

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)

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

The Liquidator, through counsel, respectfully moves to strike Sections III and IV (at pages 10-24) of "VIAD's Memorandum of Law in Opposition to Bifurcating Coverage Issues and VIAD's Position as to the Applicable Choice of Law," which VIAD filed on November 3, 2008. These portions of VIAD's Memorandum should be disregarded by the Referee at this time because they address issues that were not authorized to be addressed in this first round of briefing, and therefore were not addressed in the Memorandum simultaneously filed by the Liquidator.

During the October 21, 2008 Structuring Conference in this matter, the Referee directed the parties to file, by November 3, 2008, Memoranda that addressed just two issues: (1) whether the Referee should decide choice of law before the parties brief and argue the merits of VIAD's claims; and (2) what state law applies to the merits of VIAD's claim. The Referee also directed the parties to confer concerning a proposed oral argument date in late January or early February

2009 and a proposed schedule for discovery and briefing. On the issue of scheduling, the parties agreed to an oral argument on February 4, 2009, subject to the Referee's availability, with merits briefs on the coverage issues being filed by January 23, 2009.

Sections I and II of VIAD's November 3, 2008 submission addresses the two issues the Referee directed the parties to brief – bifurcation and choice of law. In Section I of that submission, VIAD correctly observes that the issue of whether briefing and decision of choice of law prior to briefing and argument of the merits is more or less moot, as the parties have fully briefed choice of law and that issue is now ripe for decision. In Section II of its submission, VIAD argues that California law should apply to its claim. While the Liquidator disagrees with VIAD's choice of law argument, that was an issue authorized to be briefed in the November 3 submissions.

Inexplicably, however, Sections III and IV of VIAD's November 3, 2008 submission addresses neither bifurcation nor choice of law, and instead argues two of the many coverage issues (late notice and VIAD's waiver argument) that are supposed to be briefed by the parties on January 23, 2009 and argued on February 4, 2009. Because the Referee provided explicit direction that the parties' November 3 submissions should address only bifurcation and choice of law, the Liquidator's Memorandum does not address the two substantive coverage issues argued in Sections III and IV of VIAD's Memorandum. As a result, the Referee only has a one-sided view of these issues, and a view that the Liquidator believes is incorrect both on the law and on the facts of this case. Therefore, it would be fundamentally unfair to the Liquidator for the Referee to address, or prejudge, the issues raised in Sections III and IV of VIAD's November 3 submission, as the Liquidator did not address these issues in his own Memorandum because that

was not a topic authorized by the Referee. The Liquidator will address all relevant coverage issues in the simultaneous January 23, 2009 briefs to which the parties have agreed.

For these reasons, the Referee should strike, or disregard, Sections III and IV of VIAD's November 3, 2008 submission.

Respectfully submitted,



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

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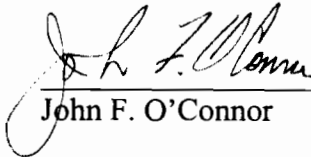
Attorneys for the Liquidator

CERTIFICATE OF SERVICE

I certify on this 5th day of November, 2008, I served a copy of the foregoing by first class U.S. Mail, postage prepaid, on the following counsel of record:

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