

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**

**LIQUIDATOR'S RESPONSE TO FIRST GROUP OF OBJECTIONS TO
MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE**

In accordance with the schedule in his filing dated November 26, 2019, John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), submits this response to the letters and objections submitted by Patricia Erway, Edward Crosby, Howard Campbell, Linda Faye Peeples, the Special Deputy Superintendent of the New York Liquidation Bureau and the agent of the New York Superintendent of Financial Services in its capacity as the ancillary receiver of The Home Insurance Company (the "New York Liquidation Bureau" or "NYLB"), and the Catholic Foreign Mission Society of American Inc. aka Maryknoll Father and Brothers ("Maryknoll") to the Liquidator's Motion for Approval of Claim Amendment Deadline. The Liquidator will respond to the remaining objections separately on or before December 31, 2019.

**A. Response to Letters from Workers' Compensation Claimants
Patricia Erway, Edward Crosby, and Howard Campbell**

1. Three workers' compensation claimants, Patricia Erway, Edward Crosby, and Howard Campbell, filed letters with the Clerk in response to the notice of deadline for objection to the Liquidator's motion for approval of claim amendment deadline. Each of the three claimants previously filed a proof of claim concerning a workers' compensation claim (in Mr. Campbell's case, two workers' compensation claims). Upon entry of the Order of Liquidation declaring that Home was insolvent, the various insurance guaranty associations across the

country were triggered. See, e.g., N.H. RSA 404-B:2, :5, IV. Consequently, the relevant insurance guaranty association assumed primary responsibility for these workers' compensation claims. Ms. Erway's claim was handled by the Michigan Property & Casualty Guaranty Association, Mr. Crosby's by the Texas Property & Casualty Insurance Guaranty Association, and Mr. Campbell's by the New York Liquidation Bureau. In each instance, the guaranty association took over responsibility for the claim, and the Liquidator understands that each guaranty association has paid benefits due under the applicable workers' compensation statute.

2. Since the guaranty associations were handling and paying the claims, the Liquidator denied the proofs of claim filed by the three claimants as otherwise satisfied, and the determinations were included on Liquidator's reports of claims and recommendations to the Court.¹ (The guaranty association's own claim against Home includes such underlying claims which it assumes by law.) The notices of determination sent to the three claimants each stated that if circumstances changed (i.e., if the guaranty association stopped handling the claim), the claimant could file a new proof of claim in the Home liquidation. Claims that had been closed by a notice of determination containing such language were deemed "open" for purposes of the order of notice dated August 19, 2019. See Order of Notice ¶ 3(e). The Liquidator accordingly sent the claimants the notice of deadline for objection to the Liquidator's motion.

3. The three claimants do not presently have claims pending in the Home liquidation. However, if they wish, they may preserve a claim against Home by filing a proof of claim before the claim amendment deadline. The Liquidator has written to each of the three claimants to clarify that they do not presently have a claim pending in the Home liquidation and

¹ Almost all claimants prefer to proceed against guaranty associations instead of pursuing claims in the liquidation. The Home estate will only pay a percentage distribution on Class II policy-related claims (the present interim distribution percentage is 30%), while the associations pay claims they allow in full (subject to any statutory limitations).

advise them that they may preserve a claim against Home by filing a new proof of claim. Copies of the letters are attached as Exhibit A (Ms. Erway), Exhibit B (Mr. Crosby), and Exhibit C (Mr. Campbell). Mr. Crosby called Liquidator's counsel in response to the letter, and counsel has provided Mr. Crosby with a proof of claim form. See Exhibit D. Ms. Erway and Mr. Campbell have not responded to the Liquidator's letters.

4. If the claimants file a proof of claim before the deadline, the proposed claim amendment deadline will not "cut off" these workers' compensation claims in the Home liquidation because they are known claims. They are claims for coverage by a specific claimant regarding a particular injury that occurred while the claimant was employed by a Home insured. Such claims are not "Potential Claims" as defined in the Proposed Order Approving Claim Amendment Deadline ("Proposed Order") ¶ 5(b) that would be cut-off by the proposed deadline.

5. The three claimants have known claims and can preserve their rights against Home by filing a proof of claim before the claim amendment deadline. Accordingly, to the extent the letters express concern that the proposed claim amendment deadline will affect their claims in the liquidation, the objections should be overruled.

6. Ms. Erway also asserts that the Michigan guaranty association has not accepted some of her requests for coverage, and she expresses disagreement with positions taken by the association. This is an issue separate from the claim amendment deadline. The Liquidator noted in the letter to Ms. Erway that, to the extent that she disagrees with positions taken by the Michigan association, her remedy is to pursue recovery from the association. See Exhibit A. A proof of claim in the Home liquidation is not an alternative to seeking review of the association's determinations. If a claimant does not pursue remedies against a guaranty association that has acted on his or her claim, then its positions are final. The Liquidator does not review positions

taken by guaranty associations but instead is obligated to follow the association's positions regarding coverage. See N.H. RSA 404-B:11, II (The liquidator of an insolvent insurer "shall be bound by settlements of covered claims by the association or a similar organization in another state.").²

7. The Liquidator accordingly does not review positions regarding coverage taken by an association in handling claims. Consequently, if Ms. Erway intended this point as an objection to the claim amendment deadline, it should be overruled.

