

**Orr&Reno**  
Professional Association

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February 18, 2005

Malcolm McLane  
(Retired)

**VIA FACSIMILE AND**  
**FIRST CLASS MAIL**

Gernot A. Warmuth, Esq.  
Scheiber & Partner  
Kennedyalle 97  
80595 Frankfurt  
Germany

**Re: *In The Matter Of The Liquidation Of The Home Insurance  
Company  
Docket No. 03-E-0106***

Dear Mr. Warmuth:

We write on behalf of the ACE Companies ("ACE") pursuant to New Hampshire Superior Court Rules 36-A and 57-A in reply to the response to the ACE Companies First Request for Production of Documents (the "discovery Responses") submitted by you individually and on behalf of Zurich Versicherung AG ("Zurich") on February 4, 2005. This letter sets forth the issues we have identified with regard to the Discovery Responses, in advance of a "meet and confer" session, both of which we hope will enable us to resolve any disputed issues without necessitating a formal motion to compel to the Court.

As presented, the Discovery Responses are incomplete under New Hampshire Superior Court Rule 35. In order to avoid formal motion practice, where we have indicated that an objection is inappropriate, we ask that you provide a supplemental response to bring the Discovery Responses in compliance with Rule 35. In that supplemental response, we ask that you confirm that:

- a. any inappropriate objection has been withdrawn; and
- b. full disclosure of the information sought and/or a complete production of all responsive, non-privileged documents will be made;

Ronald L. Snow  
Charles F. Leahy  
Susan Leahy  
Iain L. Chapman  
George W. Roussos  
Edward M. Moffett  
James E. Morris  
John A. Malmberg  
Martha Van Oot  
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Maria M. Proulx  
Michael R. Rizzo

Edith A. Fairclough  
(Of Counsel)

Susan S. Geiger  
(Of Counsel)

If Zurich continues to assert an objection to any one of ACE's Document Requests, we ask that in your supplemental response, you state with particularity:

- a. the bases for Zurich's continued objection by providing a full explanation of the reasons Zurich believes the Document Request is or remains objectionable; and
- b. the parameters of Zurich's limited disclosure or production where Zurich contemplates less than a complete disclosure.

If Zurich asserts claims of privilege, please provide us with a detailed privilege log as to the nature of documents claimed under said privilege and the basis claimed for the privilege.

We ask that you provide Zurich's supplemental responses to ACE's Document Requests at your earliest convenience so we can schedule a "meet and confer" session.

#### 1. Internal Zurich Documents

Zurich has objected to ACE's Document Request No. 1 on the grounds that the requested documents are protected from disclosure by the attorney-client privilege, work product doctrine, confidentiality agreements, joint defense agreements and/or a common interest privilege.

These objections are inappropriate to the extent that they purport to cloak in privilege internal Zurich documents that do not qualify for the protection of New Hampshire Rule of Evidence 502(b) or New Hampshire Superior Court Rule 35(b)(2). As the party asserting privilege, Zurich bears the burden of demonstrating that any communication or document withheld from production is in fact privileged. See State v. Gordon, 141 N.H. 703, 705, 692 A.2d 505, 506 (1997); Moore v. Medeva Pharmaceuticals, Inc., No. Civ. 01-311-M, 2003 WL 1856422, at\* 2 (D.N.H. Apr. 9, 2003) (applying New Hampshire law). As you are aware, New Hampshire Rule of Evidence 502(b) would only extend the protection of the attorney-client privilege to communications between or among Zurich and/or a member of one (or more) of the following groups: (1) an attorney for Zurich, (2) a representative of such an attorney, (3) a "representative of a client" as defined under that Rule, or (4) an attorney or attorney's representative for another party with a common legal interest. With regard to the work product doctrine, as you know, Zurich must demonstrate that the documents were indeed created in anticipation of litigation or for trial, as required by New Hampshire Superior Court Rule 35(b)(2).

Please explain the bases for Zurich's objections under New Hampshire law, including Zurich's position that confidentiality agreements may protect documents from discovery. If Zurich, moreover, has withheld documents responsive to ACE's Document Request No. 1 on the

basis of objections other than those noted above, please state those objections and explain the bases for such objections.

