THE SUPREME COURT OF NEW HAMPSHIRE

Merrimack
Case No. 2025-0178
Citation: In the Matter of Liquidation of Home Ins. Co., 2026 N.H. 19

IN THE MATTER OF THE LIQUIDATION OF THE HOME INSURANCE COMPANY

Argued: January 27, 2026
Opinion Issued: April 24, 2026

Morrison & Foerster LLP, of New York, New York (Joseph R. Palmore, James A. Newton, and Alexandra M. Avvocato on the brief, and Joseph R. Palmore orally), and Orr & Reno, PA, of Concord (Lisa Snow Wade on the brief), for the appellant.

John M. Formella, attorney general (Christopher G. Bond, associate attorney general, on the brief), and Davis, Malm & D'Agostine, P.C., of Boston, Massachusetts (J. David Leslie and Eric A. Smith on the brief, and Eric A. Smith orally), for the appellee.

DONOVAN, J.

[¶1] The appellant, Century Indemnity Company (CIC), challenges the Superior Court's (Kissinger, J.) denial of CIC's motion to recommit or return the Referee's (Gehris, R.) order regarding CIC's contribution claim. The referee and

the trial court ruled that under RSA chapter 402-C (2018 & Supp. 2025), the Insurers Rehabilitation and Liquidation Act (Act), the full amount of The Home Insurance Company's (Home) settlement with Home and CIC's common insured should determine the extent of CIC's contribution rights. We agree and, accordingly, affirm.

I. Facts

[¶2] The trial court found, or the record supports, the following facts. CIC and Home both issued insurance policies to a common insured (Insured) that covered the same risks. CIC also reinsures Home, which obligates it to indemnify Home's liabilities to its policyholders under certain circumstances. The Insured filed insurance claims against Home and CIC.

[¶3] In 2003, Home became insolvent and entered liquidation proceedings under the Act. In 2023, the appellee, the New Hampshire Insurance Commissioner (Liquidator), settled Home's liability to the Insured. The settlement establishes the amount of Home's liability to the Insured, thereby permitting the Insured to collect up to the settlement figure as a "Class II" claim from Home's estate. See RSA 402-C:44 (2018) (providing that policyholders' claims receive second priority in distributions from an insolvent insurer's estate). Because Home's assets are inadequate to pay its Class II claims in full, however, it will not pay the Insured the full settlement amount.[1]

[¶4] In January 2023, CIC asserted a contribution claim against Home for the shortfall between the settlement figure and the amount that Home actually distributes to the Insured.[2] CIC argued that the Insured would seek indemnity in the amount of this shortfall from CIC, Home's co-insurer, in addition to "CIC's own share of the coinsured risk." CIC sought to set off an allowed contribution claim against its separate reinsurance obligation to Home. See RSA 402-C:34, I (2018) (stating that, in general, an insolvent insurer's "[m]utual debts or mutual credits" with another entity "shall be set off and the balance only shall be allowed or paid").

[¶5] The Liquidator disallowed CIC's contribution claim, maintaining that Home satisfied its share of the Insured's loss by settling for an allowed Class II claim that represented its liability to the Insured. The parties therefore asked the referee to determine whether, as an initial matter, "the allowed settlement amount or the amount paid in distributions should be considered in determining the extent of any right of CIC to contribution from Home." See

[1] As of November 2024, the Liquidator had distributed forty-five percent of Home's estate.

[2] CIC disputes its liability to the Insured. Nonetheless, it asserted a contribution claim, contingent on its being held liable under the Insured's insurance policy, because the trial court set Home's Claim Amendment Deadline for January 26, 2023. See RSA 402-C:37, I (2018) (mandating that claims be filed by deadline); RSA 402-C:39, III (2018) (allowing contingent claims).

RSA 402-C:41, I (2018) (allowing a claimant to submit a disputed claim for a court's consideration following the Liquidator's denial of the claim). The referee found that: (1) under the Act, for the purpose of CIC's right to contribution, Home had paid its "fair share" by settling with the Insured; and (2) therefore, CIC could not assert contribution rights against Home deriving from the shortfall between the full settlement figure and Home's actual distributions to the Insured.

[¶6] CIC moved to recommit the referee's order. The trial court held a hearing and subsequently denied CIC's motion, largely adopting the referee's reasoning. This appeal followed.

