of claim is excluded by the New Hampshire Liquidator, it would then be ineligible for participation in the Scheme.”) (App. 438); Section F.1-2

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<sup>11</sup> The Scheme defines the “Claims Procedure Order” as “the order establishing procedures regarding claims filed with the Company, entered by the New Hampshire Court on 19 December 2003 (as the same may be amended, varied, supplemented or replaced from time to time).” Scheme Clause 1.1 (App. 458) (emphasis added). That order governs claims in the Home liquidation. *See Home V*, 166 N.H. at 86-87. The underscored language shows that the Scheme contemplated that the Superior Court would continue to control claims, which it does in the Claim Amendment Deadline order. *See* Liq. Add. 2 (¶ 4) (“Subject to the provisions of this Order, which shall control,” the Claims Procedures Order continues to apply).

(App. 443). Finally, the Scheme’s definition of “liability” expressly excludes claims that are not admissible in the liquidation. Scheme Clause 1.1 (“such expression does not include any liability which is barred by statute or otherwise unenforceable or which would be inadmissible in the New Hampshire Liquidation of the Company”) (App. 461).

The Scheme thus acknowledges that claims must be determined in the New Hampshire liquidation subject to applicable liquidation requirements. It would be inconsistent with the acknowledged role of the New Hampshire liquidation governing claims for the Scheme to require that the Liquidator accept AFIA claims in perpetuity. Not surprisingly, the Scheme contains no such provision. The provision on which Zurich relies, Scheme Cl. 7.7.1, only concerns the termination of the Scheme. App. 493. It says nothing about generally applicable limitations on claims in the New Hampshire Home liquidation proceeding or the duration of the liquidation. Zurich’s argument has no basis in the text of the Scheme, and the Superior Court properly rejected it.

## **2. The Zurich Settlement Resolved Disputes in Arbitration and Does Not Address General Liquidation Requirements For Claims.**

Zurich’s settlement with the Liquidator is similarly irrelevant. It resolved an arbitration concerning the “Treaty R” reinsurance agreement. The settlement resolved the arbitration and disputes. *See* Zurich Settlement, Whereas Cl. (D), (G) (App. 287, 288), ¶ 4.1 (App. 290), ¶¶ 13.1-13.3 (App. 296). The settlement addressed Home’s obligations with respect to underlying claims by policyholders against Zurich. *See*

Zurich Settlement, definition of “Policy Liability” (App. 289). It provides specificity both as to the basis for Home’s potential liability (agreed to be “Fixed Pool Share”) as reinsurer of such policy claims, *id.* ¶ 5, and as to how Home will administer the underlying claims going forward. *See id.* ¶ 6. (App. 291-293). It does not address broader liquidation issues.

Zurich’s reliance on ¶ 6.3 is misplaced. In the settlement, the Liquidator agreed that Home would adjust the underlying policy claims against Zurich (¶ 6.3.1) and that when those claims are accepted as obligations of Zurich, then the fixed pool share of those claims would also be deemed to be part of Zurich’s proof of claim in the New Hampshire liquidation. *See* ¶ 6.3.3 (App. 291). This provision does not purport to set aside generally applicable limitations governing proofs of claim. It is merely an administratively efficient way of submitting particular underlying policy claims by including them in Zurich’s proof of claim as they are accepted and paid by Zurich. The automatic inclusion of paid claims against Zurich in its proof of claim is separate from the question whether those claims can be allowed in the estate and is not an agreement that claims can be submitted in perpetuity.

Zurich now focuses on the language of ¶ 6.3.2 (App. 291). Contrary to Zurich’s repeated assertions (Zurich Br. 15, 18, 38), however, that provision does not impose some broad roving duty on the Liquidator. It only addresses certain costs of administering underlying claims against Zurich. It concerns Home’s obligations under ¶¶ 6.6.1 and 6.6.2 regarding “Policy Expenses” – the costs of disputing coverage under a policy. *See* definitions at App. 288 and 289. Paragraph 6.3.2 specifies that Home’s obligations for those coverage dispute costs will be treated as falling within

Zurich’s proof of claim and that Home will “do all things necessary to have such obligations admitted into Home’s estate for the purpose set forth in 6.7.”<sup>12</sup> This language is limited to the obligations under ¶¶ 6.6.1 and 6.6.2 and has nothing to do with the policy liabilities that are subject to ¶ 6.3.1. In any event, it does not purport to override generally applicable liquidation requirements. The phrase “all things necessary” is necessarily subject to the Act as applied by the Court supervising the liquidation.

