

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2003-EQ-0106

INTHE MATTER OF THE LIQUIDATION OF THE HOME INSURANCE COMPANY

In re Liquidator Number: 2019-HICIL-____
Proof of Claim Numbers: INSU703957-1 and INSU703968
Claimant Name: PolyOne Corporation
Policy Numbers: HEC 4495806 and HEC 4356857
Insured Names: PolyOne Corporation and B.F. Goodrich Company

**POLYONE CORPORATION'S OBJECTION TO THE
LIQUIDATOR'S JUNE 13, 2019 DENIAL OF CLAIM**

PolyOne Corporation ("PolyOne"), pursuant to RSA 402-C:41, objects to the denial of claim set forth in the Liquidator's June 13, 2019 Notice of Determination (Exhibit A hereto) for the following reasons:

1. PolyOne asserts a right to coverage under two excess liability insurance policies issued by the Home Insurance Company to the B.F. Goodrich Company (collectively, the "Home Policies"), for defense and indemnity costs associated with environmental liability claims arising out of a former manufacturing site located in Calvert City, Kentucky (the "Calvert City Site"):

a. Policy HEC 4495806, for the period from January 1, 1973 through July 1, 1974, which provides a \$5 million part of a \$20 million per occurrence layer of excess liability insurance, excess of \$40 million.

b. Policy HEC 4356857, for the period from March 21, 1973 through July 1, 1974, provides up to \$15 million part of a \$40 million per occurrence layer of excess liability insurance, excess of \$60 million.

The Liquidator erroneously denied PolyOne's claims for coverage.

2. The Home Policies by their terms incorporate the terms, conditions and limitations of American Motorists Insurance Company excess insurance policy number 9YM113800 (the “AMICO Policy”)

3. The Home Policies, as with the underlying AMICO Policy to which they follow form, were all delivered to The B.F. Goodrich Company (“Goodrich”) at its Akron, Ohio headquarters, and by their terms cover liabilities “anywhere in the world.” Neither the Home Policies nor the AMICO Policy make any mention of potential risks located in the Commonwealth of Kentucky. By contrast, Home Policy number HEC 4356857, by endorsement effective at policy inception, was explicitly “countersigned for the – State of Ohio.”

4. PolyOne is a named insured under the Home Policies, as follows:

a. The AMICO Policy, whose terms and conditions are deemed incorporated into the Home Policies, provides that “[t]he term ‘named insured’ includes The B.F. Goodrich Company, its divisions and subsidiaries, and any associated and affiliated corporations under the ownership, financial control or active management of The B.F. Goodrich Company whether now or hereafter constituted.”

b. During the time period from July 1, 1973 through July 1, 1974, the Calvert City Site was owned and operated by Goodrich or a wholly-owned subsidiary of Goodrich. In 1990, Goodrich sold part of the Calvert City Site, retaining many of the associated environmental liabilities, to Westlake Monomers Corporation. Thereafter, Westlake Monomers Corporation acquired the remaining PVC production assets at the Calvert City Site from Goodrich. Westlake Vinyls, Inc. now conducts PVC production operations at the site.

c. In 1993, Goodrich implemented a strategy to exit the PVC business by transferring assets and related environmental liabilities, including environmental liabilities related to the Calvert City Site, from what was then known as its Geon Vinyl Division to a newly-formed, wholly-owned subsidiary, The Geon Company (“Geon”).

d. Pursuant to the Amended and Restated General Assignment and Bill of Sale Relating to the Goodrich PVC Business, dated as of April 27, 1993, it was “the understanding and intention of Geon and Goodrich that the coverage” under “contracts and policies of insurance” would “extend[] automatically to Geon as successor to Goodrich in the Goodrich PVC Business under the terms thereof.”

e. PolyOne is a successor-by-merger to Geon, as the surviving corporation following a 2000 merger between Geon and the M.A. Hanna Company.

f. PolyOne, as a successor-by-merger to Geon, was a part of Goodrich (or one of its “divisions,” “subsidiaries,” or “associated and affiliated corporations under” Goodrich’s “ownership, financial control or active management”) “as now existing” during the time period from July 1, 1973 through July 1, 1974, and as that part of Goodrich (or “division,” “subsidiary,” or “associated and affiliated corporation under” Goodrich’s “ownership, financial control or active management”) is now “hereafter constituted.”

g. Therefore, PolyOne is a “named insured” under the Home Policies under the plain and unambiguous terms of the AMICO Policy, as incorporated by reference into the Home Policies.

