

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

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

**OBJECTION TO THE LIQUIDATOR'S MOTION
FOR APPROVAL OF CLAIM AMENDMENT DEADLINE**

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Indemnity Marine Assurance Co., Nederlandse Reassurantie Groep NV, NRG Victory Reinsurance Limited, NRG Fenchurch Insurance Company Ltd, New Zealand Reinsurance Company, Tenecom Limited, Underwriters at Lloyd's of London, Winterhur Swiss Ins. Co., and World Auxiliary Corp. Ltd. (together, the "Objectors") are all claimants in this proceeding, and have submitted timely proofs of claim.

The Objectors are reinsureds under contracts of reinsurance originally entered into by the Home Insurance Company ("Home") as a member of the American Foreign Insurance Association ("AFIA"). Those reinsurance contracts are known as the AFIA Treaties. The Objectors are among a group cedents to the AFIA Treaties that previously entered into an arrangement with the liquidator of Home ("Liquidator"), which allowed the estate to marshal tens of millions of dollars in reinsurance proceeds that were, in turn, distributed to Home's creditors. While certain of the Objectors' proofs of claim have been allowed, the amount of those recoveries is far less than the total amount of Home's actual liability to the Objectors under the AFIA Treaties, had Home remained solvent.

On July 31, 2019, the Liquidator moved the Court for a deadline for the amendment of proofs of claim and submission of any new proofs of claim (with the exception of administrative

and federal government claims) in the Home liquidation (the “Motion”). The Liquidator states in his Motion that his “principal goals in this liquidation are to determine claims and collect assets for the ultimate purpose of distributing Home’s assets to its creditors” and that, “it will be difficult to make significant additional progress without a final deadline for claimants to amend claims or submit any new claims and barring claims that are not identified and presented.” (Mot. at 2.) The Liquidator justifies this position by stating that “the final distribution of assets can only be made after all Class II claims have been determined.” (*Id.*) However, the Liquidator is asking the Court to bar amendments to non-Class II claims without justification. He admits that his “motion focuses on the policy-related claims assigned Class II priority” and that he “concluded early in the liquidation that there would not be sufficient assets to make any distribution to priority classes below Class II.” (*Id.* at 4.) Yet the Liquidator would cut off revisions to non-Class II claims, which could have material effects on claimants’ abilities to set off balances due on claims that are not likely to be resolved for some time – some of which may be related to the very amendments of Class II claims that he seeks to end.

This state of affairs is fundamentally unfair, against the law of New Hampshire and contrary to the best interests of the Home Estate. The New Hampshire Insurers Rehabilitation and Liquidation statutes are to be “liberally construed to effect the purpose” of “protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors” including, among other things, the “Equitable apportionment of any unavoidable loss.” RSA § 402-C:1(III-IV).

This motion is particularly problematic not only for those (like the Objectors) who cede losses to the American Foreign Insurance Association (the “AFIA Pool Cedents”) but also for the Home Estate itself. The AFIA Pool Cedents reached an agreement with the Liquidator in

2004 (the "Agreement"), which allowed the AFIA Pool Cedents to submit claims to the Home Estate that would then be presented by Home to its retrocessionaires. This benefitted the Estate by allowing it to collect reinsurance that otherwise would have been uncollectable. In exchange, the AFIA Pool Cedents would receive compensation. The ultimate amount of compensation due to the AFIA Pool Cedents remains undetermined, because the claims that underlie that computation are still being processed. It would not serve the Estate to cut off these claims now, before they have run to their completion or have developed at least to the point where a realistic quantification can be made.

