The State of New Hampshire

MERRIMACK COUNTY **SUPERIOR COURT**

IN THE MATTER OF THE LIQUIDATION OF
THE HOME INSURANCE, CO.

Docket No.: 217-2003-EQ-00106

ORDER

The Insurance Commissioner of the State of New Hampshire, as Liquidator of the Home Insurance Company (the "Home"), moves for the Court to establish a final deadline for the amendment or submission of claims to the Home's estate (the "Claim Amendment Deadline"). Along with his motion, the Liquidator has filed a Proposed Order specifying a date and procedural requirements for amending claimants to follow. A number of policyholder priority creditors object. These are the Catholic Foreign Mission Soc. of America, Inc. a/k/a the Maryknoll Fathers and Brothers (the "Maryknoll Society") and three worker's compensation claimants—Patricia Erway, Edward Crosby, and Howard Campbell (the "Worker's Compensation Claimants").[1] In addition, a number of non-policyholders object. These are former Home employee Linda Faye Peeples, David Axinn, in his capacity as Special Deputy Superintendent of the New York Liquidation Bureau (the "NYLB"), and several insurance entities reinsured by the Home (the "AFIA cedents"). The objecting AFIA cedents are: Catalina London, Ltd. and Catalina Worthing Ins. Ltd. (the "Catalina Group"); the German branch of Zurich Ins.,

[1] U.S. Steel Corp. and MW Custom Papers each also initially filed objections to the Liquidator's Motion for Approval of a Claim Amendment Deadline but have since withdrawn their objections. (See List of Filings that May Be Cited During Hearing at 2 n.3.) During the December 11, 2020 hearing on the Liquidator's motion, the Court learned that Johnson & Johnson also withdrew its objection.

P.L.C., and Württembergische Versicherung, A.G. ("Zurich and Württembergische"); Indemnity Marine Assurance Co., Nederlande Reassurantie Groep N.V., NRG Victory Reinsurance Ltd., NRG Fenchurch Ins. Co., Ltd., New Zealand Reinsurance Co., Tenecom Ltd., Underwriters at Lloyd's of London, Winterthur Swiss Ins. Co., and World Auxiliary Corp., Ltd. ("Resolute"); and Nationwide Mutual Ins. Co. ("Nationwide"). The Court held a hearing on this matter on December 11, 2020 and heard oral argument from Ms. Peeples, the Maryknoll Society, and various objecting AFIA cedents. For the following reasons, the Liquidator's Motion for Approval of a Claim Amendment Deadline is GRANTED and the Court approves the Proposed Order.

I. Background

The Home is a New Hampshire-domiciled insurance company incorporated in 1973. (Liquidator's Mot. Approval Cl. Am. Deadline ("Liq.'s Mot.") at 3.) At its height, the Home and its subsidiaries wrote insurance and reinsurance in almost all fifty states, as well as Canada, Bermuda, Hong Kong, and the United Kingdom. (Id.) In the early 1990s, however, following financial difficulties, the Home stopped writing new personal lines of business. (Id.) By 1995, the Home had stopped writing all business, including commercial lines, with the exception of certain personal lines subject to mandatory renewal in a few states. (Id.) The Court found the Home insolvent on June 13, 2003 and appointed the Liquidator to distribute the assets of the Home pursuant to RSA 402-C, the Insurers Rehabilitation and Liquidation Act (the "Act"). (Id. at 1; Order of Liquidation.) The Order of Liquidation established June 13, 2004 as the deadline for filing claims to the Liquidator (the "Claim Filing Deadline"). (Order of Liquidation ¶ (bb).) On June 11, 2003, approximately one year in advance of the Claim Filing Deadline, the

Court issued an order approving notice of the liquidation and of the deadline to file. (Order Approving Notice.) Since 2004, at least 20,785 proofs of claim have been filed with the Liquidator, 19,695 of which had been resolved as of May 31, 2019. (Liq.'s Mot. at 3–4.) These resolved claims represent a total allowed amount of $3.08 billion. (Id. at 4.)

