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

MW CUSTOM PAPERS LLC'S OBJECTIONS TO LIQUIDATOR'S MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE

MW Custom Papers LLC ("MWCP"), successor to the Mead Corporation ("Mead"), hereby objects to the Motion filed by Jon R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), seeking an order establishing a Claim Amendment Deadline. The proposed order directing the Liquidator to "reject all [so-called] Potential Claims, effective as of the Claim Amendment Deadline, without consideration of their merits" is contrary to the express language and equitable purposes of the Insurers Rehabilitation and Liquidation Act, RSA 402-C (the "Act"), and it would improperly cut off legitimate rights of policyholders, like MWCP, with open proofs of claim for ongoing costs, resulting in disparate treatment of similarly situated Class II priority claims.

I. Critical Aspects of the Background Relied on By the Liquidator to Justify the Relief Sought Simply Do Not Apply to MWCP.

MWCP is one of the 131 policyholders identified by the Liquidator as having an open non-workers compensation proof of claim involving long-tail exposures.[1] With respect to these 131 open claims, the Liquidator broadly asserts that in "most" or "certain" instances (i) the policyholders have underlying liabilities that "are being fully paid by solvent insurers,"

[1] As relevant here, MWCP's open proof of claim involves coverage for underlying asbestos bodily injury claims.

(ii) Home wrote only "high level excess coverage" that may not be implicated for "many years, if ever," and (iii) the policyholders "generally are not willing to voluntarily resolve their proofs of claim." Liquidator's Motion at 5 (*citing* Bengelsdoff Aff., ¶ 8). These characterizations do not apply to MWCP. Rather, MWCP's open proof of claim serves as a counter example to the picture that the Liquidator seeks to paint.

During the period from December 1968 to June 1976, Home wrote $83 million (in annual limits) worth of umbrella/excess coverage to MWCP. Affidavit of Kymberly T. Wellons in Opposition to Motion for Approval of Claim Amendment Deadline ("Wellons Aff."), ¶ 4. $43 million of this coverage is not "high level excess," but rather attaches at the relatively low (in the context of asbestos claims) level of $4.3 and $5.3 million dollars. Wellons Aff., ¶ 5. Further, MWCP's lower-level Home coverage is presently being implicated by underlying asbestos bodily injury claims asserted against MWCP. MWCP calculates that Home owes over $1 million in past costs, as of September 2019; and Home's coverage will continue to be implicated by underlying asbestos bodily injury claims against MWCP into the foreseeable future. Wellons Aff., ¶ 5. Finally, MWCP previously expressed an interest in voluntarily resolving its proof of claim, but the Home's administrative claim staff did not engage with MWCP until recently, after the Liquidator filed the instant Motion. Wellons Aff., ¶ 6.

For the foregoing reasons, and those discussed below, imposing an arbitrary 150-day cut-off for so-called "IBNR" claims[2] would improperly and unjustifiably terminate MWCP's rights

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[2] As set forth in the Liquidator's Motion, "IBNR" refers to underlying claims that have been "incurred but not reported." As discussed below, the Liquidator's Motion characterizes such claims as "wholly contingent," "potential" and/or "unknown" and therefore not allowable or protected under the Act. Liquidator's Motion at 12, 21. In reality, particularly in the context of long-tail asbestos claims, where individuals were exposed, and their injuries began, decades ago, IBNR claims are more properly viewed as allowable contingent claims under RSA 402-C:39, III and/or "unliquidated and undetermined" claims protected under RSA 402-C:46, I.

under the Home policies and Act, and would treat MWCP differently from other policyholders with Class II priority claims who have, upon information and belief, presented allowed claims involving IBNR extending beyond the proposed cut-off date.

II. The Liquidator's Motion is Contrary to the Express Language and Equitable Purposes of the Act

Imposing an arbitrary 150-day cut-off period for asbestos-related IBNR claims is contrary to the express language and purposes of the Act. The Liquidator's assertion that the Act does not allow or protect IBNR claims because they are "wholly contingent" and purely "potential," s*ee* Liquidator's Motion at 12 and 21, is wrong on many levels.

