

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

_____	)	
ROGER A. SEVIGNY, Insurance	)	
Commissioner of the State of New Hampshire,	)	
Solely in his capacity as Liquidator of The	)	
Home Insurance Company,	)	
	)	
Plaintiff	)	Civil Action No. 1:11-cv-00405-SM
	)	
v.	)	
	)	
REPWEST INSURANCE COMPANY	)	
	)	
Defendant	)	
_____	)	

**LIQUIDATOR’S FIRST AMENDED COMPLAINT**

Plaintiff Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, solely in his capacity as Liquidator of The Home Insurance Company, brings this action to collect reinsurance due from defendant Repwest Insurance Company under contract and pursuant to RSA 405:49, I, and provides specifications as follows:

**Parties**

1. Plaintiff Roger A. Sevigny is the duly appointed Insurance Commissioner of the State of New Hampshire, and in that capacity is the successor Liquidator of The Home Insurance Company pursuant to the Order of Liquidation entered June 13, 2003 (Docket No. 03-E-0106). He brings this action solely in his capacity as Liquidator of The Home Insurance Company (“Liquidator”). His address is New Hampshire Insurance Department, 21 South Fruit Street, Suite 14, Concord, New Hampshire 03301.

2. The Home Insurance Company (“Home”) is an insurance company organized and existing under the laws of the State of New Hampshire with a statutory office at 55 S.

Commercial Street, Manchester, New Hampshire 03105. Home is the successor to The Home Indemnity Company (“Home Indemnity”), which merged into Home in 1995. Home was declared to be insolvent and placed in liquidation by the Order of Liquidation entered by this Court on June 13, 2003 (which superseded the Order of Liquidation entered June 11, 2003) in Docket No. 03-E-0106.

3. Defendant Repwest Insurance Company, formerly known as Republic Western Insurance Company (“Repwest”), is an insurance company organized and existing under the laws of the State of Arizona with a mail address of P.O. Box 21551, Phoenix, Arizona 85036 and its home office at 2721 North Central Avenue, Phoenix, Arizona 85004. Repwest is licensed in New Hampshire.

#### **Jurisdiction**

4. The parties are diverse and the amount in question exceeds \$75,000. Subject matter jurisdiction is, accordingly, conferred by 28 U.S.C. § 1332(a)(1).

5. Jurisdiction over the defendant is proper pursuant to RSA 402-C:4, V, because defendant Repwest is a reinsurer of Home who has entered into a contract of reinsurance with Home, which is an insurer against which a delinquency proceeding has been instituted.

#### **Facts**

6. Home Indemnity issued a policy of insurance to Quaker State Oil Refining Corporation (“Quaker State”). The policy was Home Indemnity policy number GL 994154 for the policy period April 1, 1983 to April 1, 1984 (the “Quaker State Policy”).

7. Repwest reinsured a portion of Home Indemnity’s obligations under the Quaker State Policy. Repwest issued a Casualty Facultative Reinsurance Certificate concerning the

Quaker State Policy. The certificate was No. CC 20141 for the reinsurance period April 1, 1983 to April 1, 1984 (the “Facultative Certificate”).

8. Under the Facultative Certificate and New Hampshire law, in the event of the insolvency of the ceding company, reinsurance under the Facultative Certificate is payable directly to the ceding company or its liquidator on the basis of claims allowed against the company in the liquidation proceeding without diminution because of its insolvency. See RSA 405:49, I; RSA 402-C:36.

9. Pennzoil-Quaker State filed a proof of claim in the liquidation proceeding for Home asserting claims under the Quaker State Policy.

10. On or about October 15, 2008, Repwest was given written notice through its broker that the Liquidator was considering an allowance of claims under the Quaker State Policy and of the amount under consideration. Repwest did not respond to the notice, and it did not seek to interpose any defenses to the claims. By its failure to respond to the notice and seek to interpose defenses, Repwest waived any right to dispute the claims under the Quaker State Policy as allowed by the Court in the Home liquidation.

11. The Liquidator recommended an allowance of claims under the Quaker State Policy in the Liquidator’s Report of Claims and Recommendations dated September 10, 2010, and the Court approved the recommendation and allowed the claims by order entered September 22, 2010.

12. The Liquidator billed Repwest through its broker for amounts due under the Facultative Certificate on account of the amounts allowed under the Quaker State Policy on or about October 6, 2010. Repwest has refused to pay these amounts to the Liquidator.

13. The outstanding amounts billed and due to the Liquidator from Repwest under the Facultative Certificate presently total \$105,397.97 exclusive of interest. The Liquidator has satisfied any and all preconditions to payment under the Facultative Certificate. Repwest has never denied that these billed amounts are due.

14. Despite demand, Repwest has refused to pay the amounts due under the Facultative Certificate. Repwest has asserted that it is entitled to setoff certain claims against US Reinsurance Company against its obligations to Home. The asserted setoff violates the mutuality requirement of RSA 402-C:34 and is accordingly unlawful.

**COUNT I – Breach of Contract**

15. The Liquidator incorporates the allegations of paragraph 1 - 14 above.

16. By failing to pay the outstanding amounts due, Repwest has breached the contract with Home set forth in the Facultative Certificate.

17. Home and the Liquidator have been damaged by Repwest's breach of contract. Home and the Liquidator have not been paid the amounts due under the Facultative Certificate, and they have been deprived of the use of those amounts from the time they were required to have been paid.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Enter judgment for the Liquidator and against Repwest in the amount of \$105,397.97 plus pre-judgment interest from the dates the amount became due under the contract and post-judgment interest;
- B. Award the Liquidator his costs and attorneys' fees; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

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

By his attorney,

MICHAEL A. DELANEY  
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*/s/ Eric A. Smith*

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December 16, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Liquidator's First Amended Complaint has been served on the following persons on the 16th day of December, 2011 and in the manner specified here: Electronically served through ECF on the Brian Flaherty, Esquire at [bflaherty@polsinelli.com](mailto:bflaherty@polsinelli.com), Troy Froderman, Esquire at [tfroderman@polsinelli.com](mailto:tfroderman@polsinelli.com), and Marc R. Scheer, Esquire at [mscheer@wadleighlaw.com](mailto:mscheer@wadleighlaw.com), all of whom are counsel for the defendant.

*/s/ Eric A. Smith*