II. Analysis

[¶7] The thrust of CIC's argument on appeal is that its contribution claim against Home should be calculated using the amount that Home actually distributes to the Insured, rather than the nominal settlement figure. "The aim of equitable contribution is to apportion a loss between two or more insurers who cover the same risk so that each pays its fair share of a common obligation." 44A Am. Jur. 2d Insurance § 1766 (2003). As a threshold matter, we note that, because the parties agree that the nominal settlement figure equals Home's total liability to the Insured, calculating CIC's contribution rights based on the settlement amount would foreclose CIC's contribution claim. See id. CIC's claim will only proceed if we hold that Home's actual distributions to the Insured determine whether it has borne "its fair share" of the Insured's loss. Id.

[¶8] CIC first argues that the Act, which "is silent on contribution claims," does not abrogate the common law regarding contribution. CIC therefore contends that the Act does not bear on the question of whether CIC may assert a right to contribution from Home. Addressing this argument requires us to construe the Act. "We review the trial court's statutory interpretation de novo." Boucher v. Town of Moultonborough, 176 N.H. 271, 274 (2023). "We first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning." Id. "We give effect to every word of a statute whenever possible and will not consider what the legislature might have said or add language that the legislature did not see fit to include." Id. "We also construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." Id. "However, we do not construe statutes in isolation; instead, we attempt to construe them in harmony with the overall statutory scheme." Id.

[¶9] As CIC observes, no provision of the Act specifically dictates how to calculate a co-insurer's claim for contribution from the liquidating insurer. "Generally, we will not construe a statute . . . as abrogating the common law

unless the statute clearly expresses such an intention." Petition of Willeke, 169 N.H. 802, 806 (2017) (quotation and brackets omitted). "However, when a statute revises the entire subject of a common law cause of action and is clearly designed as a substitute, the common law is abrogated, although no express terms to that effect are used." Id.

> This rule rests upon the principle that: "When the legislature frames a new statute upon a subject-matter, and from the framework of the act it is apparent that the legislature designed a complete scheme for this matter, it is a legislative declaration that whatever is embraced in the new law shall prevail, and whatever is excluded is discarded."

Id. (quoting Powell v. Catholic Med. Ctr., 145 N.H. 7, 11 (2000) (brackets omitted)).

[¶10] The Act is "a broad remedial statute," In the Matter of Liquidation of Home Ins. Co., 158 N.H. 677, 681 (2009) (Home IV), which "shall be liberally construed to effect [its] purpose," RSA 402-C:1, III (2018). This purpose encompasses, among other things, "the protection of the interests of insureds, creditors, and the public"; "efficiency and economy of liquidation, through clarification and specification of the law, to minimize legal uncertainty and litigation"; and "[e]quitable apportionment of any unavoidable loss." RSA 402-C:1, IV(c), (d) (2018).

[¶11] In accordance with these objectives, the Act sets forth a comprehensive scheme to regulate the processing and payment of monetary claims filed against a liquidating insurer. See id.; Powell, 145 N.H. at 11. One set of statutory provisions provides rules for filing, proving, and disputing claims. See RSA 402-C:28 (2018), :32 (Supp. 2025), :33, :37-:43 (2018). Another array of provisions governs the distribution of the insolvent insurer's assets to satisfy allowed claims. See RSA 402-C:34, :44-:47 (2018). Thus, as the Liquidator observes, the Act tackles "[t]he fundamental problem of insolvency" — an insolvent insurer's inability to pay its claims in full — "by centralizing claims in the liquidation for consistency in determinations, distinguishing between liability and distribution, and directing the setoff of liabilities."

[¶12] Several sections of the Act enact substantive policy preferences. For example, RSA 402-C:44 prioritizes distributions to policyholders over those to other claimants, demonstrating that the Act is "aimed at protecting preferred creditors by reserving assets for them, including people insured by Home, and people with claims against those insured by Home." Home IV, 158 N.H. at 681 (quotation omitted); see RSA 402-C:44, II, IV. Similarly, RSA 402-C:36 (2018), which concerns payment from reinsurers, signals the Act's "legislative purpose

. . . to obtain full payment from reinsurers despite an insurer's insolvency." Home IV, 158 N.H. at 681 (quotation and brackets omitted).