First, there is no support in the Act for the Liquidator's concept of "wholly contingent" claims not being allowed. RSA 402-C:39, III states that "[a] claim may be allowed even if contingent." The Act does not recognize gradations of "contingency." The Act nowhere requires that a "contingent" claim somehow be less than "wholly contingent" or otherwise distinguish between contingent claims that are "known" and those that have been incurred but not yet reported to the policyholder. *See* Liquidator's Motion at 12. And even if the Act were to require that a "contingent" claim be less than "wholly contingent," which it does not, the asbestos bodily injuries liabilities faced by MWCP satisfy a less than wholly contingent standard. Importantly, the Home policies provide coverage for bodily injuries that occurred during the policy periods, which are from 1968 to 1976. MWCP's IBNR claims involve individuals who will assert claims for bodily injury against MWCP based on exposure and injuries that occurred during this period. From an insurance and actuarial perspective, these claim are plainly not "wholly contingent." The individuals have already been exposed and injured. As such, IBNR claims are more properly viewed as "unliquidated and undetermined" claims, which are protected under RSA 402-C:46, III.

Second, although there are no New Hampshire cases addressing the allowance of IBNR claims under the Act, courts in jurisdictions with similar insolvency statutes have allowed recovery for IBNR claims. For example, in *Angoff v. Holland-American Insurance Company Trust*, the Missouri Court of Appeals held that the Missouri liquidation statute allowed for determinations that included IBNR components because the statute expressly allowed for the filing of contingent claims. *See* 937 S.W.2d 213, 218 (Mo. Ct. App. 1996) (citing MO ST 375.1210). Conversely, in cases where courts have found that other liquidation statutes prohibit IBNR claims, the statutes strictly require that all claims be "***absolute***" before the last day to file a claim. *See, e.g., In re Liquidation of Integrity Ins. Co.*, 935 A.2d 1184, 1189 (N.J. 2007) (holding that IBNR claims were not cognizable because the New Jersey statute requires that all claims be "***absolute***" on or before the last day fixed for filing a claim) (citing N.J.S.A. 17:30C-28(a)) (emphasis added). RSA 402-C:39, III imposes no such requirement. Although RSA 402-C:37, II references "absolute" contingent claims, the Act does not impose a hard deadline by which such claims must become absolute and, as discussed below, allows late filing at any time so long as the estate is not prejudiced. Based on the plain language of the Act, IBNR claims are allowed just as any other form of contingent claim is allowed.

Third, consistent with the above, rather than authorizing the Liquidator to set an arbitrary deadline after which to reject IBNR claims without regard to their merits, as the Liquidator seeks to do, the Act sets forth a clear procedure under which the Liquidator is ***required*** to protect them. Section RSA 402-C:39, III states that contingent claims are allowed "if ***filed*** in accordance with 402-C:37, II" (emphasis added). Section 402-C:37, II, in turn, provides that "[f]or good cause shown, the liquidator ***shall*** recommend and the court ***shall*** permit a claimant to make a late filing to share in dividends, whether past or future, as if he were not late...." RSA 402-C:37, II

(emphasis added). Section 402-C:37, II goes on to provide a number of non-exhaustive examples of "good cause" including that a contingent claim later becomes absolute. *See* RSA 402-C:37, II (e). At the same time, RSA 402-C:46, I, states that "unliquidated and undetermined" claims are to be reasonably protected.

Faced with a clear statutory mandate to allow previously contingent claims as late filed as they become absolute, the Liquidator has two paths to follow when faced with IBNR claims: (i) the Liquidator can seek to voluntarily resolve such contingent claims (through actuarial estimation) and thereby eliminate the need to deal with them as they mature, which upon information and belief the Liquidator has been busy doing with other policyholders; or (ii) failing a voluntary resolution, the Liquidator must keep the estate open and allow them as late filed claims as they become absolute. The Liquidator can avoid the second statutorily mandated path only if doing so would "prejudice the orderly administration of the estate." RSA 402-C:37, II; RSA 402-C:37, III. This is consistent with the mandate in RSA 402-C:46, I that "unliquidated and undetermined" claims are to be protected.

As discussed above, the Liquidator has made no showing that following the statutorily mandated path as respects MWCP's IBNR claims would prejudice the orderly administration of the estate. Instead, the Liquidator's characterizations of the problems and conundrums it faces with open proofs of claim do not apply to MWCP, and the Liquidator has to date not made an attempt to voluntarily resolve MWCP's claim. By contrast, MWCP has legitimate claims for past and ***ongoing*** costs, which would be severely prejudiced by the imposition of an arbitrary 150-day cut-off. The Liquidator's Motion does not strike a "reasonable balance between the expeditious completion of the liquidation and the protection if unliquidated and undetermined

claims" under RSA 402:C:46, I. Rather, it seeks to terminate, without justification, MWCP's legitimate rights.