The Objectors have incurred significant legal expenses participating in this Liquidation and vast sums on administration in submitting the claims of the AFIA Pool Cedents, which claims have incontrovertibly assisted the Estate in collecting assets to the benefit of creditors. The Objectors' future claims remain uncertain. Cutting off the claim process now, before the AFIA Pool Cedents have been compensated as agreed, would unfairly apportion loss to the Objectors, a particularly inequitable result, considering the value that their participation in the Agreement has brought the Estate. The Objectors' claims should remain open until a reasonable time after all Class II claims have been finalized. Accordingly, the Objectors respectfully request that the Court deny the Liquidator's Motion as to all claims that are not categorized in Class II, and in particular, with respect to the AFIA Pool Cedents' claims pursuant to the Agreement. Alternatively, the Objectors request that the Liquidator's Motion be held in abeyance until such time as a procedure has been agreed for the post-deadline recognition and payment of: (a) reserves respecting incurred but not reported claims; and (b) adjusted case reserves on previously reported claims.

II. FACTUAL BACKGROUND

Home entered liquidation in June of 2003. The Objectors are commercial insurance and reinsurance companies who entered into reinsurance arrangements with Home to cede claims to Home as their reinsurer.

The AFIA Pool Cedents are cedents under reinsurance contracts with Home. Home's liabilities on these claims were reinsured in turn by other reinsurers, *i.e.*, the retrocessionaires. Shortly after the Liquidation began, the Liquidator realized that a vast amount of retrocessional reinsurance would go uncollected if he did not receive claims from the AFIA Pool Cedents, but the AFIA Pool Cedents might not be motivated to submit claims, given the Class V priority for such claims. In January of 2004, the Liquidator reached agreement with the AFIA Pool Cedents to submit claims in return for a share of the reinsurance recovered from the retrocessionaires. (See Agreement, Exhibit A to the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents, dated February 11, 2004.) Other claimants objected to the Agreement, and these objections were actively litigated. The Liquidator's actions were eventually approved by the New Hampshire Supreme Court. See *In re Liquidation of Home Ins. Co.*, 154 N.H. 472 (2006).

Pursuant to the Insolvency Clause in the various reinsurance contracts, the Liquidator may collect reinsurance based upon the *liability* of the retrocessionaires, not just the amount actually paid to the cedents. See New York Insurance Law §1308. However, the liability of the retrocessionaires cannot be determined unless claims are ceded to Home. That is where the Agreement comes in – it incentivizes the AFIA Pool Cedents to continue to cede their claims to Home (in turn allowing Home to claim the retrocessional reinsurance) by allowing them to receive a portion of the amount recovered from the retrocessionaires. As the Liquidator stated in

2004, without the Agreement, the AFIA Pool Cedents “would have little reason to file and prosecute significant claims in this liquidation,” and their decision not to do so “would reduce the obligations of [the retrocessionaires], by many millions of dollars to the detriment of Home’s creditors.” (Liquidator’s Reply in Support of Motion for Approval of Agreement and Compromise with AFIA Cedents, at 2 (April 2, 2004)).

As the Liquidator argued in 2004, the Agreement “clearly benefits the estate and its creditors as a whole.” (*Id.* at 4.) The AFIA Pool Cedents cede claims under the reinsurance contracts that they had with Home. But Home, in liquidation, does not immediately pay the amounts billed by the cedents. Instead, Home books the liabilities, which allows it to access reinsurance from Home’s retrocessionaires. In exchange, the AFIA Cedents are entitled to receive a percentage of the full ceded amount. This results in a net influx of cash to the Home Estate. The Agreement has yielded substantial sums for the Home Estate in collected reinsurance. It has also consumed a large volume of setoffs that would otherwise have been used to set off general claims of the Estate. All of this makes more cash available to pay the Class II claimants.

The AFIA Pool Cedents need to submit Class V claims in order to receive any payment under the Agreement, even though the payment itself is classified as an administrative expense that is not truncated by the Liquidator’s Motion. The Liquidator’s Motion makes no allowance for these Class V claims, which cannot yet be assigned final values, because the long-tail asbestos and pollution losses driving the claims are still being reported and adjusted today.