**2. Communications with Other AFIA Cedents**

Zurich has objected to ACE's Document Requests Nos. 2 and 24 on the grounds that the requested documents are protected from disclosure by the attorney-client privilege, work product doctrine, confidentiality agreements, joint defense agreements, and/or a common interest privilege.

These objections are inappropriate to the extent that they purport to cloak in privilege communications that do not qualify for the protection of New Hampshire Rule of Evidence 502(b) or New Hampshire Superior Court Rule 35(b)(2). Please explain the bases for your objections under New Hampshire law, including Zurich's position that confidentiality agreements may protect documents from discovery. If Zurich, moreover, has withheld documents responsive to ACE's Document Requests Nos. 2 and 24 on the basis of objections other than those noted above, please state those objections and explain the bases for such objections.

**3. Communications with the Liquidator**

In response to ACE's Document Request No. 3, Zurich repeated its general objections. Subject to those objections, however, Zurich has produced certain documents. Please clarify whether any documents responsive to ACE's Document Request No. 3 have been withheld from production. If so, please explain the bases for Zurich's objection(s).

**4. Communications with the Joint Provisional Liquidators**

Zurich has objected to ACE's Document Request No. 4 on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and/or irrelevant to the affidavit submitted by you in this proceeding. Subject to those objections, however, Zurich has produced certain documents. Please clarify whether any documents responsive to ACE's Document Request No. 4 have been withheld from production. If so, please explain the bases for Zurich's objection(s).

**5. Documents Regarding Alternative Means of Recovery**

Zurich has objected to ACE's Document Request No. 7 on the grounds that the requested documents are protected from disclosure by the attorney-client privilege, work product doctrine, confidentiality agreements, joint defense agreements, and/or a common interest privilege. Subject to those objections, however, Zurich has produced certain documents. Please clarify

whether any documents responsive to ACE's Document Request No. 7 have been withheld from production. If so, please explain the bases for Zurich's objection(s).

6. **Documents Regarding "Walling Off"**

Zurich has objected to ACE's Document Request No. 9 on the grounds that the requested documents are protected from disclosure by the attorney-client privilege, work product doctrine, confidentiality agreements, joint defense agreements, and/or a common interest privilege. Subject to those objections, however, Zurich has produced certain documents. Please clarify whether any documents responsive to ACE's Document Request No. 9 have been withheld from production. If so, please explain the bases for Zurich's objection(s).

7. **Documents Not Produced**

In response to most of ACE's Document Requests, Zurich has asserted general and specific objections but has indicated that there are "no additional documents" responsive to these Document Requests. (Zurich has responded in this manner to ACE's Document Requests Nos. 5, 6, 8, 10-23, and 25-49.) Please confirm that no documents responsive to these Document Requests have been withheld from production. If so, please explain the bases for Zurich's objection(s).

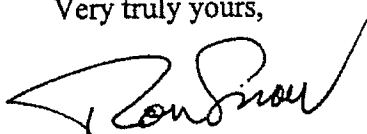
8. **Documents Purportedly in ACE's Possession**

In response to several of ACE's Document Requests, Zurich has indicated that all responsive documents are already in the possession, custody or control of ACE on account of an ACE subsidiary's involvement in "the run-off of Respondent Zurich's interest in the Ruddy Pool." (Zurich has responded in this manner to ACE's Document Requests Nos. 9 and 19-25.) If Zurich has withheld documents on this basis, such withholding is inappropriate. ACE is entitled to review all relevant documents in the possession, custody or control of Zurich, its employees and agents without speculation from Zurich regarding which documents may also be in ACE's possession. Please confirm that no documents specifically responsive to these Document Requests have been withheld from production on the basis of ACE's purported possession of such documents. If documents have been withheld from production solely on this basis, please produce such documents immediately.

Gernot A. Warmuth, Esq.  
February 18, 2005  
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We look forward to receiving your response to this letter along with a detailed privilege log no later than March 4, 2005. We appreciate your cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ron Snow", written in a cursive style.

Ronald L. Snow

RLS:pht