Before entering liquidation, the Home had an unincorporated branch that operated in the United Kingdom as part of an association of American insurance companies known as the American Foreign Insurance Association ("AFIA"). (Id. at 3; Zurich and Würtembergische's Obj. to Liq.'s Mot. at 7.) In 1984, Cigna bought AFIA and, as part of the transaction, a subsidiary of Cigna, the Insurance Company of North America (the "INA"), assumed the reinsurance obligations of the Home with respect to AFIA by way of an assumption agreement. (Liquidator's Resp. to AFIA cedents' Objs. to Liq.'s Mot. ("Liq.'s Resp. AFIA") at 3.) The assumption agreement contained an insolvency clause requiring the INA to pay obligations directly to the Home or the Liquidator in the event of the Home's insolvency. (Id.) In 1999, Century Indemnity Company ("CIC") succeeded to the INA's obligations. (Id.)

When the Home became insolvent in 2003, the AFIA cedents filed proofs of claim in the liquidation, which were all held to be Class V claims. See In re Liquidation of Home Ins. Co., 154 N.H. 472, 477 (2006) ("The claims of the AFIA Cedents . . . fall into the 'all other claims' category of Class V."); see also RSA § 402-C:44, V (defining a Class V claim). The Liquidator resolved to access the excess reinsurance funds available from CIC to increase the assets of the estate and, therefore, had an incentive to quantify the extent of the AFIA cedents' claims. (Liq.'s Resp. AFIA at 4.) However,

as the Liquidator determined that no creditors with claims below Class II would receive any proceeds from the Home's estate, the AFIA cedents had no incentive to file and prove their claims. (Id. at 3–4.)

To address the situation, the Liquidator proposed an arrangement, pursued through various agreements and settlements between the Home estate and the AFIA Cedents ("the AFIA Scheme"), whereby AFIA members agreed to cede their claims under the reinsurance contracts they had with the Home while continuing to file and quantify their claims with the Liquidator. (Id. at 4; Resolute's Obj. to Liq.'s Mot. at 5.) In exchange, the AFIA cedents received a share of the reinsurance collected by the Liquidator from CIC. (Liq.'s Resp. AFIA at 4.) On August 6, 2004, the AFIA cedents entered into a Claims Protocol with CIC for the handling of AFIA claims in the liquidation. (Id.) CIC challenged the AFIA Scheme in this jurisdiction, but the scheme was upheld by the New Hampshire Supreme Court, which affirmed that (1) payments of the Liquidator to the AFIA cedents pursuant to the AFIA Scheme constitute Class I payments to distribute assets, (2) the payments are necessary to collect assets, and (3) the scheme is fair and reasonable as it benefits Class II claimants. In re Home, 154 N.H. at 481–490.

Under the Claims Protocol, the CIC, through its agent, ACE-INA UK Services Ltd. ("ACE-INA"), would review claims and make recommendations to the Liquidator. (Liq.'s Resp. AFIA at 4.) ACE-INA's successor, Chubb International Services UK Ltd. ("Chubb"), exercises this role today. (Id. 4–5.) If the Liquidator agrees with a recommendation, a notice of determination is issued to the claimant pursuant to the Court's Claims Procedure Order. (Id. at 5.) If the claimant agrees with the

determination, the determination is presented to the Court in a Liquidator's report of claims and recommendations. (Id. at 5.) Once the determination is approved, CIC applies any offsets it may have and makes payment to the Liquidator. (Id. at 5.) Historically, claims by the AFIA cedents have significantly contributed to the estate and, therefore, to the funds available for distribution to Class II claimants. (See id. at 13.) The extent of recovery available from any future claims, however, is disputed by the parties. (Id. at 12.) The Liquidator's motion for a Claim Amendment Deadline would foreclose future claims made pursuant to the AFIA Scheme. (See id. at 14.)

