

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In The Matter Of The Liquidation Of
The Home Insurance CompanyBENJAMIN MOORE & CO.'S RESPONSE AND OBJECTIONS TO
PROPOSED ORDER ON REMAND

1. The Proposed Order states incorrectly that Benjamin Moore agreed in prior status conferences that the issue whether or not the Liquidator has statutory authority to enter into the Agreement under RSA chapter 402-C can be decided without any discovery or evidentiary hearing. Benjamin Moore has always taken the consistent position that any determination as to the necessity of the Agreement, as well as its reasonableness, must await the completion of discovery and an evidentiary hearing.

2. Benjamin Moore agrees that the issue whether the payments to AFIA Cedents under the Agreement qualify as "administrative expenses" under RSA 402-C:44I is a legal issue that can be decided without further factual development. But that is a different and much narrower issue than the question of whether the Agreement can be deemed "necessary and expedient" to the liquidation of Home under RSA 402-C:25.

3. The latter question is not on the list of issues remanded to this Court by the New Hampshire Supreme Court, although the former issue was included on the list of remand issues.

4. The Proposed Order recognizes that discovery and further hearing is appropriate on the issues of necessity and reasonableness of the Agreement. It is plainly inconsistent for the Court to provide for discovery and further hearing on the necessity and reasonableness of the Agreement, on the one hand, and on the other hand to make a determination based upon the

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Liquidator's untested and hearsay affidavit evidence that the Agreement is "necessary and expedient" to the liquidation under RSA 402-C:25.

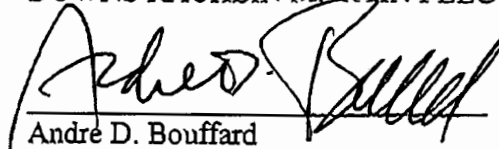
5. Although the Supreme Court remanded the administrative expense issue to this Court for decision, the Draft Remand Order does not address that issue, except with reference to the language of Section 25, which presents separate and distinct issues. The Remand Order does not interpret the language of RSA 402-C:44, or discuss the legislative history or purposes of Section 44. Certification of this issue to the Supreme Court for decision at this time may be fruitless absent a reviewable decision on this issue by the Court.

Respectfully submitted,

October 6, 2004

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