5. PolyOne has incurred nearly \$59 million in unreimbursed liability costs associated with claims arising out of environmental contamination at the Calvert City Site. PolyOne will also incur substantial additional costs related to Calvert City Site-related liabilities; as of June 30, 2019, estimated future costs for Calvert City Site-related liabilities exceeded \$100 million.

6. PolyOne filed a timely proof of claim with The Home Insurance Company in Liquidation on June 10, 2004.

7. By Notice of Determination dated June 13, 2019 (Exhibit A hereto), the Liquidator erroneously denied PolyOne’s claim against the Home Policies at issue here in its entirety, on three grounds:

a. The Liquidator found that “PolyOne is not an insured under the policies’ provisions or by operation of law.”

b. The Liquidator found that “[c]osts allocable to Home’s period of coverage are insufficient to reach the policies’ respective attachment points pursuant to applicable Kentucky law requiring that coverage for indivisible environmental property damage ongoing and continuous during various policy periods is to be allocated over time periods and pro-rated to policy periods accordingly.”

c. The Liquidator found that “Policy requirements that the issuers of the underlying coverage have paid or have been held liable to pay the full amount of the underlying limits of \$40 million and \$60 million respectively have not been met.”

8. The Liquidator’s findings are contrary to fact and governing law, and PolyOne is in fact entitled to coverage under the Home Policies for environmental liabilities arising from the Calvert City Site, for the following reasons:

a. As discussed above, PolyOne is a “named insured” under the plain language of the AMICO Policy, as incorporated by reference into the Home Policies.

b. The limits of the underlying AMICO Policy, and all other underlying policies, have been exhausted by payment of claims, or are deemed exhausted by settlement.

c. Costs that PolyOne has incurred, or will incur, easily reach the Home Policies’ attachment points.

i. Ohio law, rather than Kentucky law, governs the construction and application of the Home Policies to environmental liabilities related to the Calvert City Site. Indeed, on information and belief, the Home Insurance Company argued for the application of Ohio law to resolve coverage for Calvert City Site-related liabilities under the very Home Policies at issue in this Objection, in filings with the courts of Ohio in a pre-liquidation lawsuit brought by Goodrich. Further, the courts of Ohio accepted this argument and applied Ohio substantive

law to Goodrich's claims against the Home Policies for Calvert City Site-related liabilities. *See, e.g.,* Combined Brief of Appellees, *The B.F. Goodrich Co. v. Commercial Union Ins. Co.*, No. 20936 (Ohio App. 9th Dist., Summit Cty.) (in which the Home Insurance Company argues coverage questions applying Ohio substantive law); *see also B.F. Goodrich Co. v. Commercial Union Ins. Co.*, No. 20936, 2002 WL 31114948 (Ohio App. 9th Dist., Summit Cty. Sept. 25, 2002) (deciding coverage questions by applying Ohio substantive law).

ii. Under controlling Ohio law, the Home Policies are triggered by Calvert City Site-related liabilities because a continuous and progressive process of ongoing property damage took place in part during the policy periods of the Home Policies. *See, e.g., Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 769 N.E.2d 835 (Ohio 2002).

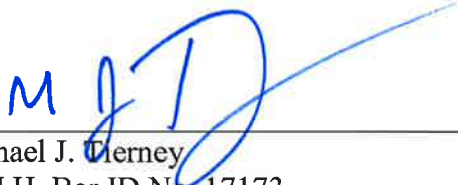
iii. Further under controlling Ohio law, PolyOne is entitled to allocate on an "all sums" basis all losses related to the Calvert City Site to the policy period of the Home Policies. *See, e.g., Goodyear.*

iv. After doing so, and after taking account of payments made by underlying insurers, PolyOne's unreimbursed liabilities relating to the Calvert City Site easily exceed the attachment points of the Home Policies, and indeed exceed (or will exceed) the Home Policies' limits, such that PolyOne should be allowed a claim for the full limits of the Home Policies, \$20 million in total.

