

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

2005 MAY 11 A 9:03

Docket No. 03-E-0106

In The Matter Of The Liquidation Of
The Home Insurance Company

BENJAMIN MOORE & CO.'S MEMORANDUM ON
ISSUES FOR 5/12/05 STATUS CONFERENCE

Benjamin Moore & Co. (BMC"), through its undersigned counsel, submits this Memorandum concerning the issues for the May 12, 2005, Status Conference.

1. The Liquidator of Home has filed a "Report" on the issues for the 5/12/05 status conference that is indicative of the flawed reasoning behind the Liquidator's positions on the discovery issues before the Court.
2. The Liquidator has objected to many of BMC's discovery requests on illegitimate grounds, and seeks to unduly restrict the scope of discovery on grounds that BMC does not have the same discovery rights as a litigant in adversary civil litigation. This has forced BMC to move to compel adequate responses to its Interrogatories and Request to Produce Documents. That motion is before the Court, and should result in disclosure of significant additional information by the Liquidator, for the reasons set forth in BMC's Motion to Compel, and its Reply Memorandum filed contemporaneously with this Memorandum.
3. The Liquidator apparently believes that he can deny legitimate discovery to BMC, and at the same time compel BMC to identify witnesses it may call to testify at the merits hearing in July, or other witnesses it may seek to depose. This puts the cart before the horse. The Court must rule on BMC's Motion to Compel, and give BMC access to the information it seeks in discovery, before BMC can reasonably be expected to provide a list of witnesses to the

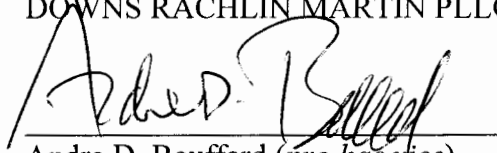
Liquidator. Moreover, BMC has had the Liquidator's Offer of Proof only since April 29, 2005, so there is ample time for witnesses to be identified once the Liquidator has fulfilled Home's discovery obligations.

Respectfully submitted,

May 10, 2005

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CERTIFICATE OF SERVICE

I hereby certify that on this day 10th of May, 2005, a copy of Benjamin Moore & Co.'s Memorandum on Issues For 5/12/05 Status Conference was served by first class mail, postage prepaid to the following:

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