B. Response to Letter from Class V Claimant Linda Faye Peeples

8. Linda Faye Peeples, a former employee of Home, sent a letter to the Clerk dated November 15, 2019. In the letter, Ms. Peeples does not appear to object to the proposed claim amendment deadline. Instead, she asks the Court to "re-examine" her claim. The Court should decline to do so.

9. Ms. Peeples' claim was addressed in disputed claim proceeding 2012-HICIL-55, and it was resolved by the Order on the Merits ("Order") issued by the Referee on March 27, 2013. Exhibit E. As reflected in the Order and the Case File (included with Ms. Peeples' letter), Ms. Peeples was an employee of Home from September 1986 to November 1990. She filed a proof of claim on May 5, 2010 seeking amounts allegedly due her under the Home Insurance Company 401(k) plan. The Liquidator issued a notice of determination on July 14, 2011

² The Liquidator could allow a claim if the guaranty association denied it for a reason other than policy coverage (for instance, based on a statutory exclusion from association coverage based on the net worth of the insured). As noted above, a claimant can preserve rights in the liquidation against this type of concern by filing a new proof of claim. Guaranty associations generally afford the same statutorily-mandated workers' compensation benefits as available under Home's workers' compensation policies, as guaranty association coverage for workers' compensation claims typically is not subject to a statutory cap. See, e.g., Mich. Comp. Laws § 500.7925(6) (providing a statutory cap on the amount of a covered claim payable by the Michigan association "other than a worker's compensation claim"); N.Y. Workers' Comp. Law §§ 107, 109-C (N.Y. Workers Compensation Security Fund without cap); Tex. Ins. Code § 462.213 (Texas association "shall pay the full amount of a covered claim arising out of a workers' compensation claim under a workers' compensation insurance policy").

assigning the claim to Class V priority. The determination deferred addressing the merits of Ms. Peeples' claim because the Liquidator does not anticipate there will be sufficient assets to permit a distribution to Class V claimants. Ms. Peeples filed a request for review, and the Liquidator issued a notice of redetermination dated November 8, 2011 confirming the determination. Ms. Peeples filed an objection on December 13, 2011.

10. After briefing and telephonic argument,³ the Referee issued the Order on March 27, 2013. The Referee upheld the Liquidator's determination that Ms. Peeples' claim fell within Class V priority under RSA 402-C:44. Exhibit E at 2-4. The Liquidator provided notice of the Order to Ms. Peeples on March 28, 2013. See Exhibit F. Ms. Peeples did not file a motion to recommit the decision with the Court within the 15-day period provided by Section 20 of the Claims Procedures Order (or at any other time). Accordingly, any attempt to obtain review of the March 27, 2013 Order now is untimely and barred. See Claims Procedures Order § 20.⁴

11. The claim amendment deadline should not serve as an opportunity to reopen and reargue claims, such as Ms. Peeples', that have previously been determined. The Act and the Claims Procedures Order both provide that claim determinations are final absent timely objection. See RSA 402-C:41, I ("Within 60 days from the mailing of the notice [of the Liquidator's determination], the claimant may file his objections with the court. If no such filing is made, the claimant may not further object to the determination."); Claims Procedures Order § 8 (providing a 60 day period from the Liquidator's mailing of a notice of determination or

³ The filings and procedural orders in 2012-HICIL-55 may be found on the Liquidation Clerk website at <http://www.hicilclerk.org/DocsDB/DisputedClaims.nsf/vwClaimDisputed%20Claims?readform&2012-HICIL-55>.

⁴ In October 2018, an attorney left messages with the Liquidator's counsel inquiring about Ms. Peeples' claim on her behalf. Liquidator's counsel responded to Ms. Peeples' counsel in an email dated October 5, 2018 advising that in the Liquidator's view the Referee's ruling was correct and a motion to recommit would be untimely. See Exhibit G. The Liquidator has not heard anything further from counsel.

redetermination for a claimant to file an objection with the Court; “If no timely Objection is filed, the Claimant may not further object to the Determination.”); Claims Procedures Order § 20 (15 days to file motion to recommit from Referee’s decision).

12. The proposed claim amendment deadline order accordingly provides that the claim amendment deadline “does not permit the refiling or rearguing of proofs of claim previously determined by the Liquidator.” Proposed Order ¶ 10. See *id.* ¶ 9. With respect to claimants, such as Ms. Peeples, who have received notices of determination as to Class V priority, deferring determination as to amount, the proposed order permits them to amend their claim with an explanation of why their proofs of claim should be determined as to amount. *Id.* ¶ 8. If a claimant presents a good reason to devote resources to determining a Class V claim, the Liquidator may then determine the claim on the merits. (For instance, the claimant might assert that the claim can be used as a setoff against a claim asserted against the claimant by the Liquidator.) However, the Liquidator is not aware of any reason to determine the validity or amount of Ms. Peeples’ claim.

13. Ms. Peeples’ claim has been properly and finally determined to be Class V. The Liquidator does not anticipate making any distribution to Class V claimants so it would not be a useful expenditure of resources to address the merits of her claim. In the circumstances, the Court should overrule Ms. Peeples’ letter objection and decline to re-examine her claim.

