

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

IN THE MATTER OF LIQUIDATION  
OF THE HOME INSURANCE COMPANY

DOCKET #: 03-E-106

**OBJECTION TO LIQUIDATOR'S DETERMINATION OF CLAIM AND  
REQUEST FOR FURTHER EQUITABLE RELIEF**

NOW COMES, QBE Insurance (Australia) Ltd., by and through counsel,  
Robert D. Hunt, Esq., and respectfully submits as follows:

**Preliminary Statement**

1. QBE Insurance (Australia) Ltd. ("QBE") respectfully  
declares that the Court has granted a declaration of this Court granting QBE withdrawal of the claim it filed with The  
Home Insurance Company in Liquidation ("The Home") in December 2003.

2. QBE filed its Proof of Claim with the The Home's Liquidator ("the  
Liquidator") in December 2003. Before the Liquidator made any formal  
determination with respect to that claim, QBE withdrew it by letter from its counsel to  
the Liquidator dated October 13, 2006, receipt of which the Liquidator duly  
acknowledged on October 16, 2006.<sup>1</sup> Over three months after QBE withdrew its  
claim, the Liquidator formally took action for the first time with respect to it by  
issuing a Notice of Determination in which the Liquidator, *inter alia*, refused to  
accept QBE's withdrawal of its claim. Since the Liquidator refuses to recognize  
QBE's withdrawal of its claim, QBE seeks a declaration granting its withdrawal.

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<sup>1</sup> A copy of QBE's Proof of Claim is attached hereto as Exhibit A, a copy of QBE's counsel's  
letter dated October 13, 2006, withdrawing QBE's claim is attached hereto as Exhibit B, a  
copy of the Liquidator's acknowledgement dated October 16, 2006, is attached hereto as  
Exhibit C, and a copy of the Liquidator's Notice of Determination dated February 1, 2007 is  
attached hereto as Exhibit D.

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MERRIMACK COUNTY  
SUPERIOR COURT

3. The most compelling reason to grant this request is the various written communications the Liquidator sent to QBE, between December 2003 and March 2006, asserting that QBE did not have a reinsurance contract with The Home and, thus, did not have a claim against The Home. In those communications, the Liquidator repeatedly advised QBE to seek redress, instead, from Trygg Hansa Spp (“Trygg Hansa”), now known as Zurich Insurance Ireland Limited, Swedish Branch (“Zurich”), because, as the Liquidator explained, QBE’s reinsurance contract was with Trygg Hansa. (The various communications from the Liquidator are exhibits to this memorandum of law petition and are discussed in detail in Section 2 of the Statement of Facts that follows).

4. A second reason to grant QBE’s request is that, in a liquidation proceeding, a claimant should have a fundamental right to withdraw its claim where, as here, the liquidator had not yet taken any formal action with respect to it. (As indicated, the only action the Liquidator had taken before QBE withdrew its claim was to assert repeatedly that QBE had no claim).<sup>2</sup>

5. QBE finds it necessary to seek this relief because QBE’s reinsurer, Zurich, has agreed to pay QBE what is due under their reinsurance contract if, *inter alia*, QBE’s claim against The Home is withdrawn. Zurich has made withdrawal of

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<sup>2</sup> A possible third reason to grant QBE’s request is that QBE may have been required to file its proof of claim in the separate liquidation proceeding concerning US International Re, not the liquidation proceeding concerning The Home. See the email dated March 4, 2004 from the Home’s Liquidator, a copy of which is attached hereto as Exhibit E, as well as the list of companies from the 1995 Annual Statement of The Home (a copy of which is attached hereto as Exhibit F), which appears to show that Home International Services (H.K), Ltd., which may have been the entity with which QBE dealt, is part of US International Re, not The Home. QBE’s counsel has requested from the Liquidator additional information concerning Home International Services (H.K.), Ltd. in order to further explore this avenue of relief, and QBE reserves all rights accordingly.

QBE's claim a condition precedent to paying QBE because Zurich fears having to pay twice for the same claim. Zurich has this concern because, despite the Liquidator's repeated admissions that QBE did not have a reinsurance contract with The Home, the Liquidator now alleges that QBE and The Home had such a contract and that such a contract allows the Liquidator to pay QBE nothing as a Class V creditor and thereafter collect reinsurance monies from Zurich as if The Home had actually paid QBE.

