

Ronald L. Snow

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From "Michael L. Cohen" <mcohen@cohenbuckley.com>  
To: <rls@orr-reno.com>  
Date: 02/15/2005 4:21 PM  
CC: <dconnor@wiggin-nourie.com>

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Mr. Snow,

This will respond to your letter of February 11<sup>th</sup>.

Nationwide will at not at this point respond to your purported request for production of documents for two reasons:

1. You have not made the slightest attempt to identify the legal basis which requires Nationwide to respond. That something is "difficult for [you] to understand]" does not constitute legal authority or analysis. We shall be happy to consider any reasoned analysis supported by cases and statutes that ACE care to provide. Until we receive the benefit of such analysis, Nationwide has no intention of going through the time and expense attendant to dealing with your purported request for production. By the way, I have reviewed the court's order of October 8, 2004. Nothing in that order sheds any light on a nonparty's legal obligation to respond to a party's discovery papers in the proceedings in which you are involved.

2. Nationwide's nonparty status is underscored by the fact that neither ACE nor Home have ever seen fit to serve Nationwide with any of the pleadings in the litigation between those parties. The fact that the definitional section of your report purported request for production adverts to pleadings in that litigation obviates Nationwide's response to your purported request for production. I asked you to provide copies of the relevant pleadings comp. Without comment, you did not do so. Until you provide this material, Nationwide is unable to respond even if it is under a legal obligation to do so.

Additionally, in our conversation you indicated that the Lovell firm had prepared and was handling the responses thereto. You also indicated that you are merely acting as a paper carrier for that firm. While I agree that we are unaware that your firm is in a conflict position vis-à-vis Nationwide, it is also clear that Lovells is. I have been instructed by Nationwide to advise that Nationwide considers Lovells to be in a conflict position and requires that Lovells have no involvement with the discovery served on Nationwide, including but not limited to instructing your firm with respect to the discovery served on Nationwide receiving or reviewing any response that Nationwide might submit in response to your purported request for production. Please confirm that you are not taking instructions or communicating with Lovells about the discovery propounded on Nationwide. Nationwide reserves its right to require the withdrawal of Lovells from this matter entirely should a directly adversarial relationship develop.

Michael L. Cohen

Michael L. Cohen

# Orr&Reno

*Professional Association*

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Malcolm McLane  
(Retired)

January 13, 2005

Ronald L. Snow  
Charles F. Leahy  
Mary Susan Leahy  
William L. Chapman  
George W. Roussos  
Howard M. Moffett  
James E. Morris  
John A. Malmberg  
Martha Van Oot  
Douglas L. Patch  
Connie L. Rakowsky  
Jill K. Blackmer  
James P. Bassett  
Emily Gray Rice  
Charles A. Szypszak  
Steven L. Winer  
Peter F. Burger  
Lisa Snow Wade  
Jennifer A. Eber  
Roy S. McCandless  
Pamela E. Phelan  
Connie Boyles Lane  
Jeffrey C. Spear  
James F. Laboe  
Maria M. Proulx  
Michael R. Rizzo


Ms. Karen Lebrmann  
Nationwide Mutual Insurance Co.  
c/o Nationwide Indemnity  
P.O. Box 8101  
Wausau, WI 54402-8101

**Re: *In the Matter of the Liquidation of The Home Insurance  
Company, Merrimack County Superior Court (New Hampshire)  
Docket No. 03-E-0106***

Dear Ms. Lebrmann:

Enclosed are the original and two copies of Respondents ACE Companies' First Request for Production of Documents by Nationwide Mutual Insurance Co. in the above-entitled matter. Would you kindly respond to this discovery within 30 days.