C. Response to Objections of the New York Liquidation Bureau and MaryKnoll

14. The New York Liquidation Bureau, which is the New York equivalent of a guaranty association, and Maryknoll, a policyholder in Hawaii, filed objections concerning statutes in New York and Hawaii that “revive” previously barred sexual abuse claims.

15. New York Liquidation Bureau. The NYLB “consents to the Motion in principle,” but it requests that the proposed claim amendment deadline be extended to August 14, 2020, on account of a New York statute “reviving” previously time-barred sexual abuse claims. NYLB Objection ¶ 2. The NYLB administers the Property/Casualty Insurance Security Fund under New York Insurance Law Article 76, which functions as the equivalent of a guaranty association for property/casualty claims. NYLB Objection ¶ 3. See N.Y. Ins. Law § 7603. It is concerned that previously time-barred sexual abuse claims may be asserted against Home policyholders in New York under New York’s Child Victims Act (“CVA”), N.Y. Laws 2019, c. 11. The CVA provides that claims for sexual abuse committed against a child of less than 18 years of age which were time-barred on the CVA’s effective date are “hereby revived, and action thereon may be commenced not earlier than six months after, and not later than one year and six months after the effective date of this section.” N.Y. Civ. Prac. Law & Rules § 214-g, enacted by N.Y. Laws 2019, c. 11, § 3 (effective February 14, 2019). Since CPLR § 214-g was effective February 14, 2019, the revival period extends to August 14, 2020. See NYLB Objection at ¶ 4.

16. As an initial matter, the NYLB’s objection may become moot due to the passage of time. The proposed claim amendment deadline is the date 150 days after the Court’s approval order. Proposed Order ¶ 3. If the Court enters the proposed order after March 17, 2020, the claim amendment deadline will be on or after August 14, 2020 as the NYLB requests. Resolution of the other objections – such as those of the four AFIA cedents – may take until after March 17, 2020. The Liquidator accordingly suggests that the Court defer addressing the NYLB objection at this time.

17. Turning to the merits, the Liquidator recognizes that the CVA represents a sympathetic case for extension of the claim amendment deadline, as it involves potential claims

of child sexual abuse. However, unless the requested extension is so short as to be immaterial (as may happen here), the objection should be overruled.

18. In the overall context of the Home liquidation, the possibility that previously time-barred sexual abuse claims might be made against Home insureds under the CVA in New York does not warrant extension of the deadline. Holding the liquidation open on account of the possibility that claims could be filed in light of a new statute is contrary to the interests of the policyholders and claimants with allowed claims, who cannot receive a final distribution until all claims are determined. As described in the Liquidator's motion, the Home liquidation has been open for 16 years, the last Home policies expired 23 years ago, 95% of the proofs of claim have been determined, and a claim amendment deadline is necessary to move the liquidation toward closure. At the present stage of the Home liquidation, the interests of Home's creditors with allowed claims in establishing a claim filing deadline outweigh the interests of unidentified claimants who might file claims of one type against Home insureds in New York under the CVA. Establishing a final date for the submission of claims in an insurer liquidation necessarily will cut-off some possible claims. Considering the overall balance of interests in the Home liquidation, the claim amendment deadline should be established now.

19. Maryknoll. Maryknoll, a religious order, also objects to the proposed claim amendment deadline on account of a statute "reviving" certain sexual abuse claims. Maryknoll states that the Hawaii State Legislature "has consistently extended the statute of limitations" for the filing of sexual abuse claims, and that "[t]he latest extension is until June 30, 2020." Maryknoll Objection at 2. It says that "[c]onsequently, new, additional claims" within the 1970 to 1973 period of Home's excess policy may be filed against Maryknoll and objects to the proposed deadline. Id.

20. To the extent it concerns the existing Hawaii revival statute, this objection is moot. The current Hawaii revival statute provides that “[f]or a period of eight years after April 24, 2012, a victim of child sexual abuse that occurred in this State may file a claim . . . if the victim is barred from filing a claim . . . due to the expiration of the applicable civil statute of limitations that was in effect prior to April 24, 2012.” Hawaii Rev. Stat. § 657-1.8(b). The revival cut-off date is thus April 24, 2020 (eight years from April 24, 2012). Since the proposed claim amendment deadline is 150 days after the Court’s approval order, entry of the proposed order today (December 13, 2019) would result in a deadline after April 24, 2020. The proposed deadline thus will not affect any claims filed within the Hawaii revival deadline, and the objection based on existing law is moot.⁵

21. Maryknoll also appears to object based on the possibility that the Hawaii Legislature may extend the revival period in the future. This concern may arise from the history of Hawaii’s revival statute. In 2012, the Hawaii Legislature enacted a revival statute which allowed a victim of child abuse whose claim was barred by the civil statute of limitations to file a claim “[f]or a period of two years after the effective date of Act.” Former Hawaii Rev. St. 657-1.8(b), enacted by 2012 Hawaii Laws, c. 68, § 1 (effective April 24, 2012). In 2014, the Legislature extended the revival period to “four years after April 24, 2012.” Former Hawaii Rev. St. § 657-1.8(b), enacted by 2014 Hawaii Laws, c. 112, § 1 (effective June 20, 2014). In 2018, the Legislature extended the revival period to “eight years after April 24, 2012.” Hawaii Rev. St. § 657-1.8, enacted by 2018 Hawaii Laws, c. 98, § 1 (effective July 1, 2018).