WHEREFORE, PolyOne respectfully requests that the Court (i) issue a Notice of Disputed Claim pursuant to this Court's Order of January 19, 2005 and RSA 402-C:41; (ii) commence the Disputed Claims Process before a Referee; (iii) allow PolyOne's claim for the

full limits of the Home Policies, *i.e.*, \$20 million, and (iv) grant such other and further relief that the Court deems just and appropriate.

Dated: August 8, 2019



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Counsel for PolyOne Corporation

CERTIFICATE OF SERVICE

I certify that today I am serving a true and correct copy of the foregoing PolyOne Corporation's Objection to Liquidator's Denial of Claim, by first class mail, to Eric A. Smith and J. Christopher Marshall (counsel for the Liquidator) and all other parties on the attached Service List.

Date: August 8, 2019



Michael J. Tierney

Exhibit A

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720
Manchester, New Hampshire 03105-1720
Tel: (800) 347-0014

Date: 6/13/2019

Class: II

PolyOne Corporation c/o Lori Siwik
SandRun Risk
4199 Kinross Lakes Pky Ste 275
Richfield, OH 44286

RE: NOTICE OF DETERMINATION
Proof of Claim No.: INSU703957-01 INSU703968

Determination Summary

Gross Amount of Claim	: \$ 156,752,212.76
Amount Allowed by Liquidation	: \$ 0

Explanation: PolyOne Corporation's (PolyOne) Proof of Claim (POC) seeks an allowance for its payments of costs to address environmental contamination arising from B. F. Goodrich Company's (BFG) operation of a facility in Calvert City, Kentucky (site) under policies issued by The Home Insurance Company (Home) to BFG including excess liability policies HEC 4356627 for the policy term 1/1/73 to 7/1/74 attaching \$5 million part of \$20 million in excess of \$40 million underlying coverage and HEC 4356857 for the policy term 3/21/73 to 7/1/74 attaching \$15 million part of \$40 million in excess of \$60 million underlying coverage.

According to materials PolyOne submitted in support of its POC, it paid the aforesaid costs pursuant to an Amended and Restated Assumption of Liabilities and Indemnification Agreement (ALIA) between Geon Company and BFG as a part of a transaction in March 1993.

PolyOne has not submitted proof that an environmental regulator or other third party has made a claim against it asserting that it is liable for costs to address environmental contamination arising from the site. The sole purported basis for PolyOne's payment of environmental response costs is the ALIA.

The Liquidator has determined that PolyOne's POC is disallowed for the following reasons:

Costs allocable to Home's period of coverage are insufficient to reach the policies' respective attachment points pursuant to applicable Kentucky law requiring that coverage for indivisible environmental property damage ongoing and continuous during various

policy periods is to be allocated over time periods and pro-rated to policy periods accordingly.

Policy requirements that the issuers of the underlying coverage have paid or have been held liable to pay the full amount of the underlying limits of \$40 million and \$60 million respectively have not been met.

PolyOne is not an insured under the policies' provisions or by operation of law.

Although the above reasons are dispositive of whether PolyOne is entitled to an allowance under policies issued to BFG, the Liquidator hereby reserves all rights and defenses under the policies and applicable law.

Additional Notices of Determination will be issued in the future for PolyOne's claims regarding Hanna Mining Company, Day International Corporation and Dennis Chemical Company, Inc. under POC numbers INSU703969; INSU703970; INSU703971; INSU703972; INSU703973; INSU703974; INSU703975; INSU703986 and INSU703987.