II. Analysis

The Liquidator seeks to impose a Claim Amendment Deadline to ensure Class II creditors receive the full extent of available distributions in a timely fashion. The New Hampshire Legislature directs the Court to "liberally construe[]" the Act so as to protect the "interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors." RSA 402-C:1, III–IV. The Act enumerates a series of avenues to ensure the fulfillment of this statutory purpose, including enhancing the "efficiency and economy of liquidation" and ensuring the "[e]quitable apportionment of any unavoidable loss." Gonya v. Comm'r, N.H. Ins. Dep't, 153 N.H. 521, 524 (2006) (citing RSA 402-C:1, IV(c)–(d)). When appointing a liquidator to administer the business of a domestic insurer, the Court transfers to such liquidator "the title to all of the property, contracts and rights of action and all of the books and records of the insurer" subject to liquidation. 402-C:21, I. Subject to the Court's control, the liquidator is empowered to take extraordinary steps to achieve the Act's statutory purposes, including to "[e]nter into such contracts as are necessary to carry out the

order to liquidate," to "affirm or disavow any contracts to which the insurer is a party," and to "[e]xercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member." 402-C:25, XVIII, XI. Thus, the Act "grants the liquidator broad authority to administer liquidation proceedings." In re Home, 154 N.H. at 482.

The Act provides an enumerated order of distribution for the apportionment of estate assets, which divides claimants into separate priority "classes," numbered I–X in order of decreasing priority. See RSA 402-C:44. In general terms, Class I consists of the "administrative costs" of liquidating the estate, Class II of claims made by policyholders of the insurer, Class III of claims by the federal government, Class IV of employee wages, Class V of "residual claims," including those of state or local governments, Class VI of judicial judgments, Class VII of interest on claims already paid, Class VIII of miscellaneous subordinated claims, Class IX of preferred ownership claims, and Class X of shareholder and other "proprietary claims." Id. "Every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment," and "[n]o subclasses" shall be established. In re Home, 154 N.H. at 475 (citing RSA 402-C:44).

A. Objections of Class II Policyholders

The Court first turns to objections filed by Class II policyholders. Only four Class II policyholders have current objections to the Liquidator's proposed Claim Amendment Deadline and, of those four, only one—the Maryknoll Society—presented oral argument during the December 11, 2020 hearing. The Liquidator contends that the imposition of a Claim Amendment Deadline would directly benefit Class II policyholders and argues

that the interests of individual objectors in maintaining the estate open do not outweigh the interest of Class II claimants as a whole. During oral argument, he argued that the absence of additional Class II claimant objections, especially in view of the sophistication of the Home's Class II creditors, suggests Class II policyholders recognize a Claim Amendment Deadline is in their interest.

i. The Maryknoll Society's Objection

The Maryknoll Society has a valid policy with the Home that provides coverage for the period of 1970–1973. (The Maryknoll Society's Obj. to Mot. Approval Cl. Am. Deadline re The Home at 2.) Over the years, the Maryknoll Society has submitted several claims to the Home to cover civil litigation expenses regarding alleged instances of sexual abuse by Maryknoll Society personnel in Hawaii. (Id.) The Maryknoll Society contends that, as the Hawaii Legislature has consistently extended the statute of limitations for the filing of such claims, it risks losing coverage for litigation expenses incurred in the event that the statute of limitations is further extended. (Id.) The Maryknoll Society also argues that it has upheld its end of the bargain by paying all premiums for the policy issued by the Home, and it is therefore entitled to seek coverage in the event that an extension of the Hawaii statute of limitations for sexual abuse results in further litigation expenses. (Id.)

The Court concludes that the effect of a potential extension of the applicable Hawaii statute of limitations on the Maryknoll Society is far too speculative a concern to outweigh the interests of other Class II creditors in securing final distributions. Pursuant to the Act, the Liquidator has broad authority to "[e]xercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member." 402-C:25,