6. QBE submits that The Liquidator's present course of action is of dubious validity and, indeed, that the Liquidator is acting in bad faith. Be that as it may, QBE respectfully requests that the Court declare that QBE's claim is withdrawn.

#### **Statement of Facts**

##### **A. The Fronting Arrangement Between QBE and Trygg Hansa**

7. The genesis of this dispute goes back to 1995, when Trygg Hansa, a Swedish insurer, was the global liability insurer of Telefonaktiebolaget LM Ericsson ("Ericsson Sweden"), the Swedish telecommunications giant. As Trygg Hansa was not licensed to write insurance policies in Australia, where Ericsson Sweden had a subsidiary called Ericsson Australia Pty Limited ("Ericsson Australia"), Trygg Hansa entered into a fronting arrangement<sup>3</sup> with QBE Mercantile Mutual Limited, a predecessor of QBE. Pursuant to that fronting arrangement, QBE issued an insurance policy to Ericsson Australia and its associated companies and also issued a document called the "Facultative Reinsurance Proposal" in which The Home, for reasons

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<sup>3</sup> In a fronting arrangement, an insurer licensed to do business in a particular jurisdiction (the fronting insurer) issues an insurance policy on behalf of another insurer that is not licensed to do business in that jurisdiction. The fronting insurer then fully reinsures the risk with the latter and passes to the latter most of the premium it received from the policyholder. Fronting arrangements, which are quite common in the insurance business, allow an insurer to do business in a jurisdiction in which it is not licensed. *See generally* Barry R. Ostrager & Mary Kay Vyskocil, *Modern Reinsurance Law & Practice (Second Edition)*, § 1.05 (Glasser 2000).

unknown, was mistakenly named as the reinsurer instead of Trygg Hansa, which was the intended reinsurer of the fronting arrangement. A copy of the policy QBE issued to Ericsson Australia is attached hereto as Exhibit G, and a copy of the “Facultative Reinsurance Proposal” is attached hereto as Exhibit H.

8. That the fronting arrangement was intended to be wholly between QBE and Trygg Hansa and that Trygg Hansa, and not The Home, should have been named as the reinsurer in the Facultative Reinsurance Proposal, is demonstrated by the following: 1) the various communications (attached hereto as Exhibit I) from early 1995 between the brokers for QBE and Trygg Hansa that show that the fronting arrangement was intended to be between QBE and Trygg Hansa; 2) as shown in the next section of this memorandum of law, the contemporaneous evidence and the Liquidator’s admissions that The Home kept no portion for itself of the premium QBE remitted but, instead, transferred that premium in full to Trygg Hansa (now Zurich); and 3) the various admissions the Liquidator made, as detailed in the next section, that QBE’s reinsurer was Trygg Hansa and that QBE did not have a contract of reinsurance with The Home.

**B. The Home Was, At Most, A Conduit, As The Liquidator’s Admissions and The Contemporaneous Evidence Show**

9. It is not entirely clear how The Home, or US International Re,<sup>4</sup> became involved in this transaction, but it appears to have become involved in it, at best, in the role of a conduit or liaison only. This is demonstrated by various communications from the Liquidator made between December 2003, when QBE filed its Proof of

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<sup>4</sup> As explained in n.2, *supra*, The Home’s Liquidator has suggested that US International Re, not The Home, was the entity involved in this transaction.

Claim,<sup>5</sup> and March 2006, as well as the contemporaneous documents from 1995 which The Liquidator provided to QBE with those communications.

10. The first such communication from The Liquidator is an email dated May 8, 2004 to QBE. A copy of the Liquidator's May 8, 2004 email is attached hereto as Exhibit J. It provides as follows:

We have reviewed the materials you have provided to us and done an exhaustive search of our records and do not believe this risk was ever bound by Home. Rather we believe it was bound by Trygg Hansa Spp. If you refer to a fax sent by Grace Lui of Home International Hong Kong to Melinda Gaines of Home International accounting which was included in the package of materials you sent to us, you will see a reference is made to the account being a Trygg Hansa Spp account and that Home sent all the premium to Trygg Hansa. As we cannot find any system record of this account being bound by Home our only assumption is that is [sic] was bound by Trygg Hansa. (emphasis added).<sup>6</sup>