[¶13] CIC argues that the question of how to calculate its contribution claim does not fall within the Act's purview because, under the Act, "the fact that an entity is insolvent does not foreclose otherwise-viable claims; insolvency merely dictates whether and how those claims are paid." We are not persuaded. The distribution scheme in RSA 402-C:44 determines what percentage of the Insured's allowed claim — Home's determined insurance liability to the Insured-— Home will actually pay. Consequently, any payment by CIC to the Insured beyond "its fair share" stems directly from the Act's policy choices. 44A Am. Jur. 2d Insurance § 1766 (2003).

[¶14] The calculation of CIC's contribution claim thus goes to the heart of the Act's scheme to "[e]quitabl[y] apportion[] . . . any unavoidable loss" by providing for claimants to receive percentages of their allowed claims, pursuant to the Act's hierarchy of claims. RSA 402-C:1, IV(d); see RSA 402-C:44. Given that Home's creditors — including the Insured and CIC — must each bear some financial loss stemming from Home's insolvency, CIC's contribution claim implicates the Act's policy objective of "protecting preferred creditors by reserving assets for them, including people insured by Home." Home IV, 158 N.H. at 681 (quotation omitted). The statute's express mandate that it "shall be liberally construed to effect [its] purpose" bolsters this conclusion. RSA 402-C:1, III.

[¶15] Finally, although we construe statutes to "make[] the least, rather than the most, change in the common law," State v. Etienne, 163 N.H. 57, 74 (2011), CIC points to no clear common law rule regarding the treatment of a contribution claim filed against an insurer whose assets are inadequate to pay its liabilities.[3] In arguing that an insurer's actual payments must determine the extent of a co-insurer's right to contribution, CIC posits that "[c]ontribution law operates 'without regard to questions of comparative fault or the relative equities between the insurers.'" (Quoting Fireman's Fund Ins. Co. v. Maryland Cas. Co., 77 Cal. Rptr. 2d 296, 305 (Ct. App. 1998)). However, none of the cases CIC cites to support this argument involves an insolvent insurer.

[¶16] We therefore conclude that the Act provides "a complete scheme" that governs the determination of claims against a liquidating insurer, including a co-insurer's common law claim for contribution. Petition of

[3] For insurance-related disputes, "in the absence of an express choice of law validly made by the parties," we apply the law of "the State which is the principal location of the insured risk." Cecere v. Aetna Ins. Co., 145 N.H. 660, 662 (2001) (quotations omitted). The parties agree that: (1) either Missouri or California is "the principal location of the insured risk," id.; (2) thus, insofar as common law rules impact this case, Missouri or California law should apply; and (3) those states' laws do not differ in ways material to this appeal. Given our conclusions, we need not determine whether Missouri or California common law governs this case.

Willeke, 169 N.H. at 806. The Act thus abrogates any inconsistent common law principles regarding the calculation of contribution claims generally. Rather, "common law is relevant only to the extent it supports or supplements the statute," as the referee reasoned in her order.

[¶17] Accordingly, we consider whether the Act supports calculating CIC's contribution rights using the nominal amount of Home's settlement or its actual distributions to the Insured. Under our canons of statutory construction, we interpret the Act as a whole to effectuate its "overall statutory scheme." Boucher, 176 N.H. at 274. As previously noted, the Act's structure divorces the determination of the insolvent insurer's liabilities from the process of making payments. See RSA 402-C:28, :32, :33, :37-:43. This bifurcated structure is informative; where a claim or obligation derives from Home's liability to a third-party claimant, it must be determined based on that established liability — the allowed claim — without regard to the Liquidator's distributions. For example, consistent with the Act's overarching structure, a reinsurer must pay its reinsurance obligation to Home, which arises from Home's liabilities to its insureds, based on "the claims allowed against [Home] in the insolvency proceedings . . . without diminution because of the insolvency." RSA 402-C:36 (emphasis added).