XVIII. The Liquidator's motion to impose a Claim Amendment Deadline is an effort to exercise such authority to protect the rights of Class II priority creditors to a timely disbursement of as large a portion of their insurance claim as possible. Without a Claim Amendment Deadline, the Liquidator will be unable to distribute substantial estate assets to Class II creditors for the foreseeable future, as he will not know the full amount of the Home's liabilities and a reserve will be necessary for the continued administration of the estate. (Mot. Approval Cl. Am. Deadline at 9.) The Liquidator's interests in protecting the rights of Class II creditors should not yield to the Maryknoll Society's individual interest in covering litigation expenses in the event of a change in the law. The current Hawaii statute of limitations for sexual offenses during the relevant coverage period expired on April 24, 2020. See Hawaii Rev. Stat. Ann. § 657-1.8(b) ("For a period of eight years after April 24, 2012, a victim of child sexual abuse" previously barred from initiating an action by expiration of the then-current statute of limitations "may file a claim in a circuit court of this State against the person who committed the act of sexual abuse.") The Court has no way to know whether the Hawaii Legislature will choose to extend the statute of limitations at some point after a Claim Amendment Deadline is imposed. The Court does know, however, that Class II creditors will not receive a final disbursement until the Liquidator can set a Claim Amendment Deadline. Though the Maryknoll Society upheld its end of the bargain by paying all premiums for the policy issued by the Home, so did all other Class II creditors entitled to recovery in this liquidation. Accordingly, the Court is not persuaded by the Maryknoll Society's objection to the imposition of a Claim Amendment Deadline.

ii. The Workers Compensation Claimants' Objection

Each of the Workers Compensation Claimants filed a proof of claim with the Liquidator more than a decade ago regarding particular injuries each suffered while employed by the Home. (Liquidator's Resp. First Group Objs. Mot. Approval Cl. Am. Deadline ("Resp. First Group").) Ms. Erway's claim was transferred to a guaranty association in Michigan pursuant to Michigan's Property and Casualty Guaranty Association Act, Mich. Comp. Laws Ann. § 500.7901 et seq. (Id., Ex. A.) Mr. Crosby's claim was transferred to a guaranty association in Texas pursuant to chapter 462 of the Texas Property and Casualty Insurance Guaranty Act, Tex. Code Ann. § 462.001. (Id., Ex. B.) Mr. Campbell's claim was transferred to the NYLB in New York pursuant to N.Y. Ins. Law § 7405. (Id., Ex. C.) Each of these guaranty associations has a duty to pay certain obligations of an insolvent insurer that come within their respective acts' definition of covered claims. The Liquidator denied Ms. Erway's claim in 2007, Mr. Campbell's in 2008, and Mr. Crosby's in 2009, each time citing the claimant's ability to pursue a remedy from the respective guaranty association instead of the Home's estate. (Id., Exs. A–C.)

Each of the objections of the Worker's Compensation Claimants is properly addressed by the out-of-state guaranty associations handling their claims. Pursuant to RSA 404-B:11, the Liquidator "shall be bound by settlements of covered claims by [an] association or a similar organization in another state." RSA 404-B:11, II (emphasis added). Because all three Guaranty Association Claimants have open claims before guaranty associations in other jurisdictions, the Liquidator may not review any unfavorable settlements of covered claims or provide an alternative venue to secure

relief for the injuries each suffered in the Home's employ. Id. To the extent any of the Worker's Compensation Claimants fears that a guaranty association will decline to adjudicate his or her claim, a Claim Amendment Deadline will not affect the availability of alternative relief from the Home liquidation. The Liquidator expressly states that the sought Claim Amendment Deadline does not bar known claims, such that the Worker's Compensation Claimants remain free to file proof of claims before any deadline to preserve whatever rights they may have against the Home. (Resp. First Group ¶¶ 4–5.) The Court is not persuaded, therefore, that the imposition of a Claim Amendment Deadline would prejudice the rights of the Worker's Compensation Claimants, especially to such an extent as would require a denial of the instant motion.

B. Objections of Non-Class II Policyholders

The Court now turns to the objections of non-Class II claimants. A number of these objections were filed by Class V Claimants who provided oral argument during the December 11, 2020 hearing. These include the objections of Ms. Peeples and of various AFIA cedents. The NYLB, a non-claimant, has also filed an objection to the Liquidator's motion. The Liquidator has submitted written pleadings in response to each of these objections and highlighted them to the Court in advance of the hearing. (See List of Filings that May Be Cited During Hearing at 1–5.)

i. Ms. Peeples' Objection

Ms. Peeples was continuously employed by the Home from September 1986 to November 1990. (Ms. Peeple's Obj. dated Apr. 1, 2010; Referee Case File of Linda Faye Peeples ("Peeples Case File"), Ex. A.) Beginning in 1986, she invested six percent of her earnings in a health insurance plan with the Home that, after several

modifications, became a Section 401(k) plan. (Id.; Resp. First Group, Ex. E. at 1, n.1.)