11. The next such communications were a series of emails from the Liquidator to in-house counsel at QBE. In the first of those emails, dated January 19, 2006 (a copy of which is attached as Exhibit L hereto), the Liquidator reiterated what it had previously advised QBE: "we [that is, the Liquidator] have no record of Home binding the risk rather [sic] it appears that it was bound by Trygg Hansa Spp. I sent

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<sup>5</sup> As more fully elaborated in its Proof of Claim (Exhibit A), QBE sought AUD \$501,288.15, or about US \$373,000 at the then current exchange rate, for two claims QBE paid to Carole Dickinson and Louis Piscopo under the insurance policy QBE had issued to Ericsson Australia in or about April 1995 on behalf of Trygg Hansa, for which QBE was fronting.

<sup>6</sup> On September 23, 2004, the Liquidator faxed QBE a copy of the memorandum from Grace Lui of Home International Hong Kong mentioned in the above quotation from the Liquidator's email of May 8, 2004. A copy of that fax is attached hereto as Exhibit K, and the memorandum from Grace Lui is the second page of the fax.

[QBE] on August 23rd 2004<sup>7</sup> a Home internal memorandum from our file illustrating that the premium was sent to Trygg Hansa Spp.”

12. The next such communication from the Liquidator was an email dated March 3, 2006 to which the Liquidator attached two contemporaneous documents from 1995 that relate to the memorandum from Grace Lui of Home International (the second page of Exhibit K) mentioned in the paragraph quoted above. A copy of the March 3, 2006 email and its attachments constitute Exhibit M hereto.

13. For the Court’s convenience, Exhibit N hereto consists of the memorandum from Grace Lui that the Liquidator sent to QBE on September 23, 2004 (the second page of Exhibit K hereto) and the two documents attached to the Liquidator’s email dated March 3, 2006 (the second and third pages of Exhibit M hereto). The memorandum from Grace Lui of the Home International to The Home International’s New York office (the first page of Exhibit N hereto) is dated July 10, 1995 and states it concerns “Ericsson – Australia.” Ms. Lui’s memorandum acknowledges The Home International’s receipt of QBE’s check in the amount of AUD\$66,423.28<sup>8</sup> for “the Trygg Hansa Spp account” and requests “a wire transfer to Trygg Hansa’s bank account.” The Home International’s “Request for Check” (the second page of Exhibit N) states that the check from QBE “belongs to Trygg Hansa” and requests a wire transfer to Trygg Hansa of AUD\$66,423.28, or US\$49,179.80; that amount, AUD\$66,423.28, is significant inasmuch as it is the full amount The Home International’s Hong Kong office received from QBE, as demonstrated by Grace Lui’s memorandum. The third document in Exhibit N is The Home’s

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<sup>7</sup> QBE cannot locate a communication dated August 23, 2004. It believes that the Liquidator may have meant the fax dated September 24, 2004 (*see* Exhibit K hereto).

<sup>8</sup> AUD means Australian dollars. As noted, QBE is an Australian company.

“Worldline Transfer Initiation Transaction Record,” showing a wire transfer on July 20, 1995 from The Home to Trygg Hansa in the amount of AUD\$66,423.28, or US\$49,179.80, that is, the full amount The Home International received from QBE, as demonstrated by Grace Lui’s memorandum.

14. In short, the documents attached as Exhibit N, all of which the Liquidator sent to QBE in an effort to prove there was no reinsurance contract between QBE and The Home, demonstrate that The Home International received AUD\$66,423.28 in premium from QBE and remitted that amount in full to Trygg Hansa, thus showing, as the Liquidator explained, that The Home was not acting as a reinsurer of QBE but, rather, as a mere conduit between QBE and Trygg Hansa.

15. The next communication from the Liquidator to QBE in which the Liquidator admitted there was no contract between QBE and The Home is an email dated March 9, 2006, a copy of which is Exhibit O hereto. Exhibit O offers the Liquidator’s fullest explanation of the lack of a reinsurance relationship between The Home and QBE and specifically denies that the Facultative Reinsurance Proposal (Exhibit H hereto) is a contract between The Home and QBE. Exhibit O provides as follows:

...As discussed in review of the information provided to date including the copy of a reinsurance proposal listing Home Insurance on the risk,<sup>9</sup> at the time in question Home had ceased writing new business and what we believed happened was that ultimately Trygg Hansa bound the risk. This is reaffirmed by the point that no formal slip or contract has been produced bearing Home’s name as well as the fact that the entire premium was sent to Trygg Hansa. (emphasis supplied).