[¶18] Similarly, a common law contribution claim looks to co-insurers' relative liabilities to a common insured under their policies. See, e.g., Superior Ins. v. Universal Underwriters Ins., 62 S.W.3d 110, 114-15, 117 (Mo. Ct. App. 2001) (affirming plaintiff's right to contribution where co-insurer defendant had settled with parties' common insureds for an amount below its policy limit, because the settlement constituted less than the defendant's pro rata share of the insureds' total recovery based on the parties' respective policy limits). Thus, CIC's contribution claim turns, in part, on the amount of Home's insurance liability to the Insured.

[¶19] It follows that under the Act, the relevant figure to compare the parties' liabilities to the Insured is the Insured's allowed Class II claim from Home's estate — the nominal settlement figure. Indeed, the significance of an allowed claim amount is that the Liquidator is bound to distribute this claim to the Insured to the full extent that the priority scheme in RSA 402-C:44 permits. Thus, the proper inquiry to determine the extent of CIC's contribution rights is whether the nominal settlement figure represents Home's share of the Insured's loss, given Home's and CIC's respective insurance policies. The parties' agreement that the settlement figure equals Home's fair share forecloses CIC's contribution claim. Under the Act's structure, the Liquidator's distribution process is not relevant to the determination of CIC's contribution rights.

[¶20] CIC contends to the contrary that basing its contribution claim on Home's actual payments to the Insured furthers the Act's purpose of

"[e]quitable apportionment of any unavoidable loss," RSA 402-C:1, IV(d), because: (1) the doctrine of contribution seeks to "fairly apportion losses among multiple insurers"; and (2) the word "loss" indicates the legislature's focus on funds actually removed from the insolvent estate. The word "loss" in RSA 402-C:1, IV(d), however, includes financial losses borne by entities other than Home's co-insurers. See RSA 402-C:1, IV (stating that the Act seeks to "protect[] the interests of insureds, creditors, and the public"); RSA 402-C:44, II-V (listing potential claimants, including insureds, the insolvent insurer's employees, and government bodies).

[¶21] Further, the Act reflects the legislature's policy determination as to what constitutes equitable apportionment. It prioritizes recovery by "preferred creditors . . . including people insured by Home, and people with claims against those insured by Home." Home IV, 158 N.H. at 681 (quotation omitted); see RSA 402-C:44. As the trial court concluded, basing CIC's contribution rights on Home's actual payments to the Insured would subvert this policy choice by inflating CIC's allowed claim relative to those of higher-priority claimants. By way of illustration, CIC seeks to subtract the full amount of an allowed contribution claim — which it advocates calculating based on Home's actual distributions, a percentage of the Insured's allowed claim — from its reinsurance liability to Home. See RSA 402-C:34, I (providing that "[m]utual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter shall be set off"). Given that CIC is a low-priority Class V claimant under the Act, CIC's intended setoff would divert to it a greater share of Home's assets than the legislature intended.[4] See RSA 402-C:44.

[¶22] Finally, the equitable principles underlying the common law doctrine of contribution support our construction of the Act. A contribution claim requests equitable relief to "accomplish ultimate justice in the bearing of a specific burden." Truck Ins. Exchange v. Kaiser Cement, 549 P.3d 781, 786 (Cal. 2024). Thus, "when deciding whether contribution is appropriate, courts may consider a variety of other factors, including the nature of the claim, the relation of the insured to the insurers . . . and any other equitable considerations." Id. (quotations, citation, and brackets omitted). The "specific burden" here is the financial loss generated by Home's insolvency. Id. We cannot conclude that apportioning this burden by tethering CIC's contribution rights to the amount of the Insured's allowed claim is unjust.

[4] Contrary to CIC's assertion that a "setoff is a mandatory exception to normal claim distribution rules," a setoff only becomes compulsory following the establishment of a valid "mutual credit[]" in the underlying "action or proceeding under this chapter," RSA 402-C:34, I (2018). The mandatory nature of the Act's setoff provision thus does not bear on the preliminary inquiry as to whether CIC can assert a right to contribution.

III. Conclusion

[¶23] In sum, we determine that the Act abrogates any inconsistent common law rules pertaining to a co-insurer's contribution claim asserted against a liquidating insurer. We further conclude that under the Act, the amount of Home's settlement, and not the Liquidator's actual distributions to the Insured, determines the extent of CIC's contribution rights. Accordingly, we affirm.

Affirmed.

COUNTWAY and GOULD, JJ., concurred.