On May 5, 2010, nearly six years after the 2004 filing deadline, Ms. Peeples filed a proof of claim with the Liquidator, contending that the Home invested her 401(k) funds in junk bonds and never paid her for her contributions. (Peeples Case File, Ex. A.) Ms. Peeples' late filing was excused on account of her not being on notice of the Claim Filing Deadline. (See id., Exs. C–D.) After considering her claim, the Liquidator issued Ms. Peeples a notice that her claim was given Class V priority status and that a determination of the amount of her claim would be made "only if it [was] later concluded that there will be sufficient assets to permit a distribution to Class V claimants." (Id., Ex. D at 1.) Ms. Peeples disputed the determination, and later a redetermination, that her claim was a Class V priority claim, insisting she was entitled to Class II priority. (Id., Exs. E–G.) Ultimately, on March 15, 2013, Ms. Peeples was granted a telephonic hearing before Court-appointed Referee Melinda Gehris, who affirmed the Liquidator's determination that her claim for 401(k) distributions is not a policy related claim and is only entitled to Class V priority. (Resp. First Group, Ex. E at 3.) Ms. Peeples did not initially seek review of the Referee's determination in this Court.

Ms. Peeple's first objection in this Court was filed on November 15, 2019, in response to the Liquidator's Motion for Approval of a Claim Amendment Deadline. (Ms. Peeple's Obj. dated Nov 15, 2019.) She asks the Court to "re-examine [her] claim" on the ground that, as a former employee of the Home who placed her trust in the company by investing in the Home's 401(k) plan, she is entitled to Class II priority. (Id.) She seeks $1,500,000 in contractual damages, alleging she made contributions to the 401(k) plan in consideration for the Home's promises that she would be rewarded in

retirement. (Id.) Following a status conference on February 28, 2020, Ms. Peeples filed a further objection, reiterating her position and contending that the Liquidator's reports "support that there [are] sufficient . . . funds to settle" her claim. (Ms. Peeple's Obj. dated Apr. 1, 2010.)

The Court concludes the substance of Ms. Peeples' objection was properly addressed by Referee Gheris in 2013 and her opposition to the instant motion is unavailing, as the approval or denial of a Claim Amendment Deadline has no bearing on the availability of distributions to Class V priority claimants. Following notice of Referee Gheris' determination in 2013, Ms. Peeples had "60 days" to seek review of the Referee's determination in this Court. RSA 402-C:41, I; (Claims Procedure Order § 8.) While the Court sympathizes with Ms. Peeples' plight, Ms. Peeples' objection is untimely, as it has been in excess of seven years since the deadline to seek review of the Referee's determination. Moreover, even if Ms. Peeples' objection was timely, the instant motion does not concern whether final, properly determined claims may be reviewed by the Court, nor whether the Liquidator properly determined that there are no available funds for claimants below Class II. The Liquidator merely seeks to impose a deadline for the amendment of open claims. This is neither the time nor the occasion to have Ms. Peeple's objections to the class assigned to her claim reexamined. Therefore, to the extent Ms. Peeples objects not to her status as a Class V Claimant but to the imposition of the Liquidator's proposed Claim Amendment Deadline, the Court is not persuaded that Ms. Peeples' concerns justify denying the Liquidator's motion to the detriment of higher priority creditors.