⁵ Maryknoll said that the extension date is June 30, 2020 (Maryknoll Objection at 2), but the Liquidator is not aware of any basis for that assertion. Even if that date were correct, an approval order issued after February 3, 2020 would result in a claim amendment deadline after the extension date. Given the other objections, Maryknoll’s objection will likely become moot even if its asserted extension date were correct.

22. The possibility that the Hawaii legislature might extend its revival statute does not warrant denial of a claim amendment deadline in the Home liquidation. As described in the Liquidator's motion, the judgment to establish such a deadline reflects a balancing of the interests of claimants with allowed claims and those with unliquidated and undetermined claims in light of the time that has passed and the progress of the liquidation. The possibility of future legislation that might allow plaintiffs to bring claims is essentially speculative, and it is of little weight in the context of the Home liquidation. Home wrote policies in all of the States of the United States, in addition to several foreign jurisdictions. State legislatures frequently consider and enact laws that may affect underlying tort claims. The possibility of such laws should not prevent the establishment of a final deadline for claims in a liquidation that is far progressed. The deadline is necessary for the Liquidator to determine all claims in the liquidation, collect the final assets, and calculate and make a final distribution to claimants with Class II claims. If the possibility of legislation in one state were enough to require that insurer liquidations remain open, none would ever close. Maryknoll's objection should be overruled.

23. For these reasons, the Court should overrule objections expressed in the letters of Ms. Erway, Mr. Crosby, Mr. Campbell, and Ms. Peebles and, to the extent they do not become moot, the objections of the NYLB and Maryknoll. The Liquidator will submit a response to the remaining objections (MW Custom Papers and the four AFIA cedents) on or before December 31, 2019.⁶

⁶ U.S. Steel Corporation filed a withdrawal of its objection on November 18, 2019.

Respectfully submitted,

JOHN R. ELIAS, INSURANCE
COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE, AS LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

By his attorneys,

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December 12, 2019

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Response to First Group of Objections to the Liquidator's Motion for Claim Amendment Deadline was sent, this 12th day of December, 2019, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith
NH Bar ID # 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106

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EXHIBIT A

**RACKEMANN
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November 14, 2019

Ms. Patricia Erway
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Re: In the Matter of the Liquidation of The Home Insurance Company
Merrimack County Superior Court No. 217-2003-EQ-00106

Dear Ms. Erway:

I represent John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"). I write concerning your letter of October 30, 2019 to the Clerk of the Merrimack County Superior Court. The letter responded to the notice of the Liquidator's motion for approval of a claim amendment deadline. Since it responded to the notice, the Liquidator construes the letter as an objection.

As background, you filed a proof of claim in the Home liquidation (POC No. CLMN377106) concerning your workers' compensation claim. Because of Home's insolvency, the claim was transferred to the Michigan Property & Casualty Guaranty Association ("MPCGA"). The MPCGA is an entity created under Michigan law to handle claims under insurance policies of insolvent insurers that are "covered claims" under the statute. The MPCGA took over handling your claim and paying medical benefits due under the Michigan Workers' Compensation Act.

The Liquidator accordingly denied your claim in the Home liquidation in a Notice of Determination dated December 4, 2007. The Notice of Determination stated that if there were a change in circumstance so as to warrant filing of a new proof of claim, you could do so. In light of this statement, the Liquidator sent you notice of the motion for approval of the claim amendment deadline, because the deadline if approved will bar the filing of new proofs of claim after the deadline. You do not presently have a proof of claim pending in the Home liquidation.

Your letter focuses on your claim with MPCGA, not the claim amendment deadline. It indicates that in recent years you have requested coverage for certain treatment and items from the MPCGA but that the MPCGA has not paid them. To the extent that you disagree with the positions taken by the MPCGA, your remedy is to pursue recovery against MPCGA.

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Ms. Patricia Erway
November 14, 2019
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A proof of claim in the Home liquidation is not an alternative to pursuing your claim against the MPCGA. MPCGA is handling your claim under the Home policy. If you do not pursue remedies against the MPCGA, then its positions are final. Workers' compensation benefits are statutory, and Home in liquidation does not afford more coverage than the MPCGA. (Indeed, the Home estate can only make percentage distributions on allowed claims.) By law, the Liquidator does not review positions taken by the MPCGA and follows MPCGA's positions regarding policy coverage in acting on any claim in the Home liquidation. If you have any questions concerning MPCGA's positions regarding coverage under the Home policy or its obligations under its governing statute, you should contact MPCGA.

The proposed claim amendment deadline, if approved, would prevent you from filing a proof of claim in the liquidation for workers' compensation after the deadline. However, you have a known workers' compensation claim – a claim for coverage respecting a particular injury – so that you can file a new proof of claim now, before the deadline, that will preserve any rights in the Home liquidation. (Notwithstanding this, you should continue to look to MPCGA for recovery on your claim because the Liquidator will take the same positions as MPCGA under the Home policy.)

If you wish to preserve rights in the Home liquidation, you should file a new proof of claim before the claim amendment deadline.

The Liquidator accordingly requests that you withdraw your objection to the proposed claim amendment deadline since your concerns relate to the MPCGA, not Home and the pending matter.

If you have any questions regarding this letter, please let me know. Thank you.

