

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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

In Re Liquidator Number: 2015-HICIL-60  
Proof of Claim Number: INSU240739-01  
Claimant Name: Bridgestone Americas Tire  
Operations, LLC

ASSENTED-TO REQUEST FOR BIFURCATION

Pursuant to Section 13 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation dated January 19, 2005 ("Claims Procedures Order"), Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), requests that the Referee issue an order bifurcating the issues of coverage and valuation of the claim submitted by Bridgestone Americas Tire Operations, LLC ("Bridgestone"). As reasons therefor, the Liquidator states:

1. Background. Home issued seven excess liability policies to Bridgestone's predecessor Firestone Tire & Rubber Company in the 1970's. The Home excess policies only attach after ultimate net loss arising from a single occurrence exceeds the self-insured retention specified in the policy. The lowest self-insured retention in the Home policies is \$500,000.

2. Bridgestone's predecessor Bridgestone/Firestone North American Tire, LLC, filed a proof of claim in the Home liquidation seeking coverage from Home with respect to underlying asbestos bodily injury claims against Bridgestone or its predecessors.

3. The Liquidator concluded that that the underlying plaintiffs' claims constitute distinct occurrences pursuant to the terms of the Home policies at issue and that Bridgestone thus

may not aggregate the claims to reach the \$500,000 attachment level of Home's lowest attaching policy. The Liquidator accordingly issued a notice of determination disallowing Bridgestone's proof of claim on May 26, 2015.

4. Bridgestone objected to the Liquidator's determination as to two excess policies on July 23, 2015. In its objection, Bridgestone contends that all or some of the underlying asbestos claims constitute a single occurrence, and that it may allocate all ultimate net loss on account of each occurrence to a particular policy period to the extent that such occurrence results in personal injury during the policy period.

5. Request for bifurcation. Section 13 of the Claims Procedures Order provides that: "To the extent The Home's coverage is contested . . . , at any time up to the Structuring Conference pursuant to Section 14, any party may request that the issues of coverage and valuation of the claim be bifurcated. When the issues are bifurcated, discovery and any proceeding shall be limited to the issue pending before the Referee at that time."

6. Home's coverage is contested in this disputed claim proceeding. The Liquidator denied Bridgestone's claim because the underlying asbestos claims constitute separate occurrences and do not exceed the \$500,000 self-insured retention. Bridgestone contends that (a) all or some of the claims constitute a single occurrence, and (b) it may allocate all ultimate net loss on account of each occurrence to a particular policy period to the extent that such occurrence results in personal injury during that policy period.

7. The first of these coverage issues – the "occurrence" issue – should be determined separately from and before the second issue and valuation. The occurrence issue will require discovery concerning the asbestos containing product or products at issue in the underlying claims and determinations concerning the application of the Home policies to those claims under

applicable law. In the event that the Liquidator's position is upheld in whole or in part, the "allocation" and valuation issues might either not need to be reached or be narrowed. The Liquidator believes that allocation and valuation issues would require discovery concerning the value of the claims against Bridgestone and its predecessors, the allocation of those values to the Home policies, and the amounts (if any) paid by other insurers toward those claims. These subjects may require expert analyses involving sensitive information that are potentially expensive and time-consuming but might be unnecessary if the occurrence issue is resolved in the Liquidator's favor.

8. Counsel for the Liquidator has conferred with counsel for Bridgestone concerning this motion, and Bridgestone has assented to the requested bifurcation.

WHEREFORE, the Liquidator requests that the Referee issue an order bifurcating this disputed claim proceeding so that the occurrence issue will be determined before the allocation issue and valuation.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, SOLELY AS  
LIQUIDATOR OF THE HOME  
INSURANCE COMPANY,

By his attorneys,

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December 22, 2015

**Certificate of Service**

I hereby certify that a copy of the foregoing Request for Bifurcation was sent this 22<sup>nd</sup> day of December, 2015, by email to counsel for Bridgestone.



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Eric A. Smith  
NH Bar ID No. 16952