

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 MOTION TO STRIKE JOHNSON & JOHNSON'S OBJECTION TO
LIQUIDATOR'S MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE**

Alexander K. Feldvebel, Acting Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves to strike Johnson & Johnson's Objections to Liquidator's Motion for Approval of Claim Amendment Deadline filed December 24, 2019 as untimely because it was filed five weeks after the November 18, 2019 deadline for filing objections established by the Court's Order of Notice Regarding Liquidator's Motion for Approval of Claim Amendment Deadline dated August 19, 2019 ("Order of Notice"). As reasons therefor, the Liquidator states:

1. On August 1, 2019, the Liquidator filed the Liquidator's Motion for Approval of Claim Amendment Deadline ("Motion"), together with the Liquidator's Motion for Order of Notice Regarding Motion for Approval of Claim Amendment Deadline.
2. On August 19, 2019, the Court issued the Order of Notice. (A copy of the Order of Notice is attached as Exhibit 1.) The Order of Notice ordered that "[a]ny objections to the Motion shall be filed on or before the date 90 days from the date of this Order (or, if that date is a Saturday, Sunday or holiday, the next business day) with the Clerk, Merrimack County Superior Court." Order of Notice ¶ 2. As the date 90 days from August 19, 2019 was November 17, 2019, which was a Sunday, the Order of Notice established November 18, 2019 as the deadline for submission of objections to the Motion.

3. The Order of Notice approved a form of notice and directed the Liquidator to mail the notice to claimants with open proofs of claim (as defined in the Order of Notice) within 30 days from receipt of the Order of Notice. Order of Notice ¶ 3.¹ The Liquidator accordingly completed the approved form of notice by inserting the November 18, 2019 deadline date and the link to the Motion posted on the Liquidation Clerk's website and mailed the notice as directed in the Order of Notice. See Liquidator's Certificate of Compliance with Order of Notice Regarding Motion for Approval of Claim Amendment Deadline ¶¶ 2 (filed September 19, 2019) ("Certificate").

4. As set forth at paragraphs 7-9 below, the mailing of notice of the deadline for objection included notice to Johnson & Johnson ("J&J") care of its counsel at the only address provided on J&J's proof of claim, that of its counsel.

5. Twelve objections to the Motion were filed on or before the November 18, 2019 deadline, one of which (that of U.S. Steel Corporation) was subsequently withdrawn. On November 27, 2019, the Liquidator made a filing setting out a schedule for his responses to the objections. Liquidator's Filing re Schedule for the Liquidator's Response to Objections to Motion for Approval of Claim Amendment Deadline (filed November 27, 2019). In accordance with that schedule, the Liquidator filed a response to six objections on December 13, 2019 and filed responses to the other timely objections and a request for status conference on December 31, 2019.

6. On December 24, 2019, five weeks after the November 18, 2019 deadline for submission of objections, J&J filed Johnson & Johnson's Objections to Liquidator's Motion for

¹ The Order of Notice also directed the Liquidation Clerk to promptly post the Motion, the Order of Notice and the notice in the Merrimack County Superior Court Files section of the Home Liquidation Clerk website (www.hicilclerk.org). Order of Notice ¶ 6. The Motion was posted on August 1, 2019, the Order of Notice was posted on August 26, 2019, and the notice was posted on September 17, 2019. Certificate ¶ 4.

Approval of Claim Amendment Deadline (“J&J Objection”) with the Clerk. In the J&J Objection, J&J states that it did not receive notice of the deadline from the Liquidator and that it learned of the deadline from an unspecified “third party” at an unspecified date “after the November 18, 2019 deadline to object had already passed.” J&J Objection at 2.

I. J&J WAS PROPERLY MAILED NOTICE OF THE DEADLINE AT THE ADDRESS OF ITS COUNSEL IN ACCORDANCE WITH THE ORDER OF NOTICE.

7. J&J was properly mailed notice of the deadline for objection to the Motion at the address of its counsel. J&J submitted its proof of claim form on June 19, 2019. Affidavit of Peter A. Bengelsdorf Regarding Johnson & Johnson’s Objection to Motion for Approval of Claims Amendment Deadline (“Bengelsdorf Aff.”) ¶ 7 and Exhibit 3 (J&J Proof of Claim without attachment). J&J’s proof of claim provided only an address for J&J care of its counsel, Thomas W. Ladd of McCarter & English at the firm’s Newark, New Jersey address. It did not provide an address for J&J itself. Id.