Very truly yours,



Eric A. Smith

EAS/lbh

EXHIBIT B

**RACKEMANN
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Established 1886

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November 14, 2019

Mr. Edward Crosby
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Crowell, TX 79227

Re: In the Matter of the Liquidation of The Home Insurance Company
Merrimack County Superior Court No. 217-2003-EQ-00106

Dear Mr. Crosby:

I represent John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"). I write concerning your letter of November 4, 2019 to the Clerk of the Merrimack County Superior Court. The letter responded to the notice of the Liquidator's motion for approval of a claim amendment deadline. Since it responded to the notice, the Liquidator construes the letter as an objection.

As background, you filed a proof of claim in the Home liquidation (POC No. CLMN379132) concerning your workers' compensation claim. Because of Home's insolvency, the claim was transferred to the Texas Property & Casualty Insurance Guaranty Association ("TPCIGA"). The TPCIGA is an entity created under Texas law to handle claims under insurance policies of insolvent insurers that are "covered claims" under the statute. The TPCIGA took over handling your claim, and we understand that it has paid for medical benefits due under the Texas Workers' Compensation Act.

The Liquidator accordingly denied your claim in the Home liquidation in a Notice of Determination dated May 14, 2009. The Notice of Determination stated that if there were a change in circumstance so as to warrant filing of a new proof of claim, you could do so. In light of this statement, the Liquidator sent you notice of the motion for approval of the claim amendment deadline, because the proposed deadline would bar the filing of new proofs of claim after the deadline. You do not presently have a proof of claim pending in the Home liquidation.

Your letter requests that your claim be left open. As noted, you do not presently have an open claim in the liquidation because TPCIGA has handled the claim. If you have any questions concerning TPCIGA's positions regarding coverage under the Home policy or its obligations under its governing statute, you should contact TPCIGA.

The proposed claim amendment deadline, if approved, would prevent you from filing a proof of claim in the liquidation for workers' compensation after that deadline. However, you have a known workers' compensation claim – a claim for coverage respecting a particular injury

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Mr. Edward Crosby
November 14, 2019
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– so that you can file a new proof of claim now, before the deadline, that will preserve any rights in the Home liquidation. (Notwithstanding this, you should continue to look to TPCIGA for recovery on your claim because the Liquidator will take the same positions as TPCIGA under the Home policy.)

If you wish to preserve rights in the Home liquidation, you should file a new proof of claim before the claim amendment deadline.

In the circumstances, the Liquidator requests that you withdraw your objection to the proposed claim amendment deadline since your concern may be addressed by the filing of a proof of claim.

If you have any questions regarding this letter, please let me know. Thank you.

Very truly yours,



Eric A. Smith

EAS/bh

EXHIBIT C

**RACKEMANN
SAWYER & BREWSTER**
PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

Established 1886

Eric A. Smith
(617) 951-1127
esmith@rackemann.com

November 14, 2019

Mr. Howard Campbell
10011 Mosher Hollow Road
Cattaraugus, NY 14719

Re: In the Matter of the Liquidation of The Home Insurance Company
Merrimack County Superior Court No. 217-2003-EQ-00106

Dear Mr. Campbell:

I represent John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"). I write concerning your letter of November 4, 2019 to the Clerk of the Merrimack County Superior Court. The letter responded to the notice of the Liquidator's motion for approval of a claim amendment deadline. Since it responded to the notice, the Liquidator construes the letter as an objection.

As background, you filed two proofs of claim in the Home liquidation (POC Nos. CLMN375413 and CLMN379650) concerning workers' compensation claims with dates of loss of 5/18/79 and 1/8/81. Because of Home's insolvency, the claims were transferred to the New York Workers Compensation Security Fund managed by the New York Liquidation Bureau ("NYLB"). The NYLB is an entity created under New York law to handle claims under insurance policies of insolvent insurers pursuant to its statute. PMA Management Corporation is the administrator for the NYLB. The NYLB took over handling your claims, and we understand that it has paid for medical and indemnity benefits due under the New York Workers' Compensation Act on both claims.

The Liquidator accordingly denied your claims in the Home liquidation in a single Notice of Determination dated October 7, 2008. The Notice of Determination stated that if the NYLB is no longer able to handle your claim, you should file a new proof of claim. In light of this statement, the Liquidator sent you notice of the motion for approval of the claim amendment deadline, because the proposed deadline would bar the filing of new proofs of claim after the deadline. You do not presently have a proof of claim pending in the Home liquidation.

Your letter requests that your claims include a sum for future care. As noted, you do not presently have an open claim in the liquidation because the NYLB is handling the claims. If you have any questions concerning the NYLB's positions regarding coverage under the Home policy or its obligations under its governing statute, you should contact the NYLB.

160 Federal Street
Boston, MA 02110-1700
TEL 617 542 2900
FAX 617 542 7437

www.rackemann.com

Mr. Howard Campbell
November 14, 2019
Page 2

The proposed claim amendment deadline, if approved, would prevent you from filing a proof of claim in the liquidation for workers' compensation after that deadline. However, you have known workers' compensation claims – claims for coverage respecting particular injuries – so that you can file a new proof of claim now, before the deadline, that will preserve any rights in the Home liquidation. (Notwithstanding this, you should continue to look to the NYLB for recovery on your claim because the Liquidator will take the same positions as NYLB under the Home policy.)

If you wish to preserve rights in the Home liquidation, you should file a new proof of claim before the claim amendment deadline.

