

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

**OBJECTION TO MOTION FOR
APPROVAL OF CLAIM AMENDMENT DEADLINE**

NOW COMES the Special Deputy Superintendent of the New York Liquidation Bureau, and the agent of the New York Superintendent of Financial Services (“New York Superintendent”) in its capacity as the ancillary receiver (“Ancillary Receiver”) of The Home Insurance Company (“The Home”) and objects to the Motion for Approval of Claim Amendment Deadline. In support thereof, the Ancillary Receiver states as follows:

1. On August 19, 2019, this Court granted the Insurance Commissioner of the State of New Hampshire as Liquidator’s (“Liquidator”) motion for an Order of Notice Regarding Liquidator’s Motion (“Motion”) for Approval of Claim Amendment Deadline. The Motion seeks to establish a deadline for creditors to submit amendments to their open claims (“Proposed Deadline”). The effective date for the Proposed Deadline would be set 150 days after the date of the order granting the Motion, which given the

November 18, 2019 deadline for submitting objections, could not be earlier than April 18, 2020.¹

2. The Ancillary Receiver consents to the Motion in principle, but objects to the extent that the Proposed Deadline would curtail the one-year period established under New York's recently enacted Child Victims Act ("CVA"). The CVA provides a one-year window for persons who were sexually abused when they were minors to revive their time-barred claims in New York courts. NY CPLR 214-g. The Ancillary Receiver requests that the Proposed Deadline be extended until August 14, 2020², to run concurrently with the CVA revival period, to permit New York insureds of The Home to have their eligible CVA claims processed in the liquidation. The requested relief represents *at most* a four-month extension of time from the Proposed Deadline, from late April 2020 to August 14, 2020, which is unlikely to result in material prejudice to The Home or its creditors. Prior to submitting this Objection, staff for the Ancillary Receiver and The Home conferred concerning the Ancillary Receiver's request for a short extension of the Proposed Deadline to accommodate claims under the CVA. The Home communicated to the Ancillary Receiver on October 29, 2019, that it would not make any changes to the Proposed Deadline.

3. The Home was placed into liquidation by order of this Court dated June 13, 2003. By order dated September 24, 2003, the Supreme Court of the State of New York

¹ Assuming the Court does not decide the Motion on the same day as objections are due, the Proposed Deadline could easily be set in May or June of 2020.

² Although the one-year reprieve period is understood to expire at the end of August 13, 2020, one additional day until August 14, 2020, is requested to resolve any ambiguity.

appointed the New York Superintendent as Ancillary Receiver under New York Insurance Law Section 7410. As set forth in each of The Home's Reports on the liquidation, "the Liquidator works closely with the state insurance guaranty association established in every state to handle and pay certain claims under policies issued by insolvent insurers subject to statutory limitations as provided in the associations' respective statutes." (*See e.g.*, Liquidator's Seventy-Fourth Report at ¶3 [http://www.hicilclerk.org/Hicil.nsf/094E48D94F187C248525847E004450E5/\\$file/Liquidator's%20Seventy-Fourth%20Report%20\(A1483105x7AB72\).pdf?OpenElement](http://www.hicilclerk.org/Hicil.nsf/094E48D94F187C248525847E004450E5/$file/Liquidator's%20Seventy-Fourth%20Report%20(A1483105x7AB72).pdf?OpenElement)). New York maintains a Property/Casualty Insurance Security Fund ("P/C Fund") under New York Insurance Law Article 76 that functions as the equivalent of a guaranty association for property/casualty claims. The Ancillary Receiver represents the P/C Fund in judicial proceedings to protect the interests of New York policyholders and submits claims referred to the P/C Fund by The Home to the New York courts for payment. Since the liquidation began in 2003, The Home has referred approximately \$44 million in incurred paid and reserved claims to the P/C Fund. The Ancillary Receiver on behalf of the P/C Fund seeks reimbursement from The Home for these referred claims under an open proof of claim.

4. The CVA became law on February 14, 2019, and provides a one-year revival period in New York courts for persons subjected to sexual abuse when they were under the age of 18 to file previously time-barred civil claims. The one-year revival

period runs from August 14, 2019 to August 14, 2020. As stated in the sponsor's memorandum to the CVA:

New York is one of the worst states in the nation for survivors of child sexual abuse. New York currently requires most survivors to file civil actions or criminal charges against their abusers by the age of 23 at most, long before most survivors report or come to terms with their abuse, which has been estimated to be as high as 52 years old on average.

(Committee Report Jan. 26, 2019, L. 2019 Ch. 11 (Sp. Hoylman)).

5. Since the CVA's one-year revival period began on August 14, 2019, three civil lawsuits alleging sexual abuse involving a New York entity insured by The Home have been forwarded to the Ancillary Receiver for a determination of coverage. As of the filing date of this objection, there are approximately nine months remaining under the CVA under which additional claims may be filed.

6. New Hampshire Insurance Law Section 402-C:46 provides: "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." The Home's Special Deputy Liquidator cites this provision in his Affidavit in Support of the Motion, dated July 30, 2019, as the standard for determining whether the Court should establish the Proposed Deadline. The Special Deputy Liquidator argues that the Proposed Deadline "will motivate claimants that have been slow or reluctant to resolve or amend their open proofs of claim" and "will thus expedite the final determination of claims necessary to collect reinsurance and to make a

final distribution of Home's assets." (Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Claim Amendment Deadline ¶¶16, 24 (July 30, 2019).

7. The Ancillary Receiver agrees that the Proposed Deadline will assist in the "expeditious completion of the liquidation," but submits that the Proposed Deadline does not adequately provide "protection of unliquidated and undetermined claims, including third party claims." The CVA provides victims of child sexual abuse with an extraordinary, but limited, remedy of reviving their civil claims for one-year. Three lawsuits have already been filed against The Home insureds and it is possible that many more claims will be filed before the expiration of the revival period on August 14, 2020. The short requested extension would serve the interests of both "expeditious completion" and "protection" of policyholders. The extension will also protect persons with "third party claims," including victims under the CVA, and allow them an opportunity to participate in the proceeding. This modest extension of the Proposed Deadline should not result in any material prejudice to The Home or its creditors given that the Proposed Deadline will fall more than 17 years after the liquidation commenced on March 4, 2003. It will, however, provide coverage for eligible claims that only became viable in New York because of the CVA.

WHEREFORE, the Ancillary Receiver respectfully requests that this Court:

A. Deny the Motion only to the extent that it establishes a Claims Amendment Deadline prior to August 14, 2020.

- B. Extend the Claim Amendment Deadline to August 14, 2020; and
- C. Grant such other and further relief as may be just and proper.


Respectfully Submitted

New York Superintendent of
Financial Services as Ancillary Receiver
of the Home Insurance Company
in Liquidation

By Its Attorneys,

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Dated: 11/15/19

By: 
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was this day forwarded to J. Christopher Marshall, Esquire, NH DOJ, J. David Leslie, Esquire and Eric A. Smith, Esquire, Rackemann, Sawyer & Brewster, 160 Federal Street, Boston, MA 02110-1700.


Doreen F. Connor

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