Fourth, for similar reasons, imposing an arbitrary 150-day cut-off on MWCP's contingent claim would be contrary to a core purpose of the Act. The Act expressly states that it is to be "liberally construed to effectuate the purpose [of the Act]." RSA 402-C:1. One of the core purposes of the Act is to ensure "[e]quitable apportionment of any unavoidable loss." RSA 402-C:1, IV(d). For the reasons articulated above, MWCP's IBNR claims are, from an insurance and actuarial perspective, "unavoidable loss[es]." The individuals have already been exposed and injured. If the Liquidator's Motion were granted, claimants like MWCP with open proofs of claim for such unavoidable losses would be treated inequitably. Upon information and belief, consistent with the statutory framework discussed above, the Liquidator has voluntarily resolved many long-tail IBNR claims that will not become absolute before the 150-day cut-off period proposed by the Liquidator.[3] By attempting to foreclose MWCP and other claimants with open claim from recovery for similar liabilities, the Liquidator is seeking to create an inherently inequitable distribution system.

Further exacerbating the inequity, the Liquidator's definition of Potential Claims that will be barred after the 150-day cut-off period sweeps broadly to include all contingent claims that are not specifically asserted by a "known, identifiable person" within the next 150 days. *See* Liquidator's Motion at 15. The Potential Claims definition sweeps up ***all*** future projections of any type, no matter how well-supported the future projection is by data and actuarial analysis. This too is inconsistent with a liberal construction of the Act.

[3] To the extent disputed, such that proof of the Liquidator's prior treatment of similarly situated policyholders with IBNR claims is required, MWCP respectfully requests that the Court permit discovery on this issue.

III. The Arbitrary Cut-Off Would Prejudice the Negotiating Position of Policyholders with Open Proofs or Claims

To the extent that the Liquidator continues to attempt to resolve IBNR claims, imposing the arbitrary 150-day cut-off period requested by the Liquidator will also provide the Liquidator with unfair leverage in negotiating settlements of such unresolved claims. Claimants with which the Liquidator has not yet settled will be forced to resolve their claims quickly and potentially for less value or face the risk of receiving nothing for that portion of their IBNR claims falling after the 150-day cut-off period. The Liquidator will lack any incentive to value IBNR claims appropriately or give due consideration to well-founded projections because any claims that would be realized after the 150-day cut-off period will soon become valueless. In addition to implicitly authorizing the Liquidator to treat similarly-situated claimants differently, the cut-off period provides the Liquidator with unfair leverage, which runs counter to the equitable principles underlying the Act.

IV. The Liquidator's Ultimate Justification is a Straw Man

The Liquidator ultimately attempts to support its position by arguing that without the imposition of a cut-off period, the estate could never be closed. *See* Liquidator's Motion at 9. This argument is a strawman. To the extent that the desire to move toward closing the estate is a legitimate goal, it can be accomplished by setting a cut-off date by which actuarial IBNR claim projections must be submitted. Rather than cutting off all IBNR claims that are not fully realized 150 days from the date of this Court's order, the Court could instead require that all claimants provide any projection of their IBNR claims by the 150-day cut-off period. Setting a deadline for the submission of actuarial estimations of contingent claims could assist with the orderly administration of the estate without resulting in the inequities inherent in the Liquidator's proposal.

V. Request for Oral Argument

MWCP requests oral argument on the Liquidator's Motion for Approval of a Claim Amendment Deadline.

Dated: November 15, 2019

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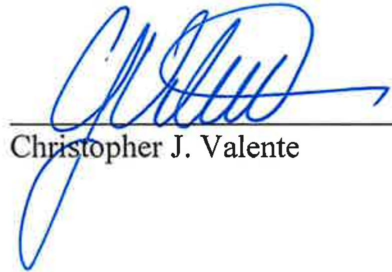
Certificate of Service

I hereby certify that a copy of the foregoing Objection's to Liquidator's Motion for Approval of Claim Amendment Deadline and Affidavit of Kymberly T. Wellons in Opposition to Motion for Approval of Claim Amendment Deadline was served this 15th of November, 2019 by First-Class Mail, postage prepaid to all persons on the attached service list.



