

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 RESPONSE TO
BRIDGESTONE'S NOTICE OF SUPPLEMENTAL AUTHORITY**

John R. Elias, New Hampshire Insurance Commissioner, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), responds briefly to the Notice of Supplemental Authority regarding Scott Fetzer Co. v. Zurich American Ins. Co., CA No. 18-3057 (6th Cir. Apr. 30, 2019) filed by Bridgestone Americans Tire Operations, LLC (“Bridgestone”).

The unpublished supplemental authority adds nothing to this case. First, Fetzer did not turn on the language addressed by the Ohio courts in William Powell Co. v. OneBeacon Ins. Co., 75 N.E.3d 909, 915 (Ohio App. 2016) and Cincinnati Ins. Co. v. ACE INA Holdings, Inc., 886 N.E.2d 876, 887 (Ohio App. 2007) (both looking to “injurious exposure to conditions”). The term “occurrence” as defined in the Home policy has a definite legal meaning and is not ambiguous. See Liquidator’s Objection to Bridgestone’s Motion to Recommit (filed January 14, 2019) (“Liq. Obj.”) at 20-21. The Liquidator relies on the plain and ordinary meaning of the policy language, while Bridgestone’s proposed interpretation is clearly unreasonable (Liq. Obj. at 14-17). Further, Bridgestone violates the principle that policies are read as a whole by disregarding other provisions which confirm the Liquidator’s interpretation but are rendered superfluous by Bridgestone’s (Liq. Obj. at 17-19).

Second, whatever the merits of Fetzer’s application of the “cause” test in a case involving assaults by one individual, the Ohio courts have rejected it in favor of the “triggering event” test in the asbestos context. William Powell, 75 N.E.3d at 915 (noting that Cincinnati “found the

causation theory inapplicable” and followed Babcock & Wilcox Co. v. Arkwright-Boston Mfg. Mut. Ins. Co., 53 F.3d 762, 769 (6th Cir. 1995)); Cincinnati, 886 N.E.2d at 885-886. Liq. Obj. at 10-12. The Cincinnati court distinguished as “factually inapposite” the case of Progressive Preferred Ins. Co. v. Derby, No. F-01-002, 2001 WL 672177 (Ohio Ct. App. June 15, 2001), cited by the Fetzer court as support for the cause test. See Fetzer at 11; Cincinnati, 886 N.E.2d at 885-886 (finding “instructive” Norfolk & Western Ry. Co. v. Acc. & Cas. Ins. Co., 796 F.Supp. 929 (W.D.Va. 1992)). Liq. Obj. at 13, n. 7. While the cause test may be applicable to “the typical situation where a single-car accident results in multiple claims,” it has no applicability here. See Cincinnati, 886 N.E.2d at 885; Liq. Obj. at 16, n.10.

Respectfully submitted,

JOHN R. ELIAS, INSURANCE COMMISSIONER
OF THE STATE OF NEW HAMPSHIRE, AS
LIQUIDATOR OF THE HOME INSURANCE
COMPANY,
By his attorneys,

GORDON J. MACDONALD
ATTORNEY GENERAL

J. Christopher Marshall (NH Bar # 1619)
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650



J. David Leslie (NH Bar # 16859)
Eric A. Smith (NH Bar # 16952)
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110
(617) 542-2300

May 7, 2019

Certificate of Service

I hereby certify that a copy of the Liquidator's Response to Bridgestone's Notice of Supplemental Authority was sent this 7th day of May 2019, by first class mail, postage prepaid to counsel for Bridgestone and other counsel listed on the attached Service List.



Eric A. Smith
NH Bar # 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106

SERVICE LIST

Lisa Snow Wade, Esq.
Orr & Reno
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Gary S. Lee, Esq.
James J. DeCristofaro, Esq.
Kathleen E. Schaaf, Esq.
Morrison & Foerster
250 West 55th Street
New York, NY 10019-9601

David M. Spector, Esq.
Dennis G. LaGory, Esq.
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606

Samantha D. Elliott, Esq.
Gallagher, Callahan & Gartrell, P.C.
214 North Main Street
Concord, NH 03301

David H. Simmons, Esq.
Mary Ann Etzler, Esq.
Daniel J. O'Malley, Esq.
deBeaubien, Knight, Simmons,
Mantzaris & Neal, LLP
332 North Magnolia Avenue
P.O. Box 87
Orlando, Florida 32801

Martin P. Honigberg, Esq.
Sulloway & Hollis, P.L.L.C.
9 Capitol Street
P.O. Box 1256
Concord, New Hampshire 03302-1256

Richard Mancino, Esq.
Willkie Farr & Gallagher, LLP
787 Seventh Avenue
New York, New York 10019

Joseph G. Davis, Esq.
Willkie Farr & Gallagher, LLP
1875 K Street, N.W.
Washington, DC 20006

Albert P. Bedecarre, Esq.
Quinn Emanuel Urguhart Oliver & Hedges LLP
50 California Street, 22nd Floor
San Francisco, California 94111

Jeffrey W. Moss, Esq.
Morgan Lewis & Bockius, LLP
One Federal Street
Boston, Massachusetts 02110

Robert M. Horkovich, Esq.
Robert Y. Chung, Esq.
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020

Andrew B. Livernois, Esq.
Ransmeier & Spellman, P.C.
One Capitol Street
P.O. Box 600
Concord, New Hampshire 03302-0600

John A. Hubbard
615 7th Avenue South
Great Falls, Montana 59405

Stephanie V. Corrao, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

Harry Cohen, Esq.
Crowell & Moring
590 Madison Avenue
20th Floor
New York, New York 10022-2544

Harry L. Bowles
306 Big Hollow Lane
Houston, Texas 77042

Gregory T. LoCasale, Esq.
White and Williams, LLP
One Liberty Place, Suite 1800
Philadelphia, Pennsylvania 19103-7395

Kyle A. Forsyth, Esq.
Commercial Litigation Branch/Civil Division
United States Department of Justice
P.O. Box 875
Washington, D.C. 20044-0875

W. Daniel Deane, Esq.
Nixon Peabody LLP
900 Elm Street, 14th Floor
Manchester, New Hampshire 03861

Joseph C. Tanski, Esq.
John S. Stadler, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110

Michael S. Lewis, Esq.
Rath Young Pignatelli
One Capital Plaza
Concord, New Hampshire 03302-1500

Michael J. Tierney, Esq.
Wadleigh, Starr & Peters, PLLC
95 Market Street
Manchester, New Hampshire 03101

Mark J. Andreini, Esq.
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Paul A. Zevnik, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Michel Y. Horton, Esq.
Morgan, Lewis & Bockius LLP
300 South Grand Avenue, Suite 4400
Los Angeles, California 90071

Hilary Loynes Palazzolo, Esq.,
Keith Dotseth, Esq.
Larson King
30 East Seventh Street, Suite 2800
Saint Paul, Minnesota 55101