In the circumstances, the Liquidator requests that you withdraw your objection to the proposed claim amendment deadline since your concern may be addressed by the filing of a proof of claim.

If you have any questions regarding this letter, please let me know. Thank you.

Very truly yours,



Eric A. Smith

EAS/lbh

EXHIBIT D

**RACKEMANN
SAWYER & BREWSTER**

PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

Established 1886

Eric A. Smith
(617) 951-1127
esmith@rackemann.com

November 26, 2019

Mr. Edward Crosby
P.O. Box 155
Crowell, TX 79227

Re: In the Matter of the Liquidation of The Home Insurance Company
Merrimack County Superior Court No. 217-2003-EQ-00106

Dear Mr. Crosby:

I write further to our call yesterday concerning my letter of November 14, 2019. As you know, I represent John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home").

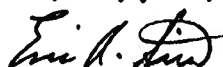
During our call, you said that you expected to ask for new boots soon. As I said, you should contact the Texas Property & Casualty Insurance Guaranty Association about that, as you have before, to determine their position.

We also discussed that you could preserve your rights in the Home liquidation by filing a proof of claim concerning your workers' compensation claim before the claim amendment deadline and that you could file such a proof of claim now.

As you requested, I enclose a proof of claim form for your use. When you fill it in, please include a reference to your earlier Proof of Claim (No. CLMN379132) and the Liquidator's Notice of Determination of that proof of claim dated May 14, 2009. The proof of claim should be mailed to the 61 Broadway address provided at the end of the proof of claim form.

If you have any further questions, please let me know.

Very truly yours,



Eric A. Smith

Enclosure

EAS/lbh

160 Federal Street
Boston, MA 02110-1700
TEL 617 542 2300
FAX 617 542 7437

www.rackemann.com

PROOF OF CLAIM
The Home Insurance Company,

Merrimack County Superior Court, State of New Hampshire 03-E-0106
Read Carefully Before Completing This Form
Please print or type

FOR LIQUIDATOR'S USE ONLY

DATE PROOF OF
CLAIM RECEIVED

The Deadline for Filing this Form is June 13, 2004.

You should file this Proof of Claim form if you have an actual or potential claim against The Home Insurance Company of any of its former subsidiaries* ("The Home") even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be postmarked no later than June 13, 2004. Failure to timely return this completed form will likely result in the **DENIAL OF YOUR CLAIM**. You are advised to retain a copy of this completed form for your records.

1. Claimant's Name: _____
2. Claimant's Address: _____

3. Claimant's Telephone Number: (____) _____
Fax Number: (____) _____
Email address: _____
4. Claimant's Social Security Number, Tax ID Number or Employer ID Number: _____
5. Claim is submitted by (check one):
 - a) Policyholder or former policyholder
 - b) Third Party Claimant making a claim against a person insured by The Home
 - c) Employee or former employee
 - d) Broker or Agent
 - e) General Creditor, Reinsurer, or Reinsured
 - f) State or Local Government Entity
 - g) Other, describe: _____

If your name, address, e-mail address, or telephone number set forth above are incorrect, or if they change, you must notify the Liquidator so she can advise you of new information.

Describe in detail the nature of your claim. You may attach a separate page if desired. Attach relevant documentation in support of your claim, such as copies of outstanding invoices, contracts, or other supporting documentation.

- _____
- _____
- _____
6. Indicate the total dollar amount of your claim. If the amount of your claim is unknown, write the word "unknown", BUT be sure to attach sufficient documentation to allow for determination of the claim amount.

\$ _____ (if amount is unknown, write the word "unknown").

7. If you have any security backing up your claim, describe the nature and amount of such security. Attach relevant documentation.

- _____
- _____
8. If The Home has made any payments towards the amount of the claim, describe the amount of such payments and the dates paid: _____

- _____
9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim?

- _____
10. Do you claim a priority for your claim? If so, why: _____

- _____
11. Print the name, address and telephone number of the person who has completed this form.
Name: _____
Address: _____
Phone Number (____) _____
Email address: _____

* The Home Indemnity Company, The Home Insurance Company of Indiana, City Insurance Company, Home Lloyds Insurance Company of Texas, The Home Insurance Company of Illinois, and The Home Insurance Company of Wisconsin.

12. If represented by legal counsel, please supply the following information:
- a. Name of attorney: _____
 - b. Name of law firm: _____
 - c. Address of law firm: _____
 - d. Attorney's telephone: _____
 - e. Attorney's fax number: _____
 - f. Attorney's email address: _____

13. If using a judgment against The Home as the basis for this claim:
- a. Amount of judgment _____
 - b. Date of judgment _____
 - c. Name of case _____
 - d. Name and location of court _____
 - e. Court docket or index number (if any) _____

14. If you are completing this Proof of Claim as a Third Party Claimant against an Insured of The Home, you must conditionally release your claim against the insured by signing the following, as required by N.H. Rev. Stat. Ann. § 402-C:40 1:

I, _____ (insert claimant's name), in consideration of the right to bring a claim against The Home, on behalf of myself, my officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives hereby release and discharge _____ (insert name of defendant(s) insured by The Home), and his/her/its officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives, from liability on the cause(s) of action that forms the basis for my claim against The Home in the amount of the limit of the applicable policy provided by The Home; provided, however, that this release shall be void if the insurance coverage provided by The Home is avoided by the Liquidator.

