

THE STATE OF NEW HAMPSHIRE**MERRIMACK, SS.****SUPERIOR COURT**

2005 MAR 28 A 9:14

Docket No. 03-E-0106**In the Matter of the Liquidation of
The Home Insurance Company**NH SUPERIOR COURT
2005 MAR 28 9:14 AM**LIQUIDATOR'S SUR-REPLY TO ACE COMPANIES' REPLY IN FURTHER
SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER ON REMAND**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator of The Home Insurance Company, submits this sur-reply to respond to the ACE Companies' reply in support of their motion for reconsideration as follows:

1. Like their original motion, the ACE Companies' reply (filed nineteen days after the March 4, 2005 scheduling conference) does not raise any issue relevant to the statutory question addressed in the Order on Remand. The statutes have not changed, and the Supreme Court has expressly held that even legislative rejection of a proposed amendment (not the case here) is irrelevant to the interpretation of existing law. State v. Warren, 147 N.H. 567, 572 (2002) (“[T]he legislative history of a proposed amendment rejected by a subsequent legislature does not alter our interpretation of the statute, particularly since the proposed amendment purported to clarify, not change, existing law.”). The ACE Companies do not even attempt to address Warren in their papers.

2. Nevertheless, the Liquidator is constrained to point out that the ACE Companies continue to mischaracterize the legislative events as a “rejection.” The materials submitted with the reply – a partial transcript of the Senate Committee hearing and an affidavit describing selected statements before the Committee – do not support the ACE Companies' argument that the Committee disagreed with the proposal on the merits. The ACE Companies actually go so

far as to say that by “rejecting” the proposed amendment the Senate Committee “confirmed that the Legislature never intended to allow a Class V creditor to use the administrative expense provision to obtain payment of its pre-liquidation claim ahead of other Class V creditors (as well as creditors in higher classes).” ACE Reply ¶ 2.

3. The Committee did no such thing. In fact, the Committee specifically addressed its consideration of the proposed amendment in its report to the full Senate on SB 74. Senator Foster, speaking for the Committee on the Senate floor, stated:

The committee also heard lots of testimony both in favor and against language which was contained in section 5 of the bill. The committee, without coming to a substantive determination on that language, felt because the matter was before the courts, it was best not to pass a measure that impacted the litigation in any way whatsoever.

Senate Banks and Insurance Committee, floor report to the Senate on SB 74, Senator Foster for the Committee (February 10, 2005) (emphasis added) (certified copy attached as Exhibit A; see pages 2 and 3). This legislative report removes any conceivable basis for the ACE Companies’ argument that the history of Senate Bill 74 supports reconsideration of the Order on Remand.

4. The Liquidator notes that the reply fails to mention the NAIC working group activity that was part of the ACE Companies’ original motion and addressed in the Liquidator’s opposition and the Affidavit of Douglas A. Hartz.

CONCLUSION

For the reasons stated above and in the Liquidator's opposition, the Court should deny the ACE Companies' motion for reconsideration.

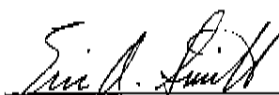
Respectfully submitted,

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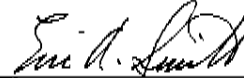


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March 25, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Sur-Reply to ACE Companies' Reply in Further Support of Motion for Reconsideration of Order on Remand was sent, this 25th day of March, 2005, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith

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