The AFIA Agreement, the Scheme and the Zurich Settlement all contemplate the submission of claims subject to generally applicable limitations established in the liquidation. Nothing in their texts provides that the Liquidator must accept claims and the New Hampshire liquidation remain open indefinitely or precludes a Claim Amendment Deadline. They do not provide Zurich with a veto over concluding the liquidation. Such an extraordinary result would be contrary to the purpose of the Act to provide for the “efficien[t]” and reasonably “expeditious” completion of the liquidation (*see* RSA 402-C:1, IV(c), RSA 402-C:46, I) and to the interests of the Class II policyholders and claimants that the Act is intended to prefer and protect. *See* RSA 402-C:44, II; *Home I*, 154 N.H. at 488.

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<sup>12</sup> That section provides that specified obligations have Class I priority. App. 292. Such administration costs are not subject to the Claim Amendment Deadline. *See* App. 24 (¶ 11).



## **CONCLUSION**

For the foregoing reasons, the orders of the Superior Court approving and establishing the Claim Amendment Deadline should be affirmed.

## **REQUEST FOR ORAL ARGUMENT**

The Liquidator requests 15 minutes of oral argument to be presented by J. David Leslie.

Respectfully submitted,

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### **Certificate of Compliance**

This brief complies with the word limitation set out in Supreme Court Rule 16(11) and contains 9,456 words.

### **Certificate of Service**

I hereby certify that a copy of the Liquidator's brief shall be served upon all counsel of record in this appeal through the Court's electronic filing system this 26<sup>th</sup> day of October 2021.

/s/ Eric A. Smith  
Eric A. Smith

**ADDENDUM**

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**THE STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS.**

**SUPERIOR COURT**

**Docket No. 217-2003-EQ-00106**

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

~~**[PROPOSED]**~~

**ORDER APPROVING CLAIM AMENDMENT DEADLINE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

SO ORDERED

Dated:

1/28/21

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

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

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

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

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

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

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

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

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

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

Your submission must include available supporting information regarding your claim.

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

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

Revised Statutes Annotated of the State of New Hampshire  
Title XXXVII. Insurance (Ch. 400 to 420-Q) (Refs & Annos)  
Chapter 402-C. Insurers Rehabilitation and Liquidation (Refs & Annos)

N.H. Rev. Stat. § 402-C:1

402-C:1 Title, Construction and Purpose.

Currentness

I. SHORT TITLE. This chapter may be cited as the “Insurers Rehabilitation and Liquidation Act.”

II. CONSTRUCTION: NO LIMITATION OF POWERS. This chapter shall not be interpreted to limit the powers granted the commissioner by other provisions of the law.

III. LIBERAL CONSTRUCTION. This chapter shall be liberally construed to effect the purpose stated in paragraph IV.

IV. PURPOSE. The purpose of this chapter is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors, through:

- (a) Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures, neither unduly harsh nor subject to the kind of publicity that would needlessly damage or destroy the insurer;
- (b) Improved methods for rehabilitating insurers, by enlisting the advice and management expertise of the insurance industry;
- (c) Enhanced efficiency and economy of liquidation, through clarification and specification of the law, to minimize legal uncertainty and litigation;
- (d) Equitable apportionment of any unavoidable loss;
- (e) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extension of the scope of personal jurisdiction over debtors of the insurer outside this state; and
- (f) Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

**Credits**

**Source.** 1969, 272:1, eff. June 23, 1969.

Notes of Decisions (3)

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N.H. Rev. Stat. § 402-C:1, NH ST § 402-C:1  
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Revised Statutes Annotated of the State of New Hampshire  
Title XXXVII. Insurance (Ch. 400 to 420-Q) (Refs & Annos)  
Chapter 402-C. Insurers Rehabilitation and Liquidation (Refs & Annos)  
Formal Proceedings

N.H. Rev. Stat. § 402-C:21

402-C:21 Liquidation Orders.

Currentness

I. ORDER TO LIQUIDATE. An order to liquidate the business of a domestic insurer shall appoint the commissioner and his successors in office liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the orders of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the date of the filing of the petition for liquidation. He may recover and reduce the same to possession except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in [RSA 402-C:55](#), III for ancillary receivers appointed in this state as to assets located in this state. The filing or recording of the order with any register of deeds in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that register of deeds.

II. FIXING OF RIGHTS. Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members and all other persons interested in its estate are fixed as of the date of filing of the petition for liquidation, except as provided in [RSA 402-C:22](#) and [39](#).

III. ALIEN INSURER. An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included under the order.

IV. DECLARATION OF INSOLVENCY. At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner may petition the court to declare the insurer insolvent, and after such notice and hearing as it deems proper, the court may make the declaration.