 Claimant's signature Date

15. All claimants must complete the following:

I, _____ (insert individual claimant's name or name of person completing this form for a legal entity) subscribe and affirm as true, under the penalty of perjury as follows: that I have read the foregoing proof of claim and know the contents thereof, that this claim in the amount of _____ dollars (\$ _____) against The Home is justly owed, except as stated in item 9 above, and that the matters set forth in this Proof of Claim are true to the best of my knowledge and belief. I also certify that no part of this claim has been sold or assigned to a third party.

 Claimant's signature Date

Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

16. Send this completed Proof of Claim Form, postmarked by June 13, 2004, to:

The Home Insurance Company in Liquidation
 61 Broadway, 6th Floor
 New York, New York 10006

You should complete and send this form if you believe you have an actual or potential claim against The Home even if the amount of the claim is presently uncertain.

EXHIBIT E

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

**In Re Liquidator Number: 2012-HICIL-55
Proof of Claim Number: EMPL713583
Claimant Name: Linda Faye Peeples
Claimant Number:
Policy or Contract Number:
Date Of Loss:**

ORDER ON THE MERITS

The issue before the Referee is whether Ms. Peeples' claim, which was accepted by the Liquidator as a Class V claim, should be reclassified to a higher class. The parties have briefed the issue, and agreed that there was no need for discovery as to the reclassification issue. Telephonic oral argument was held on March 15, 2013.

The Facts

Ms. Peeples was an employee of the Home Insurance Company from September 1986 to November 1990. During her employment, Ms. Peeples invested six percent of her earnings in the Home Insurance Company 401(k) Plan.¹ The Home matched a portion of her investment. Ms. Peeples claims that the Home invested in "junk bonds" and that she never received anything from the 401(k) plan.

Ms. Peeples filed a Proof of Claim on May 5, 2010 seeking amounts due to her from the Plan. On July 14, 2011, the Liquidator issued a Notice of Determination and assigned the claim to Class V – Residual Classification for priority. Because the Liquidator does not anticipate there will be sufficient assets to permit a distribution to Class V claimants, the Liquidator deferred addressing the merits of Ms. Peeples' claim. On August 9, 2011, Ms. Peeples filed a Request for Review of the priority classification, requesting that the claim be treated as a Class II – Policy Related Claim. On November 8, 2011, the Liquidator issued a Notice of Redetermination confirming the assignment of the claim to Class V for priority. On December 13, 2011, Ms. Peeples objected to the Notice of Redetermination. She later filed a disputed claim.

¹ According to the Liquidator Home provided employees with a savings plan – The Home Builders Savings Plan which later became the AmBase Savings Plan, and which was later converted into a Section 401(k) Plan within the meaning of the Internal Revenue Code. Effective January 1, 1987. For ease of reference, all three plans are referred to as the Home 401(k) Plan or "the Plan."

Analysis

The New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C ("the Act") governs this liquidation. The Act sets forth statutory priorities and requires that the assets of an insolvent insurer are to be distributed under the direction of the Court according to the statutory priorities. The statute also provides that every claim in each successive priority class is to be paid in full, or adequate funds be retained to make such payment, before any member of the next class receives payment. RDSA 402-C:44. The Act sets forth ten classes. In this dispute, we need only consider a few of those classes.

- I. **Administration Costs.** The cost 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...
- III. **Claims of the Federal Government.** [federal claims that do not fall within Classes I and II above].
- IV. **Wages.** (a) Debts due to employees for services performed, not to exceed \$1000 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 similar priority authorized by law as to wages or compensation of employees.
- V. **Residual Classification.** All other claims...not falling within other classes under this section...

Ms. Peeples argues that her 401(k) plan was set up as a before and after tax contribution to a policy of insurance and that Home assumed a risk of loss for that "retirement plan policy." She asserts that employees who contributed to the 401(k) are equivalent to Home Insurance Company policyholders, who purchased liability or other insurance from Home. She argues that claims by employees arising from the alleged mis-investment of funds in the 401(k) plan by Home are the same as those by policy holders and the claims are meant to be included in Class II under the Act. Ms. Peeples provides no legal or other support for her contention.

Class II of the Act provides priority for "Policy Related Claims." In Class II, the Act specifically identifies three types of claimants who fall within the category. The first type of claimant identified includes policyholders, beneficiaries and insureds. The second is liability claims against insureds and the third is the two New Hampshire guaranty associations and similar organizations in other states. The only one of the three categories at issue in this disputed claim is the first – policyholders, beneficiaries and insureds.

Ms. Peeples asserts that she thinks of the 401(k) plan as a "retirement plan policy." She believes paying a portion of her earnings into the Plan is akin to paying the premium on an insurance policy. However, nothing in the record describes the Plan as such. The documents provided regarding the Home Builder Savings Plan and the AmBase Savings Plan indicate the plans provided employees an opportunity to save with tax advantages. None of the documents demonstrate either Savings Plan was the equivalent of an insurance policy.