Very truly yours,



Ronald L. Snow

Judith A. Fairclough  
(Of Counsel)

Susan S. Geiger  
(Of Counsel)

RLS:mp  
Enclosures

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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

**RESPONDENTS ACE COMPANIES' FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS BY  
NATIONWIDE MUTUAL INSURANCE CO.**

Respondents Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company (collectively, the "ACE Companies") hereby request, pursuant to Rule 35 of the Rules of the Superior Court of the State of New Hampshire and the Order Establishing Procedures Regarding Claims Filed with the Home Insurance Company entered on December 19, 2003 (as amended), that Karen Lebrmann ("Lebrmann"), individually and on behalf of Nationwide Mutual Insurance Co. ("Nationwide"), produce and permit them to inspect and copy, within thirty (30) days after the service of this request, or within any other period ordered by the Court, the documents listed below in accordance with the following definitions and instructions.

**Definitions**

A. "Communications" shall mean the transmittal of information, whether written or oral, in the form of facts, ideas, inquiries or otherwise.

B. The terms "concerning," "relating to," "refer to," "containing" and "regarding" are used in their broadest sense and shall include in their meaning each such terms as well as constituting, embodying, comprising, stating, dealing with, summarizing, recording, noting, mentioning, studying, setting forth, discussing, evaluating, commenting on, responding to,

describing, analyzing, containing information concerning, and containing information that is in any way pertinent to the subject matter, directly or indirectly, including, but not limited to, documents concerning the presentation of other documents.

C. The term "document" or "documents" is used in the broadest possible sense and shall mean, without limitation, any written, typed, printed, recorded, computer-stored, visual or graphic material, however produced, reproduced, copied or stored (including, but not limited to, any audio tapes, video tapes or magnetic recording tapes, microfilm, microfiche, computer hard drives, recording discs, computer disks or any other computer storage mechanisms whether temporary or permanent, or computer back-up storage media and/or mechanisms), of any type or description, whether in draft or final form, and each non-identical copy or otherwise, regardless of origin or location, in your actual or constructive possession, custody or control, and includes, without limitation, all electronic data (as the term is defined herein), correspondence, communications, notes, drafts, records, notebooks, plans, minutes, agendas, lists, summaries, expressions, statements, opinions, instruments, accounts, invoices, ledgers, logs, accounting records, worksheets, estimating sheets, computation sheets, forms, tables, charts, analyses, graphs, forecasts, statistical statements, photographs, slides, recordings, schedules, reports, memoranda, lists, outlines, instructions, notes, calendars, diaries, telexes, telegrams, facsimile transmissions, electronic mail (e-mail), instant computer messaging, voice mail messages and other messages (including, but not limited to, reports, summaries or other records of telephone conversations and conferences), studies, books, periodicals, magazines, booklets, circulars, brochures, pamphlets, press releases, bulletins (including, but not limited to, inter- and intra-office communications), questionnaires, contracts, agreements, reports and/or summaries of investigations, reports and/or summaries of interviews, expressions or statements of policy,

records, reports or summaries of negotiations, agendas for meetings or conferences, minutes of records of meetings or conferences, lists of persons attending any meetings or conferences, opinions or reports of consultants, and drafts and revisions of drafts of any documents, and all other instruments conveying information by written, pictorial, mechanical, electronic or other means. If a document has been prepared in several copies, or additional copies have been made, or copies are not identical (or, because of subsequent modifications or addition of notations or other marginalia, are no longer identical), each non-identical copy is a separate document. The term "document" also includes and refers to the file or any container holding, or which once held, any documents and any writing or printing which might appear on such file or container.

D. "Computer" shall mean microchips, microcomputers (commonly referred to as "personal computer" or "PCs"), laptop computers, notebook computers, portable computers, palmtop computers (commonly referred to as "personal digital assistants" or "PDAs"), minicomputers and mainframe computers.