8. After the Court issued the Order of Notice on August 19, 2019, the Liquidator’s counsel completed the form of notice with the actual deadline date and link to the Motion on the website, and liquidation staff prepared a mailing list spreadsheet listing the 2,186 claimants and counsel for claimants with open proofs of claim (as defined in the Order of Notice). Bengelsdorf Aff. ¶ 5. The mailing list and the form of notice were provided to NH Print & Mail Services in Concord, N.H. Affidavit of Janice Oliver ¶ 3, Exhibit A and B. NH Print & Mail Services mailed the notice to the 2,186 claimants and counsel for claimants, 129 claimants and counsel with addresses outside the United States by first class mail –international, postage prepaid, on September 12, 2019 and 2,057 claimants and counsel with addresses in the United States by first class mail, postage prepaid, on September 13, 2019. Oliver Aff. ¶¶ 4-5. The notices were

mailed in envelopes with a return address and the legend “Important-Notice re Motion for Approval of Claim Amendment Deadline”. Oliver Aff. ¶ 3 and Exhibit C.

9. The mailing list spreadsheet used by NH Print & Mail Services for the mailing included Johnson & Johnson care of Mr. Ladd. Bengelsdorf Aff. ¶ 8, Ex. 4; Oliver Aff. ¶¶ 4-5, Ex. B. The address for Mr. Ladd on the mailing list spreadsheet is the same as that on J&J’s proof of claim. Bengelsdorf Aff. ¶ 8. Compare Bengelsdorf Aff. Exhibits 3 and 4 (Page 25). That address continues to be the address of J&J’s counsel. See J&J Objection at 9. Notice was properly mailed to J&J in accordance with the Order of Notice.

II. J&J’S LATE OBJECTION SHOULD BE STRICKEN.

10. The Court should strike and disregard J&J’s untimely objection filed five weeks after the deadline. As set forth above, the Court set a deadline for objections to the Motion and directed how notice of that deadline was to be given in the Order of Notice, and the Liquidator provided mail notice to J&J in accordance with that procedure. Where notice was properly given in accordance with the Order of Notice, a claimant should not be permitted to file an untimely objection.

11. The Order of Notice established the November 18, 2019 deadline for objections to the Motion so that all objections would be filed by a common date. This permits the Liquidator and the Court to identify and consider the universe of objections in an orderly fashion. Indeed, the Liquidator has already addressed the twelve timely objections by separating them into three groups and responding to them in three filings made on December 13, 2019 and December 31, 2019.

12. Untimely objections disrupt and delay the orderly process contemplated by the Order of Notice. The purpose of the deadline will be frustrated if late objections are considered.

Instead of a controlled process, the determination of the Motion will become an iterative, rolling process of new objection followed by a Liquidator's response. Claimants who initially decided not to object may be encouraged by one of the objectors to join in.

13. J&J may contend that the Court should consider its objection because the Court has not yet decided the Motion or determined how to proceed on it. However, one of the important functions of the deadline is to avoid the need for individualized determinations concerning the impact of a late objection on the process and whether to consider the late objection. There should be a clear court-delineated dividing line separating objections that must be addressed from those that do not. Here, that line is set forth in the Order of Notice ¶ 2 ("Any objections to the Motion shall be filed on or before the date 90 days from the date of this Order"). If a filing five weeks after the deadline needs to be addressed, then what about a filing filed ten weeks late, or at any time until the Motion is decided? Otherwise, each late filing will require the Liquidator to respond and the Court to determine (a) whether there is sufficient reason for the late filing, (b) whether the filing is redundant of timely objections or present new issues, and (c) how to address any such new issues.²

14. The consideration of late filings will inevitably delay determination of the Motion, and this harms the interests of claimants with allowed claims. As the Liquidator has set forth in the Motion and his responses to timely objections, delay in establishing a claim amendment deadline prejudices the interests of claimants with \$2.73 billion of allowed Class II claims. Those claimants cannot receive the fullest possible distribution on their claims until all

² J&J's objection cites to and makes essentially the same arguments as the timely objection filed by MW Custom Papers, LLP ("MWCP"), except that it also refers to the Ambassador case discussed in two of the AFIA cedents' objections. The Liquidator addressed MWCP's arguments in the Liquidator's Response to MWCP's Objection filed December 31, 2019, and addressed the Ambassador case in the Liquidator's Response to AFIA Cedents' Objections filed December 31, 2019.

claims are determined, and (since the Liquidator cannot pay interest) they suffer erosion of the value of their allowed claims so long as the liquidation remains open without final payment.

