

THE STATE OF NEW HAMPSHIRE

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

**In re Liquidation Number: 2015-HICIL-60 Bridgestone Americas
Tire Operations, LLC**

Proof of Claim No.: INSU240739-01

Claimant Name: Bridgestone Americas Tire Operations, LLC

**BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC'S OBJECTION TO
THE LIQUIDATOR'S DENIAL OF CLAIM RELATING TO THE HOME
INSURANCE COMPANY EXCESS LIABILITY POLICIES
NOS. HEC 4429222 AND HEC 4356801**

Bridgestone Americas Tire Operations, LLC, formerly known as The Firestone Tire & Rubber Co. ("Bridgestone"),¹ objects in part to the denial of claim set forth in the Liquidator's Notice of Determination (attached as Exhibit A), for the reasons set forth below.

1. This Objection was filed with the Merrimack County Superior Court July 23, 2015 pursuant to RSA 402-C:41, I, and is refiled with the Referee pursuant to the Notice of Disputed Claim dated September 7, 2015.

2. Bridgestone is entitled to indemnification under the captioned excess liability policies (the "Policies") issued by The Home Insurance Company ("The Home") for costs of defense and settlement that it incurred in connection with certain asbestos claims that have been brought against it. All of these claims are product liability claims arising from the alleged injurious exposure to asbestos by individuals who worked with a particular asbestos-containing brake lining product manufactured and sold by World Bestos, a former unincorporated division of Bridgestone.

¹ Bridgestone Americas Tire Operations, LLC, is the successor to Bridgestone/Firestone North American Tire, LLC, which filed the original Proof of Claim.

3. For the 3/1/73 to 12/1/75 policy period, Home had \$10 million of coverage in the first excess layer (Policy No. 4429222). That \$10 million in “per occurrence” limits sits above a \$500,000 self-insured retention (“SIR”).

4. The Home also issued another excess liability policy for this same period (Policy No. 4356801) that was a \$5,000,000 part of \$10,000,000 layer of coverage that sits above \$40,000,000 in limits.

5. The basis of Bridgestone’s claim for indemnification under the Policies can be summarized as follows:

- (a) Bridgestone purchased the World Bestos Corporation on December 22, 1938. At that time World Bestos had a single plant located in Patterson, New Jersey. In 1942, this sole plant site was moved to New Castle, Indiana, where all of the operations of this division remained until the division was sold by Bridgestone to Royal Industries, Inc. on February 25, 1975.
- (b) World Bestos made asbestos-containing brake lining.
- (c) All the product liability claims at issue arise out of an alleged injurious exposure to the asbestos used in this brake lining product. Plaintiffs in those underlying claims contend that this work – particularly the handling, cutting, grinding or sanding of a replacement pad or fastening of a new brake lining to the metal backing – resulted in exposure to freed asbestos fibers. Plaintiffs allege against Bridgestone, like they allege against brake lining manufacturers generally, that the World Bestos product was inherently dangerous and caused injury when used as intended.

- (d) As of October 16, 2014, Bridgestone had incurred \$50,884,612 in defense and indemnity costs in connection with the World Bestos product liability claims. Bridgestone expects to incur additional costs in the defense and settlement of these claims in the future.
- (e) As construed under Ohio law, the defined term “Personal Injuries” includes the disease process that takes place continuously from the first exposure to freed asbestos fibers to the manifestation of asbestos related disease. The Policies are thus triggered by a claimant’s asbestos-related injury if those policies were in effect at any time from the claimant’s initial exposure to asbestos from the brake lining product until manifestation of the plaintiff’s disease.
- (f) The claims brought against Bridgestone for alleged injuries arising from the manufacture and sale of its brake lining product constitute a single occurrence under the “Occurrence” definition of the defendants’ policies, which defines the term as follows :
- [A]n accident or a happening or event or a continuous or repeated exposure to conditions which unexpectedly and unintentionally results in personal injury, property damage or advertising injury during the policy period. All such exposure to substantially the same general conditions existing at or emanating from one premises location shall be deemed one occurrence.
- (g) Notably, the Home policy does not require that the accident, happening, or event, or a continuous or repeated exposure to conditions, happen during the policy period. Rather, such accident, happening, or event, or continuous or repeated exposure to conditions, whenever they occurred, must only *result* in personal injury during the policy period. In each of the product liability claims for which

Bridgestone seeks the cost of defense and indemnity, personal injury resulted during the policy period.

