

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of
The Home Insurance CompanyLIQUIDATOR'S RESPONSE TO
THE ACE COMPANIES' DOCUMENT REQUEST

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby responds to the ACE Companies' First Request for Production of Documents by Liquidator dated October 4, 2004 ("ACE Document Request").

Preliminary Statement

The Liquidator responds to the ACE Document Request in accordance with the Order on Remand entered October 8, 2004. The Court there directed that, in the present circumstances and pending clarification of the New Hampshire Supreme Court's order entered September 13, 2004, "the parties may conduct discovery limited to the necessity, reasonableness, and fairness of the agreement." Order on Remand at 13. See *id.* at 14 ("The parties may conduct discovery limited to the necessity, fairness, and reasonableness of the compromise and agreement.").

The Liquidator has previously provided information concerning the Agreement, the reasons for entering the Agreement, and pertinent background in numerous filings in the Merrimack County Superior Court and the New Hampshire Supreme Court beginning with the Motion served on February 11, 2004. Those filings include affidavits of Peter Bengelsdorf, Jonathan Rosen, Gareth Hughes, Gernot Warmuth, and Rhydian Williams.

Those documents have previously been served on the ACE Companies, and the Liquidator incorporates those filings by reference.

General Objections

Each response below is made subject to the following general objections even though the objections are not specifically referred to therein:

1. The Liquidator objects to the ACE Document Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege.

2. The Liquidator objects to the definitions and instructions set forth in the ACE Document Request to the extent they purport to impose obligations beyond those imposed by the New Hampshire Superior Court Rules, including but not limited to the following:

a. The Liquidator objects to the definition of “concerning,” “relating to,” “refer to,” “containing,” and “regarding” as overbroad and unduly burdensome. The Liquidator construes these terms to mean referring to, describing, evidencing, or constituting.

b. The Liquidator objects to the definitions of “document” and “electronic data” and instruction D as overbroad and unduly burdensome. The Liquidator objects to conducting general searches for electronic data, especially deleted material, as unduly burdensome. With respect to electronic records, the Liquidator has printed out e-mails presently existing on the Home liquidation computer system and the New Hampshire Insurance Department computer system within the responses below and is investigating the availability of backup information from those systems. The Special

Deputy Liquidator has provided his electronic records within the responses below. The Liquidator has requested and the Joint Provisional Liquidators have printed out e-mails presently existing on the Ernst & Young computer system within the responses below. The Liquidator has been informed by the Joint Provisional Liquidators that further backup information is not available. The Liquidator objects to further attempts to retrieve electronic records as unduly burdensome.

c. The Liquidator objects to the definitions of “you,” “your,” “Liquidator” and “Special Deputy Liquidator” and instructions A and B as overbroad, in particular insofar as they purport to include the Joint Provisional Liquidators (appointed by and responsible to the High Court of Justice in London), accountants, attorneys, and other independent persons. The Liquidator responds in accordance with the responses set forth below based on a reasonable search of the Liquidator’s files at the New Hampshire Department of Insurance, and the files of the Special Deputy Liquidator and liquidation staff involved in the subject matters of the requests. The Liquidator has also requested that the Joint Provisional Liquidators provide documents within the scope of the responses set forth below and will produce documents provided by the Joint Provisional Liquidators in accordance with the responses.

3. Except as specified in the responses below, the Liquidator objects to producing documents created after February 11, 2004, as not relevant to the necessity, reasonableness, and fairness of the Agreement, beyond the scope of discovery permitted by the Order on Remand, overbroad and unduly burdensome. The Motion for approval of the Agreement was served on February 11, 2004, and litigation with the ACE

Companies and Benjamin Moore and Co. (“BMC”) over the Motion began shortly thereafter.

4. Except as specified in the responses below, the Liquidator objects to producing documents created before September 1, 2003 as not relevant to the necessity, reasonableness, and fairness of the Agreement, beyond the scope of discovery permitted by the Order on Remand, overbroad and unduly burdensome.

Responses and Objections to Document Requests

1. All documents concerning the “significant assets related to the Home UK Branch” that are referred to in paragraph 1 of the Motion.

Response: The Liquidator reasonably construes this request to refer to assets of the Home UK Branch that may be repatriated pursuant to the Global Liquidation Order contemplated by the Agreement as discussed in the cited paragraph of the Motion. The Liquidator will produce documents identifying such assets and their approximate values as estimated as of December 31, 2002. The Liquidator otherwise objects to the request as not relevant to the necessity, reasonableness, and fairness of the Agreement and beyond the scope of discovery permitted by the Order on Remand.

2. All documents concerning the appointment of the Joint Provisional Liquidators by the High Court of Justice, as described in paragraph 5 of the Motion.

Response: The Liquidator objects to this request as not relevant to the necessity, reasonableness, and fairness of the Agreement, beyond the scope of discovery permitted by the Order on Remand, overbroad and unduly burdensome.

3. All documents filed in the English provisional liquidation proceeding for the Home UK Branch, including, but not limited to, the application for the appointment of the Joint Provisional Liquidators and any supporting legal submissions, witness statements or affidavits, and all documents concerning the witness statement of Paula Taft Rogers dated May 7, 2003.

Response: The Liquidator incorporates the response to Request 1 above and otherwise objects to this request as not relevant to the necessity, reasonableness, and fairness of the Agreement, beyond the scope of discovery permitted by the Order on Remand, overbroad and unduly burdensome.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER
OF INSURANCE FOR THE STATE OF
NEW HAMPSHIRE, AS LIQUIDATOR
OF THE HOME INSURANCE COMPANY

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