

DNPC

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

DOCKET NO. 03-E-0106

2011 OCT -5 P 10:39

In The Matter Of The Liquidation Of
The Home Insurance Company

FILED IN SUPERIOR COURT
MERRIMACK COUNTY
CLERK

**SWAN TRANSPORTATION COMPANY'S RESPONSE
TO THE LIQUIDATOR'S SUBMISSION ADDRESSING ONE ISSUE
RAISED AT HEARING ON SWAN'S MOTION TO RECOMMIT**

Swan Transportation Company f/b/o Swan Asbestos and Silica Settlement Trust ("Swan") respectfully submits the following in response to the Liquidator's submission dated September 26, 2011.

1. To the extent that it turns out that Swan was in error that the Court Order affirming Phelps Dodge's claim approved by the Liquidator in the amount of \$15 million was a different Phelps Dodge claim than that at issue in the Court Order declining to enforce the pre-Liquidation settlement agreement with Phelps Dodge, Swan deeply regrets the error. It certainly was not the intention of counsel to mislead the Court. Swan did not have access to the internal Liquidator documents attached as Exhibit 2 to the Liquidator's submission reflecting the net amount the Liquidator was recommending. Swan did not know that Phelps Dodge had multiple different claims subject to multiple different approvals by the Liquidator. The different names and different relationships of the parties, Phelps Dodge, Freeport McMoran, Inspirational Consolidated Copper Co c/o Terra Industries, also added a layer of complexity. In short, Swan regrets any confusion that may have been caused. Before oral argument, Swan's counsel had confirmed with former counsel to Phelps Dodge that Phelps Dodge reasserted its claims

for \$15 million after Phelps Dodge was unsuccessful in enforcing its pre-Liquidation settlement. Swan's argument was in made in good faith.

2. Swan respectfully submits that this should not affect the outcome and respectfully requests that the Court grant Swan's motion to recommit. The central point of Swan's brief and argument in support of its motion to recommit remain the same. To the extent that the settlement is unapproved and unperformed, it cannot be the basis of the Liquidator's Notice of Determination. And absent the settlement, the parties are returned to their pre-settlement position. Swan's claim is based on its insurance policies and should be considered on that basis.

3. Again, to the extent that Swan was in error as to which Phelps Dodge claim was being approved in the amount of \$15 million, Swan greatly regrets any confusion it may have caused. Swan still respectfully requests that the Court grant its motion to recommit.

Dated: October 5, 2011

Respectfully submitted,

SWAN TRANSPORTATION COMPANY F/B/O
SWAN ASBESTOS AND SILICA SETTLEMENT
TRUST

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

CERTIFICATE OF SERVICE

I hereby certify that on this date, a true and correct copy of Swan Transportation Company's Response To The Liquidator's Submission Addressing One Issue Raised At Hearing On Swan's Motion To Recommit was served by First Class Mail on all persons on the attached service list.

Dated: October 5, 2011



Andrew B. Livernois

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

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The Home Insurance Company**

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