



THE STATE OF NEW HAMPSHIRE

MERRIMACK, S.S.

SUPERIOR COURT

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IN THE MATTER OF
THE HOME INSURANCE COMPANY
* * * * *

03-E-106

MOTIONS HEARING

TRANSCRIPT OF ENTIRE MOTIONS HEARING
MERRIMACK COUNTY SUPERIOR COURT, CONCORD, NEW HAMPSHIRE, ON
MARCH 4, 2005, BEFORE THE HONORABLE KATHLEEN MCGUIRE
PRESIDING JUSTICE

Appearances:

- For Liquidators: Suzanne Gorman, Esq.
Eric Smith, Esq.
David Leslie, Esq.
For ACE: Pieter Van Tol, Esq.
Ronald Snow, Esq.
Gary Lee, Esq.
For BMC: Andre Bouffard, Esq.
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1 the order requires, the Administrative Order requires, present
2 any affiants in the Court to be examined and we think that's
3 the most efficient way to do it. ACE and Benjamin Moore will
4 be fully informed as to what their testimony will be in
5 advance, since they'll have the affidavits - -

6 THE COURT: Okay.

7 MR. LESLIE: And they'll see - -

8 MR. TOL: Your Honor, we are not, we are talking
9 about a half dozen witnesses. We could bring them over here in
10 a week and - -

11 THE COURT: Why - -

12 MR. LESLIE: Why don't you voluntarily agree to do
13 that?

14 THE COURT: All right, wait a minute. From, how this
15 can be presented so it's understandable to me, which is what
16 I'm concerned about. I think it'd be very helpful for you to
17 do your offer of proof so the other side understand what it is
18 that your proof will be. I probably wouldn't read that. But,
19 and I would want the testimony here under oath, only because
20 it's much more, I'll be much more able to understand it by
21 watching the witness and listening.

22 But I do think the suggestion of ahead of time, before
23 depositions, that, that you give your detailed, that you write

1 out your offer of proof, the other side has it. I think that
2 the other side's going to be entitled to depositions. I, I, we
3 just are not going to be able to short circuit it that much.

4 MR. LEE: And also going to, you know, very much
5 limit the scope of the depositions as well.

6 THE COURT: That's what, that's what I'm hoping.

7 MR. LESLIE: Your Honor, the Supreme Court itself
8 offered the option of an offer of proof, and the, the
9 Administrative Order calls for the examination, under oath, of,
10 of such affiants. And we would respectfully suggest that's,
11 that serves the Court's purpose of being able to evaluate the
12 credibility of the affiants. It allows ACE and Benjamin Moore
13 an opportunity to examine them. They will, they will know the
14 issues. Again, this is an In Rem proceeding, ACE is not, this
15 is not a private party litigation. The purpose of this, this
16 offer of proof is to inform the Court so that, and ACE and
17 Benjamin Moore's role is a role that the Court should confine
18 to what is it in the furtherance of its tasks, so - -

19 THE COURT: All right.

20 MR. TOL: But, Your Honor, just for clarity, what Mr.
21 Leslie's referring to in the Supreme Court Order is clearly a
22 reference to the evidentiary hearing but we're not precluding
23 discovery nor did they address discovery.