E. "Electronic data" shall mean the electronic original (which includes the raw data, the code necessary to make use of that data, and all header, footer and other machine-readable information related to the electronic original), the identical duplicate when the electronic original is not available, and any non-identical copies (whether non-identical because of attached comments, hidden text, annotations, marks, transmission information or alteration of any kind) of information of any kind stored in electronic, magnetic, optical, magneto-optical, or digital form. Electronic data includes, but is not limited to, electronic originals and all copies of electronic mail (e-mail), activity listings and/or logs of electronic mail receipts and/or transmittals, voicemail, audio or video recordings of any kind, output resulting from the use of any software product, including word processing documents, spreadsheets, database files, charts, graphs and

outlines, PDF files, batch files, ASCII files, script files, and all miscellaneous electronic files and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, archival file, deleted file or file fragment, as those terms are defined herein. Electronic data includes any and all information stored on electronic media as that term is defined herein.

F. "Electronic media" shall mean any magnetic or other media used for the storage of electronic data as the term is defined herein. Electronic media includes, but is not limited to, hard disks, floppy disks, CD-ROM disks, Bernoulli disks and their equivalents, Zip disks, Click disks, Memory Sticks, compact flash cards, magnetic tapes of all kinds, computer chips (including, but not limited to, EPROM, PROM, RAM and ROM), and any other type of removable storage media.

G. "Active file" shall mean any electronic data file that is readily visible to the operating system and application with which it was created.

H. "Archival file" shall mean any electronic data file that is stored in electronic media for back-up purposes and is not otherwise an active file.

I. "Deleted file" shall mean any electronic data file that has been deleted from the electronic media on which it resides but has not yet been completely written over with new electronic data.

J. "File fragment" shall mean any electronic data file that exists as a subset of an original active file. A file fragment may be part of an active file, archival file or deleted file.

K. "You" or "your" shall mean, Karen Lebrmann, individually and on behalf of Nationwide Mutual Insurance Co., including any of its affiliates, related companies, parent company, subsidiaries, predecessors or successors, and any of its/their employees, agents,

accountants, advisors, attorneys and any other persons acting or purporting to act on its/their behalf.

L. "Liquidator" shall mean Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator of the Home Insurance Company, and his predecessors, successors, assigns, employees, agents, accountants, advisors, attorneys and any other persons acting or purporting to act:

- (a) on his behalf, including, but not limited to, the Special Deputy Liquidator;
- (b) on behalf of Home; and
- (c) on behalf of the Joint Provisional Liquidators (as defined herein).

M. "Liquidation" shall mean the liquidation of Home, which was commenced in the United States by the filing of a petition to liquidate on or about May 8, 2003.

N. "Motion" shall mean the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents filed in the Liquidation on or about February 11, 2004.

O. "Home" or the "Company" shall mean the Home Insurance Company.

P. "Home UK Branch" shall mean Home's unincorporated branch operation in the United Kingdom.

Q. "Agreement" shall mean the Agreement with the AFIA Cedents that is the subject of the Motion, including any and all of its terms.

R. "UK Scheme of Arrangement" shall mean the proposed scheme of arrangement referred to in paragraphs 12 through 17 of the Motion.

S. "AFIA" shall mean the American Foreign Insurance Association, an unincorporated association of American insurers, through which the Home UK Branch wrote insurance and reinsurance business in the United Kingdom.

T. "AFIA Cedent(s)" shall mean those insurers, including Nationwide, who ceded insurance risk to Home through the Home UK Branch.

U. "AFIA Treaties" shall mean those reinsurance treaties through which certain insurers ceded insurance risk to Home through the Home UK Branch.

V. "Joint Provisional Liquidators" shall mean the Joint Provisional Liquidators appointed by the High Court of Justice in London, on or about May 8, 2003, in the English provisional liquidation proceeding for the Home UK Branch, and any successor(s) thereto.

W. The terms "all" and "each" shall be construed as all and each.

X. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the requests below all responses that might otherwise be construed to be outside of its scope.

Y. The use of the singular form of any word includes the plural and vice versa.

#### **Instructions**

A. These requests call for the production of all responsive documents in your possession, custody or control or available to you, your employees, attorneys, accountants, advisors, auditors or other persons acting on your behalf, in your employment, under your direction and/or control of your agents or representatives.

