

1                   BEFORE THE COURT-APPOINTED REFEREE  
2           IN RE THE HOME INSURANCE COMPANY IN LIQUIDATION  
3                   DISPUTED CLAIMS DOCKET  
4

5   In Re Liquidator Number:       22008-HICIL-35  
6   Proof of Claim Number:        EMTL 705271-01  
7   Claimant Name:                  VIAD Corp  
8   Claimant Number:  
9   Policy or Contract Number:   HEC 9557416  
  HEC 9304783  
  HEC 4344748  
10  Insured or Reinsured Name:   VIAD (predecessor The  
  Greyhound Corporation/  
  Transportation Leasing  
  Company)

11   Date of loss:  
12  
13  
14  
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16                   DEPOSITION OF DEBORAH J. DEPAOLI, ESQ.  
17  
18

19                                   Phoenix, Arizona  
20                                   January 12, 2009

21  
22  
23   BY:   SANDRA L. MUNTER, RPR/CSR  
24   Certified Reporter 50348  
25

ORIGINAL

1 about \$315,000 for our claim.

2 They rejected a number of our  
3 submissions. There was still a number of our  
4 submissions that were pending. Some were deemed  
5 ineligible, and through this process we discovered  
6 more claims that we should have made. So under my  
7 direction we filed, in 2006, reimbursement number  
8 two.

9 It was rejected due to some  
10 formalities, so we refiled reimbursement number  
11 two under my signature in December of 2007,  
12 sending voluminous boxes of documents and invoices  
13 and canceled checks, which we had to reconcile  
14 with each other in order to submit our claim.

15 Q You were not with Viad at the time that  
16 it entered into the remediation agreement for this  
17 site, were you?

18 A I was not. I am aware of the  
19 remediation agreement, however, though, because I  
20 was involved in 2000. I was here, so I was aware  
21 of the remediation project.

22 Q But you weren't involved on a firsthand  
23 basis with the decisions whether to enter into  
24 that agreement?

25 A No. Only aware of them through my

1 review of records.

2 Q When did Viad first give notice to the  
3 Home Insurance Company concerning environmental  
4 remediation at the San Diego site?

5 A To my knowledge, it was in as part of  
6 submitting a proof of claim.

7 Q That would have been in 2003?

8 A I think it was in 2004 that we  
9 submitted the proof of claim.

10 Q Were you involved in any discussions  
11 prior to that where the decision was made not to  
12 give notice to the Home?

13 A I'm aware of discussions, as working  
14 with the insurance department that in the late  
15 '90s, we submitted claims with and gave notices of  
16 claims to Home Insurance.

17 Those claims were essentially denied or  
18 denied by very long form letters that gave all the  
19 reasons why they weren't going to cover the  
20 matter. We sent, and I'm aware of this, we sent a  
21 number of documents to them. I'm also aware that  
22 we gave them history on, corporate history, as  
23 well as history of the site.

24 And in response to that, a couple years  
25 later, we got basically a form letter that

1 outlined all the reasons why there wasn't  
2 coverage.

3 Q To go back to my question, you weren't  
4 involved in any of those things because you  
5 weren't even at the company yet?

6 A No. I'm aware of them.

7 Q You've just seen documents?

8 A I've seen documents, yes. And I've  
9 talked to people in the insurance department.

10 Q You've seen documents and you've been  
11 told things by other people?

12 A Yes.

13 Q Isn't it true that with respect to  
14 these other sites, the reservation of rights  
15 letter asked for additional information from Viad?

16 A What is true and what I do know from  
17 talking to people in the insurance department, as  
18 well as the litigation department, is that we sent  
19 a lot of documents to Home Insurance.

20 And our response back was basically,  
21 "We don't have sufficient information." There  
22 wasn't a delineation of what they needed. And  
23 when they first responded to us, they didn't have  
24 their own policies, so we had to supply Home  
25 Insurance with the policy.

1 THE WITNESS: Yeah. We can certainly  
2 go to the corporate secretary's department and  
3 find that out very quickly on a break.

4 MR. SIMMONS: I think we dealt with all  
5 of this in our briefs, didn't we? Didn't you take  
6 the position they were headquartered in New York?

7 MR. O'CONNOR: I don't think anyone has  
8 disputed they were headquartered in New York until  
9 I saw Paragraph 7 of the affidavit, which I was  
10 surprised to see Delaware because --

11 Instead of me testifying...

12 Q (By Mr. O'Connor) You're not aware of  
13 Greyhound having a physical headquarters in the  
14 State of Delaware, are you?