ii. The AFIA Cedents' Objections

The AFIA cedents contend that the proposed Claim Amendment Deadline is contrary to prior agreements reached with the Liquidator as part of the AFIA Scheme, premature, and not in the best interests of Class II creditors, whose recoveries may ultimately be lower if the Liquidator's motion is granted. (Zurich and Würtembergische's Obj. to Liq.'s Mot. at 1; Resolute's Obj. to Liq.'s Mot. at 5.) In particular, they argue that the proposed Claim Amendment Deadline does not strike a "reasonable balance" between the expeditious completion of the liquidation and the protection of incurred but not reported ("IBNR") claims. (Nationwide's Obj. to Liq.'s Mot. at 4–7; Zurich and Würtembergische's Obj. to Liq.'s Mot. at 1.) They point to the potential benefit to priority claimants of IBNR recoveries pursuant to the AFIA Scheme, as well as to the potential for Class II claimants to pursue their own IBNR claims in the future. (Nationwide's Obj. to Liq.'s Mot. at 2–3; Zurich and Würtembergische's Obj. to Liq.'s Mot. at 2.) In addition, the AFIA cedents argue that approval of a Claim Amendment Deadline at this time would prejudice their ability to value claims pursuant to the AFIA Scheme and place them in a weak negotiating position with Chubb and the Liquidator. (Nationwide's Obj. to Liq.'s Mot. at 5–6; Zurich and Würtembergische's Obj. to Liq.'s Mot. at 26–28.) Finally, a number of the AFIA cedents urge the Court to adopt the framework employed by the Vermont Supreme Court in In re Ambassador Insurance Co., 114 A.3d 492, 498–502 (2015), which they cite as support for the denial of the Liquidator's motion or, in the alternative, for an exception to be provided for future IBNR recoveries. (Zurich and Würtembergische's Obj. to Liq.'s Mot. at 2; Resolute's Obj. to Liq.'s Mot. at 5–7.)

As a preliminary matter, the Liquidator has the power to terminate any of his

duties under the AFIA Scheme to impose a Claim Amendment Deadline. The Act delegates broad powers to the Liquidator, including the power to "disavow any contracts to which the insurer is a party." RSA 402-C:25, XI. Damages asserted for the alleged breach of any settlements or contracts entered into as part of the AFIA Scheme are claims below Class II priority status and therefore unrecoverable, as they can only be pursued as Class VI judicial judgments. RSA 402-C:44, VI. The Court need not, therefore, further address any of the AFIA cedents' claims for breach of contract or any settlement agreements. (See e.g., Zurich and Würtembergische's Obj. to Liq.'s Mot. at 25–28.)

Rather, the Court concludes that the proposed Claim Amendment Deadline strikes a "reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims." RSA 402-C:46, I; see RSA 402-C:40, II (Delay in the filing of an insured's claim "shall not be a reason for unreasonable delay.") The Home has been in liquidation since June 2003, more than seventeen years ago. (Order of Liquidation.) The only recoverable non-administrative claims that remain are those of Class II policyholders, whose claims have had at least twenty-three years to develop since the Home stopped providing material coverage in 1997. (Aff. Bengelsdorf in Supp. Liq's Mot. ¶ 18.) The Liquidator does not owe a duty under the Act to protect the undetermined claims of creditors below Class II, including those of the AFIA cedents, as the Home estate lacks assets sufficient to make distributions to Class II claimants. RSA C:44 ("Every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment.") Consequently, the AFIA cedents' IBNR claims are not relevant

to the "reasonable balance" analysis imposed by the Act. RSA 402-C:46, I.[2] The Court recognizes that observance of the AFIA Scheme may result in additional recoveries to Class II claimants. However, given the length of time since the Home entered liquidation and the uncertain nature of future recoveries versus administration costs, it was reasonable for the Liquidator to conclude that such additional recoveries do not justify delaying final distributions to priority creditors. RSA 402-C:48, I.

The Court declines to apply the multi-factor test employed by the Vermont Supreme Court in In re Ambassador to the facts of this case. 114 A.3d 492. In In re Ambassador, the Vermont Supreme Court reversed a trial court order approving imposition of a deadline to "file final proofs of claim" where the estate in liquidation had already paid all allowed policyholder claims "in full, with interest," and had an additional $92 million remaining to address future and lower priority claims. Id. 493–494. The Vermont Supreme Court concluded that given the "unique circumstances" before it, the proposed deadline to file did not strike a "reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims." Id. at 500. In doing so, the Court examined the following nonexclusive factors: (1) the company's remaining assets; (2) the nature and amount of its remaining liabilities; (3) the administration costs of the estate; and (4) the extent to which delay in termination of the liquidation proceedings results in a delay of full payment to priority claim holders. Id.