B. When information with respect to a corporation, partnership, limited liability company or unincorporated association or entity is called for in these requests, such reference shall be construed to include information with respect to that entity and any and all predecessors and successors in interest, parents, subsidiaries, affiliates, divisions or departments, agents, representatives, directors, officers, employees, committees, attorneys, accountants and all other persons or entities acting on its behalf or under its control.



C. Where a document is not produced because of a claim of privilege, the following information shall be provided: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document, including, where appropriate, the author of the document, the addressees of the document, any other recipients of the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other.

D. If a document that is responsive to a document request was, but is not now, in your custody or control, provide a statement with the following information:

- (a) whether the document is still in existence, and if so, the name and business address of each person in whose custody a copy of the document may be found;
- (b) whether the document has been lost or destroyed, and if destroyed, why and by whom;
- (c) whether the document has been otherwise disposed of, stating who disposed of it, and the date and manner of disposition; and
- (d) a description of the contents of the document, the names of the author(s) and addressee(s) of the document, and the date the document was created.

E. If it is otherwise not possible to produce any document called for by the request, or if any part of the request is objected to, the reasons for the objection and/or other failure to produce should be stated with specificity as to all grounds.

F. These requests are continuing and require further and supplemental production as and whenever additional documents are acquired or made or located between the time of the initial production hereunder and the time this matter is concluded.

## Document Requests

### Communications regarding the Agreement

1. All documents reflecting your internal communications concerning the Agreement, including but not limited to:

- (a) communications concerning payments and net recoveries contemplated under the Agreement;
- (b) any payment necessary for you to file a claim in the Liquidation;
- (c) any other incentive to you to enter into the Agreement;
- (d) any correlation between payment levels and the cost of collection;
- (e) any possible side arrangement between you and the ACE Companies; and
- (f) the payment to you of administrative expenses.

2. All documents reflecting communications between you and the Liquidator or Joint Provisional Liquidators concerning the Agreement, including but not limited to:

- (a) communications concerning payments and net recoveries contemplated under the Agreement;
- (b) payment necessary for you or any other AFIA Cedent to file a claim in the Liquidation;
- (c) any other incentive or potential benefit to you or any other AFIA Cedent to enter into the Agreement;
- (d) any correlation between payment levels and the cost of collection;
- (e) any possible side arrangements between you or any other AFIA Cedent and the ACE Companies;

(f) alternative means of realizing recovery with respect to the business protected by the AFIA Treaties;

(g) the application of New Hampshire claims and distribution procedures to claims and assets located in the United Kingdom;

(h) any suggestion that UK assets should be walled off from US creditors and distributed to HOME UK Branch creditors;

(i) the UK Scheme of Arrangement; and

(j) the payment to you or any other AFIA Cedent of administrative expenses.

3. All documents reflecting communications between you and any other AFIA Cedent or between and among AFIA Cedents concerning the Agreement, including but not limited to:

(a) communications concerning payments and net recoveries contemplated under the Agreement;

(b) payment necessary for you or any other AFIA Cedent to file a claim in the Liquidation;

(c) any other incentive to you or any other AFIA Cedent to enter into the Agreement;

(d) any correlation between payment levels and the cost of collection;

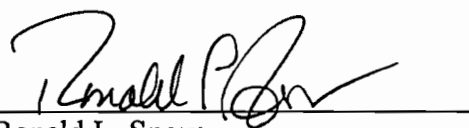
(e) alternative means of realizing recovery with respect to the business protected by the AFIA Treaties;

(f) the application of New Hampshire claims and distribution procedures to claims and assets located in the United Kingdom;

(g) any suggestion that UK assets should be walled off from US creditors and distributed to HOME UK Branch creditors;

- (h) the UK Scheme of Arrangement;
- (i) Any possible side arrangements between you or any other AFIA Cedent and the ACE Companies;
- (j) communications concerning payments and net recoveries contemplated under the Agreement; and
- (k) the payment to you or any other AFIA Cedent of administrative expenses.

Dated January 13, 2005



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