15 A I am not.

16 MR. SIMMONS: It's a typo.

17 THE WITNESS: Yeah.

18 MR. SIMMONS: Typo. Sorry.

19 MR. O'CONNOR: I thought that might be  
20 right.

21 MR. SIMMONS: We'll correct that.

22 THE WITNESS: Yeah. That should be New  
23 York.

24 MR. SIMMONS: That's just a typo.

25

1           Q     (By Mr. O'Connor) You'll forgive me.  
2     There was one more thing that I wanted to ask you  
3     about in your affidavit. I've got to find it  
4     again.

5                     Let's turn to Page 4, Paragraph 14.  
6     The first sentence says the abatement order was a  
7     judgment that required Viad to remediate the  
8     property and, as such, Viad entered in a  
9     remediation agreement with the California Regional  
10    Water Quality Control board to clean up this site.

11                    What's the basis for your conclusion  
12    that the abatement order was a judgment?

13           A     By what we do and why we treat it. I  
14    mean, from a practical standpoint, we treat  
15    abatement orders as judgments, something you have  
16    to follow.

17                    From a legal perspective, they are  
18    judgments. They are an order that you have to  
19    comply with. If you do not comply with it by the  
20    time specified in the order, you will immediately  
21    start incurring penalties. So it is an order and  
22    a final judgment that you have to act upon.

23           Q     There's no judge involved?

24           A     There is no judge involved.

25           Q     And there's no court involved?

1           A       No court involved. There is statutory  
2 regulations that govern it. And based on those,  
3 the state regulators basically become the judge.  
4 They are the body, the governing body that tells  
5 you what you must do.

6           Q       But you're not claiming to be an expert  
7 on how California laws treat judgments, are you?

8           A       I'm not claiming to be a expert on  
9 California law. I do have experience dealing with  
10 abatement orders and knowledge of abatement  
11 orders. And they are something you have to treat  
12 as if they are a judgment. You have to treat them  
13 as if they are something final that you have to  
14 act upon, otherwise, you will incur penalties.

15          Q       You can go to court to challenge an  
16 abatement order, can't you?

17          A       You can appeal the abatement order,  
18 yes. That's why it's a judgment until you appeal  
19 it.

20          Q       You can take it to a court?

21          A       You can appeal an order, yes.

22          Q       You can appeal an order to where?

23          A       To the courts.

24          Q       You're not aware of any court order  
25 that relates to the San Diego site?

1 A I am aware of the abatement order --

2 Q That's it?

3 A -- directing Viad to remediate.

4 Q Okay.

5 A That is the only thing I'm aware of.

6 MR. O'CONNOR: Ms. DePaoli, I have no  
7 further questions. Thank you.

8 THE WITNESS: Okay. Thank you.

9 MR. SIMMONS: All right.

10

11

EXAMINATION

12 BY MR. SIMMONS:

13 Q Ms. DePaoli, I want to ask you a few  
14 questions and follow up with some of the things  
15 that Mr. O'Connor asked you about.

16 And first and foremost, the policies  
17 that we have that are the subject matter of this  
18 claim to Home in liquidation, these are policies  
19 that I understand are owned by Viad now?

20 A Yes.

21 Q And Viad believes that it is entitled  
22 to coverage under those policies?

23 A Yes. Viad does believe it's entitled  
24 to coverage.

25 Q And one of the things that generated



1 this was, as I understand it, the experts, for a  
2 period of ten years, did not believe that the cost  
3 of this remediation would be significant enough to  
4 implicate insurance; is that right?

5 MR. O'CONNOR: Objection to form.

6 MR. SIMMONS: I'll rephrase the  
7 question.

8 Q (By Mr. Simmons) Was there a period of  
9 time in which there was any belief that the cost  
10 of remediation would be low enough so that  
11 insurance would not be implicated?

12 MR. O'CONNOR: Objection to form.

13 THE WITNESS: Yes. It wasn't until  
14 1999, when the director of the Regional Water  
15 Quality Control Board directed Viad to do an  
16 excavation, which is a dig and haul, of the soil  
17 to remediate the groundwater contamination.

18 It wasn't until that time that we  
19 realized the cost would well exceed what would be  
20 reimbursed under the Underground Storage Tank  
21 Reimbursement Fund of the State of California.

22 Q (By Mr. Simmons) All right. And was  
23 there this period of time that, when the dig and  
24 haul was not required in order to remediate the  
25 groundwater, that the cost was such that because