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<sup>9</sup> This is obviously a reference to the Facultative Reinsurance Proposal (Exhibit H hereto).

In answer to your questions as to why the Routing number at the bottom of "World Link Transfer Form [sic] is 00000000000000 and what the Account No. of 2650 represents,<sup>10</sup> unfortunately in both cases after discussing it internally I am unable to answer you. However, I believe that this form clearly illustrates that a wire transfer was made to Trygg Hansa's bank which is referenced by the Beneficiary's Bank name and address sections of the form. Also, you will note that Trygg Hansa's Bank account No. is listed as 5544-10 017 47 under the Beneficiary's address.

If you contact Trygg Hansa with this information, they should be able to confirm that they received the money and have bound the risk.

Please advise if I can be of further assistance. We shall diary our file 30 days and if we do not hear from you to the contrary we shall recommend that your claim not be allowed into the Home estate as no risk was bound by Home. (emphasis supplied).

**C. The Liquidator's "About-Face" and Its Bad Faith**

16. In or about April 2006, QBE retained the law firm of Wilker & Lenci to pursue its claim. During the course of negotiations between representatives of Zurich and attorney Edward Lenci of Wilker & Lenci, Zurich made it clear that, because QBE had a claim pending in The Home liquidation, Zurich was concerned about paying QBE. In an effort to assuage Zurich's concerns, attorney Lenci made contact with The Liquidator in order to obtain further confirmation from the Liquidator that there was no contract between The Home and QBE.

17. On October 11, 2006, attorney Lenci met with Jonathan Rosen, Esq., of the Liquidator's office, and Mr. Rosen proceeded to make a complete "about-face" from the position the Liquidator had consistently taken since QBE filed its Proof of Claim. Mr. Rosen insisted that, The Liquidator's various written admissions

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<sup>10</sup> This is a reference to the third page of both Exhibits M and N hereto.



notwithstanding, QBE and The Home had a contract, namely, the same Facultative Reinsurance Proposal that the Liquidator had already admitted was not a contract between The Home and QBE.<sup>11</sup>

18. At his meeting with attorney Lenci, Mr. Rosen provided attorney Lenci with a copy of the so-called Partnership Agreement of Reinsurance (the “PAR”), a copy of which is attached hereto as Exhibit P. The PAR appears to have purportedly existed between The Home and Trygg Hansa at some point in the early 1990s. Mr. Rosen further claimed that, based on the PAR and the purported existence of a reinsurance contract between QBE and The Home, the Liquidator could and would allow QBE’s claim but pay QBE nothing as a Class V creditor and then pursue Zurich for reinsurance as if QBE had actually been paid by The Home.

19. Apart from the dubious validity of such a scheme, Mr. Rosen seemed at that meeting to suggest that, because the PAR purportedly shows that The Home was retroceding<sup>12</sup> all its reinsurance risks to Trygg Hansa, the PAR somehow proves also that The Home actually was QBE’s reinsurer. That argument is logically flawed for at least three reasons: First, it is *non sequitur* to contend that the PAR proves there was a reinsurance agreement between The Home and QBE. Second, assuming, *arguendo*, the PAR existed at some point in the early 1990s, it cannot have applied to the fronting arrangement established in 1995 because, as the Liquidator has admitted,

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<sup>11</sup> As noted, in its email dated March 9, 2006, the Liquidator admitted the Facultative Reinsurance Proposal was not contract between QBE and The Home. *See* Exhibit O (admitting to having reviewed “the copy of a reinsurance proposal listing Home Insurance on the risk” and “reaffirm[ing] ... that no formal slip or contract has been produced bearing Home’s name as well as the fact that the entire premium was sent to Trygg Hansa.”)

<sup>12</sup> A reinsurer retrocedes a risk when it reinsures it with yet another reinsurer.

“at the time in question [1995] Home had ceased writing new business” (Exhibit O hereto).