15. J&J contends that it should be allowed to object late because, it asserts, the Liquidator “failed to properly notify J&J of its Motion.” J&J Objection at 1. However, as set forth above, the Liquidator properly complied with the Order of Notice and mailed J&J notice of the deadline at the address of its counsel as provided on J&J’s proof of claim. No more is required. Mailing is a reasonable and proper way of notifying a large class of claimants of a motion concerning liquidation processes. See Cote v. Cote, 123 N.H. 376, 378 (1983) (“In New Hampshire, there is a presumption that a properly addressed mailed communication has been received in the absence of other evidence to the contrary.”).

17. J&J assumes that the applicable standard is actual receipt of notice. However, if actual receipt by every addressee of a proper mailing were the standard, then few widely applicable liquidation deadlines would be effective. The Legislature has recognized that an insurer liquidation must be able to proceed based on the proper giving of notice, not receipt. See RSA 402-C:26, III (“If notice is given in accordance with this section [requiring notice of an insurer liquidation by mail], the distribution of the assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice.”). The Liquidator is not required to prove that addressees of a mailing actually received the notice.

18. If actual receipt of notice were the standard, the Liquidator submits that it is met here. The affidavits of Janice Oliver and Peter Bengelsdorf show that notice was properly mailed to J&J care of its counsel at the address provided on J&J’s proof of claim, thus invoking the presumption of receipt under the Cote case. Furthermore, the mailing to J&J care of its counsel was not returned to the Liquidator as undeliverable. Bengelsdorf Aff. ¶ 9. The

Liquidator also notes that there were four notices sent to other lawyers in the New Jersey office of Mr. Ladd's firm, McCarter & English, who represented other claimants, and that none of those notices were returned to the Liquidator. Bengelsdorf Aff. ¶ 9.

19. J&J's objection should be stricken because it was filed after the November 18, 2019 deadline for objections. In addition, J&J's late objection should also be struck because J&J has made no showing that (a) J&J acted with diligence in asserting its objection once it was on notice of the Liquidator's Motion and (b) the late objection was not solicited by another objector. J&J's objection and the supporting affidavit do not address either point. The affidavit states only that J&J's counsel "was informed of the Motion by a third party after the November 18, 2019 deadline to object had already passed." Affidavit of Thomas W. Ladd ¶ 13. J&J has failed to identify when and how J&J's counsel was so informed, and whether J&J acted promptly in response to that information. At the least, J&J's objection should be stricken without a showing that J&J acted promptly and diligently after learning of the deadline for objection.

WHEREFORE, the Court should strike J&J's objection to the Liquidator's Motion for Approval of Claim Amendment Deadline.

Respectfully submitted,

ALEXANDER K. FELDVEBEL, ACTING INSURANCE
COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE, AS LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

By his attorneys,

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January 7, 2020

Certificate of Service

I hereby certify that a copies of the foregoing Liquidator's Motion to Strike Johnson & Johnson's Objection to Liquidator's Motion for Approval of Claim Amendment Deadline, Affidavit of Peter A. Bengelsdorf, and Affidavit of Janice Oliver were sent, this 7th day of January, 2020, 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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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**

~~{PROPOSED}~~

**ORDER OF NOTICE REGARDING LIQUIDATOR'S
MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE**

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), has filed a motion for an order of notice concerning the Liquidator's Motion for Approval of Claim Amendment Deadline (the "Motion") and a deadline for submission of any objection to the Motion. On consideration of the motion for order of notice, the Court hereby orders as follows:

1. The Liquidator's motion for an order of notice is granted.
2. Any objections to the Motion shall be filed on or before the date 90 days from the date of this Order (or, if that date is a Saturday, Sunday or holiday, the next business day) with the Clerk, Merrimack County Superior Court, 163 North Main Street, Concord, New Hampshire 03301 in In the Matter of the Liquidation of The Home Insurance Company, Docket No. 217-2003-EQ-00106. Copies of any objection shall be served on counsel for the Liquidator, J. Christopher Marshall, Civil Bureau, New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301-6397 and J. David Leslie/Eric A. Smith, Rackemann, Sawyer & Brewster, 160 Federal Street, Boston, MA 02110-1700.
3. Within 30 days from receipt of this Order, the Liquidator shall mail notice of the Motion and the deadline for objections in the form attached to this Order to all claimants who

have open proofs of claim in the Home liquidation. Open proofs of claim means those on which (a) there has been no determination, (b) there has been only a partial determination or determinations, (c) there has been a determination that has not yet been approved by the Court, (d) there has been a determination as to priority but deferral as to amount, or (e) there has been a determination that provided that the claimant could submit further claims. Notice shall be mailed to the latest mailing address provided to the Liquidator by the claimant. Where the claimant is represented by counsel, notice shall be mailed to both the claimant and counsel using the latest mailing addresses provided to the Liquidator by the claimant or counsel. Notice shall be mailed by first class mail, postage prepaid, except that notice to claimants or counsel with addresses outside the United States shall be sent by air mail, postage prepaid.

4. Notice shall not be mailed to claimants whose proofs of claim have been finally determined by approval of a Liquidator's report of claims and recommendations or by approval of a settlement.

5. In addition to the mailing to claimants with open proofs of claim, the Liquidator shall email notice of the Motion and the deadline for objections in the form attached to this Order to the United States Department of Justice.

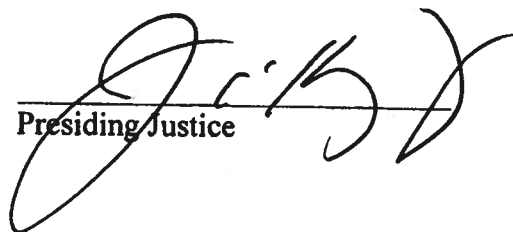
6. The Liquidation Clerk shall promptly post the Motion, this Order, and the notice in the Merrimack County Superior Court Files section of the Home Liquidation Clerk website (www.hicilclerk.org).

SO ORDERED

Dated: _____

8/17/19

Presiding Justice



**The Home Insurance Company, in Liquidation
61 Broadway, Sixth Floor
New York, NY 10006**

POC No(s): _____

**NOTICE OF DEADLINE FOR OBJECTION TO MOTION FOR
APPROVAL OF CLAIM AMENDMENT DEADLINE REGARDING
THE HOME INSURANCE COMPANY, IN LIQUIDATION**

To Persons who have open proofs of claim in the liquidation of The Home Insurance Company ("Home"):

Home is in liquidation proceedings before the Merrimack County Superior Court of the State of New Hampshire (the "Court"), In the Matter of the Liquidation of The Home Insurance Company, Docket No. 217-2003-EQ-00106.

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of Home, has filed a Motion for Approval of Claim Amendment Deadline to set a deadline of 150 days after the Court's order granting the Liquidator's motion for the final submission of amendments to proofs of claim in the Home liquidation. As described in that motion, claims filed after the claim amendment deadline and potential claims (any claim that cannot be specifically identified by the claim amendment deadline) will be barred, and certain claimants may be required to amend their proofs of claim, if the motion is granted. The Liquidator's motion and the proposed order may be found in the Home liquidation file in the Merrimack County Superior Court Files section of the Home Liquidation Clerk website, www.hicilclerk.org, at _____ [INSERT LINK TO MOTION].

The Court has set a deadline of _____ [INSERT DATE 90 DAYS AFTER COURT'S ORDER OR NEXT BUSINESS DAY] for the filing of any objections to the Liquidator's Motion for Approval of Claim Amendment Deadline. Any objections to the motion shall be filed on or before _____ [INSERT SAME DATE] with the Clerk, Merrimack County Superior Court, 163 North Main Street, Concord, New Hampshire 03301 in In the Matter of the Liquidation of The Home Insurance Company, Docket No. 217-2003-EQ-00106.

Copies of any objection shall also be served on counsel for the Liquidator: J. Christopher Marshall, Civil Bureau, New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301-6397 and J. David Leslie/Eric A. Smith, Rackemann, Sawyer & Brewster, 160 Federal Street, Boston, MA 02110-1700.

**John R. Elias, New Hampshire Insurance Commissioner,
as Liquidator of The Home Insurance Company**