

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE HOME INSURANCE COMPANY IN LIQUIDATION
DISPUTED CLAIMS DOCKET**

In Re Liquidator Number: 2008-HICIL-35
Proof of Claim Number: EMTL 705271-01
Claimant Name: VIAD Corp
Claimant Number:
Policy or Contract Number: HEC 9557416
HEC 9304783
HEC 4344748
Insured or Reinsured Name: VIAD (predecessor The Greyhound
Corporation/ Transportation Leasing
Company)
Date of loss:

**VIAD'S OBJECTION TO THE LIQUIDATOR'S MOTION TO STRIKE PORTION OF
VIAD'S MEMORANDUM ON CHOICE OF LAW AND STRUCTURING**

Comes now Viad Corp ("Viad"), which by and through its undersigned counsel, files this Response to the Liquidator's Motion to Strike Portion of Viad's Memorandum on Choice of Law and Structuring filed November 5, 2008, and in support thereof states as follows:

Viad's Memorandum of Law was prepared based on the Liquidator's argument that this matter be bifurcated because once New York law is applied, according to the Liquidator, this case would be over because Viad could not recover. It now appears clear that the Liquidator has receded from its prior position and fully understands that even if New York law were to apply, then Viad still can (and should) prevail based upon the policy language and other circumstances that did not require Viad to give notice of a claim until 2004.

On that basis, the Liquidator previously argued that should it receive a favorable ruling that New York law applied to interpret the insurance contracts at issue, such a ruling would render moot the need for any further hearing(s). Because the parties were instructed to submit their memoranda of law on the choice of law issue simultaneously and without the benefit of reviewing the other party's position, Viad had no choice but to anticipate that the Liquidator

would make the same argument when it prepared its Memorandum of Law on the issue of choice of law.

The Liquidator has now admitted that Viad was correct in stating that the bifurcation issue is “moot,” because the Referee has decided that she will decide the choice of law issue based upon memoranda of law (already submitted) and has agreed to set this matter for oral argument in February 2009. (See Liquidator’s Motion to Strike, p.2). It appears that the Liquidator, by virtue of its Motion to Strike, is likewise agreeing that a ruling by the Referee on the choice of law issue is not dispositive of the issue of coverage. In fact, irrespective of which state’s law applies, the issue of coverage is heavily dependent upon factual evidence that must be presented at the oral argument in February 2009.

Sections III and IV of Viad’s Memorandum of Law simply explained to the Referee that the choice of law issue is not dispositive of coverage. If the Liquidator is now in agreement (as its Motion to Strike now indicates) that choice of law is not determinative as to coverage, then Sections III and IV can be deferred and be included in Viad’s brief on the merits in late January 2009. If the Liquidator somehow is still erroneously claiming that choosing New York law is somehow dispositive of this case, then Sections III and IV are necessary to explain to the Referee that the actual language of the policies provides coverage irrespective of what state’s law applies.

WHEREFORE, Viad respectfully requests that the Liquidator’s Motion to Strike be denied, and that the merits of Viad’s Memorandum of Law be fully considered by the Referee in making her determination regarding choice of law.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was provided by U.S. Mail on November 18, 2008, to: Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, as Liquidator of the Home Insurance Company c/o J. David Leslie, Esquire and Eric

A. Smith, Esquire, Rackemann, Sawyer & Brewster, P.C., 160 Federal Street, Boston, MA, 02110-1700; Liquidation Clerk, The Home Insurance Company in Liquidation, c/o Merrimack Superior Court, 163 N. Main Street, Concord, NH 03302-2880; and John O'Connor, Esq., Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC, 20036-1795.

Respectfully submitted,

VIAD CORP

By its attorneys,

Dated: November 18, 2008

By: /s/ Peter G. Callaghan
Peter G. Callaghan, NH Bar #6811
Preti, Flaherty, Beliveau & Pachios, PLLP
57 N. Main Street
P.O. Box 1318
Concord, NH 03302-1318
(603) 410-1500

/s/ David H. Simmons
David H. Simmons
admitted pro hac vice
de Beaubien, Knight, Simmons,
Mantzaris & Neal, LLP
332 North Magnolia Avenue
P.O. Box 87
Orlando, FL 32801
(407) 422-2454

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent this 18th day of November 2008, by first class mail, postage prepaid and via email to John F. O'Connor, Esquire, counsel for the Liquidator.

/s/ Peter G. Callaghan
Peter G. Callaghan