V. Any order issued under this section shall require financial reports to the court by the liquidator. Financial reports shall include, at a minimum, the assets and liabilities of the insurer and all funds received or disbursed by the liquidator during the current period. Financial reports shall be filed within one year of the liquidation order and at least annually thereafter.

VI. (a) On or before January 6, 1992, or, if later, within 5 days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. Such plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant company's financial condition is, in the judgment of the commissioner, unable to support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of

certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such policyholders and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the commissioner or any of his deputies, agents, clerks, assistants or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(b) The appeal pendency plan shall not supersede or affect the obligations of any insurance guaranty association.

(c) Any such plans shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. Further, in the event an order of liquidation is set aside upon any appeal, the company shall not be released from delinquency proceedings unless and until all funds advanced by any guaranty association, including reasonable administrative expenses in connection with the proceedings relating to obligations of the company, shall be repaid in full, together with interest at the judgment rate of interest or unless an arrangement for repayment thereof has been made with the consent of all applicable guaranty associations.

#### Credits

**Source.** 1969, 272:1. 1991, 96:5, eff. Jan. 1, 1992.

#### Notes of Decisions (1)

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N.H. Rev. Stat. § 402-C:21, NH ST § 402-C:21

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N.H. Rev. Stat. § 402-C:25

402-C:25 Powers of Liquidator.

Currentness

The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. Subject to the court's control, he may:

I. Appoint a special deputy to act for him under this chapter, and determine his compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

II. Appoint or engage employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and other personnel he deems necessary to assist in the liquidation. RSA 98 shall not apply to such persons.

III. Fix the compensation of persons under paragraph II, subject to the control of the court.

IV. Defray all expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the liquidator may advance the costs so incurred out of any available appropriation. Any amounts so paid shall be deemed expense of administration and shall be repaid for the credit of the insurance department out of the first available moneys of the insurer.

V. Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath and compel any person to subscribe to his testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents which he deems relevant to the inquiry.

VI. Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts; do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including sell, compound, compromise or assign for purposes of collection, upon such terms and conditions as he deems best, any bad or doubtful debts; and pursue any creditor's remedies available to enforce his claims.

VII. Conduct public and private sales of the property of the insurer in a manner prescribed by the court.



VIII. Use assets of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under [RSA 402-C:44](#).

IX. 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, except that no transaction involving property the market value of which exceeds \$10,000 shall be concluded without express permission of the court. He also may execute, acknowledge and deliver any deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation. In cases where real property sold by the liquidator is located other than in the county where the liquidation is pending, the liquidator shall cause to be filed with the register of deeds for the county in which the property is located a certified copy of the order appointing him.

X. Borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

XI. Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.

XII. Continue to prosecute and institute in the name of the insurer or in his own name any suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he deems unprofitable to pursue further. If the insurer is dissolved under [RSA 402-C:23](#), he may apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff.

XIII. Prosecute any action which may exist in behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person.

XIV. Remove any records and property of the insurer to the offices of the commissioner or to such other place as is convenient for the purposes of efficient and orderly execution of the liquidation.

XV. Deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions.

XVI. File any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located.

XVII. Assert all legal and equitable defenses available to the insurer as against third persons. A waiver of any defense by the insurer after a petition for liquidation has been filed shall not bind the liquidator.

XVIII. Exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member, including any power to avoid any transfer or lien that may be given by law and that is not included within [RSA 402-C:30-32](#).

XIX. Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

XX. Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states.

XXI. Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this chapter.

XXII. The enumeration in this section of the powers and authority of the liquidator is not a limitation upon him, nor does it exclude his right 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.

#### **Credits**

**Source.** 1969, 272:1, eff. June 23, 1969.

#### [Notes of Decisions \(1\)](#)

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N.H. Rev. Stat. § 402-C:25, NH ST § 402-C:25

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Chapter 402-C. Insurers Rehabilitation and Liquidation (Refs & Annos)  
Formal Proceedings

N.H. Rev. Stat. § 402-C:37

402-C:37 Filing of Claims.