(h) Bridgestone has the right under Ohio law to allocate on an “all sums” basis its losses from the product liability claims. Under an all sums allocation, Bridgestone is entitled to allocate all of the losses from the product liability claims to the 3/1/73 to 12/1/75 policy period.

(i) The past product liability defense and indemnity costs alone exceed the \$50,000,000 in limits, including the SIR. Accordingly, the full limits of both Policies, \$15,000,000, are due and payable.

6. The Liquidator’s conclusion “that the underlying plaintiffs’ claims constitute separate and distinct occurrences” is contrary to Ohio law.

7. Bridgestone does not object to the Liquidator’s denial of any claim arising out of premises liability. The premises claims were released pursuant to a 1994 settlement agreement between Home and Firestone.

8. Bridgestone also does not dispute the Liquidator’s contention that Firestone previously commuted its primary and first layer excess coverage incepting prior to 3/1/73. Those policies, however, do not form any part of its claim in this matter.

Respectfully submitted,

/s/ Mark J. Andreini

Steven E. Sigalow (0023503)

Mark J. Andreini (0063815)

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114

Telephone: (216) 586-3939

Facsimile: (216) 579-0212

and

/s/ Robert E. Murphy, Jr.

Robert E. Murphy, Jr. NH Bar #1848
WADLEIGH, STARR & PETERS, PLLC
95 Market Street
Manchester, NH 03101
(603) 669-4140
rmurphy@wadleighlaw.com

ATTORNEYS FOR BRIDGESTONE
AMERICAS TIRE OPERATIONS, LLC

Exhibit A

THE HOME INSURANCE COMPANY IN LIQUIDATION

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

Date: 5/26/2015

Class: II

The Claro Group, LLC
Mr. Joseph Tess
321 N. Clark St., Suite 1200
Chicago, IL 60654

RE: NOTICE OF DETERMINATION
Proof of Claim No.: INSU240739-01

Determination Summary

Gross Amount of Claim	: \$ 29,926,671.00
Amount Allowed by Liquidation	: \$ 0

Explanation: Home issued 7 excess liability policies to Firestone Tire & Rubber Company, in effect during various periods from 3/1/73 through 3/1/78. Firestone had previously commuted its primary and first layer excess coverage incepting prior to 3/1/73. Bridgestone/Firestone North American Tire, LLC, successor in interest to Bridgestone/Firestone, Inc. fka The Firestone Tire & Rubber Company, filed a Proof of Claim in the Home liquidation, asserting coverage under the Home policies for liabilities arising out of asbestos premises and products claims. The premises claims were released pursuant to a 1994 settlement agreement between Home and Firestone. With respect to the products claims, the Claimant asserts the position that all asbestos claims arise out of and constitute a single occurrence under the Home policies. In consideration of the numerous periods, locations and myriad of circumstances attendant to plaintiffs exposures to asbestos products and the various alleged injuries and diseases arising therefrom, and the terms and conditions of the Home policies under which the claims have been presented, as well as the jurisdictional case law addressing the specific issue of number of occurrences in the context of asbestos claims, it has been concluded that the underlying plaintiffs' claims constitute separate and distinct occurrences pursuant to the terms of the Home policies at issue. Since the per occurrence self-insured retentions underlying Home's policies do not contain aggregate limits applicable to the subject claims, the claims do not aggregate to reach the \$500,000 attachment level of Home's lowest attaching policy. Accordingly, the Proof of Claim is disallowed.

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 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.

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.

*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

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 Roger A. Sevigny, Liquidator
of The Home Insurance Company in Liquidation

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

Cheryl Gartland
Senior Manager
Home Insurance Company in Liquidation
Phone : 212-530-4002

CC:

Mark J. Andreini, Esq., Jones Day, 901 Lakeside Avenue, Cleveland, OH 44114

THE HOME INSURANCE COMPANY IN LIQUIDATION

P.O. Box 1720

Manchester, New Hampshire 03105-1720

Tel: (800) 347-0014

POC #: INSU240739-01

Amount Allowed: \$ 0

The Claro Group, LLC
Mr. Joseph Tess
321 N. Clark St., Suite 1200
Chicago, IL 60654

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: _____