

**THE STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS.**

**SUPERIOR COURT**

**Docket No. 217-2003-EQ-00106**

**In the Matter of the Liquidation of  
The Home Insurance Company**

**LIQUIDATOR'S SUR-REPLY TO WESTERN TRUST'S  
REPLY MEMORANDUM IN SUPPORT OF ITS OBJECTION**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator of Home,<sup>1</sup> submits this sur-reply to address a new argument raised in the March 30, 2016 Reply Memorandum ("Reply") filed by the Western Trust in support of its Objection.

In its Reply, the Western Trust argues for the first time that the "Policies-related expenses" addressed in Paragraph 9(B)(1) of the Settlement Agreement are properly defined by reference to the phrase "Policy Related Claims" in the priority provision in the Act, RSA 402-C:44, II. Reply at 9-10. This just seizes on an irrelevant similarity of phrase. If the Act provided "the best evidence" (Reply at 9) of what the Agreement means, then the Trust would have raised the point earlier. The argument is wrong for several reasons.

First, the provision of the Settlement Agreement at issue does not incorporate the statute on which the Western Trust now relies. Paragraph 9(B)(1) does not use the phrase "Policy Related Claim," nor does it cite to RSA 402-C:44, II. The Agreement is specific in its words and phrases, and it defines all the relevant terms (Recommended Amount, Recoveries, Expenses).

Second, the Western Trust's argument disregards the first sentence of Paragraph 9(B)(1), which acknowledges that if the Western Trust pursues a claim against an Insurance Guaranty Association "the Insurance Guaranty Association's expenses of addressing the claim" may

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<sup>1</sup> In this sur-reply, the Liquidator used terms as defined in the Liquidator's Opposition to Western Trust's Objection dated March 10, 2016.

become a claim by the Association in the Home liquidation.<sup>2</sup> This explains why the contract provides for the deduction of “the Insurance Guaranty Association’s Policy-related expenses incurred after the Effective Date.” (Emphasis added). In attempting to restrict Paragraph 9(B)(1) to policyholder defense expenses, the Trust’s argument renders the language of the first sentence surplusage, contrary to applicable principles of contract construction. See One Beacon Ins. LLC v. M & M Pizza, Inc., 160 N.H. 638, 642 (2010) (declining to dismiss contract language as “mere surplusage”); Motion Motors, Inc. v. Berwick, 150 N.H. 771, 777 (2004) (interpreting agreement so that no provisions “will be rendered meaningless”).

Third, the Act’s phrase does not fit in the contractual provision concerning post-Effective Date Expenses. “Policy Related Claims” is defined as “[a]ll claims by policyholders . . . and insureds arising from and within the coverage of and not in excess of applicable limits of insurance policies and contracts.” RSA 402-C:44, II. It encompasses losses and policyholder’s defense expenses incurred before or after the liquidation. If paid by CIGA, those amounts would be “Recoveries” under the Settlement Agreement (“any judgments, settlements, or other recoveries by claimants from any Insurance Guaranty Association with respect to the Policies”).

Fourth, as previously discussed, the purpose of Paragraph 9(B) was to maintain the position of the Home estate despite any renewed pursuit of CIGA by the Western Trust. The paragraph accordingly provided for the deduction from the Recommended Amount of both (1) any Recoveries (amounts paid by CIGA under the Policies, which in turn constitute a CIGA claim in the estate under RSA 402-C:44, II), and (2) any Expenses (i.e., amounts spent by CIGA

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<sup>2</sup> The Legislature chose how to fund guaranty association expenses in RSA 404-B:11, II. In its standing argument, the Trust fails to identify any statute giving it a legal interest in the payment of CIGA’s expenses, and the Agreement does not provide any contractual right of review.

handling the Trust's claim under the Policies, which in turn constitute a CIGA claim under RSA 404-B:11, II and RSA 402-C:44, I).<sup>3</sup>

### CONCLUSION

For the foregoing reasons, the Western Trust's Objection should be denied.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, AS LIQUIDATOR  
OF THE HOME INSURANCE  
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<sup>3</sup> The Western Trust contends that CIGA's defense of the Snyder action is not activity "in handling claims" because the case involves interpretation of California statutes as well as the Home policies. RSA 404-B:11, II, however, does not limit expenses to those "in interpreting insurance policies." It refers to expenses "in handling claims," which necessarily includes statutory defenses. The Trust also contends that there is no authority for construing "in handling claims" broadly. The statutory language is itself broad, so it is not surprising the issue has not been litigated in the context of guaranty association expenses incurred in responding to a lawsuit by an insured. Compare Matter of Liquidation of Home Ins. Co., Merrimack County Super. Ct. No. 03-E-106, Order at 7 (October 31, 2013) (Arizona Fund's payment of dues to the National Conference of Insurance Guaranty Funds is not an expense in handling claims); Illinois Ins. Guar. Fund v. Reliance Ins. Co. in Liquidation, 88 A.3d 313, 317 (Pa. Comm. Ct. 2014) (Illinois Fund's investment management expenses are not expenses in handling claims).

Certificate of Service

I hereby certify that a copy of the foregoing Sur-Reply to Western Trust's Objection was sent, this 6th day of April, 2016, by first class mail, postage prepaid to all persons on the attached service list.



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