Currentness

I. DEADLINE FOR FILING. Proof of all claims must be filed with the liquidator in the form required by [RSA 402-C:38](#) on or before the last day for filing specified in the notice required under [RSA 402-C:26](#), except that proof of preferred ownership claims and proprietary claims under [RSA 402-C:44](#) need not be filed at all, and proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

II. EXCUSED LATE FILINGS. For a good cause shown, the liquidator shall recommend and the court shall permit a claimant making a late filing to share in dividends, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation. Good cause includes but is not limited to the following:

- (a) That existence of a claim was not known to the claimant and that he filed within 30 days after he learned of it;
- (b) That a claim for cash surrender values or other investment values in life insurance or annuities which was not required to be filed was omitted from the liquidator's recommendations to the court under [RSA 402-C:45](#), and that it was filed within 30 days after the claimant learned of the omission;
- (c) That a transfer to creditor was avoided under [RSA 402-C:30-32](#) or was voluntarily surrendered under [RSA 402-C:33](#), and that the filing satisfies the conditions of [RSA 402-C:33](#);
- (d) That valuation under [RSA 402-C:43](#) of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation; and
- (e) That a claim was contingent and became absolute, and was filed within 30 days after it became absolute.

III. UNEXCUSED LATE FILINGS. The liquidator may consider any claim filed late which is not covered by paragraph II, and permit it to receive dividends, other than the first dividend, which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is then being paid to other claimants of the same priority plus the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

**Credits**

**Source.** 1969, 272:1. 1975, 348:12, 13, eff. Aug. 6, 1975.

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Formal Proceedings

N.H. Rev. Stat. § 402-C:44

402-C:44 Order of Distribution.

Currentness

The order of distribution of claims from the insurer's estate shall be as stated in this section. The first \$50 of the amount allowed on each claim in the classes under paragraphs II, V, and VI except claims of the guaranty associations as defined in RSA 404-B, 404-H, 404-D, and 408-B shall be deducted from the claim. Claims may not be cumulated by assignment to avoid application of the \$50 deductible provision. Subject to the \$50 deductible provision, 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. No subclasses shall be established within any class.

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.

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, and liability claims against insureds which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company and claims of the New Hampshire Insurance Guaranty Association, the New Hampshire Life and Health Insurance Guaranty Association and any similar organization in another state. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds or investment values, shall be treated as loss claims. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employee shall be treated as a gratuity.

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. Officers shall not be entitled to the benefit of this priority.

(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. Claims, including those of any non-federal governmental body, for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under paragraph VIII.

VI. JUDGMENTS. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he deems appropriate. The claim as allowed shall receive the priority it would receive in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

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. The liquidator, with the approval of the court, may make reasonable classifications of claims for purposes of computing interest, may make approximate computations and may ignore certain classifications and time periods as de minimis.

VIII. MISCELLANEOUS SUBORDINATED CLAIMS. The remaining claims or portions of claims not already paid, with interest, as in paragraph VII:

- (a) Claims under [RSA 402-C:39, II](#);
- (b) Claims subordinated by [RSA 402-C:61](#);
- (c) Claims filed late;
- (d) Portions of claims subordinated under paragraph V;
- (e) Claims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.

IX. PREFERRED OWNERSHIP CLAIMS. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in paragraphs VII and VIII.

X. PROPRIETARY CLAIMS. The claims of shareholders or other owners.

#### **Credits**

**Source.** 1969, 272:1. 1975, 348:14. 1977, 499:1. [1998, 99:1](#). [2005, 248:5](#), eff. [Sept. 12, 2005](#).

Notes of Decisions (8)

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Formal Proceedings

N.H. Rev. Stat. § 402-C:46

402-C:46 Distribution of Assets.

Currentness

I. PAYMENTS TO CREDITORS. Under the direction of the court, the liquidator shall pay dividends in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

II. EXCESS ASSETS.

(a) Upon liquidation of a domestic mutual insurance company, any assets held in excess of its liabilities and the amounts which may be paid to its members as provided under subparagraph (b) shall be paid into the state treasury for the credit of the insurance department.

(b) The maximum amount payable upon liquidation to any member for and on account of his membership in a domestic mutual insurance company, in addition to the insurance benefits promised in the policy, shall be the total of all premium payments made by the member with interest at the legal rate compounded annually.

**Credits**

**Source.** 1969, 272:1, eff. June 23, 1969.

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N.H. Rev. Stat. § 402-C:46, NH ST § 402-C:46

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Revised Statutes Annotated of the State of New Hampshire  
Title XXXVII. Insurance (Ch. 400 to 420-Q) (Refs & Annos)  
Chapter 402-C. Insurers Rehabilitation and Liquidation (Refs & Annos)  
Formal Proceedings

N.H. Rev. Stat. § 402-C:48

402-C:48 Termination of Proceedings.

Currentness

I. LIQUIDATOR'S APPLICATION. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders deemed appropriate, including an order to transfer to the state treasury for the credit of the insurance department any remaining funds that are uneconomic to distribute.

II. APPLICATION BY OTHERS. Any other person may apply to the court at any time for an order under paragraph I. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

**Credits**

**Source.** 1969, 272:1, eff. June 23, 1969.

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