Christopher J. Valente

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Docket No. 217-2003-EQ-00106

AFFIDAVIT OF KYMBERLY T. WELLONS IN OPPOSITION TO MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE

I, Kymberly T. Wellons, hereby depose and state as follows:

1. I am employed as Associate General Counsel of WestRock Company ("WestRock"). WestRock is the ultimate parent entity of MW Custom Papers LLC ("MWCP"). MWCP is the successor by merger to the legacy asbestos liabilities and corresponding insurance assets of the Mead Corporation ("Mead").

2. My duties as Associate General Counsel include the management and oversight of the defense of legacy Mead asbestos bodily injury claims (the "Underlying Asbestos Claims") and the management and oversight of corresponding insurance recovery efforts, including the proof of claim filed by Mead/MWCP in this liquidation, which proof of claim remains open.

3. The overwhelming majority of Underlying Asbestos Claims asserted against MWCP arise from asbestos-containing products manufactured by Mead during the 1960s and 1970s. The claimants in these cases allege that they were first exposed to asbestos fibers released from Mead's products in the 1960s and 1970s, and that this first exposure marked the commencement a continuous bodily injury process culminating in the development and diagnosis of cancers, including mesothelioma.

4. The Home Insurance Company ("Home") issued five umbrella/excess liability policies to Mead. The policies provide coverage for, *inter alia*, bodily injury that occurs during the policy period. The policy numbers, policy periods, attachment points and limits of the Home policies are as follows:

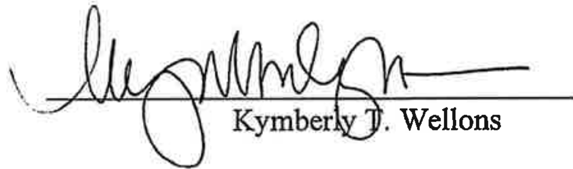
POLICY NUMBER	POLICY PERIOD	BODILY INJURY UNDERLYING LIMITS	BODILY INJURY AGGREGATE LIMITS
HEC 9 30 47 37	12/01/68-12/01/71	$4,300,000	$6,000,000
HEC 4 16 58 09	12/01/71-12/01/74	$5,300,000	$5,000,000
HEC 4 35 69 90	06/10/73-06/10/76	$5,300,000	$5,000,000
HEC 4 35 63 78	07/01/72-06/10/73	$20,300,000	$10,000,000 p/o $20,000,000
HEC 4 35 69 91	06/10/73-06/10/76	$20,300,000	$10,000,000 p/o $20,000,000

5. As of September 2019, MWCP has paid in excess of $1 million in indemnity and defense costs on account of Underlying Asbestos Claims that are allocable to coverage issued by Home to Mead. MWCP is incurring additional indemnity and defense costs on account of Underlying Asbestos Claims allocable to the Home coverage, and it anticipates that it will continue to incur additional such costs into foreseeable future, beyond the Claim Amendment Deadline sought to be imposed by the Liquidator through the instant motion. More specifically, MWCP anticipates that it will incur over $20 million in additional indemnity and defense costs on account of Underlying Asbestos Claims allocable to the Home coverage issued to Mead.

6. The statement in paragraph 8 of the July 30, 2019 Affidavit of Peter A. Bengelsdorf that the "insureds whose proofs of claim remain open generally are not willing to voluntarily resolve their proofs of claim" is not correct with respect to MWCP. To the contrary,

MWCP, through counsel, previously expressed an interest in attempting to voluntarily resolve its proof of claim to Home's administrative claim staff, and MWCP remains interested in attempting to negotiate a voluntary resolution. Until recently (after the Liquidator filed the instant motion), Home's administrative claim staff did not engage with MWCP regarding a potential voluntary resolution of its proof of claim.

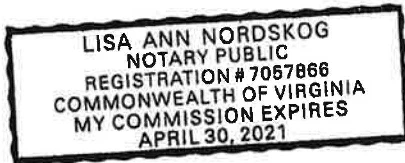
Signed under the penalties of perjury this 15 day of November 2019.



Kymberly T. Wellons

Sworn to and subscribed before
me this 15 day of November, 2019.

Notary Public



LISA ANN NORDSKOG
NOTARY PUBLIC
REGISTRATION # 7057866
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
APRIL 30, 2021