[2] It is entirely unclear whether any "unliquidated and undetermined" claims are likely to be filed by Class II priority claimants. The only Class II claimant that presently expresses concern regarding its ability to file IBNR claims is the Maryknoll Society. Because the Court is not persuaded by the Maryknoll Society's objections on other grounds, see supra, § (II)(A)(i), the Court need not address whether IBNR claims constitute "unliquidated and undetermined" claims under the Act.

The facts before the Court are not comparable to In re Ambassador in key respects. Unlike the liquidator in In re Ambassador, the Liquidator before this Court seeks the imposition of a claim amendment deadline—a claim filing deadline went into effect in June 2004, more than sixteen years ago. In addition, the Home is unable to pay all policyholder claimants in full, and it will be unable to issue final disbursements to policyholder claimants until a claim amendment deadline is approved.

Even if the Court were to limit its analysis of RSA 402-C:46, I in this case to the four factors considered in In re Ambassador, three of the four factors weigh in favor of granting the Liquidator's motion. First, the Home's remaining assets to pay Class II creditors are limited and Class II claimants will not receive a full disbursement, such that a reasonable balance struck between an expeditious completion of the liquidation and foreclosure of undetermined claims may reasonably weigh in favor of disbursing what funds remain for priority creditors, seventeen years since the Home entered liquidation, in a timely fashion. Id. Second, the claims of Class II priority creditors constitute in themselves "the nature and amount" of the Home's remaining recoverable liabilities, such that any reasonable determination must place their interests above the interests of lower priority creditors, including the AFIA cedents. Id. Third, the continued administration of the estate, while likely offset in cost by recoveries pursuant to the AFIA Scheme, prevents a calculation of final liabilities and, consequently, the timely, expeditious disbursement of final payments to Class II claimants. Id.

iii. The NYLB's Objection

The NYLB fulfills the role of a guaranty association in the State of New York. (NYLB Obj. ¶ 3.) It administers the Property/Casualty Insurance Security Fund under

New York Insurance Law, Article 76. (Id.) The NYLB is concerned that previously time-barred sexual abuse claims may be asserted against Class II policy holders in New York, citing the enactment of New York's Child Victims Act, N.Y. C.P.L.R. § 214-g ("the CVA"), which took effect in February 2019. (Id.) The statute provides that previously time-barred claims for sexual abuse against a child of less than 18 years of age are "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 the statute. N.Y. C.P.L.R. § 214-g. The revival period of the CVA, therefore, last expired in August 2020. Id.

The Court is not persuaded that the rights of existing Class II creditors to final distributions should yield to the interests of potential future claimants merely in case of a potential change in New York law. As with the Hawaii Legislature, the Court has no way to ascertain whether the New York Legislature will choose to extend the statute of limitations for sexual abuse, nor even whether a potential extension would result in the filing of additional Class II proofs of claim. To prevent the distribution of disbursements to known Class II claimants across the country on account of speculation regarding amendments to a New York statute, more than sixteen years since the expiration of the Claim Filing Deadline, would frustrate the Liquidator's authority to "[e]xercise and enforce all the rights, remedies and powers" of existing Class II creditors. 402-C:25, XVIII, XI; In re Home, 154 N.H. at 482 (the Liquidator has "broad authority to administer liquidation proceedings.") The Court, therefore, is not persuaded that the NYLB's objections warrant a denial of the Liquidator's motion for approval of a Claim Amendment Deadline.

III. Conclusion

For the foregoing reasons, the Liquidator's Motion for Approval of a Claim Amendment Deadline is GRANTED, with no exceptions made as to any objector. The Court also issues a separate order specifying the procedures to follow for claimants to seek amendments to existing claims.

SO ORDERED.

1/28/21
Date

John C. Kissinger, Jr.
Presiding Justice