Dear Claimant :

The purpose of this letter is to provide you with a determination set forth above of claims you have presented to The Home Insurance Company in Liquidation ("The Home"), under the Proof(s) of Claim specified above. The Home expects to present notice of this determination to the Superior Court for Merrimack County, New Hampshire (the "Court") for approval in accordance with New Hampshire Revised Statute, RSA 402-C:45. Read this Notice of Determination carefully as it sets forth your rights and obligations in detail.

The Home has now made a Determination on the claims as set forth above in accordance with The Home Claim Procedures (the "Procedures")* approved by the Court. If the claim has been allowed, in whole or in part, it has been assigned a Class II priority as a "policy related claim" pursuant to the Order of Distribution set forth in RSA 402-C:44 and will be placed in line for payment as directed by the Court from the assets of The Home. The first \$50 of the amount allowed on each claim in this class shall be deducted from the amount distributed as specified in RSA 402-C:44.

You may have other claims against The Home for which you may receive other Notices of Determination. You will have a separate right to dispute each Notice of Determination. If your claim has been allowed in whole or in part, this Notice of Determination does not mean that your claim will immediately be paid, or that it will be paid in full or at all. Pursuant to order of the Court, The Home may make distributions of its assets as a percentage of all allowed claims in a particular priority class in The Home estate as

*A copy of the January 19, 2005 Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation may be obtained from the website of the Office of the Liquidation Clerk for The Home Insurance Company in Liquidation and US International Reinsurance Company in Liquidation, www.hicilclerk.org

approved by the Court. The amount of the final payment for allowed claims will be determined by the final ratio of assets to liabilities and the applicable priority. Please be advised that the final percentage of payment you receive from The Home, at the time The Home estate is finally closed, is the total payment amount that you will be entitled to for this claim.

The Liquidator does not expect there to be assets sufficient to make a distribution to creditors in classes below Class II.

Any and all distributions of assets may be affected and/or reduced by any payments you have received on this claim from any other sources not listed on the Notice of Distribution. Any such distributions by The Home are based on The Home's knowledge and/or understanding of the amounts you have received in settlement and/or reimbursement of this claim from all other sources at the time of the allowance or thereafter. Should The Home subsequently become aware of prior recoveries from other sources The Home has the right to reduce its future distribution payments to you to the extent of such other recoveries or to seek and obtain repayment from you with respect to any previous distributions that were made to you. The Home policy against which this claim is made contains certain limits. New Hampshire RSA 402-C:40, IV provides that in the event multiple claims against such a policy are filed, and the aggregate allowed amount of all claims to which the same limit of liability in the policy is applicable exceeds that limit, then each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. The Liquidator is presently unaware of any proof of claim filed in the Home estate asserting a claim subject to the same limit in the Home policy as this claim. However, if an allowance is made such that the aggregate allowed amount of all claims subject to the same limit exceeds the limit, each claim will be prorated so that the total equals the policy limit. The Liquidator will be unable to determine whether, or the extent to which your claim may be subject to proration until all claims against the policy are identified and evaluated. If the aggregate allowed amount of claims exceeds the applicable limit such that your claim is subject to proration, the Liquidator will inform you accordingly.

Further, if you seek or receive any future payment from any other source on this claim after you receive a distribution payment from The Home you must notify The Home at the address below and The Home has the right to recover from you the distribution payments in whole or in part, to the extent of any such other future recoveries.

As a condition to receipt of any distributions, The Home shall be entitled to any rights to subrogation you may have against any third party and you shall be deemed to have assigned to The Home such rights upon receipt of any distributions. You shall also be obliged to reimburse The Home for any legal fees or other costs associated with The Home recovering from you any distribution payments to which you are not entitled.

The following instructions apply to this Notice of Determination:

Claim Allowed

1. If this claim has been allowed in whole or in part and you agree with the determination, sign and date the enclosed Acknowledgment of Receipt of the Notice of Determination and mail the completed Acknowledgment to The Home.

Claim Disallowed

2. A. If all or part of your claim has been disallowed or you wish to dispute the determination or creditor classification for any reason, you may file a Request for Review with the Liquidator. The Request for Review is the first of two steps in the process of disputing a claim determination. The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination.

