

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Liquidation of  
The Home Insurance Company**

**U.S. DEPARTMENT OF LABOR'S RESPONSE IN OPPOSITION  
TO LIQUIDATOR'S MOTION FOR LEAVE TO FILE SURREPLY**

Claimant Seth D. Harris, Acting Secretary of the United States Department of Labor (Labor),<sup>1</sup> opposes the January 25, 2013, "Motion for Leave to File Sur-reply," by New Hampshire Insurance Commissioner Roger A. Sevigny (Liquidator), as Liquidator of the Home Insurance Company (Home). The Court should deny the Liquidator's motion because the proposed surreply is prohibited by the Court's January 19, 2005 Claims Procedures Order. Further, the length of Labor's 15-page argument in its January 11, 2013 Reply Brief—in response to a combined 29 pages of argument from opposing parties—does not justify the Liquidator's request to depart from the Court's settled procedures. Finally, a surreply is not needed because Labor did not introduce new issues or arguments in its reply brief.

1. The Court's January 19, 2005 Claims Procedures Order prohibits the Liquidator's proposed surreply. Section 15(a) of that order states that each party in a disputed claim proceeding shall submit one "written submission," and "shall make no other submissions unless specifically requested by the Court." Jan. 19, 2005 Claims Procedures Order, Sec. 15(a). With respect to Labor's disputed Proof of Claim No. GOVT 700090-01 (Labor's Claim), the Court specifically authorized Labor to file a reply brief in its October 11, 2012 "Order Regarding

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<sup>1</sup> Seth D. Harris became Acting Secretary of Labor in January 2013, upon the resignation of former Secretary Hilda L. Solis.

[Labor's Disputed Claim]." But the Court has neither "requested" nor otherwise authorized the Liquidator's proposed surreply. Consistent with its orders governing disputed claims generally, and Labor's Claim in particular, the Court should deny the Liquidator's motion for leave to file a surreply.

2. Recognizing that his proposed surreply is not authorized by the Court's orders, the Liquidator attempts to justify his request by reference to the length of Labor's reply brief. The Liquidator notes that Labor's reply brief contained fifteen pages of argument, while Labor's opening brief included a five-page argument section. This ten-page differential, the Liquidator suggests, warrants an additional round of briefing that gives him the last word. But, of course, the purpose of Labor's reply brief was to respond to the arguments raised in the written submissions filed by the Liquidator and the intervening state insurance guaranty associations (Guaranty Associations).<sup>2</sup> So the relevant comparison is between Labor's reply brief and the combined length of the two written submissions to which Labor's reply responded. The Liquidator's December 13, 2012 written submission contained thirteen pages of argument (pp. 10-22) and the Guaranty Associations provided an additional sixteen pages of argument (pp. 4-19) in their separate, January 2, 2013 written submission. In light of the combined 29 pages of argument to which Labor was responding, Labor's 15-page reply argument was entirely

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<sup>2</sup> The fifteen Guaranty Associations are: the New Hampshire Insurance Guaranty Association, Arkansas Property & Casualty Insurance Guaranty Fund, Colorado Insurance Guaranty Association, Connecticut Insurance Guaranty Association, District of Columbia Insurance Guaranty Association, Idaho Insurance Guaranty Association, Illinois Insurance Guaranty Fund, Kansas Insurance Guaranty Association, Maine Insurance Guaranty Association, Massachusetts Insurers Insolvency Fund, Montana Insurance Guaranty Association, Rhode Island Insurers' Insolvency Fund, Vermont Property and Casualty Insurance Guaranty Association, Virginia Property And Casualty Insurance Guaranty Association, and Washington Insurance Guaranty Association.

reasonable, even economical. Labor's reply brief did no more than respond to the other parties' arguments and a surreply is unwarranted.

3. Perhaps most importantly, Labor's reply brief did not introduce new issues or arguments that could necessitate a surreply. Even the Liquidator agrees. His motion for leave to file a surreply asserts only that Labor "first developed" certain arguments in its reply. Labor's reply brief merely defended the authorities Labor cited in its opening brief, and explained why the Liquidator's and Guaranty Associations' newly introduced theories and authorities were unpersuasive or inapposite. If any of Labor's arguments were "first developed" in the reply brief, that is because Labor could not possibly have developed its *response* to the other parties' arguments until after they filed their written submissions, *i.e.*, in its reply brief.

Because the Court's orders prohibit the Liquidator's proposed surreply, and the Liquidator has failed to provide any justification to depart from the Court's established procedures, the Liquidator's "Motion for Leave to File Sur-reply" should be denied.

Dated: January 31, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing “U.S. Department of Labor’s Response in Opposition to Liquidator’s Motion for Leave to File Surreply,” was sent today via first class U.S. Mail to all persons on the attached Service List.

Dated: January 31, 2013



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