20. A third reason is that, even assuming, purely *arguendo*, that the PAR existed and that The Home was writing business in 1995, the PAR itself refutes what the Liquidator is asserting based upon it. Per the terms of the PAR, the Home was to keep a portion (typically 20%, and at least 5%) of any premium it received for all transactions subject to the PAR (*see* Exhibit P, at Articles III(e), IV and VI.1 of the PAR). Yet, the Liquidator has admitted, and the contemporaneous evidence shows in any event, that Home International remitted 100% of the premium it received from QBE to Trygg Hansa and kept nothing for itself (*see* Exhibits L-O).

21. In view of the foregoing, QBE submits that the Liquidator is not only wrong as to its present position but is, additionally, now attempting to exploit a mistake in the Facultative Reinsurance Proposal and acting in bad faith.

**D. QBE Withdrew Its Claim In October 2006, Over Three Months Before The Liquidator Took Formal Action**

22. On October 13, 2006, two days after attorney Lenci met with Mr. Rosen, QBE formally withdrew its claim. *See* Exhibit B. As noted already, the only action the Liquidator had taken before then was to assert repeatedly that there was no contract of reinsurance between QBE and The Home and that it was going to recommend denial of that claim. *See, e.g.*, Exhibit O.

23. Despite the Liquidator’s prior admissions and QBE’s withdrawal of its claim over three months before the Liquidator took any formal action with respect to it, the Liquidator issued a Notice of Determination on February 6, 2007, purporting to allow QBE’s claim and advising that payment of any amount to QBE from the Home estate is unlikely. *See* Exhibit D.

## Legal Arguments

### POINT I

**THE COURT SHOULD GRANT QBE'S REQUEST  
BECAUSE THE LIQUIDATOR HAS ADMITTED  
THERE WAS NO CONTRACT OF REINSURANCE  
BETWEEN QBE AND THE HOME AND IS,  
IN BAD FAITH, SEEKING TO EXPLOIT A MISTAKE  
IN THE FACULTATIVE REINSURANCE PROPOSAL**

24. As explained in detail above, the Liquidator made repeated statements, and offered detailed explanations, that QBE had no contract with The Home and that, therefore, QBE has no claim against The Home. Those statements constitute admissions that QBE had no contract with The Home and that, therefore, QBE has no claim against The Home. *See e.g., In re Brittany L.*, 144 N.H. 139, 144, 737 A.2d 670, 675 (1999) (out-of-court statement qualified as an admission of a party-opponent, admissible for both substantive and impeachment purposes.); *Tullgren v. Phil Lamoy Realty Corp.*, 125 N.H. 604, 608, 484 A.2d 1144, 1147 (1984) (“Admissions are received in evidence upon the assumption that what a party admits to be true, may reasonably be presumed to be so.”).

25. As is clear, what is happening here is that the Liquidator is now in bad faith exploiting what it had previously conceded was a mistake in the Facultative Reinsurance Proposal naming The Home as the reinsurer of QBE. In addition to ignoring its own admissions, the Liquidator has now also conveniently forgotten that all the contemporaneous evidence (Exhibits I and N) shows conclusively that Trygg Hansa was the intended reinsurer of QBE -- and it is the intended parties that are the true parties to any contract. *See In re: Stafford's in the Field, Inc.*, 192 B.R. 29, 34 (D. N.H. 1996) (following New Hampshire law; where identity of parties to a contract

was ambiguous court looked at all facts and circumstances surrounding transaction to find intended parties); *Lawrence v. U.S.*, 378 F.2d 452, 461 (5<sup>th</sup> Cir. 1967) (“A person is not made a party to a contract merely by being named and described in it or merely by the fact that such a contract is referred to in a second instrument in a way to evidence that such person is a party in another contract”).

26. On the basis of either the Liquidator’s admissions or the contemporaneous evidence, or both, the Court should grant QBE the relief requested because it is clear there never was a contract between QBE and The Home.

## **POINT II**

### **IT IS QBE’S RIGHT TO WITHDRAW ITS CLAIM**

27. QBE is not aware of any case directly on point regarding the question of whether a party can withdraw a claim already submitted in an insurance liquidation, but several cases from other states make reference to withdrawals having occurred. *See, e.g., Hemisphere Nat’l Bank, v. District of Columbia Ins. Guaranty Ass’n*, 412 A.2d 31, 33 (D.C. 1980); *Cogliano v. Ferguson*, 245 Mass. 364, 369, 139 N.E. 527 (Mass. 1923); *Hahn, v. General American Life Ins. Co.*, 132 Neb. 509, 514, 272 N.W. 321 (Neb. 1937); *In re Liquidation of New York Title and Mortgage Co.* 170 Misc. 109, 111, 9 N.Y.S.2d 994, 997 (N.Y. Sup. Ct. 1939).