REQUEST FOR REVIEW FILING REQUIREMENTS:

- (a) Sign and return the attached Acknowledgment of Receipt form.
- (b) On a separate page, state specifically the reasons(s) you believe that the determination is in error and how it should be modified. Please note the Proof of Claim number on that page and sign the page.
- (c) Mail the Request for Review to:
The Home Insurance Company in Liquidation
P.O. Box 1720
Manchester, NH 03105-1720

You should keep a copy of this Notice of Determination, Acknowledgment of Receipt and Request for Review, then mail the Original Request for Review to us by U.S. Certified Mail.

- (d) The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination. The Request for Review must be in writing.
- (e) The Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination.

IF A REQUEST FOR REVIEW IS NOT FILED WITH THE HOME WITHIN THE THIRTY (30) DAY PERIOD, YOU MAY NONETHELESS DIRECTLY FILE AN OBJECTION WITH THE COURT WITHIN SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE. You do not have to file the Request for Review as a prerequisite to dispute the Notice of Determination. Please see Section 2B (below) for the Objections to Denial of Claims.

B. If your claim is disallowed in whole or in part, you may file an Objection with the Court at

Office of the Clerk, Merrimack County Superior Court
163 N. Main Street, P.O. Box 2880
Concord, New Hampshire 03301-2880
Attention: The Home Docket No. 03-E-0106

within sixty (60) days from the mailing of the Notice of Determination and bypass the Request for Review procedures as noted in Section 2A (above). If the Request for Review is timely filed, as outlined in Section 2A, the Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination. If the redetermination is to disallow the claim, you may still file an Objection with the Court. You have sixty (60) days from the mailing of the Notice of Redetermination to file your Objection. Please also sign and return the Acknowledgment of Receipt form and mail a copy of the Objection to the Liquidator.

IF YOU DO NOT FILE AN OBJECTION WITH THE COURT WITHIN EITHER SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE OF DETERMINATION OR SIXTY (60) DAYS FROM THE MAILING OF ANY NOTICE OF REDETERMINATION, YOU MAY NOT FURTHER OBJECT TO THE DETERMINATION.

A timely filed Objection will be treated as a Disputed Claim and will be referred to the Liquidation Clerk's Office for adjudication by a Referee in accordance with the Procedures.

3. You must notify The Home of any changes in your mailing address. This will ensure your participation in future distributions, as applicable. For purposes of keeping The Home informed of your current address, please notify us at the address given on the letterhead above.

Sincerely yours,

Peter Bengelsdorf, Special Deputy Liquidator
For John R. Elias, Liquidator
of The Home Insurance Company in Liquidation

If you wish to speak to someone regarding this Notice of Determination, please contact:

Ron Barta
Senior Manager
Home Insurance Company in Liquidation
Phone : 212-530-4054

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720

Manchester, New Hampshire 03105-1720

Tel: (800) 347-0014

POC #: INSU703957-01 INSU703968

Amount Allowed: \$ 0

PolyOne Corporation c/o Lori Siwik
SandRun Risk
4199 Kinross Lakes Pky Ste 275
Richfield, OH 44286

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge receipt of the Notice of Determination as a Class II Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Determination of my Claim against The Home Insurance Company in Liquidation and in that regard advise as follows:

(Check off all applicable items.)

I agree to the determination.

I reject the determination and want to file a Request for Review (specific reasons must be included along with return of the signed Acknowledgment).

I reject the determination and intend to file a separate Objection with the Court, without filing a Request for Review.

I have not assigned any part of this claim.

I have not made any other recoveries with respect to this claim.

I have not sought and do not intend to seek any other recoveries with respect to this claim.

I have made recovery from others with respect to this claim (full details must be included with this Acknowledgment).

I have sought or intend to seek recovery from others with respect to this claim (full details must be included with this Acknowledgment).

I request that The Home mail further correspondence to:

_____ Same name as above.
New name _____

_____ Same address as above
New address _____

This Acknowledgment of Receipt must be completed, signed and returned to The Home in order to be eligible for distributions from The Home estate as directed by the Court.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SERVICE LIST

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