It is also clear from the language of the statute that the legislature did not intend to include employees who contributed to 401(k) plans as policyholders, beneficiaries and insureds. The legislature did not include any language related to employees of the insolvent insurer in Class II. In fact, the New Hampshire Supreme Court has indicated "the 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." The Supreme Court did not add to that list employees who invested in a 401(k) sponsored by the Home Insurance Company. The Iowa Supreme Court has specifically addressed this issue under a similar statute. In State ex rel. Hager v. Iowa Nat'l Mut. Ins. Co., 430 N.W.2d 420 (Iowa 1988), the Court indicated that the language of a similar statute suggested that the priority status was aimed at the insolvent insurance company's obligations to its insureds and not to employee claims. In that case, the court held that claims by employees under the insurer's deferred compensation plan did not fall within the policy related priority class.

Turning to the other priority classes in the Act, Ms. Peeples' claim does not fall in any of those. It is not an Administration Cost defined in Class I as post liquidation expenses for authorized activities undertaken in furtherance of the liquidation. Class III includes claims of the federal government – this is not one of those claims. Class IV is for debts due to employees for services performed within one year before the filing of the petition for liquidation. Ms. Peeples was employed from 1986 until 1990 and so was not employed within a year of the liquidation in 2003. Given that her claim does not fall in any of the first four classes of priority, it falls within Class V.

The Referee upholds the Liquidator's determination that Ms. Peeples' claim falls within Class V for priority under RSA 402-C.

So ordered.

March 27 2013
Date:

Melinda S. Gehris
Referee, Melinda S. Gehris

EXHIBIT F

Smith, Eric A. EAS

From: Smith, Eric A. EAS
Sent: Thursday, March 28, 2013 8:38 AM
To: 'linda peeples'
Subject: FW: OLC List Service - Updates Notification

Dear Ms. Peeples:

Yesterday, the Liquidation Clerk sent the following email notice of the Referee's Order on the Merits in 2012-HICIL-55 to those on the Home liquidation List Service. I forward it to you as I am not sure whether you are on the List Service.

Regards,

Eric A. Smith
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, Massachusetts 02110-1700
Phone: 617-951-1127
Fax: 617-542-7437
esmith@rackemann.com

-----Original Message-----

From: help@hicialclerk.org [mailto:help@hicialclerk.org]
Sent: Wednesday, March 27, 2013 4:32 PM
To: Smith, Eric A. EAS
Subject: OLC List Service - Updates Notification

The Office of the Liquidation Clerk has posted the following

1. 2012-HICIL-55 Order on the Merits

Please click the link to access these postings.

<http://hicialclerk.org/docsDB/DisputedClaims.nsf/vwSingleCatDocs?readform&Disputed+Claims>

ATTENTION AOL users: Use the link below ONLY if you are using AOL software to access your e-mail otherwise please click on the link above.

AOL
User Click Here

Liquidation Clerk

For information about unsubscribing to this List Service please visit:

<http://www.hicilclerk.org/Hicil.nsf/unSubscribe?openform>

EXHIBIT G

Smith, Eric A. EAS

From: Smith, Eric A. EAS
Sent: Friday, October 5, 2018 11:15 AM
To: 'jimwilleford@willefordlaw.com'
Subject: Linda Peeples/The Home Insurance Company

Jim,

I represent the New Hampshire Insurance Commissioner, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), and I write in response to your voicemails concerning the claim submitted by Linda Peeples. Home has been in liquidation since 2003. Information about the liquidation may be found on the liquidation website at www.hicilclerk.org.

Ms. Peeples filed a proof of claim in the Home liquidation, which the Liquidator assigned to Class V priority. Because the assets of the Home estate will not be sufficient to make any distribution to Class V claims, the Liquidator deferred a determination on the merits of the claim. Ms. Peeples objected to the Liquidator's determination on priority, and the matter was heard by the court-appointed Referee as Disputed Claim Proceeding 2012-HICIL-55. The filings in the disputed claim proceeding may be found on the Home liquidation website at <http://www.hicilclerk.org/DocsDB/DisputedClaims.nsf/vwClaimDisputed%20Claims?readform&2012-HICIL-55>. On March 27, 2013, the Referee issued an order upholding the Liquidator's determination that Ms. Peeples' claim is a Class V claim (at [http://www.hicilclerk.org/docsDB/DisputedClaims.nsf/07E268319E87235A85257B3B004EF5CB/\\$file/Order%20on%20the%20Merits.pdf?OpenElement](http://www.hicilclerk.org/docsDB/DisputedClaims.nsf/07E268319E87235A85257B3B004EF5CB/$file/Order%20on%20the%20Merits.pdf?OpenElement).) Ms. Peeples did not appeal by filing a motion to recommit with the Court within 15 days as required by § 20 of the Claims Procedures Order (at [http://www.hicilclerk.org/docsDB/2005.nsf/7F4062066A1E215785256F8E00714AAB/\\$file/011905%20Home%20Revised%20Order%20Establishing%20Procedures.pdf?OpenElement](http://www.hicilclerk.org/docsDB/2005.nsf/7F4062066A1E215785256F8E00714AAB/$file/011905%20Home%20Revised%20Order%20Establishing%20Procedures.pdf?OpenElement)). In our view, the Referee's ruling was correct, and a motion to recommit now is untimely.

If you would like to discuss this matter, please let me know. Thank you.

Regards,

Eric

Eric A. Smith
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, Massachusetts 02110-1700
Phone: 617-951-1127
Fax: 617-542-7437
esmith@rackemann.com