III. ARGUMENT

Establishing a claim deadline for all classes of claims at this point in time would be unfair to the Objectors and detrimental to the Estate. As the Vermont Supreme Court recently held in a

similar situation, “any final claim date must be consistent with the critical goal of the liquidation process: the protection of the public in general and policyholders in particular.” *In re Ambassador Ins. Co., Inc.*, 198 Vt. 341 (2015). Likewise, New Hampshire insurance insolvency law makes clear that:

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:

* * *

(d) Equitable apportionment of any unavoidable loss;

RSA § 402-C:1(III-IV). Adopting a final claim date for Class V claims would not serve that purpose here, where claims are still being discovered, reported and submitted. Cutting them off at this point would be fundamentally unfair and certainly not in accordance with the purposes of insolvency law.

The AFIA Pool Cedents will have to continue to pay claims submitted to them by their insureds going forward, regardless of whether the Court sets a final claim date. However, establishing the proposed date will unfairly strip the AFIA Pool Cedents of *all* reinsurance under their reinsurance contracts with Home. Under the Agreement, their reinsurance cessions actually bring money into the Estate by allowing it to tap the retrocessional coverage. Allowing the status quo to continue with respect to the Class V claims would therefore help the AFIA Pool Cedents, by allowing them some compensation for their part in allowing Home to access its retrocessional coverage. Significantly, it would also help the Estate’s other creditors by increasing the pot of money in the Estate, and thereby the percentage that the creditors receive on their claims. There is no benefit to cutting off the Agreement at this point in time, when many of the claims driving the cessions remain undetermined.

Not only does the Liquidator's Motion inequitably prejudice the Objectors by truncating their claims that are still being reported, it also harms the Estate by reducing the amount of money available for Class II claimants. Setting a claim deadline would mean that the incentives and benefits created by the Agreement would evaporate. While the AFIA Pool Cedents would continue to submit claims pursuant to the proposed claim amendment deadline, the adjustment and allowance of those claims would proceed pursuant to a procedure that has yet to be established. Without clarity and agreement on such procedures, the Liquidator is potentially cutting off Home's access to retrocessional cover and its concomitant stream of proceeds flowing to the creditors of the Estate. The Agreement should be allowed to continue to play out, and the Objectors should not be subjected to a claim deadline at this time. Accordingly, the Motion should be denied or, in the alternative, held in abeyance until such time as a procedure has been agreed respecting the recognition and payment of reserves, additional case reserves and incurred but not reported losses. The latter alternative has the dual benefit of permitting the Estate to move towards an efficient closure, while preserving the value that the AFIA Pool Cedents add by increasing the amount of reinsurance proceeds available to the Estate to pay its creditors.

IV. CONCLUSION

Because the Liquidator's Motion unfairly and unnecessarily places a substantial burden on the Objectors and the Estate, the Objectors respectfully move the Court for an order denying the Liquidator's Motion. Alternatively, the Objectors request that the Liquidator's Motion be held in abeyance until such time as a procedure has been agreed for the post-deadline recognition and payment of: (a) reserves respecting incurred but not reported claims; and (b) adjusted case reserves on previously reported claims.

REQUEST FOR HEARING

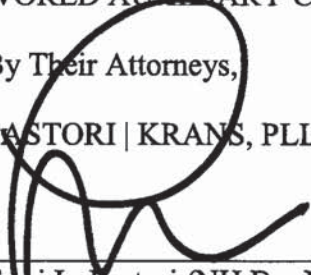
The Objectors respectfully request a hearing on this objection.

Respectfully submitted,

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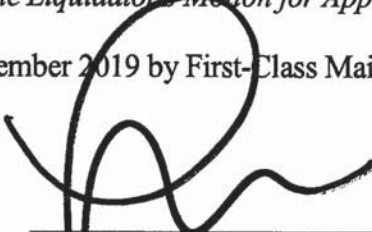
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Dated: November 18, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Objection to the Liquidator's Motion for Approval of Claim Amendment Deadline* was sent this 18th day of November 2019 by First-Class Mail to all persons on the attached service list.



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