

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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

In Re Liquidator Number: 2008-HICIL-35
Proof of Claim Number: EMTL 705271-01
Claimant Name: VIAD Corporation
Claimant Number: Class II
Policy Numbers: HEC 9557416
HEC 9304783
HEC 4344748
Insured Name VIAD Corporation (predecessor The Greyhound Corporation)

REPLY IN SUPPORT OF THE LIQUIDATOR'S MOTION TO STRIKE PORTION OF VIAD'S MEMORANDUM ON CHOICE OF LAW AND STRUCTURING

At the structuring conference in this matter, the Referee directed the parties to submit simultaneous briefs addressing two issues: (1) what state's law should govern construction of the Home policies at issue in this matter; and (2) whether briefing should be bifurcated so that the Referee decides choice of law before the parties brief the substantive coverage issues involved in this matter. Because Sections III and IV of Viad's submission address certain coverage issues (relating to late notice) in addition to the two issues authorized by the Referee, the Liquidator moved to strike those portions of Viad's submission.

Viad's opposition to the Liquidator's motion to strike states that "[i]t now appears clear that the Liquidator has receded from its [sic] 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." Viad Opp. at 1. Viad cannot seriously believe this to be the Liquidator's position. As Viad well

knows, the Liquidator's position is that Viad's claim is barred by the doctrine of late notice no matter what state's law applies to the insurance policies, although the particulars of each state's late notice jurisprudence differ somewhat. The Liquidator's sole position in his motion to strike is that the analysis of coverage issues is premature at this stage. Substantive coverage analysis is premature because the parties have not fully briefed the coverage issues, and the Liquidator has not briefed them at all because the briefs permitted by the Referee did not authorize the parties to address any issue other than choice of law and bifurcation.

As Viad suggests in its opposition (Viad Opp. at 2), the proper course of action is for the Referee to defer consideration of the substantive coverage issues raised in Viad's choice of law/bifurcation submission until the parties have submitted briefs addressing the coverage issues in accordance with the schedule previously proposed by the parties. At that time, the Referee will have the benefit of complete briefing, and argument, by both parties as to the substantive coverage issues to be resolved in this matter.

Respectfully submitted,



John F. O'Connor (admitted *pro hac vice*)

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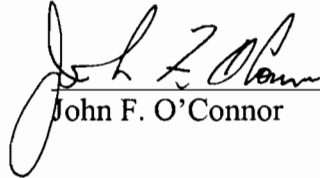
Attorneys for the Liquidator

CERTIFICATE OF SERVICE

I certify on this 21st day of November, 2008, I served a copy of the foregoing by electronic mail and first class U.S. Mail, postage prepaid, on the following counsel of record:

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