28. Moreover, two analogies support QBE’s right to withdraw its claim. First, by way of analogy to a Federal bankruptcy proceeding, a creditor can withdraw a claim against a debtor’s estate as of right until an objection is filed or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the bankruptcy case. *See* Rule 3006 of the Federal Rules of Bankruptcy Procedure; *In re Cruisehone*, 278

B.R. 325, 330-331 (E.D.N.Y. 2002); *In re Lazo*, 1994 U.S. App. LEXIS 16405 at \*7-8 (9<sup>th</sup> Cir. 1994). As noted earlier, the Liquidator did not issue its Notice of Determination until after QBE withdrew its claim.

29. A second analogy can be made to New Hampshire's procedure for "nonsuit" in a civil action, which roughly corresponds to voluntary dismissal under Rule 41 of the Federal Rules of Civil Procedure. *See Dorney v. Dorney*, 98 N.H. 159, 160, 96 A.2d 198, 199 (1953) ("The plaintiff's motion that his [complaint] be dismissed without prejudice was filed before any hearing had begun on the merits and before any answer or cross petition seeking affirmative relief had been filed. Under these circumstances, the plaintiff was entitled to a granting of this motion as a matter of right."); *see also Bennett v. Hartford Group, Inc.*, 150 N.H. 753, 759, 846 A.2d 56, 565 (2004) ("The trial court may deny a voluntary nonsuit without prejudice if 'the plaintiff has so far committed to the case by act or agreement that it would be unjust to permit the case to be discontinued.'"), *quoting* New Hampshire Practice, Civil Practice and Procedure § 32.11.

### POINT III

#### **THE COURT SHOULD DISMISS QBE'S CLAIM IF IT DETERMINES THE PROOF OF CLAIM SHOULD HAVE BEEN BUT WAS NOT FILED IN THE US INTERNATIONAL RE LIQUIDATION**

30. As noted at the beginning of this brief, in n. 2, a third possible reason to grant QBE's request is that QBE may have been required to file its proof of claim in the separate US International Re liquidation proceeding, not The Home liquidation proceeding. If that is so, then that is a basis upon which the Court should dismiss QBE's claim and QBE requests that the Court do so. By way of further analogy to bankruptcy practice, a proof of claim must be timely filed against the correct debtor.

*See Matter of Stuart*, 31 B.R. 18 (D. Ct. 1983) (creditor not permitted to amend claim against wife-debtor to state claim against husband-debtor).

**Conclusion**

31. For the foregoing reasons, QBE respectfully requests a declaration of this Court granting withdrawal of the claim QBE filed against The Home in December 2003.

**REQUEST FOR ORAL ARGUMENT**

32. The dispute identified in this pleading involves relatively unusual and complex issues related to re-insurance having occurred in the context of a substantial insurance company liquidation pending over a long period of time. Oral argument would further assist the court in determining the pending issues because explanations by counsel would likely clarify issues of law and allegations of fact that are material and relevant to such determination.

WHEREFORE, QBE prays that this Honorable Court shall:

- A. Grant the relief requested; and
- B. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,  
QBE Insurance (Australia) Ltd.  
By its attorneys,  
ROBERT D. HUNT, P.A.



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Dated: March 28, 2007

and


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**CERTIFICATION**

I hereby certify that a copy of the foregoing Objection to Liquidator's Determination of Claim and Request for Further Equitable Relief has been given/mailed this day by first class mail, postage prepaid to the following:

Roger A. Sevigny, Commissioner of Insurance, NH  
J. David Leslie, Esq.  
Eric Jones, Esq.  
Pieter Van Tol, Esq.  
Adam Goodman, Esq.  
Eric A. Haab, Esq.  
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Lisa S. Wade, Esq.  
Michael Cohen, Esq.

Dated: March 28, 2007

  
Robert D. Hunt, Esq.